



**NUNAVUT WATER BOARD**

**WATER LICENCE NO. 2AM-MEA0815**

**REASONS FOR DECISION**

# NUNAVUT WATER BOARD



In the Matter of:

Applicant: Agnico-Eagle Mines Limited

Subject: Application for Short term renewal of Existing Type “A”  
Water Licence No. 2AM-MEA0815

Date: March 20, 2015

Precedence: Where there is any inconsistency or conflict between the *Nunavut Land Claims Agreement (Agreement)* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA)*, the *Agreement* prevails to the extent of the inconsistency or conflict. Where there is any inconsistency or conflict between the *NWNSRTA* and any other act of Parliament, except the *Nunavut Land Claims Agreement Act*, the *NWNSRTA* prevails to the extent of the inconsistency or conflict.



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## **REASONS FOR DECISION**

### **SECTION I: BACKGROUND AND REGULATORY HISTORY**

#### **Application**

The Application that is the subject of this decision is a for a Short term renewal (STR Application) filed by Agnico-Eagle Mines Limited (AEM or the Applicant) requesting that an existing Type “A” Water Licence No. 2AM-MEA0815 (the Existing Water Licence) be amended to renew the Existing Licence term for a period of up to 180 days from the current expiry date of May 31, 2015.

It is important to note that the Applicant currently has a full renewal and amendment application before the Nunavut Water Board (the NWB or Board) that was received on July 23, 2014 (the Renewal and Amendment Application). On January 15, 2015 during the Technical Meeting and Pre-hearing Conference (TM/PHC) associated with the Renewal and Amendment Application, the Applicant indicated their concerns that due to the prescribed timelines for the Board’s notice period in advance of a Public Hearing, the likely timing of a Public Hearing, the typical timelines for the Board’s decision-making and reporting following a Public Hearing and recognizing the Minister’s timelines for decision-making, that the timing of the renewal of the Existing Licence may result in the Existing Licence expiring before the Board and the Minister complete their consideration of the Renewal and Amendment Application. Consequently, it was discussed by the parties at the TM/PHC that the Applicant may wish to consider bridging the gap between the expiry of the Existing Licence and the potential issuance of an amended and renewed licence by filing a Short term renewal application.

The Board identified for the parties at the TM/PHC and then reiterated in the NWB’s Pre-hearing Conference Decision report<sup>1</sup> that, as permitted under s. 9(1)(b) of the *Nunavut Waters Regulations*, SOR/2013-69<sup>2</sup> with the STR Application involving a Short term renewal not exceeding 180 days, the Board would not be required to hold a Public Hearing in order to process an STR Application.

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<sup>1</sup> Nunavut Water Board, Type “A” Water Licence 2AM-MEA0815: Pre-Hearing Conference Decision Regarding an Application for Renewal and Amendment, February 20, 2015.

<sup>2</sup> Section 9(1)(b) establishes that:

9. (1) For the purposes of section 13.7.3 of the Agreement and subsection 52(1) of the Act, no public hearing is required in respect of an application for... (b) one or several renewals of a type A licence if the total duration of the renewal or renewals does not exceed 180 days;



On January 23, 2015 the Board received the STR Application from the Applicant. The STR Application requested the renewal of the Existing Licence on the following basis:

- Absolutely no changes to the Existing Licence (administrative or otherwise);
- The Short term renewal would not exceed 180 days from the date on which the Existing Licence expires (May 31, 2015) with the expiry of the STR occurring on the earlier of November 27, 2015 or on the grant of a renewed water licence if the Board and Minister grant the Renewal and Amendment Application and issue a renewed water licence;
- No plans, studies, reports, or designs would be submitted in support of the STR Application as this information has already been provided or will be provided during the Board's processing of the full Renewal and Amendment Application; and
- Noting the assumption that even if the STR is granted, the Renewal and Amendment Application will continue to be processed by the Board in as timely and efficient a manner as possible.

### **Application and Supporting Materials Submitted by the Applicant**

The following documents were included with the STR Application:

1. Cover Letter;
2. Completed Application form for STR Water Licence; and
3. \$30 application fee.

The Application and supporting documentation were placed on the Board's Public Registry and is available from the NWB ftp site using the following access (Username: *public* and Password: *registry*) at the following link:

[ftp://ftp.nwb-oen.ca/1\\_PRUC\\_PUBLIC\\_REGISTRY/2\\_MINING\\_MILLING/2A/2AM - Mining/2AM-MEA0815 Agnico/1 APPLICATION/2015 Short term renewal/](ftp://ftp.nwb-oen.ca/1_PRUC_PUBLIC_REGISTRY/2_MINING_MILLING/2A/2AM_-_Mining/2AM-MEA0815_Agnico/1_APPLICATION/2015_Short_term_renewal/)

### **Existing Licence History**

The existing Type "A" Water Licence No. 2AM-MEA0815 was issued by the NWB on June 9, 2008<sup>3</sup> (the Existing Licence). The Existing Licence was subsequently approved by the Minister

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<sup>3</sup> Nunavut Water Board, Reasons for Decision for 2AM-MEA0815, Applicant: Agnico-Eagle Mines Limited, issued June 9, 2008.



of Indian and Northern Affairs Canada (as the Minister was known then, now Aboriginal Affairs and Northern Development Canada, or AANDC) on July 10, 2008 and is set to expire on May 31, 2015. The Existing Licence authorizes the use of water and deposit of waste in relation to the operation of the Mining and Milling undertaking at the Meadowbank Gold Project located approximately 70 km north of Baker Lake, within the Kivalliq Region of Nunavut.

The Existing Licence has been amended twice, once in May 2010 to reflect the addition of tanks to increase storage capacity in the Bulk Fuel Storage Facility by 20 million litres (Amendment No. 1), and again in June 2014 to increase the authorized water use from the original amount of 700,000 m<sup>3</sup>/yr. to 1,870,000 m<sup>3</sup> in 2013 and 1,150,000 m<sup>3</sup> per year after 2013 (Amendment No. 2).

### **Regulatory History of this Application**

On February 6, 2015 the Board issued Notice of the STR Application and commenced a thirty (30) day technical review and comment period, which closed on March 9, 2015.

For the previous Amendment Application (No. 2) and the Renewal and Amendment Application, the Board had delegated its power to dispose of all matters in relation to this Licence, to the duly constituted Meadowbank Panel (P9 or the Panel) of the Board, and this Panel was also responsible for considering the STR Application.

Following the review of technical comments received during the thirty (30) day comment period, and pursuant to Article 13 Clause 13.3.6 of the Nunavut Land Claims Agreement and s. 29<sup>4</sup> of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10 (NWNSRTA) the members of the Meadowbank Panel (P9), on March 20, 2015, by Panel Motion No. 2014-32-P9-03 approved the grant of the STR Application. The Panel authorized the issuance of a single renewal of the Existing Licence, being a change to the expiry date of the Licence to add a further term of up to 180 days. This Renewal would result in the expiry of the Licence on November 27, 2015.

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<sup>4</sup> Section 29 of the NWNSRTA states:

(1) The Board may establish panels of the Board and delegate any of its powers, duties and functions to them.



## **SECTION II: SUMMARY OF COMMENT SUBMISSIONS OF THE PARTIES**

### **Kivalliq Inuit Association (KIA)**

The KIA is a Designated Inuit Organization under the Nunavut Land Claims Agreement, representing the rights and values of the Inuit within the Kivalliq Region of Nunavut in respect of rights to water and wildlife compensation, landowner rights and negotiation of an Inuit Impact and Benefit Agreement.

The KIA did not submit comments expressly with respect to the STR Application. The Board followed up with the KIA to confirm that, as indicated in the KIA's response to AEM's Amendment No. 1 provided to the Board in June, 2014 there are no outstanding water compensation issues under the Existing Licence that would limit the Board's issuance of a short term renewal of the Existing Licence. The KIA did not respond or identify any outstanding water user compensation issues for the Board and the Board has proceeded on the basis of the KIA's earlier confirmation that water user compensation has been adequately addressed.

### **Aboriginal Affairs and Northern Development Canada (AANDC)**

Aboriginal Affairs and Northern Development Canada (AANDC) has a broad mandate for the co-management of water resources and the management of Crown land in Nunavut. With respect to the STR Application, AANDC provide their comments pursuant to the following applicable law and policy: the *Department of Indian Affairs and Northern Development Act*,<sup>5</sup> and the *Nunavut Waters and Surface Rights Tribunal Act*.<sup>6</sup>

In AANDC's correspondence<sup>7</sup> regarding the STR Application, AANDC indicated:

Aboriginal Affairs and Northern Development Canada supports Agnico Eagle's request for a 180 short term licence renewal application. Their Type 'A' Licence should not expire while the full renewal application is being processed.

### **Fisheries and Oceans Canada (DFO)**

DFO's Fisheries Protection Program is mandated to ensure the sustainability and ongoing productivity of Canada's commercial, recreational and Aboriginal fisheries.

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<sup>5</sup> R.S.C. 1985, c. I-6.

<sup>6</sup> S.C. 2002, c. 10.

<sup>7</sup> Letter from D. Abernethy, Regional Coordinator, Water Resources Division, Resource Management Directorate, AANDC to R. Ikkutisluuk, Licence Administrator Assistant, NWB dated February 24, 2015.



With respect to the STR Application, DFO indicated in correspondence to the NWB<sup>8</sup> that the STR Application was reviewed to:

....determine whether it is likely to result in serious harm to fish which is prohibited under subsection 35(1) of the Fisheries Act. AEM's request has also been reviewed to determine whether it will adversely impact listed aquatic species at risk and contravene sections 32, 33 or 58 of the *Species at Risk Act* (SARA).

Noting that the questions and concerns raised by DFO with respect to the full Renewal and Amendment Application had already been addressed, DFO indicated that they have no "additional comments for the NWB regarding AEM's STR request."

### **Environment Canada (EC)**

The primary relevant legislation and standards administered by EC and that are applicable to the STR Application are the *Department of the Environment Act*,<sup>9</sup> *Canadian Environmental Protection Act, 1999*<sup>10</sup> and the pollution prevention provisions of the *Fisheries Act*.<sup>11</sup>

EC indicated in correspondence to the NWB<sup>12</sup> that EC had no specific comments regarding the STR Application.

### **SECTION III: SUBMISSIONS BY OTHER INTERVENING PARTIES OR MEMBERS OF THE PUBLIC**

There were no submissions on the STR Application provided to the Board by any other intervening parties or members of the public.

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<sup>8</sup> Letter from J. Dahl, DFO, Regional Manager, Regulatory Reviews, Fisheries Protection Program to P. Beaulieu, Manager of Licensing, NWB, dated February 19, 2015.

<sup>9</sup> R.S.C. 1985, c. E-10.

<sup>10</sup> S.C. 1999, c. 33.

<sup>11</sup> R.S.C. 1985, c. F-14.

<sup>12</sup> Correspondence from M. Mohammed to P. Beaulieu, Manager of Licensing, NWB, dated September 29, 2014 (perhaps in error) and received by the NWB on March 06, 2015.





## **SECTION IV: JURISDICTION OF THE BOARD**

The Board has jurisdiction over the STR Application pursuant to Division 2 of the NWNSRTA.<sup>13</sup> Relevant sections in that Division allow the Board to renew a licence<sup>14</sup> on application or on the Board's own initiative. As required by ss. 55(1) and (4) of the NWNSRTA, the Board provided notice of the STR Application on February 6, 2015 and invited interested persons to provide their comments on or before March 9, 2015.

### **Pre-licensing Considerations**

#### **Land Use Planning**

On November 28, 2015, the Nunavut Planning Commission (NPC) provided correspondence to the NWB<sup>15</sup> confirming that the STR request does not warrant a further review by the NPC at this time.

#### **Environmental Assessment**

As the Nunavut Impact Review Board (NIRB) indicated in its correspondence to the NWB<sup>16</sup>, that the full Renewal and Amendment Application is exempt from the requirements for screening pursuant to Section 12.4.3 of the NLCA and the amendment activities proposed therein remain subject to the terms and conditions of the NIRB Project Certificate [004] as issued on December 31, 2006, and did not provide a specific decision related to the STR Application, the NWB has assumed that the STR is also exempt from the requirements for screening pursuant to Section 12.4.3 of the NLCA.

#### **Inuit Water Rights**

During the comment period for the STR, the Kivalliq Inuit Association did not identify any outstanding requirements for water user compensation pursuant to s. 63(1) of the NWNSRTA, and as such, the Board has determined that the requirements of s. 63(1) have been satisfied with respect to the STR Application.

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<sup>13</sup> Sections 42-81 of the NWNSRTA.

<sup>14</sup> See s. 43(1)(b) of the NWNSRTA.

<sup>15</sup> Correspondence from B. Aglukark, NPC, to D. Hohnstein, Director of Technical Services/Acting Executive Director, NWB, and to A. Hanson, Director Technical Services, NIRB, dated November 28, 2015.

<sup>16</sup> Correspondence from R. Barry, Executive Director, NIRB, to T. Kabloona, Chairperson, NWB, c/o P. Beaulieu, Manager of Licensing, NWB, dated September 30, 2014.



## The Nunavut Waters Regulations

As set out in s. 9(1)(b) of the *Nunavut Waters Regulations*,<sup>17</sup> because the STR Application involves a Short term renewal not exceeding 180 days, the Board was not required to hold a Public Hearing in respect of the Application. It should also be noted that no submissions were received that identified an interest in a Public Hearing being held.

## **SECTION V: DECISION TO GRANT THE SHORT TERM RENEWAL**

Following the close of the comment period associated with the STR Application and for reasons elaborated further below, the Board has decided to grant the Applicant's request to renew amend Type "A" Water Licence No. 2AM-MEA0815 to extend the expiry to the earlier of November 27, 2015 or the date on which a renewed water licence is granted, if the Board and Minister choose to grant/approve the Renewal and Amendment Application and issue a renewed water licence, following the scheduled Public Hearings in Baker Lake at the end of April, 2015.

Based on the discussion of the issue at the Technical Meeting and Pre-Hearing Conference for the full Renewal and Amendment Application, the comments received from the parties, no indications of public concern with the STR Application and the Board's consideration of its objects and mandate, the Board has determined that it is preferable to renew the Existing Licence for up to 180 days, rather than to have the Existing Licence possibly expire while the Board and Minister are considering the full Renewal and Amendment Application.

The NWB is confident that if this Short term renewal extension is approved, the Meadowbank Gold Project will continue to meet acceptable standards for water quantity, water quality and effluent quality throughout its duration. In granting the STR Application, the Board is satisfied that the STR Application contained the required information and was in the proper form having regard to the requirements of the NWNSRTA<sup>18</sup> and associated regulations.<sup>19</sup>

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<sup>17</sup> S.O.R./2013-69.

<sup>18</sup> See s. 48 of the NWNSRTA.

<sup>19</sup> *Nunavut Waters Regulations*, SOR/2013-69, April 18, 2013.



## **SECTION VI: WATER LICENCE 2AM-MEA0815 AMENDED TERM**

The Applicant is advised that the Short term renewal of the Licence does not take effect until approval of the Minister is given or deemed to have been given pursuant to s. 56 of the NWNSRTA.<sup>20</sup>

As indicated in Section V, the Panel, by way of Motion No: 2014-32-P9-04 has decided to issue the requested Short term renewal of Water Licence No. 2AM-MEA0815, adding up to an additional 180 days to the expiry date of the Existing Licence. This Renewal will result in a new expiry date of November 27, 2015. All other terms and conditions of the Existing Licence remain.

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<sup>20</sup> Section 56 of the NWNSRTA states:

The issuance, amendment, renewal and cancellation of a Type A licence, and if a public hearing is held, a Type B licence are subject to the approval of the Minister.

Under s. 56(2.2) if the Minister does not issue a decision within 45 days of receiving the Licence from the Board, (or within 90 days if the Minister has extended the decision-making period by an additional 45 days) the Minister is deemed to have approved the Licence.