



NIRB File No.: 11MN034

December 10, 2014

The Honourable Bernard Valcourt
Minister of Aboriginal Affairs and Northern Development
10 Rue Wellington, 21st Floor
Gatineau, QC K1A 0H4

Sent via regular mail, fax and email: bernard.valcourt@parl.gc.ca; minister@aandc.gc.ca

Re: Board Notice of Errata in Response to Request for Clarification of Recommended Terms and Conditions #34 and #69 in the NIRB's Final Hearing Report for Agnico Eagle Mines Ltd.'s Meliadine Gold Project

Dear Mr. Bernard Valcourt:

This letter is in response to your correspondence of December 8, 2014 requesting clarification regarding the meaning of the Nunavut Impact Review Board's (NIRB or Board) recommended Terms and Conditions #34 and #69 in the NIRB's Final Hearing Report in respect of Agnico Eagle Mines Ltd.'s Meliadine Gold Project Proposal (the Meliadine Gold Project) submitted for your consideration on October 10, 2014.

As set out in the Meliadine Gold Project Final Hearing Report,¹ the NIRB's recommended Term and Condition #34 was stated as follows:

Term and Condition No.	34
Category:	Freshwater Aquatic Environment – Watercourses
Responsible Parties:	The Proponent
Project Phase:	Pre-construction, Construction
Objective:	To prevent blockages or restrictions to fish passages
Term or Condition:	The Proponent shall ensure that all Project infrastructure in watercourses is designed and constructed in such a manner that it does not obstruct or limit the natural movement of water in fish bearing streams and rivers.
Reporting Requirements:	To be determined following approval of the Project by the Minister

As summarized your recent letter, there is concern that if recommended Term and Condition #34 is broadly construed it could prevent the construction of key project infrastructure in fish-bearing watercourses such as dikes, pits, ore and plant pads that would obstruct or limit natural

¹ See NIRB File No.: 11MN034, Final Hearing Report for the Meliadine Gold Project, Agnico Eagle Mines Limited, at pp. 253 and see also the more detailed discussion of these issues and the Board's conclusions and recommendations at pp. 101-106.

movement of water (and may be designed for just that purpose). With the Board having approved the Meliadine Gold Project to proceed, you questioned whether the Board's wording in recommended Term and Condition #34 accurately conveyed the Board's intended meaning because it appears incongruous to approve the Project proceeding to licensing but recommend a term and condition that would prevent the construction of key project infrastructure. In particular, you highlighted that the evidence from the Hearing Record indicates that there are approximately 35 fish bearing streams that the Proponent identified would be affected by the construction of this type of project infrastructure in-stream.

In order to assess whether there may have been an error in the way Term and Condition #34 was expressed in the Board's Meliadine Gold Project Final Hearing Report, the Board has considered how the Board expressed similar terms and conditions designed to achieve similar objectives in the past. For example, in the Mary River Final Hearing Report,² the wording of the recommended Term and Condition designed to achieve the same objective was as follows:

Term and Condition No.	47
Category:	Freshwater Aquatic Environment – Watercourses
Responsible Parties:	The Proponent
Project Phase:	Construction
Objective:	To prevent blockages or restrictions to fish passage.
Term or Condition:	The Proponent shall ensure that all Project infrastructure in watercourses are designed and constructed in such a manner that they do not unduly prevent and limit the movement of water in fish bearing streams and rivers.
Reporting Requirements:	To be developed following approval of the Project by the Minister.

The Term and Condition from the Mary River Final Hearing Report uses the words “unduly prevent and limit” rather than the more absolute wording used by the Board in the recommended Term and Condition #34 in the Meliadine Gold Project Final Hearing Report of “obstruct and limit”. In reviewing the substantive discussion surrounding this issue in both NIRB reports there was no significant difference in the evidence before the Board on this issue in each case, nor in the analysis or conclusions of the Board in disposing of this issue that would explain the slight difference in wording. Thus it appears to the Board that there was an error in the final editing of Term and Condition #34 that resulted in the change to the final wording that inadvertently removed the words “unduly prevent” and replaced the wording with the more absolute term “obstruct” in the Meliadine Gold Project Final Hearing Report.

In reviewing the Board's stated intention and substantive discussion surrounding this issue included in the Meliadine Gold Project Final Hearing Report, the Board also expressly acknowledged the jurisdiction of Fisheries and Oceans Canada, water licensing and other respective regulatory authorities to consider freshwater aquatic effects in greater detail at the licensing and permitting stage. However, the current wording of Term and Condition #34 does not accurately reflect the fact that regulatory authorities such as Fisheries and Oceans Canada

² See NIRB File No.: 08MN053, Final Hearing Report for the Baffinland Iron Mines Corporation's Mary River Project Proposal, September 14, 2012, at p. 255.

and the Nunavut Water Board may exercise permitting and licensing authority over these types of activities and have jurisdiction to authorize project infrastructure that specifically would impede the movement of water in fish bearing streams and rivers such as tailings impoundment structures, dams, dikes, etc. It was not the Board's intention to limit or otherwise affect the discretion of subsequent authorizing agencies in this regard.

Having assessed the Board's objective underlying Term and Condition #34 in the context of the information in the Hearing Record, the entirety of the Final Hearing Report, the other recommended Terms and Conditions and the integrated regulatory system, the Board regretfully acknowledges that the Board erred in the wording chosen for Term and Condition #34 by replacing the term "unduly prevent" with "obstruct" and by not expressly recognizing the jurisdiction of other regulatory authorities to authorize the design and construction of project infrastructure in water courses that may prevent or limit natural movement of water such as dams and dikes. On this basis, the Board issues this Notice of Errata and provides the corrected Term and Condition #34, which reads as follows (additions underlined and deletions in strikethrough text).

<u>Corrected</u> Term and Condition No.	34
Category:	Freshwater Aquatic Environment – Watercourses
Responsible Parties:	The Proponent
Project Phase:	Pre-construction, Construction
Objective:	To prevent blockages or restrictions to fish passages
Term or Condition:	<u>Unless otherwise approved by regulatory authorities,</u> the Proponent shall ensure that all Project infrastructure in watercourses is designed and constructed in such a manner that it does not obstruct <u>unduly prevent</u> or limit the natural movement of water in fish bearing streams and rivers.
Reporting Requirements:	To be determined following approval of the Project by the Minister

As set out in the Meliadine Final Hearing Report,³ the NIRB's recommended Term and Condition #69 was stated as follows:

Term and Condition No.	69
Category:	Birds and Bird Habitat – Flight altitude requirements
Responsible Parties:	The Proponent
Project Phase:	Pre-construction, Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring
Objective:	To minimize the impact of aircraft on birds and bird habitat
Term or Condition:	Subject to safety requirements, the Proponent shall require all Project related aircraft to maintain a cruising altitude of at least:

³ See NIRB File No.: 11MN034, Final Hearing Report for the Meliadine Gold Project, Agnico Eagle Mines Limited, at p. 266 and the detailed summary of the issues, position of the parties and the conclusions and recommendations of the Board at pp. 129-138 of the Board's Report.

	<ul style="list-style-type: none"> a. 650 m during point to point travel when in areas likely to have migratory birds b. 1100 m vertical and 1500 m horizontal distance from observed concentrations of migratory birds c. 1100 m over the area identified as a key site for moulting snow geese during the moulting period (July-August), and if maintaining this altitude is not possible, maintain a lateral distance of at least at least 1500 m from the boundary of the Project.
Reporting Requirements:	To be determined following approval of the Project by the Minister

As summarized in your letter, the current wording of Term and Condition #69(c) requires that if an altitude of 1100 m cannot be maintained from key sites for moulting snow geese that a lateral distance of 1500 m from the “boundary of the Project” would need to be maintained. As the reference is not to maintaining a distance from the moulting snow geese, but rather from the Project boundary, this would practically eliminate the ability of aircraft to land within the Project boundaries if the required flight altitude could not be maintained. As this wording is inconsistent with Term and Condition #69(b) which makes reference to a horizontal distance from observed concentrations of migratory birds in general, the Board acknowledges that the reference to the boundary of the Project is an error. The actual intention of Term and Condition #69(c) is, as stated at the start of the Term and Condition to prevent aircraft from being in proximity to moulting snow geese during the moulting period. The corrected Term and Condition #69 should read as follows (additions underlined and deletions in strikethrough text):

Corrected Term and Condition No.	69
Category:	Birds and Bird Habitat – Flight altitude requirements
Responsible Parties:	The Proponent
Project Phase:	Pre-construction, Construction, Operations, Temporary Closure/Care and Maintenance, Closure and Post-Closure Monitoring
Objective:	To minimize the impact of aircraft on birds and bird habitat
Term or Condition:	<p>Subject to safety requirements, the Proponent shall require all Project related aircraft to maintain a cruising altitude of at least:</p> <ul style="list-style-type: none"> a. 650 m during point to point travel when in areas likely to have migratory birds b. 1100 m vertical and 1500 m horizontal distance from observed concentrations of migratory birds c. 1100 m over the area identified as a key site for moulting snow geese during the moulting period (July-August), and if maintaining this altitude is not possible, maintain a lateral distance of at least at least 1500 m from the boundary of

	the Project <u>key sites for moulting snow geese.</u>
Reporting Requirements:	To be determined following approval of the Project by the Minister

In providing these two corrections to the Board's recommended Terms and Conditions, the Board emphasizes that this does not, in any way, constitute a reconsideration of the contents, conclusions or recommendations in the Meliadine Gold Project Final Hearing Report. As outlined above, due to an oversight during editing, the wording of Terms and Conditions #34 and #69 did not accurately convey the Board's true intentions. The Board appreciates the Minister bringing these errors to our attention and apologies for any difficulty this may have caused to participants in this process.

The Board wishes to assure the Minister that although the Board strives to be accurate in the expression of our intentions, given the scale, scope and extent of the Board's Final Hearing Report and the timelines associated with its production, the Board acknowledges these two errors and appreciates the opportunity to correct these mistakes. Should the Minister accept the Board's recommendation and approve the Project, through the development of a Project Certificate the NIRB will continue to ensure that all associated terms and conditions are clearly understood by the parties and can be fully implemented and incorporated into applicable regulatory instruments.

Sincerely,



Elizabeth Copland
Chairperson
Nunavut Impact Review Board

cc: The Honourable Gail Shea, Minister of Fisheries and Oceans
The Honourable Greg Rickford, Minister of Natural Resources
The Honourable Lisa Raitt, Minister of Transport
David Ningeonnan, President, Kivalliq Inuit Association
Cathy Towtongie, President, Nunavut Tunngavik Incorporated
The Honourable Peter Taptuna, Premier, Nunavut
The Honourable Leona Aglukkaq, MP
Sean Boyd, Agnico Eagle Mines Ltd.
Larry Connell, Agnico Eagle Mines Ltd.
Stéphane Robert, Agnico Eagle Mines Ltd.
Meliadine Distribution List