

April 6, 2020

Luis Manzo, Director of Lands  
Kivalliq Inuit Association  
32-4 Sivulliq Avenue  
P.O. Box 340  
Rankin Inlet, NU X0C 0G0

**Re: Agnico Eagle's Application to Authorize the Release of Water from Containment Pond 1 (CP1) to Meliadine Lake**

Dear Mr. Manzo,

Agnico Eagle would like to thank the Kivalliq Inuit Association (**KIA**) for providing its comments via the Director of Lands to the Nunavut Water Board (**NWB**) on April 2, 2020 and for the opportunity to respond.

As we have discussed, the email that was sent to Agnico Eagle on March 24, 2020 was unfortunately sent to an incorrect address. It did not reach any Agnico Eagle employee. We wish to assure you that had that email been received, Agnico Eagle would have responded promptly as our positive working relationship with the KIA is the highest priority. As soon as Agnico Eagle staff became aware of the email (as a result of browsing the NWB public registry on April 2), Agnico Eagle reached out promptly to the KIA Vice President on April 2. To date Agnico Eagle have not received a direct response to this email. Open and transparent communications are essential to building our relationship and we are resolved to do what we can to avoid any future confusion or communication delays.

Given the multiple engagements that Agnico Eagle has had on this issue with KIA Lands staff, we were surprised by your letter but appreciate that information shared may not have been communicated internally to the KIA Executive. It is our hope that with the additional information provided below and Agnico Eagle's response to your technical questions submitted directly to NWB, KIA will have a clearer understanding of the scope and context of the application, and why Agnico Eagle needs to make this request at this time following established processes under the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (**NWNSRTA**) for an emergency amendment.

You raised three main points in your cover letter and we have done our best to respond to each of these below.

**1. Agnico Eagle has not shown any sudden environmental emergency to justify an amendment on an emergency basis**

KIA has requested further information on the source of the saline water that Agnico Eagle seeks to discharge from CP1. The reason the total dissolved solids (**TDS**) in the water accumulated in CP1 is higher than expected is that there is higher salinity in the surface contact water. The increase in the salinity is primarily from the increase in precipitation in 2019 that flushed out the salinity from the construction activities. The flushing was previously known to occur, but under normal precipitation events that could be managed as contact water within the TDS concentration.

Agnico Eagle has also prepared additional supporting technical information which explains in more detail how the timely release of the waters accumulated in CP1 will prevent an environmental emergency from

occurring. Agnico Eagle requests permission to begin this release from CP1 to Meliadine Lake (which is already a permitted release under the Water Licence) upon freshet. It would not be responsible to delay the discharge, as this has a risk of creating a “sudden environmental emergency”. The engineering technical memo from our design engineers is part of the technical response package to NWB and includes further details on this point.

The accumulated waters in CP1 meet every discharge criteria under the Water Licence, but for the current TDS discharge limits of 1400 mg/L included at Part F, Item 3. KIA’s technical consultants and KIA Lands staff did not specify 1400 mg/L TDS limits during the original licensing process, and there is no known evidence that increasing TDS to the proposed discharge concentration of 3500 mg/L is an issue. Our evidence, filed with this application, shows that there is no environmental effect. The TDS limit appears to have been included because at the time the Water Licence was issued, Agnico Eagle and Environment and Climate Change Canada (ECCC) proposed the 1400 mg/L TDS limit to the NWB. No technical rationale supporting this limit was provided to the NWB and it is much lower than what is needed to ensure Meliadine Lake continues to be protected.

It is not clear based on any of the literature or supporting evidence why the current 1,400 mg/L TDS limit was selected. The salinity ions have little or no short-term effects, and unlike other ions are not inherently toxic. Some higher saline water can be deposited into Meliadine Lake with very little effect. The Water Quality Management and Optimization Plan (WQMOP) describes the minimal effect in detail. Most operating mines in Nunavut do not have TDS limits included in their water licences (instead, TDS is included a part of the monitoring program with no specified limits), and there is no TDS limit included in the *Metals and Diamond Mining Effluent Regulations* (MDMER). It is not considered a key parameter of concern.

Agnico Eagle is committed to following best environmental practice at the Meliadine Mine. Continuing to accumulate water in CP1 that has been shown to be safe for release to Meliadine Lake, in a manner that risks key infrastructure and has serious risk of causing an uncontrolled release, is not in the public interest.

**2. Agnico Eagle’s proposed discharge of water with high total dissolved solids (“TDS”) into Meliadine Lake, even on a temporary basis, will cause significant public concern given the importance of Meliadine Lake and the river system to Rankinmuit**

Agnico Eagle first began engaging with NWB on the potential amendment that would permit release of the accumulated waters in CP1 in November 2019. At that time, Agnico Eagle was completing an internal assessment of options and alternatives to understand what options were available in a timely way and also commenced work to confirm that release of higher TDS water could be validated. The NWB staff advised that an amendment to the Water Licence was required, that the nature of the amendment would trigger a public hearing and that the process could not be completed prior to May 2020. Their advice was to pursue an emergency amendment application.

Agnico Eagle briefed KIA staff on this issue during our meetings in early January 2020 (noting staff annual leave schedules and elections in December 2019 challenged communications prior to that date). Agnico Eagle continued to discuss potential procedural alternatives with NWB staff in February/March 2020 (which were also discussed with KIA), and again was given the advice by NWB staff that the only NWB procedural option that would meet the timeline was to proceed with an emergency amendment.

Agnico Eagle has never before applied for an emergency amendment. This is an unusual circumstance. Agnico Eagle emphasizes that the amendment is not associated with any expansion of mining at Meliadine, and that dewatering of CP1 is not an activity that should be delayed any longer.

KIA has suggested that the processing of applications should be reserved for serious circumstances of public concern. Agnico Eagle agrees, and believes that the current circumstances should be considered serious circumstances of public concern. For all the reasons outlined in the attached memoranda, Agnico Eagle's engineers have advised that CP1 must be dewatered starting at freshet in order to protect the infrastructure (dyke). Preventing an uncontrolled release is in the public interest, particularly in these circumstances where the controlled release of the retained water has been shown to be protective of Nunavut waters.

The emergency amendment process is part of the NWB's normal process and rules. The references to the "emergency amendment" process are included in the NWNSRTA as follows – there is no suggestion that a situation needs to arise "suddenly" in order for an application to be processed as an emergency amendment:

52 (1) Subject to subsection 37(2), a public hearing shall be held by the Board before it disposes of (a) any application in relation to a licence, unless the application is of a class that is exempted by the regulations from the requirement of a public hearing; and (b) an application for permission to expropriate under section 77.

(2) A public hearing need not be held (a) if the applicant or licensee consents in writing to the disposition of a matter without a public hearing, provided that no other person informs the Board by the tenth day before the day of the proposed hearing of the person's intention to make representations; (b) before an application is rejected under subsection 38(2); or (c) **in the case of an application for the amendment of a licence where the Board, with the consent of the Minister, declares the amendment to be required on an emergency basis.**

55 (1) The Board shall give notice of every application in relation to a licence to the council of each municipality in the area affected by the application and shall publish the notice in a newspaper of general circulation in the area affected or, if there is no such newspaper, in such other manner as the Board considers appropriate. The notice shall invite interested persons to make representations within a specified period and shall advise them of the consequences, as provided in section 59 and subsection 60(2), of any failure to respond to the notice.

(2) Where the Board decides or is required under this Part to hold a public hearing, it shall give notice, in the manner described in subsection (1), at least sixty days before the commencement of the hearing, of the place, date and time of the hearing. The place, date and time of the hearing shall be chosen and the notice published by the Board in a manner that promotes public awareness and participation in that hearing.

(3) Where a public hearing is held in relation to an application, the information provided to the

Board in relation to the application shall be made available to the public within a reasonable period of time before the commencement of the hearing.

(4) Where a public hearing is not held in relation to an application, the Board shall not act on the application until at least thirty days after notice of the application has been published under subsection (1) unless, in the opinion of the Board, there are urgent circumstances that justify the Board acting on that application in a shorter period, but that shorter period shall not be less than ten days.

**(5) Subsections (1) and (4) do not apply in respect of an application for the amendment of a licence where the Board, with the consent of the Minister, declares the amendment to be required on an emergency basis.**

174 (1) The regulations made under paragraph 33(1)(c) of the Northwest Territories Waters Act are deemed, in relation to the use of waters or the deposit of waste in Nunavut, to prescribe, as classes of applications that are exempted from the requirement of a public hearing, the classes of applications in relation to the following:

(a) in the case of a Type A licence,

(i) any amendment that does not affect the use, flow or quality of waters or alter the term of the licence,

**(ii) any amendment that affects the use, flow or quality of waters or alters the term of the licence, where the Nunavut Water Board, with the consent of the Minister, is of the opinion that an emergency exists that requires the amendment, or**

(iii) one or several renewals of a total duration not exceeding sixty days; and

(b) in the case of a Type B licence, its issuance, amendment, renewal or cancellation.

(2) Within one year after the day on which this Act is assented to, the Minister shall, unless regulations have been made under paragraph 82(1)(f) before that time to replace the regulations referred to in subsection (1), consult the Board on the application of subsection (1).

Agnico Eagle has heard from the community many times about the importance of Meliadine Lake and the river system to Rankinmuit and takes great care to respect and incorporate this advice into our planning. Agnico Eagle only proceeded with this emergency application once it had strong evidence in hand that proceeding with the 2020 discharge would continue to protect Meliadine Lake and the river system. Agnico Eagle emphasizes that it is not requesting permission from the NWB to discharge waters with “high TDS”. As shown in the WQMOP filed with the application shows, the proposed 2020 TDS limit is still lower than levels that would cause environmental effects. Again, there is no evidence that Agnico Eagle is aware of that shows that revising current TDS limits of 1400 mg/L to the proposed discharge concentration of

3500 mg/L is an issue.

As part of the assessment of TDS toxicity at Snap Lake mine, a literature review was undertaken to evaluate the potential effects of elevated TDS on fish community resilience and avoidance behaviour (Golder 2014). The review identified several cases where Lake Trout (*Salvelinus namaycush*), Arctic Grayling (*Thymallus arcticus*) and several other fish species (longnose sucker, *Catostomus catostomus*; Slimy Sculpin, *Cottus cognatus*; Burbot, *Lota lota*; and Round Whitefish, *Prosopium cylindraceum*) have been observed in northern environments at TDS concentrations of 1,000 to 1,500 mg/L or higher. Based on this review, Golder (2014) concluded that for Snap Lake, fish and other organisms may be able to adapt to increasing TDS concentrations and that overall structural integrity of the ecosystem and food web would be maintained beyond 1,300 mg/L TDS. Additionally, fish community monitoring in Snap Lake with TDS concentration of 300 to 450 mg/L indicated no change in Lake Trout fish community composition to previous years, with relative abundance and catch rates similar to or greater in Snap Lake relative to reference lakes (Golder 2017). Within Meliadine Lake, TDS concentrations outside of the mixing zone will be well below 1,000 mg/L (refer to KivIA-6, Response 1), which suggests fish would adapt to increased TDS.

In drafting the emergency application, Agnico Eagle took care to scope it as narrowly as possible, to permit a time-limited discharge of waters from CP1 during 2020 only. Should the emergency amendment be granted by the NWB, Agnico Eagle anticipates that the NWB would require stringent additional monitoring requirements during 2020. Agnico Eagle appreciates that any changes at site have potential to cause community concern. However, TDS specifically has not been identified by the community as an issue in past consultations or regulatory processes, and Agnico Eagle is not proposing to change the effluent discharge point – that will continue to be Meliadine Lake, and will continue to occur via the existing permitted diffuser and infrastructure. The emergency amendment is a very technical amendment relating to temporary relief respecting discharge criteria for TDS.

Given that the technical information supports the view that the 3,500 mg/L TDS is below the limits that would be expected to cause effects to fish and fish habitat, in the longer term Agnico Eagle does intend to apply for a permanent amendment to the TDS limits included in the Water Licence. Agnico Eagle was transparent about this in its cover letter included in the emergency amendment application. Agnico Eagle will be submitting this permanent amendment application later in 2020, and anticipates that the NWB's consideration of this application would follow standard NWB processes and timelines.

**3. KIA and the Kivalliq community are facing an unprecedented challenge responding to the daily developments in the global COVID-19 pandemic and its impact on Nunavummiut. This is not a time to abridge NWB's public consultation protocols.**

Agnico Eagle fully understands and respects the need for KIA and the Kivalliq community to prioritize through this stressful and unprecedented time. Despite the global challenges that we are all facing, Agnico Eagle must continue to operate the Meliadine Mine in a manner that is protective of the environment and it is unfortunately not possible in these circumstances for Agnico Eagle to defer this application. Freshet will arrive regardless of the status of the current health crisis, and CP1 must be dewatered this year in order to protect the dike. It is important that the regulatory system continue to function in Nunavut to support the continued protection of Nunavut lands and waters. It will take commitment and resolve from

all parties to ensure that occurs and Agnico Eagle believes we can all support each other in this situation. We look forward to your participation in the call on April 8<sup>th</sup> or April 9<sup>th</sup> and are available to speak in advance with KIA as well.

Agnico Eagle has been engaging and briefing KIA Lands staff on this potential application since at least the first week of January 2020. Based on those discussions, it was our understanding that KIA Lands staff did not have any significant concerns about the proposal to increase TDS limits in the Water Licence to permit the full dewatering of CP1 during 2020. Agnico Eagle appreciates the KIA Lands Department is now working from home, and is prepared to support them and their technical consultants in whatever way necessary to enhance their understanding and to assist them in properly analyzing and transferring information they receive from Agnico Eagle to the KIA Executive and to the NWB.

While the KIA Lands Inspector is aware of the current status of CP1 water based on past inspections, we can also prepare additional visual aids to support as needed (for example photos or drone video). Should a site visit be deemed necessary by KIA after those steps are taken, Agnico Eagle is willing work with the KIA and the KIA Lands Inspector to arrange a visit that could be conducted in a manner isolated from any site staff or consultants.

Agnico Eagle is hopeful that once KIA's consultants and staff have an opportunity to review the technical information provided, and to brief the KIA Executive on the results of their review, KIA will be able to support this application. While a public hearing is not possible in the circumstances, Agnico Eagle would appreciate KIA's advice in how any information they feel is essential can be delivered to the community in the circumstances, given the timeline we have prior to expected commencement of freshet in May 2020. Again, Agnico Eagle is ready to work together with KIA to move forward and identify opportunities for consultation that could occur.

The emergency amendment process is an established component of the overall regulatory regime under the NWNSTRA, which Agnico Eagle is proceeding with on advice of NWB staff, and Agnico Eagle is of the view that the circumstances that will arise starting in summer 2020 if the application is not granted warrant its use. We recognize the challenging circumstances we are all working under, and given that this is an essential application that will ensure that waters at the Meliadine Mine will continue to be managed in a way that will be protective of Meliadine Lake, ask all parties to participate in good faith in the emergency amendment process with a view to working towards the best outcome for Nunavut waters and the environment.

Regards,



Jamie Quesnel

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819.856.0821

Regional Manager - Permitting & Regulatory Affairs

Reference:

Golder. 2014. Snap Lake Mine, Effects of 1,000 mg/L Total Dissolved Solids. In: De Beers Canada Inc. 2014., Snap Lake Mine Post-Environmental Assessment Information Package. Appendix II. November 2014. <http://registry.mvlwb.ca/Documents/MV2011L2-0004/MV2011L2-0004%20-%20De%20Beers%20Snap%20Lake%20-%20Post%20EA%20info%20pkg%20-%20cover%20letter%20and%20body.pdf>

De Beers Canada Inc. 2017. Aquatics Effects Monitoring Program: 2016 Annual Report. Submitted to Mackenzie Valley Land and Water Board. Yellowknife, NWT. May 2017.