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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

NWB File No.: 2AM-MRY1325
Phase 2 Proposal Amendments

January 9, 2019

Distributed By Email

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Subject: Nunavut Water Board Follow Up to the QIA Comment Submission Regarding an Application by Baffinland Iron Mines Corporation for Amendments to Water Licence No: 2AM-MRY1325, associated with the Phase 2 Project Proposal for the Mary River Iron Mine

This correspondence is provided by the Nunavut Water Board (NWB or Board) in response to concerns expressed by the Qikiqtani Inuit Association (the QIA) about the coordinated process associated with the Nunavut Impact Review Board's (NIRB) impact assessment of changes to the Mary River Iron Mine Project under the Phase 2 Proposal and the NWB's consideration of the associated application to amend Water Licence No: 2AM-MRY1325 by Baffinland Iron Mines Corporation (BIMC) (the Application). As summarized in the QIA's most recent correspondence of January 7, 2019: "*QIA is concerned that NWB may elect to advance to the technical review stage without requiring additional information from the applicant*" and noted that the impacts of such an approach would include setting a precedent "... where regulators allow proponents to proceed with incomplete applications."

The QIA also voiced similar concerns in respect of the NIRB/NWB coordinated process in their November 23, 2018 submission to the NIRB and NWB as follows:

NIRB and NWB have proposed a coordinated review of the Phase II proposal. The deficiencies in the water licence application are significant and do not support the ability to conduct regulatory assessments in parallel with impact assessments. This is an impediment to the coordinated review process for the Phase II Proposal.

QIA is concerned that it appears the NWB process is already lagging the NIRB process.

The QIA also posed the following questions regarding the coordinated review process in their November submission, as follows:

How will the coordinated review proceed in light of the fact the NWB review process still requires significant additional attention? How and when would NIRB and NWB decide to revert to a “traditional” review if the processes continue to have synchronization challenges?

In November, the NWB considered it premature to respond directly to the QIA’s questions, as the NWB awaited the responses of BIMC to information requests of all parties, including the NWB, the QIA and other interveners and the Board’s completeness review of the Application was not concluded. However, recognizing that the QIA’s most recent submission reiterates similar concerns regarding the potential for a NIRB/NWB coordinated process to sacrifice the efficiency, thoroughness and overall quality of the NWB’s consideration of the Application, the NWB is issuing this follow up correspondence to address the QIA’s outstanding concerns.

At the outset, the NWB notes that the coordination of the NIRB’s assessment and the NWB’s water licensing processes is not only in keeping with the intention and spirit of the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* (the *Nunavut Agreement*), as set out under the provisions of Article 13, Section 13.6.1 of the *Nunavut Agreement*, the NIRB and the NWB have an explicit obligation to coordinate their respective processes:

13.6.1 *The NPC, NIRB and the NWB shall co-operate and co-ordinate their efforts in the review, screening and processing of project proposals requiring an application to the NWB to ensure they are dealt with in a timely fashion.*

The obligation to coordinate is also included in s. 37 of the NWB’s legislation, the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10 (NWNSRTA):

37 (1) In order to avoid unnecessary duplication and to ensure that projects are dealt with in a timely manner, the Board shall cooperate and coordinate its consideration of applications with the Nunavut Impact Review Board or any federal environmental assessment panel or joint panel established under subsection 115(1) or paragraph 160(1)(a) or (b) of the Nunavut Planning and Project Assessment Act in relation to the screening of projects by that Board and the review of projects by that Board or panel.

The obligation to coordinate is also set out in s. 193 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14 (NuPPAA):

193. The Commission, any responsible authority, the Board, any federal environmental assessment panel and any joint panel must coordinate their respective activities relating to the review of a project requiring a licence under the Nunavut Waters and Nunavut Surface Rights Tribunal Act with

those of the Nunavut Water Board so as to ensure efficiency and avoid duplication.

Consequently, when, as is the case in respect of the Application, BIMC has requested that the NWB coordinate their consideration of the Application with the NIRB's assessment of the Phase 2 Proposal, the NWB and the NIRB are clearly obligated to propose processes and timelines that would enable both Boards to coordinate their processes to the extent practical. The approach to coordination taken by the NWB and the NIRB to date reflects their obligations under the *Nunavut Agreement*, the *NWNSRTA* and *NuPPAA*. However, coordination does not, as appears to be central to the QIA's concerns, mean that the NWB's normal requirements during the processing of the Application, such as the NWB's requirements for a complete application and fulsome technical review by parties, will be overlooked, deferred or otherwise sacrificed in order to maintain, for all intents and purposes, a coordinated process and/or timeline. As both the NIRB and the NWB have made clear from the commencement of the coordinated process for this file in October 2018, both the timelines and process for conducting the coordinated technical review of the Phase 2 Proposal and the Application are predicated on the provision of adequate information and responses to information requests by BIMC.

As is apparent from the NWB's follow up requirements and BIMC's additional Application submissions to date, when the NWB determines that additional information is required to complete an application, the NWB has revisited and revised the proposed process and timelines as the Board considers necessary and appropriate. As recent NIRB/NWB coordinated processes demonstrate¹ at each major step in the NWB's processing of an application the NWB (and often the Proponents) evaluate the extent and level of coordination that is appropriate and feasible based on the extent to which sufficient detailed information as required during the permitting process is available. In that regard, comments from the QIA and other interveners regarding the sufficiency of information provided to date helps to inform the NWB's on-going consideration of the Application and helps the NWB to determine throughout the regulatory process the extent to which regulatory steps can be coordinated between the impact assessment process and the water licensing process.

As indicated by the NWB in the Board's email of January 8, 2019 accompanying the Board's request for a response from BIMC to the QIA's and Crown-Indigenous Relations and Northern Affairs Canada's comments about BIMC's December response to intervener's comments on completeness, the NWB encourages all parties to engage with each other directly to resolve issues, exchange required information and ensure that all parties have the information needed to participate fully in the applicable regulatory processes. The Board truly appreciates the on-going and constructive participation of BIMC, the QIA and other interveners in the NWB's consideration of the Application and requests to be kept informed of the outcomes of any direct engagement activities.

¹ See the NIRB/NWB coordinated process associated with Agnico Eagle Mines Limited's Whale Tail Pit Project Type "A" Water Licence No: 2AM-WTP1826 and consequential amendments to Water Licence No: 2AM-MEA1526; and TMAC Resources Inc.'s Phase 2 Hope Bay Belt Project Type "A" Water Licence No: 2AM-BOS1835 and Amended (Amendment No. 2) Water Licence No: 2AM-DOH1335.

With respect to the immediate next steps in the NWB's consideration of the Application, including coordination with the NIRB's assessment process, the NWB anticipates issuing additional process guidance in the near future following the receipt of additional response comments from BIMC.

Regarding the QIA request to be provided with the NWB's SIG conformity assessment of BIMC submission, the NWB would like to make clear that the Board does not intent to release any internal documentation associated with the completeness assessment, as this is not the Board's normal practice.

In the interim, if you have any questions regarding any technical matters for the file, please contact Assol Kubeisinova, Technical Advisor at assol.kubeisinova@nwb-oen.ca or by phone at (867) 360-6338 (ext. 31) or Karen Kharatyan, Director Technical Services at Karen.kharatyan@nwb-oen.ca or by phone at (867) 360-6338 (ext. 35).

Sincerely,

NUNAVUT WATER BOARD

Stephanie Autut
Executive Director

cc: Mary River Distribution List