



P.O. Box 119
GJOA HAVEN, NU X0B 1J0
TEL: (867) 360-6338
FAX: (867) 360-6369

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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYIT
OFFICE DES EAUX DU NUNAVUT

NWB File No: 2AM-MRY----
NIRB File No.: 08MN053

April 13, 2012

Erik Madsen
Vice President, Sustainable Development, Health,
Safety & Environment
Baffinland Iron Mines Corporation
Suite 1016, 120 Adelaide Street West
Toronto, ON M5H 1T1

E-mail: Erik.Madsen@baffinland.com

Re: Completeness Review and Notice of Type “A” Water Licence Application No. 2AM-MRY----

Dear Erik Madsen:

Further to the Nunavut Water Board’s (NWB or Board) correspondence¹ in which interested parties were invited to assess the completeness of and/or submit Information Requests (IRs) pertaining to Baffinland Iron Mines Corporation’s (BIMC or Proponent) type “A” water licence application (Application) for the Mary River Project, the Board has received submissions from several intervening parties. Submissions specifically related to the Application were received from Aboriginal Affairs and Northern Development Canada (AANDC), Canadian Transportation Agency, Environment Canada (EC), Natural Resources Canada (NRCan), the Qikiqtani Inuit Association (QIA), and Transport Canada (TC). In addition, there were some comments/IRs in submissions from Fisheries and Oceans Canada (DFO) and the Government of Nunavut (GN) that were identified as having potential implications for the Application although these parties did not explicitly state that the comments related to the Application within their submission. None of the comments received indicated that the Application should not proceed through the regulatory process at this point.

Copies of the application documents, including the errata document², and intervener’s submissions have been placed in the Board’s Public Registry. Public access to the information is made available through the NWB’s ftp site using the following link (Username: Public, and Password: Registry):

¹NIRB – NWB Letter from A. Hanson and D. Hohnstein to E. Madsen of BIMC, dated February 29, 2012, re: Acceptance of FEIS and Next Steps in the NIRB’s Review and the NWB’s Water Licensing Process for Baffinland Iron Mines Corp.’s Mary River Project.; and NWB Letter from D. Hohnstein to E. Madsen of BIMC, dated March 2, 2012, re: Application for a Type “A” Water Licence.

² Errata Documents from E. Madsen to D. Hohnstein and S. Joseph of NWB dated March 9, 2012, re: Errata and Clarification Document for the Application for Type A Water License for the Mary River Project.

Comments/IRs Submissions

In the review of interveners' submissions that are specific to the Application, or that could have potential implication for the Application, the NWB has identified several items that the Proponent is required to address no later than **April 25, 2012**. A summary of the comment/IR numbers, categorized by intervener, which the NWB has determined the Proponent is required to address, is provided in Table 1.0. It should be noted that the NWB has assigned numbers, highlighted "yellow", to the comments/IRs that were not numbered in some of the submissions and included the appropriate descriptions in Table 1.1. A number of Items included in Table 1.0 may have been also covered by the Nunavut Impact Review Board (NIRB) in its correspondence³ to BIMC. The Proponent is advised that in cases where particular comments/IRs are related to both the NIRB and NWB processes, those comments/IRs can be submitted simultaneously. However, please be advised that for ease of review for the parties, a stand-alone and separate response should also be submitted to the NWB.

Although Table 1.0 provides a summary of comments/IRs that should be addressed by the Proponent in this letter, the NWB has attempted to provide clarification on some of the comments/IRs received that may not have been necessarily directed at the Proponent, that commented on the general water licensing process or that focused on more general issues in the Application, which was included as an appendix to BIMC's Final Environmental Impact Statement (FEIS).

The QIA in its submission⁴ to the NWB indicated that the Application contains the information requested by the supplemental information guide; however, it looks forward to the Board's direction on the errata document associated with the type "A" water licence application. In addition, the QIA provided its opinion on the proposed next steps in the NWB licensing process. In response, the NWB takes this opportunity to inform parties that the purpose of the errata document, which is in response to NWB correspondence⁵, is to provide missing information and corrections to referencing in the Application, in advance of the NWB's requesting the full technical review, essentially in advance of the request for provision of completeness comments/IRs.

With respect to the next steps for the NWB licensing processes, the Board has noted the opinions expressed; however, the comments relating to the NWB steps following the completion of the NIRB review are beyond the scope and focus of what is required and anticipated at this time. For information purposes, the NWB has included a copy of *Guide 5* to provide all reviewers with a general perspective and to clarify expectations with respect to the NWB licensing process. Copies of the aforementioned guide are also available on the NWB's ftp site using the following Link (Username: public and Password: registry): <ftp://nunavutwaterboard.org/NWB%20GUIDES/>

In a separate submission to the NIRB, the QIA stated that the NWB should provide the outcome of a meeting on the Engineering Design and Standards for the Water Licensing Process, held in

³ NIRB Letter from A. Hanson to E. Madsen of BIMC, dated April 6, 2012, re: Information Requests received from Parties regarding Baffinland's Final EIS.

⁴ QIA Letter from S. W. Bathory to D. Filiatrault of NWB, dated March 30, 2012 re: Proposed next Steps in the NWB Licensing Process; and QIA Letter from S.W. Bathory to D. Filiatrault of NWB, dated March 30, 2012, re: Completeness Review of the Mary River Project Type A Application.

⁵ NWB Letter from D. Hohnstein to E. Madsen of BIMC, dated March 2, 2012, re: Application for a Type "A" Water Licence.

Edmonton on July 21, 2011. The NWB wishes to advise QIA that it is in the process of developing general guidelines/standards for engineering drawings and design that are not specific to any particular project. Once these general guidelines/standards are developed and approved, they will be made available to the public. Moreover, to provide clarity to the Board's position on the relevant items expressed by the QIA; the Board would like to follow-up with the QIA regarding their specific NWB process-related comments at a meeting in Iqaluit in the near future. Any item requiring further clarification and relevant to all the parties in the BIMC review specifically may be addressed during the NIRB technical meeting, which will be attended by the NWB.

AANDC in its submission stated that the Application should have been submitted as a stand-alone document in which the NWB Supplementary Questionnaire for Mine Development should be included. However, the Board notes that the Application is consistent with the conditions set out in the Detailed Coordinated Process Framework (DCPF).⁶ Section 8 of the DCP states as follows:

“...The FEIS shall include as appendix water licence application(s) with cross referencing to the FEIS to eliminate or reduce duplication and for ease of Parties review. The Proponent may elect to submit a stand-alone Type A water licence directly to the NWB (with no cross referencing to the FEIS). The Proponent shall submit to the NIRB and the NWB a concordance table to NIRB's PHC Decision and NWB SIG (MM3) Guidelines and subsequent project specific guidelines issued for pre-development or “exception” activities. Should the Proponent decide not to submit a Type A water licence the EA process will proceed...”

It should also be noted that under the DCPF, the MM3 Guidelines supersede the NWB Questionnaire for Mine Development so as to prevent or reduce redundancies, and as such, the manner in which the Application was submitted, the cross-referencing in the FEIS and the focus on the MM3 guidelines without reference to the Supplementary Questionnaire for Mine Development, are in keeping with the requirements of the NWB as set out in the DCPF.

Completeness of Application

With respect to the Application before the Board, the NWB has indicated prior to distribution that its preliminary conformity review had determined that the Application is materially complete and generally acceptable based on the Supplemental Information Guidelines (MM3) that were provided as an appendix to the NIRB's EIS Guidelines as well as the concordance assessment provided with the NIRB's PHC Decision (included under sec. 4.2 and as an Appendix 3). The Board has further reviewed the Application, including the errata document, and has given consideration to the comments/IRs received from intervening parties including AANDC, CTA, DFO, EC, QIA, TC, NRCAN and GN. On this basis, the NWB's determination is that the application, which is deemed to be for a Type “A” water licence, has satisfied the requirements of s. 48(1) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (“Act”). The NWB, however, retains the right to request additional information and studies pursuant to s. 48(2) of the Act or to issue guidelines for the provision of information pursuant to s. 48(3) of the Act.

The parties are reminded that the type “A” water licence applications do require a public hearing as per the applicable provisions of the Act and that all NWB-related public hearing matters will be

⁶ Nunavut Impact Review Board (NIRB) and Nunavut Water Board (NWB) Detailed Coordinated Process Framework for NIRB Part 5 Reviews and NWB Licensing (September 2009).

carried out in accordance with the Board's *Rules of Practice and Procedure for Public Hearing* dated May 11, 2005 (NWB Rules).

NPC and NIRB Requirements

In accordance with s. 11.5.10 of the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* ("NLCA"), the project proposal is required to be reviewed by the Nunavut Planning Commission ("NPC") to determine whether it is in conformity with an approved land use plan. On April 30, 2008, the NPC indicated that the project proposal conforms to the North Baffin Regional Land Use Plan (NBRLUP). Subsequent to this conformity determination, the proponent submitted an application to amend Appendices J and K of NBRLUP and this application is being considered by the NPC. The NWB anticipates that the NPC will inform the NWB regarding its consideration of this application. Also, it should be noted that this project proposal is currently undergoing a Part 5 review by the NIRB within the context of the DCPF. Subject to s. 12.10.2 and 13.5.5 of the NLCA, where a review is required pursuant to Article 12; the NWB shall not approve any water application that forms part of that review until Article 12 has been complied with.

Notice of Application and Request for Technical Review

Pursuant to s. 55(1) of the Act, the Board hereby gives notice of the application and invites interested persons or parties to commence their review and complete a thorough technical assessment of the application, making representation to the Board. The formal technical review of the Application will begin on the date of the public notice of the Application; however, the Board strongly recommends that interested parties begin their technical review on the information already provided by the applicant in advance of the publication of the notice, as it is in the best interests of all parties to ensure they engage in timely review and response to the Application. All comments shall be filed in writing to Phyllis Beaulieu, NWB's Manager of Licensing, at licensing@nunavutwaterboard.org no later than **June 22, 2012**.

Throughout the technical review phase, interested parties are encouraged to work cooperatively with BIMC to discuss minor issues in advance of the proposed technical meetings, which will occur shortly after NIRB's final hearing (date and venue will be provided in subsequent correspondence). The NWB requests to be kept informed of any discussions, resolutions or agreement(s) between the parties on any general or specific issues. The Board asks that technical review comments, particularly for matters such as air quality, noise, and wildlife provided to the NWB in respect of the Application recognize the limits of the NWB's jurisdiction, which is based on the use of waters and the deposit of waste in waters, or that may enter waters.

Parties are advised that the consequences of failing to respond and participate in the NWB licensing process are outlined in ss. 59 and 60(2) of the Act.⁷ To ensure this application is dealt with in a timely manner, the NWB forwards notice of all documentation to regulators and councils of the municipality(ies) most affected by the project.

⁷ **Section 59.** In the circumstances described in paragraph 58(b), an applicant need not compensate the person under section 58 if the person fails to respond to the notice of application given under subsection 55(1) within the time period specified in the notice for making representations to the Board. **Section 60(2)** Subsection (1) does not apply in respect of a person referred to in that subsection who fails to respond to the notice of application given under subsection 55(1) within the time period specified in that notice for making representations to the Board.

If you have any questions pertaining to the Nunavut Water Board's Licensing process or NIRB's Review process, please contact Sean Joseph, Technical Advisor, NWB, at (867) 360-6338 or email sjoseph@nunavutwaterboard.org or Li Wan, Technical Advisor, NIRB, at (867) 983-4606 or liwan@nirb.ca, respectively.

Sincerely,

Original signed by:

David Hohnstein, CET
Director, Technical Services
Nunavut Water Board

cc. Mary River Project Distribution List

Attachments:

Table 1.0
Table 1.1
NWB Guide 5