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Your file / Votre référence  
16MN056  
2AM-WTP

Our file / Notre référence  
7075-70-1-319

December 22, 2016

Sophia Granchinho  
Manager Impact Assessment  
Nunavut Impact Review Board (NIRB)  
P.O. Box 1360  
Cambridge Bay, NU  
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**RE: Information Requests for the NIRB Review of Agnico Eagle Mines Ltd.'s "Whale Tail Pit" Project Proposal**

Transport Canada is responsible for transportation policies and programs that ensure air, marine, road and rail transportation are safe, secure, efficient and environmentally responsible. Transport Canada provides expert advice and administers regulations, conducts reviews and issues approval for works that may affect transportation. Transport Canada appreciates the opportunity to participate in the review of the Agnico Eagle Mines Ltd.'s "Whale Tail Pit" project proposal. Transport Canada has reviewed the Environmental Impact Statement for Agnico Eagle Mines Ltd.'s "Whale Tail Pit" project and submits the following information requests for the Nunavut Impact Review Board's consideration.

Should you have any questions please do not hesitate to contact Christopher Aguirre via email at [christopher.aguirre@tc.gc.ca](mailto:christopher.aguirre@tc.gc.ca) or by phone at (204) 333-5215.

Adam Downing  
Transport Canada  
Superintendent, Environmental Affairs  
Prairie and Northern Region

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# Transport Canada

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Information Requests – Agnico Eagle Mines Ltd.'s  
Whale Tail Pit Project  
Environmental Impact Statement

Submitted to:  
Nunavut Impact Review Board  
December 22nd, 2016  
NIRB File No.: 16MN056  
NWB File No.: 2AM-WTP  
TC File No.: 7075-70-1-319

**IR Number:** TC\_01  
**To:** Agnico Eagle Mines Ltd.  
**Reference:** Volume 1 1.1.10.2, Volume 1 1.2.5.4 Appendix 1-B, Appendix 1-C, Appendix 1-E  
**Subject:** Dike Construction and Dewatering of Mammoth Lake and Whale Tail Lake

**Issue/Concern:**

Agnico Eagle Mines Ltd. are not required to submit Notice of Works forms to Transport Canada for review of works on water bodies that are not listed in the Schedule under the Navigation Protection Act (NPA). Mammoth Lake and Whale Tail Lake, along with the other water bodies impacted do not fall under the schedule, therefore no Notice of Works forms are required. A Notice of Works forms and a Navigation Assessment is required for the dewatering of a navigable water body, which the Whale Tail Pit project may require.

Sections 21 to 23 of the NPA apply to all waterways irrespective of whether they are listed in the Schedule of the NPA. These sections prohibit the depositing of certain materials in navigable waters or in non-navigable waters that flow into navigable waters, and the dewatering of navigable waters unless the Governor in Council provides an Order exempting the specific waterways from the applicability of section 21 to 23.

Further information is needed from Agnico Eagle Mines Ltd. to determine whether sections 21, 22 or 23 of the NPA are applicable. If they are, then Agnico Eagle Mines Ltd. will need to seek an exemption Order under section 24 of the NPA.

Transport Canada notes that an application under the NPA may be required for the proposed dike construction and dewatering of Mammoth Lake and Whale Tail Lake. Transport Canada suggests Agnico Eagle Mines Ltd. submit information to Transport Canada to determine the navigability of Mammoth Lake and Whale Tale Lake.

**Information Request:**

Transport Canada's Navigation protection Program (NPP) will require the following: A Notice Of Work form that will list out the water body details along with the specific types of work that will impact the water bodies; Transport Canada will need to conduct a navigability assessment on Mammoth Lake and Whale Tail Lake for the dewatering of the proposed Whale Tail Pit.

Transport Canada requests the following:

1. Characteristics of the Mammoth Lake and Whale Tail Lake
    - a) Do the physical characteristics of the waterway support carrying (floating and traversing) a vessel of any size (e.g. canoe/kayak) from one point to another?
  2. Is there evidence of current use by the public, for navigation purposes, of Mammoth Lake and Whale Tail Lake as an aqueous route?
  3. Is there evidence of past/historical public use, for navigation purposes, of Mammoth Lake and Whale Tail Lake as an aqueous route?
  4. Is there a reasonable likelihood of use by the public, for navigation purposes, of Mammoth Lake and Whale Tail Lake as an aqueous route?
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**IR Number:** TC\_02  
**To:** Agnico Eagle Mines Ltd.  
**Reference:** Volume 1 1.1.10.2, Volume 1 1.2.4.2, Volume 1 1.2.4.3, Volume 1 1.2.5.1, Volume 1 1.2.5.5, Volume 1 1.2.7, Appendix 1-B, Appendix 1-C, Appendix 2-I, Volume 6 6.3.2.2.2, Appendix 6-D,  
**Subject:** Intake on Nemo Lake and Whale Tail Lake, Diffuser on Mammoth Lake, Water Management Infrastructure, and Haul Roads

**Issue/Concern:**

Agnico Eagle Mines Ltd. can “Opt-In” to have works that are in water bodies that fall outside of the Schedule reviewed by the Navigation Protection Program. Notice of Work forms may be submitted for project review for works that include water course crossings, water intakes, water outfalls, dams, dikes, culverts etc. When this request is made, the Navigation Protection Program will start by conducting a navigational assessment of the water body to determine if it falls under the scope of the NPA.

The water Intake on Nemo Lake and Whale Tail Lake, the diffuser on Mammoth Lake, and the crossings related to the Haul Road and Water Management Infrastructure are on water bodies that are not listed in the Schedule under the NPA; therefore, Transport Canada does not require the review and approval of these proposed works under the NPA. Section 4(1) of the NPA contains a provision which allows the owner of a proposed work in any navigable waterway (other than those listed in the Schedule) to 'Opt-in' to Transport Canada's legislative regime and the NPA review process. If an “Opt-in” request is accepted by Transport Canada under Section 4(1), then all provisions and review processes of the NPA would apply to the work.

**Information Request:**

Transport Canada requests Agnico Eagle Mines Ltd. provide information whether they will choose to “Opt-In” to Transport Canada's legislative regime and the NPA review process for any of the in-water works proposed in or on non-Scheduled waterways.

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**IR Number:** TC\_03  
**To:** Agnico Eagle Mines Ltd.  
**Reference:** Volume 7 7.4.3.1, Appendix 7-A 3.5, Appendix 7-A 3.6  
**Subject:** Aboriginal Consultation – Alteration of existing waterways, impacts to Aboriginal people's usage of navigable waterways

**Issue/Concern:**

Transport Canada may have a duty to consult Aboriginal groups due to potential approvals that Transport Canada may issue. Transport Canada will need to assess whether Transport Canada has a duty to consult with groups who's Aboriginal or treaty rights may be adversely impacted by the project and/or by the department's decision to issue such approvals as are required under its mandate.

Agnico Eagle Mines Ltd. has not clearly identified consultation with local Inuit or Inuit organizations in order to identify the historic, current, and future use on Mammoth Lake and Whale Tail Lake as an aqueous route, and the potential navigational impacts of the project related waterways.

**Information Request:**

Transport Canada requests further details regarding Aboriginal groups' issues in relation to the historic, current, and future use of Mammoth Lake and Whale Tail Lake as an aqueous route. As such, Transport Canada requests information about whether Agnico Eagle Mines Ltd. has held any Aboriginal consultation activities with Aboriginal groups in the area to discuss any specific concerns related to potential adverse impacts on potential or established Aboriginal treaty rights of any in-water works to be submitted to Transport Canada.

Please provide consultation records of any consultation between Agnico Eagle Mines Ltd. and any Aboriginal group in the area who may have an interest in the use of Mammoth Lake and Whale Tail Lake as an aqueous route. Please provide information about Aboriginal consultations, including but not limited to: concerns raised by the Aboriginal groups as well as the measures taken by Agnico Eagle Mines Ltd. or proposed to be taken by Agnico Eagle Mines Ltd. to address those concerns. We are interested in concerns raised by Aboriginal groups generally, but we are particularly interested in any concerns raised by Aboriginal groups with respect to Transport Canada's potential approval(s) regarding works located at the location of works subject to approval under the Navigation Protection Act.

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