



NIRB File No.: 16MN056, associated Project Certificate No. 008

NWB File No.: 2AM-WTP1826 & 2BB-MEA1828

NPC File No.: 148953

November 16, 2018

To: The Honourable Dominic LeBlanc, P.C.
Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade
Government of Canada
10 Wellington, 21st Floor
Gatineau, QC K1A 0H4

Sent via email: dominic.leblanc@parl.gc.ca

Re: The Nunavut Impact Review Board's Notice of Reconsideration In Respect of Agnico Eagle Mines Limited's "Whale Tail Pit Expansion Project Proposal" for the Whale Tail Pit Project

Dear Honourable Dominic LeBlanc, P.C.:

This correspondence is intended to provide notice as required by s. 112(3) of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*) that the Nunavut Impact Review Board (NIRB or Board) is initiating a formal reconsideration of the terms and conditions of Project Certificate No. 008 as a result of significant modifications proposed by Agnico Eagle Mines Limited (Agnico Eagle) to the approved Whale Tail Pit Project (NIRB File No. 16MN056) in the "Whale Tail Pit Expansion Project Proposal" received by the NIRB on November 1, 2018.

In addition to providing notice to the Minister under s. 112, as set out in Article 12, Part 8, Sections 12.8.3 and 12.5.4 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)*, the Board is also inviting the Minister to provide any direction he may have regarding priorities and reasonable time frames associated with the Board's reconsideration of the Terms and Conditions of the existing Whale Tail Project Certificate No. 008.

In determining that the NIRB should assess the changes proposed in the Whale Tail Pit Expansion Project Proposal as a reconsideration of Project Certificate No. 008, the NIRB has decided that:

- The activities described in the Whale Tail Pit Expansion Project Proposal, as submitted to the Board on November 1, 2018, involve a proposed expansion to the previously-approved Whale Tail Pit Project with additional new pits and infrastructure adjacent to the already-approved Whale Tail Pit development; therefore, any potential

ecosystemic and socio-economic effects associated with these changes are best addressed through comprehensive reconsideration of the terms and conditions of the existing Project Certificate No. 008; and

- The proposed project activities and amendments have not, to date, been subject to impact assessment by the Board and have not been subject to full technical review by interested parties, public comment or approval by the various responsible authorities.

PROCEDURAL HISTORY

On October 16, 2018 the NIRB received a positive conformity determination (Keewatin Regional Land Use Plan) from the Nunavut Planning Commission (Commission) with a referral to assess Agnico Eagle Mines Limited's (Agnico Eagle or Proponent) "Whale Tail Pit Expansion Project Proposal" (the Project Proposal). In summary, the Project Proposal outlines works to:

- develop a larger Whale Tail open pit than was previously assessed and approved for the Whale Tail Pit Project;¹
- develop a second open pit called the IVR Pit, including underground mining operations;
- development of associated mine infrastructure at the IVR Pit; and
- the continuation of processing of the additional ore mined at the expanded/additional pits at the approved Meadowbank Gold Mine.²

In its referral, the Commission concluded that the Project Proposal represents a significant modification to the approved Whale Tail Pit Project (NIRB File No. 16MN056) because it would involve activities and components not part of the original project, or subsequent Vault Pit Amendment. The Commission specifically noted the Project Proposal proposes increases to the project area, as well as increases to the intensity and duration of mining activities. On this basis, the Commission referred the Whale Tail Pit Expansion Project Proposal to the NIRB for assessment as directed by Section 12.4.3 of the Agreement *between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* as a significant modification of the approved project.

In response, on October 19, 2018 the NIRB requested additional information from Agnico Eagle regarding the full scope and nature of the Whale Tail Expansion Project Proposal, which was provided to the Board on November 1, 2018. On November 2, 2018 the NIRB circulated correspondence indicating its receipt of the project description for the Whale Tail Expansion Project Proposal and identifying that Agnico Eagle had indicated that a Final Environmental Impact Statement (FEIS) Addendum would be forthcoming.

1 The NIRB previously reviewed the Whale Tail Pit Project (NIRB File No. 16MN056) in accordance with Article 12, Part 5 of the *Nunavut Agreement* and Part 3 of the *NuPPAA*. The Whale Tail Pit Project was allowed to proceed pursuant to the NIRB Project Certificate No. 008 which was issued March 15, 2018 following the approval of the Whale Tail Pit Project by the Minister of Crown-Indigenous Relations and Northern Affairs.

2 The NIRB previously reviewed the related but distinct Meadowbank Gold Mine project (NIRB File No. 03MN107) in accordance with Article 12, Part 5 of the *Nunavut Agreement*. The Meadowbank Gold Mine project was allowed to proceed pursuant to the NIRB Project Certificate No. 004 which was issued December 30, 2006 following the approval of the Meadowbank Gold Mine Project by the Minister of Indian and Northern Affairs.

All documentation associated with the Whale Tail Pit Expansion Project Proposal, including application materials filed by the Proponent with the NIRB can be accessed online from the NIRB's public registry using the following link: www.nirb.ca/project/125418.

NIRB DECISION REGARDING RECONSIDERATION OF PROPOSAL

The NIRB has considerable discretion as to the precise process for conducting a reconsideration of Project Certificate terms and conditions under Section 12.8.2 of the *Nunavut Agreement* and s. 112 of *NuPPAA*. In conducting a reconsideration, the Board remains, however mindful that the NIRB's primary objectives apply to reconsiderations and generally dictate that the NIRB conduct an assessment of the modification proposal with as much rigor as a NIRB screening and sometimes even a full environmental review. The flexibility and discretion granted to the NIRB to determine the appropriate process for the assessment of modification proposals through reconsideration of Project Certificate terms and conditions reflects that the scale and scope of the changes requested may vary considerably as previously approved projects are developed, operated, decommissioned and reclaimed.

As such, the Board has considered the following to determine whether the Whale Tail Pit Expansion Project Proposal (the Project Proposal) should be assessed via a NIRB screening or a reconsideration of the terms and conditions of Project Certificate No. 008 under s. 112 of the *NuPPAA*:

1. Was the Project Proposal included within the scope of the assessment of the Whale Tail Pit Project (as an alternative means of carrying out the project or even preferred alternative)?
2. Is the Project Proposal consistent with the terms and conditions of the existing NIRB Project Certificate, or are changes to the Project Certificate necessary to reflect the modification?
3. Is the Project Proposal integrally linked to the Whale Tail Pit Project or could it be characterized as constituting a stand-alone project proposal?
4. If the Project Proposal is integrally linked to the Whale Tail Pit Project, do the modifications proposed warrant reconsideration of the terms and conditions in Project Certificate No. 008?

Having now reviewed the project description for the Whale Tail Expansion Project Proposal, the Board has determined that the proposed activities were *not* included within the scope of the previously assessed Whale Tail Pit Project; however, the activities comprising the Project Proposal *are* amending components of the approved Whale Tail Pit Project in addition to proposing new components in proximity to the Whale Tail project area. Therefore, the Board has determined that Article 12, Sections 12.8.2(b) and 12.8.2(c) of the *Nunavut Agreement* and ss. 112(1)(b) and 112(1)(c) of the *NuPPAA* (changed circumstances and technological developments) trigger the reconsideration of the terms and conditions of Project Certificate No. 008 to assess the impacts of the Whale Tail Pit Expansion Project Proposal.

RECONSIDERATION PROCESS: NEXT STEPS

Having determined that a reconsideration of the Terms and Conditions of Project Certificate No. 008 is now necessary, the Board would like to provide Agnico Eagle and parties with direction regarding the anticipated next steps in the reconsideration process. Where the NIRB has established that terms and conditions within a Project Certificate require reconsideration, the Board initiates a public review of the application, including written or oral hearings as deemed necessary in accordance with the NIRB's Rules of Procedures (*September 3, 2009*). Agnico Eagle will be required to provide any information determined to be necessary to facilitate the reconsideration process. At the conclusion of the assessment, the Board is required to provide a report of its reconsideration of the Project Certificate terms and conditions to the Responsible Ministers for consideration, and the NIRB would amend the Project Certificate as necessary based on the Ministers' acceptance or variance of this report.

To facilitate the NIRB's assessment of the potential ecosystemic and socio-economic impacts associated with the Whale Tail Expansion Project Proposal, Agnico Eagle has indicated that it expects to submit an FEIS Addendum shortly; the NIRB expects the addendum will describe all aspects of the Whale Tail Expansion Project including updates to relevant baseline data, impact predictions and proposed mitigation measures and monitoring plans. The FEIS Addendum should consist of a stand-alone document that meets the minimum Environmental Impact Statement requirements set out under Section 12.5.2 of the *Nunavut Agreement* and s. 101(3) of the *NuPPAA*.

Following receipt of the FEIS Addendum, the NIRB will conduct an internal cursory review to confirm the submission has provided the requested information in a format and level of detail which meets with the directions in the *Nunavut Agreement* and the *NuPPAA*. Following acceptance of the Proponent's EIS Addendum, the Board will initiate a public technical review that includes an information request period, a technical review period, an opportunity for the Proponent to respond to comments, a technical meeting, submission of final written submissions and a Public Hearing. Following the completion of these steps, the Board will prepare a report detailing its reconsideration and recommendations for the Responsible Ministers.

The Board also acknowledges that Agnico Eagle has requested that the NIRB's assessment for the Whale Tail Pit Expansion Project Proposal be coordinated with the water licensing process to be undertaken by the Nunavut Water Board (NWB); pending acceptance of the FEIS Addendum, the NIRB and the NWB will issue further direction to all parties on anticipated process timelines, including areas of planned coordination between the Boards, which will be highlighted.

The Board looks forward to receiving any direction from the Minister regarding priorities and reasonable time frames associated with the Board's reconsideration of Project Certificate No. 008. In the interim, should you have any questions regarding the preceding, please contact the NIRB's Executive Director, Ryan Barry at (867) 983-4608 or via email at rbarry@nirb.ca.

Sincerely,



Elizabeth Copland
Chairperson
Nunavut Impact Review Board

cc: Whale Tail Pit Distribution List
 Ryan Vanengen, Agnico Eagle Mines Limited
 Jamie Quesnel, Agnico Eagle Mines Limited
 Manon Turmel, Agnico Eagle Mines Limited
 Brian Aglukark, Nunavut Planning Commission
 Karén Kharatyan, Nunavut Water Board
 Aluki Kotierk, Nunavut Tunngavik Inc.
 David Ningeongan, Kivalliq Inuit Association
 Steven Pinksen, Government of Nunavut
 Georgina Williston, Environment and Climate Change Canada
 Mark D'Aguiar, Fisheries and Oceans Canada
 David Kitchen, Health Canada
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