



NIRB File No.: 16MN056
NWB File No.: 8BC-WTP----

November 14, 2017

Jamie Quesnel
Environment Superintendent – Nunavut
Agnico Eagle Mines Ltd.
P.O. Box 549
Baker Lake, NU X0C 0A0

Sent via email: jamie.quesnel@agnicoeagle.com

Re: Nunavut Impact Review Board's Response to Agnico Eagle Mines Ltd.'s October 27, 2017 Correspondence Request to Reconsider NIRB Exception Determination Report, released October 10, 2017

Dear Jamie Quesnel:

Thank you for your October 27, 2017 correspondence to the Nunavut Impact Review Board (NIRB or Board) in which you raised three points that, in the view of Agnico Eagle Mines Ltd. (Agnico Eagle or the Proponent) support the Board revisiting its Exception Determination (released on October 10, 2017).¹ Please note, I have prepared a detailed response not only for the benefit of Agnico Eagle and the participants in the Board's recent review of the Whale Tail Pit project proposal, NIRB File No.: 16MN056 (the Project), but also as a reference for future project proponents and other participants in NIRB reviews, as it appears greater clarity surrounding the Board's process and timing of applications and consideration of exceptions from review in general would be beneficial.

At the outset, you indicated that in the Proponent's view the Board's determination of the Exception Application in this case was premature and should have been released at the same time as the Board's Final Hearing Report,² also noting that the Board should have used the assessment information provided as part of the ongoing Review to address the information gaps in the Exception Application. With respect, such an approach is not asking the Board to except exploration and development activities from the ongoing Review as permitted under the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right*

¹ NIRB Exception from Review Determination Report for Agnico Eagle Mines Ltd.'s "Whale Tail Pit Project Type B Predevelopment Application", NIRB File No. 16MN056, October 10, 2017.

² NIRB Final Hearing Report for the Assessment of Agnico Eagle Mines Ltd.'s Whale Tail Pit Project, NIRB File No. 16MN056, November 6, 2017.

of Canada, (the *Nunavut Agreement*) and the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14 (*NuPPAA*). By relying on the Board to include these activities in the full assessment conducted by the NIRB during the Review, the Proponent is asking that the Board only except these activities from Ministerial decision-making following the NIRB's conclusion of a Review, not from the assessment conducted under the Review. The Board does not have the jurisdiction to rely on including these activities and the NIRB's assessment of these activities within the scope of the NIRB's Review but then excluding these same activities from the scope of the Project for the purposes of the Minister's decision-making that follows the NIRB's submission of the Final Hearing Report and recommendations.

The Board indicated at the Final Hearing that the timing of the Board's determination about the exception activities would be issued in advance of the Board's conclusion of the review of the main project (essentially prior to the submission of the Final Hearing Report to the Responsible Minister(s)):

*So for the benefit of the participants who are in the audience and may not have seen the written materials associated with what is called an "exception from review", there is a process under the Nunavut Agreement, which is what is being requested here, and that is, in advance of the conclusion of the Board's review of a main project, certain activities may be, if granted the exception from review by the Nunavut Impact Review Board, may be allowed to proceed...[underlining added for emphasis]*³

The Board recognizes that all parties, including the Board, find it very challenging to consider an exception application when it is received and considered in such close proximity to the Final Hearing and at such a late stage of the Board's Review of the main project. The Board also recognizes that it is understandable that parties participating in the Review request, as was the case with the Government of Nunavut,⁴ that the Board defer consideration of the Exception Application until after the completion of the NIRB's Review because it becomes very difficult to separate out those exploration and development activities that should validly be excepted from the ongoing review (true exception activities) from those activities that the Proponent simply wishes to accelerate into the permitting stage while awaiting the Minister's decision.

To avoid the potential for this kind of overlap and confusion, the NIRB asks at every Pre-hearing Conference, as was the case here (in early May 2017), whether there are any measures or modifications to the project proposal, including exception applications that are being contemplated by the Proponent as the project proposal moves forward to the Final Hearing stages of the NIRB's Review. In this case, during the Pre-hearing Conference the Proponent did not identify that an exception application was being contemplated. As a result, the timing of the Board's consideration of the Exception Application ended up overlapping with the Review of the main project to a large extent and this created challenges for all parties. However, the fact that the timing overlapped to a large extent should not confuse the central issue: the Board's

³ T. Meadows, NIRB Legal Counsel, NIRB Final Hearing File No. 16MN056 Transcript, September 21, 2017, p. 384, lines 16-24.

⁴ See the discussion of these issues in the NIRB Exception from Review Determination Report File No. 16MN056, October 10, 2017, at pp. 9-10 and pp. 14-16.

determination decision is about whether specific exploration and development activities should be excepted from further assessment prior to the NIRB completion of the Review of the main project.

With respect to the third point Agnico Eagle raised that the NIRB should have granted the exception from further review in respect of the rejected exploration and development activities because those activities fell within the Schedule 12-1 of the Nunavut Agreement, the Board did not agree and for the reasons set out in the Board's October 10, 2017 Determination Report, the Board has decided that the Exception Application did not establish that these specific activities were exploration and development activities that should be excepted from further assessment activities. Consequently, the Board included these activities in the scope of the Board's Final Hearing Report, issued on November 6, 2017. As a result, the Board respectfully declines to revisit the October 10, 2017 determination on the basis of the issues raised within the Proponent's request.

Should you wish to discuss this matter further, please contact the undersigned directly at (867) 983-4608 or via e-mail at rbarry@nirb.ca.

Sincerely,

A handwritten signature in black ink that reads "Ryan Barry". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Whale Tail Pit Distribution List
Ryan Vanengen, Agnico Eagle Mines Ltd.
Bertin Paradis, Agnico Eagle Mines Ltd.
Julie Belanger, Agnico Eagle Mines Ltd.