



SCREENING DECISION REPORT NIRB FILE NO.: 09EN067

February 22, 2010

Honourable Chuck Strahl
Minister of Indian and Northern Affairs Canada
Indian and Northern Affairs Canada
Gatineau, QC

Sent via Regular Post, Facsimile and Email

Re: Screening Decision for Weststar Resources Corporation's "Ellesmere Island Coal Project" project proposal, NIRB File No. 09EN067

Dear Honourable Minister:

As set out in detail below, pursuant to **Section 12.4.4(d)** of the Nunavut Land Claims Agreement (NLCA), the Nunavut Impact Review Board (NIRB or Board) recommends to the Minister that on the basis of unacceptable potential adverse impacts to wildlife and paleontological resources, Weststar Resources Corporation's "Ellesmere Island Coal Project" as currently proposed, be **modified or abandoned**.

LEGAL FRAMEWORK

The primary objectives that govern the functions of the Nunavut Impact Review Board (NIRB or Board) are set out in Section 12.2.5 of the Nunavut Land Claims Agreement (NLCA) as follows:

In carrying out its functions, the primary objectives of NIRB shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area. NIRB shall take into account the well-being of the residents of Canada outside the Nunavut Settlement Area.

Further, Section 12.4.4 of the NLCA states:

Upon receipt of a project proposal, NIRB shall screen the proposal and indicate to the Minister in writing that:

- a) the proposal may be processed without a review under Part 5 or 6; NIRB may recommend specific terms and conditions to be attached to any approval, reflecting the primary objectives set out in Section 12.2.5;*
- b) the proposal requires review under Part 5 or 6; NIRB shall identify particular issues or concerns which should be considered in such a review;*

- c) the proposal is insufficiently developed to permit proper screening, and should be returned to the proponent for clarification; or*
- d) the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.*

PROCEDURAL HISTORY AND BACKGROUND

On May 4, 2009 the Department of Indian and Northern Affairs Canada (INAC) Mining Recorder's Office approved six (6) Coal Exploration Licence applications made by Weststar Resources Corporation (Weststar or the Proponent). The licences cover an approximate area of 4823 square-kilometres and are located on the Fosheim Peninsula and at the head of Strathcona Fiord, Ellesmere Island, Nunavut. The nearest community, Grise Fiord, lies approximately 400 kilometres to the south and the Eureka weather research station lies 35 kilometres to the west. Following the granting of licences, on August 13, 2009 Weststar submitted land and water use applications for a proposed coal exploration program to the Qikiqtani Inuit Association (QIA), Nunavut Water Board (NWB) and INAC.

On August 14, 2009 Weststar submitted its "Ellesmere Island Coal Project" project proposal directly to the NIRB (see **Appendix A** for a project summary). On August 18, 2009 the NIRB notified Weststar that the proposed project appeared to be located in an area with an approved land use plan (North Baffin Regional Land Use Plan) and, therefore, would require a conformity determination from the Nunavut Planning Commission (NPC). On October 9, 2009 Indian and Northern Affairs Canada referred a land use permit application (N2009C0014) in support of this project proposal to the NIRB for screening. On October 23, 2009 the NIRB received a positive conformity determination from the Nunavut Planning Commission (NPC) for this file and commenced screening the proposal. The NIRB assigned this project proposal file number 09EN067.

On October 23, 2009 the NIRB distributed this project proposal to community organizations in Eureka (30 km southeast of the proposed project), Grise Fiord (400 km southeast of the proposed project) and Resolute Bay (623 km southwest of the proposed project) as well as to relevant federal and territorial government agencies, and Inuit organizations. NIRB requested that interested parties review the proposal and provide the Board with any comments or concerns by November 9, 2009 (extended to November 25, 2009 at the request of commenting parties) regarding the following.

- Whether the project proposal is likely to arouse significant public concern; and if so, why;
- Whether the project proposal is likely to cause significant adverse eco-systemic and socio-economic effects; and if so, why;
- Whether the project is of a type where the potential adverse effects are highly predictable and mitigable with known technology, (providing any recommended mitigation measures); and
- Any matter of importance to the Party related to the project proposal.

On or before November 25, 2009 the NIRB received comments from the following interested parties (see **Appendix B-1** for complete comment submissions):

- Fisheries and Oceans Canada (DFO)
- Government of Nunavut - Culture, Language, Elders and Youth (GN-CLEY)
- Environment Canada (EC)
- Qikiqtani Inuit Association (QIA)
- Transport Canada (TC)
- Government of Nunavut – Department of Environment (GN-DOE)

On November 27, 2009 the NIRB provided an opportunity for Weststar to respond to the concerns raised during the public commenting period. On December 8, 2009 the Proponent submitted its response to the NIRB, detailing proposed operational commitments meant to address concerns raised (see **Appendix C** for complete comment submission). The NIRB distributed this submission to parties for review, requesting any additional comments or concerns be submitted to the Board on or before December 16, 2009 (later extended to January 15, 2010 at the request of commenting parties).

On or before January 15, 2010 the NIRB received comments from the following interested parties (see **Appendix B-2** for complete comment submissions):

- Qikiqtani Inuit Association (QIA)
- Government of Nunavut - Department of the Environment (GN-DOE)
- Alliance of Natural History Museums of Canada
- British Antarctic Survey – Natural Environment Research Council
- Canadian Museum of Nature
- Institute of Arctic and Alpine Research (INSTAAR)
- Ottawa Palaeontological Society
- Society of Vertebrate Palaeontology (SVP)

The NIRB also received 73 comment submissions from the following members of the public (see **Appendix B-3** for complete comment submissions):

- | | | |
|---------------------------|-----------------------|----------------------------|
| ▪ A. Hope Jahren | ▪ Grant Hurlburt | ▪ Natalia Rybczynski |
| ▪ Aaron D. Pan | ▪ Hans Larsson | ▪ Neil Kelley |
| ▪ Adam Csank | ▪ Jaelyn J. Eberle | ▪ Paul A. Johnston |
| ▪ Alexander Kellner | ▪ James F. Basinger | ▪ Paul Sealey |
| ▪ Alison M. Murray | ▪ Jan Lynett Gillette | ▪ Philip Currie |
| ▪ Amy McEwing | ▪ Janice L. Pappas | ▪ Pierre-Olivier Antoine |
| ▪ Andrew Stanton | ▪ Jean P. Lee | ▪ René Barendregt |
| ▪ Ashley Ballantyne | ▪ Jeremy Martin | ▪ Richard T. McCrea |
| ▪ Barry George | ▪ Jerry Hooker | ▪ Robert F. Mason |
| ▪ Benjamin J. Burger | ▪ Jessica Theodor | ▪ Robert Redhawk Hoffman |
| ▪ Caitlin Horrall | ▪ Jing Chen | ▪ Robin Smith |
| ▪ Caroline A.E. Strömberg | ▪ Joanna Northover | ▪ Robyn J. Burnham |
| ▪ Catherine Badgley | ▪ John C. Gosse | ▪ Roger Summers |
| ▪ Christopher Noto | ▪ John Storer | ▪ Ronda J. Brook |
| ▪ Claudia Schroder-Adams | ▪ Jonathan Perry | ▪ Sanja Hinic-Frlog |
| ▪ Dan Sharon | ▪ Joseph S. Sullivan | ▪ Selena Y. Smith |
| ▪ David B. Scott | ▪ Kenneth D. Rose | ▪ Stephen J. Godfrey |
| ▪ David Dobry | ▪ Lee Mishkin | ▪ Stephen L. Cumbaa |
| ▪ Donald Brinkman | ▪ Leo J. Hickey | ▪ Tony & Galina Rybczynski |
| ▪ Eric Buffetaut | ▪ Lucia Kuizon | ▪ Vince Ward |
| ▪ Fabio M. Dalla Vecchia | ▪ Margaret Madsen | ▪ W. Travis Mitchell |
| ▪ Florence Quesnel | ▪ Marla de Boef Miara | ▪ Wayne Sawtell |
| ▪ Gae A. Weber | ▪ Mary R. Dawson | |
| ▪ Gordon S Trick | ▪ Matt Lamanna | |
| | ▪ Matt Vickaryous | |
| | ▪ Matthew J. Kohn | |
| | ▪ Michelle Pinsdorf | |

On January 19, 2010 the NIRB provided Weststar with a final opportunity to respond to concerns raised during the second commenting period. A submission from Weststar with additional operational commitments was received by the Board on January 29, 2010 (see **Appendix C** for complete comment submission).

NIRB ASSESSMENT AND DECISION

In determining whether or not a public review is necessary, the NIRB considered a number of factors, in addition to soliciting and reviewing comments received from interested parties. Upon completion of the internal technical review, the NIRB determined that based on the nature, timing, and location of the Project and reflecting the criteria identified in 12.4.2(a) of the NLCA, i) this project has the potential to cause significant adverse ecosystemic effects, (ii) the project may have significant adverse socio-economic effects on northerners and iii) there is significant public concern regarding this project. The NIRB and commenting parties have identified a number of significant issues that could be associated with this project. Details of the significant issues identified are:

1. The project may have significant adverse effects on the ecosystem, wildlife habitat or Inuit harvesting activities – NLCA 12.4.2(a) (i):

There is the potential for impacts to wildlife and wildlife habitat, particularly habitat used for calving by sensitive populations of caribou and muskoxen, as a result of exploration activities including drilling, airborne surveys, and associated camp use. The Project is located in an area that may be used by calving Peary caribou and is used extensively by calving muskoxen. These concerns were raised by a number of parties:

“The entire area, within which the proponent is proposing, is Peary caribou habitat and may include calving areas. The Nunavut Atlas corroborates the importance of these areas as does Taylor’s study of Inuit Qaujimagatuqangit for the High Arctic Islands of Nunavut (Taylor 2005). This population of caribou is currently under study and areas important to Peary caribou are being refined as data become available.” (GN-DOE; Appendix B-1)

“In their Assessment Summary of May 2004, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) assessed the entire pearyi subspecies of caribou as Endangered: that is, it is facing imminent extinction.” (GN-DOE; Appendix B-2)

“Caribou are extremely sensitive to disturbance including over flights, ground activities, and noise which can affect their access to habitat, and their fitness levels and survival. Disturbances to Peary caribou and their habitat must be avoided.” (GN-DOE; Appendix B-2)

“QIA has been advised by the CLARC of Grise Fiord that Weststar’s proposed activities are likely to have undesirable impacts to wildlife, Inuit harvesting of wildlife, interference with Inuit use and quiet enjoyment of Inuit Owned Lands.” (QIA; Appendix B-2)

DOE’s studies also show that the Fosheim Peninsula is the epicentre, i.e. the focal point of activity, for muskox distribution on Ellesmere Island (Jenkins 2007, see attached maps). The Fosheim Peninsula provides critical habitat to muskox and large numbers of muskox use the area for calving. Muskox are particularly sensitive to disturbance during calving and post calving. Every effort should be taken to minimize disturbances to the animals and the grazing habitat and to protect calving and post calving areas from any disturbance. (GN-DOE; Appendix B-2)

“Wildlife Division has strongly recommends against any activities in the location of the Weststar’s Ellesmere Island Coal Exploration project because of potential significant impacts to important caribou and muskox habitat.” (GN-DOE; Appendix B-1)

2. The project may have significant adverse socio-economic effects on northerners – NLCA 12.4.2(a) (ii):

The importance of wildlife harvesting to northerners’ social and cultural values cannot be understated. Reliance of many northerners on caribou as a food source also means the health of caribou herds factor prominently into the local economy. Public comments emphasized the importance of preserving the social and cultural values in the project area. Submissions highlighted the fact that Inuit Owned Lands within the project area are highly valued and were chosen solely on the basis of their cultural, harvesting and conservation importance, rather than for economic/commercial development purposes. Concerns were also raised regarding unacceptable impacts to paleontological resources with specific significance for northerners in the project area. In addition, public comments identified concerns regarding inadequate public consultation. These concerns were expressed specifically as follows:

“Documentation of IOL selection in the high arctic suggests four main attributes were used to describe IOL selection; cultural, harvesting, economic/commercial and conservation. When observing the current project proposal a portion of the project area includes IOL parcel GF-05. The attributes for selection of this parcel are: cultural, harvesting and conservation. It should also be noted the economic/commercial attribute is not listed as a reason for selection.” (QIA; Appendix B-2)

“The area under consideration for exploration is also HIGHLY sensitive in terms of Nunavut’s Paleontology Resource. The extent of the fossil forest is not well defined and while predominately associated with Axel Heiberg Island beds may extend on to the west side of Ellesmere Island.” (GN-CLEY; Appendix B-1)

“My specific concern centers on the lease-blocks labeled NU-Coal#106, NU-Coal#107, and NU-Coal#108. These blocks lie precisely in the discovery area and richest deposits of Tertiary-age vertebrate fossils in the Canadian Arctic. Not only do these include the three-toed horses and alligators of popular accounts, but the fossils of a group related to bats and primates that survives today only in the Philippine Islands. This region is highly unusual as well because it provides the only integrated fossil record of animal and plant fossils. This makes the area of enormous value in reconstructing the environmental conditions of the Arctic. Much has been made of the marvelous fossil forests of Axel Heiberg Island, but to date, no fossil vertebrate fossils have been recovered from the area.” (Leo J. Hickey; Appendix B-3)

“Rocks within Westar’s proposed development area near Strathcona Fiord preserve fossil plants and animals that lived during one of the warmest times in all of Earth’s history, when Ellesmere Island was blanketed in forests inhabited by alligators, turtles, primates and hippo-like Coryphodon. Their discovery in the 1970s and 80s was among the greatest contributions to paleontology of the last century. These unique fossil sites are world-renowned, and despite over three decades of searching the High Arctic, no sites of comparable age and fossil richness have been discovered elsewhere in the Canadian Arctic. Younger fossil sites near the head of Strathcona Fiord indicate that this area was home to larch forests, horses, and beavers just a few million years ago, and underscore how quickly and dramatically the Arctic can change. These fossils are irreplaceable. Destroying these fossil sites will impact our ability to understand (and predict) the effects of future climate change in polar regions.” (Society of Vertebrate Palaeontology; Appendix B-2)

“QIA has been advised by the CLARC of Grise Fiord that Weststar’s proposed activities are likely to have undesirable impacts to wildlife, Inuit harvesting of wildlife, interference with Inuit use and quiet enjoyment of Inuit Owned Lands. Furthermore, no direct socioeconomic benefits are foreseen. As a result, QIA is withholding access to IOL for Weststar’s proposed project.” (QIA; Appendix B-1)

“QIA would like to reiterate that socio-economic aspects of a project offer a tangible relationship beyond consultation and updates. For a community with limited employment and economic opportunities avenues for local involvement should factor significantly into project planning. Weststar’s response, “Weststar is committed to obtaining support services where practical from local communities”, does not appear to address these factors in a meaningful way.” (QIA; Appendix B-2)

3. The project will cause significant public concern – NLCA 12.4.2(a) (iii):

The NIRB has received a number of comment submissions from members of the public expressing significant concerns regarding the potential for unacceptable adverse impacts to paleontological resources in the Project area. Notably, the majority of submissions were from professional palaeontologists and organizations with a paleontological mandate, describing the importance of the area nationally and internationally, the current lack of protection for the area, and the likelihood of irreparable and unacceptable impacts to paleontological resources occurring as a result of the proposed project. The Board considers that the comments received, such as the following, constitute significant public concern:

“In August 2009, the DOE commented on Coal License Applications #122-137 from Indian and Northern Affairs Canada and strongly recommended against issuing them based on a number of biological concerns. These same areas are now being considered for Weststar’s Ellesmere Island Coal Exploration project proposal.” (GN-DOE; Appendix B-1)

“My concerns stem from some years of work I have done in the region working on Mesozoic aged rocks and their fossils in the arctic. The proposed activities could damage or destroy fossil sites that form an important part of Nunavut’s history. These fossils tell us about the history of Arctic plants and animals, and are recognized internationally for their scientific importance. They also provide important evidence from a time when Earth, especially the Arctic, was warmer. Ultimately, evidence from Nunavut’s fossil record can help us better estimate and prepare for future climate change.” (Hans Larsson; Appendix B-3)

“The fossils at Strathcona Fiord are not only world-renowned to science, but just as important, they are a part of Nunavut’s heritage and a legacy for generations of Nunavut children. These fossils, and the clues they reveal about Nunavut’s ancient past, are irreplaceable.” (Jaelyn J. Eberle; Appendix B-3)

“I write to express my great concern that a precious area of paleontological resources is imperiled by the plans of the Westar Coal Company to drill and exploit the region of Ellesmere Island starting inland from the south shore of Strathcona Fiord and extending to the south shore of Bay Fiord.” (Leo J. Hickey; Appendix B-3)

“We would like to make it known that there are those in the Canada’s south (as well as in Nunavut), outside of the academic community, who understand the importance of arctic fossil exploration. These finds are important for understanding Canada’s past and climate, as well as for our national pride and international image”.... “Development should be delayed until the

potential damage to our national heritage and scientific knowledge is assessed and a solution is found which will ensure that the interests of the CSCC and the Canadian scientific community/public are no longer in conflict.” (Ottawa Palaeontological Society; Appendix B-2)

Of the comments submissions received, many parties also included a request for the NIRB to consider a specific NLCA 12.4.4(a) (b) (c) or (d) decision:

“After reviewing the project proposal and supporting documents, Environment Canada (EC) is of the opinion that the proposed project is of a type where the potential adverse effects are highly predictable and mitigable with known technology.” (EC; Appendix B-1)

“If the fossil sites in the Westar coal project areas are destroyed the evidence is lost forever, therefore I recommend that the Nunavut Impact Review Board advise the Minister, pursuant to article 12.4.4(b) of the Nunavut Land Claim Agreement, that the project proposal requires review under Part 5 or 6.” (John C. Gosse; Appendix B-3)

“If the fossil sites in the Westar coal project areas are destroyed, the evidence is lost forever. Therefore, I recommend that the Nunavut Impact Review Board advise the Minister, pursuant to article 12.4.4(b) of the Nunavut Land Claim Agreement, that the project proposal requires review under Part 5 or 6.” (Jaelyn J. Eberle; Appendix B-3)

“I most sincerely hope that NIRB would recommend to the Minister a 12.4.4.(d) recommendation: “the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.” ” (Mary Dawson; Appendix B-3)

“I urge the protection of these valuable sites and recommend that the Nunavut Impact Review Board advise the Minister, pursuant to article 12.4.4(d) of the Nunavut Land Claim Agreement, that the project proposal be modified or abandoned due to its potential adverse impacts.” (Benjamin J. Burger; Appendix B-3)

“I would hope that NIRB would recommend to the Minister at the Department of Indian and Northern Affairs, a 12.4.4 recommendation, namely sections b and d. (b) the proposal requires review under Part 5 or 6, NIRB shall identify particular issues or concerns which should be considered in such a review.(d) the potential adverse impacts of the proposal are so unacceptable that it should be modified or abandoned.” (Jean P. Lee; Appendix B-3)

Following each round of public commenting, Weststar provided a response to the public comment submissions received by the NIRB, clarifying its intentions and outlining additional commitments to mitigate potential impacts:

“Some of the concerns raised by the commenting parties were addressed by Weststar's existing environmental, social and economic commitments. Importantly; as a direct result of the review process, and based on input provided by the commenting parties, Weststar implemented a number of new mitigation and monitoring best practices. Westar's existing and recently implemented mitigation and monitoring practices and social and economic commitments include:

- *Strict adherence to Nunavut Archeological and Paleontological Site regulations.*
- *Completion archeological and paleontological site assessments prior to any land disturbance.*
- *Strict Adherence to DIAND established Caribou Protection Measures.*

- *Implementation of wildlife monitoring program emphasizing observation, recording and avoidance, to determine effectiveness and/or identity where further mitigation is required.*
- *To conduct community consultation with the people of Grise Fiord*
- *Commitment to obtain support services from local and/or Nunavut registered companies. Wherever and whenever possible Weststar will hire locally.” (Weststar; Appendix C)*

“After reviewing Weststar’s wildlife monitoring and mitigation practices, the QIA indicated that it was unclear whether Weststar planned to conduct activities during the Peary caribou and muskox calving period of April 15th - July 15th. To clarify; with approval and provided they do not impact Peary caribou or muskox Weststar plans to conduct activities during the calving period. As previously indicated Weststar will strictly adhere to DIAND established Caribou Protection Measures. In recognition that project activities have the potential to impact both calving Peary caribou and muskox, Weststar plans to implement monitoring and mitigation protection measures with respect to both species.” (Weststar; Appendix C)

“Based on the concerns and recommendations of QIA, Weststar is now preparing to conduct community consultation with the Inuit and community of Grise Fiord during March 2010; approximately 1 month earlier than previously indicated.” (Weststar; Appendix C)

In summary, Weststar presented its belief that the potential impacts from the project would be adequately mitigated through its commitments and existing legislation:

“Weststar believes that the Ellesmere Island coal exploration project is of a type where the potential adverse effects are highly predictable and can be mitigated with known technology. This opinion, with respect to Weststar’s wildlife management and mitigation practices, is shared by Environment Canada. Similarly, the Government of Nunavut, Department of Environment has indicated that Weststar’s wildlife management and mitigation practices “would likely be able to adequately mitigate disturbances to wildlife “. The unique archeological and fossil sites present on Ellesmere Island are protected from disturbance under the terms of the Nunavut Act, and the Nunavut Archeological and Paleontological Site Regulations to which Weststar is legally bound. In addition, Weststar remains committed to addressing the wildlife and socio-economic concerns voiced by the Inuit of Grise Fiord via meaningful community consultation.” (Weststar; Appendix C)

During its internal technical review, the NIRB noted that, although there is an approved land use plan which encompasses the project area, it does not yet provide significant formal protection to wildlife and paleontological resources. Additionally, although there are existing commitments to further the development of Caribou Protection Measures in this area, key obligations remain to be developed and implemented. Action item 3.4.4 of the North Baffin Regional Land Use Plan states as follows:

Caribou protection measures, based on those suggested in Appendix I – and further developed by DIAND and the QIA Inuit land managers in consultation with NWMB, local HTOs and DSD – shall be implemented for all caribou herds in the North Baffin Planning Region by DIAND and by the QIA.

It is the NIRB’s understanding that this obligation as set out in the North Baffin Regional Land Use Plan has not yet been fulfilled, and to date there are no formal Caribou Protection Measures in place for the North Baffin Planning Region that would provide direction or impose limitations on Weststar’s proposed activities in the project area. Notwithstanding that the Peary caribou which inhabit this region have been assessed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as being

Endangered (i.e. the species is facing imminent extinction), to date, Peary caribou have not been formally designated under the *Species At Risk Act*. The net result is that although there may be a future formal designation under the *Act*, at present, in the absence of this designation there is no formal protection for either Peary caribou, or the habitat used for calving by Peary caribou, in the project area under the North Baffin Regional Land Use Plan nor the *Species At Risk Act*.

As noted in the background discussion to this decision, on May 4, 2009 the Mining Recorder's Office approved six (6) coal exploration license applications made by Weststar. Through the comment submissions received during screening of this project proposal, it has been brought to the NIRB's attention that, prior to issuing coal exploration licences for the project area (NU-coal licences # 101-108, excluding #105), the INAC Mining Recorder's Office solicited and received comments from various organizations and government departments/agencies (see **Appendix D**). It is the NIRB's understanding that copies of these comment submissions were appended to the coal exploration licences issued to Weststar for its information. In this prior process, strong concerns analogous to the concerns raised before the NIRB were formally registered by GN-CLEY, GN-DOE and the Nunavut Regional INAC Environment office regarding the sensitivities of the project area and the current lack of protection for wildlife and paleontological resources:

"We can not recommend approval of the Pending License: #101, #102, #103, #104, #105, #106, #107, #108, #109, #110, #111, #112, #113, #114, #115, and # 116. These licenses are in a paleontological sensitive area and no exploration or development should occur in these areas." (GN-CLEY; Appendix D)

"Due to wildlife concerns GN-DoE does not recommend issuing the permits #101-121." (GN-DOE; Appendix D)

"Permits #101-115, with the exception of #105, all fall within the locale of the Fossil Forest and paleontological sites and serious consideration should be given to making the protection of the forest a priority over other uses of the area." (GN-DOE; Appendix D)

"Additionally, the area in question is particularly important for subsistence harvesting for the communities of Grise Fjord and Resolute Bay, and a great deal of traditional ecological knowledge can be obtained through communication with the Hunters and Trappers Organizations in these communities." (GN-DOE; Appendix D)

"Our findings suggest that the issuance of several of these permits, should they proceed to exploration or development, may likely cause environmental impacts on the petrified forests found on both Axel Heiberg Island and Ellesmere Island." (INAC; Appendix D)

"As described above, the pending licenses: #101,102,103, 104, 105, 106,107, 108, 109, 110, 111, 112, 113, 114, and 115 are located in sensitive terrain areas of Ellesmere Island and Axel Heiberg Island that are not formally protected under any legislation." (INAC; Appendix D)

Although criteria pursuant to NLCA Section 12.4.2 (a) have been satisfied as previously stated, it is the NIRB's opinion that a public review of the project pursuant to NLCA Article 12 Part 5 or 6 is not appropriate. The purpose of such a public review process is to identify the ecosystemic and socio-economic effects, to gauge and define the extent of the effects identified and to determine whether project proposals should proceed, and if so, under what terms and conditions. In the situation where the fundamental nature, location, and timing of the proposed project has a high likelihood of resulting in unacceptable, immitigable and irreparable impacts and significant public concern has been expressed, as is the case here, the more appropriate avenue is that set out in section 12.4.4(d) of the NLCA.

As noted above, concerns regarding the general permitting of coal exploration in the project area were submitted to the Mining Recorder's Office for consideration prior to the issuance of coal exploration licences to Weststar, with recommendations that licences should not be approved and no exploration or development should be allowed in the project area. Following the Board's internal technical review of the project, consideration of public comments and the additional commitments proposed by the Proponent, there are several issues which remain outstanding and cannot be adequately mitigated through approval of the proposal with project-specific terms and conditions. As outlined above, in this case, it is the NIRB's view that further review is not required, given the high likelihood of immitigable impacts to sensitive wildlife and significant paleontological resources that could result from the proposed project. As such, these potential impacts have been deemed "unacceptable" by the NIRB.

RECOMMENDATION TO THE MINISTER

After completing a review of the application materials received, and taking into account the information the Proponent and parties have supplied for the Board's consideration, it is the NIRB's recommendation that **the potential adverse impacts of the project proposal are so unacceptable that the project should be modified or abandoned pursuant to section 12.4.4(d) of the NLCA.**

In making this recommendation, the Board acknowledges it is uncommon for NIRB to recommend that the Minister return a project proposal for modification or abandonment in this manner. However, it is the Board's view that the potential for significant adverse impacts to wildlife and paleontological resources is unacceptable and cannot be properly mitigated as currently proposed.

Validity of Land Claims Agreement

NLCA Section 2.12.2

Where there is any inconsistency or conflict between any federal, territorial and local government laws, and the Agreement, the Agreement shall prevail to the extent of the inconsistency or conflict.

Dated February 22, 2010 at Sanikiluaq, NU.



Lucassie Arragutainaq, Chairperson

Enclosures (6): Appendix A – Project Summary
 Appendix B-1 – Comment Submissions Received (November 25, 2009)
 Appendix B-2 – Comment Submissions Received (January 15, 2010)
 Appendix B-3 – Comment Submissions Received (Public, January 15, 2010)
 Appendix C – Proponent Responses to Comments
 Appendix D – Comment Submissions to the Mining Recorder's Office