



NIRB File Nos.: 07EN012, 08MN053

NWB File No.: 2BB-MRY1114

QIA File Nos.: LUA-2007-001, Q13C301

AANDC File Nos.: N2006C0036, N2007F0004,

2012QP0065, 2013QP0086

DFO File No. NU-06-0084

TC File No.: 8200-07-----

April 4, 2014

The Honourable Bernard Valcourt
Minister of Aboriginal Affairs and Northern Development
Government of Canada
c/o Jeff Mercer, Manager Land Administration
Aboriginal Affairs and Northern Development Canada
P.O. Box 100
Iqaluit, NU X0A 0H0

Sent via email: jeff.mercer@aandc.gc.ca; landsmining@aandc.gc.ca

Re: Application Exempt from the Requirement for Screening pursuant to Section 12.4.3 of the NLCA: Baffinland Iron Mines Corporation's "Mary River Project," Qikiqtani Region

Dear Jeff Mercer:

On January 17, 2014 the Nunavut Impact Review Board (NIRB or Board) received an application from the Nunavut Water Board (NWB) for a renewal and an amendment to the Type B Water Licence (No. 2BB MRY-1114) previously associated with Baffinland Iron Mines Corporation's (Baffinland) "Mary River Bulk Sampling" project proposal. On February 14, 2014 the NIRB received confirmation from the Nunavut Planning Commission (NPC) that the previous NPC conformity determination issued for this project proposal on June 7, 2012 would continue to apply to the current application. On March 27, 2014 the NIRB received correspondence from Aboriginal Affairs and Northern Development Canada (AANDC) referring an application to amend the federal Land Use Permit (LUP; No. N2006C0036) associated with the above mentioned file (No. 07EN012) to the Board for its consideration.

Please be advised that the NIRB received applications for the original project proposal (NIRB File No.: 07EN012) from Indian and Northern Affairs Canada (INAC; now AANDC) and the Qikiqtani Inuit Association (QIA) on January 25, 2007. The original project proposal was screened by the Board in accordance with Part 4, Article 12 of the Nunavut Land Claims

Agreement (NLCA). On May 4, 2007 the NIRB issued the enclosed NLCA 12.4.4(a) screening decision to the Minister of INAC which indicated that the proposed project could proceed without a review, subject to the NIRB's recommended project-specific terms and conditions.

The current NWB and AANDC applications, the original NIRB Screening Decision Report for the Mary River Bulk Sample project (NIRB File No.: 07EN012) and related file information are available from the NIRB's online public registry at the following location:

<http://ftp.nirb.ca/01-SCREENINGS/COMPLETED%20SCREENINGS/2007/07EN012-Baffinland%20-%20Bulk%20Sampling%20Program/>.

As you are aware, since the Board's screening of the original Mary River Bulk Sample Project, the Board has also screened and reviewed, under Article 12, Part 5 of the NLCA, the mining and exploration activities associated with the construction, operation and reclamation of the Mary River Project Iron Ore Mine and associated infrastructure. As you will recall the Board's Review culminated in the issuance of the NIRB's Final Hearing Report for the Mary River Project in September 2012 (NIRB File No.: 08MN053). Following the Minister's acceptance of the NIRB's Final Hearing Report, on December 28, 2012 the Board issued the Mary River Project Certificate (No. 005) to Baffinland which contained terms and conditions designed to mitigate potential impacts of various aspects of the Mary River Project.

The Mary River Project Certificate is available from the NIRB's online public registry at the following link:

<http://ftp.nirb.ca/03-MONITORING/08MN053-MARY%20RIVER%20IRON%20MINE/01-PROJECT%20CERTIFICATE/>.

PREVIOUSLY-SCREENED PROJECT PROPOSAL:

As previously screened by the NIRB (File No.: 07EN012), the "Mary River Bulk Sample" project was located within the Qikiqtani region, approximately 160 kilometres (km) southeast of the Hamlet of Pond Inlet. The Proponent indicated that it intended to conduct a bulk sampling program in 2008 using the Milne Inlet Tote Road to facilitate movement of bulk product between the Mary River and Milne Inlet sites.

The activities/components associated with this proposal included:

- Delivery of contractor mining and crushing equipment, camp materials and fuel in 2 ship voyages to Milne Inlet;
- Upgrade of existing Milne Inlet Tote Road for all-weather use including:
 - Quarrying and placement of fill on road bed;
 - Replacement and installation of culverts at watercourses;
- Construction of 100-person all-weather tent camp at Mary River, adjacent to existing seasonal exploration camp;
- Establishment of a temporary 30-person trailer camp at Milne Inlet;
- Establishment of a temporary 12-person trailer camp part-way along the Milne Inlet Tote Road (Midway camp);

- Establishment of temporary fuel storage facilities at Mary River consisting of one 1.4 million litres (ML) diesel fuel tank farm, one 550,000 L Jet-A tank farm, and one 1.25 ML diesel tank farm;
- Establishment of temporary fuel storage facilities at Milne Inlet for 8 ML of diesel fuel and 90,000 L of Jet-A fuel;
- Establishment of temporary fuel storage facilities Midway Camp for 20-30 200 L drums of diesel fuel;
- Construction of a test rail embankment;
- Drilling, blasting and storing of 169,300 dry tonnes (t) of weathered surface rock on top of Deposit No. 1 over one or two months;
- Abandonment of a 169,300 t weathered iron ore stockpile;
- Drilling, blasting and storing 250,000 t of iron ore bulk sample from Deposit No. 1 over three-to five months;
- Hauling of the 250,000 t iron ore bulk sample from Mary River to Milne Inlet;
- Temporary stockpiling of the 250,000 t iron ore bulk sample at Milne Inlet; and
- Loading of the 250,000 t iron ore bulk sample on 3 ships for a total of five voyages.

On June 4, 2013 Baffinland applied for an extension to its AANDC Land Use Permit (LUP; No. N2007F0004) to support the continued operation, maintenance and progressive reclamation of the Milne Inlet Tote Road and the development of borrow and quarry pits. On July 24, 2013 the NIRB issued correspondence which noted that while the extension to the LUP was exempt from the requirement for screening, the bulk sample program as initially proposed in 2008 was considered to be a one-year project only, and it was the Board's understanding that these activities had since been completed. As such, the Board's consideration of the extension for AANDC LUP No. N2007F0004 included only the support of continued operation, maintenance and reclamation of the Milne Inlet Tote Road and did not extend to the transport of iron ore on Milne Inlet Tote Road or the shipment of iron ore through Milne Inlet.

CURRENT APPLICATION:

Baffinland is currently proposing to renew and amend its NWB Type B Water Licence (No. 2BB-MRY-1114) for a renewed license period of 25 years, and to amend the AANDC Land Use Permit (No. N2006C0036) to allow for satellite camps as outlined within application materials. Baffinland has proposed the following additional project components/activities associated with these renewal and amendment applications:

- Mineral exploration drilling;
- Surface mineral exploration activities including mapping, sampling, geophysical surveys, geochemical surveys, mechanical trenching and stripping of surficial overburden;
- Geotechnical drilling programs;
- Activities in support of scientific and engineering studies related to the advancement of future expansion of the Mary River Project; including geotechnical investigations;
- Potential bulk sampling programs;
- Construction and use of airstrips and icestrips;
- Construction of winter roads, stream/river crossings;
- Sealift operation and establishment and use of laydown area;

- Potential for establishing future satellite camps to support exploration and drilling activities on mineral claims; and
- Progressive reclamation programs associated with exploration programs.

On February 7, 2014 the NIRB invited federal and territorial agencies and designated Inuit organizations to provide information regarding Baffinland's proposed renewal and amendment to its Water Licence (No. 2BB-MRY-1114) by February 21, 2014, specifically requesting that agencies responsible for issuing authorizations for the Project provide the NIRB with confirmation of the following:

- Whether the original authorization(s) as issued by each department for the 2008 Mary River Bulk Sample project proposal would continue to apply, including confirmation of expiration dates, if applicable;
- Identify whether any additional authorization(s) or amendments to the existing authorization(s) may be required by each department, given the current scope of activities as proposed and confirm whether Baffinland had made application for these, where applicable; and
- Any other matter of concern to the party as pertaining to the current application.

On February 12, 2014 the NIRB received clarification from Baffinland regarding the scope of its application for renewal and amendment of the Type B Water Licence No. 2BB-MRY-1114. Within its correspondence Baffinland confirmed the following:

- Baffinland was no longer seeking any amendment relating to bulk sampling activities under the renewed Type B Water Licence;
- Baffinland was no longer seeking any amendment relating to the construction of winter roads, winter stream/river crossings, airstrips, or ice strips; and
- Baffinland was no longer seeking any amendment relating to the use of sealift and laydown areas for supply to exploration satellite camps.

On or before February 22, 2014 the NIRB received comments from the following parties regarding the proposed renewal and amendment to Baffinland's Water Licence (No. 2BB-MRY 1114):

- Qikiqtani Inuit Association (QIA)
- Government of Nunavut (GN)
- Aboriginal Affairs and Northern Development Canada (AANDC)
- Environment Canada (EC)
- Fisheries and Oceans Canada (DFO)
- Transport Canada (TC)

All comment submissions received pertaining to this project proposal can be obtained from the NIRB's online public registry at:

<http://ftp.nirb.ca/01-SCREENINGS/COMPLETED%20SCREENINGS/2007/07EN012-Baffinland%20-%20Bulk%20Sampling%20Program/02-DISTRIBUTION/COMMENTS/>

The following presents a *summary* of issues raised by parties:

- The QIA noted that Baffinland's Commercial Production Lease (File No. Q13C301) enables the Proponent to perform activities on Inuit Owned Land through the submission of a formal "Work Plan" for QIA's review. QIA indicated that no additional application relating to Baffinland's 2014 Work Plan had been filed with the QIA.
- The GN's Department of Culture and Heritage noted that the permits required to conduct archaeology or paleontology work in support of the proposed ongoing exploration expire on a yearly basis and that no such permit application had been received to date from Baffinland;
- AANDC informed the NIRB that the land use permit N2007F0004 associated with the Project would expire on July 4, 2014 and that the associated Quarry Permit (No. 2013QP0086) had expired on July 25, 2013. In addition, AANDC stated that the proposed satellite camps A, C and D located on Crown Land had not been previously authorized and would require amendment to relevant Land Use Permit(s) in order to proceed;
- EC determined that no additional assessment was required for the proposed project activities;
- DFO noted that no additional *Fisheries Act* authorizations or amendments to existing authorizations would be required for the proposed project activities; and
- TC confirmed that the existing *Navigable Waters Protection Act* approvals for the Project would apply to the current proposal; however, that amendments to the existing approval would be required for water crossings along the Milne Inlet Tote Road.

On April 2, 2014 the NIRB received a referral from AANDC for an amendment to Baffinland's Land Use Permit (No. N2006C0036) associated with its proposed establishment of additional satellite camps as described within application materials submitted in support of its Type B Water Licence amendment and renewal.

After completing a review of the information provided in support of the current NWB and AANDC applications including the Proponent's February 12, 2014 clarification of scope, and comments received from interested parties, the NIRB is of the understanding that the proposed renewal and amendment of the Type B Water Licence (No. 2BB-MRY-1114) and proposed amendment to the AANDC LUP (No. N2006C0036) do not reference or relate to a continuation or renewal of its 2008 bulk sampling program associated with Deposit #1 for the Mary River Project, but rather pertain to general ongoing exploration activities within associated project areas as outlined above. The NIRB notes that bulk sampling of iron ore specifically has now been excluded from the scope of the current applications.

Reflecting that bulk sampling, which was clearly the focus of the original 2008 Mary River Bulk Sampling project proposal screened by the Board is now excluded from the scope of the renewal of the Type B Water Licence (No. 2BB-MRY-1114) and proposed amendment to the AANDC LUP (No. N2006C0036), in the Board's view, the Board's screening of the original 2008 Mary River Bulk Sampling is not relevant to determining whether additional assessment and a new screening should be required for the Water Licence renewal and the LUP amendment. Rather, as

the Proponent has confirmed that the scope of the Water Licence renewal and the LUP amendment are associated with ongoing exploration activities within the project areas it is the Board's view that it is more appropriate for the Board to consider whether the proposed ongoing exploration activities in the project area were assessed during the Board's Review under Article 12, Part 5 of the overall mine project at Mary River Deposit #1 and associated continued exploration activities throughout the project development area.

CONCLUSION

Please note that Section 12.4.3 of the NLCA states that:

"Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NIRB unless:

(a) such component or activity was not part of the original project proposal; or

(b) its inclusion would significantly modify the project."

The Board can confirm that the ongoing exploration activities¹ as presented do not change the general scope of the original project activities as considered by the Board during its Review of the Mary River Project (NIRB File No. 08MN053) and therefore, that NLCA 12.4.3(a) and (b) do not apply and additional screening is not required. While the NIRB acknowledges that the NWB Type B Water Licence (2BB-MRY1114) was originally issued for Baffinland's 2008 Bulk Sampling Program and as such, incorporated the recommended terms and conditions within the NIRB's May 4, 2007 Screening Decision Report, as noted above, the Board believes the scope of the Water Licence and LUP amendment applications align more closely with the exploration activities considered by the Board during the NIRB's Review of the Mary River Project (NIRB File No. 08MN053). On this basis, the Board finds that the applications for renewal and amendment of the NWB Water Licence and amendment of the AANDC LUP are exempt from the requirement for screening pursuant to Section 12.4.3 of the NLCA, having already been subject to review and that activities therein remain subject to the terms and conditions of the NIRB's Project Certificate (No. 005) as issued December 28, 2012 for the Mary River Project.

The Board has specifically identified a number of Terms and Conditions from the Mary River Project Certificate which should be applied through relevant regulatory instruments to mitigate potential impacts of ongoing exploration, including numbers 10, 14, 15, 16, 17, 22, 23, 24, 26, 30, 31, 46, 59, 60, 61, 62, 64, 65, 66, 69, 70, 71, and 72. This initial listing is provided as a starting point, however authorizing agencies are also encouraged to undertake their own analysis of the Terms and Conditions within the Project Certificate with a view to incorporating into the relevant regulatory instruments any additional Terms and Conditions that are, in their opinion, necessary to mitigate the potential effects of the ongoing exploration activities.

¹¹ The NIRB notes that ongoing exploration activities as presented and considered herein do not include bulk sampling activities, and that it expects any future plans Baffinland may have to engage in bulk sampling will warrant further consideration by the NIRB.

However, with respect to the requested 25 year term of authorization for NWB Licence No. 2BB-MRY1114 the NIRB has identified that this term would exceed the current projected mine life of 21 years for the Mary River Project as it was reviewed by the NIRB in 2012. Consequently, the Board has identified that the term may warrant careful consideration by the NWB when determining the perceived need and appropriateness of that term for the current scope of activities.

While the Board has determined that the activities outlined in Baffinland's applications to renew and amend its Water Licence and to amend its Land Use Permit for ongoing exploration are exempt from the requirement for screening, as part of the existing Project Certificate the development of a Monitoring program for the Mary River Project pursuant to Part 7, Article 12 of the NLCA is underway for the purpose of monitoring the ecosystemic and socio-economic impacts of the overall Project, including monitoring for the impacts associated with the ongoing exploration activities included in the Type B Water Licence renewal and the LUP amendment. As such, the Board retains the discretion to, in future, determine that the potential impacts resulting from the ongoing exploration should be considered through the Mary River Project Monitoring program, and may impose additional monitoring requirements related to these potential impacts on the Proponent as deemed necessary.

If you have any questions or require additional clarification, please contact Amanda Hanson, the NIRB's Director of Technical Services at (867) 983-4615 or ahanson@nirb.ca.

Sincerely,



Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Erik Madsen, Baffinland Iron Mine Corp.
Oliver Curran, Baffinland Iron Mines Corp.
Sean Joseph, Nunavut Water Board
Phyllis Beaulieu, Nunavut Water Board
Stephen Williamson Bathory, Qikiqtani Inuit Association
Tracey McCaie, Aboriginal Affairs and Northern Development Canada