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August 29, 2000

Mr. Philippe di Pizzo
Executive Director
Nunavut Water Board
P.O. Box 119
Gjoa Haven NU X0E 1J0

Dear Sir:

Re: Municipality of Iqaluit
NWB File No: NWB31QA9900

We are retained by the Municipality of Iqaluit with respect to the upcoming Water Licence hearing. I am writing with respect to your letter of August 28, 2000.

The Municipality expects to file a new Water Licence Application shortly. Other documents and reports will be filed no later than October 20th as per the Board's request.

The Municipality of Iqaluit trusts that the Board appreciates that it is working very hard to address the real issues in providing water, sewage and waste management services to a rapidly expanding population. It does not wish to get side-tracked with matters that could pull it off course. However, there is one matter that it feels obliged to raise with the Board at this time. In the last paragraph of your letter, you advise that it is the Board's position that the Water Licence issued by the Board on December 15, 1999 was duly approved in accordance with the provisions of the Nunavut Land Claims Agreement (NLCA), and that it had force of law under the NLCA immediately upon issuance by the Board.

With the greatest of respect to the Board, it is difficult to see how it's position can be legally correct. In our opinion, the December 15, 1999 Water Licence does not have any force in law. We offer the following basis for this opinion:

- The NWB was created by Article 10 of the NLCA which states that the NWB shall be established as an institution of public government, with responsibilities and powers at least equivalent to those of the Northwest Territories Water Board (NTWB). The Government of Canada undertook in the NLCA to establish the NWB in legislation to be passed by 1995. However, where legislation was not in place in time, the provisions respecting the appointment of NWB members were deemed to be in effect and those NWB members were considered to have all the powers and duties described in Article 13, (ie. all the powers and responsibilities currently held by the NTWB under the *Northwest Territories Waters Act*).
- The NWB was established in July 1996, but federal legislation has never been enacted. Therefore, as we understand it, the NWB now exists by virtue of the deeming provision in Article 10 of the NLCA. In addition to that provision, the legal effect of Section 29 of the *Nunavut Act* is to provide the NWB with the powers of the NTWB set out in the *Northwest Territories Waters Act*. The Board's powers and duties must be those of the NTWB.
- Under Subsection 14(6) of the *Northwest Territories Waters Act*, the NTWB may only issue a license of this type with the approval of the Minister. Therefore, the NWB may only issue a license of this type with the approval of the Minister. The Minister has never approved the December 15, 1999 Licence. It therefore cannot have any legal force and effect.

DIAND adopted similar reasoning in its February 21, 2000 letter to the Board. In its February 25, 2000 decision to refuse the Municipality's request to reconsider certain conditions, we understood the Board to have adopted DIAND's submissions almost in their entirety. As a result, the Municipality wrote to you on March 1, 2000 to confirm the validity of the December 15, 1999 Water Licence. No response was received until now.

Under the present circumstances, the Municipality of Iqaluit has no idea where it stands. There is a good argument that the 1996 Water Licence remains in force as a result of the Board's decision to extend it until a final decision was made. In any event, the Municipality is content to file a fresh renewal application, with the objective of having a new long-term water licence in effect by January 1, 2001.

The Municipality continues to be deeply concerned with the reasonableness of some of the Board's December 15, 1999 conditions. We intend to address those concerns before the Board on November 7th and 8th.

Yours very truly,

John Tidball

Cc: M. Hough, Municipality of Iqaluit
S. Hardy, Nunavut Justice
D. Sitland, CG&T
Amarook Hunters and Trappers Association
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