



Department of Justice  
Canada

Ministère de la Justice  
Canada

Northwest Territories Regional Office  
3<sup>rd</sup> Floor, Joe Tobie Building  
5020 – 48<sup>th</sup> Street  
P.O. Box 8, Yellowknife  
Northwest Territories  
X1A 2N1

Bureau régional de Territoires du Nord-Ouest  
3<sup>ème</sup> étage, Édifice Joe-Tobie  
5020, 48<sup>e</sup> rue  
C.P. 8, Yellowknife  
Territoires du Nord-Ouest  
X1A 2N1

Phone/Téléphone: (867) 669-6900  
Fax/élocopieur: (867) 920-4022

Our File: 2-73812  
Your File: NWB3IQA99

February 21, 2000

Nunavut Water Board  
P.O. Box 119  
Gjoa Haven, Nunavut  
X0E 1J0

**BY FAX to 867-360-6369 and**  
**BY E-MAIL to [rbecker@polarnet.ca](mailto:rbecker@polarnet.ca)**

Attention: Mr. Thomas Kudloo,  
Chairperson

Dear Mr. Kudloo:

**Re: Submissions concerning letter dated February 10, 2000  
from Mayor of Iqaluit to Nunavut Water Board**

---

Kindly accept this letter as the submissions on behalf of the Department of Indian Affairs and Northern Development with respect to the above-noted letter.

\* \* \*

In these submissions, the following short forms of reference will be used:

- **“Board”**: Nunavut Water Board.
- **“DIAND”**: Department of Indian Affairs and Northern Development.
- **“Minister”**: Minister of Indian Affairs and Northern Development
- **“Municipality”**: the applicant, the Municipality of Iqaluit.
- **“NWT Waters Act”**: the *Northwest Territories Waters Act*, S.C. 1992, c. 39, as amended.
- **“Proposed Licence”**: Water Licence (renewal) number NWB3IQA9900, as appended to a decision of the Board dated December 15, 1999.

1. DIAND requests that, as a first step, the Board rule on whether it will entertain “Substantive Submissions”: that is, submissions (from the Municipality and others) on the terms of the Proposed Licence, and submissions on the merits of the objections presented by the Municipality in Mayor Kilabuk’s letter of February 10th.
2. For the reasons set forth in paragraphs 3 and 4, below, DIAND submits that the Board should rule that it will not entertain Substantive Submissions.
3. DIAND respectfully submits that the Municipality’s letter does not present the Board with a request that the Board can properly entertain. More particularly:
  - a) For the most part, the letter does not identify and request specific changes that the Municipality would like the Board to make to the Proposed Licence. Instead, it simply raises a series of objections. It is true that, in a few limited instances, specific requests for changes are indeed made: for example, in the discussion of Part C, Item 5, the Mayor requests that a deadline be removed. However, with respect to most matters the letter goes no farther than to voice a concern. In the same vein, the detailed comments upon the Proposed Licence are introduced (page 1) as a list of “problems and issues”. The letter concludes not by asking for any specific relief, but rather by expressing a hope that a dialogue may be started (page 3), and by inviting the Board or its Executive Director to meet with the Municipality’s Council (page 4).
  - b) The letter proposes an inappropriate means of dealing with the Municipality’s objections. First, dialogue is not the means by which an administrative tribunal makes or alters its decisions. Secondly, a dialogue which included only the Board and the Municipality would, by excluding all other parties who had previously been involved in the proceedings, deny those other parties fairness and natural justice. Thirdly, it would be inappropriate for the Board to turn its decision-making process into an appearance *by* the Board before some other body, such as the Iqaluit Municipal Council. Fourthly, while one of the Mayor’s suggestions is that the Board’s Executive Director be the one who meets with Council, this suggestion overlooks the fact that the decisions of the Board with respect to the licence renewal application must be made by Board members, not by a non-member officer of the Board. It is submitted that these points are consistent with what was said in the letter from Mr. di Pizzo to Mayor Kilabuk dated January 19, 2000.

4. More generally, DIAND questions whether it would be proper for the Board to entertain Substantive Submissions at this point in the licencing process given the release of the Board's decision and the Proposed Licence in December 1999 and the expiry of the appeal period under the *NWT Waters Act*. At the same time, jurisdiction to amend a licence cannot yet be invoked, as there is not yet an "issued" licence renewal. In accordance with sections 14(6) and 18(2) of the *NWT Waters Act*, the Proposed Licence will not be "issued", and thus will not be valid or effective, unless and until it is approved by the Minister. The Minister has not yet approved the Proposed Licence. Consequently, it would appear that the Board lacks the authority to revisit the licence terms at this time.

5. If the Board nevertheless rules that it will entertain Substantive Submissions, DIAND requests that it be given an opportunity to make Substantive Submissions. DIAND respectfully reserves the right to make Substantive Submissions or otherwise respond to any request by the Board for Substantive Submissions.

6. Further to paragraph 5, DIAND submits that it is reasonable and appropriate to seek a resolution of procedural concerns before making any Substantive Submissions. Also, the parties have had only a week in which to review the Municipality's letter and to review the Proposed Licence in light of that letter.

7. DIAND also submits that, if the Board nevertheless rules that it will entertain Substantive Submissions, the Board should set a procedure for the making and reception of such submissions. The particulars to be addressed in setting the procedure would include (without limitation): the definition of the issues on which submissions would be entertained; means whereby each party which has been involved in the proceedings will be provided with an opportunity to reply to the submissions of others, and with an opportunity to rebut comments upon its own submissions; and whether an oral hearing should be held.

\* \* \*

Thank you for your consideration of these submissions.

Yours very truly

Lee F. Webber  
Legal Counsel to the  
Intervenor DIAND

cc.: Peter Kusugak, DIAND, at 867-979-6445  
Roxanne Beavers, DIAND, at 867-669-2716