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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

**File: 3AM-IQA1626 /
Amendment No. 2**

July 22, 2019

By Courier, E-mail and Regular Mail

Honourable Carolyn Bennett, PC, MP
Minister of Crown-Indigenous Relations and Northern Affairs
21st Floor, 10 Wellington, North Tower
Gatineau, QC K1A 0H4
Email: carolyn.bennett@parl.gc.ca;

Subject: NWB Water Licence Type “A” No. 3AM-IQA1626 – Request for the Minister’s Consent to Process Amendment No. 2 on an Emergency Basis and Attached Reasons for Decision and Amendment No. 2 for the Minister’s Consideration

Dear Honourable Minister Bennett:

This correspondence is in relation to the July 10, 2019 request from the City of Iqaluit to amend Type “A” Water Licence No. 3AM-IQA1626 (Licence) for a “Municipal Undertaking” on an emergency basis (Amendment No. 2).¹ The basis for the City of Iqaluit’s request was stated in the City’s correspondence as follows:

... the City of Iqaluit (the City) is facing a shortage of potable water for the upcoming 2019-2020 winter, and ...is requesting the Nunavut Water Board (NWB) ’s immediate approval to supplement the Lake Geraldine reservoir from the Apex (Niaqunguk) River, and possibly other sources. The situation arises because the reservoir has not recharged following spring melt and will not be full prior to freeze-up. Ongoing dry conditions have resulted in flows in local watersheds at or near historic lows.²

As the Minister may recall, the City of Iqaluit requested and was granted an emergency amendment in August 2018 for this type of additional water use from the Niaqunguk (Apex) River for a period

¹ As defined under Schedule 1 of the *Nunavut Waters Regulations*, SOR/2013-69.

² Correspondence from A. Elgersma, City of Iqaluit to L. Toomasie, NWB Chairperson, July 10, 2019, and Application for Water Licence Amendment, July 12, 2019.

of one season (Amendment No. 1), with the clear direction that if the City of Iqaluit anticipates that pumping from alternative water sources to replenish the reservoir may be needed on a permanent basis, that the City of Iqaluit should submit an amendment application for a longer term supplemental pumping program. The NWB requested that in order to allow for the amendment to be processed by the NWB in accordance with the Board's normal timelines, notice, and public hearing requirements, that the City of Iqaluit should submit the longer-term amendment application by October 2018.

On February 1, 2019, following the completion of the land use planning conformity assessment by the Nunavut Planning Commission (NPC) and the screening assessment requirements of the Nunavut Impact Review Board (the NIRB) as required under *the Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* (the *Nunavut Agreement*) and the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*), the City of Iqaluit submitted an application to the NWB to amend the Licence to allow for additional water use from the Niaqunguk (Apex) River and to increase the total annual volume of water use authorized under the Licence for the period of 2019-2026 (the Amendment Application). The NWB's processing of the Amendment Application is currently underway and the Amendment Application is proceeding to the final stages, with an in-person Public Hearing scheduled to take place in the City of Iqaluit for August 8 and 9, 2019.

Although the Board and all parties have processed the Amendment Application with diligence, the final decision-making required of both the NWB and the Minister in respect of the Amendment Application will not be completed until after the potential pumping window (August-October) from the additional water source may have closed, resulting in a significant risk that the City of Iqaluit may not have sufficient water to supply to the residents of Iqaluit throughout the winter of 2019-2020. Consequently, the Board advised all parties on July 11, 2019 that the Board would consider whether the request for a temporary amendment to authorize supplemental water use (pumping) from the Niaqunguk (Apex) River for the 2019 pumping season (Amendment No. 2) constitutes emergency circumstances and should therefore be processed by the NWB without public comment, notice and a public hearing.³

In contrast to last summer's emergency amendment request, the NWB notes that because the scope of Amendment No. 2 is the same as the scope of the longer-term Amendment Application which was assessed for conformity by the NPC and screened by the NIRB earlier this year, the NWB has considered the requirements of the *Nunavut Agreement* and *NuPPAA* to be met so that the requested Amendment No. 2 can proceed to processing by the NWB. The City of Iqaluit has indicated that pumping urgently needs to commence to ensure that sufficient volumes of water can be pumped commencing as soon as August 1 through to October in a manner that does not exceed the thresholds required to maintain fish health in the Apex River. Reflecting this urgency, the NWB convened a teleconference meeting of the duly appointed three-member City of Iqaluit Panel (Panel P6) responsible for decision-making with respect to the file on Thursday, July 18 to consider the City of Iqaluit's Amendment No. 2.

³ As set out in ss. 52(2)(c), 55(5) and 56 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10 (*NWNSTRA*)

By way of Panel Motion No.: 2019-08-P6-05 Panel P6 determined that it is appropriate that the City of Iqaluit's requested Amendment No. 2 to Water Licence 3AM-IQA1626 as received by the Board on July 10, 2019 should be considered by the Board on an emergency basis. The Panel noted that the City of Iqaluit is experiencing exceptionally dry weather and that the Lake Geraldine Reservoir is currently at an historic low. The Board is therefore requesting the Minister's consent to the Board's processing of Amendment No. 2 in emergency circumstances as permitted by ss. 52(2)(c) and 55(5), of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10 (*NWNSTRA*), allowing the Board to waive the normal notice, public hearing and comment requirements typically associated with the Board's consideration of an application to amend a Type "A" Water Licence.

Also reflecting the urgent circumstances, the Panel P6 also considered during the teleconference whether, if the Minister consents to the NWB processing Amendment No. 2 on an emergency basis, the NWB would recommend that Amendment No. 2 should be issued. By way of Panel Motion No.: 2019-08-P6-06, and for the reasons set out in the attached Reasons for Decision and Licence Amendment No. 2, Panel P6 has approved the issuance of Amendment No. 2 for your consideration.

In recommending the processing and issuance of Amendment No. 2 in emergency circumstances for the 2019 pumping season, Panel P6 wished to emphasize to all parties that the NWB will continue to process the longer-term Amendment Application (2020-2026) in accordance with the schedule confirmed with the parties at the Pre-Hearing Conference held in May 2019. Accordingly, the Board looks forward to the participation of the City of Iqaluit, interveners and interested members of the community at the in-person Public Hearing for the Amendment Application to be held on August 8 and 9, 2019.

Conclusion

The Board recommends that Amendment No. 2 be considered by the Minister for approval under s. 56(1) of the *NWNSRTA*. Given the urgent nature of this matter, the Board would appreciate receiving, as soon as possible, the Minister's decisions regarding whether the Minister consents to the NWB's processing of Amendment No. 2 under emergency circumstances and, if so, the Minister's consideration of whether to approve the issuance of Amendment No. 2.

If the Minister has any questions or concerns regarding this matter, please contact Stephanie Autut, the NWB's Executive Director at Stephanie.Autut@nwb-oen.ca.

Sincerely,

Lootie Toomasie
Nunavut Water Board, Chair

LT/dd/rqd

Enclosure: **Licence No. 3AM-IQA1626 – Emergency Amendment Decision and Licence Amendment No. 2**

cc. Amy Elgersma, City of Iqaluit
Erica Bonhomme, Stantec / Nunami Stantec Ltd.
Iqaluit Distribution List

DECISION

WATER LICENCE 3AM-IQA1626 - EMERGENCY AMENDMENT

Licensee:	The City of Iqaluit
Licence No:	3AM-IQA1626 Type “A”
Licence Issued:	June 17, 2016
Emergency Amendment for 1 year:	
Amendment No. 2 Effective:	August 1, 2019
Amendment No. 2 Expiry:	July 31, 2020
Licence Expiry:	June 16, 2026

Pursuant to its authority under Article 13 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada (Nunavut Agreement)* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSTRA or Act)*, with respect to the Application for an emergency amendment to the Licence noted above, dated July 12, 2019, provided by the City of Iqaluit, the Nunavut Water Board (NWB or Board) hereby grants the following licence amendments (Amendment No. 2).

The Licence issued June 17, 2016, with an expiry date of June 16, 2026, shall be amended to include the following terms and conditions, with respect to the use of Waters and the deposit of Waste, to allow for:

- The temporary withdrawal (August 2019 – October 2019) of up to 500,000 m³ of Water from the Niaqunguk River (Apex River) to replenish Lake Geraldine Reservoir for the winter of 2019-2020; and
- the increase in the total amount allowed to be withdrawn from Lake Geraldine, from 1,100,000 m³/year to 2,000,000 m³/year.

Procedural History

On July 10, 2019, the Nunavut Water Board (NWB or Board) received notice from the City of Iqaluit (the City or Applicant) of the City’s intention to submit an application to amend Water Licence No. 3AM-IQA1626.⁴ The notice requested that due to the potential for the situation to result in a water shortage in the upcoming winter, the amendment be dealt with on an emergency basis under the provisions of Article 13 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada (Nunavut Agreement)* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSTRA)*. As provided for under s. 52(2)(c) and s. 55(5), of the *NWNSTRA* with the consent of the Minister, the Board may declare the amendment to be required on an emergency basis. With the consent of the Minister, this declaration allows the Board to waive the normal notice, public hearing and comment requirements typically associated with the Board’s consideration of an application to amend a Type “A” Water Licence and to process the amendment application on an expedited basis.

⁴ Amy Elgersma (City of Iqaluit Chief Administrative Officer) to Lootie Toomasie (NWB Chairperson); RE: City of Iqaluit Request for Immediate Approval to Supplement Drinking Water Supply; June 10, 2019.

On July 11, 2019, the NWB issued correspondence acknowledging receipt of the City of Iqaluit’s request to amend Type “A” Water Licence No. 3AM-IQA1626 (Licence) on an emergency basis (Amendment No. 2), and highlighted that the NWB is currently processing the City of Iqaluit’s non-emergency-amendment application to authorize the additional water use (2020-2026) (the Amendment Application), with that Amendment Application set down to proceed to an in-person Public Hearing in the City of Iqaluit on August 8 and 9, 2019.⁵ The Board emphasized that regardless of the Board’s disposition of the City of Iqaluit’s Amendment No. 2 request, the NWB will be proceeding with the in-person Public Hearing on August 8 and 9, to consider the longer term Amendment Application for the term of 2020-2026.

Following consultation with NWB staff, on July 12, 2019, the City of Iqaluit submitted an application and associated information (2019 Emergency Amendment Application) to authorize the additional water uses necessary to support a 2019 Supplementary Pumping Program (SPP) to the existing Water Licence No. 3AM-IQA1626. The 2019 Emergency Amendment Application was reviewed by NWB staff and notification of receipt of that Application was issued to the City on July 15, 2019.

On July 18, 2019, the Iqaluit Panel (Panel P6) met via teleconference and concluded that emergency circumstances has been established by the City of Iqaluit and directing that the Board seek the Minister’s consent for the Board to process the 2019 Emergency Amendment Application on an emergency basis. On this basis, the NWB has written to the Minister of Crown-Indigenous Relations and Northern Affairs (CIRNA), seeking the Minister’s consent for the Board to process the application on an emergency basis and to consider the Board’s recommendation to grant Amendment No. 2 on the following basis.

General Considerations

The City of Iqaluit considers the situation as an emergency because their drinking water source, Lake Geraldine Reservoir (Reservoir) *“has not recharged following spring melt and will not be full prior to freeze-up. Ongoing dry conditions have resulted in flows in local watersheds at or near historic lows.”* Further, the City of Iqaluit asserts that *“Without supplementation, the City is likely to face an overwinter shortage of potable water in 2019/2020.”*

As noted in the cover letter attached to these Reasons for Decision and Amendment No. 2, although the 2019 Emergency Amendment Application was processed on an emergency basis without public notification and formal comment, the scope of the 2019 Emergency Amendment Application is the same as the scope of the Amendment Application that has already been assessed for conformity by the NPC⁶ and screened for impacts by the NIRB⁷ as required by Articles 11-13

⁵ Stephanie Autut (NWB Executive Director) to Amy Elgersma (City of Iqaluit Chief Administrative Officer); Subject: July 10, 2019 Request to Process Amendment to NWB Water Licence Type “A” No. 3AM-IQA1626 to Authorize Immediate Pumping from Additional Temporary Water Sources on an Emergency Basis; July 11, 2019.

⁶ Letter from G. Djalogue, NPC to N. Lear, NIRB, R. Dwyer, NWB and A. Elgersma, City of Iqaluit issued on January 11, 2019; NPC conformity determination indicating that the proposal is outside the area of an applicable land use plan, but requires screening by the NIRB.,

⁷ NIRB, Screening Decision Report, NIRB File NO.: 19UN013, April 17, 2019; positive screening decision indicating further assessment by the NIRB is not required.

of the *Nunavut Agreement* and Part 3 of the *NuPPAA*. Consequently, the NWB has determined that the 2019 Emergency Amendment Applicant can be processed by the NWB without further conformity assessment by the NPC and impact assessment by the NIRB. In addition, the Board notes that the activities included in the 2019 Emergency Amendment have also been reviewed by the intervening parties (comments provided by CIRNA), under the Amendment Application (2020-2026 pumping program). These activities include:

- Construction, operation, and removal of temporary facilities, comprising of pumps, pipe/hose, intake, and related temporary facilities to use fresh Water from the Niaqunguk River (Apex River);
- Withdraw up to 500,000 m³ of water annually from the Niaqunguk River (Apex River) while remaining within DFO criteria of 10% of the instantaneous flow when natural flow is above 30% of the mean annual discharge (MAD); and,
- An increase to the amount allowed to be withdrawn from Lake Geraldine, to 2,000,000 m³.

The NWB has recommended the term of the 2019 Emergency Amendment should be limited to the works and activities required to replenish the Lake Geraldine Reservoir in 2019 as required to meet the City’s water needs for this winter only.

Amendment No. 2 seeks authorization for the City to undertake pumping of fresh Water from the Niaqunguk River (Apex River) into the Lake Geraldine Reservoir to replenish the Reservoir. The period of withdrawal is expected to be August 2019 through October 2019, to ensure that there will be sufficient water in the Reservoir to provide drinking water to the community throughout the winter. The Niaqunguk River will be the only additional source of water. Water would be pumped directly into Lake Geraldine Reservoir from the same location as the 2018 Supplementary Pumping Program approved under Amendment No. 1. No other sources of water are authorized under Amendment No. 2.

On this basis, the Panel P6, by way of Motion No.: 2019-08-P6-05 has approved the processing of the 2019 Emergency Amendment Application to Type “A” Water Licence No. 3AM-IQA1626 under emergency circumstances as requested by the City of Iqaluit. Further, if the Minister consents to processing the 2019 Emergency Amendment Application on an emergency basis, the Panel P6 has, by way of Motion No.: 2019-08-P6-06, authorized the issuance of this Decision and the specified amendments to Water Licence No. 3AM-IQA1626 (Amendment No. 2) to authorize the SPP for 2019 as follows.

EMERGENCY AMENDMENT

Amend Page 3 **Quantity of Water not to be exceeded** to read:

2,000,000 CUBIC METERS ANNUALLY FROM LAKE GERALDINE RESERVOIR, 500,000 CUBIC METERS IN 2019 FROM NIAQUNGUK RIVER (APEX RIVER).

PART A: SCOPE, DEFINITIONS, AND ENFORCEMENT

Insert Item 1. k.:

Construction, operation, and removal of temporary facilities for the Supplementary Pumping Program (SPP).

PART D: CONDITIONS APPLYING TO THE USE OF WATER AND WATER MANAGEMENT PLANS

Amend Item 1 to Read:

The Licensee is authorized to withdraw, from the Lake Geraldine Reservoir at Monitoring Station No. IQA-01, up to 2,000,000 cubic metres of Water annually for the relevant activities, works, and undertakings authorized under the scope of this Licence.

The Licensee is authorized to withdraw in 2019, from the Niaqunguk River (Apex River) watershed at Monitoring Station No.: IQA-10, up to a total of 500,000 cubic metres of Water in 2019 for the supplementation of Water levels in the Lake Geraldine Reservoir.

Insert Item 10:

The Licensee shall ensure that withdrawals from the Niaqunguk River (Apex River) at Monitoring Station No.: IQA-10 are only taken when natural flow is above 30% of the mean annual discharge (MAD) and do not exceed 10% of the instantaneous flow; and do not exceed the rate and volume that is considered acceptable by Fisheries and Oceans Canada. If, at any time, Fisheries and Oceans Canada advises the Licensee that withdrawals from the Niaqunguk River (Apex River) are no longer acceptable, the withdrawals must cease until Fisheries and Oceans Canada indicates that withdrawals can resume.

Insert Item 12:

The Licensee shall cease all withdrawals associated with the SPP (Monitoring Station No.: IQA-10) if sufficient water has been transferred into Lake Geraldine Reservoir to provide enough drinking water for Iqaluit for the winter of 2019 and into early 2020.

PART I: CONDITIONS APPLYING TO MONITORING

Insert Item 13:

The Licensee shall monitor the SPP in accordance with requirements included

under Schedule I.

SCHEDULE A: DEFINITIONS

Insert Item:

“**Supplementary Pumping Program (SPP)**” means the pumps, pipe/hose, intakes, coffer dams, and related temporary facilities to use fresh Water from the Niaqunguk River (Apex River) to augment Water levels in the Lake Geraldine Reservoir. The active pumping under the SPP is authorized to proceed in accordance with the terms and conditions of the Licence from August to October 2019 to address a pending Water shortage in the winter of 2019 and early 2020.

SCHEDULE B: ANNUAL REPORT REQUIREMENTS

Insert Item q:

The 2019 Annual Report referred to in Part B, Item 1, shall provide the following information about the SPP including:

1. A summary of the SPP program, including lessons learned, based on monitoring and mitigation efforts.
2. GPS co-ordinates (in degrees, minutes and seconds of latitude and longitude) and datum for the locations of all water withdrawals.
3. The daily and monthly quantities in cubic metres of fresh Water withdrawn from the Niaqunguk River (Apex River) watershed at Monitoring Station IQA-10.
4. All other monitoring conducted to meet DFO requirements.
5. Discussion of any observed trends, exceedances, or unanticipated impacts.

SCHEDULE I: CONDITIONS APPLYING TO MONITORING

Add to the end of Table 2:

Station ID	Description	Status	Parameter	Testing/ Measurement Frequency	Reporting Frequency
IQA-10	Withdrawal from Upper Niaqunguk River for transfer directly into the Reservoir.	New	F	Daily when withdrawals occurring at this station.	2019 Annual Report

All remaining terms and conditions of Type “A” Water Licence 3AM-IQA1626 dated June 17, 2016, still apply.

This Licence Amendment No. 2 issued and recorded at Gjoa Haven, NU on **July 22, 2019**.

Lootie Toomasie
Chairperson, Nunavut Water
Board

**APPROVED
BY:**

Carolyn Bennett
Minister of Crown-
Indigenous Relations and
Northern Affairs

DATE:
