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May 26th, 2017

Kelli Gillard  
Manager, Project Monitoring  
Nunavut Impact Review Board  
P.O. Box 1360  
Cambridge Bay, NU  
X0B 0C0

**RE: Comment Request for the Refining of the NIRB's Project Specific Monitoring Framework**

Dear Ms. Gillard

The Qikiqtani Inuit Association (QIA) is writing this letter in response to the invitation by the Nunavut Impact Review Board (NIRB) to provide comments on the refining of NIRB's project specific monitoring framework. QIA has participated in monitoring project approval conditions since 2007 and takes the requirement to uphold project approval conditions very seriously. QIA is grateful for this opportunity to provide input into this process.

QIA recalls the provision for project monitoring within the *Nunavut Agreement* (NA) under Article 12, Part 7. The *Nunavut Planning and Project Assessment Act* (NuPPAA) provides additional specificity about monitoring programs. Neither the NA nor NuPPAA require a monitoring program for any given project. However, upon the establishment of a monitoring program, government, the proponent and NIRB are obligated to "... carry out any responsibilities assigned to them under the monitoring program".<sup>1</sup>

Please find below some of QIA's main concerns.

## **1. Establishing monitoring frameworks**

NIRB does not have a stated practice for establishing monitoring frameworks after the issuance of a project certificate (PC). Absent a monitoring framework, it is not clear to parties when or

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<sup>1</sup> NuPPAA, s. 135(2)



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how monitoring will occur. Once established, the monitoring framework itself should also be subject to regular review. A one-year timeframe for the establishment of a finalized project specific monitoring framework between the issuance of a PC and the establishment of a monitoring framework would be reasonable.

The suggestion of a one-year time frame to develop a project specific monitoring framework should not be taken as a suggestion for when this work should commence. Rather, QIA also suggests that if NIRB were to develop a preliminary framework for how it intends to monitor approved projects that such a framework could be an important reference point for NIRB during project assessment. In this vein, QIA would argue that the development of project specific guidelines allows NIRB the ability to construct the basis of information a proponent will develop to describe a project, and this information could be constructed to support eventual project monitoring. The same view could be applied to key NIRB directives issued throughout the review process, such as the transition from a Draft Environmental Impact Statement and a Final Environmental Impact Statement. This transition in the review process could also contain an expectation that project monitoring become detailed to facilitate consideration for how to develop appropriate terms and conditions. By the time NIRB is in a position to present a draft PC for Ministerial consideration, QIA believes NIRB should have a clear view as to the main components that would exist in a project specific monitoring framework. QIA believes some of the current difficulty faced by NIRB in developing project specific monitoring frameworks can be attributed to the fact this work is deferred until post-project approval, as opposed to starting with the issuance of guidelines until finalization one-year after final project approval.

## **2. Revising terms and conditions (T&Cs)**

Monitoring provides an opportunity to revisit T&Cs in PCs. Current PCs may not have effective T&Cs, including T&Cs that are vague and unenforceable. It is not clear if NIRB intends to adapt T&Cs in light of monitoring findings. If NIRB monitoring will not include consideration of possible changes to T&C, it undermines the seriousness of NIRB monitoring and leaves ineffective T&C in the PC. Changes to T&Cs may be warranted to better reflect the realities of implementing a project. If changes are possible, there should be a clear process established to consider changes to T&Cs that includes stakeholder feedback.



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Revising T&C is particularly relevant if a project proponent's efforts are not achieving the objectives in the PC. NIRB monitoring needs to include a means to identify T&C that are not effective and address them.

## 3. "Orphan clauses"

PCs assign responsibility for T&Cs to a specific party. T&C often also fall under the jurisdiction of certain enforcement agencies. In some cases, there are "orphan clauses" that name a responsible party but there is no enforcement agency. It is not clear if NIRB sees orphan clauses as a particular area of NIRB responsibility as far as monitoring and enforcement. T&C enforcement (ie specific agencies or organizations) should be stated in PCs. Any enforcement designation under a PC could include terms of monitoring (ie frequency) and possible sanctions (ie fines) for non-compliance.

## 4. T&Cs and other regulatory authorities

Where T&C are under the jurisdiction of a given enforcement agency, there seems to be inconsistent feedback to NIRB. NIRB should be aware of monitoring and enforcement carried out by other parties or it risks being subject to an important information deficit regarding compliance with PCs. If NIRB has no interest, capacity or willingness to monitor certain T&C because they are the responsibility of another agency, perhaps the T&C should not be part of the PC. Alternatively, if an agency is failing in their duty to enforce T&C NIRB may view this as a reasonable grounds to enhance their own duties with respect to project monitoring.

## 5. Baseline data

If there is no baseline data for certain T&C, monitoring may be problematic. QIA is interested in seeing effective monitoring that uses reliable baseline data. Related to this is determining the significance of impacts. NIRB should have a means to review and assess predictions of significance within its monitoring. Where data reveals existing determinations of significance (ie significant or not significant impacts) may warrant revision (ie the impact is or is not significant), there should be a means to review the T&C or PC as appropriate.

## 6. Monitoring groups supported



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NIRB could clarify how project specific monitoring groups relate to the overall monitoring framework. It is currently unclear what role monitoring groups have, despite being included in PCs. When monitoring groups are established, there should also be a statement of NIRB's roles and responsibilities with that monitoring group. An example of this are the Marine and Terrestrial Environmental Working Groups (MEWG / TEWG) which were included in the Mary River PC. NIRB has yet to participate in any MEWG/TEWG meetings despite being invited. It would seem that participating within the monitoring groups established under a PC would enhance and support NIRB's ability to perform its own duties with respect to monitoring of the a PC.

### **7. NIRB site visits include key stakeholders**

When NIRB carries out site visits, key stakeholders like QIA with stated roles under PCs, could be useful parties to participate in the site visit. Conducting joint site visits would enhance transparency and common understanding of the monitoring issues that arise at each site. Collaboration on site visits could also save costs and be a way of building relationships to help arrive at mutual-shared expectations.

### **8. Community credibility**

It is important that NIRB be able to communicate and show how monitoring efforts are meaningful and relevant to residents of Nunavut. There is a perception the issuance of a PC is an unfettered licence to operate with limited means to enforce compliance. Where concerns arise, it is unclear how external (ie community, QIA) input might trigger or influence monitoring and enforcement. NIRB should set out what role, if any, stakeholders including communities have in monitoring PC. Related to this is timely access to monitoring data and opportunities for dialogue which support non-technical and non-written perspectives. More accessible information may allow for better mitigation of environmental or socio-economic impacts.

### **9. Socio-economic issues**

NIRB has a mandate to monitor socio-economic impacts. These impacts are a major concern for Inuit and QIA. Baseline data is relevant and important here too. Based upon QIA organizational experience to date it appears to QIA that NIRB's activities in assessing and monitoring projects is significantly weighted towards biophysical elements of projects. QIA encourages NIRB to invest



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greater efforts to develop more mature approaches to socio-economic assessment and monitoring inline with NIRBs mandate under the NA.

### **10. NIRB needs adequate funding in order to fulfil its monitoring mandate.**

NIRB should conduct an assessment of its duties and the costs of fulfilling those duties under a PC at the time of issuing a report to the Minister, and in so doing request confirmation that NIRBs role in monitoring the project will be accommodated within the annual budget allocations provided to NIRB.

QIA is pleased to have been invited to provide this input to NIRB as it considers fulfilling its mandate to monitor PCs. If you require any clarification or additional information, please do not hesitate to contact us.

### **11. The Role of Community Based Monitoring**

More recently QIA has invested some effort into better organizing the role of communities and community involvement in project specific monitoring. One of the outcomes of this work is the development of a general best practices approach to community involvement in project mandated monitoring, such as within a PC. In the event NIRB is interested to hear more on this topic QIA could provide additional information through a separate filing.

Finally, as QIA views NIRB monitoring to be an important role within the NA QIA would appreciate further opportunities to support NIRB in this regard moving forward.

Sincerely,

Stephen Williamson Bathory  
Director, Department of Major Projects