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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

September 7, 2016

NLCA 2015/*NuPPAA* Implementation

By Email

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Email: Stephen.VanDine@aadnc-aandc.gc.ca

Email: David.Rochette@aadnc-aandc.gc.ca

Re: September 6, 2016 Correspondence, *NuPPAA* Implementation and Mineral Claim Staking

Dear Mr. Van Dine and Mr. Rochette

This letter provides the response of the Nunavut Water Board (NWB) to Mr. Van Dine's correspondence of September 6, 2016 that identified that Indigenous and Northern Affairs Canada (INAC) has "concerns about interpretations" arising from the application of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14 (*NuPPAA*) to mineral staking proposals. The NWB recognizes that because the immediate focus of INAC's correspondence was their concern with staking of mineral claims and the NWB does not typically play a role in that type of project approval, Mr. Van Dine's correspondence was only directly addressed to representatives from Nunavut Tunngavik Incorporated, the Government of Nunavut (Department of Environment) and the Executive Directors of the Nunavut Planning Commission and Nunavut Impact Review Board. However, the NWB wishes to emphasize to all concerned that with significant regulatory responsibilities in the integrated regulatory system established under the *Nunavut Land Claims Agreement* (NLCA) the NWB has responsibilities and processes that have been and continue to be very much affected by the implementation of *NuPPAA*. Consequently, the NWB has a significant interest in actively contributing to, and participating in, the "Nunavut Planning and Project Assessment Act Implementation Workshop" (*NuPPAA* Implementation Workshop) described in the latter part of Mr. Van Dine's correspondence.

As Mr. Rochette is planning and organizing the *NuPPAA* Implementation Workshop, “to more fully examine the technical issues and operational practices that we need to address to ensure the co-management regime in Nunavut operates effectively” the NWB wishes to confirm that I and the NWB’s outside legal counsel, Teresa Meadows will remain in Iqaluit following the Nunavut Planning Commission Pre-hearing Conference to participate in the *NuPPAA* Implementation Workshop. The NWB hopes that the *NuPPAA* Implementation Workshop will be broadened slightly to address several outstanding implementation issues arising under the amended NLCA and *NuPPAA*, not just focus on INAC’s expressed concerns in respect of mineral staking.

In general, with respect to implementation issues, the NWB points out that it is not actually the Nunavut Planning Commission’s application of the definition of “project” under *NuPPAA* that has resulted in a wide category of developments with minimal effects having to be received and reviewed by the Commission. Rather, it is inconsistency and a possible gap between the NLCA (as amended in 2015 to support the implementation of *NuPPAA*) and *NuPPAA* that has added complexity and confusion to the process for all parties.

Specifically, the addition of Section 11.5.9A to Article 11 of the amended NLCA requires the following:

11.5.9A

The proponent of any project proposal shall submit the project proposal to the NPC.

The definition of “project proposal” under the amended NLCA is as follows:

"project proposal" means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out, or a physical activity that a proponent proposes to undertake or otherwise carry out, such work or activity being within the Nunavut Settlement Area, except as provided in Section 12.11.1 but does not include the construction, operation or maintenance of a building or the provision of a service, within a municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydro-electric power or any industrial activity

The amended NLCA does not currently have a definition of “project” and does not reference the definition of “project” under *NuPPAA*. Consequently, with no mechanism for excluding, on the basis of insignificant impacts, any type of work or activity from the requirements of Article 11, Section 11.5.9A of the NLCA, all physical works and activities that meet the definition of “project proposal” under the amended NLCA must be submitted to the Commission. Compliance with Article 11, Section 11.5.9A is required, even if the project proposal is not a “project” to which *NuPPAA* applies. This result is not, in the NWB’s view, created by an “interpretation” of *NuPPAA* by the Nunavut Planning Commission or other regulatory agencies, but rather the net (and perhaps unintended) consequence of the express wording in the 2015 amendments to the NLCA.

The NWB has previously identified this and other implementation issues arising from the implementation of the amendments to the NLCA that came into force at the same time as *NuPPAA* in July 2015. The NWB has raised these issues in our discussions with INAC, Nunavut Tunngavik, the Nunavut Planning Commission and the Nunavut Impact Review Board starting

in the fall of 2015 and continuing to date. As a follow up to the NWB's general discussions of these issues with parties, in December 2015 the NWB prepared the attached discussion document about the potential implications for water licence processing arising from these outstanding issues. I am attaching the document to this letter as I would hope that these items could be added to the discussions in INAC's proposed *NuPPAA* Implementation Workshop. I would be happy to follow up directly with Mr. Rochette regarding the addition of these items to the proposed *NuPPAA* Implementation Workshop Agenda or alternatively at some other suitable venue.

In closing, the NWB is committed to actively participating in discussions leading to the resolution of these issues in a manner that reflects our respective mandates but also improves the efficiency, effectiveness and certainty of Nunavut's regulatory system. Please note that as I am scheduled to be out of the office and on duty travel for much of September, please contact me by email at stephanie.autut@nwb-oen.ca.

Regards,

NUNAVUT WATER BOARD

Stephanie Autut
Executive Director

Attachment Discussion Brief: Nunavut Land Claims Agreement Amendments, July 9, 2015:
NWB Implementation Issues

cc. Sharon Ehaloak, Executive Director, Nunavut Planning Commission
Ryan Barry, Executive Director, Nunavut Impact Review Board
James Arreak, Nunavut Tunngavik Incorporated
Paul Emingak, Kitikmeot Inuit Association
Gabriel Nirlungayuk, Kivalliq Inuit Association
Navarana Beveridge, Qikiqtani Inuit Association
David Akeeagok, Government of Nunavut (Department of Environment)
Bernie MacIsaac, Government of Nunavut (Economic Development & Transportation)
Gary Vivian, NWT & Nunavut Chamber of Mines
Dr. Janet King, Canadian Northern Economic Development Agency