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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

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

August 2, 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. 3 on an Emergency Basis and Attached Reasons for Decision and Amendment No. 3 for the Minister’s Consideration

Dear Honourable Minister Bennett:

This correspondence is in relation to the July 31, 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. 3).¹ The basis for the City of Iqaluit’s request was stated in the City’s correspondence as follows:

...based on a water balance assessment of the reservoir completed in June 2019, the reservoir will not recharge naturally in 2019. The City will face an overwinter water supply shortage this year if it is not able to supplement the reservoir.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 River (Apex River) for a period of one season (August to October, 2018; 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 sufficient time for the amendment to be processed by the NWB in accordance

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

² Application for Water Licence Amendment, July 31, 2019.

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 River (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 River (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

The scope of Amendment No. 2 (pumping directly from Niaqunguk River (Apex River)) was specifically chosen because it 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. Consequently, Amendment No. 2 did not require an additional conformity assessment by the Nunavut Planning Commission and the Nunavut Impact Review Board under Articles 10 and 12 of the *Nunavut Agreement* and Part 3 of *NuPPAA*. On this basis, the NWB proceeded to consider Amendment No. 2 on an emergency basis. On July 22, 2019 the NWB issued correspondence to the Minister seeking her consent to the NWB waiving the notice and public hearing requirements of the *NWNSRTA* to process the Application for Amendment No. 2 under emergency circumstances and providing the Minister with Amendment No. 2 (authorization to pump directly from Niaqunguk River (Apex River) to replenish Lake Geraldine) for her consideration.

Since the Board submitted the decision recommending the issuance of Amendment No. 2, the City of Iqaluit has confirmed that due to the ongoing dry conditions in the area, the Niaqunguk River (Apex River) alone will not have enough water to supplement the Lake Geraldine Reservoir, and pumping from an additional water source is required.

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*)

Therefore, on July 31, 2019 the Honourable, Lorne Kusugak, the Government of Nunavut's Minister of Community and Government Services (GN-CGS) under s. 11(1) of the Emergency Measures Act declared a state of emergency having formed the opinion that: "*the current water shortage in Lake Geraldine, combined with historic low water levels in the Apex River constitutes an emergency*". The GN-CGS Minister further noted that as set out in s. 152 of *NuPPAA* the land use planning and assessment requirements of *NuPPAA* do not apply to measures taken to prevent an emergency or remedy or minimize its effects if a federal or territorial minister is of the opinion that an emergency exists.

Following the receipt of the GN-CGS Minister's declaration of an emergency, the City of Iqaluit wrote to the NWB proposing to obtain water to supplement the Lake Geraldine reservoir in 2019 from both the Niaqunguk River (Apex River), and a source north of the Niaqunguk River (Apex River), unofficially called "Unnamed Lake." On this basis, **the City of Iqaluit has requested to withdraw the "Water Withdrawal Apex River 2019" project application**, (Amendment No. 2) and is substituting a new Emergency Amendment Application (Amendment No. 3) which combines in its scope authorization to pump from both from the Niaqunguk River (Apex River) and Unnamed Lake in 2019.

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 Friday, August 2 to consider the City of Iqaluit's Amendment No. 3 Application. By way of Panel Motion No.: 2019-10-P6-03 Panel P6 acknowledges that in light of the GN-CGS Minister's declaration of emergency circumstances that the application for Amendment No. 3 for Water Licence 3AM-IQA1626 received on July 31st is exempt from the land use conformity and impact assessment requirements of *NuPPAA* and should be processed by the NWB on an emergency basis under the *NWNSRTA*. The Panel noted that the City of Iqaluit is experiencing exceptionally dry weather and that both the Lake Geraldine Reservoir and Niaqunguk (Apex) River are currently at historic lows.

The Board is therefore requesting the Minister's consent to the Board's processing of Amendment No. 3 in emergency circumstances as permitted by ss. 52(2)(c) and 55(5) of the *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 decided during the teleconference that if the Minister consents to the NWB processing of Amendment No. 3 on an emergency basis, the NWB would recommend that Amendment No. 3 should be issued. By way of Panel Motion No.: 2019-10-P6-04, Panel P6 has decided to grant the Emergency Amendment (No. 3) to the Type "A" Water Licence No. 3AM-IQA1626 and is attaching, for the Minister's consideration, the Board's Reasons for Decision and the amended Licence to reflect Amendment No. 3.

In recommending the processing and issuance of Amendment No. 3 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. 3 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. 3 under emergency circumstances and, if so, the Minister's consideration of whether to approve the issuance of Amendment No. 3.

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. 3**

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
Amendment No. 3 Effective:	August 2, 2019
Amendment No. 3 Expiry:	March 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 (NWNSTRTA or Act)*, with respect to the Application for an emergency amendment to the Licence noted above, dated July 31, 2019, provided by the City of Iqaluit, the Nunavut Water Board (NWB or Board) hereby grants the following licence amendments (Amendment No. 3).

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 700,000 m³ of Water from the large unnamed source water lake (Unnamed Lake) and transferring it to the Niaqunguk River (Apex River), and/or subsequently withdrawing up to 700,000 m³ of water from the Apex River, and transferring it to Lake Geraldine Reservoir for storage over 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 (NWNSTRTA)*. As provided for under ss. 52(2)(c) and 55(5) of the *NWNSTRTA* 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

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

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.

On July 11, 2019, the NWB issued correspondence acknowledging receipt of the City of Iqaluit’s request to amend the Type “A” Water Licence No. 3AM-IQA1626 (Licence) on an emergency basis (Amendment No. 2), and highlighted that 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, 2019 to consider the longer term Amendment Application for the term of 2020-2026.

On July 12, 2019, the City of Iqaluit submitted an application and associated information for Amendment No. 2, to authorize the use of water from the Niaqunguk River (Apex River) to support a 2019 Supplementary Pumping Program (SPP). On July 22, 2019 the NWB issued correspondence to the Minister seeking:

- the consent of the Minister to process the Application for Amendment No. 2 on an emergency basis; and
- if the Minister provided her consent, the Minister’s consideration of the Board’s recommendation to grant Amendment No. 2 to the water licence.

Following the NWB’s issuance of correspondence to the Minister, on July 25, 2019, the NWB was notified by the city of Iqaluit that water levels in the Niaqunguk River (Apex River) were also at historic low, and an additional water source would need to be used.

On July 31, 2019, the City of Iqaluit submitted an application to amend the Type “A” Water Licence No. 3AM-IQA1626 on an emergency basis (Amendment No. 3), with additional scope added to the scope of Amendment No. 2. The basis for the City of Iqaluit’s request was stated in the City’s correspondence as follows:

...Due to ongoing exceptionally dry conditions in 2019, flows in the Apex River are at historic lows and the reservoir is experiencing the lowest levels ever recorded for this time period. The City is aware that the Apex River alone may not provide sufficient water to fill the reservoir prior to winter.⁶

Also on July 31, 2019, the Minister of Community and Government Services, declared that the low water levels in both Lake Geraldine and Niaqunguk River (Apex River) constitute an emergency, under s. 11(1) of the *Emergency Measures Act*. Therefore, as provided for under the emergency provisions of s. 152(1) of the *Nunavut Planning and Project Assessment Act (NuPPAA)*, the additional water uses proposed in Amendment No. 3 are exempt from the conformity and impact assessment requirements of *NuPPAA*.

⁵ Stephanie Autut (NWB Executive Director) to Amy Elgersma (City 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 Application for Water Licence Amendment, July 31, 2019.

On this basis, on August 2, 2019, the NWB’s decision-making panel responsible for the file, Iqaluit Panel (Panel P6) met via teleconference and concluded that emergency circumstances have been established by the City of Iqaluit. Consequently, Panel P6 issued this decision seeking the Minister’s consent for the Board to process the Application for Amendment No. 3 on an emergency basis and to consider the Board’s recommendation to grant Amendment No. 3 in accordance with the following terms and conditions.

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”*.

The scope of Amendment No. 3 includes the following activities:

- Construction, operation, and removal of temporary facilities, consisting of pumps, pipe/hose, intake, and related temporary facilities to use fresh Water from the Niaqunguk River (Apex River);
- The temporary withdrawal (August 2019 – October 2019) of up to 700,000 m³ of Water from Unnamed Lake for transfer to the Apex River, and/or the subsequent withdrawal of up to 700,000 m³ of water from the Apex River and for transfer to the Lake Geraldine Reservoir for storage over the winter of 2019-2020; 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. 3 seeks authorization for the City to undertake pumping of fresh Water from the large unnamed source water lake (Unnamed Lake) for transfer to the Niaqunguk River (Apex River), and subsequent transfer from the Apex River into the Lake Geraldine 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 Apex River and the large Unnamed Lake will be the only additional sources of water. Water would be pumped directly into Lake Geraldine Reservoir from the same locations as the 2018 Supplementary Pumping Program approved under Amendment No. 1.

On this basis, the Panel P6, by way of Motion No.: 2019-10-P6-03 has acknowledged that in light of the GN-CGS Minister’s declaration of emergency circumstances that the application for Amendment No. 3 for Water Licence 3AM-IQA1626 received on July 31st should be processed by the NWB on an emergency basis. Further, if the Minister consents to processing the 2019 Application for Amendment No. 3 on an emergency basis, the Panel P6 has, by way of Motion No.: 2019-10-P6-04, authorized the issuance of this Decision and the specified amendments to Water Licence No. 3AM-IQA1626 (Amendment No. 3) 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, 700,000 CUBIC METERS IN 2019 FROM NIAQUNGUK RIVER (APEX RIVER), AND 700,000 CUBIC METERS IN 2019 FROM THE LARGE UNNAMED SOURCE WATER LAKE (Unnamed Lake) FOR TRANSFER TO THE 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) at Monitoring Station No. IQA-10, up to a total of 700,000 cubic metres of Water in 2019 for the supplementation of Water levels in the Lake Geraldine Reservoir.

The Licensee is authorized to withdraw in 2019, from the large unnamed source water lake (Unnamed Lake) at Monitoring Station No. IQA-13, up to 700,000 cubic metres of Water in 2019, for augmentation of flow in the Niaqunguk River (Apex River).

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 11:

The Licensee shall ensure that withdrawal of Water from the large unnamed source water lake at Monitoring Station No.: IQA-13 only as necessary to provide water

towards Monitoring Station No. IQA-10.

Insert Item 12:

The Licensee shall cease all withdrawals associated with the SPP (Monitoring Station Nos. IQA-10 and IQA-13), 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) and unnamed source water lake (Unnamed Lake), 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. The daily and monthly quantities in cubic metres of fresh Water withdrawn from the large unnamed source water lake (Unnamed Lake) at Monitoring Station IQA-13.
5. A comparison of withdrawals at Monitoring Station Nos. IQA-10 and IQA13.
6. The daily water levels and/or flow rates in the Niaqunguk River when withdrawals are occurring at Monitoring Station No. IQA-10.
7. All other monitoring conducted to meet DFO requirements.
8. 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.	Active in 2019	F	Daily when withdrawals occurring at this station.	2019 Annual Report
IQA-11	Withdrawal from Middle Niaqunguk River watershed for transfer directly into the Reservoir. Withdrawal point to be located on an ephemeral tributary near where it enters the Niaqunguk River or on the river itself just downstream of the confluence with the tributary.	Inactive in 2019	F	Daily when withdrawals occurring at this station.	N/A
IQA-12	Withdrawal from small unnamed source water lakes adjacent to Lake Geraldine Reservoir for transfer directly to the reservoir.	Inactive in 2019	F	Daily when withdrawals occurring at this station.	N/A
IQA-13	Withdrawal from large unnamed source water lake for transfer into ephemeral tributary to Niaqunguk River. Intent of withdrawal is to provide water to withdrawal point at Monitoring Station IQA-10.	Active in 2019	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. 3 issued and recorded at Gjoa Haven, NU on August 2, 2019.

Lootie Toomasie
Chairperson, Nunavut Water Board

APPROVED _____
BY: Carolyn Bennett
Minister of Crown-Indigenous Relations and Northern Affairs

DATE: _____