

Baffinland Iron Mines Corporation's Phase 2 Development Proposal

NOTICE OF MOTION

Oceans North Conservation Society ("Oceans North") will make a motion to the Nunavut Impact Review Board ("the Board") on January 27, 2021, at 3:00 pm, or soon after that time as the motion can be heard, by videoconference.

THE MOTION IS FOR an order by the Board to:

1. Compel the testimony of Ms. Valerie Moulton.

THE GROUNDS FOR THE MOTION ARE:

1. On January 18, 2021, Oceans North filed a draft report, "Marine Mammal Aerial Surveys in Eclipse Sound, Milne Inlet and Pond Inlet, 1 August-17 September 2015", prepared by the environmental research and consulting firm LGL Limited (LGL report FA0059-2);
2. The draft report, dated 15 March 2016, was commissioned by the Proponent Baffinland;
3. Oceans North seeks to introduce this evidence through one of the report's authors, Ms. Valerie Moulton;
4. Oceans North anticipates oral evidence confirming the existence of this revised version of the report, as well as evidence of the context in which that revised version was created and how it was ultimately received by the Proponent;

5. Oceans North has recently learned that Ms. Moulton refuses to testify unless she is compelled to do so;
6. Oceans North anticipates that this evidence will provide critical information of direct relevance to a fair assessment of actual and potential impacts of Baffinland's Phase 2 Expansion;
7. Ms. Moulton is being asked to provide evidence as to the context and process by which this report was prepared, as well as any process regarding revisions. This was a report commissioned by and received by the Proponent, and a report with which the Proponent's expert witnesses from Golder Associates Inc. are well familiar, as evidenced by their filings and public comments inside this process;
8. Given the draft nature of the report currently on the public record, Ms. Moulton's testimony can provide critical information to assist the Board in arriving at a reasoned assessment as to the relevance and reliability of this report and the weight that should be attributed to its key findings;
9. Any perceived prejudice to the Proponent can be remedied through cross-examination;
10. Such an approach promotes transparency and the pursuit of the best available science pertaining to questions of real and potential environmental impacts in this context of this development proposal;
11. This approach is consistent with the precautionary principle, a guiding principle in this process (see e.g. ss. 2.3 *Amended EIS Guidelines for Mary River Phase 2 Project Proposal*, October 6, 2015);
12. The Board's draft EIS guidelines (*Standard Guidelines for the Preparation of an Impact Statement* November 2018 (Draft)) incorporate by reference the guiding principles found within Canadian Privy Council Office's *A Framework for the Application of Precaution in Science-based Decision Making About Risk* (PCO, 2003). These principles provide that:
 - a. *Mechanisms should exist for re-evaluating the basis for decisions and for providing a transparent process for further consideration.* (p.8 PCO)

b. *A high degree of transparency, clear accountability and meaningful public involvement are appropriate.* (p.9 PCO)

c. *Transparency in documenting the rationale for making decisions strengthens accountability.* (p.9 PCO)

13. In light of these guiding principles, the mere fact that the Proponent has decided not to incorporate the findings of the LGL report into their Project Proposal should not operate to prevent the Board and the public from assessing its relative merits.

THE FOLLOWING DOCUMENTARY EVIDENCE is relied upon in support of this motion:

1. “Marine Mammal Aerial Surveys in Eclipse Sound, Milne Inlet and Pond Inlet, 1 August-17 September 2015”, prepared by the environmental research and consulting firm LGL Limited (LGL report FA0059-2);
2. Affidavit of Pierre Richard, January 26, 2021;
3. “A Framework for the Application of Precaution in Science-based Decision Making About Risk”, Privy Council Office, 2003;
4. *Standard Guidelines for the Preparation of an Impact Statement* November 2018 (NIRB Draft);
5. *Amended EIS Guidelines for Mary River Phase 2 Project Proposal*, October 6, 2015; and
6. Such further and other material as counsel may advise and the Board may permit.

January 26, 2021

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