

WOODWARD & COMPANY

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Our file: 6024

February 10th, 2021

BY EMAIL: info@nirb.ca

Nunavut Impact Review Board
PO Box 1360
Cambridge Bay, Nunavut X0B 0C0

Dear Sirs/Mesdames:

**Re: NIRB. FILE NO. 08MN053
Baffinland Iron Mines Corporation's Mary River Phase 2 Proposal
Exhibit 70 Notice of Motion of Oceans North Regarding Filing of Preliminary Information Circular**

We write on behalf of the Mittimatalik Hunters and Trappers Organization ("MHTO") in support of the motion of Oceans North requesting that Baffinland's Preliminary Information Circular (2018) be filed and considered as evidence by the Nunavut Impact Review Board (the "Board") in its review of the Mary River Phase 2 Proposal (the "Project").

MHTO notes that the Board's primary objectives "shall be at all times to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, and to protect the ecosystemic integrity of the Nunavut Settlement Area" (s.12.2.5, Nunavut Agreement).

Further, under section 12.2.2, the primary functions of NIRB include:

(b) to gauge and define the extent of the regional impacts of a project, such definition to be taken into account by the Minister in making his or her determination as to the regional interest;

In MHTO's submission, the Preliminary Information Circular is relevant to the Board's functions and objectives. The Board must review information that informs the "extent of regional impacts of a project" in order to "protect the ecosystemic integrity" of the Nunavut Settlement Area. The Board must further consider the need for and financial viability of a project prior to recommending approval of a project that will cause impacts to the region.

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The Preliminary Information Circular is relevant to the need for and financial viability of the Project as proposed by Baffinland. It contains information about the extent to which the Project at its current and proposed expanded (12 mtpa) capacity is financially viable and whether future expansions will be necessary to maintain the financial viability of the Project. The Board should have the benefit of this information in making its recommendation on the Project.

Further, it is very difficult for the Board to gauge the extent of the regional impacts when, as here, Baffinland continues to split its Project into components that do not disclose the full extent of its project plans. These plans are not hypothetical, but are being actively contemplated by Baffinland. The Board is entitled to transparency, as are the residents of Nunavut.

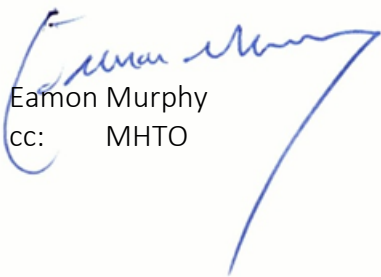
In this instance, Baffinland's Preliminary Information Circular helps to explain why Baffinland is "overbuilding" its port, which MHTO and other intervenors are deeply concerned about. Further, the Board should discourage proponents from keeping relevant information from the Board, particularly when that information informs the Board's functions.

There are a number of cases that address the issue of "project-splitting" and environmental assessments. Although each case is particular to the environmental assessment legislation in question, at least one court has noted that the public interest remains a guiding principle in these instances¹:

... the public interest at stake is nevertheless the same, namely, whether the proponent had properly addressed the Project's true environmental footprint or was restricting what it chose to register in an effort to avoid environmental scrutiny by the appropriate officials.

MHTO supports the Board having access to all relevant information before it. This Project has the potential to significantly impact the harvesting rights of Inuit. The need for the Project, the financial viability of the Project and the true scope of the Project should be relevant considerations of the Board in its review and should be rigorously analyzed prior to approving impacts to harvesting rights.

Yours truly,
WOODWARD & COMPANY LAWYERS LLP


Eamon Murphy
cc: MHTO

¹ *Atlantic Salmon Federation (Canada) v. Newfoundland (Environment and Climate Change)*, 2017 CanLII 46863, at para 76