

WOODWARD & COMPANY

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Our file: 6024

February 25, 2021

Karen Costello
Executive Director
Nunavut Impact Review Board
Cambridge Bay, NU

Sent via Email: info@nirb.ca

Dear Karen Costello:

**RE: NIRB File No. 08MN053
Baffinland Iron Mines Corporation's Mary River Phase 2 Proposal**

The Mittimatalik Hunters and Trappers Organization (MHTO) received the February 12, 2021 direction provided by the Nunavut Impact Review Board (NIRB) with regard to the extension of the Public Hearing for Baffinland's Phase 2 proposal and respectfully submits the following for your consideration.

Timeline for Written Questions, Responses, and Board direction on Objections

The NIRB recently circulated Objections, Notice of Motions, and proposed Exhibits that were submitted during the January-February Hearing; the NIRB is currently accepting comments to those items. Specifically pertaining to the Igloodik Working Group and MHTO's objections to the Qikiqtani Inuit Association's filing of new materials, the Board should be aware that these are matters also of substance to our intervention, and we require the NIRB's direction on their admissibility prior to the finalization and submission of written questions.

We request that the NIRB revise its timeline for comment on the Objections, Notice of Motions and proposed Exhibits to enable the Board's disposition on these procedural matters with adequate time to consider potential new materials in the preparation and submission of written questions.

We submit that, given the length of time between the January-February Hearing completion and resumption in mid-April, considering the switch to written question format, and noting that procedural direction on substantive matters of evidence remains outstanding, the timeline for submission of questions, and responses, should be reconsidered. Specifically, we request that the NIRB dispose of Motions and Objections by March 1. Following its procedural direction, we suggest that the NIRB could provide an additional week for the submission of questions - to March 8, and similarly extend the timeline for responses by one week, to March 29.

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Having the Board's timely direction on the admissibility of exhibits is critical to formulating fulsome questions for submission and consideration by the Board and by parties.

Time for Follow Up Questioning

We submit that the time provided on Day 1 to the Intervenor who were unable to pose questions is not sufficient. Given the high degree of interest in the Marine Environment, and the fact that 5 of those remaining intervenors have expressed significant interest in marine issues, and that Canada is comprised of 7 different agencies, we suggest that the Board schedule an additional day for remaining marine questions.

The Draft Agenda provides, during Days 2 and 3, time for a "Roundtable of follow-up questions by Intervenor" - however Day 2 relates only to Baffinland's response to written questions, and Day 3 includes "Baffinland and Intervenor presentations." We request clarification - is a total of 30 minutes provided per Intervenor to ask follow up questions to Baffinland and other Intervenor, or are parties provided 30 minutes for follow up to Baffinland and an additional 30 minutes for follow up questions to other Intervenor?

We submit that if the NIRB intends to include follow up questions to Baffinland as well as the 23 other intervenors' responses to our written questions within that 30 minute limit, this will be far from adequate. We note that the Draft Agenda provides Baffinland with 5 hours for follow up questioning to intervenor responses to its questions. We request that the NIRB increase the time provided to the MHTO for follow up questions to Baffinland and other Intervenor's written responses to our questions to at least 1 hour (total).

CRT and Public Participation During Extended Hearing Session

We submit that the NIRB's change to the agenda and format of the Hearing - hosting the remaining 5 days of the CRT outside of the most impacted community of Pond Inlet, will unfairly exclude Mittimatalingmiut from presenting evidence to the Board which it previously considered important to hear.

On February 11, 2021, the MHTO submitted a Notice of Motion to the Board, requesting the Board hold the remaining Community Roundtable session in the community most likely to be impacted by the Phase 2 proposal, Pond Inlet. As an alternative, the MHTO Notice of Motion requests that the NIRB host 4 days of Community Roundtable proceedings in Pond Inlet in addition to the days scheduled for Iqaluit in April. We again submit that this is a necessary accommodation to ensure Mittimatalingmiut have adequate opportunity to raise comments and questions to the Proponent and Intervenor, and to ensure they are heard by the NIRB Panel.

For the January-February Hearing, the Board had set the Hearing to include 5 days of CRT in Pond Inlet. The extended Hearing in April does not include any additional days in, or specifically for, Pond Inlet, though the February 17, 2021 correspondence does identify that the NIRB "is currently exploring options for Public participation from Pond Inlet and will provide a further update upon release of the Final Agenda." The NIRB has also indicated its plans to arrange for 5 community residents from Pond Inlet to attend the Iqaluit CRT session in April; however, we emphasize that this is not an adequate alternative to holding days of CRT specifically in, or for residents of, Pond Inlet over a period of a number of days.

Furthermore, we submit that the proposed details about “Public participation from Pond Inlet” should be available for comment by parties ahead of the Final Agenda, in order that we, and others, including the Hamlet of Pond Inlet, are able to contribute meaningful input into how the most affected community is to be engaged for this critical process.

Within the CRT portion of the Draft Hearing Agenda, repeated references are made to “Comments and Questions by attendees in Pond Inlet who have advised the Chairperson that they wish to present.” MHTO seeks clarification regarding this repeated process step; to date, the NIRB has not indicated if or how residents of Pond Inlet will be accommodated to participate.

Without knowing how the NIRB plans to ensure public participation by the most impacted community during the remainder of the CRT, we respectfully suggest that it is both unlikely and unreasonable to expect that making “The Board’s proceedings...available to the Public using similar platforms as the previous meetings (Teleconference and Zoom)” will be a sufficient substitute for the in person participation and ability to speak before the NIRB that is owed to Mittimatalingmiut and residents of other affected communities during this process. Considering across the general population, many residents have very limited access to internet and technology that would support this type of virtual participation, we submit that an in-person opportunity should be provided for sufficient public engagement and participation.

As noted above, the MHTO’s Notice of Motion filed February 11, 2021 provides suitable remedies including moving the CRT to Pond Inlet, or following the Iqaluit session with in-person CRT days in Pond Inlet to ensure evidence and critical Inuit Qaujimajatuqangit that provide local input on this project proposal are heard by the NIRB. We request the Board expedite its consideration of this Motion and provide its disposition on the matter as soon as possible.

In addition, the MHTO is concerned that the Iqaluit venue will remain closed to public participants. This is unacceptable, given the widespread public interest in the Phase 2 proposal, and significant public concern that has been demonstrated to date. We request that the NIRB consider providing a limited number of seats for the public to attend the Iqaluit venue, as was done during the Pre-Hearing Conference and January-February Hearing held in Pond Inlet.

Intervenor Presentations to CRT Representatives

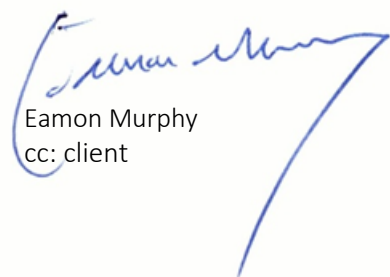
The NIRB’s correspondence indicates that “in order to help orientate community representatives, the Proponent will deliver the brief overview presentation that was provided on February 6, 2021 in Pond Inlet at the beginning of the Community Roundtable.” As the MHTO has submitted to the NIRB on multiple occasions, we remain seriously concerned that this is procedurally unfair, and that all CRT representatives, and community members in attendance at any public sessions, should have the benefit of receiving full information, including summary presentations by Intervenor. Two months will have elapsed between the end of the January-February session, and the April session in Iqaluit. CRT representatives cannot be expected to recall the content of various intervenors presentations. Providing copies of written questions, often highly technical in nature and not geared

toward public engagement, is not an appropriate means by which to inform CRT participants or members of the public. If Baffinland is afforded an opportunity to provide a summary presentation at the start of the CRT, this must be extended to all other Intervenor as well.

Conclusion

We appreciate the immense pressure the NIRB is under to develop processes and procedures which meet the spirit of the Nunavut Agreement and relevant legislation, and that offers a fair process for all involved. We submit the foregoing with hope that the NIRB will consider the suggestions and requests we put forward, and provide direction that takes into account the issues and concerns raised.

WOODWARD & COMPANY LAWYERS LLP



Eamon Murphy
cc: client