SAYISI DENE FIRST NATION NORTHLANDS DENESULINE FIRST NATION

SAYISI DENE FIRST NATION

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Final Written Submission to the Nunavut Impact Review Board

Agnico Eagle Mines Limited's "Saline Effluent Discharge to Marine Environment" Project Proposal NIRB File No.11MN034

April 12, 2021

Executive Summary

Caribou are central to the culture and existence of Sayisi Dene First Nation (SDFN) and Northlands Denesuline First Nation (NDFN). SDFN and NDFN continue to use and live on lands they share with Qamanirjuaq caribou, and to share the caribou herd with Inuit and other Indigenous Peoples, as they have for thousands of years. Any development that has potential negative effects on Qamanirjuaq caribou is a concern to SDFN and NDFN, in part because the size of the herd has been decreasing for more than two decades. SDFN and NDFN are concerned that developments on Qamanirjuaq caribou range may reduce the ability of the herd to stay strong and healthy and may limit the ability of SDFN and NDFN members to maintain their culture, their way of life, and their Aboriginal and Treaty rights to harvest caribou.

SDFN and NDFN appreciate the opportunity provided by the Nunavut Impact Review Board to participate in this review of Agnico Eagle's proposal to construct waterlines to discharge saline effluent into the marine environment. We acknowledge and appreciate the contribution of Agnico Eagle and the other parties and individuals involved in this review.

SDFN and NDFN submit that additional actions are required to make sure that any project effects on caribou health, productivity, movements and distribution do not accumulate over the long-term and create harm to the Qamanirjuaq caribou herd. Therefore, SDFN and NDFN recommend that additional action be taken on the following issues:

- 1) Information provided to date, including a preliminary analysis of the movements of some collared adult caribou near the road leading to the mine, does not support Agnico Eagle's conclusion that the road and waterline structures will not interfere with movements of caribou and especially with their ability to move freely to and around key summer feeding habitat. A broader and more robust analysis is required and should be planned with input from members of the Terrestrial Advisory Group based on both science and Indigenous knowledge.
- 2) No clear plan has been provided to prevent caribou from drinking the saline effluent that could result from an accidental spill or leak from the waterlines. Clearer guidelines and protocols need to be developed for mine staff, including operators of the system for detecting leaks in the waterline, to make sure they know when to shut down a waterline that might be leaking when caribou are nearby. An annual report on the waterline system should be provided that includes information on the operation and effectiveness of the system.
- 3) SDFN and NDFN recognize that ongoing collaboration will be required and welcome the opportunity to work together with other members of a Terrestrial Advisory Group or other group created to provide advice on the Terrestrial Environment Management and Monitoring Program, or any caribou-related issues. We request that the Nunavut Impact Review Board and Agnico Eagle support asking the Terrestrial Advisory Group to work on identifying ways to monitor regional and cumulative effects of mining development on Qamanirjuaq caribou.

SDFN and NDFN proposed one revision and one new Project Certificate Term and Condition regarding these recommendations.

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1.0 Introduction

Sayisi Dene First Nation (SDFN) and Northlands Denesuline First Nation (NDFN) have long-standing and deep-rooted cultural, social and economic connections to the Qamanirjuaq barren-ground caribou that continue to the present day. SDFN and NDFN continue to use and live on lands that are Qamanirjuaq caribou habitat, as they have for thousands of years. Caribou are central to SDFN and NDFN existence and to the exercise of their Aboriginal and Treaty rights. As a result, any development that has the potential to impact the demographics, migratory movements, behaviour and/or habitat of the herd could adversely affect SDFN and NDFN, their members and their Section 35 rights under the *Constitution Act, 1982*.

SDFN and NDFN thank the Nunavut Impact Review Board (the Board) for the opportunity to participate in the Board's review of Agnico Eagle Mines Limited's (AEM) "Saline Effluent Discharge to Marine Environment" Project Proposal (Project). Canada provided participant funding for SDFN and NDFN to participate in the review due to the Project's potential effects on the Qamanirjuaq caribou herd and its importance to SDFN and NDFN members. SDFN and NDFN acknowledge and thank AEM for reports, presentations and responses to comments and questions provided by their staff and consultants throughout the review process. SDFN and NDFN also acknowledge and appreciate contributions from the other parties and individuals that have participated in the review process.

SDFN's and NDFN's standing to participate in this matter is provided by right under the Nunavut Agreement and the *Nunavut Planning and Project Assessment Act*. SDFN's and NDFN's participation has focused primarily on potential impacts to the Qamanirjuaq caribou herd and its habitat as a result of the proposed project.

After reviewing the documentation and participating in the Technical Review and Community Roundtable meetings, SDFN and NDFN better understand the specific Project proposal under review and have identified concerns with some aspects of the Project's assessment related to the Qamanirjuaq caribou herd, which AEM has made commitments to address.

It should be noted that because of the declining trends being reported for mainland barrenground caribou populations across Canada, the Committee on the Status of Endangered Wildlife in Canada changed the status of barren-ground caribou from "Not at Risk" to "Threatened" in 2016. The Beverly and Qamanirjuaq Caribou Management Board, of which SDFN and NDFN are both members, has rated the Qamanirjuaq caribou herd's vulnerability level as "medium-high". The results of the 2008, 2014 and 2017 population surveys undertaken by the Government of Nunavut indicate that the herd has been declining from peak numbers in 1994. The rate of decline from 2008 to 2017 was calculated to be about 2% per year, and the herd's size in 2017 was estimated to be less than 60% of its size in 1994.

2.0 Specific Comments

2.1 Review Comment Number: SDFN/NDFN – 1

Subject/Topic:

Caribou Crossings/Deflections, Regional and Cumulative Effects

References:

2020 Waterline FEIS Addendum Appendix IR-8 (Sections 3.0); AEM Responses to IR Requests re August 2020 FEIS Addendum (GN-IR-03, 04 & 05; KivIA-IR-8; KWB-IR-6, NIRB-IR-09 & 011); November 2020 SDFN-TRC-01 & 02; November 2020 AEM's Waterline FEIS Addendum-Meliadine Mine Technical Comment Responses (Pages 90-93); Agnico Eagle-SDFN Bilateral Meeting (December 17, 2020); Golder Technical Memorandum, January 8, 2021; SDFN Response to the NIRB & AEM re Golder Technical Memorandum, January 29, 2021.

Summary:

SDFN submitted a Technical Review Comment expressing concern regarding:

- a) the assumption being made by AEM that caribou will cross the All-Weather Access Road (AWAR)-waterline structure in the same way they cross the existing AWAR structure, with there being no supporting quantitative data presented to show how successful caribou are at crossing the existing AWAR structure; and
- b) the statement that because the waterlines will be constructed within the Project footprint originally assessed in 2014, the 2014 effects assessment continues to apply and only new effects resulting from the waterline's construction need to be assessed.

SDFN and NDFN requested that AEM provide a technical report on the crossings and deflections of caribou in relation to the existing AWAR structure that would incorporate data collected since its construction up to and including data collected in 2020.

Importance of issue to the impact assessment process:

The potential effects of the Project on Qamanirjuaq caribou are of major importance to this impact assessment process, as indicated by Minister Vandal's response letter of 28 August 2020. A disruption of local and/or regional movements of caribou during the post-calving and summer periods, particularly if ongoing over several years, could affect access to key feeding habitat, survival of calves, health of cows, and herd productivity. Each of these potential effects would be a serious problem for a declining herd and for the Indigenous peoples who depend on them, including members of SDFN and NDFN. The regional and cumulative residual effects of the Project related to caribou migration and distribution are of concern to SDFN and NDFN.

Detailed Review Comments:

SDFN submitted a Technical Review Comment expressing concern regarding the assumption being made by the Proponent that caribou will cross the AWAR-waterline structure in the same way they cross the existing AWAR structure, with there being no supporting quantitative data presented to show how successful caribou are crossing the existing AWAR structure. SDFN and NDFN were also concerned that there were no quantitative data or analyses provided to support the statement in the 2019 Terrestrial Environment Management and Monitoring Program (TEMMP) Report that the AWAR structure caused fewer than 10% deflections.

In the initial response from AEM, it was noted that 12 of 13 (92%) collared caribou that entered the Local Study Area showed movement across the AWAR in 2019. SDFN and NDFN requested further analysis be done based on locations of collared caribou for the years since the AWAR's construction prior to 2019 and that the results from the 2020 TEMMP caribou monitoring program also be made available. AEM noted that results from the 2020 caribou monitoring program would not be available until the 2020 Annual Report was completed, which AEM committed to provide by the end of March 2021.

AEM provided a report with the results of an analysis of the movements of all collared caribou entering the Local Study Area around the Meliadine Mine, the AWAR and the proposed Discovery road between 2014 and 2019 on which the SDFN and NDFN provided further comments.

Remaining concerns:

- SDFN and NDFN do not agree with the criteria used for a "deflected" animal used in the analysis.
- This analysis only considers collared caribou that have entered within the 1.5 km Local Study Area around the road; some reports suggest the actual Zone of Influence for a road on caribou movements may in fact extend well beyond 1.5 km.
- SDFN and NDFN expected that data from 2020 would be incorporated in the response and that reference to or analysis of AEM's many years of experience with the Meadowbank mine AWAR would be included.

SDFN and NDFN have stated that they are prepared to accept this Technical Review Comment to be "Resolved with commitment" based on:

- a) AEM's commitment to include more comprehensive information and analysis on caribou interactions with the AWAR in the 2020 TEMMP Report; and
- b) its intention to establish a Terrestrial Advisory Group (TAG) that would provide advice to AEM and NIRB for revision, implementation and reporting on the TEMMP, including methods for assessing crossing and deflection rates for caribou in relation to the AWAR/waterline structure.

It should be noted that the draft terms of reference for the TAG, circulated by AEM on February 18, 2021, included no specific references to regional and cumulative effects. SDFN

and NDFN recommended the addition of these items in reply comments sent to AEM on March 16, 2021, however, to date, no further discussion has occurred.

Recommendations:

If the Project is approved SDFN and NDFN recommend that:

- 1) Issues related to caribou interactions with the road/waterline structure be addressed through the TEMMP with oversight provided by the TAG. In the event that a TAG is not established, it is recommended that AEM work with this review's interested parties to resolve these issues through some other forum.
- 2) The TAG initiates a project that will treat the monitoring, assessment and reporting of regional and cumulative effects as a priority, and will incorporate this information into adaptive management and other efforts to ensure these effects are minimized. In the event that a TAG is not established, AEM should identify how it will address this issue.

Project Certificate Term and Condition:

Given the importance attached to the establishment of a Terrestrial Advisory Group to address many commitments made by the Proponent during this review, SDFN and NDFN recommend an addition to Project Certificate Term and Condition #43 as follows:

To support this Condition the Proponent will undertake discussions and work towards the establishment of a Terrestrial Advisory Group (TAG) to provide advice to Agnico Eagle and a forum for ongoing cooperation and communication in the review and consideration of terrestrial environmental effects monitoring, mitigation measures and adaptive management. The TAG would advise Agnico Eagle on implementation of the Terrestrial Environment Management and Monitoring Plan (TEMMP) and the project certificate terms and conditions related to the interaction between the Project and the terrestrial environment, and on ways to incorporate western science and Indigenous Knowledge into the TEMMP and any other terrestrial wildlife and wildlife habitat monitoring and mitigation programs. The Proponent shall give special consideration to providing funding support for the participation of interested parties in the TAG.

Additional Note

At the Pre-hearing Conference, SDFN and NDFN requested that sufficient time be provided to review the 2020 TEMMP report, which AEM committed to providing by March 31, 2021. It came to the attention of SDFN and NDFN on April 7, 2021 that the 2020 TEMMP report was available. As such, SDFN and NDFN have not had sufficient time to review and comment on the 2020 TEMMP report as part of this submission, and reserve the right to submit additional written comments in advance of the public hearing.

2.2 Review Comment Number: SDFN/NDFN - 2

Subject/Topic:

Spills or Accidental Release of Treated Groundwater

References:

August 2020 FEIS Addendum (Section 8.1.2); November 2020 SDFN-TRC-03; AEM's Waterline FEIS Addendum-Meliadine Mine Technical Comment Responses (November 20, 2020, Pages 94); Golder's "Meliadine Mine – Failure Modes and Effects Analysis" report (November 20, 2020); AEM-SDFN Bilateral Meeting (December 17, 2020); Spill Contingency Plan (Version 11, January 2021); ERM memo "Caribou Ingestion of Salt Water (January 8, 2021); Fiber Optic Leak Detection report (January 15, 2021).

Summary:

SDFN submitted a Technical Review Comment due to the uncertainty expressed in the August 2020 FEIS Addendum regarding the effects that consumption of saline effluent resulting from a spill could have on non-marine wildlife, specifically post-calving caribou (both adults and calves). In its response, AEM addressed the concern related to the ingestion of the saline effluent and agreed that the Spill Contingency Plan should include measures that will prevent caribou from accessing an area in the event of a spill. AEM stated that to be protective to caribou, any notification from the leak detection system would result in an immediate shutdown of that waterline, when caribou are in the vicinity of the AWAR, until it can be confirmed whether a leak has occurred. SDFN and NDFN reviewed the draft Spill Contingency Plan (January 2021, Version 11) to see how these proposed actions would be implemented.

Importance of issue to the impact assessment process:

The potential effects of the Project on Qamanirjuaq caribou are of major importance to this impact assessment process, as indicated by Minister Vandal's response letter of 28 August 2020. Though it is acknowledged that the potential effect of a saline effluent spill to the Qamanirjuaq caribou population as a whole may be minor, SDFN and NDFN are concerned about any preventable potential adverse effect to caribou, be it at the population or individual level. And at the range level, SDFN and NDFN are concerned about the cumulative effects of a potential reduction in productivity resulting from localized but recurring minor events such as this, in combination with other negative effects on caribou occurring across the caribou range over time.

Detailed Review Comments:

SDFN submitted a Technical Review Comment due to the uncertainty expressed in the August 2020 FEIS Addendum regarding the effects that consumption of saline effluent resulting from a spill could have on non-marine wildlife, specifically post-calving caribou (both adults and calves).

AEM addressed SDFN's concern related to the ingestion of saline effluent by caribou by obtaining the opinion of a wildlife veterinarian as requested. His opinion was that "if the animals have access to fresh water there should be no concerns."

However, AEM also noted in its response that the Spill Contingency Plan should include measures that would result in the immediate shutdown of the waterline if caribou were in the vicinity and prevent caribou from accessing an area in the event of a spill.

In January 2021, AEM filed a revised draft of the Spill Contingency Plan (Version 11) with the NIRB (as part of Commitment 19). SDFN and NDFN reviewed the draft plan and requested further clarification from AEM on the implementation of the following actions listed in Appendix H (General Response Procedures For Spilled Saline Water):

- To be protective to caribou, any notification from the leak detection system would result in an immediate shutdown of that waterline, when caribou are in the vicinity of the AWAR, until it can be confirmed whether a leak has occurred.
- Additional measures to prevent caribou from accessing the area would depend on the time of year and extent of spill but regardless of the degree, the area would be isolated until it is safe for caribou to return.

AEM responded to the SDFN and NDFN's comments, in part, to state that the use of fencing is an option for preventing caribou from accessing a spill but that removing the volume of a spill may be quicker and less destructive than installing and removing a fence. It was also indicated that the mitigation that would be used for a spill in a certain location will be discussed with TAG members and the HTO, to ensure a timely decision is in place based on the location of the spill and time of year.

Remaining concerns:

- The term "caribou in the vicinity" and how caribou will be monitored to determine if they are in the "vicinity" need to be clarified. SDFN and NDFN question how an operator monitoring the leak detection system could be expected to make the decision to "immediately shut down the waterlines, when caribou are in the vicinity" without a more objective definition.
- Specific information about how caribou will be prevented from accessing a spill area and how it will be determined that it would be safe for caribou to return to that area, based on objective criteria, is required.
- Information on the ongoing performance of the fiber optic leak detection system is needed to provide confidence that it is effective in detecting leaks, particularly in the buried portion of the waterlines, and to identify if and where improvements may be required.
- SDFN and NDFN agree with AEM's suggestion that should a TAG be established it could play a role in advising the Proponent on appropriate spill mitigation measures, but note that the primary responsibility for this remains with AEM.

Recommendations:

SDFN and NDFN submit that AEM should be guided by a "when", not "if", approach to a waterline spill. As a result SDFN and NDFN recommend that, should the Project be approved:

- 1) AEM develop a decision framework utilizing the TEMMP caribou monitoring program (perhaps like that for the road) which the operators of the leak detection system can refer to when having to decide whether or not to shut down the waterline when caribou are "in the vicinity".
- 2) AEM prepare an annual report assessing the performance of the waterline system, including the Fiber Optic Leak Detection System. This would preferably be provided as a standalone report, or could be part of the annual report on the Water Management Plan (as AEM has committed to include information on the operation and maintenance of the waterline system into the existing Water Management Plan, to be submitted 60 days prior to the commissioning of the waterline).

The report should include the following information: when each waterline and the leak detection system were in use; when and why the leak detection system was not operating while waterline(s) were in use; when the waterline(s) were shut down due to a leak or possible leak as a result of an accident or malfunction; the number of leaks detected by the leak detection system; the number and timing of visual inspections of the waterlines and the number of leaks detected by those inspections; an explanation of any leaks detected visually but not by the leak detection system; and, any other information relevant to the operation, maintenance and monitoring of the waterline and leak detection systems. Any issues related to the calibration of the Fiber Optic Leak Detection System, particularly during caribou migrations (which was identified as a potential issue in the "Meliadine Mine – Failure Modes and Effects Analysis" report) should also be reported.

Project Certificate Term and Condition:

Given the waterline system, including the fiber optic leak detection system, are new components of the Project which resulted in concerns regarding possible spills of saline effluent to the terrestrial and freshwater environments, SDFN and NDFN recommend the addition of a new Term and Condition to the Project Certificate under the category "Accidents and Malfunctions", which is provided below.

Category:	Accidents and Malfunctions – Waterline System Operation, Maintenance and Monitoring, including the Fiber Optic Leak Detection
Dagagaible	System
Responsible Parties:	The Proponent
Project Phase:	Operations, Temporary Closure/Care and Maintenance
Objective:	To ensure there is adequate monitoring of the waterline system, including the fiber optic leak detection system, and that appropriate mitigation measures are initiated when there is a potential leak in a waterline.
Term or Condition:	 a. The Proponent shall describe the planned operation, maintenance and monitoring of the waterline system, including the fiber optic leak detection system. b. The Proponent shall provide an annual report on the operation, maintenance and monitoring of the waterline system and the fiber optic leak detection system with sufficient detail to illustrate that the overall system is effective at detecting leaks and leading to protective actions in a timely manner.
Reporting Requirements:	 a. The description of the planned operation, maintenance and monitoring of the waterline and leak detection systems shall be submitted to the NIRB for review and comment, either as a separate document or as part of an existing management plan (e.g., Water Management Plan), at least 60 days prior to the commissioning of the waterline system. b. Annual reports shall be submitted to the NIRB as either
	standalone documents or as part of an existing management plan (e.g., Water Management Plan) by March 31.

3.0 Summary of Recommendations

SDFN/NDFN - 1

- 1) Issues related to caribou interactions with the road/waterline structure should be addressed through the TEMMP with oversight provided by the TAG. In the event that a TAG is not established, it is recommended that AEM work with this review's interested parties to resolve these issues through some other forum.
- 2) The TAG should initiate a project that will treat the monitoring, assessment and reporting of regional and cumulative effects as a priority, and will incorporate this information into adaptive management and other efforts to ensure these effects are minimized. In the event that a TAG is not established, AEM should identify how it will address this issue.

SDFN/NDFN - 2

- AEM should develop a decision framework utilizing the TEMMP caribou monitoring program (perhaps like that for the road) which the operators of the leak detection system can refer to when having to decide whether or not to shut down the waterline when caribou are "in the vicinity".
- 2) AEM should prepare an annual report assessing the performance of the Fiber Optic Leak Detection System. This would preferably be provided as a standalone report, or could be part of the annual report on the Water Management Plan.

SDFN and NDFN proposed one revision and one new Project Certificate Term and Condition regarding these recommendations.