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Kaviq Kaluraq
Chairperson
Nunavut Impact Review Board
PO Box 1360
Cambridge Bay, NU X0B 0C0
via email: info@nirb.ca

Dear Chair Kaluraq:

**Re: Objection of the Qikiqtani Inuit Association (“QIA”)
to the filing of the video submitted by IUOE Local 793 -
NIRB File No. 08MN053 Hearing on Baffinland’s Phase 2 Proposal**

On November 3, 2021, the Nunavut Impact Review Board (“NIRB”) invited Parties in the Phase 2 Project Public Hearing to provide any objections to the filing in this hearing of a video (the “Union Video”) produced by the International Union of Operating Engineers (“IUOE”).

The Union Video, shown during the Community Roundtable (CRT) on November 2, purports to present views of Inuit employees working at the Mary River Mine regarding the Phase 2 Proposal.

In addition to the video footage of Inuit employees at the Mine, a separate narrator provides information regarding the Mine including information about the Phase 2 Proposal and anticipated environmental impacts and mitigation measures proposed by the proponent Baffinland. In addition, textual and graphics information with statistics and other details and conclusions about the Proposal are displayed in the video as background visuals during the comments of those being interviewed.

NIRB allowed the video into evidence without any prior review by or notice to Parties in the proceeding (other than the proponent Baffinland). No other parties, including any of the registered intervenors in the hearing, were allowed to make any presentations or present any materials in the

CRT (other than responses to direct questions from community members). NIRB indicated that “the narration would not be admitted into evidence”.

As a visual medium, the video made its impact on NIRB panel members and CRT participants, regardless of whether it is formally admitted to the record or not and notwithstanding NIRB’s offer to allow parties to comment on its admission “after the fact”.

Accordingly, QIA requests that NIRB consider how it should view this evidence, now that it was seen (and cannot be ‘unseen’) by the Panel member. QIA makes this submission regarding the appropriate weight of this evidence notwithstanding QIA’s procedural concerns regarding the admission of the video in the first place through its viewing on November 2, 2021.

QIA submits that the panel members should give little weight to the evidence in the Union Video for following reasons.

Rule 33 of NIRB’s *Rules of Procedure* governs the admission of evidence. Among other things, Rule 33 provides that “relevant” oral and documentary evidence should be admitted (rule 33.3). NIRB may exclude evidence if the “danger of unfair prejudice” of filing that evidence “outweighs its value” (rule 33.3).

Part of the test of relevance is the source and credibility of the evidence. QIA submits that there are issues with both the source and credibility of the evidence in the Union Video, based on the unquestioned process by which editorial and curating decisions were made about what to present and not present to NIRB from the video recordings of Inuit employees’ evidence. The Union Video evidence should be given minimal weight given the danger of unfair prejudice should it be admitted with no assessment of its relevance and appropriate weight.

More specifically, the Union Video was produced by a non-party in this proceeding, the IUOE. The IUOE had the opportunity to register as an intervenor in this proceeding and offer evidence, but chose not to do so. Had it provided the video in the Technical Hearing, or had NIRB adapted its CRT process, other parties would have had the opportunity to ask questions about the video that go to its credibility and which probe the information provided, including questions such as:

- What choices were made about which parts of video interviews with Inuit employees to include or not include in this video evidence provided to NIRB?
- Were there video interviews which were not included? What portion of specific interviews were or were not included?
- What editorial decisions were made to determine what was “relevant” and “not relevant” to NIRB’s decision-making?
- What is the source of the statistics and other information added as background visuals to reinforce and provide interpretive context for the comments of Inuit employees, such as the information on proposed environmental measures, details of the IIBA benefits, projected employment levels, and specific consequences should the mine expansion be approved or not approved?

- Were decisions made about which Inuit employees to include and not include, including decisions based on which communities which they are from (as most of the participants appeared to come from communities other than the most proximate communities)?

The Union Video provides carefully edited and curated snippets of opinion statements given by mine employees (in some cases appearing to be read from scripts) with reinforcement and interpretive context provided by additional audio and visual materials that are not the voice of those Inuit employees themselves. The Parties had no opportunity to test this evidence, and NIRB should not accept it in a way that fails to consider its evidentiary weight.

Introducing oral testimony in this way is little different than allowing a person's lawyer to pick and choose their words for them on a cross-examination. That would be unacceptable under any rules of procedure, as is introducing oral testimony in an edited video format with no opportunity for testing of the evidence.

QIA questions the veracity of the assertion (made by Baffinland at the hearing) that participation in this video was the only way for Inuit employees to provide their perspective to NIRB. QIA wholeheartedly supports the opportunity and need for impacted Inuit to participate in the CRT process, including Inuit who work at the mine or who wish to work at the mine. This is important evidence for NIRB to consider, as part of the process of listening to directly The CRT process allowed for this. Indeed, during the CRT hearing the NIRB panel heard from a number of Inuit who attended the CRT sessions and currently work, or have worked, at the mine site. Moreover, Baffinland sent Inuit employees home, from the mine, during the week of the CRT hearing so that they could participate in the CRT process should they wish to do so.

QIA is concerned that admitting the Union Video without assessment of its credibility and weight will create a negative precedent in this and future NIRB hearings. Admission of videos by non-parties, curating their understanding of the "Inuit voice", undermines the CRT process and its intention to ensure NIRB panels hear directly from impacted Inuit in a forum where their voices are not filtered by third parties. The Union Video, produced and edited by a non-Party making choices made about what the Inuit voices are, has no place in a Community Roundtable where the NIRB panel should hear directly from impacted community members. Allowing the video onto the evidentiary record, without serious critical assessment of its weight and credibility, creates a precedent that potentially allows proponents or third parties to drown out the views of members of the most affected communities at Community Roundtables with the views of others.

NIRB is not bound by the strict rules of evidence, and indeed has an obligation to be flexible in its processes to ensure maximum Inuit participation. Minimum standards must, however, apply to ensure a fair decision-making process and to meet the land claim agreement and statutory goals for admission of evidence directly from impacted Inuit. Among other things, fairness include prohibition against speculation and opinion evidence from non-parties, a fair opportunity for other parties to test evidence, and a process that does not allow a non-Inuit party to curate and decide what Inuit are really saying.

QIA submits that the Union Video does not satisfy essential baseline criteria for credible and admissible evidence. Its weight should, accordingly, be minimized in any NIRB decision-making

process to preserve the fairness of this proceeding and avoid creating a precedent that would allow this type of evidence in the future.

QIA thanks the Board for the opportunity to provide these comments and objection.

Sincerely,



Lorraine Land
Legal Counsel for QIA

cc. Teresa Meadows, Legal Counsel for NIRB