



MEMORANDUM OF UNDERSTANDING

FOR A FRAMEWORK TO CO-OPERATE AND COORDINATE EFFORTS IN THE REVIEW AND PROCESSING OF WATER APPLICATIONS IN THE NUNAVUT SETTLEMENT AREA

BETWEEN:

THE NUNAVUT IMPACT REVIEW BOARD AND THE NUNAVUT WATER BOARD

PREAMBLE

WHEREAS pursuant to Articles 10 and 12 of the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* (Nunavut Agreement), the Nunavut Impact Review Board (NIRB) was established on July 9, 1996, as an institution of public government responsible for the impact assessment of project proposals in the Nunavut Settlement Area (NSA);

WHEREAS pursuant to Articles 10 and 13 of the Nunavut Agreement the Nunavut Water Board was established on July 9, 1996, as an institution of public government with responsibilities and powers over the regulation, use and management of fresh water in the NSA;

WHEREAS the NIRB has statutory responsibilities pursuant to the *Nunavut Planning and Project Assessment Act* (NuPPAA);

WHEREAS the NWB has statutory responsibilities pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA);

WHEREAS Sections 12.10.1 and 13.5.4 of the Nunavut Agreement, section 75 of the NuPPAA and section 38 of the NWNSRTA prohibit the NWB from issuing a licence to use water or dispose of waste in the NSA where a project requires assessment by the NIRB until the NIRB has completed the assessment;

WHEREAS pursuant to Section 12.9.1 of the Nunavut Agreement, section 137 of the NuPPAA and section 70 of the NWNSRTA the NWB has a duty to implement the terms and conditions of a NIRB project certificate;

WHEREAS Sections 13.5.2 and 13.6.1 of the Nunavut Agreement, section 193 of the NuPPAA and section 37 of the NWNSRTA require the NWB and a review body pursuant to Article 12 to cooperate and coordinate their efforts in order to avoid unnecessary duplication and ensure the timely review and processing of an application; and

WHEREAS the NIRB and the NWB believe that in light of the forecasted development in Nunavut, a coordinated process is necessary to support their respective capacities to fulfill their respective mandates in a timely and efficient manner.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. GENERAL

- 1.1 The purpose of this Memorandum of Understanding (MOU) is to identify the objectives of a coordinated process and key elements included in any detailed coordinated process frameworks (DCPs) developed by the NIRB and the NWB under this MOU, to ensure that high standards of environmental protection are maintained while providing for the conservation and utilization of water in a manner that provides for the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general as contemplated by Articles 12 and 13 of the Nunavut Agreement.
- 1.2 This MOU must be interpreted in a manner consistent with the Nunavut Agreement, NuPPAA and the NWNSRTA. To the extent that this MOU or DCP are determined to be inconsistent with the provisions of the Nunavut Agreement, NuPPAA and the NWNSRTA, the relevant enactment governs.

2. OBJECTIVES OF A COORDINATED PROCESS

- 2.1 The parties agree that the objectives of any DCP developed under this MOU are to be based on the goals set out for a Model Regulatory System, as described by Neil McCrank, Minister Special Representative, in his May 2008 Report "*Road to Improvement- Report to the Honourable Chuck Strahl Minister of Indian Affairs and Northern Development – The Review of the Regulatory Systems Across the North*":
1. Understandable
 2. Neutral
 3. Clear Mandate
 4. Open and Transparent Process
 5. Fair process
 6. Timelines
 7. Consistent and Predictable
 8. Accountable
 9. Capacity
 10. Coordinated
 11. Establish Rules

3. KEY ELEMENTS OF A COORDINATED PROCESS

- 3.1 In designing any DCP the NIRB and NWB shall respect the authority and decision powers of the Minister set out in Articles 12 and 13 of the Nunavut Agreement, sections 92-96 and sections 105-108 of NuPPAA and section 56 of the NWNSRTA, as well as the requirements set out in Sections 12.10.1 and 13.5.4 of the Nunavut Agreement, and section 75 of NuPPAA, prohibiting the NWB from issuing a licence to use water or dispose of waste in the NSA (with the

exception of short-term approvals for water uses related to exploration or developmental work for a proposal under NIRB review) where a project requires assessment by the NIRB until the NIRB has completed the assessment.

- 3.2 To aid the NIRB and the NWB in operating within the parameters of the Nunavut Agreement, NuPPAA and NWNSRTA, any DCP developed under this MOU shall respect the distinct objects and mandates of each Board, including establishing the NWB involvement in the NIRB review process only in relation to the expertise related to the use of water, deposit of waste and associated activities consistent with the mandated objects of the NWB.
- 3.3 Upon the passing of any amendments to the Nunavut Agreement, the NuPPAA or the NWNSRTA, the NIRB and the NWB shall review and revise this MOU and any DCP to address any conflicts or inconsistencies arising from the amendments.
- 3.4 The NIRB and the NWB shall include in any DCP developed under this MOU, clarification on types of project specific activities that may be considered as water uses related to exploration or developmental work for a proposal under NIRB review, activities pursuant to Sections of 12.10.2 and 13.3.3 of the Nunavut Agreement.
- 3.5 To aid in the development of an open and transparent coordinated process, and respect the direction provided in the NuPPAA and the NWNSRTA to coordinate where possible, the NIRB and the NWB shall ensure effective and efficient communication is maintained throughout the implementation of any DCP, including consultation on any unexpected changes or modifications.
- 3.6 To aid in ensuring the process is fair and respects the rules of natural justice, the NIRB and the NWB shall design any DCP under this MOU to be consistent with the parties' obligations to give due regard and weight to Inuit customs and knowledge, the applicable NIRB and NWB by-laws and rules and the parties' roles in ensuring that affected communities are aware of the project and its potential environmental and socio-economic impacts.
- 3.7 The NIRB and the NWB agree that a key objective to be achieved through the implementation of any DCP is to reduce the overall length of time to process a project proposal and water licence application through the NIRB assessment and the NWB water licensing regulatory system. The NIRB and NWB shall include approximate timelines within the DCP.
- 3.8 The NIRB and the NWB agree that the design of any DCP under this MOU shall not result in a delay of the NIRB review process due to a lack of information necessary to undertake the NWB regulatory process. If, at any time it becomes apparent that implementation of the DCP is not fulfilling the objective set out in paragraph 3.10, the NIRB and the NWB shall revert to their individual processes.
- 3.9 The NIRB and the NWB shall ensure that the level of technical information required by the NWB regulatory process introduced during impact assessment

does not unnecessarily increase the complexity of conducting NIRB's assessment of environmental and socio-economic impacts.

3.10 Upon completion of the parties' processes governed by a DCP developed under the MOU, the NIRB and the NWB agree to jointly conduct a review of the implementation of the DCP, including an analysis of the approximate timelines versus actual implementation and the process associated with any short-term approvals of water uses related to exploration or developmental work that may have been issued prior to the completion of the NIRB's review.

3.11 The NIRB and the NWB shall periodically evaluate the effectiveness and implementation of any DCP, soliciting input from Governments, the Designated Inuit Organizations, and, where appropriate the public, in an open and transparent manner.

4.0 REPORTING

4.1 The NIRB and the NWB shall each report on any DCP developed under this MOU in their Annual Activity Report to the Federal Government.

5.0 RESOURCE COMMITMENT

5.1 The NIRB and the NWB each agree to the fullest extent possible, to commit the human and financial resources necessary to fulfill their respective mandates in any DCP developed under this MOU.

6.0 EFFECTIVE DATE

6.1 This MOU comes into effect on signing.

7.0 TERMINATION

7.1 Upon the mutual agreement of the Chairpersons of the NIRB and the NWB, or upon providing reasonable notice to the other party, the Chairperson of the NIRB and/or the Chairperson of the NWB may terminate this MOU at any time.

IN WITNESS WHEREOF, the Parties to this Memorandum of Understanding have signed on the 23rd day of February, 2018.



Elizabeth Copland
Chairperson
Nunavut Impact Review Board

Lootie Toomasie
Chairperson
Nunavut Water Board