FOLLOW UP SUBMISSION

To

Senate Standing Committee on Energy, the Environment and Natural Resources

By

The Nunavut Impact Review Board

Regarding

Bill C-69: An Act to enable the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts

Date of NIRB’s Oral Presentation to the Committee: February 7, 2019
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Follow up Information in Response to Senator’s Questions to the NIRB

1.0 Follow Up to a Question by Senator LaBoucane-Benson

The answer that follows is a more complete response to the question posed by the Senator as set out in the draft transcript of the Nunavut Impact Review Board’s (NIRB or Board) February 7, 2019 appearance before the Senate Committee:

Senator LaBoucane-Benson:

I want to thank you so much for your presentation. There’s so much common sense and old school community engagement in what you’ve presented. It seems like you have struck a balance to ensure that the communities and people who will be affected the most have the loudest voice.

Would you describe your standing test for us and how you manage that balance?

As noted by the Nunavut Impact Review Board (the NIRB or Board) in our written submissions, the Board recognizes the importance of including broad rights of public participation in the Board’s processes. To that end, the NIRB has an established process that allows for any interested party to apply to seek full participation rights during the Board’s formal processes such as during a Public Hearing. Under Part 22, Rules 22.1-22.4 (relevant excerpt attached) of the Board’s current Rules of Procedure (NIRB 2009) (and brought forward into the current consultation draft of the Board’s revised Rules of Procedure (NIRB 2018) in Rules 58-60), when the NIRB gives notice of a public hearing or other formal proceeding, any party who wishes to be recognized as a formal Intervenor in that process is given an opportunity to file an intervention application for the review and consideration of the Board. The application for intervention must provide some detail regarding the following items:

- why the applicant is interested in participating in the NIRB’s proceedings;
- what the nature and scope of the applicant’s intended participation will include;
- an indication as to whether the applicant intends to make written submissions to the NIRB;
- an indication as to whether the applicant intends to appear in-person if the proceeding involves an in-person meeting/hearing; and
identifying the language in which the applicant intends to be heard.

Applications for intervention received within the timeline included in the NIRB’s notice are reviewed by the Board for completeness and the Board conducts an initial assessment of whether the intervention request is vexatious, frivolous or otherwise without merit. The Board may, at this initial stage solicit the views of the proponent of the project being assessed, other Intervenors involved in the NIRB proceeding and interested members of the public regarding whether an applicant should be granted formal Intervenor status. As indicated by the Board’s Executive Director in his response to this question during the NIRB’s appearance before the Senate Standing Committee on February 7, 2019, following receipt of any comments filed with the Board about the intervention application, the Board then assesses the applicant’s interest in the NIRB proceeding, identifies if there is any duplication between interventions and determines whether the applicant has a genuine interest in the NIRB proceeding and/or can share information, experience, expertise or perspective with the Board that is relevant or germane to the Board’s proceedings.

If formal Intervenor status is granted to a party by the Board, the Intervenor is granted full participation rights in respect of the proceeding that are the same as Intervenors that appear before the Board as of right (such as Designated Inuit Organizations and Regulatory Agencies). These rights may include:

- the right to be on the Board’s distribution list for the assessment so that the Intervenor will receive notice of all filings, invitations to comment and other Board notice and directions in respect of the file;
- the opportunity to file written submissions with the Board;
- the opportunity to make oral submissions to the Board in subsequent in-person or teleconference oral proceedings; and
- the opportunity to ask questions of the proponent of a project and other Intervenors during the Board’s proceedings.

When discussing public participation in the NIRB’s conduct of assessments it is important to also recognize that during a typical assessment associated with a major development proposal, the Board hosts a variety of informal proceedings in the communities most likely to be affected by a proposed development. These types of proceedings also provide an opportunity for all community members to ask questions, voice concerns, share experiences and perspective, and
share Inuit Qaujimaningit, traditional knowledge and community knowledge, all without being required to be registered as a formal Intervenor. These types of proceedings include scoping sessions, community information sessions, and Community Roundtable sessions that are included in the Board’s Pre-Hearing Conference and Public Hearing settings. While the purposes of these types of proceedings may vary to reflect the context of a given assessment, the central goal of these processes does not change: encouraging public engagement in a way that gives due regard and weight to the tradition of Inuit oral communication and inclusive decision-making.

In addition to providing oral submissions during these types of proceedings, prior to the Board closing the Record for a given assessment (typically at the end of the Final Public Hearing for the assessment) any party wishing to provide a comment submission in writing to the NIRB is able to do so in any of the four languages (English, French, Inuktitut or Inuinnaqtun) of the Board.

2.0 Follow Up to a Question by Senator MCallum

The answer that follows is a deferred response to the question posed by the Senator as set out in the draft transcript of the Nunavut Impact Review Board’s (NIRB or Board) February 7, 2019 appearance before the Senate Standing Committee:

Senator McCallum:

You said that when a project comes and it’s less certain, new information comes about. So the theory didn’t work as expected and you had to improve midstream. Can you give us an example of when this happens and the timelines involved?

Mr. Barry (Executive Director of the Nunavut Impact Review Board):

Perhaps we could follow up in our follow-up submission to give an explicit example because we do have a number to choose from.

As indicated during the NIRB’s appearance before the Standing Committee, the Board is not only responsible for carrying out impact assessments for major development projects within the Nunavut Settlement Area, but if a project is allowed to proceed, the Board has an on-going
monitoring role for the life of that project as well. Very often, it is in fulfillment of its monitoring function that the Board may be called upon to reconsider mitigation measures, monitoring programs and even existing project certificate terms and conditions to respond to unanticipated project effects that may be occurring, to address unexpected monitoring results or to revisit mitigation and monitoring programs that may not be working as originally designed.

On an annual basis (typically in the Fall) the Board issues an annual Monitoring Report for each project that has been assessed by the NIRB and is governed by a NIRB-issued Project Certificate. Included within the Board’s annual Monitoring Reports are recommendations issued to the proponent by the Board that can involve the Board requiring proponents to respond to project effects that are different in scale or scope than the effects that were predicted during the Board’s assessment of the project. For example, in the 2017-2018 annual Monitoring Report associated with the Doris North Gold Mine Project (NIRB File No.: 05MN047) the Board identified that monitoring results identified that actual dustfall measurements made during the summertime were above the dustfall predictions provided by the proponent during the NIRB’s assessment of the project in 2005. Consequently, the Board recommended that the proponent (TMAC Resources Inc. revisit its Dustfall Monitoring (and mitigation) Plans to reduce dustfall emissions to the previously predicted levels.

The excerpt below is from the Board’s summary correspondence sent to the proponent and accompanying the Board’s more detailed 2017-2018 Annual Monitoring Report for the Doris North Gold Mine Project, October 31, 2018 and is available from the Board’s electronic public registry:

Dustfall Monitoring and Mitigation

TMAC notes in the summary of the post-environmental assessment monitoring program (PEAMP) in its 2017 Annual Report that summertime dustfall measurements at the Project site were above predictions made in the Proponent’s 2005 Final Environmental Impact Statement for the Project.

The NIRB has concerns about the potential implications of these air quality exceedances to the health of mine personnel and wildlife in the general project area.
**Recommendation 2:** The Board requires that TMAC update its Dustfall Monitoring Plan to address how it intends to reduce dustfall in the summer months below the predictions presented within the 2005 Final Environmental Impact Statement for the Project.

The updated plan should be submitted within 90 days of receipt of the Board’s recommendations.

The Board has many more examples of this kind of adaptive management cycle being implemented for the major development projects assessed by the NIRB, governed by a Project Certificate issued by the Board, and subject to the Board’s on-going project monitoring. In the interests of brevity, the Board has not attached the annual Monitoring Report referenced above, however if the Standing Committee would benefit from reviewing any of these types of annual monitoring reports or recommendations, the Board would be happy to provide these documents.

**Conclusions**
The Board thanks the Honorable Members of the Senate Standing Committee on Energy, the Environment and Natural Resources for this opportunity to provide our follow up responses with respect to our February 7, 2019 appearance to speak about Bill C-69.
Excerpt of the NIRB’s Current Rules of Procedure (September 2009):

22. Public Participation and Request for Intervenor Status

22.1 The Board shall, without request, allow full standing to the proponent and authorizing agencies.

22.2 A request for intervenor status must be filed in writing with the Board within the time period set out in the notice of hearing. The request for intervenor status must contain the following:
   (a) A brief summary of the reasons for the intervenor’s interest in the hearing;
   (b) A concise statement indicating the nature and scope of the intervenor’s intended participation, including whether the intervenor intends to make a written submission and/or appear at an oral hearing, whether the intervenor will be represented by counsel or an agent, and the language in which the person wishes to be heard; and
   (c) The name, address, telephone number and, if available, fax number and e-mail address of the intervenor and, if applicable, of the authorized representative.

22.3 The Board shall on receiving and examining a request for intervenor status, do one or more of the following:
   (a) Direct the intervenor to serve a copy of the request on the proponent and such other persons as the Board specifies, and solicit the views of the proponent and parties on the request;
   (b) Direct the intervenor to provide more information to the Board or otherwise revise the request in any manner the Board considers necessary;
   (c) Decide that the intervention will not be heard because the submission is frivolous, vexatious or of little merit; and
   (d) Decide that the intervention will be heard and notify the parties that the intervention will be heard.

22.4 Any person who does not wish to intervene in an oral hearing but who wishes to make their views known may make an oral presentation during that portion of the hearing that has been set aside to hear the views of the public.

NIRB