



SUBMISSION

To

House of Commons Standing Committee on Aboriginal Affairs & Northern Development

By

The Nunavut Impact Review Board

Regarding

Bill S-6: An Act to amend the Yukon Environmental and Socio-Economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act and to make related and consequential amendments to other Acts

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Background

The Nunavut Impact Review Board (NIRB or Board) is a resource co-management institution of public government established in accordance with Articles 10 and 12 of the *Nunavut Land Claims Agreement* (NLCA). One of the defining objectives of the NLCA is the rights of Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources. In addition, the regulatory regime in Nunavut is unique in that the NIRB and its sister institutions of public governance, the Nunavut Planning Commission (NPC) and the Nunavut Water Board (NWB), were formed and operate cooperatively pursuant to a single land claims agreement. The NLCA establishes a simple, integrated resource management system for land use planning, impact assessment, and land and water licensing. The scope of the Board's jurisdiction is also unique, including consideration for both environmental and socio-economic impacts through its screening- and review-level impact assessments, as well as through the establishment of monitoring programs which oversee the monitoring of impacts from approved projects.

Reflecting this unique regulatory environment, the NIRB works closely with the Nunavut Water Board to ensure the NIRB's project assessment process informs but does not duplicate nor limit the NWB's water licensing process. Under the NLCA, Article 13, Section 13.5.2, the NWB and the NIRB are directed to coordinate their efforts:

13.5.2

Where the water application is referred for review under Article 12, the NWB and the review body shall coordinate their efforts to avoid unnecessary duplication in the review and processing of the application. Legislation may provide for joint hearings or authorize the NWB to forego public hearings on any water application where it has participated in a public review of the relevant water application pursuant to Article 12.

Consequently, the aspects of Bill S-6 and the proposed amendments with effects on the NWB's processes, procedures and timelines have the potential to affect the NIRB's processes where both Board's processes intersect, are co-ordinated or even integrated. With this context in mind, the Board notes that Aboriginal Affairs and Northern Development Canada did provide the NIRB with an opportunity to provide comments on the initial draft of Bill S-6 prior to its introduction

in the Senate. As discussed in more detail in the Board's comments on timelines and the accommodation of co-ordinated processes discussed below, the NIRB was pleased to see that the draft legislation was changed to address the concerns expressed by both the NIRB and the NWB at this earlier comment stage.

The Scope of the Board's Comment Submissions on Bill S-6

With this background, the NIRB has confined our comments solely to those aspects of the proposed amendments arising from changes to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, leaving other parties to comment on the amendments affecting the Yukon Environmental and Socio-Economic Assessment Board.

Reflecting the potential for effects of these changes on the NIRB's processes, the NIRB offers two focused comments on the aspects of Bill S-6 where the NIRB's processes may be affected, and provides no comments with respect to the proposed amendments in relation to:

1. Modifications to fines;
2. The addition of an AMP scheme;
3. Life of project licensing; and
4. Addition of authority for security management.

In addition, as a sister Institution of Public Government established under the NLCA and sharing the same challenges as the NWB in the fulfillment of the NIRB's role in the integrated regulatory system, the NIRB also supports the NWB's submission regarding issues external to the NWB that may affect the NWB's ability to meet the prescribed timelines proposed under Bill S-6.

Specific Comments on Bill S-6

1.0 Ensuring Timelines Reflect Co-ordination Initiatives (s. 44 of Bill S-6/amendment to add s. 55.31 to the NWNSRTA)

When invited to comment on the preliminary consultation draft of Bill S-6, the Board noted (as did the NWB) that 9 month time limit for processing a water licence application, did not include any mechanism for pausing these time limits to allow the NWB to participate in the "pre-licensing" land use planning and impact assessment processes of the Nunavut Planning Commission and the Nunavut Impact Review Board prior to completing water licensing.

The Board notes that in response, s. 55.31 was added to the version of Bill S-6 introduced in the Senate to now expressly establish that the NWB's time limits do not commence until the land use planning and impact assessment components of the NLCA's integrated regulatory process are completed. The NIRB is satisfied that this addition addresses the Board's concern.

2.0 Cost Recovery Regimes Applying Solely To Water Licensing (ss. 47 and 48 of Bill S-6/amendment to add s.81.1 and s.82(1)(r.1) to the NWNSRTA)

In addition to commenting on the time limits issue in the Board's comment submissions with respect to an earlier version of Bill S-6, the Board also provided comments on the amendments that will implement a potential cost recovery regime under the proposed addition of s. 81.1 and pursuant to future regulations that may be developed under s. 82(1)(r.1). These comments remain to be addressed in Bill S-6.

As previously noted by the NIRB when commenting on the addition of cost recovery provisions to the northern oil and gas development regime (see the attached letter of September 2012 by the Board to Janet King), while the NIRB recognizes the rationale and desirability of implementing a cost recovery regime, as the NIRB does not currently have a mechanism to implement such a regime the Board has concerns that inconsistency in the availability of cost recovery across regulatory regimes in Nunavut may cause problems.

With respect to the amendments proposed under Bill S-6 specifically, the NIRB has concerns that having cost recovery provisions applicable to only the licensing phase of the regulatory process but not to the impact assessment phase may result in proponents, concerned about the additional costs they will incur in a cost recovery regime, having an incentive to ensure that the bulk of technical review, community consultation and intervenor involvement takes place during the impact assessment stage of project review. As the NIRB does not currently have the legislative basis to implement a cost recovery regime, costs associated with the Board's assessment of project proposals is the responsibility of the Government of Canada under the auspices of the Board's base funding and public hearing budgets. However, should the cost recovery provisions proposed under Bill S-6 and the associated Regulations come into force, if

such costs were incurred at the water licensing stage of the regulatory approval process the proponent could be responsible for paying these costs.

Reflecting this inconsistency, the NIRB has particular concerns that the NIRB/NWB Detailed Co-ordinated Process Framework could be used by proponents to download much of the responsibility and cost associated with the technical review, consultation and intervenor involvement associated with a water licence application onto the NIRB's impact assessment processes. Such actions could have the effect of considerably increasing the costs of the NIRB component of project assessment and in the event a project is approved to proceed and advances to the water licensing stage at the conclusion of the NIRB review, limiting the costs of the water licensing process allocated to the project proponent under the NWNSRTA cost recovery provisions. Accordingly, it is the NIRB's view that in order to avoid such issues in future, a consistent approach to cost recovery is desirable across all phases of Nunavut's integrated regulatory regime.

3.0 Support for the NWB's Submissions Regarding External Factors Affecting Compliance With Prescribed Timelines (s. 44 of Bill S-6/amendment to add ss. 55.1-55.6 to the NWNSRTA)

The NIRB also recognizes and supports the NWB's noted concerns that factors outside the Nunavut Water Board's control can adversely affect timelines. The NIRB experiences the same issues with respect to the following:

- Delays in Board Member appointments;
- Gaps between submissions of budgets and advancement of funds; and
- Capacity issues both within the Board and experienced by the intervenors participating and providing technical submissions in Board processes.

Conclusions

The Board thanks the Honorable Members of the House of Commons Standing Committee on Aboriginal Affairs and Northern Development for this opportunity to appear and present our comments with respect to Bill S-6; we welcome any questions of the Committee Members.