



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 Nunavut Land Claims Agreement (NLCA), 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); and

WHEREAS pursuant to Articles 10 and 13 of the NLCA, 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; and

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

WHEREAS Sections 12.10.1 and 13.5.4 of the NLCA prohibit the NWB from issuing a licence to use water or dispose of waste in the NSA where a project requires a review by the NIRB until NIRB has completed the review; and

WHEREAS pursuant to Section 12.9.1 of the NLCA, the NWB has a duty to implement the terms and conditions of a NIRB project certificate; and

WHEREAS Sections 13.5.2 and 13.6.1 of the NLCA and section 35 of the NWNSTRTA requires 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 NWB believe that in light of the forecasted development in Nunavut, a coordinated process is necessary to ensure 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 that will need to be included in a detailed coordinated process framework (DCP), 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 NLCA.

1.2 This MOU must be interpreted in a manner consistent with the NLCA and the NWNSRTA.

2. OBJECTIVES OF COORDINATED PROCESS

2.1 The parties agree that the objectives of the DCP 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 the DCP the NIRB and NWB shall respect the authority and decision powers of the Minister set out in Articles 12 and 13 of the NLCA and section 56 of the NWNSRTA, as well as the requirements set out in Sections 12.10.1 and 13.5.4 of the NLCA prohibiting the NWB from issuing a licence to use water or dispose of waste in the NSA where a project requires a review by the NIRB until NIRB has completed that review.
- 3.2 To aid all interested parties in understanding the DCP, the NIRB and NWB shall each give high priority to develop and implement a DCP framework which clarifies the role of each party, the role of proponents, the role of interested parties and the public at large.
- 3.3 To further aid understanding of the DCP, the NIRB and NWB shall jointly host a workshop for the DCP framework to clarify details of process implementation, clarify how interested interveners are to support impact review and water licensing through the provision of scientific and technical expertise on a project specific basis and evaluate options for implementing the DCP.
- 3.4 To aid the NIRB and NWB in remaining neutral on a project specific basis and ensure orderly development consistent with the intent of the NLCA, the NIRB and NWB shall ensure that the DCP does not significantly add risk to the proponent, and minimizes risk to the environment and to the Inuit relationship with the land and its resources.
- 3.5 To aid the NIRB and NWB in operating within the parameters of the NLCA and NWNSRTA, the DCP shall be designed to respect the distinct objects and mandates of each of the NIRB and NWB, including establishing the NWB involvement in the NIRB review process only in relation to the expertise related to the use of water, disposal of waste and associated activities consistent with the mandated objects of the NWB.
- 3.6 Upon passage by Parliament of development impact review legislation to implement the substantive powers, functions, objects and duties of the NIRB as contemplated by Section 10.2.1 of the NLCA, the NIRB and NWB shall review and revise the DCP framework to address any conflicts or inconsistencies arising.
- 3.7 The NIRB and NWB shall include in the DCP clarification on types of project specific activities that may be considered as pre-development activities pursuant to Sections of 12.10.2 and 13.3.3 of NLCA.
- 3.8 To aid in the development of an open and transparent coordinated process, the NIRB and NWB shall ensure effective and efficient communication is maintained throughout the implementation of the DCP, especially on consultation for unexpected changes or modifications.

- 3.9 To aid in ensuring the process is fair and respects the rules of natural justice, the NIRB and NWB shall design the DCP consistent with the NLCA principles for giving due regard and weight to Inuit customs and knowledge, the *Rules of Procedure* for NIRB, and the NWB's role in ensuring that affected communities are aware of the project and its potential environmental and socio-economic impacts.
- 3.10 The NIRB and NWB agree that a key objective to be achieved through the implementation of the framework is to reduce the overall length of time to process a project proposal and water licence application through the NIRB review and NWB water licensing regulatory system. The NIRB and NWB shall include approximate timelines within the DCP.
- 3.11 The NIRB and NWB agree that the design of the DCP 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 it becomes apparent that implementation of the DCP is not fulfilling the objective set out in paragraph 3.10, the NIRB and NWB standard processes shall be applied.
- 3.12 The NIRB and NWB shall ensure that the level of technical information required by the NWB regulatory process introduced during impact review does not unnecessarily increase the complexity of conducting NIRB's review of environmental and socio-economic impact assessment.
- 3.13 Upon completion of the first review of a project proposal and the subsequent related water licence application process using the DCP, the NIRB and NWB agree to jointly conduct a review of the approximate timelines versus actual implementation and include an assessment of any authorized pre-development activities.
- 3.14 The NIRB and NWB shall periodically evaluate the effectiveness and accountability of the DCP, soliciting input from Government, the Designated Inuit Organization, and, where appropriate the public, in an open and transparent manner.
- 4.0 REPORTING
- 4.1 The NIRB and NWB shall each report on the DCP framework in their Annual Activity Report to the Federal Government.
- 5.0 RESOURCE COMMITMENT
- 5.1 The NIRB and NWB each agree to the fullest extent possible, commit the human and financial resources necessary to fulfill their respective mandates in the DCP.
- 6.0 EFFECTIVE DATE
- 6.1 This MOU comes into effect on signing.

7.0 TERMINATION

7.1 Upon agreement of the Chairpersons of the NIRB and NWB, or after consultation with the other party the Chairperson of NIRB 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 15th day of FEB, 2011.



Thomas Kabloona
Chairman
Nunavut Water Board



Lucassie Arragutainaq
Chairman
Nunavut Impact Review Board