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Yellowknife, NT

February 28, 2017

Giant Mine Oversight Board Roll Over Provision

Dear Natalie:

I am writing in my capacity as Chair of the Giant Mine Oversight Board in response to your email of February 14, 2017 to me. In that email, you provided an update on the implementation of the rollover provision in the Environmental Agreement (Article 11.7.) and how unspent administration and research funds for 2016-2017 will be handled. Based on the content of your email and subsequent conversations, the Board is seeking additional clarification on the funding arrangements going forward. As well, this letter describes the Board's overall concerns about the lack of tangible progress in meeting the terms and intent of Article 11.7 of the Environmental Agreement.

Article 11.7 of the Environmental Agreement (also called the "rollover provision") states:

11.7 (a) Subject to the limitations of existing authorities under the written policies and directives of the Funding Governments that are applicable to the transfers of funds to the Oversight Body, the Funding Governments shall to the extent possible permit the Oversight Body to:

- (i) develop its annual budget and work plan without the requirement for approval by the Funding Governments;*
- (ii) carry unspent General Operations funds forward from one year to the next, provided that the funds may still be spent only in furtherance of the Oversight Body's roles and responsibilities under this Agreement;*

- (iii) at the end of a fiscal year, re-allocate any unspent General Operations funds (including General Operations funds that have been carried forward a year) to the Research Program;*
- (iv) carry unspent Research Program funds forward, provided that the funds may still be spent only in furtherance of the Oversight Body's roles and responsibilities under Article 7 ("Active Research Toward a Permanent Solution for Arsenic"); and*
- (v) report to the Funding Governments on its expenditures at the frequency and level of detail commensurate with a grant under the Treasury Board of Canada's system of grants and contributions.*

(b) If the applicable written policies and directives of the Funding Governments do not authorize funding agreements that would permit the Oversight Body the flexibility to manage funds and report as described in section 11.7(a), the Minister of Aboriginal Affairs and Northern Development shall without unreasonable delay seek authority from the Treasury Board of Canada to transfer the funds under Article 11 by way of a grant or other funding mechanism that permits the Oversight Body the flexibility to manage funds as described in section 11.7(a).

The clear intent of this Article is to enable the Board to carry-over surplus funds from one year to another provided the carry-over is allocated to the Research Program. In this way, surplus funds from a given fiscal year can be accumulated and used for future research. This is seen as an important provision given the relative uncertainty of future research directions, acknowledgement that research will be expensive, and acknowledgement that the annual research budget alone would likely be insufficient to enable or catalyze a significant research effort. Consistent with the intent of the Environmental Agreement, it is critical that the Board be able to accumulate research funding and not be constrained by annual fiscal funding cycles.

At the November 9, 2016 Semi-Annual Meeting of the Parties, you confirmed that INAC was still working with Treasury Board on a mechanism to enable the rollover of funds as per Article 11.7 but that it would not be complete in time for the 2017/18 fiscal year. In lieu of having that mechanism in place, however, you committed to include any unspent 2016/17 research and general operation funds in the 2017/18 contribution agreement. As discussed at some length during the Semi-Annual Meeting, this temporary solution was proposed as a way of meeting the intent of the Agreement until a formal rollover mechanism is in place. Based on that discussion, it was the Board's understanding that the temporary solution laid out in the meeting would allow the Board to continuously accumulate money in the Research Fund until we are in an optimal position to begin allocating those funds - i.e., after finalizing our research strategy this year.

Through your email of February 14, 2017 and subsequent communications, INAC has indicated that a different funding approach from the one described during the Semi-Annual Meeting will be used. It is now our understanding that INAC has decided to not include the amount of our surplus funds from 2016/17 into the 2017/18 contribution agreement. This is apparently based on the rationale that unless the Board could spend all of the 2017/18 budget plus the surplus from 2016/17 by March 31, 2018, then it would need to return that

surplus as per the terms of the contribution agreement. The Board notes that this decision was taken unilaterally by INAC, without advance consultation with GMOB.

To summarize, it is now the Board's understanding that:

- INAC intends to make a Treasury Board submission later this year to change the funding mechanism for GMOB from the current contribution agreement (which does not allow rollovers) to a grant, a possibility envisioned by Article 11.7(b);
- If the submission is successful, INAC hopes to begin grant funding starting with the 2018/19 fiscal year, although this date cannot be confirmed at this time. Once in place, the grant mechanism would allow the Board to rollover any surplus funds;
- Because of the timing of the Treasury Board submission, the only mechanism available to fund GMOB this year is through a contribution agreement which will require the return of surplus funds at the end of each fiscal year (e.g., March 2018);
- If the Board requires additional funds in 2017/18, it must apply to INAC for an amendment to the contribution agreement. The amendment must include a proposal detailing the additional costs and would be subject to INAC approval; and,
- The Board will not be able to carry a surplus past March 2018 for the purposes of future research.

The Board asks that INAC confirm in writing at its earliest opportunity whether the funding approach outlined above is correct. We also request that that INAC provide any additional explanations that would help the Parties to the Environmental Agreement understand the situation and what to expect in the future.

For clarity, the Board supports INAC's goal of changing the funding mechanism to a grant. With respect to INAC's offer to amend the 2017/18 Contribution Agreement for additional funds if needed, the Board requests that INAC specify the nature of the proposal/justification and level of detail that would be required. In our opinion, Article 11.7 clearly speaks to the intended independence of the Board with respect to budget and would view an onerous approval process for a request to access previously committed funds as contrary to the Environmental Agreement.

With respect to INAC's planned Treasury Board submission, the Board requests regular updates on the progress of the submission so that we can plan our future year's research budget accordingly. The Board may be able to help INAC to strengthen its justification for the submission and would be happy to work with you on that going forward. In the meantime, the Board encourages INAC to explore short term and longer term solutions to this dilemma. In that context, the Board suggests that INAC consider adding the unspent funds from past fiscal years to the first grant payment.

Significantly, the current funding approach has already resulted in GMOB's funding being reduced by approximately \$165 k in comparison to commitments stipulated in the Environmental Agreement.¹ In this regard, INAC's lack of progress on this issue has compromised the ability of GMOB to fulfill its obligations to lead the development of a permanent solution for the stored arsenic trioxide at the Giant Mine. This is clearly

¹ Based on surpluses of \$65 k in 2015/2016 and potentially \$100 k in 2016/2017.

inconsistent with the spirit and intent of the Environmental Agreement. Further clarification on why it seems to be taking so long to implement Article 11.7 would be helpful.

To minimize the potential for further delays, the Board thanks you for your immediate attention to this matter. Our hope is that this funding situation can be resolved quickly so that we can fully focus on the many other important tasks set out in the Environmental Agreement.

Sincerely,



Dr. Kathleen Racher

Chair, Giant Mine Oversight Board

Cc.

Lisa Dyer, Director, Environment Division ENR GNWT

Johanne Black, Director, Lands and Environment, YKDFN

Mark Heyck, Mayor, City of Yellowknife

Tee Lim, Gordon Hamre, Andrew Robinson, Alternatives North

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