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DEC 19 2019

SUBMITTED VIA EMAIL

Dear Ms. Mullaney and Ms. Potten:

Government of the Northwest Territories' final argument regarding the Mackenzie Valley Resource Management Act and associated regulations and Seabridge Gold (NWT) Inc.'s surface lease 76D/3-6-6.

The Government of the Northwest Territories (GNWT) is pleased to provide a final argument in the Mackenzie Valley Land and Water Board's (the Board) proceeding described in the Board's November 29, 2019 letter to Seabridge Gold (NWT) Inc. (Board file numbers MV2019C0025, MV2019L2-0011 and MV2019L2-0012).

Administration of surface lease 76D/3-6-6 and its predecessors regarding the land use permitting provisions in part 4 of the MVRMA

Frankly speaking, there have been inconsistencies in the administration of surface lease 76D/3-6-6 since the enactment of the *Mackenzie Valley Resource Management Act* (MVRMA) and associated regulations.

During the review of the file for surface lease 76D/3-6-6, the GNWT uncovered evidence suggesting that the surface lease currently held by Seabridge Gold NWT Inc. (Seabridge) and the activities currently occurring on it are subject to the MVRMA and its permitting requirements. In 2005, what was then Aboriginal Affairs and Northern Development Canada (AANDC) issued a new surface lease that replaced the surface lease that was in place prior to the enactment of the MVRMA. In issuing this new surface lease, AANDC explicitly

advised the previous lessee, Bathurst Inlet Developments (1984) Ltd., and, by copy, the Board, that the surface lease was now subject to the MVRMA and associated regulations.

Despite this evidence, surface lease 76D/3-6-6 has subsequently been administered as though it is not subject to the MVRMA and associated regulations. The GNWT has not uncovered written communications between itself or its federal predecessors and Seabridge or its predecessors stating that it was changing its approach from what was communicated in 2005. The GNWT cannot speak definitively to decisions and approaches taken by other governments. However, the GNWT is aware that the federal government did later in the 2000s take a position in relation to some other leases that grandfathering survived the replacement of leases. It is unclear how this has influenced Board decision-making. However, in 2012, the Board issued land use permit MV2012C0025 that excluded the area covered by surface lease 76D/3-6-6 to Seabridge.

The GNWT inherited administration of this surface lease upon the devolution of land administration authorities to it from the Government of Canada on April 1, 2014. In 2015, Seabridge's lease expired and the GNWT issued a new lease. In legal terms, this was not a "renewal" as it was not "renewed" pursuant to a renewal clause in the lease. Similarly, the lease issued in 2005 was not, in legal terms, a "renewal." The GNWT has endeavored to administer this lease consistently with what the previous administration of leases indicated that it conveyed. However, a thorough review of the file revealed the correspondence previously submitted in 2005 and through it the inconsistent administration of this lease.

The GNWT notes that, as the MVRMA is a federal law, the GNWT does not have the ability to create through a contract or its own legislation rights that would prevent the application of the MVRMA to a use of land within the Mackenzie Valley or to otherwise pass laws or take action that would prevent the application of this law. The GNWT may only administer a pre-devolution lease contract according to whatever rights it conveyed; nothing the GNWT states in relation to a given contract can alter the impact of the MVRMA. Any rights to be exempt from the regulation of the MVRMA in a contract would have had to have been created prior to devolution, and lapsed rights cannot be revived if

contrary to the law of the time of any purported revival. If the Government of Canada properly exercised any authority that it had in 2005 not to perpetuate an exemption from the application of the MVRMA, then the GNWT has no ability to alter this.

The GNWT notes that Seabridge has a very good record in terms of compliance and enforcement and has responded promptly to any concerns identified by GNWT inspectors. Seabridge's operations as conducted to date have incurred minimal environmental risk.

Draft terms and conditions of licence and permit

Pending the Board's decision on the current proceeding, the GNWT respectfully requests an opportunity to review the draft terms and conditions for water licence MV2019L2-0011 and land use permit MV2019C0025 if the Board is contemplating terms and conditions that deviate significantly from the draft terms and conditions reviewed by GNWT in October 2019.

I trust that this information is helpful. If the Board has any questions or concerns or requires additional information, please contact Blair Chapman, Director, Land Administration, at Blair.Chapman@gov.nt.ca, or me at Lorraine.Seale@gov.nt.ca.

Sincerely,



Lorraine Seale
Director
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- c. Michael Roesch, Senior Program Manager, Crown-Indigenous Relations and Northern Affairs Canada
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