













September 01, 2017

The Hon. Carolyn Bennett, P.C., M.P.  
Minister of Indigenous and Northern Affairs  
21st Floor, Terrasses de la Chaudière  
Gatineau, Québec  
K1A 0H4

Dear Minister Bennett,

**Re: Participant Funding for Nunavut Regulatory Processes**

Nunavut Tunngavik Inc. (NTI) and the Qikiqtani Inuit Association (QIA) are writing to urge the Government of Canada (GoC), led by your Department, to do the following:

1. Grant the community of Clyde River its request for participant funds to participate meaningfully in Strategic Environmental Assessment of Baffin Bay and Davis Strait (SEA);
2. Grant similar moneys to all other affected Baffin region communities seeking such assistance; and
3. Create, as a longer term solution, a participant funding program through the regulation- making provisions of the Nunavut Planning and Project Assessment Act (NuPPAA).

The community of Clyde River's request for participant funding highlights a persistent and serious barrier to Inuit participation in regulatory decision-making processes in Nunavut.

One of the main objectives of the Nunavut Agreement is certainty of *rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore*. Despite this, Inuit face significant obstacles to participating in resource management decisions. Institutions of Public Government (IPGs) established under the Nunavut Agreement often struggle to meet Inuit consultation obligations in the Agreement, as sufficient funds are not allocated to facilitating Inuit involvement when budgets are negotiated with the GoC.

As explained by the Nunavut Impact Review Board (NIRB) in its letter detailing its inability to provide the community of Clyde River participant funding for the SEA, NIRB's current budget allows for the paying of travel, accommodation and meal costs permitting community representatives to be present at public hearings, but does not provide for funding that would grant community representatives the resources required to participate effectively in NIRB's assessment process. NIRB characterizes the support it

provides as “community engagement”, distinguishing its funding from participant funding and clarifying the limits of its role in consultation.

Inuit community representatives, unless participant funds are provided, do not have the resources to review and understand all aspects of proposals, conduct necessary research, gather information and knowledge from community members, prepare submissions and respond to the submission of other parties. The most important aspect of the decision-making process, meaningful Inuit involvement, is short changed. There is mounting frustration that critical regulatory processes that impact on Inuit rights, and require Inuit participation, do not provide Inuit community representatives with the necessary support to be fully engaged. The absence of resources for Inuit participation in decision-making sends the message to Inuit that their contributions are not valued, impedes the meeting of Nunavut Agreement consultation obligations and is eroding the relationship between the Crown and Inuit. The denial of timely participant funds for impacted Aboriginal peoples is also throwing into question the long term legal reliability of regulatory processes.

Below, we outline our reasoning and recommendations for participant funding in the context of the SEA, environmental reviews under the NuPPAA and other regulatory processes.

### **Strategic Environmental Assessment: Oil and Gas Licensing in Baffin Bay and Davis Strait**

In February 2017, the Department of Indian Affairs and Northern Development (DIAND) requested the NIRB conduct a Strategic Environmental Assessment in Baffin Bay and Davis Strait to assist in the 5-year review of the GoC’s decision to designate Canadian Arctic waters as off limits to future oil and gas licences. The review of the GoC’s decision to keep Nunavut’s offshore waters off limits, or to open the area for oil and gas licensing and related seismic testing, triggers the Crown’s duty to consult with Inuit. The potential opening of Arctic waters to oil and gas development may negatively affect Inuit rights to wildlife harvesting under the Nunavut Agreement. As concluded by the Supreme Court of Canada in *Clyde River (Hamlet) v. Petroleum Geo-Services* 2017 SCC 40, the established treaty rights to hunt and harvest marine mammals are extremely important to the economic, cultural and social well-being of Inuit and Crown action that may infringe on those rights requires deep consultation.

NTI and QIA support the role of NIRB in performing the SEA in collaboration with DIAND. However, the current process without participant funding does not provide for deep consultation and cannot be relied on to fulfill the Crown’s duty to consult. Does the Crown intend to rely on the SEA as a means to satisfy its duty to consult for its decision to extend or revoke the designation of Nunavut’s offshore waters being closed to future oil and gas licensing?

NIRB is requested by DIAND to “provide opportunities for all stakeholders, with a strong emphasis on meaningful community engagement, to ask questions, share concerns, and present observations, and research to inform recommendations”. Taking into account NIRB’s assessment of its budget constraints and limitations in conducting consultations, without the allocation of participant funding to communities, this consultation objective will not be met. In their request for funding, the community of Clyde River has clearly explained that they require participant funds to collect community information including knowledge of elders, review relevant technical documents, and prepare submissions, research and responses. Due to budget constraints, NIRB has been forced to deny the community of Clyde River participant funds, compromising their ability to participate fully in the SEA.

It is essential for DIAND to grant communities involved in the SEA with participant funds to achieve meaningful Inuit participation and for the Crown to meet its duty to consult obligations within the context of a significant decision regarding oil and gas licensing in Nunavut's offshore waters affecting Inuit rights. The *Clyde River* case emphasizes that the lack of participant funding is an indicator of inadequate consultation underscoring the relevance of this issue.

### **Participant Funding Program for Environmental Reviews under NuPPAA**

The lack of a participant funding program within the context of NIRB environmental reviews is a long standing concern. You may recall that when the NuPPAA Bill (C-47) was before the House of Commons Committee, the QIA and the IPGs, with NTI's support, advocated strongly for amendments that would see a participant funding program included in the Bill. The GoC was alone in opposing the establishment of the program. NuPPAA came into force without a participant funding program and the door was left open to create a program through regulations.

The concern regarding meaningful Inuit participation in the environmental review process is growing. NIRB is on the record as stating that the level of community engagement in their processes is limited and has created a significant inequity resulting in Inuit not being fully engaged in review processes. This is unacceptable considering that NIRB addresses impacts on Inuit rights established in the Nunavut Agreement in the majority of reviews. Moreover, in instances where the GoC may wish to rely on NIRB consultation processes to fulfil the duty to consult when Crown action and Inuit rights are at issue, the GoC will not be able to do so considering existing consultation practices.

The creation of a participant funding program will facilitate meaningful Inuit involvement that addresses Nunavut Agreement rights and obligations and sets the foundation for the Crown to meet duty to consult obligations that may arise. For these reasons, NTI and QIA request that DIAND initiate, as soon as possible, the development of a participant funding program for Inuit through the regulation-making provision, paragraph 228(1)(b) of NuPPAA, which states:

*The Governor in Council may, on the recommendation of the federal Minister after close consultation by that Minister with the territorial Minister, the designated Inuit organization, the Commission and the Board, make regulations for carrying out the purposes and provisions of this Act and, in particular, regulations...*

*(b) establishing a funding program to facilitate the participation of specified classes of persons or groups in reviews of projects by the Board, a federal environmental assessment panel or a joint panel.*

### **Other Processes**

Adequate funding for Inuit involvement in other IPG decision making processes is necessary. A solution is required for the allocation of funding for Inuit participation in decision-making processes when Inuit rights are at stake, such as Inuit harvesting rights, under the Nunavut Agreement. For example, in the context of Nunavut Wildlife Management Board (NWMB) public hearings, Inuit are facing obstacles to meaningful participation similar to those encountered with NIRB's environmental review processes. IPGs require reasonable budgets that allow them to engage and consult fully with Inuit.

Further discussions are required to ensure that Inuit community representatives have access to adequate funds for engagement in public hearings such as those of the NWMB. The regulation-making provision of the Nunavut Land Claims Agreement Act provides a vehicle for implementation of Nunavut Agreement consultation obligations. The Act states at section 8:

*8 The Governor in Council may make such orders and regulations as are necessary for the purpose of carrying out any of the provisions of the Agreement.*

NTI and QIA request that long-term regulatory solutions be found to address the participant funding concerns raised and that discussions be initiated, as soon as possible, to obtain a mutually acceptable resolution to these issues.

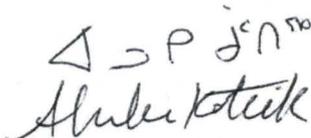
### Conclusion

We are optimistic that there is broad consensus around the importance of addressing fundamental gaps in participant funding issues raised in the context of the SEA, NIRB environmental reviews and other IPG processes. We are similarly optimistic that there is also a shared willingness to take corrective steps to eliminate such gaps. Regular, informed and meaningful Inuit participation in Nunavut decision-making processes is an essential part of creating a more constructive and reliable on-going relationship between the Crown and Nunavut Inuit, thereby contributing to the project of reconciliation.

Considering that there is an immediate need for participant funding in the SEA process, we request that participant funding be granted by September 30 and that NIRB's SEA scoping comment period be extended for one month. This is to ensure that participant funds are granted in time for communities to participate meaningfully in the SEA scoping exercise. We understand this delay can be accommodated within the overall SEA timeline without jeopardizing the final March 2019 deadline.

We look forward to your early reply.

Sincerely,

Aluki Kotierk  
President, NTI

P.J. Akeeagok  
President, QIA

c.c.  
Chair, Clyde River Hunters and Trappers Organization  
Chairs, Hunters and Trappers Organizations  
Chair, Nunavut Impact Review Board  
Chair, Nunavut Wildlife Management Board  
Chair, Nunavut Water Board  
Chair, Nunavut Planning Commission  
Presidents, Nunavut Regional Inuit Associations











NIRB File No.: 17SN034

August 10, 2017

Jerry Natanine, Chairperson  
Clyde River Hunters and Trappers Organization  
P.O. Box 149  
Clyde River, NU X0A 0E0

*Sent via regular mail and email: [htoclyde@qiniq.com](mailto:htoclyde@qiniq.com)*

**Re: Response to Request of Clyde River HTO for Participant Funding to Support Participation in the Nunavut Impact Review Board's Strategic Environmental Assessment**

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Dear Jerry Natanine,

Thank you for your correspondence of August 4, 2017 addressed to both the Minister of Indigenous and Northern Affairs Canada (INAC) and the Chairperson of the Nunavut Impact Review Board (NIRB or Board). In your correspondence, you requested participant funding be provided by the Government of Canada to support the full and meaningful participation of the Clyde River Hunters and Trappers Organization in the NIRB's on-going Strategic Environmental Assessment in Baffin Bay/Davis Strait (NIRB File No. 17SN034).

The NIRB is very receptive to working with the Clyde River Hunters and Trappers Organization, local organizations and community members to accommodate suggestions and/or requests that may result in increased public engagement in the ongoing Strategic Environmental Assessment in Baffin Bay/Davis Strait, to the extent that our available funding and mandate allow. In scheduling scoping meetings this coming fall, the NIRB has been working with the communities to select dates that will maximize availability of community members to the extent possible, scheduling public meetings over 2 consecutive days in each community. The Board is also coordinating with and offering support to the Qikiqtani Inuit Association's (QIA) planned efforts to conduct independent workshops to collect Inuit Qaujimagatuqangit to inform the Strategic Environmental Assessment.

While the Board supports your request and recognizes the critical importance of the participation of the local Hunters and Trappers Organizations and communities throughout this area during the Board's Strategic Environmental Assessment, I regret to advise you that there is currently no formal participant funding program in Nunavut to provide this kind of support. The NIRB, Nunavut Tunngavik Inc. (NTI) and other intervenors have often identified that this lack of a

statutory participant funding program to facilitate public participation in the NIRB's processes has created a significant gap and inequity in the impact assessment regime in Nunavut. Over the years, the NIRB has repeatedly identified that the lack of a formal participant funding program challenges the Board's ability to carry out inclusive and comprehensive assessments. The Board has often raised this issue with the Federal Government in the past, including in the context of specific Reviews of project proposals, in the Board's submissions to Parliament about regulatory reform and in the Board's appearances before the Senate and the House of Commons during the review of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14.

Currently, participant funding requests arising during the Board's processes have been addressed by the Federal Government on a project by project basis without set criteria. In general, most of the NIRB's recent requests for participant funding have been met with the advice that funding is not available because there is no formal program in place. In the Board's view, this ad hoc approach to participant funding results in inconsistencies between specific NIRB assessments and also inconsistencies between Nunavut and most other Canadian jurisdictions where assessments are carried out through the Canadian Environmental Assessment Agency, the National Energy Board or the Canadian Nuclear Safety Commission, each of which has formalized participant funding programs.

Recently, the Board's requests for the provision of participant funding during NIRB assessments have also been met with suggestions by INAC that, in lieu of participant funding, the NIRB should address these needs via the support for consultation activities already included in the NIRB's budgets and work plans for the Board's assessment. While perhaps well intentioned, this suggestion does not recognize the significant differences between the purpose of a robust participant funding program and the kind of funding support the Board can offer to community representatives to attend key meetings or hearings.

A participant funding program provides participants with the support required by parties to access the resources and expertise (including support from consultants, technical advisors, legal counsel, etc.) needed to participate effectively in the NIRB's assessment processes. Typically participant funding supports the technical review of information, research, collection of data, preparation of submissions and presentations, preparation of witnesses and retention of experts, including legal representation throughout these processes. In contrast, the NIRB's existing funding support is more properly characterized as a "community engagement" program, as the sole focus of this component of the Board's budget and work plans is on ensuring potentially affected parties can attend key meetings in the NIRB process. The NIRB's existing approach allows for the provision of very limited logistical and funding support, such as providing travel, accommodation and meal expense reimbursement to community representatives to be present at public hearings at a venue outside their home community.

Given the very different purposes, focus and processes associated with participant funding, when compared to the NIRB's community engagement funding, the NIRB asserts that community engagement funding is in no way a substitute for participant funding. While we recognize the importance of NIRB's community engagement facilitating attendance at key points in the NIRB process, this limited support is not designed to provide the resources necessary to ensure fulsome

participation of potentially affected groups. On this basis, the Board recognizes that the NIRB's current process is not an adequate substitute for a comprehensive participant funding program for Nunavut.

The Board supports the many parties, including the Clyde River Hunters and Trappers Organization who have asserted that participant funding should be made available to participants in the Board's assessment processes. In the interim, the Board recognizes the challenges this participant funding gap creates and will continue to work with communities, NTI, Regional Inuit Associations, the Government of Nunavut (GN), INAC and local organizations to support participation of all interested parties in our processes to the extent possible. I invite you to contact the Board's Executive Director, Ryan Barry at his direct line: (867) 983-4608 or via e-mail: [rbarry@nirb.ca](mailto:rbarry@nirb.ca) to discuss any measures that the Board can take to facilitate the continued participation of the Clyde River Hunters and Trappers Organization in the ongoing Strategic Environmental Assessment in Baffin Bay/Davis Strait despite the current limitations.

Sincerely,



Elizabeth Copland  
Chairperson  
Nunavut Impact Review Board

cc: The Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs  
Distribution List

Carolyn Bennet  
Minister, Indigenous and Northern Affairs Canada

Elizabeth Copeland  
Chair, Nunavut Impact Review Board

August 4, 2017

**RE: Need for participant funding for Strategic Environmental Assessment**

Ms. Bennet & Ms. Copeland

I am writing to you today, to request the Government of Canada provide participant funding to help Inuit participate in the Strategic Environmental Assessment (SEA) for offshore oil/gas development in Baffin Bay and Davis Strait.

I am pleased that the Nunavut Impact Review Board (NIRB) is currently conducting an SEA into this matter. The last assessment of oil and gas exploration – the National Energy Board's review of proposed seismic surveys – did not meaningfully engage our hunters and elders, did not communicate properly with our residents, and did not meaningfully address our concerns. We are very hopeful that this SEA will be a better experience

It will be important to ensure that Clyde River hunters' and elders' perspectives are taken into account. Oil and gas is clearly very controversial in our community, and we have many concerns that need to be addressed. However, we require significant funding to meaningfully participate.

During the initial scoping phase of the assessment, we will incur expenses for hosting community workshops to document community concerns, consultant and legal fees to help us review draft scoping documents, and travel fees for legal counsel and consultants to attend scoping workshops. We anticipate these costs will total roughly \$35,000.

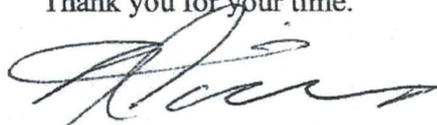
During later phases of the review, we will require funding to conduct further community-based research, consultant and legal fees to help us review other submissions to the NIRB, and travel fees for legal counsel, consultants, and other researchers to attend meetings and perform services in our community. We have yet to determine what our costs will be for these later phases of the review.

We believe that the federal government has an obligation to provide Inuit with financial resources to participate in this SEA. Courts have repeatedly ruled that Inuit are owed 'deep' consultation when oil/gas development in Baffin Bay and Davis Strait are concerned. The Supreme Court of Canada has also repeatedly stated that deep consultation often requires the Crown to provide funding to aboriginal groups to allow them to participate in environmental reviews and licencing processes.

In closing, I would like to stress the urgency of this matter. The NIRB will be releasing a draft scope for this review in the fall of 2017. As such, if we cannot access funding by September

2017, we will be unable to meaningfully participate in the scoping phase of this review. Scoping is, in our opinion, one of the most important stages for indigenous participation, especially when 'deep' consultation is required. Scoping is when the NIRB will determine what issues will be addressed through the SEA. If we cannot meaningfully participate in this vital initial stage, our participation in later stages will not be meaningful. As such, meaningful consultation with Inuit in this review requires substantial participant funding for the initial scoping stages of the review.

Thank you for your time.

A handwritten signature in black ink, appearing to read 'Jerry Natanine', with a stylized flourish at the end.

Jerry Natanine  
Chair, Clyde River Hunters and Trappers Organization

