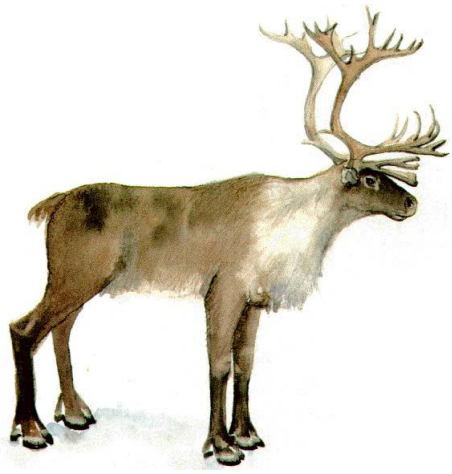

Nunavummiut Makitagunarningit

Comments on the Revised Draft Guidelines for AREVA Resources Canada Inc's preparation of the Environmental Impact Statement (EIS) for the proposed 'Kiggavik' Project

Submission to the Nunavut Impact Review Board

March 2, 2011

1. About Nunavummiut Makitagunarningit

Nunavummiut Makitagunarningit ('Makita') is an independent, non-governmental organization with members in Iqaluit and Baker Lake.

In our comments on NIRB's Draft EIS Guidelines for AREVA Resources' proposed Kiggavik uranium mine, Makita stated that we would be submitting more detailed comments once the Revised Draft Guidelines were issued and we held "community consultations … using a NIRB document translated into Inuktitut." As the Nunavut Impact Review Board has not had the draft Guidelines translated into Inuktitut, we have not been able to hold the kind of community consultations we had envisioned.

Our limited comments on NIRB's Revised EIS Guidelines are as follows:

2. Lack of essential documents translated into Inuktitut

As we noted in our comments on the Draft Guidelines, "Proper community consultation is not possible without essential documents being made available in Inuktitut. Makita raised this matter with NIRB on November 18, 2010, and on November 23rd NIRB stated that it "is currently endeavouring to translate … key provisions of the Draft EIS Guidelines for the Kiggavik Project, and we will make these documents available for information purposes as soon as meaningful translations have been completed.""

In response, NIRB stated:

> Submission of a translated EIS Guidelines has been delayed due to the technical issues regarding translation.

On February 27, 2011, the Baker Lake Hunters and Trappers Organization (HTO) wrote NIRB requesting "that the Kiggavik review be immediately put on hold until a vocabulary can be developed that allows the draft guidelines to be translated into the Baker Lake dialect of Inuktitut."

On March 2, 2011, NIRB responded that it had been unable to do so – but that "suspending the Board's review of the Kiggavik project proposal would not appear to be feasible at this time, given that such a delay could prove to be indefinite."

Makita notes that:

a) Nunavummiut have known since the suspension of the Federal Environmental Assessment Review Office (FEARO) review in 1990 that one day there would be a second attempt to exploit the Kiggavik uranium ore body, with a resulting review process.

b) In the years since its creation NIRB appears to have given no thought to the need to develop the terminology required to allow unilingual Inuktitut speakers to fully participate in the review of a proposed uranium mine.

c) Similarly, neither AREVA Resources nor the Canadian Nuclear Safety Commission have sought to develop so much as an English/Inuktitut glossary of key terminology.

d) The result is that all unilingual English speakers can participate fully in NIRB's review of a proposed uranium mine located 80 kms from the community of Baker Lake, but unilingual Inuktitut speakers in the community of Baker Lake cannot.

Makita supports the Baker Lake HTO's request that the Kiggavik review be immediately put on hold until a vocabulary can be developed that allows the draft guidelines to be translated into the Baker Lake dialect of Inuktitut.

3. Failure to acknowledge the 'basin opening' nature of the proposed project

NIRB's Draft EIS Guidelines limited the definition of 'reasonably foreseeable future development' to "Projects or activities that are currently under regulatory review or that will be submitted for regulatory review in the near future, as determined by the existence of a proposed project description, letter of intent, or any regulatory application files with an authorizing agency." A very different perspective was presented at NIRB's "community scoping sessions" in April 2010:

> Perhaps the most far-reaching question was asked by a hunter on the third night, after the NIRB facilitator stated that NIRB defines "cumulative effects" as "effects resulting from incremental impact of the action when added to other past, present and foreseeable future actions."
>
> This is what the hunter said:
>
> "Everyone knows that this review is not really about the Kiggavik proposal, yes or no. This review is about opening the Kivalliq – and Nunavut as a whole – to uranium mining, yes or no.
>
> "We know that there's a lot of uranium around Baker Lake, which is why this community is surrounded by uranium exploration. AREVA has already spoken publicly about the possibility of the mill at Kiggavik being used to process uranium from other mines to be built in the future. In 20 years there could be several or many mines, with several or many roads between them, and everything else that comes with additional mines.
>
> "For this review to be intellectually honest, you are going to have to model a realistic 'likely scenario' of what could very well happen if this region is politically opened up to uranium mining.
>
> "I believe that "foreseeable future actions" resulting from approval of the Kiggavik could be six or 12 or who knows how many uranium mines. How are you going to model their cumulative effects on the caribou, on the environment and on the people of Baker Lake?"[1]

Makita argued in our comments on the Draft Guidelines that real 'cumulative impact assessment' in this situation requires modeling what the uranium industry might look like in the Kivalliq industry in 20 years time, and assessing what the cumulative impact of the entire development scenario might be.

Makita noted that a broader definition of cumulative effects is not without precedent in Canada. The *Canadian Environmental Assessment Act* defines cumulative effects as "any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out."[2] The Canadian Environmental Assessment Agency (CEAA) interprets this to include assessment of "the most likely future scenario", which may include consideration of hypothetical projects.[3] The CEAA states:

---

[1] www.nunatsiaqonline.ca/stories/article/98789_nirb_uranium_firm_governments_look_like_part_of_same_team/

[2] See CEAA's Operational Policy Statement, http://www.ceaa.gc.ca/default.asp?lang=En&n=1F77F3C2-1

[3] Ibid.

> The Agency's 1994 Reference Guide advised that the assessment of cumulative environmental effects in relation to future projects should focus exclusively on imminent projects, that is, projects that have been approved but not yet implemented or proposals awaiting planning or other formal approval. It is now recognized that this approach may not always be adequate to understand the implications of development activities on the future well-being of the environment. Also, it may limit the ability of cumulative environmental effects assessment to contribute to informed environmental planning and decision making in the future in the project area.

Makita also noted that the Report of the Joint Review Panel for the Mackenzie Gas Project, *Foundation for a Sustainable Future*[4] (December 2009), has put this higher standard into practice. Chapter 3 of the JRP's report outlines their approach to potential future projects. Here, a distinction is made between the project under review and the "Project as Filed" (p.54). The project under review includes additional infrastructure deemed hypothetical by the project proponent, but which the JRP believed to be reasonably foreseeable "notwithstanding that it is not possible to identify specifically what those developments would be or, more importantly, where they might be located" (p.54).

Makita stated that cumulative effects assessment in Nunavut should reflect, at a minimum, the minimum standards of best practice in the rest of Canada. We noted that such an approach would contribute to proper environmental planning for a 'basin opening' project like Kiggavik.

NIRB responded:

> The NIRB's jurisdiction is limited to reviewing the specific project proposal as proposed by AREVA. There is no evidence before the NIRB regarding foreseeable future projects at this time. In the event that this project is followed by other uranium mining project proposals, clearly the question of cumulative effects of the additional mining proposals would be brought before the NIRB and would be considered at that time.

Makita believes that NIRB's approach is a decade or two behind 'best practice' environmental assessment in Canada, including that of the Canadian Environmental Assessment Agency.

Makita continues to insist that the 'basin opening' nature of the proposed Kiggavik project must be reflected in the approach to 'cumulative impact assessment' used in the NIRB review. To do otherwise would be to deny the obvious.

4. The capacity of government to competently regulate uranium mining in Nunavut

In our comments on the Draft Guidelines, Makita noted that NIRB's Draft Guidelines were silent on the question of the capacity of government (both federal and territorial) to competently regulate a uranium mine in Nunavut. The FEARO Guidelines were not. Among other things, they asked:

[4] http://www.ceaa.gc.ca/default.asp?lang=En&n=71B5E4CF-1

2.2.2

- What is the expected departmental cost for each government office that would have a regulatory or monitoring responsibility should the project proceed? Include costs from exploration to long term post-project monitoring. Is the expertise, manpower, infrastructure and equipment available within these offices at the present time? If not, from where would these resources be drawn and at what cost? (GNWT, AECB, EM&R, DIAND, NWT Water Board, DFO, HWC, DOE, DOT, LC)

part of 2.4.1

- How would regulation of the proposed project be coordinated between and within government agencies at all levels of government? (GNWT, AECB, EM&R, DIAND, NWT Water Board, DFO, HWC, DOE, DOT, and LC)

- How would compliance with regulations be enforced by responsible government agencies? (GNWT, AECB, EM&R, DIAND, NWT Water Board, DFO, HWC, DOE, DOT, and LC)

- How would information required by regulation be recorded? Would it be publicly available? (GNWT, AECB, EM&R, DIAND, NWT Water Board, DFO, HWC, DOE, DOT, and LC)

Makita stated our belief that a cost benefit analysis must be done for the construction, operation, closure, and long term care and maintenance phases of the project from a public accounts perspective. This work should include consideration of both revenues and public expenditures to support an appropriate compliance and effects monitoring regime that meets NLCA Article 23 requirements. We argued that this information is necessary for NIRB to make an informed judgment regarding the socio-economic effects of this project and reasonably foreseeable future projects. These are questions that government should answer, and questions that we hoped NIRB would require the government to answer.

NIRB responded:

> The FEARO Guidelines were developed at a time that pre-dated the establishment of the regulatory framework that governs EIA and licencing in Nunavut today. Given the established regulatory processes in Nunavut such an inquiry is no longer required.

This statement makes no sense to us. As NIRB has demonstrated, having an "established regulatory [process]" in place does not assure capacity and competence. Makita has seen no evidence that government has given sufficient thought to the considerable number of specialized staff that would be required to competently regulate a uranium mining industry in Nunavut.

Makita insists that all levels of government – including the Canadian Nuclear Safety Commission – should be asked about their ability to competently regulate uranium mining in Nunavut, as per parts 2.2 and 2.4.1 of the FEARO Guidelines.

5. More clearly-worded questions about radiation

In our comments on the Draft Guidelines, Makita noted that one of the characteristics of the FEARO Guidelines was that they were developed specifically for the review of a proposed *uranium* mine. There were a significant number of sections in FEARO's Guidelines where the proponent is required to explain how radiation may impact on plant life (3.1.1), wildlife (3.1.2), and public health (5.2). They were very clearly worded and easy to understand. Given the almost complete lack of reference to radiation or radioactivity in NIRB's Draft Guidelines, Makita suggested that NIRB simply incorporate these sections of the FEARO Guidelines into its Revised Draft Guidelines.

NIRB responded:

> Tying most of the impacts in the sections specifically to radiation and radioactivity may actually limit the range of environmental and health effects considered. The more general wording in the NIRB EIS Draft Guidelines is more encompassing than the FEARO references.

The purpose of EIS Guidelines is to spell out, in considerable detail, the topics that the proponent must address in their EIS. Makita is not aware of a precedent for a body such as NIRB arguing that employing wording that is "more general" will result in an EIS being "more encompassing".

Makita insists that sections 3.1.1, 3.1.2 and 5.2 of the FEARO Guidelines be incorporated in the NIRB Guidelines.

6. A monitoring system worthy of the land, the people and the wildlife

In our comments on the Draft Guidelines, Makita argued that if the Kivalliq region is to be opened to uranium development, future generations deserve to know *with certainty* what the impacts of that development have – and have not – been. A scenario of (for example) five uranium mines each with its own project-specific monitoring system would be a travesty. Makita noted that NIRB has shown a willingness to approve projects in the absence of a co-ordinated system of monitoring socio-economic impacts across Nunavut. Makita called for a well-designed 'general monitoring program' for the Kivalliq, to be operated by *an independent body* with sufficient funding to do the job well – and not by the proponents/operators themselves. This program, including its effects monitoring methodology and organizational structure, should be designed and agreed upon by intervenors prior to the issuance of NIRB's final hearing report.

NIRB did not comment on this recommendation.

7. End use

In our comments on the Draft Guidelines, Makita noted that AREVA's public relations material asserts that uranium mined in Nunavut will only be used for the production of electricity – and will not find its way into nuclear weapons. We stated that the proponent should be required to show how and why, with certainty, the latter cannot occur.

Makita noted that AREVA has recently signed significant nuclear contracts with India,[5] and that the government of Australia has recently refused to allow the export of uranium to India because the Indian government refuses to sign the Nuclear Non-Proliferation Treaty.[6] Makita asked how Canadian uranium can be guaranteed not to end up in India's nuclear weapons program once again.[7]

NIRB said:

> In the absence of evidence that the information supplied to the NIRB is inaccurate or misleading, the NIRB does not have the resources nor the mandate to conduct further inquiries of this nature and will rely upon the information as submitted.

What a gift to the proponent, NIRB's willingness to accept without question AREVA's assertion that there is no chance of uranium from Kiggavik ending up in nuclear weapons!

The journal The Ecologist has since published an article which concluded that "The major powers have "normalised" India's nuclear weapons through special exceptions in global nuclear commerce rules. France [has] used these to drive a bargain for crash-strapped Areva" when negotiating the contract for six 1,650-MW reactors at Jaitapur, in Maharashtra state.[8]

Makita believes that the onus is not on intervenors to disprove the proponent's claims – the onus is on the proponent to substantiate them. We assert that AREVA cannot guarantee with certainty that uranium from Kiggavik will not end up in nuclear weapons.

(In our comments on the Draft Guidelines Makita also noted that recent research has "reported a 1.6-fold increase in solid cancers and a 2.2-fold increase in leukemias among children living within 5 km of all German nuclear power stations."[9] This finding has been accepted by the German government, but dismissed by the President of the Canadian Nuclear Safety Commission.)

[5] http://www.guardian.co.uk/environment/2010/dec/28/india-areva-nuclear-power-bouissou

[6] http://news.bbc.co.uk/2/hi/asia-pacific/7188835.stm; http://news.ino.com/headlines/?newsid=11920110216

[7] http://en.wikipedia.org/wiki/Smiling_Buddha

[8] http://www.theecologist.org/blogs_and_comments/commentators/other_comments/764515/the_truth_behind_indias_nuclear_renaissance.html

[9] http://www.ehjournal.net/content/8/1/43

8. The proponent

On February 22, 2011, the World Nuclear News reported that "Areva will be required to spin off its uranium mining activities under the French government's plans for a strategic partnership between the company and EDF. … The Nuclear Policy Council, headed by President Nicolas Sarkozy … [has decided that] Areva must spin off its uranium mining interests into a subsidiary "as a prerequisite" for putting in place strategic and financial support for its future development."[10]

So… in a few months' time (the timeline is "before the middle of this year"), who will be the proponent of the proposed Kiggavik uranium mine?

[10] http://www.world-nuclear-news.org/newsarticle.aspx?id=29485