



Department of Justice
Canada

Ministère de la Justice
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File Number: 2-90482

April 09, 2014

ELECTRONICALLY

Paul Dixon
Executive Director
Sahtu Land and Water Board
P.O. Box 1, Fort Good Hope, NT
X0E 0H0

Dear Sir:

Re: Additional Information Requests to AANDC for Imperial Oil Resources Limited's Application for Type A Water Licence renewal (S13L1-007)

Please be advised that I am legal counsel for Aboriginal Affairs and Northern Development Canada ("AANDC") for the purpose of the above-noted water licence renewal process. Further to your letter of March 21, 2014 to Kathryn Bruce, Regional Director General of the Northern Regional Office of AANDC, AANDC hereby submits the following information as requested by the Board.

I would like to take this opportunity to inform you that, depending on the context, AANDC is responding either in its capacity as an owner of a one-third interest in the Norman Wells Proven Area or in its capacity as a regulatory decision-maker.

AANDC IR #3: Details on Crown Trust Account to Secure Closure and Reclamation Costs for Imperial Oil Resources Limited Norman Wells Operation

Details about the "Trust"

- a) Please describe and explain the nature of the Trust. Is it established by a formal legal agreement or trust indenture? If it is, please provide a copy of any relevant agreement to the Board.
- b) If there is no formal agreement in place please explain how the trust is established and its nature.
- c) Advise the Board on the source of funds deposited to the Trust. Who makes these contributions? If IORL is not contributing to the fund, is there any legally binding agreement between the Crown and IORL addressing the manner in which IORL will fund closure and reclamation of the Norman Wells facilities?
- d) Explain in detail how and when funds can be withdrawn from the Trust and by whom.

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- e) Please advise the Board on the purposes for the Trust and more specifically on the purposes for which Trust funds may be expended. In particular, can these funds be used for closure and reclamation of IORL's Norman Wells facilities and site? Can they be used for other purposes?
- f) If funds in the Trust are intended for closure and reclamation of the IORL Norman Wells site, please advise the Board of AANDC's position on whether the current balance in the fund should be counted as a credit towards any amount of security required of IORL by the Board in this Water Licence proceeding.

AANDC Response:

a) through e): AANDC understands this request to refer to the Trust Account mentioned in Imperial's response to the Board's request to Imperial of February 6, 2014. AANDC's response is that although the Crown is the beneficiary of the Trust, it is not a party to the trust agreement between Imperial and a third party to retain in trust a portion of the annual revenue stream from the Norman Wells Proven Area in amounts which reflect estimates by Imperial of the Crown's one-third share of abandonment and reclamation costs associated with the Proven Area. The Crown relies on Imperial as operator to manage the Crown's interest in the field and in this role Imperial is responsible for the estimation of abandonment and reclamation costs reflected in the reserves accumulated in the Trust.

Further, AANDC is bound by a confidentiality agreement regarding the arrangement between the parties to the Trust. Imperial as operator of the field would be best placed to respond to the Board's inquiries a) through e), and indeed has done so in their response to IR #6 issued to Imperial on February 28, 2014.

f) To the extent that the funds in trust address matters of concern to the Board in this proceeding, AANDC would consider this information to be relevant in determining the overall amount of security required to be posted under a renewed water licence held by Imperial. AANDC also notes that the Crown holds a one-third interest in the Norman Wells Proven Area and that this ownership arrangement includes responsibility for its proportionate share of the estimated abandonment and reclamation costs.

AANDC IR #4: The Norman Wells Proven Area Agreement

- a) Please set out AANDC's position with respect to the legal priority or paramountcy of the Proven Area Agreement in relation to the Board's authorities to require security under s. 17 of the *Northwest Territories Waters Act*.
- b) Please advise the Board on AANDC's preference as to the vehicle for holding security for closure and reclamation of the IORL Norman Wells facilities. Should any additional security be held by the Minister under the Water Licence or should it be held in the Trust?

AANDC Response:

a) The Norman Wells Proven Area Agreement does not take any priority or paramountcy over the Board's ability pursuant to s. 17 of the *Northwest Territories Waters Act* (now s. 71(1) of the amended *Mackenzie Valley Resource Management Act*) to require, as a condition of a water licence, that security be posted with the Minister. Nor does the Proven Area Agreement oust the jurisdiction of the Board with respect to the Norman Wells facilities or otherwise exempt Imperial from the operation of any other federal regulatory regime.

b) AANDC has noted in its response to IR #3 that the Crown is not a party to the Trust. The Trust is not a vehicle for the Minister to hold security for abandonment and reclamation costs associated with the Norman Wells facilities. As noted in Imperial's response to the Board on February 28, 2014, current annual abandonment and reclamation work is financed from current year revenues for both Imperial and the federal government. As of year-end 2013, \$181.4 million was held in trust to secure the Crown's one-third portion of abandonment and reclamation costs once this revenue stream ends.

Please do not hesitate to contact me should you require any further information regarding these matters.

Yours truly,



Scott Duke
Legal Counsel
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