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Chair

Mr. Blake Richards

Standing Committee on Aboriginal Affairs and Northern Development

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● (0850)

[*English*]

The Chair (Mr. Blake Richards (Wild Rose, CPC)): I call the meeting to order.

Welcome to the 35th meeting of the Standing Committee on Aboriginal Affairs and Northern Development. We're on our study of Bill S-6.

We have with us, for the first 45 minutes, two individuals from the Government of Nunavut: Gabriel Nirlungayuk, the deputy minister of the environment, and William MacKay, acting assistant deputy minister of intergovernmental affairs.

We're fortunate to have both of you with us this morning. We do have 10 minutes allotted for an opening presentation. I'm not sure who is making that.

Mr. Nirlungayuk, we'll have you begin. You have 10 minutes and then we'll take some questions from the members.

Mr. Gabriel Nirlungayuk (Deputy Minister, Environment, Government of Nunavut): Thank you, Mr. Chair.

Good morning. My name is Gabriel Nirlungayuk and I am the deputy minister of environment for the Government of Nunavut. On behalf of Premier Taptuna I would like to thank the committee for this invitation this morning that was extended to the premier. Premier Taptuna sends his regrets. I am appearing on his behalf.

Also appearing for the Government of Nunavut is Mr. William MacKay, acting assistant deputy minister of intergovernmental affairs.

This morning I am here to speak in support of part 2 of Bill S-6, An Act to amend the Nunavut Waters and Nunavut Surface Rights Tribunal Act.

This bill is an important step in creating an effective and modern regulatory regime in Nunavut. The Nunavut Water Board plays an essential role in land and resource management in Nunavut. lt is composed of members appointed or nominated by Inuit, as well as the territorial and federal governments. lt has operated effectively in Nunavut since 1996.

This bill will give the board and regulators important new powers that will ensure that water use in Nunavut is sustainable and environmentally friendly.

Mr. Chair, the Government of Nunavut believes that this bill will make a number of improvements to the regulatory regime in Nunavut. lt will give the water board increased flexibility and give regulators better enforcement powers. lt will ensure a regulatory process with predictable timelines and clear integration with the work of the other regulators and boards in Nunavut.

The Government of Nunavut supports the proposed amendments and was consulted when they were developed. In particular, Mr. Chair, the increase in existing fines associated with water licenses will bring the fine levels in line with those under the Territorial Lands Act, and other pieces of federal environmental legislation, and will serve as an effective deterrent to unlicenced water use.

Likewise, the addition of an administrative monetary penalties regime will give enforcement officers more tools to ensure that this legislation is complied with and will allow for more effective and efficient enforcement of water licence conditions.

Allowing for life-of-project water licences will give the water board the flexibility to issue licences to developers that are better tailored to the particular water use and will give developers clearer certainty of their water rights.

The requirement in the bill that the water board takes into consideration agreements between Canada, regional Inuit associations, and proponents regarding posting of security will address the issue of overbonding, which is a barrier to investment in Nunavut.

The specific timelines that are established in the bill for regulator and minister decisions are particularly welcomed by the Government of Nunavut. This will bring certainty and predictability to Nunavummiut, industry, and other stakeholders.

As the committee can see, this is an important piece of legislation for the north, particularly Nunavut, and will contribute to the environmental protection and economic development for Nunavut.

Mr. Chair, that is all I have in terms of opening comments.

I thank the committee members for your time.

Subject to any further opening remarks by my colleague, Mr. MacKay, we are prepared to answer any questions the committee may have.

Thank you.

The Chair: Thank you, Mr. Nirlungayuk.

Mr. MacKay, did you have something to add as well?

Mr. William MacKay (Acting Assistant Deputy Minister, Intergovernmental Affairs, Government of Nunavut): Yes, Mr. Chair. I have just a few additional comments.

Thank you to Mr. Nirlungayuk for his comments. As he mentioned, I'm the acting assistant deputy minister for Intergovernmental Affairs.

In my opening comments, I'd like to recognize the role that the federal government has taken in involving Inuit and the Government of Nunavut in its regulatory improvement initiative for the north. Recently it made amendments to the Territorial Lands Act, which has allowed for better enforcement mechanisms and greater predictability and transparency with respect to the management of lands in Nunavut. Also, the federal government worked closely with the Government of Nunavut to enact the Nunavut Planning and Project Assessment Act, which also brings a lot of regulatory certainty to Nunavut, and which we think will foster greater investment in Nunavut. We'd like to acknowledge the federal government's role in involving the territorial government and Inuit in this regulatory initiative.

As members of the committee may know, the Government of Nunavut is currently engaged in devolution discussions to transfer jurisdiction over lands and resources from the federal government to the Government of Nunavut. The proposed amendments to the Nunavut Waters and Nunavut Surface Rights Tribunal Act will contribute to a transparent and effective regulatory system in Nunavut. An effective regulatory system is a key component of devolution and will assist in the transition of land and water management from Canada to Nunavut. As my colleague noted, this is an important piece of legislation for the north and will contribute to the environmental protection and economic development of Nunavut.

Mr. Chair, those are my opening remarks. Like my colleague, I'm prepared to answer any questions from the committee.

● (0855)

The Chair: Thank you very much, Mr. MacKay.

You certainly both will have an opportunity to answer some questions, I have no doubt.

We'll start off our questioning with Ms. Ashton.

Ms. Niki Ashton (Churchill, NDP): Thank you very much.

Thank you, Minister. Thank you to both of you for attending today.

It's our first opportunity to hear from the Government of Nunavut and, frankly, any representative from Nunavut on this bill. We certainly appreciate your presentation today.

Minister, I was very pleased to hear in your presentation that Nunavut was adequately consulted and was a key partner in this entire process. Obviously we're concerned about the rest of the bill pertaining to the Yukon. Consultation is an issue of grave concern in that context.

With focus on the Nunavut Water Board, I'm wondering about some background with respect to decisions around water licences. On average up to now, how long have licence decisions usually taken?

The Chair: Mr. Nirlungayuk.

Mr. Gabriel Nirlungayuk: I believe that the member of the water board will be appearing before you this morning. I know there are a few projects that have been coming up in Nunavut. It's pretty virgin territory. There are a few mines opening up that, including Meadowbank, near Baker Lake, and Baffinland up in Baffin Island, which I know had to go through the process.

I'm sorry, but I couldn't really tell you, but I believe the water board will be appearing before this committee and they will have a more definitive answer.

Ms. Niki Ashton: Absolutely, and we can definitely relay that question.

I guess it becomes a discussion, which you referred to, about certainty. In the more overall sense with this certainty and the issuing of water licences and, obviously, the powers that the Nunavut Water Board will have, I'm wondering what that will mean for you and your government in terms of development, we hope, in the near future.

Mr. William MacKay: Well, certainly the amendments made to this bill, plus the amendments to the Territorial Lands Act, plus the new Nunavut Planning and Project Assessment Act, all of those together do give a level of certainty. Timelines are a part of that certainty to investors and project proponents in Nunavut, so they'll have a general idea of how long the process will take. They'll have a general idea from the legislation of what will be requested or expected of them. So we feel that will help investment or encourage investment from people outside Nunavut into the mining industry, in particular.

Ms. Niki Ashton: That's very positive to hear, of course. In terms of the expanded powers coming from this bill, do you believe in the need, or does your government have a sense of the need, for increased capacity and perhaps increased supports to make sure that now these shorter timelines are fulfilled? Could you speak to us about the issue of capacity and perhaps needs going forward?

● (0900)

Mr. Gabriel Nirlungayuk: I will give you an idea. You know that Nunavut territory is pretty young. We're past the honeymoon phase, I guess, at this point. With its significant mineral potential, the natural resources sector will only continue to grow as infrastructure develops and training and education opportunities. However, there is a significant lack of infrastructure, as you know, in Nunavut, and in some cases that lack of infrastructure presents insurmountable obstacles for projects. For example, there are minerals in central Kitikmeot, in the western part of the territory. Because of the lack of infrastructure, the area's potentials is dormant, as we speak. However, as more companies begin to operate in the territory, infrastructure will grow—which is our hope—and further opportunities will be presented. Considering the continuing investment in the natural resources sector, along with the progress in other economic areas, we see a bright future for Nunavut now.

Ms. Niki Ashton: Okay, thank you for sharing that.

Could you provide perhaps some more specifics about what kind of infrastructure you're referring to?

Mr. Gabriel Nirlungayuk: We lack roads and ports. If you go to the eastern Arctic, I'm sorry to say this, but to be blunt, it might as well be the third world because of the lack of ports. The ships that are coming in have to transport goods to barges. It adds to the expense of goods being delivered to Nunavut. The lack of roads is a big hindrance to development of the territory. When Canada was built in the early 19th century, we were the hinterland, those people up there. So we were forgotten. The infrastructure—roads and ports, airports, housing, you name it—is very expensive. So we are working towards building, with the cooperation of Canada, but we're very lacking in infrastructure.

Ms. Niki Ashton: Thank you.

The Chair: Thank you very much.

We'll move now to Mr. Strahl.

Mr. Mark Strahl (Chilliwack—Fraser Canyon, CPC): Thank you very much. It's a pleasure to have you here with us this morning. I did appreciate your comments about moving towards devolution. Certainly, we're pleased to announce the appointment of Mr. Brian Dominique as chief federal negotiator to move that along. Obviously, we want to give more provincial-like powers to the territories as part of our northern strategy. That was a good milestone, and I'm sure you're all working hard to get to devolution as soon as possible. I was encouraged to hear, as well, about the process that led us to the Nunavut regulatory improvements here.

I did want to talk a bit about the administrative monetary penalties scheme. You mentioned that it was a way to more effectively encourage—I don't know if it's more of an encouragement or a deterrent to—unlicensed water use, etc.

Could you maybe just walk me through what happens now in the territory if there is unlicensed water use, for instance? What are the tools available to you and how will they improve under the proposed regulatory system?

● (0905)

Mr. William MacKay: Right now, it's very difficult to get a conviction under the current process, because you have to lay a charge—the same way you would with a criminal charge—and then that has to go through to court, and then you have to get a conviction, and then you can impose a fine. Because of that, there are very few prosecutions of environmental offences in Nunavut. We're hoping that the AMPs system—administrative monetary penalties system—which has been used in other parts of Canada and has proven to effective in better enforcement of environmental legislation, will improve enforcement, because it gives inspectors another tool to enforce the legislation. Under the AMPs system, as you know, they're able to lay a charge at the site where the environmental legislation may be being violated and then it's up to the accused violator to appeal to the minister to show that they actually were not in violation of the act.

It has the effects of being able to enforce the legislation and also being able to stop violations right away, rather than having to lay a charge. If you lay a charge, potentially the violation could continue until a conviction was brought, whereas an AMP allows you to stop the violating action right there.

Mr. Mark Strahl: Excellent. Thank you.

You also mentioned, in your opening remarks, the issue of overbonding, which is one that we'll be hearing about from the Chamber of Mines later on as well.

It's not a term that I've been familiar with for long, so could you maybe just talk about overbonding—what it is and how it is an impediment to economic development in Nunavut and how you believe this bill will address that issue as well.

Mr. Gabriel Nirlungayuk: In Nunavut, because we have land claims agreements with the Inuit who have land and subsurface rights, along with crown land, we are pleased that this bill is going to give a direction o resolving double bonding and greater certainty and clarity as to how the agreements would work. Currently, it's a hindrance for proponents, but this bill will give clarity. It's an issue right now and the lack of clarity hinders companies from coming up. This bill will give clarity.

Mr. Mark Strahl: Essentially, as I understand it, it's a requirement for a proponent to provide a bond to one level of government and then they have to provide it to another, so they're essentially doing it twice. They have to lay out the same amount of money for one project to bond, essentially, which obviously, in today's economic climate is a difficult barrier to overcome.

Mr. Gabriel Nirlungayuk: Yes.

Mr. Mark Strahl: You mentioned that industry is just starting to develop plans for Nunavut, and you mentioned a couple of projects near Baker Lake. Obviously, right now with commodity prices and access to the capital for some of these major players, it's difficult. Are there any projects on the horizon? Are we more in the discovery stage, or are there any that are on to capitalization and actually getting some of those minerals out of the ground?

Mr. Gabriel Nirlungayuk: Currently, we have two operating mines in Nunavut. We've just gone through public hearings on Meadowbank mine near Rankin Inlet, which is a gold mine. We've gone through another, very controversial public hearing on AREVA, a uranium project near Baker Lake. There are a lot of minerals around Baker Lake. It's very controversial, but it has gone through the process. As you said, depending on the commodity prices of uranium.... The tribunal will have to weigh in the evidence, and evidence will be given to the minister for approval.

● (0910)

Mr. Mark Strahl: Thank you.

The Chair: That takes us to Ms. Jones for the next seven minutes.

Ms. Yvonne Jones (Labrador, Lib.): Thank you very much.

I want to thank our guests this morning for being here and for their presentation.

Obviously, we've had lots of discussion on different bills regarding Nunavut in the last year, and one of them that I know you guys are happy about is the devolution piece. I hope that with the devolution, you'll start seeing improvements in your infrastructure and more investment in your territory, because I know that has been a significant issue for you.

This morning, with regard to this particular bill, it is my understanding that as you look at large-scale development projects within the territory, you are seeing some regulatory changes taking place. My question, first of all, is about the amendments that we are looking at here in Bill S-6 right now. Are they being proposed at the request of the Nunavut government, or is this something that is being presented directly by the federal government or the Government of Canada?

Mr. William MacKay: It's a federal bill, and I think the impetus was the regulatory improvement initiative generally, which is also a federal initiative but something that the Government of Nunavut supports. As for the specifics of this bill, a lot of the proposals come from other federal legislation, environmental legislation that exists in the south and parts of the north. It is very much part of a federal environmental initiative that's nationwide. To answer your question, no, these were not proposed by the territorial government.

Ms. Yvonne Jones: Were you involved in the consultation around this bill, and did you sit at the table with the Nunavut Impact Review Board to seek their input and address their concerns? It seems that they have some concerns that they are expressing here. I am wondering how your government feels about that and whether you've had an opportunity to address those concerns with them.

Mr. Gabriel Nirlungayuk: We were consulted several months ago as this proposal was drafted. The draft bill was sent to the premier back in May. Overall, given the limited scope of the amendments and the fact that they are consistent with other federal environment legislation, we don't have any concerns. However, in Nunavut, we work very closely with other co-managers. We'd like to have a co-management body. We were directly consulted. The proponent you are speaking about will be appearing before you. I would be very interested, too, to hear what their concerns are.

Ms. Yvonne Jones: I guess one of the things we're looking at here is the time period required by the applicant to provide information.

In the past was this an issue? Was it a problem that was continuously being identified? What would be the rationale right now for the Government of Canada to want to make changes to that particular part of the bill?

Mr. William MacKay: I think that's something that industry has been pushing for generally, to have timelines so they can have an idea of at least what the outside limit is of how long an application will take.

With respect to this bill in particular, I didn't draft the bill, but I believe the timeline was arrived at so it would fit with the rest of the process.

In Nunavut under the federal legislation, an applicant comes to the Nunavut Planning Commission, and it determines whether an application is in compliance with the plan. It moves on from there to the Nunavut Impact Review Board, which does an environmental assessment. At the same time the Nunavut Water Board has to issue a water licence.

So under the Nunavut Planning and Project Assessment Act, there were timelines put in for that process, and the Government of Nunavut's support of this was that it felt that the Nunavut Water Board had to have some sort of time limit as well in order for it to fit in with that process and the timelines and that overall process, which involves the three bodies pretty closely.

We heard from the Nunavut Water Board about its concerns, about that timeline, and I'm sure the witnesses will relay those to you, but the Government of Nunavut generally supports a timeline.

If this timeline is sufficient or not, we don't really have a view on that, but we do support timelines specifically.

● (0915)

Ms. Yvonne Jones: I guess that brings me to my next question. Are there any examples of projects that have been extended over a long period of time because they couldn't get the proper approvals or permitting? If so, just so we get a good understanding of why this change would be proposed, what would be some of those examples?

Mr. William MacKay: I've had anecdotal evidence. I don't know any specific examples, but the Nunavut Chamber of Mines will be appearing this morning and its representatives would have a better idea. They represent the proponents, so they might have a better idea of any frustration that's been expressed with respect to the length of time. I haven't heard any.

Ms. Yvonne Jones: Okay.

This brings me to a question with regard to an issue that was identified by the Mining Association of Canada. That was the additional requirements for recovery of cost that was related to the water licensing, and whether it adds to the financial challenges or not.

Do you share the concerns it has with regard to this issue? What it expressed is that the Mining Association of Canada would allow federal and territorial regulatory agencies to charge back their own costs under—

The Chair: Ms. Jones, your time has actually expired, but I think there's enough of a question there that we can very briefly let the witnesses respond.

Mr. Gabriel Nirlungayuk: Cost recovery is a model adopted by many regulators in Canada, but we don't believe it is appropriate for Nunavut. The cost of resource development in Nunavut is already significantly higher than in southern Canada. Cost recovery would be a disincentive to investment.

The minister is given the power to seek recovery of government's cost. This discretion should be used sparingly, and project proponents should be notified before the regulatory review begins whether the minister will be seeking recovery of the government's cost.

The Chair: Thank you very much.

That ends our questions for this morning. We want to thank both the deputy minister and the acting assistant deputy minister for being here this morning on behalf of the Government of Nunavut.

We will briefly suspend now so we can set up for the next panel.

The meeting is suspended.

● (0915)

(Pause)

● (0920)

The Chair: We'll call the meeting back to order.

We have with us for the next portion of the meeting, from the Nunavut Impact Review Board, Elizabeth Copland, the chair, and Ryan Barry, the executive director. We also have, from the Northwest Territories and Nunavut Chamber of Mines, Elizabeth Kingston, the general manager, and Adam Chamberlain, director. Joining us by teleconference as well we have, from the Nunavut Water Board, Thomas Kabloona, the chairman and, as an individual, Teresa Meadows, legal counsel.

● (0925)

What we will do now is to move to opening statements, and we'll begin with the Nunavut Impact Review Board. Then we'll move to the Chamber of Mines and the Nunavut Water Board.

I'll turn it to the Nunavut Impact Review Board.

Ms. Copland, you have 10 minutes and the floor is yours.

Ms. Elizabeth Copland (Chair, Nunavut Impact Review Board): Thank you very much. Good morning. *Ublaahatkut*. *Ma'na*.

Good morning, everyone, and thank you for this opportunity to appear before you on behalf of the Nunavut Impact Review Board. My name is Elizabeth Copland. I am the chairperson of the Nunavut Impact Review Board and with me today is Ryan Barry, our executive director.

We have provided the committee with a written brief setting out our comments with respect to Bill S-6, An Act to amend the Yukon Environmental and Socio-economic Assessment Act and the Nunavut Waters and Nunavut Surface Rights Tribunal Act. Knowing that your time is limited, the focus of my opening statement will be to highlight the key aspects of our submission and to make ourselves available for any questions.

As a member of the Nunavut Land Claims Agreement transition team, I have been involved with impact assessment in Nunavut since 1994. I have served several terms with the Nunavut Impact Review Board for a total of about 17 years. I have chaired a number of public hearings for the NIRB, including the Jericho diamond mine project, the Doris North, Meadowbank, and Meliadine gold mines, and recently, the Kiggavik uranium ore mine project and the Baffinland Marry River iron ore project.

Throughout my time with the NIRB we have worked closely with the other institutions of the public government established under the Nunavut Land Claims Agreement, including the Nunavut Water Board, which is why we have an interest in the amendments proposed under Bill S-6.

Accompanying me today is Mr. Ryan Barry. Ryan has worked with the board for about eight years in various technical capacities, including as director of technical services since 2011. Throughout his career with the NIRB he has worked closely with the Nunavut Water Board and spearheaded a number of specific coordination initiatives, including the jointly-developed detailed coordinated process framework that coordinates the Nunavut Impact Review Board's impact assessment process during the review of major development projects and the Nunavut Water Board's water licensing process.

At the outset I would like to remind the committee that the regulatory regime established under the Nunavut Land Claims Agreement is unique and consists of a single integrated resource management system for land use planning, impact assessment, and land and water licensing in the Nunavut settlement area. Within this unique structure, the NIRB and the Nunavut Water Board work cooperatively to ensure NIRB's project assessment process informs, but does not duplicate or limit the Nunavut Water Board's licensing process.

Reflecting the importance of our ongoing collaborative and cooperative work with the Nunavut Water Board, the NIRB has commented on two aspects of Bill S-6 only. The first area of comment relates to those amendments that the NIRB sees as having the potential to affect the NIRB's processes because the NIRB and the Nunavut Water Board processes intersect and are coordinated or integrated, and this area will be the focus of my remarks today.

The second area included in our written comments simply affirms the NIRB's support of the Nunavut Water Board's written submission that identifies the issues external to the Nunavut Water Board, such as board member appointments and third-party capacity issues that have the potential to adversely affect the Nunavut Water Board's ability to meet the prescribed timelines proposed under Bill S-6. The NIRB can confirm that our board has experienced many of the same challenges as we have also experienced delays in our impact assessments arising from these same factors.

I'll now move on to the NIRB's comments on Bill S-6. The board is pleased to see that one of our comments on a preliminary draft of Bill S-6 was incorporated in the text of Bill S-6, but because of this issue it's important to coordinate initiatives. I will mention it briefly.

● (0930)

In our review of the preliminary text of the bill, we identified that the prescribed timelines established in the bill needed to be revised to reflect the timing of our coordination initiatives between the NIRB and the water board.

In addition, with regard to the preliminary draft of Bill S-6, we also commented on our concerns with the implementation of potential cost recovery only at the stage of water licensing. This issue remains outstanding in the current bill.

The NIRB recognizes the rationale and desirability of implementing a cost recovery regime, but notes that there is currently no mechanism for cost recovery during the NIRB's impact assessments of projects. Consequently, with cost recovery only being implemented at the water licensing stage, a proponent may have a direct financial incentive to ensure that the bulk of technical review, community consultation, and intervenor involvement take place during the impact assessment stage of project review rather than at the water licensing stage where the applicant could be responsible to pay for these activities under the cost recovery provisions.

To limit the financial incentive for a proponent to front-load the responsibilities onto the NIRB part of the integrated regulatory process, the Nunavut Impact Review Board has suggested that a consistent approach to cost recovery should be developed and implemented across all phases of Nunavut's integrated regulatory regime, including land use planning, impact assessment, and licensing.

In closing, the board thanks the honourable members of the House of Commons Standing Committee on Aboriginal Affairs and Northern Development for this opportunity to appear in your presence to comment on Bill S-6.

If you have any questions, I'd be glad to answer them.

Thank you very much.

The Chair: Thank you very much.

We'll move now to the Northwest Territories and Nunavut Chamber of Mines.

Ms. Kingston, you'll be making the presentation. The next 10 minutes are yours.

Ms. Elizabeth Kingston (General Manager, Nunavut, North West Territories and Nunavut Chamber of Mines): Thank you very much, Mr. Chairman. We appreciate the invitation to come to speak with you today.

The NWT and Nunavut Chamber of Mines is the industry association and leading advocate for responsible and sustainable mineral exploration and development in the Northwest Territories and Nunavut.

My name is Elizabeth Kingston. I'm the general manager for Nunavut. My office is based in Iqaluit. With me today is Adam Chamberlain, who is a member of our board of directors.

Exploration and mining is the foundation of Nunavut's economy and is playing a significant role in the growth of Nunavut's GDP. Next to government, it is the largest contributor to the northern economy, and becomes even larger if you factor in associated mining industry spending on construction and transportation. lt is the largest private sector contributor to the economy of the north.

Operating in Nunavut is not easy, however. Companies face a unique set of challenges that more centrally located businesses and industries in Canada do not have to face, by virtue of their proximity to both physical and non-physical infrastructure. These challenges derive from the characteristics that define the geographical region itself: remoteness, severe Arctic weather, undeveloped infrastructure, and sparse populations.

Companies in Nunavut face significant costs to build their own infrastructure, much of which is already in place or is more accessible with southern projects. Companies must also invest additional sums in these regions to train and educate, attract and retain, and transport and house our workers.

These factors combine to make exploration and mining substantially more expensive than in most of southern Canada. Any company operating in Nunavut has a much harder time attracting investment, because investors are well aware of the challenges associated with operating in our territory.

Given the limited opportunities for social and economic development, and with Arctic sovereignty as a strategic national consideration, the principles of economic growth and efficiency should be prioritized when guiding government policy towards the mining industry, particularly for our companies operating in remote and northern Canada. That is why the work that you do to create new legislation that helps provide process and investment certainty in Nunavut is so important.

And that brings us to today's meeting. We support a number of the legislative changes proposed by Bill S-6; however, we have a number of concerns and comments, which will focus on part 2 of the bill, respecting Nunavut waters.

The first concern is cost recovery. As we understand it, cost recovery for the consideration, renewal, amendment, or cancellation of a licence is proposed, to align Nunavut with the Canadian Environmental Assessment Act.

Industry strongly opposes new cost recovery measures, as they are a clear disincentive to investment in the north. Cost recovery represents an added impediment to an already costly operating regime. Introducing these measures now will only serve to further dampen investor interest in our territory. We recommend that cost recovery either be removed from the legislation or that it not be invoked at this time.

The concept of administrative monetary penalties is new to the north and is creating unease, as there are a number of aspects with this clause of the proposed legislation that require clarification. Monetary fines, in and of themselves, do not present a problem to good operators. However, extending the period of uncertainty from two to five years after a non-compliance incident could discourage investment without offering additional environmental protection. As well, the proposed amendments to the offences and punishments under the current scheme differ from the current version of the Mackenzie Valley Resource Management Act. We recommend that this section be changed to be more closely aligned and consistent with MVRMA.

Recently, staff at Aboriginal Affairs and Northern Development Canada created a policy direction on the definition of water used in exploration that is unnecessarily stringent and will delay projects and increase costs for proponents as they try to address it. A new interpretation of the water used, specifically to include circulated water utilized for no other purpose than to prevent pipes from freezing, is now considered a use under the act. This change in policy was made with no consultation with industry, and no transition period for its application has been applied to Nunavut's advanced projects.

● (0935)

The current standards by which type A and type B water licences are defined needs to be reviewed. In particular, the threshold of 300 cubic metres per day for a project moving from a type B to a type A licence requirement needs to more accurately coincide with the transition of a project from exploration to development. The act and regulations should also demarcate between “exploration” and “mining” by requiring type A licences for mining and type B licences for larger exploration projects.

Double bonding occurs in cases in which a licensee must provide financial security to more than one payee to address the same or related reclamation requirements. Industry is pleased to note the addition of proposed section 76.1 as a positive step towards addressing the issue of double bonding. However, we note that security management agreements would be formulated only on a proponent-driven, case-by-case basis. Successfully resolving the double bonding issue entirely will help to support Nunavut's growing reputation as an attractive investment destination for the many mineral development projects that are located on both crown and Inuit-owned lands. Our recommendation is to broaden section 76 to clarify what elements security management agreements should contain.

Establishing time limits for the evaluation and approval of water licence applications will allow for more predictable and timely reviews.

The inclusion of an express power for the Nunavut Water Board to issue 60-day extensions to water licences is entirely consistent with the Nunavut Land Claims Agreement. However, it seems that the option currently under consideration is to permit extensions only on the recommendation of the minister. In our view, this decision should be made by the Nunavut Water Board, as the considerations that would need to be weighed in determining whether an extension should be granted are well within the expertise of the Nunavut Water Board's technical staff.

It is important that water licences address environmental risks associated with mining processes as well as respond to community and socio-economic issues.

We agree that water licences should be issued for the life of the mining operation, with scheduled periodic reviews to ensure that water-related requirements are addressed, in distinction from the current costly process of a full re-application and review process every few years.

To conclude, mining provides to the north a major economic advantage, and it is already creating significant community benefits. Nunavut hosts a very high mineral potential and can support world-class mines and world-class opportunities.

We support Bill S-6, but with recommendations to ensure that it can be an incentive for increased mineral investment in Nunavut and we look forward to future dialogue with the federal government as the accompanying regulations are created.

That concludes my presentation. Thank you.

● (0940)

The Chair: Thank you very much.

We'll move now to our guest joining us by teleconference, the Nunavut Water Board.

Mr. Kabloona, I assume you'll be making the presentation.

Mr. Thomas Kabloona (Chairman, Executive, Nunavut Water Board): I have a slide presentation.

Good morning, and thank you for this opportunity to appear before you on behalf of the Nunavut Water Board. My name is Thomas Kabloona. I am the chairman of the Nunavut Water Board and I am from Baker Lake, Nunavut. I have been with the board for many years, commencing with my first term in 1998, and I have been the board`s chair since 2006.

With me today via teleconference is the Nunavut Water Board's outside legal counsel, Teresa Meadows, with the firm Shores Jardine LLP. Teresa has been legal counsel to the board since February 2010 and has represented the board on the working group that reviewed these proposed amendments commencing in January 2014.

Next is slide 2. We have provided the standing committee with a written brief setting out the details of the board's comments regarding Bill S-6 [*Technical Difficulty—Editor*].

The Chair: Mr. Kabloona, we seem to have lost you at least momentarily. Would you just say a couple of words to see if you're still with us.

Mr. Thomas Kabloona: I'm still here.

The Chair: We've definitely got you back. If you want to resume your presentation, I think we're okay.

Mr. Thomas Kabloona: Okay, thank you.

Knowing that your time is limited, the focus for our testimony today will be to provide you with additional context and insight regarding our work and to highlight three key areas of discussion that the proposed amendments to the Nunavut Waters and Nunavut Surface Rights Tribunal Act raise for the board. The focus for our comments today will be on the aspects of Bill S-6 that apply to Nunavut.

To begin with I will give you a brief background to the board. As slide 3 indicates, the Nunavut Water Board was established under the authority of article 13 of the Nunavut Land Claims Agreement, also called the NLCA. The board has responsibility and power over the regulation, use, and management of fresh water in the Nunavut settlement area. We are part of the integrated regulatory system established under the NLCA that commences with the review of proposed developments, such as mines, hydro projects, major infrastructure such as ports and roads, for their conformity with the land use planning requirements of the Nunavut Planning Commission. Then the Nunavut Impact Review Board considers the potential environmental and socio-economic effects of the proposed development.

Once those institutions of public government have indicated that a development can go ahead, the Nunavut Water Board gets to work to consider whether to issue a licence for a project for any required use of fresh water or any associated deposit of waste that may enter into fresh water.

Over the years the board has worked on a number of coordinated initiatives with our partners in the regulatory process to minimize duplication, to streamline our process, and to engage with stakeholders, including Inuit organizations, government agencies, potentially affected communities, and members of the public. It is the board's overall impression from the regulated community, members of the public and our other stakeholders, that although there are challenges to the capacity of all parties within the existing system, which Teresa will talk to you about from the perspective of the Nunavut Water Board in a few moments, in general, the structure of the regulatory system in Nunavut works well.

Slide 4 gives you a quick overview of the legislative base that further defines the board's structure and processes in addition to the NLCA. In April 2002 the Nunavut Waters and Nunavut Surface Rights Tribunal Act came into force, and this is the act that Bill S-6 now proposes to amend. In April 2013, following consultations by Aboriginal Affairs and Northern Development and public hearings conducted by the board, the Nunavut waters regulations came into force, completing the remaining piece of the regulatory puzzle for the water board by replacing the statutes from the Northwest Territories regulations that had been brought forward in the absence of Nunavut-specific regulations.

Turning to slide 5, and with that context in mind, I would like to share the board's general views on Bill S-6 before passing the floor to Teresa Meadows to outline our specific comments on three key areas. As you would expect, the Nunavut Waters and Nunavut Surface Rights Tribunal Act is our governing legislation. The board is very interested in whatever changes are proposed. So in January 2014 when the board was first contacted about participating in a working group that was considering changes to the act, our executive director and legal counsel actively participated in all meetings and provided several written comments and submissions throughout the process.

In September 2014 the board provided written submissions and the board's former executive, Damien Côté, and I appeared before the Standing Senate Committee on Energy, the Environment and Natural Resources to speak about Bill S-6.

● (0945)

As we indicated before the Senate committee, the board has always been supportive of efforts to ensure that our regulatory structure enables its processes to remain transparent, efficient, integrated, timely, and responsive, and our comments reflected these goals in a number of areas, including, among others, the public notifications associated with administrative monetary penalties and the public registry system. A number of the specific issues raised by the Board during this participation were considered, and have been to some extent reflected in Bill S-6, so we are supportive of the amendments in general.

Teresa, I'll pass it on to you.

● (0950)

Ms. Teresa Meadows (Legal Counsel, Shores Jardine LLP, As an Individual): Thank you, Chairman Kabloona, and thank you to the chair of the standing committee and honourable members.

My apologies that we are unable to attend in person. I know that it creates some difficulty. I hope that people will stop me if they are unable to hear me, but I will proceed on the assumption that you can hear the disembodied voice at the other end of the phone.

I intend to cover in more depth three key areas of the Board's comments that remain unaddressed in the current draft of Bill S-6. As Chairman Kabloona mentioned, we have been involved in the process. I know that committee members are concerned about consultation. I can say that we were consulted commencing in January 2014 and that we did have some significant changes made to the text of the bill prior to its presentation in the Senate and the current iteration that's before the committee.

I would like to refer to the specific comments that remain unaddressed, including discussions on the term of the licence or the amendments to section 45; time limits or sections 55.1 and 55.6; and security, which would be section 76.1 in the amended bill.

With respect to term of licence, right now, as described in item 2.2.2 of the legislative summary of Bill S-6, in the proposed section to replace the existing section 45, the Board is expressly authorized to issue licences in certain circumstance that would exceed the current 25-year limit and extend—

The Chair: Sorry, for my interruption, Ms. Meadows, but we have arrived at the time allotted for the presentation. We did have a couple of hiccups, which used a bit of the time we allotted to you, so maybe what I will do is allow a minute or two for both of you to wrap up the remainder of your presentation. I do see you have some slides left, but maybe you could take the next minute or two to wrap up as quickly as you can.

Ms. Teresa Meadows: Okay. I will focus, then, on a couple of things.

The first is, there is no working definition right now of "anticipated duration". I recognize that the committee has our written submissions as well. The anticipated duration of an individual project is a live issue at present. In just the last year, we have two licences before the Board year where the question became, what truly is the end of an undertaking? Is it at the time that the water use or waste deposit associated with that undertaking ceases, or is it a long-term monitoring requirement? When you're talking about a major mine project, the question of whether or not the anticipated duration includes the monitoring component, or whether it includes only the active water use or waste deposit, remains a live issue. In the submissions for those two licences—the former Nanisivik and Polaris Mines—there was no consensus among the parties on how long a licence should remain for an undertaking.

The second thing I want to talk about is time limits. I heard a question as to the average processing time for a water licence. I think there is a perception that the water licensing process is an extensive one, a difficult one, and an arduous one, all of which, of course, from the Water Board's perspective, is perhaps not an accurate characterization. From the stage when a complete application is received for type A licence, which is a major mining project or a major water licence with a larger water use, the average time is about 9 to 12 months. Three months of that time is included in notice provisions, that is, provisions where the Board cannot proceed with processing. That's because we have to give a month's notice for comment at the time the application is received with respect to technical review and completeness, and also a 60-day notice period in advance of a public hearing. Type A water licences require a form of public hearing. The 9 to 12 months is average. When you start to talk about more extensive time—

The Chair: Ms. Meadows, I'm terribly sorry, but I'm going to have to cut you off there. We have gone over time significantly at this point.

You'll maybe be able to get the remainder of some of the things you need to present in the questioning, which we will move to now. My apologies for that, but we will move to Mr. Bevington now for questions.

● (0955)

Mr. Dennis Bevington (Northwest Territories, NDP): Thank you, Mr. Chair.

Thank you to the witnesses, who all have presented really interesting and detailed issues regarding this bill, which I think may present some challenges for us on this committee going forward.

I sat on the Mackenzie Valley Resource Management Environmental Impact Review Board and understand some of the complexity of it.

I want to go into one area. We're all skirting around this idea of who has to pay for the work that has to be done.

Ms. Kingston, could we characterize mining development as a partnership between the owner of the resource and the company that wants to develop it? Is that really what's going on here?

Ms. Elizabeth Kingston: Yes, I think that's a fair statement.

But one of the limitations that the industry has to deal with is the price of commodities. When prices are very low, as they are now, when we begin to talk about adding additional cost to that review, whether it's for water licences or an environmental review, it becomes more prohibitive for the proponent to be able to move forward.

Certainly, yes, we would look at it as a partnering arrangement so that all of the measures are in place to ensure that the project moves forward.

Mr. Dennis Bevington: In any partnership, the process you enter into with an environmental assessment, with regulation, is a planning process between those who own the resource and those who wish to exploit it.

Is it correct that this is a planning process for the development of the resource?

Ms. Elizabeth Kingston: Yes, I would describe it that way.

Mr. Dennis Bevington: Okay, so if it's a planning process, then it has value to both sides. If the planning is done properly, the government will collect additional resource revenue through taxation. If the planning is done correctly, the company will have a better opportunity to develop the resource and have a higher profit.

Is that not really what we're dealing with here?

Ms. Elizabeth Kingston: Yes, that's correct.

The other more important party, I guess, would be at the community level. The community level benefits as a result of the economic development opportunity.

Mr. Dennis Bevington: When the people of Nunavut own their resources rather than them being held in trust, as they are now by the Government of Canada, it will be a much better situation for those people in Nunavut. As it stands now, the Government of Canada still owns those resources.

Ms. Elizabeth Kingston: In part, a number of the projects are actually on Inuit-owned lands, so there would be a shared ownership arrangement between the federal government and the respective Inuit association.

Mr. Dennis Bevington: Do you think the fact that communities are not getting proper resources to facilitate the planning process with the companies is something we should correct with this bill?

With regard to communities and individuals who want to intervene in the environmental process at their cost—because they really have no opportunity to cover those costs later on with the development of the resource—do you think it's appropriate that those people should receive compensation for their work and be encouraged to do that work, so that the planning process goes ahead in a good fashion?

Mr. Adam Chamberlain (Director, North West Territories and Nunavut Chamber of Mines): I guess we hadn't come prepared to talk about community funding. We're here principally to talk about the issues as presented in the legislation.

Mr. Dennis Bevington: Philosophically, I mean, do you see the relationship as important, that the people in the communities are able to interact with you so the planning process goes ahead in a good fashion?

Mr. Adam Chamberlain: Of course.

Mr. Dennis Bevington: We have a philosophical similarity when we talk about these things—all of us in the north. We want things to be done correctly, and that requires resources.

On the other side, with companies, you're concerned that you have to pay for your share of the planning process you're going into. You don't particularly like that you have to pay for that.

● (1000)

Mr. Adam Chamberlain: I could start with a comment, and Ms. Kingston could add.

There is no hesitation by industry to pay its fair share of the cost of moving through a regulatory process related to any project. What is troublesome to industry is the fact that in Nunavut the costs of these processes are significantly higher than they would be in less remote areas in the south. By imposing cost recovery in the same way you might, say, if your project were in northern Ontario near roads where you can get in and out—not to say there aren't remote communities in northern parts of provinces as well, but comparing the cost and the effect on projects—it acts as a disincentive to development in the north. What we are talking about here are benefits that would not just be for companies, not just for the landowner, or the Inuit, or the Government of Canada, but rather for all Nunavummiut, for all northerners.

The notion that some of those costs should be shared by society broadly is what we are talking about here.

Mr. Dennis Bevington: Really what it's going to come down to is that cost recovery would be done in regulation. You would determine what would be a fair exchange for your portion that should be covered by industry. If we accept the principle of cost recovery, then really there's a negotiation process that should take place to understand how those costs should be divided.

Mr. Adam Chamberlain: That's one approach. Depending on where this legislation is going now, it probably is going toward dealing with it in regulation somehow.

Mr. Dennis Bevington: I agree with you. We don't want to hinder industry, but at the same time if value is added to your side through the process, then, of course, there is some logic that you would pay for some of that value.

Mr. Adam Chamberlain: That is what industry does do. Industry will pay for its fair share of the regulatory expenses of approving a project. We want to see that it is not borne inappropriately.

Mr. Dennis Bevington: We could say that industry would probably—

The Chair: Mr. Bevington, there are about three seconds left in your time, so I don't know if there would be time for a question and a response in that time.

Mr. Dennis Bevington: Okay, fair enough.

The Chair: Thank you very much.

Mr. Barlow, we have you for the next seven minutes.

Mr. John Barlow (Macleod, CPC): Ms. Kingston, you spoke about overbonding a little bit, and from what I understand—we talked a little bit about it before you got here—an industry or a corporation looking at doing a project would have to do bonding with the territorial government as well as the Inuit landowners. Is that right? Can you explain how the changes to this will address that? You talked about it maybe not going far enough.

Can you talk about what overbonding is, what the changes have been, and maybe some of your suggestions on how we can improve that?

Ms. Elizabeth Kingston: Double bonding occurs where a licensee must provide financial security to more than one payee to address the same reclamation requirement, which often happens when you're talking about a project that crosses over between Inuit-owned lands and crown land. The territorial government is not directly involved in this particular issue per se.

Right now the way it stands is that both the Inuit landowner and the crown want to hold the bond that must be put forward, so that essentially doubles the amount of a credit note that a company would have to bring forward. That, in and of itself, can be cost-prohibitive, particularly to a junior company that would have to actually come up with the cash in order to do that, otherwise it's a credit note or what have you with the bank.

What's laid out here essentially in section 76 is that the minister is able to sign off on an agreement between the designated Inuit association and the crown, and that must be taken into consideration by the Nunavut Water Board when they are determining the amount of the bond. We do recognize that is a step. We've been talking about this for many years and we certainly acknowledge that the staff have recognized this particular issue, but we feel that it really doesn't go far enough because it's still a proponent-driven process.

From the proponent perspective, if there's a certain amount of reclamation that has to be put forward, it doesn't really matter who holds the bond. What's important is the amount of the bond and that it's enough in a case such that a proponent is not able to take care of the situation. But the problem this runs into is there are two groups that want to hold that bond, and they both want their share, and the proponent is getting caught in the middle of that.

Often we are asked to broker meetings. As a matter of fact, there is a meeting taking place tomorrow. The longer it takes to get these agreements set in place, the longer the proponent needs to pay for time and expertise to actually move through the licensing process, it's another delay problem, and the faster we can come to these agreements, to a reasonable amount of security, and move forward, we don't really care who holds the bond. We would just like the crown and the designated Inuit association to come to an agreement that is mutually satisfactory—and quickly.

● (1005)

Mr. John Barlow: Teresa, do you want to address the overbonding issue as well? Do you feel that it goes far enough, that it addresses the issue, or do you have some problems with it as well?

Ms. Teresa Meadows: Thank you, I would like to address that.

I think the issue that the water board faces is twofold with respect to security.

Number one, as referenced by the previous speaker, it does actually adversely affect timelines with respect to the evidence that comes before the board, because the board is primarily responsible for fixing the amount of security. So in the event that the parties actually do come to the board and are able to present that they have a security management agreement and that appropriate security, reclamation security for the undertaking, has been posted or would be posted under a security management agreement, the board can take that into consideration in determining the amount of security that needs to be posted under the water licence.

Unfortunately, in many respects, because of where the water licensing process comes in, the parties oftentimes have deferred those discussions until afterwards, until after they see what the terms and conditions of the water licence are. So it's very rare for the board to actually have that evidence before it while it's making a decision, and so very often, unfortunately, what ends up happening is that the board is responsible for ensuring that all of the reclamation security is posted and then subsequently the parties are having a discussion about additional security and they end up in a situation of multiple bonding or overbonding as it's sometimes called.

The second thing is that right now, the way water licences are issued—and this is the comment that the board actually made with respect to the suggested amendments in proposed new section 76.1—the board is essentially left with a one-shot deal in terms of actually fixing that security amount at the time the licence is issued. Under the licensing regime, in the event there is an amendment to a type A licence, an entire public hearing and application process is triggered. So in the event that you're fixing the amount at the outset of a licence, particularly if you're talking about a life-of-mine licence, there really isn't a mechanism for the board to be reviewing on an annual basis that security amount, in order to be able to accommodate changes over time where a security management agreement would subsequently be entered into by the Inuit association, by the crown, and by the proponent. So we're left in a situation of then attempting to try to figure out exactly how a review of that security amount or an update of that security amount could be commenced without triggering an amendment to the licence and having to conduct a public hearing in respect of that amendment specifically.

Those are the kinds of issues that arise from the board's perspective with respect to trying to address the overbonding and security issues.

Mr. John Barlow: Thank you. As I've only got 20 seconds left, I just wanted to thank everybody for making the effort to be here with us today. Your input is very much appreciated.

The Chair: Thank you.

We'll move now to Ms. Jones for the next seven minutes.

Ms. Yvonne Jones: Thank you to all of our guests for your presentations this morning. It's certainly been very beneficial to us to understand your concerns around this bill, what you like about it, and what you don't like about it.

First of all, a number of you have indicated that you had an opportunity to review the draft bill early on, and my question for you is about the concerns you're raising today. Did you address those concerns to the minister or the department after you received a draft bill, and were any of the suggested changes or recommendations that you put forward accepted at that time, or are all of those still on the table for discussion now?

Who wants to start?

● (1010)

Mr. Ryan Barry (Executive Director, Nunavut Impact Review Board): Thank you for the question.

Ours is very straightforward. At the Nunavut Impact Review Board we had two main concerns. We feel that one of the concerns in our submission was addressed, and that's the ability for us to continue to coordinate with the Nunavut Water Board with respect to timelines.

The second was with regard to cost recovery and the fact that if it's applied to water licensing and not to impact assessment, there is a concern about front-loading the process and impact assessment, so that the cost borne by the proponent would be lighter in water licensing. That concern has not been addressed.

Ms. Yvonne Jones: The Chamber of Mines had a number of recommendations that we've reviewed. Would you like to comment on whether you provided those during the draft of the bill and if any of them were accepted, or if all of those concerns are still here today?

Ms. Elizabeth Kingston: We have had some opportunities to provide our input. We do appreciate that.

I would say that the one change that we've noted that we had been talking about for many years is the note around security management agreements and that there has been some movement toward trying to address this issue within this bill. We don't feel it goes far enough to add enough clarification, but most of the items that we've talked about during my presentation still remain outstanding and haven't changed from that first draft.

Ms. Yvonne Jones: Mr. Kabloona.

Ms. Teresa Meadows: If it's all right, it's Teresa Meadows. I'll address that issue because I was involved in the working group.

The submissions were fairly extensive at the working group level with respect to the draft text of Bill S-6 before it was introduced into the Senate. I would say that our submissions were lengthy and included the same issues that we've identified in our brief as well, but also included several other issues that weren't addressed. What we've included in our brief are only those issues that remain from our perspective unaddressed in the draft of the bill.

Those are the definition of duration of the undertaking and our wanting a little more clarity around that, issues with respect to the timelines in terms of issues that are outside the control of the board that could adversely affect the ability of the board to comply with those timelines, and the issue of security that I raised earlier.

Ms. Yvonne Jones: I guess my next question for all three of the parties would be with the fact that you have not been able to achieve the changes thus far that you're putting forward to our committee today. If for some reason these amendments do not pass in this bill, are you still prepared to support the bill without the changes you are requesting, or would you reject the bill on that basis?

Mr. Ryan Barry: We'll start with it again for the Nunavut Impact Review Board.

Recognizing that our concerns with the bill are very focused, our primary concern was the ability to be able to continue to coordinate and make use of the progress that we've made through the years. That's been addressed.

With the cost recovery issue, I think there's a lot of concerns that have been tabled by the other parties that remain to be addressed and are somewhat more significant than our concern. With our concern I think we can continue to support the bill and the increased clarity it would provide to the system.

Ms. Elizabeth Kingston: I would suggest that we support the forward movement of this bill.

We're here to represent the operators that are in the field and we hope that this will be viewed as a form of constructive feedback from the people who are living with the rules that are created and are doing their best to live within those rules. We are in support of the bill moving forward.

Thank you.

Ms. Yvonne Jones: And Teresa.

Ms. Teresa Meadows: I would say that overall we were pleased with the consultation leading up to the preparation of the draft bill. A lot of the key issues that we felt would have limited our support of the bill were addressed prior to its introduction. Overall we are supportive of the bill.

I think the issues that we've raised are primarily looking toward the water board's view of implementation of the current text of the bill and issues that we see with the implementation of the bill. They are largely polishing the apple more than any concerns about the bill itself moving forward from the Nunavut perspective.

● (1015)

Ms. Yvonne Jones: Okay. Thank you.

The question that I have right now is in regard to the compensation piece, that is, who pays and who pays what? Obviously there are differing views from the Chamber and the Nunavut Impact Review Board.

I guess my question would be, having come from the north, about how costly it can be to do business in the north. I know that it can often be a deterrent between whether we develop a resource or whether we don't because it's all about the competitive global market and sometimes it makes it more difficult for us.

I understand where the Chamber of Mines is coming from and I sympathize with that particular aspect—

The Chair: Ms. Jones, I have to cut you off there. You are at your time.

I know we're always getting to the important points, but unfortunately I have to cut you off there and move to Mr. Strahl.

Mr. Mark Strahl: Thank you very much. I'll be sharing my time with Mr. Seeback.

I wanted to talk to the Chamber of Mines about the use of water. I understand that concerns have been raised about what constitutes water use, whether using the same water twice and recycling it still counts as a part of your daily, weekly, or monthly annual allotments. The industry has raised some concerns about that. I understand that the department is working with industry officials to try to come up with some solutions and that, hopefully, administrative measure will be identified to mitigate this in the short term.

Can you share your thoughts on that issue and potential non-legislative solutions to your concerns about what constitutes water use and maybe explain to the committee what that concern is and what you think should be done about it?

Ms. Elizabeth Kingston: Just to provide a little bit of background, the past practice has always been that water would circulate through the pipe that goes into the drill. There's a certain amount of water that would be revolving through that pipeline simply to keep the pipe from freezing. That's been normal practice in the north. It's due to a necessity that southern jurisdictions wouldn't have to deal with.

This has been an ongoing practice for many years. There was a rather arbitrary decision made on the part of an inspector about two years ago to suddenly include that water as part of the use for drilling purposes. What that did was create a spike in the amount of water that was being used or being measured under the current water licence. In some cases that would result in bumping a typical type B licence requirement for exploration drilling into a type A measurement.

In a way it does play into the regulations because we talk about those thresholds. What we're saying now is that if that water is now going to be included, all of those exploration licences, those type B water licences, are now going to get bumped because they're going to be over that 300 cubic metre a day threshold. I don't think anybody wants that. I think that's an expensive and timely proposition for everyone, including the federal government, Inuit organizations, the water board, and all parties. We're trying to come up with a measure that will counteract that decision that's been made. We will reiterate that it was a sudden and arbitrary decision that had no consultation from industry to provide any background. There's been no transition period. It affected four advanced projects, which immediately had to take costly measures to stay within their type B requirements.

The arbitrariness of the decision is a bit of a concern, but also it affects those thresholds as they now stand listed in the regulations. We may be have to review where those thresholds lie.

These are the kinds of conversations that we will be having with staff. We've had these conversations with staff for over the past year or so since that decision has been made. We're hoping to come up with an appropriate mitigating factor so the water is protected. It still doesn't bump the licencing aspect out of reach of junior exploration

● (1020)

Mr. Mark Strahl: I also wanted to raise an issue you mentioned about administrative monetary penalties. We talked to the Nunavut government officials about that. They were hopeful that that new regime would allow them to more quickly and more able to deal with environmental violations or concerns rather than going through a whole prosecutorial court process. You've raised some concerns with that potential regime. Are you opposed in general to administrative monetary penalties or was it simply around the margins of the two-to-five-year liability? Perhaps you have a different word, but are you opposed to that in principle or is it simply the details of that are of concern?

Mr. Adam Chamberlain: I'm happy to address that.

The chamber does not object to the use of administrative monetary penalties. They're a tool used in regulatory environments throughout Canada and elsewhere. As you've alluded to, there are some details around the timing that we think need to be adjusted slightly. I'm a member, a director, of the chamber, and I'm also an environmental lawyer, and I deal with these matters regularly throughout Canada. I think that what we would like to see reflected in the application of the AMP provisions as it moves forward by government is the reality that things are different in the north. In the south, if I have a situation where an AMP is levelled or imposed on a project, the chances are that the proponent can get to that place and gather evidence and know what's really happening in almost real time. The problem in the north, of course, as we all know, is accessibility. If an AMP is imposed, it's much, much harder to get there to get the information that we would normally get quickly.

I won't go on at length, but there are significant differences between operating in the north and operating in the south that we think should be reflected in the way that AMPs are applied in the future.

Mr. Mark Strahl: Are the AMPs proposed in this legislation consistent with other northern regulatory improvements that have been made with Bill C-15 and the MVRMA? In the north is there consistency? Does this apply? Do you think it should be across the whole north? Should it be similar to what is south of 60? My understanding is that what's being proposed here is what's in place in NWT—

A voice: Exactly.

Mr. Mark Strahl: I guess I'm trying to get a read on why you would want something different in Nunavut than in NWT and Yukon.

Mr. Adam Chamberlain: I have two comments. One is that Nunavut is different from NWT and Yukon. There are distinct differences in the remoteness of the communities. Yes, it's a matter of degree, I suppose, but if you were to look at this from a broader point of view, I think that the north and the south have to be viewed differently from the point of view of AMPs in the way that they're applied. So they may appear in legislation and regulation identically, or very close to identically, but they ought to be imposed or applied differently from a regulatory point of view or from a policy point of view down the road. This is one of the reasons we can continue to support this legislation the way it is because it's one thing to have these things on the books, and it's another thing to apply them, and how you do that is going to be significant and should be done differently in the north and the south.

The Chair: Thank you.

We'll move for the next five minutes to Ms. Ashton.

Ms. Niki Ashton: Thank you.

I guess my question is for any and all witnesses, including those who are joining us by phone, and it's the question of capacity. There are clearly changes that will come into effect with regard to water licensing and extended powers within Nunavut. Is there room for increased support for capacity-building, should the federal government be looking at this area and working to support Nunavut in building the capacity that will be necessary going forward?

Perhaps we could start with Ms. Copland, if you have any thoughts on this, or Mr. Barry.

● (1025)

Mr. Ryan Barry: I think I'd defer most of it to the Nunavut Water Board, as it's more applicable to them. We could just say that we've supported the Nunavut Water Board's concerns about capacity and the need to ensure that there's adequate resourcing for the boards to do their jobs, as well as to ensure that there are actual board member appointments in place. It has been an ongoing concern for many years to make sure that appointments are made in a timely manner and that vacancies are not permitted to occur, because that has an impact upon the ability to have quorum and to make decisions. That's our primary concern.

Ms. Niki Ashton: Great, so maybe, given that comment, Mr. Barry, I will ask the representatives from the Nunavut Water Board to share their thoughts and perhaps give direction to all of us who are here around the table on how the federal government has a role to play in supporting capacity-building.

Ms. Teresa Meadows: Absolutely, thank you.

Picking up on what Mr. Barry said, I think one of the key things, not to put too fine a point on it, is that until this fall, the Nunavut Water Board had two outstanding vacancies on the board that exceeded 700 days. That's almost two years of vacancy. Given the staggered terms of board member appointments, every three years or so the board stands a chance of losing quorum completely and being unable to do its business for a period of time if there's a delay in appointments. Board appointments are always an issue.

It used to be as well, until last week, that funding of the board was an issue. I think this committee has probably heard repeatedly and often that the board had been underfunded. A considerable amount of funding has now been secured. Going forward the expectation is that some of that underfunding over the last 10 years will now be addressed. The board is optimistic that the additional funding will certainly support capacity.

When we're talking about capacity in an integrated regulatory process, we're not only talking about the capacity of the board in terms of board member appointments and having sufficient funding capacity. We're also talking about the limits of capacity on the other participants in the integrated regulatory process.

For example, the board is very much reliant on the technical information and inputs provided by agencies like Environment Canada, the Government of Nunavut's Department of Environment, and the Department of Fisheries and Oceans Canada. In the last year and a bit the board has seen that there are no technical review comments coming in from some of the parties. They've been identifying the fact that they are at capacity and don't have the human resources, or the financial resources in some cases, to travel to public hearings, public meetings, pre-hearing conferences, or technical meetings. The board is starting to see the participants requesting that there not be in-person public meetings and that the meetings be by teleconference.

I think you can understand and appreciate that in a territory that is so vast, and where travel distances are very expensive, as soon as we start to see capacity difficulties with the Inuit organizations and the government participants, the board's evidentiary record becomes lessened and the participation and the presentation before the community that is directly affected by water licensing decisions becomes limited. When that happens it brings the integrity of the whole regulatory process into question.

Ms. Niki Ashton: Thank you very much.

I think that concludes our time, but I did want to express my appreciation for the analysis you've shared on how cuts on the Ottawa side of things to departments that help the work you do in Nunavut stand to affect the kind of work you're doing. That's something I think we can take away from what we heard today.

Thank you to all of you.

The Chair: That's the end of our questioning for today. I want to thank all of our witnesses for being here, as well as those who have joined us by teleconference.

The meeting is adjourned.