



July 20, 2016

The Honourable Carolyn Bennett  
Minister of Indigenous and Northern Affairs  
10 Wellington, 21<sup>st</sup> Floor  
Gatineau, QC K1A 0H4

Dear Minister Bennett:

**Re: The Nunavut Impact Review Board's Final Hearing Report respecting Sabina Gold & Silver Corp's (Sabina or the Company) Back River Gold Mine Project (the Project) of June 15, 2016**

As we indicated in our previous letter of June 16, 2016, we are now submitting our response and request in connection with the Nunavut Impact Review Board's Final Hearing Report with respect to our Back River Gold Mine Project. The NIRB Report recommended to the Minister that the Project should not proceed at this time.

We understand that under the provisions of Section 12.5.7 of the *Nunavut Land Claims Agreement* (NLCA), the Minister may decline to accept the Report and then has the following options:

- Under subsection 12.5.7(d), reject the determination of NIRB on the grounds that the Project should have been approved because of its importance in the national or regional interests, and refer the Report back to NIRB to consider terms and conditions which should be attached to any project approval; or
- Under subsection 12.5.7(e), where the Report is deficient with respect to ecosystemic and socio-economic issues, refer the Report back to NIRB for further review or public hearings.

With great respect to the NIRB and its staff, Sabina requests that the Minister reject the NIRB Report and return the Report to the NIRB to provide recommended terms and conditions, under subsection 12.5.7(d).

In the alternative, Sabina requests that the Minister confirm and make a determination that the NIRB Report is deficient and refer the report back to the NIRB for further review under subsection 12.5.7(e).

Since receiving the NIRB Report Sabina has visited the Kitikmeot communities of Cambridge Bay, Kugluktuk, Kugaaruk, Gjoa Haven and Taloyoak and held over 16 formal meetings and public forums with Inuit and community representatives and community members. Over 230 community members participated in these sessions. The Back River Project continues to have significant support, as reflected in a number of letters which have been sent to you.

We believe that there are very strong grounds for rejecting the determination of NIRB and referring the report back to NIRB to consider terms and conditions which should be attached to any project approval. In our view, the NIRB Report does not give appropriate weight to the support of the Project by Inuit representatives and communities, does not give appropriate weight to the socio-economic benefits of the Project to be secured under an Inuit Impact and Benefit Agreement to be negotiated with the KIA, makes errors by reaching conclusions that are not consistent with the evidence submitted by experts, responsible government agencies, and the KIA on the monitoring and mitigation measures, including adaptive management for the protection of caribou, does not comply with requirements for considering matters under the provisions of Part 12 of the NLCA, and does not give appropriate weight to the views, mandates and responsibilities of federal and territorial regulatory agencies, and the KIA in addressing any “uncertainties” relating to environmental protection.

In the attached Detailed Summary, we have set out the grounds for this request in detail. The grounds can be summarized as follows:

### **1. Inuit support for the Project**

We are strongly of the view that the NIRB Report does not properly reflect the strong support for the Project expressed by the KIA, based on its own extensive and detailed reviews and consideration of the Project throughout the four-year environmental assessment process. As well, it does not reflect the support for the Project expressed by the five established communities within the Kitikmeot region: Cambridge Bay, Kugluktuk, Gjoa Haven, Taloyoak, and Kugaaruk.<sup>1</sup> We note that Sabina has had significant engagement and consultation with communities in the Kitikmeot and NWT, completing more than 270 engagements to-date.

At the Final Hearing on the Project, the KIA urged the NIRB to make a positive NIRB recommendation to the Minister. We recognize that to proceed with the Project we will require, under Article 26 of the NLCA, the consent and agreement of the Kitikmeot Inuit Association under an Inuit Impact and Benefit Agreement and under a land tenure agreement for activities on Inuit Owned Land. We believe that we have a good working relationship with the KIA and we have worked hard to earn their support for moving forward with the Project through the environmental assessment phase to the regulatory and Inuit agreement phase.

The expressions of support by the KIA and by the established communities are included in the attached Detailed Summary, with excerpts from the transcripts of the Final Hearing. The NIRB

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<sup>1</sup> The Executive Summary to the NIRB Report makes particular reference to the views of one individual from Bathurst Inlet (a seasonal community) - seeming to give this individual comment more weight than the support of the KIA and the five established Kitikmeot communities.

Report makes no specific reference to the following matters which are to be considered under subsections 12.5.5(a) and (c) of the NLCA:

“12.5.5 NIRB shall, when reviewing any project proposal, take into account all matters that are relevant to its mandate, including the following:

(a) Whether the project would enhance and protect the existing and future well-being of the residents and communities of the Nunavut Settlement Area, taking into account the interests of other Canadians;

. . .

(c) Whether the project would unduly prejudice the ecosystemic integrity of the Nunavut Settlement Area.”

We submit that each of these matters would be evaluated positively if the NIRB Report had addressed them specifically, as required by the NLCA.

## **2. Regional and Inuit Benefits**

Nunavut and the Kitikmeot Region are in need of investment, employment opportunities, and business opportunities. The Project would provide significant regional and Inuit socio-economic benefits including significant capital and operating expenditures, a significant contribution to the Nunavut GDP, significant tax revenue and royalty revenue, and training, employment and business opportunities for Inuit people to be agreed under the IIBA.

In the seven years that Sabina has operated Back River as an exploration project we have already provided significant benefits to Inuit in the form of direct employment and contracts to Inuit owned companies. For example, in 2013 the project had 58 Inuit employees (30% of approx. 200 total employees) and \$1,654,590.00 gross payroll value and in 2014 had 15 Inuit employees (50% of approx. 30 total employees) and \$339,201.00 gross payroll value.

These opportunities for socio-economic benefits will significantly increase with the Project moving forward both currently and in the future but will be foregone if the project is not allowed to proceed.

In expressing its support for the Project, the KIA gave emphasis to the need for investment in Nunavut and the Kitikmeot Region, and to the value of the socio-economic benefits to the Inuit people, and in particular, to Inuit youth looking for training, employment and business opportunities.

Throughout the NIRB Report, the Board cites anecdotal evidence from participants at the hearing referring to experience in the Northwest Territories respecting the delivery of socio-economic benefits. In making this reference, the NIRB Report neglects to note the significant differences between Nunavut and the NWT. In particular, in Nunavut, there is a requirement for an Inuit Impact and Benefits Agreement to secure socio-economic benefits. Secondly, the NIRB Report does not reference the direct and positive benefits of mining to the NWT Indigenous communities as confirmed by the annual reports of the Government of the NWT. The NIRB Report makes superficial reference to the question of benefits in the NWT without NIRB ever requesting detailed information on this issue from the GNWT or other parties.

### 3. Caribou Protection Measures

With respect to caribou, it is important to remember that the mine and the marine laydown area are located outside the range of the Bathurst caribou herd and significantly outside the calving and post-calving ranges of the Beverly herd. The winter ice road from the mine to the marine laydown area does not interact seasonally with caribou. This was of particular importance to both the GN and the GNWT, the lead agencies for the management and conservation of caribou, who stated during the hearings that, taking into account recommendations made by them and committed to by Sabina, the monitoring and mitigation measures under the Wildlife Mitigation and Monitoring Plan (WMMP) and the Wildlife Effects Monitoring Plan (WEMP), were satisfactory.

Throughout the environmental assessment process and in the collaborative development of the WMMP and the WEMP, Sabina has continuously recognized the tremendous importance of caribou to the people and to the land. These monitoring and mitigation plans were developed in consultation with the Government of Nunavut, the KIA, the GNWT and other parties. The plans integrate traditional knowledge with scientific knowledge. The plans include contingency measures and adaptive management. As stated in the final hearing by our Vice President of Environment and Sustainability:

“We have committed to working with the Government of Nunavut, the Kitikmeot Inuit Association, and others on these monitoring programs as the mine advances. Monitoring will provide us with early notice of there is any expectation if caribou movements in the vicinity of the Project and an early notice that will enable us to determine whether we need to trigger mitigation measures. Mitigation measures also include consideration for a shift in the herd and a season-specific monitoring proposal”.

“We believe that the mitigation and monitoring program, particularly in the commitments that the Kitikmeot Inuit Association, Government of Nunavut, and Government of the Northwest Territories helped us make this week, is now the most complete and comprehensive mitigation plan of any mine in the north”.

We are confident that the monitoring and mitigation measures that we have committed to will ensure that the caribou are protected, and that the project will not have any affect on the recovery of the Bathurst caribou herd and their long-term viability. We believe that terms and conditions in a Project Certificate requiring compliance with the monitoring and mitigation plans, and the requirement for ongoing monitoring and adaptive management will secure the protection of the both the Bathurst and Beverly caribou herds. The ongoing regulatory oversight of the Government of Nunavut, the Government of the Northwest Territories and the KIA will also ensure the protection of the caribou.

The NIRB Report gives no consideration to terms and conditions that will ensure compliance with the monitoring and mitigation plans for the protection of caribou - and does not give appropriate weight to the recommendations of the government agencies and the KIA, which have expertise, experience, and ongoing responsibilities for the management and conservation of caribou. In our view, the NIRB Report makes errors in reaching conclusions that are not consistent with the evidence at the Final Hearing.

#### 4. Regulatory Protection of the Environment

The NIRB Report fails to give appropriate weight to the submissions of Federal and Territorial government agencies which provided detailed reviews and recommendations, and which indicated that they were satisfied that the project could be approved and proceed to the regulatory phase. Details of the positions of the regulatory agencies are set out in the attached Detailed Report.

We have already referenced the example of the caribou protection measures under the WMMP and the WEMP, which were developed and committed to by Sabina after detailed and extensive reviews and recommendations of both the Government of Nunavut and the Government of the Northwest Territories, which are the lead agencies with respect to the management and conservation of caribou and other wildlife, as well as by the KIA as the representative of the Inuit people in the region.

Another example relates to the issue of tailings and waste rock management. The government agencies which take the lead in reviewing plans for tailings and waste rock management are INAC, NRCan, and Environment Canada. These agencies advised NIRB that, after their detailed and extensive reviews of plans for tailings and waste rock management, they were satisfied that the project could be approved and proceed to the regulatory phase. At the regulatory phase, the Nunavut Water Board will consider an application for a water license, including terms and conditions for tailings and waste rock management, and for any discharges to water. The Nunavut Water Board is required under its mandate to set terms and conditions for the management of tailings and waste rock facilities and for the protection of water quality.

The NIRB Report does not give appropriate weight to the jurisdiction and mandate of these regulatory agencies and the statutory and regulatory requirements with respect to the management of tailings and waste rock facilities and the protection of water quality.

The NIRB Report identifies “uncertainty” respecting discharges from the desalination plant - but gives no weight to the legislative and regulatory terms for the protection of water quality under the *Fisheries Act*, the *Arctic Waters Pollution Prevention Act*, and *CCME Water Quality Guidelines*, and land use authorizations from Indigenous and Northern Affairs Canada - all of which will be complied with.

The NIRB Report identifies “uncertainty” respecting marine fuel deliveries but gives no weight to the requirements of the *Canada Shipping Act* and Regulations applicable to ships and to terminal operators to ensure safe fuel transport and delivery - all of which will be complied with.

The NIRB Report consistently neglects to consider the role of project terms and conditions, regulatory reviews, regulatory terms and conditions and regulatory agencies in ensuring the appropriate monitoring and mitigation for the protection of environmental issues. The NIRB Report does not properly consider how the “uncertainties” it identifies can be addressed through standard terms and conditions in a project certificate and in regulatory provisions. We submit that each of the concerns about “uncertainties” identified in the NIRB Report can be addressed by referring the Report back to NIRB under subsection 12.5.6(d) of the NLCA to consider terms and conditions which should be attached to a project approval.

It is important to stress that a consistent and clear environmental assessment process is imperative in providing investment certainty for project proponents and attract new investment

in Nunavut. We believe that given that there are no-project specific issues that cannot be addressed in terms and conditions, a decision to refer the Report back to NIRB to consider terms and conditions would demonstrate a stable and predictable regulatory process. Attracting and advancing responsible development that respects the balance of environment, socio-economics and economics is in the best interest of the Kitikmeot region and Nunavut.

## 5. Conclusion

We respectfully request that the Minister give careful consideration to our request for referral of the NIRB Report back to NIRB under subsection 12.5.7(d) or, in the alternative, subsection 12.5.7(e), and we would be pleased to provide any additional information that the Minister may require.

Yours truly,



Bruce McLeod  
President and CEO



Matthew Pickard  
Vice President, Environment & Sustainability

cc: The Honourable Dominic Leblanc, Minister of Fisheries and Oceans and the Canadian Coast Guard, GOC  
The Honourable Jim Carr, Minister of Natural Resources, GOC  
The Honourable Marc Garneau, Minister of Transport, GOC  
The Honourable Hunter Tootoo, MP for Nunavut  
The Honourable Peter Taptuna, Premier of Nunavut  
Cathy Towntongie, President, Nunavut Tunngavik Incorporated  
Stanley Anablak, President, Kitikmeot Inuit Association  
Thomas Kabloona, Chairperson, Nunavut Water Board  
Elizabeth Copland, Chairperson, Nunavut Impact Review Board