

NUNAVUT WATER BOARD
PUBLIC HEARING FOR LICENCE NO. 2AM-MRY1325

AMENDMENT NO. 1 APPLICATION

HEARING HELD AT
POND INLET, NUNAVUT
EXCERPT
MAY 6, 2015

1 APPEARANCES:

2

3 NUNAVUT WATER BOARD

4 T. Kabloona Chair of Hearing

5 D. Aglukark, Sr. Member

6 R. Mrazek Member

7

8 NUNAVUT WATER BOARD STAFF

9 T. Meadows Legal Counsel

10 D. Hohnstein Technical Advisor

11 S. Joseph Technical Advisor

12 B. Kogvik Board Secretary

13 R. Ikkutsiluk Licensing Administrator

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15 APPLICANT BAFFINLAND IRON MINES CORPORATION

16 K. Kowbel Legal Counsel

17 E. Madsen Vice President Sustainable
18 Development, Health, Safety,
19 Environment

20 O. Curran Director Sustainable
21 Development

22 J. Millard Environmental Manager

23 S. Potter Environmental Specialist

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1 INTERVENORS

2 QIKIQTANI INUIT ASSOCIATION

3	M. Osland	Legal Counsel
4	E. Inuarak	Board of Directors
5	S. Williamson Bathory	Director, Departmnet of
6		Major Projects
7	J. VanGulck, Dr.	Arktis Solutions Inc.
8	B. Ootoova	Community Coordinator

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10 ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT CANADA

11	S. Muscati	Legal Counsel
12	A. Morgan	Senior Project Engineer
13	S. Forte	Water Management
14		Coordinator
15	S. Burgess	Project Manager, Mary
16		River Team

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18 ENVIRONMENT CANADA (VIA TELEPHONE)

19	M. Dahl	Environmental Assessment
20		Coordinator
21	A. Wilson	Water Quality Specialist

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23 HAMLET OF POND INLET

24	J. Aareak	Representative
25	J. Atagoutak	Representative

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1 MITTIMATALIK HUNTERS AND TRAPPERS ORGANIZATION

2 N. Mablick Representative

3 G. Koonark Representative

4 M. Kaunak Representative

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6 INTERPRETERS/TRANSLATORS

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1 (PROCEEDINGS COMMENCED AT 2:54 PM)

2 Discussion

3 MS. MEADOWS: Mr. Chair, legal -- Teresa
4 Meadows, legal counsel for the Nunavut Water Board.

5 It's my understanding that you have
6 additional information with respect to security that
7 you wish to offer at this point, but before we do that,
8 I'd like to have a discussion about the submission of
9 new evidence at this point and give the parties present
10 an opportunity to comment on, just generally, the
11 submission of new evidence at this point. I don't need
12 to know what the evidence is, I just need to know,
13 generally, that it pertains to security and an update.
14 It's my understanding it's an update of the position of
15 Aboriginal Affairs and Northern Development Canada with
16 respect to the security to be held under this amended
17 license? Is that correct?

18 MR. MUSCATI: That's correct, and
19 strictly speaking, we're not presenting any -- any new
20 evidence but it is a change in the position based on
21 the -- based on having reviewed all the submissions and
22 the -- the circumstances.

23 MS. MEADOWS: Thank you, Mr. Chair.
24 Teresa Meadows, legal counsel for the Nunavut Water
25 Board.

26 Mr. Muscati, is the information -- and I'm

1 thinking in general terms again. Has Aboriginal
2 Affairs and Northern Development Canada presented the
3 specific figures before that you're now intending to
4 offer?

5 MR. MUSCATI: The information we'll be
6 presenting is based on evidence that has been presented
7 in earlier annual security review processes, and I
8 understand that that evidence remains on the record for
9 the purposes of this hearing.

10 MS. MEADOWS: Thank you, Mr. Chair.
11 Teresa Meadows, legal counsel for the Nunavut Water
12 Board.

13 Perhaps what I'll do is I'll poll the parties
14 first with respect to their position as to whether or
15 not they'd consider a revised number, I would imagine,
16 a revised number in terms of what you think should be
17 held under the water license, because I don't believe
18 as much as the basis of that number may have been
19 presented in the annual security review, I don't
20 believe we've actually seen the number that's being
21 suggested, so I'd like to go to legal counsel for the
22 Applicant first to see whether or not they have
23 anything to say about this, and then I'll also refer to
24 the other intervenor here, the Qikiqtani Inuit
25 Association as well, so first over to Baffinland.

26 Thank you, Mr. Chair.

1 THE CHAIR: Thank you.

2 Baffinland.

3 Submissions by Baffinland Iron Mines Corporation

4 MS. KOWBEL: Thank you, Mr. Chair.

5 Christine Kowbel, Baffinland.

6 I think Baffinland opposes the introduction
7 of any new evidence at this stage of these proceedings
8 on the issue of quantum of security. The issue of
9 quantum of security has not been an issue in these
10 proceedings that anyone, I think, has presented any
11 evidence on other than to say that the reclamation and
12 closure plan will be updated and subject to the usual
13 processes completed during the annual security review
14 at the end of this year.

15 It's, in our view, completely inappropriate
16 to bring up issues about quantum at this stage, given
17 that they have a technical aspect to them, given that
18 we've prepared for the hearing on the basis of the
19 submissions made so far in these proceedings, and given
20 the fact that the Board has established a very
21 thoughtful and thorough process to consider on an
22 annual basis at this time, the matter of quantum of
23 security and the appropriate quantum of security that
24 should be posted under this license, and I think for
25 all these reasons, we would oppose the introduction of
26 this kind of evidence at this stage.

1 Thank you, Mr. Chair.

2 THE CHAIR: Thank you.

3 Teresa.

4 MS. MEADOWS: Thank you, Mr. Chair.

5 Teresa Meadow, legal counsel for the Nunavut Water
6 Board.

7 If I can have the representatives from the
8 Qikiqtani Inuit Association perhaps provide their views
9 on the matter?

10 Submissions by Qikiqtani Inuit Association

11 MR. WILLIAMSON BATHORY: Hello. Stephen
12 Williamson Bathory, Qikiqtani Inuit Association.

13 We would like to support the statements made
14 by Baffinland's counsel. We feel that at this stage in
15 the hearing process, given the amount of time and
16 opportunity afforded to parties to already present
17 positions on security, given the fact there is an
18 annual security process within the license that was
19 completed for two years already, that we don't feel
20 it's appropriate to introduce new evidence at this
21 point in time.

22 If the Board chooses to entertain such a
23 discussion during this hearing, then QIA would like to
24 request the time to review and respond to such
25 material. We're not certain that we'd be in a position
26 to do that today or necessarily at these hearings,

1 given that until today, we had not heard that
2 discussion of the security figure was going to be
3 introduced. Thank you.

4 THE CHAIR: Thank you.
5 Teresa.

6 MS. MEADOWS: Thank you, Mr. Chair.
7 Perhaps we can open it up to the floor, if
8 there are any further comments from any of the parties,
9 and then the Panel will take a brief recess to discuss
10 the application for new evidence.

11 Thank you, Mr. Chair. Teresa Meadows, legal
12 counsel for the Nunavut Water Board. I don't know if
13 AANDC would like to reply to the submissions of
14 Baffinland and then we'll recess?

15 THE CHAIR: AANDC.
16 Submissions by Aboriginal Affairs and Northern
17 Development Canada

18 MR. MUSCATI: Thank you. Sina Muscati,
19 legal counsel for the Government of Canada.

20 I'll just say that the amendment process --
21 the amendment to the license will need to be approved
22 by the Minister, and, so, what we want to present is
23 what the department would be comfortable with, with
24 respect to security in order to be comfortable with
25 having the amendment go ahead, so that's the reason why
26 we wanted to present the new information.

1 THE CHAIR: Teresa.

2 Questions by Nunavut Water Board Staff

3 MS. MEADOWS: Thank you, Mr. Chair.

4 Teresa Meadows, legal counsel for the Nunavut Water
5 Board.

6 Just a quick follow-up on that, then, am I to
7 take it that your suggestion is that this information
8 is directly tied to the Amendment Application and that
9 the Amendment Application should not proceed without a
10 full and complete understanding of this new
11 information?

12 THE CHAIR: AANDC.

13 MR. MUSCATI: Thank you, Sina Muscati,
14 legal counsel for the Government of Canada.

15 That's correct, yeah. This is information
16 that's material to the amendments and to whether the
17 department will recommend to the Minister whether the
18 amendment should be approved, so we understand that
19 this is coming in at the -- at the last minute. We had
20 these instructions sent to us today, and we appreciate
21 that there are concerns among the parties and that
22 there may be a need for more time for them to be able
23 to consider this information and to provide the
24 response to it.

25 THE CHAIR: Teresa.

26 MS. MEADOWS: Thank you, Mr. Chair.

1 Teresa Meadows, legal counsel for the Nunavut Water
2 Board. Thank you, Mr. Chair.

3 I think perhaps we should adjourn, and we'll
4 have a Panel discussion about the offering of the new
5 evidence, recognizing that potentially with the
6 submissions of Aboriginal Affairs and Northern
7 Development Canada, that the outcome may, in fact, be
8 an adjournment of the public hearing with respect to
9 this particular issue, so with that, we will adjourn.

10 THE CHAIR: Baffinland.

11 Submissions by Baffinland Iron Mines Corporation

12 MS. KOWBEL: Thank you, Mr. Chair.

13 Christine Kowbel.

14 I just wanted to clarify that I think I heard
15 a second motion in Mr. Muscati's response, which was a
16 motion to adjourn these hearings should the Board
17 accept new evidence to permit parties additional time,
18 and I just wanted to clarify that Baffinland would also
19 oppose that motion to adjourn on the basis that the
20 annual security review is the appropriate forum for
21 this discussion. The annual security review terms were
22 agreed to by AANDC, and they were established with
23 AANDC's full cooperation and involvement and that the
24 appropriate forum for these questions is within the
25 annual security review, and we don't believe that this
26 is an issue to be resolved in order to complete the

1 amendment process for this application.

2 THE CHAIR: Teresa.

3 MS. MEADOWS: Thank you, Mr. Chair.

4 Teresa Meadows, legal counsel for the Nunavut Water
5 Board. I require nothing further I think. Thank you.

6 THE CHAIR: We'll recess.

7 AANDC.

8 Submissions by Aboriginal Affairs and Northern
9 Development Canada

10 MR. MUSCATI: Thank you. Sina Muscati,
11 legal counsel for the Government of Canada.

12 We're not making a formal motion for an
13 adjournment, but we are presenting information that we
14 think is material to the amendment, and we appreciate
15 that other parties will need time to -- may need the
16 time to respond to this, so if -- if the Board feels
17 that there is a need to keep the record open, then we
18 leave that to the Board's judgment to decide.

19 THE CHAIR: Teresa.

20 MS. MEADOWS: Thank you, Mr. Chair.

21 Teresa Meadows, legal counsel for the Nunavut Water
22 Board.

23 I guess, you know, not to put too fine a
24 point on it, but formal motion or not, the net effect
25 of new evidence and the opportunity to reply is an
26 adjournment, so I'm not really sure how else to do it,

1 and I don't think, in fairness to the parties here,
2 that they would have the ability to respond to a
3 substantive revision with respect to quantum overnight,
4 so as much as I would like to have them work miracles
5 through the night, I suspect that that's probably not a
6 possibility.

7 Ms. Kowbel, I don't know if you have a
8 position on that, but I don't think that a response
9 would be available overnight, and also, too, I
10 recognize that the Qikiqtani Inuit Association does not
11 have their legal counsel here, so trying to -- trying
12 to prepare a response through the evening and into
13 tomorrow morning I suspect is probably a non-starter,
14 but Ms. Kowbel, perhaps if you can?

15 THE CHAIR: Baffinland.

16 Submissions by Baffinland Iron Mines Corporation

17 MS. KOWBEL: I think that that's safe
18 to say, but our final position on that would depend on
19 what the evidence is, should the Board determine they
20 wanted to hear from AANDC on this point.

21 THE CHAIR: Teresa.

22 MS. MEADOWS: Thank you, Mr. Chair.

23 Teresa Meadows. Legal counsel for the Nunavut Water
24 Board.

25 Perhaps if I can just ask, I think you
26 referenced it in your submissions, but trying to get

1 ahold of legal counsel tonight and be able to have a
2 position for the QIA tomorrow, if that's a possibility?
3 Submissions by Qikiqtani Inuit Association

4 MR. WILLIAMSON BATHORY: Thank you. Mr. Soundman?

5 Stephen Williamson Bathory, QIA. We've
6 reached out to our counsel. I just need a confirmation
7 call that we'd be able to connect this evening. It
8 appears we may be somewhat limited, given the
9 circumstance, and maybe just one final point to impress
10 upon the Board as you deliberate, we have, as an Inuit
11 association, invested considerable effort and work on
12 financial security for three years consistently on this
13 project. We've invested several hundred thousand
14 dollars of our institution's resources to ensure that
15 the liability on the project was well-managed. We've
16 done that in a way that we've worked with the Proponent
17 through policies that have been made public, explained,
18 introduced to all of their intervenors. We have spent
19 considerable effort ensuring that the evidence
20 presented before the Board at each of the annual
21 security reviews is not just substantial, but detailed
22 to the point where it could be critiqued in any form.

23 We are, to be fair, relatively frustrated
24 that a party would want to introduce matters of
25 security quantum at the final moment of an amendment
26 hearing, given that there have been many years and many

1 opportunities to have these discussions. We believe
2 the license permits that are to take place and that,
3 quite frankly, we think there are far more important
4 aspects of the project that we need to set our minds
5 to, and that's why this hearing's in Pond Inlet.

6 The project is meant to produce benefits to
7 these communities, and continuing a dialogue with no
8 resolution on security defers those opportunities, and
9 it's something QIA takes quite seriously, so, again,
10 QIA will continue to -- we'll reach out to our counsel
11 tonight. If we can resolve matters, we will, because
12 it's important that we're able to actually provide the
13 benefits and the opportunities associated with the
14 project.

15 To date, we haven't seen a single submission
16 from AANDC on the quantification of security that is
17 detailed. They have done armchair reviews of documents
18 and participated in a very ad hoc way through the
19 annual security review process, and that has been a
20 substantial limitation on our ability to move forward
21 on security as a whole, so it's not to say that we're
22 not open to discussions, but those discussions need to
23 take place in their proper venues. And we're very
24 cautious as to whether or not today's hearing on the
25 ERP amendment is that venue. Thank you.

26 THE CHAIR:

Teresa.

1 MS. MEADOWS: Thank you, Mr. Chair.

2 Teresa Meadows, legal counsel for the Nunavut Water
3 Board.

4 With that, we will adjourn and consider the
5 two motions, even though I know it's only really one,
6 before the Board at the moment. Thank you.

7 THE CHAIR: Thank you.

8 (ADJOURNMENT)

9 THE CHAIR: Welcome back.

10 Teresa.

11 Ruling

12 MS. MEADOWS: Thank you, Mr. Chair, and
13 I think we've just heard legal counsel for the
14 Qikiqtani Inuit Association that has just called in, so
15 welcome, and thank you for joining us on such short
16 notice.

17 So when we adjourned, there were essentially
18 two motions before the Board. One to allow Aboriginal
19 Affairs and Northern Development Canada to present
20 additional evidence with respect to their position on
21 quantum of security to be held under an amended
22 license, and then flowing from that, the question was
23 if that evidence is allowed in, essentially, how the
24 Board may adjourn the hearing with respect to that
25 particular issue to allow the other parties time to
26 respond to the information presented, so I will start

1 by saying sort of some brief lead-in remarks.

2 We heard from Aboriginal Affairs and Northern
3 Development Canada that this additional information is
4 considered by them to be central to the Amendment
5 Application, and particularly reflecting the Minister's
6 jurisdiction to consider any amended license, should
7 the Board grant the amendment, the Minister would be,
8 at that point, considering whether or not adequate
9 security has been put in place.

10 The positions of the parties were that the
11 Applicant was opposed to this additional information
12 coming in, in this forum, having said that the annual
13 security review under the existing license is the more
14 appropriate venue for those discussions.

15 The Qikiqtani Inuit Association also took the
16 position in support of Baffinland's position, the
17 Applicant's position, that these discussions are more
18 appropriately dealt with under the annual security
19 review and not with respect to this Amendment
20 Application.

21 Having considered the submissions of the
22 parties, recognizing the stage of the review of the
23 Amendment Application that we're at, at the public
24 hearing, the Panel has decided to firstly allow
25 Aboriginal Affairs and Northern Development Canada to
26 present the additional evidence that they wish to with

1 respect to their position on quantum of security to be
2 held under a potentially amended license.

3 The second part of the Panel's direction is
4 to then permit, tomorrow morning, the Applicant and the
5 Qikiqtani Inuit Association to make submissions
6 tomorrow morning with respect to the time period that
7 they anticipate would be required to reply to the
8 additional evidence provided by Aboriginal Affairs and
9 Northern Development Canada.

10 At that point, the Panel will make a decision
11 as to the extent to which the record of this public
12 hearing may remain open and the time period for which
13 the record may remain open with respect to the issue of
14 quantum of security only.

15 So with that, Mr. Chair, I would turn it over
16 to Aboriginal Affairs and Northern Development Canada
17 to provide the additional submissions with respect to
18 their position on quantum of security. Thank you,
19 Mr. Chair.

20 THE CHAIR: Thank you, Teresa.

21 AANDC.

22 Submissions by Aboriginal Affairs and Northern
23 Development Canada

24 MS. MORGAN: Thank you to the Water
25 Board and to the Chair for considering the submission
26 of the new evidence by the department.

1 The issue of security is challenging. We are
2 still trying to find ways to minimize overbonding while
3 respecting the interest of Inuit landowners and
4 protecting the public interest. This problem has not
5 been resolved. The department now sees a need to
6 modify the approach we took previously. We appreciate
7 that this is an unexpected development and that
8 Baffinland, QIA, or the Board may need time to consider
9 and respond to it.

10 To protect the public interest and fulfill
11 the roles of the statutory officers under the Nunavut
12 Waters and Nunavut Surface Rights Tribunal Act, for
13 example, the Inspectors and the Minister, the minimum
14 water license security amount must cover Crown land,
15 water-related issues, and on Crown land and
16 water-related issues throughout the project scope.
17 Anything short of that would leave the Crown
18 significantly undersecured and would not be in the
19 public's interest.

20 In the Board's Reason for Decision of June
21 12th, 2013, the Board reviewed Baffinland's reclaim
22 evidence regarding the 2013 work plan which did
23 apportion out costs between land and water. At that
24 time, Baffinland's estimate of the water-related costs
25 was approximately 6 percent of the then current
26 reclamation cost estimate.

1 While that information applied to an earlier
2 work plan, it appears to be the best information
3 available to us on a reasonable apportionment between
4 land and water. On that basis, the department's
5 submission is that 6 percent of the consensus
6 reclamation cost estimate, that is 2,861,000 is the
7 minimum amount of security for the water license
8 itself. No discounting should take the Board below
9 that number.

10 The department understands the challenges of
11 apportioning reclamation costs between land and water
12 and understands the holistic approach that the Board
13 has taken; however, a discounting approach to security
14 requires the drawing of lines within the current
15 legislation -- legislative framework. This appears to
16 be the only way to reduce overbonding of Proponent's,
17 while at the same time protecting both the public
18 interest and respecting the interest of landowners and
19 holding security for the costs of risks that they may
20 -- must manage.

21 To be clear, the change in the department's
22 approach is with respect to the water-related issues on
23 private land. Our submission on a minimum quantum for
24 water license security modifies Part 1, paragraphs 2
25 and 3 of our written submission, but it does not
26 detract from the more general submission we have made

1 with respect to discounting.

2 The Board should discount only if the
3 conditions out in Part 2 of our written submissions are
4 addressed to the satisfaction of the Board. If the
5 Board does not have that evidence as basis for
6 discounting, then the reclamation cost estimate should
7 be secured in its entirety within the water license.

8 The department is undertaking a review of our
9 approach to water license security and, in particular,
10 to discounting to ensure that we are appropriately
11 safeguarding the public interest, and we will be
12 continuing to work on these issues in the coming
13 months.

14 The department understands that we can
15 anticipate an annual security review process as early
16 as this fall. While we don't have a precise
17 quantification of the problem, we already have enough
18 information to conclude that we are undersecured in
19 relation to what the public interest requires. That
20 situation should be rectified at the earliest possible
21 opportunity. The annual security review process would
22 be an opportunity to refine the numbers, and we should
23 start addressing the issue now.

24 And that completes our submission.

25 THE CHAIR: Thank you. Questions to
26 AANDC from the Applicant?

1 Questions by Baffinland Iron Mines Corporation

2 MR. MADSEN: Erik Madsen with
3 Baffinland.

4 Once again, it's very disappointing at this
5 point in time to be talking about this. Two months
6 ago, your department participated in a review of this
7 and was in agreement with the amounts that were
8 proposed.

9 Just to clarify, you mentioned earlier -- in
10 the earlier amounts, 2013, there was 6 percent related
11 to an earlier work plan. You know, as these things
12 evolve, you look at your cost estimates and you
13 determine that there's certain amount of your work
14 plans that have been allocated to the wrong owners, and
15 in this case, the 2013 work plan and the cost estimate,
16 there was certain amount of funds related to cost
17 estimate that should have been on IOL lands, and that's
18 why in subsequent submissions, the amount of IOL or
19 QIA-related securities went up, and that's why these
20 annual security reviews are done, and we do very
21 thorough reviews on them, and you've heard from the QIA
22 they've done a thorough review, and I just want to
23 confirm that your department did participate in those
24 reviews this year and basically agreed on this year's,
25 the 2015, work plan on the amounts that were agreed
26 upon.

1 THE CHAIR: Thank you.

2 AANDC.

3 MR. MUSCATI: It's Sina Muscati, legal
4 counsel for the Government of Canada.

5 So, yes, the department was involved in the
6 2015 annual security review process that did arrive at
7 an amount, but the department is continually looking at
8 security and whether it's able to be comfortable. That
9 it's in a position to protect the public interest,
10 given the amount of security, and based on the ongoing
11 review and the instructions and information that we've
12 received, they feel that the security amount is not --
13 is not an amount that is sufficient to protect the --
14 to secure their interests and to protect the public
15 interests, so it's just based on an ongoing review and
16 assessment of the security amount.

17 THE CHAIR: Thank you.

18 Applicant.

19 MR. MADSEN: It's Erik Madsen again
20 with Baffinland.

21 I guess I can appreciate that, that you're
22 continuing to review it. I guess just a comment from
23 us. I appreciate that where we are right now with the
24 situation of our project, with other things that are
25 going on with other institutions such as NPC, we've
26 actually decided to scale back a lot of our work this

1 year in 2015, and, so, there's a lot less activities
2 that are going to occur this year that were actually
3 proposed in the 2015 work plan, so the amount of sea
4 lifts we'll be bringing in will be significant less, so
5 I will actually be making the comment right now that
6 for this year in 2015, we are probably overbonded for
7 the work that we are planning to do this year by
8 millions of dollars.

9 THE CHAIR: Thank you.

10 AANDC.

11 MS. MORGAN: Andrea Morgan from AANDC.

12 Thank you, Baffinland, for this information.
13 It will be taken into consideration through a review.

14 THE CHAIR: Thank you. Any further
15 questions from Baffinland?

16 MR. MADSEN: No, not just any further
17 questions, just a general comment. You know, as people
18 understand that the price of iron ore is very low
19 compared to when we first started out on this project,
20 so any -- anything like situations that are just
21 occurring now really impact how investments are done in
22 the north and in Nunavut, and this is something that
23 not only our company, but other people that are going
24 to invest in this territory are going to think about
25 moving forward. Thank you.

26 THE CHAIR: Thank you.

1 Questions to AANDC from Qikiqtani Inuit
2 Association?

3 Questions by Qikiqtani Inuit Association

4 MR. WILLIAMSON BATHORY: Stephen Williamson
5 Bathory, QIA.

6 A general question first to AANDC. You've
7 just presented an oral submission, a change in some of
8 your submission relative to what was submitted last
9 week in your formal preparation. A question to AANDC
10 and looking also for confirmation of the Board, is that
11 going to be provided in writing? When would that be
12 provided in writing, and are there more pieces that we
13 would expect to be delivered in concert with that?
14 We're asking simply because what was described is --
15 we're interpreting as a concept. AANDC's proposing a
16 concept to resolve an AANDC point of conflict with what
17 they're viewing as being the security process present.
18 QIA needs a better understanding of what AANDC's
19 actually presenting.

20 What you have just introduced raises a number
21 of questions that of course we would need to understand
22 before we could begin to undertake to develop a
23 position, so respecting that the Water Board has asked
24 we make a representation by tomorrow morning, from our
25 perspective, we need to first understand the process
26 through which your positions will be presented,

1 clarified such that our review can be initiated. Thank
2 you.

3 THE CHAIR: Thank you.

4 AANDC.

5 MR. MUSCATI: Thank you. It's Sina
6 Muscati, legal counsel for Government of Canada.

7 Yes, we do appreciate that this information
8 has come in last minute, and I will be checking just to
9 see when we might have a written submission that we'll
10 be able to provide, and hopefully within the next hour,
11 we can get back to you with more details on when that
12 will be coming in and in what format.

13 THE CHAIR: Thank you.

14 QIA.

15 MR. WILLIAMSON BATHORY: So just as a follow-up,
16 and we can again spend more time on this over the
17 evening, but what I would suggest, QIA will need time
18 to first receive and review the AANDC submission before
19 we can fully respond on how much time we would need to
20 present our position on the topics raised by AANDC. We
21 simply can't predict what our timeframes will be in the
22 absence of seeing the submission and then having the
23 opportunity to clarify the submission with AANDC.

24 Thank you.

25 THE CHAIR: Thank you.

26 AANDC.

1 MR. MUSCATI: Thank you. Sina Muscati,
2 legal counsel for Government of Canada.

3 Yes, we appreciate that and will try to get
4 you that information as soon as possible.

5 THE CHAIR: QIA.

6 MR. WILLIAMSON BATHORY: Thank you. Again,
7 Stephen Williamson Bathory, QIA.

8 Just because our counsel has joined on the
9 phone line, I would ask if he has anything further to
10 add? Otherwise, I'm happy to further discuss with the
11 Board at the close of today, and QIA can prepare a
12 formal response by the morning, but, again, I'd like to
13 involve our counsel in this.

14 THE CHAIR: Thank you.

15 Legal Counsel.

16 MR. OSLAND: Yes, Sorry, Mr. Chairman.
17 It's Mike Osland speaking in Ottawa. I hope you can
18 hear me. I apologize if the technology is preventing a
19 better submission from me. I'm having a difficult time
20 hearing. A fair number of blackouts occurring while
21 some of the speakers have been presenting.

22 I just want to point out we don't even have
23 instructions. We will speak with QIA over the evening,
24 and tomorrow we'll come back with any further direction
25 or submissions we'd like to make after we clarify
26 instructions, but I would like to point out just how

1 disappointing this is, this turn of events truly is
2 given the fact that QIA spends a significant amount of
3 cost in following the process and respecting the
4 process, and to have last-minute submissions like this
5 brought in, I really think it would be incumbent upon
6 the Board to really try to identify how to separately
7 isolate this issue and avoid it from bogging down the
8 hearing as a whole or any issues that need to be
9 resolved for this year's operations.

10 As far as QIA is concerned, there was an ASR
11 earlier this year. The 2015 security has been accepted
12 and agreed to by the department, and any other issues
13 that they wish to raise, we can certainly look to,
14 identify, respond to if we're given enough time to do
15 so, but it's -- it's just not fair to either QIA or to
16 the Proponent if this is the sort of last-minute
17 raising of major issues is allowed to bog down the
18 entire process; and other than that, very off-the-cuff
19 submission, we'll seek further instructions and
20 hopefully be on the phone with you tomorrow. Thank
21 you.

22 THE CHAIR: Thank you.

23 Environment Canada?

24 MR. DAHL: No comments from
25 Environment Canada or questions.

26 THE CHAIR: Thank you.

1 Hamlet of Pond Inlet?

2 HTO? HTO?

3 Staff?

4 Questions by Nunavut Water Board Staff

5 MR. JOSEPH: Sean Joseph. Thank you

6 Mr. Chair. We have just one clarification that we'd
7 like to seek from AANDC.

8 THE CHAIR: Go ahead, Sean.

9 MR. JOSEPH: Thank you, Mr. Chair.

10 Referring to Slide Number 9 from AANDC's
11 presentation, I would just like to know if AANDC could
12 elaborate a little bit in terms of the rationale for
13 wanting the water use that the Proponent is asking for,
14 wanting to limit that amount to 1,500 cubic metres per
15 day?

16 THE CHAIR: AANDC.

17 MS. MORGAN: This is Andrea Morgan
18 from AANDC. I just need a second to think to give you
19 a proper response.

20 So with regards to the withdraw rates,
21 they're in Table 4. There was a maximum withdraw rate
22 indicated for each of the water courses, and, in total,
23 they summed up to the 2,788, although Baffinland has
24 indicated that they would not be withdrawing from all
25 seven water courses within the Phillips Creek. They --
26 it's not clear within the proposed water license

1 submission, and I guess what we were raising concern is
2 accumulative impacts, if it's -- if -- should the full
3 amount be taken out at the same time, what would that
4 accumulative impact be on the Phillips Creek.

5 MR. JOSEPH: Thank you, AANDC. Thanks
6 for your answer. We appreciate it.

7 That will be all for me, Mr. Chair.

8 THE CHAIR: Thank you. Any questions
9 to AANDC from Panel members? We will move on to the
10 next intervenor. Ten-minute break. Ten-minute break,
11 one, zero minutes.

12 (ADJOURNMENT)

13 THE CHAIR: Welcome back. I
14 understand QIA has a few more questions for AANDC.

15 Please go ahead.

16 Further Questions by Qikiqtani Inuit Association

17 MR. WILLIAMSON BATHORY: (Other language spoken)

18 Stephen Williamson Bathory, QIA.

19 I'd like to ask if we could look at Slide 15
20 from your presentation? And, again, this brings back
21 the topic of security. On that slide, there's a line
22 which reads, (as read):

23 Any discounting be supported by evidence.

24 The question we'd like to ask AANDC is through these
25 hearings, you've represented some thoughts on security.
26 On the topic of evidence, do you know of any specific

1 issues, based on the public record for this license,
2 which would suggest there are weaknesses in the
3 evidence that have been presented by parties to support
4 discounting? So is there anything specific that you
5 can point to on the topic of weaknesses in evidence as
6 presented before the Board?

7 THE CHAIR: Thank you.

8 AANDC.

9 MS. MORGAN: Andrea Morgan from AANDC.

10 The purpose of the information on Slide 15
11 and that were included in the cover letter for the
12 final written submission was intended as
13 recommendations on how to manage security within the
14 water license. It was not specific to the security
15 that we just currently reviewed in the past year.

16 THE CHAIR: Thank you. QIA.

17 MR. WILLIAMSON BATHORY: (Other language spoken)

18 Stephen Williamson Bathory, QIA.

19 Just a follow-up question, then. AANDC did
20 provide an April 22nd submission to the Board, and they
21 referenced that earlier in their presentation.
22 Specifically, I'm looking at page 4 of 6, and page 4 of
23 6 lays out five specific items that AANDC suggests
24 would have to be presented to establish that proper
25 evidence exists to support discounting.

26 Again, I would like to ask if AANDC can point

1 to any of those five bullets in their submission that
2 would suggest that such evidence hasn't already been
3 presented before the Board as it relates to the Mary
4 River financial security estimates.

5 So we understand in your most recent
6 response, your slide is a general statement. At this
7 hearing, we're looking to resolve specific matters, so,
8 again, specifically, can you point to an issue of
9 evidence from that list?

10 THE CHAIR: Thank you.

11 AANDC.

12 MS. MORGAN: Andrea Morgan from AANDC.

13 Again, these are comments that were directed
14 to the Water Board with regards to security management
15 under the license that the department was recommending
16 that the wording within the amended license ensure that
17 these items that have been included in -- within this
18 page 2 and 6 of the cover letter of the April 22nd
19 submission, that these are covered within the water
20 license wording itself.

21 THE CHAIR: Thank you.

22 QIA.

23 MR. WILLIAMSON BATHORY: (Other language
24 spoken)

25 Stephen Williamson Bathory, QIA.

26 From that, QIA takes the understanding that

1 there are no specific issues relative to the evidence
2 that has been presented before the Board on the topic
3 of financial security. The only other follow-up
4 comment we would like to propose back to AANDC is
5 confirmation that AANDC participated in the review of
6 the 2013 work plan for the purposes of establishing
7 security as well as the 2014 and 2015 ASR process for
8 the purpose of establishing security?

9 (Other language spoken)

10 THE CHAIR: Thank you.

11 AANDC.

12 MS. MORGAN: Andrea Morgan from AANDC.

13 I just want to rephrase your questions to
14 make sure that I understand them clearly. I think
15 there was two questions there. The first one is that
16 QIA is seeking confirmation from the department that
17 the evidence is adequate for the security held by QIA;
18 and the second question was to confirm AANDC's
19 participation in -- of the 2013, '14 annual security
20 reviews as well? Is that correct?

21 THE CHAIR: QIA.

22 MR. WILLIAMSON BATHORY: (Other language spoken)

23 Stephen Williamson Bathory, QIA.

24 And I'll try to just be more clear, so I'll
25 deal with the first topic. QIA now understands that
26 AANDC does not have any specific issues to raise with

1 regards to the evidence that have been presented, and
2 we were just looking for a final confirmation that
3 there's no specific issue with any specific piece of
4 evidence that has been presented to date? So that was
5 Topic 1.

6 The second topic is just a confirmation that
7 AANDC did, in fact, participate in the establishment
8 for security for the 2013 work plan, that was through a
9 hearing process, as well as the 2014 and 2015 ASR
10 process?

11 Thank you.

12 THE CHAIR: Thank you.

13 AANDC.

14 MS. MORGAN: Andrea Morgan from AANDC.

15 Regarding your first question, the department
16 -- see, my understanding that it's the Water Board that
17 reviews the evidence that is brought forward by QIA on
18 the security, and they make their decision on whether
19 the security is held in the same form as what it would
20 be, and intent is that it would be held by the Minister
21 or by the Crown, so I think that answers the first
22 question.

23 And the second question is I've -- myself, I
24 have been involved with the annual security review for
25 the work plan for 2015. I understand that the
26 department was also involved with the 2013 and 2014

1 annual security review. I was not participating in
2 that, but I do see correspondences from previous
3 department representatives.

4 THE CHAIR: Thank you.

5 QIA.

6 MR. WILLIAMSON BATHORY: (Other language spoken)

7 Stephen Williamson Bathory, QIA.

8 So hopefully just one final question, then.

9 What we're hearing is that through this process, AANDC
10 doesn't have any advice to give to the Board on the
11 basis that there is any weakness in the evidence that
12 has been presented on security, so through this
13 process, parties are able to advise the Board in their
14 decision-making. We're just confirming there's no
15 specific advice AANDC's offering the Board on the topic
16 of evidence?

17 Thank you.

18 THE CHAIR: Thank you.

19 AANDC.

20 MS. MORGAN: Andrea Morgan from AANDC.

21 The focus has been really to clarify to the
22 Water Board what the department's expectations are for
23 security that is held outside of the water license, and
24 it was the intent of the April 22nd, 2015, final
25 submission that that would bring more clarity to the
26 department's expectations of the Water Board when they

1 do review the evidence.

2 THE CHAIR: Thank you.

3 QIA?

4 MR. WILLIAMSON BATHORY: (Other language spoken)

5 Stephen Williamson Bathory, QIA.

6 Nothing further.

7 THE CHAIR: Thank you. We will now move
8 on to our next intervenor.

9 (EXCERPT CONCLUDED AT 4:42 PM)

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1 CERTIFICATE OF TRANSCRIPT:

2

3 I, Julie Macdonald, certify that the foregoing
4 pages are a complete and accurate transcript of the
5 proceedings, taken down by me in shorthand and
6 transcribed from my shorthand notes to the best of my
7 skill and ability.

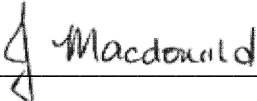
8 Dated at the City of Calgary, Province of Alberta,
9 this 11th day of May 2015.

10

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JULIE MACDONALD, CSR(A)

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Official Court Reporter

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