

Ministre des Affaires autochtones
et du développement du Nord



Minister of Aboriginal Affairs and
Northern Development

Ottawa, Canada K1A 0H4

APR 14 2014



Mr. Thomas Kabloona
Chairperson
Nunavut Water Board
PO Box 119
GJOA HAVEN NU X0B 1J0

Dear Mr. Kabloona:

Thank you for your letter of January 23, 2014, in which you conveyed your decision on the adjustment of security in relation to water licence 2AM-MRY1325. I understand the amount of security required under the water licence will decrease as a result of the Board's annual security review.

I recognize that the Board has taken a novel approach to security management for this water licence, and I would like to commend the Board for its coordination efforts regarding the Annual Security Review process. Coordination is important as projects on private lands must satisfy reclamation requirements to the private land owners as well as statutory security requirements related to in-land water, as set and determined by the Board, to ensure the Crown's legislative responsibilities respecting reclamation are assured. For this licence, the Annual Security Review process involved a collaborative approach toward determining a "global" reclamation cost estimate. The approach appears to be an effective process for arriving at an agreeable, total amount of reclamation security. The process also involved the Board considering security held by the private landowner, who in this case, has identified they have negotiated security holistically with the proponent for not only land-related issues but water as well. Effectively, the Board has "discounted" the amount held by the private landowner from the total reclamation cost estimate, with the balance to be held by Aboriginal Affairs and Northern Development Canada under the water licence.

Currently, all parties involved in this annual security review are in agreement that \$39,959,000 is an appropriate reclamation cost estimate for the upcoming year. Based on this year's work plan and your discounting of \$39,793,000 held by the landowner, the security to be furnished with the Department under the water licence will be \$166,000.

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Although I encourage innovative solutions related to the setting of security, the method of "discounting" securities based on the quantity of an instrument held by a private landowner outside of the licensing process without evidence to substantiate if the quantity is sufficient for statutory purposes is of concern. For me to have confidence in the Board's approach to discounting, I require ongoing assurance that an appropriate amount of security is held by the landowner, and that the security serves the same purposes as would be served by Board-ordered security furnished to Aboriginal Affairs and Northern Development Canada under the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*. At the public hearing, departmental officials clearly stated the type of evidence that should be required by the Board as a basis for any discounting of the security amount the Board sets, where that discounting is made in reliance on security arrangements outside of the licence. Therefore, for future annual reviews, it is vitally important for the Board to have a full understanding of the security arrangement with the landowner, to actively consider (based on appropriate evidence) whether the arrangement is an effective substitute for a Board-ordered security; to provide explicit reasons for its conclusion that privately held securities are an adequate basis upon which to discount the statutory security; and to provide me with that evidence.

On a final note related to the discounting approach, I must point out that where a landowner has encouraged the Board to rely on the security it holds as a basis for decreasing security for statutory water-related purposes, the landowner has accepted the risks associated with funding remedial action, whether on a voluntary basis or pursuant to a letter of direction, depending on the circumstance.

In light of the above-noted concerns, I encourage the Board to work closely with departmental officials to further refine the security review process developed by the Board for this project. I remain of the opinion that Schedules form part of this licence and any changes that are contemplated to the Schedules should be treated similarly to changes to the body of the licence. As such, I look forward to being kept informed of any changes to security under this water licence.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bernard Valcourt', with a stylized flourish at the end.

Bernard Valcourt, PC, QC, MP

c.c.: Ms. J. Okalik Eegeesiak, President, Qikiqtani Inuit Association
Mr. Erik Madsen, Vice-President, Baffinland Iron Mines Corporation