



Water Resources Division
Nunavut Regional Office
P.O. Box 100
IQALUIT, NU X0A 0H0

Your file
2AM-MRY1325/PART C

January 22, 2015

Our file

IQALUIT- #883344

Phyllis Beaulieu
Manager of Licensing
Nunavut Water Board
P.O. Box 119
GJOA HAVEN, NU X0A 1J0

Re: Water Licence No. 2AM-MRY1325, Mary River Project: Annual Security Review under Part C and Schedule C of the Type 'A' Water Licence

Dear Ms. Beaulieu,

Thank you for your letter of December 24, 2014, outlining the timeline of events for the Mary River Project Annual Security Review (ASR) and providing the opportunity for further comment.

Aboriginal Affairs and Northern Development Canada (AANDC) has reviewed the updated information provided by the Qikiqtani Inuit Association (QIA) and Baffinland Iron Mine Corporation (Baffinland or BIMC) that includes:

- 1) Baffinland letter dated December 12, 2014, to the Nunavut Water Board (NWB), including the addendum to the 2015 Work Plan (issued October 31, 2014) and BIMC response to QIA and AANDC review of the 2015 Work Plan (issued December 5, 2014);
- 2) QIA 2014 Comprehensive Security Estimate (issued December 12, 2014); and
- 3) Baffinland 2015 ASR Summary Presentation (dated December 18, 2014).

This letter follows up on our teleconference discussions on December 19, 2014. On that call we referred to the AANDC letter dated October 2, 2013 (attached). The principles outlined in that letter remain the department's priorities, and should continue to be the basis for ASR.

Specifically with respect to the 2015 ASR process, currently, AANDC holds no security on matters that are relevant to the quantification of security under the Type A licence. For that reason, there is no basis for discounting of AANDC land-lease or other security as part of the 2015 ASR process.

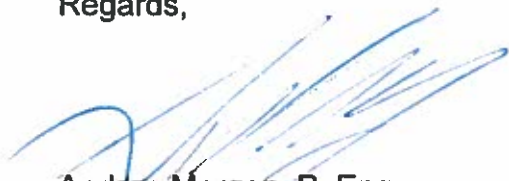
Also specific to the 2015 ASR process and the materials already before the Board, we note the following:

- On the December 19th call, representatives of Hatch (acting on behalf of Baffinland) described their assumption of a single reclamation along the Milne Inlet Tote Road, and the allocation of costs associated with the reclamation of Crown land within the security to be held by QIA. This assumption is inconsistent with the Crown requirement that it be separately secured for reclamation of Crown lands. The reduction of the water licence security from \$166,000 to \$0 would not be appropriate. AANDC is still considering whether the \$166,000 figure is a reasonable reclamation cost estimate for the applicable work. One primary consideration is that the \$166,000 figure assumes that the work is being completed by a contractor that is already mobilized and dealing with the whole project site. There is not yet any agreement between QIA and the Crown on how reclamation work would be coordinated. Therefore, it remains foreseeable that the Crown might need to fund a mobilization.
- Some of the discussion on the teleconference, and as detailed on Table A of BIMC/HATCH presentation, seemed to involve shifting security between water licences. While it is not clear whether amendment of the Type B licences was being contemplated, we observe that security cannot shift between water licences without an appropriate amendment process for the Type B water licences.
- On the call it was helpful that all participants seemed to share the view that that (i) the habitat security (DFO) is not relevant to ASR, because the security is for a different purpose entirely, and that (ii) the same applies to the dock-related infrastructure in the marine environment.
- Because of the references to security under other licences, and to matters outside the water-licensing regime such as the DFO security and the AANDC marine-lease, the Marginal Closure Costs table is confusing. It would be helpful if it were replaced with a version that dealt only with matters relevant to the 2015 ASR process.
- With respect to the evidence that should be required to support the 2015 ASR and meet the requirements discussed in our October 2013 letter and elsewhere, perhaps it would be most appropriate for counsel to discuss the issues rather than trying to address them in exchanges of letters or large teleconferences. All parties have a shared goal, that being to ensure that the Board is provided the information it would require to come to conclusions on the matters discussed in our October 2013 letter.

The total security amount \$45,370,000 as proposed by BIMC is considered reasonable by AANDC for the global security amount for the 2015 Work Plan. It should be noted though, that there are still outstanding questions with regards to some of the closure activities and related costs, such as required for the interim care and maintenance phase, post closure long term monitoring, and coordination of site remediation by QIA and AANDC in the event the mine site is abandoned by the owner. These concerns will be discussed further with BIMC and QIA in the coming year, with the expectation that these issues will be addressed in the 2016 ASR.

Should you have any questions or comments, please do not hesitate to contact me at 867-975-4657 or andrea.morgan@aandc-aadnc.gc.ca.

Regards,



Andrea Morgan, P. Eng.
A/Manager Water Resources Division
Resource Management Directorate
Nunavut Regional Office

Cc. Ken Landa, Legal Counsel, Department of Justice
Karen Costello, Director of Resource Management, AANDC-NU
Erik Allain, Manager, Field Operations, AANDC-NU



Aboriginal Affairs and Northern Development Canada
Nunavut Regional Office
Box 100 Iqaluit, NU X0A 0H0

October 2, 2013

Executive Director
Nunavut Water Board
Box 119 Gjoa Haven, NU X0A 1J0

Re: Water Licence 2AM-MRY1325 Annual Security Review

Dear Damien:

Aboriginal Affairs and Northern Development Canada (AANDC) would like to provide comment on the structure and sequencing of the upcoming initial annual security review for the Mary River Type A water licence. The Department appreciates the discussions fostered by the Nunavut Water Board through a proposed timeline circulated by the Board, the written responses from Qikiqtani Inuit Association (QIA) and Baffinland Iron Mines Corp. (BIMC), and the recent teleconference with Board staff, QIA, BIMC and AANDC. The Department would like to take the opportunity through this letter to put comments on record.

The structure of the annual security review for the Mary River water licence is based on the principle of the Board reducing, based on evidence, the security quantum it sets annually under the Type A licence. The licence security quantum (arrived at by the Board after discounting) would be furnished and maintained with the Minister of AANDC pursuant to the Act.

At a conceptual level, this would mean that the Board would, on an annual basis:

- (i) accept evidence and determine, according to the Board's methodology, the total cost of abandonment and reclamation of the appurtenant undertaking (a finding of fact);
- (ii) accept evidence on financial security held outside statutory scheme (a finding of fact); and
- (iii) apply its findings of fact, and thereby decide the amount of security to be furnished and maintained with the Minister of AANDC pursuant to the Act (a statutory decision).

The need for evidence-based findings of fact has clear implications for the sequencing of the annual security review process. Departmental submissions during the water licensing process indicated support for the discounting approach. However, the Department has been clear in stating that the Board should not discount the statutory security quantum without evidence that there is an alternative security bond *already in place* that is "robust" and approximates the security (in both form and purpose) that would otherwise have been ordered by the Board as a condition of the licence, and therefore would have been governed by the Act and furnished to the Minister.



There is a further key limitation on Departmental support for a “discounting” approach to the water licence security quantum. Discounting should not leave the Minister with unsecured reclamation costs for Crown land or waters in or on Crown lands. To achieve this, the aggregate of Crown land lease security (*i.e.*, security held by AANDC outside of the water licence) and the water licence security quantum must, at all times, be sufficient to cover abandonment and reclamation of the portions of the appurtenant undertaking on Crown land, or affecting waters in or on Crown lands. In other words, the “discount” applied by the Board in virtue of QIA security should never take the water licence security below a minimum level. This level would be determined by subtracting Crown leasehold security from the Board’s finding of fact on A&R costs vis-à-vis Crown lands (and waters thereon).

The application of the above principles has implications for the structure and sequencing of the annual security review process. The Department sees the following steps as essential to the process:

1. BIMC submits projected workplan with a reclamation cost estimate. That estimate must be sufficient to cover the highest projected reclamation cost for any point in the upcoming year, with consideration of cumulative and legacy issues.
2. QIA and AANDC (severally) have an opportunity to review the BIMC submission, and may request additional information or explanation from BIMC.
3. QIA and AANDC (severally) may validate or critique BIMC submission. QIA and AANDC (severally) may also submit their own evidence of reclamation cost estimates.
4. Parties and Board meet by teleconference to clarify outstanding questions on reclamation cost estimation and to provide the Board with final input.
5. The Board makes a finding of fact on the overall reclamation requirement for the year, including explicitly distinguishing reclamation costs for Crown land.
6. AANDC provides evidence of any then-current Crown land lease security.
7. BIMC and QIA provide evidence to the Board on their then-current alternative security bonding (recognizing that any discounting should be based actual, not projected, security holdings);
8. The Board decides the statutory security quantum to be held under the water licence.
9. BIMC provides security to AANDC.
10. AANDC provides an acknowledgement of receipt of the security to BIMC.

The steps would need to go in sequence, with the possible exception of steps five, six and seven. There is a possibility that BIMC and QIA may reach agreement on the QIA land lease security before the Board presents its finding of fact, in which case the evidence on the alternative security bond could be provided sooner. Alternately, BIMC and QIA may go to arbitration and finalize their security quantum later in the process. In that case, one of two things could happen:

- (i) BIMC could furnish additional security with QIA so that this evidence could be available for the Board to consider when discounting and making a final decision on the water licence security amount; or
- (ii) BIMC furnishes no additional security, pending the resolution of the arbitration. In such a situation, any discount applied by the Board would still be based solely on evidence of



alternative security bonds *actually held* by QIA, and so the Board should require evidence that the *prior-year's* alternative security bonding remains in place.

The Department believes the points above were made during our earlier discussions. If further clarification is required, however, please do not hesitate to contact me or Karen Costello, Director of Resource Management.

Regards,

Original signed by

Murray Ball
Manager Water Resources

cc.

Karen Costello, Director Resource Management
Erik Madsen, Baffinland Iron Mines Corporation
Stephen Williamson Bathory, Qikiqtani Inuit Association