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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

File No: 2AM-MRY1325
By Email and Regular Mail

February 11, 2015

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Re: Licence No. 2AM-MRY1325, Baffinland Iron Mines Corporation Type “A” Water Licence, Mary River Project; Part C, Schedule C, Annual Security Review Process: Direction from Nunavut Water Board

As set out in the Nunavut Water Board’s (NWB or Board) Decision¹ supporting the issuance of Type “A” Water Licence No. 2AM-MRY1325 (the Water Licence) in 2013, and as required under Part C and Schedule C of the Water Licence, the amount of financial security the Board requires Baffinland Iron Mines Corporation (the Licensee or BIMC) to post under the Water Licence is subject to periodic review and adjustment under the process described in the Licence as the Annual Security Review (ASR). The amount of security required to be posted following the ASR is based on both an estimate of the highest reclamation liability for land and water in the upcoming year (the global security amount), as well as any changes from the global security

¹ Nunavut Water Board, Reasons for Decision for 2AM-MRY1325, June 12, 2013 at pp. 54-63.

amount to reflect the financial security that may have been provided by BIMC to the Qikiqtani Inuit Association (QIA) under the reclamation requirements associated with the QIA land lease. This information and the parties' submissions are considered by the Board in order to determine a total security amount that must be held under the Water Licence for the upcoming year.

As indicated in the NWB's guidance letter issued to the parties on November 6, 2014, with respect to the 2015 ASR process, the Board specifically requested comment on the following:

- Is the existing global security amount as set by the Board during the 2014 ASR process adequate to reflect the updated scope of activities and undertakings proposed to be undertaken by BIMC in the 2015 Work Plan?

Figure 1 that follows provides a summary of the key documentation provided under the ASR process and the key activities undertaken by the Board and the parties to complete the ASR process for 2015.

Figure 1: Table Summarizing Key Documentation and Activities in Support of Annual Security Review for 2015-2016 Period

Date	Activity
October 7, 2014	NWB issued correspondence to the Mary River Project Distribution list requesting that parties to comment on the timing and process for the 2015 Annual Security Review required under Part C and Schedule C of the Type "A" water licence, 2AM-MRY1325
October 10, 2014	NWB received correspondence from BIMC in response to the NWB October 7, 2014 correspondence
October 17, 2014	NWB received comments from AANDC regarding the 2015-2016 Annual Security Review for Type "A" Water Licence 2AM-MRY1325 and in response to the NWB's October 7, 2014 correspondence
	NWB received comments from the QIA regarding the timing and process for the 2015 Annual Security Review and in response to the NWB October 7, 2014 correspondence
October 31, 2014	NWB received from BIMC, copies of some of the documents associated with the 2015 Work Plan for the Mary River Project
November 5, 2014	NWB received correspondence from the DFO, dated November 4, indicating financial security held by the DFO for the Mary River Project and in response to the BIMC October 10, 2014 correspondence.
November 6, 2014	NWB issued follow-up correspondence related to the ASR review process for the 2015 Work Plan in light of delays in receiving the BIMC complete 2015 Work Plan
November 6, 2014	NWB received from AANDC correspondence, dated November 6, 2014, pertaining to financial security held by AANDC

Date	Activity
November 7, 2014	NWB issued follow-up correspondence related to the documents received for the 2015 Work Plan.
November 13, 2014	NWB received from Baffinland, complete copies of the documents associated with the 2015 Work Plan for the Mary River Project
December 3, 2014	<p>NWB received copies of the following letters of credit as part of an email from the DFO:</p> <ul style="list-style-type: none"> ▪ Irrevocable Standby Letter of Credit issued by Scotia Bank(OSB7060TOR- Issued on June 25, 2014) for \$3,003,159 regarding reclamation liability with the Crown ▪ Irrevocable Standby Letter of Credit issued by Scotia Bank (OSB7061TOR-Issued on June 25, 2014)for \$562,500, regarding reclamation liability with the Crown
December 4, 2014	NWB received from AANDC, a copy of a correspondence dated December 4, 2014, pertaining to the review conducted for the 2015 Work Plan by SNC Lavalin Environment on behalf of AANDC.
December 5, 2014	NWB acknowledged receipt of AANDC's submission dated December 4, 2014
	<p>NWB received the following documents from the QIA:</p> <ul style="list-style-type: none"> ▪ Cover letter dated December 5, 2014 accompanying the QIA ASR submission ▪ 2015 Comprehensive Security Estimate dated December 5, 2014 ▪ Irrevocable Standby letter of credit (Ref. S18572/269319 - Amendment No.5, dated July 22, 2014) issued to the QIA Lands Department in the amount of \$39,793,000 for potential reclamation liability associated with QIA's lands
	NWB Received a copy of AANDC's annual security review submission, dated December 5, 2014
December 8, 2014	NWB Distributed the QIA's review submission related to the 2015 Annual Security Review
December 10, 2014	<p>NWB received the following documents from the QIA</p> <ul style="list-style-type: none"> ▪ Appendix A to QIA 2014 Annual Security Estimate ▪ Appendix C to QIA 2014 Annual Security Estimate
December 12, 2014	<p>NWB received from BIMC copies of the following documents:</p> <ul style="list-style-type: none"> ▪ 2015 Work Plan Addendum ▪ Responses to ASR comments from AANDC and the QIA

Date	Activity
December 15, 2014	NWB distributed a copy of the draft agenda for the ASR teleconference scheduled for December 18, 2014
	NWB acknowledged receipt from BIMC, a copy of the 2015 Work Plan Addendum
December 16, 2014	NWB received from BIMC, a copy of BIMC's presentation entitled <i>2015 Annual Security Review (ASR), Summary Presentation</i> , dated December 18, 2014
	The NWB received the following documents from the QIA: <ul style="list-style-type: none"> ▪ Cover letter dated December 16, 2014 ▪ Copy of QIA 2014 Comprehensive Security Review Estimate, dated December 16, 2014 ▪ Appendix A to QIA 2014 Comprehensive Security Estimate ▪ Appendix B to QIA 2014 Comprehensive Security Estimate ▪ Appendix C to QIA 2014 Comprehensive Security Estimate
December 17, 2014	The NWB distributed a copy of the agenda for the ASR teleconference held on December 18, 2014
December 18, 2014	NWB held an ASR teleconference with representatives from BIMC, QIA and AANDC
December 19, 2014	NWB received a copy of the QIA speaking points used in the December 18, 2014 ASR teleconference
December 24, 2014	NWB issued correspondence, dated December 24, 2014, regarding supplemental process guidance and timeline for the 2015 Annual Security Review (ASR) process
January 22, 2015	NWB received correspondence, dated January 22, 2015, from AANDC regarding the 2015ASR
January 22, 2014	NWB received confirmation from the QIA regarding a joint BIMC-QIA submission
	NWB received from the QIA a copy of the QIA's Revised 2015 comprehensive Security Estimate, dated January 13, 2014
	NWB received from the BIMC, a copy of a joint QIA-BIMC submission
	NWB received a copy of the cover letter dated January 22, 2015 regarding the QIA's review of the 2015 Work Plan Addendum

Date	Activity
January 23, 2015	NWB distributed to interested parties for comment a copy of the draft agenda for January 26, 2015 ASR teleconference
January 26, 2015	NWB distributed the agenda for the ASR teleconference held on the same day
	NWB held a second ASR teleconference with representatives QIA, BIMC and AANDC
February 6, 2015	NWB issued correspondence to advise the Licensee and the parties that this letter regarding the ASR outcome would be delayed until February 9
February 11, 2015	NWB to issues a Board decision on the financial reclamation security required for the 2015 period
February 27, 2015	The Licensee to file the total financial security amount for 2015-16

The Board has placed all non-confidential information associated with the ASR process on its public registry. For further details, consult the NWB's FTP site under 2AM-MRY1325/TECH/2 SECURITY (C) (user name: "public", password: "registry") at the following link:

[ftp://ftp.nwb-oen.ca/1%20PRUC%20PUBLIC%20REGISTRY/2%20MINING%20MILLING/2A/2A M%20-%20Mining/2AM-MRY1325%20BIMC/3%20TECH/2%20SECURITY%20\(C\)/](ftp://ftp.nwb-oen.ca/1%20PRUC%20PUBLIC%20REGISTRY/2%20MINING%20MILLING/2A/2A M%20-%20Mining/2AM-MRY1325%20BIMC/3%20TECH/2%20SECURITY%20(C)/)

Summary of Submissions with respect to Global Financial Security Amount and Financial Security under Licence 2AM-MRY1325

Licensee (BIMC)

In support of the 2015-2016 ASR, BIMC provided to the Board, under separate submissions, copies of the following documents for consideration:

- 2015 Work Plan, dated October 31, 2014;
- 2015 Work Plan Addendum, dated December 12, 2014 and
- 2015 Annual Security Review (ASR) Summary Presentation, dated December 18, 2014

The 2015 Work Plan and Work Plan Addendum, outline the scope of activities and undertakings that BIMC expects to carry out for the 2015-2016 period at various project sites in accordance with the Type "A" Licence 2AM-MRY1325 and/or Type "B" Licence 8BC-MRY1416. The activities and undertakings are aimed at continued development of the overall Mary River project.

The documents also include a complete break-down of the project's financial security assessment estimate for the 2015-2016 period. In terms of the approach used in the 2015 assessment, details provided by BIMC indicate that a re-baseline exercise was undertaken to achieve the following objectives:

- Determine the estimating guidelines and assumptions for functional site specific unit costs, quantities, direct costs & indirect costs required;
- Facilitate understanding and transparency between all parties; and
- Develop direct and indirect costs assumptions to incorporate into future ASR processes.

Taking the re-baseline exercise into consideration, BIMC estimates that the total liability associated with the project based on cumulative activities and undertakings is \$45,370,000 for the upcoming 2015-2016 period. This amount takes into consideration, the reclamation required on Crown and Inuit-owned lands and water, up to and including the authorized early revenue phase activities.

BIMC's estimate of the global security amount for the 2015, **\$45,370,000**, is **\$5,411,000** greater than the global security amount posted for the 2014 period, which was **\$39,959,000** for Crown and Inuit-owned lands and water. It should be noted however, that BIMC proposed that the total liability estimate of **\$166,000** for those activities and liabilities associated with Crown land and/or water reclamation would remain unchanged from the 2014 security amount. Consequently, BIMC indicated that there should be an increase in the security held by the QIA under land-based instruments of approximately \$5.4 million, but no change in the security held by the Crown under the Type "A" Water Licence.

QIA

In response to the BIMC 2015 Work Plan and Work Plan Addendum, the QIA provided copies of the following submissions to the NWB:

- Copy of QIA 2015 Comprehensive Security Estimate dated December 5, 2014;
- Copy of the QIA 2014 Comprehensive Security Review Estimate, dated December 16, 2014;
- Copy of the QIA Speaking Notes from the December 18, 2014 ASR Teleconference
- Letter from the QIA regarding Additional Filing of Information, Mary River Project – (1) Commercial Lease (Q13C301) of IOL and Landlord's 2015 Reclamation Security; and
- Copy of QIA Revised 2015 Comprehensive Security Estimate, dated January 13, 2015 and received January 22, 2015

The QIA in its December 5, 2014 submission indicated that based on its estimates (with some differing assumptions than BIMC's), the total financial security for the project for the 2015 period and 2015 Work Plan should be **\$45,040,000** for Land and Water reclamation on Inuit owned lands. This represents an increase of **\$5,247,000** in the amount of security posted by BIMC for activities and undertakings on IOL for the 2014 period, which was \$39,793,000. The QIA stated that the estimate took into consideration its abandonment and reclamation policy.

On January 22, 2015, the QIA submitted to the NWB a revised security estimate, **\$49,831,000**, which took into consideration the additional work outlined in BIMC's 2015 Work Plan Addendum. On this basis, the QIA indicated that the difference between the security amount posted by BIMC for IOL and Water for the 2014 period and the updated estimate for 2015 would be **\$10,038,000**.

QIA/BIMC Joint Submission

QIA

On January 22, 2015, the NWB received a joint QIA-BIMC submission confirming that following meetings in early January, BIMC and the QIA had agreed that the global financial security for the 2015-2016 period should be **\$47,517,500**, reflecting the 2015 Work Plan and Work Plan Addendum. This amount would represent an increase of **\$7,724,000** compared to the global financial security posted for the 2014 period. BIMC and the QIA also indicated that the additional security required would be held under the QIA's land lease and would therefore not affect the **\$166,000** held with AANDC for Crown Land and water reclamation, which BIMC intends to maintain under the Type "A" Water Licence for 2015-2016.

In the joint submission both parties indicated that while they have reached agreement on the amount of the security for the upcoming 2015-2016 period, although there are still some differences between the two parties' estimates arising from differences in the base assumptions associated with the calculation of reclamation liability. The QIA and BIMC indicated that these issues will continue to be discussed and remain to be resolved in discussions regarding security in the context of future ASR processes, land permit discussions and water licence amendments.

AANDC

AANDC provided the following submissions to the NWB in response to the BIMC 2015 Work Plan and Work Plan Addendum:

- AANDC ASR submission, dated January 22, 2015;
- AANDC ASR submission from SNC Lavalin Environment on behalf of AANDC, dated December 4, 2014; and
- AANDC ASR submission, dated December 5, 2015.

Some of the issues highlighted in AANDC's submissions include the following:

- AANDC indicated, that as it does not hold security under land use permits that are relevant to the quantification of security under the Type "A" licence, there is no basis for discounting security held by AANDC under land-based instruments from the global security amount as part of the 2015-2016 ASR process;
- Contrary to the recommendations by Hatch's representatives that the \$166,000 held by AANDC for crown lands be reduced to \$0, AANDC recommended that that amount of security should remain at the current value set under the Licence;
- AANDC stated that there were some questions regarding the extent to which the security held under BIMC's Type "B" licences is, or should be, transferred to the Type "A" Licence, at present AANDC observed that the security would not be shifted from the Type "B" Licence without amendments to those licences;
- AANDC stated that it believed all participants seems to have shared the view that the security held by DFO for the dock-related infrastructure in the marine environment is not relevant to the ASR as it is not related to land and water reclamation for the freshwater environment;
- AANDC mentioned that it believes the total amount security proposed by BIMC,

\$45,370,000, is reasonable for the 2015 Work Plan. However, during the second ASR teleconference, AANDC confirmed that the updated amount of security proposed in the BIMC-QIA joint submission, **\$47,517,500**, is also acceptable and adequately reflects the land and water reclamation required in light of the proposed work in 2015-2016. The amount of financial security proposed in the joint BIMC-QIA submission, \$47,517,500, does not include the \$166, 000 held by AANDC for reclamation activities

All Parties

The following Figure 2, summarizes the security amount proposed by, AANDC, BIMC and the QIA for the 2015-2016 period.

Figure 2: Table Summarizing Security Proposed by the Parties Reflecting the 2015-2016 Work Plan and Addendum

<i>Party</i>	<i>Inuit Owned Land and/or Water(\$)</i>	<i>Crown Land and/or Water (\$)</i>	<i>Total (\$)</i>
BIMC	45,370,000		45,370,000
QIA	49,831,000	166,000	49,997,000
AANDC	45,370,000	166,000	45,536,000
BIMC-QIA Joint Submission 2015	47,517,500	166,000	47,683,500

As shown in the Figure 2 above, there are differences in the estimated amount of financial security proposed by the various parties. The differences in the amount of financial security estimates is primarily attributed to different base level assumptions over issues such as mobilization costs, assumptions in terms of fuel and equipment availability, etc. Where BIMC and the parties are not fully in agreement with the assumptions, they have chosen to continue discussions to establish a common ground for subsequent ASRs. In the meantime, however, they **jointly agreed** that the global financial reclamation security for 2015-2015 should be **\$47,683,500** consisting of **\$47,517,500** filed with the QIA and **\$166,000** maintained under the Type “A” Water Licence into 2015-2016.

Scope of the 2015-2016 Annual Security Review

In the summer of 2014, the Board received and started processing an application from BIMC to amend the Type “A” Water Licence to reflect a change to some activities and the scope of the Type “A” Water Licence (the Amendment Application). The Amendment Application requires the Board to consider amendments to the Licence necessary to allow for the Early Revenue Phase (ERP) scenario that would bring the mine into limited production in advance of the larger Mary River Project. The NWB has yet to complete its consideration of the Amendment Application and therefore the ASR for 2015-2016 did not necessarily include a consideration of

all the changes to activities and scope requested in the Amendment Application. Any changes to security required to reflect the Amendment Application will be considered during the processing of the Amendment Application.

The Board also notes that information was provided by BIMC and the Department of Fisheries and Oceans (DFO) Canada with respect to security held by DFO for offsetting habitat loss and reclamation of works to be constructed in the marine environment at Milne Port. However, in DFO's November 4, 2014 submission providing the Board with general information regarding the security held by the DFO in relation to the DFO's offsetting, the DFO indicated that it does "not hold any securities for works occurring in the freshwater environment".

In reviewing this information and the submissions of the parties on this issue, the Board has decided that the security filed with DFO does not overlap with the land and water reclamation considered by the Board under the Type "A" Water Licence, and therefore has not considered this information to be relevant in setting the global or total security amount required under the Licence.

Global Security Amount

After considering the evidence provided to the Board in 2013 during the NWB's Public Hearing associated with the initial Water Licence Application, the Board fixed the global security amount required to reclaim the undertaking (land and water) authorized for 2013 under the Type "A" Water Licence at \$36,000,000 in total.²

During the first ASR process in 2013/2014, the Board determined that the overall global security amount for 2014-2015 should be increased from the original global security amount of \$36,000,000 established in 2013, to \$39,959,000.³

On the basis of the submissions of the parties throughout the ASR process, the Board has concluded that the overall global security amount for 2015-2016 should be increased to **\$47,683,500** to reflect the 2015 Work Plan and 2015 Work Plan Addendum, which took into consideration a BIMC re-baseline exercise.

Amount of Security Required by the NWB to be posted under Licence 2AM-MRY1325, for the 2015-2016 Period

At the time the Type "A" Water Licence was issued, \$26,200,000 of the global security amount of \$36,000,000 required to be posted, was posted with the Qikiqtani Inuit Association under land-based instruments, with the remaining \$9,800,000 to be held by AANDC under water licences. As required under the terms and conditions of Licence 2AM-MRY1325 and the

² See Nunavut Water Board, Reasons for Decision for 2AM-MRY1325, June 12, 2013 at p. 60 and Type "A" Water Licence 2AM-MRY1325, Part C, Item 1a.

³ See correspondence dated January 23, 2014 from T. Kabloona, Chairperson of the Nunavut Water Board to the Minister of Aboriginal Affairs and Northern Development Canada, the President of the Qikiqtani Inuit Association and Vice President Sustainable Development, Health, Safety & Environment, BIMC and the Mary River Distribution list regarding Direction from the NWB the ASR process under Part C and Schedule C of the Water Licence.

direction of the Board following the issuance of the reconciliation of security under Type “B” Water Licence 2BB-MRY1114 Amendment No. 1 in December, 2013, BIMC was required to ensure that the amount of \$9,800,000 was posted under the Type “A” Water Licence.

However, in 2014, noting that the reclamation liability for activities and undertakings occurring on federal Crown land in 2014 was very minimal, the amount of security required to be posted under the Type “A” Water Licence was considerably reduced to \$166,000, with BIMC being required to post a total security of \$39,793,000 with the Qikiqtani Inuit Association for reclamation liability on Inuit Own Lands.

Similarly, in 2015-2016, the parties noted that the entirety of the increase to the global security amount should be attributed to security held by the QIA for reclamation on Inuit Owned Lands. Consequently, the Board has determined that of the total global security amount of \$47,683,500, only \$166,000 is required to be held by the Minister of Aboriginal Affairs and Northern Development Canada, under Part C, Item 1 of Type “A” Water Licence 2AM-MRY1325, with the remaining \$47,517,500 to be secured under the Land Lease with the Qikiqtani Inuit Association.

This concludes the Board’s ASR determination with respect to the global security amount and the total security required to be held under Part C and Schedule C of Licence No. 2AM-MRY1325 for the 2015-2016 work year, as specified under the Licence, Schedule C, Item 4. During the ASR process, the Licensee agreed to furnish the financial security as set out in this determination on or before February 27, 2015.

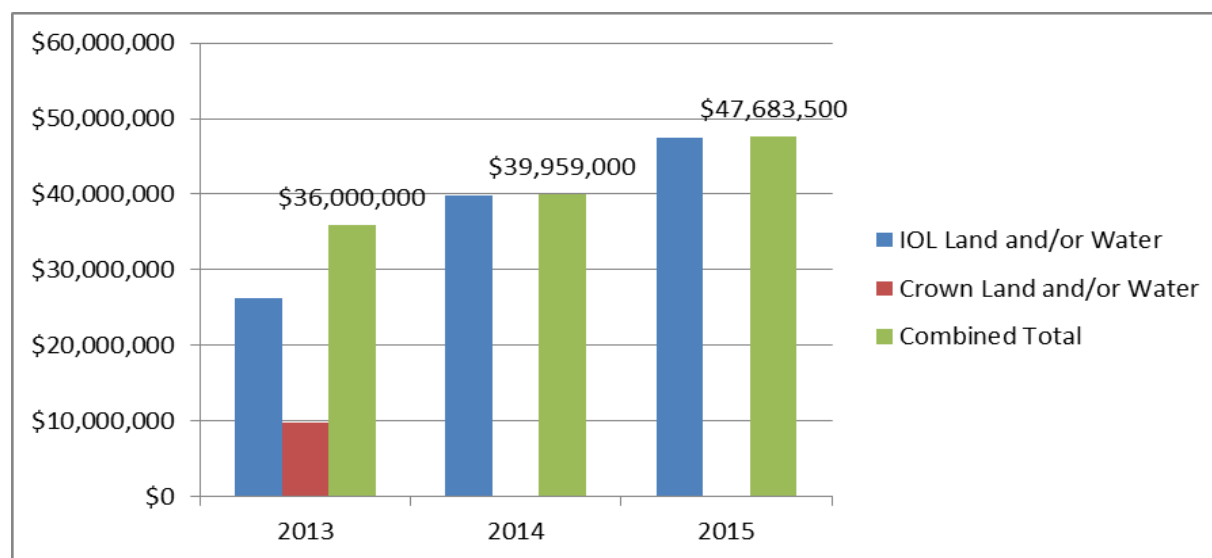
Summary of Total Financial Security Posted Pursuant to Part C and Schedule C of Licence No. 2AM-MRY 1325 Since 2013

The following Figures show the total financial security posted for the Project during the years 2013, 2014, as well as the amount directed by the Board to be filed by BIMC for the upcoming 2015-2016 period.

Figure 3: Table Summarizing Financial Security Posted in 2013, 2014 and 2015

	2013	2014	2015
Inuit Owned Land and/or Water	\$26,200,000	\$39,793,000	\$47,517,500
Crown Land and/or Water	\$9,800,000	\$166,000	\$166,000
Total	\$36,000,000	\$39,959,000	\$47,683,500

Figure 3.1: Security Posted for the Years 2013, 2014, and proposed for 2015



ASR Process Issues

During the ASR process for 2015, Aboriginal Affairs and Northern Development Canada requested that the Board address outstanding ASR process concerns. In addition, during the Board's discussion during the ASR and the technical meeting in relation to BIMC's Amendment Application currently before the Board, there has also been discussion of possible amendments to the frequency of the security review process to provide greater flexibility to allow the Board and parties to forego a review of security if, in any given year, there are no significant changes to outstanding reclamation liability such that a review is warranted. As indicated in discussions during the ASR teleconferences and also in the technical meeting for the Amendment Application, the Board has agreed to respond to the outstanding questions from AANDC in this correspondence, but has deferred consideration of amendments to the frequency of the review as set out in the Type "A" Water Licence to the Board's upcoming consideration of the Amendment Application.

Response to Outstanding Questions from AANDC

In AANDC's December 4, 2014 submission, AANDC reiterated concerns regarding the Board's approach to security, including the ASR process under the Licence. In both the December 4, 2014 submission and in the recent ASR Conference call on January 26, 2015, AANDC requested that the Board provide a specific response to the following:

- Questioning whether the Board, by allowing for the management of security under the auspices of the combined QIA/AANDC security under the existing structure of the licence has improperly limited the Department's role as decision-maker and regulator under ss. 56 and 76 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*;
- Requesting that the NWB ensure that the Board has a full understanding of the QIA's

security arrangement with BIMC in order to consider whether the arrangement is an effective substitute for Board-ordered security under the water licence;

- Requesting that the NWB provide explicit reasons for the Board's conclusion that the QIA's privately held security is an adequate basis on which to discount the statutory security and to provide this evidence to the Minister; and
- Requesting that the Board be more explicit in terms of the evidence the Board has reviewed and considered in the ASR process in order to conclude that the security filed by BIMC with the QIA is, in essence, equivalent to the security that would normally be held under the water licence.

As identified by AANDC in their submissions and in the Board's Reasons for Decision associated with the original licence,⁴ the Board's jurisdiction to require a licensee to furnish security is established under s. 76 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* as follows:

76. (1) The Board may require an applicant, a licensee or a prospective assignee to furnish and maintain security with the Minister in the form, of the nature, subject to such terms and conditions and in an amount prescribed by, or determined in accordance with, the regulations or that is satisfactory to the Minister.

In addition, the *Nunavut Waters Regulations* (the Regulations) further specify the limits on the Board's jurisdiction and state the following:

10. (1) For the purposes of subsection 76(1) of the Act, the Board may fix the amount of security required to be furnished by an applicant for a licence, a licensee or a prospective assignee in an amount not exceeding the aggregate of
(a) the costs of the abandonment of the undertaking;
(b) the costs of the restoration of the site of the undertaking;
(c) the costs of any ongoing measures that may remain to be taken after the abandonment of the undertaking; and
(d) the compensation that a person, including the designated Inuit organization, who is adversely affected by the use of waters or deposit of waste may be entitled to under section 13 of the Act.

On this basis, the Board recognizes that if the Board required the full global security amount established under the ASR to be held under the water licence with no consideration of the security that has been secured by the QIA for reclamation under the land-lease, the Board would be exercising its jurisdiction to fix an amount of security in excess of what is permissible under s. 10(1) of the Regulations. As set out in the Board's previous decisions outlining how the Board may factor security held under land-based instruments into the Board's fixing of security under water licences:

... the Board's focus in assessing security is that the Applicant must have posted sufficient security, through all means, when taken together, to ensure that the overall reclamation of the site (land and water) has been adequately addressed.

⁴ Nunavut Water Board, Reasons for Decision for 2AM-MRY1325, June 12, 2013 at pp. 54-63

Consequently, the Board's starting point to assess security remains considering the security requirements holistically and then deducting from the aggregate land and water reclamation totals any security held under other instruments, with the remainder being secured under the water licence.

The Board believes this approach is also consistent with the Principles set out in the Mine Site Reclamation Policy for Nunavut, 2002⁵ which state:

- *The total financial security for final reclamation required at any time during the life of the mine should be equal to the total outstanding reclamation liability for land and water combined (calculated at the beginning of the work year, to be sufficient to cover the highest liability over that time period).*
- *Estimates of reclamation costs, for the purposes of financial security, should be based on the cost of having the necessary reclamation work done by a third-party contractor if the operator defaults. The estimates should also include contingency factors appropriate to the particular work to be undertaken.*
- *The recognized methodology for calculating reclamation costs, for the purposes of financial security, should be the RECLAIM or some other appropriate model. Consideration should be given to alternate or innovative forms of security, such as mine reclamation trusts, provided they meet certain criteria that protect the government's interests and objectives.*
- *Financial security requirements related to reclamation should be clearly set out in water licences, land leases and other regulatory instruments, though there may be circumstances where security requirements may be more appropriately dealt with through an agreement.*
- *Mining operators should be credited for approved progressive reclamation, and the value of financial security required should be adjusted in a timely fashion.*⁶ [underlining added]

In the Board's view, the ASR approach adopted under the Licence is not only entirely consistent with the Board's jurisdiction and the Minister's jurisdiction under s. 76 and the limits imposed under s. 10 of the Regulations, but it also very much in keeping with the requirements of the applicable Principles of Reclamation clearly espoused by the Minister in 2002. Clearly the Board does not view a process founded on these Principles to improperly limit or unduly fetter either the Board's or the Minister's jurisdiction in respect of security.

With respect to whether the Board has sufficient evidence to assess whether the arrangements for security held by the QIA under the land lease are an effective substitute for Board-ordered security under the water licence, during the course of the 2014 ASR process and as resubmitted during the 2015 ASR process, the Licensee and the QIA agreed to provide all relevant sections

⁵ Minister of Indian Affairs and Northern Development, (Ottawa: Minister of Public Works and Government Services Canada, 2002) available on-line: http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/recpolnuna_1100100036043_eng.pdf.

⁶ Nunavut Water Board, Reasons for Decision for 2AM-JER1119, December 21, 2012 at pp. 47-48.

of the land lease to the Board for consideration in this regard. While AANDC noted that the land lease in its entirety was not provided, the Board has confidence that BIMC and the QIA have supplied all relevant provisions and the Board sees no benefit in soliciting a copy of a confidential document in its entirety to review provisions not relevant to the Board's narrow inquiry under the ASR process. Further, it is the Board's view that BIMC and the QIA are sufficiently informed regarding the security considerations being discussed under the ASR process to be relied upon to provide the relevant provisions of the land lease.

In turning to AANDC's question of whether the security held by the land lease is "equivalent" to the security held under the water licence and if not, then assuming that the Board should order the global security amount to be secured in total under the water licence, the Board reminds the parties that the Board's fixing of security is limited by s. 10(1) of the Regulations and the Board must ensure that the amount fixed does not exceed:

- (a) the costs of the abandonment of the undertaking;*
- (b) the costs of the restoration of the site of the undertaking;*
- (c) the costs of any ongoing measures that may remain to be taken after the abandonment of the undertaking; and*
- (d) the compensation that a person, including the designated Inuit organization, who is adversely affected by the use of waters or deposit of waste may be entitled to under section 13 of the Act.*

In this respect, the Board believes that the assessment of the security held under the QIA land lease is not so much a question of "equivalency" but rather adequacy. For obvious reasons, the security held under the land lease is not the same as that held under the water licence with respect to several administrative issues such as the involvement of the Minister in determining when and how to release the security and when and how to access the security. The Board is well aware of the differences between security held under a private contractual arrangement between the QIA as landowner and BIMC as lessee versus held by the Minister with BIMC as a licensee. However, in the Board's view, these differences are factors to be considered in assessing the adequacy of the global security amount required to reclaim the land and water impacted by the licensed undertaking but are not determinative (i.e. the fact that there are these differences does not mean that this form of security is inadequate and should not be included in the Board's assessment of whether the costs of abandonment and restoration have been secured). In the Board's accounting for the QIA's security during the ASR process the fundamental question is whether the QIA's security is adequate and accessible to secure the costs of the abandonment of the undertaking, restoration of the site and implementation of required remedial measures such that it should reduce the part of the global security amount that is required to be filed under the water licence as the total security amount.

On the basis of the totality of the evidence provided by all the parties, including the provisions of the land lease, the detailed work plans, the re-baseline exercise and the review of the updated security estimates, the Board has confidence that the security held by the QIA under the land lease is adequate and accessible to apply to the abandonment of the undertaking, restoration of the site and implementation of on-going measures as set out in s. 10(1) of the Regulations and that it is appropriate for the Board to discount this amount from the global security amount fixed by the Board and required to be filed as total security under the water licence. Consequently, the Board has determined that when BIMC has added \$7,724,000 to the existing security filed with

the QIA to reflect the additional global security amount specified in this correspondence that BIMC will have posted, prior to undertaking the 2015 work plan sufficient security, through all means, when taken together, adequate security to ensure that the overall reclamation of the site (land and water) has been adequately addressed.

With respect to AANDC's concerns regarding the fact that the Board does not control the timing of BIMC's filing of additional security with the QIA, the Board notes the commitment of BIMC during the ASR process for 2015-2016 that the global security amount fixed by the Board in this correspondence, under all instruments, will be filed on or before February 27, 2015. The Board expects that confirmation that the additional security has been filed with the QIA will be provided to the Board when that process is completed. All parties are advised that if confirmation is not received by March 1, 2015, the Board may take further steps and issue further written direction under the ASR process to ensure that adequate security is in place prior to the commencement of work under the 2015 Work Plan and applicable activities under the Addendum.

If you have any questions or require further direction with respect to this matter, please contact the Board's Acting Executive Director and Director of Technical Services, David Hohnstein at (780) 443-4406 or by email to david.hohnstein@nwb-oen.ca.

Regards,



Thomas Kabloona
Chairperson
Nunavut Water Board

cc. Public Registry
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Andrea Morgan (AANDC)
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