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December 3rd, 2015

∆⁵∧⊲⁵≺⁵ Arctic Bay Attention Erik Madsen, Vice-President, Sustainable Development, Health, Safety and Environment Baffinland Iron Mines Corporation 2275 Upper Middle Road East, Suite 300

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Nunavut Water Board P.O. Box 119

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Attention: Stephanie Autut, Executive Director

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トσΡュΦ® Sanikiluag RE: Baffinland Iron Mines Corporation – Mary River Project: (1) Landlord's 2016
Reclamation Security Requirement - QIA Commercial Lease (Q13C301) of IOL and; (2)
NWB 2016 Annual Security Review – Water Licence #2 AM-MRY1325 (as amended)

Pursuant to Section 9 of QIA-BIMC Commercial Production Lease Q13C301 dated September 6, 2013 (the "Commercial Lease"), QIA, as Landlord, has reviewed the 2016 BIMC Work Plan and estimate of Reclamation Security and determined that \$54,649,000 is the aggregate amount of adjusted Reclamation Security to be posted by BIMC, as Tenant, for 2016 pursuant to the Commercial Lease. This amount represents an increase of \$7,131,500 relative to the letter of credit currently held by QIA.

Pursuant to the Commercial Lease, BIMC is required to post the additional security described above by January 31, 2016 unless before that date BIMC disputes the amount and refers the matter to arbitration pursuant to the Commercial Lease (or the Landlord and Tenant have otherwise resolved any matters in dispute relating to the increase).

In furtherance of the Annual Security Review ("ASR") conducted by Nunavut Water Board (NWB) for the existing Type "A" Licence No. 2AM-MRY1325 (as amended by Amendment No. 1.), QIA also submits this letter and all attachments as its submission to NWB for the NWB 2016 ASR for consideration in determining required Licence security.

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QIA's determination is based on the attached **QIA 2016 Comprehensive Security Estimate** prepared by Arktis Solutions Inc. for QIA (the "2016 Comprehensive Security Estimate"). The 2016 Comprehensive Security Estimate is based upon the Landlord's Abandonment and Reclamation Policy ("A&R Policy") for use with reclamation activities on Inuit Owned Lands ("IOL") and is an extension of previous project specific QIA security assessments.

The 2016 Comprehensive Security Estimate should be understood as updating the QIA security assessment last presented to the NWB during the 2015 ASR process. In addition to a review of the 2016 Work Plan supplied by the proponent, the 2016 Comprehensive Security Estimate also includes findings derived during QIA's 2015 Environmental Audit, performed in August 2015. Therefore the 2016 Comprehensive Security Estimate should be understood as being the most up-to-date security estimate.

The following comments are in addition to, or in furtherance of, the *2016 Comprehensive Security Estimate*, and also generally in relation to the 2016 ASR process:

- 1. The QIA determination pursuant to the Commercial Lease of applicable 2016 Reclamation Security is exclusively in relation to activities affecting IOL (for land and water) pursuant to the Commercial Lease, and does <u>not</u> apply to any activities described in the BIMC 2016 Work Plan and Security Estimate that relate to Crown lands or marine development (i.e. Milne Inlet port site construction).
- 2. With specific reference to the ASR process, QIA disagrees with AANDC that "there are significant unresolved issues concerning how much security should be held by the Crown, under Water Licence 2AM-MRY-1325." NWB has repeatedly rendered clear and concise decisions concerning licence security. Notwithstanding, AANDC continues to allege unspecified and unsubstantiated concerns regarding the specific terms and conditions attaching to Licence 2AM-MRY-1325 relating to security.
- 3. The Licence terms and conditions, and NWB's express written reasons for its decisions, have been available to all parties since June 12, 2013, have been

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<sup>&</sup>lt;sup>1</sup> AANDC letter to NWB. Reply to Oct 23, 2015 NWB notice of ASR process. November 5, 2015.

<sup>&</sup>lt;sup>2</sup> NWB 2AM-MRY1325 Type A Licence. June 12, 2013; See also NWB 2015 ASR decision – "Response to Outstanding Questions from AANDC". February 11, 2015; See also NWB 2AM-MRY1325 Type A Licence – Amendment No. 1. July 31, 2015; See also NWB 2AM-MRY1325 Type A Licence – Amendment No. 1. – Reasons for Decision, Including Record of Proceedings. July 31, 2015.



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<sup>'</sup>PP<sup>®</sup>C'≺d<sup>®</sup> Qikiqtarjuaq reiterated with clear and concise reasons in subsequent decisions of the Board, and all parties have relied and acted upon the relevant Licence terms and conditions which have been in force and outstanding for 2 ½ years. QIA submits that any grounds or time for a review of the Board's decisions has long since expired.

- 4. QIA further submits that the ASR mechanism, per the Licence terms and conditions, is not an appropriate forum for NWB to re-consider the terms and conditions of Licence 2AM-MRY-1325 (as amended). The licence terms and conditions were established and ordered only following a full and complete board process, including hearings and the participation of all affected parties and interveners. Among the licence terms and conditions resulting from that process, the ASR condition is only intended to provide a more informal means for immediate parties to provide technical information to NWB to assist NWB achieve its stated goal of "The phased approach adopted by the Board" to the posting of full project security over time.
- 5. The terms and conditions of the 2AM-MRY1325 Type A Licence, including conditions relating to security, are based on decisions (and accompanying written reasons for decisions) following due process. The General Conditions of the Licence provide that revisions to Licence Schedules (for interpretive assistance only) will not necessarily constitute a licence amendment<sup>4</sup>. But QIA submits that any proposed revision to the Part C- Conditions Applying to Security<sup>5</sup>, including the items which permit reductions in the amount of Licence security held by the Minister to reflect adequate security held by QIA, would constitute a Licence amendment requiring application, supporting evidence, and due process to permit all affected parties and intervenors to fairly respond to any such proposed licence amendment.
- 6. NWB has already noted, as part of the record in its reasons for decision, that "the change in approach suggested by AANDC during their oral submissions at the Public Hearing for this Application [ie. Amendment No. 1 Application] would require a significant and fundamental shift in the Board's approach to fixing security that would repudiate the Board's fundamental view that fixing security must be

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<sup>&</sup>lt;sup>3</sup> NWB 2AM-MRY1325 Type A Licence – Amendment No. 1. – Reasons for Decision, Including Record of Proceedings. July 31, 2015 at p. 55.

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<sup>&</sup>lt;sup>4</sup> NWB 2AM-MRY1325 Type A Licence – Amendment No. 1. July 31, 2015. General Condition 16. at p.11.

 $<sup>^{5}</sup>$  NWB 2AM-MRY1325 Type A Licence – Amendment No. 1. July 31, 2015 at p. 12 and 13.

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approached in a holistic and pragmatic way."<sup>6</sup> QIA submits that such "change in approach suggested by AANDC" would require formal amendment of Licence terms.

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- 7. The ASR is only intended to be a mechanism that operates within existing licence conditions, and is not intended to be a mechanism for amending such licence terms. QIA submits that if AANDC wishes to introduce amendments to the Licence in relation to existing conditions, then an amendment application is required. QIA submits that it would be inappropriate for NWB to consider revisions or modifications to its past decisions regarding security conditions during the 2016 ASR, and which in effect would amend licence conditions without due process.
- 8. NWB has also stated, as part of the record in its reasons for decision, that "the Board recognizes the potential effect of AANDC's suggested change in approach beyond just this Application [ie. Amendment No. 1 Application]; this is a matter of significance to all Designated Inuit Organizations..." QIA submits that amendments to Licence conditions, which would be needed to introduce "a significant and fundamental shift in the Board's approach to fixing security" (in the NWB's words), would require that all Designated Inuit Organizations potentially affected by such a fundamental shift have an opportunity to make representations to NWB. Such opportunity cannot be accommodated in the limited context of the ASR mechanism.
- 9. NWB appears to have left open the door for further "discussions of AANDC's newly expressed position until the Annual Security Review (commencing in October/November)"8. Therefore the foregoing items 2. to 8. are QIA's comments relating to procedure and due process in the event NWB feels obliged, notwithstanding its recorded decisions upholding existing Licence conditions, to yet again respond to AANDC's general concern regarding existing Licence conditions during the 2016 ASR. Per NWB's July 31, 2015 reasons for decision: "the Board has concluded that AANDC has provided no evidence indicating there is a threat to the public interest that would warrant the Board making major amendments to the

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<sup>&</sup>lt;sup>6</sup> NWB 2AM-MRY1325 Type A Licence – Amendment No. 1. – Reasons for Decision, Including Record of Proceedings. July 31, 2015 at p. 62.

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<sup>&</sup>lt;sup>7</sup> NWB 2AM-MRY1325 Type A Licence – Amendment No. 1. – Reasons for Decision, Including Record of Proceedings. July 31, 2015 at p. 62.

<sup>&</sup>lt;sup>8</sup> Ibid.

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۲۰۶۵ مد Sanikiluag Board's approach to fixing security." QIA notes that as of this filing there is still no evidence to support a re-consideration of AANDC's allegation that vague and unspecified amendment to Licence conditions is needed relating to the determination of security.

- 10. QIA is willing to review and discuss any future evidence provided by AANDC to determine if a negotiated resolution of AANDC concerns is possible. But QIA wishes to clearly state its position that where resolution of AANDC concerns requires, in effect, amending Licence conditions (which seems to be the likely result given NWB's decision that AANDC is asking for "a significant and fundamental shift in the Board's approach to fixing security"), then QIA does not speak on behalf of all Designated Inuit Organizations. In such circumstances QIA will insist that AANDC bring its own application to amend licence conditions to ensure due process and fairness to all potentially affected Designated Inuit Organizations.
- 11. QIA will also object to any use of the 2016 ASR as an informal means of by-passing an application, including receipt, review and an opportunity for affected DIO's to test, evidence supporting such an application during a formal NWB hearing process. AANDC has also stated that its unresolved concerns "is not the focus of this phase of the process, which is concerned with the total security estimate, and not the apportionment of said security." <sup>10</sup> If there is an opportunity during the 2015 ASR, QIA is willing to discuss AANDC concerns to advance a clearer understanding of AANDC's position. But QIA respectfully submits that that the parties cannot formally resolve those concerns during the ASR if in fact a formal amendment of the existing licence conditions would, directly or indirectly, be implicitly required.
- 12. QIA believes that discussions related to the implications associated with "double-bonding" or the perception of "double-bonding" are not matters that should be addressed within the ASR. QIA interest in security are focused upon liabilities associated with Inuit Owned Lands. Discussions and remedies related to Crown security interests are best addressed between the Crown and the proponent, whereby outcomes can be reported to the ASR process. Since the issuance of 2AM-MRY1325 QIA is not aware of any actions taken by the Crown to proactively address the topic of "double-bonding" within the Mary River Project.

<sup>&</sup>lt;sup>9</sup> NWB 2AM-MRY1325 Type A Licence – Amendment No. 1. – Reasons for Decision, Including Record of Proceedings. July 31, 2015 at p. 64.

<sup>&</sup>lt;sup>10</sup> AANDC letter to NWB. Reply to Oct 23, 2015 NWB notice of ASR process. November 5, 2015.

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Consistent the 2016 ASR process, and follow-up confirmations received through teleconference QIA will participate in the scheduled teleconference. Additionally, QIA and BIMC have already pledged to provide the NWB with any additional evidence, no later than January 18<sup>th</sup>, 2016, related to the amount of security to be posted with QIA in relation to the 2016 Work Plan.

QIA looks forward to reviewing its determination with BIMC pursuant to the Commercial Lease, and with interested parties for purposes of the ASR conducted by NWB.

Yours truly,

Stephen Williamson Bathory,

Director, Department of Major Projects

Attachments: 2016 Comprehensive Security Estimate

SWB/

Attach.

cc. Karen Costello, P. Geol,
Director, Resource Management, AANDC