



December 3rd, 2015

Attention Erik Madsen,  
Vice-President, Sustainable Development, Health, Safety and Environment  
Baffinland Iron Mines Corporation  
2275 Upper Middle Road East, Suite 300  
Oakville, Ontario  
L6H 0C3

-and to-

Nunavut Water Board  
P.O. Box 119  
Gjoa Haven, Nunavut  
X0B 1J0

Attention: Stephanie Autut, Executive Director

**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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**Qikiqtani Inuit Association**

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 not 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.”*<sup>1</sup> NWB has repeatedly rendered clear and concise decisions concerning licence security<sup>2</sup>. 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>1</sup> AANDC letter to NWB. Reply to Oct 23, 2015 NWB notice of ASR process. November 5, 2015.

<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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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”*<sup>3</sup> 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*

<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.

<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.

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...”*<sup>7</sup> 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)”*<sup>8</sup>. 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*

<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.

<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>8</sup> Ibid.







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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