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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

February 5, 2016

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

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

As required under Part C and Schedule C of Type “A” Water Licence No. 2AM-MRY1325, associated with the Mary River Project (the Licence), as amended, the amount of financial security the Board requires the Licensee, Baffinland Iron Mines Corporation (BIMC or the Licensee), to post under the Licence is subject to periodic review and adjustment under the process described in the Licence as the Annual Security Review (ASR). For your background, a detailed discussion of the Board’s rationale for establishing this approach to setting security is set

out in the Nunavut Water Board (NWB or Board) Decision¹ supporting the issuance of the Licence in 2013.

However, in summary, 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 based on an annual Work Plan provided by the Licensee and reviewed by Indigenous and Northern Affairs Canada (INAC), the Qikiqtani Inuit Association (QIA) – the owner of the lands on which the majority of the undertaking is located, and the NWB staff. This total amount of security is referred to as the global security amount and is set by the Board for the upcoming year of March 2016 to March 2017.

In addition, recognizing that the footprint of the undertaking includes both Crown Land and Inuit Owned Land, the approach to setting security under the ASR was designed to take into consideration both the financial security required to be posted with the primary landowner, the QIA; as well as the financial security specifically held by the Crown under the Water Licence. This approach was developed by the Board over time to prevent or minimize the possibility of over-bonding, which occurs when a licensee is required to post reclamation security under both the commercial land lease and water licence instruments for essentially the same liability.

Therefore, the second aspect of the ASR involves the Board allowing for reductions from the global security amount to reflect the financial security that the QIA requires the Licensee to post under the reclamation requirements associated with the QIA's commercial lease. In this way, the ASR is an approach to fixing security under the Licence that limits the potential for over-bonding, but ensures that the highest reclamation liability for land and water in the upcoming year is secured under all instruments, when taken together.

As requested in the NWB's guidance letter issued to the parties on October 23, 2015, the parties were asked to supply their comments regarding the following by early December 2015:

Is the existing total security amount as set by the Board in accordance with the 2015 Work Plan adequate to reflect the updated scope of activities and undertakings that may be proposed by BIMC in its forthcoming 2016 Work Plan, expected to be filed with the Board by November 5, 2015?

To support the parties' submissions on this question, the Board requested that the parties provide sufficient information regarding their key assumptions and inputs, including any models used to generate and review the reclamation estimates. In particular, where the parties differed in their estimates on the amount of financial security necessary to ensure appropriate closure, reclamation, restoration, and post-closure measures for the undertaking, the parties were asked to provide a clear indication of the differences and identify the basis for the specific points of divergence.

With respect to the second step in the ASR Process, namely, the Board's consideration of the reclamation security for the undertaking to be held under all instruments taken together, the Board required confirmation from the QIA and the relevant Federal Agencies regarding the amount of reclamation security provided by the Licensee for land and/or water under the

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

Amended Licence or any water licence subsumed by and/or related to the Amended Licence and whether updates to these amounts are being contemplated or required by the parties.

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 at the following link:

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

Phased Approach to Establishing Security for Reclamation under the Licence

During the Public Hearing conducted for the Licence in 2013, and based on the Final Environmental Impact Statement (FEIS) for the Mary River Project, the overall financial reclamation cost for the full scope of activities, works, and undertakings originally proposed for all phases of the project was estimated to be \$518,711,208. Therefore, the Licence issued to the project took into consideration the overall security estimate contained in the FEIS.

During the water licensing process for the project, reflecting that this total reclamation liability was a significant amount and for many years of the undertaking's development would vastly exceed the reclamation liability in any given year until the full scope of activities has been achieved, the Board received feedback and input from BIMC and the interveners that may be more appropriate to use a phased approach to posting financial reclamation security that is more accurately tailored to the extent of reclamation liability arising from the scope of project activities that have taken place and that are planned for the upcoming year. On this basis, the Board accepted that security should be based on a phased approach and Part C and Schedule C of the Licence reflects this approach by allowing for the security to be reviewed and adjusted on an annual basis to reflect the outcome of the ASR security setting process. To initiate the ASR process annually, BIMC is required to submit to the Board for review a copy of the Project's work plan for the forthcoming year.

With the Board's granting of Amendment No.1 to Licence No. 2AM-MRY1325 on July 21, 2015 to allow for additional scope of works, activities, and undertakings proposed under the Early Revenue Phase (ERP), the Licensee proposed an increase to the overall reclamation security for the Project, from \$518,711,208 to \$519,000,000, to address potential increases in liabilities associated with changes to both the original scope of activities, works, and undertakings as well as those introduced by the ERP.

The most recent version of the Updated Interim Mine Closure and Reclamation Plan contains an updated estimate for the overall reclamation security proposed for the undertaking in the context of the added phase now approved under the Early Revenue Phase. The Board may be revisiting the updated overall reclamation cost estimate in the context of approving the Updated Interim Mine Closure and Reclamation Plan, which is currently under review by the NWB.

Board's Jurisdiction to Set Security for An Undertaking

As previously set out in the Board's Reasons for Decision associated with the original licence,² 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) impose the following limits on the Board's jurisdiction:

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.

As the Board noted in prior decisions, and also in the Board's ASR guidance letter in 2015, the Board's approach to factoring security held under land based instruments into the Board's fixing of security under water licences is as follows:

... 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. 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, 2002³ which states:

- 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*

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

³ 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.

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.⁴*

As with previous years, the Board's guidance for the ASR Process for the 2016 Work Plan reflects the Board's jurisdiction and previous approach to security.

Summary of Reclamation Security Posted for the Undertaking, 2013 – 2015

Since the Licence was issued to the undertaking in 2013, the Licensee has posted the required financial reclamation security in the form of letters of credit, including yearly adjustments to the security amount to reflect the level of site activities, works, and undertakings carried out and/or to be conducted for the undertaking.

The following sections provide an overview of the global financial reclamation security as posted for the undertaking, for respective years, from 2013 – 2015 in accordance with relevant requirements in the Licence and following the respective ASR processes over the same period.

2013 Reclamation Security

Following issuance of the Licence in 2013, the global security amount for reclamation of land and/or water located on both Inuit Owned Land and Crown Land was set at \$36,000,000, under Part C and Schedule C of the water licence.

2014 Reclamation Security

The first Annual Security Review (ASR) Process for the Project was carried out October 2013 – January 2014. The outcome of this process was an increase in the global financial reclamation security required for the undertaking, from \$36,000,000 to \$39,959,000, to address liabilities associated with both the commercial land lease and water licence instruments. The increase in the security amount was only applied to the security held by the QIA under the commercial land lease, while the security held by the Crown under the water licence was significantly reduced to reflect that the majority of the undertaking was located on Inuit Owned Lands and that the QIA

⁴ Nunavut Water Board, Reasons for Decision for 2AM-JER1119, December 21, 2012 at pp. 47-48.

proposed to secure a significant portion of the reclamation liability under the commercial lease.

2015 Reclamation Security

The second ASR process, which occurred from October 2014 – January 2015, also resulted in an increase in the global amount of financial reclamation security held for the undertaking. This increase was limited to the proportion of the security held under the commercial land lease while no changes were made to the proportion held by the Crown under the water licence. Overall, the financial security increased from \$39,959,000 to \$47,683,500. **Table 1** below provides a summary of the financial reclamation security posted, annually, for the undertaking over the period 2013 – 2015.

Table 1: Respective Annual Financial Reclamation Security Posted for the Mary River Project Over the Period 2013 – 2015			
Entity/Instrument	2013 (\$)	2014 (\$)	2015 (\$)
IOL (Land & Water)	26,200,000	39,793,000	47,517,500
Crown (Land & Water)	9,800,000	166,000	166,000
Total	36,000,000	39,959,000	47,683,500

Annual Security Review Process for the 2016 Work Plan

The ASR Process for the 2016 Work Plan began in late October 2015 and ended in early January 2016. The process commenced with the issuance of process guidance correspondence by the NWB on October 23, 2015 followed by the receipt of initial interveners' submissions on procedural aspects of the process. The NWB then received and distributed BIMC's 2016 Work Plan and associated information around October 30, 2015. On November 5, 2015, the NWB received initial submissions from the key stakeholders, INAC and the QIA, pertaining to financial security for the undertaking. Additional submissions were received from the same intervening parties and BIMC before and after a teleconference meeting hosted by the NWB on December 17, 2015 to review parties' submissions and resolve outstanding issues. A summary of the procedural history for the ASR Process for the 2016 Work Plan is included in **Appendix A**, attached to this document.

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

BIMC SUBMISSIONS

In support of the Annual Security Review for the 2016 Work Plan and/or relevant terms and conditions of amended Licence No. 2AM-MRY1325, the NWB received copies of the following documents from the Licensee, BIMC, under two different submissions:

October 30, 2015 Submission

2AM-MRY1325, as amended
2016 Annual Security Review--Guidance from the NWB

- 2016 Work Plan, dated October 30, 2015;
- Updated Interim Mine Closure and Reclamation Plan (BAF-PH1-830 – P16-0012), Rev 4, dated October 31, 2015; and
- Updated Aquatic Effects Monitoring Plan (BAF-PH1-830-P16-0039), Rev. 1, dated October 30, 2015;

December 17, 2015 Submission

- 2016 Annual Security Review (ASR) Summary Presentation, dated December 17, 2015;

Following receipt of the October 30, 2015 submission and recognizing that some of the documents contained in submission were not directly related to the ASR Process for the 2016 Work Plan, the NWB publicly distributed the documents, under one correspondence while establishing separate review processes for the Management Plans (Updated Interim Mine Closure and Reclamation Plan and Updated Aquatic Effects Monitoring Plan) that also formed part of the submission. By reviewing these management plans separately from the 2016 Work Plan, the review of the plans did not form part of the ASR Process but were instead considered by the Board as set out in the specific Licence terms and conditions. Therefore, the focus of the following summary of BIMC's submissions has been limited to the 2016 Work Plan and the 2016 Annual Security Review Summary Presentation.

➤ 2016 Work Plan

Under Part C and Schedule C of the Licence, BIMC is required, on an annual basis, to submit a work plan, which must outline the activities, works, and undertaking for the forthcoming year. Consistent with this requirement, the 2016 Work Plan included information related to the works proposed for the 2016 – 2017 period and an estimate of the marginal effect that the proposed work would have on the financial reclamation security that would be required to allow a third party contractor to perform reclamation under a worst case scenario. The Work Plan also examined some of the changes that the proposed works would have on other project variables such as management plans, existing infrastructure and more.

Details contained in the 2016 Work Plan indicate that ongoing development of the mine will continue over the 2016 – 2017 period. The Work Plan states that while new works are planned under the 2016 Work Plan, some components or activities that were previously included under the 2015 Work Plan/Addendum had not been carried out as anticipated or at all. Further, the Work Plan mentions that while some of the activities not completed in 2015 have been carried over from the 2015 Work Plan/Addendum to 2016 Work Plan; others are not expected to be carried out at all in the future.

The following is a summary of the main activities, works, or undertakings expected be carried out in accordance with the 2016 Work Plan:

- Continued operations of the mine and ore crushing facilities; land transportation and stockpiling of ore, material and equipment and marine shipment of ore;
- Continued development of infrastructure at the Milne Port and Mary River sites as well as continued operations of camp facility at these sites;
- Ongoing operations of quarries and borrow sources and establishment of new quarry sites and borrow sources;
- Continued transportation during open-water periods and stockpiling of fuel, equipment

and supplies for use at the Mine site and Milne Port site;

- Continued geotechnical drilling to support engineering design and construction activities;
- Continued environmental monitoring in accordance with permits and authorizations issued to the project;
- Ongoing exploration activities; and
- Ongoing maintenance and upgrades to the Tote Road to satisfy safety and efficiency requirements.

BIMC concluded that a reduction in the overall financial reclamation security for the Project, from \$47,683,500 to \$44,768,000 was justified taken into account the following factors: the works conducted under the 2015 Work Plan/Addendum were actually less than what had been proposed; the effect on reclamation liability associated with the new works proposed in the 2016 Work Plan; and the effect on reclamation liability for works carried over from the 2015 to the 2016 Work Plan.

Additional factors contributing to the changes in the overall security proposed for the project included: the removal from the 2015 Work Plan of works that have not occurred or expected to occur under the 2016 Work Plan; reconciliation of cost allocation in the context of the 2015 and 2016 Work Plans; and additional allocation of indirect cost for short-term care and maintenance, closure and post-closure monitoring and reporting linked to the Updated Interim Mine Closure and Reclamation Plan.

➤ **2016 Annual Security Review Presentation**

In advance of the teleconference scheduled by the NWB for the Annual Security Review for the 2016 Work Plan, BIMC provided a copy of its presentation that summarized the main content of its 2016 Work Plan and included adjustments to the security amount initially proposed in the 2016 Work Plan. In this presentation, BIMC increased the proposed reclamation security from \$44,768,000 to \$46,265,000, to reflect relevant aspects of stakeholder's comments and recommendations provided for the 2016 Work Plan.

Factors contributing to the increase in security proposed included: new allocations for post-operations monitoring and reporting; updates to unit cost and quantities of explosives; cost additions for liner removal associated with two (2) portable fuel dispensing units; establishment of quantities for all waste storage areas and more. **Table 2** below provides details related to the initial and revised reclamation security proposed by BIMC for the 2016 – 2017 period.

Table 2: Initial and Revised Financial Reclamation Security Proposed by BIMC for the 2016-2017 Period		
Entity/Instrument	Initial Proposal (\$)	Revised Proposal (\$)
IOL (Land and/or Water)	44,362,000	45,055,000
Crown (Land and/or Water)	406,000	1,210,000
Total	44,768,000	46,265,000

QIA SUBMISSIONS

The Qikiqtani Inuit Association (QIA) provided several submissions in respect of the Annual Security Review Process for the 2016 Work Plan for the project:

- Letter to the NWB dated November 5, 2015;
- Baffinland Iron Mines Corporation, Mary River Project, QIA 2016 Comprehensive Security Estimate, dated December 2, 2015 and Cover letter, dated December 3, 2015;
- 2016 Annual Security Review Teleconference Speaking notes, dated December 18, 2015; and
- Revised Security Estimate, dated January 8, 2016;

The following sections include an overview of the QIA's submissions.

➤ November 5, 2015 Letter

The QIA provided a letter on November 5, 2015 in response to the NWB's October 23, 2015 correspondence requesting that interested parties provide initial process – related information pertaining to the ASR Process for the 2016 Work Plan. In its letter, the QIA confirmed that the security currently being held under the commercial land lease, in the form of a letter of credit, amounts to \$47,517,500. In addition, the QIA's letter included feedback on process-related matters for the ASR Process for the 2016 Work Plan.

➤ Comprehensive Security Review

The QIA's comprehensive review and cover letter submitted to the NWB under the ASR Process for the 2016 Work Plan included details related to the reclamation security as determined by the QIA's consultant to cover potential reclamation costs on Inuit Owned Land based on requirements contained in the QIA's commercial lease, Abandonment and Reclamation Policy, the QIA's assessment of the information contained in BIMC's 2016 Work Plan, and other relevant factors.

Further, the QIA's comprehensive assessment, which was conducted by Arctis Solutions Inc., determined that the financial reclamation security for the 2016 – 2017 period to cover liabilities on Inuit Owned Land should be adjusted to \$54,649,000.

The difference in the amount of security between that proposed by BIMC and that determined by

the QIA's assessment is attributable mostly to costs allocated by the QIA for abandonment of the Tote Road, open pit, some quarry sites and borrow sources, existing waste storage areas, additional refuelling module, some of the site infrastructure, off-site disposal of fuel, disposal of ammonium nitrate explosives, inflation and more.

The QIA's submission also included feedback related to comments contained in INAC's November 5, 2015 correspondence to the NWB in which INAC indicated, among other concerns, that it has concerns related to the relative proportion of security currently held by the Crown under the water licence.

➤ **2016 Teleconference Speaking Notes**

In its speaking notes for the Teleconference held for the ASR Process for the 2016 Work Plan, the QIA reiterated its position on the amount of reclamation security that it determined is appropriate to capture reclamation costs associated with the 2016 Work Plan for works, undertakings, and activities occurring on Inuit Owned Land under the commercial lease agreement. The Speaking Notes also highlighted the fact that QIA had received additional information and clarification from BIMC regarding certain aspects of the 2016 Work Plan that could cause QIA to revisit their initial estimate provided in November. The QIA also mentioned that further discussions with BIMC on several topics or items in the 2016 Work Plan were planned for January 2016, which may also result in changes to the QIA's initial estimate.

➤ **Revised Security Estimate**

On January 8, 2016, the QIA submitted a revised reclamation cost estimate for the ASR Process for the 2016 Work Plan. The estimate captured BIMC's original submissions as well as aspects of additional information provided to the QIA subsequent to the QIA's initial security estimate filing for the 2016 Work Plan.

The QIA's updated security estimate takes into consideration a lower reclamation cost than that originally included for the quantity of ammonium nitrate being stored on site, excluded portions of the Tote Road located on Crown Land, increases in the quantity of heavy equipment available on site, and more. The QIA noted that differences still exist between the QIA's estimate and BIMC's on the topics of abandonment of Tote Road and associated disturbed areas, backhauling of third-party equipment, excavation and hauling of contaminated soil, and the rate of inflation. Considering the additional information provided to the QIA by BIMC as well as the differences in position that still exist on certain topics contained in the 2016 Work Plan, the QIA revised its estimate to \$52,719,000 for the 2016 – 2017 Period. **Table 3** summarizes the QIA's initial and revised estimates for the 2016 Work Plan.

Table 3: Initial and Revised Financial Reclamation Security Proposed by the QIA for the 2016 Period		
Instrument	Initial Proposal (\$)	Revised Proposal (\$)
IOL (Land and/or Water)	54,649,000	52,719,000

INAC SUBMISSIONS

Similar to the QIA, Indigenous and Northern Affairs Canada (INAC) provided several submissions in respect of the Annual Security Review Process for the 2016 Work Plan associated with Mary River Project:

- Letter in Response to NWB October 23, 2015 letter, dated November 5, 2015;
- INAC Annual Security Review Estimate, dated December 3, 2015; and
- INAC Updated reclamation Cost Estimate, dated December 24, 2015.

➤ November 5, 2015 Submission

INAC in its November 5, 2015 submission indicated that its consultant, SNC Lavalin Inc., calculated the overall reclamation security for the project for the 2015 period, which amounted to \$49,461,549, which is approximately \$4 million more than the amount proposed by BIMC for the same period.

INAC indicated its estimate for the 2015 period, which excluded the content of the 2016 Work Plan, was higher than BIMC's estimate due to a more extensive period allocated for interim care and maintenance, higher cost for closure and post-closure monitoring, and a higher contingency factor (15%).

➤ 2016 Annual Security Review Estimate

INAC in its comprehensive review of the 2016 Work Plan for the project, which was also conducted by SNC-Lavalin Inc., estimated the overall reclamation cost for the 2016 Work Plan at \$49,101,425, taking into consideration both Crown Land and Inuit Owned Land.

The differences between INAC's estimate and BIMC's were again based on higher contingency factors, higher cost allocation for monitoring and more. INAC's submission highlighted several potential discrepancies for which further clarification was required from BIMC.

Apart from the details related to INAC's proposed estimate for the 2016 Work Plan, INAC provided several recommendations including a request for an increase in the reclamation security held by the Crown under the water licence from \$166,000 to \$887,032. INAC stated that the rationale for this recommendation is that a meaningful amount of security should be held by the Crown to ensure that, if government intervention is required, the public purse will not be affected. INAC commented that it has made similar recommendations on two previous occasions; however, these assertions had not been accepted by the Board in setting the amount of security required to be held under the licence.

➤ **Updated 2016 Annual Security Review**

Following the ASR teleconference for the 2015 Work Plan, INAC in its December 24, 2015 submission to the Board, provided revised reclamation cost estimate, \$47,195,763, for the Project for the 2016 – 2017 period. The updated estimate took into consideration modifications of the inventory for disposal of explosives, indirect cost, fill application disposal, and more.

Apart from details related to INAC's security estimate, INAC again voiced concerns about the proportion of security held by the Minister for the project and indicated that INAC believes it is underfunded, should any meaningful intervention be required. INAC therefore recommended that the security held under the water licence be increase from \$166,000 to \$879,307 to cover reclamation cost on Crown land. **Table 4** below provides an overview of the initial and revised estimates provided by INAC.

Table 4: Initial and Revised Financial Reclamation Security Proposed by INAC for the 2016 Period		
Instrument	Initial Proposal (\$)	Revised Proposal (\$)
IOL (Land and Water)	48,214,392	46,316,456 \$
Crown (Land and Water)	\$887,032	\$879,307
Total	49,101,425	47,195,763

BIMC – QIA JOINT SUBMISSION

On January 11, 2015, BIMC and the QIA provided the NWB with a joint submission regarding the financial reclamation security proposed for Inuit Owned Land under the commercial lease for the 2016 – 2017 period following further discussions held between the two parties.

BIMC and the QIA agreed that BIMC should post an additional \$1,328,000 to the \$47,517,500 currently held under the land lease instrument to bring the total amount of security held for IOL to **\$48,845,500**. The joint submission also indicated that continued discussions regarding the calculation of reclamation security under the commercial lease may result in further submissions, changes, and refinement to the positions of BIMC and the QIA in future.

Table 5 below provides a summary of the proposed reclamation estimates provided in the final submissions of the parties involved the ASR Process for the 2015 Work Plan.

Table 5: Security Proposed by Various Parties for 2016 Work Plan Based on Final Submissions			
Party	Inuit Owned Land and Water (\$)	Crown Land and Water(\$)	Total(\$)
BIMC	45,055,000	1,210,000 ⁵	46, 265,000
QIA	52,719,000	N/A ⁶	52,719,000
INAC	46,316,456	879,307	47,195,763
BIMC-QIA Jointly	48,845,500	N/A	50,055,500
BIMC ⁷	N/A	1,210,000	

Global Security Amount for 2016 – 2017 Period

Although there continue to be some differences amongst the parties in terms of the assumptions that should form the basis for the estimate of reclamation cost, the Board, after considering the submissions of the parties for the ASR Process for the 2016 Work Plan in the context of works, activities and undertakings carried out and proposed for the project, concurs that the proposed global security amount of **\$50,055,500** is an accurate estimate of the overall security cost for 2016 – 2017 period. It is the Board's view that this global security amount reflects both the past level of activity and work plans for the year ahead (March 2016 – March 2017).

In coming to this conclusion, the Board considered several factors, including the effects on the global security amount associated with some of the works and activities that had been proposed under the 2015 Work Plan / Addendum not be undertaken in 2015 as planned, the fact that additional works and activities now authorized under the Licence as amended in the summer of 2015 will be undertaken in 2016 and the fact that more accurate inventories of actual fuel and explosives on-site have now been considered to refine the estimates provided. The Board also noted that while there are approvals or authorizations in place for the majority of works, activities, and undertakings outlined in the 2016 Work Plan, there are some works and activities that will require authorizations from the relevant authorizing entities in order to be carried out over the 2016 – 2017 period.

Consequently, on February 4, 2016, when the Mary River Panel (Panel P4), the Panel appointed by the Board as decision-makers for the file met, by Board Motion #: 2015-25-P4-03, the Panel approved setting the total financial security for the highest reclamation liability in the upcoming year (2016 – 2017) at **\$50,055,500**. The Board notes this reflects an increase from the previous global security amount of **\$47,683,500**, set at the conclusion of the ASR Process for the 2016 Work Plan to **\$50,055,500**.

⁵ Revised Estimate Proposed in BIMC's Teleconference Presentation, Table A, P. 19, December 17, 2015.

⁶ No Values Provided

⁷ Ibid

Amount of Security Required by the NWB to be posted under Licence No. 2AM-MRY1325 for the 2016-2017 Period

In contrast to previous ASRs where the entirety of the increase to the global security amount would be allocated to security held by the QIA for reclamation on Inuit Owned Lands. The Board accepts that, as expressed by BIMC and INAC, the liability for reclamation on Crown lands has increased due to factors such as an increase in activities along the Tote Road, the inventory of explosives on-site, etc. Both BIMC and INAC recognized in their submissions that the current amount of security held under the Licence, \$166,000, may not be adequate to undertake the reclamation that could be required to be initiated by the Minister of Indigenous and Northern Affairs Canada under Part C, Item 1 of the Licence.

Reflecting the parties' detailed submissions on this point and the concerns expressed by INAC, the Board identified that there should be an increase in the security to be held under the Licence. By Board Motion #: 2015-25-P4-03, the Mary River Panel directed that the security held under the Licence should be increased from **\$166,000** to **\$1,210,000**. The Board notes this increase was proposed by BIMC in its revised estimate, and is an amount greater than that requested by INAC in the updated reclamation cost estimate provided on December 24, 2015.

Conclusions

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 2016 – 2017 period, as specified under the Licence, Schedule C, Item 4. The Board wishes to thank all the parties who participated throughout this process for their thorough, diligent and comprehensive submissions to the Board in support of the Annual Security Reviews conducted over the last three years. The Board recognizes that this process involves considerable additional work from all of the parties and appreciates the cooperative and constructive discussions that take place in association with the ASR.

Finally, during the establishment of timelines for the 2016 – 2017 ASR process, the Licensee agreed to furnish the financial security as set out in this determination on or before February 26, 2016. However, recognizing that there was a slight delay in the Board's issuance of this guidance, the Licensee is now required to post the security on or before **February 29, 2016**.

If you have any questions or require further direction with respect to this matter, please contact the Board's Executive Director, Stephanie Autut, by email to stephanie.autut@nwb-oen.ca or by phone at (867) 360 – 6338.

Regards,

Thomas Kabloona, Chairperson
Nunavut Water Board

cc. Public Registry
Stephen Williamson Bathory (QIA)
Karen Costello (INAC)
Oliver Curran (BIMC)

Appendix A:

Procedural History for the Annual Security Review Process for the 2016 Work Plan

Date	Description of Submission
October 23, 2015	NWB distributed correspondence containing guidance for the 2016 – 2017 ASR Process
October 30, 2015	<p>NWB received and distributed BIMC's submission for this year's ASR process, which includes the following documents:</p> <ul style="list-style-type: none"> • Appendix A – 2016 Work Plan and Site Layout • Appendix B – 2016 Marginal Closure and Reclamation Financial Security Estimate • Appendix C – Interim Closure and Reclamation Plan, dated October 31, 2015 • Appendix D – Commercial Lease • Appendix E – Emergency Response Plan, dated March 3, 2015 • Appendix F – Spill Contingency Plan, dated March 16, 2015
November 5, 2015	NWB received and distributed the QIA's submission on timing and process for the Annual Security Review Process for the 2016 Work Plan
	NWB received and distributed INAC's submission containing INAC's initial position on the ASR Process for the 2016 Work Plan
November 11, 2015	NWB received and distributed BIMC's comments related to INAC's November 5, 2015 submission
December 2, 2015	NWB received and distributed the QIA's 2016 Comprehensive Security submission including its estimate for the 2016 Work Plan
	NWB received and distributed INAC's revised reclamation cost estimate for the Mary River, which integrated BIMC 2016 Work Plan
December 08, 2015	NWB distributed a copy of the draft agenda for the ASR Teleconference for the 2016 Work Plan
December 9, 2015	NWB received and distributed BIMC's response to INAC's December 2, 2015 submission
December 10, 2015	NWB received and distributed a copy of BIMC's supplementary information clarifying points raised in the QIA's December 2, 2015 submission
December 14, 2015	NWB received and distributed correspondence from INAC requesting further clarification on BIMC's December 10 submission
December 15, 2015	NWB received and distribution additional information provided BIMC regarding INAC's December 14, 2015 correspondence
December 15 – 16, 2015	NWB received confirmation of attendance for the teleconference from BIMC, the QIA, and INAC
December 16, 2016	NWB distributed the final Agenda for the Teleconference
December 17, 2015	NWB distributed a copy of updated timelines for the remaining stages of the ASR Process for the 2016 Work Plan associated with the Mary River Project

Date	Description of Submission
	NWB received and distributed a copy of BIMC ASR presentation
December 18, 2015	NWB received and distributed a copy of the QIA's speaking notes for the 2016 ASR Teleconference
December 24, 2015	NWB received a copy of INAC's updated estimate for the Mary River Project ASR Process associated with the 2016 Work Plan
January 8,2016	NWB received a copy of the QIA's revised Reclamation Security Estimate and accompanying cover letter for the 2016 period
January 11,2016	NWB received a copy of BIMC and the QIA joint submission regarding security to be held under the licence
January 12, 2016	NWB acknowledged receipt on January 11, 2016 of a Joint Submission for Reclamation Security for the 2016 period
January 13, 2016	NWB Acknowledged receipt of the QIA's Revised 2016 Security Assessment for the Mary River Project