



Water Resources Division
Nunavut Regional Office
Iqaluit, NU X0A 0H0

Your file - Votre référence
2AM-MRY1325

December 16, 2016

Our file - Notre référence
IQALUIT#1118086

Stephanie Autut
Executive Director
Nunavut Water Board
Gjoa Haven, NU X0E 1J0

**Re: Indigenous and Northern Affairs Canada's final recommendation for the
Mary River Project 2017-18 Annual Security Review Process for Water
Licence #2AM-MRY1325 – Baffinland Iron Mines Corporation**

Dear Ms. Autut,

This response was committed to during the December 9, 2016 teleconference for the Mary River Project Annual Security Review (ASR) for Water Licence 2AM-MRY1325. This will be Indigenous and Northern Affairs Canada's (the Department) final submission in the 2017-2018 ASR process, modifying our December 2, 2016 position based on information learned during the teleconference.

Project modifications

Baffinland Iron Mines Corporation (Baffinland) included activities which might be considered as project modifications in Table 3-1 of their 2017 Work Plan. In this table, permit applications were not applicable for any activities, however some activities were flagged as requiring issued for construction documentation or option exercise notices. During the ASR, Nunavut Water Board (the Board) staff brought attention to the fact that notice of modifications had to be provided to the Board before the activities were undertaken. Board staff also stated that a review of the Work Plan does not mean authorizations have been granted for the activities, and the Department supports this statement.

In Water Licence 2AM-MRY1325, both the conditions applying to construction and operations, and the conditions applying to modifications require the Licensee to provide information and plans 60 days prior to commencing the activities. The Department expects that it would have the opportunity to review and comment on the activities during this period.

Following the ASR discussion and review of the Mary River Project Update Report submitted to the Nunavut Impact Review Board and referenced by Baffinland, we offer the following comments on activities included in the 2017 Work Plan:

- Mobilization and occupation of 49 person camp at Milne Inlet – More information is required on this camp, particularly plans for wastewater treatment.
- Portable batch plant set-up – The coordinates given for the batch plant in the 2017 Work Plan are not near existing laydowns. During a conversation, Baffinland informed us that the plant would be within laydown areas, that it might be moved around, and that they would inform the Water Resources Officer of the location of the plant. We recommend also informing the Water Board of the plant location.
- Expansion of crusher pad at Mine Site – The Department awaits the chance to review detailed plans for this expansion, particularly the water management structures.
- Expansion of stockpile pad at Milne Inlet – The proposed expansion area in Appendix A of the 2017 Work Plan overlaps that presented in Figure 4.4 of the of the Nunavut Impact Review Board's Mary River Project Update Report. If this expansion forms part of Phase 2, it would be appropriate to wait until this phase of the project has been evaluated by the Nunavut Impact Review Board.

During the ASR Baffinland mentioned they would do geotechnical drilling; approximately 10 drillholes on the Milne foreshore for the 2nd dock and 20 drillholes on the projected rail alignment. This work is not in the list of activities in the 2017 Work Plan and is related to Phase 2. As with the last point above, it would be appropriate to await the outcome of the Nunavut Impact Review Board process.

Department's initial response

Indigenous and Northern Affairs Canada hired SNC-Lavalin to review Baffinland's 2017 Work Plan and Marginal Closure and Reclamation Financial Security Estimate, and develop a reclamation cost estimate using RECLAIM v.7. A total reclamation cost of \$49,932,123 was calculated for the project for 2017. The splitting of this cost based on land ownership and land-water reclamation activities is detailed in Table 1. A full report describing the estimate development was included with our previous submission.

Table 1: Splitting of total reclamation cost estimate

Total cost¹	Crown Tenure Reclamation Cost Estimate	Inuit-Owned Land Reclamation Cost Estimate	Water Reclamation Cost Estimate	Land Reclamation Cost Estimate
\$ 49,932,123	\$ 1,298,555	\$ 48,633,568	\$ 10,341,691	\$ 39,590,432
percentage	2.6%	97.4%	20.7%	79.3%

¹ Total cost can be divided by tenure, or ownership, for which both the land and water components of reclamation are assigned according to land tenure, or by the costs of reclaiming the land and water components separately.

In our December 2, 2016 submission, the Department recommended leaving the amount of security held under the Water Licence unchanged at \$1,210,000. The Department's preference would be for security to cover water-related reclamation costs, as calculated in RECLAIM, to be included in the Water Licence. This would increase the security under the Licence to \$10,341,691. However, we acknowledge that the Board uses a holistic approach to calculating reclamation security and does not divide land and water based reclamation costs. We also recognize that Qikiqtani Inuit Association has to secure itself against risk, because the majority of the project is on Inuit-owned land.

Last year the Nunavut Water Board changed the amount of security held under the Water Licence to equal the Crown land reclamation cost estimate as calculated by Baffinland. We had requested that the Board initiate a Licence-amendment process to change the amount of security under this Licence in a procedurally appropriate manner using the Board's powers under sections 43(1)(b)(iii), 49 and 52(1)(a) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* and section 9 of the *Nunavut Waters Regulations*, however they respectfully declined to do so.

Developments from ASR

During the ASR, we had the opportunity to clarify that we were requesting that the amount held under the Licence remain unchanged because of our position on the necessity of amending the Licence to change the amount of security held under this instrument. We judged that the risks of managing an increased \$90,000 in liability were less than the burden of the procedural requirements and risks of divergence during an amendment proceeding. The Board's counsel informed us that they would once again respectfully decline to use the amendment route for any modifications.

The Department estimates that the reclamation cost for water related activities is \$10,341,691. However, given that the Board is taking a holistic approach based on land tenure and not separating land and water related security, the Department deems that \$1,298,555 should be held under the Water Licence. The Department will be ensuring

that risks to the Crown, as a result of not holding all of the water related security (\$10,341,691), are mitigated through inspection and enforcement activities.

Recommendation

The Department is of the opinion that security in the amount of \$49,932,123 is necessary to ensure that the project is secured for the peak-projected reclamation costs for the year 2017-2018, based on the 2017 Work Plan. This is \$123,377 less than the total security amount of \$50,055,500 held for the 2016 work plan

In light of the discussions during the ASR, it is Indigenous and Northern Affairs Canada's submission that the amount of security held under Water Licence 2AM-MRY1325 should be increased from \$1,210,000 to \$1,298,555 in order to cover reclamation costs for activities on Crown land, as calculated by an independent estimate made using RECLAIM.

Please do not hesitate to contact me at 867-975-3876 or sarah.forte@aandc-aadnc.gc.ca for any additional information.

Regards,

Sarah Forté

Water Management Coordinator

c.c.: Wayne McPhee, Director Sustainable Development, Baffinland
Adam Grzegorzczuk, Approvals Manager, Baffinland
Stephen Williamson Bathory, Director of Department of Major Projects, Qikiqtani
Inuit Association