

Ministre des Affaires autochtones  
et du développement du Nord



Minister of Aboriginal Affairs and  
Northern Development

Ottawa, Canada K1A 0H4

**JUL 15 2013**

Mr. Thomas Kabloona  
Chairperson  
Nunavut Water Board  
PO Box 119  
GJOA HAVEN NU X0B 1J0

Dear Mr. Kabloona:

Thank you for your letter of June 12, 2013, which conveyed the new water licence No. 2AM-MRY1325 for water use and waste disposal associated with the Mary River Project. I would like to thank the Nunavut Water Board for all of its efforts in the administration of water resources in Nunavut.

In accordance with my responsibilities under Section 56 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (the Act), I grant my approval of water licence No. 2AM-MRY1325. In coming to a decision on this licence, I have considered the following: certain concerns with parts of the licence, my options for response under Section 56 of the Act, the significant delay that a rejection decision would entail, and the risks to the environment of approving the licence as is. As mentioned above, I have observed in this licence matters which cause me some concern, and which I feel I must bring to your attention.

First, I would like to note concerns regarding the management of securities under licences. Whereas it appears the combined security required for this project by the Qikiqtani Inuit Association and the Crown provides for adequate reclamation security for the short term, it does not allow the flexibility that the Department requires under its authority under sections 56 and 76 of the Act. Further, the licence appears to be structured in a way that may limit the Department's role as a decision maker and regulator. This is a concern given that liabilities with the project will only increase over the coming years, as construction of the various project components progresses.

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Second, I notice that the Board has adopted an approach to this licence of using "Schedules" to provide "clarification and guidance to the Licensee". This approach appears to allow the Board to modify the licence without seeking Ministerial approval on potentially key issues. As you are aware, the management of water resources in Nunavut is a shared responsibility. Aboriginal Affairs and Northern Development Canada has legislated responsibilities for the management and protection of Nunavut's water resources stemming principally from the *Department of Indian Affairs and Northern Development Act*, the Nunavut Lands Claim Agreement, and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*. Further, departmental and Government of Canada-wide policies provide clear direction that the Government of Canada has adopted the 'polluter-pays' principle and will not incur financial liabilities. It is for this reason that I cannot fully support the approach of the use of 'Schedules' and must advise against the use of such an approach in future instances.

Lastly, there are a number of textual inconsistencies and contradictions within the licence. This may make the licence unclear on some issues, inconsistent with the legislative scheme, and possibly unenforceable. I expect these matters should be addressed and corrected in the near future.

In light of the potential challenges posed by the above noted concerns, namely with respect to security and schedules, I strongly encourage the Board to work in a timely manner with appropriate departmental officials to find a satisfactory resolution, and I look forward to the opportunity to review an amended licence that considers the concerns I have expressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Bernard Valcourt", with a stylized flourish at the end.

Bernard Valcourt, PC, QC, MP

Encl.



# Nunavut Water Board | WATER LICENCE NO: 2AM-MRY1325

## Licence No. 2AM-MRY1325

Pursuant to the Nunavut Waters and Nunavut Surface Rights Tribunal Act and the Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada, the Nunavut Water Board, hereinafter referred to as the Board, hereby grants to

BAFFINLAND IRON MINES CORPORATION

(Licensee)

SUITE 1016 - 120 ADELAIDE STREET WEST, TORONTO, ONTARIO M5H 1T1

(Mailing Address)

hereinafter called the Licensee, the right to alter, divert or otherwise use water or deposit waste for a period subject to restrictions and conditions contained within this Licence:

Licence Number/Type:	<u>2AM-MRY1325 TYPE "A"</u>
Water Management Area:	<u>GIFFORD (21) &amp; ECLIPSE SOUND (48) WATERSHEDS</u>
Location:	<u>MARY RIVER PROJECT QIKIQTANI REGION, NUNAVUT</u>
Purpose:	<u>WATER USE AND THE DEPOSIT OF WASTE</u>
Description:	<u>MINING AND MILLING UNDERTAKING</u>
Quantity of Water not to be Exceeded:	<u>580,000 CUBIC METRES <i>PER ANNUM</i> DURING THE PROJECT CONSTRUCTION PHASE;</u> <u>230,000 CUBIC METRES <i>PER ANNUM</i> DURING THE PROJECT OPERATION PHASE</u>
Date Licence Issuance:	<u>JUNE 10, 2013</u>
Expiry of Licence:	<u>JUNE 10, 2025</u>

This Licence issued (Motion Number 2013-10-P4-05) and recorded at Gjoa Haven, Nunavut includes and is subject to the annexed conditions.

Thomas Kabloona  
Nunavut Water Board  
Chair

APPROVED  
BY:

  
Minister of Aboriginal Affairs and  
Northern Development Canada

DATE LICENCE APPROVED:

July 15<sup>th</sup>, 2013