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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

File No: 2AM-MRY1325

July 23, 2013

By Courier, Email and Regular Mail

Honourable Bernard Valcourt, PC, QC, MP
Minister of Aboriginal Affairs and Northern Development Canada
21st Floor, 10 Wellington
Gatineau, Quebec K1A 0H4
Email: Bernard.Valcourt@parl.gc.ca

**Subject: NWB Type “A” Water Licence No. 2AM-MRY1325 – Mary River Project,
Nunavut; Baffinland Iron Mines Corporation**

Dear Honourable Minister Valcourt:

On behalf of the Nunavut Water Board (NWB or Board), thank you for your recent correspondence, dated July 15, in which you approved of the issuance of the Type “A” Water Licence No. 2AM-MRY1325 (the Licence) that authorizes Baffinland Iron Mines Corporation (the Proponent) to use water and deposit waste in relation to the construction, operation, closure and reclamation of an iron-ore mine, proposed under the Mary River Project. In your letter, you brought three items of concern with the Licence to the Board’s attention and indicated that these items should be addressed and/or corrected in the near future.

In response, please find in the text that follows the Board’s initial clarifications and corrections with a view to responding, to the extent possible at this point in the water licensing process, to the concerns you have identified. In providing these clarifications and corrections the Board is aware that some of these concerns can only fully be addressed during the administration and implementation of the Licence, and we wish to assure the Minister that it has always been the Board’s practice to have an on-going dialogue and collaborative working relationship with all participants in the licensing process. This holds particularly true with AANDC, in its role as the agency responsible for enforcing water licences as these are implemented and assessed for compliance.

With respect to the first concern expressed about the Board’s approach to security in the Licence, and in particular that the approach does not provide sufficient flexibility to reflect the Minister’s authority under ss. 56 and 76 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWSRTA), as acknowledged by the Board in the decision accompanying the Licence, the Board’s approach to fixing the amount of security in the Licence is novel and this is the first Licence to contain a clear mechanism allowing for AANDC, the Regional Inuit Association (the Qikiqtani Inuit Association in this case) and the Proponent to participate in an annual review of security. In the Board’s previous water licences, there was no tripartite mechanism involving these parties in a review of security during the term of a licence. Rather, the approach was to fix, at the outset of the term, the security amounts to be provided under the licence, allowing an increase in security solely at the discretion of the Board, requiring the licensee to “furnish and maintain such further or other amounts as may be required by the Board based on annual estimates of current mine restoration liability” and allowing reductions to the amount of security based



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solely on an application by the Licensee “to the Board for approval, a request for a reduction to the amount of security.”¹

In developing the mechanism of an Annual Security Review that involves the receipt of evidence from AANDC, the QIA and the Proponent to review and adjust security on an annual basis, in the Board’s view, the Board has now more expressly recognized the significant role and jurisdiction of AANDC under the NWNSTRA (including determinations regarding the form, application and refund of security) and has responded to the concern of all parties as communicated at the Hearing that the Board’s prior practice was not adequately addressing the issue of overbonding. While the Board recognizes that diverging from the Board’s prior past practice with the introduction of a new mechanism in the form of an Annual Security Review may initially appear to create uncertainty for the parties, the Board reiterates for all parties that this approach is intended to recognize the holistic approach to security while respecting the jurisdiction and mandate of the NWB, AANDC and the QIA in securing adequate and appropriate reclamation security for the entire project. To this end, the Board anticipates that as this aspect of the Licence is implemented, the collaborative and co-operative approach that characterized the discussions of this issue at the Hearing will continue in a manner that serves the respective mandates and interests of all parties, and following the completion of the initial Annual Security Review, the Board could provide a further update regarding the implementation of this aspect of the Licence.

Although it is not entirely clear, it appears to the Board that the second concern raised in your letter in relation to the use of Schedules in the Licence may also be specifically linked to the inclusion of items in relation to security in a Schedule (Schedule C) of the Licence. We say this because the Board’s similar use of Schedules for the purposes of providing instructive details of the terms and conditions contained in the main body of the licence and clarification and guidance to the licensee has been used by the Board in the past (see Water Licence No. 2AM-JER1119, introduction to the Schedules), but concerns regarding the Board’s approach did not previously warrant comment. In particular it appears that the ability of the Board to modify terms and conditions in the Schedules is of concern to the Minister.

The Board notes that the jurisdiction of the Board to modify the terms and conditions of a licence, including the schedules has also been included in the Board’s previous licences in the Board’s definition of “modifications”, which are changes that may be made to the undertaking that will not be considered to be amendments to the licence. In assessing whether proposed changes constitute modifications under existing licences, whether to the schedules or to the body of the licence, the Board is well aware that their jurisdiction is clearly limited by several factors, including the existing scope of the licence as approved by the Board and the Minister, the provisions of the NWNSRTA, including the Minister’s jurisdiction to approve amendments as referenced in your letter, the requirements of the *Nunavut Waters Regulations*, and the provisions of the Nunavut Land Claims Agreement, and in particular the land use planning and impact assessment provisions in Articles 11 and 12. The Board is not aware of any concerns or comments regarding the Board’s past approach to modifications to licence terms and conditions and as with this past use of discretion to permit modifications under previous licences, the Board intends to assess any changes to Schedules within the Licence in a manner consistent with the clear boundaries of the Board’s jurisdiction to change the terms and conditions in a licence without triggering a formal amendment.

¹ See for example Water Licence No. 2AM-MEA0815, Part C: Items 2 and 3, at p. 9.



cc: Mary River Project Distribution List
NWB Public Registry