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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

File No: 2BB-MRY1114

November 26, 2013

To: Mary River Distribution List

Subject: Response to Specific Comments from the Qikiqtani Inuit Association Regarding Proposed Amendment No. 1 to Type “B” Water Licence No. 2BB-MRY1114 – Mary River Project; Baffinland Iron Mines Corporation

Dear Parties:

Although it is not the usual practice of the Nunavut Water Board (NWB or Board) to respond directly to comments provided in the course of the Board’s call for comments in respect of active licensing decisions, the NWB has noted that comments received from the Qikiqtani Inuit Association (the QIA) in October with respect to the evidentiary basis for the proposed Board initiated amendment (Amendment No.1) to the scope and security provisions of the Type “B” Water Licence No. 2BB-MRY1114 (the Type “B” Licence) issued to Baffinland Iron Mines are such that this direct response is warranted. As the parties are aware, the proposed Board initiated amendment to the scope and security provisions of the Type “B” Licence are intended to reflect the overlap between the Type “A” Water Licence No. 2AM-MRY1325 (the Type “A” Licence) issued in June, 2013 and the existing Type “B” Licence. This approach was contemplated, discussed and evidence was presented with respect to this reconciliation of scope and security in the Public Hearing conducted by the NWB in April, 2013 in respect of the Type “A” Water Licence Application.¹

In the comments from the Qikiqtani Inuit Association:

The proposed Amendment No. 1 Type “B” Water Licence proposes a scope of the undertaking that differs from that assumed by BIMC in their estimate of the \$1.25 million Security. Thus, it is unclear to QIA how the NWB has assessed the security amount for the proposed amendment No. 1 Type “B” Water Licence.²

¹ Nunavut Water Board, Record of Proceedings/Reasons for Decision: 2AM-MRY1325, June 12, 2013 (the Type “A” Decision), see pp. at pp. 58-63 and see the transcripts where this evidence was provided NWB Public Hearing File No. 2AM-MRY1325, Transcript, April 24, 2013, pp. 194-195, p. 209 and p. 257.

² Correspondence dated October 15, 2013 from S. Williamson Bathory, Director, Major Projects, the Qikiqtani Inuit Association to Damien Côté, Executive Director, Nunavut Water Board, a p. 2.

In response, the Board notes it is within the Board's jurisdiction to amend any term or condition of a licence when the Board considers the amendment to be in the public's interest,³ and therefore the NWB is within its jurisdiction to assess the appropriate scope of the activities that should remain within the Type "B" Water Licence and that are not validly included within the scope of the Type "A" Water Licence. However, the NWB does not agree that the NWB's proposed revised scope of the Type "B" Water Licence differs so significantly from that proposed by the Licensee at the time of the Public Hearing associated with the Type "A" Water Licence that additional evidence and a new estimate of security is required before the Board can consider the amendment of the Type "B" Water Licence to reconcile the scope and the security to be held under the Type "B" Water Licence and the Type "A" Water Licence.

As parties may recall from the Public Hearing associated with the Type "A" Water Licence, the Board expressly considered and elicited evidence regarding the nature of the reclamation activities that had been included by the Licensee under the \$1.25 million security to be held under the Type "B" Water Licence if a Type "A" Water Licence was issued. In particular, the exchange set out below demonstrates that this issue was directly contemplated by the Board at the time of the Public Hearing:

MR. JOSEPH: Thank you, Mr. Chair. I have a question on security for Baffinland. Slide Number 130 of your presentation provided a breakdown of the security that will remain under the Type "B" water licence application -- or existing licence, sorry, in the amount of \$1.25 million. Could Baffinland clarify or confirm the reclamation activities that will be captured under that reclamation amount that has been put forward? I know that your 2013 reclamation plan, the upgraded one, may have some of the details with respect to that, but for the benefit of participants, we would like for Baffinland to clarify the activities that would be associated with that reclamation amount.

MR. MADSEN: It's Erik Madsen with Baffinland. So the Type "B" would remain for ongoing exploration activities within the mine -- within the claim-back area, so it really will deal with the mid-rail camp, which is a smaller camp in between Steensby and Mary River, the smaller Steensby camp, same thing for exploration purposes, and then, you know, we will -- that would be -- that licence would be for drilling, exploration drilling in the claim-back area, so it would deal with any kind of drilling activities related to exploration. So these are the key areas that are outlined for reclamation ongoing.⁴

Consequently, the Board is confident that the evidence that was before the Board at the Public Hearing associated with the Type "A" Water Licence Application is sufficient for the Board to

³ Section 43(1)(b)(iii), *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10.

⁴ S. Joseph, Technical Advisor, Nunavut Water Board and E. Madsen, Vice President, Sustainable Development, Health, Safety and Environment, Baffinland Iron Mines Corporation Public Hearing File No. 2AM-MRY1325, Transcript, April 24, 2013, pp. 257-258, lines 5-26 and lines 1-5.

assess the appropriate security amount to remain under the Type “B” Water Licence. Reflecting this assessment of the information received during the Public Hearing process for the Type “A” Water Licence, the Board will not be requesting or considering additional evidence before considering the proposed-Board initiated amendment (Amendment No.1) to the Type “B” Licence.

Further, the Qikiqtani Inuit Association also commented that additional details regarding the activities included under the scope of an amended Type “B” Water Licence that will take place on Inuit Owned Lands are necessary before the Qikiqtani Inuit Association can provide the Board with information regarding the security amount that should be secured under the Type “B” Water Licence, rather than being secured by the Qikiqtani Inuit Association under the QIA’s land-based instruments such as the land lease. In response, the Board notes that, in contrast to the Type “A” Water Licence, Part C and Schedule C, there is currently no provision under the Type “B” Water Licence analogous to the Type “A” Annual Security Review to solicit this type of information and reduce the global security amount held under the Type “B” Water Licence by amounts that may be secured by other instruments outside the Type “B” Water Licence.

Although the Board also recognizes that this type of information and submissions in this respect may be included in the parties’ submissions at the time of the Annual Security Review and may be useful in ensuring that the global security amount held for reclamation of the entire undertaking is sufficient, whether licensed under the Type “A” Water Licence or the Type “B” Water Licence, the Board is not contemplating changing the basis for the current assessment of the Type “B” Water Licence security, which was evidence provided at the Public Hearing of the Type “A” Water Licence in April, 2013.

Therefore, the Board wishes to confirm for all parties that the evidentiary basis for the Board’s reconciliation of the scope and security provisions of the Type “B” Water Licence under the Board initiated amendment remains the information provided at the Type “A” Water Licence Public Hearing, as supplemented only by the information provided by the parties in their recent comment submissions. In terms of next steps, the Board-initiated amendment has been remitted to the Board for their consideration, and it is anticipated that Board decision regarding the potential amendment will be issued shortly thereafter.

In the interim, if you have questions regarding this matter, please contact me directly.

Sincerely,



Damien Côté
Executive Director
Nunavut Water Board

cc: NWB Public Registry