

NWT CHAMBER OF MINES SECURITY DEPOSIT SUBMISSION

A. Jurisdiction of the Nunavut Water Board (NWB)

1. Effective July 9, 1996 the NWB was established as an institution of public government pursuant to the Nunavut Land Claim Agreement (NLCA), Article 13.2.1 of which grants to the NWB "responsibilities and powers over the regulation, use and management of water in the Nunavut Settlement Area, on a basis at least equivalent to the powers and responsibilities currently held by the Northwest Territories Water Board under the *Northern Inland Waters Act*, RSC 1985, c. N-25, and any other responsibilities acquired under this Article".

2. In June 1993, the *Northwest Territories Waters Act* replaced the *Northern Inland Waters Act*.

3. To date no enabling legislation has been enacted, though Bill C-62, An Act respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal, was given first reading in the House of Commons on December 4, 1998. Presumably, Bill C-62 will form the basis of NWB's jurisdiction, duties and responsibilities. We say that with caution because all Bills are subject to change at each reading or they can die on the Order Paper or may be withdrawn.

B. Security Deposit

The issues relating to Security Deposit are the following.

1. Amount

Based upon the NWB decision associated with the BHP Boston Water Licence (NWB 9801) of July 31, 1998, the principle of "full recovery" has been set as the basis for establishing the amount of the security deposit. In a letter to NWB accompanying data requested by the NWB for the calculation of the Security Deposit via the "Reclaim Model", BHP expressed doubts about the accuracy of the model to calculate costs associated with the reclamation of advanced exploration projects. Therefore, by a letter to the NWB on October 22, 1998, BHP estimated the security deposit for the Boston Gold Project based on the full cost of abandonment and reclamation of the site to be \$1.7 million, covering both land and water related reclamation.

While this may make sense in principle, one must realize that of the \$1.7 million, the sum of \$1.3 million is for transportation alone. The actual on site work is not that significant. Further, security deposits historically, especially for exploration projects, have been much lower. Following are several examples:

Project	Amount	Location
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George Lake	\$100,000.00	Nunavut
Jerico	\$ 50,000.00	Nunavut
Ulu	\$250,000.00	Nunavut

The NWT Chamber of Mines understands that NWB policy on Security Deposits is evolving. In the interim, however, project proponents need to be dealt with evenly and fairly. Accordingly, it may make sense to go to full cost recovery, but in stages. That way the playing field is kept level between project proponents.

The NWB and its counterparts under the *Northwest Territories Waters Act* and the *Yukon Waters Act*, have set the amount of security based upon an estimate of the total cost of reclamation, covering both land and water related items. While we do understand how this has evolved historically, it is the NWT Chamber of Mines position that the jurisdiction of the NWB extends only to those items of reclamation that could impact water, particularly where, as in the BHP case, there is a DIO, seeking, and related security. Critical to mining companies operating in Nunavut, is the need to avoid duplicating the amount of the security deposit, first with the NWB, then again with the DIO. In the case of BHP, the NWT Chamber of Mines understands that the \$1.7 million estimate is divided between land and water issues as follows:

Reclamation	Amount
Water Related	\$350,000.00
Land Related	\$1,350,000.00

The NWB in its July 31, 1998, decision also indicated that in fixing the amount of security the NWB may have regard to "the ability of the applicant to pay" and the "past performance of the applicant". BHP should rate high marks on both counts; hence the amount of security might be lower than would otherwise be required. Further, it is the opinion of the NWT Chamber of Mines that progressive Abandonment and Restoration Plans tied to adequate inspection by regulators, should eliminate the need for large Security Deposits, because few liabilities will be left at the end of the project.

2. Use of Security

Historically, security has been posted purely to cover the costs of abandonment and restoration. The NWB in its July 31, 1998, decision has indicated that such funds should also be available as a performance bond, to be available to be used for remedial activities in the case of contamination during operations.

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Bill C-62 would permit security to be used as well, for compensation of a DIO and for remediation. Notwithstanding these additional uses that security may be put to, the amount, we submit, is still limited to water related restoration/reclamation.

3 Payee

As with the predecessor acts, Bill C-62 (in section 8) provides that subject to the rights, under the NCLA, of the DIO in respect of waters, the property in and the right to the use and flow of all waters in Nunavut are vested in Her Majesty in Right of Canada. Section 75 of Bill C-62 further provides that any security required by NWB, shall be furnished and maintained "with the Minister" and it is the Minister who may apply the security to the uses referred to in 2 above. Put simply, the payee of any security must be the Minister.

In the case, such as BHP Boston, where there is a DIO that wants security pursuant to its tenure grant, to ensure that land related reclamation is undertaken, there seems to be two alternatives.

One alternative would be for there to be a single bond covering the full amount of land and water related reclamation with the DIO and the Minister being joint payees.

The other alternative would be to have two separate bonds, one in respect to land related reclamation with the payee being the DIO and the second in respect to water related reclamation with the payee being the Minister, the total of both not to exceed the full cost of reclamation for land and water related items

— The NWT Chamber of Mines is of the opinion that both options may have appropriate uses depending upon the particulars of given projects. Whichever option is ultimately used in the current BHP case or with other companies in the future, appropriate safe guards are necessary to eliminate the possibility of inappropriate use of security.

C. License Wording

Based upon the foregoing submission the NWT Chamber of Mines would support the following wording changes suggested by BHP for the Boston Water Licence:

Part B: General Conditions

Clause 2(c) should be amended to read:

"Upon notification of the amount required under Part B, Item 2(b) the License shall provide the Minister with the amount within thirty (30) days."

If the security deposit is in an amount that would cover all land and water related reclamation, then clause 3 should be amended by replacing the first paragraph with the following:

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"The security deposit may be applied by the Minister or the Designated Inuit Organisation ("DIO") to carry out work necessary to fulfil the requirements of this License or to fulfil the requirements of the land tenure grant from the DIO."

If the security deposit is in an amount that is to cover only water related reclamation (because a second and separate security deposit for land related reclamation is to be held by the DIO), then clause 3 should be amended by replacing the first paragraph with the following:

"The security deposit may be applied by the Minister to carry out work necessary to fulfil the requirements of this License."

The second paragraph of clause 3 could remain unchanged.

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2. ՀՀ, 1993-Դ ժամանակահատվածում ՀՀ կառավարության կողմից մշակված հրահանգները:

[illegible]

B. $\gamma \delta \Gamma^c \Pi^a \sigma^b \langle C \rangle \langle D^a C \rangle \langle \bar{L}^b D^c \rangle \langle \bar{P}^c \bar{D} C \rangle \langle \bar{L} \bar{L}^c \rangle$

$$P^a \Gamma^c \Pi^a \sigma^{cb} \langle C \rangle \langle D \rangle^{sb} \langle D \rangle \varepsilon^{sb} \rangle^c \langle P \rangle \langle D \rangle \langle C \rangle \Gamma^c \Delta L^a \Delta c^a \Delta \rangle^c.$$

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