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**Reasons for Compensation Decision**

Issued pursuant to section 72.25 of the *Mackenzie Valley Resource Management Act*

<b>Water Licence Application - Compensation</b>	
<b>Reference/File Numbers</b>	MV2016L8-0006
<b>Applicant</b>	Department of Indian Affairs and Northern Development – Contaminants and Remediation Division
<b>Project</b>	Gordon Lake Group Remediation Project, NT

**Decision from Mackenzie Valley Land and Water Board meeting of**

February 16, 2017

These Reasons for Decision set out the Mackenzie Valley Land and Water Board’s (the Board or MVLWB) decision on a compensation claim submitted by Sandy Point Lodge (SPL) on an Application made by the Department of Indian Affairs and Northern Development - Contaminants and Remediation Division (DIAND-CARD), provided to the Board on August 4, 2016 for type B Water Licence (Licence) MV2016L8-0006. This Application, along with an accompanying Land Use Permit (Permit) MV2016X0021 application, was to initiate DIAND-CARD’s mine remediation activities at nine mine and advanced exploration sites in the vicinity of Gordon Lake, collectively referred to as the Gordon Lake Group (GLG) Remediation Project. The proposed work is referred to herein as the GLG Remediation Project. The term requested for the Licence is seven years.

**Background**

The GLG Remediation Project consists of nine mine and advanced exploration sites (Burnt Island, Camlaren, Goodrock, Kidney Pond, Murray Lake, Storm Property, Treacy, Try Me, and West Bay) located approximately 110 km northeast of Yellowknife, around Gordon Lake, Northwest Territories (NT), within the asserted Akaitcho Territory. The GLG sites are located northwest of the east arm of Great Slave Lake, which falls into the Northwestern Boreal Uplands of Canada. Gordon Lake and the Project sites are located in the Taiga Shield - Great Slave Upland Low Subarctic (LS) Ecoregion of the NT. All nine sites fall under the custodial responsibility of DIAND, and site remediation is coordinated by DIAND-CARD.

The nine sites are unrelated to each other but for the purposes of efficiency in logistics, procurement, cost, regulatory and engagement requirements they have been placed into a single portfolio for remediation purposes. Each of the nine sites within this portfolio are listed as separate individual “waste sites” within the Devolution Agreement, and were excluded from transfer to the Government of the Northwest Territories (GNWT). Most of the sites, with the exception of Kidney Pond and Camlaren, are very small in size, scope and concern. They range from very small exploration sites from the 1940’s and 1950’s to somewhat larger sites that went into limited production.

In 2015, a Site Wide Hazard Assessment (SWHA) was completed at each of the nine sites, by Stantec Consulting Ltd. (Stantec). The nine GLG sites exhibit similar types of hazards, resulting in related remediation strategies across all sites. One hundred and nine (109) hazards across the nine sites were identified through the SWHA, classified into the following categories:

- Non-hazardous Waste – including scrap wood, empty drums, plastic, rubber, textile, fiberglass insulation, glass, miscellaneous metal debris and crucibles;
- Hazardous Waste – including batteries, asbestos containing materials and lead-based painted materials;
- Abandoned Site Buildings – including cabins, headframes, and building remains (concrete slabs, old chimney);
- Abandoned Site Infrastructure – including a concrete retaining wall, culverts, docks, tailings dyke, a drill rig and core racks;
- Waste Rock Piles – including acid generating, potentially acid generating and non-acid generating waste rock;
- Tailings;
- Mine Openings – including pits, shafts, portals, adits, vents and raises;
- Surface Excavations;
- Unfired Explosives;
- Impacted Soil; and
- Impacted Water.

A Human Health and Ecological Risk Assessment (HHERA) for the sites was completed in March 2014 to determine concentrations of contamination that, if left, could pose a risk to human or ecological health. Phase III Environmental Site Assessments for Burnt Island, Camlaren, Goodrock Mine, Kidney Pond and Treacy Mine have also been completed, dated March 2013. These, along with a 2016 Gap Assessment Report, SWHA, and Borrow Source Assessment Report, have aided in the development of the Remedial Action Plan.

### **Regulatory Process**

On August 4, 2016, DIAND-CARD submitted an Application for a Type B Water Licence MV2016L8-0006<sup>1</sup>, and an Application for a Type A Land Use Permit MV2016X0021<sup>2</sup>. On August 12, 2016, the Applications were deemed complete in accordance with section 34(2) of the *Waters Act*, sections 17.16(1) and 63(1) of the *Mackenzie Valley Resource Management Act* (MVRMA) and sent for review<sup>3</sup>.

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<sup>1</sup> See [MV2016L8-0006 Water Licence Application submitted on August 4, 2016](#).

<sup>2</sup> See [MV2016X0021 Land Use Permit Application submitted on August 4, 2016](#).

<sup>3</sup> See MVLWB Application complete letters to DIAND-CARD - [Applications Complete](#) - dated August 12, 2016

The Board is satisfied that the Applications were in the form, and contained the information, prescribed by the regulations in accordance with section 72.1 of the MVRMA. Notice of commencement of the review was provided to the parties, indicating that the Board had deemed the information supplied by DIAND-CARD to be sufficient, that the regulatory process would proceed, and that the legislated timelines defined in subsection 72.18(1) of the MVRMA had commenced. All interested parties were given the opportunity to participate in this regulatory process.

On August 25, 2016, the Board decided to invoke paragraph 22(2)(b) of the Mackenzie Valley Land Use Regulations (MVLUR) for Permit MV2016X0021 to allow for additional time to gather information with the associated Type B Licence MV2016L8-0006 regulatory process.<sup>4</sup>

On September 15, 2016, the Board held a technical workshop to discuss and seek clarity on the application and to address any preliminary questions or concerns from reviewers and Board staff prior to the review comment deadline. Attendees included: DIAND-CARD (and consultants), Government of the Northwest Territories – Department of Environment and Natural Resources (GNWT-ENR), GNWT – Department of Lands (GNWT-Lands), and North Slave Métis Alliance (NSMA)<sup>5</sup>. DIAND-CARD provided a presentation<sup>6</sup> on the Project followed by questions and discussions.

A comment deadline of September 20, 2016 was established. Comments on the applications were received from the following parties: the GNWT-ENR, Department of Fisheries and Oceans Canada (DFO), GNWT – Department of Health, GNWT – Department of Industry, Tourism and Investment (GNWT-ITI), GNWT – Department of Transportation (GNWT-DOT), GNWT-Lands, GNWT – Lands Inspector (GNWT-Inspector), Indigenous and Northern Affairs Canada – Inspector (INAC-Inspector), the NSMA, and Mr. Duncan Cooke, the owner of SPL. Board staff also submitted comments on the applications. DIAND-CARD responded to the parties' comments and recommendations on September 29, 2016.<sup>7</sup>

During the review, the owner and operator of SPL, Mr. Duncan Cooke, submitted a letter to the Online Review System (ORS) requesting the opportunity to make submissions as to how SPL will be adversely affected by the Project and the appropriate level of compensation. On September 23, 2016, Board staff sent a letter to DIAND-CARD, asking how they plan to respond to the concerns raised in Mr. Duncan Cooke's letter. DIAND-CARD responded on September 28, 2016, indicating that though there may be temporary disturbances, the Project will ultimately be a net benefit to the users of the Gordon Lake area, and did not feel compensation is required. On October 12, 2016, Board staff sent a letter to Mr. Duncan Cooke requesting specific information if he wishes to pursue a claim for compensation. Further information regarding compensation is outlined below in section 4.1.2.

On October 12, 2016, a draft Permit<sup>8</sup> and draft Licence<sup>9</sup> were circulated to parties for review. By October 28, 2016 the following parties responded: GNWT-Lands Inspector, INAC Inspector, GNWT-ENR, GNWT – Prince of Whales Northern Heritage Centre (GNWT-PWNHC), and NSMA. DIAND-CARD responded to all of the parties' comments and provided comments of their own on November 3, 2016<sup>10</sup>.

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<sup>4</sup> [Further Study Required Letter 22\(2\)\(b\)](#)

<sup>5</sup> [Technical Workshop Meeting Notes](#)

<sup>6</sup> [DIAND-CARD Technical Workshop Presentation](#)

<sup>7</sup> [See ORS Reviewer Comments](#)

<sup>8</sup> [DRAFT Land Use Permit MV2016X0021](#)

<sup>9</sup> [DRAFT Water Licence MV2016L8-0006](#)

<sup>10</sup> [See ORS Reviewer Comments](#)

On February 16, 2017, the Board met to make a decision regarding compensation. Reasons for this decision can be found below.

## **Decision**

### **Requirements of Subsection 72.03(5) of the MVRMA: Conditions for Issuance**

#### ***Compensation***

Paragraph 72.03(5)(b) of the MVRMA prohibits the issuance of a Licence unless the Board is satisfied that appropriate compensation has been or will be paid by the applicant (in this case, DIAND-CARD) to persons who were, at the time when the Application was filed with the Board, members of the classes of water users, depositors, owners, occupiers, or holders listed under paragraph 72.03(5)(b), who would be adversely affected by the use of waters, or deposit of waste proposed by the applicant.

On November 2, 2016, Mr. Duncan Cooke of SPL submitted a compensation claim to the Board.<sup>11</sup> SPL is a fly-in only fishing lodge located on Gordon Lake, NT. In his claim, Mr. Duncan Cooke expressed concerns about air traffic, noise, air pollution from vehicles and machinery, human activity, etc. and how this activity from the GLG Remediation Project will negatively impact his business. On November 16, 2016, DIAND-CARD responded to Mr. Duncan Cooke's claim<sup>12</sup>, stating that the remediation Project will result in a net benefit for the users of Gordon Lake. DIAND-CARD also argued that due to the seasonality, duration, and scale of activities proposed, as well as the localized nature of the activities, the Project is highly unlikely to adversely affect SPL. Mr. Duncan Cooke responded to this reply on November 30, 2016<sup>13</sup> stating that though net benefits may occur, this does not mean that SPL won't be adversely affected while the Project activities are being carried out.

On December 20, 2016, Board staff sent an Information Request (IR)<sup>14</sup> to Mr. Duncan Cooke requesting further information on specific components of his compensation claim, with a deadline of January 4, 2017. Mr. Duncan Cooke agreed to provide the information, however on December 23, 2016, he requested the response remain confidential. The Board granted this request. On January 4, 2017, Mr. Duncan Cooke submitted his response to the IR to the Board. On January 12, 2017, the confidentiality agreement was signed between Mr. Duncan Cooke and DIAND-CARD, and Board staff then provided DIAND-CARD with the IR response for their review. On January 17, 2017, DIAND-CARD submitted a response stating they had, "... No further comment regarding the Information Request Response from Mr. Cooke..."<sup>15</sup>.

On February 16, 2017, the Board reviewed all the evidence on the record regarding Mr. Duncan Cooke's claim for compensation. It is clear that Mr. Duncan Cooke, as owner and operator of SPL, is eligible under subsection 72.03(5)(b) of the MVRMA to claim compensation in relation to activities proposed under Water Licence MV2016L8-0006 as a domestic user, occupier of property, and holder of outfitting concessions. The owners of SPL have held lease No.: 85 P/3-1-17, Parcels A & B, Gordon Lake, NT since February 2001. SPL operates as a fly-in fishing lodge

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<sup>11</sup> [November 2, 2016 – Compensation Claim](#)

<sup>12</sup> [November 16, 2016 – DIAND-CARD response](#)

<sup>13</sup> [November 30, 2016 – SPL response](#)

<sup>14</sup> [December 20, 2016 – Information Request](#)

<sup>15</sup> [January 17, 2017 – DIAND-CARD no comment letter](#)

under a GNWT tourism licence and Mr. Duncan Cooke claims SPL will be adversely affected by the use of waters proposed by the GLG Remediation Project.

Subsection 72.03(6) of the MVRMA identifies the factors in determining compensation. These include:

- a) Provable loss or damage;
- b) Potential loss or damage;
- c) The extent and duration of the adverse effect, including incremental adverse effect;
- d) The extent of the use of waters by persons who would be adversely affected; and
- e) Nuisance, inconvenience, and noise.

These factors must be considered when assessing the details in the claim for compensation submitted by Mr. Cooke. Ultimately, it is the responsibility of the claimant to provide the burden of proof and all necessary evidence to support claims of compensation provided to the Board. At least in respect of the claim for nuisance, inconvenience and noise, the evidence provided must convince the Board that SPL will be adversely affected by the activities associated with Water Licence MV2016L8-0006 and that those effects will be substantial and unreasonable given that the activities are designed for the greater benefit of the residents of the Mackenzie Valley and of other Canadians.<sup>16</sup>

### ***Compensation Decision***

The Board carefully reviewed the evidence available on the record and the submissions of the parties before making its decision. Neither of the parties to this compensation matter requested a hearing. The Board is of the view that the evidence available is sufficient to enable it to dispose of the SPL compensation claim without a hearing.

The Board has decided to deny the SPL compensation claims.

Table 1, below, provides the details of the Board's analysis on each item of the alleged losses presented in Mr. Cooke's November 2, 2016 Claim for Compensation. The analysis in Table 1 includes DIAND-CARD's responses to the SPL claims, additional information provided by Mr. Cooke on November 30, 2017 and January 4, 2017, as well as Board staff notes, based on the record.

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<sup>16</sup> *Antrim Truck Center Ltd. V. Ontario (Transportation)*, 2013 SCC 13; 1 SCR 594 at para 18.

**Table 1. Board Decision Based on a Summary of Sandy Point Lodge Compensation Claim, DIAND-CARD Responses, Board Staff Notes, and Board Analysis**

<u>Line Item #</u>	<u>Line Item Description and Rationale</u>	<u>Claim Amount (\$CAD)</u>	<u>DIAND-CARD Response, IR information and Board Staff Notes</u>	<u>Board Analysis</u>
Item 1B	Research, costing and planning for a potential lease change required to accommodate work crews above the current lease limits allowable for the GLG Project.	██████	DIAND-CARD response: "With respect to SPL' s claim that the lodge would suffer financial loss due to the necessity to change the "use" of the lease to accommodate work crews for durations exceeding the current allowable under the tourism lease, INAC-CARD is of the opinion that it was SPL' s responsibility to understand the limitations of their land lease and consider the costs/benefits of amending the scope accordingly."	No proof or rationale for the costs related to these efforts was provided by Mr. Duncan Cooke. Any potential lease change to the SPL property would be a decision based solely on Mr. Duncan Cooke's desire to change the purpose and use of SPL. The activities proposed under Water Licence MV2011L8-0006 do not require any change to the SPL lease. As a result, this claim item does not fit within the types of compensation available under subsection 72.03(6) of the MVRMA and is dismissed.
Item 1C	Business planning research, budgeting and forecasting to determine impact on SPL's business and to rebuild a clientele base and revenues following the Project.	██████	DIAND-CARD did not directly address this line item, but did discuss future mitigation efforts: "INAC-CARD is open to facilitating direct discussions between the successful contractor and SPL with regards to areas of shared interest and consideration of additional mitigations where possible and appropriate. Additional details regarding the operations schedule, sharing contact information of key on-site and off-site Project personnel and development of a communications protocol between SPL and the successful remediation contractor are some of the mitigative strategies INAC-CARD could employ in order to address any safety concerns associated with the shared use of Gordon Lake."	No proof or rationale for the costs related to these efforts was provided by Mr. Duncan Cooke. The use of waters proposed by DIAND-CARD in its Application does not directly result in the need for SPL to update or change any aspect of its business plan and will not directly impact its clientele base. As a result, this claim item does not fit within the types of compensation available under subsection 72.03(6) of the MVRMA and is dismissed.
Item 1D	Research, planning, estimating and solicitation of proponents participating in the tender pursuit of the GLG remediation contract. This initiative was required to determine if in fact the Lodge location had any potential to provide accommodation services to the Project.	██████	DIAND-CARD did not directly address this line item, but did discuss future mitigation efforts: "INAC-CARD is open to facilitating direct discussions between the successful contractor and SPL with regards to areas of shared interest and consideration of additional mitigations where possible and appropriate. Additional details regarding the operations schedule, sharing contact information of key on-site and off-site Project personnel and development of a communications protocol between SPL and the successful remediation contractor are some of the mitigative strategies INAC-CARD could employ in order to address any safety concerns associated with the shared use of Gordon Lake."	No proof or rationale for the costs related to these efforts was provided by Mr. Duncan Cooke. Any research, planning, estimating, and solicitation of proponents to use SPL for accommodation would be a decision based solely on Mr. Duncan Cooke's desire to obtain and provide that service. The activities proposed under Water Licence MV2011L8-0006 do not require accommodations at SPL. As a result, this claim item does not fit within the types of compensation available under subsection 72.03(6) of the MVRMA and is dismissed.

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Item 1E	Legal Costs.	██████████	DIAND-CARD did not respond to this line item.	The Board has no legal authority to award legal costs. This claim item not fit within the types of compensation available under subsection 72.03(6) of the MVRMA and is dismissed.
Item 5A	Costs to install improvements required for change to Lease "use" if required for accommodating work crews to mitigation losses the following are estimates based in pricing available on web sites or from verbal quotes. Time has permitted for written quotations. (Claiming costs for written quotes).	██████████	DIAND-CARD response: "With respect to SPL' s claim that the lodge would suffer financial loss due to the necessity to change the "use" of the lease to accommodate work crews for durations exceeding the current allowable under the tourism lease, INAC-CARD is of the opinion that it was SPL' s responsibility to understand the limitations of their land lease and consider the costs/benefits of amending the scope accordingly."	See response to Items 1B and 1D, above. Any improvements to SPL would be a decision based solely on Mr. Duncan Cooke's desire for upgrades. Changes described by Mr. Duncan Cooke are not necessary for the GLG Remediation Project and do not result from the GLG Remediation Project. DIAND-CARD made it clear to Mr. Duncan Cooke that they are not in a position to sole-source business to SPL and have no plans or contract for SPL accommodations in the Project description. The GLG Remediation Project does not rely on SPL for accommodations. This claim item does not fit within the types of compensation available under subsection 72.03(6) of the MVRMA and is dismissed.
Item 5B	Offset 50% discount offered on current avg. revenue of ██████████.  <b>Claim Description:</b> "SPL will suffer financial loss due to the GLG Project as a result of having to discount rates to maintain the client base during the Project as a mitigation effort. Due to the fact that the work being undertaken on the water course is in areas where we have always fished such as Burnt Island, Camlaren Island, the bays where the Goodrock and Storm properties are located, and both the West Bay Mine and West Bay quarry area. These areas will not be available during the Project for safety	██████████ x 3 years x 50% offset)	DIAND-CARD responded, stating that the entire south end of the lake will not be blocked off for safety reasons, and that they do not foresee any access restrictions to be placed on Gordon Lake. DIAND-CARD also argued that if the Project did not proceed, some of the sites could ultimately degrade to a point where there could be adverse effects on the aquatic health of certain areas of Gordon Lake, including adverse impacts to the sport fishing and wilderness experience of SPL operations and profits. DIAND-CARD also outlined that Project activities overlapping with lodge activities will generally involve localized and site specific activities. DIAND-CARD anticipates most hauling will be completed in the winter months when SPL is not operating.  In Mr. Duncan Cooke's claim, the main rationale for loss and damages is from the following Project-related activities: <i>Air pollution from vehicles, machinery and incineration; helicopter and air traffic noise; human presence/activity &amp; camp; and lodge security and safety.</i> Mr. Duncan Cooke is claiming 50% of his	The average annual income provided by Mr. Duncan Cooke in his November 30, 2016 submission was an unaudited reflection of gross revenues. The Board was hesitant to accept these unaudited statements as reliable evidence of SPL finances. Further, the Board did not feel that gross revenues were the appropriate amount upon which to base a compensation claim. The costs of operations are, and remain, the responsibility of SPL, and not DIAND-CARD. The costs to run SPL will not be lost if the lodge is not operational. Net revenues for the past ten years were provided in Mr. Duncan Cooke's January 4, 2017 submission (protected by a confidentiality agreement). Mr. Duncan Cooke claims that 50% of SPL gross revenues would be lost for the three years that the GLG Project is expected to

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	and aesthetic reasons. In fact, the entire south end of the lake will be unavailable to clients of the lodge during the Project."		<p>current average revenue, as he will now have to offer a discount to clients to ensure business.</p> <p>On December 20, 2016, Board staff sent an Information Request (IR) to Mr. Duncan Cooke. In this IR, Board staff requested SPL's net profit, after paying all operating costs and employer expenses, and after income tax, for the last 5 years. In the response, a spreadsheet was submitted indicating SPL's net revenue over the last 10 years.</p>	<p>take. There was no evidence provided to support this 50% loss estimate. This makes the estimate speculative with no proof, or rationale for the Board to rely on. The scope and duration of the GLG Project activities at many of the site locations are limited and will not present a substantial or an unreasonable adverse effect on SPL activities. According to the above analysis, the Board found that this claim item cannot be considered a clear case of potential or provable loss or damage, nor can any reference to nuisance or inconvenience be quantified in a way to convince the Board that it would be unreasonable or unavoidable. As a result, this portion of the SPL claim is denied.</p>
Item 5C	Fixed overheads such as lease fee, tourism licence, corporate filing property and liability insurance, communication contracts, bank charges, misc. book keeping and accounting for corporate taxes, and marketing upkeep	<p>██████████ (██████████ per year x 3 years (27% annual fixed overhead))</p>	DIAND-CARD did not respond to this item.	[See response to item 5B, above]. Fixed overhead costs are, and remain, the responsibility of SPL, whether or not the GLG Remediation Project occurs. These are not damages or losses resulting from the proposed activities. SPL has provided no evidence to show that they will change as a result of the DIAND-CARD project. As a result, this portion of the SPL claim is denied.
Item 5C	<p>Three years lost earnings with growth of revenue due to GLG Project - refer to the financial proforma.</p> <p>SPL is planning to expand the lodge to hold an additional 8-9 persons, and plans to have the lodge open an extra month (September) for Aurora Tourism. They have recently completed a Tourism Product Marketing and Diversification Business Plan that is attached to their claim. This Business Plan discusses how marketing/advertising, web presence,</p>	<p><b>Year 1:</b> ██████████  <b>Year 2:</b> ██████████  <b>Year 3:</b> ██████████  -----  <b>TOTAL:</b> ██████████</p>	<p>Mr. Duncan Cooke has initiated a 3-year Business and Marketing Diversification Plan, which he states will now be on hold due to the GLG Project. He is claiming for lost growth revenue; that is, the additional revenue he would have made through expanding his business. In the December 20, 2016 IR, Board staff requested evidence to support his projected growth values. The IR response did not complete any calculations, or submit any additional concrete evidence to prove a potential growth of ██████████ in 3 years. Currently, average annual revenue over the last 10 years for SPL after taxes and expenses is ██████████.</p> <p>DIAND-CARD response: "In terms of SPL's compensation claim itself, INAC-CARD is of the opinion the details provided do not provide sufficient evidence. SPL's claim references gross</p>	<p>The projected financial returns from lodge expansion, including the substantial increased earnings predicted by Mr. Cooke, were difficult for the Board to accept due to a lack of supporting evidence. There was no proof that the expansion would definitely occur, nor details to support the projected growth in income if that expansion did occur. No projected earnings calculations based on either research or similar case studies were provided as evidence. Therefore, it is unknown how these claims for losses were developed. Based on the evidence provided, this portion of the SPL claim is denied.</p>

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	social media use, and a Projected increase in Chinese Tourism to Canada will allow them to “increase revenues from ██████████ to ██████████ over the next 6 years”.		<p>revenues; however, net profits would be a more appropriate measure to consider in this situation. We note that SPL has not provided any information with respect to their net profits. SPL also makes claims based on a projected increase in business not yet proven, and excludes any consideration of capital costs. SPL is claiming payment for assumed revenues, based on assumed actions that are assumed to increase the lodge's business by 200%.</p> <p>In INAC-CARD's opinion, this is a very optimistic set of assumptions which are not supported by any evidence. Furthermore, SPL does not provide information regarding capital costs, or related sunk costs associated with the increased business case.”</p>	
Item 5E	<p>Compensation for Nuisance and inconvenience as described in 5E - This includes emotional stress that leads to health issues, and also includes the following information provided in SPL’s IR response:</p> <ul style="list-style-type: none"> <li>• “The nuisance and inconvenience in time and energy I have had to commit to read research and understand in detail about the project <b>(180 hours of time)</b></li> <li>• The nuisance and inconvenience in time and energy I have had to commit to develop alternate strategies and business models <b>(110 hours of time)</b></li> <li>• <b>250 Hours</b> and climbing plus flight, accommodation and fuels costs of over ██████████ in order to offer services to the RFP proponents.</li> <li>• The nuisances and inconvenience of interrupting the plans to develop as an Aurora Viewing business and the undermining of steps we have taken to have my son Brandon</li> </ul>	██████████	<p>Staff note that nuisance and inconvenience related to noise, air pollution, and security are already listed in Items 5B and 5C. In addition, staff note that the nuisance and inconvenience related to time spend on research, understanding the project, alternative business strategies and models, and services to the RFP proponents have already been listed in items 1C and 1D.</p> <p>DIAND-CARD did not respond to Mr. Duncan Cooke’s IR response, as detailed in the column to the left. However, DIAND-CARD did respond to Mr. Duncan Cooke’s original claim information, which had minimal descriptions of what he was claiming for. DIAND-CARD’s original response is as follows:  <b>“Nuisance, Inconvenience, and Noise:</b>  SPL claims the remediation activities will cause nuisance, inconvenience and noise to SPL and will thereby directly affect the lodge's ability to use Gordon Lake for sport fishing. In this regard, it is important for the Board to recognize the duration of the proposed project activities, the volume of air traffic expected, the proximity of the various sites to SPL, the activities proposed at the sites, and the expected noise generation as a result of the remediation:  <u>Duration and Seasonal Activities:</u> The main construction phase of the project is minimum 2, maximum 3 years in duration and seasonal activities overlapping with lodge activities will generally involve localized and site specific activities. INAC-CARD anticipates most hauling will be completed in the winter months when SPL is</p>	<p>Claims for nuisance and inconvenience do relate to subsection 72.03(6) of the MVRMA and are described under tort law. In tort law, nuisance is a cause of action, while inconvenience and noise are two factors pointing to the existence of a nuisance. In analyzing the nuisance claim the Board considered a two-part analysis asking:</p> <ul style="list-style-type: none"> <li>(i) is the interference with SPL’s use of its land likely to be substantial (i.e. non-trivial); and</li> <li>(ii) is the interference with SPL’s use of its land unreasonable given the purpose of the GLG Project (net benefit to residents of the Mackenzie Valley and all Canadians/public interest)?</li> </ul> <p>The items claimed by Mr. Duncan Cooke are, largely, typical business costs (business modelling, training and development, security, and planning) and do not fit the definition of nuisance under the law. Further, the Board did not accept the claim in light of scope and duration of the GLG Project activities at many of the site locations are limited. The nuisance and inconveniences identified by Mr. Duncan Cooke and the evidence to support the claim</p>

<u>Line Item #</u>	<u>Line Item Description and Rationale</u>	<u>Claim Amount (\$CAD)</u>	<u>DIAND-CARD Response, IR information and Board Staff Notes</u>	<u>Board Analysis</u>
	<p>Cooke learn Asian languages and Culture to accommodate the tourism growth. To date we have spent over [REDACTED] on travel to China and Japan and for language and cultural studies at school in Japan.</p> <ul style="list-style-type: none"> <li>The nuisance and inconvenience of having to engage a security company working on the winter road to watch the lodge on a daily basis from intruders</li> <li>The nuisance and inconvenience of noise and air pollution will require daily planning to avoid areas of the lake where activity is greatest.</li> <li>The Nuisance and inconvenience the project has caused on a return on the investment SPL represents for our family has been delayed for 3 years.”</li> </ul>		<p>not operating. However, the final sequence and scheduling of the proposed activities as well as the final camp locations and mobilization/inter-site transport methodology will be dependent on the successful contractor's proposed plans.</p> <p><u>Air traffic:</u> The majority of waste, equipment and material transportation will occur during the winter months via winter road when SPL is not operational. The primary use of air support will be bi-weekly crew rotations and shipment of laboratory samples. When flights overlap with lodge summer operations, flight paths will be direct from Yellowknife to the project sites and will not overfly SPL.</p> <p><u>Proximity of Sites to SPL:</u> Burnt Island is the closest site to SPL and is approximately 3 km to the south; the remaining sites vary from 6 to 19 km away. The main activities at Burnt Island include minor excavation, closing of mine openings, and burning and consolidating waste to be removed from site. This is not one of the main remediation sites, therefore minimal noise is expected and the activities would be of short duration. Given the seasonality, duration and scale of activities proposed at the GLG sites, and the localized nature of activities to be conducted in relation to the large size of Gordon Lake, the GLG Remediation Project is highly unlikely to adversely affect SPL.”</p>	<p>did not convince the Board that any effects on SPL operations would be substantial and unreasonable. The Board notes that Gordon Lake is a very large lake and that the limited activities associated with the GLG Remediation Project (i.e. noise, dust, unsightly views) ranging from 3 to 20 kilometers away can be avoided by SPL users. As a result, this portion of the SPL claim was also denied.</p>
Item 5E.1	<p>Compensation for Nuisance and inconvenience if forced to change lease and pursue risk inherent revenue to mitigate impact.</p>	[REDACTED]	<p>DIAND-CARD has stated that they will not be using SPL’s services while carrying out the remediation project. This item was only placed in the claim for comparative information. <b>Please note that SPL stated that this amount is only being claimed if DIAND-CARD chose to use SPL’s services for the Remediation Project.</b></p>	<p>See responses to items 1B, 1D, and 5A, above. In the Board’s view this claim duplicates those denied above. There is no evidence to support it and it too is denied.</p>

In issuing Water Licence MV2016L8-0006 and in respect of the claim made by SPL that it would be adversely affected by the issuance of the DIAND-CARD licence, the Board has an obligation under subsection 72.04(2) of the MVRMA to fix terms and conditions for the Water Licence which will minimize any adverse effects on SPL. The Board has thus set out the terms and conditions of the Water Licence in a way that will, in its view, minimize the impacts of the licensed development on SPL. There was no claim made and no evidence adduced by SPL to suggest that the activities proposed by DIAND-CARD will have any impact on the quality or quantity of water in Gordon Lake or impact the use of that water for any purpose by SPL.

Provided that compliance with the Licence conditions occurs, including engagement as described in the Engagement Plan, the Board finds that any potential impacts of the GLG Project can be mitigated.

SIGNATURE

Mackenzie Valley Land and Water Board



February 16, 2007

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Violet Camsell-Blondin, A/Chair

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Date