

Phone Meeting Report – March 16, 2020

Candace DeCoste – Giant Mine Remediation Team

John McCullum – sailboat owner claiming compensation (note taker)

Topic: negotiation of compensation for costs associated with effects of Giant Mine Remediation Project on my 26 foot, 6000 pound boat stored at Great Slave Sailing Club boatyard, as per February 5, 2020 letter from Mackenzie Valley Land and Water Board Executive Director Shelagh Montgomery:

- Costs associated with moving boat to an alternate location and storing it there
- Value of boat if I am no longer able to lift it into Great Slave Lake
- Nuisance value of lost ability to sail due to GMRP project

Meeting requested by John McCullum on March 12, 2020, by email.

Meeting started at 1:30 pm MT

Candace noted that GNWT had been communicating directly with the Great Slave Sailing Club (GSSC) regarding off-site storage. She expected the alternate site would be near the current site but did not have a specific location at present. Candace also noted that an access agreement is being negotiated with the City of Yellowknife. She further noted that the Giant Mine Remediation Team (GMRT) would provide advance notification of any activities affecting the GSSC boatyard.

I noted that my boat is stored on a cradle, so cannot easily be moved to an alternate location. I further noted that there are no boat trailers available to rent in Yellowknife, and that each trailer is set up for the specific boat it is carrying. I asked about GMRT providing compensation for a trailer to move my boat, as set out in my compensation claim. Candace stated that GMRT would not provide or assist with a boat trailer and did not have any alternate solutions to suggest for moving my boat. She further stated that the GMRT work with GNWT to provide an alternate location, and with the City to develop an access agreement was as far as the GMRT are willing to go.

Candace noted that the GMRT plan is to keep one of the access areas (GSSC boatyard or City boatlaunch area) open at all times. I asked whether it would be possible to lift boats in with a crane from both access areas, particularly the GSSC boatyard, during the period where a temporary boat launch was built there. Candace noted that the GMRT will put a restriction on the remediation contractor to keep one of the access points open.

Candace noted that there may end up being a larger area at the GSSC yard than is currently available. The GMRT believes the best case scenario is that the GSSC boatyard is closed for a year.

Candace indicated the City may have stated it would provide access to the GSSC (GSSC letter of March 10, 2020).

Candace indicated that there is no change in the GMRT position with respect to boat owners' compensation claims ie. they do not believe there is any requirement for compensation.

Meeting ended at 2pm MT.

From: [John](#)
To: [Shannon Allerston](#)
Subject: RE: Claims for Water Compensation - MV2007L8-0031 - Giant MineRemediation Project
Date: Friday, March 27, 2020 11:28:49 PM

Hi Shannon, in answer to your questions:

Status of Compensation Claims

Regarding my claims for compensation, nothing was resolved with the Giant Mine Remediation Project (GMRP) since the Remediation Team representative stated that they were not prepared to provide any compensation to boat owners (see my meeting report of March 16, 2020). What I have is a verbal reassurance that the Remediation Team (GMRT) will they will put a restriction on the contractor requiring that they must keep one of the access points open. They were clear that they will not provide any compensation with respect to moving my boat to an offsite storage location, or from the offsite storage location to a point where my boat can be lifted in or lifted out by a crane, or provide any other form of assistance for moving my boat.

No detailed plans have been provided to show how the access points will be kept open. It remains to be seen whether keeping one of the access points open will provide a suitable area to:

- allow a crane to set up to lift boats into or out of the water,
- for boats and trailers to be able to move in and out safely and efficiently to and from the crane lift point.

Absent such plans it is reasonable to expect that boats will not be able to be lifted in at either of the access points, and prudent to continue with my compensation claims until the GMRT has demonstrated that it has plans that will allow for this. So my claim for the loss of ability to sail in the amount of \$6,408 per season still stands.

I have been told that the boats will have to be moved to an offsite location yet to be determined. Moving a 6000 pound sailboat more than the safe reach of a crane is a significant undertaking and requires a specialized trailer designed to carry the weight of the boat and keep it stable. I do not own a trailer, and such trailers are not available to rent in Yellowknife. So my claim for the cost of purchasing and transporting such a trailer to Yellowknife in order to move the boat still stands. I have no desire to purchase a trailer and would be happy to have the GMRT purchase it on my behalf and recover whatever portion of the purchase price they can after the remediation is complete and my boat is back in the boatyard.

Without knowing the details of the offsite location it is reasonable to expect to pay a rental fee at the going rate, which is also included in my claim. I am willing to review these details with GMRT once the cost of storage are known to ensure that the amount I would have paid to the Great Slave Sailing Club for storage are taken into account.

Normally the boat is lifted twice per seasons, once into the water and once out. Additional lifting of the boat onto the trailer and off again at the offsite location will require:

- lifting the boat from its cradle onto the trailer when remediation begins
- removing the mast to allow for transporting the boat on the trailer,

- lifting the boat back into the water at lift-in and lifting the mast onto the boat
- repeating this operation each time the boat is lifted in or out of the water
- lifting the boat from its trailer back onto the cradle at the boatyard when remediation is complete.

I am willing to review these details with the GMRT to come to an agreed value that takes into account the normal costs of lifting in and out that I would expect to pay under normal circumstances.

I do not have the skills to drive a boat trailer with a sailboat on it, so would have to hire a driver to ensure the boat is moved safely.

So my claim for \$18,436 to compensate me for the costs of moving my boat to and from an offsite storage location still stands, subject to some possible adjustments related to storage of the boat and additional lift costs.

I leave the value of the boat claimed in my compensation application in case a worst-case scenario takes place.

I have reviewed the City of Yellowknife arguments in its letter of December 13, 2019, and found that the City of Yellowknife cites statements by the courts and the MVLWB in prior compensation claims that are relevant to my claims:

- In the Carter case the court said that “The Board's powers are there so it may balance conservation and development by, among other things, addressing adverse effects expected to occur in the future as a result of the licenced use.”
- The court also said that “‘provable’ and ‘potential’ losses could just as easily be interpreted to mean losses or damages that will definitely occur and those which might occur, respectively.

Right to Compensation

I am not a lawyer and so my compensation claim is based on what seems reasonable to me. I sail on the waters of Great Slave Lake and have done so since 1990. I have owned and sailed my own sailboat, housed at the Great Slave Sailing Club (GSSC), since 2000. As a result of the GMRP I will have to incur substantial costs and potentially be subject to a great deal of nuisance because of the need to move my boat to an alternate location and the possibility that I may not be able to sail for at least one season. That doesn't seem fair to me.

I have reviewed the GMRP response to claims for compensation with respect to water licence application MV2007L8-0031.

I disagree with the arguments made by the GMRT regarding eligibility to claim compensation:

- the GMRT letter makes a complicated argument that boat owners who store their boats in the GSSC boatyard are not occupiers of property, referring to what they hold to be the requirements to qualify as an occupier of property. I am not able to debate these arguments from a legal perspective, but I am asking the Board to consider whether they are overly narrow in their interpretation and fit within the intent of the MVRMA.
- I pay a specific fee to the GSSC to store my boat in the boatyard and as long as I am a member in good standing of the club and pay these fees I have a right to occupy a space

in the yard.

- It is my view that the MVRMA includes a broad range of categories of people who could be affected by the issuance of a water licence because it is the intent of the Act to ensure those people are treated fairly and compensated where they will be affected by the issuance of the licence.

Thanks for your consideration

Cheers

John McCullum

Sent from [Mail](#) for Windows 10

From: [Shannon Allerston](#)

Sent: March 23, 2020 1:42 PM

To: [Mccullumbooth](#)

Subject: RE: Claims for Water Compensation - MV2007L8-0031 - Giant Mine Remediation Project

Hi John,

Thanks for this. If you could include a summary of any remaining concerns and clarify what claims may be settled vs. what claims remain outstanding in your opinion. I would like to remind you of the limitations of the Board's jurisdiction when dealing with claims for water compensation, as provided in the MVRMA:

In order to establish a right to compensation, an Eligible Claimant (i.e. *ii) domestic users, iii) in-stream users, iv) authorized users, v) authorized waste depositors, vi) persons who use waters or deposit waste (without a licence) under territorial law, vii) persons referred to in paragraph 61(d) of the Nunavut Waters and Nunavut Surface Rights Tribunal Act, viii) owners of property, ix) occupiers of property, and xi) holders of outfitting concessions, registered trapline holders, and holders of other rights of a similar nature*) must demonstrate that the Water Licence Applicant's proposed Water Use will "more likely than not" cause a loss or damage or other adverse effect on their use of waters (Subsection 72.05(6) of the MVRMA).

Thanks,

Shannon

From: Mccullumbooth <mccullumbooth@northwestel.net>

Sent: Monday, March 23, 2020 10:37 AM

To: Shannon Allerston <sallerston@mvlwb.com>

Subject: Re: Claims for Water Compensation - MV2007L8-0031 - Giant Mine Remediation Project

Hi Shannon - attached is my report of a phone meeting with Candace DeCoste of GMRT last Monday as an attempt to negotiate on my compensation claim. Please review the format and let me know if there is any other information I should add or any changes to the format.

Cheers

John

On 05/02/20 09:40 AM, **Shannon Allerston** <sallerston@mvlwb.com> wrote:

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Good morning,

Please see the attached letter regarding the process moving forward to address claims for water compensation filed under the water licence proceeding for MV2007L8-0031, the Giant Mine Remediation Project. Each claimant is expected to respond to the Board by the deadline indicated in the letter.

If you have any questions, please contact me using the information provided below.

Thank you,

Shannon Allerston, MA, MSc

Regulatory Specialist

Mackenzie Valley Land and Water Board

7th Floor, 4922 48th St, PO Box 2130 | Yellowknife, NT | X1A 2P6

ph 867.766.7465 | fax 867.873.6610

sallerston@mvlwb.com | www.mvlwb.com

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