

# SEABRIDGE GOLD

November 14, 2019

Mackenzie Valley Land and Water Board  
4922, 48th Street, 7th Floor  
P.O. Box 2130  
Yellowknife, NWT X1A 2P6

Attention: Ms. Tyree Mullaney, Regulatory Specialist

Dear Ms. Mullaney:

**Re: Reclamation Security Estimate for Proposed Phase 1 and Phase 2 Exploration Program at Courageous Lake, MV2019C0025, MV2019L2-0011 and MV2019L2-0012**

Seabridge Gold (NWT) Inc. (Seabridge) proposes to undertake grassroots exploration activities (not advanced) at Courageous Lake that are consistent with activities that were previously permitted and conducted responsibly for nearly 20 years. Those activities were authorized by three land use permits, where the required security deposit ranged from \$25,000 to \$45,000. There is no change to the type of activities and no increased potential for disturbance associated with the proposed work.

Seabridge acknowledges there is a need to post security and that the amount is likely to increase to reflect 2019 dollars, however we do not agree that that the security for the same activities should increase 700% from \$45,000 to \$313,000 as proposed by the Government of the Northwest Territories (GNWT).

Section 32 of the *Mackenzie Valley Land Use Regulations* (MVLUR) permits the Board to require security which does not exceed the cost of restoring the site of the land use operation. Subsection (2) permits the Board to consider, among other things, the past performance of the permittee, the prior posting of security by the permittee pursuant to other legislation or land use operations, and the probability of environmental damage or the significance of any environmental damage.

Seabridge has an excellent environmental and regulatory track record over the past 16 years in the Northwest Territories, and the inspection reports which are available for the land use permit area provide the history and condition of those areas. The estimate provided by GNWT clearly does not consider these factors and exceeds the actual cost of restoring the site of the land use operation.

More specifically, the RECLAIM estimate submitted by GNWT on November 7, 2019 for Phase 1 and Phase 2 exploration are flawed in the following ways:

1. The RECLAIM methodology follows the 2002 INAC Mine Site Reclamation Policy for the Northwest Territories (the 2002 INAC Policy), **which explicitly excludes**

- exploration from its scope**<sup>1</sup>. The assumptions underlying the design of RECLAIM are applicable to mining and advanced exploration projects<sup>2</sup> and also follow the Guidelines for Closure and Reclamation Cost Estimates for Mines issued by the Board in 2017. Such assumptions are inappropriate for Seabridge's exploration project.
2. The RECLAIM estimate prepared by GNWT includes invalid assumptions about the probability and significant of damage associated with the proposed work, resulting in artificially high costs.
  3. The RECLAIM estimate inflates the total estimate by adding an unnecessarily large contingency and other project management costs that are intended for mine site and advanced exploration projects, of which the Courageous Lake is neither.
  4. The RECLAIM estimate was prepared by a consultant and under the direction of GNWT personnel. Those individuals have limited experience in the scope of early phase exploration activities, and none of those individuals have been to the Courageous Lake site.
  5. The RECLAIM estimate is based only on photos, uses invalid assumptions, and relies on unrealistic reclamation methods. Information regarding actual site conditions, including previous inspection reports, were not requested from the GNWT or (Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) inspectors during the preparation of the estimate. Assumptions used in preparing the estimate do not appear to have been validated with the Inspectors, and suggestions regarding practical reclamation methods were not sought from the Inspectors.
  6. The RECLAIM estimate is incomplete. GNWT provided an estimate for disturbances on Territorial lands only and did not determine security for Federal lands.
  7. The RECLAIM estimate assumes an arbitrary 50-50 split between land and water liability that is not justified by risk, which will lead to unnecessary complexity and effort for Seabridge and regulators alike related to posting, managing, and recovering the security.

Consequently, Seabridge submits that the RECLAIM estimates provided by GNWT for Phase 1 (\$313,322) and Phase 2 (\$353,350,445) are not representative and exceed the aggregate, probable cost of reclamation associated with grassroots exploration activities. The particulars related to each of above statements are provided in the attached detailed analysis.

Seabridge submitted a Phase 1 (\$45,010) and Phase 2 (\$113,488) security estimate with its application package that included a realistic allocation between Territorial and Federal land and between land and water. Seabridge's estimates were prepared using an alternate methodology (the MVLWB LUP Security Worksheet) that is routinely used by the Board for other exploration projects. This method was selected by Seabridge because it is more representative of the exploration activities and potential land disturbance than RECLAIM; and would be comparable

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<sup>1</sup> Ministry of Indian, Northern Affairs Canada, Mine Site Reclamation Policy for the Northwest Territories, 2002, page 4,

<sup>2</sup> RECLAIM 7.0 User Manual, Mining Version, 2017. Introduction states that RECLAIM was developed to estimate closure and reclamation costs at mines and advanced mineral explorations projects in the NWT and that the format is specifically designed to help MVLWB, GNWT to better comprehend the multiple components of mine site closure cost estimates.

to previous security estimates that were calculated using the same method. While the 2002 INAC Policy and the 2013 and 2017 guidelines<sup>3</sup> identify RECLAIM as the preferred method to calculate security for all new water licences, the guidelines provide the option for the proponent to submit estimates using an alternate method. Seabridge has followed the process for submitting an alternate method.

This alternate methodology is valid and appropriate in the circumstances. As described in Seabridge's estimate, small adjustments can be made to reflect 2019 (rather than 2003) dollars and an additional allowance for mob/demob costs.

Seabridge therefore recommends that the Board consider and accept Seabridge's security estimate for the following reasons:

- If not for the increase in water use, the proposed exploration activities would be authorized by a land use permit under the MVLUR and the estimate would be calculated using the MVLWB LUP Security Worksheet.
- Seabridge's estimate presents complete costs that distinguish between Federal and Territorial lands and more accurately represents the land and water liabilities.
- The federal government agrees with Seabridge's security estimate, as described in comment #2 by Dinah Elliot, INAC and in meetings held jointly with members of GNWT.
- The GNWT Inspector and CIRNAC Inspector have both acknowledged in meetings with other GNWT personnel present, that Seabridge's methodology, the proposed allocation between federal and territorial land, and the proposed allocation between the land use permit and water licences were reasonable.
- The methodology used by Seabridge is a valid alternate method that is more appropriate than RECLAIM in this instance.
- The methodology used by Seabridge considers the relevant factors set out in s. 32(2) of the MVLUR, such as past performance and probability/significance of damage.

We respectfully suggest that the Board allocate security 100% to the land use permit, and split that amount between the Federal (75%) and Territorial (25%) governments. To do otherwise, would create an inappropriate regulatory burden for a small exploration project. This project is not a mine or advanced exploration project, and there will be no profits or revenue. Seabridge must post security in the form of cash and excessive security will impact the amount of money that can and will be expended in the NWT on exploration activities.

The question of security should also be considered in the broader context. The spirit of the MVRMA is to "promote the social, cultural and economic well-being of residents and communities in the settlement area, having regard to the interests of all Canadians"<sup>4</sup>. The NWT

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<sup>3</sup> Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories, 2013 by MVLWB, GNWT and INAC; and Guidelines for Closure and Reclamation Cost Estimates for Mines, 2017 MVLWB, GNWT and AANDC,

<sup>4</sup> Sections 35 and 115 of the MVRMA.

has continued to suffer from lagging mineral exploration investment for 12 consecutive years.<sup>5</sup> The role of the Board in this regard should therefore be to establish an appropriate amount of security, given the level of risk and potential for damage, that ensures remediation is completed (or can be completed) while not subjecting a proponent to unreasonable costs and unnecessary complexity related to administration or recovery of their security.

In conclusion, we request the Board determine an appropriate security that considers the principles of section 32 of MVLUR. Seabridge's excellent environmental and compliance record should be an important consideration in any security estimate.

Should you have any questions, please do not hesitate to contact Jane Howe at [jane@seabridgegold.net](mailto:jane@seabridgegold.net) or 306-321-4144.

Yours truly,

A handwritten signature in blue ink, appearing to read "R. Brent Murphy".

R. Brent Murphy, M.Sc., P.Geo.  
Vice President, Environmental Affairs

List of attachments:

1. Analysis of Security Estimate provided November 7, 2019 by GNWT

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<sup>5</sup> Report by the Conference Board of Canada, July 2019

## **Attachment 1: Analysis of Security Estimate provided November 7, 2019 by GNWT**

### **1. Basis for security**

Section 32 of the *Mackenzie Valley Land Use Regulations* (MVLUR) permit the Board to require security in an amount not exceeding the aggregate cost of restoring the land use area. However, in setting the amount of security, the Board can consider the ability of applicants to pay, the past performance of the applicant, and the probability and significance of environmental damage.

- These factors are considered in the MVLWB LUP Security Worksheet.
- The RECLAIM method does not account for these.

### **2. Allocation between Land and Water creates unnecessary complexity**

The estimate prepared by GNWT, includes an arbitrary 50-50 allocation between land and water liability:

- There is no justification for the allocation between land and water liability. Indeed, for many of the activities, such as removing temporary tents and mobile equipment, this allocation is illogical.
- The allocation of reclamation costs to water liability creates the perception that water resources are at risk. This risk is unfounded given the actual site conditions and equipment used for a proposed land-based exploration program with little or no surface disturbance or waste disposal.

Based on this arbitrary allocation to land and water liability, GNWT recommended that security should be posted under both water licences and land use permits:

- The allocation to both land and water permits would create unnecessary complexity and effort for Seabridge and regulators alike related to posting, managing and recovering the security.
- As proposed by GNWT, Seabridge would need to post four separate securities: two securities for the land use permit split between Territorial and Federal jurisdiction, a security for the Territorial water licence, and a security for the Federal water licence. Four separate securities that must be managed.
- With the security deposit split between four separate instruments, Seabridge anticipates immense difficulty when its attempt to recover the security or a portion of the security from one or two of the security holders.
- In the unlikely event that Seabridge defaults, it is also easy to envision internal challenges developing between departments or branches of government regarding reclamation priorities and the coordination of work.

### **3. Security can be satisfied under the land use permit and is not required for the water licences**

The proposed exploration activities are the same activities that have been permitted under three previous Land Use Permits. While Seabridge's proposed water use for exploration drilling requires two water licences, the use of water does not create any new risks or liabilities that were not present previously and secured under the land use permits. There are no waste disposal facilities and there is nothing at the site that realistically poses any threat to water resources. If there are no new risks, Seabridge respectfully suggests that there is no need to post security under the water licence.

- This approach is consistent with Seabridge's security estimate and recommendation that 100% of the security be allocated to the land use permit and 0% security required under the water licences. The land use permit security should be further allocated between Territorial (75%) and Federal (25%) jurisdictions. This will require only two securities and will streamline the ongoing management for all parties involved.
- This approach and allocation were supported by both the GNWT Inspector and the CIRNAC Inspector during meetings held August 30 and September 10, 2019 prior to submission of our application package.
- We note that CIRNAC's submission during the comment period reiterated their support.

### **4. Exploration activities are exempt from 2002 INAC Policy**

Exploration activities were never intended to be considered in the requirements for mine site reclamation planning and security calculations as evidenced by the following:

- The 2002 INAC Mine Site Reclamation Policy for the Northwest Territories (the 2002 INAC Policy) defines principles for mine site reclamation and security that includes the concept of third-party costs and the establishment of RECLAIM as the preferred methodology for calculating security.
- The 2002 INAC Policy explicitly excluded exploration activities. The exact wording is relevant, with the policy stating it "does not apply to activities undertaken during the prospecting, exploration or advanced exploration stages of the development of a mineral property".
- Since 2002, the Board, GNWT and INAC have issued two guidelines which seek to incorporate advanced exploration. The 2013 Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories inaccurately defined advanced exploration as any undertaking that required a water licence. Then, in 2017, the Guidelines for Closure and Reclamation Cost Estimates for Mines refined that definition to include specific activities that are attributed to advanced exploration.
- Despite the inclusion of advanced exploration, neither guideline attempted to include prospecting or exploration activities.

- Seabridge is not proposing any activities that meet the definition of “advanced exploration”, as set out in the 2017 guidelines. The proposed activities are consistent with the prospecting and exploration phases which occur prior to advanced exploration.

Thus, the principles established in the 2002 INAC Policy, refined in the 2013 guideline for reclamation planning and the 2017 guideline for cost estimating, should NOT be considered when determining the security deposit for basic exploration activities. Concepts defined by these guidelines (and incorporated into the GNWT RECLAIM estimate) include the use of third party costs, the assumption that all equipment at the site should be considered unusable, the need to include contingency and other in-direct project management costs, and the preferred use of RECLAIM, among others.

Seabridge is not suggesting that reclamation planning and security are not required for exploration activities, only that the requirements and expectations as defined in the policy and guidelines are inappropriate for exploration. It is analogous to trying to hit a fly with baseball bat.

## **5. RECLAIM is not appropriate methodology for exploration projects**

Following on from the preceding section, Seabridge respectfully submits that RECLAIM is not an appropriate methodology for calculating security for exploration activities.

- The RECLAIM model was designed for mines and advanced exploration projects
- Early stage exploration projects require land use permits to authorize short duration and transient land uses, such as drilling and temporary tent structures. These are low risk and low impact activities that result in minor surface disturbance and small discharges of waste associated with drill cuttings.
- The *Mackenzie Valley Land Use Regulations* acknowledge this and require a different approach for the determination of security compared to the *Waters Regulations* and the *Mackenzie Valley Federal Areas Water Regulations*.
- Section 32(2) of the *Mackenzie Valley Land Use Regulations* permit the Board to consider the ability of the applicant to pay, past performance of the applicant and the probability of damage and its significance when determining the amount of security.
- Seabridge’s proposed exploration activities only trigger the requirement for a Type B water licence due to a desire to use greater than three drills per day, which if undertaken will lead to more than 100 m<sup>3</sup> water used per day. This increased use of water does not alter the environmental risk of the exploration activities, nor does the increased water use create additional land use disturbance or increase the environmental risk to land or water. The simple use of water for drilling does not justify the use of a model like RECLAIM that introduces the full panoply of tasks and work that are considered when estimating security for large industrial activities such as mines and advanced exploration.

The MVLWB Land Use Permit Security Worksheet takes the matters identified in s. 32(2) of the MVLUR into consideration. The RECLAIM method does not.

## **6. Seabridge satisfied the Board's requirements for submission of an alternate method for calculating security:**

- The 2020 INAC Policy, the Board's 2013 Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories Guidelines and the 2017 Guidelines for Closure and Reclamation Cost Estimates for Mines identify RECLAIM as the preferred method for calculation of security for water licence applications but acknowledge that other methods may be used.
- Section 2.2 of the 2017 Guidelines states that should a proponent wish to use an alternate method for estimation of closure costs, the onus is on the proponent to propose an alternate method prior to submitting the estimate. The guideline sets out a three-step process to do this. Seabridge followed this process, as outlined in section 9.2 of our Closure and Reclamation Plan and has submitted an alternate method for consideration.
- The reasons for submitting this alternate method were numerous: (1) the proposed land use activities are the same activities as previously permitted with a security amount determined using this method; (2) the estimate for proposed land use activities could be easily compared and contrasted to the previous security; (3) the alternate method is more reflective of the type of land disturbance and probability of disturbance associated with exploration than the RECLAIM method; (4) Seabridge felt that RECLAIM was not an appropriate method under the circumstances; and (5) the alternate method incorporates the matters under section 32(2) of the MVLUR.

While RECLAIM may be the preferred method, alternate methods of calculating security can and should be considered by the Board if the proponent satisfies the Board's requirements and RECLAIM is shown to be an inappropriate method as documented elsewhere in this analysis.

## **7. Seabridge's use of MVLWB Land Use Permit Security Worksheet:**

As mentioned previously, section 9.2 of our Closure and Reclamation Plan, outlined the rationale for using an alternate method. Seabridge stands behind the methodology and assumptions that were used in our estimate as submitted.

- The MVLWB LUP Security Worksheet and considers the factors from s. 32(2) of the MVLUR.
- Seabridge acknowledges that the MVLWB LUP Security Worksheet may need to be adjusted to 2019 dollars in order to reflect current costs of living and an additional allowance for mob/demob costs.
- We assume that the Board is aware of the limitations of this worksheet, given that it continues to issue permits to other exploration projects based on this methodology.

Seabridge offered to work with GNWT on this alternate methodology and estimate to identify and agree on potential additional costs that could be incorporated. Unfortunately, GNWT was unwilling to review or work with our proposed estimate, preferring to only use RECLAIM.



## **8. Seabridge collaborated with GNWT on the RECLAIM estimate:**

Despite our position that RECLAIM methodology is inappropriate, Seabridge met several times with GNWT-ENR and their consultants with the goal of achieving a RECLAIM estimate that was based on realistic assumptions associated with existing and potential disturbances related to Seabridge's proposed Phase 1 and Phase 2 exploration program.

The assumptions were reviewed and Seabridge explained that many assumptions were intended for mines and advanced exploration and are inappropriate for the exploration activities proposed. While the meetings with GNWT and their consultant lead to reductions on the order of several hundred thousand dollars, Seabridge was unable to agree with GNWT regarding several key line items:

- Assumption that third party cost must be used: Seabridge believes this is not appropriate for early phase exploration projects as it is a principle established in the 2002 INAC Policy.
- Assumption that equipment is not available at site and new equipment must be rented and mobilized to site to complete the work: Seabridge asserts that fully operational equipment is available at site and the application of this assumption (based on the 2013 and 2017 guidelines) is not appropriate because Seabridge's project is not an advanced exploration project.
- Requirement for Environmental Site Assessment (ESA): There is no evidence, based on 16 years of land use inspections by GNWT and CIRNAC inspectors, that there is any reason to assume an ESA is either warranted or required. Moreover, the information necessary to conduct a Phase 1 ESA, being data submitted by Seabridge to the Board and annual inspection reports, is readily available.
- Reclamation methods and timing of work (summer versus winter): Activities and costs proposed by GNWT's consultant resulted in incremental labour costs that are not based on factual information or validated by Inspectors who have been to the site and are familiar with the area. Examples include deferral of work until winter because equipment is considered to not be available during summer and the need to mobilize specialized equipment to drill and blast in order to remove two small wooden bridges and two culverts.
- Requirement for interim and post closure monitoring, inspection and reporting: The amounts for these items are excessive relative to actual/realistic costs. Furthermore, the need for additional trips to site for monitoring is unwarranted given the residual risks associated with the reclamation.
- Addition of indirect costs such as contingency, project management and contract insurance as a percentage of the actual costs: While Seabridge was somewhat successful convincing GNWT to reduce this from 37%, Seabridge believes the 28% overhead applied to the actual estimate is an arbitrary inflationary cost tactic that is not justified by known conditions (i.e. there is a high degree of certainty about the site) and is inconsistent with the concept of actual reclamation costs, as required in s. 32 of MVLUR.

- GNWT arbitrarily split the security between land and water (50/50), based on the perception that everything is a potential water liability. The only exception to this split was the \$10,000 estimate to reclaim drill sites. This split does not reflect the activities which Seabridge has proposed or the probability of damage to water.

The value of the above discrepancies is approximately \$130,000 (\$101,000 + 28% overhead) which represents over 40% of the total estimate.

For Phase 1 alone, Seabridge is confident that the GNWT security estimate could be reduced to about \$170,000 if the estimate eliminated the above discrepancies and all contingency and overhead are removed. Further reductions are also possible if performance and risk/probability of disturbance are considered, per MVLUR s. 32(2). Phase 2 would see similar decreases since the assumptions are identical.

## **9. Specific cost discrepancies identified in this estimate:**

Further to the previous section, Seabridge has identified the following aspects of the RECLAIM estimate which are obviously inconsistent or inappropriate for the Seabridge Phase 1 and Phase 2 estimates:

- The assumption that contamination is present and therefore an Environmental Site Assessment is required, is an unnecessary cost for an exploration project that adds \$30,000 plus 28% overhead.
- The assumption that all equipment is considered inoperable therefore requiring additional mob/demob and equipment costs contributes \$32,850 in rental and mobilization costs plus 28% overhead.
- Differing opinions on how and when reclamation is undertaken due to the assumption that there is no working equipment contributes about \$18,500 in additional labour costs plus 28% overhead.
- The assumption that an interim site inspection (and reporting) and post closure inspection (and reporting) are required contribute \$20,000 in additional labour and helicopter costs plus 28% overhead.
- All totaled, for the entire project there is \$29,828 in contingency and overhead costs on top of the cost of doing the reclamation work.

These are not insignificant costs and collectively represent approximate \$130,000 that has been included in the estimate inappropriately because GNWT and their consultants are using assumptions that are designed for mining and advanced exploration projects. The amounts relate to both Phase 1 and Phase 2 estimate since the assumptions are identical.

While elimination of these costs might bring the GNWT estimate closer to the estimate prepared by Seabridge, the company remains firm in its position that RECLAIM is not an appropriate method for estimating security for exploration projects and should not be used in this instance.