

LUPIN MINES INCORPORATED

June 30, 2016

Nunavut Water Board
P.O. Box 119
Gjoa Haven, NU X0B 1J0

Attention: Karen Kharatyan, A/Manager of Licensing

Dear Sirs and Mesdames:

Licence NO. 2AM-LUP1520 ("Licence") – NWB's Proposal for Procedure Relating to INAC's Application to Amend the Reclamation Security Provisions of the Licence

In the NWB's letter of April 20, 2016, addressed to Mr. Ian Parsons of Indigenous and Northern Affairs Canada ("INAC") the NWB proposes next steps for the process of the Board's consideration of INAC's above-noted application. In the letter, the NWB proposes that:

- (a) INAC be provided an opportunity to respond to LMI's submissions;
- (b) A joint teleconference with the main stakeholders and interested persons, to be scheduled following INAC's response to LMI's submissions, to discuss in an open forum the issues of concern and potential resolution of differences in positions on reclamation security with the goal of achieving an agreement;
- (c) If the participants are unable to resolve the issues and reach agreement in whole or in part, the NWB will retain a neutral third party contractor to review and evaluate the reclamation estimates provided by both INAC and LMI within sixty (60) days following the teleconference. The third party retained to review the submissions will also be requested to provide its recommendations regarding an acceptable security estimate for the project (INAC's value, LMI's value or a value derived from the analysis of both INAC's and LMI's estimates); and,
- (d) Within thirty (30) days of receipt of the third party's determination, the Board will issue on a determination on whether or not the Board agrees to amend the reclamation security requirements of Part C of the Licence.

LMI has not commented on the proposed process to date as it was attempting to resolve differences directly with INAC. However, as INAC has confirmed that it does not intend to withdraw its amendment application, LMI is writing to provide comments on the proposed process.

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LMI respectfully submits that the proposed process is procedurally unfair in a number of aspects. As LMI is the party whose rights stand to be significantly affected, it should be given an opportunity to provide a final response to INAC's submissions. Otherwise, the fundamental principle of procedural fairness – that a party must know the case being made against him or her and given an opportunity to answer it – will not have been satisfied.

LMI respectfully submits that the NWB should consider whether or not INAC has satisfied the Board, on a preliminary threshold, that there have been substantive changes in the conditions or use of the site that would justify the re-opening of the reclamation security issue, for the following reasons.

- As the NWB will recall, pursuant to their letter of August 21, 2015 to the Minister of Aboriginal Affairs and Northern Development Canada (as he then was), the purpose of Part C, Item 3 of the Licence was to allow INAC the right to apply for a change in the amount of security if there was substantive information about current conditions at the site that could challenge the extent to which the \$25.5 million security estimate remains adequate and appropriate in the circumstances: *"Although during the Board's further consideration of the quantum of security the Board has received no new evidence that would point to the need for an immediate amendment to the security amount currently fixed under Part C, Item 1, the Board does recognize that AANDC's site visit, including geotechnical investigations in August may yield substantive information regarding the current conditions at the site that could challenge the extent to which the \$25.5 million security estimate remains adequate and appropriate in the circumstances."*
- As confirmed by INAC's most recent submission to the Board (See Attachment A, memo from Charles Gravelle to INAC, page 1), *"The results of the current review have determined that there has been no material change to the site conditions that would have significantly altered the current approach taken by Arcadis to develop the RECLAIM cost estimate."*
- As in 2015, the main differences between the LMI and INAC reclamation estimates are attributable to differences relating to the tailings area, mobilization/demobilization, fuel and contingency. The Board already considered these differences in 2015 and preferred LMI's approach. Therefore, there is currently no information before the Board regarding a change in conditions at the site, or a change in use, that would justify a re-examination of the reclamation security issues.
- LMI respectfully submits that there has been no change in circumstances and that INAC is attempting to re-argue information and conditions which have already been considered by the NWB. In particular, INAC continues to submit

that its estimate, based on worst case assumptions and significant contingency to reflect uncertainty, is a more appropriate basis for the reclamation estimate even though the site conditions remain unchanged since August 21, 2015 when the NWB issued its decision on its reconsideration of the security.

- Moreover, a significant fact that the NWB should consider is the Licence requirement on LMI to submit an updated reclamation estimate by September 30, 2017 (Part C, Item 4), which will be based on substantially the same site conditions and usage as before the NWB in INAC's application.

In addition to LMI's request for the NWB's preliminary determination regarding whether INAC has satisfied the threshold for an application to amend Part C of the Licence, LMI also submits that the following adjustments should be made to the proposed procedure:

- Prior to the proposed teleconference, which LMI understands to be in the nature of a without-prejudice mediation, LMI, INAC and other stakeholders should have an opportunity to provide briefs in advance of the teleconference;
- If the NWB retains a third party to prepare a reclamation estimate, LMI should have an opportunity to make submissions on the qualifications, neutrality of the proposed third party and the scope of the third party's review;
- LMI should be permitted to tour the third party, along with NWB Board members and NWB staff, at the Lupin Mine;
- LMI, INAC and other stakeholders should have an opportunity to comment on the third party's "determination" and make a final submission before the NWB makes its own determination on this matter.

In LMI's submissions, the fairest process for the NWB to follow would be for it to allow LMI to respond to INAC's most recent submission and for the NWB to render a decision on INAC's application. In the alternative, LMI submits that the proposed modifications to the procedure outlined in the Board's letter are required in order to provide LMI with an informed and fulsome opportunity to be heard on such a significant application.

We look forward to receiving further advice from the NWB on the next steps of this process.

Regards,

Karyn Lewis

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