

LUPIN MINES INCORPORATED

August 10, 2016

Nunavut Water Board
P.O. Box 119
Gjoa Haven, NU, X0A 1J0

Attention: Karen Kharatyan, A/Manager of Licensing

Dear Sirs and Mesdames:

Re: 2AM-LUP1520 – Lupin Mine Project – Lupin Mines Incorporated (LMI) – Renewal and Amendment Application – Additional Comments on Issue of Quantum of Security

Please accept this letter and enclosures as LMI's response to the submissions filed by Indigenous and Northern Affairs Canada ("INAC") regarding its application to increase the amount of security required by the Nunavut Water Board for the Lupin Mine Site.

Background

LMI applied to the NWB to renew its Type A Water Licence (Licence) on or around January 28, 2014. During the Licence renewal process, LMI, INAC, and other stakeholders had an opportunity to provide information and submissions in technical meetings and public hearings to the NWB with respect to the quantum of security required for the Lupin Mine Site.

LMI, during the licence renewal process, provided an updated cost estimate in December 2014 which estimated the required reclamation security for the Lupin Mine Site to be \$24.1 million. LMI's estimate was based on detailed engineering reports, extensive site knowledge and the input of experts, the work of industry contractors with experience in the North and the Lupin mine in particular, as well as professional opinions. As such, the rates that informed LMI's estimate are site specific to the Lupin Mine Site.

As there was already \$25.5 million posted in security for the Lupin Mine Site at the time LMI applied for its renewal, LMI agreed that the \$25.5 million should remain posted as security and that the \$1.4 million difference between LMI's estimate and the actual posted security ought to be considered as surplus contingency.

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INAC completed a desktop review of LMI's reclamation estimate and concluded that the \$43.5 million was required as security when the outstanding reclamation liability was assessed using the RECLAIM 6.1 model. Key differences between the stakeholders in the reclamation estimate, at the Licence renewal stage were attributable to the assumption as to whether or not fuel on site would be useable to support reclamation work; recommendations for further environmental studies and reports; and uncertainties regarding the potential for geotechnical issues; the management of potential acidic waste rock; and the performance of the tailings cover. A significant concern raised by INAC was the potential for geotechnical issues on the site that created uncertainty. As such, INAC submitted to the NWB that the contingency should increase from 10% used by LMI to 25% suggested by INAC.

As an outcome of the NWB's comprehensive renewal process, on or around May 11, 2015, the NWB approved the Licence and accepted LMI's reclamation estimate and recommended that LMI's Licence be renewed with \$25.5 million posted as security. In doing so, the NWB noted that INAC's technical consultant had stated that LMI's estimate was "extremely well done", that the INAC consultant had not been to site, and had based INAC's estimate on "models and assumption that could not be verified by an understanding of actual current site conditions by the technical expert".¹ The NWB also directly addressed two of the significant differences between LMI's estimate and INAC's estimate (fuel and contingency) and concluded as follows:

Consequently, although the Board recognizes that, without the benefit of verification of current site conditions, the AANDC estimate was based on a worst case assumption of large volumes of unusable fuel being left on-site, the NWB prefers the assumptions provided by LMI's 2014 update in this regard, as it was based on current knowledge of the status of the site and the usability of fuel volumes present on-site.

With respect to the difference in contingency for uncertainty built into AANDC's estimate (25%) and LMI's contingency (10%), the Board find that considerable uncertainty may arise in terms of what updates to the existing abandonment and reclamation plans would be necessary and what reclamation security may then be required in the event that the mine site were to return to active operations. However, with respect to the site's current state of Care and Maintenance the site has been in this state from 2005 to present. As a result, in the Board's view there is much less uncertainty regarding the abandonment and reclamation requirements and liability associated with the site while maintained in the current care and maintenance phase. Given that the Renewed and Amended Licence limits LMI to activities associated with care and maintenance and the transition to active operations, the Board does not see the need for the significant boost to the contingency built into the estimate.

¹ Reasons for Decision dated May 11, 2015, at p. 45-46.

By way of letter dated June 23, 2015, the Minister of Aboriginal Affairs and Northern Development (now known as INAC) did not accept the NWB's recommendation to renew the Licence on the terms stated on the basis that, in his view, the required security was too low. The Minister requested that the NWB reconsider AANDC's reclamation estimate.

The NWB heard further submissions from the stakeholders on the security estimate and on August 21, 2015 recommended that the security remain at \$25.5 million, but included an additional condition to the Licence which would permit INAC (or other stakeholders) to bring an application to seek an amendment to the quantum of security:

AANDC's estimate also did not provide compelling evidence as to why an increase of approximately 70% in the reclamation security estimate that was in place under the previous or expired licence is now required for a renewed licence when there is no significant change to water use, waste deposit and the phase of the undertaking authorized under the Proposed Licence when compared to the previous expired licence.

INAC, and its consultant ARCADIS, attended the Lupin Mine Site between August 19-20, 2015 to conduct a site inspection and geotechnical inspection. LMI understood that the purpose of ARCADIS' attendance on site, in part, was to conduct an in-person review of the mine site to determine if an in-person inspection of the site would change the conclusions reached in ARCADIS' desktop review. INAC relies on a Final Reclaim Estimate dated October 22, 2015 as support for an increase in security. However, the Executive Summary of the ARCADIS report states that:

The results of the site inspection work completed by ARCADIS Staff during a recent site visit, undertaken 19 to 20 August 2015, have determined that in general the conditions, as outlined in the Lupin Mines Incorporated (LMI) Lupin Mines Closure Estimate Update December 2014, remain unchanged. The assumptions used by LMI in their RECLAIM cost estimate are reflective of the site conditions save for the issues and concerns raised by ARCADIS in their memoranda of 31 December 2014 and 22 January 2015 regarding the LMI December 2014 RECLAIM cost estimate.

Overview of Key Differences between the Estimates

As in the public hearing and technical meetings 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.

(a) Tailings Area

ARCADIS has stated that there is a \$3.84 million difference in the stakeholders' reclamation estimates relating to the tailings area. LMI's Tailings estimate is \$3,935,562 not \$3,395,562, for a difference of \$540,000 not \$3,835,518 as shown in INAC's submission.

LMI notes that no new information has been presented by INAC to justify its higher estimate for reclamation costs related to the tailings area. LMI has provided very detailed data (as attached to the INAC submission and again attached to this submission for reference) as to the exact costing to cover the tailings including load, haul, dump times and contractor costs which are Lupin site specific. It is not appropriate for INAC to use generic cost assumptions in this case.

LMI's estimate is also cautious in that it has included fuel costs which are very unlikely to be required given the amount of fuel onsite.

LMI notes that Meadowbank has a unit rate of between \$5.10 and \$5.50 for comparable work to cover their tailings area. LMI's rate of \$7.24 is well above the number calculated to complete the work and conservatively based on work that has already been carried out at site. LMI has asked INAC on several occasions to clarify where the perceived flaw or error exists is in LMI's detailed calculated rate for this work and to date have received no response.

Finally, LMI disagrees with a 30% increase from 2014 to 2015. Costs in the mining industry have decreased for contracting services as demand for services has decreased. LMI has canvassed many companies up North and rates have been reduced over the past two years. A concrete example of this is work LMI contracted in 2013 and this year the same work has been reduced in price by approximately 35% from 2013. Furthermore, aside from the significant reduction in rates for contracting services, the inflation rate for 2015 in Canada (averaged) was 1.13%, making a 30% increase as submitted by INAC entirely unsuitable.

(b) Mobilization/Demobilization

INAC's estimate for mobilization and demobilization costs is approximately \$3.16 million higher than LMI's. INAC/ARCADIS states that the reasons for this difference is INAC's assumption that the on-site fuel will not be useable, suggesting that additional fuel will have to be supplied and additional equipment will be required on site to complete the reclamation work.

A RECLAIM estimate must reflect "current conditions" and having usable fuel does reflect "current conditions". LMI relies on its previous submissions before the NWB, which has been accepted by the NWB, as to why its assumption that the fuel will be useable should be preferred. There is nothing in the INAC's Mine Site Reclamation Policy for Nunavut, 2002 that states onsite fuel and the onsite equipment fleet are not to be used in reclamation work. As INAC has presented no information which would support a change in assumptions with respect to fuel, LMI submits that the NWB should confirm its acceptance of LMI's earlier submission and

decline to increase the amount of security to include costs associated with the mobilization of fuel to site.

With respect to equipment, INAC has not presented any new information to support its conclusion that increased security is required for equipment. However INAC has confirmed, as stated in the ARCADIS submission dated October 22, 2015 – “Based on visual observations only, the equipment on site appears to be in relatively good condition.” LMI agrees as this equipment is being used currently to complete routine maintenance and progressive reclamation and is kept in good working condition. If the equipment, in the future, becomes unusable this will be reflected in future cost estimates prepared by LMI in accordance with the conditions of the Licence.

(c) Chemicals

ARCADIS has included \$4.71 million to dispose of the fuel on site. As submitted above, it is LMI’s position, which has already been accepted by the NWB, that the fuel on site should assumed to be useable as LMI is currently using the fuel to complete work at site and therefore there should be no increase in security for the cost of disposing of the useable fuel.

(d) Contingency

As discussed in the public hearing before the NWB last year, ARCADIS has assumed a 25% contingency. LMI’s December 2014 estimate provided for a 10% contingency, which is at the top end of the range recommended by the Mackenzie Valley Land and Water Board guide to RECLAIM for contingency funds for mines at the development stage such as Lupin. Further, as LMI did not request a decrease in the amount of security, the extra \$1.4 million that remains posted as security actually increases the overall contingency provision to 19%.

LMI’s 2016 Work Plan

LMI has done further work on site during the 2016 season. As submitted to INAC on June 17, 2016, LMI’s 2016 work plan for the site includes the following:

Work at the Lupin site would be to conduct environmental, restoration and maintenance work on-site in order to remain compliant with our NWB water licences. Specific work may include but is not limited to the items listed below. The specific tasks will ultimately be determined by the amount of accumulated snowfall and any estimated precipitation that may occur over the summer and fall, and identification of the activities that are necessary in order to ensure the integrity of site facilities.

Depending on the work to be completed we anticipate there will be between 5-16 people on site. Taking into consideration some contractors live close to the mine site and do not use the Lupin Mine accommodations.

- *Water sampling in accordance with NWB approvals*
- *Discharge sewage pond in accordance with NWB approvals*
- *Possible treatment Pond 2 water and discharge in accordance with NWB approvals*
- *Sampling, treatment and discharge of all water collected with the fuel berms in accordance with NWB approvals*
- *Ongoing general maintenance and repairs to site*
- *Waste backhauls*
- *Geotechnical inspection by a third party in accordance with NWB approvals*
- *Preparation, construction and operation of the Landfarm to treat hydrocarbon soil at located at the STF in accordance with the NWB approvals*
- *Transfer of water from Cell 5 to Pond 1 via syphon*
- *Ongoing repairs to Dam M as per the 2015 Geotechnical report*
- *Cover of Cell 5 tailings per the closure plan*
- *Ongoing erosion repairs on dams, as per the 2015 Geotechnical report, roads and airstrip*

Since INAC's site visit, additional equipment has been returned to LMI's site. LMI notes that this equipment was leased to INAC's contractors in March 2014 until May 2015, but has only recently been returned to LMI despite LMI's earlier requests for its return. In any event, the additional equipment has been inspected and routine maintenance has been done on the equipment and LMI can report that the equipment is in good, useable condition.

Further, LMI has continued to backhaul hazardous waste off-site. To date, LMI has backhauled approximately 130,000lbs of hazardous waste since its December 2014 estimate was completed. Please note that any reference to 130,000 kilograms is factually incorrect.

As this information does reflect the current conditions on site, and could have been used to support a reduced security estimate, it is LMI's submission that the NWB can use this information as assurance that the existing security has a more than adequate contingency allocation.

Conclusion

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.

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.

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. In particular, there is no new material evidence on fuel usage, tailings cover, ARD, or contaminated soils. The ARCADIS Report is based on substantially the same information, site conditions, assumptions and conclusions as the previous report. As confirmed by INAC's 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.*"

We respectfully submit that INAC's application does not meet the requirements of Part C, Item 3 of the Licence which requires any change to the amount of security to be based on new information that would suggest there has been a change of conditions on site, or a change in usage of the site, that would justify such a dramatic increase in security.

Yours truly,

Karyn Lewis

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