

## **MEETING RECORD**

**Teleconference hosted by Nunavut Water Board**

**NWB File No. 2AM-LUP1520 Type A Water License - Consideration of Application to Reduce Security Bond**

**Licensee: Lupin Mines Incorporated**

**Date: April 6, 2018; 8:45 am -11:00am MST**

### **a) Participants**

**NWB** – Karén Kharatyan, Assol Kubeisinova, Teresa Meadows (Legal Counsel)

**LMI** – Karyn Lewis, Belinda Labatte, Ken Bocking, Dionne Filiatrault, Christine Kowbel (Legal Counsel)

**INAC** – Spencer Dewar, Eric Alden, Ian Parsons

**ECCC** – Absent

### **b) Karén Kharatyan - NWB OPENING REMARKS**

Purpose of the meeting is to discuss reduction of security request from LMI. NWB also expects discussion to include updated cost estimate and ICRP as well as next steps. Agenda includes discussion of technical issues and to facilitate transfer of information. Karén requested LMI highlight and clarify technical issues during the presentation.

Procedural history of the application was identified in NWB correspondence to parties on March 26, 2018.

Housekeeping – NWB distributed copies of LMI submission on April 5, 2018; NWB did not schedule time for breaks. LMI advised Golder will be keeping a record of the meeting.

### **c) Karyn Lewis – LMI OPENING REMARKS**

My name is Karyn Lewis, I am the Project Manager for Lupin Gold Mine. On behalf of LMI I would like to thank the Nunavut Water Board for the opportunity to provide additional information on April 4 and to present our evidence today to confirm a reduction in security of \$13.6 M for the Lupin Mine Site.

To support LMI, the following people are on the teleconference:

- Belinda Labatte – Chief Development Officer – Mandalay Resources Corporation (owner of LMI and “Company”)
- Ken Bocking – Principal, Golder Associates Ltd.
- Dionne Filiatrault – Project Manager (Regulatory Advisor), Golder Associates Ltd.

- Christine Kowbel – External Legal Counsel

To start the call, I would like to provide an overview of our main points.

- In October 2017, our independent third-party consultant, Ken Bocking of Golder Associates, completed a new cost estimate for the Lupin Mine, along with an updated IARP which was filed with the NWB for a security review as per the water licence condition (see Part C, Item 4).
- We believe our submission of additional information and presentation provides additional evidence to support a reduction in security as requested in October 2017.
- The current reclamation bond is far in excess of the current reclamation liability at the Lupin Mine site. LMI is committed to reclamation of the Lupin Mine and releasing the excessive funds back to LMI will benefit reclamation efforts at Lupin and enable LMI to put the funds to work to efficiently and effectively implement 2018 restoration works. The current situation in combination with procedural delays is causing strain on the Company's working capital and internal ability to establish concrete reclamation plans for 2018 and beyond.
- LMI also wishes to say a few words about the process delays to date. LMI submitted the revised IARP in October 2017 and provided responses from intervening parties to the plan on November 29, 2017. It is unfortunate that the review process has taken 4 months to get to this point and the delays are affecting LMI's 2018 work plans. Further procedural delays would be unfair and prejudicial to LMI.
- All parties had ample notice that LMI would be seeking a reduction in advance of our October 2017 filing. LMI senior representatives have held various meetings with INAC regarding the reassessment in reclamation security which supports a reduction in security, and ideas for future reduction in security. Senior executives have also provided updates and timeline on site closure plans for the next two years which included discussions that we would be submitting for a reduction in Q4 2017 – and this was completed on the timeline discussed. LMI has advised the NWB and the KIA in separate meetings of the same.
- LMI believes urgent circumstances warrant an immediate decision of the NWB as soon as possible.

The evidence before the NWB supports a positive decision to reduce the reclamation security by C\$13.6 M.

1. Very little evidence or concerns have been raised by interested parties in relation to the proposed IARP and reduction;
2. While INAC expressed a desire to revisit the site to confirm that the remediation works were completed prior to the NWB granting the reduction, LMI objected to this request. LMI Legal counsel advised that this is not a requirement of the Act or regulations, and LMI notes that this is not part of INAC's process for other projects. INAC for other projects does not provisionally require a site visit in order to approve an Interim ARP. LMI would like to reiterate that INAC has visited the site several times a year (most recently in Summer 2017) and no major compliance issues were noted. INAC had every opportunity to carry out an additional inspection and failed to do so. LMI stated from a procedural fairness and evidentiary point of view further delays are unwarranted and unsupported.
3. INAC advised LMI management during a meeting on July 24, 2017 that they would be requesting an inspection of the site to validate site conditions for the security reduction being submitted in September 2017. On August 4, 2017, LMI provided a detailed update to INAC and the NWB on the status of security and work plans for the site. Information obtained during the 2017 field season could be used to validate site conditions. The INAC Inspector, Eva Paul, carried out inspections under the Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA) and Territorial Lands Act at the Lupin Mine twice during the 2017 season (July and August). The Inspector filed her inspection reports as per the NWNSRTA with the NWB and there were no major concerns with the current site conditions. LMI indicated on the call that INAC did not follow up on their need for a site visit until today, even with Mandalay proactively informing INAC of the upcoming process for bond reduction.
4. LMI submitted that INAC were given ample notice and access to validate site conditions during the 2017 season, noting the Lupin Mine site was open until October 20, 2017. The last site inspection occurred on August 21, 2017, and there were no further visits from INAC after this, to further validate site conditions supporting the bond reduction.
5. LMI indicated it is moving forward with reclamation of the site. LMI further confirmed that failure to release funds will impact the availability of working capital to carry out reclamation activities going forward.

Karyn continued: In order to provide further context for our October 2017 estimate, included with our submission on April 4 was a cost comparison/summary, between the Golder cost estimate and the Knight Piesold technical review. We would like to walk through those slides now, in order to give the NWB staff an overview. I am going to turn this over to our third-party

expert, Ken Bocking, who will begin by giving an important overview which highlights the different basis for the KP technical review vs. the Golder estimate. Another key difference that we will highlight in our presentation is that latest estimate takes into account work completed at the site, which KP assumed was still pending (and failed to discount their estimate accordingly).

Ken Bocking of Golder Associates then proceeded to speak to the slide deck filed by LMI and made the following points.

- LMI requested Golder to undertake assessment as independent engineering consultant. Golder estimate consistent with INAC policy represents an independent third party thorough and comprehensive assessment of closure costs considering on site conditions based on several site visits and detailed technical review of substantial engineering, geotechnical and technical information on file for the Project current to date. Regardless of whether Golder might have been engaged to complete this cost estimate on behalf of the Board, LMI, the Crown or any other party the estimate would be the same.

Ken confirmed visit to site in 2016 and that he has been involved since that time assessing costs. He confirmed that the assessment was done in the RECLAIM V. 7 tool for the most recent estimate of October 2017. At several points Golder (Ken) highlighted that in his assessment he used actual documented costs where these were available, (which he deemed more reliable than unit costs from the RECLAIM database).

- LMI legal counsel highlighted that KP's values represent a technical review of two other cost estimates for the purpose of establishing a framework of mediation or distinction between the two estimates provided by LMI and INAC. KP's technical review was not an estimate and is inconsistent with INAC policy which requires a detailed comprehensive independent third-party cost estimate assessment of security requirements.

Assol asked if LMI rates were guaranteed for reclamation jobs. Karyn confirmed that rates are bid on annually and carried out by a third-party contractor. LMI does not have received preferred rates. Karyn added that the costs have remained consistent on annual basis estimate and the unit costs are based on an average cost over several years.

INAC clarified that Eva Paul, is the water resources officer on the file for compliance inspections under the water licence and asserted that the inspector was only at site to inspect terms and conditions and that the inspection was not a "security inspection".

- LMI noted that the inspection report identified/no issues raised that would negatively

affect financial security.

- Legal counsel to NWB acknowledged that NWB understands that some issues flagged as outstanding by the inspector in 2016 were corrected.

LMI asked if they thought it was necessary, why did INAC not carry out a “security inspection”, given the priority of the file in October 2017 and given prior knowledge of LMI’s intentions?

- INAC responded that a site assessment in 2016 was completed and indicated that INAC could not get a consultant in place to carry out an inspection prior to October 2017.

LMI reconfirmed that LMI reached out to INAC and kept the site open until Oct 20, 2017. LMI reconfirmed the requirement for LMI to file an updated security assessment in 2017 is a specified condition in water licence. INAC and all parties knew this would be happening and is a condition of our water licence. Therefore, INAC should have carried out any verification work it considered necessary during 2017. INAC has not provided any substantive comments on the closure plan and it was noted that INAC has had since October 17, 2017 to do so.

- INAC reiterated that INAC inspectors don’t assess security and that INAC could not get necessary consultants in place in a timely way.

Golder (Ken Bocking) noted that most of the discrepancies in the cost estimate do not relate to observable quantities, with the exception of tailings cover which is a small amount of the reduction overall (in the \$200,000 range). Most of the costing differences are based on differences and clarifications in assumptions and desk top studies completed since the previous version of the IARP.

INAC requested that LMI confirm timing of freshet, to enable INAC to book a consultant to visit site after freshet. Karyn Lewis of LMI confirmed timing of freshet May/June.

- LMI objected to delaying the decision until after freshet, noting that INAC has had ample opportunity to visit the site.
- LMI confirmed Mandalay has been very proactive and has reached out to INAC several times.
- LMI legal counsel noted that the NWB set a November 2017 deadline for comments on the IARP and no substantive technical comments were filed by INAC.
- LMI requested that all parties should respect the process and timelines set by the Board and further requested NWB to repeat the process and dates.

INAC reiterated that the October 2017 filing did not allow time for field verification.

LMI reiterated Ken Bocking's previous point that field verification could assess cover placement all the rest is assessable on a desktop level.

- LMI asked INAC to state any other big items that need field verification to provide further context for what would a 'security' inspection achieve?

Ken Bocking confirmed many items of discrepancy are not a matter of verifying of site quantities (only relevant item is incremental cover of tailings); rather, they are matters of fact. So, amount of discrepancy on site verification is quite small.

INAC noted that INAC had in the past received pushback from proponents on not doing site visits and doing desktop studies and reiterated that a desktop review is not enough due diligence for INAC.

LMI reiterated and emphasized again INAC had all opportunity to participate and all stakeholders need to follow the process set by the Board.

In response to suggestion by INAC that the July 2017 inspection report is not relevant because it was not done for the purposes of a "security inspection", it was noted that in the past INAC has suggested that based on the outcome of previous compliance inspections, INAC has suggested that reclamation liability should be inflated. Now that no significant concerns were raised in the last two compliance inspection rounds, this should be noted by the NWB and the security reduced accordingly.

NWB legal counsel noted that in the INAC original security estimate there was evidence before the NWB on these matters and these inspections factored into INAC's estimate and position. LMI's point - that it was suggested by INAC that contingency be increased based on outstanding compliance issues and they have been addressed - was acknowledged by NWB legal counsel.

NWB legal counsel also noted that changes to the reclamation plan that Golder has proposed in revised interim plan over what was in reclamation estimate reviewed and accepted and adopted in 2017. NWB legal counsel requested LMI highlight those differences in assumptions and changes in proposed reclamation plan that may not require a site assessment and therefore would not require INAC confirmation on update.

It was noted that on Friday October 20 NWB gave participants 30 days to comment on LMI's materials. INAC requested an extension but ultimately made no substantive comments on the plan. INAC confirmed it did not share LMI's submissions with INAC's consultants during that time.

LMI respectfully requested that other stakeholders follow the timelines and process set by the

NWB and acknowledged that INAC chose not to make substantive submissions when it was provided the opportunity to do so by the NWB.

NWB legal counsel asked LMI for clarification on timing for plans for FCRP.

- LMI confirmed it will be submitting a Final Closure and Reclamation Plan (FCRP) and a water licence amendment and renewal application which will include a further requested security reduction. It is targeting submission in May 2018, LMI will also be meeting with INAC (Ian Parsons) to discuss in April. LMI notes that the document will highlight progressive release of security, as was suggested originally by INAC.

INAC confirmed it will make it a priority to do a site visit.

LMI confirmed it is open and collaborative and will have someone on site all summer. However, LMI strongly objects to the deferral of the NWB decision on the proposed reduction of security until after INAC's site visit.

- INAC restated it would want to do an onsite inspection to verify everything, and that it will be putting a contract in place to review the reclamation plan and unit costs.

#### **d) INAC presentation**

INAC made no formal presentation or submission.

INAC acknowledged NWB authority to set amount of security and reiterated its view that a "security inspection" is needed and should be considered by the NWB prior to security reduction being applied.

#### **e) Technical Issues**

INAC asked NWB staff what assessment should be used for comparison - the KP estimate or the INAC original estimate?

- NWB legal counsel noted that the NWB does not direct intervenors on whose evidence to use.

LMI legal counsel registered LMI objection to the suggestion that INAC's 2015 estimate is relevant to the current process.

- LMI once again noted that INAC was not following process for this application.
- INAC by its admission didn't retain any expert to comment on the estimate LMI filed in

October 2017 and has not filed any substantive response on the estimate to date despite ample opportunity to do so. It has failed to actively engage in the process.

- It would not be appropriate to go back to INAC's 2015 estimate as it is outdated information. The process has moved forward. LMI's independent third-party expert view is that LMI is over bonded at C\$34.6M and the issue is time sensitive.

INAC responded that in its view, the October 2017 estimate was too late to field verify and that their comments are pending a site visit.

LMI emphasized that LMI has been asked to and has engaged with INAC, and INAC should reciprocate as it has not done so to date. INAC has not engaged in this process until last minute. LMI asked the NWB to reconfirm the process - what the dates were and when responses are to be submitted.

#### **f) Discussion of Process and next steps**

NWB legal counsel reiterated the process steps and timeline to date:

- May 12, 2017 - NWB adjusted security to \$34.6M;
- Aug 4, 2017 - NWB received correspondence related to posting additional security;
- Sept 27, 2017 - additional security of C\$9.1M was posted with Minister;
- October 14, 2017 - ICRP received from LMI with updated cost estimate (liability assessment 21 M). LMI requested a reduction of C\$13.6M;
- Oct 20, 2017 – NWB acknowledged LMI's submission and requested party comments on submission within 30 days. This date was extended.
- Nov 24, 2017 - INAC filed a non-substantive submission indicating a site visit was required.
- Nov 29, 2017 - LMI filed its response;
- Nov -March - NWB ongoing discussion and workplan proposed for year ahead;
- March 22, 2018 - LMI discussion staff and technical held in 2018;

NWB Legal Counsel asked LMI what its workplan for 2018 would be if the security reduction were issued - what would not be completed if the security reduction is not granted?

LMI responded that the work plan for this year is still under development. Potentially, continuing to cover tailings; work on tank farm; work on crown pillar but all depends on this process. Details will be included in the application for renewal; the FCRP to detail the closure activities with some changes relative to the ICRP and expecting slight reduction based on current decision of NWB still pending.



- LMI also suggested that security assessment for FCRP up in the air with respect to reduction of security decision pending.

NWB legal counsel provided a summary of potential options for next steps.

- Direction from the NWB will be required, not just staff/technical level.
- In general, in the past, amendment to security required amendment under the license.
- NWB can proceed based on evidence received; if they did they would issue decision still subject to Type A security because of the regulation can proceed without a public hearing. In the past waived requirement for public hearing; remitted evidence to the NWB for decision. In past this involved review of third party reviewer mandate specifically for point of disagreements. Noted that LMI is correct in that KP did not conduct full third party independent review.
- Note was made respecting timelines. NWB to remit decision to panel minister would have 45 days for Ministerial decision not coming down until June/July. Precedent of Minister rejecting of fixing of security - possible Minister could reject the amendment and existing security would remain in force.

With respect to LMI's request to file minutes, NWB legal counsel requested that the minutes be provided to parties to the call for review prior to filing.

#### **g) Other Issues - Review of ICRP**

INAC noted that review of ICRP could be carried out in coordination with site visit, but that INAC could get it done sooner.

LMI legal counsel reiterated that comments on LMI's filing were due in November 2017 and noted LMI's objection to granting INAC any further extensions.

INAC said it will ask if NWB could accept these late comments within 30 days.

NWB (Karen K.) noted that the NWB (rather than staff) will decide whether or not to accept INAC's late filing.

LMI legal counsel once again confirmed that it objects to any extension.

#### **h) CLOSING REMARKS**

LMI (Karyn) thanked the NWB and INAC for the call and summarized

The main points within the document and will be explained further are:

- LMI's October 2017 cost estimate/IARP now includes progressive reclamation work not previously included in its 2015 estimate and not taken into consideration when KP completed their technical review (in late 2016).
- Some tasks, such as covering of Cell 5 are ongoing, and the unit costs used for cover placement are actual contracted third-party costs.
- Our cost estimate/IARP also now takes into consideration the updated Environmental Site Assessment that was conducted during 2017 and filed with the Board. This information also changed how some reclamation work would be completed as well as unit costs.
- Camp costs – during the technical review by KP they assumed that LMI may be getting preferred or discounted rates and the unit rate they used was for a site without any infrastructure. LMI provided letters to the NWB (filed on the NWB ftp site) with the cost estimate from Discovery (LMI's third party contractor carrying out progressive reclamation and water licence requirement along with maintaining the camp) and Summit Air (flight provider) that LMI does not and has not previously received preferred rates which was assumed by KP in their report. The camp and flight costs provided in the LMI's cost estimate are actual third-party contractor costs.
- A very large part of the cost estimate that we refute is in regard to fuel. During our water licence renewal process and subsequent Board decision, the fuel at Lupin was considered usable and not included in the security costs. During the security review in 2016, initiated by INAC, the Board included the cost of supplying new fuel in the security costs even though the fuel on site tested as useable and that INAC agreed during our 2016 site visit that they would remove it from their estimate if the fuel tested usable. The fuel at Lupin was retested again in 2017 and the fuel is still usable and has been used to complete progressive reclamation. The fuel will continue to be used during the next two years to complete final closure. LMI firmly believes that the costs of re-supplying fuel should not be included in the security costs as agreed in 2015 and as LMI plans on using this fuel to complete final closure in 2018 and 2019. LMI does commit that, should the fuel become unusable, they will include new fuel in any future cost estimates.
- As previously stated, site conditions have continued to improve at Lupin over the last three years. The progressive reclamation program planned by LMI over the next two years to reclaim the site will eliminate most, if not all, environmental liability.

**LMI (Belinda)** - The philosophical objectives need to be verbalized here, and is the reason why we are all on this call today which is that we share the aim of responsible stewardship of assets in the north and in this case the responsible reclamation of the Lupin site with good environmental stewardship and reclamation of this site. She reminded everyone that this site will not be abandoned and that our actions demonstrate this to be true and further reminded everyone that doing so is contrary to our environmental policy and values. She, reminded everyone that delaying the process is not aligned with the ultimate goal of good environmental stewardship and expeditious reclamation of the site

As it currently stands, Lupin is grossly over-bonded. Once the over-bonding amount is refunded, LMI can move forward to reinvest the refund of security to implement reclamation activities at Lupin during 2018 and 2019 as per the Final Closure and Reclamation Plan, which will be submitted to the NWB during Q2/2018. LMI would like to note that while preparing the Final Closure and Reclamation Plan, with Golder Associates and Norwest Engineering, they have identified additional areas that will further reduce the costs of the reclamation work we plan to carry out over the next two years. LMI understands the financial responsibilities required to satisfactorily restore the site and based on past performance and ongoing progressive reclamation works completed the NWB should be in a position to make a decision of security reduction at this time.

LMI wishes to re-emphasize that it requests the Board to reduce the security required under Part C, of the Water Licence as soon as possible by the over-bonded amount. The project is currently over bonded by C\$13.6M, and the current situation is causing the Company strain on its working capital, where releasing those funds can enable LMI to put the funds to work at Lupin.

LMI will continue with its progressive reclamation plan starting at the beginning of May 2018. We respectfully submit that INAC's request to delay the process when a process has been clearly committed, not be accepted on the basis of the facts herein, and that the NWB move forward with a Board decision on LMI's new security cost estimate so that we can work together as stakeholders interested in the same philosophical positive outcome.

LMI believes that, at the close of this meeting, the record should be closed once the record of the meeting has been posted, and that the NWB should immediately move forward with issuing its decision. Given the lengthy process to date, an immediate or timely response from the Board is necessary and would be appreciated. Good and timely reclamation is everyone's objective.

Thank you again to Board staff for organizing this meeting, and for its careful consideration of the materials LMI has filed and presented on this topic. It is our hope that this process will

support the timely and appropriate reclamation of the Lupin Mine site.

**INAC closing** statement (Spencer) share the objective, but due diligence requires a site visit with no snow on ground. Recognize urgency and best we can do is make it a priority and assess liability based on what they see on site. And hope LMI would participate in site visit with INAC.

Karen K – indicated NWB will issue follow up guidance in a few weeks. Subject to board schedule.

**LMI (Belinda)** stated further extension makes it difficult to work in the north in a responsible and efficient way and ask NWB to hold stakeholders to account within the process to let the company proceed with the good and expeditious remediation process. The process we are following now is not unexpected - it was a licence requirement, included in the licence the Minister approved.

**NWB** Thanks everyone for participation today NWB intends to issue guidance within next couple of weeks. Expected date for response will be emailed shortly.