



JUN 23 2015

Mr. Thomas Kabloona  
Chairperson  
Nunavut Water Board  
PO Box 119  
GJOA HAVEN NU X0B 1J0

Dear Mr. Kabloona:

Thank you for your letter of May 11, 2015, conveying the recommended water licence 2AM-LUP1520 related to the Lupin Mine, for my approval.

I regret to inform you that I am withholding my approval for the reasons outlined below, and respectfully returning the recommended water licence 2AM-LUP1520 for your reconsideration and attention.

To a large extent, I am satisfied with the recommended water licence. The Board has developed a fair and enforceable water licence that meets the needs of regulators and the proponent, with the exception of the amount of security that the Board has set to be held as security for the obligations as set out in the legislation.

Should the circumstance arise, I have a clear statutory and public obligation to assume custodial responsibilities for the mine site to protect human health and safety, as well as the environment, through the Nunavut Land Claim Agreement, the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, the Nunavut Waters Regulations, and the Department's Nunavut Mine Site Reclamation Policy. Given this, it is in the public interest that adequate security is provided by the proponent to ensure that, should the proponent be unable to do so, necessary site activities can be carried out by appropriate departmental officials without the financial liability and burden of such activities falling to the Government of Canada.

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Through the water licence application review process, the Department has identified a need for security in the amount of \$43,500,000. I understand the proponent posed a number of arguments in its closing statement to the Board, which the Board has accepted, by setting security for the water licence at \$25,500,000. By the Department's estimation, this leaves the Crown under-secured by an amount of \$18,000,000.

I note there are three main rationales provided by the Board in its Reasons for Decision for the setting of security at an amount less than the Department's estimate: the availability and handling of fuel currently on site; the differences in contingency rate, in general, for a range of site components; and that the estimates presented by the Department were not based on first-hand observation of current site conditions by the Department's consultant.

Concerning fuel, the Board rightly recognized that the Department's estimate was based on a worst-case assumption of large volumes of unusable fuel being left on site. In assessing liability on site, it is not an acceptable practice to assume that any amount of fuel or other assets and resources on site would be available to and usable by a third-party contractor. The Department has no assurance that it would have first right of access to assets, including fuel, left on site or that the fuel will still be of good quality in the time of need.

Regarding contingency, the proponent has applied a 10-percent contingency rate while the Department has applied a 25-percent contingency rate. I understand the Board's rationale that the site has been in care and maintenance since 2005 and thus, most uncertainties are known. However, in this circumstance, I note there are uncertainties associated with site compliance issues that require further study, monitoring and analysis, and that the RECLAIM model provides guidance for determining appropriate contingency amounts, in excess of 10 percent. The proponent's continuing use of the site for local air transport needs, the length of time it has been under care and maintenance, as well as its uncertain future justify concerns regarding current and future degradation uncertainties, hence the higher contingency rate.

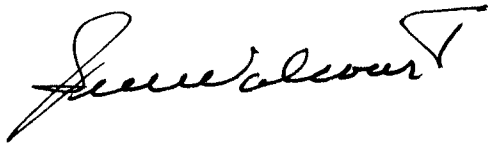
Finally, the Department's models and assumptions for the calculation of the security account for all the potential costs the Department may incur in the event the site is abandoned, not simply the costs the owner may incur should it carry out its remediation obligations. The Department has conducted multiple site visits, as recently as August 17, 2014, for enforcement purposes, and is knowledgeable about the current site condition.

In developing the security estimate, the Department has based its calculations on recent and accurate information, plans and other documentation provided by the proponent as part of this water licence application review process.

I trust that you will seek to reconsider these aspects of the licence and that you will inform me of your recommendation thereafter in an expeditious manner.

Should you have any questions, or require clarification on any aspects of this correspondence, please do not hesitate to contact Ms. Karen Costello, Director of Resource Management, Nunavut regional office, at 867-975-4546.

Sincerely,

A handwritten signature in black ink, appearing to read "Bernard Valcourt". The signature is fluid and cursive, with a prominent initial "B" and a stylized "V".

Bernard Valcourt, PC, QC, MP