

Ministre des Affaires indiennes et  
du Nord canadien et interlocuteur fédéral  
auprès des Métis et des Indiens non inscrits



Minister of Indian Affairs and  
Northern Development and Federal Interlocutor  
for Métis and Non-Status Indians

Ottawa, Canada K1A 0H4

**Your file: 2AM-LUP0914**

**AVR 8 2009**

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

Dear Mr. Kabloona:

Thank you for your letter of February 25, 2009, which conveyed the water licence renewal for Nunavut Water Board licence 2AM-LUP0914 for the Lupin Gold Mine project. I would like to thank you and your colleagues on the Nunavut Water Board for all of your efforts in the administration of water resources in Nunavut.

I observe that in this licence, the Nunavut Water Board has referenced its authority, under Section 70 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, to include in the licence provisions requiring Canada to participate in monitoring programs for site parameters or conditions. The Board has exercised this authority in past licences and, in these cases, has explicitly identified the parameters or site conditions to be monitored.

In this instance, however, the Water Board has required inspections by enforcement officers of Indian and Northern Affairs Canada rather than requiring the Department to play a role in monitoring. Moreover, the Board has set a schedule for these inspections rather than indicating the parameters or site conditions that the Department is expected to monitor. I am concerned that in attempting to direct water inspectors in their general inspection and enforcement functions, as opposed to establishing conditions and parameters to be monitored by Canada, the Board may have exceeded its authority under Section 70 of the Act.

Even if that is not the case, I do not find that this approach is helpful to the maintenance of a water management and inspection regime that is based on risk assessment and which directs limited inspection resources to where they are most needed at any given time. Indian and Northern Affairs Canada's inspection priorities are based on a rigorous regime of risk assessment and management in planning for the inspection of project sites in Nunavut. Issues associated with spring freshet, as well as the unique physical structures at individual major project sites, form an important part of our risk assessment

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**Canada**

and scheduling. The need for inspection at each individual site must, of course, be balanced against all other projects based on numerous criteria, some of which are dynamic, including recent conditions at the site, and the licensee's past performance. Indian and Northern Affairs Canada's inspection resources must be flexible enough to respond to such changes.

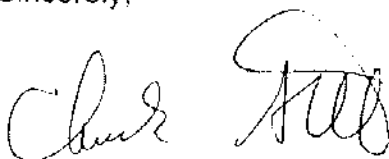
Further, I note that the Board does not appear to have found that the applicant was incapable or unwilling to carry out any monitoring or reporting required of it by the Board, or posed any particular risk of non-compliance. Therefore, I see no need for the Board to require an inspector to visit the site on a predetermined schedule for the purpose of determining compliance.

I have also observed that under this licence amendment a number of plans associated with activities required under the water licence will not be submitted for the Water Board's review and approval until after the water licence has been approved. I recognize that, in many cases, applicants cannot be expected to provide all plans associated with a licence without having completed some advance geophysical work or even some construction at a major project site. I understand also that this reality poses a challenge in determining which plans should be included in an applicant's initial licence submission for it to be considered complete.

However, as this particular licence amendment is for ongoing care and maintenance at a long-standing mine site with infrastructure that is well known to the applicant, it would not necessarily have been an onerous expectation to require that their initial application include a care and maintenance plan. I am pleased that the Water Board is presently taking steps to make clear its expectations on the completeness of water licence applications by the development of application guidelines. Ensuring that essential plans form part of the water licence application package allows me to better understand the terms which I am approving when accepting a licence and provides clarity to applicants on the provisions they will be required to implement under their licence.

In light of these considerations, I have chosen to withhold my approval of the Nunavut Water Board licence renewal and amendment 2AM-LUP0914 for the Lupin Gold Mine site. I encourage you to convene the Board at your earliest convenience to review the concerns I have expressed and consider options for a different approach that would respond to these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Strahl". The signature is fluid and cursive, with the first name "Chuck" and the last name "Strahl" clearly distinguishable.

Chuck Strahl