

Via Email

December 19, 2017

Ken Cowles

Jupiter Resources Inc.

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca**Attention : Len Moriarity**

Dear Sirs:

**RE: Request for Regulatory Appeal by Ken Cowles
Jupiter Resources Inc. (Jupiter)
Application Nos.: 1847201; 1847511; 1847512; 1847513; 1847514; 1847524 (Applications)
Licence Nos.: 0478486; 0478487; 0478513; 0478514; 0478515; 0478516; 0478517; 0478518;
0478519; 0478520; 0478521; 0478546; 0478547; 0478548
Locations: 02-11-059-02W6M; 01-34-059-01W6M; 09-03-060-02W6M; 06-03-060-02W6M;
12-32-059-01W6M; 12-23-059-02W6M
Regulatory Appeal No. 1849984**

The Alberta Energy Regulator (AER) has considered Mr. Cowles' requests under section 38 of the *Responsible Energy Development Act (REDA)* for regulatory appeals of the AER's decisions to approve the well licences issued for the applications listed above. The licences were issued on December 14 and 15, 2015, allowing Jupiter to drill and produce fourteen natural gas wells from surface locations at 02-11-059-02W6M; 01-34-059-01W6M; 09-03-060-02W6M; 06-03-060-02W6M; 12-32-059-01W6M; and 12-23-059-02W6M. All the wells have a H₂S content of 0%. The AER has reviewed Mr. Cowles' submissions and submissions filed by Jupiter in response.

For the reasons that follow, the AER has decided that: (1) Mr. Cowles did not file a statement of concern in relation to the Applications; and (2) in any case, the record does not indicate that Mr. Cowles is directly and adversely affected by the AER's decisions to approve the Applications. The requests for regulatory appeals are therefore dismissed for the reasons outlined below.

Reasons for DecisionSection 38 of *REDA* states:

38(1) An eligible person may request a regulatory appeal of an appealable decision by filing a request for regulatory appeal with the Regulator in accordance with the rules.

The term "eligible person" is defined in section 36(b)(ii) of *REDA* to mean:

a person who is directly and adversely affected by a decision [that was made by the AER under an energy resource enactment, if that decision was made without a hearing].

The well licences in this case were issued under the *Oil and Gas Conservation Act*, which is an energy resource enactment.

Section 39(4)(b) of *REDA* is also relevant to these regulatory appeal requests because Mr. Cowles did not file statements of concern. That provisions states:

39(4) The Regulator may dismiss all or part of a request for regulatory appeal

- (b) if the request is in respect of a decision on an application and the eligible person did not file a statement of concern in respect of the application in accordance with the rules,

Upon receiving the regulatory appeal requests, the AER conducted an audit of Jupiter's applications to verify compliance with the AER's participant involvement requirements. The audit revealed that Jupiter notified Mr. Cowles of its intention to file the Applications and waited at least 14 days before filing the Applications as routine. In addition, it appears from Jupiter's submissions in this proceeding that it had reason to believe Mr. Cowles' unresolved concerns about the Applications only related to compensation, and that he preferred to discuss that issue directly with Jupiter rather than by filing a statement of concern in response to the Applications as per AER process. In his submissions, Mr. Cowles described a different course of events in which he was either not aware that Jupiter had filed the Applications, or he was not aware that he needed to file a statement of concern.

Regardless of the reasons, the fact is that Mr. Cowles did not file a statement of concern in relation to the Applications, although he has offered an explanation as to why he did not do so. Instead, Mr. Cowles chose to file a request for regulatory appeal after the AER approved the Applications. Given that, the AER is in a position to dismiss Mr. Cowles' requests under the authority of section 39(4) of *REDA*, which is what Jupiter asked the AER to do in the submissions Jupiter's counsel filed in this proceeding. The AER notes Mr. Cowles has filed additional regulatory appeal requests in relation to other development in the trapline currently licensed to him (licensed trapline No. 1345 (TPA)), and has filed numerous statements of concern with applications for development in the area of the TPA. In these circumstances, the AER believes it can better assist the parties by also considering the merits of Mr. Cowles' requests and providing reasons why he is not eligible for a regulatory appeal hearing.

The decisions to issue the well licences are appealable decisions, and the requests for regulatory appeal were filed in accordance with the rules. The substantive issue in these matters is whether Mr. Cowles is a person who is directly and adversely affected by the AER's decisions to issue the well licences.

Mr. Cowles' concerns with the Applications are stated in a general way, without reference to a particular location or locations that is/are some ascertainable distance from his trapping activities or assets (which includes his cabin). What is missing from his requests is information that provides a demonstrated degree of location or connection between one or more of the wells and impacts on him or his trapping activities, so that the AER has reliable information indicating that a reasonable potential or probability exists that the impacts alleged by Mr. Cowles will occur. Instead, Mr. Cowles' concerns are stated in a general sense, as though each of the wells gives rise to all of the concerns he raises about impacts on his trapping. The AER notes that, other resource companies are active in Mr. Cowles' trapping area, including a forestry company, and that this factor is not addressed by Mr. Cowles. For Mr. Cowles to be granted a regulatory appeal he must demonstrate that *these particular* Jupiter wells are the activities responsible for the impacts that he is concerned about: damage to his trapping trails and lines; property theft and vandalism; hazardous use of roadways, and the disappearance of fur-bearing wildlife.

The local municipality has jurisdiction over the public roads in the area: the AER has no authority over public road use. For private roads in the area, Jupiter has agreements to use those roads to access its sites, and measures have been taken to stop unauthorized use of the roads.

Many of Mr. Cowles' concerns center on compensation, including for diminished harvests, loss of resale value of the TPA, and loss of or damage to his property. The Alberta Trappers' Compensation Board administers a program that is funded by industry and government to compensate trappers for the kinds of losses alleged by Mr. Cowles. The AER does not have authority to require that compensation be paid by Jupiter to Mr. Cowles, and in any case the extent to which the losses alleged by Mr. Cowles are occurring, or whether Jupiter or its personnel are in fact responsible for such losses, is not indicated in Mr. Cowles' requests.

As a result, the AER cannot conclude that any of Jupiter's wells will directly and adversely affect Mr. Cowles. The fact that Jupiter is active in the area of the TPA does not, by itself, demonstrate that Jupiter is or may be responsible for impacts on Mr. Cowles' trapping assets and activities. For this reason, and the fact that Mr. Cowles did not file statements of concern in relation to the applications, the AER has decided not to grant the requests for regulatory appeals.

The AER also notes that Mr. Cowles has submitted to the AER numerous statements of concern and regulatory appeal requests in connection with various applications and approvals within the area of the TPA: numbering in the dozens at this time. While each of those remains to be considered on its own merits by AER decision-makers, an observation at this point may assist Mr. Cowles in his future dealings with applicants and the AER. Similar to his requests in this proceeding, the concerns stated by Mr. Cowles in his various submissions are almost all general in nature and lack any specific information about site-specific impacts. In order to determine whether a hearing is required on a given application, the AER requires information about specific impacts. Statements of concern and regulatory appeal requests filed more recently by Mr. Cowles often restate exactly what was provided in previous submissions, without making any distinction between the different facilities, activities or even applicants that are involved and any specific impacts of those activities on Mr. Cowles and/or his activities in the vicinity. The risk to Mr. Cowles proceeding this way arises from section 39(4)(a) of *REDA* s. 6.2(2)(e) of the *Alberta Energy Regulator Rules of Practice*, which permit the AER to disregard concerns or requests that are frivolous or vexatious. The courts have established that repeatedly making the same claim or filing duplicitous claims, as a matter of practice or strategy, is frivolous and vexatious behaviour on the part of a clamant that warrants judicial intervention.

Finally, and notwithstanding the foregoing, the AER reminds Jupiter that Directive 056 requires it to include Mr. Cowles in its participant involvement program for any applied-for development or activity that is or may be located within the TPA. This includes specifically providing Mr. Cowles with notice of any application that is filed by Jupiter with the AER. By this letter, the AER hereby notifies Jupiter that the AER expects it to file all future applications seeking approval of activities within the area of Mr. Cowles' TPA as non-routine and to identify Mr. Cowles as a person with known concerns about those activities. By this letter the AER also notifies Mr. Cowles that he is expected to identify his concerns at the time he is notified of future applications submitted to the AER as opposed to waiting until after the AER approves those applications.

We trust the above articulates the AER's expectations of both Jupiter and Mr. Cowles going forward.

Sincerely,

<original signed by>

Patricia Johnston, Q.C., ICD.D.
Executive Vice President, Law and General Counsel

<original signed by>

Tom Byrnes, P. Eng.
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