Alberta Energy Regulator

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Via Email

April 5, 2018

Ken Cowles

Jupiter Resources Inc.
Attention: Len Moriarity

Dear Sirs:

RE: Request for Regulatory Appeal by Ken Cowles
Jupiter Resources Inc. (Jupiter)
Application No/s.:1866148, 1866149, 1866152 and 1866977; Licence No/s.: 58508 and 43829
Request for Regulatory Appeal No.: 1875471

The Alberta Energy Regulator (AER) has considered Mr. Ken Cowles's request under section 38 of the *Responsible Energy Development Act* (REDA) for a regulatory appeal of the AER's decision to approve the pipeline licences issued for the applications cited above (Applications). The licences were issued on November 23, 2016, allowing Jupiter to construct and operate five pipelines: four being extensions of B100 and B101 pipelines to existing licence No. 43829, and one as a new B100 pipeline that was licensed as No. 58508. The AER has reviewed Mr. Cowles's submissions and Jupiter's response submissions.

For the reasons that follow, the AER has decided that Mr. Cowles is not directly and adversely affected by the AER's decision to approve the Applications. The request for a regulatory appeal is therefore dismissed for the reasons outlined below.

Reasons for Decision
The applicable provision of *REDA* in regard to regulatory appeal requests is section 38, which 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 include:

> 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 licences were issued under the *Pipeline Act*, which is an energy resource enactment.

The decisions to issue the pipeline licences are appealable decisions, and the request for a regulatory appeal was filed in accordance with the rules. The substantive issue in this matter is whether Mr. Cowles is a person who is directly and adversely affected by the AER's decision to issue the pipeline licences.

Mr. Cowles's 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 request is information that provides a demonstrated degree of location or connection between one or more of the pipelines 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's concerns are in a general sense, as though each of the pipelines 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's 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 pipelines are responsible for the impacts that he is concerned about: damage to his TPA, hazardous use of roadways, and loss of or damage to his property.

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's 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's request.

As a result, the AER cannot conclude that any of Jupiter's pipelines 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's trapping assets and activities. For this reason, the AER has decided not to grant the request for regulatory appeal.

The AER also notes that Mr. Cowles has submitted numerous statements of concern and regulatory appeal requests to the AER in connection with various applications and approvals within the area of the TPA. In a previous letter to Mr. Cowles conveying the AER's first decision on regulatory appeal requests filed by him, the AER provided the following comments that bear repeating. While each of Mr. Cowles's submissions and requests remains to be considered on its own merits by AER decision-makers, the concerns stated by Mr. Cowles in his various submissions are 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 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* and section 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.

Sincerely,

<*original signed by*>
Paul Ferensowicz,
Senior Advisor, Operations Division

<*original signed by*>
David Helmer,
Director, Pipelines, Industry Operations

<*original signed by*>
Richard Tomlins
Director, Oil and Gas, Industry Operations