

**Via Email**

December 6, 2016

John Winchester  
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Rocky Mountain House AB T4T 1A3Petrus Resources Corp.  
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Calgary AB T2P 4H4Calgary Head Office  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada[www.aer.ca](http://www.aer.ca)**Attention: Brett Booth and Pamela MacDonald**

Dear Sirs and Madam:

**RE: Request for Suspension by John Winchester (Mr. Winchester)  
Petrus Resources Corp. (Petrus)  
Application Nos.: 1861228; 1867410  
Licence Nos.: 0481082; 0481083; 49411  
Regulatory Appeal No. 1872471 (Regulatory Appeal)**

The Alberta Energy Regulator (AER/Regulator) has considered Mr. Winchester's request under section 39(2) of the *Responsible Energy Development Act (REDA)* for a stay of the above noted licences. The AER reviewed Mr. Winchester's suspension request submission dated November 7, 2016 and November 15, 2016. The AER also reviewed Petrus' submission dated November 11, 2016.

For the reasons that follow, the AER denies the request of Mr. Winchester for a stay of the above noted licences.

**Parties' Submissions**

In Mr. Winchester's suspension request, he submits that the single surface location at 01-08-039-08W5M for the two wells planned should be moved to the north and drilled to the south, and that AER mediation with Petrus and the residents should be required before any well licence is issued. He further submits that moving the wells to the north and drilling to the south would put them one mile from his residence and thereby keep noise, groundwater aquifer problems and flaring away from their property. Mr. Winchester has concerns with the impact on water wells, and the general location near their property. He notes that the water and air quality is the only remaining natural resource they need and maintain, and that the drilling of the wells would interfere with the hardpan. He further submits that they will be impacted by noise, that there is an alternative site for the pad, and that the field representative lied and has a total lack of respect for the environment, residents and their quality of life. Mr. Winchester also requests a suspension of the approvals until a decision regarding the appeal request is made.

In response, Petrus requests that the AER decline Mr. Winchester's request to suspend the above referenced licences. Petrus notes that it does not intend to act on the licences until January 3, 2017.

In regards to relocation of the developments referenced in the licences, Petrus submits that it investigated the potential of relocating and encountered a landowner who would be directly affected by the relocation and not interested in pipeline development on their land. Further investigations into alternative pipeline alignment concepts presented feasibility obstacles such as more land disturbance, extra pipeline length, and potential conflict with industry competitors. In addition, one of the conceptual pipeline alignments affects the same landowner and occupant on the issued licences and would unfairly prejudice that landowner. Petrus further submits that moving the development further north would actually cause greater impacts as an additional 2.0 km of public roadway would require maintenance and dust control and an additional 3 dwellings would be impacted. Also Petrus indicates that the proposed surface location is necessary to maximize reservoir contact and the recovery of hydrocarbon liquids, as well as to optimize capital spending. It will also provide a day to day site representative other than the individual initially hired as the contact person for any concerns Mr. Winchester may have.

In regards to water well concerns, Petrus submits that having a smaller quantity of water wells within an arbitrary 2.0 km radius does not necessarily mean that there is more or less risk to the quantity and quality of the ground water and aquifer. Petrus is confident that the proposed wells will be constructed, cased and drilled correctly, thereby protecting ground water and aquifers in this area. Furthermore, Petrus will offer to perform pre-drilling and post completion water well testing to ensure sufficient information is available to evaluate the protection of ground water and aquifers. With respect to noise, Petrus submits that the noise associated with drilling, completion, equipping and tie in operations will be temporary in nature and comply with *Directive 038: Noise Control*. Petrus states it will also consider a noise barrier should this become necessary during the construction and completion of this development. In regards to flaring, this will be kept to a minimum, with *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting* notification of flaring activities and if applicable an additional notice to Mr. Winchester prior to the test phase. There will not be any continuous flaring from this development. With respect to traffic and dust control, Petrus commits to managing dust in coordination with the County and implementing a 50 km/h speed limit for traffic related to this development.

Petrus submits that it has exhausted all efforts to resolve Mr. Winchester's concerns and consider his suggested alternative.

### Reasons for Decision

The Regulator is empowered to grant a stay pursuant to section 39(2) of the *Responsible Energy Development Act (REDA)*.

Section 39(2) provides the AER the authority to grant a stay. It states:

The Regulator may, on the request of a party to a regulatory appeal, stay the appealable decision or part of it on any terms or conditions that the Regulator determines.

However, section 38(2) indicates that the mere filing of a request for regulatory appeal does not operate to stay the appealable decision.

The Regulator's test for a stay is adapted from the Supreme Court of Canada case of *RJR MacDonald*.<sup>1</sup> The three questions within the test are:

1. Serious question – Is there is a serious question to be heard at the requested appeal? This requires a preliminary assessment of the merits of the requested appeal.
2. Irreparable harm – Will the stay applicant suffer irreparable harm if the stay request is refused?
3. Balance of convenience – Which of the parties would suffer greater harm from the grant or refusal of the requested stay?<sup>2</sup>

The *RJR MacDonald* decision makes it clear that the onus is on the stay applicant, in this case Mr. Winchester, to satisfy the AER that he has satisfied each element of the three-part test.

### 1. Serious Issue

The first step of the test requires the applicant to show there is a serious issue to be tried. The applicant has to demonstrate that there is some basis on which to present an argument on the appeal.

Mr. Winchester submits issues which are seriously arguable before the AER. For instance, issues indicated include possible alternate locations, noise, groundwater problems, flaring, traffic, dust, communications with Petrus and general water and air quality. Given the low threshold for this part of the three-part test, the AER is satisfied that Mr. Winchester raises serious issues to be argued.

<sup>1</sup> *RJR MacDonald Inc. v Canada (Attorney General)*, [1994] 1 S.C.R. 311 (*RJR MacDonald*)

<sup>2</sup> *RJR MacDonald* at paragraph 43

## 2. Irreparable Harm

The second step in the test requires the decision maker to decide whether the applicant seeking the stay would suffer irreparable harm if the stay is not granted. Irreparable harm will occur if the stay applicant will be adversely affected by the conduct the stay would prevent if the regulatory appeal applicant prevails in the appeal and the harm is not the sort that could be remedied through damages (i.e. in monetary terms). As noted by the Court of Appeal of Alberta irreparable harm is “of such a nature that no fair and reasonable redress may be had in a court of law and that to refuse the [stay] would be a denial of justice.”<sup>3</sup>

In relation to the second part of the test, whether Mr. Winchester will suffer irreparable harm, the AER finds the test is not met. Although Mr. Winchester submits concerns pertaining to alternate locations, noise, groundwater, flaring, traffic, dust, communications with Petrus and general water and air quality, as outlined in the *RJR MacDonald* decision, it is not enough for Mr. Winchester to allege potential harm; he must show irreparable harm will result. The AER finds that Mr. Winchester has not provided evidence sufficient to demonstrate a connection between the drilling and operations of the wells and facilities and the harm he may suffer, not to mention whether that harm will be irreparable, if the stay is denied. As a result, Mr. Winchester has failed to meet the second part of the *RJR MacDonald* test.

## 3. Balance of Convenience

As explained above, an applicant for a stay must satisfy each element of the three-part test set out in the *RJR MacDonald* decision if it is to be successful in its request to stay an AER decision. In light of the finding that Mr. Winchester has failed to satisfy the second test (demonstrating irreparable harm), a consideration of the third test (balance of convenience), is therefore not necessary.

## Conclusion

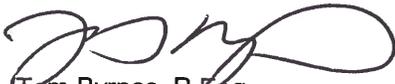
The stay/suspension request is dismissed because Mr. Winchester has not demonstrated he will suffer irreparable harm if the stay is not granted.

The regulator will provide its decision on the request for regulatory appeal in due course.

Sincerely,



Kevin Parks, P. Geo.  
Vice President, Reserves and Resources



Tom Byrnes, P. Eng.  
Senior Advisor, Oil and Gas



K. Fisher  
Manager, Regulatory Effectiveness

<sup>3</sup> *Ominayak v Norcen Energy Resources*, [1985] 3 W.W.R. 193 (ABCA) at paragraph 31.