

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – August 21, 2001

IN THE MATTER OF Sections 84, 85 and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E-13.3 and section 115 of the *Water Act*, S.A. 1996 c. W-3.5.

-and-

IN THE MATTER OF an appeal filed on July 10, 2001 by Mr. Clinton J. Marr with respect to Water Management Order No. 2001-WA-DAM029-PR issued under the *Water Act* to the Spearpoint Cattle Company Ltd. by the Director, Water Management, Prairie Region, Regional Services, Alberta Environment.

Cite as: *Marr and Spearpoint Cattle Company Ltd. v. Director, Water Management, Prairie Region, Regional Services, Alberta Environment.*

EXECUTIVE SUMMARY

A Notice of Appeal was filed Mr. Clinton J. Marr of Spearpoint Cattle Company Ltd. appealing a Water Management Order directing the company to cease diversion of all water as there was insufficient water to supply to a water user with senior rights to the water.

Mr. Marr advised in his appeal that he did not own the land which was the subject of the diversion. Alberta Environment met with Mr. Marr and confirmed that he was not the owner of the land in question and that he does not operate any works in relation to the water licence in question.

The Board sought confirmation from Mr. Marr that he was satisfied with the outcome of the meeting with Alberta Environment and asked him to confirm that he would be withdrawing his appeal. As no response has been received from Mr. Marr, the Board accordingly exercises its discretion under section 87(5)(a)(ii) of the *Environmental Protection and Enhancement Act* and dismisses the Notice of Appeal filed by Mr. Clinton J. Marr and Spearpoint Cattle Company Ltd. for failure to respond to a written request.

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I. BACKGROUND

[1] On July 4, 2001, the Director, Water Management, Prairie Region, Regional Services, Alberta Environment (the “Director”) issued Water Management Order No. 2001-WA-DAM029-PR (the “Order”) under the *Water Act*, S.A. 1996 c. W-3.5, to the Spearpoint Cattle Company Ltd. (“Spearpoint”). The Order states that Spearpoint must cease diversion of water from Dungarvan Creek at NW 16-003-29-W4 in the County of Pincher Creek as the senior priority holder has made a claim because Dungarvan Creek is not able to sustain diversion from both the senior priority user and the junior priority user, Spearpoint.

[2] On July 10, 2001, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. Clinton J. Marr and Spearpoint Cattle Company Ltd. (the “Appellants”) appealing the Order and advising that they did not own the land in question nor were they ever given a licence for diversion by the Director.

[3] The Board acknowledged the appeal and requested that the Director provide a copy of the records related to the appeal. The letter also requested that the Director and the Appellants provide dates for a mediation/settlement conference or hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[5] On July 18, 2001, the Board received a letter from the Director advising that he has discussed the appeal with the Appellants and he is hopeful that the issues raised in the appeal can be resolved. The Director requested that the appeal be held in abeyance until July 31, 2001. The Board granted the request and advised the Director and Appellants that the appeal would be held in abeyance until July 31, 2001.

[6] The Director advised the Board on July 30, 2001 that he is satisfied that the Appellants are not the subject of the Order. As a result, the Board requested on July 31, 2001, that the Appellants confirm their satisfaction with the meeting with the Director and withdraw

their appeal by August 7, 2001. The Appellants did not respond to the Board's written request by August 7, 2001. Board staff left a follow up message on August 13, 2001 and received no response.

[7] On August 16, 2001, the Board advised the Appellants and the Director that it was dismissing the appeal with reasons to follow. These are those reasons.

II. DECISION

[8] Section 87(5)(a)(ii) of the *Environmental Protection and Enhancement Act*, S.A. 1992 c. E-13.3 states:

87(5) The Board

(a) may dismiss a notice of appeal if ...

(ii) the person who submitted the notice of appeal fails to comply with a written notice under section 85...

[9] The Board hereby exercises its discretion under section 87(5)(a)(ii) and dismisses the Notice of Appeal filed by Mr. Clinton J. Marr and Spearpoint Cattle Company Ltd. for failure to respond to the Board's written request.

Dated on August 21, 2001, at Edmonton, Alberta.

William A. Tilleman, Q.C., Chairman