

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – June 12, 2002

IN THE MATTER OF Section 91 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF an appeal filed on April 23, 2002 by Mr. Robert David Stuart with respect to a research permit issued by Fish and Wildlife Division, Sustainable Resource Development, to Mr. Robert David Stuart.

Cite as: *Stuart v. Fish and Wildlife Division, Sustainable Resource Development.*

EXECUTIVE SUMMARY

The Board received a Notice of Appeal from Mr. Robert David Stuart with respect to a research permit that he had applied for from Fish and Wildlife Division, Sustainable Resource Development.

The Environmental Appeal Board hears appeals of decisions made by *Alberta Environment*, under the *Environmental Protection and Enhancement Act*, the *Water Act* and Schedule 5 of the *Government Organization Act* only. In dealing with these appeals, the Board is limited to dealing with issues regarding land and water, which may include animal and fish habitat. The Board *cannot* deal with issues concerning the control of wildlife research. Further, the Board *cannot* hear appeals of decisions made by Sustainable Resource Development, including the Fish and Wildlife Division.

The Board therefore dismisses this appeal for lack of jurisdiction.

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I. BACKGROUND

[1] The Board received a Notice of Appeal, dated April 18, 2002, from Mr. Robert David Stuart (“the Appellant”), on April 23, 2002. The appeal was with respect to a research permit, for an “upland bird census”, that the Appellant had applied for through Fish and Wildlife Division, Sustainable Resource Development. The Appellant’s Notice of Appeal stated in part:

“After receiving an inadequate permit #8052 concerning upland bird study authorizing, I am confident I can provide many sufficient reasons to allow the Environmental Appeal Board confidence to delete and correct four (4) conditions on the Wildlife Act sections 81, 81(2, 3, 4)(o.c. page 48) research permit, as the conditions make the activity (upland bird census) and reporting requirements impossible to continue.”

[2] The Board received a further letter from the Appellant on May 31, 2002, and on June 7, 2002, the Board acknowledged receipt of the Appellant’s letters, and requested Alberta Environment provide the Board with a copy of any documents that they may have in relation to this appeal.

[3] The Board did not contact Sustainable Resource Development to request documents as the Board cannot deal with decisions made by Sustainable Resource Development, including the Fish and Wildlife Division.

[4] On June 10, 2002, the Board received a response to its June 7, 2002, letter from Alberta Environment advising:

“..I advise that we have checked with the Regulatory Approvals Centre and have been advised that Mr. Robert David Stuart does not have any approvals under either the *Water Act* or the *Environmental Protection and Enhancement Act*. Therefore, we do not believe that Alberta Environment has any documents with respect to this matter.”

[5] On June 10, 2002, the Board acknowledged receipt of the letter from Alberta Environment and forwarded a copy to the Appellant.

[6] The Board had previously received letters from the Appellant on October 18, 2001, November 26, 2001, April 12, 2002, April 15, 2002, April 22, 2002, April 23, 2002 (Notice of Appeal) and on May 31, 2002 regarding the same issue. The Board had responded to the Appellant’s letters on October 24, 2001 and on January 23, 2002 advising that the Board

could not deal with his appeal as the Board was limited by the law in what cases it could hear. The Board did however, contact Sustainable Resource Development, Fish and Wildlife Division in January of 2002, on behalf of the Appellant, and was advised by staff that they would be sending the Appellant a letter regarding the research permit he was seeking. The Board in turn wrote to the Appellant to advise him of this information.

II. DECISION

[7] The Environmental Appeal Board hears appeals of decisions made by *Alberta Environment*, under the *Environmental Protection and Enhancement Act*, the *Water Act* and Schedule 5 of the *Government Organization Act* only. In dealing with these appeals, the Board is limited to dealing with issues regarding land and water, which may include animal and fish habitat. The Board *cannot* deal with issues concerning the control of wildlife research. Further, the Board *cannot* hear appeals of decisions made by any Division of Sustainable Resource Development, including the Fish and Wildlife Division.

[8] Because the Board cannot deal with decisions made by Sustainable Resource Development, including the Fish and Wildlife Division, and because the decision regarding the Appellant's research permit was made by Fish and Wildlife Division, Sustainable Resource Development, and not by Alberta Environment, and, pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, the Board dismisses this appeal for lack of jurisdiction and has closed its file in this matter.

Dated on June 12, 2002, at Edmonton, Alberta

“original signed by”

William A. Tilleman, Q.C.
Chair