

ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation Meeting and Settlement Conference: August 20, 2002

Date of Report and Recommendations: August 26, 2002

IN THE MATTER OF Sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 and section 115 of the *Water Act*, R.S.A. 2000 c. W-3;

-and-

IN THE MATTER OF Notices of Appeal filed by Mr. Bob and Ms. Riske Quartero, Mr. Ernie and Ms. Marjory Shewchuk, Mr. William Nicol, Ms. Barbara Potter, Ms. Daphne Varty, Mr. Jim Morison, Mr. Victor and Ms. Mary Neufeld, Mr. Lorne and Ms. Elizabeth Dalrymple and, Dr. David and Dr. Gail Jardine with respect to Approval No. 0152694-00-00 issued under the *Water Act* to the Rocky View School Division No. 41, by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Quartero et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Rocky View School Division No. 41* (26 August 2002), Appeal Nos. 02-042 – 02-046, 048, 049 and 063-R (A.E.A.B.).

MEDIATION MEETING BEFORE

Frederick C. Fisher, Q.C.

APPEARANCES

Appellants: Mr. Bob Quartero, Ms. Riske Quartero, Mr. Jim Morison, Mr. Victor Neufeld, Ms. Mary Neufeld, Mr. Ernie Shewchuk, Ms. Daphne Varty, Dr. Gail Jardine.

Director: Mr. Brock Rush, Acting Director, Southern Region, Regional Services, Alberta Environment; Mr. Claude Eckert, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Approval Holder: Mr. Roger Graham, Rocky View School Division No. 41.

Other Parties: Mr. Frank Misura, Municipal District of Rocky View No. 44; Mr. David Neufeld; Dr. Bob Nowak, Groundwater Exploration and Research.

Board Staff: Ms. Denise Black, Board Secretary.

EXECUTIVE SUMMARY

Alberta Environment issued an Approval to the Rocky View School Division No. 41 authorizing the exploration for groundwater at NE 1-23-W5M for the proposed Banded Peak School water supply source in Bragg Creek, Alberta.

The Board received Notices of Appeal from Mr. Bob and Ms. Riske Quartero, Mr. William Nicol and Ms. Barbara Potter, Mr. Jim Morison, Mr. Victor and Ms. Mary Neufeld, Mr. Ernest and Ms. Marjory Shewchuk, Ms. Daphny Varty, Mr. Lorne and Ms. Elizabeth Dalrymple, and Dr. David and Dr. Gail Jardine, appealing the Approval.

The Board held a mediation meeting in Calgary, Alberta, following which a Resolution was reached by the parties. The Board recommends that the Minister of Environment accept the Resolution.

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I. BACKGROUND

[1] On June 17, 2002, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 00152694-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Rocky View School Division No. 41 (the “Approval Holder”), authorizing the exploration for groundwater at NE 1-23-W5M, for the proposed Banded Peak School water supply source in Bragg Creek, Alberta.

[2] Between June 24, 2002 and June 27, 2002, the Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Bob and Ms. Riske Quartero, Mr. Ernest and Ms. Marjory Shewchuk, Mr. William Nicol and Ms. Barbara Potter, Ms. Daphne Varty, Mr. Jim Morison, Mr. Victor and Ms. Mary Neufeld, Mr. Lorne and Ms. Elizabeth Dalrymple, and on August 6, 2002, from Dr. David and Dr. Gail Jardine¹ (collectively the “Appellants”).

[3] On June 25, 27 and 28, 2002, the Board wrote to the Appellants, the Approval Holder and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals. In the same letters, the Board also requested the Director provide the Board with a copy of the records (“the Record”) relating to the Approval and requested the parties provide available dates for a mediation meeting 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 5, 2002, the Board acknowledged a letter from one of the Appellants advising of the available dates for all of the Appellants and also advising the Board of possible

¹ The Board received a Notice of Appeal from Dr. David and Dr. Gail Jardine on August 6, 2002. As the Notice of Appeal appeared to be filed out of time, the Board requested the Jardines advise if they wished to request an extension of time to appeal and to indicate to the Board the reasons for the extension to appeal. While waiting for a response from the Jardines, the Board received a request from one of the other parties to allow Dr. Gail Jardine to participate in the mediation meeting. The Board granted this request as there were no objections from the other parties.

interested parties. On the same date, the Board wrote to the possible interested parties and provided them with copies of the Notices of Appeal and the Approval.²

[6] On July 9, 2002, the Board acknowledged receipt of the Record from the Director and on that date, provided a copy to the Appellants and the Approval Holder. On the same date, the Board also acknowledged receipt of a letter dated July 5, 2002 from the Approval Holder advising the Board of their available dates for a mediation meeting or hearing.

[7] On July 15, 2002, in consultation with the Parties, the Board scheduled the mediation meeting to be held in Calgary, Alberta, on August 20, 2002.

[8] The Board subsequently received a request from one of the Appellants that a representative of the Municipal District of Rocky View No. 44 (the "Municipal District") attend the mediation meeting. The Board wrote to the Municipal District on August 12, 2002, advising them of this request and asked that they advise the Board if they wished to attend the mediation meeting and also asked the other Parties if there were any objection to the Municipal District's participation. On August 13, 2002, the Board received a letter from the Municipal District advising that they would attend and on August 16, 2002, the Board advised the Parties and the Municipal District that the Municipal District would be permitted to attend the mediation meeting.

II. THE MEDIATION MEETING

[9] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Calgary, Alberta, on August 20, 2002, with Frederick C. Fisher, Q.C. as the presiding Board Member.

[10] It was noted at the mediation meeting that the following Appellants did not attend: Mr. Lorne and Ms. Elizabeth Dalrymple, Mr. William Nicol and Ms. Barbara Potter. The Board did not receive prior notification from these Appellants that they would not be attending the mediation meeting.

² The Board notified Mr. and Mrs. D. Dean, Mrs. Faith Dean, Mrs. Carol Clency of the Banded Peak School Council, and Mr. Frank Misura of the Municipal District of Rocky View No. 44.

[11] In conducting the mediation meeting, Dr. Fisher reviewed the appeals and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants' Agreement to Mediate. All Parties signed the Agreement and discussions ensued.

[12] Following productive and detailed discussions, a Resolution evolved at the August 20, 2002 mediation meeting and is attached (pages 5 and 6).

[13] On August 21, 2002, Board staff contacted Mr. William Nicol, Ms. Barbara Potter, and Mr. Lorne and Ms. Elizabeth Dalrymple, to discuss their nonattendance at the mediation meeting and their appeals. Board staff reviewed the Resolution signed at the mediation meeting with Ms. Barbara Potter and Ms. Elizabeth Dalrymple. Ms. Barbara Potter, on behalf of herself and Mr. William Nicol, and Ms. Elizabeth Dalrymple, on behalf of herself and Mr. Lorne Dalrymple, verbally advised that they were in agreement with the Resolution. Based on this verbal consent, the Board advised that it considered Mr. William Nicol, Ms. Barbara Potter, and Mr. Lorne and Ms. Elizabeth Dalrymple to collectively be parties to the Resolution dated August 20, 2002, signed in Calgary, Alberta. A letter dated August 21, 2002, was sent to the Parties confirming this position.

III. RECOMMENDATIONS

[14] In accordance with section 100 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the "Act"), the Board recommends that the Minister of Environment vary *Water Act* Approval No. 0152694-00-00, issued by the Director, Southern Region, Regional Services, Alberta Environment, in accordance with the Resolution contained herein. Attached for the Minister's consideration is a draft Ministerial Order implementing the recommendations.

[15] Further, with respect to sections 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following parties:

- Mr. Bob and Ms. Riske Quartero;
- Mr. Jim Morison;

- Mr. Victor and Ms. Mary Neufeld;
- Mr. Ernie and Ms. Marjory Shewchuk;
- Ms. Daphne Varty;
- Dr. Gail Jardine and Dr. David Jardine;
- Mr. Lorne and Ms. Elizabeth Dalrymple;
- Mr. William Nicol and Ms. Barbara Potter;
- Mr. Roger Graham, Rocky View School Division No. 41;
- Mr. Frank Misura, Municipal District of Rocky View No. 44; and
- Mr. Brock Rush, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Dated on August 26, 2002, at Edmonton, Alberta.

Frederick C. Fisher, Q.C.

IV. RESOLUTION

V. DRAFT ORDER

**Ministerial Order
/2002**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal Nos. 02-042 - 02-046, 048, 049 and 063**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal Nos. 02-042 - 02-046, 048, 049 and 063.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2002.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board Appeal Nos. 02-042 – 02-046, 048, 049 and 063

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Approval No. 0152694-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Rocky View School Division No. 41, I, Dr. Lorne Taylor, Minister of Environment, order that the Approval be varied as follows:

- 1 Clause 1 of the Approval be amended by removing the phrase “16,380.0” and replacing it with “3,500.0”;
- 2 Clause 4 of the Approval be amended by adding “(d) shall include a notification by the Rocky View School Division No. 41 or its agents, to Ms. Daphne Varty prior to conducting the testing and the Rocky View School Division No. 41 and its agents agree that no water from the testing will enter Ms. Daphne Varty’s property” immediately after clause 4(c);
- 3 Clause 6(b) of the Approval be amended by adding “and, if the existing production water well in NE 1-23-5WM is not licencable due to the set back rules of the sewage lagoon, this well will be used as an observation well during the testing” immediately after the phrase “as the pumping test”; and
- 4 Clause 6(c) of the Approval be amended by repealing it and replacing with “obtain water level readings in all neighbouring wells located within 1.0 kilometre, including but not limited to, the Neufeld private well, the Morison/Wood private well, the Shewchuk private well, the Varty private well, the Quartero private well, and the Jardine private well”.

**Ministerial Order
22/2002**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal Nos. 02-042 - 02-046, 048, 049 and 063**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal Nos. 02-042 - 02-046, 048, 049 and 063.

Dated at the City of Edmonton, in the Province of Alberta this 12th day of September, 2002.

”original signed by” _____
Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeal Board Appeal Nos. 02-042 – 02-046, 048, 049 and 063

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Approval No. 0152694-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Rocky View School Division No. 41, I, Dr. Lorne Taylor, Minister of Environment, order that the Approval be varied as follows:

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3. Clause 6(b) of the Approval be amended by adding “and, if the existing production water well in NE 1-23-5WM is not licencable due to the set back rules of the sewage lagoon, this well will be used as an observation well during the testing” immediately after the phrase “as the pumping test”; and
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