

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation Meeting - January 17, 2003

Date of Report and Recommendations - January 22, 2003

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 appeals filed by Grant and Beth
Spackman and John G. Evans with respect to Preliminary
Certificate No. 00182584-00-00 issued under the *Water Act* to
Coyote Cove Golf Course Inc., by the Director, Southern Region,
Regional Services, Alberta Environment.

Cite as: *Spackman et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Coyote Cove Golf Course Inc.* (22 January 2003), Appeal Nos. 02-075 and 02-076-R (A.E.A.B.).

MEDIATION MEETING BEFORE:

Frederick C. Fisher, Q.C.

APPEARANCES:

Appellants: Mr. Grant Spackman
Mr. John G. Evans

Department: Mr. Brock Rush, Director, Southern Region,
Regional Services, Alberta Environment,
Mr. Randy Poon, Alberta Environment,
represented by Ms. Charlene Graham,
Alberta Justice.

Certificate Holder: Mr. Tom Walter, Q.C., Ms. Susan Walter,
Mr. Tim and Ms. Susan Duffin, representing
Coyote Cove Golf Course Inc.

Board Staff: Ms. Denise Black, Board Secretary.

EXECUTIVE SUMMARY

Alberta Environment issued a Preliminary Certificate to Coyote Cove Golf Course Inc., whom, upon compliance with conditions in the preliminary certificate will receive a licence to divert water from the Pine Creek in NW 04-022-01-W5 near DeWinton, Alberta.

The Board received Notices of Appeal from Mr. Grant and Ms. Beth Spackman and Mr. John Evans appealing the Preliminary Certificate and Licence.

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

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I. BACKGROUND

[1] On September 17, 2002, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Preliminary Certificate No. 00182584-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c. W-3, to Coyote Cove Golf Course Inc. (the “Certificate Holder”), whom, upon compliance with conditions in the Certificate, will receive a licence to divert 173,415 cubic metres of water annually at a maximum rate of 0.076 cubic metres per second from Pine Creek in NW-04-022-01-W5 near DeWinton, Alberta.

[2] On October 21 and 23, 2002, the Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Grant and Ms. Beth Spackman and Mr. John Evans (collectively the “Appellants”) appealing the Certificate.

[3] On October 23, and 24, 2002, the Board wrote to the Appellants, Certificate Holder and Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal, notifying the Certificate Holder and the Director of the appeals, requesting the Director provide the Board with a copy of the records relating to the Certificate (the “Record”), 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 November 4, 2002, the Board received the Record from the Director and on November 6, 2002 the Board acknowledged receipt of the Record and forwarded a copy to the Appellants and the Certificate Holder.

[6] On November 22, 2002, in consultation with the Parties, the Board scheduled a mediation meeting for January 17, 2003 to be held in Calgary, Alberta.

II. THE MEDIATION MEETING

[7] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Calgary, Alberta, on January 17, 2003, with Frederick C. Fisher, Q.C. as the presiding Board Member (the “Mediator”).

[8] In conducting the mediation meeting, the Mediator 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.

[9] Following productive and detailed discussions, a Resolution evolved at the January 17, 2003 mediation meeting and is attached as (page 3).

III. RECOMMENDATIONS

[10] In accordance with section 99 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* Preliminary Certificate No. 00182584-00-00 and Licence, 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.

[11] 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. Grant and Ms. Beth Spackman;
- Mr. John Evans;
- Mr. Tom Walter, Q.C., Coyote Cove Golf Course Inc.; and
- Mr. Brock Rush, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Dated on January 22, 2003, at Edmonton, Alberta.
“original signed by”

Frederick C. Fisher, Q.C.

IV. RESOLUTION

RESOLUTION OF APPEAL NOS. 02-075 AND 02-076 REGARDING THE DECISION OF THE DIRECTOR, SOUTHERN REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT (THE "DIRECTOR"), TO ISSUE PRELIMINARY CERTIFICATE NO. 00182584-00-00 (THE "CERTIFICATE") UNDER THE *WATER ACT*, R.S.A. 2000, C.W-3, TO COYOTE COVE GOLF COURSE INC.

All parties to the appeals have agreed to the following terms and conditions:

1. THAT Alberta Environment agrees to review an application from Coyote Cove Golf Course Inc. to increase the rate of diversion during the period February 20 to May 31.
2. THAT Mr. John and Ms. Shirley Evans and Mr. Grant and Ms. Beth Spackman will cooperate with Coyote Cove Golf Course Inc. in their application to the Director to decrease the instream objectives during the period February 20 to May 31 subject to the provision of the applicable Pine Creek water monitoring data submitted to Alberta Environment.
3. THAT Coyote Cove Golf Course Inc. will cooperate with Mr. John and Ms. Shirley Evans and Mr. Grant and Ms. Beth Spackman to increase Coyote Cove Golf Course Inc.'s instream objectives during the period of June 1 to August 31 upon the provision of the applicable Pine Creek water monitoring data submitted to Alberta Environment.
4. THAT the Certificate and Licence will be revised to reduce the diversion of water from 173,415 cubic metres of water annually to 150,600 cubic metres of water annually.
5. THAT in consideration of the foregoing, the Appellants, Mr. Grant and Ms. Beth Spackman, and Mr. John and Ms. Shirley Evans, agree to withdraw their Notices of Appeal.

RESOLUTION AGREED TO BY:

"original signed by"
Mr. Grant Spackman on behalf of himself
and Ms. Beth Spackman

Date: January 17, 2003

"original signed by"
Mr. John Evans on behalf of himself
And Ms. Shirley Evans

Date: January 17, 2003

"original signed by"
Mr. Brock Rush, Director,
Southern Region, Regional Services, Alberta Environment,

Date: January 17, 2003

represented by Ms. Charlene Graham, Alberta Justice

“original signed by”

Mr. Tom Walter, Q.C.
Coyote Cove Golf Course Inc.

Date: January 17, 2003

V. DRAFT ORDER

**Ministerial Order
/2003**

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. 02-075 and 076**

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. 02-075 and 076.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2003.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board Appeal Nos. 02-075 and 02-073

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Preliminary Certificate No. 00182584-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c. W-3, to Coyote Cove Golf Course, I, Dr. Lorne Taylor, Minister of Environment, order that the Certificate be :

1. Order that the decision of the Director to issue the Certificate is confirmed, subject to the following provisions.
2. Order that the Certificate be varied by deleting the phrase “will receive a licence to divert 173,415 cubic metres of water annually” from the cover page of the Certificate, and replacing it with “will receive a licence to divert 150,600 cubic metres of water annually”.

**Ministerial Order
35/2003**

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. 02-075 and 076**

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. 02-075 and 076.

Dated at the City of Edmonton, in the Province of Alberta this 4th day of February, 2003.

"original signed by"
Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeal Board Appeal Nos. 02-075 and 02-076

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the "Director") to issue Preliminary Certificate No. 00182584-00-00 (the "Certificate") under the *Water Act*, R.S.A. 2000, c. W-3, to Coyote Cove Golf Course, I, Dr. Lorne Taylor, Minister of Environment, order that the Certificate be :

3. Order that the decision of the Director to issue the Certificate is confirmed, subject to the following provisions.
4. Order that the Certificate be varied by deleting the phrase "will receive a licence to divert 173,415 cubic metres of water annually" from the cover page of the Certificate, and replacing it with "will receive a licence to divert 150,600 cubic metres of water annually".