

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

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Date of Discontinuance of Proceeding – April 10, 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 Gordon and Joan Scarlett, Grant Berg, Ray and Marion Braumberger, and Ernie and Louise Braumberger with respect to *Water Act* Preliminary Certificate No. 00156592-00-00, issued to the Town of Sexsmith by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: *Scarlett et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Town of Sexsmith* (10 April 2003), Appeal Nos. 02-121, 125, 126 and 130-DOP (A.E.A.B.).

**BEFORE:**

William A. Tilleman, Q.C., Chair

**APPEARANCES:**

**Appellants:**

Mr. Gordon and Ms. Joan Scarlett, represented by Mr. Gerry Dobko, Dobko, Hougestol & Golden; Mr. Grant Berg; Mr. Ray and Ms. Marion Braumberger; and Mr. Ernie and Ms. Louise Braumberger.

**Director:**

Mr. Garry Sasseville, Director, Northern Region, Regional Services, Alberta Environment, represented by Ms. Michelle Williamson, Alberta Justice.

**Certificate Holder:**

The Town of Sexsmith, represented by Ms. Carolyn Gaunt, Town of Sexsmith.

## EXECUTIVE SUMMARY

Alberta Environment issued a Preliminary Certificate under the *Water Act* to the Town of Sexsmith. The Town of Sexsmith, subject to meeting certain conditions in the Preliminary Certificate, would be granted a licence authorizing the diversion of 58,200 cubic metres of water annually from the well in LSD 03-13-074-06-W6 near Sexsmith, Alberta.

Fourteen appeals were filed with respect to the Preliminary Certificate and six of the appeals also requested a Stay of the Preliminary Certificate. The Board received submissions on the Stay requests and subsequently advised it would not grant a Stay as the request was premature. The Board advised it would hold an information meeting for the parties.

On February 25, 2003, the Town of Sexsmith officially withdrew their application with respect to the Preliminary Certificate and it was subsequently cancelled by Alberta Environment. The Board sought comments from the Parties asking how this cancellation affected their appeals.

As a result of the cancellation of the Preliminary Certificate, the Board received letters from Mr. Gordon and Ms. Joan Scarlett (02-121), Mr. Grant Berg (02-125), Mr. Ray and Ms. Marion Braumberger (02-126) and Mr. Ernie and Ms. Louise Braumberger (02-130) withdrawing their Notices of Appeal.

The Board therefore closes these files.

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## **I. BACKGROUND**

[1] On October 20, 2002, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”) issued Preliminary Certificate No. 00156592-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, (the “Certificate”) to the Town of Sexsmith (the “Certificate Holder”) stating that they will receive a licence to divert 58,200 cubic metres of water annually from the well in LSD 03-13-074-06-W6, for a term of 5 years with priority no. 2002-05-13-002, upon compliance with certain conditions in the Certificate.

[2] Between December 16, 2002 and December 30, 2002 the Board received fourteen appeals in relation to the Certificate. Four of those appeals were filed by Mr. Gordon and Ms. Joan Scarlett (02-121), Mr. Grant Berg (02-125), Mr. Ray and Ms. Marion Braumberger (02-126) and Mr. Ernie and Ms. Louise Braumberger (02-130) (collectively the “Appellants”). Several requests for a Stay were also received.

[3] The Board wrote to the Appellants, the Certificate Holder and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Certificate Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records relating to these appeals (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 December 24, 2002, the Board wrote to the Appellants asking for written comments on the following questions regarding the Stay requests:

- “1. What are the serious concerns of Ms. Shirley Hogg, Mr. Grant Berg, Mr. Ray and Ms. Marion Braumberger, L. Bozarth, Mr. Gerald and Ms. Judith Bozarth, and Mr. Ernie and Ms. Louise Braumberger [(the persons that filed Stay requests)] that should be heard by the Board?

2. Would Ms. Shirley Hogg, Mr. Grant Berg, Mr. Ray and Ms. Marion Braumberger, L. Bozarth, Mr. Gerald and Ms. Judith Bozarth, and Mr. Ernie and Ms. Louise Braumberger suffer irreparable harm if the Stay is refused?
3. Would Ms. Shirley Hogg, Mr. Grant Berg, Mr. Ray and Ms. Marion Braumberger, L. Bozarth, Mr. Gerald and Ms. Judith Bozarth, and Mr. Ernie and Ms. Louise Braumberger suffer greater harm if the Stay was refused pending a decision of the Board on the appeals than the Town of Sexsmith would suffer from the granting of a Stay?
4. Would the overall public interest warrant a Stay?
5. Are Ms. Shirley Hogg, Mr. Grant Berg, Mr. Ray and Ms. Marion Braumberger, L. Bozarth, Mr. Gerald and Ms. Judith Bozarth, and Mr. Ernie and Ms. Louise Braumberger directly affected by Alberta Environment's decision to issue Preliminary Certificate No. 00156592-00-00 to the Town of Sexsmith? This question is asked because the Board can only grant a Stay where it is requested by someone who is directly affected."

[6] In the same letter, the Board also requested that all Parties, including the Director and the Certificate Holder, provide their comments to the following two questions:

- “ 6. When does the Town intend to commence diverting water?
7. What is it under the Preliminary Certificate that the persons who have filed the Notices of Appeal are requesting the Board to stop?”

The Board noted that if there is no work or diversion of water planned under the Certificate at this time, then there may be nothing to Stay.

[7] Between January 14, 2003 and January 23, 2003, the Board received responses to its December 24, 2002 letter from the Parties and on January 27, 2003, the Board advised the Parties that the Board would review the submissions and advise the Parties in due course of its decision.

[8] On February 5, 2003, the Board wrote to the Parties and advised them that the Board had decided that it would not grant the Stay at this time because the request is premature. The Board's letter stated in part:

“...until the Town of Sexsmith has filed a Certificate of Completion and Alberta Environment has accepted the Certificate of Completion the Town is not permitted to take water. Further, until the Town is allowed to take water it is not possible for the “irreparable harm” to occur. Without an immediate possibility of irreparable harm the request for a Stay is premature.... However, the Board will direct that the Town of Sexsmith and Alberta Environment provide the Board with a copy of the Certificate of Completion when it is filed and confirmation that it has been accepted. Once the Certificate of Completion has been filed and accepted, the Board would then be prepared to consider the application for a Stay upon request by any of the Notice of Appeal filers....”

In the same letter the Board advised that it had decided to hold an information meeting for the Parties where the Director and the Certificate Holder could present information regarding the Certificate.

[9] On February 12, 2003, the Board wrote to the Parties advising that the information meeting was scheduled for March 7, 2003 in Grande Prairie, Alberta.

[10] On February 25, 2003, the Board received a letter from the Certificate Holder advising that they were withdrawing their application for the Certificate. The Board wrote to the Director requesting the Director advise the Board by March 3, 2003 if the Certificate and Licence in this matter had been cancelled. In light of the new information, the Board wrote to the Parties and cancelled the information meeting scheduled for March 7, 2003.

[11] On March 7, 2003, the Board received a copy of a letter from the Director addressed to the Certificate Holder, advising that the Certificate had been cancelled. A copy of this letter was provided to the Parties, and the Board requested of the Parties, comments as to the effect that the cancellation of the Certificate has on the appeals that are before the Board.

[12] On March 19 and 24, 2003, as a result of the cancellation of the Certificate and Licence, the Board received letters from Mr. Gordon and Ms. Joan Scarlett, Mr. Grant Berg, Mr. Ray and Ms. Marion Braumberger, and Mr. Ernie and Ms. Louise Braumberger, withdrawing their appeals.

## II. DECISION

[13] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based on the withdrawal letters received on March 19 and 24, 2003, the Board discontinues its proceedings in Appeal Nos. 02-121, 02-125, 02-126, and 02-130, and will be closing its files.

Dated on April 10, 2003, at Edmonton, Alberta.

“original signed by”  
William A. Tilleman, Q.C.  
Chair