

ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation Meeting – April 30, 2003
Date of Report and Recommendations – May 8, 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 Richard and Connie Blair
and Lazy H Trail Company Ltd. and F.W. (Fritz) Seidel with
respect to *Water Act* Licence No. 00154141-00-00 issued to
Richard and Connie Blair and Lazy H Trail Company Ltd., by the
Director, Southern Region, Regional Services, Alberta
Environment

Cite as: *Blair et al. v. Director, Southern Region, Regional Services, Alberta Environment*
re: *Richard and Connie Blair and Lazy H Trail Company Ltd.* (08 May 2003),
Appeal Nos. 02-143 and 02-151-R (A.E.A.B.).

MEDIATION MEETING BEFORE: Mr. Ron V. Peiluck, Board Member

APPEARANCES:

Appellants: Mr. Richard Blair and Lazy H Trail Company Ltd. represented by Mr. Alan Harvie, Macleod Dixon LLP; and Mr. F. W. (Fritz) Seidel represented by Ms. Judy Stewart, Barrister and Solicitor.

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

Other Participants: Mr. Bryne and Ms. Anne Weerstra, and Ms. Joan Coleman, represented by Ms. Judy Stewart; Mr. Colone and Ms. Cheryle Trudgeon; and Mr. Bob Nowak.

Board Staff: Mr. Gilbert Van Nes, General Counsel and Settlement Officer.

EXECUTIVE SUMMARY

Alberta Environment issued a Licence to Mr. Richard and Ms. Connie Blair and Lazy H Trail Company Ltd., authorizing the diversion of 8,641 cubic metres of water annually for an industrial camp (British Army Training Unit Suffield Water Supply) near Cochrane, Alberta.

The Board received a Notice of Appeal from Mr. and Ms. Blair appealing certain conditions in the Licence. The Board also received a Notice of Appeal from Mr. F.W. (Fritz) Seidel.

The Board contacted Mr. Colone and Ms. Cheryle Trudgeon, Mr. Randall and Ms. Joan Coleman, and Mr. Bryne and Ms. Anne Weerstra, notifying them of the appeals, as they had been named in the Licence as persons to be provided with information regarding monitoring and reporting.

The Board scheduled a mediation meeting involving all parties to be held in Cochrane, Alberta. However, prior to the mediation meeting the Board received a letter from Mr. and Ms. Blair requesting the appeal of Mr. Seidel be dismissed.

The Board held a Preliminary Meeting on April 24, 2003 to deal with the objections of Mr. and Ms. Blair. After hearing the arguments of the parties at the Preliminary Meeting the Board denied Mr. and Ms. Blair's request to dismiss Mr. Seidel's Notice of Appeal.

The Board held the mediation meeting on April 30, 2003, in Cochrane, 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 January 15, 2003, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Licence No. 00154141-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to Mr. Richard and Ms. Connie Blair and Lazy H Trail Company Ltd. (the “Licence Holder”), authorizing the diversion of 8,461 cubic metres of water annually from Production Wells No. CW1-91 and CW2-01, located in the NW 25-026-07-W5M for the purpose of Industrial Camp (British Army Training Unit Suffield Water Supply).

[2] On February 13, 2003, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. Richard and Ms. Connie Blair and Lazy H Trail Company Ltd. (the “Licence Holder”) appealing certain conditions within the Licence.

[3] On February 18, 2003, the Board wrote to the Licence Holder and the Director acknowledging receipt of the Notice of Appeal, notifying the Director of the appeal, requesting the Director provide the Board with a copy of the records relating to the Licence (the “Record”), and requesting that the Licence Holder and the Director provide available dates for a mediation meeting or hearing.

[4] In the Board’s letter of February 18, 2003, the Board also requested that the Licence Holder and the Director advise the Board if in their opinion there were other persons that may have an interest in this appeal. In this regard, on February 20, 2003, the Board wrote to Mr. Colone and Ms. Cheryle Trudgeon, Mr. Randall and Ms. Joan Coleman, and Mr. Bryne and Ms. Anne Weerstra, as they are named in the Licence (the “Interested Persons”), notifying them of the appeal and providing them with a copy of the Notice of Appeal and Licence, and requesting that they advise the Board if they wished to participate in the appeal.

[5] 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.

[6] On February 28, 2003, the Board received the Record from the Director, and on March 5, 2003, forwarded a copy of the Record to the Licence Holder. On March 13, 2003, the Board forwarded a copy of the Record to the Interested Persons.

[7] On March 14, 2003, the Board received a Notice of Appeal from Mr. F.W. (Fritz) Seidel requesting that he be permitted to participate in the appeal. Mr. Seidel advised that he had filed a Statement of Concern with the Director with respect to the Licence, but later withdrew the Statement of Concern.

[8] On March 18, 2003, in consultation with the Licence Holder, the Director and the Interested Persons, the Board scheduled a mediation meeting for April 30, 2003, to be held in Cochrane, Alberta.¹

[9] On March 20, 2003, the Board received a letter from Mr. Martin Buckley, C.A.O., Municipal District of Bighorn No. 8, providing the Board with copies of by-laws and Development Permits with respect to the Licence Holder. The Board wrote to the Municipal District of Bighorn No. 8 on March 24, 2003, requesting clarification of whether the letter was intended as a Notice of Appeal. The Board received a telephone call on April 9, 2003, from the Municipal District of Bighorn No. 8 advising that their letter was not intended as a Notice of Appeal, but was provided as information to the Board only.

[10] On March 24, 2003, the Board acknowledged receipt of the Notice of Appeal from Mr. Seidel, notified the Licence Holder and the Director of the appeal and requested the Director provide any further records in relation to Mr. Seidel's appeal to the Board.² The Board informed Mr. Seidel of the mediation meeting scheduled for April 30, 2003 and provided him with a copy of the Record.

[11] On April 1, 2003, the Board received a letter from the Licence Holder objecting to the appeal of Mr. Seidel. Their letter stated:

“...It is the position of the Blairs/Lazy H that the EAB cannot accept Mr. Seidel's letter as a Notice of Appeal because he did not file a complete statement of concern and instead withdrew an incomplete statement of concern...It is also the position of the Blairs/Lazy H that the EAB cannot accept Mr. Seidel's letter as a

1 On March 16 and 17, 2003, Board staff received an e-mail and telephone calls from the Interested Persons advising that they wished to participate in the appeal.

2 No additional records were received from the Director.

Notice of Appeal because he has not complied with the *Environmental Appeal Board Regulation*...Mr. Seidel's letter of March 14, 2003 to the EAB does not contain any of the required information, except signature and address...It is the position of the Blairs/Lazy H that if the EAB intended to grant Mr. Seidel party status, the EAB has not requested Mr. Seidel provide evidence that he is entitled to party status and Mr. Seidel has not provided that evidence..."

[12] In response to the Licence Holder's April 1, 2003 letter, the Board wrote to the Licence Holder, Mr. Siedel, and the Director (the "Parties") on April 2, 2003, advising that a Preliminary Meeting would be scheduled to address Licence Holder's motion to dismiss Mr. Seidel's Notice of Appeal, and requesting the Parties advise if they were available for the Preliminary Meeting on either April 23 or 24, 2003, in Calgary, Alberta.

[13] In consultation with the Parties the Board scheduled the Preliminary Meeting for April 24, 2003, in Calgary, Alberta.

[14] After hearing the arguments of the Parties at the Preliminary Meeting, the Board issued its Decision letter on April 28, 2003, stating that it would accept Mr. Seidel's Notice of Appeal.

[15] On April 30, 2003, the Board held the mediation meeting as originally scheduled.

II. THE MEDIATION MEETING

[16] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Cochrane, Alberta, on April 30, 2003, with Mr. Ron V. Peiluck as the presiding Board Member (the "Mediator").

[17] In conducting the mediation meeting, the Mediator reviewed the appeal and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants' Agreement to Mediate. All participants signed the Agreement and discussions ensued.

[18] Following productive and detail discussions, a Resolution evolved at the April 30, 2003 mediation meeting and is attached (pages 5-7).

III. RECOMMENDATIONS

[19] 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* Licence No. 00154141-00-00, 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.

[20] 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:

- Mr. Alan Harvie, Macleod Dixon, representing Mr. Richard and Ms. Connie Blair and Lazy H Trail Company Ltd.;
- Mr. Colone and Ms. Cheryle Trudgeon;
- Ms. Judy Stewart representing Mr. F.W. (Fritz) Seidel, Mr. Bryne and Ms. Anne Weerstra, and Mr. Randall and Ms. Joan Coleman; and
- Ms. Charlene Graham, Alberta Justice representing Mr. Brock Rush, Director, Southern Region, Regional Services, Alberta Environment;

Dated on May 8, 2003, at Edmonton, Alberta.

“original signed by”

Mr. Ron V. Peiluck

IV. RESOLUTION

RESOLUTION OF APPEAL NO. 02-143 AND 02-151 REGARDING LICENCE NO. 00154141-00-00 ISSUED UNDER THE *WATER ACT*, R.S.A. 2000, c. W-3, BY THE DIRECTOR, SOUTHERN REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT, TO RICHARD AND CONNIE BLAIR OF LAZY H TRAIL COMPANY LTD., AUTHORIZING THE DIVERSION OF 8,461 CUBIC METRES OF WATER ANNUALLY FROM PRODUCTION WELLS NO. CW1-91 AND CW2-01 LOCATED IN THE NW 25-026-07-W5 FOR THE PURPOSE OF INDUSTRIAL CAMP (BRITISH ARMY TRAINING UNIT SUFFIELD WATER SUPPLY).

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

1. Licence No. 00154141-00-00 (the "Licence") is amended on the cover page by deleting the phrase "...is authorized to divert 8461.0 cubic metres..." and replacing it with "...is authorized to divert 6636.0 cubic metres..."

2. The Licence is amended by deleting clause 5(c) and replacing it as follows:

“(c) (i) submit a proposal to the Director for a four observation well monitoring system (the “observation wells”) located on land owned by the licensee for the Director’s approval,
(ii) once the Director approves the proposal, in writing, install the authorized observation wells, and
(iii) not commence diversion from the diversion site(s) for the purposes of this licence until the observation wells are installed and are operational.”

3. Clause 6 of the Licence is amended by adding immediately after the phrase “Joan and Randall Coleman” the phrase “F.W. (Fritz) Seidel or as modified in writing by the Director.”

4. The Licence is amended by deleting clause 6(c) and replacing it as follows:

“(c) (i) weekly measurement of the water levels from the observation wells identified in clause 5(c) until June 30, 2005, and
(ii) measurement of the water level from the observation wells identified in clause 5(c) at a frequency prescribed by the Director after June 30, 2005.

(c.1) the measurements as required by clause 5(e) of this licence.”

5. The Licence is amended by deleting clause 7(1)(b) and replacing it as follows:

“(b) investigate all written complaints accepted by the Director relating to allegations of surface water or groundwater interference as a result of the diversion site(s) operation.”

6. The Licence is amended by adding clause 5(e) as follows:

“5(e) The licensee shall have the water levels measured in the diversions site(s) and in the observation wells by a licenced water well driller
(i) once during the month of May, and
(ii) once during the month of September of each year.”

7. Mr. Richard Blair and Ms. Connie Blair c/o Lazy H Trail Company Ltd. (Trails End Camp) (the “Licencee”) agrees that it will immediately commence the weekly monitoring of the water levels of the diversion sites(s) as described in clause 6(b) of the Licence.

8. The Licencee shall prepare and submit a Report Supplement to the Director by June 30, 2003 regarding the shallow culvert wells located on the land of Mr. F.W. (Fritz) Seidel, Ms. Cheryle and Colone Trudgeon, Ms. Aileen and Mr. Thomas Pinder, and Dr. Shelagh Lindsey and Dr. Lyle Caldwell to include the following:

- a. a new survey map,
- b. a new table,
- c. a description of the elevation and radius of these shallow culvert wells,
- d. comments on the potential impact of the diversion site(s) on these shallow culvert wells,
- e. a determination of the local groundwater flow direction and gradient, and
- f. a GPS location of the diversion site(s).

A copy of this Report Supplement shall also be provided to Mr. F.W. (Fritz) Seidel, Mr. Bryne and Ms. Anne Weerstra, Mr. Colone and Ms. Cheryle Trudgeon, and Ms. Joan and Mr. Randall Coleman.

9. Mr. F.W. (Fritz) Seidel agrees to provide, at a minimum, monthly water level measurements from his shallow culvert well to the Licencee and the Licencee agrees to include any such water level measurements in the reporting requirement under clause 6 of the Licence.

10. The Licencee agrees to include any additional water level measurements provided by Ms. Cheryle and Colone Trudgeon, Ms. Aileen and Mr. Thomas Pinder, and Dr. Shelagh Lindsey and Dr. Lyle Caldwell in the reporting requirements under clause 6 of the Licence.

11. That in consideration of the foregoing, Richard Blair and Connie Blair and Lazy H Trail Company Ltd., and F.W. (Fritz) Seidel, agree to withdraw their Notices of Appeal.

RESOLUTION AGREED TO ON APRIL 30, 2003 BY:

“original signed by”
Richard Blair of Lazy H Trail Company Ltd.
represented by Alan Harvie
MacLeod Dixon LLP

“original signed by”
Cheryle Trudgeon

“original signed by”
Colone Trudgeon

“original signed by”
Richard Blair for Connie Blair
of Lazy H Trail Company Ltd.
represented by Alan Harvie
MacLeod Dixon LLP

“original signed by”
Bryne Weerstra
Represented by Judy Stewart

“original signed by”
Anne Weerstra
Represented by Judy Stewart

“original signed by”
Brock Rush, Director
Southern Region, Regional Services
Alberta Environment
represented by Charlene Graham
Alberta Justice

“original signed by”
Joan Coleman
Represented by Judy Stewart

“original signed by”
Joan Coleman for Randall Coleman
Represented by Judy Stewart

“original signed by”
F.W. (Fritz) Seidel
Represented by Judy Stewart

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. 02-143 and 02-151**

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. 02-143 and 02-151.

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. 02-143 and 02-151

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the "Director") to issue Licence No. 00154141-00-00 (the "Licence") under the *Water Act*, R.S.A. 2000, c. W-3, to Richard and Connie Blair of Lazy H Trail Company Ltd., I, Dr. Lorne Taylor, Minister of Environment, order:

1. The decision of the Director to issue the Licence is confirmed subject to the following provisions.
2. The Licence is varied by amending the cover page by deleting the phrase "...is authorized to divert 8461.0 cubic metres..." and replacing it with "...is authorized to divert 6636.0 cubic metres...".
3. The Licence is varied by deleting clause 5(c) and replacing it as follows:

“(c)(i) submit a proposal to the Director for a four observation well monitoring system (the “observation wells”) located on land owned by the licensee for the Director’s approval,
(ii) once the Director approves the proposal, in writing, install the authorized observation wells, and
(iii) not commence diversion from the diversion site(s) for the purposes of this licence until the observation wells are installed and are operational.”
4. Clause 6 of the Licence is varied by adding immediately after the phrase “ • Joan and Randall Coleman” the phrase:

“ • F.W. (Fritz) Seidel, or
• as modified in writing by the Director”
5. The Licence is varied by deleting clause 6(c) and replacing it as follows:

“(c)(i) weekly measurement of the water levels from the observation wells identified in clause 5(c) until June 30, 2005, and
(ii) measurement of the water level from the observation wells identified in clause 5(c) at a frequency prescribed by the Director after June 30, 2005.

(c.1) the measurements as required by clause 5(e) of this licence.”

6. The Licence is varied by deleting clause 7(1)(b) and replacing it as follows:

“(b) investigate all written complaints accepted by the Director relating to allegations of surface water or groundwater interference as a result of the diversion site(s) operation.”

7. The Licence is varied by adding clause 5(e) as follows:

“5(e) The licensee shall have the water levels measured in the diversions site(s) and in the observation wells by a licenced water well driller
 - (i) once during the month of May, and
 - (ii) once during the month of September of each year.”

**Ministerial Order
43/2003**

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. 02-143 and 02-151**

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. 02-143 and 02-151.

Dated at the City of Edmonton, in the Province of Alberta this 13 day of May, 2003.

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

Appendix

Order Respecting Environmental Appeal Board Appeal Nos. 02-143 and 02-151

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the "Director") to issue Licence No. 00154141-00-00 (the "Licence") under the *Water Act*, R.S.A. 2000, c. W-3, to Richard and Connie Blair of Lazy H Trail Company Ltd., I, Dr. Lorne Taylor, Minister of Environment, order:

1. The decision of the Director to issue the Licence is confirmed subject to the following provisions.
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(ii) measurement of the water level from the observation wells identified in clause 5(c) at a frequency prescribed by the Director after June 30, 2005.
(c.1) the measurements as required by clause 5(e) of this licence.”

6. The Licence is varied by deleting clause 7(1)(b) and replacing it as follows:

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(i) once during the month of May, and
(ii) once during the month of September of each year.”