

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – October 5, 2005

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 the County of Grande Prairie No. 1, Brock F. Smith, Ernie Bartsch, Allan Greber, David Lowen and Sidney Hogg with respect to *Water Act* Licence No. 00192607-00-00 issued to Slave River Exploration Ltd. (now Midnight Oil and Gas), by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: *County of Grande Prairie No. 1 et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Slave River Exploration Ltd. (now Midnight Oil and Gas)* (05 October 2005), Appeal Nos. 02-152, 03-001-003 and 03-005-006-DOP (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued a Licence under the *Water Act* to Slave River Exploration Ltd. authorizing the diversion of 36,500 cubic metres of water annually from the well in LSD 05-30-073-12-W6M, near Hythe, Alberta, for the purpose of industrial (injection).

The Board received Notices of Appeal from the County of Grande Prairie No. 1, Mr. Brock Smith, Mr. Ernie Bartsch, Mr. Allan Greber, Mr. David Lowen and Mr. Sid Hogg appealing the Licence. The Board also received requests for a Stay from the County of Grande Prairie No. 1 and Mr. Smith.

The Board scheduled a written submission process to deal with preliminary motions received from Alberta Environment. However, prior to making a determination on the preliminary motions the Board held a mediation meeting, on July 28, 2003, in Grande Prairie, Alberta, in order to assist the parties in reaching a resolution of the appeals.

Three of the Appellants reached an agreement with Slave River Exploration Ltd. and Alberta Environment at the mediation meeting. Before finalizing the resolution, the Board had to make a decision with respect to the preliminary motions for the three remaining appeals. The Board began processing the remaining appeals, however, it received a request from the Licence Holder to hold the appeals in abeyance so that they could explore for an alternative source of water.

The Board granted the abeyance and in due course received notice from the Licence Holder that they were relinquishing the Licence. As a result, the Appellants withdrew their appeals.

The Board therefore closes its file in this matter.

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I. BACKGROUND

[1] On February 26, 2003, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Licence No. 00192607-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3 to Slave River Exploration Ltd. (the “Licence Holder”) authorizing the diversion of 36,500 cubic metres of water annually from the well in LSD 05-30-073-12-W6 for the purpose of industrial (injection) near Hythe, Alberta.

[2] The Environmental Appeals Board (the “Board”) received Notices of Appeal from the County of Grande Prairie No. 1 (the “County”) (EAB 02-152), Mr. Brock Smith (EAB 03-001), Mr. Ernie Bartsch (EAB 03-002), Mr. Allan Greber (EAB 03-003), Mr. David Lowen (EAB 03-005), and Mr. Sidney Hogg (EAB 03-006) (collectively the “Appellants”) appealing the Licence. The County and Mr. Smith also requested a Stay of the Licence. On March 26, April 3, 15 and 23, 2003, the Board wrote to the Appellants, the Licence Holder and the Director (collectively the “Parties”) acknowledging receipt of the appeals, and notifying the Licence Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records relating to the Licence (the “Record”) and requested that the Parties provide their available dates for a hearing or a mediation meeting.

[3] 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.

[4] On March 26, 2003, the Board wrote to the Parties requesting the County address the following questions in relation to their request for a Stay:

- “1. What are the serious concerns of the County of Grande Prairie No. 1 that should be heard by the Board?
2. Would the County of Grande Prairie No. 1 suffer irreparable harm if the Stay is refused?
3. Would the County of Grande Prairie No. 1 suffer greater harm if the Stay was refused pending a decision of the Board on the appeals, than Slave River

Exploration Ltd. would suffer from the granting of a Stay?

4. Would the overall public interest warrant a Stay?
5. Is the County of Grande Prairie No. 1 affected by Alberta Environment's decision to issue Licence No. 00192607-00-00 to Slave River Exploration Ltd.? This question is asked because the Board can only grant a Stay where it is requested by someone who is directly affected."

On April 7, 2003, the Board received comments in relation to the Stay request from the County.

[5] On April 8, 2003, the Board received a letter from the Director requesting the Board dismiss the appeals of the County and Mr. Smith because "...neither 'appellant' filed a proper statement of concern..."

[6] On April 9, 2003, the Board received a letter from Mr. Smith requesting a Stay. On that same date, the Board also received a copy of the Record from the Director and forwarded a copy to the Licence Holder and Appellants.

[7] On April 11, 2003, the Board wrote to the County, Mr. Smith, the Director and the Licence Holder providing a schedule for written submissions to deal with Mr. Smith's Stay request and the Director's motion to dismiss the appeals of the County and Mr. Smith.

[8] The Board received letters from the Licence Holder on April 15, 2003, and Mr. Bartsch on April 17, 2003, identifying persons that may have an interest in the appeals (the "Interested Persons"). The Board wrote to the Interested Persons notifying them of the appeals and providing them with a copy of the Licence. The Board received only one response, from Ms. Cathy Bartsch on May 2, 2003, advising that she supported Mr. Ernie Bartsch and the County in their appeals. The Board acknowledged Ms. Bartsch's letter and advised that she would be notified should the appeals proceed to a hearing.

[9] On April 17 and 24, 2003, the Board received letters from the Director requesting the Board dismiss the appeals of Mr. Lowen, Mr. Greber, Mr. Bartsch and Mr. Hogg, and advising that their Notices of Appeal were not valid as they did not file Statements of Concern and their Notices of Appeal were filed late. The Director requested the Board "make a

determination” with respect these appeals “prior to proceeding with respect to the processing of” these appeals. On April 22 and 25, 2003, the Board acknowledged the Director’s letters and scheduled a written submission process to deal with the Director’s request.

[10] Written submissions were subsequently received from the Parties and in the Director’s written submission of May 6, 2003, the Director advised that he was prepared to proceed to a mediation meeting prior to any decision being made by the Board with respect to the preliminary motions.

[11] Upon review of the written submissions and taking into consideration the Director’s willingness to mediate, the Board wrote to the Parties on May 28, 2003, advising that prior to the Board making a determination on the preliminary issues before it, a mediation meeting would be scheduled and requested the Parties provide the Board with their available dates.

[12] On June 9, 2003, in consultation with the Parties, the Board scheduled the mediation meeting for July 28, 2003, in Grande Prairie, Alberta.

II. MEDIATION MEETING

[13] Pursuant to section 11 of the Environmental Appeal Board Regulations, A.R. 114/93, the Board conducted a mediation meeting in Grande Prairie, Alberta, on July 28, 2003, with Dr. Frederick C. Fisher as the presiding Board Member (the “Mediator”).

[14] In conducting the mediation meeting, the Mediator reviewed the appeals and the mediation process and explained the purpose of the mediation meeting.

[15] Following productive and detailed discussions, a resolution was reached at the July 28, 2003 mediation meeting between the Licence Holder, the Director, Mr. Bartsch, Mr. Greber, Mr. Lowen and Mr. Coutts, which resulted in Mr. Bartsch, Mr. Greber and Mr. Lowen agreeing to withdraw their appeals. However, as the appeals of the County, Mr. Hogg and Mr. Smith were not resolved at the July 28, 2003, mediation meeting, the Board proceeded to deal with the outstanding preliminary issues previously raised by the Director. The resolution drawn up at the mediation meeting in relation to appeals of Mr. Bartsch, Mr. Greber and Mr. Lowen

would be considered by the Board once the preliminary issues in relation to the remaining appeals were dealt with.

[16] The Board reviewed the written submissions provided by the Parties in relation to the preliminary issues, and on October 31, 2003 issued its decision by letter to the Parties and proceeded to schedule a Hearing.

[17] While the Board was in the process of scheduling the Hearing, it received a letter from Midnight Oil and Gas Ltd., on November 12, 2003, advising that they had recently acquired all of the interests of Slave River Exploration Ltd. in the Sinclair area including the operation of the Doe Creek Oil Pool, and therefore the licence under appeal. The Licence Holder requested the Board hold the appeals in abeyance until April 15, 2004, to allow them to drill for non-potable water. The Licence Holder advised that the Licence would be cancelled if the non-potable water source met their needs.

[18] On November 13, 2003, the Board wrote to the Parties, granting the Licence Holder's request, as finding an adequate non-potable water source and withdrawing the Licence "would effectively achieve the goal of the appellants as stated in their Notices of Appeal". The Board granted the abeyance provided there were no objections from the other Parties, and provided the potable water source was not withdrawn during the abeyance period. The Licence Holder was requested to provide the Board with a written status report on a monthly basis beginning December 12, 2003. The Board did not receive any objections to the abeyance of the appeals. Status reports were received from the Licence Holder on a regular basis until July 28, 2005.

[19] On July 28, 2005, the Board received a letter from the Licence Holder advising that it was prepared to relinquish the Licence and therefore "it will not be necessary to proceed with this appeal."

[20] On August 2, 2005, the Board wrote to the Appellants requesting they advise if they would be withdrawing their appeals. The Board received a letter from the County on August 25, 2005, withdrawing their appeal. The Board also received confirmation by telephone from Mr. Bartsch on August 31, 2005, Mr. Hogg on August 30, 2005, Mr. Greber on September

8, 2005, Mr. Lowen on September 8, 2005, and Mr. Smith on August 12, 2005, that they were withdrawing their appeals.

III. DECISION

[21] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based on the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 02-152, 03-001, 03-002, 03-003, 03-005 and 03-006 and closes its file.

[22] As the Appellants have withdrawn their appeals, the Board will not be forwarding a Report and Recommendations to the Minister in relation to the July 28, 2003 mediation meeting.

Dated on October 5, 2005, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hrudehy
Chair