

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

Date of Decision – January 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** an appeal filed by Linda Covey, Elin H. Barlem, J. Mark Barlem, Margaret Baycroft, Bill and Linda Biggart, Leo E. Carter, Davina Daly, Judy Hudson, Robert R. Lewis, Ron Macdonald, Laurie Miller, Randy K. Miller, R.C. Sifton, Karen Strong, Larry Strong, Leah Wile, Laurie Zaleschuk, Faye Carter, Ray Cerniuk, Richard Ellingson, G.M. Eirikson, Norman Eirikson, Hendrina Halpin, Ralph Halpin, Kevin Jamieson, Adam Kline, Angus Macleod, Margaret E. Medak, Mike Peckham, Mark Roberts, John Smith, Ed Tchir, Dixie and Kevin Ingram, Robert J. Miller, Larry and Eleanor Brown, Sydney Quartly, William and Doreen Thomsen, Peter and Christa Lamboo, Claudia Descrochers, William Froling, and Len Plummer with respect to Amending Approval No. 00076694-00-01 issued under the *Water Act* to the Town of Innisfail by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Covey et al. v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (05 January 2005), Appeal No. 03-040-058 and 03-060-081-D (A.E.A.B.).

**BEFORE:**

Dr. Steve E. Hrudehy, Panel Chair and Board Member.

**WRITTEN SUBMISSIONS:**

**Appellants:**

Linda Covey, Elin H. Barlem, J. Mark Barlem, Margaret Baycroft, Bill and Linda Biggart, Leo E. Carter, Davina Daly, Judy Hudson, Robert R. Lewis, Ron Macdonald, Laurie Miller, Randy K. Miller, R.C. Sifton, Karen Strong, Larry Strong, Leah Wile, Laurie Zaleschuk, Faye Carter, Ray Cerniuk, John Chase, Richard Ellingson, G.M. Eirikson, Norman Eirikson, Hendrina Halpin, Ralph Halpin, Kevin Jamieson, Adam Kline, Angus Macleod, Margaret E. Medak, Mike Peckham, Mark Roberts, John Smith, Ed Tchir, Dixie and Kevin Ingram, Robert J. Miller, Larry and Eleanor Brown, Sydney Quartly, William and Doreen Thomsen, Peter and Christa Lamboo, Claudia Descrochers, William Froling, and Len Plummer.

**Approval Holder:**

Town of Innisfail, represented by Mr. Dale Mather and Tim Ainscough.

**Director:**

Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

## EXECUTIVE SUMMARY

Alberta Environment issued an approval on March 3, 2000, to the Town of Innisfail authorizing the construction of flood control works at Dodd's Lake at NW 28-35-28-W4M near Innisfail, Alberta. The Approval was amended on April 24, 2003, to include plans regarding Dodd's Lake outlet improvements and a water level management plan.

On July 22 and 23, 2003, the Board received a total of 42 Notices of Appeal appealing the amending approval and requesting a stay. The time period in which an appeal may be filed with the Board with respect to an amending approval under the *Water Act* is 7 days, unless the Board finds there is sufficient reason for extending this filing period. The Board requested the Appellants provide reasons as to why the Board should extend the time limit for filing the appeals.

After reviewing the reasons provided, the Board found the Appellants did not present sufficient reasons to demonstrate that special circumstances existed to warrant an extension of the time limit. Therefore, the Board dismissed the appeals for being filed outside the time limit and, therefore, did not consider the Stay applications.

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## I. BACKGROUND

[1] On March 3, 2000, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 00076694-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Town of Innisfail (the “Approval Holder”), for the purpose of constructing flood control works at NW 28-35-28-W4M at Dodd’s Lake near Innisfail, Alberta. On April 24, 2003, the Director amended the Approval with Approval No. 00076694-00-01 (the “Amending Approval”) by including two plans pertaining to the control structure constructed at the outlet of Dodd’s Lake.

[2] On July 22 and 23, 2003, the Environmental Appeals Board (the “Board”) received Notices of Appeals from Ms. Linda Covey (03-040), Mr. Elin H. Barlem (03-041), Mr. J. Mark Barlem (03-042), Ms. Margaret Baycroft (03-043), Mr. Bill and Ms. Linda Biggart (03-044), Mr. Leo E. Carter (03-045), Ms. Davina Daly (03-046), Ms. Judy Hudson (03-047), Mr. Robert R. Lewis (03-048), Mr. Ron Macdonald (03-049), Ms. Laurie Miller (03-050), Mr. Randy K. Miller (03-051), R.C. Sifton (03-052), Ms. Karen Strong (03-053), Mr. Larry Strong (03-054), Ms. Leah Wile (03-055), Ms. Laurie Zaleschuk (03-056), Ms. Faye Carter (03-057), Mr. Ray Cerniuk (03-058), Mr. John Chase (03-059),<sup>1</sup> Mr. Richard Ellingson (03-060), G.M. Eirikson (03-061), Mr. Norman Eirikson (03-062), Ms. Hendrina Halpin (03-063), Mr. Ralph Halpin (03-064), Mr. Kevin Jamieson (03-065), Mr. Adam Kline (03-066), Mr. Angus Macleod (03-067), Ms. Margaret E. Medak (03-068), Mr. Mike Peckham (03-069), Mr. Mark Roberts (03-070), Mr. John Smith (03-071), Mr. Ed Tchir (03-072), Ms. Dixie and Mr. Kevin Ingram (03-073), Mr. Robert J. Miller (03-074), Mr. Larry and Ms. Eleanor Brown (03-075), Mr. Sydney Quartly (03-076), Mr. William and Ms. Doreen Thomsen (03-077), Mr. Peter and Ms. Christa Lamboo (03-078), Ms. Claudia Descrochers (03-079), Mr. William Froling (03-080), and Mr. Len Plummer (03-081) (collectively the “Appellants”) appealing the Amending Approval. The Appellants also requested a Stay.

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<sup>1</sup> Mr. John Chase withdrew his appeal, and the Board issued a Discontinuance of Proceedings on September 16, 2003. See: *Chase v. Director, Central Region, Regional Services, Alberta Environment*, re: *Town of Innisfail* (16 September 2003), Appeal No. 03-059-D (A.E.A.B.).

[3] On July 25, 2003, the Board wrote to the Appellants, the Approval Holder, and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal. The Board requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals.

[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] In the Board’s letter of August 14, 2003, the Board advised the Appellants it appeared the Notices of Appeal had been filed significantly outside the time limit prescribed in the *Water Act*. The Board’s letter stated:

“The normal time limit prescribed in the *Water Act* for filing such an appeal of an Approval is 7 days. As the Amending Approval was issued on April 24, 2003, the Notices of Appeal filed by the Appellants appears to be significantly outside the time limit prescribed in the *Water Act*. Each Appellant, or their designated representative, is requested to advise the Board if they wish to request an extension of time to appeal? [*sic*] Please indicate to the Board the reasons for the extension of time to appeal and provide an explanation as to why the appeal was filed outside of the 7-day time limit. The granting of the extension of time is at the discretion of the Board and is not routinely granted. You are requested to provide this information in writing to the Environmental Appeal Board by August 26, 2003.” (Emphasis deleted.)

[6] In the same letter, the Board asked the Appellants to answer the following questions:

- “1. What are the serious concerns of each of the Appellants that should be heard by the Board?
2. Would each of the Appellants suffer irreparable harm if the Stay is refused?
3. Would each of the Appellants suffer greater harm if the Stay was refused pending a decision of the Board than the Town of Innisfail would suffer from the granting of a Stay?
4. Would the overall public interest warrant a Stay?
5. Are each of the Appellants directly affected by Alberta Environment’s decision to issue the Amending Approval to the Town of Innisfail? This question is asked because the Board can only grant a Stay where it is requested by someone who is directly affected.”

[7] The Appellants submitted their responses to the Board between August 22 and August 28, 2003.

[8] After reviewing the reasons provided by the Appellants, the Board notified the Parties on September 18, 2003, that it was not prepared to grant an extension of time to appeal and dismissed the appeals for filing the Notices of Appeal late. The Board, therefore, did not consider the Stay applications.

[9] The following are the Board's reasons.

## **II. SUBMISSIONS**

### **A. Late Filed Appeal**

[10] The Appellants did not, generally, provide any significant detail as to why the time frame should be extended. The Appellants explained they were unaware the Dodd's Lake Water Level Management Plan existed, and they believed they were involved in the process of determining a water level that was "...more accommodating to local residents."<sup>2</sup> They argued they were never meant to see the notice of the Amending Approval.

[11] The Appellants stated the notice was posted in the Town office, which they rarely frequent, and the 7-day appeal period "...does not give people much time to correspond, especially when the information is kept semi-hidden."<sup>3</sup>

[12] The Appellants stated they realize posting the notice of the Amending Approval in local offices is legal, but "...given the ongoing concerns and recent questioning about the Lake level, we feel this was insufficient notice."<sup>4</sup>

[13] The Appellants explained the only public notice they received regarding the original structure was a small notice in the local paper. According to the Appellants, they attended a meeting with the Approval Holder to discuss the proposal and were told the Approval had been granted. The Appellants stated they were led to believe there was nothing else they

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<sup>2</sup> See: Appellants' submission, received August 26, 2003.

<sup>3</sup> Mr. Kevin Ingram's submission, dated August 22, 2003.

<sup>4</sup> Appellants' submission, received August 26, 2003.

could do, and no one mentioned their right to appeal the decision. The Appellants stated the Approval Holder assured them that it did not intend to drain 24 inches of water from Dodd's Lake, but that is what occurred.

**B. Stay Application**

[14] Similar responses regarding the Stay application were raised in the Appellants' submissions. The Appellants stated the Approval Holder had constructed the control structure 10 months prior to it receiving approval from Fisheries and Oceans.

[15] The Appellants expressed concerns regarding previous actions taken by the Approval Holder in lowering the lake levels. They stated that even though the Town claimed the levels had to be lowered to prevent flooding, they were not aware of any flooding in the area during the past 80 years.<sup>5</sup> The Appellants submitted the Approval Holder received the Approval on the premise that it was for flood control, but the Approval Holder used the structure to "...change the status of the lake to storm water management pond, so that the developers can develop right to the waters edge, with impunity."<sup>6</sup> The Appellants argued the Approval Holder based its reasons to construct the control outlet on inconsistent research and totally disregarded the history of Dodd's Lake.<sup>7</sup>

[16] The Appellants stated the control weir leaks and water has seeped out from the deemed appropriate level, which is one foot lower from where the healthy level used to be. The Appellants claimed that, as a result, the lake has deteriorated since the control structure was installed. They stated the low lake level is causing deterioration of the water, severely limiting it as a public resource, and is harming the environment. According to the Appellants, the beach area is virtually unusable due to the thick weeds and blue green algae covering the area. Some of the Appellants stated the low levels affect their enjoyment of their property and their property values.<sup>8</sup>

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<sup>5</sup> See: Mr. Syd and Ms. Myrtle Quartly's submission, dated September 16, 2003.

<sup>6</sup> Mr. David Ingram's submission, dated August 22, 2003.

<sup>7</sup> See: Ms. Elin Barlem's submission, dated August 20, 2003.

<sup>8</sup> See: William and Doreen Thomsen's submission, dated September 17, 2003.



[17] In describing the irreparable harm that would occur if a Stay was not granted, the Appellants referred to the debris and algae growth in the Lake, making the beach unusable, and that canoes can no longer be launched from certain areas of the Lake. They submitted that steps are needed "...to manage and conserve our water, to provide a healthy ecosystem for Dodd's Lake...."<sup>9</sup> The Appellants submitted an independent environmental impact study was needed to determine the natural lake levels.<sup>10</sup>

[18] The Appellants argued the Approval Holder would not suffer any great harm except a revenue loss as it would be unable to develop land right to the edge of the Lake, but the Appellants would lose their surroundings, specifically the natural beauty of the Lake.

[19] The Appellants argued there is a public interest and the Approval Holder has not been upfront regarding the implications of the control structure. They also expressed concerns that the Approval Holder will continue to destroy the Lake by altering the lake level. They submitted the lake is a public resource and has a great historic value.

[20] The Appellants stated the water level has been a "...source of much dispute and distress..." for the residents around Dodd's Lake since the control structure was constructed. The Appellants argued the water level specified cannot be maintained during drought years, and therefore, the plan needs to be more flexible. The Appellants stated they were unaware the operating level in the original Approval was to be a permanent feature. The Appellants understood the water levels were still being monitored when the Amending Approval was issued.<sup>11</sup>

[21] The Appellants stated they would like the chance to resolve their water issue problems with their Town Council and have taken steps to do so. The Appellants stated that at the Town Council meeting held on August 25, 2003, the Town Council "...agreed to observe and monitor the level over the next year, to establish statistics to indicate the appropriate operating level for Dodd's Lake."<sup>12</sup>

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<sup>9</sup> Appellants' submission, received August 23, 2003.

<sup>10</sup> Ms. Elin Barlem's submission, dated August 20, 2003.

<sup>11</sup> See: Appellants' submission, received August 23, 2003

<sup>12</sup> Appellants' submission, received August 26, 2003

### **III. EXTENSION OF APPEAL PERIOD**

#### **A. Statutory Background**

[22] Section 116(1) of the *Water Act* provides:

“A Notice of Appeal must be submitted to the Environmental Appeals Board

- (a) not later than 7 days after
  - (i) receipt of a copy of a water management order or enforcement order, or
  - (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from, or
- (b) in any other case, not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.”

Therefore, in the case of an amending approval issued under the *Water Act*, the normal time limit for filing a Notice of Appeal is 7 days.

[23] The Board has the authority to extend the filing time if there are sufficient grounds to do so. Section 116(2) of the *Water Act* states:

“The Environmental Appeals Board may, on application made before or after the expiry of the period referred to in subsection (1), extend that period, if the Board is of the opinion that there are sufficient grounds to do so.”

#### **B. Application**

[24] Before the Board can determine if a Stay should be granted, it must have a valid appeal before it. Therefore, the Appellants must provide sufficient reasons to convince the Board an extension of time to file the Notices of Appeal should be granted before the Board can proceed with the Stay applications.

[25] After reviewing the Appellants’ submission, the Board has determined the appeal must be dismissed based on two grounds – the need for certainty in the appeal process and for failing to meet the onus in applying for an extension.

[26] The legislation has provided the Board with some flexibility to allow for late filed appeals in certain circumstances, but the Board uses this authority in only limited situations.<sup>13</sup> The onus is on the Appellants to demonstrate to the Board that the time limit should be extended to allow the appeal.

[27] In this case, the appeal period ended on May 1, 2003, but the Appellants did not file their Notices of Appeal until 82 and 83 days later.

1. Certainty

[28] One of the purposes of having deadlines incorporated into legislation is to bring some element of certainty to the regulatory process. In this case, the *Water Act* requires an applicant for an amendment to an approval to go through an application process. This process provides for a public notice process, which allows anyone who may be directly affected by the proposed amendment to submit their concerns to the Director (statements of concern). Once a decision is made to issue, or for that matter not to issue, the amending approval, then there is an appeal period in which the applicant or anyone who is directly affected (and who filed a statement of concern) can file an appeal. The time limit in which an appeal must be filed is legislated so that all parties – the applicant, the people who are directly affected, and the regulator – know when the process is complete. The time lines included in the legislation, and the certainty that they create, balance the interests of all the parties.

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<sup>13</sup> See: *Town of Valleyview v. Director, Northern Region, Regional Services, Alberta Environment* (1 August 2003), Appeal No. 03-009-D (A.E.A.B.); Preliminary Motions: *Hanson et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (29 November 2002), Appeal Nos. 01-123-131, 02-001, 02-050-058-D (A.E.A.B.); *Dyck v. Director, Southern Region, Regional Services, Alberta Environment re: Coyote Cove Golf Course Inc.* (14 February 2003), Appeal No. 02-137-D (A.E.A.B.); *Shennan et al. v. Director, Central Region, Regional Services, Alberta Environment re: Parkbridge Communities Inc.* (13 February 2003), Appeal Nos. 02-066 and 068-D (A.E.A.B.); *Seabolt Watershed Association v. Director, Central Region, Regional Services, Alberta Environment re: Mountain Creeks Ranch Inc.* (14 February 2003), Appeal No. 02-085-D (A.E.A.B.); *Seniuk v. Director, Enforcement and Monitoring, Parkland Region, Regional Services, Alberta Environment* (4 June 2002), Appeal No. 01-112-D (A.E.A.B.); *Warner et al. v. Director, Central Region, Regional Services, Alberta Environment re: AAA Cattle Company Ltd.* (15 June 2002), Appeal Nos. 01-113 and 01-115-D (A.E.A.B.); *Municipal District of Rocky View No. 44 v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (25 June 2002), Appeal No. 02-006-D (A.E.A.B.); and *Proft v. Director, Licensing and Permitting Standards Branch, Environmental Assurance, Environmental Operations Division, Alberta Environment re: Her Majesty the Queen in Right of Alberta* (1 October 2001), Appeal No. 01-037-D (A.E.A.B.).

[29] Once this process is complete, the amending approval can be acted upon and all of the parties can move forward on that basis - the parties can carry on with their business affairs, making decisions based on the known terms and conditions of the approval. If there were no time limits placed on the appeal period, the applicant for an approval, or an amendment to the approval, would never know when it could proceed with its project, as there would always be the possibility of an appeal that could result in changes to the approval or the amendments.

[30] The *Water Act* recognizes the importance of conserving and managing water.<sup>14</sup> Uncertainty would create unfavourable conditions for taking the necessary steps to manage water. Approval holders need to know that decisions that are made that affect the way they are required to operate will not be susceptible to continuous change.

[31] Therefore, taking into consideration the importance of certainty in any decision made by the Director and the potential impact uncertainty would bring, the Appellants have not presented sufficient reasons to justify allowing the appeals to proceed at this late date, and therefore the appeals must be dismissed.

## 2. Extension of Time

[32] The second consideration the Board examined was whether the Appellants had provided sufficient reasons to grant an extension of time to file their appeals. To allow an

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<sup>14</sup> Section 2 of the *Water Act* provides:

“The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:

- (a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;
- (b) the need for Alberta’s economic growth and prosperity;
- (c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;
- (d) the shared responsibility of all Alberta citizens for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;
- (e) the importance of working co-operatively with the governments of other jurisdictions with respect to transboundary water management;
- (f) the important role of comprehensive and responsive action in administering this Act.”

extension of time, the Appellants must be able to show that extenuating or special circumstances existed that prevented them from filing within the legislated timeframe.

[33] The Appellants were asked to provide reasons why an extension of time should be allowed for them to file Notices of Appeal. The principal basis for the Appellants' request for an extension of time was that they did not receive adequate notice of the application. It is the Board's understanding the notice of application was posted in the offices of the Town of Innisfail. The Appellants argued the Town office was a place not frequented by them. The Appellants also expressed concern regarding the 7-day appeal period, particularly when the information is kept "semi-hidden."

[34] The Appellants have admitted the notice was posted as required under the legislation. Although the Director was aware of previous concerns expressed by citizens in the area, he instructed the Approval Holder that posting in the Town office was sufficient notice. Under the legislation, the Director can determine the best method of providing notice of a decision. Section 2(1) of the *Environmental Protection and Enhancement (Miscellaneous) Regulation*, Alta. Reg. 118/93, stipulates:

"Where, in the Director's opinion, an application under the *Approvals Procedure Regulation* [Alta. Reg. 113/93] is complete and the Director does not waive the notice requirement under section 69(3) of the Act, the Director shall, or shall require the applicant to, do one or both of the following:

- (a) publish notice of the application in one or more issues of a newspaper that has daily or weekly circulation in the area in which the activity that is the subject of the application is or will be carried on;
- (b) provide notice of the application to the persons and in the manner determined by the Director."

[35] The Director required the Approval Holder to post the Amending Approval in "...an area accessible to the public."<sup>15</sup> Although the Act and Regulations accept this practice as sufficient public notification, the Director must have been aware of the previous concerns expressed by residents in the area regarding the outlet weir and the recommended water levels. If not known to the Director as a fact, he should have been aware of the potential public concern regarding the project. He should consider the individuals who may be potentially affected by his

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<sup>15</sup> Director's Record at Tab 1.

decision and determine if this is the most appropriate manner in which to give notice. In this situation there were a number of individuals along or near Dodd's Lake who may be affected by the decision, and surely the Director must have realized these individuals would have a vested interest in what happens to Dodd's Lake. It is important that the approval process be open and providing notice is one step of ensuring that openness and the participation of those most likely to be affected in the process.

[36] Many individuals do not attend to the Town office on a regular basis; often it is just once a year to pay property taxes. When the appeal period is as short as 7 days, perhaps the Director should ensure a more obvious form of public notification is required by the applicant.

[37] Although the Director may have considered alternate methods of notifying the public of the application, the Appellants and any others who may be directly affected by the Director's decision, also have an obligation to become aware of impending projects and decisions. The Board has stated in previous decisions that it would be too onerous of a task to have each person be notified individually, but notice in a newspaper is adequate. If an individual is concerned, they have an obligation to check for such notices, including offices of the applicant if it is a public building such as in this case.

[38] Even though the Board would strongly prefer for the Director to chose another form of notice, the Director did comply with the *Water Act* and the regulations. Based on the above observations, the Appellants have not provided the Board with the evidence of the special circumstances required to grant an extension of time to file an appeal, and the appeal must therefore be dismissed. In this case, and given the method of notice chosen by the Director, the Board may have considered the circumstances warranted an extension of time had the Notices of Appeal been filed in May or early June. However, three months after the appeal period ended would result in too much uncertainty into the appeal process. The Town's rights have crystallized and the Director's decision as to notice should not be the Approval Holder's fault.

[39] The Appellants filed their Notices of Appeal 82 and 83 days after the legislated appeal period ended, and they have failed to provide sufficient reasons to grant an extension. Therefore, the Board dismisses these appeals.

#### **IV. OTHER MATTERS**

[40] The Board notes that many of the issues presented by the Appellants are in relation to the actions taken by the Town of Innisfail council. The Board does not have jurisdiction to consider these matters, but other options are available to the residents of Innisfail. The Board notes that a group of citizens have appeared before the Town council to express their concerns about the lake level. This is an important first step, and residents can speak again at the next municipal elections. Although this latter step will not provide the Appellants with immediate action, it is something the present councilors should keep in mind when dealing with their constituents.

[41] The Appellants stated their willingness to be part of a planning committee for Dodd's Lake, and have, in fact, participated in such a committee. This supports the principles of the *Water Act*, in particular the obligations of individual Albertans to take a role in the wise use and management of water resources. The committee exists and the residents and representatives from the Town of Innisfail should make every effort to continue with the committee and make the work done by them meaningful. This can only benefit the residents, the community, and the environment.

#### **V. STAY APPLICATIONS**

[42] Filing an appeal with the Board does not automatically stay the decision being appealed. Sections 97(1) and (2) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA") provide:

- “(1) Subject to subsection (2), submitting a notice of appeal does not operate to stay the decision objected to.
- (2) The Board may, on the application of a party to a proceeding before the Board, stay a decision in respect of which a notice of appeal has been submitted.”

[43] Before the Board can determine whether a Stay should be granted, it must determine who the parties are in the appeal as only a party can make an application for a Stay. As discussed above, the Board has concluded the Appellants have not filed valid appeals, and

therefore are not entitled to a Stay. As a result, the Board is not in a position to consider the Stay applications.

## **VI. CONCLUSION**

[44] The Board finds the statutory prerequisites for filing a Notice of Appeal have not been met, as the appeals were filed out of time and no special circumstances exist to extend the appeal deadline. The Board is of the opinion that certainty requires the appeal timelines be adhered to, unless special circumstances exist to warrant an extension. Therefore, pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, the Board dismisses the appeals.

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

*“original signed by”*

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Dr. Steve E. Hrudehy  
Panel Chair and Board Member