
ALBERTA
ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Mediation Meeting – March 15, 2004
Date of Report and Recommendations – March 16, 2004

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 Myles and Lynda McLellan with respect to *Water Act* Licence No. 00193172-00-00 issued to Mark and Susan Weiss by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *McLellan v. Director, Central Region, Regional Services, Alberta Environment*
re: *Weiss* (16 March 2004), Appeal No. 03-153-R (A.E.A.B.).

MEDIATION BEFORE:

Mr. Al Schulz, Board Member.

APPEARANCES:

Appellants: Mr. Myles McLellan and Ms. Lynda McLellan.

Director: Mr. Tom Slater, Director, Central Region, Regional Services, Alberta Environment, Mr. Guy Hancock, Alberta Environment, and Mr. Steve Wallace, Alberta Environment, represented by Ms. Erika Gerlock, Alberta Justice.

Licence Holder: Mr. Mark Weiss, Ms. Susan Weiss, and Mr. Robert Hoyteniuk.

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

EXECUTIVE SUMMARY

Alberta Environment issued Licence No. 00193172-00-00 to Mr. Mark and Ms. Susan Weiss to divert 613 cubic metres of water annually from the well in NW 31-053-14-W4 for agricultural purposes (stock watering) near Warwick, Alberta, subject to certain conditions. Mr. and Ms. Weiss also made Application to Alberta Environment for a Licence to divert approximately 3652 cubic metres of water annually from wells in NW 31-053-14-W4, near Warwick, Alberta.

The Board received a Notice of Appeal from Mr. Myles and Ms. Lynda McLellan appealing Licence No. 00193172-00-00, and a Statement of Concern with respect to Licence Application No. 001-00193863.

The Board held a mediation meeting in Vegreville, Alberta on March 15, 2004, following which an agreement was reached by the parties. The Board recommends that the Minister of Environment accept the agreement.

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I. BACKGROUND

[1] On December 15, 2003, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued *Water Act* Licence No. 00193172-00-00 (the “Licence”) to Mr. Mark and Ms. Susan Weiss (the “Licence Holder”) authorizing the diversion of 613 cubic metres of water annually from the well in NW 31-053-14-W4 for agricultural purposes (stock watering) near Warwick, Alberta. Mr. and Ms. Weiss also made Application to Alberta Environment for a licence to divert approximately 3,652 cubic metres of water annually from wells in NW 31-053-14-W4, near Warwick, Alberta (the “Licence Application”).

[2] On January 5, 2004 the Environmental Appeals Board (the “Board”) received a Notice of Appeal dated January 1, 2004, from Mr. Myles and Ms. Lynda McLellan, (the “Appellants”), appealing the Licence.

[3] The Appellants’ Notice of Appeal also consisted of a Statement of Concern in relation to the Licence Application. The Appellants, in a telephone conversation with Board staff on January 5, 2004, advised that they had forwarded their Statement of Concern directly to Alberta Environment.

[4] On January 9, 2004, the Board wrote to the Appellants, the Licence Holder and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Licence Holder and the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating the Licence, and that the Parties provide available dates for a mediation meeting or hearing. In its letter of January 9, 2004, the Board also confirmed its understanding that the Appellants had forwarded their Statement of Concern in relation to the Licence Application directly to Alberta Environment.

[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 January 23, 2004, the Board received a copy of the Record from the Director, and on January 27, 2004, forwarded a copy to the Appellants and the Licence Holder.

[7] On February 2, 2004, in consultation with the parties, the Board scheduled a mediation meeting for March 15, 2004 to be held in Vegreville, Alberta.

II. THE MEDIATION MEETING

[8] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Vegreville, Alberta on March 15, 2004 with Mr. Al Schulz as the presiding Board Member (the “Mediator”).

[9] In conducting the mediation meeting, the Mediator reviewed the appeal and the 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.

[10] Following productive and detailed discussions, a Resolution evolved at the March 15, 2004 mediation meeting and is attached as page 3.

III. RECOMMENDATIONS

[11] 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 order that the *Water Act* Licence No. 00193172-00-00 be reversed. Attached for the Minister’s consideration is a draft Ministerial Order implementing the recommendation.

[12] 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. Myles and Ms. Lynda McLellan;
- Mr. Mark and Ms. Susan Weiss; and
- Ms. Erika Gerlock, Alberta Justice, representing Mr. Tom Slater, Director, Central Region, Regional Services, Alberta Environment.

Dated on March 16, 2004, at Edmonton, Alberta.

“original signed by”

Mr. Al Schulz
Board Member

IV. RESOLUTION

RESOLUTION OF APPEAL NO. 03-153 REGARDING LICENCE NO. 00193172-00-00 ISSUED UNDER THE *WATER ACT* BY THE DIRECTOR, CENTRAL REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT, TO MARK AND SUSAN WEISS, AUTHORIZING THE DIVERSION OF 613 CUBIC METRES OF WATER ANNUALLY FROM THE WELL IN NW 31-053-14-W4 FOR THE PURPOSE OF AGRICULTURE (STOCK WATERING) NEAR WARWICK, ALBERTA.

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

1. THAT the decision to issue Licence No. 00193172-00-00 (for 613 cubic metres from Well #2 in NW 31-053-14-W4) is reversed and Licence No. 00193172-00-00 is cancelled.
2. THAT Application 001-00193863 (for approximately 3652 cubic metres from Wells # 3 and #6 in NW 31-053-14-W4) received by Alberta Environment on October 10, 2001 is withdrawn.
3. THAT in consideration of the foregoing, the Appellants, Myles and Lynda McLellan, agree to withdraw their Notice of Appeal.

RESOLUTION AGREED TO BY:

"original signed by" _____ Date: March 15, 2004
Myles McLellan

"original signed by" _____ Date: March 15, 2004
Lynda McLellan

"original signed by" _____ Date: March 15, 2004
Mark Weiss

"original signed by" _____ Date: March 15, 2004
Susan Weiss

"original signed by" _____ Date: March 15, 2004
Tom Slater
Director, Central Region,
Regional Services, Alberta Environment
Represented by Erika Gerlock, Alberta Justice

V. DRAFT ORDER

**Ministerial Order
/2004**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

**Order Respecting Environmental Appeals Board
Appeal No. 03-153**

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 Appeals Board Appeal No. 03-153.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2004.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeals Board Appeal No. 03-153

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”) to issue Licence No. 00193172-00-00 (the “Licence”), under the *Water Act*, R.S.A. 2000, c. W-3, to Mark and Susan Weiss, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Licence is reversed and that the Licence is cancelled.

**Ministerial Order
03/2004**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

**Order Respecting Environmental Appeals Board
Appeal No. 03-153**

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 Appeals Board Appeal No. 03-153.

Dated at the City of Edmonton, in the Province of Alberta this 19 day of March, 2004.

“original signed by”

Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeals Board Appeal No. 03-153

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”) to issue Licence No. 00193172-00-00 (the “Licence”), under the *Water Act*, R.S.A. 2000, c. W-3, to Mark and Susan Weiss, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Licence is reversed and that the Licence is cancelled.