
ALBERTA
ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Mediation Meeting – July 21, 2004
Date of Report and Recommendations – July 27, 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 Wayne and Wendy von Hollen with respect to *Water Act* Licence No. 00204431-00-00 issued to Albert and Sjoukje van der Meer by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *von Hollen v. Director, Central Region, Regional Services, Alberta Environment*
re: *van der Meer* (27 July 2004), Appeal No. 03-157-R (A.E.A.B.).

MEDIATION MEETING BEFORE:

Dr. Steve E. Hrudehy, Board Member.

APPEARANCES:

Appellant: Mr. Wayne and Ms. Wendy von Hollen.

Director: Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment, represented by Mr. Darin Stepaniuk, Alberta Justice.

Approval Holder: Mr. Albert and Ms. Sjoukje van der Meer.

Board Staff: Ms. Marian Fluker, Senior Research Officer, Environmental Appeals Board.

EXECUTIVE SUMMARY

Alberta Environment issued a *Water Act* Licence to Mr. Albert and Ms. Sjoukje van der Meer authorizing the diversion of 8,252 cubic metres of water annually from a well for agricultural purposes (confined feeding operation) near Rocky Mountain House, Alberta.

The Environmental Appeals Board received a Notice of Appeal from Mr. Wayne and Ms. Wendy von Hollen appealing the Licence.

The Board held a mediation meeting in Rocky Mountain House, Alberta, on July 21, 2004, 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 30, 2004, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Licence No. 00204431-00-00 under the *Water Act*, R.S.A. 2000, c. W-3 to Mr. Albert and Ms. Sjoukje van der Meer (the “Licence Holder”) for the diversion of 8,252 cubic metres of water annually from the well in NW 26-040-07-W5 for agricultural purposes (confined feeding operation) near Rocky Mountain House, Alberta.

[2] On February 27, 2004, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Wayne and Ms. Wendy von Hollen (the “Appellants”) appealing the Licence.

[3] On March 1, 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 to this appeal, and 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. The Alberta Energy and Utilities Board responded in the negative.

[5] On March 10, 2004 the Board acknowledged a telephone call from the Appellant, notifying the Board that her husband is working out of town and therefore unable to provide available dates for a mediation meeting or hearing until March 29, 2004. The Board therefore extended its deadline for all Parties until March 29, 2004.

[6] On March 16, 2004 the Board acknowledged a letter from the Director advising that the Record would be delayed due to his involvement in another hearing and was of the view that this appeal would benefit from a mediation meeting.

[7] On March 19, 2004 the Board received a copy of the Record from Alberta Environment and on March 23, 2004, forwarded a copy to the Appellants and Licence Holder.

[8] On March 25, 2004, the Board acknowledged a letter dated March 22, 2004 from the Natural Resources and Conservation Board which stated:

“...the parties who have submitted the referenced appeal materials ... did not have an opportunity to provide input during the registration process and no Board review was conducted with respect to the van de[sic] Meer’s registration...”

and wrote to the Parties:

“Upon review of the March 22, 2004 letter from the NRCB, it does not appear to the Board, that section 95(5)(b)(i) of the *Environmental Protection and Enhancement Act* applies in this case. However, the Board would like to receive comments from the parties in relation to this question by April 8, 2004.”

[9] On May 21, 2004, the Board wrote to the Parties to advise that it had not received a response to its March 25, 2004 letter, regarding the Natural Resources and Conservation Board from the Licence Holder and that upon review of the file, the Board concluded that section 95(5)(b)(i) of the *Environmental Protection and Enhancement Act* did not apply and asked the parties to provide available dates for a mediation meeting.

[10] On June 15, 2004, in consultation with the parties, the Board scheduled a mediation meeting for July 21, 2004 to be held in Rocky Mountain House, Alberta.

II. THE MEDIATION MEETING

[11] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Rocky Mountain House, Alberta on July 21, 2004 with Dr. Steve Hruddy as the presiding Board Member (the “Mediator”).

[12] 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.

[13] Following productive and detailed discussions, a Resolution evolved which all Parties signed. This document is attached as page 4 and 5.

III. RECOMMENDATIONS

[14] 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. 00204431-00-00 be varied. Attached for the Minister’s consideration is a draft Ministerial Order implementing the recommendation.

[15] 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. Wayne and Ms. Wendy von Hollen;
- Mr. Albert and Ms. Sjoukje van der Meer; and
- Mr. Darin Stepaniuk, Alberta Justice, representing Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment.

Dated on July 27, 2004, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hruddy
Board Member

IV. RESOLUTION

RESOLUTION OF APPEAL NO. 03-157 REGARDING LICENCE NO. 00204431-00-00 ISSUED UNDER THE *WATER ACT* BY THE DIRECTOR, CENTRAL REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT, TO ALBERT AND SJOUKJE VAN DER MEER, AUTHORIZING THE DIVERSION OF 8,252 CUBIC METRES OF WATER ANNUALLY FROM THE WELL IN NW 26-040-07-W5M NEAR ROCKY MOUNTAIN HOUSE, ALBERTA.

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

1. THAT the Director will ensure the Appellants, Mr. Wayne and Ms. Wendy von Hollen, receive a copy of directions on how to construct a water well monitoring system.
2. THAT the Licence Holder, Mr. Albert and Ms. Sjoukje van der Meer, will notify Mr. Wayne and Ms. Wendy von Hollen as soon as possible if any manure leakage occurs from Mr. Albert and Ms. Sjoukje van der Meer's operations, including but not limited to the barns, storage lagoon, and associated pipelines.
3. THAT Mr. Albert and Ms. Sjoukje van der Meer agree to comply with all of the conditions included in *Water Act* Licence No. 00204431-00-00 (the "Licence").
4. THAT Mr. Albert and Ms. Sjoukje van der Meer will allow Mr. Wayne and Ms. Wendy von Hollen to visit the Licence Holder's operations at a mutually convenient time.
5. THAT Mr. Albert and Ms. Sjoukje van der Meer agree to comply with all of the conditions included in the Natural Resources Conservation Board Amendment to Registration Decision Regarding Application Number RA 02008A.
6. THAT Mr. Albert and Ms. Sjoukje van der Meer agree to provide Mr. Wayne and Ms. Wendy von Hollen with a copy of all monitoring data collected pursuant to condition 4.b. of Natural Resources Conservation Board Amendment to Registration Decision Regarding Application Number RA 02008A.
7. THAT the Licence Holder agrees not to enlarge his operations at the present land location.

8. THAT the Board will recommend to the Minister of Environment that the Licence be varied as follows:

Add to Condition 7 the words “and to Mr. Wayne and Ms. Wendy von Hollen” immediately after the words “...shall provide this information to the Director”.

9. THAT in consideration of the foregoing, the Appellants, Mr. Wayne and Ms. Wendy von Hollen, agree to withdraw their Notice of Appeal.

RESOLUTION AGREED TO BY:

“original signed by” _____ Date: July 21, 2004
Wayne von Hollen

“original signed by” _____ Date: July 21, 2004
Wendy von Hollen

“original signed by” _____ Date: July 21, 2004
Albert van der Meer

“original signed by” _____ Date: July 21, 2004
Sjoukje van der Meer

“original signed by” _____ Date: July 21, 2004
David Helmer
Director, Central Region, Regional
Services, Alberta Environment
Represented by Darin Stepaniuk,
Alberta Justice

V. DRAFT ORDER

**Ministerial Order
/2004**

Water Act
R.S.A. 2000, c. W-3

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

**Order Respecting Environmental Appeals Board
Appeal No. 03-157**

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. 03-157.

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. 03-157

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”) to issue Licence No. 00204431-00-00 (the “Licence”), under the *Water Act*, R.S.A. 2000, c. W-3, to Albert and Sjoukje van der Meer, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the Licence is confirmed subject to the following amendment.
2. Order that Condition 7 be amended by deleting:

“7. The licensee shall record and retain for each calendar year the following information and shall provide this information to the Director on or before January 31 of each year”

and replacing with the following:

“7. The licensee shall record and retain for each calendar year the following information and shall provide this information to the Director and to Mr. Wayne and Ms. Wendy von Hollen on or before January 31 of each year”

ALBERTA ENVIRONMENT
Office of the Minister

Ministerial Order
15/2004

Water Act
R.S.A. 2000, c. W-3

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

Order Respecting Environmental Appeals Board
Appeal No. 03-157

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. 03-157.

Dated at the City of Edmonton, in the Province of Alberta this 4th day of August, 2004.

“original signed by”

Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeals Board Appeal No. 03-157

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”) to issue Licence No. 00204431-00-00 (the “Licence”), under the *Water Act*, R.S.A. 2000, c. W-3, to Albert and Sjoukje van der Meer, I, Dr. Lorne Taylor, Minister of Environment:

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