ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Hearing – July 26, 2004
Date of Decision – November 17, 2004

IN THE MATTER OF sections 91, 92, 95, and 96 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 Barrie Nault and Victoria Mitchell with respect to *Water Act* Approval No. 00206657-00-00 issued to the Town of Canmore by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: Costs Decision: *Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Canmore* (17 November 2004), Appeal Nos. 04-019 and 04-020-CD (A.E.A.B.).

BEFORE: Dr. Frederick C. Fisher, Q.C., Chair.

SUBMISSIONS:

Appellants:	Dr. Barrie Nault and Dr. Victoria Mitchell, assisted by Mr. Noble Shanks, Docken & Company.
Director:	Ms. May Mah-Paulsen, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham and Mr. Mark Greene, Alberta Justice.
Approval Holder:	Town of Canmore, represented by Mr. Brian Evans, Q.C. and Mr. Craig J. Tomalty, Miller Thomson LLP.

EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to the Town of Canmore for the construction of a boat launch on the Bow River in the Town of Canmore.

The Environmental Appeals Board received Notices of Appeal from Dr. Barrie Nault and Dr. Victoria Mitchell, who live near the proposed boat launch. Dr. Nault requested a Stay of the Approval pending the Hearing of the appeals. The Board granted the Stay, which remained in place until the Minister's decision was released.

The Hearing was held on July 26, 2004, and the Board determined the construction of the boat launch would not have a detrimental effect on the environment, including the Bow River. It recommended the Minister confirm the Approval, with a clause added to clarify that the width of each of the two boat launch ramps is not to exceed 4 metres. The Minister released his decision on August 24, 2004.

The Board received a request for final costs from Drs. Nault and Mitchell for a total of $12,520.91.

The Board determined the Appellants have a responsibility, as do all Albertans, to pay at least some of the costs involved in appearing before the Board. The Board found not all of the costs claimed related directly to the identified issues and other costs were not directly and primarily related to presenting their evidence before the Board. Therefore, the Board denied all costs claimed.

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I. BACKGROUND

[1] On June 9, 2004, the Director, Southern Region, Regional Services, Alberta Environment (the "Director"), issued Approval No. 00206657-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, (the "Approval") to the Town of Canmore (the "Approval Holder") authorizing the construction of a boat launch on the Bow River in the Town of Canmore, Alberta.

[2] On June 16, 2004, the Environmental Appeals Board (the "Board") received Notices of Appeal from Dr. Barrie Nault and Dr. Victoria Mitchell, (the "Appellants") appealing the Approval. Dr. Nault also requested a Stay of the Approval pending the resolution of the appeals.

[3] On June 16, 2004, the Board wrote to the Appellants, the Approval Holder, and the Director (collectively the "Parties") acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals and the Stay request. The Board also requested that the Director provide the Board with a copy of the records (the "Record") relating to these appeals.

[4] In this letter, the Board also asked that Dr. Nault respond to a number of questions in relation to his Stay request.[1] The Board subsequently asked the other Parties for submissions in relation to the Stay request. The Parties provided their responses on June 22 and July 2, 2004.

[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.

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[1] The Parties were asked to answer the following questions:

"1. What are the serious concerns of Dr. Nault that should be heard by the Board?

2. Would Dr. Nault suffer irreparable harm if the Stay was refused?

3. Would Dr. Nault suffer greater harm if the Stay was refused pending a decision of the Board on his appeal, than the Town of Canmore would suffer from the granting of a Stay?

4. Would the overall public interest warrant a Stay?

5. Is Dr. Nault directly affected by Alberta Environment's decision to issue the Approval to the Town of Canmore? This question is asked because the Board can only grant a Stay where it is requested by someone who is directly affected."

[6] On July 6, 2004, the Board contacted the Parties, stating it had reviewed the submissions provided respecting the Stay request, and requested further information from Dr. Nault respecting his directly affected status, specifically the connection between the environmental impacts he is concerned with and the quiet enjoyment of his property. A temporary Stay was granted to allow the Board the opportunity to obtain the additional information from Dr. Nault. In the same letter, the Board also requested the Parties address the directly affected status of Dr. Mitchell.

[7] On July 7, 2004, the Board granted an extension of the temporary Stay to provide the Approval Holder and the Director the opportunity to respond to the submissions of the Appellants. The Parties provided their written submissions between July 7 and July 9, 2004. On July 9, 2004, the Board notified the Parties the temporary Stay was extended until midnight on July 11, 2004, to provide the Board sufficient time to review the submissions.

[8] On July 11, 2004, the Board wrote to the Parties, stating it had concluded the Appellants were directly affected, and the Board would hear their appeals. The Board also decided to grant a Stay of the Approval until the conclusion of the appeals or unless otherwise directed by the Board. The Board scheduled the Hearing for July 23, 2004.

[9] On July 13, 2004, in response to requests from the Parties, the Board rescheduled the Hearing to July 26, 2004. The Board also rescheduled the deadline for receiving written submissions for the Hearing.

[10] On July 19, 2004, the Board received 41 intervenor requests from 62 individuals and 3 organizations. Two additional requests were received on July 20, 2004, an additional request was received on July 21, 2004, and a further request was received on July 22, 2004. (These additional four intervenor requests dealt with seven individuals.) The Appellants and Director provided submissions regarding the intervenor requests on July 20 and 21, 2004.

[11] On July 21, 2004, the Board notified the Parties of the status of the intervenors, allowing those granted intervenor standing to participate through written submissions only.[2]

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[2] The following individuals and organizations were granted intervenor standing: Ms. Brenda and Mr. Brian MacNeill; Ms. Janet Ewens, represented by Mr. Doug Ewens; Mr. Liam and Ms. Mary Christie; Mr. Elmer and Ms. Charlene Doell; Mr. Ken and Ms. Josie Bruce; Mr. Robert and Ms. Susan Iverach; Mr. Clark and Ms. Cathie Zentner; Mr. Gerald and Ms. Alison Hankins; Ms. Margo Pickard; Mr. Garth and Ms. Maureen Mitchell; Mr. Mike

[12] The Hearing took place on July 26, 2004, in Canmore, Alberta. The Board issued its Report and Recommendations on August 17, 2004, and on August 24, 2004, the Minister issued a Ministerial Order accepting the Board's Report and Recommendations.

[13] At the close of the Hearing, the Appellants reserved the right to ask for costs in these appeals. In its submission dated July 22, 2004, the Approval Holder suggested costs be determined at a later time, and on September 7, 2004, the Approval Holder stated it would not be making an application for costs in relation to these appeals.

[14] On September 9, 2004, the Appellants notified the Board they would be requesting costs.

[15] On September 22, 2004, the Director notified the Board that he was not filing any submissions with respect to costs, as the Appellants were seeking costs be paid by the Board.

II. WRITTEN SUBMISSIONS

A. Appellants

[16] The Appellants requested costs for the following:

Legal costs:	$ 2,380.75
Research Assistance:	$ 48.00
Film Developing:	$ 18.16
Meals on day of Hearing:	$ 74.00
Time costs: ($5000 each)	$10,000.00
Total:	$12,520.91

Fuller; Ms. Linda Hammell and Mr. Alistair Justason; Mr. James and Ms. Josephine Emmett; Mr. Graham and Ms. Linda McFarlane; Mr. Mike Ryer; Mr. David and Ms. Susan Schaus; Mr. Al and Ms. Nancy Bellstedt; BowKan Birders, represented by Ms. Cliff Hansen; Drs. John and Jean Parboosingh; Mr. James H. Pissot; Defenders of Wildlife Canada, represented by Mr. James H. Pissot; Mr. Mel Youngberg; Ms. Shelley Youngberg; Mr. Jack and Ms. Maureen Fair; Ms. Jeannette Bearss; Rundle Estate Corporation, represented by Mr. Gordon R. Meurin, Field Law, and Mr. Donald Bester; Ms. Stacy Williams; Ms. Judith Maxwell; Ms. Deanna and Mr. D.L. Monod; Mr. Cy and Ms. Carolann Johnson; Ms. Nancy Palmer, represented by Exploron Corporation; Dr. Jeffrey Yates; Mrs. Maia Egerton; Dr. Ray Egerton; Mr. Clifford and Ms. Patricia Anger; Mr. Jim and Ms. Wendy Anton, and Mr. Gary Jennings. The intervenor requests of the following individuals were denied as they did not live in close proximity to the project or their request was filed late: Dr. Paul Forster; Mr. Frank and Ms. Sharon Thirkettle; Mr. Doug and Ms. Donna McKown; Mr. Tim, Ms. Sherrill, Ms. Meaghan and Mr. Trevor McGuire; Mr. Alan Hobson; Dr. Ian and Ms. Robin Beddis; Mr. Frank and Ms. Barbara Dyrgas; and Dr. Donald and Ms. Mary Collinson.

[17] The Appellants provided invoices from their legal counsel and research assistant and receipts for the film developing and meals.

[18] The Appellants stated they "…spent two full weeks, including weekends, and 16 hour days preparing legal briefs and preparing for the Hearing – in part because the time between Hearing announcement and the Hearing itself was compressed to two weeks."[3] They submitted that had the work been contracted to other professionals, costs could have amounted to $20,000.00 or more.

[19] The Appellants stated the opportunity costs of the two weeks preparing for the Hearing were significant, and they submitted that $5,000.00 per Appellant was reasonable.

B. Approval Holder

[20] The Approval Holder argued it should not be ordered to pay any portion of the Appellants' costs.

[21] The Approval Holder submitted the Appellants' legal counsel "…provided little, if any, input or assistance to the Board with respect to the issues to be determined."[4]

[22] The Approval Holder argued that, had the Appellants "…limited their submissions to the issues properly before the Board, the costs incurred by all concerned would have been significantly less. The time spent dealing with issues not properly within the Board's jurisdiction and mandate is noteworthy in light of the fact that the Appellants were advised well before the Hearing date as to what issues were properly before the Board."[5]

C. Director

[23] The Director stated he would not be filing any submissions regarding costs as the Appellants stated they were seeking their costs be paid by the Board.[6]

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3 Appellants' submission, dated September 9, 2004.

4 Approval Holder's submission, dated September 28, 2004.

5 Approval Holder's submission, dated September 28, 2004.

6 See: Director's submission, dated September 13, 2004.

III. DISCUSSION

A. Statutory Basis for Costs

[24] The legislative authority giving the Board jurisdiction to award costs is section 96 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"), which states:

> "The Board may award costs of and incidental to any proceedings before it on a final or interim basis and may, in accordance with the regulations, direct by whom and to whom any costs are to be paid."

[25] This section appears to give the Board broad discretion in awarding costs. As stated by Mr. Justice Fraser of the Court of Queen's Bench in *Cabre Exploration Ltd.*:

> "Under s. 88 [(now section 96)] of the Act, however, the Board has final jurisdiction to order costs 'of and incidental to any proceedings before it…'. The legislation gives the Board broad discretion in deciding whether and how to award costs."[7]

Further, Mr. Justice Fraser stated:

> "I note that the legislation does not limit the factors that may be considered by the Board in awarding costs. Section 88 [(now section 96)] of the Act states that the Board '*may* award costs … and *may*, in accordance with the regulations, direct by whom and to whom any costs are to be paid….'" (Emphasis in the original.)[8]

[26] The sections of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 (the "Regulation") concerning final costs provide:

> "18(1) Any party to a proceeding before the Board may make an application to the Board for an award of costs on an interim or final basis.
>
> (2) A party may make an application for all costs that are reasonable and that are directly and primarily related to
>
> (a) the matters contained in the notice of appeal, and
>
> (b) the preparation and presentation of the party's submission. …

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[7] *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2001), 33 Admin. L.R. (3d) 140 at 146 (Alta. Q.B.).

[8] *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2001), 33 Admin. L.R. (3d) 140 at 147 (Alta. Q.B.).

20(1) Where an application for an award of final costs is made by a party, it shall be made at the conclusion of the hearing of the appeal at a time determined by the Board.

(2) In deciding whether to grant an application for an award of final costs in whole or in part, the Board may consider the following:

(a) whether there was a meeting under section 11 or 13(a);

(b) whether interim costs were awarded;

(c) whether an oral hearing was held in the course of the appeal;

(d) whether the application for costs was filed with the appropriate information;

(e) whether the party applying for costs required financial resources to make an adequate submission;

(f) whether the submission of the party made a substantial contribution to the appeal;

(g) whether the costs were directly related to the matters contained in the notice of appeal and the preparation and presentation of the party's submission;

(h) any further criteria the Board considers appropriate.

(3) In an award of final costs the Board may order the costs to be paid in whole or in part by either or both of

(a) any other party to the appeal that the Board may direct;

(b) the Board.

(4) The Board may make an award of final costs subject to any terms and conditions it considers appropriate."

[27] When applying these criteria to the specific facts of the appeal, the Board must also remain cognizant of the purpose of the *Water Act* as stated in section 2:

"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."

[28] While all these purposes are important, the Board believes the shared responsibility that section 2(d) of the Act places on all Albertans for "…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…" is particularly instructive in bringing the proper balance into its costs decisions. Section 2(d) puts an obligation on citizens to participate in the process to ensure better decision-making regarding the environment, but it does not mean participants to an appeal are *entitled* to be compensated for their involvement.

[29] The Board has stated in other decisions that it has the legislated discretion to decide which of the criteria in the Act and Regulation should apply in particular claims for costs.[9] The Board also determines the relative weight to be given to each criterion, depending on the specific circumstances of each appeal.[10] In *Cabre Exploration Ltd.*, Mr. Justice Fraser noted that section "…20(2) of the Regulation sets out several factors that the Board 'may' consider in deciding whether to award costs…" and concluded "…that the Legislature has given the Board a wide discretion to set its own criteria for awarding costs for or against different parties to an appeal."[11]

[30] As stated in previous appeals, the Board evaluates each costs application against the criteria in the Act and Regulation and the following:

> "To arrive at a reasonable assessment of costs, the Board must first ask whether the Parties presented valuable evidence and contributory arguments, and presented suitable witnesses and skilled experts that:

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[9] See: Re: *Zon* (1998), 26 C.E.L.R. (N.S.) 309 (Alta. Env. App. Bd.), (*sub nom.* Costs Decision re: *Zon et al.*) (22 December 1997), Appeal Nos. 97-005 to 97-015 (A.E.A.B.).

[10] See: Re: *Paron* (2002), 44 C.E.L.R. (N.S.) 133 (Alta. Env. App. Bd.), (*sub nom.* Costs Decision: *Paron et al.*) (8 February 2002), Appeal Nos. 01-002, 01-003, and 01-005-CD (A.E.A.B.).

[11] *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2001), 33 Admin. L.R. (3d) 140 at 147 (Alta. Q.B.).

(a) substantially contributed to the hearing;

(b) directly related to the matters contained in the Notice of Appeal; and

(c) made a significant and noteworthy contribution to the goals of the Act."[12]

[31] Under section 18(2) of the Regulations, costs awarded by the Board must be "…directly and primarily related to…(a) the matters contained in the notice of appeal and (b) the preparation and presentation of the party's submission." These elements are not discretionary.[13]

B. Court vs. Administrative Tribunals

[32] In applying these costs provisions, it is important to remember there is a distinct difference between costs associated with civil litigation and costs awarded in quasi-judicial forums such as board hearings or proceedings. As the public interest is a part of all hearings before the Board, the Board must consider the diverse aspects of the public interest when making its decision or recommendation. The outcome is not simply making a determination of a dispute between parties. Therefore, the Board is not bound by the "loser pays" principle used in civil litigation. The Board will determine whether an award of costs is appropriate considering the public interest generally, which can be complicated, and the overall legislative purpose as defined in section 2 of the Act.

[33] The distinction between the costs awarded in judicial as opposed to quasi-judicial settings was stated in *Bell Canada* v. *C.R.T.C.*:[14]

> "The principle issue in this appeal is whether the meaning to be ascribed to the word [costs] as it appears in the Act should be the meaning given it in ordinary judicial proceedings in which, in general terms, costs are awarded to indemnify or compensate a party for the actual expenses to which he has been put by the litigation in which he has been involved and in which he has been adjudged to have been a successful party. In my opinion, this is not the interpretation of the word which must necessarily be given in proceedings before regulatory tribunals."[15]

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12 See: Costs Decision re: *Cabre Exploration Ltd.* (26 January 2000), Appeal No. 98-251-C (A.E.A.B.).

13 See: Costs Decision re: *Monner (*17 October 2000), Appeal No. 99-166-CD (A.E.A.B.) at paragraph 25.

14 *Bell Canada* v. *C.R.T.C.*, [1984] 1 F.C. 79 (Fed. C.A.).

15 *Bell Canada* v. *C.R.T.C.,* [1984] 1 F.C. 79 (Fed. C.A.). See also: R.W. Macaulay, *Practice and Procedure Before Administrative Tribunals* (Scarborough: Carswell, 2001), at page 8-1, where he attempts to

[34] The effect of this public interest requirement was also discussed by Mr. Justice Fraser in *Cabre*:

> "…administrative tribunals are clearly entitled to take a different approach from that of the courts in awarding costs. In *Green*, Michaels & Associates Ltd., *supra* [*Re Green, Michaels & Associates Ltd. et al. and Public Utilities Board* (1979), 94 D.L.R. (3d) 641 (Alta. S.C.A.D.)], the Alberta Court of Appeal considered a costs decision of the Public Utilities Board [('P.U.B.')]. The P.U.B. was applying a statutory costs provision similar to section 88 [(now section 96)] of the Act in the present case. Clement J.A., for a unanimous Court, stated, at pp. 655-56:
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> > In the factum of the appellants a number of cases were noted dealing with the discretion exercisable by Courts in the matter of costs of litigation, as well as statements propounded in texts on the subject. I do not find them sufficiently appropriate to warrant discussion. Such costs are influenced by Rules of Court, which in some cases provide block tarrifs [*sic*], and in any event are directed to *lis inter partes*. We are here concerned with the costs of public hearings on a matter of public interest. There is no underlying similarity between the two procedures, or their purposes, to enable the principles underlying costs in litigation between parties to be necessarily applied to public hearings on public concerns. In the latter case the whole of the circumstances are to be taken into account, not merely the position of the litigant who has incurred expense in the vindication of a right."[16]

[35] The Act and the Regulation give the Board the authority to award costs if it determines the situation warrants it and further supports the view that the Board is not bound by the loser pays principle. As stated in *Mizeras*:

> "Section 88 [(now section 96)] of the Act and section 20 of the Regulation, give the Board the ability to award costs in a variety of situations that may exceed the common law restrictions imposed by the courts. Since hearings before the Board do not produce judicial winners and losers, the Board is not bound by the general principle that the loser pays, as outlined in *Reese* [v. *Alberta (Ministry of Forestry, Lands and Wildlife)* (1992), 5 Alta. L.R. (3d) 40 [1993] W.W.R. 450

> "…express the fundamental differences between administrative agencies and courts. Nowhere, however, is the difference more fundamental than in relation to the public interest. To serve the public interest is the sole goal of nearly every agency in the country. The public interest, at best, is incidental in a court where a court finds for a winner and against a loser. In that sense, the court is an arbitrator, an adjudicator. Administrative agencies for the most part do not find winners or losers. Agencies, in finding what best serves the public interest, may rule against every party representing before it."

[16] *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2001), 33 Admin. L.R. (3d) 140 at 147-148 (Alta. Q.B.).

> (Alta. Q.B.)]. The Board stresses that deciding who won is far less important than assessing and balancing the contributions of the Parties so the evidence and arguments presented to the Board are not skewed and are as complete as possible. The Board prefers articulate, succinct presentations from expert and lay spokespersons to advance the public interest for both environmental protection and economic growth in reference to the decision appealed."[17]

[36] As indicated earlier, under section 18(2) of the Regulation, a party may make an application to the Board for all costs that are *reasonable* and that are directly and primarily related to the matters contained in the Notice of Appeal, and for the preparation and presentation of the party's submission. The Board has a starting point that costs incurred in an appeal are the responsibility of the individual parties.[18] There is an obligation for each member of the public to accept some of the responsibility of bringing environmental issues to the forefront.

C. Analysis

[37] The Appellants contributed to the goals of the *Water Act*. They took time from their busy schedules to participate in the Board's process and to voice their concerns regarding the construction of the boat launch. They identified discrepancies in the description of the boat launch as described in the Approval and the report provided to support the application. In response to this identified discrepancy, the Board recommended, and the Minister agreed, the Approval be amended to ensure it was clear the width of each of the ramps could not exceed four metres in width. However, the Board considers the costs claimed to be part of all Albertans' responsibility in protecting the environment. Therefore, the Board denies the Appellants' request for costs.

[38] The Board notes the Appellants provided receipts and documentation regarding their expenses. The Board requires this form of documentation attached to requests for costs, as it demonstrates whether the costs claimed are reasonable and are directly related to the preparation and presentation of the arguments.

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[17] See: Re: *Mizeras* (2000), 32 C.E.L.R. (N.S.) 33 (Alta. Env. App. Bd.), (*sub nom.* Costs Decision re: *Mizeras, Glombick, Fenske, et al.*) (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.) at paragraph 9. See also: Costs Decision re: *Cabre Exploration Ltd*. (26 January 2000), Appeal No. 98-251-C (A.E.A.B.) at paragraph 6.

[18] See: Re: *Paron* (2002), 44 C.E.L.R. (N.S.) 133 (Alta. Env. App. Bd.), (*sub nom.* Costs Decision: *Paron et al.*) (8 February 2002), Appeal Nos. 01-002, 01-003, and 01-005-CD (A.E.A.B.).

[39] The Appellants claimed costs for hiring a research assistant. However, the research was regarding the environmental impacts of motorized watercraft, which was not an issue for the Hearing. Therefore, it cannot be accepted as costs directly related to the preparation and presentation of the issues under appeal.

[40] The Appellants included the costs of developing pictures to be used at the Hearing. Many of these pictures showed jet boats on the Bow River, not an issue considered at the Hearing.

[41] The Appellants provided receipts for meals on the day of the Hearing. The Hearing concluded by 5:30 p.m. on that day, but the Appellants included receipts for a meal at 7 p.m. The Appellants live in Canmore, a short drive from the hearing venue. The Board cannot justify allowing costs for such meals. The Board can only award costs for those items directly and primarily related to the preparation and presentation of the party's submission. The cost of meals does not fall within this description. Therefore, it is only on rare occasions will meal costs be considered, and it would not occur when the party lives in the same town or city where the Hearing is being held. Therefore, the Board will not award costs for the meals claimed.

[42] In the past, the Board has granted costs for counsel who has appeared at hearings, if they have done an exemplary job at the hearing, and they assisted the Board by clarifying complicated and technical issues and legal issues.[19]

[43] The costs claimed for the Appellants' legal counsel was for 8.8 hours, which included reviewing the documents and attending at the Hearing. Although the time claimed is reasonable, the Board must also look at the amount of assistance legal counsel gave to the Board during the Hearing. The Appellants stated their legal counsel was there to act as a consultant; the Board agrees. Essentially, he did not take an active role in presenting the evidence and arguments to the Board. It was the Appellants who cross-examined witnesses, and they presented their evidence without particular guidance from their counsel. Although it was beneficial to the Appellants to have legal counsel there for them to refer to, their counsel did not

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[19] See: Costs Decision: *Maga et al.* (27 June 2003), Appeal Nos. 02-023, 024, 026, 029, 037, 047, 074-CD (A.E.A.B.); Costs Decision: *Imperial Oil and Devon Estates* (8 September 2003), Appeal No. 01-062-CD (A.E.A.B.); Costs Decision re: *Kievit et al.* (12 November 2002), Appeal Nos. 01-097, 098, and 101-CD (A.E.A.B.); Costs Decision: *Paron et al.* (8 February 2002), Appeal No. 01-002, 01-003, and 01-005-CD (A.E.A.B.).

make the type of contribution required by the Board for costs to be awarded. The Appellants had effectively presented their case on their own. Therefore, the Board does not see the justification of awarding costs in these circumstances.

[44] Each of the Appellants requested $5000.00 for their opportunity costs during the time they prepared for the Hearing. The Board does recognize the time and effort the Appellants spent in preparing for the Hearing, but it finds it difficult to accept their opportunity costs would amount to $5000.00 each. There was no indication the Appellants lost income during the preparation time. If they had lost wages during this time, the Board may be more willing to consider some compensation, but proof would have to have been provided to show they actually lost $5000.00 each. The Board cannot award costs that would allow a party to benefit financially for appearing before the Board. All parties appearing before the Board have some degree of opportunity costs associated with taking time to be involved in the Board's process, but it is part of the costs associated with the responsibility of Albertans to bring environmental issues to the forefront.

[45] The Board has the jurisdiction under section 96 of EPEA to award costs to and against any party to an appeal, including the Approval Holder and the Director. It is important that all parties respond to a request for costs with this in mind, and they should provide arguments why costs should not be awarded against them. In this case, the Appellants requested costs from the Board. The Board interprets this as the Board should award costs to them, but not necessarily the Board pay the costs itself. By simply arguing the Appellants stated the Board should pay the costs, the Director in this case, left himself open to the possibility of having costs being awarded against him as he provided no arguments to demonstrate why he should not be responsible for paying costs. That being said, the Board in this case does not consider it appropriate to award costs to the Appellants, and therefore, the Director and the Approval Holder will not have costs assessed against them.

IV. CONCLUSION

[46] Pursuant to section 96 of the *Environmental Protection and Enhancement Act*, and for the foregoing reasons, the Board denies the Appellants' request for costs.

Dated on November 17, 2004, at Edmonton, Alberta.

"*original signed by*"

Dr. Frederick C. Fisher, Q.C.
Chair