

DECISIONS 2000

00-003

Appellant(s) – Legal Oil and Gas Ltd. and Charles W. Forster, **Operators** – Legal Oil and Gas Ltd. and Charles W. Forster, **Location** – Sturgeon, **Type of Appeal** – Decision

On January 14, 2000, the Environmental Appeal Board received a Notice of Appeal and application for Stay from Legal Oil and Gas Ltd. and Mr. Charles W. Forster. The appeal was with respect to Environmental Protection Order (EPO) No. 2000-01 issued to Legal Oil and Gas Ltd. and Mr. Charles W. Forster for contamination of a well known as LWS 3 LEGAL 3-21-57-25 (“3 of 21 site”) located on lands at LSD3-SW-21-57-25-W4M and an interim Stay of the EPO. In consultation with the parties, the Board granted an abeyance pending the outcome of a judicial review of Board appeal file no. EAB 98-009 as the issues were interrelated. On June 9, 2000, Mr. Justice Clackson denied the judicial review of EPO 98-04 and on July 26, 2000, the Appellants filed a Notice of Appeal with the Court of Appeal with respect to the outcome of the first judicial review. On September 26, 2000, the Appellant requested that EAB 00-003 be held in abeyance again pending the Court of Appeal’s decision and the Board granted the request on November 8, 2000. On February 5, 2001, the Court of Appeal discontinued the judicial review and on February 9, 2001, the Board wrote to the parties requesting clarification on their positions and if the Appellant wished to proceed with the appeal. On February 15, 2001, the Appellant advised that he wanted to address factual and legal issues associated EAB 98-009 and EAB 00-003 and on February 26, 2001 the Board provided the opportunity to do so via written submissions. After failing to provide his submission to the Board on March 9, 2001 and being made aware by three separate letters from the Board that failure to respond to a written notice may result in the dismissal of his appeal, the Board, on March 16, 2001, issued a Decision to dismiss the appeal.

Cite as: Legal Oil and Gas Ltd. and Charles W. Forster v. Manager, Enforcement and Monitoring, Northeast Boreal Region, Alberta Environment.

00-004 and 00-005

Appellant(s) – Ainsworth Lumber Co. Ltd. and Footner Forest Products Ltd., **Operators** – Ainsworth Lumber Co. Ltd. and Footner Forest Products Ltd., **Location** – near High Level and Grande Prairie, **Type of Appeal** – Report and Recommendations

On January 20 and 21, 2000, the Environmental Appeal Board received Notices of Appeal with respect to Approval No. 76335-00-01 issued to Footner Forest Products Ltd. for the construction, operation and reclamation of an oriented strand board plant near High Level and Amending Approval No. 1622-00-06 issued to Ainsworth Lumber Co. Ltd. for the construction, operation and reclamation of an oriented strand board and value added products plant near Grande Prairie respectively. With consent of the parties, a mediation meeting/settlement conference was held on April 10, 2000 in Edmonton whereby the parties reached an agreement with respect to some of the issues, and also agreed to hold a hearing on May 26, 2000 to address the remaining issues. At the hearing, the Board concluded that the discretion exercised by the Director in issuing the Approval and Amending Approval was within his authority under the *Environmental Protection and Enhancement Act* and was reasonable. On June 26, 2000, the Board issued a Report and Recommendations to the Minister, which was approved on July 28, 2000.

Cite as: Ainsworth Lumber Co. Ltd. and Footner Forest Products Ltd. v. Director, Northwest Boreal Region, Alberta Environment.

00-006

Appellant(s) – Mr. William and Ms. Susan Procyk, **Operator** – Dow Chemical Canada Inc., **Location** – Fort Saskatchewan, **Type of Appeal** – Report and Recommendations

On January 29, 2000, the Environmental Appeal Board received a Notice of Appeal from Mr. William and Ms. Susan Procyk with respect to the issuance of Amending Approval 236-01-02 issued to Dow Chemical Inc. for the construction, operation and reclamation of the Fort Saskatchewan chemical manufacturing plant. On February 17, 2000, the Department provided the Board with correspondence regarding the

appeal, and in addition, advised that the concerns brought forth by the Appellants did not address Amending Approval 236-01-02, but instead were used to reopen an earlier appeal (EAB Appeal No. 99-137) which was later agreed to by the Approval Holder. In consultation with the parties, the Board held a mediation/settlement conference on April 14, 2000 whereby a resolution was signed. On April 17, 2000, the Board issued a Report and Recommendations which was signed by the Minister on May 2, 2000.

Cite as: *Procyk v. Director, Northeast Boreal Region, Alberta Environment re: Dow Chemical Canada Inc.*

00-008, 009 and 010

Appellant(s) – Mr. Victor and Ms. Elizabeth Chrapko, Ms. Julie Heath, **Operator** – R.V. Recreational Park Development Inc., **Location** – near Brosseau, **Type of Appeal** – Discontinuance of Proceedings

On March 9, 2000, Mr. Victor and Ms. Elizabeth Chrapko and on March 10, 2000, Ms. Julie Heath filed Notices of Appeal with respect to *Water Act* Approval No. 00077677-00-00 issued to R.V. Recreational Park Development Inc. authorizing the exploration for groundwater at SE 17-056-11-W4. On March 30, 2000, the Board received a letter stating that the Appellants were withdrawing their appeal. On March 31, 2000 the Board issued a Discontinuance of Proceedings and closed its files.

Cite as: *Chrapko et al. v. Manager, Regional Support, Parkland Region, Alberta Environment re: R.V. Recreational Park Development Inc.*

00-011

Appellant(s) – Mah Family, **Operator** – County of Red Deer No. 23, **Location** – Red Deer, **Type of Appeal** – Discontinuance of Proceedings

On March 28, 2000, Ms. Eva Mah Borsato, on behalf of the Mah family, filed a Notice of Appeal with respect to Approval No. 00075037-00-00 issued under the *Water Act* to the County of Red Deer No. 23 for the construction of storm water management works located in the NE 20-37-27-W4 McKenzie Industrial Park in Red Deer, Alberta. On April 25, 2000, the Board received a letter from D.C. Commercial Corporation, the registered landowner of McKenzie Industrial Park advising that the landowner was directly affected as they were the developer undertaking construction of the water management works and requested all materials regarding the appeal. On April 26, 2000, the landowner requested full party status, including the right to make submissions to the Board. In consultation with the parties, the Board scheduled a preliminary meeting on June 28, 2000 to deal with jurisdiction. On June 27, 2000, the Board received a letter from the parties advising that a settlement had been reached and therefore the appeal was withdrawn. On July 6, 2000, the Board issued a Discontinuance of Proceedings.

Cite as: *Borsato v. Manager, Regional Support, Parkland Region, Alberta Environment, re: County of Red Deer No. 23.*

00-012

Appellant(s) – Winterburn Oil and Gas Ltd. and Provost Petroleum Ltd., **Operator** – Winterburn Oil and Gas Ltd. and Provost Petroleum Ltd., **Location** – Redwater, **Type of Appeal** – Decision

On April 7, 2000, Winterburn Oil and Gas Ltd. and Provost Petroleum Ltd. respectively, filed a Notice of Appeal with respect to Environmental Protection Order No. 2000-03 issued to Winterburn Oil and Gas Ltd. and Provost Petroleum Ltd.. On May 3 and May 29, 2000, the parties were requested to provide their written representations to the Board by May 23 and June 2, 2000 respectively. No response was received. On June 5, 12 and 15, 2000, further attempts were made by the Board to contact the Appellants. No response was received. Therefore, on June 20, 2000, the Board issued a Decision dismissing the Notice of Appeal for having failed to comply with the Board's written request under section 85 of the *Environmental Protection and Enhancement Act*.

Cite as: *Winterburn Oil and Gas Ltd. and Provost Petroleum Ltd. v. Manager, Enforcement and Monitoring, Alberta Environment.*

00-013

Appellant(s) – North Springbank Water Co-op Limited, **Operator** – Emerald Bay Water and Sewer Co-op Ltd., **Location** – near Calgary, **Type of Appeal** – Decision

On April 10, 2000, the North Springbank Water Co-op Limited filed a Notice of Appeal with respect to Amending Approval No. 18892-00-03 issued to Emerald Bay Water and Sewer Co-op Ltd. for the construction and operation of a Class II wastewater treatment plant, a Class I wastewater collection system and a storm drainage system for the Emerald Bay Estates Development. In response to the Appellant's request on April 14, 2000, for additional time to set forth arguments as to why the appeal of Amending Approval 18892-00-03 also operates as an appeal of the original approval, the Board, in consultation with the parties, granted the request. On May 24, 2000, the parties put forth and agreed to participate in a mediation meeting/settlement conference which took place on June 9, 2001 in Calgary, Alberta. At the mediation meeting/settlement conference, the parties reached an agreement (the "June 9th Agreement") to continue discussions, develop a contingency plan and to make a decision on the course of action to be taken with respect to the appeal by September 15, 2000. As a result of information received from the parties after the mediation, a second mediation meeting/settlement conference took place on December 7, 2000, where the parties reached a second agreement (the "December 7th Agreement") and agreed to continue to work together to resolve the issues. On March 2, 2001, the Board received the draft Mediation Agreement from the Appellant and forwarded it to the parties for review. By letters of April 10 and 16, 2001, the other parties approved the draft Mediation Agreement and the Board then forwarded the agreement back to the Appellant for comment. On three occasions, the Board requested a status report from the Appellant by May 1, 16 and 30th, 2001. The Board had not heard from the Appellant and on June 5, 2001, a Decision was issued dismissing the Notice of Appeal for failure to comply with a written notice.

Cite as: *North Springbank Water Co-op. v. Director, Bow Region, Environmental Service, Alberta Environment, re: Emerald Bay Water and Sewer Co-op Ltd.*

00-014

Appellant(s) – Eugene P. Cyr, **Operator** - Town of Pincher Creek, **Location** – Kettles Creek (Pincher Creek), **Type of Appeal** – Report and Recommendation

On April 17, 2000, the Environmental Appeal Board received an appeal via facsimile from Mr. Eugene P. Cyr, objecting to Approval No. 00074194-00 issued to the Town of Pincher Creek under the *Water Act* for the construction of stormwater drainage works in the SW 23-6-30-W4 discharging into Kettles Creek in Pincher Creek, Alberta. The Board held a mediation meeting/settlement conference on June 27, 2000, after an extension was granted to allow the Appellant to respond to the Board's letter of May 1, 2000. At the mediation, the parties agreed to schedule a second mediation to be held on July 18, 2000, in Pincher Creek which took place and a resolution was reached. On August 1, 2000 the Board issued a Report and Recommendations to the Minister which he agreed to on August 28, 2000.

Cite as: *Eugene P. Cyr v. Regional Water Manager, Prairie Region, Alberta Environment re: Town of Pincher Creek.*

00-015

Appellant(s) – Villeneuve Sand and Gravel Alberta Ltd., **Operator** – Inland Aggregates Limited, **Location** – Sturgeon County, **Type of Appeal** – Decision

On April 17, 2000, the Board received a Notice of Appeal from Villeneuve Sand and Gravel Alberta Ltd. with respect to Approval No. 72308-01-00 issued to Inland Aggregates Limited to open up, operate and reclaim a pit located on the West ½ of Section 29 and North East ¼ of Section 30 in Township 54, Range 26, West of the 4th Meridian in the County of Sturgeon for the production of sand and gravel. The Appellant claims to be the owner of the sand and gravel rights relating to the pit and has not given consent to the Approval Holder or the registered owner of the lands to open up, operate or reclaim the pit. The registered owners of the land are Mr. Dale and Mrs. Deborah Barrie. On April 17, 2000, the Appellant also requested a "stay of enforcement of the approval" (the "Stay of Application"). After reviewing information submitted by the parties, on May 8, 2000, the Board identified a number of preliminary issues such as 1. Are the Barries a proper party to this appeal and therefore able to bring a preliminary motion, 2. Is the Appellant "directly affected"?, 3. Does the Board have jurisdiction to hear this matter, particularly given

that ownership of the sand and gravel appears to have been determined by the Court of Queen's Bench? and 4. Is the appeal frivolous or vexatious or without merit? Upon reviewing all written submissions, the Board advised that it is bound by the findings of Master Funduk and Madam Justice Johnston, both of the Court of Queen's Bench. Taking their findings into account, the Board holds that 1. The Appellant is not directly affected and 2. The appeal is either frivolous and vexatious, as the Court said in *Pocklington Foods*, and it is surely without merit. Given this information, the Board dismissed the appeal and deemed it unnecessary to make a decision on the Stay of Application. On November 10, 2000, the Board issued a Decision to dismiss the appeal.

Cite as: *Villeneuve Sand and Gravel Alberta Ltd. v. Director, Northeast Boreal Region, Alberta Environment re: Inland Aggregates Limited.*

00-016

Appellant(s) – Sunpine Forest Products Ltd., **Operator** – Sunpine Forest Products Ltd., **Location** – Rocky Mountain House, **Type of Appeal** – Discontinuance of Proceedings

On April 20, 2000, Mr. Masten Broisma on behalf of Sunpine Forest Products Ltd. filed a Notice of Appeal with respect to Licence No. 00081864-00-00 issued to Sunpine Forest Products Ltd. authorizing the diversion of 25,914 cubic metres of water annually from a well in SW 02-038-09-W5 for the purpose of Commercial (wood products) subject to conditions. The Appellant requested that "Conditions 6(a) and 6(b) be amended to state 'monthly readings' and 'monthly measurements' be taken, respectively". On June 1, 2000, the Appellant wrote to the Board withdrawing their appeal. On June 2, 2000, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Sunpine Forest Products Ltd. v. Manager, Regional Support, Parkland Region, Alberta Environment.*

00-017 and 00-018

Appellant(s) – Bryam Industrial Services Limited, Dr. Rosalind Beacom, Dr. Michael Peyton and the Pembina Institute, **Operator** – Drayton Valley Regional Sanitary Landfill Authority, **Location** – Drayton Valley, **Type of Appeal** – Discontinuance of Proceedings

On April 25, 2000, MByram Industrial Services Ltd. (Byram), and Dr. Rosalind Beacom, Dr. Michael Peyton and the Pembina Institute, filed Notices of Appeal with respect to Approval No. 47415-00-01 issued to the Drayton Valley Regional Sanitary Landfill Authority which authorizes the construction, operation and reclamation of the Drayton Valley Regional Landfill. According to standard practice, the Board wrote to the Natural Resources Conservation Board (NRCB) and the Alberta Energy and Utilities Board (AEUB) on April 26, 2000 to see whether this matter had been the subject of a hearing or review under their respective legislation. The AEUB advised that there was a Memorandum of Understanding (MOU) between the AEUB and Alberta Environment that allowed the Drayton Valley Regional Sanitary Landfill to accept petroleum hydrocarbon contaminated soils. On August 9, 2000, the Board received a copy of the MOU. In their letters of July 26 and 27, 2000, the parties advised the Board that they would be agreeable to participate in a mediation meeting/settlement conference. However, on August 11, 2000, the Board received a letter from the Department with respect to the standing of the Pembina Institute and Byram Industrial Services Ltd. On August 15, 2000, the Board advised the parties that the issue of standing would be addressed if the mediation meeting/settlement conference was unsuccessful and the appeal went to a hearing and to file any objections to the Board by August 23, 2000. On August 21 and 22, 2000, the Department and Byram respectively, objected to the Board's recommendation. In view of the information received, the Board decided to cancel the mediation meeting/settlement conference and hold a preliminary meeting on the issue of standing. On September 8, 2000, the Appellants advised the Board that they were actively engaged in informal mediation and that the Pembina Institute declined to make submissions and attend the preliminary meeting, however, if they did attend, it would be in the capacity of an agent or expert witness for the other Appellants. On September 27, 2000, the Appellants advised the Board that a terms of agreement had been reached between the Approval Holder, Byram and the Appellants and that after meeting with the Department, would consider withdrawing their appeals. On January 4, 2001, the Board received a letter from the Approval Holder advising of the steps being taken to address specific issues raised by the Appellants and on January 8, 2000, the Board requested comments from the Appellants. On

January 10 and 24, 2001, Byram Industrial Services Ltd. and collectively, the Pembina Institute, Dr. Rosalind Beacom and Dr. Michael Peyton respectively, withdrew their appeals. As a result, the Board issued a Discontinuance of Proceedings on February 1, 2001 and closed its file.

Cite as: *Byram Industrial Services Limited et al. v. Director, Parkland Region, Alberta Environment, re: Drayton Valley Regional Sanitary Landfill Authority.*

00-019

Appellant(s) – ABL Ventures Ltd., **Operator** – ABL Ventures Ltd., **Location** – Strathmore, **Type of Appeal** - Discontinuance of Proceedings

On April 26, 2000, ABL Ventures Ltd. filed an appeal with respect to Administrative Penalty No. 00/07-BOW-AP issued to ABL Ventures Ltd., as a result on an alleged contravention, by ABL Ventures Ltd., of section 59 of the *Environmental Protection and Enhancement Act*, with respect to the construction of an extension to the water distribution and wastewater collection systems at SE 4-23-24-25 W4. In response to the Board's letter of May 10, 2000 asking the parties if they wished to consider mediation or a proceed directly to a hearing, the Director wrote to the Board advising that they would prefer a hearing. In consultation with the parties, the Board scheduled a hearing for September 7, 2000, however, it was adjourned as the department required time to access relevant documents in the Freedom of Information Office. On September 7, 2000, the Board received a letter from the Director advising of Mr. Jay Litke's letter of September 6, 2000 withdrawing the Administrative Penalty. On September 15, 2000, the appellant wrote to the Board withdrawing their appeal and as a result, the Board issued a Discontinuance of Proceedings on September 22, 2000 and closed its file.

Cite as: *ABL Ventures Ltd. v. Manager, Enforcement and Monitoring, Bow Region, Alberta Environment.*

00-020

Appellant(s) – Ms. Gwyn Baily, **Operator** – Sunset Harbour Developments Ltd., **Location** – Pigeon Lake, **Type of Appeal** – Discontinuance of Proceedings

On April 25, 2000, Ms. Gwyn Baily filed a Notice of Appeal with respect to 00073615-00-00 issued under the *Water Act* to Sunset Harbour Developments Ltd. for the construction of a marina and stormwater management works at Pigeon Lake in the SW 12-47-02-W5 subject to certain conditions. On May 1, 2000, the Board requested that the Appellant clarify the purpose of her letter and provide further information. After not receiving any information, the Board followed-up via a telephone conversation and further telephone message. On June 15, 2000, the Appellant wrote to the Board withdrawing her appeal due to other commitments. On July 6, 2000, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Baily v. Manager, Regional Support, Parkland Region, Alberta Environment, re: Sunset Harbour Developments Ltd.*

00-021-023, 00-025-027, 00-032, and 00-036

Appellant(s) – Mr. Frank Cowles, Mr Ernie Semeniuk, Mr. Kevin Fenemor, the Summer Villages of Sundance Beach and Golden Days, Mr. John Turgeon, Mr. Marcel Normandeau, Dr. Larry Eberlein, Ms. Jane Nagy and Ms. Roberta McLaughlin on behalf of herself, Mr. Gerald McLaughlin, Mr. Brinton McLaughlin and Ms. Jennifer Binnendyke **Operator** – Sunset Harbour Developments Ltd., **Location** – Pigeon Lake, **Type of Appeal** – Report and Recommendations

Between May 5 and May 24, 2000, appeals were received from Mr. Frank Cowles, Mr Ernie Semeniuk, Mr. Kevin Fenemor, the Summer Villages of Sundance Beach and Golden Days, Mr. John Turgeon, Mr. Marcel Normandeau, Dr. Larry Eberlein, Ms. Jane Nagy and Ms. Roberta McLaughlin on behalf of herself, Mr. Gerald McLaughlin, Mr. Brinton McLaughlin and Ms. Jennifer Binnendyke with respect to Approval 00073615-00-00 issued under the *Water Act* to Sunset Harbour Developments Ltd. for the construction of a marina and stormwater management works at Pigeon Lake in the SW 12-47-02-W5 subject to certain conditions. In consultation with the parties, a two-day mediation meeting/settlement conference took place on September 19 and 21, 2000, in Edmonton and a resolution was reached. On October 5, 2000, the Board

issued a Report and Recommendations advising the Minister to vary the Approval in accordance with the resolution agreed to by the parties which was agreed to on October 18, 2000.

Cite as: *Cowles et al. v. Manager, Regional Support, Parkland Region, Alberta Environment, re: Sunset Harbour Developments Ltd.*

00-024

Appellant(s) – Alberta Fish and Game Association, **Operator** – Sunset Harbour Developments Ltd., **Location** – Pigeon Lake, **Type of Appeal** – Discontinuance of Proceedings

On May 9, 2000, the Alberta Fish and Game Association (AFGA) filed an appeal with respect to Approval No. 00073615-00-00 issued under the *Water Act* to Sunset Harbour Developments Ltd. for the construction of a marina and stormwater management works at Pigeon Lake in the SW 12-47-02-W5 subject to certain conditions. In consultation with the parties, a mediation meeting/settlement conference took place on September 19 and 21, 2000 at the Board's office. On September 21, 2000, during the mediation meeting, the Appellant withdrew from the mediation proceedings as the AFGA intended to pursue this matter with the Department of Fisheries and Oceans (DFO). Further, it is the Board's understanding that only if the DFO admits that the quality of fish habitat compensation is inadequate, but is unwilling to reconsider their Approval in relation to this matter, then the AFGA will pursue their appeal with the Board. On October 17, 2000, the Board received a letter from the Appellant dated October 13, 2000 withdrawing their appeal. On October 20, 2000, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Alberta Fish and Game Association v. Manager, Regional Support, Parkland Region, Alberta Environment, re: Sunset Harbour Developments Ltd.*

00-028

Appellant(s) – Westlock County, **Operator** – Lafarge Canada, **Location** – Westlock, **Type of Appeal** – Discontinuance of Proceedings

On May 10, 2000, the Board received a letter from the County of Westlock appealing Approval No. 15084-01-00 issued to Lafarge Canada Inc. for the opening up, operation and reclamation of a sand pit on SE 18-59-23-W4. On May 11, 2000, the Board asked the parties if they wished to attend a mediation meeting/settlement conference with respect to the appeal. On May 18 and 29, June 19 and July 4, 2000, legal counsel for the Appellant requested an extension in order to seek the Appellant's advice with respect to the mediation. On July 5, 2000, the Board received a letter from the Approval Holder advising that the parties had reached a satisfactory arrangement. On July 12, 2000 the Appellant wrote to the Board withdrawing their appeal and on July 18, 2000, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Westlock County v. Director, Northern East Slopes Region, Alberta Environment, re: Lafarge Canada Inc.*

00-029 and 00-060

Appellant(s) – Butte Action Committee and the Town of Eckville, **Operator** – Crestar Energy, **Location** – near Eckville, Alberta, **Type of Appeal** – Decision

On May 23 and August 15, 2000, the Butte Action Committee and the Town of Eckville respectively, filed Notices of Appeal with respect to Approval No. 00077822-00-00 issued under the *Water Act* to Crestar Energy to explore for groundwater in relation to two pre-existing groundwater wells – Well 1966-06-27-01 and Well 1973-11-26-02 both located on LSD 12 in the North West ¼ of Section 28, Township 39, Range 3, West of the 5th Meridian, near Eckville, Alberta. Upon reviewing information submitted by the parties, the Board agreed that the appeals are moot on the grounds that 1. the Approval Holder had met the conditions of the Approval and stated in its letter of January 5, 2001, saying "Since all work under the Approval has been completed [the Board's jurisdiction is lost]" and 2. the Director advised on January 4, 2001, that "The approval activity has been undertaken and completed" Accordingly, the Board dismissed the appeals with one important condition. Since the Board accepts and relied upon the representation of the Approval Holder and the Director that all work under the Approval is spent, if further work under this

Approval is done by the Approval Holder, the Board will immediately accept the re-instatement of these appeals with the same status they held prior to this decision. On January 9, 2001, the Board issued its Decision to dismiss the appeals.

Cite as: *Butte Action Committee and Town of Eckville v. Manager, Regional Support, Parkland Region, Natural Resource Service, Alberta Environment, re: Crestar Energy.*

00-030

Appellant(s) – Mr. Ron Bakken, **Operator** – Sunset Harbour Developments Ltd., **Location** – Pigeon Lake, **Type of Appeal** – Discontinuance of Proceedings

On May 10, 2000, Mr. Ron Bakken filed a Notice of Appeal with respect to Approval No. 00073615-00-00 issued under the *Water Act* to Sunset Harbour Developments Ltd. to construct a marina and stormwater management works at Pigeon Lake in the SW 12-47-02-W5 subject to certain conditions. Following a conversation with the Appellant on June 1, 2000, the Board wrote to Appellant requesting that Mr. Bakken confirm in writing that he would be withdrawing his appeal which was received by the Board on June 7, 2000. On June 14, 2000, the Board issued a Discontinuance of Proceedings.

Cite as: *Bakken v. Manager, Regional Support, Parkland Region, Alberta Environment, re: Sunset Harbour Developments Ltd.*

00-031

Appellant(s) – Mr. John Sanders, **Operator** – Sunset Harbour Developments Ltd., **Location** – Pigeon Lake, **Type of Appeal** – Discontinuance of Proceedings

On May 13, 2000, Mr. John Sanders sent a letter to the Board appealing Approval No. 00073615-00-00 issued under the *Water Act* to Sunset Harbour Developments Ltd. for the construction of a marina and stormwater management works at Pigeon Lake in the SW 12-47-02-W5 subject to certain conditions. On May 16, 2000, the Board requested that the Appellant clarify the purpose of his letter and provide further information in order to proceed with the request for an appeal. On June 16, 2000, the Appellant faxed a letter to the Board advising that he was withdrawing his independent appeal and instead making presentations for others appealing the same approval. On July 6, 2000, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Sanders v. Manager, Regional Support, Parkland Region, Alberta Environment, re: Sunset Harbour Developments Ltd.*

00-033

Appellant(s) – Genesis Exploration Ltd., **Operator** – Genesis Exploration Ltd., **Location** – near Valleyview, **Type of Appeal** – Discontinuance of Proceedings

On May 18, 2000, Genesis Exploration Ltd. filed a Notice of Appeal with respect to the refusal of the Department to issue an Approval for the purpose of constructing a petroleum wellsite at 09-24-069-23-W5. On May 29, 2000, the Appellant wrote to the Board indicating that the application they made “was for the re-entry of an existing suspended well and not the construction of a new well”, and requested a site visit to resolve the matter. On June 5, 2000, the Director advised the Board that he would contact the Appellants to coordinate a site visit. After reviewing requests by the Director and the Appellants, on December 21, 2000, the Board advised that the appeal would be placed in abeyance until May 1, 2001 due to the site assessment and construction plans. In a letter received by the Board on February 12, 2001, the Appellants withdrew their appeal. As a result, the Board issued a Discontinuance of Proceedings on February 12, 2001 and closed its file.

Cite as: *Genesis Exploration Ltd. v. Manager, Regional Support, Northwest Boreal Region, Alberta Environment.*

00-034

Appellant(s) – Elkana Resident’s Water Co-Operative Limited, **Operator** – Elkana Resident’s Water Co-Operative Limited, **Location** – M.D. of Rock View No. 44, **Type of Appeal** – Decision

On January 7, 2000, the Director, Bow Region, Alberta Environment, issued Amending Approval No. 498410-00-01 modifying Approval No. 498412-00-00 authorizing the construction, operation and reclamation of a Class I water treatment plant and distribution system for the Elkana Estates subdivision in the M.D. of Rocky View No. 44. On May 16, 2000, the Appellant filed a Notice of Appeal requesting an amendment to the date for the pipeline construction stated in Section 3.2, Condition 3.2.1 of the Amending Approval. On June 1, 2000, the Board received a letter from the Director requesting that the appeal be dismissed as the Notice of Appeal was filed outside the 30 day time limit. On June 28, 2000, the Appellant wrote to the Board advising that they wished to withdraw the appeal as the Co-Op wanted to pursue alternate avenues with Alberta Environment to get an extension of the water system construction deadline. In the same letter, the Appellant advised that they may wish to re-initiate the appeal process at a later date. On July 7, 2000, the Board responded by advising the Appellants that there are no provisions in the legislation to “re-initiate” an appeal once the Board has been advised in writing of a withdrawal. On July 20, 2000, the Board received a further letter from the Appellants requesting an extension to the appeal due to extenuating circumstances related to water in Bragg Creek and ongoing studies. On August 28, 2000, the Board went on to propose a schedule for written submissions for the parties. Once the submissions were received and reviewed, the Board issued its Decision to dismiss the appeal on November 10, 2000.

Cite as: *Elkana Resident’s Water Co-Operative Limited v. Director, Bow Region, Alberta Environment.*

00-035

Appellant(s) – Messrs. Marc and Roch Bremont, **Operator** – Messrs. Marc and Roch Bremont, **Location** – near Falher, **Type of Appeal** – See below

Overview – On May 19, 2000, Messrs. Marc and Roch Bremont filed a Notice of Appeal with respect to the Director’s refusal to issue an Approval under the *Water Act*, authorizing an existing ditch used to deal with alleged flooding on the Appellants’ land at NW 27-079-21-W5M, adjacent to Lac Magliore. The Appellants’ advised the weir structure, constructed by Ducks Unlimited caused flooding on the Appellants’ property, and hence, they decided to construct a drainage ditch.

Discontinuance of Proceedings - In consultation with the parties, the Board held a mediation meeting on April 10, 2001, in Falher, Alberta, with conference calls being held with the Director, Appellants, Ducks Unlimited, and Messrs. Hayden, Oliver and Garde Hansen. As the mediation was unsuccessful, the Board proceeded to a hearing on November 7, 2001, in the Board’s office. On October 26, 2001, the Board advised the parties that the only issue to be heard was “whether the drainage ditch should be authorized under the *Water Act* or should it be closed and rendered ineffective?” Intervenor requests were received from Ducks Unlimited, and Messrs. Hayden, Oliver and Garde-Hansen, which were granted by the Board on October 26, 2001. On November 2, 2001, the Board wrote to Appellants confirming a telephone conversation between Board staff and the Appellants whereby he advised the Appellants would be withdrawing their appeal. A letter was sent to the Board from the Appellants to this effect on November 2, 2001. On the same day, the Board received a letter from Ducks Unlimited seeking costs related to this appeal, which the Board advised would be dealt with via a separate Decision. As a result of the withdrawal, the Board issued a Discontinuance of Proceedings on November 22, 2001, and closed its file.

Cite as: *Bremont v. Director, Northwest Boreal Region, Natural Resources Service, Alberta Environment.*

Costs Decision - An application for costs was received from Ducks Unlimited, an intervenor, in the amount of \$743.72 for legal fees and air travel associated with the hearing that had been scheduled. As the costs applied for did not relate directly to the matters contained in the Notice of Appeal nor to the preparation and presentation of the submission, the Board, in its Cost Decision of May 8, 2002 did not award costs to Ducks Unlimited.

Cite as: *Cost Decision re: Ducks Unlimited.*

00-037

Appellant(s) – Mr. Ken McEachren, **Operator** – Mr. Allen Pukanski, **Location** Edmonton, **Type of Appeal** – Discontinuance of Proceedings

On May 26, 2000, Mr. Ken McEachren filed a Notice of Appeal with respect to Approval No. 00083208-00-00 issued under the *Water Act* to Mr. Allen Pukanski for the construction of a channel re-alignment and installation of a culvert on an unnamed watercourse, situated at NE 14-051-25-W4. On June 2, 2000, the Board wrote to the Appellant stating “I understand from speaking with Mr. Nash Kara of Alberta Environment that you have resolved your concerns regarding the work done by Mr. Pukanski. Mr. Nash further advises that you wish to drop your appeal...”. On June 7, 2000, the Board received a letter from the Appellant withdrawing his appeal. On June 26, 2000, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *McEachren v. Manager, Regional Support, Northeast Boreal Region, Alberta Environment, re: Allen Pukanski.*

00-038

Appellant(s) – Mr. Don Knight, **Operator** – Town of Strathmore, **Location** – Strathmore, **Type of Appeal** - Discontinuance of Proceedings

On May 23, 2000, Mr. Don Knight filed an appeal with respect to Amending Approval No. 1190-01-04. The Amending Approval is an amendment to Approval 1190-01-00 issued to the Town of Strathmore for the operation of a Class I wastewater treatment plant (wastewater stabilization ponds) and a Class II wastewater collection system and a storm drainage system for the Town of Strathmore. On July 17, 2000, the Appellant wrote to the Board advising that after meeting with the Town of Strathmore and Epcor most of his concerns had been met and that he would be releasing his appeal. On September 21, 2000, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Knight v. Director, Bow Region, Alberta Environment, re: Town of Strathmore.*

00-039

Appellant(s) – Mr. Jurgen Preugschas, **Operator** – Pigs R Us Inc., **Location** – near Mayerthorpe, **Type of Appeal** – Decision

On May 26, 2000, Mr. Jurgen Preugschas filed a Notice of Appeal with respect to Water Licence Nos. 00082554-00-00 and 000825613-00-00 issued under the *Water Act* to Pigs R Us Inc., for the diversion of water subject to certain conditions. On June 19, 2000, the Board requested additional information to supplement the appeal. After attempts to receive the information via a deadline and telephone message, the Board received the completed information on September 8, 2000. At the request of the parties, the appeal was held in abeyance from September 15, 2000 to February 20, 2001, pending discussions between the Appellant and the Director. On February 9, 2001, the Director advised the Board that further amendments to the monitoring requirements within the Licences were being forwarded to the Appellant for approval. On February 20, 2001, the Director further advised the Board that after several unsuccessful attempts, the Director could not reach the Appellant regarding the amendments. The Board also attempted unsuccessfully to contact the Appellant by telephone on February 21 and 23, 2001. Based on factual inconsistencies given by the Appellant with respect to the reasons for not returning calls made to the Board and the Director, the Board issued a Decision to dismiss the Notice of Appeal.

Cite as: *Pigs R Us Inc. v. Director, Northern East Slopes Region, Alberta Environment.*

00-040 and 00-041

Appellant(s) – Siksika First Nation and Mr. Clinton Blyth, **Operator** – Town of Strathmore, **Location** – Town of Strathmore, **Type of Appeal** – Discontinuance of Proceedings

On June 16 and 20, 2000, the Siksika First Nation and Mr. Clinton Blyth respectively, filed Notices of Appeal with respect to Amending Approval No. 1190-01-04 issued to the Town of Strathmore. The Approval is an amendment to Approval No. 1190-01-00, which authorizes the operation of a Class I wastewater treatment plant, a Class II wastewater collection system and a storm drainage system for the

Town of Strathmore. In response to a copy of an August 2, 2001, Statement of Concern letter from Mr. Blyth to the Director regarding the Town of Strathmore's application for a further approval for the addition of tertiary treatment capabilities to the wastewater treatment plant, the Board, on August 10, 2001, wrote to the Appellants advising that the Town of Strathmore's current Approval was still active and that it was the Board's understanding that the Town applied for a new approval to address longer term sewage effluent discharges. The Board further explained that if the approval is granted, the previous approval would be cancelled and therefore, encouraged the Appellants to file a Statement of Concern for the new application to ensure a Notice of Appeal could be filed should the approval be granted. After reviewing the information provided by the parties, the Board wrote to the parties on November 7, 2000, advising that a hearing would take place to address the appeals in relation to the Amending Approval and that the issue of Mr. Blyth's standing would be addressed at the beginning of the hearing which was later scheduled to take place in Calgary on January 17 and 18, 2001. Further to a November 29, 2000, letter from the Operator to the parties proposing a resolution to the Appellants' concerns, on December 18, 2000, the Operator informed the Board that the proposal was not satisfactory to the Appellants and was therefore withdrawn. On the same day, the Siksika First Nation wrote to the Board advising of their intention to withdraw their appeal, however, on January 4, 2001, advised the Board that they would take part in a hearing as their intent to withdraw their appeal depended on the formalization of commitments and the addition to the approval. Further to the Operator's request on January 3, 2001, and in consultation with the parties on January 5, 2001, the Board agreed to adjourn the hearing. On January 7, 2001, the Operator wrote to the parties (including the Siksika First Nation) and provided them a draft "Memorandum of Principles of Settlement" as discussed at a joint meeting on January 5, 2001. On January 29, 2001, the Director advised the Board that application 1190-05 for an amending approval had been signed and distributed to the parties. From January 29 - February 23, 2001, the parties worked toward finalizing the Memorandum of Settlement and on March 5 and April 6, 2001, the Board received notice that Mr. Blyth and the Siksika First Nation respectively, would sign the agreement. On May 28, 2001, the Board received a letter from the Director enclosing the Approval for the tertiary plant and as outlined in the Board's letter of May 25, 2001, issued a Discontinuance of Proceedings on June 4, 2001. The Board then closed its files.

Cite as: *Siksika First Nation and Blyth v. Director, Bow Region, Environmental Service, Alberta Environment*; re: *Town of Strathmore*.

00-042-046, 00-048-053, 00-056 and 00-057

Appellant(s) – Mr. Steve and Ms. Wendy Mazure, Ms. Maxine Dubuc, Ms. Terry Fisher, Mr. Barry and Ms. Lana Love, Mr. Carl Anderson, Mr. Henry Hays, Ms. Ina Fisher, Ms. Rae Fisher, Mr. Jack Potter, Ms. Florence Van Koughnett, Ms. Marjory Korth, Mr. Joe and Ms. Pearl Bebee, Mr. Greg and Ms. Jolie Schachtschneider, **Operator** – Taiwan Sugar Corporation, **Location** – near Hardisty, **Type of Appeal** – Discontinuance of Proceedings

Between July 12 and July 31, 2000, the Board received Notices of Appeal from Mr. Steve and Ms. Wendy Mazure, Ms. Maxine Dubuc, Ms. Terry Fisher, Mr. Barry and Ms. Lana Love, Mr. Carl Anderson, Mr. Henry Hays, Ms. Ina Fisher, Ms. Rae Fisher, Mr. Jack Potter, Ms. Florence Van Koughnett, Ms. Marjory Korth, Mr. Joe and Ms. Pearl Bebee, Mr. Greg and Ms. Jolie Schachtschneider. The Notices of Appeal were with respect to Approval No. 00081681-00-00 issued to Taiwan Sugar Corporation authorizing the exploration of groundwater on 8 & 19-041-01-W4M, 10 & 12-041-11-W4M, 7 & 8-42-10-W4M, 26 & 35-042-11-W4M near Hardisty, Alberta. The Approval provided the basis for an application for a licence to divert groundwater at the same locations in order for Taiwan Sugar Corporation to run a large hog barn operation. The appeals related primarily to the proposed diversion of water and its possible impacts as well as the general impact of the project upon the area, rather than an Approval for groundwater exploration. Since concerns regarding the development and zoning of the Approval Holder's proposed operation fall under the jurisdiction of Flagstaff County, the Appellants requested the Board hold the appeals in abeyance so they could take the matter of the Development Permit before the Development Appeal Board. The appeals were further held in abeyance while the matter proceeded to the Court of Appeal. Once the Court of Appeal issued its decision with respect to the Development Permit, and because the Approval to explore had expired, the Appellants withdrew their appeals with the Environmental Appeal Board. The Board therefore issued a Discontinuance of Proceedings and closed its file.

Cite as: *Mazure et al. v. Director, Parkland Region, Regional Services, Alberta Environment* re:

00-047

Appellant(s) – Mr. Henk Siderius of Siderius Dairy Ltd., **Operator** – Siderius Dairy Ltd., **Location** – Millet, **Type of Appeal** - Discontinuance of Proceedings

On July 11, 2000, Mr. Gordon Harris on behalf of Mr. Henk Siderius of Siderius Dairy Ltd. filed an appeal with respect to Approval No. 00082375-00-00 issued under the *Water Act* to Siderius Dairy Ltd. authorizing the dairy to explore for groundwater subject to certain conditions. On August 1, 2000, legal counsel for the Appellant wrote to the Board advising that the Mr. Siderius was dealing with his neighbours and Agra Earth & Environmental about the Approval and therefore, the appeal was held in abeyance until September 1, 2000. On August 31, 2000, legal counsel for the Appellant wrote to the Board advising that Mr. Siderius was no longer having difficulties complying with the conditions imposed on Siderius Dairy Ltd. by the Approval. On September 8, 2000, the Appellant withdrew his appeal and as a result, the Board issued a Discontinuance of Proceedings on September 21, 2000 and closed its file.

Cite as: *Siderius Dairy Ltd. v. Manager, Regional Support, Parkland Region, Alberta Environment.*

00-054

Appellant(s) – Mr. Don and Ms. Marjorie Bower, **Operator** – Mr. Don and Ms. Marjorie Bower, **Location** – near Red Deer, **Type of Appeal** – Report and Recommendations

On July 24, 2000, Mr. Don and Ms. Marjorie Bower filed a Notice of Appeal with respect to the decision of the Director, Parkland Region, Natural Resources Service, Alberta Environment, to refuse to issue a licence under the *Water Act* to Mr. Don and Ms. Marjorie Bower for the diversion of groundwater at NE 30-038-26-W4M for the purpose of a municipal subdivision water supply. In response to the Board's letter to the parties of August 23, 2000, asking if they wished to participate in mediation meeting/settlement conference, Mr. Clisshold, on behalf of the Appellants, suggested informal meetings with the Director's counsel. To allow the meetings to ensue, the Board held the appeal in abeyance until October 27, 2000. On November 14, 2000, the Board received a letter from the Director advising that he did not wish to pursue mediation and requested the Board proceed to a hearing. After determining issues to be addressed at the hearing on a preliminary meeting via written submissions, the Board held the hearing on April 2, 2001 in Edmonton. After considering the evidence, the Board concluded that the Director's decision to deny the licence application failed to serve the purpose of the *Water Act* as stated in section 2. The Board recommended its Report and Recommendations to the Minister on May 28, 2001, that he vary the decision of the Director and order: the Appellants to complete appropriate remedial actions to repair the improper well completion of WTH 2-97; the Appellants to perform an aquifer test on WTH 2-97 to accepted professional standards; and the Director, provided that the aquifer test of WTH 2-97 does not substantially contradict the previous findings on available groundwater yield, to issue a licence for the diversion of 5,110 cubic metres of water from WTH 1-97. The Board also notes that costs were not awarded as both parties indicated that they did not wish to make an application for costs. On June 20, 2001, the Minister approved the Board's recommendations.

Cite as: *Bower v. Director, Parkland Region, Natural Resources Service, Alberta Environment.*

00-055

Appellant(s) – Mr. Don Kadutski, **Operator** – Ranger Oil Limited, **Location** – near Elk Point, **Type of Appeal** – Decision

On July 28, 2000, the Board received a Notice of Appeal from Mr. Don Kadutski with respect to Approval No. 00082533-00-00 issued under the *Water Act* to Ranger Oil Limited. The Approval authorizes the Approval Holder to explore for groundwater at 19-055-06-W4M, 20-055-06-W4M, 29-055-06-W4M and 30-055-06-W4M. On September 12, 2000, the Board received a letter from the Appellant advising that Canadian Natural Resource Limited was the successor to Ranger Oil Limited and as a result, was now the

Approval Holder. On October 26, the Appellant requested the file be held in abeyance as the matter was before the Energy and Utilities Board (EUB). On November 15, 2000 the Board received a status report from the Approval Holder advising that they had determined that the wells are not required for either remediation purposes or for any other function and the wells are abandoned, they will then request the Department to cancel the Approval. In consultation with the parties, the appeal was held in abeyance until April 2, 2001. From April 6 to June 4, 2001, the Board received information from the parties with respect to actions to take place regarding the abandoned wells. Given the information presented to the Board, on August 28, 2001, it issued a Decision concluding that the Notice of Appeal was not properly before the Board; it is moot or without merit, and that the proper forum for this matter is the EUB and that the appeal should be dismissed for each of these concerns on their own.

Cite as: *Kadutski v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment, re: Ranger Oil Limited.*

00-058

Appellant(s) – Mr. Alan and Ms. Mary Ellen Young, **Operator** – Mr. Alan and Ms. Mary Ellen Young, **Location** – Calgary, **Type of Appeal** – Discontinuance of Proceedings

On August 2, 2000, Mr. Alan and Ms. Mary Ellen Young filed a Notice of Appeal with respect to Enforcement Order No. 2000-WA-01, issued under the *Water Act* for the construction of erosion control works, without an approval. The works were constructed on the Elbow River, at or near Calgary, Alberta. On August 11 and 31, 2000, the Youngs requested that the appeal be held in abeyance pending a possible resolution, which was granted by the Board. On December 1, 2000, the Board received a letter from counsel for the Director, enclosing a letter from the Director to the Appellants, dated November 3, 2000, stating that the Enforcement Order had been complied with. On December 7, 2000, the Board was advised by the Appellants that Alberta Environment closed the Enforcement Order and therefore, the Appellants would no longer be proceeding with the appeal. On December 11, 2000, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as *Young v. Director, Bow Region, Alberta Environment.*

00-059

Appellant(s) – Westridge Water Supply Ltd., **Operator** – Westridge Water Supply Ltd., **Location** – near Calgary, **Type of Appeal** – As listed below

Overview - On August 15, 2000, the Environmental Appeal Board received a Notice of Appeal from Westridge Water Supply Ltd. objecting to a number of terms and conditions of Preliminary Certificate 00081364-00-00 issued under the *Water Act* to Westridge Water Supply Ltd. The Preliminary Certificate states that the Appellant will receive a licence, upon compliance with certain conditions, to divert up to 787,101 cubic metres of water annually with the source of water supply being the Elbow River in NE 6-24-2-W5, through two production wells identified as Production Well No. 1 and Production Well No. 2 with Priority No. 1999-09-09-002.

(Interim) Decision - As a threshold matter, the Board needed to decide whether the appeal could continue, given the Appellant has sold its rights under the Preliminary Certificate to a successor company (Westridge Utilities Inc.) and the Director has formally transferred the Preliminary Certificate to that successor. On May 1, 2001, the Board issued a Decision advising 1. Westridge Utilities Inc. will be substituted for Westridge Water as the sole Appellant for jurisdictional purposes, 2. Westridge Water may continue to participate in the Appeal, but as a “party”, and lastly, 3. All parties should contact the Board (through its Registrar of Appeals) as soon as possible to set a quick hearing date.

Cite as: *Westridge Water Supply Ltd. #2 v. Director, Bow Region, Natural Resources Service, Alberta Environment.*

Report and Recommendations - In response to the Notice of Appeal, the Director requested that the Board dismiss the appeal outright as the grounds allegedly lack merit. After receiving the written submissions of the parties on this question, the Board advised all parties that an oral preliminary meeting would be held on April 27, 2001. At the preliminary meeting, the Board concluded that the appeal should

continue and that Westridge Utilities Inc. will be substituted for Westridge Water Supply Ltd. as the sole Appellant for jurisdictional purposes and that Westridge Water Supply Ltd. may continue to participate in the appeal. The Board also advised in its letter of May 14, 2001, that it decided the preliminary issues on jurisdiction and that it would schedule a hearing in this matter for July 26 and 27, 2001. On July 5, 2001, Westridge Utilities and Westridge Water Supply Ltd. advised the Board that they reached a settlement with the Director, which the Director later confirmed. Upon notice of the agreement, the Board cancelled the hearing and requested an original copy of the agreement. On July 27, 2001, the Board issued a Report and Recommendations recommending the Minister of Environment vary the expiry date of the Preliminary Certificate. The Minister approved the recommendation on September 27, 2001.

Cite as: *Westridge Water Supply Ltd. #3 v. Director, Bow Region, Natural Resources Service, Alberta Environment.*

00-061

Appellant(s) – Mr. Darren and Mrs. Daphne Fisher, **Operator** – Taiwan Sugar Corporation, **Location** – near Hardisty, **Type of Appeal** – Decision

On September 19, 2000, Mrs. Daphne Fisher on behalf of herself and her husband, Mr. Darren Fisher filed a Notice of Appeal with respect to Approval No. 00081681-00-00 issued under the *Water Act* to the Taiwan Sugar Corporation for the purpose of exploring for groundwater near Hardisty, Alberta. The Notice of Appeal filed by the Appellants is one of 14 Notices of Appeal that the Board received in relation to the Approval. The other 13 appeals were filed between July 6 and 31, 2000. Given that the appeal was submitted outside the specified timeline of the Act, on September 27, 2000, the Board requested the Appellants explain the reasons for the delay. On October 5, 2000, the Board received a letter from the Appellants advising that the Notice of Appeal was completed but due to a misunderstanding, failed to be faxed in time. The Board in turn found this to be an insufficient reason to extend the filing deadline. The Board however advised the Appellants that as stated in the Board's letter of September 27, 2000, the Appellants may be able to request intervenor status if the appeal were to proceed to a hearing. For the reasons provided above, on November 14, 2000, the Board its Decision dismissing the Notice of Appeal.

Cite as: *Fisher v. Director, Parkland Region, Natural Resource Service, Alberta Environment re: Taiwan Sugar Corporation.*

00-062

Appellant(s) – Mr. William Fedoruk, **Operator** – Canadian Natural Resources Limited, **Location** – near County of Minburn, **Type of Appeal** – Decision

On September 22, 2000, the Environmental Appeal Board received a Notice of Appeal from Mr. William Fedoruk appealing the issuance of Reclamation Certificate 38902 to Canadian Natural Resources Limited for the surface of land within NE 9-54-15-W4M in connection with the well known as Prevident Merrill Warwick 10-9-54-15, which is located on Mr. Fedoruk's property. In response to a letter from the Board on November 3, 2000, to the parties asking if they would like to participate in a mediation meeting, settlement conference, the Director requested, on November 17, 2000, that the appeal be held in abeyance until late spring or early summer as mediation would be most likely successful if a site visit was included. In consultation with the parties, the appeal was held in abeyance until May 1, 2001. From April 30 to June 20, 2001, the Board tried to schedule available dates for a mediation meeting/settlement conference but had difficulty doing so based on the parties' schedules. On June 20, Board staff left a telephone message at the Appellant's home asking if he was available September 5 or 25, 2001 for a mediation meeting. Board staff left home and work numbers and no response was received. The Board called again with no response. The Appellant was requested in a letter of June 22, 2001, to provide the Board with information it requested in its June 13, 2001 letter by June 27, 2001. This letter also included a statement indicating that failure to provide the information requested may result in the dismissal of the appeal. On June 28, 2001, the Appellant contacted the Board's office and advised that he wished to proceed with the mediation meeting in August 2001. On June 28, 2001, the Board issued a Decision to dismiss the Notice of Appeal for failure to respond to the Board's requests on a timely basis.

Cite as: *Fedoruk v. Director, Environmental Service, Parkland Region, Alberta Environment, re: Canadian Natural Resources Limited.*

00-063

Appellant(s) – Mr. Wayne Watson, **Operator** – Danoil Energy Ltd. (now Acclaim Energy Ltd.), **Location** – Chauvin, **Type of Appeal** – Discontinuance of Proceedings

On October 10, 2000, the Environmental Appeal Board received a Notice of Appeal from Mr. Wayne Watson appealing the issuance of Reclamation Certificate 39819 to Danoil Energy Ltd. (now Acclaim Energy Ltd.) and Envirsoil Land Management Ltd. which certified the surface of land within NE 25-41-2-W4M in connection with Aledo Et Al Hayter 9D-25-41-2 well complied with the conservation and reclamation requirements. In response to the Board's letter of November 3, 2000, asking the parties if they wished to participate in a mediation meeting, the Operator advised it would like to proceed directly to a hearing. On November 21, 2000, the Board received a request for a mediation meeting at the site to evaluate any concerns and advised that the Operator was in agreement. The Operator later advised that they would be agreeable to a mediation meeting in late May 2001. On December 19, 2000, the Board advised the parties that the appeal would be held in abeyance until May 2001, as there would be vegetation to inspect and the parties could provide available dates at that time. In consultation with the parties, the Board held a mediation meeting/settlement conference and site visit in Chauvin, Albert on June 6, 2001, whereby a resolution was reached. On June 15, 2001, based on the parties' resolution, the Board issued a Discontinuance of Proceedings and closed its files.

Cite as: Watson v. Director, Parkland Region, Environmental Service, Alberta Environment, re: Danoil Energy Ltd.

00-064

Appellant(s) – Mr. Ken and Ms. Marie Smulski, trustees of the estate of Mr. John Smulski, **Operator** – Corridor Pipeline Limited, **Location** – Strathcona County, **Type of Appeal** – Discontinuance of Proceedings

On October 13, 2000, Mr. Ken and Ms. Marie Smulski, trustees of the estate of Mr. John Smulski, filed an appeal with respect to a Letter of Authorization issued pursuant to Approval No. 69136-00-00 to Corridor Pipeline Limited to undertake the construction and reclamation of the Redwater River and North Saskatchewan River watercourse crossings with certain conditions. On October 17, 2000, the Appellants wrote a letter to the Board withdrawing his clients' appeal. On October 18, 2000, the Board issued a Discontinuance of Proceedings.

Cite as: Smulski v. Director, Bow Region, Alberta Environment, re: Corridor Pipeline Limited.

00-065

Appellant(s) – Mr. Neil Martin, **Operator** – Mr. Neil Martin, **Location** – Summer Village of Island Lake, **Type of Appeal** – Report and Recommendations

On October 30, 2000, the Board received a Notice of Appeal from Mr. Neil Martin with respect to Enforcement Order 2000-WA-02 issued under the *Water Act* to Mr. Martin. The Order states that the Appellant placed sand on the bed and shore of Island Lake in the Summer Village of Island Lake and is in violation of section 36(1) of the *Water Act*. The Order requires Mr. Martin to submit a plan to the Director outlining the remedial action to be taken to remove the sand from the bed and shore of Island Lake and requires the Appellant to carryout the plan once reviewed by the Director. The Appellant would like the Order rescinded and the development of a shoreline study. In consultation with the parties, the Board scheduled a hearing for March 2, 2001. The Board received intervenor requests from Mr. Gary and Ms. Cathy Fitzgerald (additional lakefront property owners) on February 16, 2001, and Ms. Lorraine Robertson, the Administrator for the Summer Village of Island Lake, on February 22, 2001. After reviewing written submissions, the Board advised that it would permit the Fitzgeralds to participate at the hearing by making a five-minute statement and that the Fitzgeralds and Summer Village of Island Lake Council's written submissions of February 28, 2001 would be accepted by the Board. A hearing took place on March 2, 2001 and the Board reconvened the hearing on March 9, 2001 to hear closing arguments and ask final questions. The issue before the Board at the hearing was whether the Appellant undertook an activity without an

approval when an approval was required, and whether the Director acted reasonably, within his jurisdiction, and properly exercised his discretion to issue the Order. Upon reviewing the evidence presented at the hearing, the Board issued a Report and Recommendations on June 8, 2001, recommending that it believed the Director took too strong an action in dealing with the Appellant, however the Appellant carried out an activity requiring an approval without an approval. The Board recommended that the Enforcement Order be varied to replace the requirement to remove the sand with a requirement for the Appellant to work with the Director to develop a maintenance program for the lakefront of his property that will minimize environmental impacts to be developed within 6 months of the Minister's approval and implemented immediately thereafter. The Minister approved the recommendations on August 9, 2001.

Cite as: *Martin v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment.*

00-066

Appellant(s) – Fas Gas Oil Ltd. and Fas Gas Realty Ltd., **Operator** – Fas Gas Oil Ltd. and Fas Gas Realty Ltd., **Location** – Provost, **Type of Appeal** – Decision

On November 1, 2000, Fas Gas Oil Ltd. and Fas Gas Realty Ltd. filed a Notice of Appeal with the Board with respect to Environmental Protection Order No. 2000-9 (the "EPO"). The EPO was issued to the Appellants for soil contamination at a gas station in Provost, Alberta. The Appellants however advised the contamination was on the site prior to Fas Gas taking possession of the gas station. On November 7, 2000, the Board acknowledged a letter from the Appellants requesting a Stay of the Order. On November 15, the Director advised no action would be taken under the EPO until the appeal was resolved. The Board advised the parties that a mediation meeting/settlement conference would be held on December 5, 2000, however it was later cancelled as the Director requested an abeyance until January 19, 2001 to accommodate an ongoing investigation into the EPO. On January 22, April 2, May 9 and June 15, 2001, the Director made further requests to hold the appeal in abeyance to continue the investigation and discuss the matter with the Appellants. The Director submitted another request for an extension, which was refused by the Board. The Board then advised the parties to submit dates for a possible hearing. On November 13, 2001, the Director advised the EPO would be withdrawn. As a result, the Board issued a Decision on November 19, 2001, dismissing the appeal under section 87(5) of *the Environmental Protection and Enhancement Act* for being either moot, not properly before the Board or without merit.

Cite as: *Fas Gas Oil Ltd. and Fas Gas Realty Ltd. v. Director, Enforcement and Monitoring, Bow Region, Alberta Environment.*

00-067

Appellant(s) – McColl-Frontenac Inc., **Operator** – McColl-Frontenac Inc., **Location** – Calgary, **Type of Appeal** – Report and Recommendations

This is an appeal of Environmental Protection Order No. 2000-08 (the "EPO") issued by Alberta Environment under the Environmental Protection and Enhancement Act (the "Act"). The EPO requires McColl-Frontenac Inc. (McColl) to assess the extent and nature of pollution at a site in northwest Calgary and to design and implement plan for remediating that pollution. McColl is the successor to several companies that owned the site and operated a gas station on it for roughly twenty-five years. However, the gas station ceased operating in the late 1970s. For much of the time since, the site has been used for the operation of two equipment rental businesses. The Board heard the appeal through written submissions and included AI's Equipment Rentals (1978) Ltd., a previous occupant. In its submission, McColl argues that: (a) Alberta Environment violated the Legislature's intent by applying a section 102 EPO retrospectively to facts that occurred before the Act came into force; (b) Alberta Environment violated McColl's legitimate expectation that would follow the *Guidelines for the Designation of Contaminated Sites*; (c) Alberta Environment erred by failing to name other parties as responsible persons; and (d) Alberta Environment erred by issuing the EPO under section 102 rather than under section 114 of the Act. The Board recommended on December 7, 2001 that the Minister affirm the EPO, while requiring the Director to consider in the future whether to designate the site as a contaminated site under section 110 of the Act and apply the remaining provisions of Part 4, Division 2 of the Act. The Minister agreed with the Board and issued Order 01/2002 on January 10, 2002 stating (1) order that the decision of the Director respecting the

EPO is confirmed; and, (2) further order the Director to activate the EPO immediately under section 102 and, if new evidence supports it, to give due consideration to applying the procedures in Part 4 Division 2 to the site.

Cite as: *McColl-Frontenanc Inc. v. Director, Enforcement and Monitoring, Bow Region, Environmental Service, Alberta Environment.*

00-068 and 00-069

Appellant(s) – Mr. Robert and Mrs. Christine Lederer and Mr. Pat and Mrs. Rita Chant, **Operator** – Spruce Valley Ranch Ltd., **Location** – near Millarville, **Type of Appeal** – Decision

On November 9, 2000, Mr. Robert and Mrs. Christine Lederer and Mr. Pat and Mrs. Rita Chant filed Notices of Appeal with respect to Preliminary Certificate 00079765-00-00 issued under the *Water Act* to Spruce Valley Ranch Ltd.. The Certificate states that the Approval Holder will receive a licence to divert 59,018 cubic metres of water annually at a maximum rate of 0.0037 cubic metres per second from the Coulee Tributary of Threepoint Creek in the NW1/4 of Section 2, Township 21, Range 3, West of the 5th Meridian with priority number 1999-09-7-003 upon compliance with certain conditions. In their Notices of Appeal, the Appellants expressed concern regarding the scope of the planned project, the nature of the water storage reservoir, and the downstream effects of the construction on the unnamed creek. On December 5, 2000, the Director wrote to the Board making a motion to dismiss the appeals as the concerns they raised were not contained in the Certificate and wanted to know the “directly affected” status of the Appellants. On January 12 and 16, 2001, the Board received letters from Mr. Daryl Seaman and Mr. R.B. McBride respectively, advising that they were both downstream residents of the proposed developments and designated the Appellants to act as their agents. On January 22, 2001, the Board advised Messrs. Seaman and McBride that the appeal period with respect to the issuance of the Certificate had expired, but they could apply as intervenors should the matter proceed to a hearing. After reviewing initial, response and rebuttal submissions by the parties, the Board issued a Decision on March 6, 2001 to dismiss the appeals as the Appellants did not disclose clear grounds of appeal.

Cite as: *Lederer and Chant v. Director, Bow Region, Alberta Environment re: Spruce Valley Ranch Ltd.*

00-070

Appellant(s) – Mr. Elgar Newsham, **Operator** – Mr. Elgar Newsham, **Location** – Innisfail, **Type of Appeal** - Decision

On November 9, 2000, Mr. Elgar Newsham filed a Notice of Appeal with respect to Approval No. 00141557-00-00 issued under the *Water Act*, to Mr. Elgar Newsham for the exploration of groundwater subject to certain conditions. On December 4, 2000, the Board received a letter from the Department advising that the Director would be cancelling the Approval issued to Mr. Newsham as the Appellant applied for a Traditional Agriculture Use Registration. On January 11, 2001, the Board received a letter from the Director advising the Approval was cancelled and wrote to the Appellant on January 15, 2001 requesting whether or not he would be withdrawing his appeal. No response was received and after numerous attempts to reach Mr. Newsham via telephone, on January 30, 2001, the Board issued a Decision to dismiss the Notice of Appeal.

Cite as: *Newsham v. Manager, Regional Support, Parkland Region, Alberta Environment.*

00-071-072

Appellant(s) – Mr. Chet Gilmore and Mr. Gary and Ms. Cathy Fitzgerald, **Operator** – Mr. Chet Gilmore and Mr. Gary and Ms. Cathy Fitzgerald, **Location** – Summer Village of Island Lake, **Type of Appeal** – Report and Recommendations

On November 23 and 24, 2000, the Board received a Notices of Appeal from Mr. Chet Gilmore, and Mr. Gary and Ms. Cathy Fitzgerald, respectively. The appeal was with respect to the issuance of Enforcement Order 2000-WA-05 issued to Mr. Gilmore and Enforcement Order 2000-WA-04 issued to the Fitzgeralds by the Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment. The Orders state the Appellants placed sand on the bed and shore of Island Lake. The Orders outline remedial action

(removal of walkways) to be taken to remove the sand from the bed and shore of Island lake. On March 9, 2001, the Board convened a hearing into the appeals. The issues before the Board are whether the Appellants each engaged in an activity, the placing of sand on the bed and shore of Island Lake, without an approval where an approval was required, and whether or not the Director acted reasonably, within his jurisdiction, and properly exercised his discretion to issue the Orders. Following initial deliberations, the Board reopened the hearing to receive written submissions. On June 8, 2001, the Board issued a Report and Recommendations to the Minister that the decision of the Director to issue the Orders should be varied to 1. Replace requirements to remove sand placed on the bed and shore with a requirement for the Appellants to work with the Director to develop a maintenance program for the lakefront of their properties to minimize environmental impacts, and 2. The plans should be developed within six months of the date of the Minister's Orders respecting these appeals and implemented as soon as possible. The Minister approved the recommendations on August 9, 2001.

Cite as: *Gilmore and Fitzgerald v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment.*

00-073

Appellant(s) – Metis Nation of Alberta Zone II Regional Council, **Operator** – AEC Pipelines Ltd., **Location** – near Cold Lake, **Type of Appeal** - Decision

This decision deals with two Notices of Appeal filed by the Metis Nation of Alberta Zone II Regional Council in relation to AEC Pipelines Ltd.'s Foster Creek Pipeline Project near Cold Lake. The question before the Board is the Appellant's ability to file their Notices of Appeal. On August 8, 2000, the Appellants wrote to the Director to file a Statement of Concern in relation to the project and advised, among other things, that they were prime stakeholders within the region. On November 15, 2000, the Director responded and advised the Appellants that their letter could not be considered a "formal" Statement of Concern as there was no indication of use of the lands in the Cold Lake Air Weapons Range by the Metis as the lands are restricted by the Department of National Defence. On November 16, 2000 the Director issued Approval No. 136570-00-00 to the Approval Holder for the project. On December 14, 2000 the Board received a Notice of Appeal (the "First Notice of Appeal") filed by Mr. Henry Desjarlais, President of the Metis Nation of Alberta Zone II Regional Council requesting the Board order the Director to accept the Statement of Concern. Therefore, the first Notice of Appeal appealed the Director's decision to reject the Statement of Concern and not the decision to issue the Approval. On January 5, 2001, the Appellant filed their second Notice of Appeal which was with respect to the Approval. On January 24, 2001, the Board advised the parties that it intended to hold an oral preliminary meeting, which took place on February 7, 2001. After reviewing the parties' submissions, and hearing their arguments, the Board issued a Decision on March 20, 2001, concluding that the Appellant was not directly affected according to the *Environmental Protection and Enhancement Act*.

Cite as: *Metis Nation of Alberta Zone II Regional Council v. Director, Bow Region, Environmental Service, Alberta Environment re: AEC Pipelines Ltd.*

00-074, 075, 077, 078, 01-001-005 and 011

Appellant(s) – Ms. Gwen Bailey, Enmax Energy Corporation, Mr. Nick Zon, Mr. Blair Carmicheal, Ms. Donna Thomas and the Summer Village of Kapasiwin, Mr. James Paron, the Village of Wabamun, Mr. David Doull, Lake Wabamun Enhancement and Protection Association, the Summer Village of Point Allison, **Operator** – TransAlta Utilities Corporation, **Location** – Village of Wabamun, **Type of Appeal** – Decision

Overview - On December 28, 2000 and January 2, 3, 4, and 10, 2001 the Board received Notices of Appeal from the following parties (collectively the "Appellants"), Ms. Gwen Bailey and the Summer Village of Point Alison; Mr. Steven J. Ferner on behalf of Enmax Energy Corporation ("Enmax"); Mr. Nick Zon; Mr. Blair Carmichael; Ms. Donna Thomas and the Summer Village of Kapasiwin; Mr. James Paron; His Worship Mayor William Purdy on behalf of the Village of Wabamun; Mr. David Doull; the Lake Wabamun Enhancement and Protection Association ("LWEPA"); and His Worship Mayor C. Gordon Wilson, again, on behalf of the Summer Village of Point Alison (Note: In a letter of February 15, 2001, Point Alison confirmed that His Worship Mayor C. Gordon Wilson would be representing the Summer

Village of Point Alison.) with respect to the issuance of Approval 10323-02-00 to TransAlta Utilities Corporation (“TransAlta”) for the operation and reclamation of the Wabamun Thermal Electric Power Plant, in the Village of Wabamun.

Decision - Upon request by the Environmental Appeal Board (“the Board”), the Alberta Energy and Utilities Board (AEUB) advised that TransAlta currently held AEUB Approval No. HE 8109 with respect to the Wabamun Power Plant. On January 25, 2001, the Board advised the Appellants that it would proceed to an oral preliminary meeting, which took place on March 1, 2001 at the Board’s office, to consider the status of the appeals filed by Enmax and determine which of the issues included in the Notices of Appeal would be included in a hearing. The Board also advised that it would consider “issue estoppel”, to prevent it from rehearing issues that already heard and decided in the previous appeals regarding the Wabamun Power Plant. As a result of the preliminary meeting, the Board issued a Decision on March 13, 2001, concluding that all Appellants, with the exception of Enmax are directly affected by the Wabamun Power Plant, and as a result, have standing. The Board was also prepared to revisit, within specific conditions, the issues of public safety, harvesting weeds, and sediment deposition at Point Alison. Lastly, the Board also concluded that it would accept submissions regarding 4.1.2 and 4.3.27 of the Approval, regarding timing and duration only, but including the length (the term) of the Approval.

Cite as: *Bailey et al. v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation*.

Decision (Preliminary Motions) – On March 20, 2001, the Board advised the parties that it would hold a hearing on April 18 & 19, 2001 at its office in Edmonton and accepted the following preliminary motions: Reconsideration Requests (lake levels) from Messrs. Zon and Doull on March 15, 2001; Adjournment and Interim Cost Request from Mr. Zon on March 19, 2001; Reconsideration Request (AEUB licence and priority number) from Mr. Zon on March 22, 2001, Interim Cost Request from Mr. Carmichael on March 23, 2001; Reconsideration Request (delta T) from Mr. Zon on March 26, 2001; and Interim Costs Request from LWEPA on March 26, 2001. On April 17, 2001, the Board issued a Decision concluding that the reconsideration request of Mr. Zon of March 15, 22, and 26, and Mr. Doull dated March 15, 2001 are dismissed pursuant to section 87(4) that: 1. only the issues that will be considered at the hearing of these appeals are those specified in the Board’s March 13, 2001 Decision; and 2. Representation with respect to other matters will not be permitted. The Board also denied all other preliminary motions and provided specific reason within its Decision.

Cite as: Preliminary Motions: *Bailey et al. v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation*.

Report and Recommendations – On April 18 and 19, 2001, the Board convened a hearing regarding these appeals which Messrs. Bailey and Thomas did not attend. The issues identified at the hearing included ice safety, alternate technologies to control weeds, sediment deposition at Point Alison, definitions of cooling water and decommissioning, watershed management plan, section 4.1.2 and the ten-year term, sections 4.3.27 and 4.1.3 and public consultation. On May 18, 2001, the Board issued its Report and Recommendations with the following recommendations to the Minister: 1. Confirm the definitions of decommissioning and cooling water in the Approval, being sections 1.1.2(m) and 1.1.2(i) respectively; confirm the provision dealing with the watershed management plan in the Approval, being section 4.3.24, subject to the proposed clerical amendment of the Director should the Director choose to make that amendment; confirm section 4.1.2 and the ten-year term of the Approval; vary the Approval by adding provisions (as outlined in this Report and Recommendations) as proposed by TransAlta – sections 4.3.27.1, 4.3.27; and vary the Approval by deleting section 4.1.3 and replacing it with a new provision. Prior to the close of the hearing, the Board received applications for final costs from LWEPA and the Village of Wabamun and requested that submissions in relation to the cost applications be provided to the Board two weeks from the date of the Minister’s Order with respect to the Report and Recommendations. The Minister issued a Ministerial Order approving these recommendations on June 20, 2001.

Cite as: *Bailey et al. #2 v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation*.

Appellant(s) – Mr. Perry, Ms. June and Ms. Marie Ellis, **Operator** – Village of Standard, **Location** Village of Standard, **Type of Appeal** – Discontinuance of Proceedings

On December 29, 2000, the Board received a Notice of Appeal from Mr. Perry and Ms. June and Ms. Marie Ellis with respect to Approval No. 00082525-00-00 issued under the *Water Act* to the Village of Standard. The Approval authorizes the maintenance of existing works, upgrade of the water collection system, replacement of water supply line, and the ability to conduct spring supply testing and examination in the Village of Standard. After numerous abeyances of this appeal, the Board finally set the matter down for hearing on October 29, 2001. On October 19, 2001, the Board received a letter from the Appellants advising that an agreement had been reached and they would be withdrawing their appeal. As a result, on October 26, 2001, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Ellis v. Director, Bow Region, Natural Resources Service, Alberta Environment,*
re: *Village of Standard.*
