

## DECISIONS 2003

03-004

**Appellant(s)** – Mr. Ben Gadd., **Operator** – Cardinal River Coal Ltd., Cheviot and Luscar Mine, **Location** – Cadomin, **Type of Appeal** – Discontinuance of Proceedings

On April 11, 2003, the Board received a Notice of Appeal from Mr. Ben Gadd with respect to a decision made by Alberta Environment that the Appellant was not directly affected by the private haulroad near Cadomin, Alberta, which was applied for by Cardinal River Coal Ltd., Cheviot and Luscar Mines. The Board began processing the appeal, however it received a request from Alberta Environment to dismiss the appeal for being premature since a decision had not yet been made with respect to the application. The Board scheduled a written submission process to address the request to dismiss the appeal. The Board also received a request from the Appellant for an abeyance in order to allow the parties to work toward a resolution of the appeal. The Appellant subsequently withdrew his appeal and as a result, the Board issued a Discontinuance of Proceedings on May 16, 2003 and closed its files.

Cite as: *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coal, Cheviot and Luscar Mine* (16 May 2003), Appeal No. 03-004-DOP (A.E.A.B.).

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03-007

**Appellant(s)** – Ms. Nancy Hohnstein, **Operator** – Nor-Chris Holdings Inc., **Location** – Parkland County, **Type of Appeal** – Discontinuance of Proceedings

On April 30, 2003, the Board received a Notice of Appeal from Ms. Nancy Hohnstein with respect to Approval No. 00189558-00-00 issued under the *Water Act* to Nor-Chris Holdings Inc. authorizing the construction, operation and maintenance of works for storm water management for Atim Creek Estates, Stage 1, in Parkland County, Alberta. The Board began processing the appeal, however, Nor-Chris Holdings Inc. requested the appeal be held in abeyance in order to allow the parties to pursue discussions with a view towards resolution. The parties agreed to provide the Board with status reports on a regular basis. Subsequently, Ms. Hohnstein agreed to withdraw her appeal on the condition that Nor-Chris Holdings Inc. amend their plans. Nor-Chris Holdings Inc. applied to Alberta Environment to amend their approval in order to satisfy Ms. Hohnstein's concerns and her appeal. Alberta Environment approved the amendment and on August 1, 2003, the Board issued a Discontinuance of Proceedings and closed its files.

Cite as: *Hohnstein v. Director, Central Region, Regional Services, Alberta Environment re: Nor-Chris Holdings Inc.* (1 August 2003), Appeal No. 03-007-DOP (A.E.A.B.).

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03-008

**Appellant(s)** – Mr. Doug McCoy, **Operator** – Doug McCoy, **Location** – Clyde, **Type of Appeal** – Discontinuance of Proceedings

On May 13, 2003, the Board received a Notice of Appeal from Mr. Clyde McCoy on behalf of Mr. Doug McCoy with respect to Licence No. 00194883-00-00 issued to Mr. Doug McCoy, authorizing the diversion of 611 cubic metres of water annually from the well in SE 24-060-25-W4, in Clyde, Alberta for agricultural purposes. After discussions between the Appellant and Alberta Environment, on June 4, 2003, the Board received a telephone message from the Appellant advising that he did not "need to appeal anymore". The Board responded by confirming with the Appellant that the appeal would therefore be withdrawn and requested the Appellant contact the Board immediately if this was not the case. No further response was received from the Appellant. Therefore, the Board issued a Discontinuance of Proceedings on June 13, 2003, and closed its files.

Cite as: *McCoy v. Director, Northern Region, Regional Services, Alberta Environment* (13 June 2003), Appeal No. 03-008-DOP (A.E.A.B.).

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03-009

**Appellant(s)** – Town of Valleyview, **Operator** – Town of Valleyview, **Location** – near Valleyview, **Type of Appeal** – Decision

On June 16, 2003, the Board received a Notice of Appeal from the Town of Valleyview appealing Licence No. 00080224-00-00 issued under the *Water Act* to the Town of Valleyview, authorizing the diversion of up to 668,400 cubic metres of water annually from the Little Smoky River at SE 12-70-22-W5M near Valleyview, Alberta. The time period in which an appeal may be filed with the Board with respect to a water licence is 30 days, unless the Board finds there is sufficient reason for extending this filing period. The Board requested that the Town provide reasons as to why the Board should extend the time limit for filing the appeal. After reviewing the reasons provided by the Town, the Board found that the Town did not present sufficient reasons to demonstrate that special circumstances existed to warrant an extension of the time limit. Therefore, the Board issued a Decision on August 1, 2003, dismissing the appeal for it being filed outside the time limit.

Cite as: *Town of Valleyview v. Director, Northern Region, Regional Services, Alberta Environment* (1 August 2003), Appeal No. 03-009-D (A.E.A.B.).

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### 03-010

**Appellant(s)** – Mr. Michael Monner, **Operator** –New Dale Hutterian Brethren, **Location** – near Milo, **Type of Appeal** – As listed below

**Overview:** On June 30, 2003, the Board received a Notice of Appeal and request for a Stay from Mr. Michael Monner with respect to Approval No. 00136848-00-00 issued under the *Water Act* to the New Dale Hutterian Brethren authorizing the operation of drainage works on an unnamed water body, a tributary to Indian Lake, at NW 15-20-21-W4M, 16-20-21-W4M, and 17-20-21-W4M, near Milo, Alberta. Upon review of Mr. Monner’s reasons for a Stay, the Board concluded that no irreparable harm would take place on Mr. Monner’s land as a result of activities authorized under the Approval. As a result, the request for a Stay was denied. A mediation meeting was held on August 6, 2003; however, the participants were unsuccessful in reaching an agreement. A hearing was held on January 27, 2004, with the Siksika Nation, Alberta Transportation, and the Vulcan County participating as intervenors. At the hearing, the Siksika Nation raised jurisdictional issues. The Board heard arguments on the substantive issues and set a schedule to receive arguments on the jurisdictional matter.

**(03-010-ID1) Stay Decision:** As the Board had to determine the jurisdictional matter before making its final decision on the substantive matters, both Mr. Monner and the Siksika Nation requested a Stay of the Approval. Based on the submissions and arguments of the parties and intervenors, the Board issued a Decision on November 29, 2004, and determined a Stay was not warranted as there would be no irreparable harm to the applicants and the public interest did not support a Stay.

Cite as: Stay Decision: *Monner v. Director, Southern Region, Regional Services, Alberta Environment re: New Dale Hutterian Brethren* (29 November 2004), Appeal No. 03-010-ID1 (A.E.A.B.).

**(03-010-R) Report and Recommendations:** With regard to the substantive issues, the Board determined that drainage works would not have a detrimental effect on Mr. Monner’s property and recommended the Approval be upheld. As Alberta Transportation and Vulcan County raised the issue of public safety, the Board issued a Decision on October 13, 2004, recommending the Approval be varied by adding two conditions to ensure the roadbed be adjacent to the existing culvert at Secondary Highway 842 and the roadbed adjacent to Township Road 202 are not impacted by the operation of the drainage works.

Cite as: *Monner v. Director, Southern Region, Regional Services, Alberta Environment re: New Dale Hutterian Brethren* (13 October 2004), Appeal No. 03-010-R (A.E.A.B.).

**(03-010-CD) Decision:** Mr. Monner and the Siksika Nation filed costs applications after the Report and Recommendations and the Minister’s decision were released. Mr. Monner’s request for costs totaling \$5,213.67 was denied, as all of the costs claimed pre-dated the appeal, and therefore, were not costs incurred in the preparation and presentation of his arguments at the hearing. The Siksika Nation’s application for costs totaled \$56,434.16, all of which the Board denied. Most of the costs (\$44,815.93)

were in relation to the jurisdictional matter, which was withdrawn and not determined by the Board. Although the Board respects the value and found the traditional knowledge interesting, it did not make a significant contribution or materially assist in the Board's decision on the substantive issues.

Cite as: Costs Decision: *Monner v. Director, Southern Region, Regional Services, Regional Services, Alberta Environment* re: *New Dale Hutterian Brethren* (05 January 2006), Appeal No. 03-010-CD (A.E.A.B.).

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03-011

**Appellant(s)** – The County of Warner No. 5, **Operator** – Alberta Transportation, **Location** – County of Warner, **Type of Appeal** – Discontinuance of Proceedings

On June 30, 2003, the Board received a Notice of Appeal from the County of Warner No. 5 appealing Approval No. 00198269-00-00 to Her Majesty the Queen in Right of Alberta as Represented by the Minister of Transportation, authorizing the construction of a drainage ditch in the County of Warner. The Board began processing the appeal, however, the Board received a letter from the Appellant on July 14, 2003, withdrawing the appeal. As a result, the Board issued a Discontinuance of Proceedings on July 18, 2003, and closed its files.

Cite as: *County of Warner No. 5 v. Director, Southern Region, Regional Services, Alberta Alberta Environment* re: *Alberta Transportation* (16 July 2003), Appeal No. 03-011-DOP (A.E.A.B.).

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03-012

**Appellant(s)** – Mr. Brian Navrot, **Operator** – Anadarko Canada Corporation, **Location** – near St. Paul, **Type of Appeal** – Discontinuance of Proceedings

On July 8, 2003, the Board received a Notice of Appeal from Mr. Brian Navrot, a landowner, with respect to Reclamation Certificate No. 00183533-00-00, issued to Anadarko Canada Corporation. The appeal was in connection with or incidental to the Norwest Owlseye 9-34-58-9 W4M well, near St. Paul, Alberta. The Board held a mediation meeting on August 26, 2003, and as a result, Mr. Navrot withdrew his appeal. The Board issued a Discontinuance of Proceedings on September 10, 2003, and closed its file.

Cite as: *Navrot v. Inspector, Northern Region, Regional Services, Alberta Environment* re: *Anadarko Canada Corporation* (10 September 2003), Appeal No. 03-012-DOP (A.E.A.B.).

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03-013

**Appellant(s)** – Mr. Mel Gray, **Operator** – Bar Kay Cee Club, **Location** – M.D. of Foothills No. 31, **Type of Appeal** – Discontinuance of Proceedings

On July 4, 2003, Mr. Mel Gray filed a Notice of Appeal with the Board with respect to Approval No. 186939-00-00 issued to the Bar Kay Cee Club, authorizing the construction, operation and reclamation of a waterworks system for the Bar Kay Cee Club subdivision in the Municipal District of Foothills No. 31. The Board began processing the appeal and, in consultation with the parties, scheduled a hearing of the appeal for September 10, 2003 in Calgary. On August 18, 2003, the Board received a letter from Mr. Gray withdrawing his appeal as a result of a meeting with Alberta Environment. The Board issued a Discontinuance of Proceedings on August 29, 2003, and closed its file.

Cite as: *Gray v. Director, Southern Region, Regional Services, Alberta Environment* re: *Bar Kay Cee Club* (29 August 2003), Appeal No. 03-013 (A.E.A.B.).

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03-014-019, 021-027, 029-038 and 082

**Appellant(s)** – Ms. Linda Covey, Ms. Elin Barlem, Mr. J. Mark Barlem, Ms. Margaret Baycroft, Mr. Bill and Ms. Linda Biggart, Mr. Leo E. Carter, Ms. Judy Hudson, Mr. Robert Lewis, Mr. Ron Macdonald, Ms. Margaret Medak, Ms. Laurie Miller, Mr. Randy Miller, Mr. Len Plummer, Ms. Karen Strong, Mr. Laurence Strong, Ms. Leah Wile, Ms. Laurie Zaleschuk, Ms. Dixie and Mr. Kevin Ingram, Mr. Robert Miller, Mr. Larry and Ms. Elenor Brown, Mr. Sydney and Ms. Myrtle Quartly, Mr. William and Ms. Doreen Thomsen,

Mr. William Froling, Ms. Jean Veldkamp and Mr. Howard Milligan, **Operator** – Mr. Hal Willis, **Location** – Innisfail, **Type of Appeal** – as listed below

**Overview:** On July 22 and 23, 2003, the Board received 26 Notices of Appeal and requests for a Stay in relation to Approval 00193447-00-00 issued under the *Water Act* to Mr. Hal Willis. The Approval authorizes the placement of clean fill on property adjoining Dodd's Lake at SW 28-35-28-W4M in Innisfail, Alberta. The purpose of placing the fill is to allow for the construction of a housing development.

**Decision:** The Board wrote to the parties on August 14, 2003, and September 19, 2003, regarding the Stay and requested submissions. On October 24, 2003, the Board wrote to the parties granting a temporary Stay on the basis that, *prima facie*, at least one of the Appellants are directly affected. A Preliminary Meeting was held on December 16, 2003, to decide the directly affected status of the Appellants, whether the Board should extend or release the Stay, and whether the government participated in a public review under the *Canadian Environmental Assessment Act* (Canada) in respect of all of the matters included in the Notices of Appeal. The Board received correspondence from Ms. Covey indicating that she had been in contact with the Department of Fisheries and Oceans; and the issues to be heard at a hearing should one be held. After receiving written submissions and hearing evidence at the Preliminary Meeting, on February 2, 2004, the Board notified the parties that: 1. the Stay of the Approval will remain in place until the Minister of Environment releases his decision; 2. the matter was not the subject of a *Canadian Environmental Assessment Act* review; 3. the following appeals and Appellants have been dismissed: Ms. Linda Covey 03-014, Ms. Elin H. Barlem 03-015, Mr. J. Mark Barlem 03-016, Mr. Bill and Ms. Linda Biggart 03-018, Mr. Leo E. Carter 03-019, Ms. Judy Hudson 03-021, Mr. Robert R. Lewis 03-022, Mr. Ron MacDonald 03-023, Mr. Len Plummer 03-027, Ms. Karen Strong 03-029, Mr. Laurence Strong 03-030, Ms. Laurie Zaleschuk 03-032, Mr. Robert J. Miller 03-034, Mr. Larry and Ms. Eleanor Brown 03-035, Mr. Sydney and Ms. Myrtle Quartly 03-036, Mr. William Froling 03-038, and Ms. Jean Veldkamp and Mr. Howard Milligan 03-082; and 4. the following appeals and Appellants are directly affected and their appeals will proceed to a hearing: Ms. Margaret Baycroft 03-017, Ms. Margaret E. Medak 03-024, Ms. Laurie A. Miller 03-025, Mr. Randy Miller 03-026, Ms. Leah Wile 03-031, Ms. Dixie and Mr. Kevin Ingram 03-033, and Mr. William and Ms. Doreen Thomsen 03-037. On March 23, 2004, the Board notified the parties that the only issue to be heard at the Hearing would be "Has the Director properly considered the issue of water quality impacts in issuing the Approval to place fill in the specified location."

**(03-014-019, 021-027, 029-038 and 03-082-ID1) Interim Decision:** The Board granted a Stay as the Appellants had shown, *prima facie*, that at least one of them would be affected by the project. A preliminary meeting was held to determine if any of the Appellants are directly affected; if the Stay should remain in effect or be released; if the provincial government had participated in a *Canadian Environmental Assessment Act* review; and the issues to be heard at the hearing, if one is held. After hearing the submissions of the parties, the Board issued a Decision on January 20, 2005, which determined: 1. The Appellants at the hearing will be: Ms. Margaret Baycroft, Ms. Margaret E. Medak, Ms. Laurie Ann Miller, Mr. Randy Miller, Ms. Leah Wile, Ms. Dixie and Mr. Kevin Ingram, and Ms. Doreen and Mr. William Thomsen. All the other appeals are dismissed, 2. the Stay will remain in place until the Minister of Environment releases his decision, 3. the matter was not the subject of a *Canadian Environmental Assessment Act* review, and 4. the issue to be heard at the hearing is: Has the Director properly considered the issue of water quality impacts in issuing the Approval to place the fill in the location specified in the Approval?

Cite as: *Covey et al. v. Director, Central Region, Regional Services, Alberta Environment* re: *Hal Willis* (20 January 2005), Appeal Nos. 03-014-019, 021, 027, 029-038, and 03-082-ID1 (A.E.A.B.).

**(03-017, 024-026, 031, 033 and 037-R) Report and Recommendations:** The Board held a Hearing on April 13, 2004 to hear from the Appellants (Ms. Margaret Baycroft (03-017), Ms. Margaret E. Medak (03-024), Ms. Laurie Miller (03-025), Mr. Randy K. Miller (03-026), Ms. Leah Wile (03-031), Ms. Dixie and Mr. Kevin Ingram (03-033), and Mr. William and Ms. Doreen Thomsen (03-037), Alberta Environment and Mr. Hal Willis. The Board heard from arguments the parties on whether Alberta Environment properly considered the water quality impacts on Dodd's Lake when issuing the Approval. After reviewing all of the evidence and submissions provided by the parties, the Board concluded the real concern of the

Appellants was the current water quality in Dodd's Lake, which has no connection to the placement of fill allowed under the Approval. The Appellants also argued the Approval would interfere with their attempts to increase the water levels in the lake. The Board rejected this argument. The Board found that Alberta Environment had adequately considered the potential impacts on the water quality in Dodd's Lake. The Board issued a Report and Recommendations on May 12, 2004, to the Minister of Environment. On May 17, 2004, the Minister approved the recommendations.

Cite as: *Baycroft et al. v. Director, Central Region, Regional Services Alberta Environment re: Hal Willis* (12 May 2004), Appeal Nos. 03-017, 024-026, 031, 033, and 03-037-R (A.E.A.B.)

**(03-017, 024-026, 031, 033, 03-037-RD) Reconsideration Decision** – The Appellants filed a reconsideration request with the Board regarding its decision. After reviewing the submissions from the parties, the Board issued a Decision on January 20, 2004, advising that there were no grounds to reconsider its previous decision, and the request was denied. The Appellants did not provide any new evidence that was not available at the time of the original decision and no error of law was identified. Therefore, the reconsideration request was denied.

Cite as: Reconsideration Decision: *Baycroft et al. v. Director, Central Region, Regional Services, Alberta Environment re: Hal Willis* (20 January 2005), Appeal Nos. 03-017, 024-026, 031, 033, and 03-037-RD (A.E.A.B.).

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### 03-020

**Appellant(s)** – Ms. Davina Daly, **Operator** – Mr. Hal Willis, **Location** – Innisfail, **Type of Appeal** – Discontinuance of Proceedings

On July 22, 2003, the Board received a Notice of Appeal from Ms. Davina Daly with respect to Approval No. 00193447-00-00 issued to Mr. Hal Willis, authorizing placement of clean fill on property adjoining Dodd's Lake located in Block F, Plan P, SW 28-35-28-W4M in Innisfail, Alberta. The Board received 27 Notices of Appeal appealing the Approval, including Ms. Davina Daly. The Board began processing the appeals. However, the Board received a letter from Ms. Daly advising that she wished to withdraw her appeal. As a result, the Board issued a Discontinuance of Proceedings on September 25, 2003, and closed its file.

Cite as: *Daly v. Director, Central Region, Regional Services, Alberta Environment re: Hal Willis* (25 September 2003), Appeal No. 03-020-DOP (A.E.A.B.).

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### 03-028

**Appellant(s)** – Mr. R.C. (Dick) Sifton, **Operator** – Mr. Hal Willis, **Location** – Innisfail, **Type of Appeal** – Discontinuance of Proceedings

The Board received 26 Notices of Appeal in relation to the Approval No. 00193447-00-00 issued to Mr. Hal Willis, authorizing placement of clean fill on property adjoining Dodd's Lake located in Block F, Plan P, SW 28-35-28-W4M. The Board received a Notice of Appeal and Stay of the Approval from Mr. R.C. (Dick) Sifton on July 22, 2003. Shortly after the Board began processing appeals, Mr. Sifton withdrew his appeal as he had moved from the Innisfail area. As a result, on November 12, 2003, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Sifton v. Director, Central Region, Regional Services, Alberta Environment re: Hal Willis* (12 November 2003), Appeal No. 03-028-DOP (A.E.A.B.).

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### 03-039

**Appellant(s)** – Mr. Bill and Ms. Linda Biggart, **Operator** – Town of Innisfail, **Location** – Innisfail, **Type of Appeal** – Decision

On July 22, 2003, the Board received a Notice of Appeal from Mr Bill and Ms. Linda Biggart with respect to Approval No. 00076694-00-00 issued on March 3, 2000, under the *Water Act* to the Town of Innisfail, for the purpose of constructing flood control works at NW 28-35-28-W4M at Dodd's Lake near Innisfail, Alberta. The time period in which an appeal may be filed with the Board with respect to a *Water Act*

approval is 7 days, unless the Board finds there is sufficient reason for extending this filing period. In this case, the Notice of Appeal was filed in excess of three years after the expiry of the appeal period. The Board requested that the Biggarts provide reasons as to why the Board should extend the time limit for filing the appeal. After reviewing the reasons provided, the Board found the Biggarts did not present sufficient reasons to demonstrate that special circumstances existed to warrant an extension of the time limit. As a result, the Board issued a Decision on November 24, 2003, dismissing the appeal.

Cite as: *Biggart v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (24 November 2003), Appeal No. 03-039-D (A.E.A.B.).

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### 03-040-058 and 03-060-081

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

**Overview:** On March 3, 2000, Alberta Environment issued *Water Act* Approval No. 00076694-00-00 to the Town of Innisfail authorizing the construction of flood control works at Dodd's Lake at NW 28-35-28-W4M near Innisfail, Alberta. The Approval was amended with *Water Act* Approval No. 00076694-00-01 on April 24, 2003, to include plans regarding Dodd's Lake outlet improvements and a water level management plan. On July 22 and 23, 2003, the Board received a total of 42 Notices of Appeal appealing the amending approval and requesting a Stay.

**(03-040-058 and 03-060-081-D) Decision:** The time period in which an appeal may be filed with the Board with respect to an amending approval under the *Water Act* is 7 days, unless the Board finds there is sufficient reason for extending this filing period. The Board requested the Appellants provide reasons as to why the Board should extend the time limit for filing their appeals. After reviewing the reasons provided, the Board issued a Decision on January 5, 2005, advising that the Appellants did not present sufficient reasons to demonstrate that special circumstances existed to warrant an extension of the time limit. Therefore, the Board dismissed the appeals for being filed outside the time limit and, therefore, did not consider the Stay applications.

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

**(03-040-058 and 03-060-081-RD) Reconsideration Decision:** The Appellants requested a reconsideration of the Board's decision on the basis that new information had become available. On January 5, 2005, the Board issued a Decision denying their request as the information was available at the time of the original appeal, and even if the information had been presented at the time, the Board would still have refused extending the filing period, as then information did not demonstrate the special circumstances required to reconsider the decision.

Cite as: Reconsideration Decision: *Covey et al. v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (05 January 2005), Appeal Nos. 03-040-058 and 03-060-081-RD (A.E.A.B.).

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### 03-059

**Appellant(s)** – Mr. John Chase, **Operator** – Town of Innisfail, **Location** – Innisfail, **Type of Appeal** – Discontinuance of Proceedings

On April 24, 2003, Alberta Environment issued *Water Act* Amending Approval No. 00076694-00-01 to the Town of Innisfail amending Approval No. 00076694-00-00 to include plan number 00076694-P002 (Dodd's Lake Outlet Improvements) and plan no. 00076694-P003 (Dodd's Lake Water Level Management

Plan) as they relate to the control structure constructed at the outlet of Dodd's Lake in Innisfail, Alberta. The Board received 42 Notices of Appeal, one of which was received by the Board on July 25, 2003 from Mr. John Chase, in relation to Amending Approval No. 00076694-00-01. The Board began processing the appeals. However, the Board received a telephone call from Mr. Chase (EAB 03-059) advising that he wished to withdraw his appeal. As a result, the Board issued a Discontinuance of Proceedings on September 16, 2003, and closed its file.

Cite as: *Chase v. Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (16 September 2003), Appeal No. 03-059-DOP (A.E.A.B.).

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### 03-083-114

**Appellant(s)** – John Dennehy, Sheila Thompson, Keith and Carol Quaife, Kelly Calkins, M. Lois Bell, Kevin O'Neil, Vern Shoemaker, Pierrette Doohan, Rae Allen, M. Smith, Hank Hendricks, Marvel Currie, Maurice Juchli, Jerry Hoshowski, Lori and Brent Mikkelsen, Darla and Jim Dragon, G. Mattock, D. Losie, Hank Hendricks, Bob Tomlinson, Brian Vanstone, H.J. Kowalchuk, K. and L. Fenemor, Harley Johnson and Lynne Staples, Andy and Darlene Davidson, Jack Lozeron, Carol Allen, J. and M. Helps, Daryl Allen, Ed and R. Karpluk, Lillian Karpoff, and Harvey Tober, **Operator** – Gregg Properties Co. Ltd., **Location** – Pigeon Lake, **Type of Appeal** – Discontinuance of Proceedings

On July 29, 2003, the Board received a Notice of Appeal from John Dennehy, Sheila Thompson, Keith and Carol Quaife, Kelly Calkins, M. Lois Bell, Kevin O'Neil, Vern Shoemaker, Pierrette Doohan, Rae Allen, M. Smith, Hank Hendricks, Marvel Currie, Maurice Juchli, Jerry Hoshowski, Lori and Brent Mikkelsen, Darla and Jim Dragon, G. Mattock, D. Losie, Hank Hendricks, Bob Tomlinson, Brian Vanstone, H.J. Kowalchuk, K. and L. Fenemor, Harley Johnson and Lynne Staples, Andy and Darlene Davidson, Jack Lozeron, Carol Allen, J. and M. Helps, Daryl Allen, Ed and R. Karpluk, Lillian Karpoff, and Harvey Tober with respect to Approval No. 00191814-00-00 issued under the *Water Act* to Gregg Properties Co. Ltd. authorizing the construction, operation and maintenance of a storm water management facility in SW 28-047-01-W5 for the purpose of collecting and draining storm water into Pigeon Lake and an unnamed tributary of Pigion Lake, Alberta. The Board received appeals from 32 Pigeon Lake property owners appealing the Approval. The Board began processing the appeals, however, the Appellants subsequently withdrew their appeals. As a result, the Board issued a Discontinuance of Proceedings on August 15, 2003, and closed its file.

Cite as: *Dennehy et al. v. Director, Central Region, Regional Services, Alberta Environment re: Gregg Properties Co. Ltd.* (15 August 2003), Appeal Nos. 03-083-114-DOP (A.E.A.B.).

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### 03-115

**Appellant(s)** – RD Flush Systems Ltd. and Mr. Jacob Martens, **Operator** – RD Flush Systems Ltd. and Mr. Jacob Martens, **Location** – Red Deer, **Type of Appeal** – Discontinuance of Proceedings

On July 31, 2003, the Board received a Notice of Appeal from RD Flush Systems Ltd. and Mr. Jacob Martens with respect to Enforcement Order No. EO-2003/03-CR issued to RD Flush Systems Ltd. and Mr. Jacob Martens for alleged contraventions of the *Environmental Protection and Enhancement Act* in relation to a truck washing facility in Red Deer, Alberta. The Board scheduled a hearing for October 29, 2003, however, prior to the hearing taking place, the Board received a request from the Appellants to adjourn the hearing as the parties were in discussions with a view toward resolving the appeal. The Board granted the adjournment and the Appellants subsequently withdrew their appeal. As a result, the Board issued a Discontinuance of Proceedings on July 28, 2004, and closed its file.

Cite as: *RD Flush Systems Ltd. et al. v. Director, Central Region, Regional Services, Alberta Environment* (28 July 2004), Appeal No. 03-115-DOP (A.E.A.B.).

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### 03-116 and 03-118-123

**Appellant(s)** – Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, City of Red Deer, Mr. Terry Little, Mr. Kelly Smith, the Butte Action Committee and Mr. Mike Gallie, **Operator** – Capstone Energy, **Location** – near Red Deer, **Type of Appeal** – As listed below

**Overview:** Between August 15 and September 8, 2003, The Board received Notices of Appeal from the Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, the City of Red Deer, Mr. Terry Little, Mr. Kelly Smith, the Butte Action Committee, and Mr. Mike Gallie (collectively the “Appellants”) with respect to Preliminary Certificate No. 00198509-00-00. The Preliminary Certificate was issued under the *Water Act* to Capstone Energy Ltd. allowing the diversion of 328,500 m<sup>3</sup> of water annually from the Red Deer River by way of an infiltration well in the fluvial gravel formation in SW 4-36-1-W5M near Red Deer, Alberta, for the purpose of oilfield injection.

**(03-116 and 03-118-123-ID1) Preliminary Motions:** The Board held a preliminary meeting to determine if the parties that filed the appeals were directly affected; to determine the issues to be considered at the hearing of these appeal; to consider an application for interim costs; and to determine whether the appeal filed regarding the Director’s decision to reject a statement of concern was properly before the Board. After reviewing the submissions and oral arguments provided by the parties, the Board found the Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, the City of Red Deer, Mr. Terry Little, and Mr. Kelly Smith directly affected. On February 11, 2004, the Board issued a Decision dismissing Mr. Mike Gallie’s appeal as he was found not directly affected, but because he could provide unique, relevant evidence, the Board made him a party to the appeals. The Butte Action Committee withdrew its request to be included as a formal appellant, and instead decided to act as Mr. Gallie’s agent. Upon reviewing the submissions of the parties on the issues to be considered at the hearing of these appeals, the Board identified five main areas that the parties wished to address: purpose, protection, volume, immediate neighbours, and policy considerations. With respect to the application for interim costs, based on the information that was before the Board, it decided to not grant interim costs, but instead invited any of the parties to reapply with additional information. (A subsequent application for interim costs was made and granted by the Board.) The appeal of the Director’s decision not to accept a statement of concern did not have to be considered. It was one of Mr. Gallie’s appeals, which was dismissed as Mr. Gallie was determined not to be directly affected.

Cite as: Preliminary Motions: *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (11 February 2004), Appeal Nos. 03-116 and 03-118-123-ID1 (A.E.A.B.).

**(03-116 and 03-118-121-ID2) Intervenor Decision:** The Board set a hearing for February 23, 24, and 25, 2004, and in response to the published notice of hearing, it received intervenor requests from the Red Deer Ratepayer Association, Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited. After reviewing the submissions from the parties, the Board issued an Intervenor Decision on January 24, 2005, advising that intervenors could participate in the hearing by providing written submissions and would be able to make a ten minute presentation at the hearing.

Cite as: Intervenor Decision: *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (24 January 2005), Appeal Nos. 03-116 and 03-118-121-ID2 (A.E.A.B.).

**(03-116 and 03-118-121-R) Report and Recommendations:** The Appellants argue that fresh water is a scarce resource and it should not be used for oilfield injection, and believe that once fresh water is injected into the ground in this way, it is gone forever. In considering these appeals, the Board highlights the importance of fresh water; it is essential for human existence and it is a limited resource. The Board is also aware of the importance of the oil and gas industry in Alberta and the work they are undertaking to reduce their use of fresh water in keeping with the principles of sustainable development. The Board must balance the protection of our fresh water supplies with sustaining this essential element of our economy. In addition to the Appellants, the Board received intervenor requests from the Red Deer County Ratepayer Association, Ms. Dorene Rew, the Council of Canadians (Red Deer Chapter), the Normandeau Cultural and Natural History Society, and Trout Unlimited. The Board granted these groups intervenor status, and as a result, they provided evidence at the Hearing. Based on all of the evidence received in these appeals (including evidence provided by the Intervenors at the Hearing), the Board issued a Report and Recommendations on April 26, 2004, concluding that the Preliminary Certificate and Proposed Licence should be upheld, but subject to a number of changes, including a reduction in the quantity of water and a staggered, shorter term for the licence. The Board encourages the government to provide direction through



an oilfield injection policy that focuses on minimizing the use of fresh water regardless of its source. In the Board's view, if fresh water is going to be used for oilfield injection, the *Water Act* requires that an alternatives analysis be conducted, looking at the technical, economic, and regulatory feasibility of the alternatives and demonstrating that the fresh water will be used not only efficiently, but as the last option considered. In the Board's view, the amount of water allocated should be reduced to 600 m<sup>3</sup>/day, for a total allocation of 219,000 m<sup>3</sup> annually. The reduction is consistent with evidence provided by Capstone that 150 m<sup>3</sup>/day of produced water is possibly available elsewhere and that the amount of water to be used during the first year of the project is less than peak requirements. To encourage the use of alternate water sources, before the Proposed Licence is issued, Capstone should provide Alberta Environment with a report detailing a more complete investigation of alternate water sources. Subject to certain conditions detailed in this Report and Recommendations, the amount of water finally allocated in the Proposed Licence may be further decreased if alternate water sources are available. In all of the circumstance, even though past policies are contradictory and data is lacking, the Board believes Alberta Environment did its best to consider the effects of the Proposed Licence on other users, including recreational users, and on fish and wildlife. However, as water shortages have occurred in the last number of years, and to protect our aquatic ecosystem, an additional safety margin of 10 percent should be added to the minimum residual flow level. Further, to provide additional protection to other water users, a number of the clauses in the Proposed Licence should be varied to provide greater certainty, particularly in dealing with complaints. The Board recommends that the Minister order that the term of the Proposed Licence be staggered or phased with shorter terms. In this case, the initial term should be for a one year, and the second term should also be for one year, unless an applicable plan, guideline, or change in regulations provides otherwise. If no applicable plan, guideline or change in regulations is in place after the second one year term, any subsequent renewals of the Proposed Licence should not exceed a term of three years. Every renewal of the Proposed Licence should require that an alternatives assessment be conducted based on a list of criteria that should be part of the application process. The Minister approved the Board's recommendations on May 18, 2004.

Cite as: Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy (26 April 2004), Appeal Nos. 03-116 and 03-118-121-R (A.E.A.B.).

**03-116 and 03-118-121-ID3 (Preliminary Motions):** During the hearing process, the Parties raised a number of preliminary issues. Since time was of the essence, the Board decided to render its decision with reasons to follow. The following outlines the reasons to the Parties: **1.** the City of Red Deer's request to have the Chair of the Board recused was not granted, **2.** the Parties agreed to have written closing submissions only, **3.** costs would be dealt with at the close of the Hearing, using the Board's regular process, **4.** the request to postpone the Hearing until such time that Mr. Vance Buchwald could attend was denied, **5.** Mr. Don Bester and Ms. Judy Winter were not allowed to testify, and the documents Mr. Bester intended to submit, dated November 28, 2001, and September 24, 2003, were not accepted by the Board, **6.** the Board agreed with the Landowners that a portion of the interim costs that had been awarded to them to defray costs associated with having Dr. David Schindler appear as a witness for them should be returned to the Certificate Holder, **7.** Dr. David Schindler was allowed to present evidence, and the Director and Certificate Holder were provided the opportunity for additional preparation time for cross-examination, but neither party availed themselves of the offer, **8.** the City of Red Deer voluntarily withdrew the affidavit of Ms. Leanne Staldeker, as the Director and Certificate Holder agreed with the issue the affidavit intended to represent; specifically that other companies in the area are using alternate technologies, **9.** the weight of the Intervenor's testimony was dependent on the relevancy and probative value of the evidence, **10.** the affidavit of Mr. Mike Gallie was accepted, because unforeseen and uncontrollable circumstances prevented him from submitting the documents on the day specified, **11.** Mr. Tom Tang and Mr. Doug Ohrn were requested to appear and testify at the Hearing. Their experience with the South Saskatchewan River Basin Water Management Plan Phase 2 was relevant to the issues identified for the Hearing, **12.** the Chief Administrative Officer for the Town of Ponoka appeared at the Hearing to provide sworn evidence and was subject to cross-examination by Parties adverse in interest and the Board, and **13.** the Director's closing arguments were accepted and were within the specified page limits, as Appendix A was stricken from the record and Appendix B was already a part of the Record.

Cite as: Preliminary Motions: *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (16 December 2005), Appeal Nos. 03-116 and 03-118-121-ID3 (A.E.A.B.).

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**(03-118, 120, 121, and 123-IC) Interim Costs:** Mr. Gerald Oxtoby, Mr. Terry Little, Mr. Kelly Smith, and Mr. Mike Gallie all filed an application for interim costs in the amount of \$7,854.00. Since the issues to be heard at the hearing were complex, and the costs were reasonable and directly associated with the preparation and presentation of their submissions, the Board granted costs in the amount of \$5,979.00 to be payable to Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith by Capstone Energy Ltd.

Cite as: Interim Costs Decision: *Oxoby et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (29 December 2004), Appeal Nos. 03-118, 120, 121 and 123-IC (A.E.A.B.).

**(03-118, 120, 121, and 123-CD) Costs Decision:** The Board received applications for costs from the City of Red Deer (\$72,242.57) and from Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith (\$28,840.46). After reviewing the applications and the submissions from the other parties, the Board issued a Decision on December 16, 2005, to award costs to the City of Red Deer (\$129.00) and to Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith (\$14,110.36, less the \$5,850.00 they received as interim costs = \$8,260.36), payable by Capstone Energy Ltd.

Cite as: Costs Decision: *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (16 December 2005), Appeal Nos. 03-116 and 03-118-123-CD (A.E.A.B.).

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### 03-117

**Appellant(s)** – Mr. Dennis and Ms. Barbara Hebner, **Operator** – EPCOR Generation Inc. and EPCOR Power Development Corporation, **Location** – near Genesee, **Type of Appeal** – Decision

On August 19, 2003, the Board received a Notice of Appeal from Mr. Dennis and Ms. Barbara Hebner with respect to Amending Approval No. 773-01-06 issued to EPCOR Generation Inc. and EPCOR Power Development Corporation Ltd., for the construction and operation of an emergency diesel generator at the Genesee thermal electric power plant located at 25-55-3-W5M near Genessee, Alberta. The Board held a preliminary meeting to determine whether the Appellants were directly affected; if their objection was with respect to land use; and whether they had the opportunity to participate in a hearing or review under an Act administered by the Alberta Energy and Utilities Board (“AEUB”) at which all of the matters included in appeal were adequately dealt with. The Board issued a Decision on January 24, 2004, advising that the Appellants were not directly affected by the operation of the emergency generator, and the appeal was dismissed. The Board also found the concerns expressed by the Appellants were actually land use issues and not within the Board’s jurisdiction. As the appeal was not properly before the Board, it did not consider whether the AEUB had considered the issues.

Cite as: *Hebner v. Director, Central Region, Regional Services, Alberta Environment re: EPCOR Generation Inc. and EPCOR Power Development Corporation Ltd.* (24 January 2005), Appeal No. 03-117-D (A.E.A.B.).

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### 03-124 and 125

**Appellant(s)** – Imperial Oil Limited and Devon Estates Limited, **Operator** – Imperial Oil Limited and Devon Estates Limited, **Location** – Calgary, **Type of Appeal** – Discontinuance of Proceedings

On September 5, 2003, the Board received Notices of Appeal from Imperial Oil Limited and Devon Estates Limited with respect to Environmental Protection Order Nos. EPO-2003/02-SR and EPO-2003/03-SR issued to Imperial Oil Limited and Devon Estates Limited in relation to the Lynnview Ridge residential subdivision in the City of Calgary, Alberta. Imperial Oil, Devon Estates, and Alberta Environment agreed to work to resolve their differences through consensual mediation. The Board selected a mediator and arranged for a series of mediation meetings commencing on October 27, 2003. The Lynnview Ridge Residents Action Committee and the Calgary Health Region participated in some of the discussions with the mediator. As a result of an agreement reached between Imperial Oil, Devon Estates, and Alberta Environment on March 31, 2005, Alberta Environment cancelled the Environmental Protection Orders and Imperial Oil and Devon Estates withdrew their appeals. The Board issued a Discontinuance of Proceedings on April 6, 2005, and closed its file.

Cite as: *Imperial Oil Limited and Devon Estates Limited v. Director, Southern Region, Regional Services, Alberta Environment* (6 April 2005), Appeal Nos. 03-124 and 125-DOP (A.E.A.B.)

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03-126

**Appellant(s)** – Mr. Robert A. Berrien and 766364 Alberta Ltd., **Operator** – Mr. Robert A. Berrien and 766364 Alberta Ltd., **Location** – near Okotoks, **Type of Appeal** – Discontinuance of Proceedings

On September 9, 2003, the Board received a Notice of Appeal from Mr. Robert A. Berrien and 766364 Alberta Ltd. with respect to Licence No. 989 issued under the *Water Act* to Mr. Berrien and 766364 Alberta Ltd. The licence was issued in 1967 to divert up to 65 acre-feet of water from the Highwood River in SW 05-020-28-W4 to irrigate up to 100 acres of land within the S1/2 05-020-28-W4. The Board scheduled an appeal hearing for November 21, 2001 in Calgary. However, the Board received a letter advising that Mr. Berrien wished to withdraw the appeal. As a result, the Board issued a Discontinuance of Proceedings on November 10, 2003, and closed its files.

Cite as: *Berrien v. Director, Southern Region, Regional Services, Alberta Environment* (10 November 2003), Appeal No. 03-126-DOP (A.E.A.B.).

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03-127-137

**Appellant(s)** – Mr. Gordon Volume, Mr. Gerry and Ms. Janet Whiteside, Ms. Barbara Petrie, Ms. Barbara Fehr, Mr. David Drader and Ms. Linda Vongrad, **Operator** – Word of Life Tabernacle, **Location** – Strathcona County, **Type of Appeal** – As listed below

**Overview:** On September 16 and 17, 2003, the Board received Notices of Appeal from Mr. Gordon Volume (03-127 and 03-128), Mr. Gerry and Ms. Janet Whiteside (03-129 and 03-130), Ms. Barbara Petrie (03-131 and 03-132), Ms. Barbara Fehr (03-133 and 03-134), and Ms. Linda Vongrad (03-136 and 03-137), appealing Approval No. 00198139-00 issued under the *Water Act* to the Word of Life Tabernacle for the construction of storm water management works at SW 5-52-22-W4M and SE 6-52-22-W4M in Strathcona County. Alberta Environment also issued Approval No. 198159-00-00 to the Operator for the construction, operation and reclamation of a storm outfall structure in SE 6-52-22-W4M.

**(03-127-137-ID1) Stay Decision:** Five of the six Notices of Appeals also requested a Stay of the approvals. After reviewing the parties' submissions, the Board issued a Decision on November 19, 2004, granting the Stay applications, primarily since the Word of Life Tabernacle had placed the property up for sale.

Cite as: Stay Decision: *Volume et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Word of Life Tabernacle* (19 November 2004), Appeal Nos. 03-127-137-ID1 (A.E.A.B.).

**(03-127-137-D) Decision:** Prior to the hearing scheduled for January 23, 2004, the Word of Life Tabernacle notified the Board that it had sold the property to which the approvals pertained. The Board cancelled the hearing. The Board was subsequently notified that Alberta Environment did, in fact, cancel the approvals as requested by the Word of Life Tabernacle. After reviewing the arguments and issues presented by the parties, the Board issued a Decision on November 24, 2004, which stated the appeals were now moot and as a result, dismissed the appeals.

Cite as: *Volume et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Word of Life Tabernacle* (24 November 2004), Appeal Nos. 03-127-137-D (A.E.A.B.).

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03-138

**Appellant(s)** – Ms. Dorene Rew, **Operator** – Capstone Energy Ltd., **Location** – near Red Deer, **Type of Appeal** – Decision

The Board received a Notice of Appeal from Ms. Dorene Rew on September 19, 2003, with respect to *Water Act* Preliminary Certificate No. 00198509-00-00 issued to Capstone Energy Ltd. on July 23, 2003. The Preliminary Certificate was for the diversion of water from the Red Deer River for industrial (oilfield

injection) purposes at SW 4-36-1-W5M. The time period in which an appeal may be filed with the Board with respect to a Preliminary Certificate is 30 days, unless the Board finds there is sufficient reason for extending this filing period. The Board requested reasons from Ms. Rew as to why the Board should extend the time limit for filing the appeal. After reviewing the submissions provided by Ms. Rew, the Board found she did not present sufficient reasons to demonstrate that special circumstances existed to warrant an extension of the time limit. Therefore, the Board issued a Decision on October 30, 2003, to dismiss the appeal for being filed outside the prescribed time limit.

Cite as: *Rew v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (30 October 2003), Appeal No. 03-138-D (A.E.A.B.)

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### 03-139

**Appellant(s)** – Mr. Brent Kelland, Ms. Susan Scott, Ms. Colleen Praud and Ms. Jill Kelland, **Operator** – Hunt Power Company of Canada Inc., **Location** – Crossfield, **Type of Appeal** – Discontinuance of Proceedings

On October 7, 2003, the Board received a Notice of Appeal, dated October 6, 2003, from Mr. Brent Kelland, on behalf of Mr. Brent Kelland, Ms. Susan Scott, Ms. Colleen Praud and Ms. Jill Kelland with respect to Approval No. 192173-00-00 issued to Hunt Power Company of Canada Inc. The Approval was for the construction, operation, and reclamation of the Crossfield Thermal Electric Power Plant in Crossfield, Alberta. The Board scheduled a Hearing for this matter, however, several weeks before the Hearing, the Appellants withdrew their appeal. As a result, the Board issued a Discontinuance of Proceedings on January 22, 2004, and closed its file.

Cite as: *Kelland et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Hunt Power Company of Canada Inc.* (22 January 2004), Appeal No. 03-139-DOP (A.E.A.B.).

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### 03-140

**Appellant(s)** – Calpine Canada Resources, **Operator** – Calpine Canada Resources, **Location** – near Oyen, **Type of Appeal** – Discontinuance of Proceedings

On October 16, 2003, the Board received a Notice of Appeal from Calpine Canada Resources appealing the Inspector of Environment's refusal to issue a Reclamation Certificate to Calpine Canada Resources with respect to the Bowtex et al. Shubbald well, located at SE Sec. 4, Twp. 28, Rge. 03, W4M, near Oyen, Alberta. The Board held a mediation meeting in Oyen on June 9, 2004. As a result of the meeting, Calpine Canada Resources withdrew their appeal. On June 10, 2004 the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Calpine Canada Resources v. Inspector, Southern Region, Regional Services, Alberta Environment* (10 June 2004), Appeal No. 03-140-DOP (A.E.A.B.).

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### 03-141

**Appellant(s)** – Ms. Gwen Veer, **Operator** – Navigo Energy Inc., **Location** – near Vilna, **Type of Appeal** – Discontinuance of Proceedings

On October 21, 2003, the Board received a Notice of Appeal dated October 3, 2003, from Ms. Gwen Veer, land occupant appealing Reclamation Certificate No. NE 1-03-00169 issued to Navigo Energy Inc. for the surface of the land within TWP 61-13-W4M; Sec 18, NW 17. The Reclamation Certificate is in connection with or incidental to the access road held under LOC 962663 and Licence No. 0195079, near Vilna, Alberta. The Board received a letter from the Navigo Energy Inc. requesting an abeyance of the appeal until spring of 2004 to complete remedial work on the land. On June 9, 2004, the Board received a telephone call from the Appellant advising the work carried out by the Operator was satisfactory, and she would be withdrawing her appeal. As a result of withdrawing her appeal, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Veer v. Inspector, Public Lands, Sustainable Resource Development re: Navigo Energy Inc.* (10 June 2004), Appeal No. 03-141-DOP (A.E.A.B.).

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### 03-142

**Appellant(s)** – Mr. Charlie and Ms. Pat Johnson, **Operator** – Murphy Oil Company Ltd., **Location** – near Cherry Point, **Type of Appeal** – Discontinuance of Proceedings

On October 23, 2004, the Board received a Notice of Appeal from Mr. Charlie and Ms. Pat Johnson with respect to Reclamation Certificate No. 00186627-00-00 issued to Murphy Oil Company Ltd. for the reclamation of the Murphy et al. BDYLKS 15-13-84-13-W6M well. The Board held a mediation in Cherry Point, Alberta on May 28, 2004, and following productive and detailed discussions, the parties' reached an agreement and decided to withdraw their appeal. On May 31, 2004, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Johnson v. Inspector, Northern Region, Regional Services, Alberta Environment re: Murphy Oil Company Ltd.* (31 May 2004), Appeal No. 03-142-DOP (A.E.A.B.).

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### 03-143

**Appellant(s)** – EnCana Corporation, **Operator** – EnCana Corporation., **Location** – near Jean Cote, **Type of Appeal** – Report and Recommendations

On October 31, 2004, the Board received a Notice of Appeal from EnCana Corporation appealing the refusal of the Director to issue a Reclamation Certificate to EnCana Corporation with respect to AEC Normandville/AEC Tangent well located at 8-15-80-23 W5M. The Board held a mediation meeting in Peace River, Alberta on February 10, 2004, following which a resolution was reached by the parties. On February 11, 2004, the Board issued a Report and Recommendations to the Minister of Environment recommending that the Minister accept the mediation resolution. On February 26, 2004, the Minister approved the recommendation.

Cite as: *EnCana Corporation v. Inspector, Northern Region, Regional Services, Alberta Environment* (11 February 2004), Appeal No. 03-143-R (A.E.A.B.).

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### 03-145 and 03-154

**Appellant(s)** – Mr. Klaus Jericho on behalf of himself and the Southern Alberta Environment Group, and Ms. Cheryl Bradley, **Operator** – St. Mary River Irrigation District, **Location** – near Lethbridge, **Type of Appeal** – Decision

On November 25, 2003, the Board received a Notice of Appeal from Mr. Klaus Jericho on behalf of himself and the Southern Alberta Environment Group and on January 6, 2004, received a Notice of Appeal from Ms. Cheryl Bradley with respect to Licence Amendment No. 00044590-00-01 issued under the *Water Act* to the St. Mary River Irrigation District near Lethbridge, Alberta. The amendment changes the purpose section of Licence No. 00044590-00-00 from "Irrigation" to "Irrigation District", and adds a number of clauses to the Licence to define Irrigation District purposes so as to allow the Operator to deliver water for municipal, agricultural, irrigation, commercial, industrial, management of fish, management of wildlife, habitat enhancement, and recreational purposes. The Board held a preliminary meeting to address the following issues: 1. the directly affected status of Mr. Jericho, the Southern Alberta Environmental Group, the Southern Alberta Environmental Group's members, and Ms. Bradley; 2. Ms. Bradley's late filed appeal; 3. any further preliminary issues raised by the parties; 4. the issues to be heard at a future hearing of the appeals, should one be held; and 5. a Stay of the amendment to the water licence, as requested by the Appellants. After hearing the legal arguments and evidence from the parties at the preliminary meeting, the Board issued a Decision on November 4, 2004, advising that the Southern Alberta Environmental Group, its members, and Mr. Jericho were not directly affected by the amendment to the water licences and their appeal was dismissed. Further, Ms. Bradley's appeal was also dismissed as she was found not to be directly affected by the amendment to the water licence, she did not file a Statement of Concern, her Notice of Appeal was filed late, and no extenuating circumstances existed to warrant extending the appeal period. As none of the appeals were property before it, the Board did not address the issues to be considered at a potential hearing and did not address the Stay application.

Cite as: *Jericho et al. v. Director, Southern Region, Regional Services, Alberta Environment re: St. Mary River Irrigation District* (4 November 2004), Appeal Nos. 03-145 and 03-154-D (A.E.A.B.).

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03-146

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

**Overview:** On December 8, 2003, the Board received a Notice of Appeal from Messrs. Marc and Roch Bremont regarding Enforcement Order No. WA-EO-2003/01-NR issued under the *Water Act* to the Bremonts for a ditch located on the NW 27-79-21-W5M.

**Issues Decision:** The Board decided to schedule a Hearing and requested the Bremonts provide written submissions to the Board with issues to be heard at the Hearing. Upon receipt of the written submissions, the Board issued an Issues Decision on February 4, 2004, and determined the issues to be heard at the Hearing would be 1. whether the ditch is used, operated and maintained such that it consititues an “activity” within the meaning of the *Water Act*, and whether its continued use, operation and maintenance without an approval is a contravention of section 36(1) of the *Water Act*, and 2. whether the Director properly and reasonably exercised his discretion in issuing the Enforcement Order.

Cite as: Issues Decision: *Bremont v. Director, Northern Region, Regional Services, Alberta Environment* (04 February 2004), Appeal No. 03-146-ID1 (A.E.A.B.).

**Discontinuance of Proceedings:** The Board scheduled a Hearing of the appeal for March 3, 2004. However, the Appellants withdrew their appeal days before the Hearing. As a result, the Board issued a Dicontinuanace of Proceedings on March 1, 2004, and the Board closed its file.

Cite as: *Bremont v. Director, Northern Region, Regional Services, Alberta Environment* (01 March 2004), Appeal No. 03-146-DOP (A.E.A.B.).

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03-147

**Appellant(s)** – Wood Buffalo First Nation, **Operator** – ConocoPhillips Canada Resources Corp., **Location** – near Fort McMurray, **Type of Appeal** – As listed below

**Overview** - On December 11, 2003, the Board received a Notice of Appeal from the Wood Buffalo First Nation (“Appellants” or “WBFN”) appealing Approval No. 48263-00-00 issued to ConocoPhillips Canada Resources Corp. for the construction, operation and reclamation of the Surmont enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Fort McMurray, Alberta.

**(03-147-D) Decision** - The Board conducted a Preliminary Meeting via written submissions on the issue of wheather the WBFN had an oppotunity to participate in a hearing before the Alberta Energy and Utilities Board (“AEUB”) at which all matters included in the Notice of Appeal were adequately dealt with. On June 28, 2004, the Board issued a Decision that determined that the WBFN did receive notice of, and did participate in an AEUB review of the matter, and all issues in the Notice of Appeal were adequately dealt with by the AEUB.

Cite as: *Wood Buffalo First Nation v. Director, Northern Region, Regional Services, Alberta Environment re: ConocoPhillips Canada Resources Corp.*, (28 June 2004), Appeal No. 03-147-D (A.E.A.B.)

**(03-147-RD) Reconsideration Decision** – The Wood Buffalo First Nation submitted a reconsideration request of the Board’s decision. After reviewing the submissions from the parties from the original appeal and the reconsideration request, the Board issued a Decision on November 17, 2004, and determined that no new evidence was presented by the Wood Buffalo First Nation, and they did not raise any substantial error in law. Therefore, the reconsideration request was denied.

Cite as: Reconsideration Request: *Wood Buffalo First Nation v. Director, Northern Region, Regional Services, Alberta Environment re: ConocoPhillips Canada Resources Corp.* (17 November 2004), Appeal No. 03-147-RD (A.E.A.B.).

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03-148

**Appellant(s)** – Wood Buffalo First Nation, **Operator** – OPTI Canada Inc./Nexen Canada Ltd., **Location** – near Fort McMurray, **Type of Appeal** – As listed below

**Overview:** On December 11, 2003, the Board received a Notice of Appeal from the Wood Buffalo First Nation (“Appellants” or “WBFN”) appealing Approval No. 137467-00-00 issued to OPTI Canada Inc./Nexen Canada Ltd. for the construction, operation and reclamation of the Long Lake enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Fort McMurray, Alberta.

**Decision:** The Board conducted a Preliminary Meeting via written submissions on the issue of whether the WBFN had an opportunity to participate in a hearing before the Alberta Energy and Utilities Board (“AEUB”) at which all matters included in the Notice of Appeal were adequately dealt with. On June 28, 2004, the Board issued a Decision that determined that the WBFN did receive notice of, and did participate in an AEUB review of the matter, and all issues in the Notice of Appeal were adequately dealt with by the AEUB.

Cite as: *Wood Buffalo First Nation v. Director, Northern Region, Regional Services, Alberta Environment* re: *OPTI Canada Inc./Nexen Canada Ltd.* (28 June 2004), Appeal No. 03-148 (A.E.A.B.)

**Reconsideration Decision:** The Wood Buffalo First Nation requested the Board reconsider its decision. After reviewing the submissions, the Board found the Appellant did not provide any compelling evidence or arguments for a reconsideration of the Board’s decision, therefore, on November 17, 2004, the Board issued a Decision denying the request for a reconsideration.

Cite as: Reconsideration Request: *Wood Buffalo First Nation v. Director, Northern Region, Regional Services, Alberta Environment* re: *OPTI Canada Inc./Nexen Canada Ltd.* (17 November 2004), Appeal No. 03-148-RD (A.E.A.B.).

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03-149

**Appellant(s)** – Mr. Dale Clearwater, **Operator** – Mr. Larry and Ms. Terri Cameron, **Location** – near Rocky Mountain House, **Type of Appeal** – Report and Recommendations

On December 18, 2003, the Board received a Notice of Appeal from Mr. Dale Clearwater regarding Licence No. 00196055-00-00 and Licence Amendment No. 00196055-00-01 issued under the *Water Act* to Mr. Larry and Ms. Terri Cameron operating as Wolf Dance Lodge. The Licence authorized water supply for the lodge at SW 04-038-07-W5 near Rocky Mountain House, Alberta. The Board held a mediation meeting in Rocky Mountain House on March 22, 2004, following which an agreement was reached by the parties. As a result, on March 24, 2004, the Board issued a Report and Recommendations to the Minister of Environment recommending the Minister accept the agreement. On March 29, 2004, the Minister approved the recommendations.

Cite as: *Clearwater v. Director, Central Region, Regional Services, Alberta Environment* re: *Larry and Terry Cameron, o/a Wolf Dance Lodge* (24 March 2004), Appeal No. 03-149 (A.E.A.B.).

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03-150, 03-151 and 03-152

**Appellant(s)** – Mr. Ben Gadd, **Operator** – Cardinal River Coals Ltd., **Location** – near Cadomin, **Type of Appeal** – As listed below

**Overview:** On December 19, 2003, the Board received a Notice of Appeal from Mr. Ben Gadd with respect to Approval No. 00188589-00-00 issued under the *Water Act* and *Environmental Protection and Enhancement Act* Amending Approval Nos. 11767-01-02 and 46972-00-01 issued to Cardinal River Coals Ltd for the construction, operation and reclamation of a private haul road located near Cadomin, Alberta.

**(03-150, 03-151 and 03-152-ID1) Preliminary Motions:** The Board determined that the private haul road was sufficiently different from the transportation corridor assessed in the joint Alberta Energy and Utilities Board and Canadian Environmental Assessment Agency review, and the Board's jurisdiction to hear these appeals was not removed by this joint review process. However, the issues are limited to the differences in the environmental impacts between what was assessed in the joint Alberta Energy and Utilities Board and the Canadian Environmental Assessment Agency review and what now exists as the result of the new design of the haul road. In addition, Mr. Gadd raised a legal issue surrounding the status of the amending approval. On October 8, 2004, the Board issued a Decision outlining the issues to be heard at the hearing: 1. what effect will the new design of the haul road have on the movement and migration of wildlife in the area?; 2. what effect will the new design of the haul road have on public access to the wilderness areas and tourist sites on either side of the haul road?; 3. what effect will the new design of the haul road have on the local watershed?; 4. what effect will the new design of the haul road have on the noise and dust coming from the haul road?; and 5. what is the legal status of the approval given that pre-development activities under the previous approval were to be commenced by December 31, 2001, unless amended?

Cite as: Preliminary Motions: *Gadd v. Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (8 October 2004), Appeal Nos. 03-150, 03-151 and 03-152-ID1 (A.E.A.B.).

**(03-150, 03-151, and 03-152-ID2) Intervenor Decision:** In response to the Board's notice of hearing scheduled for September 27 and 28, 2004, the Board received nine intervenor requests, representing 15 individuals and organizations. On October 12, 2004, the Board issued a Decision granting full party status to Mr. Allan Dane, Ms. Barb Higgins, Ms. Helen Ready, Ms. Janice Melnychuk, Mr. Edd Vass, Ms. Joyce Wilkins, and Mr. Roger Wilkins, who are all residents of Cadomin, Alberta (the "Cadomin Group"). The Board was of the view that residents of Cadomin would assist the Board in making its report and recommendations in this matter. Trout Unlimited, Yellowhead County, Alberta Fish and Game Association, United Mine Workers of America, the Town of Hinton, West Yellowhead Community Futures Development Corporation, and the Alberta Council for Sustainable Communities and the Environment (collectively the "Intervenors") were granted the right to participate through written submissions and a five minute oral presentation at the hearing. The Board was of the view that the Intervenors may have information that would assist the Board in making its report and recommendations in this matter. The intervenor request of Mr. Tom Stang was dismissed, as he does not live in the area.

Cite as: Intervenor Decision: *Gadd v. Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (12 October 2004), Appeal Nos. 03-150, 03-151, and 03-152-ID2 (A.E.A.B.).

**(03-150, 03-151, and 03-152-ID3) Interim Costs Decision:** The Cadomin Group requested interim costs for the amount of \$2,500.00. After reviewing the submissions for interim costs, the Board issued a Decision on December 21, 2004, denying the request even though the expenses claimed were not unreasonable. The Board advised that the parties appearing before it are responsible for the costs associated with bringing their issues to the forefront. The Board advised the Cadomin Group that they were free to submit a final costs submission at the close of the hearing.

Cite as: Interim Costs Decision: *Gadd v. Director, Central Region, Regional Services, Alberta Environment* re: *Cardinal River Coals Ltd.* (21 December 2004), Appeal Nos. 03-150, 03-151, and 03-152-ID3 (A.E.A.B.).

**(03-150, 151 and 152-R) Report and Recommendations:** Following a review of all of the evidence presented for the Hearing of these appeals, the Board determined that some aspects of the new design of the haul road negatively affected Mr. Gadd and the Cadomin residents in terms of their use and enjoyment of the local wilderness areas. However, the Board found there were also environmental benefits to the haul road design relative to the original design, most notably with regard to the reduced impact on the local watershed and the improved control of human access to the wilderness areas to the west of the haul road, which should reduce illegal hunting in the area. Therefore, as long as the potential for wildlife mortality associated with the haul road can be minimized, the haul road should have a net benefit for the environment compared to the original design of the project. Therefore, the Board issued a Report and Recommendations to the Minister of Environment for his approval on February 24, 2005, recommending the *Water Act* Approval be confirmed and the *Environmental Protection and Enhancement Act* Amending Approvals be



confirmed subject to a number of variations. Most of these variations relate to providing additional protection for wildlife. The Minister approved the Report and Recommendations on April 8, 2005.

Cite as: *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (24 February 2005), Appeal Nos. 03-150, 151 and 152-R (A.E.A.B.).

**(03-150, 151 and 152-CD) Costs Decision:** The Board received costs applications from Mr. Gadd (\$71,364.26), Cardinal River Coals (\$1.00), and the Cadomin Residents (\$5,935.74) who intervened in the hearing. The Board issued a Costs Decision on December 16, 2005 denying costs to the Cadomin Residents, as they did not reserve their right to ask for costs prior to the end of the hearing. Costs were not awarded to Cardinal River Coals Ltd. as the costs they were seeking were punitive in nature. The Board awarded Mr. Gadd for legal fees (\$10,165.00) and for witnesses that appeared on his behalf (\$3,838.96) to be paid by Cardinal River Coals Ltd.

Cite as: Costs Decision: *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (16 December 2005), Appeal Nos. 03-150, 151 and 152-CD (A.E.A.B.).

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### 03-153

**Appellant(s)** – Mr. Myles and Ms. Lynda McLellan, **Operator** – Mr. Mark and Ms. Susan Weiss, **Location** – near Warwick, **Type of Appeal** – Report and Recommendations

On January 5, 2004, the Board received a Notice of Appeal from Mr. Myles and Ms. Lynda McLellan, regarding License No. 00193172-00-00, issued under the *Water Act* to Mr. Mark and Ms. Susan Weiss. The Licence authorized the diversion of 613 cubic metres of water annually from the well in NW 31-053-14-W4 for agricultural purposes (stock watering) near Warwick, Alberta, subject to certain conditions. Mr. and Ms. Weiss also made application to Alberta Environment for a Licence to divert approximately 3,652 cubic metres of water annually from wells in NW 31-053-14-W4, near Warwick. The Notice of Appeal also consisted of a Statement of Concern in relation to the Licence application. On March 15, 2004, the Board held a mediation meeting in Vegreville, Alberta, following which an agreement was reached. As a result, on March 16, 2004, the Board issued a Report and Recommendations to the Minister of Environment recommending the Minister accept the conditions of the agreement. On March 19, 2004, the Minister approved the recommendations.

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

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### 03-155

**Appellant(s)** – Mr. Ron and Ms. Irene Hill, **Operator** – Mr. Ralph Biehn, **Location** – near Priddis, **Type of Appeal** – Discontinuance of Proceedings

On February 3, 2004, the Board received a Notice of Appeal from Mr. Ron and Ms. Irene Hill, dated February 1, 2004, regarding Licence No. 00197594-00-00 issued under the *Water Act* to Mr. Ralph Biehn. The Licence would construct a barrier (berm/plug) in a cut-off channel of Priddis Creek. The Board began processing the appeal, however, the Appellants decided to withdraw their appeal. As a result, the Board issued a Discontinuance of Proceedings on March 5, 2004, and closed its file.

Cite as: *Hill v. Director, Southern Region, Regional Services, Alberta Environment re: Ralph Biehn* (05 March 2004), Appeal No. 03-155-DOP (A.E.A.B.).

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### 03-156

**Appellant(s)** – Gleneagles Investments Ltd. and Louson Investments Ltd., **Operator** – AES Calgary ULC, **Location** – near Chestemere, **Type of Appeal** – Decision

On February 6, 2004, the Board received a Notice of Appeal from Gleneagles Investments Ltd. and Louson Investments Inc. with respect to Amending Approval No. 00149007-00-01 issued to AES Calgary ULC authorizing an extension of time for the construction of the AES Calgary Thermal Electric Power Plant until December 31, 2004. The Amending Approval also allowed the Operator to apply for a further extension if construction had not been completed by December 31, 2004. The Board scheduled a hearing

of the appeal via written submissions. However, prior to the commencement of the hearing, Alberta Environment cancelled the Amending Approval at the request of AES Calgary ULC. As a result, the Board issued a Decision on December 21, 2004, and dismissed the appeal for being moot.

Cite as: *Gleneagles Investments Ltd. and Louson Investments Ltd. v. Director, Southern Region, Regional Services, Alberta Environment re: AES Calgary ULC* (21 December 2004), Appeal No. 03-156-D (A.E.A.B.).

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03-157

**Appellant(s)** – Mr. Wayne and Ms. Wendy von Hollen, **Operator** – Mr. Albert and Ms. Sjoukje van der Meer, **Location** – near Rocky Mountain House, **Type of Appeal** – Report and Recommendations

On February 27, 2004, the Board received a Notice of Appeal from Mr. Wayne and Ms. Wendy von Hollen appealing Licence No. 00204431-00-00 issued under the *Water Act* to Mr. Albert and Ms. Sjoukje van der Meer for the diversion of 8,252 cubic metres of water annually from the well in NW 26-040-07-W5 for agricultural purposes (confined feeding operation) near Rocky Mountain House, Alberta. The Board held a mediation meeting in Rocky Mountain House on July 21, 2004, following which a resolution was reached by the Parties. On July 27, 2004, the Board issued a Report and Recommendations to the Minister of Environment recommending he accept the resolution. The Minister approved the resolution on August 4, 2004.

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

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03-158

**Appellant(s)** – Mr. Mike Richard, **Operator** – Devon ARL Corporation, **Location** – near Spirit River, **Type of Appeal** – Discontinuance of Proceedings

On March 10, 2004, the Board received a Notice of Appeal from a landowner, Mr. Mike Richard appealing Reclamation Certificate No. 00193712-00-00 issued to Devon ARL Corporation for the ARL Mirage 5-7-79-7 well near Spirit River, Alberta. The Board began processing the appeal, however, the Appellant decided to withdraw his appeal and pursue the complaint process available through the Department of Environment. As a result, the Board issued a Discontinuance of Proceedings on July 27, 2004 and closed its file.

Cite as: *Richard v. Inspector, Northern Region, Regional Services, Alberta Environment re: Devon ARL Corporation* (27 July 2004), Appeal No. 03-158-DOP (A.E.A.B.).

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