

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings - January 8, 2003

IN THE MATTER OF Sections 91, 92 & 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12 and section 115 of the *Water Act*, R.S.A. 2000 c. W-3;

-and-

IN THE MATTER OF an appeals filed by 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 with respect to *Water Act* Approval No. 00081681-00-00 issued by the Director, Parkland Region, Regional Services, Alberta Environment to Taiwan Sugar Corporation.

Cite as: *Mazure et al. v. Director, Parkland Region, Regional Services, Alberta Environment, re: Taiwan Sugar Corporation* (8 January 2003), Appeal Nos. 00-042-046, 00-048-053, 00-056, 00-057-DOP (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to Taiwan Sugar Corporation, which authorized them to explore for groundwater at 8 & 19-041-10-W4M, 10 & 12-041-11-W4M, 7 & 8-042-10-W4M and 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 Board received Notices of Appeal appealing the Approval from 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.

As 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 the approval for groundwater exploration and 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 that 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 of Alberta.

Once the Court of Appeal of Alberta 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 closes its file in this matter.

TABLE OF CONTENTS

I. BACKGROUND	1
II. DECISION	4

I. BACKGROUND

[1] On June 16, 2000, the Director, Regional Support, Parkland Region, Alberta Environment (the “Director”) issued Approval No. 00081681-00-00 (the “Approval”) to Taiwan Sugar Corporation (the “Approval Holder”) authorizing the exploration of groundwater on 8 & 19-041-01-W4M, 10 & 12-041-11-W4M, 7 & 8-42-10-W4M and 26 & 35-042-11-W4M near Hardisty, Alberta. The Approval was subject to a number of conditions restricting the Approval Holder to the temporary diversion of water incidental to pumping tests. The purpose of obtaining the Approval was to provide the basis for the application for a licence to divert groundwater at the same locations in order for the Approval Holder to operate a large hog barn, near Hardisty, Alberta.

[2] The Environmental Appeal Board (the “Board”) received Notices of Appeal between July 12, 2000 and July 31, 2000 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. Marjorie Korth, Mr. Joe and Ms. Pearl Bebee and Mr. Greg and Ms. Jolie Schachtschneider (collectively the “Appellants”).

[3] The Board acknowledged receipt of these appeals on July 12, 13, 17, 18, 20, 25, and August 4, 2000, notified the Director and Approval Holder of the appeals and requested that the Director provide copies of the records relating to these appeals (the “Record”) to the Board.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[5] On September 18, 2000, the Board noted that all of 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 the 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 Board informed the Appellants that the proper forum for an appeal of the development permit should be directed to the Development Appeal Board.

[6] On October 5, 2000, the Board received notice from the Appellants that they were appealing the Approval Holder's development permit before the Subdivision and Development Appeal Board of Flagstaff County. As a result, the Appellants requested that the appeals be held in abeyance pending the outcome of the Development Appeal Board hearing. The Board granted the abeyance.

[7] On November 27, 2000, the Subdivision and Development Appeal Board upheld the decision to allow the Taiwan Sugar Corporation development and on February 13, 2001, the Appellants subsequently applied for leave to appeal to the Alberta Court of Appeal. Leave was granted on February 26, 2001, and the Court of Appeal heard the matter on November 21, 2001. The Board determined that since the outcome of the court decision may affect these appeals, the appeals would continue to be held in abeyance pending the issuance of the Court of Appeal's decision.

[8] On February 22, 2001, the Board received notice from the Approval Holder, that the groundwater exploration work for some of the locations authorized by the Approval had been completed. The letter stated that the full report was available to the public, but that the results had yet to be filed with Alberta Environment. According to the Approval Holder, the findings "...established that the 3 sites on which exploration and testing is complete can supply all the water required for the entire Taiwan Sugar Corporation development."

[9] On April 2, 2001, the Approval Holder advised the Board that all exploration work had been completed and that the Approval Holder was proceeding with their application for a licence to divert water. The Board forwarded this information on to the Appellants and in answer to the Board's request, the Appellant's replied on May 4, 2001 that they would be willing to abandon their appeals if the exploration had indeed been completed and the abandonment would not prejudice their ability to appeal any other application for approval. The letter also stated that the Appellants had information that the groundwater exploration was ongoing and requested that Approval Holder respond to this allegation.

[10] On May 9, 2001, the Approval Holder responded that some recent groundwater exploration had, in fact, been undertaken and would continue until approximately June 15, 2001. The letter described the activities undertaken and the work still to be carried out and explained that:

“...given the high degree of public concern and given our desire to avoid antagonizing local residents, we chose to re-evaluate the potential to develop a water supply on NW 10-41-11, and consider extending the water supply by pipeline to SE 22-41-11. In discussion with our hydrologist, they decided to proceed to explore at NW 10-41-11 under our existing Approval and suspended the process for SE 22-41-11...”

[11] The Approval Holder's licence to explore for groundwater expired on June 15, 2001. The appeals continued to be held in abeyance by the Board pending the Court of Appeal's decision.

[12] On December 12, 2002, the Court of Appeal released their decision with respect to Taiwan Sugar Corporation. On December 17, 2002, the Board wrote to the Appellants advising “...the Board would like to proceed in the most appropriate fashion.” The Board went on to request comments from the Appellants to the following questions:

1. What is the effect of the Court of Appeal decisions on these appeals?
2. Assuming that the work under the Approval is now complete, the Board would like to receive the comments from the parties as to the jurisdictional effect on this on the appeals.

3. The Board notes that the Approval that is the subject of these appeals expired on June 15, 2001. The Board would like to receive comments from the parties as to the effect of this on the appeals.

[13] On January 6, 2003, the Board received a letter from the Appellants which stated, in part:

“...we note that the Director has confirmed that the Approval to explore has expired and that the subject of this appeal would appear to be moot as no further relief can be granted by the Board.. We also note that the Director has confirmed that a licence to divert has not been issued, and should a water licence be issued, this would give rise to further right of appeal.

Based on the information from the Director that this approval has expired, and in light of the issue of mootness and given the further recent Court of Appeal decisions, our clients have instructed us to withdraw their appeals in respect of the exploratory approval.”

II. DECISION

[14] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based on the letter of January 6, 2003 from the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 00-042-046, 00-048-053, 00-056 and 00-057 and closes its file.

Dated on January 8, 2003, at Edmonton, Alberta.

“original signed by”

William A. Tilleman, Q.C.
Chair