

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations – July 27, 2001

IN THE MATTER OF sections 84, 85, 87, and 91 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3 and section 115 of the *Water Act*, S.A. 1996, c. W-3.5;

-and-

IN THE MATTER OF an appeal filed by Westridge Water Supply Ltd. with respect to the decision of the Director, Bow Region, Natural Resources Service, Alberta Environment, to issue Preliminary Certificate 00081364-00-00 to Westridge Water Supply Ltd. under the *Water Act*.

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

EXECUTIVE SUMMARY

The Director issued a Preliminary Certificate to Westridge Water Supply Ltd., a small utility company that supplies potable water in an area west of Calgary, Alberta. The Preliminary Certificate provided that upon meeting certain terms and conditions, Westridge Water Supply Ltd. would be issued a Licence to divert up to 787,101 cubic metres of water annually through two production wells located in NE 6-24-2-W5M. The Licence will have priority no. 1999-09-09-002.

Westridge Water Supply Ltd. filed a Notice of Appeal objecting to a number of terms and conditions of the Preliminary Certificate and Licence. In general, Westridge Water Supply Ltd. expressed the view that it had been deprived of the full water right to which it believed it is entitled under the *Water Act*.

The Board dealt with a number of preliminary motions regarding this appeal, including the effect of the sale of the Preliminary Certificate and Licence to Westridge Utilities Inc. The Board then scheduled a hearing of the appeal in this matter.

The parties subsequently reached an agreement resolving the appeal. The agreement provides, among other things, that the expiry date of the Preliminary Certificate be amended. The Board is recommending to the Minister that the proposed amendment be accepted.

BEFORE

William A. Tilleman, Q.C., Chairman

PARTIES

Appellant: Westridge Water Supply Ltd. and Westridge Utilities Inc.,
represented by Ms. Judy Stewart, Fleming Kambeitz.

Director: Mr. Al McMillan, Director, Bow Region, Natural
Resources Service, Alberta Environment, represented by
Ms. Charlene Graham, Alberta Justice.

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I. BACKGROUND

[1] On July 12, 2000, the Director, Bow Region, Natural Resources Services, Alberta Environment (the “Director”), issued Preliminary Certificate 00081364-00-00 (the “Preliminary Certificate”) under the *Water Act*, S.A. 1996, c.W-3.5, to Westridge Water Supply Ltd. (“Westridge Water”). Westridge Water is a small utility company that provides potable water to an area west of Calgary, Alberta. The Preliminary Certificate states that upon compliance with certain conditions, the Appellant will receive a licence (the “Licence”) 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. The water is diverted through two production wells identified as Production Well No. 1 and Production Well No. 2 and the Licence will have priority no. 1999-09-09-002.

[2] On August 15, 2000, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Westridge Water Supply Ltd. objecting to a number of terms and conditions of the Preliminary Certificate and the Licence. In its Notice of Appeal, Westridge Water listed numerous, complex grounds of appeal, the gist of which are that the Westridge Water alleges that it has been deprived of the full water rights to which it believes it is entitled under the *Water Act*.

[3] The Board acknowledged the Notice of Appeal on August 15, 2000 and requested that the Director provide all relevant correspondence, documents and materials (the “Record”). The Director provided the Board with the Record on September 5, 2000 and a copy was subsequently forwarded to Westridge Water.

[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 replied in the negative.

[5] In response to the Notice of Appeal, the Director requested that the Board dismiss the appeal outright because all of the appeal grounds allegedly lack merit. In response to this preliminary motion, the Board wrote to the parties on October 27, 2000, and asked for submissions on the questions:

1. Whether the Board has the jurisdiction to deal with the matters put forward in the Notice of Appeal; and
2. Whether the Board should dismiss the appeal pursuant to section 87(5)(a)(i) or (i.2) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E.13.3 (the “Act”).

The Board received these submissions and on December 4, 2000 the Board wrote to the parties advising it would review these submissions and provide a decision.

[6] In January of 2001 while the Board was considering this preliminary motion, Westridge Water advised the Board that it had sold all its assets, including preliminary certificates and/or licences issued pursuant to the *Water Act* to Westridge Utilities Inc. (“Westridge Utilities”). Attached to the letters advising the Board of the sale was a “Notice of Assignment of Water Distribution System, Water Rights, and Water Supply Contracts.” Included in the assignment of assets was Preliminary Certificate No. 00081364-00-00, which is the subject matter of this appeal.

[7] Westridge Water further advised the Board on February 7, 2001 that an Application for Transfer of Licence from Westridge Water to Westridge Utilities Inc. was before the Director. Westridge Water advised that it would be prudent to add Westridge Utilities as a party to the appeal. On February 13, 2001, the Director acknowledged that the application was before him, and requested that the Board defer its decision until the Director had made a decision respecting the Application for Transfer of Licence.

[8] The Director subsequently advised Westridge Water on February 23, 2001, that Preliminary Certificate No. 00081364-00-00 had been amended to list the certificate holder as being Westridge Utilities Inc. The Director then took the position that that the appeal was no longer properly before the Board because neither Westridge Water nor Westridge Utilities allegedly has standing to continue the appeal and that the appeal should be dismissed.

[9] On March 7, 2001, the Board wrote all parties requesting that they address the legal standing of Westridge Utilities.

[10] After receiving the written submissions of the parties on this question, the Board advised all parties on March 30, 2001, that an oral preliminary meeting would be convened. The sole question before the preliminary meeting would be: “What is the effect of the sale of the

assets from Westridge Water Supply Co. to Westridge Utilities Inc. on the Notice of Appeal?”
The preliminary meeting was held on April 27, 2001.

[11] The Board concluded at this preliminary meeting that the appeal should continue and that Westridge Utilities will be substituted for Westridge Water as the sole appellant for jurisdictional purposes and that Westridge Water may continue to participate in the appeal.

[12] The Board also advised the parties by letter dated May 14, 2001 that it had decided the preliminary issues on jurisdiction that it had set in its October 27, 2000 letter. The Board advised that it had jurisdiction and set the issues to be addressed at the hearing.

[13] The Board then scheduled a hearing in this matter for July 26 and 27, 2001.

II. THE SETTLEMENT

[14] On July 5, 2001, while the Board was preparing for the July 26 and 27, 2001 hearing, Westridge Water and Westridge Utilities advised the Board that they had reached a settlement with the Director.¹ The Director confirmed that an agreement had been reached.

[15] The Board, on receipt of the notice that an agreement (the “Agreement”) had been reached, cancelled the hearing that was scheduled for July 26 and 27, 2001. The Board further requested that original copies of the Agreement, which was signed in counterpart, be forwarded to the Board for purposes of preparing a Report and Recommendations.² The Agreement was received by the Board and is included in this Report and Recommendations.

III. RECOMMENDATIONS

[16] In accordance with section 91 of the Act and in accordance with the terms of the Agreement reached between the parties, the Board recommends that the Minister of Environment:

vary the expiry date of Preliminary Certificate No. 00081364-00-00 by deleting and replacing it with:

“Expiry Date: 787,101 cubic metres: 2002-07-12”

¹ Letter from J. Stewart to Board, July 5, 2001.

² Letters from Board, July 5 and 11, 2001.

[17] Attached for the Minister's consideration is a draft Ministerial Order implementing this recommendation.

[18] Further, with respect to section 92(2) and 93 of the Act, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following parties:

- Westridge Utilities Inc. and Westridge Water Supply Ltd. represented by Ms. Judy Stewart, Fleming Kambeitz; and
- Mr. Al McMillan, Director, Bow Region, Natural Resources Service, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Dated on July 27, 2001, at Edmonton, Alberta.

□□□□□□□□ _____ □

William A. Tilleman, Q.C.
Chairman

IV. RESOLUTION

V. DRAFT ORDER

Ministerial Order

_____/2001

Environmental Protection and Enhancement Act,

S.A. 1992, c. E-13.3

Water Act,

S.A. 1996, c. W-3.5

Order respecting Environmental Appeal Board

Appeal No. 00-059

I, Dr. Lorne Taylor, Minister of Environment, pursuant to Section 92 of the *Environmental Protection and Enhancement Act*, make the order in the attached appendix being an Order Respecting Environmental Appeal Board Appeal No. 00-059.

DATED at the City of Edmonton, in the Province of Alberta, this _____ day of _____, 2001.

Honourable Lorne Taylor
Minister of Environment

DRAFT APPENDIX

Order Respecting Environmental Appeal Board Appeal No. 00-059

With respect to the decision of Mr. Al McMillan, Director, Bow Region, Natural Resources Service, Alberta Environment (the “Director”), to issue Preliminary Certificate 00081364-00-00 (the “Certificate”), which includes a Licence (the “Licence”), under the *Water Act*, dated July 12, 2000, to Westridge Water Supply Ltd. (succeeded by Westridge Utilities Inc.), I, Dr. Lorne Taylor, Minister of Environment order:

1. that the decision of the Director to issue the Certificate is confirmed, subject to the amendments included in this Order;
2. that the decision of the Director is varied by amending the Certificate expiry date by deleting

“Expiry Dates:

605,779 cubic metres: 2002-07-12

181,322 cubic metres: the earlier of the above noted expiry date or:

- i) the date of the Ministerial Order in relation to E.A.B. No. 99-142; or
- ii) the date of the decision if a court in relation of any civil proceeding that may be commenced by Westridge Water Supply Ltd. against Her Majesty the Queen in Right of Alberta, her employees or agents in relation to this quantity of water.”

and replacing it with:

“Expiry date:

787,101 cubic metres: 2002-07-12”.