

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Decision

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Date of Decision – June 22, 2001

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

-and-

**IN THE MATTER OF** intervenor requests received from Mr. Stanely Weiss, Mr. Garth Felesky, Mr. Brian Ziegenhagel, Mr. Pat Liboiron, Mr. Merle and Ms. Barb Brost, Mr. Edgar and Ms. Olga Hofer, Mr. Mel and Ms. Ardeth Wittke, Mr. Ed and Ms. Judy Stock, Mr. Larry Brown, Mr. Leo Pugsley, Mr. Rob and Ms. Bonnie Mather, Mr. Ken Berg, Ms. Bonnie Berg, Mr. Ron and Ms. Patty Roth, Mr. Lee Yasinski, Ms. Linda Yasinski, Mr. Ralph Roth, and Mr. Vern Cook, with respect to a hearing being held on June 25, 2001, in Medicine Hat, Alberta, regarding Preliminary Certificate No. 00139098-00-00 issued under the *Water Act* to B and J Schneider Ranching Ltd., by the Director, Prairie Region, Natural Resources Service, Alberta Environment.

Cite as: *Intervenor Requests: Schafer et al. v. Director, Prairie Region, Natural Resources Service, Alberta Environment, re: B and J Schneider Ranching.*

## **EXECUTIVE SUMMARY**

These appeals relate to a Preliminary Certificate and proposed Licence issued to B and J Schneider Ranching Ltd. B and J Schneider Ranching Ltd. proposes to establish a 6,000 feeder hog operation. The Preliminary Certificate provides that B and J Schneider Ranching Ltd. will be granted a Licence to use 21,600 cubic metres of water annually from wells located in SE 30-012-03-W4M near Medicine Hat, Alberta, if the conditions in the Preliminary Certificate are met.

This decision relates to 18 intervenor requests that were submitted to the Board by people asking to participate in the hearing that the Board has scheduled with respect to these appeals on June 25, 2001. All of the proposed intervenors indicate that their position is substantially the same as the Appellants in this matter.

The Board had decided to deny the intervenor requests of all of the proposed intervenors, with the exception of Mr. Stanley Weiss. Given that all of the intervenors have substantially the same position as the Appellants and given the “technical nature” of the issues before the Board, the Board is of the view that the proposed intervenors, except Mr. Weiss, will not materially assist the Board in deciding these appeals.

Mr. Weiss owns a well within 1600 m of the B and J Schneider Ranching Ltd. well and as a result, the Board has decided to let Mr. Weiss participate as an intervenor, but by written submission only.

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## I. BACKGROUND

[1] On December 20, 2000, the Director, Prairie Region, Natural Resources Service, Alberta Environment (the “Director”) issued Preliminary Certificate No. 00139098-00-00 (the “Certificate”) under the *Water Act* (the “Act”) to B and J Schneider Ranching Ltd. (the “Certificate Holder”). The Certificate provides that if the conditions of the Certificate are met the Certificate Holder will be issued a Licence which authorizes the use of 21, 600 cubic meters of water annually from wells in SE 30-012-03-W4 with priority 2000-08-29-002. A copy of the proposed Licence was attached to the Certificate.

[2] From January 31, 2001 to February 2, 2001, the Environmental Appeal Board (the “Board”) received 16 Notices of Appeal, from Mr. Louis and Ms. Verna Schafer, Mr. David Hausauer, Mr. Roy Hausauer, Ms. Chryle Bascom, Mr. Ken Benson, Mr. Ivan Hausauer, Mr. Donald Elhart, Ms. Bernice Bonneau, Ms. Aaron Elhart, Mr. Edward Aberle, Mr. Bill Hogg, Mr. Merlen Brost, Mr. Neil Hoff and Mr. Darcy Geigle (collectively known as the “Clearwater Clean Air Advocates” or “CCAA”), Mr. Brian Franz and Mr. Tracy Elhart, appealing the decision of the Director.

[3] The Board acknowledged receipt of the Notices of Appeal from CCAA, Mr. Franz and Mr. Elhart, and at that time requested a copy of the Records relative to the appeal, from the Director. The Records were received on February 16, 2001 and copies were subsequently provided to the parties to these appeals.

[4] On June 4, 2001, the Board scheduled a hearing in this matter for June 25, 2001, in Medicine Hat, Alberta, and determined the following matters would be heard:

1. The directly affected status of the Appellants, based on the position of the Preliminary Certificate Holder that the Preliminary Certificate and proposed Licence will have no impact on the Appellants.
2. The Appellants lack confidence in the available data and are of the view that there is insufficient data upon which to base the decision to issue the Preliminary Certificate and proposed Licence. Specifically, the Appellants have concerns that:
  - (a) the pump test was too short,
  - (b) there was no testing of observation wells,

- (c) there is insufficient information regarding the existence of a hydraulic barrier between the till material and the bedrock, and
  - (d) there is insufficient information to demonstrate that there is no connection with Ross Creek.
3. The Appellants would like to see expanded monitoring. The Appellants would like to see:
- (a) a frequency of four times per year specified in section 6(c) of the Preliminary Certificate;
  - (b) monitoring of other wells in the area, including the establishment of an “early warning system” on the Preliminary Certificate Holder’s lands and the monitoring of other existing wells in the area.

[5] A Notice of Hearing was placed in the Medicine Hat News on May 31, 2001 and requested that any representations, other than the parties to these appeals, be made in writing to the Board by June 11, 2001. A news release was also issued and distributed to 95 daily newspapers, radio stations and television stations within Alberta.

[6] On June 11, 2001, the Board received 18 requests for interventions by way of the Clearwater Clean Air Advocates from Mr. Stanely Weiss, Mr. Garth Felesky, Mr. Brian Ziegenhagel, Mr. Pat Liboiron, Mr. Merle and Ms. Barb Brost, Mr. Edgar and Ms. Olga Hofer, Mr. Mel and Ms. Ardeth Wittke, Mr. Ed and Ms. Judy Stock, Mr. Larry Brown, Mr. Leo Pugsley, Mr. Rob and Ms. Bonnie Mather, Mr. Ken Berg, Ms. Bonnie Berg, Mr. Ron and Ms. Patty Roth, Mr. Lee Yasinski, Ms. Linda Yasinski, Mr. Ralph Roth, and Mr. Vern Cook. The Board advised on June 19, 2001 that Mr. Weiss may participate as an intervenor by written submission only and all other intervenor requests have been denied, with written reasons to follow. This Decision contains those reasons.

[7] The Board notes that Mr. Merle Brost filed a Notice of Appeal (EAB 01-030), is part of the Clearwater Clean Air Advocates, and therefore, it was not necessary for Mr. Merle and Ms. Barb Brost to apply for intervenor status. There is no need for the Board to address the Brost’s intervenor request.

[8] Upon reviewing the requests for intervenor status and reviewing the Director’s Records in this matter, the Board notes that Mr. Pat Liboiron and Mr. Merle and Ms. Barb Brost previously filed Statement of Concern in this matter. The other proposed intervenors did not. Further, the Board also notes that Mr. Weiss filed a Notice of Appeal, but that Notice of Appeal

was dismissed by the Board on May 14, 2001 because Mr. Weiss had not filed a Statement of Concern.

[9] In reviewing the request for intervenor status, the Board notes the proposed intervenors express a number of general concerns including: the volume of the proposed withdrawal and its effect on existing water rights, and the potential impact of the withdrawal on Ross Creek. The proposed intervenors also expressed concerns that are not related to the Preliminary Certificate under appeal including potential for water pollution from the operation, odours and financial compensation. Finally, the Board notes that Mr. Liboiron indicates that his well is 1 ¼ miles from the Schneider well, and that Mr. Weiss indicates that his well is within 1 mile (1600 m) from the Schneider well and that no monitoring has been done on his well.

[10] The Board also notes that each and every intervenor request appoints Mr. Cameron MacLennan (legal counsel for the CCAA) to speak on their behalf and provides as a reason the view that "... my position is substantially the same as the Clearwater Clean Air Advocates."

[11] On June 11, 2001 the Board acknowledged receipt of the intervenor requests and provided a copy to each of the parties to the appeals and requested their comments as to the participation of the proposed intervenors. The Board received comments from Mr. MacLennan on behalf of the Appellants, Mr. Wilson on behalf of the Certificate Holder, and Ms. Graham on behalf of the Director.

[12] Mr. MacLennan would like the Board to accept all of the intervenor requests. He argues that the proposed intervenors have a "... tangible interest in the subject matter of the Appeal and will not unnecessarily delay the appeal as their concerns have in some or many degrees, as the case may be, been referenced by the Appellants who comprise the Clearwater Clean Air Advocates." (Emphasis added.) He further indicates that the proposed intervenors "... are in substantially the same position as those advocated by the current Appellants ...." (Emphasis added.) He argues that the information that the proposed intervenors have will materially assist the Board. He also argues that it would be unfair not to permit these individuals to participate in the appeal process merely because they did not see the public advertisement calling for Statements of Concern and advocates broad interpretation for the inclusion of intervenors. He specifically notes that Mr. Weiss' well is closest to the Schneider well and that

he decided not to file a Statement of Concern because he was assured that there were no concerns.

[13] Mr. Wilson argues that all of the proposed intervenors have indicated that their position is substantially the same as the Appellants and have not provided sufficient information to demonstrate how their participation would materially assist the Board. He also expresses concerns that the proposed intervenors would be duplicative of the Appellants. Mr. Wilson asks the Board to deny all of the intervenor requests.

[14] Ms. Graham notes that based on an agreement reached by the parties to this appeal, the Board determined that the issues to be heard in these appeals "...related to the issues of directly affected of the Statement of Concern filers, lack of information before the Director in making his decision (including a lack of information concerning Ross Creek) and concerns over monitoring conditions." Ms. Graham goes on to state that all "... of these issues generally go to the general concern of what will be the impact of the diversion ... [and] will deal with these issues as well as what protections exist under the licence and under the Act (to other licence holders, household users, registered traditional agricultural users, etc.)."

[15] In Ms. Graham's view, the concerns expressed by the proposed intervenors are general in nature and all contain the statement that "my position is substantially the same as the [Appellants]." Ms. Graham highlights Rule #14 from the Board's Rules of Practice and argues that based on this Rule that the intervenor requests should be denied because they will be substantially similar to the Appellants, they would be duplicative of the Appellants, and would not materially assist the Board.

## **II. ANALYSIS**

[16] In its letter of June 4, 2001, the Board determined that the issues to be considered in these appeals were:

1. The directly affected status of the Appellants, based on the position of the Preliminary Certificate Holder that the Preliminary Certificate and proposed Licence will have no impact on the Appellants.
2. The Appellants lack confidence in the available data and are of the view that there is insufficient data upon which to base the decision to issue the

Preliminary Certificate and proposed Licence.  
Specifically, the Appellants have concerns that:

- (a) the pump test was too short,
- (b) there was no testing of observation wells,
- (c) there is insufficient information regarding the existence of a hydraulic barrier between the till material and the bedrock, and
- (d) there is insufficient information to demonstrate that there is no connection with Ross Creek.

3. The Appellants would like to see expanded monitoring. The Appellants would like to see:

- (a) a frequency of four times per year specified in section 6(c) of the Preliminary Certificate; and
- (b) monitoring of other wells in the area, including the establishment of an “early warning system” on the Preliminary Certificate Holder’s lands and the monitoring of other existing wells in the area.

[17] The Board notes that the nature of these issues are primarily technical in nature and, as stated by Ms. Graham, “... generally go to the general concern of what will be the impact of the diversion.” Rule #14 of the Board’s Rules of Practice provides:

“As a general rule, those persons or groups wishing to intervene must meet the following test:

- their participation will materially assist the Board in deciding the appeal by providing testimony, cross-examination witnesses, or offering argument or other evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal; [and] ...
- the intervention will not repeat or duplicate evidence presented by the other parties; ....”

[18] In applying this rule, the Board is of the view that given the “technical nature” of the issues identified for the intervenors, save Mr. Weiss, will not materially assist the Board in deciding the appeals and that their evidence will be duplicative of evidence that can be provided by the Appellants in this matter. As stated by all of the proposed intervenors, their “... position is substantially the same as the Clearwater Clean Air Advocates.” As a result, the request by all of the proposed intervenors, except Mr. Weiss, are denied.

[19] The information provide by Mr. Weiss that is unique is that his water well is within 1600 m (1 mile) of the Schneider wells. In fact, as stated by Mr. MacLennan, Mr. Weiss

has the well closest to the Schneider well. Mr. Weiss also indicates that his well was not monitored during the testing operation. As a result, the Board is of the view that Mr. Weiss has a tangible interest in this matter and that he may provide evidence that is directly relevant to the appeal, and that will not repeat or duplicate the evidence presented by the other parties. As a result, the Board has decided to permit Mr. Weiss to intervene but by written submission only. In this regard, the Board has already received Mr. Weiss' submission in the form of an Affidavit. As a result, Mr. Weiss will be subject to cross-examination at the hearing.

[20] The Board notes that one other proposed intervenor, Mr. Pat Liboiron, also indicates that he is located relatively close to the Schneider well – 1¼ miles. In making its decision, the Board notes that Mr. Liboiron filed a Statement of Concern and, as a result, had the opportunity to file a Notice of Appeal but at no time attempted to do so.

### **III. DECISION**

[21] The Board confirms its decision to grant intervenor status to Mr. Weiss only, and all other requests are dismissed.

Dated June 22, 2001, at Edmonton, Alberta.

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William A. Tilleman Q.C.  
Chairman