

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – May 14, 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 an appeal filed on April 24, 2001 Mr. Stanley Weiss with respect to Preliminary Certificate No. 00139098-00-00 issued under the *Water Act* to B and J Schneider Ranching Ltd., by the Director, Prairie Region, Alberta Environment.

Cite as: *Weiss v. Director, Prairie Region, Alberta Environment, re: B and J
Schneider Ranching.*

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BACKGROUND

[1] On December 20, 2000, the Director, Prairie Region, 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 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.

[2] April 24, 2001, the Environmental Appeal Board (the “Board”) received a Notice of Appeal, from Mr. Stanley Weiss (the “Appellant”), appealing the decision of the Director expressing:

“...concerned about the effects of the Preliminary Water Certificate could have on my water. I reside on SW 25-12-4-W4, but one of my wells is located on NE 25-12-4-W4 which means that it falls within the 1600 metre radius. I’m very dependant on this well for watering my livestock year round...Although I wasn’t previously involved with the appellants, I now realize the devastating effects this could have on my ranch. Please include my name on the appellants list.”

The Appellant asked to be added to the appeal which had already been filed by sixteen separate appellants (collectively known as the “Clearwater Clean Air Advocates” or “CCAA”) on February 2, 2001 with regard to Preliminary Certificate 00139098-00-00.

[3] On April 30, 2001, the Board acknowledged receipt of the Notice of Appeal from the Appellant, and at that time requested a copy of the Records relative to the appeal, from the Director. In addition, the Board sought further clarification from the Appellant by stating:

“From review of the file, it does not appear that you filed a Statement of Concern with the Director, Alberta Environment when Notice of the Application was published (s.115(1)(b) *Water Act*). Further, your Notice of Appeal is out of time in that it was not filed within the time frame specified in the *Water Act* (s.116(1)(a)(b)). If you wish to proceed with this appeal, please advise why the Board should permit you to file a Notice of Appeal without a Statement of Concern, and why the Board should extend the time frame as allowed in s.116(2) of the *Water Act*.”

[4] On May 7, 2001, the Board received a letter dated May 4, 2001 in which the Appellant attempts to address the issues raised in the Board's letter of April 30, 2001. Specifically, the Appellant reiterates:

“...Please accept this letter to permit me to appeal without submitting a letter of concern prior to the deadline...While meeting in October 1999 with... (the landowner), they indicated that I would not be directly affected in any way other than a few days of odour...I have been made aware [by area residents] of facts that lead me to believe that I too should be concerned over water depletion...I am concerned that this well is in the same aquifer due to the close proximity to the proposed diversion site...Without this well I would be forced to find an alternative water source which may be very difficult and costly due to the extreme drought conditions we are presently experiencing.”

DECISION

[5] Section 115 of the *Water Act* sets out the criteria necessary for the filing of an appeal with the Board. Section 115(1) (b) deals with the issuance of a preliminary certificate for water and states:

- 115(1) A notice of appeal under this Act may be submitted to the Environmental Appeal Board by the following persons in the following circumstances:
- (b) if the Director issues or amends a preliminary certificate a notice of appeal may be submitted
 - (i) by the preliminary certificate holder or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, or
 - (ii) by the preliminary certificate holder or by any person who is directly affected by the Director's decision, if the Director waived the requirement to provide notice under section 108(6) and notice of the application was not provided;

[6] Simply put, this section states an individual filing an appeal relating to the issuance of a preliminary certificate, must indicate (a) that they have filed a statement of concern with the Director after notice of the application was posted and (b) are directly affected by the Director's decision. The Board notes that the Appellant has not provided sufficient information in either regard. The Appellant in his letter dated May 4, 2001, admits that he did not file a statement of concern. The Board has addressed this matter in the decision of *O'Neill v. Regional Director, Parkland Region, Alberta Environment* in which the failure to file a statement of concern was addressed. In its decision, the Board stated:

“Statements of concern are a legislated part of the appeal process. Though it is seldom seen, circumstances could arise where it may be possible for the Board to process an appeal where a statement of concern was filed *late*. Or perhaps an appeal could be processed even when a statement of concern has not been filed—due to an extremely unusual case (e.g. a directly affected party being hospitalized) where a person's intent to file is otherwise established in advance. But those circumstances are highly fact-specific, exceptionally rare, and they do not apply to the present case.”¹ [Emphasis in original.]

[7] Based on the information provided by the Appellant, the Board is of the view that the circumstances indicated by the Appellant for failure to file a Statement of Concern are not special or compelling nor do they indicate an intent to file at any time in the past. On this basis, the Board dismisses the appeal for failing to file a statement of concern as required in section 115(1)(b).

Dated May 14, 2001, at Edmonton, Alberta.

William A. Tilleman Q.C.
Chairman

¹ *O'Neill v. Regional Director, Parkland Region, Alberta Environmental Protection, re: Town of Olds* (March 12, 1999), EAB No. 98-250-D at paragraph 14.