

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – February 28, 2002

IN THE MATTER OF sections 91, 92 and 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 appeal filed by Mr. Ronald Pernarowski with respect to *Water Act* Licence No. 00148301-00-00 issued by the Regional Director, Northern Region, Regional Services, Alberta Environment to Imperial Oil Resources.

Cite as: *Pernarowski v. Regional Director, Northern Region, Regional Services, Alberta Environment, re: Imperial Oil Resources.*

EXECUTIVE SUMMARY

Alberta Environment issued an Approval to Imperial Oil Resources authorizing the diversion of water for the purpose of industrial injection from wells near Cold Lake, Alberta. The Board received notices of appeal from Mr. Ronald Pernarowski, and from Ms. Sally Ann Ulfsten of Stop and Tell Our Politicians Society (STOP).

In consultation with the parties, the Board held a mediation meeting/settlement conference in Cold Lake, Alberta on August 14, 2001. An Interim Agreement was reached at the mediation and the parties agreed to an abeyance of these appeals in order for the parties to work towards a resolution of the issues. Conference calls were subsequently held between the parties and the Mediator to assist the parties in determining the outstanding issues, with a view to resolving the appeals.

During the conference calls it became apparent that although Mr. Pernarowski was close to an agreement with Imperial Oil, while, Ms. Ulfsten had a number of outstanding issues, and wished to proceed to a hearing. Therefore, Ms. Ulfsten's appeal is now proceeding independently from Mr. Pernarowski's appeal.

As a result of a further mediation via teleconference, the appeal of Mr. Pernarowski was resolved and the appeal withdrawn. The Board will therefore close its file with respect to the appeal of Mr. Pernarowski.

MEDIATION MEETING BEFORE

Dr. M. Anne Naeth.

APPEARANCES

Appellants:

Mr. Ronald Pernarowski.

Director:

Mr. Patrick Marriott, Regional Director Northern Region, Regional Services, Alberta Environment, represented by Ms. Renee Craig, Alberta Justice.

Approval Holder:

Mr. Cal Sikstrom, Imperial Oil Resources.

Staff Member:

Ms. Denise Black, Board Secretary.

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I. BACKGROUND

[1] On May 29, 2001, the Regional Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued *Water Act* Licence No. 00148301-00-00 (the “Licence”) to Imperial Oil Resources (the “Licence Holder”) authorizing the diversion of 2,920,000 cubic meters of water annually from the wells in LSD 05-22-065-04-W4M, near Cold Lake, Alberta, for the purpose of industrial injection.

[2] The Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Ronald Pernarowski on June 20, 2001 and from Ms. Sally Ann Ulfsten on behalf of certain members of Stop and Tell Our Politicians Society (“STOP”) on June 26, 2001. The Board acknowledged the Notices of Appeal, notified the Director and Licence Holder of the appeals, and requested a copy of the Director’s Records (the “Record”) related to the appeals. The Board also requested that all parties to these appeals provide available dates for a mediation meeting/settlement conference or hearing.

[3] 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 a review under their respective Boards’ legislation. The Natural Resources Conservation Board responded in the negative, while the Alberta Energy and Utilities Board advised “... please find enclosed a copy of decision 99-22 wherein the Board considered issues relating to groundwater protection in association with Imperial Oil’s Cold Lake Project. Please note that that both Mr. Pernarowski and Ms. Ulfsten participated in the proceeding.”

[4] On June 28, 2001 and July 5, 2001, the Director provided the Record to the Board, and a copy was provided to Mr. Pernarowski, Ms. Ulfsten and the Licence Holder.

[5] On July 16, 2001 in consultation with the parties, the Board advised all parties to these appeals that a mediation meeting/settlement conference would be held on August 14, 2001, in Cold Lake, Alberta.¹

¹ Notice of the mediation meeting/settlement conference were placed in *The Cold Lake Sun* on July 24, 2001 and *The Bonnyville Nouvelle* on July 23, 2001.

[6] The Board subsequently received letters dated July 27, 30 and 31, 2001 from the parties advising of other persons who may have an interest in these appeals and who may want to attend at the mediation meeting/settlement conference.² The Board requested all parties provide their comments with respect to the attendance of other interested persons at the mediation meeting, advising that mediations are conducted on a voluntary, without prejudice basis, and that other persons would only be allowed to attend the mediation meeting if all parties were in agreement. All parties were not in agreement and as a result the Board advised the parties on August 8, 2002, the participation of other interested persons at the mediation meeting would not be permitted.

II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE

[7] Pursuant to section 11 of the Environmental Appeal Board Regulations, AR 114/93, the Board conducted a mediation meeting/settlement conference in Cold Lake, Alberta on August 14, 2001, with Dr. M. Anne Naeth as presiding Board member.

[8] According to the Board's standard practice, the Board called the mediation meeting to facilitate through settlement conference the resolution of these appeals. The Board invited representatives from each party to participate in the mediation meeting/settlement conference.

[9] In conducting the mediation meeting/settlement conference, Dr. Naeth circulated copies of the "Participants' Agreement to Mediate", discussed the appeals and mediation process and explained the purpose of the mediation meeting. At the conclusion of her discussion, all participants signed the agreement.

[10] Following detailed discussions, the parties agreed to an abeyance of these appeals in order that the parties could continue discussions with a view towards a resolution of the appeals. The parties agreed to provide the Board with a status report by November 30, 2001.

² Ms. Renee Craig letter of July 27, 2001 advised Lakeland Industry Community Association, individual members of STOP, including Mr. and Mrs. E. Reddicliff may be interested. Mr. Ronald Pernarowski letter of July 30, 2001 advised that Mr. Don Savard, Cold Lake First Nations, Alex Janvier, Ben Lefebvre, and City of Cold Lake, may be interested. Ms. Sally Ann Ulfsten letter of July 31, 2001 did not identify any additional individuals.

[11] On November 30, 2001, Ms. Ulfsten advised the Board that STOP wished to proceed to a hearing and at that time provided the Board with a copy of the correspondence exchanged during this abeyance period. Ms. Ulfsten requested that several new conditions be added to the Licence. The Director responded with proposed wording for two additional clauses, which were rejected by Ms. Ulfsten. On the same date, Mr. Pernarowski wrote to the Board and requested an extension of the deadline to December 30, 2001 for providing his status report in order to try to reach a resolution and avoid a hearing, and requested a further mediation meeting to facilitate the resolution of his appeal. The Director also requested further mediation assistance with respect to the issues. The Licence Holder provided a status report and advised the Board, in summary, that it was willing to continue mediation of the issues.

[12] On December 7, 2001, the Board advised all parties to these appeals that the mediator would be calling the parties to determine the next step in the mediation process and requested available dates and times. On December 24, 2001, as a result of the conference calls with the mediator, the Board advised the parties that a second mediation meeting would be scheduled and requested that the parties provide the Board with a list of all outstanding issues as well as those they believe had been resolved prior to January 14, 2002.

[13] The Board received letters dated January 14, 2002 from the Licence Holder and Ms. Ulfsten, and dated January 15, 2002 from the Director and Mr. Pernarowski. On January 31, 2002, the Board advised the parties that a review of the progress made during mediation showed the parties at different stages of the mediation process. The Board noted that Mr. Pernarowski's issues were being addressed by Imperial Oil, and a resolution was near. In this regard, the Board offered to assist them through a conference call at the parties' convenience.

[14] Ms. Ulfsten's outstanding issues were numerous and she stated that her list of amendments to the Licence were the least that she and STOP could accept. It appeared to the Board that a further mediation between Ms. Ulfsten and Imperial Oil would not benefit the parties at this time. The Board advised Ms. Ulfsten of her alternatives including continuing with mediation with agreement from the Director and the Licence Holder, and providing the Board with compelling reasons why further mediation should continue, or to have the Board proceed with her appeal.

[15] On February 5, 2002, the Board wrote to Ms. Ulfsten advising that her appeal would proceed by dealing with preliminary jurisdictional issues. On this same date the Board advised Mr. Pernarowski that a conference call would be arranged in order to facilitate a resolution of his appeal.

[16] On February 15, 2002, the conference call was held between Mr. Pernarowski, the Licence Holder, the Director, the mediator and Board Staff. During the conference call, a resolution was reached (page 5) and included the withdrawal of Mr. Pernarowski's appeal.

III. DECISION

[17] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based on the Resolution reached by the parties, which includes the withdrawal of the appeal by Mr. Pernarowski, the Board discontinues its proceedings in Appeal No. 01-059 is closing its file.

Dated at Edmonton, Alberta on February 28, 2002.

“original signed by”_____

William A. Tilleman, Q.C.

IV. RESOLUTION

RESOLUTION

RESOLUTION OF APPEAL NO. 01-059 REGARDING THE DECISION OF THE REGIONAL DIRECTOR, ALBERTA ENVIRONMENT, TO ISSSUE LICENCE NUMBER 00148301-00-00 UNDER THE *WATER ACT* TO IMPERIAL OIL RESOURCES AUTHORIZING THE DIVERSION OF WATER ANNUALLY FROM THE WELLS IN LSD 05-22-065-04-W4 FOR THE PURPOSE OF INDUSTRIAL (INJECTION) SUBJECT TO CERTAIN CONDITIONS.

All parties to the appeal have agreed to the following terms and conditions:

1. THAT the Director shall amend clause 4.7.3(k) of Approval 73534-00-00 issued under the *Environmental Protection and Enhancement Act* by removing and replacing it as follows:
“selected domestic water well sites (subject to landowner consent) including, but not limited to, Ronald and Carol Pernarowski, SE ¼-06-64-03-W4M.”
2. THAT Imperial Oil Resources will mitigate any adverse effects to wells in the zone of effect, attributable to Imperial Oil Resources’ Cold Lake operations.
3. THAT the parties agree to an annual public meeting to discuss groundwater diversion under licence 00148301-00-00. This meeting may not be necessary if all parties agree.
4. THAT in consideration of the foregoing, the Appellant, Mr. Ronald Pernarowski, agrees to withdraw his Notice of Appeal.

RESOLUTION AGREED TO BY:

“original signed by” _____
Mr. Ronald and Mrs. Carol Pernarowski

Date: February 21, 2002

“original signed by” _____
Mr. Park Powell
Northeast District Approvals Manager
Northern Region, Alberta Environment
Represented by Ms. Renee Craig
Alberta Justice

Date: February 22, 2002

“original signed by” _____
Mr. C.B. (Cal) Sikstrom
Imperial Oil Resources

Date: February 21, 2002