

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Decision

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Date of Decision – May 10, 2002

**IN THE MATTER OF** Sections 91, 92, 95 and 97 of the  
*Environmental Protection and Enhancement Act*, R.S.A. 2000, c.  
E-12;

**-and-**

**IN THE MATTER OF** an appeal and Stay request filed by Mr.  
Tom Weber on behalf of himself, his family, and other landowners  
of the NE ¼ 32-88-8-W4M, members of the Clearwater River  
Committee, and Majic Country Wilderness Adventures with  
respect to Amending Approval No. 69136-00-01, issued to  
Corridor Pipeline Ltd. by the Director, Approvals, Bow Region,  
Regional Services, Alberta Environment for the Corridor Pipeline  
Project Rainbow Creek reroute.

Cite as: *Weber et al. v. Director, Approvals, Bow Region, Regional Services, Alberta  
Environment, re: Corridor Pipeline Ltd.*

**PRELIMINARY MEETING**

**BY WRITTEN SUBMISSION BEFORE:** William A. Tilleman, Q.C., Chair.

**PARTIES:**

**Appellants:** Mr. Tom Weber on behalf of himself, his family, other landowners of the NE ¼ 32-88-8-W4M, members of the Clearwater River Committee, and Majic Country Wilderness Adventures.

**Director:** Director, Approvals, Bow Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

**Approval Holder:** Corridor Pipeline Limited, represented by Ms. Mary Henderson, Stikeman Elliott.

## **EXECUTIVE SUMMARY**

The Environmental Appeal Board received a Notice of Appeal from Mr. Tom Weber on behalf of himself, his family, other landowners of the NE ¼ 32-88-8-W4M, members of the Clearwater River Committee, and Majic Country Wilderness Adventures regarding an Amending Approval, issued to Corridor Pipeline Ltd. by Alberta Environment, for the Corridor Pipeline Project Rainbow Creek reroute.

Mr. Weber and the parties he represents had notice of and were given the opportunity to participate in proceedings before the Alberta Energy and Utilities Board. In this Board's view, the Alberta Energy and Utilities Board adequately dealt with the concerns raised in the Notice of Appeal. As a result, the Environmental Appeal Board is required to dismiss the appeal.

The Environmental Appeal Board has also reviewed the Notice of Appeal filed by Mr. Weber and has determined that neither he, nor the parties that he represents, are directly affected by the Corridor Pipeline Project Rainbow Creek reroute. As a result, even if all of the concerns raised in the Notice of Appeal had not been adequately dealt with, the Environmental Appeal Board would still dismiss the appeal because the Appellants have failed to demonstrate that they are directly affected by the project.

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## I. BACKGROUND

[1] On April 18, 2001, the Director, Approvals, Bow Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 69136-00-00 (the “Approval”) to Corridor Pipeline Limited (the “Approval Holder”) for the construction and reclamation of the Corridor Pipeline Project. The Corridor Pipeline connects the oil sands projects in Fort McMurray, Alberta with oil refineries in Fort Saskatchewan, Alberta.

[2] On July 5, 2001, the Director issued Amending Approval No. 69136-00-01 (the “Amending Approval”) to the Approval Holder with respect to the Corridor Pipeline Project Rainbow Creek reroute (the “Project”). The Amending Approval amended the original Approval and stated the pipeline shall be constructed and reclaimed as described in the document, *Amendment to the Clearwater Pipeline Project Conservation and Reclamation Report*, prepared by Tera Environmental Consultants Alta. Ltd., May 2001. The amendment relocates the pipeline crossing of the Clearwater River from its original location within the Athabasca Oil Sands Multiple Use Corridor (“AOSMUC”) to a new location at Rainbow Creek.

[3] On August 8, 2001, the Environmental Appeal Board (the “Board” or the “EAB”) received a Notice of Appeal with respect to the Project and a request for a Stay from Mr. Tom Weber. When the Notice of Appeal was originally filed, it appeared to be on behalf of only Mr. Weber. However, it was later determined that Mr. Weber had filed the appeal on behalf of himself, his family, and other landowners of the NE¼ 32-88-8-W4M, as a member of the Clearwater River Committee, and on behalf of Majic Country Wilderness Adventures (collectively the “Appellants”).<sup>1</sup> Mr. Weber also subsequently indicated that he was also appealing on behalf of a number of others.<sup>2</sup>

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<sup>1</sup> In the Notice of Appeal, Mr. Weber stated:

“I would ask that you would consider *my* submission, and the attached documentation and if you need additional information or wish to discuss this further, *I* would be happy to try and meet your needs. There are many *others in the community* and on the Clearwater River Committee that would also be available on some notice to assist.” [Emphasis added.]

The attached documents included letters from: the Clearwater River Committee to Alberta Environment, dated May 21, 2001; the Landowners of the NE¼ 32-88-8-W4M to the Alberta Energy and Utility Board (“AEUB”), dated May 22, 2001; the Clearwater River Committee to the AEUB, dated May 31, 2001 and June 14, 2001; the Fort McMurray Environmental Association to the AEUB, dated June 14, 2001; and Mr. Tom Weber to the AEUB, dated July 9, 2001. In the latter letter, Mr. Weber refers to the Clearwater River Committee letter of May 21, 2001.

[4] On August 8, 2001, the EAB acknowledged receipt of the Notice of Appeal and at that time requested a copy of all correspondence, documents, and materials relevant to this appeal (the “Record”) from the Director. The EAB also requested that the Appellants, the Director and the Approval Holder (collectively the “Parties”) submit available dates for a mediation meeting and settlement conference or hearing and asked the Appellants the following questions with respect to the request for a Stay:

- “1. What is the serious concern that the Appellants have that should be heard by the Board?
2. Would the Appellants suffer irreparable harm if the stay is refused?
3. Would the Appellants suffer greater harm for the refusal of a stay pending a decision of the Board on the appeal than the Approval Holder would suffer from the granting of a stay?; and
4. Would the overall public interest warrant a stay?”<sup>3</sup>

[5] According to standard practice, the EAB wrote to the Natural Resources Conservation Board (“NRCB”) and the Alberta Energy and Utilities Board (“AEUB”) asking whether this matter had been the subject of a hearing or review under their respective legislation. The NRCB responded in the negative.

[6] On August 15, 2001, the Approval Holder provided the EAB with a letter requesting clarification with respect to:

“...the provision of the Act under which the notice of appeal was submitted; confirmation from Mr. Weber that he is appealing the Alberta Environment Amending Approval No. 001-69136; [and] a clear description of the relief sought by Mr. Weber in his appeal.”<sup>4</sup>

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In a subsequent letter, dated August 28, 2001, Mr. Tom Weber stated that the appeal was filed on behalf of:

“...myself and my family, the other Landowners of the NE¼ of section 32, Tp 88, R 8, West of the 4<sup>th</sup>, being Lee and Florence Weber, and Al and Mary Blatz. The Appeal is also on behalf Of [*sic*] the Clearwater River Lodge, and Denise and Blair Jean, the owners of that lodge and Majic Country Wilderness Adventures.

At a monthly meeting of the Clearwater River Committee held last night August 27, 2001, the consensus was that my appeal would also represent that committee with some members abstaining from the vote....”

For the purposes of this Decision, the Board will refer to the “Appellants,” unless an issue specifically applies to Mr. Tom Weber. The Board notes that it is unclear exactly what Majic Country Wilderness Adventures is, but note that it appears to be some form of business. (See Appellants’ letter of August 28, 2001.)

<sup>2</sup> See letter from the Appellants, dated August 28, 2001 (“...the Clearwater River Lodge, and Denise and Blair Jean, the owners of that lodge...”).

<sup>3</sup> See letter from the Board to the Appellants, dated August 8, 2001.

<sup>4</sup> See letter from the Approval Holder, dated August 14, 2001.

[7] In the same letter, the Approval Holder raised other preliminary issues including:

“Is Mr. Weber’s notice of appeal properly before the Board?

Is Mr. Weber a person who has received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under the *Natural Resources Conservation Board Act* or any act administered by the AEUB at which all the matters included in the notice of appeal were adequately dealt with?

Is Mr. Weber a person directly affected by the decision that is the subject of the appeal?”<sup>5</sup>

[8] On August 15, 2001, the EAB received the Appellants’ submission regarding the Stay application that included responses to the four questions posed in the EAB’s letter of August 8, 2001. In the letter, Mr. Weber listed other parties that may have an interest in the appeal.<sup>6</sup>

[9] The Appellants also requested interim costs:

“...I do not feel that I have answered your [(the EAB’s)] questions adequately. What these questions and other questions embodied in you letters will require, is not only qualified legal counsel but expert testimony and opinions to complete the answers. I am requesting therefore, funding from your Board to ensure appropriate assistance....”<sup>7</sup>

[10] On August 21, 2001, the EAB acknowledged receipt of the Appellants’ letter and advised it would be reviewing the application for a Stay. The EAB also acknowledged the letters received from the Approval Holder dated August 14, 2001, and the Director, dated August 15, 2001. The Director’s letter requested clarification as to whether the Appellants’ Notice of Appeal was filed in the capacity of an individual or on behalf of a committee or association.

[11] The EAB advised the Parties that preliminary issues raised by the Approval Holder and the Director would be addressed via written submissions only. With respect to the timing of the request for interim costs, the EAB advised the Appellants that section 19(1) of the Environmental Appeal Board Regulation, A.R. 114/93 (the “Regulation”) states:

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<sup>5</sup> See letter from Approval Holder, dated August 14, 2001. In response to the issues listed, the Approval Holder submitted that the Notice of Appeal was not properly before the Board; that Mr. Weber had an opportunity to participate in a hearing or review administered by the NRCB or AEUB; and that Mr. Weber is not directly affected and therefore does not have standing.

<sup>6</sup> This list included the Draper Residents Society, the Clearwater River Committee, the Fort McMurray Environmental Association, Lodge Owners on the Clearwater River, Land Owners along the Clearwater River, and the Pembina Institute.

<sup>7</sup> See letter from Appellants, dated August 14, 2001.

“An application for an award of interim costs may be made by a party at any time prior to the close of a hearing of the appeal but after the Board has determined all parties to the appeal.”

As a result, the EAB advised that the Appellants may submit a request for interim costs after the EAB has determined all parties to the appeal. The EAB indicated that this generally occurs once a hearing date has been set and the EAB has published a notice of hearing pursuant to section 7(1)(a) of the Regulation.<sup>8</sup> The EAB noted that in this appeal, the EAB must render a decision on the preliminary motions prior to determining the parties or setting a hearing date.

[12] On August 27, 2001, the EAB acknowledged receipt of the Director’s letter dated August 22, 2001, requesting an extension to provide the remainder of the Record to the EAB. The EAB granted the request for an extension until August 28, 2001.

[13] On September 13, 2001, the EAB acknowledged receipt of the remainder of the Record from the Director, letters from the Appellants dated August 28, September 1, and September 3, 2001, and a letter from the AEUB dated September 10, 2001. On August 28, 2001, the Appellants stated:

“...My appeal is made on behalf of myself and my family, the other Landowners of the NE ¼ of section 32, Tp 88, R 8, West of the 4<sup>th</sup>, being Lee and Florence Weber, and Al and Mary Blatz. The Appeal is also on behalf Of [*sic*] the Clearwater River Lodge, and Denise and Blair Jean, the owners of that lodge and Majic Country Wilderness Adventures.

At a monthly meeting of the Clearwater River Committee held last night August 27, 2001, the consensus was that my appeal would also represent that committee with some members abstaining from the vote...”<sup>9</sup>

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<sup>8</sup> Section 7(1)(a) states:

“Subject to section 87(2) and (5) [now section 95(2) and (5)] of the Act, where the Board makes the determination to proceed with a notice of appeal it shall

(a) where the Board decides to conduct the hearing of the appeal by means of an oral hearing,

- (i) fix a date for the hearing of the appeal, and
- (ii) subject to subsection (3), give written notice to the parties of the date of the hearing and the date by which the parties must file their written submissions with the Board, and publish a notice containing the information specified in subsection (2) in any manner the Board considers appropriate at least
  - (A) 7 days before the date of the hearing, where the notice of appeal is one referred to in section 115(1)(a), (d), (f) or (g) of the *Water Act* and is in respect of an approval, or
  - (B) 21 days before the date of the hearing in all other cases.”

<sup>9</sup> See Letter from Appellants dated August 28, 2001.

[14] In its letter of September 10, 2001, the AEUB advised that they were considering a request from the Clearwater River Committee to review its decision regarding Application No. 002-69136 under section 43 of the *Energy Resources Conservation Act*.<sup>10</sup> The request for a section 43 review by the Clearwater River Committee was in regard to the Rainbow Creek re-route amendment of the original pipeline scheme that had been approved by the AEUB on May 15, 2001. The amendment application, submitted by the Approval Holder to the AEUB, sought to amend AEUB Approval Nos. 33527 and 33528 and contemplated the re-routing of a portion of the original pipeline route. The AEUB also indicated to us that the Clearwater River Committee had objected to the amendment application prior to the AEUB's May 15, 2001 decision, in which the AEUB dismissed the Clearwater River Committee as it lacked an appropriate interest.<sup>11</sup> Thus, the Clearwater River Committee had filed an objection with the AEUB that was dismissed prior to May 15, 2001, and they were also pursuing a section 43 review application that was initiated after the AEUB's approval of the amendment on May 15, 2001.

[15] The EAB requested the AEUB provide further details and a description of the Appellants' involvement with the AEUB. The EAB also requested further clarification from the Appellants as to their involvement with the AEUB and advised them of section 95(5)(b)(i) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the "Act").<sup>12</sup>

[16] On September 20, 2001, the EAB wrote to the AEUB requesting documents regarding the Appellants' involvement in the AEUB proceedings. On the same day, the EAB

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<sup>10</sup> *Energy Resources Conservation Act*, R.S.A. 1980, c. E-11, s. 43 [now R.S.A. 2000, c.E-10, s. 40]. The section 43 review request allows the AEUB to reconsider an approval where there has been no public hearing, if the person requesting the review has standing. In this case the request for the section 43 review was available because the amendment approval was based on information obtained in support of the initial approval, and a new hearing was not held.

<sup>11</sup> See AEUB letter to the Board, dated September 10, 2001.

<sup>12</sup> As of January 1, 2002, the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3, was replaced with the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12. Section 95(5)(b)(i) [formerly section 87(5)(b)(i)] states:

"The Board shall ... (b) dismiss a notice of appeal if (i) in the Board's opinion the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under Part 2 of the *Agricultural Operation Practices Act*, under the *Natural Resources Conservation Board Act* or any Act administered by the Energy Resources Conservation Board at which all of the matters included in the notice of appeal were adequately dealt with...."

acknowledged receipt of the submissions from the Appellants and the Approval Holder dated September 17 and 18, 2001, respectively, and advised the Parties that once the documents from the AEUB were received, a process to receive written submissions to address all preliminary motions, including the issue of standing (whether the Appellants are directly affected) and whether the appeal should be dismissed based on section 95(5)(b)(i) of the Act, would be established.

[17] The EAB acknowledged receipt of a letter, dated September 20, 2001, from the AEUB. The AEUB advised that in addition to receiving the section 43 review request from the Clearwater River Committee, the AEUB had also received section 43 review requests from a group of landowners comprising of Mr. Tom Weber, Ms. Dawn Weber, Mr. Al Blatz, Ms. Mary Weber-Blatz, Mr. Lee Weber, and Ms. Florence Weber (the “Landowners”) and a similar section 43 review request from Mr. Blair Jean, owner of the Clearwater Lodge. The AEUB advised that the section 43 review request would be completed by October 15, 2001, and the EAB would be notified once a decision had been made on the review requests.

[18] On September 21, 2001, the EAB received a letter from the Appellants stating:

“In my original letter of appeal I requested a suspension of construction on this crossing while my appeal was being heard and dealt with. This request has not been met by the Board and as such the construction phase of the river crossing must be all but completed as most if not all of the construction equipment in the staging area near Saprac [sic] Creek Estates is no longer there. The horses are out of the barn. The need for quick and timely resolution of this grave situation has passed.”<sup>13</sup>

[19] On September 24, 2001, the EAB acknowledged the Appellants’ letter, noting that they had withdrawn the request for a Stay. The Appellants responded on September 25, 2001, stating that the request for a Stay had not been withdrawn and that “...the Stay must be exercised to mitigate against further damage and degradation to the Steep Slopes of the valley itself.”<sup>14</sup>

[20] On September 26, 2001, the EAB acknowledged a further letter from the Appellants requesting interim funding. In the letter, the Appellants also asked the EAB:

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<sup>13</sup> See Appellants’ letter dated September 21, 2001.

<sup>14</sup> See Appellants’ letter dated September 25, 2001.

“Are the Boards [sic] hands tied by the letter of the acts and regulation, to the point there is more emphasis, on following that letter, than correcting a potentially devastating decision by various Departments of the Alberta Government and Boards of the Alberta Government?”<sup>15</sup>

In reply, the EAB advised the Appellants that they may submit a request for interim costs after the EAB has determined all parties to this appeal and informed the Appellants that:

“...the [Environmental Appeal Board] Board’s job is to review the decisions of Alberta Environment listed in section 84(1) [now section 91] of the *Environmental Protection and Enhancement Act*. The [Environmental Appeal] Board only reviews decisions made by Alberta Environment, it does not review decisions made by other Government Departments or other Boards. As a statutory Board, in carrying out its mandate the [Environmental Appeal] Board is required to follow the provisions of the Act, the Regulations and the rules of natural justice and procedural fairness.”<sup>16</sup>

[21] On October 3, 2001, the EAB acknowledged receipt of documents sent from the AEUB dated October 1, 2001, and forwarded a copy to the Parties for review. In its letter, the EAB outlined a schedule to receive submissions from the parties on the following issue:

“Pursuant to section 87(5)(b)(i) [now section 95(5)(b)(i)] of the *Environmental Protection and Enhancement Act*, did Mr. Weber have an opportunity to participate before the AEUB with respect to Approval No. 69136-00-01?”<sup>17</sup>

[22] On October 9, 2001, the EAB acknowledged a letter dated October 2, 2001, from the Pembina Institute for Appropriate Development. The letter was in support of the Appellants’ Notice of Appeal and outlined similar concerns to that of the Appellants. The EAB forwarded a copy of the letter to the Parties for their information.

[23] On October 18, 2001, the Appellants spoke with EAB staff requesting the EAB:

1. delay its process for submissions until the AEUB makes its decision on the Appellants’ section 43 application;<sup>18</sup> and

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<sup>15</sup> See Appellants’ letter dated September 25, 2001.

<sup>16</sup> See Board’s letter to the Appellants, dated September 26, 2001.

<sup>17</sup> See Board’s letter to the Parties, dated October 3, 2001.

<sup>18</sup> Section 43 of the *Energy Resources Conservation Act*, R.S.A. 1980, c. E-11 [now R.S.A. 2000, c. E-10, s. 40], states:

“43(1) A person affected by an order or direction made by the Board [the AEUB] without the holding of a hearing may, within 30 days after the date on which the order or direction was made, apply to the Board for a hearing.”

In this case, Mr. Tom Weber, the Landowners and the Clearwater River Committee filed a request for a review, of the amended approval granted May 15 2001, under this section of the legislation on the basis that there was no

2. whether they could have an extension to file their submission.

The EAB reviewed the Appellants' request and determined it was not necessary to delay the submission process. However, the EAB provided a three-day extension to the Appellants to submit their initial written submission. On October 21, 2001, the Appellants provided their initial submission and on October 23, 2001, the EAB acknowledged the Appellants' letter and forwarded it to the other Parties for their response.

[24] On October 25, 2001, the AEUB advised the EAB that it dismissed the section 43 review requests submitted by the Clearwater River Committee and the Landowners (consisting of Mr. Tom Weber, Ms. Dawn Weber, Mr. Al Blatz, Ms. Mary Weber-Blatz, Mr. Lee Weber, and Ms. Florence Weber). The AEUB stated in their correspondence to the parties on October 22, 2001, that their requests for a section 43 review regarding the AEUB's approval of the pipeline reroute was being dismissed because neither the Landowners or the Clearwater River Committee could demonstrate "a legally recognized interest in land on or adjacent to the Rainbow Creek crossing."<sup>19</sup> The AEUB also specified that they considered all of the pertinent data regarding the concerns that Mr. Tom Weber, the Clearwater River Committee, and the Landowners had raised, and based on its examination of the data, the AEUB was of the opinion that the impacts of the reroute would be kept to a minimum.<sup>20</sup>

[25] In their submission, the Approval Holder argued, and in the context of section 95 of the Act, it is clear that Mr. Tom Weber, the Landowners, and the Clearwater River Committee, have had ample opportunity to participate in hearings and consultations which took place prior to the initial pipeline application and prior to the approval of the amendment to re

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specific hearing for the amendment to the initial approval. The approval of the amendment was based on the technical data that had been provided for Corridor's initial pipeline approval, which the AEUB felt was sufficiently thorough that they could base their decision on it. The decision by AEUB to dismiss this application for review was based on the fact that none of the applicants demonstrated themselves to be personally affected such that they could seek standing. (See AEUB decision letters dated October 22, 2001.) Beyond this determination on the applicant's standing, the AEUB also commented that they had reviewed all the technical data regarding the project and felt that the amended approval was an environmentally sound plan.

<sup>19</sup> See AEUB letters dated October 22, 2001, to Mr. Tom Weber, and the Landowners, and to the Clearwater River Committee which indicate that the AEUB is dismissing their requests for a section 43 review because they failed to show, in their submissions, that they had an interest in land such that they would have standing before the AEUB.

<sup>20</sup> See AEUB letters dated October 22, 2001, to Mr. Tom Weber, and the Landowners, and to the Clearwater River Committee in which the AEUB specifies that they examined all the appropriate data pertaining to the reroute, prior to approving the amendment in May, 2001, and that all the appropriate measures had been undertaken by Corridor to ensure that the "environmental and visual impacts [would be kept] at a minimum."

route the pipeline to the Rainbow Creek crossing. The Approval Holder points to three days of public hearings that were conducted prior to the approval of the initial application, in March 1999, which despite adequate notice, none of the Appellants chose to participate in.<sup>21</sup> Further, the Route Amendment Application which was considered in May 2001, was not objected to by either Mr. Tom Weber or the Landowners, while the Clearwater River Committee (of which Mr. Tom Weber is a member) did file an objection which was dismissed for lack of standing. The Approval Holder also submitted that the concerns Mr. Tom Weber raised in his Notice of Appeal to the EAB were fully addressed by the AEUB during the initial application and during the consideration of the reroute amendment.<sup>22</sup>

[26] In the AEUB's dismissal of the section 43 review applications from Mr. Tom Weber, the Landowners, and the Clearwater River Committee, dated October 22, 2001, the AEUB specifically stated that the concerns raised by the aforementioned groups had been addressed in the initial application. It was also apparent in the material the AEUB submitted to the EAB, that the Clearwater River Committee, and Mr. Tom Weber specifically, had been involved in the initial reroute consultations with Corridor and that Mr. Tom Weber was part of a sub committee of the Clearwater River Committee which "dealt extensively with [Corridor] in examining and evaluating the route alternatives."<sup>23</sup> As a result of this information, it is argued that, it is clear that Mr. Tom Weber, the Landowners, and the Clearwater River Committee, have all had ample opportunity to participate in prior hearings by the AEUB regarding the initial application, the reroute, and the section 43 review applications, by which all of the concerns raised in the Notice of Appeal to the EAB have been adequately addressed.

[27] The AEUB included a copy of the October 22, 2001 decision letters pertaining to the requests for section 43 reviews that were sent to the Clearwater River Committee and the landowners of the NE ¼ 32-88-8-W4M. The AEUB letters stated:

"...The [Energy and Utilities] Board in making a decision on a review request, under section 43 of the ERCA [*Energy Resources Conservation Act*], considers whether the person requesting the review has rights which may be directly and

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<sup>21</sup> See Approval Holder's submissions, in a letter dated November 2, 2001.

<sup>22</sup> See Approval Holder's submissions, in a letter dated November 2, 2001.

<sup>23</sup> See Corridor Pipeline Application to Change Alberta Energy and Utilities Board Licences 33527 and 33528.

adversely affected by the Board's decision to grant an approval.... The Board applied the above-mentioned test to your review request and was of the view that the Landowners Group [and the Clearwater River Committee] has not shown in its submission that it [*sic*] members have a legally recognized interest in the land on or adjacent to the Rainbow Creek crossing. As a result, the Board dismissed your review request as well as the associated requests for a suspension of the amended approvals and for intervener funding."<sup>24</sup>

[28] On November 2, 2001, the EAB acknowledged receipt of the Approval Holder and Director's response submissions of the same day. The Approval Holder's submission expressly outlined the previous opportunities where Mr. Weber, the Landowners, and the Clearwater River Committee could have participated in AEUB hearings where their concerns were addressed.

[29] The Appellants submitted a letter to the EAB dated November 4, 2001, and Mr. Weber placed a telephone call on November 5, 2001, advising that he would provide the EAB with a rebuttal submission by November 9, 2001. To date, the submission has not been received.

[30] On November 12, 2001, after reviewing the submissions provided by the Parties, the EAB advised the Parties that it had decided to dismiss the appeal and advised that the EAB's reasons would follow.

## II. STAY REQUEST

[31] The EAB has reviewed the Appellants' submissions regarding the Stay application. Pursuant to section 97 of the Act, the EAB has the jurisdiction to grant a Stay if the EAB determines it is required to maintain fairness and natural justice and otherwise meets the proper test. Section 97 of the Act states:

“(1) Subject to subsection (2), submitting a notice of appeal does not operate to stay the decision objected to.

(2) The Board may, on the application of a party to a proceeding before the Board, stay a decision in respect of which a notice of appeal has been submitted.”

[32] Before a Stay can be granted, the person requesting the Stay must be a party to the appeal. Section 97 states that the application must be from a “party” to the appeal. Therefore,

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<sup>24</sup> See AEUB decision letter dated October 22, 2001.

the assessment as to whether the Appellants are a party to this appeal must be completed prior to granting the Stay.

[33] The determination of party status is explained in the following section. As the EAB has determined that the Appellants are not a party in this appeal, and that the issues raised in the appeal were previously considered by the AEUB, the application for the Stay is denied.

### **III. ANALYSIS**

#### **A. The Appellants**

[34] The Appellants have presented their arguments well. In the Appellants' letter dated August 14, 2001, the Appellants stated that they required legal counsel as they believed that they were at a disadvantage in trying to present their concerns against the Approval Holder's "expert legal council [*sic*] and expert witnesses." Although the EAB does want succinct presentations, both written and oral, the EAB focuses on the content of the argument, not on the legal avenue from which it was presented.

[35] The original submissions of the Appellants were unclear as to whether Mr. Tom Weber filed the Notice of Appeal on his *own* behalf or on behalf of the other persons as well. In many of the submissions, Mr. Weber refers either to "my" submission or "I" submit.<sup>25</sup> In the letter of August 6, 2001, he listed a number of groups that may have an interest in the appeal, including the Clearwater River Committee and the adjacent landowners. The implication of Mr. Weber's language throughout his correspondence was that the submissions were made only on his behalf and that the other groups listed should be contacted to submit their own appeal. This resulted in some confusion as to who exactly the Appellants were.<sup>26</sup> Then, in the letter dated August 28, 2001, Mr. Tom Weber listed a number of individuals on whose behalf the Notice of Appeal had been filed, including the Clearwater River Committee and a group of landowners.

[36] Despite Mr. Weber's assertion in his letter dated August 28, 2001, that his appeal was to represent several groups besides himself, there has been no indication as to who the

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<sup>25</sup> For example, see Notice of Appeal and letter dated September 21, 2001.

<sup>26</sup> In a letter dated August 21, 2001, the Board requested that Mr. Tom Weber "clarify whether his Notice of Appeal was filed in the capacity of an individual or on behalf of a committee of organization."

members are of the Clearwater River Committee or what the Majic Country Wilderness Adventures actually is. As a result, the EAB has reviewed the submissions in order to determine if the other Appellants listed in the appeal may be granted standing. In order to decide whether a group has standing, the EAB considers whether the individual members of the group are directly affected by the Approval under appeal.<sup>27</sup>

[37] One of the problems facing the EAB in considering the standing of the individual members of the Clearwater River Committee, or the other groups that form part of the Appellants, is that nowhere in the Appellants' submissions are the individual members of these groups clearly identified. Thus, the EAB has no knowledge as to who comprises the organizations seeking standing in the appeal and cannot, therefore, determine the directly affected status of the individual members.

[38] Another problem the EAB faces is that the Appellants have submitted no specific arguments with respect to the individual group members of the Clearwater River Committee and the Majic Country Wilderness Adventures and the direct effects of the Approval on them. Their August 14, 2001 letters stated that the Clearwater River Committee was organized to lead the designation of the Clearwater River to Canadian Heritage status.<sup>28</sup> However, the submissions do not present any facts to indicate a proximate and direct connection between the members of the Clearwater River Committee, or the other groups that are part of the Appellants, and the river-crossing Approval. The submissions thus do not meet the standards discussed in *Bailey*<sup>29</sup> which require an appellant to "demonstrate the personal impact required by section 84 [now section 91]" or *Hazeldean* that requires the EAB to be "...clearly convinced that the majority of the

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<sup>27</sup> *Ouimet et al. v. Director, Regional Support, Northeast Boreal Region, Regional Services, Alberta Environment*, re: *Ouelette Packers (2000) Ltd.*, (January 28, 2002), E.A.B. Appeal No. 01-076-D.

<sup>28</sup> The Board notes that in the August 27, 2001 minutes of the Clearwater River Committee, there is a list of individuals who attended or did not attend the meeting. However, this list does not indicate how any of these people, as individuals, would be affected by the Project. In a letter from the Fort McMurray Environmental Association to the AEUB, dated June 14, 2001, and attached to the Appellants' Notice of Appeal, it stated "... the Association is made up of a cross-section of people within the community, who have a wide variety of environmental interests." Again, this does not specifically address who the individual members are and how they are directly affected by this Approval.

<sup>29</sup> *Bailey et al. v. Director, Northeast Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation* (March 13, 2001), E.A.B. Appeal Nos. 00-074, 075, 077, 078, 01-001-005 and 011-ID, paragraph 53.

individual members of the organization are individually and personally impacted....”<sup>30</sup> Further, the Appellants’ submissions do not present arguments that would distinguish this group of individuals from other members of the community at large. The individual members have not demonstrated a unique interest over and above the general community that is affected by the granting of this Approval.

[39] In the letter received by the EAB on August 28, 2001, Mr. Tom Weber indicated the other landowners as being Mr. Lee and Ms. Florence Weber and Mr. Al and Ms. Mary Blatz. He also indicated in that letter that he was also representing other members of his family. We have no clear indication as to who the other members are that he claims to be representing. The only other information provided to the EAB as to who might be included as family or landowners is in a letter from the AEUB in which it lists a “group calling themselves Landowners” and which comprised of the above mentioned people as well as Mr. Tom Weber and Ms. Dawn Weber. The EAB cannot determine if this is the exhaustive list as the letter states that the appeal was made “on behalf of myself and my family, the other Landowners of the NE ¼ of section 32, Tp 88, R 8, West of the 4<sup>th</sup>....” This indicates that there may be other members of his family that have not been provided to the EAB. Even if the EAB determined that this list was exhaustive, we have no clear indication from these individuals that Mr. Tom Weber has been authorized to act on their behalf in this appeal.

[40] The EAB did not receive any specific arguments as to how these individuals are directly affected by the Project. Although the EAB can surmise that if the individuals are living on the same quarter section of land as Mr. Tom Weber they may be affected to the same degree as him, but we have no indication that that is the case in this particular circumstance. The EAB cannot make its decision based on conjecture.

[41] Thus, in the EAB’s view, the submissions of the Appellants do not provide sufficient evidence upon which to base a finding that any of the individual members of the Clearwater River Committee, or the other groups mentioned in the Appellants’ submissions, are directly affected. The EAB concludes that the Appellants have not discharged the onus of demonstrating that the individual members are directly affected in any unique or substantial way,

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<sup>30</sup> *Hazeldean Community League et al. v. Director of Air and Water Approvals, Alberta Environment* (May 11, 1995), E.A.B. Appeal No. 95-002.

and as such, they cannot be granted standing on which to appeal. The groups listed as Appellants are therefore excluded for a lack of standing before the EAB.

[42] Further, the individual appellant, Mr. Tom Weber, faces a similar onus in order to achieve standing before the EAB. Specifically, he must prove, under section 84 (1)(a)(iv) [now section 91(a)(i)] of the *Environmental Protection and Enhancement Act*, that he is “directly affected” by the Director’s decision regarding the Approval in question.<sup>31</sup> It is not, however, available to Mr. Weber to claim that he is directly affected simply based on his “general interest or desire to prevent environmental harms resulting from the approved project; the appellant must show that those harms ‘directly affect’ the appellant.”<sup>32</sup> While Mr. Weber has made numerous submissions regarding his concerns over the Approval of the Project he has failed to show that he will suffer specific personal harm as a result of the Approval. Mr. Weber has not met the onus in his submissions to the EAB, and as a result, the EAB dismisses his appeal due to lack of standing.

#### **B. Section 95 of the Act**

[43] Notwithstanding the failure of Mr. Weber and the group Appellants to obtain standing before the EAB, the EAB will also consider the basis of the appeal in relation to the provisions of section 95 of the Act. Section 95(5) of the Act states:

“The Board ... (b) *shall* dismiss a notice of appeal if in the Board’s opinion

(i) the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under the *Natural Resources Conservation Board Act* or any Act administered by the Energy Resources Conservation Board at which all of the matters included in the notice of appeal were adequately dealt with...”[Emphasis added].

[44] Under section 95, the EAB is *required* to dismiss the appeal if the following conditions have been met:

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<sup>31</sup> See *Bildson v. Acting Director of Northeastern Slopes Region, Alberta Environmental Protection, re: Smoky River Coal Ltd.* (October 19, 1998), E.A.B. 98-230-D. This Decision sets out the requirement that the Appellants show, by a preponderance of evidence, that they are directly affected by the Director’s decision regarding the Approval under appeal.

<sup>32</sup> *Bildson v. Acting Director of Northeastern Slopes Region, Alberta Environmental Protection, re: Smoky River Coal Ltd.* (October 19, 1998), E.A.B. 98-230-D, paragraph 21.

1. the appellant either “received notice of,” “participated in,” or had the “opportunity to participate in” an AEUB review of the project at issue, and if so
2. the AEUB’s review “adequately dealt with” all of the matters raised by the appellant in the Notice of Appeal.

[45] The purpose of this section of the Act is to avoid duplication in the hearing process.<sup>33</sup> As stated in the previous case, *Carter Group*:

“The jurisdiction of this Board to become involved in a ‘review’ of ERCB decisions that led to approvals which are eventually appealed here – is limited to express statutory authority. The legislators have been very selective in ensuring there is no multiplicity of proceedings based upon similar evidence....

The Board interprets s. 87(5)(b)(i) [now section 95(5)(b)(i)] of [the] *Environmental Protection and Enhancement Act* to prevent relitigation of issues which have been decided and have substantially remained static, both legally and factually.... In other words, there is a strong presumption that appeals to this Board will not normally lie regarding the same issues of fact and the same parties that were before the ERCB.”<sup>34</sup>

[46] In *Graham*,<sup>35</sup> the EAB examined the specific terms of section 95. The EAB interpreted “matter” to mean

“...subject matter or issues raised in the proceedings before the NRCB and before this Board. But it cannot encompass generic subject matters, such as air pollution, generally. Nor is ‘matter’ a static concept so that a subject once raised before the NRCB can never be the subject of appeal to this Board.... [C]ounsel for the Director acknowledged that new information that substantially alters one’s previous understanding of the facility may be a new matter.”<sup>36</sup>

The EAB then interpreted the term “considered” as meaning “to look at closely, examine, contemplate.” The EAB continued:

“Consideration, in the context of this appeal, requires that a matter be raised or presented through submissions by parties or questions by the NRCB. This must be reasonably explicit rather than merely inferential, and must not be arbitrary. The matter must then be subject to a meaningful consideration. Further,

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<sup>33</sup> *Ed Graham et al. v. Director of Chemicals Assessment and Management, Alberta Environmental Protection* (June 28, 1996), E.A.B. No. 95-025.

<sup>34</sup> *Carter Group v. Director of Air and Water Approvals, Alberta Environmental Protection* (December 8, 1994), E.A.B. Appeal No. 94-012.

<sup>35</sup> *Ed Graham et al. v. Director of Chemicals Assessment and Management, Alberta Environmental Protection* (June 28, 1996), E.A.B. No. 95-025.

<sup>36</sup> *Ed Graham et al. v. Director of Chemicals Assessment and Management, Alberta Environmental Protection* (June 28, 1996), E.A.B. No. 95-025.

consideration requires that the NRCB respond to the matter, at least by treating it as relevant and properly taking it into account in its decision.”

[47] Applying these definitions to the evidence presented in the Parties’ submissions, the EAB determines, as described below, that the appeal must be dismissed.

### **C. The AEUB’s Review of the Approval Holder’s Application**

[48] In the Appellants’ response to the EAB’s question regarding Mr. Weber’s opportunity to participate before the AEUB, Mr. Weber stated the following:

“In direct response to the Boards [*sic*] Letter of October 3, 2001 I can and do unequivocally state that I have never been given notice of any application of Corridor to Alberta Environment of its original environmental approval, as originally granted by Alberta Environment vis-à-vis the location of its Clearwater River Crossing, and/or of its proposal to relocate its crossing of the Clearwater River at Rainbow Creek.

Nor have I been given the opportunity of examining Corridor’s application to Alberta Environment for the crossing at Rainbow Creek. Nor have I been given the opportunity of being heard in respect of the said application, prior to the application being approved.

Nor have I been given the opportunity of being heard or of making submissions to the AEUB in respect of Corridor’s application to amend its originally granted pipeline permit which amendment it required to permit Corridor to cross the Clearwater River at Rainbow Creek, even though I, along with other have filed objection(s) with the AEUB to the said application.”

[49] However, in the letters attached to the Notice of Appeal, there are clear indications that the Appellants did participate in the AEUB review process. In the letter by the Clearwater River Committee’s letter to Alberta Environment, dated May 21, 2001, said:

“During the many presentations and discussions that the committee had relative to the AOSMUC corridor and the subsequent talks firstly of a Suncor Pipeline route through the Clearwater and then later talks of a Shell (CPL) pipeline through the Clearwater....”

Further, in the same letter, the Clearwater River Committee stated:

“...This was the point at which we, the Committee suggested an alternate crossing closer to Fort McMurray in an already industrially disturbed area....”<sup>37</sup>

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<sup>37</sup> See letter from Appellants to the Assistant Deputy Minister of Environment, Environmental Services, dated May 21, 2001.

[50] This indicates to the EAB that the Appellants did have the opportunity to participate, and did in fact participate, in the initial planning of the Project. Although this letter was sent on behalf of the Clearwater River Committee, it is the EAB's understanding that Mr. Weber is a member of this organization and therefore participated, or had opportunity to participate, in the presentations and discussions with the Approval Holder. In a letter dated May 31, 2001, from Mr. Tom Weber on behalf of the Clearwater River Committee, reference is made to a presentation by the Approval Holder on the proposed crossing at Rainbow Creek that was given at the monthly meeting of the Clearwater River Committee on May 28, 2001. In another letter from Mr. Tom Weber to the AEUB, he stated, "...through my involvement on the Clearwater River Committee and presentations made by Shell (CPL) I am aware of some serious concerns relative to the safety to the environment and to us personally."<sup>38</sup>

[51] Mr. Tom Weber has been an active member of the Clearwater River Committee, and this Committee has participated in the process. The Committee was consulted by the Approval Holder prior to the filing of the original application and was included in subsequent public consultations. It has also submitted concerns to the AEUB and applied for a review of the AEUB decision.<sup>39</sup>

[52] The AEUB confirmed that the Clearwater River Committee had filed an objection to the amendment of Approvals Nos. 33527 and 33528. The AEUB determined that:

“...the CRC [(the Clearwater River Committee)] did not have a recognized interest with respect to land on or adjacent to the proposed project and therefore dismissed their objection.”<sup>40</sup>

The AEUB subsequently approved the Approval Holder's application. One week later, the AEUB received a request from the Clearwater River Committee to review its decision to grant the approval.

[53] The Appellants have lived within the Fort McMurray area for over 25 years.<sup>41</sup> It is the EAB's understanding that notice with respect to the original application and the amendment were published in the *Fort McMurray Today* newspaper. The Appellants would

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<sup>38</sup> See Appellants' letter to the AEUB, dated May 22, 2001.

<sup>39</sup> See submission of Approval Holder, dated September 18, 2001.

<sup>40</sup> See letter from AEUB, dated September 10, 2001.

have received notification of the application through the media and had the opportunity to file their concerns with the AEUB and Alberta Environment. It was in fact in response to the advertisement for the reroute, that Mr. Tom Weber requested a review of the AEUB decision.<sup>42</sup> He was obviously aware of the Project and the approval process.

[54] The EAB agrees with the Director that the Appellants did have notice of the Project "...given his extensive involvement in the process either as an individual, the group of landowners, as a member of the Clearwater River Committee, and as a municipal representative."<sup>43</sup> The Appellants in this case did participate in the AEUB process. They had submitted their concerns when notice of the amendment was given. The Appellants also requested the AEUB reconsider its decision. Therefore, the Appellants did participate in the AEUB process in respect to the reroute. Thus, since Mr. Weber is an active member of the Clearwater River Committee he too participated, or had the opportunity to participate, in the AEUB review process. The AEUB acknowledged the Appellants' concerns and the issues were reviewed by the AEUB prior to it making its decision.

**D. Have all the matters been previously decided by the AEUB?**

[55] In the Notice of Appeal, the Appellants listed five issues of concern.<sup>44</sup> They can be summarized as issues regarding:

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<sup>41</sup> See letter from Mr. Tom Weber, on behalf of the Landowners, to the AEUB, dated May 22, 2001.

<sup>42</sup> See letter from AEUB, dated September 20, 2001.

<sup>43</sup> See Director's submission, dated November 2, 2001. The Director continued:

"Mr. Weber states in his October 22, 2001 letter to the EAB that he filed an objection with the EUB to the Corridor application on behalf of himself and his family. He also states that the Clearwater River Committee, which he is a member, filed an objection to the Corridor application to amend their permit to the Rainbow Creek location.

Further, there are two Section 43 reviews filed with the EUB; one by Mr. Weber and a group of landowners and one by the Clearwater River Committee.

From both of these statements, it is clear that Mr. Weber had notice and has had the opportunity to participate in the various EUB applications/amendments regarding this pipeline."

<sup>44</sup> In the Notice of Appeal, the Appellants listed five issues of concern:

"1. The original concept and acceptance of the AOSMUC is very much in question as we can find no evidence that the approval process for that corridor included any public consultation, any definitive geotechnical studies, any definitive environmental studies, any river (Clearwater} (sic) hydrology studies, any flora and fauna studies, and this corridor was the basis for the approval of the Rainbow Creek Amendment. Its as if someone drew a line on a map and said

1. the public consultation process, geotechnical studies, and environmental studies;
2. the salt/brackish aquifer that underlies the Clearwater River Valley;
3. the aesthetic effect on the valley and the effects on the moose wintering area;
4. the lack of an Emergency Response Plan that is specific to the conditions of the Clearwater Valley; and
5. the public input into the process of granting Corridor an approval.

[56] In the letter from the Clearwater River Committee to the AEUB, the Committee raised substantially the same issues of concern.<sup>45</sup> These included concerns regarding the geotechnical data provided, the inadequate consideration of social and environmental impacts to the public interest, and the lack of an emergency response plan.

[57] In response to the notice of concern filed by the Clearwater River Committee, it is clear that the AEUB did note the concerns of the Appellants. The AEUB stated:

“Notwithstanding its finding that you have not established an interest that may be directly and adversely affected, the [Energy and Utilities] Board has considered each of the concerns raised. These concerns are relevant considerations in the Board’s review of the application by Corridor and, prior to the issuance of an approval, the Board must be satisfied that the project is in the public interest, having regard for all of the project related effects.

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this would be a[n] advantageous route for our industrial pipelines and related infrastructure without any thought to the pristine character of the Clearwater River Valley....

2. During early discussions with the Shell/Corridor group, the problems of serious environmental issues became apparent and included the salt/brackish aquifer that underlays the Clearwater River Valley that if released would destroy water quality forever; the instability of the slopes into the valley on which the pipeline would be built...
3. From a simple yet important aspect of this Crossing, the concern for the aesthetics of cutting a wide (30 to 40 metres) right of way through a pristine valley, through an important and necessary moose wintering area that creates added access pressures on the valley could in itself be devastating.
4. The Rainbow Creek Amendment dose (*sic*) not include an Emergency Response Plan that is local to the conditions of the Clearwater valley. Although we have been told that one will be made we will have no input and in as much as my home is directly down stream of a pipeline that carries highly volatile diluent and a second much larger pipeline that carries heated highly pressurized bitumen mixed with diluent coupled with the above mentioned slope instability, well this causes me much concern.
5. In Mr. Tupper’s response to the Clearwater River Committee dated June 13, 2001 he speaks of a process that is required for Corridors approval and the ability of concerned members of the public to provide input, however from the add (*sic*) in the newspaper approval was given to Corridor without that step....”

<sup>45</sup> See letter dated June 14, 2001, included in Notice of Appeal.

The Board has reviewed the technical data provided by Corridor and the Board's Decision 99-23 approving the pipeline within the Alberta Oil Sands Multiple Use Corridor (AOSMUC). The review has satisfied the Board that Corridor's current application to re-route the pipeline to the applied-for location at Rainbow Creek will be done in the same way as the original authorized crossing.<sup>46</sup>

[58] The fact that these concerns were fully considered is apparent in the AEUB's response to the review request made by Mr. Tom Weber on behalf of the Landowners and the Clearwater River Committee. The AEUB confirmed the issues brought forward were taken into consideration before the decision was made to allow the reroute:

“The [Energy and Utilities] Board, in making a decision on a review request, under section 43 of the ERCA [*Energy Resources Conservation Act*], considers whether the person requesting the review has rights which may be directly and adversely affected by the Board's decision to grant an approval... The Board was of the view that the Landowner Group has not shown in its submissions that it[s] members have a legally recognized interest in land on or adjacent to the Rainbow Creek crossing....

However, the Board wanted to assure the Landowner Group that the Board considered all the technical information relating [to] the proposed rerouting of the Corridor pipelines and impacts, prior to making a decision to issue the amended approvals. The Board was of the view that the measures to be taken: the trenchless crossing of the Clearwater River, the fact that no above-ground pipelines would be installed, and the Rainbow Creek Crossing would use the same techniques as the one previously approved, kept environmental and visual impacts at a minimum.<sup>47</sup>

[59] In the application to amend the previous approval, the Approval Holder stated that the technical and aesthetic effects of the reroute could be mitigated. In its application, the Approval Holder also suggested that the reroute: “...does not raise new issues which interested parties did not have the expectation or opportunity to raise at the EUB hearing of the Mainline Application.”<sup>48</sup> The AEUB concurred and stated that, with respect to the issue of the environmental and visual impacts:

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<sup>46</sup> See letter from AEUB to Clearwater River Committee, dated May 15, 2001.

<sup>47</sup> See AEUB's letter dated, October 22, 2001, to Mr. Tom Weber.

<sup>48</sup> See Corridor Pipeline Application to Change Alberta Energy and Utilities Board Licences 33527 and 33528.

“...Corridor has committed to proceed with a trenchless crossing of the Clearwater River and not to install any aboveground pipelines. These measures will keep the environmental and visual impacts of the crossing to a minimum.”<sup>49</sup>

[60] The Approval Holder stated that it had held “extensive stakeholder consultation in respect to the route alternatives,”<sup>50</sup> including numerous meetings with individuals and organizations.<sup>51</sup>

[61] The Approval Holder submitted that Mr. Tom Weber was aware of the Project, as there was consultation with the Clearwater River Committee of which Mr. Weber was a member. Further, Mr. Weber was also a member of the routing subcommittee of the Clearwater River Committee, which engaged in specific consultation with the Approval Holder prior to the granting of the amended approval.<sup>52</sup> The EAB agrees with the Approval Holder that “...there was no requirement that he receive such notice in his personal capacity. Mr. Weber’s land is approximately 10 kilometres downstream on the Clearwater River from the Rainbow Creek Crossing...”<sup>53</sup> There was public notification of the Project, and being an informed member of the public, an active member of the Clearwater River Committee, and a municipal representative, it is apparent to the EAB that Mr. Tom Weber had received adequate notice.

[62] In the original application to the AEUB, the Approval Holder did address the issue of slope instability.<sup>54</sup> The AEUB had the opportunity to assess the alternatives presented in the application and determined that the Approval Holder could take adequate steps to minimize the impact on the environment.<sup>55</sup>

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<sup>49</sup> See letter from AEUB to Clearwater River Committee, dated May 15, 2001.

<sup>50</sup> See Corridor Pipeline Application to Change Alberta Energy and Utilities Board Licences 33527 and 33528.

<sup>51</sup> See Corridor Pipeline Application to Change Alberta Energy and Utilities Board Licences 33527 and 33528. Included in the application was a list of stakeholders that were consulted. One of the organizations listed was the Clearwater River Heritage Committee. A subcommittee was formed to deal with the Approval Holder in examining and evaluating alternate routes. One of the members of this subcommittee was Mr. Tom Weber, representing the Regional Municipality of Wood Buffalo.

<sup>52</sup> See Corridor Pipeline Application to Change Alberta Energy and Utilities Board Licences 33527 and 33528.

<sup>53</sup> See Approval Holder’s submission, dated November 2, 2001.

<sup>54</sup> See Corridor Pipeline Application to Change Alberta Energy and Utilities Board Licences 33527 and 33528.

<sup>55</sup> See *Amendment to the Clearwater Pipeline Project Conservation and Reclamation Report*, prepared by Tera Environmental Consultants Alta. Ltd., May 2001. This report was incorporated into the terms of the Approval.

[63] The Approval Holder also addressed the issue of the movement of moose and other ungulates in the area.<sup>56</sup> Specific construction techniques are to be implemented to minimize the effect on wildlife in the area. This information again was available to the AEUB and assessed by that EAB prior to the issuance of the Approval.

[64] The AEUB did take into account the issues presented by the Appellants. In its decision, the AEUB specifically refers to public health and safety issues, emergency response plans, and public notification. In the Decision, the AEUB stated:

“The [Energy and Utilities] Board does not expect significant economic or lifestyle impacts upon the landowners resulting from the Corridor pipelines, provided the proposed mitigative measures and Board recommendations are implemented. The Board believes Corridor has substantively addressed public health and safety issues raised at the hearing in its use of emergency response planning, construction practices, pipeline design, and operations and maintenance procedures. ...

The Board is satisfied with the general route selection and believes that the impacts can be mitigated and that the project is in the public interest. ...

The Board notes the concerns expressed by the interveners with respect to emergency response, leak detection, pipeline failures, and public safety. In addressing these issues, the Board takes into consideration the nature of the materials transported in the pipelines, the potential for corrosion, the proposed monitoring and inspection programs, and the design practices and control mechanisms to be used for these pipelines.

The Board notes that Corridor has not finalized its ERP but has committed to use the TMPL [Trans Mountain Pipe Line Company Ltd.] plan as a basis. This includes resident input to the plan. On the basis of the evidence presented, the Board is satisfied that the Corridor plan, when completed, would be capable of dealing with emergency situations appropriately. The Board believes that during a significant leak event, Corridor would be able to shut down the pipelines and notify the affected residents in a timely manner. ...

The Board expects that applicants, especially those intending to construct facilities in areas of intensive industrial development, will have a clear understanding of the public notification and consultation process. The process must be in progress well in advance of the submission of an application to the Board, let alone in advance of the subsequent hearing proceedings. It must be a professional and thorough action that enables all parties that are or may be directly affected to obtain a clear understanding of the proposed project. Affected parties must be given sufficient information and the opportunity to participate

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<sup>56</sup> See Corridor Pipeline Application to Change Alberta Energy and Utilities Board Licences 33527 and 33528.

meaningfully in the project that affects them, commencing with the design and continuing throughout operation.

The applicant is responsible to provide affected parties with information that is complete, easily understood, consistent, factual, timely and, where applicable, explained in terms of the project's role as a component of a larger energy development plan. Concerns must not be simply noted and recorded by the applicant, but heard, properly addressed, and resolved through negotiated agreement. ...

The Board believes that Corridor met the minimum public notification and consultation requirements of *Guide 56*.<sup>57</sup> However, the project awareness may not have been communicated thoroughly and effectively to all parties, starting with the design phase of the project.”<sup>58</sup>

[65] Although the issues presented to the EAB by the Appellants are important, the EAB can only adjudicate on the matters if it has jurisdiction. We find that the issues brought forward by the Appellants have previously been adequately dealt with by the AEUB. Our Act specifies that this Board must dismiss a Notice of Appeal if the issues have been adequately dealt with by the AEUB. That is the case here. The EAB has no alternative but to dismiss the Appellants' appeal.

#### **IV. DECISION**

[66] Based on the information provided by the Appellants, the Approval Holder, the Director, and the AEUB, the EAB dismisses the appeal pursuant to section 95 [formerly section 87] of the *Environmental Protection and Enhancement Act* as the Appellants did have the opportunity to participate in hearings and meetings before the AEUB, and all the issues were addressed by the AEUB.

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<sup>57</sup> The AEUB has published a document listing the requirements and expectations of applicants for energy projects entitled *Energy Development Application Guide and Schedules (Guide 56)*.

<sup>58</sup> Alberta Energy and Utilities Board, Decision 99-23. Although this Decision was prepared for the original proposed line, it has been incorporated into the amendment as the AEUB stated in its letter to the Approval Holder, dated May 15, 2001. The reroute was granted based on the additional technical data provided in the amendment application in correlation with the original decision, Decision 99-23.

[67] The EAB has also determined that even if all of the issues had not been addressed by the AEUB, it would still dismiss the appeal because the Appellants have failed to demonstrate that they are directly affected by the Project.

Dated on May 10, 2002 at Edmonton, Alberta.

“original signed by”  
William A. Tilleman, Q.C.  
Chair