

ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation Meeting: January 28, 2003

Date of Report and Recommendations: February 3, 2003

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 Notices of Appeal filed by Ronald Hanson, Wayne Hanson, and Irene Hanson with respect to *Water Act* Approval No. 00137206-00-00 and *Water Act* Preliminary Certificate No. 00137211-00-00 issued to Apple Creek Golf and Country Club by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Hanson et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (3 February 2003), Appeal Nos. 01-123, 01-130, 01-131, 02-050, 02-056 and 02-057-R (A.E.A.B.).

MEDIATION MEETING BEFORE: Frederick C. Fisher, Q.C.

PARTIES:

Appellants: Mr. Ronald Hanson (01-123 and 02-050); Ms. Irene Hanson (01-130 and 02-056); Mr. Wayne Hanson (represented by Mr. Ronald Hanson) (01-131 and 02-057)

Director: Ms. May Mah-Paulson, Director, Southern Region, Regional Services, Alberta Environment, Mr. Kevin Wilkinson, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice

Approval Holder: Apple Creek Golf and Country Club, represented by Mr. Rick Skauge, Apple Creek Golf and Country Club, and Mr. Jan Korzeniowski, J.K. Engineering Ltd.

Other Attendees: City of Airdrie, represented by Mr. Mark Locking, Mr. Dennis Westhoff and Ms. Diana Faucher, City of Airdrie

Board Staff: Ms. Denise Black, Board Secretary

EXECUTIVE SUMMARY

Alberta Environment issued a Preliminary Certificate and an Approval under the *Water Act* to Apple Creek Golf and Country Club with respect to their operations at SE35-27-01-W5M in the Municipal District of Rocky View, Alberta. The Preliminary Certificate, subject to meeting certain conditions, grants a licence authorizing the diversion of 119,929 cubic metres of water annually from McPherson Coulee and the Approval authorizes the construction of a channel improvement, control gates, dykes, and a diversion pipe on McPherson Coulee and an unnamed water body. McPherson Coulee is a tributary of Nose Creek.

Ten appeals were filed with respect to the Preliminary Certificate and eleven appeals were filed with respect to the Approval.

The Board decided to conduct an information session with the Notice of Appeal Filers, Apple Creek Golf and Country Club, and Alberta Environment, to provide the Notice of Appeal Filers with an overview of the Approval, the Preliminary Certificate, Alberta Environment's approval process, Apple Creek's project, and the Board's appeal process. After the information session, Alberta Environment requested that the Board dismiss all of the appeals, except the appeals filed by Mr. Ronald Hanson.

After receiving submissions, the Board decided to hear the appeals filed by Mr. Ronald Hanson, Ms. Irene Hanson, and Mr. Wayne Hanson. Although the Board dismissed the appeal of the City of Airdrie, it decided to make the City of Airdrie a full party to these appeals noting that the City would bring a broad range of interests to the hearing that would assist the Board in its considerations. The Board dismissed the remainder of the appeals, and the reasons for the Board's decision is outlined in a previous Decision.

The Board held a mediation meeting in Airdrie, Alberta, with respect to the appeals of Mr. Ronald Hanson, Ms. Irene Hanson and Mr. Wayne Hanson, following which a resolution was reached by the Hansons, Apple Creek Golf and Country Club and Alberta Environment. The Board recommends the Minister of Environment accept the resolution.

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I. BACKGROUND

[1] On March 18, 2002, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 00137206-00-00 (the “Approval”) and Preliminary Certificate No. 00137211-00-00 (the “Certificate”) to the Apple Creek Golf and Country Club (the “Approval Holder”) authorizing the construction of channel improvement, control gates, dykes, and a diversion pipe on McPherson Coulee and an unnamed water body, and upon compliance with certain conditions issuing a Licence (the “Licence”), allowing the diversion of 119,929 cubic metres of water annually from McPherson Coulee (collectively the “Project”), all in SE 35-27-01-W5M in the Municipal District of Rocky View No. 44.¹ The Approval and the Certificate were issued under the *Water Act*, R.S.A. 2000, c. W-3.

[2] On March 25, 2002, the Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Ronald Hanson, Mr. Frank Jensen, Mr. Mark Davy, Mr. Daniel Davy, Mr. Soren Davy, Ms. Irene Hanson, and Mr. Wayne Hanson appealing the Approval.² On March 28, 2002, the Board received revised Notices of Appeal from these individuals that appealed the Certificate as well.³ On March 27, 2002, the Board received a Notice of Appeal from Mr. Robert Copley appealing both the Approval and the Certificate.⁴ On March 28, 2002, the Board received a Notice of Appeal from Mr. Ken Reid appealing the Approval only.⁵ On April 3, 2002, the Board received a Notice of Appeal from the City of Airdrie appealing the Approval and the Certificate.⁶ On April 17, 2002, the Board received a Notice of Appeal from the Municipal District of Rocky View No. 44 (the “Municipal District”) appealing the Approval and Certificate.⁷

¹ The Certificate has priority 2000-07-05-002. The Approval Holder also holds Licence 10813 under the *Water Act* for 32,071 m³ having priority 1962-03-19-001, with McPherson Coulee as its source of supply, and also located on SE 35-27-1-W5M. Licence 10813 is not the subject of these appeals.

² Notices of Appeal 01-123, 01-124, 01-125, 01-126, 01-127, 01-130, and 01-131 respectively.

³ Notices of Appeal 02-050, 02-051, 02-052, 02-053, 02-054, 02-056, and 02-057 respectively.

⁴ Notices of Appeal 01-129 and 02-055 respectively.

⁵ Notice of Appeal 01-028.

⁶ Notices of Appeal 02-001 and 02-058 respectively.

⁷ Notices of Appeal 02-006 and 02-059 respectively.

[3] The Board acknowledged receipt of the appeals of the Notice of Appeal Filers⁸ and requested that the Director provide copies of the records (the “Record”) relating to these appeals. The Board also notified the Approval Holder of the appeals.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[5] On April 12, 2002, the Board acknowledged receipt of the letter dated April 11, 2002, from the Director, as well as two additional approvals issued to the Approval Holder under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the “Act”). These approvals authorized the construction, operation, and reclamation of a waterworks system (Approval 136299-00-00) and a wastewater system (Approval 136303-00-00). Copies of these approvals were provided to the Notice of Appeal Filers as well as information regarding the timelines for filing appeals of these approvals. The Board did not receive any appeals with respect to these approvals.

[6] On April 23, 2002, the Board acknowledged receipt of the Record from the Director and provided copies to the Notice of Appeal Filers and Approval Holder. In this letter, the Board requested that the Notice of Appeal Filers and the Approval Holder provide their comments with respect to the Director’s suggestion of holding an informal information session prior to scheduling a mediation meeting. The Board provided the Record to the Notice of Appeal filers and Approval Holder on April 30, 2002.

[7] On April 25, 2002, the Board acknowledged receipt of the letter from the Municipal District supporting the Director’s suggestion of holding an informal information session with respect to these appeals.

[8] On May 9, 2002, the Board acknowledged receipt of a copy of a letter from the Approval Holder to the Director. In this letter, the Board confirmed that an informal information

⁸ Mr. Ronald Hanson, Mr. Frank Jensen, Mr. Mark Davy, Mr. Daniel Davy, Mr. Soren Davy, Mr. Ken Reid, Mr. Robert Copley, Ms. Irene Hanson, Mr. Wayne Hanson, the City of Airdrie, and the Municipal District of Rocky

meeting would be held on May 27, 2002, in Airdrie, Alberta. The purpose of the meeting was to provide the Notice of Appeal Filers with an overview of the Approval, the Certificate, the approval process, the Project, and the appeal process.

[9] On May 31, 2002, the Board wrote to the Notice of Appeal Filers, the Approval Holder and the Director summarizing the informal information meeting that was held on May 27, 2002. The Board stated that:

“Following the exchange of information, discussions continued which effectively resulted in a fundamental question from the Appellants asking how can they be assured of what types of impacts this project will have on the watercourse through some sort of model or other prediction. As a result, Alberta Environment was requested to determine whether it would be possible to give a better indication of the type and timing of the impacts that would result from this project. They were requested to provide an indication of when and if it will be possible to develop such a model or prediction by June 4, 2002.

The Board must now determine what the next steps are to be taken with respect to these appeals. As indicated to the parties at the meeting, the Board notes that there may be concerns regarding the ability of the Board to consider some of the appeals, because some of the parties may not have filed statements of concern or may not have filed statements of concern within the required timeframes. If any of the parties have concerns regarding this issue or know of any other concerns with these appeals, they should advise the Board by June 4, 2002.” (Emphasis omitted.)

[10] On May 31, 2002, the Board received a copy of the Nose Creek 2000 Surface Water Quality Data Report from the Director and provided a copy to the Notice of Appeal Filers and the Approval Holder.

[11] On June 11, 2002, the Board acknowledged receipt of a letter dated June 4, 2002, from the Director in which it was suggested that the Director complete the “...water availability study for the Nose Creek Basin using the Branch ‘Watshort’ computer program...” and indicated that it would take two to three months to complete this work. The Board advised:

“The Board believes that it may of benefit to all parties involved, if Alberta Environment were to complete the ‘water availability study of the Nose Creek Basin using the Branch ‘Watshort’ computer program’ and the Rosebud Creek information. Such information may address the types of concerns voice by the

participants at the meeting on May 27, 2002 and may also be of assistance to Alberta Environment and the Board should a hearing of these appeals proceed.”

The Board also advised in its letter that the “...preparation of this information does not prejudice the parties or the Board from considering the jurisdictions/questions that may arise in these appeals.”⁹

[12] On June 11, 2002, the Board also acknowledged a letter from the Director, dated June 4, 2002. The Director’s letter requested that the Board dismiss all of the appeals in this matter, with the exception of the appeals filed by Mr. Ronald Hanson. The Director raised two issues. The first issue was the failure of Mr. Frank Jensen, Mr. Mark Davy, Mr. Daniel Davy, Mr. Soren Davy and Mr. Robert Copley to file Statements of Concern and therefore, according to the Director, they are not eligible to file a Notice of Appeal. Included later in the Director’s submission was an argument that the City of Airdrie has also not filed a valid Statement of Concern. The second issue was that, according to the Director, Mr. Ken Reid, Ms. Irene Hanson, Mr. Wayne Hanson and the City of Airdrie are not directly affected and therefore their appeals should be dismissed. The Director also argued that the Municipal District was not directly affected, however, the Municipal District subsequently withdrew its appeal of the Certificate.¹⁰

[13] In its letter of June 11, 2002, the Board set a schedule to receive submissions in response to the Director’s motion.

[14] The appeal of the Approval by the Municipal District was dismissed on June 25, 2002.¹¹ The appeal of the Certificate by the Municipal District was withdrawn and the Board issued a Discontinuance of Proceedings on August 1, 2002¹²

[15] The Board subsequently issued a Preliminary Motions Decision on November 29, 2002 advising that the Board had decided to hear the appeals filed by Mr. Ronald Hanson, Ms.

⁹ On June 13, 2002, the Board acknowledged receipt of a letter dated June 12, 2002, from the Director advising that the Director will provide the “Water Availability Study using the Watshort Program.”

¹⁰ See: *Municipal District of Rocky View No. 44 v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (1 August 2002), Appeal No. 02-059-DOP (A.E.A.B.).

¹¹ See: *Municipal District of Rocky View No. 44 v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (25 June 2002), Appeal No. 02-006-D (A.E.A.B.).

¹² See: *Municipal District of Rocky View No. 44 v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (1 August 2002), Appeal No. 02-059-DOP (A.E.A.B.).

Irene Hanson, and Mr. Wayne Hanson. The Board also decided to make the City of Airdrie a party to these appeals. The Board dismissed the remainder of the appeals.¹³

[16] On January 14, 2003, in consultation with Mr. Ronald Hanson, Ms. Irene Hanson, and Mr. Wayne Hanson (the “Appellants”), the Director, the Approval Holder (collectively the “Parties”) and the City of Airdrie, the Board scheduled a mediation meeting to be held in Airdrie, Alberta.

II. THE MEDIATION MEETING

[17] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Airdrie, Alberta, on January 28, 2003, with Frederick C. Fisher, Q.C. as the presiding Board Member (the “Mediator”).

[18] In conducting the mediation meeting, the Mediator reviewed the appeals and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants’ Agreement to Mediate. The Parties and the City of Airdrie signed the Agreement and discussions ensued.

[19] Following productive and detailed discussions, a Resolution evolved between the Parties at the January 28, 2003 mediation meeting and is attached as (pages 7 and 8).

III. RECOMMENDATIONS

[20] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board recommends that the Minister of Environment vary *Water Act* Preliminary Certificate No. 00137211-00-00 issued by the Director, Southern Region, Regional Services, Alberta Environment, to Apple Creek Golf and Country Club, in accordance with the Resolution contained herein and confirm *Water Act* Approval 00137206-00-00. Attached for the Minister’s consideration is a draft Ministerial Order implementing the recommendations with respect to the Preliminary Certificate. Also attached for the Minister’s

¹³ See: Preliminary Motions: *Hanson et al. v. Director, Southern Region, Regional Services, Alberta Environment re: Apple Creek Golf and Country Club* (29 November 2002), Appeal Nos. 01-123-131, 02-001, 02-

consideration is a draft Ministerial Order implementing the recommendations with respect to the Approval.

[21] Further, with respect to sections 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister be sent to the following:

- Mr. Ronald Hanson, Mrs. Irene Hanson and Mr. Wayne Hanson;
- Ms. Charlene Graham, Alberta Justice, representing Ms. May Mah-Paulson, Director, Southern Region, Regional Services, Alberta Environment;
- Mr. Rick Skauge, Apple Creek Golf and Country Club;
- Mr. Jan Korzeniowski, J.K. Engineering Ltd.; and
- Mr. Jeff Greene, Team Leader, Planning and Development Department.
City of Airdrie.

Dated on February 3, 2003, at Edmonton, Alberta.

“original signed by”
Frederick C. Fisher, Q.C.

IV. RESOLUTION

Resolution of Appeal Nos. 01-123, 130 and 131, 02-050, 056 and 057 regarding Approval 00137206-00-00 and Preliminary Certificate 00137211-00-00 issued under the *Water Act*, R.S.A. 2000, c. W-3, by the Director, Southern Region, Regional Services, Alberta Environment, to Apple Creek Golf and Country Club. The Approval authorizes the construction of a channel improvement, control gates, dykes and a diversion pipe on McPherson coulee and an unnamed water body at SE 35-027-01-W5, near Airdrie, Alberta, and, upon compliance with certain conditions, the Preliminary Certificate authorizes the diversion of 119,929 cubic metres of water annually from McPherson coulee in SE 35-027-01-W5.

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

1. THAT Clause 9 of the Licence conditions set out in Preliminary Certificate No. 00137211-00-00 will be amended by removing “The licensee shall submit an annual water monitoring report to the Director on or before....” and replacing it with “The licensee shall submit an annual water monitoring report to the Director and to Ronald Hanson on or before....”

2. THAT Preliminary Certificate No. 00137211-00-00 is amended by adding the following conditions to the Licence that will be granted upon compliance with the conditions set out in the Preliminary Certificate:

“Clause 17:

The licensee shall supply up to a maximum of 4,369 cubic metres of water to the dugout in the SE 26-027-01-W5 (File No. 00157768) between March 1 and May 20 of each year.”

“Clause 18:

The licensee shall cease diversion from McPherson coulee when the flow passing the point of the water diversion is equal to or exceeds 0.85 cubic metres per second.”

“Clause 19:

The licensee shall provide electronic access to the water monitoring data set out in Clause 9.”

3. THAT in consideration of the foregoing, the Appellants, Wayne Hanson, Ronald Hanson and Irene Hanson, agree to withdraw their above Notices of Appeal (01-123, 01-130 and 01-131, 02-050, 02-056 and 02-057).

RESOLUTION AGREED TO BY:

“original signed by” _____
Ronald Hanson

“original signed by” _____
Wayne Hanson
(represented by Ronald Hanson)

“original signed by” _____
Irene Hanson

“original signed by” _____
May Mah-Paulson, Director
Southern Region, Regional Services
Alberta Environment,
represented by Ms. Charlene Graham,
Alberta Justice

“original signed by” _____
Rick Skauge
Apple Creek Golf and Country Club

**V. DRAFT ORDER RESPECTING THE PRELIMINARY
CERTIFICATE**

**Ministerial Order
/2003**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal Nos. 02-050, 02-056 and 02-057**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal Nos. 02-050, 02-056 and 02-057.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2003.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board Appeal Nos. 02-050, 02-056 and 02-057

With respect to the decision of the, Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Preliminary Certificate No. 00137211-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c. W-3, to Apple Creek Golf and Country Club, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Certificate is confirmed subject to the following provisions.
2. Order that the condition 9 of the licence set out in the Certificate be varied by deleting “The licensee shall submit an annual water monitoring report to the Director on or before December 31 in each year for that calendar year indicating” and replacing it with “The licensee shall submit an annual water monitoring report to the Director and to Ronald Hanson on or before December 31 in each year for that calendar year indicating”.
3. Order that the Certificate be varied by adding the following conditions immediately after condition 16 of the licence set out in the Certificate:
 - “17. The licensee shall supply up to a maximum of 4,369 cubic metres of water to the dugout in the SE 26-027-01-W5 (File No. 00157768) between March 1 and May 20 of each year.
 18. The licensee shall cease diversion from McPherson coulee when the flow passing the point of the water diversion is equal to or exceeds 0.85 cubic metres per second.
 19. The licensee shall provide electronic access to the water monitoring data set out in condition 9.”

VI. DRAFT ORDER RESPECTING THE APPROVAL

**Ministerial Order
/2003**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal Nos. 01-123, 01-130, and 01-131**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal Nos. 01-123, 01-130, and 01-131

Dated at the City of Edmonton, in the Province of Alberta this _____ day of _____, 2003.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board
Appeal Nos. 01-123, 01-130, and 01-131

With respect to the decision of the, Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Approval No. 00137206-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Apple Creek Golf and Country Club, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Approval is confirmed.

**Ministerial Order
36/2003**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal Nos. 02-050, 02-056 and 02-057**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal Nos. 02-050, 02-056 and 02-057.

Dated at the City of Edmonton, in the Province of Alberta this 4th day of February, 2003.

“original signed by”
Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeal Board Appeal Nos. 02-050, 02-056 and 02-057

With respect to the decision of the, Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Preliminary Certificate No. 00137211-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c. W-3, to Apple Creek Golf and Country Club, I, Dr. Lorne Taylor, Minister of Environment:

4. Order that the decision of the Director to issue the Certificate is confirmed subject to the following provisions.
5. Order that the condition 9 of the licence set out in the Certificate be varied by deleting “The licensee shall submit an annual water monitoring report to the Director on or before December 31 in each year for that calendar year indicating” and replacing it with “The licensee shall submit an annual water monitoring report to the Director and to Ronald Hanson on or before December 31 in each year for that calendar year indicating”.
6. Order that the Certificate be varied by adding the following conditions immediately after condition 16 of the licence set out in the Certificate:
 - “17. The licensee shall supply up to a maximum of 4,369 cubic metres of water to the dugout in the SE 26-027-01-W5 (File No. 00157768) between March 1 and May 20 of each year.
 18. The licensee shall cease diversion from McPherson coulee when the flow passing the point of the water diversion is equal to or exceeds 0.85 cubic metres per second.
 19. The licensee shall provide electronic access to the water monitoring data set out in condition 9.”

**Ministerial Order
37/2003**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal Nos. 01-123, 01-130, and 01-131**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal Nos. 01-123, 01-130, and 01-131.

Dated at the City of Edmonton, in the Province of Alberta this 4th day of February, 2003.

“original signed by” _____
Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeal Board
Appeal Nos. 01-123, 01-130, and 01-131

With respect to the decision of the, Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Approval No. 00137206-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Apple Creek Golf and Country Club, I, Dr. Lorne Taylor, Minister of Environment:

Order that the decision of the Director to issue the Approval is confirmed.