

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Decision

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Date of Decision – September 5, 2002

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

**-and-**

**IN THE MATTER OF** an appeal filed on April 23, 2002, by Mr. Robert David Stuart with respect to a research permit issued by Fish and Wildlife Division, Sustainable Resource Development, to Mr. Robert David Stuart.

Cite as: Reconsideration Request: *Stuart v. Fish and Wildlife Division, Sustainable Resource Development* (5 September 2002), Appeal No. 02-015-RD (A.E.A.B.).

## **EXECUTIVE SUMMARY**

The Board received a Notice of Appeal from Mr. Robert David Stuart with respect to a research permit that he had applied for from Fish and Wildlife Division, Sustainable Resource Development.

The Board dismissed the appeal for lack of jurisdiction.

Mr. Stuart then filed a request to the Board to reconsider his appeal. After review of the file and the original decision, the Board did not find any new evidence or arguments that would give the Board jurisdiction to hear the appeal. Therefore, Mr. Stuart's request for reconsideration was denied.

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## **I. BACKGROUND**

[1] The Environmental Appeal Board (the “Board”) received a Notice of Appeal, dated April 18, 2002, from Mr. Robert David Stuart (the “Appellant”) on April 23, 2002. The appeal was with respect to a research permit, for an “upland bird census”, that the Appellant had applied for through Fish and Wildlife Division, Sustainable Resource Development. The Appellant’s Notice of Appeal stated in part:

“After receiving an inadequate permit #8052 concerning upland bird study authorizing, I am confident I can provide many sufficient reasons to allow the Environmental Appeal Board confidence to delete and correct four (4) conditions on the Wildlife Act sections 81, 81(2, 3, 4) (o.c. page 48) research permit, as the conditions make the activity (upland bird census) and reporting requirements impossible to continue.”

[2] The Board received a further letter from the Appellant on May 31, 2002, and on June 7, 2002, the Board acknowledged receipt of the Appellant’s letters and requested Alberta Environment provide the Board with a copy of any documents that they may have in relation to this appeal.

[3] The Board did not contact Sustainable Resource Development to request documents as the Board cannot deal with decisions made by Sustainable Resource Development, including the Fish and Wildlife Division.

[4] On June 10, 2002, the Board received a response to its June 7, 2002 letter from Alberta Environment advising:

“...I advise that we have checked with the Regulatory Approvals Centre and have been advised that Mr. Robert David Stuart does not have any approvals under either the *Water Act* or the *Environmental Protection and Enhancement Act*. Therefore, we do not believe that Alberta Environment has any documents with respect to this matter.”

[5] On June 10, 2002, the Board acknowledged receipt of the letter from Alberta Environment and forwarded a copy to the Appellant.

[6] The Board had previously received letters from the Appellant on October 18, 2001, November 26, 2001, April 12, 2002, April 15, 2002, April 22, 2002, April 23, 2002, (Notice of Appeal), and on May 31, 2002, regarding the same issue. The Board had responded

to the Appellant's letters on October 24, 2001, and on January 23, 2002, advising that the Board could not deal with his appeal as the Board was limited by law in what cases it could hear. The Board did, however, contact Sustainable Resource Development, Fish and Wildlife Division in January of 2002, on behalf of the Appellant, and was advised by staff that they would be sending the Appellant a letter regarding the research permit he was seeking. The Board in turn wrote to the Appellant to advise him of this information.

[7] On June 12, 2002, the Board dismissed the appeal for lack of jurisdiction.<sup>1</sup> The Board's June 12, 2002 Decision stated:

"The Environmental Appeal Board hears appeals of decisions made by *Alberta Environment*, under the *Environmental Protection and Enhancement Act*, the *Water Act* and Schedule 5 of the *Government Organization Act* only. In dealing with these appeals, the Board is limited to dealing with issues regarding land and water, which may include animal and fish habitat. The Board *cannot* deal with issues concerning the control of wildlife research. Further, the Board *cannot* hear appeals of decisions made by any Division of Sustainable Resource Development, including the Fish and Wildlife Division.

Because the Board cannot deal with decisions made by Sustainable Resource Development, including the Fish and Wildlife Division, and because the decision regarding the Appellant's research permit was made by Fish and Wildlife Division, Sustainable Resource Development, and not by Alberta Environment, and, pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, the Board dismisses this appeal for lack of jurisdiction and has closed its file in this matter." (Emphasis in original.)

[8] On July 2, 2002, the Board received a letter from the Appellant requesting the Board reconsider its Decision regarding his appeal. The Board responded to the Appellant's letter on July 9, 2002, denying the request for reconsideration. The Board's July 9, 2002 letter stated in part:

"...as the Board has no jurisdiction to deal with the matters that you have raised, there are no grounds to request a reconsideration of the Decision."

[9] On July 11, 2002, the Board received a further letter from the Appellant, again requesting a reconsideration of his appeal. The Board received additional unsolicited letters and written documents on July 19, 2002, July 30, 2002, August 13, 2002, August 16, 2002 and September 4, 2002. The documents provided reiterated the issues presented by the Appellant in

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<sup>1</sup> *Stuart v. Fish and Wildlife, Sustainable Resources Development*, (12 June 2002), Appeal No. 02-015-D

his original submissions and included further papers regarding the steps taken by him prior to submitting his appeal. Although the Board recognizes the diligence of the Appellant in providing this information to us, the issue of this Board's jurisdiction to hear such an appeal has not changed.

[10] In his submission of August 16, 2002, the Appellant stated that:

“87(8) – indicates the universality of panel interests and ability to include any manner of appeal subjects and notices of any matters related to the environment, assessment, monitoring, whatsoever.”<sup>2</sup>

[11] The Board's jurisdiction is mandated by the applicable legislation. The Appellant mentioned on numerous occasions the responsibility of protecting the environment can be found in various pieces of legislation. Although this is true, this Board cannot hear any appeal related to the environment. It is restricted to the matters allowed under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the *Water Act*, R.S.A. 2000, c. W-3, and the *Government Organization Act*, R.S.A. 2000, c. G-10. Unless legislation is changed, the Board cannot, and will not, hear matters outside of its jurisdiction.

[12] The Board dismissed the original appeal as the Board did not have jurisdiction to deal with it. The Environmental Appeal Board hears appeals of decisions made by Alberta Environment, under the *Environmental Protection and Enhancement Act*, the *Water Act*, and Schedule 5 of the *Government Organization Act* only. In dealing with these appeals, the Board is limited to dealing with certain issues as outlined in the legislation. The Board *cannot* deal with issues concerning the control of wildlife research. Further, the Board *cannot* hear appeals of decisions made by Sustainable Resource Development, including the Fish and Wildlife Division.

[13] In his reconsideration request, the Appellant argued:

“The panels decision is wrong when it states it can only hear appeals of decision made by Alberta Environment, under the EPEA act, and not appeals of Sustainable Resource Development or Fish and Wildlife.

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(A.E.A.B.).

<sup>2</sup>

See: Appellant's Submission, received August 16, 2002, Rough Work from Early Winter 2001 at page 23.

EPEAct [*sic*] section 90(2) clearly states otherwise, and many other statutes also support the validity of my appeal, and outline the EAB panels jurisdiction does include notices of appeal like my #8052 research permit.

Part 4, Environmental Appeal Board established, section 90(2), office consolidation, page 64 states that the board shall hear appeals as provided for in this Act, or any other enactment.

Any other enactment would include Wildlife act approvals or permits such as mine.”<sup>3</sup> (Emphasis in original.)

[14] Section 90(2) of the *Environmental Protection and Enhancement Act* clearly states that the Board can only “...hear appeals as *provided* for in this Act or any other enactment.” (Emphasis added.)

[15] Before section 90(2) can apply, there must be a reference in the other pieces of legislation authorizing, or a section *providing* for, this Board to hear appeals under that specific Act. At the present time, only two Acts, other than the *Environmental Protection and Enhancement Act*, give this Board the authority to hear appeals under the respective legislation. These Acts are the *Water Act* and the *Government Organization Act*. The specific section that allows this Board to hear appeals with respect to issues under the *Water Act* states:

“Section 114:

A notice of appeal submitted under this Part initiates an appeal of the decision to which an objection has been made to the Environmental Appeal Board.”

[16] The section under the *Government Organization Act* allowing this Board to hear appeals under Schedule 5 states:

“Schedule 5, section 6(1)

A person to whom an enforcement order is directed under section 5(1)(a) or (b) may appeal the enforcement order by submitting a notice of objection to the Environmental Appeal Board established under the *Environmental Protection and Enhancement Act*.”

[17] There is no comparable provision in any other Acts that provides this Board with the jurisdiction to hear appeals of decisions made under any other Acts. This includes any Act administered by Sustainable Resource Development.

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<sup>3</sup> Appellant’s Reconsideration Request, dated July 11, 2002, at pages 3 and 4.

## II. DECISION

[18] Upon review of Mr. Stuart's file and the Appellants letters of July 2, 11, 19, and 30, 2002, August 13 and 16, 2002 and September 4, 2002, the Board finds that Mr. Stuart did not provide any new evidence or arguments that would give the Board jurisdiction to hear the appeal and, therefore, denies his request for reconsideration.

[19] Further correspondence from Mr. Stuart will be summarily returned to Mr. Stuart, unless he is appealing a decision under the *Environmental Protection and Enhancement Act*, the *Water Act*, or the *Government Organization Act*. Mr. Stuart is reminded that the Legislature has not given the Board authority to hear appeals of decisions made by Sustainable Resource Development, including the Fish and Wildlife Division.

Dated on September 5, 2002, at Edmonton, Alberta

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William A. Tilleman, Q.C.  
Chair