

ALBERTA ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – February 14, 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 an appeal filed by the Seabolt Watershed Association with respect to Approval No. 00148782-00-00 issued under the *Water Act* to Mountain Creeks Ranch Inc., by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Seabolt Watershed Association v. Director, Central Region, Regional Services, Alberta Environment re: Mountain Creeks Ranch Inc.* (14 February 2003), Appeal No. 02-085-D (A.E.A.B.).

BEFORE: William Tilleman, Q.C., Chair.

PARTIES:

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| Appellant: | Seabolt Watershed Association, represented by Mr. Jim Bertwistle. |
| Director: | Mr. Darryl Seehagel, Director, Central Region, Regional Services, Alberta Environment, represented by Ms. Heather Veale, Alberta Justice. |
| Approval Holder: | Mountain Creeks Ranch Inc. represented by Mr. Jim Brown. |

EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to Mountain Creeks Ranch Inc., authorizing the construction of a storm water management works on a surface runoff tributary of Maskuta Creek near Hinton, Alberta.

The Board received a Notice of Appeal from the Seabolt Watershed Association (the Association) appealing the Approval after the appeal period had ended. The Board requested the Seabolt Watershed Association provide reasons as to why the Board should extend the time limit for filing the appeal.

After reviewing the reasons provided, the Board determined that the Association failed to present sufficient reasons to demonstrate special circumstances existed to warrant an extension of the time limit.

Therefore, the Board dismissed the appeal of the Seabolt Watershed Association.

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I. BACKGROUND

[1] On October 24, 2002, the Director, Central Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 00148782-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Mountain Creeks Ranch Inc. (the “Approval Holder”) authorizing the construction of storm water management works on a surface runoff tributary of Maskuta Creek near Hinton, Alberta.

[2] The Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. James McClelland on November 7, 2002,¹ and from the Seabolt Watershed Association (the “Appellant”) on November 26, 2002. The Board notified the Approval Holder and the Director of the appeals and requested the Director provide a copy of his records relating to these appeals (the “Record”). The Board received a copy of the Record on November 29, 2002, and copies were forwarded to the other parties.

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

[4] The Board acknowledged the Appellant’s Notice of Appeal on November 29, 2002, stating that the Notice of Appeal “...appears to be significantly outside the time limit prescribed in the *Water Act*.²” In this same letter, the Board asked the Appellant to advise the Board if it wished to request an extension of time to appeal, and if it did, to provide reasons why an extension should be granted and an explanation as to why the Notice of Appeal was filed outside the 7-day time limit.²

[5] The Appellant submitted its request for an extension of time to file its appeal on December 2, 2002. His submission stated that notification of the Director’s decision was not received until November 14, 2002. It further stated that it was originally told by Board staff that an association could not file an appeal, but on November 19, 2002, it was informed that an

¹ Mr. McClelland filed his appeal (E.A.B. Appeal No. 02-078) within the required time limits, and his appeal is continuing to proceed through the appeal process.

² See: Board Letter, dated November 29, 2002.

association could file an appeal with the Board. Thus, it argued that November 19 was the date of actual notice, its time to appeal started on that date, and therefore, its appeal, filed on November 26, was filed within the time limit.³

[6] On December 10, 2002, the Board wrote to the Appellant and advised that:

“The Board advises that the time frame for filing an appeal of an Approval under the *Water Act* is 7 days from receipt of the decision of the Director of Alberta Environment and not from the date information on filing appeals is sought from the [Environmental] Appeal Board. It is the consistent practice of all Board staff to advise parties that the time period for filing appeals with respect to all matters before the Board begins on receipt of notice of the decision from Alberta Environment.”⁴

The Board gave the Appellant another opportunity to provide a submission as to why an extension of time should be granted. Yet, on December 18, 2002, the Appellant provided a submission substantially similar in content to its December 2, 2002 submission.

[7] After reviewing the Record and the reasons provided by the Appellant, the Board notified the parties on December 30, 2002, that it was dismissing the appeal for filing the Notice of Appeal late.⁵

II. ANALYSIS

A. Statutory Background

[8] Section 116 of the *Water Act* provides:

- “(1) A notice of appeal must be submitted to the Environmental Appeal Board
 - (a) not later than 7 days after...
 - (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from....”

3 See: Appellant’s Letter, received December 2, 2002.

4 Board’s Letter, dated December 10, 2002.

5 See: Board’s Letter, dated December 30, 2002.

[9] The Board does have the authority to extend the filing time limit if there are sufficient grounds to do so. Section 116(2) of the *Water Act* states:

“The Environmental Appeal Board may, on application made before or after the expiry of the period referred to in subsection (1), extend that period, if the Board is of the opinion that there are sufficient grounds to do so.”

B. Factual Background

[10] A group or organization can file a Notice of Appeal although there is additional information that must be provided to the Board. The Board notes that the Appellant had filed an action in the Alberta Court of Appeal and was recognized as a legal entity for the purposes of litigation.⁶ Therefore, the Board accepts the Appellant as a duly registered association in the Province of Alberta. However, the Board did not receive any further information as to the specific members of the Association and how these individual members would be directly affected by the Director’s decision.⁷

[11] A Statement of Concern was filed with the Director on June 15, 2001, on behalf of the Appellant and Mr. James McClelland.⁸ The Director accepted it as a valid Statement of Concern and stated they would be notified when a decision was made regarding the application.⁹

6 See: *Seabolt Watershed Association v. Yellowhead County, Subdivision and Development Appeal Board of Yellowhead Count, and Mountain Creeks Ranch Inc.* 2002 ABCA 124 (Alta. C.A.).

7 See: *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 (A.E.A.B.), Appeal No. 94-017; *Ouimet et al. v. Director, Regional Services, Northeast Boreal Region, Regional Services, Alberta Environment re: Ouellette Packers (2000) Ltd.* (28 January 2002), Appeal No. 01-076 (A.E.A.B.); *Re: TransAlta Utilities Corp.* (2001), 38 C.E.L.R. (N.S.) 68 (A.E.A.B.) (*sub nom. Bailey et al. v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment re: TransAlta Utilities Corporation*), Appeal Nos. 00-074, 075, 077, 078, 01-001-005 and 011-ID; and *Hazeldean Community League et al. v. Director of Air and Water Approvals, Alberta Environment* (11 May 1995), Appeal No. 95-002 (A.E.A.B.). See also: *Re: AEC Pipelines Ltd.* (2001), 38 C.E.L.R. (N.S.) 14 (A.E.A.B.) (*sub nom. Metis Nation of Alberta Zone II Regional Council v. Director, Bow Region, Environmental Service, Alberta Environment re: AEC Pipelines Ltd.*), Appeal No. 00-073.

8 See: Director’s Record at Tab 21.

9 See: Director’s Record at Tabs 21 and 43.

[12] The Approval was issued on October 24, 2002, and therefore the appeal period would end seven days after the person received notification of this decision. It is generally accepted that, if the letter is sent by regular post, the letter is deemed to have reached its designated destination within seven days.¹⁰ The Board notes that the Director notified Mr. James McClelland, the individual who filed the Statement of Concern on behalf of the Association, of his decision in a letter dated October 29, 2002.¹¹ Therefore, The Appellant would be deemed to have received notice of this decision on November 5, 2002, and the deadline for the Appellant to file its appeal – after having notice of the Director’s decision sent to the proper address as listed on its Statement of Concern – was at the latest November 12, 2002.¹²

[13] However, in this circumstance, the Appellant stated it did not receive notice of the decision until November 14, 2002, nine days after the generally accepted time frame for delivery by mail. In reviewing the Record, the Director also sent his decision to Mr. Bertwistle, the agent that filed the Notice of Appeal on behalf of the Appellant, in a letter dated October 29, 2002.¹³ However, the Director resent the letter on November 6, 2002, as there was an error in the address.¹⁴ Therefore, the letter would be deemed delivered by November 13, 2002, and as there is no evidence to disprove the Appellant’s assertion of the date of delivery, the Board accepts November 14, 2002, as the date of delivery. Thus, even accepting that notice of the Director’s decision was to be sent to Mr. Bertwistle instead of Mr. McClelland, the appeal period would have ended November 21, 2002, seven days after receiving notification of the Director’s decision to issue the Approval. The Appellant filed its Notice of Appeal on November 25, 2002, and was still out of time.

10 Section 23(1) of the *Interpretation Act*, R.S.A. 2000, c. I-8, provides:

“If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected

(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta....”

11 See: Director’s Record, Letter dated January 13, 2003.

12 The Board notes the individuals filing the Statement of Concern and the Notice of Appeal on behalf of the organization are different. The Board does not know the specific workings of the organization and how messages and obligations are shared between members, and in this situation, the Board’s decision is not affected by who filed the appeal as it has taken the latest dates to determine time limits.

13 See: Director’s Record at Tab 150.

14 See: Director’s Record at Tab 151.

[14] The Board notes that it appears that notice of the Director's decision was not sent to the Appellant – in the name of the Seabolt Watershed Association. However, as Mr. Bertwistle and Mr. McClelland – both of whom purport to act as agents on behalf of the Association – received letters from the Director, the Appellant received constructive notice of the decision, and therefore, its time limit to file an appeal ended, at the latest, at the same time as Mr. Bertwistle's appeal period ended – on November 21, 2002.

[15] The Board certainly has the authority to extend the appeal period "...if the Board is of the opinion that there are sufficient grounds to do so," but the Board uses this authority in only limited situations, to protect procedural fairness for all parties to an appeal. Adhering to the time limits as specified in the *Water Act* provides administrative certainty and balances the rights of all of the parties. Accordingly, the individual requesting the extension must provide valid reasons and, in particular, special circumstances why the Board should extend the time limit.

[16] Even if the Board was to accept the Appellant's argument that it was given different instructions by Board staff as to the procedure to file the Notice of Appeal on behalf of an association, according to the Appellant, that conversation occurred on November 19, 2002, two days before the expiry of the appeal period. On November 19, 2002, the Appellant still had two days in which to file a valid Notice of Appeal. However, the Appellant did not take the initiative to submit any Notice of Appeal until almost one week later.

[17] In this circumstance, the Appellant's only reason for filing late is its claim that Board staff did not provide adequate information, and I cannot accept this as a valid reason for extending the time limit. It does not demonstrate "special" circumstances to warrant extending the time limit to file an appeal; it would bring uncertainty into the Board's procedure and the legislative process.

[18] As a result, the Board has not been provided any information to demonstrate special circumstances exist to extend the time period to file a Notice of Appeal, and the appeal is therefore dismissed.

III. CONCLUSION

[19] The Board finds that the statutory prerequisites to filing a Notice of Appeal have not been met and that no special circumstances exist to extend the appeal deadline. Pursuant to section 95(5) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board dismisses the appeal of the Seabolt Watershed Association.

Dated on February 14, 2003, at Edmonton, Alberta.

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