

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – October 6, 2004

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 Clarence Bohnet with respect to *Water Act* Preliminary Certificate No. 00206333-00-00 issued to Elkwater Park Golf Club by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Bohnet v. Director, Southern Region, Regional Services, Alberta Environment re: Elkwater Park Golf Club* (6 October 2004), Appeal No. 04-005-DOP (A.E.A.B.).

EXECUTIVE SUMMARY

Alberta Environment issued *Water Act* Preliminary Certificate No. 00206333-00-00 to Elkwater Park Golf Club stating that Elkwater Park Golf Club would receive a licence to divert 10,649 cubic metres of water annually for a commercial golf course from the well in SW 01-008-03-W4 with priority no 2003-03-10-003 upon compliance with conditions within the Preliminary Certificate.

The Environmental Appeals Board received a Notice of Appeal from Mr. Clarence Bohnet, appealing Alberta Environment's decision.

The Board began processing the appeal. However, the Appellant withdrew the appeal. The Board therefore closes its file in this matter.

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I. BACKGROUND

[1] On April 8, 2004, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Preliminary Certificate No. 00206333-00-00 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Certificate”) to Elkwater Park Golf Club (the “Certificate Holder”) stating that Elkwater Park Golf Club, near Medicine Hat, Alberta will receive a licence to divert 10,649 cubic metres of water annually, for commercial purposes (golf course), from the well in SW 01-008-03-W4 with priority no. 2003-03-10-003 upon compliance with the conditions within the Certificate.

[2] On May 7, 2004, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Clarence Bohnet (the “Appellant”) appealing the Certificate.

[3] On May 10, 2004, the Board wrote to the Appellant, the Certificate Holder and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Certificate Holder and the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal, and that the Parties provide available dates for a mediation meeting or hearing.

[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 May 21, 2004, the Board received a copy of the Record from the Director, and on May 26, 2004, forwarded a copy to the Appellant and the Certificate Holder.

[6] On May 25, 2004, the Board received a letter from the Appellant informing the Board that the Parties had commenced discussions respecting the resolution of the appeal.

[7] On May 26, 2004, the Board wrote to the Parties acknowledging the May 25, 2004 letter from the Appellant and stated:

“The Board always encourages discussions amongst the parties with a view towards a resolution.”

The Board requested the Parties keep the Board informed with respect to their discussions, and advised that in the meantime the Board would continue to process the appeal.

[8] On June 3, 2004, the Board wrote to the Parties informing them that it would like to proceed to schedule a mediation meeting and asking the Appellant to provide dates for a mediation meeting for June, by June 7, 2004. The Appellant was also requested to provide the Board with a status report with respect to the Parties' settlement discussions by June 7, 2004.

[9] The Board did not receive a status report from the Appellant by June 7, 2004. Board staff contacted the Appellant on June 8, 2004, by telephone and were advised that a status report would be forthcoming. On June 10, 2004 the Board wrote to the Parties stating:

“Further to the Board’s telephone call to Mr. Wiese on June 8, 2004 with respect to this appeal, the Board understands that the parties are currently in discussions with a view towards a resolution of the appeal. However, the Board has not yet received a written status report from Mr. Wiese or a request in writing for an abeyance of the appeal pending the outcome of the parties’ discussions. In this regard, Mr. Wiese is requested to provide a written response to the Board by June 18, 2004.”

[10] On June 11, 2004, the Board received a letter from the Appellant requesting that the appeal be held in abeyance for a “couple of weeks” pending potential resolution between the Parties.

[11] On June 14, 2004, the Board wrote to the Parties, granting the Appellant’s request for an abeyance until June 25, 2004. Parties were asked to provide the Board with a written status report confirming the resolution of the appeal or providing available dates for a mediation meeting or hearing by June 25, 2004.

[12] On June 15, 2004, the Board received a letter from the Appellant, advising that a proposal had been made by the Appellant, and that a reply was expected shortly from the Certificate Holder that could resolve the matter. The Appellant’s June 15, 2004 letter also stated:

“I expect that if resolved we would seek an amendment to the issuance of the existing well licence.”

[13] On July 8, 2004, the Board received a letter from the Appellant where he advised:

“...I await reply from Elkwater Park Golf Club to confirm the settlement arrangement that has been discussed and agreed. Our letter to the Elkwater Park Golf Club was dated June 22, 2004 and we have not yet heard from them. I

expect that they have to convene a Board meeting to approve same. It is our view that this matter should be further put over until approximately July 16, 2004, pending reply from Elkwater Park Golf Club.”

[14] On July 8, 2004, the Board acknowledged receipt of the letter from the Appellant dated July 8, 2004 and requested comments from the Certificate Holder by July 9, 2004.

[15] On July 12, 2004, the Board wrote to the Parties:

“Further to the Board’s letter of July 8, 2004, the Board has not yet received a response from Elkwater Park Golf Club. The Board notes that it has not received any response from Elkwater Golf Club since this appeal was filed on May 10, 2004. Elkwater Park Golf Course is advised that if they choose not to participate in this appeal, the Board has the right to make a decision on matters related to this appeal without further notification. Please be advised that the Board intends to proceed with this appeal. In this regard, Mr. Wiese and Elkwater Park Golf Course are requested to provide their available dates for a mediation meeting or hearing for August and September 2004 by July 19, 2004. The parties are free to continue with their settlement discussions in the meantime.”

[16] On July 21, 2004, the Board received a letter from the Appellant which confirmed that the matter had been settled, that the parties involved were sorting out certain issues and hoped to come to a conclusion soon. They asked that the Certificate be amended. The letter included a July 15, 2004 letter from the Appellant and Elkwater Park Golf Club which stated:

“...it is the agreement of the undersigned parties on the appeal of this matter to amend the Preliminary Certificate described above and in particular the monitoring and reporting provisions set out in Appendix 1, of said Certificate whereby the Licencee shall under paragraph 5(d) obtain appropriate right of way to access and undertake water level measurements and conduct water level measurements on the spring: location; NW 36-8-3-W4, owners name; Clarence Bohnet, type of well; Surface Spring.”

[17] On July 26, 2004 the Board received a letter from the Appellant advising:

“Please find enclosed herein copy of the settlement achieved by the parties. We would ask that the Preliminary Certificate be amended accordingly. Please advise whether you wish the parties to participate further in this process, or whether you can issue the amended Preliminary Certificate directly.”

[18] On July 28, 2004, the Board acknowledged the Appellant’s letter of July 26, 2004, stating:

“...this will confirm that the Board cannot make changes to the Preliminary Certificate without the consent of Alberta Environment. In this regard, Mr. Wiese

has been advised to contact Ms. Graham directly...to ascertain Alberta Environment's position in this matter."

[19] On August 6, 2004, the Board received a letter from the Director advising:

"Alberta Environment is pleased that the Mr. Bohnet and the Elkwater Park Golf Club were able to reach a resolution in response to the concern of Mr. Wiese's client regarding his surface spring well. As you are aware, numerous other members of the public raised concerns regarding this proposed well. In response to these concerns, Alberta Environment included in the Preliminary Certificate/Licence the requirement for two monitoring wells, located in the same bedrock aquifer as the production well. Mr. Bohnet's well was not included as the technical information indicates that the elevation of the Bohnet surface spring well is well above the top elevation of the Frenchman Butte formation (which is the aquifer source for the Elkwater Park Gold Club well) and not connected to it. Given the above and concern for the precedent the inclusion would set, Alberta Environment is of the opinion that it would not be appropriate to include the terms of the private agreement for this surface spring well into the regulatory terms and conditions of this *Water Act* authorization. The enforceability of such a provision would be quite questionable. If this is unacceptable to Mr. Bohnet, this will likely require the continuation of the appeal process."

[20] The Board acknowledged receipt of the August 6, 2004 letter from the Director on August 10, 2004.

[21] On August 11, 2004 the Board received a letter from the Appellant. The Appellant advised:

"Further to your request, we have reviewed the letters of Charlene Graham dated August 6, and August 10, 2004 (sic) and quite frankly we are left in an uncertain position. It would seem that the two parties to this matter have made some agreement, which is not acceptable to Alberta Environment. I did not understand Alberta Environment to be a party litigant to this appeal process. We have discussed the concerns raised in the letter of Charlene Graham with actual technical personnel of Alberta Environment and they are unable to guarantee that the spring of our client will not be affected by the well. We rely upon the technical information given to indicate that our clients spring 'should not likely' be affected by the well, but again they offer no guarantees. Given the settlement achieved by our client with the Elkwater Park Golf Club, our client has great concerns in spending the additional monies needed to conduct a mediation or appeal when both parties are in agreement. At this point I seek additional time to confer with my client and determine if private arrangements can be made for the settlement achieved. I am uncertain whether this can be accomplished. I request that this matter be held in abeyance until August 27, 2004 so that I may confer with my (sic) client and determine whether there are any other avenues open to

complete the settlement achieved. It is my view that this is in the best interests of both my client and the Elkwater Park Golf Club.”

[22] On August 12, 2004, the Board acknowledged receipt of the letter from the Appellant dated August 11, 2004 and granted the request for an abeyance until August 27, 2004.

[23] On September 1, 2004, the Board wrote to the Parties asking the Appellant to provide the Board with a status report as well as dates for a mediation meeting or hearing by September 3, 2004.

[24] On September 2, 2004 the Board received a letter from the Appellant advising that the Parties were continuing negotiations and requesting additional time to attempt to resolve the matter privately.

[25] On September 2, 2004 the Board wrote to the Parties, and granted the request for an abeyance until September 16, 2004 and requested that the parties provide dates for a mediation meeting or hearing for November, 2004, to the Board by September 16, 2004.

[26] On September 16, 2004, the Board received a letter dated September 16, 2004 from the Appellant advising:

“...I have received instructions from my client to abandon the appeal in relation to this matter...”

II. DECISION

[27] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based upon the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 04-005 and closes its file.

Dated on October 6, at Edmonton, Alberta.

“original signed by”

Dr. Fredrick C. Fisher, Q.C.
Chair