

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – November 29, 2004

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 section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by Barrie Nault and Victoria Mitchell with respect to *Water Act* Approval No. 00206657-00-00 issued to the Town of Canmore by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: Preliminary Motions: *Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Canmore* (29 November 2004), Appeal Nos. 04-019 and 04-020-ID1 (A.E.A.B.).

BEFORE:

Dr. Frederick C. Fisher, Q.C., Chair.

WRITTEN SUBMISSIONS:

Appellants:

Dr. Barrie Nault and Dr. Victoria Mitchell.

Director:

Ms. May Mah-Paulsen, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Approval Holder:

Town of Canmore, represented by Mr. Oscar Regier, Manager of Engineering, Town of Canmore.

EXECUTIVE SUMMARY

Alberta Environment issued *Water Act* Approval No. 00206657-00-00 to the Town of Canmore to construct a boat launch on the Bow River in the Town of Canmore.

The Environmental Appeals Board received Notices of Appeal from Dr. Barrie Nault and Dr. Virginia Mitchell appealing the Approval. Dr. Nault also requested a stay.

After reviewing the submissions, the Board determined Dr. Nault and Dr. Mitchell are directly affected, as their property is approximately 120 metres from the proposed boat launch site and their use and enjoyment of their property includes watching wildlife that uses the area.

The Board granted the stay until the Minister makes his decision regarding the approval. If the appeals are successful and the boat launch was built prior to the Board making the decision, there would be additional detrimental effects to the environment if the project had to be removed.

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I. BACKGROUND

[1] On June 9, 2004, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued *Water Act* Approval No. 00206657-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Town of Canmore (the “Approval Holder”) authorizing the construction of a boat launch on the Bow River in the Town of Canmore, Alberta.

[2] On June 16, 2004, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Dr. Barrie Nault and Dr. Victoria Mitchell (the “Appellants”) appealing the Approval. Dr. Nault also requested a Stay of the Approval.

[3] On June 16, 2004, the Board wrote to the Appellants, the Approval Holder, and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals and the Parties provide available dates for a mediation meeting or hearing.

[4] In the same letter, the Board requested Dr. Nault respond to the following questions:

- “1. What are the serious concerns of Dr. Nault that should be heard by the Board?
2. Would Dr. Nault suffer irreparable harm if the Stay was refused?
3. Would Dr. Nault suffer greater harm if the Stay was refused pending a decision of the Board on his appeal, than the Town of Canmore would suffer from the granting of a Stay?
4. Would the overall public interest warrant a Stay?
5. Is Dr. Nault directly affected by Alberta Environment’s decision to issue the Approval to the Town of Canmore? This question is asked because the Board can only grant a Stay where it is requested by someone who is directly affected.”

[5] The Parties provided their responses June 22 and July 2, 2004.

[6] 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.

[7] On July 6, 2004, the Board contacted the Parties, stating it had reviewed the submissions provided, and:

“With respect to Dr. Nault’s directly affected status, the Board has determined that it wishes to have more information before making its final determination. Specifically, Dr. Nault has indicated that, among other things, he is concerned with the environmental impacts that the Approval will have on the fish and wildlife habitat and the bed, bank and shore of the watercourse. Further, Dr. Nault has stated that he lives on the watercourse approximately 200 metres from the project and that the Approval will ‘damage the quiet enjoyment of his property.’ The Board wishes to have additional information regarding the connection between the environmental impacts he is concerned with and the quiet enjoyment of his property.

With respect to Dr. Nault’s application for a Stay, the Board has concluded that for the purpose of granting a temporary Stay, Dr. Nault has made out a *prima facie* case that he is directly affected. Therefore the Board grants a temporary Stay of the Approval until midnight on Wednesday July 7, 2004. The purpose of granting this temporary Stay is to obtain the additional information that the Board requires to make its final determination on the directly affected issue. Further, in making its decision to grant the temporary Stay, the Board notes that the Town of Canmore is currently undertaking work under the Approval that, in the Board’s view, will be irreversible in the event that Dr. Nault’s appeal is successful.” [Emphasis omitted.]

In the same letter, the Board requested the Parties address the directly affected status of Dr. Mitchell.

[8] On July 7, 2004, the Board asked for submissions from the Town of Canmore and the Director and granted an extension of the temporary Stay until midnight, July 9, 2004, stating:

“The purpose of extending the temporary stay is to provide the Town of Canmore and the Director of Alberta Environment the opportunity to respond to the submissions of Dr. Nault and Dr. Mitchell. In making this decision to extend the temporary stay, the Board notes that the work the Town will undertake under the Approval is, in the Board’s view, irreversible in the event that Dr. Nault’s appeal is successful.”

The Parties provided their written submissions between July 7, 2004, and July 9, 2004.

[9] On July 9, 2004, the Board notified the Parties the temporary stay was extended until midnight on July 11, 2004. On July 11, 2004, the Board wrote to the Parties, stating:

“The Board has completed its review of the submissions in this matter in relation to the directly affected status of Dr. Barrie Nault and Dr. Victoria Mitchell. The Board has concluded that Dr. Nault and Dr. Mitchell are directly affected and therefore the Board will hear their appeals. As a result, the Board has also decided to grant a stay of the Approval until the conclusion of this appeal or unless otherwise directed by the Board. In granting this stay, the Board notes that the work authorized under the Approval would be, in the opinion of the Board, irreversible in the event that the appeals were successful.

Given that the Board has granted a stay, the Board will be expediting the remainder of the appeal process. The Board has therefore scheduled the Hearing of these appeals to be held on July 23, 2004.” (Emphasis omitted.)

[10] The following are the reasons for finding the Appellants directly affected and the reasons for granting the Stay.

II. SUBMISSIONS

A. Appellants

1. Dr. Barrie Nault

[11] Dr. Nault argued he would be directly affected since:

- “• I personally live and own property on the Bow River close to the proposed boat launch. So the quiet enjoyment of my property where I live full-time is directly affected.
- I also recreate daily in the location of the proposed boat launch, so my daily activities are directly affected.
- The Town of Canmore sent a notification to residents of my street last fall because in the determination of the Town, residents of my street would be directly affected.”¹

[12] Dr. Nault stated he lives approximately 120 metres from the proposed project on the bank and shore of the Bow River, and he has access to the area via the underpass by the Bow River Bridge.

¹ Dr. Barrie Nault’s submission, dated June 22, 2004.

[13] The Appellant expressed concern that the bed, bank, and shore would be further degraded by walking traffic, garbage, and petroleum pollution. Dr. Nault argued there is no indication correct emergency measures are in place to respond to fuel spills. The Appellant stated the project would allow for unprecedented access to the Bow River by motorized boats and jet-skis, the latter being well documented noise polluters.

[14] Dr. Nault stated large mammals, including deer, elk, and beaver, travel in front of or through his property to and from the bed, bank, and shore of the project, and part of the quiet enjoyment of his property includes observing wildlife from his home. He argued the environmental impact of the project would interfere with the habits and health of the wildlife that crosses through his property, reducing the amount of wildlife he could observe from his property.

[15] The Appellant argued the quiet enjoyment of his property would be directly affected by the excessive noise generated by an increase in motorized watercraft on the river in front of his property. He also argued his quiet enjoyment of his property would be affected as part of the proposed launch site is visible from his property, and the viewable natural environment would be replaced by gates and a gravel roadway. The Appellant explained the area to be cleared of natural vegetation on the bed, bank, and shore is approximately 40 metres by 13 metres (520 square metres), which is larger than the Approval Holder's estimate of 333 square metres. He stated most of the cleared area would become gravel roadway.

[16] The Appellant stated he uses the trail on the bank and shore of the proposed boat launch on a daily basis and regularly observes wildlife along the bank and shore. The Appellant stated 333 square metres of bank and shore would be cleared on prime beaver, elk, muskrat, and bird habitat. Dr. Nault stated since "...this wildlife relies on the small bushes and poplars for their habitat, removal of these and protection of a few selected spruce trees will not salvage the wildlife habitat."² According to the Appellant, the wildlife's food source and protection would be removed with the clearing of the natural vegetation and replaced with a gravel roadway and an increase in vehicle and watercraft traffic. He stated this would interfere with his enjoyment of the wildlife and natural areas proximate to his residence.

² Dr. Barrie Nault's submission, dated July 1, 2004.

[17] The Appellant submitted the boat launch infrastructure and vehicles entering and exiting the area would restrict his access to the trails he uses daily, and an access road between the parking area and launch area crosses the main walking trail. He submitted the additional traffic would interfere with his use and enjoyment of the natural trail near his property.

[18] The Appellant explained there is an underpass between his property and the project site, thereby making the boat launch area more accessible but it also enhances the physical impact of the project at his residence.

[19] The Appellant argued his property values would be negatively affected due to the environmental impact of the project.

[20] Dr. Nault argued the construction of the boat launch would damage the fish and fish hatchling habitat near the site and would destroy habitat for elk, beaver, muskrat, and a variety of birds on the bank and shore of the Bow River.

[21] The Appellant submitted the unprecedented commercial-level volume of boat and foot traffic would irreparably erode and damage the bed, bank, and shore at the site. The Appellant explained the existing paths in the area are up to 10 times smaller than each of the proposed ramps. He submitted that if the walking traffic walks beside the ramps, it would damage the bank. This was based on the Appellant's calculation that there would be 17 commercial boat accesses and possibly over 100 people walking on the riverbed and up to the shore daily.³

[22] The Appellant stated 100 people a day would generate a significant amount of garbage that would be left on the shore, sink to the bed, or float down the river to accumulate downstream. He stated this would have negative consequences to the Bow River at the boat launch site and further downstream. Dr. Nault argued garbage problems exist in high foot traffic areas, and as the Approval Holder is planning to add additional garbage bins, it indicates the Approval Holder expects additional garbage from the boat launch traffic.

[23] The Appellant stated grease, oil, and gasoline would contaminate the bed and shore of the Bow River, and there would be oil and fuel spillage from power boats as they enter

³ Dr. Barrie Nault's submission, dated June 22, 2004.

and exit the river. The Appellant argued the shallow water, gravel bars, and snags in the Bow River increases the chance of petroleum pollution in the river and along its bank and shore as it increases the probability of grounding.

[24] The Appellant argued that if the Stay was not granted and the boat launch was constructed, "...there is no amount of remediation short of waiting a generation to return this area close to its current state."⁴ He stated many trees over 12 metres would be removed and the area paved and graveled.

[25] Dr. Nault stated there are three alternate launching locations in the area, and therefore there would be little or no harm to recreational boaters if the Stay was granted. He also stated the Approval Holder would not suffer direct revenue loss if the Stay was granted, as it was not planning to charge user fees for the boat launch.

[26] The Appellant submitted it is in the general public interest to grant a Stay because of the negative impact the project would have on "...arguably the most well-known waterway in Alberta..." and it "...is in the direct interest of local residents and other Albertans that vacation in the area and use the Bow River trail system."⁵

[27] The Appellant stated that, according to the letter sent by the Approval Holder to residents in the area, the time required to complete the work on the bank and shore would be no more than two weeks. Therefore, according to the Appellant, work could begin mid-August and be completed by the August 31 deadline, or the work could be completed in May 2005 as the Approval is in effect until June 2005.

[28] The Appellant argued commercial operators are currently using alternate launch sites, and therefore, construction starting in the next month is not urgent.

[29] The Appellant expressed concern regarding the Approval Holder's decision to begin construction before waiting for the Board's decision with respect to the Stay. He stated the Approval Holder did not provide him with a notice regarding the construction dates and only selected residents were provided with the letter.⁶

⁴ Dr. Barrie Nault's submission, dated June 22, 2004.

⁵ Dr. Barrie Nault's submission, dated June 22, 2004.

⁶ See: Dr. Barrie Nault's submission, dated July 1, 2004.

[30] The Appellant argued the Approval Holder chose to apply for the boat launch Approval separately from the other two related projects thereby rendering the prior projects' approvals irrelevant.

[31] Dr. Nault submitted the number of permits applied for to use a temporary site in the Town of Canmore in 2003 does not accurately predict the volume at the proposed boat launch, since it does not account for those currently using sites outside of Town. According to the Appellant: "If it was an accurate predictor, the proposed boat launch project's massive size would not be warranted."⁷

[32] The Appellant stated removing the natural vegetation and replacing it with gravel, would harm the natural state of the bed and shore of the Bow River. He stated there is no closer and more easily accessible area with natural vegetation and wildlife, and damage to the bank and shore would irreparably harm his enjoyment of the area proximate to his home.

[33] Dr. Nault disagreed with the Approval Holder's statement that a similar boat launch existed in the location before. The Appellant argued:

"The old boat launch did not provide a specially graveled and leveled driveway-size motor vehicle access, had only one entry point to the river, did not have turn-around access for large boating equipment and towing vehicles, and did not provide the proposed project's scale of parking. The old boat launch was directly adjacent to the Bow River bridge where the new pedestrian bridge is located, and was not located through natural vegetation and wildlife areas as this proposed boat launch is. Comparing the impact of the old and proposed boat launches compares alternatives in different locations and with massively different scale. They simply are not comparable in location and size...."⁸

[34] The Appellant stated the old winch pole was rarely used in 2001 and 2002, and only one of the proposed river accesses can use the winch. Therefore, according to the Appellant, the winch pole is a secondary feature of the project, and as it does not appear a winch pole is now necessary, boaters can safely use the alternate launch sites.

[35] Dr. Nault argued the Approval Holder's "...pre-commitment prior to obtaining legally-required approvals should not constitute harm to the Town."⁹

⁷ Dr. Barrie Nault's submission, dated July 1, 2004.

⁸ Dr. Barrie Nault's submission, dated July 1, 2004.

⁹ Dr. Barrie Nault's submission, dated July 1, 2004.

[36] The Appellant stated the Approval Holder's "...rush to begin construction before the Board has had an opportunity to decide on a Stay indicates insensitivity to the Board's timetable and my request for a Stay."¹⁰ He argued the Approval Holder had not demonstrated construction costs would increase faster than the time value of money, and all the costs could be forgone entirely by abandoning the project.

[37] The Appellant submitted emergency vehicles could easily access the alternative launch sites and boats could pull ashore in an emergency at several points along the Bow River, including the proposed site where there is no boat launch.

[38] Dr. Nault argued there has been no mass public opposition to the project because "...the scale of the proposed boat launch has not been part of a public discussion."¹¹ He stated less than one percent of the Canmore population received the letter from the Approval Holder regarding the project. He submitted, "...a lack of public opposition in absence of public discussion is not a public endorsement of the project."¹² Therefore, according to the Appellant, the Approval Holder is not in a position to comment on the public's opinion.

[39] The Appellant stated he was unaware of any plan to ensure the regulatory conditions are adhered to, and "...without such a plan, the public interest is served by granting a Stay."¹³

[40] The Appellant submitted the Approval Holder's decision to proceed with the construction of the project before the Board rules on the Stay, "...shows contempt for the Board and for due process."¹⁴ He stated that if his appeal is successful and the Stay was not granted, the Approval Holder would have to bear the costs of remediation in addition to the construction costs, which would not be in the public interest.

[41] The Appellant submitted the Approval Holder notified only selected residents of the project because they lived close to the project site. Therefore, according to the Appellant,

¹⁰ Dr. Barrie Nault's submission, dated July 1, 2004.

¹¹ Dr. Barrie Nault's submission, dated July 1, 2004.

¹² Dr. Barrie Nault's submission, dated July 1, 2004.

¹³ Dr. Barrie Nault's submission, dated July 1, 2004.

¹⁴ Dr. Barrie Nault's submission, dated July 1, 2004.

“...it is obvious that the Town wished to inform them because they would have a special interest in the project: they are directly affected.”¹⁵

[42] The Appellant argued he is directly affected as he lives and owns property on the Bow River, close to the proposed project site, and he spends most his time on the Bow River side of his home and not the street side. Therefore, according to the Appellant, the quiet enjoyment of his property would be directly affected by the increased boat traffic and spillover foot traffic. He stated he recreates in the area of the proposed boat launch, and his daily recreational activities would be directly affected.

2. Dr. Victoria Mitchell

[43] Dr. Mitchell stated she was informed by the Department of Fisheries and Oceans Canada that the speed limit on the Bow River for motorized watercraft is 30 km/h, and therefore, motorized watercraft can pass by her property at 30 km/h, generating a significant amount of noise pollution that adversely affects her health and her quiet enjoyment of her home. She explained the noise level for someone 30 metres away from a jet ski, the distance between a jet ski in the middle of the river and her living room, is 75 decibels, a level that has been linked to hypertension.¹⁶ The Appellant stated the noise from recreational motorboats and jet-skis going past her home was disturbing and disruptive. She submitted the “...proposed boat launch would substantially improve river access for motorized watercraft, subjecting me to unprecedented levels of noise pollution as I am situated 120 metres from the launch site.”

[44] The Appellant argued that up to 30 percent of the fuel from the engines of most watercraft capable of navigating the Bow River and all jet skis goes directly into the water unburned. She stated the “...increased water pollution due to greater motorboat activity will have a negative impact on the wildlife in the area and my viewing of that wildlife – one of the reasons we moved to Canmore.”¹⁷ She stated endangered or sensitive species, such as Bull trout, Harlequin ducks, Columbia spotted frogs, and long-toed salamanders, reside in this part of the Bow River and would suffer from the increased motorboat activity and water pollution. The

¹⁵ Dr. Barrie Nault’s submission, dated July 1, 2004.

¹⁶ See: Dr. Victoria Mitchell’s submission, dated July 8, 2004.

¹⁷ See: Dr. Victoria Mitchell’s submission, dated July 8, 2004.

Appellant argued her quiet enjoyment of wildlife in the area would be directly affected by the project.

[45] The Appellant stated shoreline erosion has been attributed to the frequency and proximity of boat traffic, and the wake generated by boats accelerating from the boat launch would erode the shoreline that she views from her home. She stated the shoreline by the boat launch, where she recreates daily, would also be damaged by the wake created by the motorized boats.

[46] The Appellant submitted the volume of automobile, boat, and human traffic the boat launch would permit would add to the erosion, "...particularly foot traffic trampling the vegetation needed to maintain the integrity of the shore."¹⁸

[47] The Appellant argued an increase in water turbidity due to the motorized boats and jet skis could delay or block fish migration and interfere with feeding, thereby adversely affecting their fishing activity and the ecosystem in general. Dr. Mitchell stated she recently acquired fly fishing gear to learn to fish the Bow River.

[48] The Appellant stated she recreates along the Bow River daily, and her recreational activities in the area could be put at risk, as she would have to dodge motorized traffic using the same trail where she cycles.

[49] The Appellant stated she enjoys watching elk stroll along the river in front of her house, but with greater boating activity, the elk will be disrupted and possibly driven from the area altogether.

[50] Dr. Mitchell argued the construction of the boat launch would reduce her property value.

B. Approval Holder

[51] The Approval Holder agreed the Bow River is an important fish habitat, but it considered the measures it was taking during construction near the river adequately protects or mitigates any impact. It explained the boat launch is the third of three related projects that

¹⁸ See: Dr. Victoria Mitchell's submission, dated July 8, 2004.

included a pedestrian bridge and pathways under the bridge on the banks of the river. It stated the plans for the project were submitted to the relevant regulatory bodies for review and approval, including Fisheries and Oceans Canada, Alberta Environment, and Sustainable Resource Development, and the plans were accepted by these bodies. It stated it would comply with the conditions attached to the approvals.¹⁹

[52] The Approval Holder explained the boat launch would require clearing approximately 1000 square metres of mixed underbrush, poplar, and spruce trees, and only one-third of this area is located on the shore and bank of the river. It stated the large spruce trees would be protected. The Approval Holder explained the length of shore covered by the boat launch totals approximately 12 metres, and it was deliberately divided into two smaller ramps to take advantage of existing gaps in the vegetation.

[53] The Approval Holder stated the areas subject to foot and vehicle traffic will be graveled to resist erosion and withstand the effects of the expected traffic. It stated traffic would not be directed onto areas that could erode.

[54] The Approval Holder explained suitable trees and bushes would be salvaged and replanted near the entrance to the parking area to partially offset the loss of trees in the cleared area. It stated:

“The proposed clearing for the boat launch is located adjacent to multi-unit housing developments, a major roadway, a parking lot and a pathway.... The adjacent area has been developed and redeveloped over the past century and is already impacted by vehicles, cyclists, pedestrians and dogs. The incremental impact of the proposed clearing and boat launch on the existing wildlife in this area is believed to be negligible.”²⁰

[55] The Approval Holder argued the volume of boat and foot traffic estimated by the Appellant was “...hypothetical and unsubstantiated,”²¹ and the volume cannot be correlated directly to the letters of support it received. It stated not all operators would use the boat launch on a regular basis, but it might be on an ad hoc basis or in case of an emergency. The Approval Holder stated only seven operators applied for permits to use temporary sites, indicating the

¹⁹ See: Approval Holder’s submission, dated June 28, 2004.

²⁰ Approval Holder’s submission, dated June 28, 2004.

²¹ Approval Holder’s submission, dated June 28, 2004.

number of enterprises using the facilities would be significantly less than the 17 calculated by the Appellants.

[56] The Approval Holder estimated the traffic volume for the area would be 25 trips, total in and out, per day during the peak boating season, with half using the boat ramp and the other half using only the parking area and carrying a light craft to the river. The Approval Holder stated the traffic volume generated from the multi-unit residential complex across the street from the boat launch is approximately 100 trips per day throughout the year.²²

[57] With respect to the issue of garbage generated by the boat launch users, the Approval Holder submitted the Appellants' concerns were "hypothetical and unsubstantiated." It stated its plans include installation of an additional garbage bin adjacent to the parking area; signage prohibiting litter posted in the area; and an expectation that commercial operators would supervise their clientele and encourage use of the garbage bins.²³

[58] The Approval Holder stated the design and location of the project do not promote or increase the possibility or severity of petroleum pollution in the Bow River. It stated there is a small risk inherent with using motorized watercraft, but local operators do not use motorized crafts. It explained the area of the proposed boat launch "...is generally not suitable for propeller driven motorized watercraft due to shallow water, gravel bars, snags, etc. The presence of motorized watercraft on the river compared to non-motorized craft is very low."²⁴ The Approval Holder stated there are government regulations in place to address releases of hazardous substances.

[59] The Approval Holder stated the project is located on its property and Crown land and is located more than 100 metres from the Appellants' residence. It argued the distance and the presence of a provincial highway/arterial roadway between the Appellants' residence and the project "...significantly diminishes the physical impact of the project..." on the Appellants at their residence.²⁵

²² Approval Holder's submission, dated June 28, 2004.

²³ Approval Holder's submission, dated June 28, 2004.

²⁴ Approval Holder's submission, dated June 28, 2004.

²⁵ Approval Holder's submission, dated June 28, 2004.

[60] The Approval Holder stated it intends to mitigate the impact of clearing trees by replanting trees adjacent to the access lane. It argued the removal of trees is "...not synonymous with damage. We acknowledge the project will change a small part of the area but do not accept the premise that it will damage the area."²⁶

[61] The Approval Holder stated a similar boat launch existed a few metres upstream of the proposed site for several decades, and it was not aware of any environmental damage caused by the boat launch or the winch pole that was at the site. It argued the Appellants observation of elk, muskrat, beaver, and a variety of birds suggest the old boat launch and its users had a negligible impact on wildlife in the area. It submitted other recreational activities in the area would continue to exist and be available to the Appellants.

[62] The Approval Holder explained the winch pole from the old site, with the same limitations on size and capacity of boats it can handle, would be installed at the new site. The Approval Holder stated the alternate launch sites either do not have winch poles or are not favoured by boaters due to the height and steepness of the banks.

[63] The Approval Holder stated it would "...suffer strategically and financially from the granting of a Stay."²⁷ It explained it has been working together with commercial users in good faith, and it was committed to having the new boat launch ready for the 2004 boating season. According to the Approval Holder, the appeals delayed the start of construction and one rafting operator has lost revenue as a result of the delay and unavailability of the site. The Approval Holder stated this, "...reflects badly on the reputation of the affected operators, the Town and the Province with respect to tourism and sports recreation opportunities for this region that are promoted internationally."²⁸

[64] The Approval Holder stated the conditions of the Approval require in-stream construction be carried out between May 1 and August 31, and if the Stay was granted, it may not complete the in-stream work by the specified deadline. It submitted postponing the project until next year would very likely result in increased costs of construction.

²⁶ Approval Holder's submission, dated June 28, 2004.

²⁷ Approval Holder's submission, dated June 28, 2004.

²⁸ Approval Holder's submission, dated June 28, 2004.

[65] The Approval Holder argued the presence of several sites along the Bow River would benefit boaters, as it would provide a variety of opportunities to clients of operators; it would provide emergency stops for boaters requiring assistance; and it would provide access if emergency service crafts must be launched.

[66] The Approval Holder stated there has been no mass public opposition to the boat launch, and many residents viewed the boat launch as an amenity to the community with historic links. The Approval Holder argued the public interest is adequately served by the regulatory requirements in place, and construction would be supervised by trained personnel to ensure compliance with the regulatory requirements. It stated the Town of Canmore council, elected by members of the public, supported the construction of the boat launch proceed without delay.

[67] The Approval Holder stated there are multi-unit residential buildings located at the side of the Appellants' property; a street providing access to more than 20 homes passes in front of the Appellants' residence; and a provincial highway/arterial roadway carrying an average of 8,000 vehicles per day passes less than 80 metres from the Appellants' property. According to the Approval Holder, the Appellants' "...claim that the proposed boat launch, located 120 metres from his property, will affect the quiet enjoyment of his property seems to be greatly exaggerated."²⁹

[68] The Approval Holder submitted there would be no direct affect on recreational activities in the area as the pathway would remain open, access to the river would not be impeded, and ample forests would remain untouched. It stated the letter sent to residents regarding the project did not state the residents would be directly affected in any way.

[69] The Approval Holder stated the Approval applies specifically to the turn-around and ramp areas, and the Appellants' property is separated from the boat launch site by several privately owned properties and by Rundle Crescent and Rundle Drive (provincial highway/arterial roadway) and, therefore, is not in close proximity. It explained the Appellants must cross the provincial highway/arterial roadway to reach the project site.

[70] The Approval Holder explained the areas to be cleared and the areas to be graveled were "...carefully selected and their limits delineated to minimize any change to the

²⁹ Approval Holder's submission, dated June 28, 2004.

environment.”³⁰ It further argued “Dr. Nault’s comparisons to ‘estate-size residence’ and ‘dual driveway-size entry’ are seen as a misleading attempt to convey the impression of a type and scale of development that is neither proposed by the Town nor approved under the Alberta Environment Approval issued pursuant to the Water Act.”³¹

[71] The Approval Holder argued the Appellants’ assertion that the use of gravel at the proposed launch would cause more erosion is unfounded, and erosion and deposition are continuous natural geomorphic processes. It explained, “...[g]ravel and large rocks have been placed on sections of the river upstream and downstream to control erosion and protect the environment...”³² and the Appellants’ use of their residence and pathways under the bridges are possible because of the placement of rock and gravel.

[72] The Approval Holder submitted the Appellants’ comments regarding boat launch users are unfounded, and it was “...unfair to negatively stereotype individuals that pursue other legitimate water-based recreational activities in order to elevate one’s own interest in the protection of the environment by denigrating and diminishing the interests that others hold.”³³

[73] The Approval Holder stated the control of motorized watercraft is under the jurisdiction of the federal government pursuant to the *Canada Shipping Act*. It stated there is no restriction to the use of motorized watercraft in the vicinity of Canmore and access can be gained through a number of locations, including other existing boat launches and private and public lands adjacent to the river. It stated it believes “...the Town would have no objection to an application to the federal government to restrict motorized vehicles from it.”³⁴

[74] The Approval Holder stated the proposed boat launch is seen as some as an amenity and could enhance the value of properties nearby.

[75] The Approval Holder argued the affects of the project on the Appellants is no greater than those of the general public.

³⁰ Approval Holder’s submission, dated July 9, 2004.

³¹ Approval Holder’s submission, dated July 9, 2004.

³² Approval Holder’s submission, dated July 9, 2004.

³³ Approval Holder’s submission, dated July 9, 2004.

³⁴ Approval Holder’s submission, dated July 9, 2004.

[76] It stated the Appellants' property is developed to a greater degree than the boat launch will be, and if the man-made features on their property have little impact on the wildlife in the area, then it is unlikely the project will have any greater affect on the wildlife.

[77] The Approval Holder submitted the temporary Stay should be rescinded to allow construction to proceed, and the appeals be dismissed in their entirety.

C. Director

[78] The Director submitted the Appellants are not directly affected by the Approval to construct a boat launch.

[79] The Director explained the Approval only regulates the disturbance of the bed and shore of the Bow River during construction, and it does not regulate the use of the boat launch after construction or the use of the Bow River.

[80] The Director stated she had consulted those holding jurisdiction, such as the municipality and the Federal government, on specific issues, and was advised they had no concerns regarding the project.

[81] The Director argued the Appellants' concerns were general and did not appear to affect them any more than other resident of Canmore. She submitted the Appellants did not demonstrate a direct causation of harm to their particular interests, specifically:

“a. The use of the boat launch, in terms of noise, road access, parking lot and interference with walkways, is a matter of land use that is regulated by the municipality under its Land Use Bylaw. The Appellants have not demonstrated how the Director's decision, as opposed to the decision of the municipality, directly effects the Appellants.

b. The issue of disturbance and erosion of the shoreline caused by the construction of the boat launch are within the jurisdiction of the Director. The Appellants' concerns regarding the Canmore Flood Control Dike, however, appear to be of a general nature and not unique to the Appellants.... Further, the Appellants (*sic*) more general concerns regarding erosion are related to water traffic and not the construction of the boat launch *per se*. These general concerns are not within the jurisdiction of the Director.”³⁵

³⁵ Director's submission, dated July 9, 2004.

[82] The Director stated the issue of land value relates to a consequence of the land use decision made by the municipality and does not relate to Approval.

III. ANALYSIS OF DIRECTLY AFFECTED

A. Legislation

[83] Before the Board can accept a notice of appeal as being valid, the person filing the notice of appeal must show that he is directly affected. Under section 115 of the *Water Act* and section 95(1) of EPEA, a person who is directly affected by the decision of the Director – here the issuance of the Approval under the *Water Act* - has the right to file a notice of appeal with the Board.³⁶ The Board has examined the term “directly affected” in numerous previous appeals, providing a framework to determine if appellants should be given standing to appear before this Board. The test is the same whether the appeal is filed under the *Water Act* (for an approval, preliminary certificate, or a licence) or EPEA (for an approval or amending approval). Although

³⁶ Section 115(1) of the *Water Act* provides:

“A notice of appeal under this Act may be submitted to the Environmental Appeal Board by the following persons in the following circumstances: ... (c) if a preliminary certificate has not been issued with respect to a licence and the Director issues or amends a licence, a notice of appeal may be submitted (i) by the licensee or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director’s decision, if notice of the application or proposed changes was previously provided under section 108....”

Section 95(1) of EPEA states:

“A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

- (a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted
 - (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director’s decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or
 - (ii) by the approval holder or by any person who is directly affected by the Director’s decision, in a case where no notice of the application or proposed changes was provided by reason of the operation of section 72(3).”

this framework is in place, the Board recognizes there must be some flexibility in determining who is directly affected, and it will be governed by the particular circumstances of each case.³⁷

[84] The requisite test for determining a person's directly affected status has two elements: the decision must have an effect on the person and that effect must be directly on the person. In *Kostuch*,³⁸ the Board stated "...the word 'directly' requires the Appellant to establish, where possible to do so, a direct personal or private interest (economic, environmental, or otherwise) that will be impacted or proximately caused by the Approval in question."³⁹

[85] The principle test for determining directly affected was stated in *Kostuch*:

"Two ideas emerge from this analysis about standing. First, the possibility that any given interest will suffice to confer standing diminishes as the causal connection between an approval and the effect on that interest becomes more remote. The first issue is a question of fact, i.e., the extent of the causal connection between the approval and how much it affects a person's interests. This is an important point; the Act requires that individual appellants demonstrate a personal interest that is directly impacted by the approval granted. This would require a discernible interest, i.e., some interest other than the abstract interest of all Albertans in generalized goals of environmental protection. 'Directly' means the person claiming to be 'affected' must show causation of the harm to her particular interest by the approval challenged on appeal. As a general rule, there must be an unbroken connection between one and the other.

Second, a person will be more readily found to be 'directly affected' if the interest in question relates to one of the policies underlying the Act. This second issue raises a question of law, i.e., whether the person's interest is supported by the statute in question. The Act requires an appropriate balance between a broad range of interests, primarily environmental and economic."⁴⁰

³⁷ See: *Fred J. Wessley v. Director, Alberta Environmental Protection* (2 February 1994), Appeal No. 94-001 (A.E.A.B.).

³⁸ *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraph 28 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.) ("*Kostuch*").

³⁹ *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraph 28 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.).

⁴⁰ *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraphs 34 and 35 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.). These passages are cited with approval in *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1997), 21 C.E.L.R. (N.S.) 257 at paragraph 25 (Alta. Q.B.).

[86] In coming to this conclusion in *Kostuch*, one of the considerations was that the directly affected person "...must have a substantial interest in the outcome of the approval that surpasses the common interest of all residents who are affected by the approval."⁴¹ In *Kostuch*, the Board considered its previous decision in *Ross*,⁴² saying directly affected "...depends upon the chain of causality between the specific activity approved...and the environmental effect upon the person who seeks to appeal the decision."⁴³

[87] Further, in *Kostuch* the Board stated that the determination of directly affected is a "...multi-step process. First, the person must demonstrate a personal interest in the action taken by the Director. Assuming the interest is specific and detailed, a related question to be asked is whether that interest is a personal (or private) interest, advanced by one individual, or similar interests shared by the community at large. In those cases where it is the latter, the group will still have to prove that some of its members will have their own standing. Finally, the Board must feel confident that the interest affected is consistent with the underlying policies of the Act."⁴⁴

The Board further stated that:

"If the person meets the first test, they must then go to show that the action by the Director will cause a direct effect on that interest, and that it will be actual or imminent, not speculative. Once again, where the effect is unique to that person, standing is more likely to be justified."⁴⁵

[88] A similar view was expressed in *Paron* where the Board held that the

"...Appellants are also concerned that the Approval Holder has been able to obtain an Approval to cut weeds and carry out beach restoration, while the Appellants have not been able to obtain similar approval to carry out such work on their property. While this argument goes to matters that are properly before the Board – the decision-making role of the Director – it does not demonstrate that the Appellants are directly affected, though they are probably generally affected

⁴¹ *Ross v. Director, Environmental Protection* (24 May 1994), Appeal No. 94-003 (A.E.A.B.) ("*Ross*").

⁴² *Ross v. Director, Environmental Protection* (May 24, 1994), Appeal No. 94-003 (A.E.A.B.).

⁴³ *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraph 33 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.).

⁴⁴ *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraph 38 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.).

⁴⁵ *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraph 39 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.).

by the Approval. But, the Appellants have not demonstrated that they are impacted by the decision to issue the Approval in a different way than any other lakefront property owner anywhere in Alberta that has been refused a similar approval. The Appellants have not demonstrated a unique interest that would make them entitled to appeal this decision.”⁴⁶

[89] *Paron* also reminds us the onus to demonstrate this distinctive interest, to show they are directly affected, is on the Appellants. In *Paron*, the Board held that:

“Beyond these arguments, the Appellants have not presented any evidence – beyond a bare statement that they live in proximity to the proposed work – which speaks to the environmental impacts of the work authorized under the Approval. They have failed to present facts which demonstrate that they are directly affected. As a result, the Appellants have failed to discharge the onus that is on them to demonstrate that they are directly affected.”⁴⁷

The Board’s Rules of Practice also make it clear that the onus is on the Appellants to prove that they are directly affected.⁴⁸ The onus or burden of proof issue, in a slightly different context, was upheld in by the Court of Queen’s Bench.⁴⁹

[90] In the *Court*⁵⁰ decision, Justice McIntyre reversed a standing decision based on the Board’s previous cases and provided the following summary on the principles of standing before the Board:

“First, the issue of standing is a preliminary issue to be decided before the merits are decided. See *Re: Bildson*, [1998] A.E.A.B.D. No. 33 at para. 4. ...

Second, the appellant must prove, on a balance of probabilities, that he or she is personally directly affected by the approval being appealed. The appellant need not prove that the personal effects are unique or different from those of any other

⁴⁶ *Paron et al. v. Director, Environmental Service, Northern East Slopes Region, Alberta Environment re: Parkland County* (1 August 2001), Appeal Nos. 01-045, 01-046, 01-047-D at paragraph 22 (A.E.A.B.) (“*Paron*”).

⁴⁷ *Paron et al. v. Director, Environmental Service, Northern East Slopes Region, Alberta Environment re: Parkland County* (1 August 2001), Appeal Nos. 01-045, 01-046, 01-047-D at paragraph 24 (A.E.A.B.).

⁴⁸ Section 29 of the Board’s Rules of Practice provide:

“Burden of Proof

In cases in which the Board accepts evidence, any party offering such evidence shall have the burden of introducing appropriate evidence to support its position. Where there is conflicting evidence, the Board will decide which evidence to accept and will generally act on the preponderance of the evidence.”

⁴⁹ See: *Imperial Oil Ltd. v. Alberta (Director, Enforcement & Monitoring, Bow Region, Regional Services, Alberta Environment)* (2003), 2 C.E.L.R. (3d) 236 at paragraphs 87 and 88 (Alta. Q.B.).

⁵⁰ *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraphs 67 to 71, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

Albertan or even from those of any other user of the area in question. See *Bildson* at paras 21-24. ...

Third, in proving on a balance of probabilities, that he or she will be harmed or impaired by the approved project, the appellant must show that the approved project will harm a natural resource that the appellant uses or will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use and the approved project, the more likely the appellant will be able to make the requisite factual showing. See *Bildson* at para. 33:

What is 'extremely significant' is that the appellant must show that the approved project will harm a natural resource (e.g. air, water, wildlife) which the appellant uses, or that the project will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use of the natural resource at issue and the approved project, the more likely the appellant will be able to make the requisite factual showing. Obviously, if an appellant has a legal right or entitlement to lands adjacent to the project, that legal interest would usually be compelling evidence of proximity. However, having a legal right that is injured by a project is not the only way in which an appellant can show a proximity between its use of resources and the project in question.

Fourth, the appellant need not prove, by a preponderance of evidence, that he or she will in fact be harmed or impaired by the approved project. The appellant need only prove a potential or reasonable probability for harm. See *Mizera* at para. 26. In *Bildson* at para. 39, the Board stated:

[T]he 'preponderance of evidence' standard applies to the appellant's burden of proving standing. However, for standing purposes, an appellant need not prove, by a preponderance of evidence, that he will in fact be harmed by the project in question. Rather, the Board has stated that an appellant need only prove a 'potential' or 'reasonable probability' for harm. The Board believes that the Department's submission to the [A]EUB, together with Mr. Bildson's own letters to the [A]EUB and to the Department, make a prima facie showing of a potential harm to the area's wildlife and water resources, both of which Mr. Bildson uses extensively. Neither the Director nor Smoky River Coal sufficiently rebutted Mr. Bildson's factual proof.

In *Re: Vetsch*, [1996] A.E.A.B.D. No. 10 at para. 20, the Board ruled:

While the burden is on the appellant, and while the standard accepted by the Board is a balance of probabilities, the Board may accept that the standard of proof varies depending on whether it is a preliminary meeting to determine jurisdiction or a full hearing on the merits once jurisdiction exists. If it is the former, and where

proof of causation is not possible due to lack of information and proof to a level of scientific certainty must be made, this leads to at least two inequities: first that appellants may have to prove their standing twice (at the preliminary meeting stage and again at the hearing) and second, that in those cases (such as the present) where an Approval has been issued for the first time without an operating history, it cannot be open to individual appellants to argue causation because there can be no injury where a plant has never operated.”⁵¹

[91] Justice McIntyre concluded by stating:

“To achieve standing under the Act, an appellant is required to demonstrate, on a *prima facie* basis, that he or she is ‘directly affected’ by the approved project, that is, that there is a potential or reasonable probability that he or she will be harmed by the approved project. Of course, at the end of the day, the Board, in its wisdom, may decide that it does not accept the *prima facie* case put forward by the appellant. By definition, *prima facie* cases can be rebutted....”⁵²

[92] What the Board looks at when assessing the directly affected status of an appellant is how the appellant will be individually and personally affected, and the more ways in which the appellant is affected, the greater the possibility of finding the person directly affected. The Board also looks at how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person’s use of the area. The closer that these two elements are connected (their proximity), the more likely the person is directly affected. The onus is on the Appellant to present a *prima facie* case that he is directly affected.⁵³

⁵¹ *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraphs 67 to 71, 2 Admin. L.R. (4d) 71 (Alta. Q.B.). See: *Bildson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection*, re: *Smoky River Coal Limited* (19 October 1998), Appeal No. 98-230-D (A.E.A.B.); *Mizera et. al. v. Director, Northeast Boreal and Parkland Regions, Alberta Environmental Protection*, re: *Beaver Regional Waste Management Services Commission* (21 December 1998), Appeal Nos. 98-231-98-234-D (A.E.A.B.); and *Vetsch v. Alberta (Director of Chemicals Assessment & Management Division)* (1997), 22 C.E.L.R. (N.S.) 230 (Alta. Env. App. Bd.), (*sub nom. Lorraine Vetsch et al. v. Director of Chemicals Assessment and Management, Alberta Environmental Protection*) (28 October 1996), Appeal Nos. 96-015 to 96-017, 96-019 to 96-067 (A.E.A.B.).

⁵² *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraph 75, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

⁵³ *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraph 75, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

[93] The Court of Queen's Bench in *Court*⁵⁴ stated an appellant only needs to show that there is a potential for an effect on their interests. This potential effect must still be within reason and plausible for the Board to consider it sufficient to grant standing.

[94] The effect does not have to be unique in kind or magnitude.⁵⁵ However, the effect the Board is looking for needs to be more than an affect on the public at large (it must be personal and individual in nature), and the interest which the appellant is asserting as being effected must be something more than the generalized interest that all Albertans have in protecting the environment.⁵⁶ Under the *Water Act* and EPEA, the Legislature chose to restrict the right of appeal to those who are directly affected by the Director's decision. If the Legislature had intended for any member of the public to be allowed to appeal, it could have used the phrase "any person" in describing who has the right to appeal. It did not; it chose to restrict the right of appeal to a more limited class.

[95] The Board has always held that a person must show how a personal interest will be affected by the approval, and it is of assistance to the Board if the type of interest which the appellant claims to be affected is supported by the statutes, such as being included in the purpose sections of the acts (EPEA and the *Water Act*). The interests included in the acts include, among other interests, the integrity of the environment, human health, economic growth, sustainable development, and management of water resources.⁵⁷

⁵⁴ *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

⁵⁵ See: *Bildson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection re: Smoky River Coal Limited* (19 October 1998), Appeal No. 98-230-D (A.E.A.B.).

⁵⁶ See: *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraphs 34 and 35 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.). These passages are cited with approval in *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1997), 21 C.E.L.R. (N.S.) 257 at paragraph 25 (Alta. Q.B.).

⁵⁷ Section 2 of EPEA provides:

"The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:

- (a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society;
- (b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;
- (c) the principle of sustainable development, which ensures that the use of resources and the

B. Discussion

[96] In determining the directly affected status of Appellants, the Board looks at whether the appellant is affected by the project allowed under the approval in a manner different from that of other Albertans. Those with a general interest in the project are not, in most cases, found directly affected. The interest in the project has to be over and above that of most Albertans.

[97] The Legislators adopted a regime in which directly affected individuals may file a Notice of Appeal. Although this places more restrictions than a regime that would allow all Albertans to appeal, it is less restrictive than a regime of allowing only those within 100 metres of an activity having a right to appeal. There is no doubt the directly affected test applied to an appellant will prevent those with a fervent environmental interest from being granted standing if

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- environment today does not impair prospects for their use by future generations;
 - (d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;
 - (e) the need for Government leadership in areas of environmental research, technology and protection standards;
 - (f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
 - (g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment;
 - (h) the responsibility to work co-operatively with governments of other jurisdictions to prevent and minimize transboundary environmental impacts;
 - (i) the responsibility of polluters to pay for the costs of their actions;
 - (j) the important role of comprehensive and responsive action in administering this Act.”

Section 2 of the *Water Act* provides:

“The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:

- (a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;
- (b) the need for Alberta’s economic growth and prosperity;
- (c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;
- (d) the shared responsibility of all Alberta citizens for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;
- (e) the importance of working co-operatively with the governments of other jurisdictions with respect to transboundary water management;

they are not directly affected by the Director's decision, but the process must remain fair to all parties, including the approval holders.

[98] The Board cannot determine the directly affected status of an appellant based on arguments that are pure speculation. The Appellants in their initial Stay request alluded to interests that *might* be affected by the project. The Board requested further information to clarify the anticipated effect on the Appellants and to ensure their interests were not based on speculation alone.

[99] In this case, the Appellants live approximately 120 metres from the proposed site and use the area along the bed, banks, and shore for recreational purposes and for the enjoyment of their property. It is the Board's understanding that at least part of the proposed boat launch is visible from the Appellants' property. They referred to the wildlife that uses the bank and shore as a corridor and how they enjoy watching these animals travel past their property. These are features that distinguish the Appellants from most Albertans. If the project does have an affect on the environment, the Appellants would also be affected.

[100] In making its decision, the Board focused on the concerns raised by the Appellants that related solely to the effect the Approval might have on the Appellants. Issues such as the destruction of trees on the property owned by the Town of Canmore are not within the Board's jurisdiction. A property owner can do what he pleases on his property, subject to applicable laws, regulations, and by-laws. Although those on adjoining properties may enjoy the aesthetics of the vegetation, it is still ultimately someone else's property, in this case, the Town of Canmore. Land use issues in the area are the concerns of the Town of Canmore and cannot be considered by the Board in these circumstances.

[101] The operation of motorized boats on the Bow River is not within the jurisdiction of the Director nor this Board. The federal government determines speed rates and what types of vehicles are permitted on the watercourse, and if the Appellants are concerned with the present designation, they should contact Transport Canada and the federal Department of Fisheries and Oceans.

(f) the important role of comprehensive and responsive action in administering this Act.”

[102] Issues such as a decrease in property values are not within this Board's jurisdiction. Again, it is a municipal issue.

[103] The issue the Board must focus on is what effect the activity authorized in the Approval will have on the environment and the Appellants. Therefore, the Board must focus on whether the construction, and not the operation, of the boat launch will directly affect the Appellants.

[104] The Appellants live close to the area where the project is to be built. They described how they appreciate the wildlife that uses the site as a corridor, and how it adds to their use and enjoyment of their property. Both of the Appellants referred to the use and enjoyment of their property being affected by the Director's decision to issue the Approval. Use and enjoyment of one's property is recognized as an interest in land in the legal system. With respect to the directly affected test, a property right that is potentially impacted by the activity authorized under the Approval, while not determinative, is certainly of assistance in making a directly affected finding. The Board finds, for the purposes of its directly affected decision, that the construction and presence of the boat launches potentially affect the Appellants' use and enjoyment of their property, being only 120 metres away. Based on this the Board finds that the Appellants are directly affected.

[105] Further, Dr. Mitchell referred to individuals who fish from the edge of her property and how she is taking up the sport. She uses the Bow River for fishing, and any affect the project may have on fish in the river will affect the use by Dr. Mitchell immediately adjacent to her property. Therefore, Dr. Mitchell is, on this basis, also directly affected.

[106] The Board respects the direction provided by the Court of Queen's Bench in *Court*, and accepts the Appellants' arguments to demonstrate there is a potential for them to be directly affected. By acknowledging this, the Board wants to make it clear that it has yet to determine if the project as approved will have an adverse affect on the environment and the Appellants. There is a significant difference between being found directly affected for the purpose of filing a Notice of Appeal and for a project to have an adverse effect on a party and the environment.

IV. ANALYSIS OF STAY APPLICATION

A. Legal Basis for a Stay

[107] The Board is empowered to grant a Stay pursuant to section 97 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA” or the “Act”). This section provides, in part:

“(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.”⁵⁸

[108] The Board’s test for a Stay, as stated in its previous decisions of *Pryzbylski*⁵⁹ and *Stelter*,⁶⁰ is based on the Supreme Court of Canada case of *RJR MacDonald*.⁶¹ The steps in the test, as stated in *RJR MacDonald*, are:

“First, a preliminary assessment must be made of the merits of the case that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally,

⁵⁸ Section 97 of the Act, also provides:

“(3) Where an application for a stay relates to the issuing of an enforcement order or an environmental protection order or to a water management order or enforcement order under the *Water Act* and is made by the person to whom the order was directed, the Board may, if it is of the opinion that an immediate and significant adverse effect may result if certain terms and conditions of the order are not carried out,

- (a) order the Director under this Act or the Director under the *Water Act* to take whatever action the Director considers to be necessary to carry out those terms and conditions and to determine the costs of doing so, and
- (b) order the person to whom the order was directed to provide security in accordance with the regulations under this Act or under the *Water Act* in the form and amount the Board considers necessary to cover the costs referred to in clause (a).”

⁵⁹ *Pryzbylski v. Director of Air and Water Approvals Division, Alberta Environmental Protection re: Cool Spring Farms Dairy Ltd.* (6 June 1997), Appeal No. 96-070 (A.E.A.B.).

⁶⁰ *Stelter v. Director of Air and Water Approvals Division, Alberta Environmental Protection*, Stay Decision re: *GMB Property Rental Ltd.* (14 May 1998), Appeal No. 97-051 (A.E.A.B.).

⁶¹ *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (“*RJR MacDonald*”). In *RJR MacDonald*, the Court adopted the test as first stated in *American Cyanamid v. Ethicon*, [1975] 1 All E.R. 504 (“*American Cyanamid*”). Although the steps were originally used for interlocutory injunctions, the Courts have stated that the application for a Stay should be assessed using the same three steps. See: *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 30 (“*Metropolitan Stores*”) and *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 41.

an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.”⁶²

[109] The first step of the test has a very low threshold. Based on the evidence submitted, the applicant has to have some basis on which to present an argument. The applicant must show there is a serious issue to be tried. As not all of the evidence will be before the Board at the time the decision is made regarding a Stay application, “...a prolonged examination of the merits is generally neither necessary nor desirable.”⁶³

[110] The second step in the test to determine whether a Stay is warranted requires the decision-maker to decide whether the applicant seeking the Stay would suffer irreparable harm if the Stay is not granted.⁶⁴ Irreparable harm will occur when the applicant would be adversely affected to the extent that the harm could not be remedied if the applicant should succeed at the hearing. It is the nature of the harm that is relevant, not its magnitude. The harm must not be quantifiable; that is, the harm to the applicant could not be satisfied in monetary terms, or one party could not collect damages from the other. In *Ominayak v. Norcen Energy Resources*,⁶⁵ the Alberta Court of Appeal defined irreparable harm by stating:

“By irreparable injury it is not meant that the injury is beyond the possibility of repair by money compensation but it must be such a nature that no fair and reasonable redress may be had in a court of law and that to refuse the injunction would be denial of justice.”⁶⁶

The party claiming that damages would be inadequate compensation must show there is a real risk that harm will occur. It cannot be mere conjecture.⁶⁷ The damage that may be suffered by third parties may also be taken into consideration.⁶⁸

[111] The third step in the test is the balance of convenience: “...which of the parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits.”⁶⁹ The decision-maker is required to weigh the burden that the remedy

⁶² *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 43.

⁶³ *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 50.

⁶⁴ *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110.

⁶⁵ *Ominayak v. Norcen Energy Resources*, [1985] 3 W.W.R. 193 (Alta. C.A.).

⁶⁶ *Ominayak v. Norcen Energy Resources*, [1985] 3 W.W.R. 193 (Alta. C.A.) at paragraph 30.

⁶⁷ *Edmonton Northlands v. Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

⁶⁸ *Edmonton Northlands v. Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

⁶⁹ *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 36.

would impose on the defendant against the benefit the plaintiff would receive. This is not strictly a cost-benefit analysis but rather a weighing of significant factors. The courts have considered factors such as the cumulative effect of granting a Stay,⁷⁰ third parties that may suffer damage,⁷¹ or if the reputation and goodwill of a party will be affected.⁷²

[112] It has also been recognized that any alleged harm to the public is to be assessed at the third stage of the test. In *Metropolitan Stores*, it was recognized the public interest is a special factor in constitutional cases.⁷³

[113] The environmental mandate of this Board requires the public interest be considered in appeals before the Board, and therefore the public interest will be considered in the balance of convenience.⁷⁴ The Board has, therefore, stated the public interest is a separate step in the test when applying for a Stay. The applicant and the respondent are given the opportunity to show the Board how granting or refusing the Stay would affect the public interest. Public interest includes the "...concerns of society generally and the particular interests of identifiable groups."⁷⁵ The effect on the public may sway the balance for one party over the other.⁷⁶

⁷⁰ *MacMillan Bloedel v. Mullin*, [1985] B.C.J. No. 2355 (C.A.) at paragraph 121.

⁷¹ *Edmonton Northlands v. Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

⁷² *Edmonton Northlands v. Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 79.

⁷³ *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 90.

⁷⁴ The Court in *RJR MacDonald*, at paragraph 64, stated:

"The interests of the public, which the agency is created to protect, must be taken into account and weighed in the balance, along with the interests of the private litigants."

⁷⁵ *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 66.

⁷⁶ The Court in *RJR MacDonald*, at paragraph 68, stated:

"When a private applicant alleges that the public interest is at risk that harm must be demonstrated. This is since private applicants are normally presumed to be pursuing their own interests rather than those of the public at large.... Rather, the applicant must convince the court of the public interest benefits which flow from the granting of the relief sought.

In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant.... The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility."

B. Analysis

1. Serious Issue

[114] As indicated in *RJR MacDonald*, the first step in determining if a Stay should be granted has a low threshold – there needs to be a serious issue to be tried and the claim is not frivolous or vexatious.

[115] Based on the Appellants’ submissions, the Board accepts there is a serious issue to be tried, and the first part of the test for a Stay has been met. The Appellants raised the issue of the effects the project will have on their use and enjoyment of their property, including the viewing of wildlife that use the area, and the potential of erosion of the bed, banks, and shore. These are valid issues and are related to the construction of the proposed boat launch.

2. Irreparable Harm

[116] In assessing irreparable harm, the Supreme Court of Canada states that it must be determined “...whether the refusal to grant relief could so adversely affect the applicant’s own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.”⁷⁷

[117] To determine if the harm is irreparable, the Board must look at whether the Appellants could not be compensated for any damages that may result from the refusal to grant a Stay. The onus is on the Appellants to demonstrate they will suffer irreparable harm if the Stay is not granted.

[118] The Appellants argued their property value would decrease, but the loss in property values can be determined. Theoretically, the loss of enjoyment of the property, including watching wildlife, even though it may be difficult to calculate, can be determined.

[119] The Appellants argued they would suffer irreparable harm if the Stay was not granted, as the work would be completed, and if their appeal was successful, the project would have to be removed and the damage to the area would be done. This line of argument is more persuasive to the Board.

⁷⁷ *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 58.

[120] The Stay would be in place until the time of the Hearing, and the Board would then decide whether the Stay should remain in force or be lifted until the Minister makes his decision. Once the Minister releases his decision, there can be three results: the Approval is not varied and the Approval Holder can continue with its operation as allowed under the current Approval; the Approval can be varied, and the project is allowed to continue in some fashion; or the Approval is rejected and the Approval Holder must stop the project immediately.

[121] In this particular circumstance, the Board must look at whether there will be irreparable harm to the environment if the Stay was not granted. The proposed boat launch is to be constructed adjacent to the Bow River, and it involves the addition of gravel and stones to the ramp area. If the Board recommends, and the Minister accepts, the Approval not be granted or modifications be made to the proposal, the Approval Holder would be required to essentially reverse the work that had been completed. If the application of the gravel is determined to have a negative environmental impact, the removal of the gravel would exasperate the impact. In these circumstances, what the Board considers most relevant is what would the environmental effect be if the activity proceeded but then, based on the arguments heard at the hearing, the Board reverses the Director's decision.

[122] When dealing with issues that may affect the bed, bank, and shores of a water body, it is often difficult, if not impossible to reverse the activity without causing further affects to the environment. If part of the mandate of this Board is to protect the environment, it does not seem reasonable to allow something to proceed, and then make a decision knowing that, if the Board determined the activity should not have been approved, reversing what has been completed would cause further damage to the environment.

[123] The Board has looked at similar situations in previous decisions where enforcement orders were issued to landowners for placing sand and gravel on their property adjacent to a lake.⁷⁸ Although the Board agreed with the director that an approval was required to do the work, it also found more harm would result from the removal of the gravel than leaving it in place.

⁷⁸ See: *Gilmore and Fitzgerald v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment* (8 June 2001) Appeal Nos. 00-071-072-R (A.E.A.B.).

[124] In previous decisions, the Board has acknowledged the additional adverse effect of having to remove an activity once completed. In the case of *Martin*,⁷⁹ the Board discussed the effect of requiring the removal of an illegal deposition of sand. After evaluating the effect of the activity, plus the potential effect the project could have on the environment, and comparing it to the effect of removing the activity, the Board stated:

“In light of the fact that Mr. Martin placed a small amount of sand on the site, an amount that would be difficult to accurately determine, the nutrient loading damage would already be done, and that removal of this amount of sand could create as much or more environmental damage through siltation than leaving it in place, it is environmentally unreasonable to require Mr. Martin to remove it.”⁸⁰

[125] In a similar case, *Gilmore*,⁸¹ the Board discussed the reasonableness of an enforcement order that required removal of sand. In *Gilmore*, the Board stated:

“An enforcement order to stop an activity which was already done is appropriate, as is an enforcement order to undertake remedial action that is logical, reasonable, and environmentally sound. However, an enforcement order that includes a direction to undertake remedial action when it is not logical or reasonable to do so is not appropriate.”⁸²

[126] In these previous cases, the issue was not whether the addition of the gravel was causing a detrimental effect, but it was the non-compliance with the legislated requirements that was at issue. In the appeals currently before the Board, the issue that has to be determined is whether the construction of the proposed boat launch will have a detrimental effect on the environment. If the Board determines there is an adverse effect, the project would have to be modified or removed; leaving it in place as is would not be an option in those circumstances. Until the Board hears all of the evidence, it cannot make a determination on the effects of the boat launch.

[127] However, in making a decision, whether it is regarding a Stay or any other matter in its jurisdiction, the Board assesses which option would have the minimum effect on the

⁷⁹ *Martin v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment* (8 June 2001), Appeal No. 00-065-R (A.E.A.B.).

⁸⁰ *Martin v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment* (8 June 2001), Appeal No. 00-065-R (A.E.A.B.) at paragraph 34.

⁸¹ *Gilmore and Fitzgerald v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment* (8 June 2001), Appeal Nos. 00-071-072-R (A.E.A.B.).

⁸² *Gilmore and Fitzgerald v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment* (8 June 2001), Appeal Nos. 00-071-072-R (A.E.A.B.) at paragraph 48.

environment. In this particular situation, the Approval Holder wants to place gravel against the Bow River for the construction of a boat launch. One of the issues the Board must determine when it holds the substantial hearing is whether the construction of the boat launch will have a detrimental effect on the environment. If the Board finds the boat launch should not have been constructed, and the Stay had not been granted, there would be further environmental effects to the environment should the Approval Holder be required to remove the boat launch. This certainly would not minimize the effects on the environment; instead, the effect would be intensified.

[128] For this reason alone, the Board considers it prudent to grant the Stay request.

3. Balance of Convenience

[129] The Board must look at which Party would suffer the greatest harm if the Stay was granted.

[130] The Board recognizes the time limits placed on the Approval Holder to get the work completed prior to the expiry of the Approval. However, it is clear from the information provided by the Approval Holder that any harm associated with the granting of a Stay are inconvenience and economical in nature.

[131] The Approval Holder does not intend to charge for the use of the boat launch. Therefore, whether it is built this month or in one month's time, there would be no additional income losses by the Approval Holder. As for the Approval Holder telling potential users the site would be available by a certain date, there was no guarantee at the time that the project would even be approved by the Director. Therefore, the potential users were relying on projected availability, not absolute availability.

[132] If the Board recommends the project not proceed, or proceed with modifications, it would be the Approval Holder, and ultimately the taxpayers, who will bear the costs of proceeding with the project now and then having to remove or modify the project. It is the risk the Approval Holder has opted to accept, but it is still the environment that could suffer greater harm if the project had to be removed.

[133] What the Board does not want to occur in this circumstance is to have a situation that cannot be reversed without causing further environmental damage. The Board does not know the extent of the harm, if any, that may be caused by constructing the boat launch. However, if it is determined there is a detrimental effect, particularly to the Bow River, it would be difficult, if not impossible, to reverse the impact. As this type of damage cannot be realistically quantified, the Board finds it is reasonable to have the Stay remain in effect until the Minister issues his decision.

[134] The balance of convenience favours the Stay remaining in place until the Minister's decision is released.

[135] Another concern that must also be weighed, as discussed below, is the public interest element.

4. The Public Interest

[136] On the question of the public interest, the Supreme Court in *RJR MacDonald* stated:

“When a private applicant alleges that the public interest is at risk that harm must be demonstrated. This is since private applicants are normally presumed to be pursuing their own interests rather than those of the public at large.... Rather, the applicant must convince the court of the public interest benefits which flow from the granting of the relief sought.

In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant.... The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility.”

[137] Further, in determining the public interest, the Supreme Court directs us to look to the “...authority that is charged with the duty of promoting or protecting the public interest...”

[138] As stated in *RJR MacDonald*, “When a private applicant alleges that the public interest is at risk that harm must be demonstrated. This is since private applicants are normally presumed to be pursuing their own interests rather than those of the public at large....[T]he

applicant must convince the court of the public interest benefits which will flow from the granting of the relief sought.”

[139] The Appellants are residents in the area of the project. If the proposed project has an affect on the environment, it would not be just the Appellants who would be affected. The proposed project is in the Town of Canmore, with a permanent population of approximately 11,500 people.⁸³ Although not all of these residents live directly by the Bow River where the project site is located, many of the residents would, in all likelihood, use the area for recreational purposes. From that perspective, the interests of the Appellants are also a public interest.

[140] The public interest in these circumstances warrants the granting of a Stay. The environmental degradation that could occur if the Approval Holder is required to remove or alter the project would affect residents of the Town of Canmore as well as visitors from Alberta and other areas of the world. The Town of Canmore is a recognized tourist destination, particularly due to its natural surroundings. If the project negatively impacts the natural surroundings in the area, this could have an affect on the use of the area by the public, including local residents and Albertans at large.

[141] As the construction of the project has the potential to have an effect on the environment, which is the issue to be determined at the substantial hearing, the public interest supports the Stay remaining in effect.

[142] In granting the Stay, the Board remains cognizant of the time restraints of the Approval Holder in being able to complete the work under the current Approval, should it be upheld. Therefore, the Board will take all necessary steps to ensure the appeal is concluded as soon as possible.

5. Summary

[143] The Appellants have shown there is a serious issue to be decided and have, therefore, succeeded on the first element of the test. However, the Appellants failed to convince the Board they would suffer irreparable harm, but, in this situation, the deciding factor was the possible effect the removal or modification of the proposed project would have on the

⁸³ See: <www.gov.canmore.ab.ca/html/home.html>

environment. As the project is being built adjacent to a waterbody, the removal of the project if the appeals are successful and the Approval Holder is required to remove the boat launch would, in all likelihood, cause an even greater disturbance to the environment. In addition, the Board believes the balance of convenience favours the Stay remain in effect, and the granting of the Stay would be in the public interest. As a result, the Appellants' application for a Stay is granted.

[144] The Board's process must be fair to all parties to an appeal, not only to the Appellants, but also the Approval Holder and the Director. The Appellants requested a Stay, which would, at a minimum, inconvenience the Approval Holder. The Appellants must also realize the importance of having the issue dealt with as quickly as possible, for if the Minister agrees with the Director after hearing all of the evidence, the Approval Holder should be allowed to proceed with the project. If the Minister agrees with the Appellants at the end of the hearing, the Stay was in place to protect the status quo of the site. To this end, the Board will hold the Hearing as quickly and as fairly as possible.

V. CONCLUSION

[145] The Board has found the Appellants directly affected by the Director's decision to issue the Approval.

[146] The Board grants the Appellants' application for a Stay pursuant to section 97 of EPEA, and it is to remain in effect until the Minister issues his decision.

[147] The Board will take every effort to ensure the appeals are heard as expeditiously as possible.

Dated on November 29, 2004, at Edmonton, Alberta.

Dr. Frederick C. Fisher, Q.C.
Chair