

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – May 18, 2007

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-

IN THE MATTER OF appeals filed by the Siksika Nation Elders Committee and the Siksika Nation with respect to *Environmental Protection and Enhancement Act* Approval No. 1190-01-13 issued to the Town of Strathmore by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: Stay: *Siksika Nation Elders Committee and the Siksika Nation v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Town of Strathmore* (18 May 2007), Appeal Nos. 05-053 and 054-ID2 (A.E.A.B.).

HEARING BEFORE:

Dr. Steve Hrudehy, Chair,
Mr. Ron Peiluck, Vice-Chair, and
Mr. Al Schulz, Board Member.

APPEARANCES:

Appellants:

Siksika Elders Committee, represented by Elder Roy Little Chief and Ms. Donna Breaker; Siksika Nation, represented by Mr. Rangi Jeerakathil, MacPherson Leslie & Tyerman LLP.

Director:

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

Approval Holder:

Town of Strathmore, represented by Mr. Sabri Shawa, May Jensen Shawa Solomon LLP.

EXECUTIVE SUMMARY

Alberta Environment issued Amending Approval No. 1190-01-13 to the Town of Strathmore amending the existing approval for the Town's wastewater treatment system, including its wastewater treatment plant. The Amending Approval authorized the construction of a wastewater pipeline and associated outfall, making it possible for the Town to discharge its treated wastewater into a secondary channel of the Bow River. The pipeline runs 21 kilometres from the plant to the discharge point on a secondary channel of the Bow River, approximately 600 metres upstream from the confluence with the main channel at the western boundary of the Siksika Nation's lands and approximately 15 kilometres upstream of the Siksika Nation potable water treatment plant.

The Board received Notices of Appeal from the Siksika Nation Elders Committee and the Siksika Nation appealing the issuance of the Amending Approval.

Just days before the hearing of these appeals, the Siksika Nation filed a request for a stay of the Amending Approval. The Board received written submissions from the parties and heard additional arguments at the hearing on this question. In making its decision on the Stay, the Board had to balance denying the Stay, thereby allowing the Town to discharge treated wastewater at full pipeline capacity and by that discharge, imposing a plausible, but undetermined risk to the drinking water sources of the Siksika Nation; or granting the Stay and likely precipitating a treated wastewater storage crisis for the Town that could lead to serious environmental consequences. Under the circumstances, the Board determined that the balance of convenience and the public interest required that a partial Stay, with conditions, be granted.

One of the conditions was that the Town had to provide 6,000 litres of bottled water per day to the Siksika Nation to be used as drinking water for their citizens. This condition was included because, although the Board did not expect there to be a certain danger to health during the time it took to hear the appeals, the Siksika Nation presented a plausible case that a substantial health risk may exist. Without credible evidence provided by the Town to demonstrate some realistic bounds on the plausible health risks, the Board had to apply a precautionary approach and ordered bottled water to be provided. The Board noted that the Town and the Siksika Nation

made a number of suggestions as to how to address the Stay, particularly regarding how to protect the Siksika Nation potable water supply, but the evidence of the witnesses from both sides indicated that it was unlikely that these suggestions were viable. When the Board presented the parties with the suggestion of using bottled water to address this concern, none of the parties objected to the idea, subject to concerns about the logistics of delivering and distributing the bottles.

The Board granted a partial Stay of the Amending Approval, subject to certain conditions. The conditions are to remain in effect until the Ministerial Order arising from the hearing of the appeals is issued.

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I. BACKGROUND

[1] On November 24, 2005, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Amending Approval No. 1190-01-13 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) to the Town of Strathmore (the “Approval Holder” or “Town”) authorizing the construction, operation, and reclamation of a wastewater system for the Town of Strathmore near Strathmore, Alberta. The Amending Approval allows for the construction of a treated wastewater pipeline that runs 21 kilometres from the Strathmore wastewater treatment plant to the discharge point on a secondary channel of the Bow River, approximately 600 metres upstream of the confluence with the main channel at the western boundary of the Siksika Nation lands.

[2] On December 20 and 22, 2005, the Environmental Appeals Board (the “Board”) received Notices of Appeal from the Siksika Elders Committee and the Siksika Nation, respectively, (collectively, the “Appellants”) appealing the Amending Approval.

[3] On December 22 and 23, 2005, 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 that the Parties provide available dates for a mediation meeting or hearing. The Record was provided to the Board on January 30, 2006, and copies were provided to the Parties. Additional documents were provided on March 24, 2006, April 28, 2006, and January 22, 2007, and copies were provided to the Parties.

[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 January 16, 2006, the Siksika Elders Committee filed a Stay request, and on February 1, 2006, the Siksika Nation requested a Stay. The Board asked the Appellants to

provide responses to the Stay questions.¹ The Board received the submission from the Appellants on February 23, 2006. On March 16, 2006, the Board notified the Parties that the Stay was denied, and reasons were provided on May 26, 2006. The Board stated the arguments presented by the Appellants did not provide a sufficient basis to grant a Stay at that time.

[6] On January 30, 2006, the Director and the Approval Holder provided a status report explaining that the Director had a meeting with the Siksika Elders and other meetings with the Siksika Nation, the Approval Holder, and the Director were planned.

[7] On May 24, 2006, the Board notified the Parties that it intended to hold the appeals in abeyance pending the outcome of the judicial review application.² The Parties agreed to proceed with the information/technical meeting and mediation meeting. The information/technical meeting and mediation meeting was scheduled for August 15 and 16, 2006. The information/technical meeting was held on August 15, 2006, but the mediation meeting was adjourned.

[8] On August 18, 2006, the Board wrote to the Parties, summarizing the course of action agreed to at the information/technical meeting of August 15, 2006. The Siksika Nation representatives were to consult with their technical experts, the Chief and Council, and the Elders to seek instruction regarding the mediation process. The representatives of the Siksika Nation were to consider whether additional mixing modeling should be done, whether there should be a risk analysis done regarding the security of the water wells, and whether additional technical information was required from the Approval Holder. The Approval Holder agreed to provide the additional technical information, if available, as soon as possible, and the Parties agreed to tour each others' water treatment plants. On August 25, 2006, the Approval Holder provided a

¹ The Appellants were asked to respond to the following questions:

- “1. What are the serious concerns of the [Appellants] that should be heard by the Board?
2. Would the [Appellants] suffer irreparable harm if the Stay is refused?
3. Would the [Appellants] suffer greater harm if the Stay was refused pending a decision of the Board, than the Town of Strathmore would suffer from the granting of a Stay?
4. Would the overall public interest warrant a Stay.”

² On May 19, 2006, the Siksika Nation filed a judicial review of the Director's decision to issue the Amending Approval and the decision of the Board denying the Siksika Nation Stay application. At the judicial review, only the consultation issues around the Director's decision were addressed. On September 6, 2006, Justice McIntyre dismissed the judicial review application. On November 6, 2006, the Siksika nation filed an appeal of Justice McIntyre's decision to the Court of Appeal. As of the date of this decision, no date has been set for the

document in response to a request at the information/technical meeting. On September 18, 2006, the Siksika Nation stated they were prepared to proceed to a mediation meeting, and on October 13, 2006, the Siksika Elders agreed to enter into mediation.

[9] On October 30, 2006, the Board notified the Parties that it would hold the appeals in abeyance until the dye testing requested by the Appellants, and agreed to by the Approval Holder, was conducted. On December 15, 2006, the Approval Holder notified the Board that it was unable to complete the dye study in December as planned, and instead, the test would be undertaken as early as possible in the spring of 2007. The Approval Holder also informed the Board that the storage capacity of its lagoons would be reached at the end of February 2007. In response, the Board notified the Parties of its intent to schedule a hearing as soon as possible.

[10] On December 15, 2006, the Board notified the Parties that it would set up a submission process to address the Siksika Nation's question about the Board's intention with respect to the transitional provision in section 15 of the *Administrative Procedures and Jurisdiction Act*. Submissions were received between December 21, 2006 and January 3, 2007. On January 22, 2007, the Board notified the Parties that it had determined that it would leave it to the Courts to determine the constitutional issues.

[11] On December 22, 2006, the Board notified the Parties that, based on the dates provided by the Parties, the Board would hold a Hearing on February 12, 13, and 14, 2007, in Strathmore, Alberta.

[12] On February 2, 2007, the Siksika Nation submitted a Stay request by answering the following questions:

- “1. What are the serious concerns of the Siksika Nation that should be heard by the Board?
2. Would the Siksika Nation suffer irreparable harm if the Stay is refused?
3. Would the Siksika Nation suffer greater harm if the Stay was refused pending a decision of the Board, than the Town of Strathmore would suffer from the granting of a stay?
4. Would the overall public interest warrant a Stay?”

[13] The Director and Approval Holder submitted their responses on February 6, 2007, and the Siksika Nation's rebuttal submission was received February 8, 2007. The Board heard additional arguments at the Hearing.

[14] The Hearing was held on February 12, 13, and 14, 2007, in Strathmore, Alberta.

[15] On February 16, 2007, the Board notified the Parties that it was granting a partial Stay, subject to certain conditions. The following are the Board's reasons.

II. SUBMISSIONS

A. Siksika Nation

[16] The Siksika Nation stated it is directly affected by the issuance of the Amending Approval.

[17] The Siksika Nation explained it was applying for a Stay based on the environmental impacts resulting from the imminent discharge of treated wastewater by the Approval Holder, including impacts to the Siksika Nation's potable water treatment system and resulting impacts to human health, impacts in the secondary channel, and impacts to traditional users and recreational users. The Siksika Nation stated the impacts will be significant and will contravene applicable provisions of EPEA. The Siksika Nation submitted that these are serious issues to be considered by the Board and the first step of the Stay test is met.

[18] The Siksika Nation explained that, if the Stay is not granted, the Approval Holder would be allowed to discharge treated wastewater into the Bow River immediately upstream of the Siksika Nation, and the Siksika Nation would suffer irreparable harm that would not be remedied if the Siksika Nation is successful at the Hearing. The Siksika Nation stated that impacts would be apparent by the time the Board makes its recommendations. The Siksika Nation argued the daily discharge will be considerably higher than what would normally be expected because the Approval Holder is intent on emptying its lagoons. The Siksika Nation stated this would exacerbate harm to the Siksika Nation.

[19] The Siksika Nation explained its potable water treatment plants were not reviewed by the Approval Holder or Alberta Environment. The Siksika Nation stated that, if

mixing does not occur, its potable water treatment system may be compromised from the increased loading of the Bow River and proximate treated wastewater discharge. The Siksika Nation explained it has two potable water treatment plants along the Bow River, and the closest plant, the Ayoungman Plant, is approximately 15 kilometres from the outfall location, and the East Siksika Plant is about 50 kilometres from the outfall. The Siksika Nation stated the Ayoungman Plant has six community infiltration wells and the East Siksika Plant has three community infiltration wells. According to the Siksika Nation, the Ayoungman Plant provides water to approximately 642 households with approximately 2,500 people, and it provides water to community buildings such as schools, elders' facilities, and health facilities. The Siksika Nation stated that turbidity analysis supports the conclusion that the Ayoungman Plant is in direct communication with the Bow River. The Siksika Nation explained there are about 250 private wells that are in direct communication with the Bow River downstream of the Ayoungman Plant, and these wells have experienced boil water advisories in the past and are considered sensitive.

[20] The Siksika Nation explained the Hidden Valley Resort (the "Resort"), a resort community with about 300 lots, is a private lease on the Siksika Nation Reserve lands that has its own potable water treatment system and infiltration wells. According to the Siksika Nation, the Resort's water treatment plant is in direct communication with the Bow River and treats potable drinking water with chlorine. The Siksika Nation stated the Resort's wells are within 300 feet of the Bow River, downstream from the Ayoungman Plant. The Siksika Nation stated that, if the Hidden Valley Resort is impacted, the Siksika Nation would suffer economically because the lease payments are a source of revenue for the Siksika Nation. The Siksika Nation expressed concern with the health impacts to residents of the Resort.

[21] The Siksika Nation argued that the mixing data relied on by the Approval Holder in its application was inadequate, because of the difference in flow conditions between Reach 5, which was used to predict mixing, and Reach 7 on the Siksika Nation lands. The Siksika Nation pointed out that the modeling done for the Approval Holder indicated mixing would occur within 15 kilometres, which, according to the Siksika Nation, would leave no margin for error because the wells of the Ayoungman Plant are within that range. The Siksika Nation explained Reach 7 is less turbulent than Reach 5, and therefore, it is reasonable to conclude that mixing will not

occur within 15 kilometres of Reach 7. The Siksika Nation stated the Bow River at Reach 7 can be characterized as a meandering low gradient segment of the river, and it is unlikely full and complete mixing would be achieved for an extended distance downstream. The Siksika Nation stated the treated wastewater could hug the shore and mix slowly, thereby posing a risk to the Siksika Nation intake system that is located on the same side of the Bow River as the treated wastewater discharge outlet. The Siksika Nation explained there would be the risk of plugging the infiltration gravels as a result of nutrient enrichment and algal growth.

[22] The Siksika Nation explained that if 100 percent mixing does not occur within 15 kilometres, the wastewater plume would hug the left shore. It stated local effects of nutrient additions to streams are common and are found immediately downstream of wastewater discharges. The Siksika Nation also expressed concern about the potential for re-growth in the secondary channel after ultra violet disinfection.

[23] The Siksika Nation explained that its potable water wells are located very close to the bank of the Bow River and are completed in a shallow sub-surface aquifer. According to the Siksika Nation, the wells are completed in gravel strata that are in direct communication with the Bow River, and therefore, the groundwater wells behave more like infiltration wells than groundwater wells.

[24] The Siksika Nation stated that short and long term impacts to the Ayoungman Plant may occur, including loss of performance of the source water wells. The Siksika Nation explained the performance of the Ayoungman Plant cannot be predicted without a better understanding of the potential changes in the source water conditions. The Siksika Nation stated its potable water treatment plant design needs to be evaluated against the Approval Holder's water treatment facility given the added risks associated with the treated wastewater discharge. The Siksika Nation stated there was a concern of the potential of short circuiting wastewater during low flow conditions or flood events into the Siksika Nation's wells, potentially stressing the performance of the water treatment plant.

[25] The Siksika Nation argued the treated wastewater discharge is not legal under section 148 of EPEA,³ and therefore the discharge should not be permitted.

³ Section 148 of EPEA provides:

[26] The Siksika Nation argued it would suffer irreparable harm if the Approval Holder is allowed to discharge treated wastewater into the Bow River given the proximity of the outfall to the Siksika Nation's intakes and that full mixing will probably not occur. The Siksika Nation stated there was a high risk of the loss of performance and possible contamination of the source water wells, thus impacting the health of over 2,500 people. The Siksika Nation argued these impacts are magnified since the Approval Holder does not have a limit on the amount it can discharge through the pipeline. The Siksika Nation stated that, given the Approval Holder intends to empty its lagoons, the impacts will be greater and mixing will be less likely to occur, further straining the water treatment plants on the Siksika Nation lands. The Siksika Nation stated the impact will be exacerbated with the low winter flow in the Bow River and secondary channel reducing the mixing.

[27] The Siksika Nation argued these impacts to its potable water treatment system constitute irreparable harm.

[28] The Siksika Nation stated irreparable harm would also result from the discharge to the secondary channel because the low flow creates a problem with dissolved oxygen and acute ammonia concentration, there is a potential for insufficient effluent dilution at the point of discharge, and releasing to the secondary channel may require additional testing and monitoring and changes in the future.

[29] The Siksika Nation explained the secondary channel primarily flows during the spring and early summer and there is no flow in the winter months. The Siksika Nation stated ice ridges tend to build at the confluence of the channels in the area where they join the Bow River. The Siksika Nation explained the flow required to meet the concentration levels used in the Approval Holder's assessment of the channel would likely not occur with high frequency in the secondary channel. The Siksika Nation stated that mixing to achieve any form of dilution will not be possible in the secondary channel particularly in the winter when the flow in the

"No person shall release a substance or permit the release of a substance into any part of a waterworks system

- (a) that causes or may cause the potable water supplied by the system to be unfit for any of its intended uses, or
- (b) that causes or may cause the concentration of the substance or of any other substance in the potable water supplied by the system to vary from the specified concentration for the substance set out in any applicable approval or code of practice or the regulations."

channel will be almost entirely wastewater, and this would have a serious impact on the health of the riparian communities in the secondary channel and cause a significant deterioration of the aquatic environment. The Siksika Nation stated the treated wastewater will be substantially different in terms of quality, density, and likely temperature than the receiving channel or the Bow River.

[30] The Siksika Nation explained the secondary channel was previously rejected as a discharge location by the Director, the Department of Fisheries and Oceans, and UMA Engineering. The Siksika Nation argued that the Director and the Approval Holder lack credibility to suggest the location is suddenly appropriate.

[31] The Siksika Nation stated that impacts to the secondary channel will impact recreational and traditional users. The Siksika Nation explained a camping site is immediately downstream of the outfall location and will be negatively affected.

[32] The Siksika Nation argued destruction or alteration of the aquatic environment and general environment in the area of the secondary channel will result in irreparable harm to the Siksika Nation. The Siksika Nation explained its members have harvested and continue to harvest plants along the Bow River for food and medicinal, spiritual, and ceremonial uses, and Siksika societies continue traditional and ceremonial practices along the banks of the Bow River. The Siksika Nation stated the ecology of the Bow River is very sensitive and the spiritual components of the plants, roots, and other life are sacred to Siksika members, and when traditional plants are affected or harmed, the entire Siksika culture will be impacted in a way that cannot be fixed or replaced. The Siksika Nation explained willows from the river valley are used in traditional practices, water from the river is used in sweat lodges, a traditional campsite is located very close to the outfall site, and Siksika members fish in the Bow River. The Siksika Nation stated the Beaver Bundle holders, who have a specialized knowledge about the significance of the Bow River to the spiritual belief of the Siksika people, should be consulted before any discharge to the Bow River is undertaken.

[33] The Siksika Nation stated the Traditional Use Effects Study that is part of the Amending Approval is inadequate because the study: does not consider possible health effects resulting from traditional use of plants; it is difficult to determine how the vegetative mapping

and identification will be done in such a short time frame and in winter; no risk assessments were proposed; and the study does not include any interviews with Siksika members or Elders.

[34] The Siksika Nation argued the Approval Holder is rushing to complete the study in order to release the treated wastewater as soon as possible. The Siksika Nation stated the Approval Holder had previously indicated it would complete the study in June 2006 but it is now expected to be complete in February 2007.

[35] The Siksika Nation argued that any measurable impact to that portion of the Bow River has the capacity to interfere with the cultural practices of the Siksika Nation, causing irreparable harm to the Siksika Nation and its culture.

[36] The Siksika Nation stated that the Approval Holder would probably argue that if a Stay was granted, it would suffer financial harm because the Approval Holder would be required to seek another means of discharge either to the Western Irrigation District (“WID”) canal, Eagle Lake, or through trucking of the wastewater to another treatment plant. The Siksika Nation argued the financial harm must be compared to the harm the Siksika Nation would suffer as a result of the environmental impacts caused by the discharge of the treated wastewater and the potential for serious health impacts. The Siksika Nation stated it would also suffer financial harm.

[37] The Siksika Nation argued that any financial harm that may be caused by the granting of a Stay is rightfully borne by the Approval Holder, and the Approval Holder cannot claim financial distress resulting from its own actions.

[38] The Siksika Nation stated the Approval Holder was aware of the Siksika Nation’s concerns with the application, discharge, and mixing, but the Approval Holder built the pipeline anyway. The Siksika Nation stated the Approval Holder failed to dispose its wastewater through irrigation and failed to advise the Siksika Nation that the lagoons would be full.

[39] The Siksika Nation stated the Approval Holder knew that its lagoons would be full but failed to start trucking wastewater earlier which would have allowed sufficient time for a mixing study to be completed. The Siksika Nation argued the Approval Holder has created the situation it is in and should not benefit from its actions.

[40] The Siksika Nation argued that had their concerns been addressed earlier and the mixing study completed, mixing conditions would be known and the pipeline may have taken a different route.

[41] The Siksika Nation argued that the Approval Holder and the Director knew of the Siksika Nation's concerns about mixing of wastewater and its effect on the Siksika Nation's potable water system, but the Approval Holder and the Director did nothing to address the concerns.

[42] The Siksika Nation stated the Approval Holder is a municipality with the powers of taxation, and it can recover any financial harm it may suffer as a result of a Stay. The Siksika Nation explained the "...costs can be capitalized into ratebase, amortized over the life of the pipeline, and recovered in charges to users of its water system over the life of the asset. The impact to the citizens of Strathmore will not be significant."⁴

[43] The Siksika Nation stated it would suffer the greater harm if the Stay is not granted because of the impacts to its potable water supply, the alteration and destruction of the secondary channel, and the impacts to the traditional and recreational users.

[44] The Siksika Nation stated it is a public body that is responsible for its members and for protecting its members' health and welfare.

[45] The Siksika Nation submitted that the Board should find the environmental issues raised by the Siksika Nation are significant concerns as well as the negative environmental impacts of the Amending Approval, and it is in the public's interest to grant the Stay.

B. Approval Holder

[46] The Approval Holder agreed that the Siksika Nation is directly affected by the Amending Approval.

[47] The Approval Holder submitted that the Stay application was premature, because the Director had not made a decision to permit a discharge, emergency or otherwise, into the

⁴ Siksika Nation's submission, dated February 1, 2007, at page 13.

Bow River. The Approval Holder explained the Traditional Use Effects Study, required under the Amending Approval, had not been approved and the study had not been completed.

[48] The Approval Holder stated it would abide by any guidelines imposed by the Director including those relating to rate, duration, and quantity of wastewater that could be released to the Bow River.

[49] The Approval Holder stated its experts' engineering, biological, and water quality reports regarding the expected environmental impact of the wastewater release from the tertiary treatment plant consistently showed a negligible impact. The Approval Holder explained the reports were prepared based on the pipeline operating at full capacity, but there is a limit to the quantity of wastewater that can be discharged through the pipeline. The Approval Holder anticipated that it would not be required to reach full capacity for another 20 to 30 years of Town growth. The Approval Holder explained it anticipated it would utilize a quarter to one half of the design capacity of the pipeline.

[50] The Approval Holder submitted that the Siksika Nation did not show irreparable harm. The Approval Holder stated the Siksika Nation's submission is "...rife with conjecture regarding the type of harm which may occur. A close review of Siksika's expert reports show that those experts conclusions regarding environmental harm remain highly speculative."⁵

[51] The Approval Holder stated the quality of the treated wastewater produced by the tertiary treatment plant consistently meets or exceeds the guidelines imposed by the Director, and therefore, the water quality concerns raised by the Siksika Nation are unfounded.

[52] The Approval Holder acknowledged that a permanent loss of a natural resource can constitute irreparable harm, but the evidence to support the application does not support the proposition that the natural resource in question will be permanently lost or harmed. The Approval Holder argued the environmental harm alleged by the Siksika Nation is nothing more than "mere conjecture" since the Siksika Nation's own expert's reports were not definitive of what, if any, of the speculative harm would occur, let alone be irreparable.

⁵ Approval Holder's submission, dated February 6, 2007, at paragraph 15.

[53] The Approval Holder argued that "...the issues raised by the Applicant are all of a nature that lend themselves to be addressed in the fullness of the appeal process, not in the extraordinary and truncated stay process."⁶

[54] The Approval Holder submitted that the Siksika Nation did not provide any evidence that any of the alleged harm to the environment or their drinking water would be either immediate or irreparable. The Approval Holder argued the effect on the Siksika Nation has to be viewed in the narrower timeframe of the appeal and not the life of the project.

[55] The Approval Holder stated the Department of Fisheries and Oceans determined that the change of the outfall location from the primary to secondary channel would not lead to a deleterious effect as defined in the *Fisheries Act*, R.S.C. 1985, c. F-14.

[56] The Approval Holder argued the Siksika Nation failed to prove irreparable harm, as it failed to show that either the speculative environmental or health effects will occur at all, let alone within the narrow timeframe of the appeal period. The Approval Holder also stated the Siksika Nation did not prove any damage that might occur could not be rectified with monetary compensation.

[57] The Approval Holder submitted that the balance of convenience weighs on the side of not granting a Stay. The Approval Holder agreed that it would suffer financial harm if it is required to transport the wastewater to another treatment plant, but this was not the Approval Holder's primary concern.

[58] The Approval Holder explained it reviewed different options of discharging its treated wastewater. It stated it considered discharging the treated wastewater to the WID canal, but this alternative was not acceptable from the WID's perspective on a long term basis, and the WID indicated it would not accept further discharges into its privately owned and operated system. The Approval Holder stated it considered discharging the wastewater over land to a nearby body of water such as Eagle Lake, a small lake which drains through the Siksika Nation to the Bow River. The Approval Holder stated this alternative was rejected by the Director because the lake is too small to permit adequate dilution, and since the lake freezes in winter, discharge during those months would either be on top of the ice or would have to wait until

⁶ Approval Holder's submission, dated February 6, 2007, at paragraph 22.

spring thaw. The Approval Holder was perplexed why the Siksika Nation suggested discharge to Eagle Lake because the lake drains into Siksika lands.

[59] The Approval Holder explained it considered trucking the treated wastewater. It explained the Town of Strathmore generates approximately 4,000 m³ of treated wastewater daily, and in the summer months, it increases to approximately 6,000 m³ daily. The Approval Holder stated it would take about 72 truckloads per day at low flow periods to remove the treated wastewater on a daily basis. The Approval Holder argued the cost is prohibitive and there would be significant social and environmental impacts associated with the enormous traffic volume. The Approval Holder stated there are logistical challenges associated with finding trucking, particularly in the current economic environment.

[60] The Approval Holder claimed it did not realize until mid-December 2006 that its lagoons may only have capacity until the end of February 2007.

[61] The Approval Holder stated the Board had acknowledged that harm to third parties may be weighed as a factor under the balance of convenience test. The Approval Holder submitted that the interests of roughly 10,000 residents of the Town of Strathmore must also be considered with respect to the Stay. The Approval Holder stated smooth operation of the wastewater system at the Town of Strathmore is a desirable goal.

[62] The Approval Holder submitted that the Siksika Nation did not demonstrate that a Stay should be granted in these circumstances.

C. Director

[63] The Director indicated she was not taking a position on the Stay request.

D. Siksika Nation Final Submission

[64] In its final submission, the Siksika Nation stated the Approval Holder's argument that the application was premature was without merit, because the Director could approve the discharge at any time and at a time prior to when the Board issues its recommendations with respect to the appeal. The Siksika Nation stated that, if the Stay is not granted, the Approval Holder will likely begin discharging before the Board completes its recommendations.

[65] The Siksika Nation disputed that the Approval Holder is complying with Alberta Environment's guidelines and that its experts' evidence shows a negligible impact. The Siksika Nation stated the Approval Holder's reports did not consider impacts to the Siksika Nation's potable water treatment plant, impacts to the secondary channel of the Bow River, impacts to the Bow River ecosystem, or impacts to recreational and traditional users.

[66] The Siksika Nation stated the Approval Holder will discharge a greater amount than the Town's daily use of 4,000 m³ because the lagoons are full, and the Approval Holder has no limit on the amount it can discharge in accordance to the Amending Approval. The Siksika Nation stated the Approval Holder can discharge the maximum amount to the pipeline, which is 21,000 m³, and even though the Approval holder indicated it anticipated using approximately a quarter to one half of the designed capacity, it would have the right under the Amending Approval to discharge the maximum.

[67] The Siksika Nation argued the Approval Holder failed to appreciate the real issue is exposure to unreasonable risk, and when dealing with issues of environmental impacts, the question is whether the risk posed to a particular group of people or ecosystem is unreasonable. The Siksika Nation argued its submission clearly demonstrates the risk is unreasonable.

[68] The Siksika Nation stated the Approval Holder's expert based his mixing assumptions on a different biophysical region of the Bow River, and past dye studies conducted in Reach 5 indicated mixing at 15 kilometres but Reach 5 has a steeper gradient and different morphology from Reach 7. The Siksika Nation stated that suspended solids were observed hugging the shoulder of the Bow River indicating partial mixing conditions.

[69] The Siksika Nation reiterated that its intakes are located on the same side of the Bow River as the wastewater entry point, and its potable water wells are in direct communication with the Bow River.

[70] The Siksika Nation argued the behavior and performance of a plant cannot be predicted without a better understanding of the potential changes to the source water resulting from the proposed wastewater discharge and potential for environmental impacts. The Siksika Nation stated there is a potential for contamination or loss of performance of source water wells due to the wastewater discharge.

[71] The Siksika Nation stated the Approval Holder did not address the expert evidence of the Siksika Nation other than to refer to it as speculative.

[72] The Siksika Nation submitted that the test it must meet is the balance of probabilities and EPEA indicates the question is risk, not certainty. The Siksika Nation argued the Record supports a finding of unacceptable risk leading to irreparable harm.

[73] The Siksika Nation argued the discharge limits under the Amending Approval are less stringent than the present quality of the treated wastewater. The Siksika Nation stated there are concerns regarding the quality of the wastewater and the total faecal component of the wastewater. The Siksika Nation stated the secondary channel will be mostly composed of wastewater in the winter months, and this does not meet Alberta's surface water quality guidelines. The Siksika Nation explained this would cause irreparable harm to the ecosystem in the secondary channel.

[74] The Siksika Nation submitted that the impacts it is preventing by the Stay are short term in nature and relate to the potable water treatment performance, the ecosystem in the secondary channel, and the recreational and traditional use in the short term.

[75] The Siksika Nation stated it did request the outfall be moved as far away from the Siksika Nation lands as possible, but it was not informed that the secondary channel chosen had been previously rejected by the Director and other stakeholders as inappropriate. The Siksika Nation stated that had it been provided with this information, it would have objected to the use of the secondary channel in a more timely fashion.

[76] The Siksika Nation argued that the Department of Fisheries and Oceans indicated that the construction of the outfall would not constitute a harmful alteration, disruption, or destruction of fish habitat ("HADD"), but the Department of Fisheries and Oceans was not prepared to sign off on the issue of whether the discharge of the effluent into the secondary channel would constitute a HADD.

[77] The Siksika Nation was concerned that the option to discharge to Eagle Lake was not appropriately considered. It explained Eagle Lake eventually flows into Stobbart Lake, which is located on the Siksika Nation lands and then flows into the Bow River over a considerable period of time. The Siksika Nation stated this may be a more environmentally

sound approach, and it understood that discharges into the WID canal by the Approval Holder eventually ended up in Stobbart Lake in any event.

[78] The Siksika Nation argued that the Approval Holder was aware that its lagoons would be full much earlier, but it did not start seeking alternative ways to discharge or deal with the treated wastewater. The Siksika Nation stated the Approval Holder created its own dilemma by building the pipeline to an outfall location that had previously been rejected and the Approval Holder failed to seek alternatives to discharge in the face of its lagoon capacity issues.

E. Additional Submissions

[79] At the Hearing, the Board requested the Parties to provide additional information and comments regarding the Stay.

[80] The Siksika Nation provided a list of short solutions to the Approval Holder's lagoon capacity problem.

[81] The first option provided by the Siksika Nation was to have the Approval Holder evaluate the overflow capacity of the lagoons and the potential for temporary storage. The Siksika Nation recommended all the treated wastewater be trucked to Calgary. The third option presented by the Siksika Nation was to truck 100,000 m³ to the Siksika Nation's Washington lagoons and pipe another 100,000 m³ through an overland line using the provincial highway as a right of way to Stobbart Lake. The Siksika Nation stated the remaining wastewater would be trucked to Calgary. According to the Siksika Nation, this would provide enough time to discharge to the WID canal as weather permits. The Siksika Nation stated this third option would be contingent on a mixing model and risk assessment being completed and that the Siksika Nation would be reasonably compensated for taking the wastewater.

[82] A fourth option provided by the Siksika Nation was to have an emergency discharge to Eagle Lake, and because it is a short distance, freezing should not be an issue. The final option provided by the Siksika Nation was to have an integrated discharge where the Siksika Nation would shut down its water treatment plant and rely on the one to two days storage and the Approval Holder could batch discharge. The Siksika Nation explained this option would be contingent on an integrated approach and operational plan, a mixing study and risk

assessment being completed, and indemnity being provided to the Siksika Nation from the Approval Holder with respect to losses suffered by the Siksika Nation, excluding the Siksika Nation's negligence.

[83] The Approval Holder stated the most feasible and practical solution to dispose of the treated wastewater was through the pipeline to the Bow River since the pipeline was completed and could be put into service on relatively short notice. The Approval Holder stated the discharge would be to a large, flowing body of water that allows for a dilution factor well in excess of recognized standards and guidelines. The Approval Holder believed there would be no impact on downstream users, but steps could be taken to minimize any perceived impact such as limiting the flow to a bare minimum or the flow could be batched so that periodically a large volume is released over a short period of time followed by an interval with no discharge.

[84] The Approval Holder explained that in order to accommodate daily flow plus an additional 20 percent margin of safety, a continuous discharge of 4,800 m³ per day would be necessary. To undertake batch discharge, the Approval holder stated it would have to discharge at maximum capacity for one day out of four. The Approval Holder stated that either under a continuous flow or batch discharge, it would be necessary to increase the discharge rates during spring runoff in order to dispose of accumulated surplus in the lagoons.

[85] The Approval Holder argued trucking is an impractical solution. According to the Approval Holder, it had been trying to arrange some trucking in order to delay the exhaustion of the lagoons, but the most significant limitations on trucking were the unavailability of trucks, limitations on disposal sites, and the cost. The Approval Holder argued the money that would be spent on trucking could be used in a more productive fashion and for some purpose that would bring a more tangible long term benefit to the Town and downstream users such as the Siksika Nation.

[86] The Approval Holder stated the most appropriate disposal location in Calgary would be the Bonnybrook facility, and even though neither the Director nor the City of Calgary has formally approved the transfer, the Approval Holder expected both would accept the approval requests. The Approval Holder explained that, in order to accommodate only the daily flow with no margin of safety, 334 truck loads would have to be disposed of each day, which

would amount to 112 trucks for each 12 hour period based on a 3.5 hour turn around time. The Approval Holder stated that at \$440 per load plus \$7 per m³, the cost of trucking on a daily basis would be about \$174,960, and this would not include an additional margin of safety. The Approval Holder stated it could cut the number of trucks in half if they trucked around the clock, but there would be significant extra disposal charges and overtime trucking charges.

[87] The Approval Holder explained 10 trucks operating 12 hours could dispose of about 360 m³ of wastewater at a cost of about \$15,720, but this represents less than 4 percent of the Town's daily effluent and an alternative for the remaining 96 percent would have to be found. The Approval Holder claimed it would be difficult to retain the services of 10 trucks, and even if the trucks operated around the clock, they would still only dispose of about 823 m³ per day.

[88] The Approval Holder explained the irrigation system equipment is available and that it has an approval to operate the system, but the system cannot be operated in the winter months. The Approval Holder stated the approval to irrigate does not allow for the operation of the system when the ground is frozen. Also, the Approval Holder explained the equipment itself freezes. The Approval Holder stated irrigation can only take place on lands of certain classifications, and there are insufficient lands of the necessary classification in the vicinity of the Town. The Approval Holder anticipated that by the middle of May 2007, discharge through its spray irrigation equipment could begin, but that is weather dependent. The Approval Holder explained that under optimal conditions, a maximum of 10,000 m³ per day could be disposed of, but when the winds blow or there is precipitation, discharge is prohibited or limited. The Approval Holder stated the spray irrigation system would likely be sufficient to discharge daily wastewater production but is unlikely to be sufficient to eliminate accumulated wastewater.

[89] The Approval Holder stated there are standing bodies of water near the Town, including Eagle Lake, Peanut Lake, and Freeman Marsh, but they are frozen in the winter and discharge onto frozen surfaces is not environmentally sound. The Approval Holder explained the volumes of the water bodies relative to the amount of discharge are such that the dilution ratios would be unsatisfactory.

[90] The Approval Holder explained the WID canal is a privately owned facility and, although it accepted wastewater from the Approval Holder in the past, it will not do so again. The Approval Holder further stated that releasing to the canal is not a feasible option in winter because discharge into the empty canal would freeze and damage the canal infrastructure and create an ice plug that will cause flooding in the spring. The Approval Holder stated that even in the summer months, the wastewater volumes are high relative to the flow in the canal, making this an undesirable option.

[91] The Approval Holder argued some discharge regime using the pipeline to the Bow River is the only feasible solution, and the Approval Holder was amenable to additional notification or monitoring requirements.

III. ANALYSIS OF STAY APPLICATION

A. Legal Basis for a Stay

[92] The Board is empowered to grant a Stay pursuant to section 97 of EPEA. 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.”⁷

⁷ Section 97 of EPEA 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).”

[93] The Board's test for a Stay, as stated in its previous decisions of *Pryzbylski*⁸ and *Stelter*,⁹ is based on the Supreme Court of Canada case of *RJR MacDonald*.¹⁰ 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, 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.”¹¹

[94] The first step of the test requires the applicant to show there is a serious issue to be tried. The applicant has to demonstrate through the evidence submitted that there is some basis on which to present an argument. 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.”¹²

[95] 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.¹³ 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*,¹⁴ the Alberta Court of Appeal defined irreparable harm by stating:

⁸ *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.).

⁹ *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.).

¹⁰ *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. Although the steps were originally used for interlocutory injunctions, the Courts have stated 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.

¹¹ *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 43.

¹² *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 50.

¹³ *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110.

¹⁴ *Ominayak v. Norcen Energy Resources*, [1985] 3 W.W.R. 193 (Alta. C.A.).

“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.”¹⁵

The party claiming that damages awarded as a remedy would be inadequate compensation for the harm done must show there is a real risk that harm will occur. It cannot be mere conjecture.¹⁶ The damage that may be suffered by third parties may also be taken into consideration.¹⁷

[96] 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.”¹⁸ The decision-maker is required to weigh the burden that the remedy 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,¹⁹ third parties who may suffer damage,²⁰ or if the reputation and goodwill of a party will be affected.²¹

[97] 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.²²

[98] The environmental mandate of this Board requires the public interest be considered in appeals before the Board. Therefore, the Board has assessed the public interest as 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

¹⁵ *Ominayak v. Norcen Energy Resources*, [1985] 3 W.W.R. 193 (Alta. C.A.) at paragraph 30.

¹⁶ *Edmonton Northlands v. Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

¹⁷ *Edmonton Northlands v. Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

¹⁸ *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 36.

¹⁹ *MacMillan Bloedel v. Mullin*, [1985] B.C.J. No. 2355 (C.A.) at paragraph 121.

²⁰ *Edmonton Northlands v. Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

²¹ *Edmonton Northlands v. Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 79.

²² *Manitoba (Attorney General) v. Metropolitan Stores*, [1987] 1 S.C.R. 110 at paragraph 90.

of identifiable groups.”²³ The effect on the public may sway the balance for one party over the other.²⁴

B. Analysis

1. Introduction

[99] The Amending Approval authorizes the Approval Holder to construct and operate a pipeline to discharge treated wastewater from its wastewater treatment plant to the Bow River. The discharge outlet will be located approximately 15 km upstream from the infiltration wells that are the raw water supply for the Ayoungman Plant. The discharge will also flow through an area of the Bow River that supplies a number of individual water wells located on the Siksika Nation’s land.

[100] The challenge that the Board faces in addressing the substantive merits of these appeals is to balance the interests of the Siksika Nation with those of the Approval Holder. The Town needs to dispose of its treated wastewater into the environment so that it can provide the essential service of managing wastewater for its residents. The Siksika Nation needs to protect their source of supply for potable water and the Bow River ecosystem which plays a vital role in the lives of the Siksika people. The difficulty with respect to this Stay application is that it requires the Board to address this balancing of interests in the short term, until the Board can provide its Report and Recommendations regarding these appeals to the Minister, and until the Minister can make a decision that will address the matter in the long term.

[101] This stay application is complicated by two facts. First, a crisis has developed because the storage lagoons at the Strathmore wastewater treatment plant were predicted to reach

²³ *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 66.

²⁴ 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.”

capacity by March 15, 2007. A decision had to be made immediately as to what has to be done with the treated wastewater that is currently in the lagoons and that is being produced by Strathmore on a daily basis. Strathmore produces up to an average of 4000 m³ of treated wastewater per day. If some way is not found to deal with at least the daily production of treated wastewater before March 15, 2007, the lagoons will ultimately overtop, leading to an uncontrolled release of treated wastewater into the environment and possibly the collapse of the lagoons. If the lagoons collapse, even greater damage to the environment may occur.

[102] Second, the Stay decision was made at an unusual point in the Board's process – after all of the evidence had been heard on the merits of the appeals, but before the final arguments and closing comments have been filed.²⁵ Normally, Stay applications are made at the beginning of the appeal process.²⁶ However, this Stay application was filed approximately one week before the Hearing. Although written submissions regarding the Stay were filed before the start of the hearing, the Board required more information before it was prepared to make a decision on the Stay. Although the evidence on the substantive matters had been presented, final arguments and closing comments were not before the Board, and therefore the substantive evidence could not be considered to have been completed.

2. Serious Issue

[103] As indicated in *RJR MacDonald*, the first step in determining if a Stay should be granted requires the Appellant to demonstrate that there is a serious issue to be tried and the claim is not frivolous or vexatious.

[104] None of the Parties argued that there was not a serious issue to be heard by the Board. The Appellants raised issues including the effect of the treated wastewater on the water

²⁵ Due to the complex nature of the presentations at the February 12, 13, and 14, 2007 Hearing, the Board was unable to complete the Hearing, and decided to receive final arguments and closing comments in writing. The deadline for all of the arguments to be filed was scheduled for March 7, 2007.

²⁶ Stay applications were filed at the beginning of the appeal process by the Appellants. That Stay application was denied as being premature. At that time, the pipeline was being constructed and there was no immediate possibility of treated wastewater being discharged to the Bow River. After that Stay decision, the Board attempted to arrange mediation between the Parties; however, they indicated that they would prefer to work at a possible solution among themselves. Following a series of inquiries by the Board of the Approval Holder, the Approval Holder informed the Board in late December that the Town's lagoons would be full by approximately the end of March. At that point the Board proceeded to schedule a hearing. The Stay application that is the subject of this

quality in the Bow River and in the secondary channel, how the treated wastewater will impact the Siksika Nation's use of the Bow River water, and the effects of the treated wastewater discharge on the aquatic environment in the secondary channel. All of these issues are important and how the release of the treated wastewater may affect the potable source water of the Siksika Nation is a serious issue to be considered because of the potential health concerns raised by the Siksika Nation.

[105] The Siksika Nation had the right to file their appeal to challenge the use of the Bow River as the discharge location for the Approval Holder's treated wastewater, because the Bow River is the Siksika Nation's source of supply for potable water. On the other side, the Approval Holder needs to find some way to deal with its treated wastewater.

[106] It is evident that the Board and the Parties accept there are serious issues to be heard, and the first part of the test for a Stay has been met.

3. Irreparable Harm

[107] 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."²⁷

[108] To determine if the harm is irreparable, the Board looks at whether or not the Appellants could 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.

[109] In reviewing the Stay submissions, it is evident that irreparable harm could occur unless an immediate decision was made regarding what to do with the treated wastewater that is being stored in the lagoons and that is being produced by the Town on a daily basis. As stated previously, if the Approval Holder cannot deal with its treated wastewater in some way, the lagoons will overtop and there will be an uncontrolled release of treated wastewater to the

decision was received after the scheduling of the Hearing but before the Hearing started.

²⁷ *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at paragraph 58.

environment. It is uncertain as to where exactly the treated wastewater will go and what the ultimate effect will be, but likely it will flow across privately owned land and probably across the Siksika Nation's land as well, eventually entering various water bodies in the area and potentially causing adverse environmental impacts. A serious concern is that if the lagoons are overtopped, the lagoons may collapse. If the lagoons collapse, a large volume of water will flow over the adjacent land, carrying along with it the soils that make up the walls of the lagoons as well as soil and other debris from the surface of the land as it moves. This could result in a more severe adverse environmental impact.

[110] With respect to the Siksika Nation, they argued that if some sort of Stay is not granted, there is a reasonable possibility that a discharge of treated wastewater at the full capacity of the pipeline could affect the infiltration wells that supply the Ayoungman Plant, the Ayoungman Plant itself, and the individual water wells located along the Bow River, creating health risks to drinking water consumers. There was also a concern that the ecosystem of the Bow River, the most predominant aquatic ecological feature in the area, could be damaged by a full capacity discharge of the pipeline.

[111] At this point of the Hearing process, the Board had not heard all of the arguments because closing comments had not yet been received. Based on the arguments provided for the Stay application, there is a reasonable possibility the arguments presented by the Siksika Nation may have merit. This does not diminish the fact that the Approval Holder needs to deal with its treated wastewater in some manner.

[112] In previous decisions, the Board has acknowledged the additional adverse effect of having to remove an activity once completed, particularly as it applies to a water body. In the case of *Martin*,²⁸ 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

²⁸ *Martin v. Director, Northeast Boreal Region, Natural Resources Service, Alberta Environment* (8 June 2001), Appeal No. 00-065-R (A.E.A.B.).

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.”²⁹

[113] In a similar case, *Gilmore*,³⁰ 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.”³¹

[114] In *McNabb*,³² a case where the approval holder had essentially completed the realignment of a creek pursuant to the terms and conditions of his approval, the Board stated:

“In this case, since the work is essentially completed, there are no remedies that the Board can give the Appellant that will satisfy his concerns. The Board cannot make the recommendation to reverse or vary the decision appealed in this circumstance as the work has been completed in accordance with the Approval, and this type of work cannot be reversed without causing further damage to the environment.”³³

[115] The Board does not know the extent of the harm, if any, that may be caused by discharge of treated wastewater into the Bow River 15 kilometres upstream of the Siksika Nation’s potable water intake. However, if there is an adverse effect to the water quality used by the Siksika Nation, it could be difficult to reverse the impact and the plausible health risk could cause the Siksika Nation irreparable harm. As this type of damage cannot be realistically quantified, for the purposes of damages, the Board finds it is reasonable to grant a Stay.

[116] Because there are two very important interests that are at stake in these appeals, an important step in the Stay test in these circumstances is to assess the balance of convenience;

²⁹ *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.

³⁰ *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.).

³¹ *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.

³² *McNabb v. Director, Bow Region, Natural Resources Service, Alberta Environment re: Axel Steinmann* (10 May 2002), Appeal No. 01-091-D (A.E.A.B.).

³³ *McNabb v. Director, Bow Region, Natural Resources Service, Alberta Environment re: Axel Steinmann* (10 May 2002), Appeal No. 01-091-D (A.E.A.B.) at paragraph 16.

that is to balance the effect of granting the Stay with the effect the Stay would have on the Approval Holder.

4. Balance of Convenience

[117] The Board must look at which Party would suffer the greatest harm if the Stay was granted, which in this case, is the important factor to consider before making the final determination on the Stay.

[118] In the past, the Board has commonly dealt with the balance of convenience and the public interest as separate issues when considering a stay application; however, in the current circumstances these issues are inextricably linked. While the Parties in these appeals are the Siksika Nation, the Siksika Nation Elders, and the Town of Strathmore, the negative effects of granting or not granting a stay in whole will be felt by the members of the Siksika Nation and the residents of the Town of Strathmore.

[119] Strathmore is facing a pending crisis regarding the storage of its treated wastewater but there is the potential for the treated wastewater discharge to negatively impact Bow River water quality, and ultimately affect the downstream water sources for the Siksika Nation. The options available to the Approval Holder have become severely constrained, despite the construction of the treated wastewater pipeline to the Bow River, because of the concerns raised by the Siksika Nation in the appeals. This has come about, in part, because of the failure of the Approval Holder to have developed a contingency plan to deal with the concerns of the Siksika Nation regarding the impacts on the safety and quality of their water supply, and on the ecology of the Bow River, that may be caused by using the pipeline to discharge treated wastewater to the Bow River. The Approval Holder also failed to develop a contingency plan for the disposal of the treated wastewater in case they had not received permission from the Director to discharge the treated wastewater to the Bow River. There were pre-conditions that had to be met before the Approval Holder could use the pipeline, specifically providing a plan for the Traditional Use Effects Study and an Emergency Response Plan, both of which required the approval of the Director, and after conducting the Traditional Use Effects Study, the results were to be provided to the Director. At the time of the Hearing, the Director had not approved these plans and there was no specified time frame in which such a decision had to be made.

[120] In its submission, the Approval Holder argued the pipeline was the best, and essentially only, option available to it at this time. The Approval Holder explained that it previously discharged some of its treated wastewater to the WID canal, but the WID was no longer willing to accept the Town's treated wastewater. The Town explained it also uses the treated wastewater to irrigate on its own property, but irrigation cannot start until May. The option of disposing of the Town's treated wastewater to nearby bodies of water such as Eagle Lake was, according to the Approval Holder, rejected by the Director because the waterbodies are frozen in winter and the volume of water in the water bodies relative to the amount of discharge would not provide sufficient dilution. The Approval Holder provided information on the option of trucking the wastewater to another facility. It calculated the trucking would cost approximately \$175,000 daily, and it was having difficulty in retaining the services of enough trucks to haul the treated wastewater.

[121] As a result of the current circumstances, the number of viable options that are available to address the request for a Stay are extremely limited. The Board cannot legally require the WID to accept the discharge of the Approval Holder's treated wastewater, even temporarily. There is insufficient information and likely insufficient time, in the short term, to make use of the Eagle Lake and recycling options. Irrigation cannot be used until weather and soil conditions permit. This leaves the option of using the pipeline to the Bow River and trucking the treated wastewater to another facility.

[122] The Siksika Nation's request for a Stay of the Amending Approval to prevent the discharge of the Town of Strathmore's treated wastewater into the Bow River upstream of their raw water supply is based on the concerns they raised regarding the assumptions made on the rate of mixing of the treated wastewater with the entire Bow River flow. The Siksika Nation believed that full mixing would not be achieved prior to reaching the water intake of the Ayoungman Plant. The effects on the Siksika Nation and their use of the Bow River water as a potable water source must be balanced with the broader public interest determination that severe environmental consequences of imposing a total stay on the Approval Holder might lead to an overflow and failure of its treated wastewater storage lagoons, given the absence of other viable, immediate disposal options.

[123] It is the public interest that is important in these appeals and it is the public interest that brings the greatest concern to the Board regarding the Approval Holder's actions.

[124] The Approval Holder has placed the Board in a very difficult position. It has forced the Board to weigh the adverse impacts that may occur as a result of the Approval Holder's inactions and lack of a risk assessment against the possible effect on the Appellants' drinking water supply should the Board decide to allow the Approval Holder to proceed under the Amending Approval.

[125] The Approval Holder was well aware in December 2006 that its lagoons would not be able to hold all of the treated wastewater until spring when it could use its irrigation system. The Approval Holder took no steps to alleviate the build up in the lagoons. It was at that time, if not earlier, that it should have sought out and implemented alternative disposal methods. There was no guarantee at that time that all of the work would have been completed as required as a prerequisite under the Amending Approval.

[126] The public interest in these circumstances warrants granting the Stay request. However, the public interest also requires the Board to consider the potential impact of granting a full Stay. If the lagoons are allowed to overflow, there certainly can be serious environmental and health consequences.

[127] The Board was faced with two undesirable extremes: denying the Stay, thereby allowing the Approval Holder to discharge treated wastewater from their storage lagoons at full pipeline capacity and by that discharge, imposing an undetermined but fully plausible risk to the drinking water sources of the Siksika; or granting the Stay in its entirety, likely precipitating a treated wastewater storage crisis for the Town of Strathmore that could lead to serious environmental consequences. Under the circumstances, the Board determined that the balance of convenience and the public interest require that a partial Stay, with conditions, be granted. These conditions are fundamentally precautionary in nature to ensure that the members of Siksika are not exposed to an undetermined health risk resulting from the consumption of their community drinking water.

[128] The Board provided the Parties with a number of opportunities to propose measures that might be mutually agreeable to serve as an interim solution. The final proposal

offered to the Board was having the Approval Holder use the pipeline intermittently for treated wastewater discharge, with notification to the Siksika Nation so that it could shut down its potable water intake and operate from storage. The Board notes that the Parties' own experts on water treatment did not support this proposal when directly asked for their opinions about its viability.³⁴

[129] Because the Board is faced with balancing the necessity to discharge the treated wastewater with the possible effects to the Siksika Nation's potable water, at the Hearing the Board asked the Parties if it would be possible to have the Approval Holder provide bottled water to the Siksika Nation as part of the Stay requirements. Although the Board does not expect there to be a certain danger to health during the time it will take for the Board to hear the appeals and issue its Report and Recommendations, the Siksika Nation presented a plausible argument that a substantial health risk may exist, and without credible evidence provided by the Town to demonstrate some reasonable bounds on these plausible health risks, the Board has to apply a precautionary approach to the issue. Therefore, as one of the Stay conditions, the Town will be required to provide 6,000 litres of bottled water per day (based on 2 litres per day for 3,000 residents) to the Siksika Nation to be used as drinking water for their citizens. The Board

³⁴ See: Hearing Transcript at pages 479-481:

“DR. HRUDEY: Do you have concerns about shutting the plant down, starting the plant up, shutting down --

[Mr. Marr]: Yeah, I do. I actually have huge issues with shutting it down. I really do, but I mean, I don't know -- you know, we're kind of caught between a rock and a hard place. You have to understand I haven't studied everything completely in that plant. I mean, we've had enough time to go in and look at things and express concerns, but I'm not -- I haven't combed through the design documents or anything like that. So I mean, it's difficult, and that's maybe why I'm coming from a very conservative nature in the end.

And it's also for the Town's protection initially too, you know, in one respect. I mean, you don't want to end up with simultaneous operational events that are non-related, and then it ends up just being a terrible thing to try to explain.

So if I was recommending it, initially that's what I was kind of coming from in the end, was to shut it down completely for that period, at least initially.

DR. HRUDEY: Okay. Well, I think we've gone into it far enough to identify some ideas that I would, you know, ask you -- I mean, I'm assuming you're not all going to be here tomorrow -- to sleep on it and please communicate back to your respective counsel any other ideas you may have that should be taken into account with that option.

Now, if I could turn to the biologists, it seems to me that the -- there's really nothing --

MR. VAN NES: Mr. Chairman, I believe Dr. Stanley had something else to add.

DR. HRUDEY: Oh, sorry.

DR. STANLEY: Just my -- just I guess one quick thing on that. I guess when you mention the thing of shutting the plant up and down, I mean, I'd have concern with that.

DR. HRUDEY: Yes, I saw you nodding your head yes.”

notes that the Town and the Siksika Nation made a number of suggestions as to how to address the Stay, but the evidence of the witnesses from both sides indicated that it was unlikely that these suggestions were viable. When the Board presented the Parties with the suggestion of using bottled water to address this concern, none of the Parties objected to the idea, subject to concerns about the logistics of delivering and distributing the bottles.³⁵

5. Decision

[130] The Board grants a partial Stay of the Amending Approval, subject to certain conditions. The conditions, to remain in effect until the Ministerial Order arising from the hearing of the appeals is issued, are:

1. The Town of Strathmore shall not discharge treated wastewater to the Bow River at a rate greater than 4,000 m³/d. Any need by the Town of Strathmore to dispose of treated wastewater above that discharge rate shall be dealt with by trucking the excess treated wastewater to another disposal facility, such as the City of Calgary, subject to the authorization of the Director for Alberta Environment. No discharge of treated

³⁵ At the Hearing, the Board asked the Parties to provide their comments and suggestions to the possibility of having bottled available to those members of the Siksika Nation that use water from the Ayoungman Plant. The Approval Holder was satisfied with this option. See: Hearing Transcript at pages 652 to 654:

“MR. SHAWA: I just want to make sure I understand. I was under the impression the evidence we heard earlier in the hearing that the population of the reservation in its entirety was about 3,500 people. And I understood, Mr. Chairman, your question to Mr. Jeerakathil to be how many people would be on the western portion, those would be the people we’d be looking at supplying water to. So I’m just a little surprised by the figure of 3,000 people.

DR. HRUDEY: Mr. Jeerakathil.

MR. JEERAKATHIL: Well, it’s difficult to determine exactly how many people are on the reserve at any given time. There is the weekend population increases, and there are 433 homes. But on average, there tend to be more people living in the homes on the reserve than in, say Strathmore. So we assumed, you know, about six people for that. But then the Youngman plant also serves all of the buildings, all the government buildings and health centres and water at the schools and things. And so there’s the question of during the day when they’re there. They might be from other parts of the reserve. Then they have to be served water or bottled water of some kind, so we were a bit conservative in the number that’s fair.

DR. HRUDEY: So just to capture that, then, you had approximately an estimate of about 2500 based on the homes, and then another 500 to allow for common usage?

MR. JEERAKATHIL: That’s right, yeah.

DR. HRUDEY: Does that help?

MR. SHAWA: Well, I understand the figure. The difficulty will, of course, be providing a large enough volume over a long enough period of time. Obviously what we would want to try to do is make arrangements for distribution to be contracted out to someone out there, but we still have the problem of finding trucking and so on. So I just don’t know how much this translates to in terms of an actual size of sort of daily delivery. That’s the only issue we have. So we’re certainly not opposed to the idea, but we just need to be able to make it work logistically. That’s all.”

wastewater shall be permitted until the Town of Strathmore receives written confirmation from the Director for Alberta Environment that all of the preconditions included in the Amending Approval have been met. When it is discharging treated wastewater from its pipeline to the Bow River, the Town of Strathmore shall measure the total daily volume of treated wastewater being discharged and this information shall be provided on a weekly basis to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.

2. The Town of Strathmore shall conduct the monitoring prescribed in Table 1. This monitoring shall commence one week prior to any discharge of treated wastewater into the Bow River and shall continue until the stay is lifted. The monitoring prior to the discharge is only at the locations downstream of the treated wastewater pipeline outfall as noted in Table 1. Any monitoring on Siksika land is only required upon receiving the written consent from the Siksika Nation granting access to the land. The monitoring information shall be provided on a monthly basis to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.
3. The Town of Strathmore shall conduct a continuous injection dye dispersion study to determine the actual dilution of the continuous discharge from the treated wastewater pipeline outfall to the point in the Bow River adjacent to the infiltration wells of the Ayoungman Plant when ice and river flow conditions will allow for a meaningful study to be performed and worker safety is not placed in jeopardy. This requirement must address the concern raised about the lack of evidence on mixing characteristics of a discharge to the Bow River in this region under conditions of minimum mixing behaviour. Any work required on Siksika land is only required upon receiving the written consent from the Siksika Nation granting access to the land. The results, analysis, and full interpretation of the study shall be prepared by a professional engineer qualified to interpret river mixing studies and shall be provided to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.
4. The Town of Strathmore shall conduct sampling and analysis of the 350 individual wells on the Siksika land as prescribed in Table 2. Any work required on Siksika land is only required upon receiving written consent from the Siksika Nation granting access to the land and the verbal consent of individual residents controlling access to each individual well. The results of the sampling and analysis shall be provided on a monthly basis to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.
5. The Town of Strathmore shall deliver bottled water for consumption at the rate of 2 L/d per person for a population of 3,000 to the Siksika Nation's administration offices. Distribution of bottled water to the Siksika Nation must be provided in bottle sizes suitable for individual pickup within the community (i.e. 1 to 2 L bottles). Arrangements for storage and distribution within the Siksika Nation shall be made to the satisfaction of the Director for Alberta Environment, following discussions between the Town of Strathmore and the Siksika Nation. The provision of drinking water is intended for those residents of the Siksika lands currently being supplied by the Ayoungman Plant or individual water wells adjacent to the Bow River. The Ayoungman Plant is expected to

continue to operate and provide for normal household water usage. The requirement to provide bottled water is only required upon receiving written consent from the Siksika Nation granting access to deliver the bottled water. The requirement to provide bottled water only applies when the Town of Strathmore is discharging treated wastewater from its pipeline to the Bow River and continues for three days after the discharge stops.

6. The Town of Strathmore shall conduct an evaluation of the physical ice characteristics associated with the treated wastewater discharge at the pipeline outfall by means of collecting photographic evidence at least once per week during the discharge period. This information shall be provided to the Director for Alberta Environment, the Siksika Nation, and the Siksika Elders.
7. The Town of Strathmore shall immediately begin preparations to allow for the disposal of the treated wastewater by irrigation, and shall immediately begin using disposal of the treated wastewater by irrigation as soon as authorized to do so by the Director for Alberta Environment and as soon as weather conditions permit. The Town of Strathmore shall inform the Siksika Nation and the Siksika Elders when it begins irrigation.
8. The Town of Strathmore shall stop the discharge of treated wastewater via the pipeline into the Bow River as soon as the Town is able to implement irrigation disposal or any other alternative disposal method approved by the Director for Alberta Environment.
9. All the items specified in the conditions above shall be paid for by the Town of Strathmore.
10. Where any of the parties, including the Director for Alberta Environment, are unable to meet these conditions, any of the parties are free to apply to the Board for further direction respecting this stay.

Table 1
Monitoring Program for Strathmore's Treated Wastewater,
the Bow River, and the Ayoungman Water Treatment Plant

Location ³⁶	Parameters ³⁷	Frequency ³⁸
Treated Wastewater	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Suspended Solids, Total Dissolved Solids, Electrical Conductivity, C-BOD5, Turbidity, and Colour.	Daily (Starting with first pipeline discharge.)
	Semi-Permeable Membrane Sampling Device for Trace Organics (Pesticides and Pharmaceuticals). ³⁹	Weekly Integrated Sample
Bow River upstream of Secondary Channel	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Suspended Solids, Total Dissolved Solids, Electrical Conductivity, C-BOD5, Turbidity, and Colour.	Daily (Starting one week before any pipeline discharge.)
Bow River downstream of Secondary Channel	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Suspended Solids, Total Dissolved Solids, Electrical Conductivity, C-BOD5, Turbidity, and Colour.	Daily (Starting with first pipeline discharge.)
Bow River within 1m of shoreline at the location of Infiltration Wells for the Ayoungman Water Treatment Plant.	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Suspended Solids, Total Dissolved Solids, Electrical Conductivity, C-BOD5, Turbidity, and Colour.	Daily (Starting one week before any pipeline discharge.)
Raw Water from the Infiltration Wells for the Ayoungman Water Treatment Plant.	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Total Kjeldahl-N, Nitrate-Nitrite-N, Total Dissolved Solids, Electrical Conductivity, Turbidity, and Colour.	Daily (Starting one week before any pipeline discharge.)
	Semi-Permeable Membrane Sampling Device For Trace Organics (Pesticides And Pharmaceuticals). ⁴⁰	Weekly Integrated Sample
Treated Water, after disinfection from the Infiltration Wells for the Ayoungman Water Treatment Plant.	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Total-P, Dissolved-P, Ammonia-N, Nitrate-Nitrite-N, Total Dissolved Solids, Electrical Conductivity, Turbidity, Colour, and Chlorine Residual.	Daily (Starting one week before any pipeline discharge.)

³⁶ The sampling locations are to be approved by the Director for Alberta Environment.

³⁷ Additional parameters may be specified by the Director for Alberta Environment.

³⁸ Additional frequency may be specified by the Director for Alberta Environment.

³⁹ Subject to feasibility of adopting the U.S. EPA method described by Dr. Roy Crowther and with analyses for pesticides and pharmaceuticals to be specified by the Director for Alberta Environment.

⁴⁰ Subject to feasibility of adopting the U.S. EPA method described by Dr. Roy Crowther and with analyses for pesticides and pharmaceuticals to be specified by the Director for Alberta Environment.

Table 2
Monitoring Program for Individual Wells

Location ⁴¹	Parameters ⁴²	Frequency ⁴³
Up to 350 Individual Wells identified by the Siksika Nation.	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Nitrate-Nitrite-N, Total Dissolved Solids, Electrical Conductivity, Turbidity, and Colour.	Once ⁴⁴ (Before pipeline discharge commences.)
	<i>E. Coli</i> , Fecal Coliforms, Total Coliforms, Nitrate-Nitrite-N, Total Dissolved Solids, Electrical Conductivity, Turbidity, and Colour.	Monthly (After initial sample.)

[131] At this stage of the Hearing process, the Board has not heard closing arguments so the evidence is not complete and the Board cannot make a final determination of the substantive arguments provided by the Parties. In this particular case, and because the Approval Holder’s use of the pipeline and outfall to discharge treated wastewater upstream of the Siksika Nation could plausibly affect the health of the Appellants, the Board considered it necessary to take reasonable precautionary steps to prevent the Appellants from being affected in the time it takes for the Board to issue its recommendations and the Minister to issue his decision. The Board recommended that bottled water be provided to the residents of Siksika Nation as a strictly precautionary measure. No inference should be made on whether the Board believes there will be an actual impact on the members of the Siksika Nation because the Board was not provided with sufficient evidence in the Stay submissions to make that determination. The Board’s determination will be part of its recommendations to the Minister on the substantive issues under appeal.

[132] It is apparent to the Board that Strathmore’s relationship with the Siksika Nation and the Siksika Elders has been seriously damaged by the manner in which the current situation has been reached. There is potential for that relationship to get substantially worse, to the

⁴¹ The sampling locations are to be approved by the Director for Alberta Environment.

⁴² Additional parameters may be specified by the Director.

⁴³ Additional frequency may be specified by the Director.

⁴⁴ The Town of Strathmore must demonstrate to the satisfaction of the Director for Alberta Environment that it has undertaken a reasonable effort to complete the sampling of all individual wells, but the Director for Alberta Environment may authorize the Town of Strathmore to discharge treated wastewater in accordance with the conditions of this stay if it demonstrates that it has not been possible to complete the initial sampling from every individual well.

detriment of both of these neighbouring communities. The Board strongly encourages the Town of Strathmore to recognize the need and the opportunity to begin rebuilding a positive relationship with its neighbours. At the same time, the Board strongly encourages the Siksika Nation to provide the Town of Strathmore with the access that is required to carry out the requirements of the Stay, which the Board hopes will be of benefit to all of the Parties. As was eloquently expressed by the Siksika Nation Elders at the Hearing; water is essential for life and the preservation and wise use of our water resources is important for all parties, and indeed for all Albertans.

IV. CONCLUSION

[133] The Board grants the Stay request of the Siksika Nation with specific conditions. The Stay shall remain in place until the Minister issues a Ministerial Order with respect to the appeals.

Dated on May 18, 2007, at Edmonton, Alberta.

“original signed by”

Steve E. Hrudey, FRSC, PEng
Chair

“original signed by”

Ron V. Peiluck
Vice-Chair

“original signed by”

Al Schulz
Board Member