

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Mediation Meetings – March 17, 2006 and November 21, 2006

Date of Discontinuance of Proceedings – June 19, 2007

IN THE MATTER OF sections 91, 92 and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF an appeal filed by Wayne Sommerstad with respect to an Enforcement Order issued on January 24, 2006, under the *Water Act* to Wayne Sommerstad by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Sommerstad v. Director, Southern Region, Regional Services, Alberta Environment* (19 June 2007), Appeal No. 05-071-DOP (A.E.A.B.).

I. BACKGROUND

[1] On January 24, 2006, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued an Enforcement Order (the “Order”) to Mr. Wayne Sommerstad for an alleged contravention of section 36(1) of the *Water Act*, R.S.A. 2000, c. W-3, for the construction of a dam and a culvert and the diversion of water (the “Works”) on Mr. Sommerstad’s land in NW 1-20-2-W5M in the Municipal District of Foothills (the “Municipal District”) near Okotoks, Alberta.

[2] On February 1, 2006, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Wayne Sommerstad (the “Appellant”) appealing the Order and requesting a Stay.

[3] On February 2, 2006, the Board wrote to the Appellant and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal and Stay request. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal and to provide comments with respect to the Stay request. The Parties were asked to provide available dates for a mediation meeting, preliminary meeting, or hearing. The Record was provided on February 23, 2006, and a copy was provided to the Appellant on February 28, 2006.

[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 February 10, 2006, the Director notified the Board that he was unable to consent to a Stay of the Order, because he continued to have concerns for the downstream landowners. On February 10, 2006, the Board asked the Appellant to provide reasons as to why a Stay should be granted.¹ The Appellant provided his submission on February 16, 2006, and the

¹ The Appellant was asked to respond to the following questions:
“1. What are the serious concerns of Mr. Sommerstad that should be heard by the Board?
2. Would Mr. Sommerstad suffer irreparable harm if the Stay is refused?”

Director submitted his response on February 24, 2006. The Appellant's rebuttal submission was received February 28, 2006. On March 3, 2006, the Board notified the Parties that it was denying the Stay.²

[6] In consultation with the Parties, the Board held a mediation meeting on March 17, 2006.³ Following detailed discussions at and after the mediation meeting, the mediation meeting was reconvened on November 21, 2006 for further deliberations. Discussions continued after the mediation meeting between the Appellant and the Director, but no resolution was reached by March 29, 2007, and the Board proceeded to schedule a hearing.

[7] In consultation with the Parties, the Board scheduled the Hearing for June 20, 2007, in Calgary, Alberta.

[8] On May 25, 2007, the Director notified the Board that he was still attempting to resolve the Order.

[9] On June 6, 2007, the Director advised the Board that he reached an agreement with the Appellant regarding the Order. As a result, the Director explained he was withdrawing the Order and that the Appellant indicated his intent of withdrawing the appeal.

[10] On June 12, 2007, the Board received a letter from the Director confirming the Order had been cancelled. On June 13, 2007, the Board received a letter from the Appellant advising he has withdrawn his appeal.

3. Would Mr. Sommerstad suffer greater harm if the Stay was refused pending a decision of the Board, than those that may be affected by his activities?

4. Would the overall public interest warrant a Stay?"

² See: Stay Decision: *Sommerstad v. Director, Southern Region, Regional Services, Alberta Environment* (6 March 2007), Appeal No. 05-071-ID1 (A.E.A.B.).

³ The Board conducted a mediation meeting pursuant to section 11 of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93, which provides:

"Where the Board has determined the parties to the appeal, the Board may, prior to conducting the hearing of the appeal, on its own initiative or at the request of any of the parties, convene a meeting of the parties and any other interested persons the Board considers should attend, for the purpose of ... mediating a resolution of the subject matter of the notice of appeal"

II. DECISION

[11] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and based on the withdrawal of the appeal by the Appellant on June 13, 2007, the Board hereby discontinues its proceedings in Appeal No. 05-071 and closes its file.

Dated on June 19, 2007, at Edmonton, Alberta.

“original signed by”

Steve E. Hrudey, FRSC, PEng
Chair