

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Report and Recommendations

Dates of Mediation Meetings – June 27, 2006 and November 29, 2007  
Date of Report and Recommendations – December 11, 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** appeals filed by Terry and Liviana Backstrom, Gerard Kulcsar and Pearl Blain with respect to *Water Act* Approval No. 00209123-00-00, Licence No. 00215182-00-00 and Preliminary Certificate No. 0022592-00-00 issued to Gerard Kulcsar by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Backstrom et al v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Gerard Kulcsar* (11 December 2007), Appeal Nos. 06-001 – 06-009-R (A.E.A.B.).

**MEDIATION MEETING BEFORE:**

Alex MacWilliam, Board Member

**APPEARANCES:**

**Appellants:**

Terry and Liviana Backstrom represented by Clint Docken, Docken and Company; Pearl Blain; and Gerard Kulscar represented by Michael Jamison.

**Director:**

David Ardell, Director, Southern Region, Regional Services, Alberta Environment; Randy Poon, Alberta Environment; and Eric Beveridge, Alberta Environment, represented by Charlene Graham, Alberta Justice.

**Approval Holder:**

Gerard Kulscar, represented by Michael Jamison.

**Other Participants:**

David Cooper, Matrix Solutions Inc.; Darren Tomecek, Westerra Environmental Management; Sharon Manning; Merle Long; and Gerard Kulscar Jr.;

**Board Staff:**

Marian Fluker, Associate Counsel

## **EXECUTIVE SUMMARY**

Alberta Environment issued a Licence, a Preliminary Certificate and an Approval to Gerard Kulcsar for the management and construction of a fish pond, the removal of peat in a water body, and the installation of a V-notch weir on an unnamed tributary of the Little Red Deer River, near Didsbury, Alberta.

The Board received Notices of Appeal from Ms. Pearl Blain, Mr. Gerard Kulcsar and Mr. Terry and Ms. Liviana Backstrom.

The Board held Mediation Meetings on June 27, 2006 and November 29, 2007, following which an agreement was reached by the participants. The Board recommends that the Minister of Environment accept the agreement.

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## **I. BACKGROUND**

[1] On April 5, 2006, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Licence No. 00215182-00-00 (the “Licence”), Approval No. 00209123-00-00 (the “Approval”), and Preliminary Certificate No. 0022592-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c. W-3, to Mr. Gerard Kulcsar (the “Licence Holder”). The Licence authorizes the diversion of 2,700 cubic metres of water annually from the source of water for the management of a fish pond; the Certificate authorizes the diversion of up to 5,175 cubic metres of water annually from Springs tributary to the Little Red Deer River in SW 06-031-04-W5 with priority no. 2004-05-20-001; and the Approval authorizes the construction of a pond (approximately 3.5 ha in size) by removing peat in a water body (peat type wetland) and the installation of a V-notch weir on an unnamed tributary of the Little Red Deer River, all near Didsbury, Alberta.

[2] On April 12 and 13, 2006, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Ms. Pearl Blain, Mr. Gerard Kulcsar, and Mr. Terry and Ms. Liviana Backstom (the “Appellants”) appealing the Licence, Approval and Certificate.<sup>1</sup>

[3] On April 13 and 18, 2006, the Board wrote to the Appellants, the Licence Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Licence 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 Participants provide available dates for a mediation meeting, preliminary meeting or hearing.

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

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<sup>1</sup> Mr. Gerard Kulcsar, identified as the Licence Holder in this Report and Recommendations, also appealed the decisions of Alberta Environment.

[5] On May 10, 2006, in consultation with the Participants, the Board scheduled the mediation meeting for June 27, 2006, to be held in Calgary, Alberta. On May 11, 2006, the Board received a copy of the Record from the Director, and on May 18, 2006, forwarded a copy to the Appellants and the Licence Holder.

## **II. MEDIATION MEETING**

[6] Pursuant to section 11 of the Environmental Appeal Board Regulations, Alta. Reg. 114/93, the Board conducted a mediation meeting in Calgary, Alberta, on June 27, 2006, with Mr. Alex MacWilliam as the presiding Board Member (the "Mediator").

[7] In conducting the mediation meeting, the Mediator reviewed the appeals and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants' Agreement to Mediate. All Participants signed the Agreement.

[8] Following productive and detailed discussions, the Participants agreed to continue their discussions, and on October 25, 2007, in consultation with the Participants, the Board scheduled a second mediation meeting, for November 29, 2007, in Calgary, Alberta to assist the Participants in finalizing an agreement.

[9] Following productive and detailed discussions, a resolution evolved at the November 29, 2007 mediation meeting and is attached as pages 4, 5, 6 and 7.

## **III. RECOMMENDATIONS**

[10] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.-E-12 (the "Act"), the Board recommends that the Minister of Environment order that *Water Act* Licence No. 00215182-00-00, *Water Act* Approval No. 00209123-00-00, and *Water Act* Preliminary Certificate No. 0022592-00-00 be varied.

[11] Further, with respect to section 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following participants:

- Mr. Michael Jamison, on behalf of Mr. Gerard Kulcsar;

- Mr. Clint Docken, Docken and Company, on behalf of Mr. Terry and Ms. Liviana Backstrom;
- Ms. Pearl Blain;
- Ms. Sharon Manning;
- Ms. Charlene Graham, Alberta Justice, on behalf of Mr. David Ardell, Director, Southern Region, Regional Services, Alberta Environment.

Dated on December 11, 2007, at Edmonton, Alberta.

*“original signed by”*

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Dr. Steve E. Hrudehy, FRSC, P.Eng  
Chair

**IV. RESOLUTION**

**RESOLUTION  
ENVIRONMENTAL APPEALS BOARD  
EAB FILE NOS. 06-001 to 06-009**

In the matter of the mediation of the appeals of the decision of the Director, Southern Region, Regional Services, Alberta Environment, to issue Approval No. 00209123-00-00, Licence No. 00215182-00-00 and Preliminary Certificate No. 00225952-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, to Gerard Kulcsar. The Approval authorizes the construction of a pond by the removal of peat in a water body and the installation of a V-notch weir on an unnamed tributary of the Little Red Deer River. The Licence authorizes the operation of a works and diversion of up to 2,700 cubic metres of water annually from the source of water for the purpose of management of fish and, the Preliminary Certificate authorizes the diversion of up to 5,175 cubic metres of water annually from Springs tributary to the Little Red Deer River in SW 06-031-04-W5M near Didsbury, Alberta.

All participants to the appeals have agreed to the following terms and conditions:

1. THAT the participants agree to recommend to the Environmental Appeals Board (the "Board") that the following recommendations be made to vary Licence No. 00215182-00-00 as follows:
  - i. Delete conditions 4.0 (c)(ii), (iv), and (v);
  - ii. Delete condition 4.0 (e) and replace it with the following:

"(e) measure the water levels in the Liviana and Terry Backstrom, Kathleen May, Stu and Judith Shearer, Fred and Doris Oyen, and Pearl Blain private water supply wells in May and September for the first year and thereafter only if there are complaints."
  - iii. Delete condition 4.1 and replace it with the following:

"The Licensee shall record and retain the following information and shall provide this information to:

    - The Director
    - Liviana and Terry Backstrom
    - Kathleen May
    - Stu and Judith Shearer
    - Fred and Doris Oyen
    - Pearl Blain

within 30 days following completion of the measurements taken as required in condition 4.0(e) and any other information requested by the Director."
  - iv. Delete conditions 4.2 (c) and (d).
  - v. Add the following after condition 4.2:
    - 4.2.1 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity, the Licensee shall obtain water samples at the on-site groundwater well for which a chemical analyses shall be performed that reports the information as specified in condition 4.2.
    - 4.2.2 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity and two times in the first year, and thereafter, only if there are complaints, the Licensee shall obtain water samples at the Liviana and Terry Backstrom wells for which a chemical analyses shall be performed that reports the information as specified in condition 4.2."
2. THAT the participants agree to recommend to the Board that the following recommendations be made to vary Approval No. 00209123-00-00 as follows:
  - i. Delete conditions 20(b)(ii), (iv), and (v);
  - ii. Delete condition 20(d) and replace it with the following:

"(d) measure the water levels in the Liviana and Terry Backstrom, Kathleen May, Stu and Judith Shearer, Fred and Doris Oyen, and Pearl Blain private water supply wells in May and September for the first year and thereafter, only if there are complaints."

  
  
 B.P.B.

- iii. Delete condition 22 and replace it with the following:  
“The Approval Holder shall record and retain the following information and shall provide this information to:
- The Director
  - Liviana and Terry Backstrom
  - Kathleen May
  - Stu and Judith Shearer
  - Fred and Doris Oyen
  - Pearl Blain
- within 30 days following completion of the measurements taken as required in condition 20(d) and any other information requested by the Director.”
- iv. Delete conditions 23(c) and (d).
- v. Add the following after condition 23:
- “23.1 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity, the Approval Holder shall obtain water samples at the on-site groundwater well for which a chemical analyses shall be performed that reports the information as specified in condition 23.
- 23.2 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity and two times in the first year, and thereafter only if there are complaints, the approval holder shall obtain water samples at the Liviana and Terry Backstrom wells for which a chemical analyses shall be performed that reports the information as specified in condition 23.”
- vi. Add the following after condition 25:
- “CONSTRUCTION DESIGN AND REPORTING**
28. The berm shall be modified to include a 5 metre wide crest with minimum 4:1 side slopes on the upstream and downstream faces and a minimum 0.9 metre freeboard above the 100 year level. A centre keyway is to be constructed through the fill along that portion of the berm where the design high water level will be above original ground. This will entail excavating a trench a minimum of 1 metre wide through the fill material, below any peat material encountered within the berm and into the native soil at depth. The trench is to be backfilled using select clay material, free of any organic (i.e. peat) or other deleterious material. The select material shall be placed in 300 mm lifts and compacted under appropriate geotechnical placement conditions to a minimum of 95% of Standard Proctor maximum dry density. The berm construction, keyway installation, compaction activities shall be conducted under the direction and supervision of a qualified geotechnical engineering company.
29. Prior to commencing the modification work as stated in condition 28, the Approval Holder shall provide the Director and Liviana and Terry Backstrom and Pearl Blain and Sharon Manning with a detailed scope of work to be completed. The report shall be prepared by a professional geotechnical engineering firm.
30. Following completion of the modification work as stated in condition 28, the Approval Holder shall provide the Director and Liviana and Terry Backstrom and Pearl Blain and Sharon Manning with a detailed report of the work completed. The report shall be prepared by a professional geotechnical engineering firm.
31. Starting 3 years after the completion of the berm and continuing thereafter every three years for the life of the Approval, the Approval Holder shall have a professional civil or geotechnical engineer conduct a visual inspection of the stability of the berm, and the engineer shall prepare a report on his/her inspection and provide the report to the Director and Liviana and Terry Backstrom and Pearl Blain and Sharon Manning. The inspection of the berm shall be conducted between April 1 and June 30 of the specific year.”

*Handwritten signatures and initials:*  
A  
ML  
B B.P.B.

3. THAT the participants agree to recommend to the Board that the following recommendations be made to vary Preliminary Certificate No. 00225952-00-00 as follows:
  - i. Delete conditions 4.0 (c)(ii), (iv), and (v);
  - ii. Delete condition 4.0 (e) and replace it with the following:
 

“(e) measure the water levels in the Liviana and Terry Backstrom, Kathleen May, Stu and Judith Shearer, Fred and Doris Oyen, and Pearl Blain private water supply wells in May and September for the first year and thereafter, only if there are complaints.”
  - iii. Delete condition 4.1 and replace it with the following:
 

“The Licensee shall record and retain the following information and shall provide this information to:

    - The Director
    - Liviana and Terry Backstrom
    - Kathleen May
    - Stu and Judith Shearer
    - Fred and Doris Oyen
    - Pearl Blain

within 30 days following completion of the measurements taken as required in condition 4.0(e) and any other information requested by the Director.”
  - iv. Delete conditions 4.2 (c) and (d).
  - v. Add the following after condition 4.2:
 

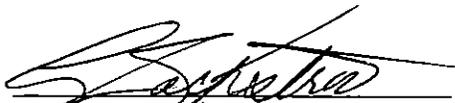
“4.2.1 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity, the Licensee shall obtain water samples at the on-site groundwater well for which a chemical analyses shall be performed that reports the information as specified in condition 4.2.

4.2.2 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity and two times in the first year, and thereafter only if there are complaints, the Licensee shall obtain water samples at the Liviana and Terry Backstrom wells for which a chemical analyses shall be performed that reports the information as specified in condition 4.2.”
4. THAT the Director shall provide Liviana and Terry Backstrom, Sharon Manning, and Pearl Blain, and Gerald Kulscar with a letter explaining the role of Alberta Environment with respect to the approval and licence process.
5. THAT in consideration of the foregoing, the appeals of Liviana and Terry Backstrom, Pearl Blain, and Gerald Kulscar are withdrawn.

RESOLUTION AGREED TO BY:

  
 Terry Backstrom  
 Represented by Clint Docken  
 Docken and Company

Date: November 29, 2007

  
 Liviana Backstrom  
 Represented by Clint Docken  
 Docken and Company

Date: November 29, 2007

  
 B.P.B.



Date: November 29, 2007

Pearl Blain  
represented by Sharon Manning



Date: November 29, 2007

Gerard Kulcsar  
represented by Michael Jamison



Date: November 29, 2007

David Ardell, Director, Southern Region  
Regional Services, Alberta Environment  
represented by Charlene Graham, Alberta Justice





ALBERTA  
ENVIRONMENT

*Office of the Minister  
MLA, Medicine Hat*

**Ministerial Order**  
**21 / 2007**

*Environmental Protection and Enhancement Act*

R.S.A. 2000, c. E-12;

*Water Act*, R.S.A. 2000, c. W-3;

**Order Respecting Environmental Appeals Board**  
**Appeal Nos. 06-001 – 06-009**

I, Rob Renner, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal Nos. 06-001 – 06-009.

Dated at the City of Edmonton, in the Province of Alberta, this 20 day of December, 2007.

Rob Renner  
Minister

## Appendix

### Order Respecting Environmental Appeals Board Appeal Nos. 06-001 – 06-009

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Approval No. 00209123-00-00 (the “Approval”), Licence No. 000215182-00-00 (the “Licence”) and Preliminary Certificate No. 00225952-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c. W-3, to Gerard Kulcsar (the “Licence Holder”), I, Mr. Rob Renner, Minister of Environment:

1. Order that the decision of the Director to issue the Licence, Approval and Certificate are confirmed subject to the following variations.
2. Order that the Licence be varied as follows:
  - i. Delete conditions 4.0 (c)(ii), (iv), and (v);
  - ii. Delete condition 4.0 (e) and replace it with the following:

“(e) measure the water levels in the Liviana and Terry Backstrom, Kathleen May, Stu and Judith Shearer, Fred and Doris Oyen, and Pearl Blain private water supply wells in May and September for the first year and thereafter only if there are complaints.”
  - iii. Delete condition 4.1 and replace it with the following:

“The Licensee shall record and retain the following information and shall provide this information to:

    - The Director
    - Liviana and Terry Backstrom
    - Kathleen May
    - Stu and Judith Shearer
    - Fred and Doris Oyen
    - Pearl Blain

within 30 days following completion of the measurements taken as required in condition 4.0(e) and any other information requested by the Director.”
  - iv. Delete conditions 4.2 (c) and (d).
  - v. Add the following after condition 4.2:

“4.2.1 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity, the Licensee shall obtain water samples at the on-site groundwater well for which a chemical analyses shall be performed that reports the information as specified in condition 4.2.

4.2.2 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity and two times in the first year, and thereafter, only if there are complaints, the Licensee shall obtain water samples at the Liviana and Terry Backstrom wells for which a chemical analyses shall be performed that reports the information as specified in condition 4.2.”

3. Order that the Approval be varied as follows:

- i. Delete conditions 20(b)(ii), (iv), and (v);
- ii. Delete condition 20(d) and replace it with the following:  
“(d) measure the water levels in the Liviana and Terry Backstrom, Kathleen May, Stu and Judith Shearer, Fred and Doris Oyen, and Pearl Blain private water supply wells in May and September for the first year and thereafter, only if there are complaints.”
- iii. Delete condition 22 and replace it with the following:  
“The Approval Holder shall record and retain the following information and shall provide this information to:
  - The Director
  - Liviana and Terry Backstrom
  - Kathleen May
  - Stu and Judith Shearer
  - Fred and Doris Oyen
  - Pearl Blainwithin 30 days following completion of the measurements taken as required in condition 20(d) and any other information requested by the Director.”
- iv. Delete conditions 23(c) and (d).
- v. Add the following after condition 23:  
“23.1 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity, the Approval Holder shall obtain water samples at the on-site groundwater well for which a chemical analyses shall be performed that reports the information as specified in condition 23.  
23.2 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity and two times in the first year, and thereafter only if there are complaints, the approval holder shall obtain water samples at the Liviana and Terry Backstrom wells for which a chemical analyses shall be performed that reports the information as specified in condition 23.”

vi. Add the following after condition 27:

**“CONSTRUCTION DESIGN AND REPORTING**

28. The berm shall be modified to include a 5 metre wide crest with minimum 4:1 side slopes on the upstream and downstream faces and a minimum 0.9 metre freeboard above the 100 year level. A centre keyway is to be constructed through the fill along that portion of the berm where the design high water level will be above original ground. This will entail excavating a trench a minimum of 1 metre wide through the fill material, below any peat material encountered within the berm and into the native soil at depth. The trench is to be backfilled using select clay material, free of any organic (i.e. peat) or other deleterious material. The select material shall be placed in 300 mm lifts and compacted under appropriate geotechnical placement conditions to a minimum of 95% of Standard Proctor maximum dry density. The berm construction, keyway installation, compaction activities shall be conducted under the direction and supervision of a qualified geotechnical engineering company.
29. Prior to commencing the modification work as stated in condition 28, the Approval Holder shall provide the Director and Liviana and Terry Backstrom and Pearl Blain and Sharon Manning with a detailed scope of work to be completed. The report shall be prepared by a professional geotechnical engineering firm.
30. Following completion of the modification work as stated in condition 28, the Approval Holder shall provide the Director and Liviana and Terry Backstrom and Pearl Blain and Sharon Manning with a detailed report of the work completed. The report shall be prepared by a professional geotechnical engineering firm.
31. Starting 3 years after the completion of the berm and continuing thereafter every three years for the life of the Approval, the Approval Holder shall have a professional civil or geotechnical engineer conduct a visual inspection of the stability of the berm, and the engineer shall prepare a report on his/her inspection and provide the report to the Director and Liviana and Terry Backstrom and Pearl Blain and Sharon Manning. The inspection of the berm shall be conducted between April 1 and June 30 of the specific year.”

4. Order that the Preliminary Certificate be varied by:

- i. Delete conditions 4.0 (c)(ii), (iv), and (v);

- ii. Delete condition 4.0 (e) and replace it with the following:  
“(e) measure the water levels in the Liviana and Terry Backstrom, Kathleen May, Stu and Judith Shearer, Fred and Doris Oyen, and Pearl Blain private water supply wells in May and September for the first year and thereafter, only if there are complaints.”
  
- iii. Delete condition 4.1 and replace it with the following:  
“The Licensee shall record and retain the following information and shall provide this information to:
  - The Director
  - Liviana and Terry Backstrom
  - Kathleen May
  - Stu and Judith Shearer
  - Fred and Doris Oyen
  - Pearl Blainwithin 30 days following completion of the measurements taken as required in condition 4.0(e) and any other information requested by the Director.”
  
- iv. Delete conditions 4.2 (c) and (d).
  
- v. Add the following after condition 4.2:
  - “4.2.1 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity, the Licensee shall obtain water samples at the on-site groundwater well for which a chemical analyses shall be performed that reports the information as specified in condition 4.2.
  - 4.2.2 Unless otherwise authorized in writing by the Director, prior to the commencement of the authorized activity and two times in the first year, and thereafter only if there are complaints, the Licensee shall obtain water samples at the Liviana and Terry Backstrom wells for which a chemical analyses shall be performed that reports the information as specified in condition 4.2.”