

ALBERTA  
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – October 3, 2008

**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 Leonard Chomistek and Big Bear Hills Inc. with respect to the June 18, 2008 decision by Alberta Environment to return to Mr. Chomistek his application under the *Water Act* for a water licence at NW-30-27-5-W5M, and three applications under the *Water Act* for temporary diversion licences NW-30-27-5-W5M, SW-31-27-5-W5M, and SE-30-27-5-W5M.

Cite as: *Chomistek and Big Bear Hills Inc. v. Southern Region, Environmental Management, Alberta Environment*, (3 October 2008), Appeal No. 08-009-DOP (A.E.A.B.).

## I. BACKGROUND

[1] On May 16, 2008, Mr. Leonard Chomistek, Big Bear Hills Inc., submitted to the Director, Southern Region, Environmental Management, Alberta Environment, an application under the *Water Act*, R.S.A. 2000, c. W-3, for the diversion of water in relation to Grand Valley Creek at NW-30-27-5-W5M; and three separate applications under the *Water Act* for a temporary diversion licence at NW-30-27-5-W5M, SW-31-27-5-W5M, and SE-30-27-5-W5M, in the Municipal District of Rocky View No. 44.

[2] On June 18, 2008, staff from the Director's office ("Alberta Environment") returned the applications to Mr. Chomistek advising that the applications were incomplete and lacked the necessary information, and as a result could not be processed.

[3] On July 18, 2008, the Environmental Appeals Board (the "Board"), received a Notice of Appeal from Mr. Leonard Chomistek and Big Bear Hills Inc. (the "Appellant") appealing the return of his applications by Alberta Environment.

[4] On July 23, 2008, the Board wrote to the Appellant and Alberta Environment (the "Participants") acknowledging receipt of the Notice of Appeal and notifying Alberta Environment of the appeal. The Board also requested Alberta Environment provide the Board with a copy of the records (the "Record") relating to this appeal and that the Participants provide available dates for a mediation meeting, a preliminary motions hearing or a hearing.

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

[6] On August 18, 2008, the Board received a letter dated August 15, 2008, and the Record from Alberta Environment. In their August 15, 2008 letter, Alberta Environment requested the Board dismiss the appeal for lack of jurisdiction. Alberta Environment stated:

"The decision being appealed is not one listed in section 115 of the *Water Act* as an appealable decision and the Board can only consider appeals of the specifically identified decisions in that section. At no time did a Designated Director under the *Water Act* make a decision on Big Bear Hills Inc./Leonard Chomistek's application. The only decision made was by technical staff that the application was incomplete."

[7] On August 29, 2008, further to Alberta Environment's letter, the Board wrote to the Participants stating:

"Mr. Chomistek is requested to provide the Board with a written submission on why, in his view, he should be entitled to appeal given that Ms. Keehn states that Alberta Environment's technical staff deemed the application incomplete, and that at no time did a designated Director under the *Water Act* make a decision on the application. Mr. Chomistek is requested to provide the Board with this submission by **September 29, 2008.**"

The Board also provided a copy of the Record to the Appellant.

[8] On September 26, 2008, the Board received a letter from the Appellant in relation to this appeal as well as two other appeals the Appellant had filed with the Board (EAB 08-002 and 08-003<sup>1</sup>). The Appellant's letter stated:

"The Parties, Big Bear Hills and Leonard Chomistek, acknowledge receipt of the letter dated September 24, 2008. The Parties will be focusing 100% on concluding the outstanding civil matter before the Court of Queen's Bench. That being said, the Parties thank the Board for their consideration and patience in regards to providing written submissions regarding these matters."

[9] On September 26, 2008, the Board responded to the Appellant by letter stating:

"It is the Board's understanding that Mr. Chomistek is withdrawing his appeal. The Board will issue a Discontinuance of Proceedings for appeals 08-002 and 08-003 in relation to his appeals of the Orders issued to Griffin Valley and will then close its file. If the Board's understanding is incorrect, Mr. Chomistek is to advise the Board by Monday, **September 29, 2008.**"

The Board notes that Mr. Chomistek also makes reference to appeal 08-009 in the subject line of his September 26, 2008 letter. Appeal 08-009 is in relation to Mr. Chomistek's water licence applications. The Board requests Mr. Chomistek advise if his September 26, 2008 is intended to withdraw appeal 08-009 as well, or if he intends on filing a written submission by **September 29, 2008** as requested in the Board's August 29, 2008 letter."

[10] On October 1, 2008, the Board received a telephone call from the Appellant confirming the withdrawal of Appeal No. 08-009.

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<sup>1</sup> *Chomistek and Big Bear Hills v. Director, Southern Region, Environmental Management, Alberta Environment*, re: *Griffin Valley Ranches Ltd.* (3 October 2008), Appeal Nos. 08-002 & 08-003-DOP (A.E.A.B.).

**II. DECISION**

[11] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based upon the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal No. 08-009 and closes its file.

Dated on October 3, 2008, at Edmonton, Alberta.

*“original signed by”*

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Dr. Steve E. Hrudehy, FRSC, PEng  
Chair