ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – November 19, 2009

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

-and-

IN THE MATTER OF appeals filed by Joan and Rod Dyrholm with respect to *Environmental Protection and Enhancement Act* Approval No. 19060-01-00 issued to the Resort Development Funding Corporation by the Director, Central Region, Environmental Management, Alberta Environment.

Cite as: *Dyrholm* v. *Director, Central Region, Environmental Management, Alberta Environment*, re: *Resort Development Funding Corporation* (19 November 2009), Appeal Nos. 09-002-003-D (A.E.A.B.).

BOARD PANEL:	Mr. Gordon Thompson, Panel Chair; Mr. Jim Barlishen, Board Member; and Dr. Dan Johnson, Board Member.
SUBMISSIONS BY:	
Appellants:	Ms. Joan Dyrholm and Mr. Rod Dyrholm.
Director:	Mr. Robert Pole, Director, Central Region, Environmental Management, Alberta Environment, represented by Mr. Andrew Bachelder, Alberta Justice.
Approval Holder:	Resort Development Funding Corporation, represented by Mr. Ryan Rodier, Osler Hoskin & Harcourt LLP.

EXECUTIVE SUMMARY

Alberta Environment issued an approval under the *Environmental Protection and Enhancement Act* to the Resort Development Funding Corporation. This approval renewed the previous approval authorizing the construction, operation, and reclamation of a waterworks system for the Gleniffer Lake Resort in Red Deer County, Alberta. The waterworks system provides potable water to the Resort.

The Environmental Appeals Board received Notices of Appeal from Ms. Joan and Mr. Rod Dyrholm appealing the approval.

The Resort Development Funding Corporation asked for the appeals to be dismissed on the grounds that the Dyrholms were not directly affected; the appeals were frivolous, vexatious and without merit; and they raised matters not properly before the Board. The Board received written submissions from the participants responding to this request.

The Dyrholms argued they were directly affected by this Approval because water flows onto their lands from the Resort causing flooding and property damages. However, the Approval under appeal only relates to the proper treatment and handling of potable water. None of the conditions in the Approval direct how the Resort's potable water is used or disposed. Further, the Dyrholms are not residents of the Resort and are not connected to the Resort's waterworks system in any way. Based on this, the Board concluded the Dyrholms were not directly affected by the Approval and their appeals were therefore dismissed.

The Board decided the appeals were not frivolous, vexatious, or without merit, because the Dyrholms had a genuine concern about water from the Resort flowing onto their lands. The Resort conceded this point.

The Board did not consider whether the appeals included issues that were not properly before the Board, because the Dyrholms are not directly affected and the appeals were dismissed.

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I. BACKGROUND

[1] On May 1, 2009, the Director, Central Region, Environmental Management, Alberta Environment (the "Director"), issued Approval No. 19060-01-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, ("EPEA"), to Resort Development Funding Corporation (the "Approval Holder") authorizing the construction, operation, and reclamation of a waterworks system for the Gleniffer Lake Resort (the "Resort") in Red Deer County, Alberta. The waterworks system supplies potable water to the Resort.

[2] On June 11, 2009, the Environmental Appeals Board (the "Board") received Notices of Appeal from Ms. Joan and Mr. Rod Dyrholm (the "Appellants") appealing the Approval.

[3] On June 12, 2009, the Board wrote to the Appellants, Approval Holder, and Director (collectively the "Participants") 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 record (the "Record") relating to the appeals, and that the Participants provide available dates for a mediation meeting, preliminary motions hearing, or hearing. The Record was provided on July 21, 2009, and copies were provided to the Participants on July 22, 2009.

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

[5] On June 29, 2009, the Approval Holder raised a motion to dismiss the appeals on the grounds that the Appellants are not directly affected, the Notices of Appeal raise issues that are not properly before the Board, and the appeals are frivolous, vexatious, and without merit.

[6] On June 30, 2009, the Board set a submission process to respond to the Approval Holder's motion. The Appellants requested an extension to allow them to seek legal counsel. On July 2, 2009, the Board granted the extension.

[7] Submissions were received from the Appellants on August 12, 2009, response submissions were received from the Approval Holder and the Director on August 26, 2009, and the Appellants provided their rebuttal submissions on September 9, 2009.

II. SUBMISSIONS

A. Appellants

[8] The Appellants explained the Approval is the second link in a chain of water mismanagement by the Approval Holder which ultimately leads to the disposal of excess water onto their land. The Appellants stated the Approval Holder should not be using their land as a drainage basin.

[9] The Appellants argued the Approval allows the Approval Holder to treat a large volume of water from Gleniffer Lake. The Appellants stated the large volume of water is a factor in the offsite flow to their land. The Appellants explained the importation of the water from Gleniffer Lake is the first link in the problem, and the second link in the chain occurs when the imported waster is treated, distributed throughout the Resort, and a portion of this water ends up on their land. The Appellants argued that any water that comes onto the Resort eventually has to be dealt with, and some of it ends up on their land, impacting the land and their life. The Appellants argued all of the links are interrelated thereby making them directly affected by the Approval.

[10] The Appellants stated the additional links in the "cumulative effects chain" are the wastewater system which is used to treat the water after usage, the irrigation system which irrigates effluent onto the golf course, and re-contouring of the Resort lands to facilitate drainage to the north, including man made ponds, ditching, pipelines, and the final link, an overflow pipe to their land.

[11] The Appellants understood that some raw water is imported from Gleniffer Lake to top up ponds on the golf course for aesthetic purposes and to dilute or supplement the volumes needed to irrigate the golf course. The Appellants argued these volumes could also add to the amount of water being discharged to the Appellants' lands.

[12] The Appellants submitted that, if the waterworks system did not exist, including the distribution of the water imported from Gleniffer Lake, the problems on their land would probably not exist, unless treated water was trucked to the Resort. The Appellants believed that, when the Approval Holder was initially given a licence to take water from Gleniffer Lake, no investigation was undertaken to determine if the Resort lands could handle the extra water, what would be the discharge route, and how would it impact adjacent lands. The Appellants submitted that if the water produced by the waterworks system was contained on the Resort lands, as the plans submitted for the original approval indicated, then the Appellants would not be adversely affected.

[13] In response to the argument that the appeals were frivolous, vexatious, and without merit, the Appellants stated they want to stop water from the Resort ending up on their land. The Appellants stated the Approval Holder needs to manage its entire water system on its own lands or apply for approval to send the water it cannot handle back to Gleniffer Lake.

[14] The Appellants stated they are concerned that the water diversion licence is based on a plan that was modified without the author's permission.[1] They also expressed concern about further expansion of the Resort.

[15] The Appellants argued they have a serious, genuine, and legitimate interest in the management of the water on the Resort given they own land adjacent to the Resort.

[16] The Appellants stated they have been affected because of the general loss of enjoyment of their land. They explained the continuous flow and steep banks of the ditch impede crossing to other parts of their land. The Appellants stated that prior to the development of the Resort, the ditch dried out in between rains and was not as wide or steep. The Appellants

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[1] See: Ms. Dyrholm's submission, dated August 10, 2009, at Tab 5. A note is handwritten on the document, Triwest Resorts Development, stating: "This document has been modified (by others) without the consent of the consultant Randall R. Gibson & Assoc. from it's [*sic*] intent as a 'Surface Treatment Plan' as part of a Golf Course Tender set of drawings – issued in July 1997 and cancelled in Aug. 1997." The note is signed by R. Gibson and

expressed concern about the health and safety of their tenant and their farm animals because of unknown chemicals that could be in the flow coming from the Resort's commercial activities. The Appellants expressed frustration at being unable to protect their property and not being notified when the Resort would be discharging onto their land.

[17] The Appellants stated their property has been damaged as a result of the water entering their lands, and they have incurred costs to repair their property and install sump pumps which were not needed prior to the construction of the golf course and the effluent pond. They explained they have been unable to farm a portion of their land because the area has been too wet. The Appellants stated they have incurred costs associated with retaining a hydrologist to help them understand their flooding problems and in meeting with Alberta Environment, Red Deer County, and other government officials and experts.

[18] The Appellants explained there is a potential opportunity to develop some or all of their lands, but with drainage and water handling issues caused by the Resort, this development potential is negatively impacted.

[19] The Appellants stated the excess water from the Resort flows onto their land for about 90 metres before it reaches the Dickson Drainage District ditch, and the Resort also has pumped water onto their land. The Appellants expressed concern that the ditch has not been upgraded to prevent flooding. They believe that if the berm extension on the north side of Pond E had been designed and constructed according to the engineer's plans, surface overflows would not occur between Pond E and Pond F. The Appellants stated the overflow has occurred, and it could result in the overflow of effluent onto their land. The Appellants added that growth of reeds in the ditch inhibits water flow, resulting in ponding and water flowing towards the house.

[20] The Appellants argued the waterworks system distributes water that is not naturally occurring throughout the Resort and this water ends up draining onto their land. Therefore, according to the Appellants, they are directly affected by the Approval.

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dated August 26, 2008.

[21] In closing, the Appellants argued they are impacted by the cumulative effect of: changes to the contour of the land and drainage on the Resort lands; large volumes of imported water from Gleniffer Lake; runoff from buildings and roads; irrigation of the golf course; low areas that are kept relatively full for the golfer's aesthetic enjoyment; and reed growth in the ditch that impedes water flow. The Appellants expressed concern that Alberta Environment grants approvals and licences without adequate studies or based on studies with known errors. The Appellants also expressed concern with subdivisions being granted development permits and changes of usage based on an urban plan that was criticized by Alberta Environment and the Appellants' hydrologist. The Appellants added the Dickson Drainage District allows the Approval Holder to drain runoff onto and through the Appellants' land.

B. Approval Holder

[22] The Approval Holder argued the Appellants failed to meet their onus of demonstrating they are directly affected by the Approval. The Approval Holder stated the Appellants' concerns relate to the discharge of water off the Resort lands and onto adjacent lands and potential contamination that may result. The Approval Holder stated these issues are regulated by other approvals from Alberta Environment, including a licence to divert water which regulates the discharge of water from the Resort to the Dickson Drainage District, and by Alberta Environment Wastewater Approval No. 19061-01-00 ("Wastewater Approval") which regulates the management of the wastewater. The Approval Holder clarified that the Approval relates solely to the supply, treatment, and distribution of potable water to residents of the Resort. The Approval Holder argued only the Resort residents are directly affected by the Approval, not the Appellants.

[23] The Approval Holder argued that, because the Appellants relied on a "cumulative effects chain" to establish they are directly affected, it demonstrates there is no direct connection between the Approval and the impacts the Appellants are using as a foundation for standing. The Approval Holder explained there is no direct connection between the Approval and the Appellants' concerns, because the discharge of water off the Resort is regulated by the diversion licence and concerns regarding contamination are regulated by the Wastewater Approval.

[24] The Approval Holder argued the Appellants cannot use other approvals as a basis for standing, even though the Approval, Wastewater Approval, and diversion licence relate to the same property and same Approval Holder. The Approval Holder noted that any changes to the terms and conditions in the Approval would not address the Appellants' concerns. The Approval Holder submitted that, even though the Appellants may have a genuine interest in the Resort's activities, it does not mean they are directly affected by the Approval.

[25] The Approval Holder identified concerns raised in the Notices of Appeal that are not properly before the Board, including: a land dispute between the Approval Holder and the Appellants that is currently before the Alberta Court of Queen's Bench; land use approvals that are within the jurisdiction of Red Deer County; and maintenance of the drainage ditch that is the responsibility of the Dickson Drainage District. The Approval Holder explained the capacity of the Resort's water treatment plant, adequacy of the berms and pond construction, irrigation of the Resort, and water diversion on the Resort are regulated by other approvals and licences.

[26] The Approval Holder stated the Appellants have appealed the Wastewater Approval, and now the Board is faced with four appeal proceedings that concern fundamentally the same issues. The Approval Holder submitted this would result in inefficiencies for the Board and all the Participants and may raise concerns of *res judicata*, mootness, or inconsistent Board decisions. The Approval Holder argued duplicative proceedings should be avoided since the Appellants are not directly affected by the Approval, and they will not be prejudiced by having these appeals dismissed as they can pursue their concerns in the context of the Wastewater Approval.

[27] The Approval Holder argued the appeals should be dismissed on the ground that they are frivolous, vexatious, or without merit, because many of the issues raised in the Notices of Appeal were sensationalized, included personal attacks on character, or were irrelevant to the Approval. The Approval Holder understood and appreciated the Appellants' concerns that the Resort may be impacting the Appellants' land.

C. Director

[28] The Director explained that any waterworks system being constructed or extended in a new development not served by an existing wastewater system authorized under EPEA must be approved by Alberta Environment. He stated wastewater generated by a waterworks system is dealt with through the Wastewater Approval, which has a separate approval process from a waterworks approval. The Director further explained that EPEA deals with quality of water and the *Water Act*, R.S.A. 2000, c. W-3, deals with water quantity, including timing, duration, and quantity of flow, management of storm water, and availability of water for down stream users. He stated licences and *Water Act* approvals are issued for storm water retention and usage of water from water sources.

[29] The Director confirmed the Approval is a renewal of an existing approval that provided for a waterworks system to supply the Resort with potable water.

[30] The Director stated he received letters from the Appellants expressing concern about the waterworks renewal application, but he concluded the Appellants were not directly affected by the renewal application because the issues raised were outside the scope of EPEA and the mandate of Alberta Environment, or were issues already raised in their Statements of Concern filed for the wastewater treatment system.

[31] The Director argued the only persons directly affected by the Approval are the residents of the Resort. The Director explained the Approval ensures the Resort residents are provided with safe water for drinking and personal use. The Director stated the terms and conditions in the Approval "…relate to potable water quality standards and reporting to ensure that the water is being properly treated."[2]

[32] The Director noted the Appellants are not residents of the Resort and they do not represent the Resort residents.

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[2] Director's submission, dated August 26, 2009, at paragraph 21.

[33] The Director argued the Appellants attempted to link the Approval with problems they are experiencing on their lands by claiming wastewater from the Resort has resulted in excess water flowing onto their lands. The Director reiterated that the Wastewater Approval is separate from the Approval. The Director argued the issue of excess water on the Appellants' lands does not meet the directly affected test set out by the Board, because the Approval deals with drinking water and personal use of water for the Resort residents.

[34] The Director argued there are too many intervening events for there to be an unbroken connection between the activities permitted under the Approval and the concerns expressed by the Appellants. The Director submitted that the impact claimed and the connection with the Approval must be reasonable and plausible. He argued the submissions from the Appellants are speculative and lack any real evidence to support the Appellants' claims.

[35] The Director noted the Appellants' concerns relate to the discharge of wastewater from the Resort onto the Appellants' lands. The Director explained the discharge of wastewater is regulated by a separate licence to divert water, not by the Approval. The Director stated the Appellants concerns will be heard in their appeals of the Wastewater Approval. The Director noted that any changes to the Approval will not address the concerns raised by the Appellants.

[36] The Director explained that each stage of the Resort's water usage is regulated separately with the Director issuing the appropriate approvals and licences to ensure the water is safe and environmental protection targets are met.

[37] The Director stated that Alberta Environment does not regulate the growth of the Resort; the Resort's growth is regulated by the applicable municipal government. The Director suggested the Appellants should take their concerns about the growth of the Resort to the municipality.

[38] The Director argued the Appellants' concerns regarding the drainage ditch is not a matter for the Board to consider because the responsibility and jurisdiction of the drainage ditch falls under the Dickson Drainage District.

[39] The Director submitted that, even though the Appellants have taken legal action, it does not mean the Appellants are directly affected for the purposes of these appeals.

[40] The Director concluded the Appellants are not directly affected because they cannot show the Approval will cause harm to them or their property and interests. He stated the Appellants may have legitimate concerns regarding drainage or discharge from the Resort, but these appeals are the wrong forum to move the Appellants' claims forward.

[41] The Director requested the appeals be dismissed for lack of standing.

D. Appellants' Rebuttal Submissions

[42] In their rebuttal submissions, the Appellants argued the impact should not focus only on the Resort residents. They argued the assessment of the environmental impact should be inclusive, not exclusive.

[43] The Appellants noted the Director conceded they may or may not have legitimate concerns regarding drainage or discharge of water from the Resort, but the Director still argued the impact is not related to the waterworks system. The Appellants argued the Approval also concerns neighbouring lands. The Appellants stated there are not too many intervening events, and there is a connection between the waterworks system and the impacts on their lands because the water distributed from the waterworks system eventually ends up on their lands. They explained the water gets used by the Resort residents, and then the water is collected, moved to a pond, and then pumped and piped to the Appellants' lands. The Appellants stated the water has to cross about 90 meters of their land before it reaches the Lateral A-6 drainage ditch of the Dickson Drainage District. The Appellants stated the water is not channeled to the Lateral A-6 drainage, so there is flooding on lands beyond the 90 metres.

[44] The Appellants stated the initial waterworks approval was for 800 recreational vehicle style seasonal units, but the occupancy has been changed from seasonal to year round with permanent housing. The Appellants argued the Resort should have been required to do studies on the effect of these changes, because these changes increase the amount of water distributed throughout the Resort and ultimately the water that flows to the Appellants' lands.

The Appellants noted these studies are required under the Approval, but the 5-year time frame to implement the studies is unacceptable.

[45] The Appellants stated the imported water in the waterworks system adds to an excess of water on the Resort lands that the Resort has to or wants to dispose of by discharging to the Appellants' lands. They explained the excess water was never part of the drainage equation before the Resort developed the last six stages, the golf course was developed, and the Resort constructed an overflow pipe to the Appellants' lands without first obtaining a water diversion licence. The Appellants stated the licence was based on applications and advertisements for different land.

[46] The Appellants argued the Approval needs to be amended so that none of the water produced by the Approval is eventually discharged to the Appellants' lands. They submitted this could be done by constructing dry gulches, extra storm water retention ponds, or re-routing the water back to the reservoir. The Appellants stated the Resort residents do not experience flooding or property damage. According to the Appellants, they have "…a substantial interest in the outcome of the appeal that surpasses the common interest to all residents who are affected by the Approval."[3]

[47] The Appellants stated that over the past 11 years, they have experienced repeated damage to and loss of enjoyment of their property due to the Resort's inability or unwillingness to contain excess water. The Appellants argued the Resort generates volumes of water under the Approval, some of which is discharged onto the Appellants' lands on a regular basis.

[48] The Appellants argued a dismissal of these appeals would prejudice their appeals of the Wastewater Approval.

[49] The Appellants argued the Approval, diversion licence, and Wastewater Approval are dependent on each other in order to function, and because the Approval is included as part of the overall water system, the Appellants are directly affected.

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[3] Rod Dyrholm's submission, dated September 9. 2009, at page 3.

[50] The Appellants explained the decision to have the waterworks Approval and the Wastewater Approval renewals advertised separately, resulting in separate Statements of Concern, was the decision of the Director. The Appellants argued their appeals should not be prejudiced by the Director's decision to present the approval renewals separately to the public.

III. ANALYSIS

A. Directly Affected

[51] The Board has discussed the issue of directly affected in numerous decisions. The Board received guidance on the matter of directly affected from the Court of Queen's Bench in *Court* v. *Director, Bow Region, Regional Services, Alberta Environment* (2003), 1 C.E.L.R. (3d) 134, 2 Admin L.R. (4d) 71 (Alta. Q. B.) ("*Court*").

[52] In the *Court* decision, Justice McIntyre summarized the following principles regarding standing before the Board.

> "First, the issue of standing is a preliminary issue to be decided before the merits are decided. See *Re: Bildson*, [1998] A.E.A.B. No. 33 at para. 4. …
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> Second, the appellant must prove, on a balance of probabilities, that he or she is personally directly affected by the approval being appealed. The appellant need not prove that the personal effects are unique or different from those of any other Albertan or even from those of any other user of the area in question. See *Bildson* at paras. 21-24. …
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> Third, in proving on a balance of probabilities, that he or she will be harmed or impaired by the approved project, the appellant must show that the approved project will harm a natural resource that the appellant uses or will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use and the approved project, the more likely the appellant will be able to make the requisite factual showing. See *Bildson* at para. 33:
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> > What is 'extremely significant' is that the appellant must show that the approved project will harm a natural resource (e.g. air, water, wildlife) which the appellant uses, or that the project will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use of the natural resource at issue and the approved project, the more likely the appellant will be able to make the requisite factual showing. Obviously, if an appellant has a legal right or entitlement to lands adjacent to the

> project, that legal interest would usually be compelling evidence of proximity. However, having a legal right that is injured by a project is not the only way in which an appellant can show a proximity between its use of resources and the project in question.

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

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

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

> While the burden is on the appellant, and while the standard accepted by the Board is a balance of probabilities, the Board may accept that the standard of proof varies depending on whether it is a preliminary meeting to determine jurisdiction or a full hearing on the merits once jurisdiction exists. If it is the former, and where proof of causation is not possible due to lack of information and proof to a level of scientific certainty must be made, this leads to at least two inequities: first that appellants may have to prove their standing twice (at the preliminary meeting stage and again at the hearing) and second, that in those cases (such as the present) where an Approval has been issued for the first time without an operating history, it cannot be open to individual appellants to argue causation because there can be no injury where a plant has never operated."[4]

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

[53] Justice McIntyre concluded by stating:

> "To achieve standing under the Act, an appellant is required to demonstrate, on a *prima facie* basis, that he or she is 'directly affected' by the approved project, that is, that there is a potential or reasonable probability that he or she will be harmed by the approved project. Of course, at the end of the day, the Board, in its wisdom, may decide that it does not accept the *prima facie* case put forward by the appellant. By definition, *prima facie* cases can be rebutted…."[5]

[54] What the Board looks at when assessing the directly affected status of an appellant is how the appellant will be individually and personally affected, and the more ways in which the appellant is affected, the greater the possibility of finding the person directly affected. The Board also looks at how the person uses the area, how the project will affect the environment, and how the effect on the environment will affect the person's use of the area. The closer these elements are connected (their proximity), the more likely the person is directly affected. The onus is on the appellant to present a *prima facie* case that he or she is directly affected.[6]

[55] The Court of Queen's Bench in *Court*[7] stated an appellant only needs to show there is a potential for an effect on that person's interests. This potential effect must still be within reason, plausible, and relevant to the Board's jurisdiction for the Board to consider it sufficient to grant standing. This is the same regardless of whether it is an individual person or corporate person.

[56] Although both the Approval Holder and the Director argued these appeals should be dismissed because the Appellants have already filed appeals of the Wastewater Approval, the Board cannot consider that a ground for dismissing the appeals. The Board recognizes that a different approval has been issued regarding the wastewater system and the Appellants have also appealed that approval. However, in determining whether the Appellants are directly affected with respect to the Approval for the waterworks, the Board cannot consider the Wastewater Approval or the appeals of that approval. The waterworks system and the wastewater system

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

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

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

are separate, distinct entities with separate approvals, conditions, and reporting requirements. When it comes to dealing with the appeals of the Wastewater Approval, the Board will look at that approval only; even if these appeals of the waterworks Approval are dismissed, it will not affect the Board's analysis and review of the wastewater appeal issues.

[57] The basis of the Appellants' appeal is that some of the potable water produced and distributed through the Resort's waterworks system eventually flows onto their land causing flooding and damage. For the purposes of this decision, the Board is prepared to accept that potable water produced under the Approval may enter the Appellants' land. The potable water is used by the Resort residents and disposed into the Resort's wastewater collection system and wastewater treatment plant. Treated effluent from the wastewater collection system is pumped to storage ponds and then used to irrigate the Resort's golf course. These storage ponds also collect surface water runoff from the Resort and one of these ponds has an overflow pipe discharging to a ditch which crosses the Appellants' property. However, none of these aspects of water flow are regulated under the Approval that is under appeal.

[58] The scope of the Resort's waterworks system Approval is: the intake of surface water from Gleniffer Lake; treatment of this water to potable standards; distribution of the treated water to residents of the Resort; and associated terms and conditions. The Approval does not stipulate the quantity of water withdrawn, and none of its provisions direct how the water is used or disposed of after it is distributed to Resort residents.[8]

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[8] Section 4.1.1 of the Approval states:

"The approval holder shall:

(a) operate, and

(b) maintain

a waterworks system, located within in [sic] the E ½ of Section 25, Township 35, Range 3, West of the 5th Meridian, which shall include all of the following:

(i) a source consisting of:

(A) surface water from Gleniffer Lake,

(ii) a water treatment plant consisting of:

(A) coagulation and flocculation,

(B) clarification,

(C) rapid sand filtration unit(s),

(D) disinfection by chlorination,

(iii) treated water storage, [and]

[59] It is clear from the Appellants' submissions that they understand there are different steps and approvals associated with the entire water system at the Resort, from withdrawing the water from the lake to the disposal of the water after it has been treated, used, and re-treated. The Approval being appealed in this case relates solely to the initial treatment part of the process to produce potable water, but the concerns of the Appellants relate to the handling of the wastewater from the Resort, not any part of the water treatment process for the Resort.

[60] Further, the Appellants are not residents of the Resort and are not supplied with potable water from the Resort's water distribution system. As a result, they cannot be directly affected by the potable water system in the same way as residents of the Resort are affected.

[61] Based on this analysis of the submissions, the Board finds the Appellants are not directly affected by the issuance of the waterworks Approval.

B. Frivolous, Vexatious, or Without Merit

[62] The Approval Holder argued the appeals were not properly before the Board because they were frivolous, vexatious, or without merit. The Appellants raised concerns regarding the discharge of wastewater from the Resort onto the Appellants' lands and how this excess water is affecting their ability to use and enjoy their property and further develop their lands. The Approval Holder recognized the Appellants are concerned the Resort may be impacting the Appellants' lands.

[63] The Board accepts the Appellants have genuine and serious concerns with water flowing onto their property from the Resort and that they believe the link to the Resort's waterworks Approval is direct enough to warrant their appeals. While the Board does not believe the Appellants are directly affected by the waterworks Approval, the issues raised by the Appellants are not frivolous or vexatious.

(iv) a treated water distribution system."

C. Issues

[64] The appeals of the Approval have been dismissed. Therefore, the Board does not have to consider which issues are properly before the Board.

IV. DECISION

[65] The Board dismisses Appeal Nos. 09-002 and 09-003 filed by Ms. Joan Dyrholm and Mr. Rod Dyrholm pursuant to section 95(5)(ii) of the *Environmental Protection and Enhancement Act*, because they are not directly affected.

Dated on November 19, 2009, at Edmonton, Alberta.

"*original signed by*"

Gordon Thompson
Panel Chair

"*original signed by*"

Jim Barlishen
Board Member

"*original signed by*"

Dan Johnson
Board Member