

ALBERTA  
ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

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Dates of Mediation Meeting – June 22, 2010  
Date of Report and Recommendations – July 14, 2010

**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 K. Dean Anderson with respect to the cancellation of *Water Act* Licence No. 17516 (Priority 1976-01-20-4) by the Director, Southern Region, Environmental Management, Alberta Environment.

Cite as: *Anderson v. Director, Southern Region, Environmental Management, Alberta Environment* (14 July 2010), Appeal No. 09-045-R (A.E.A.B.).

**MEDIATION MEETING BEFORE:**

Dan. L. Johnson, Board Member

**APPEARANCES:**

**Appellant:**

K. Dean Anderson

**Director:**

Robert Burland, Director, Southern Region,  
Environmental Management, Alberta  
Environment; and Kathleen Murphy, Alberta  
Environment

**Board Staff:**

Gilbert Van Nes, General Counsel and  
Settlement Officer

## EXECUTIVE SUMMARY

Alberta Environment cancelled Water Licence No. 17516 (Priority 1976-01-20-4) under the *Water Act*, R.S.A. 2000, c. W-3. The Board received a Notice of Appeal from Mr. K. Dean Anderson, the Licence Holder.

The Licence was issued on June 16, 1982 for an irrigation project on lands located at NW 14-005-22-W4M and SW 23-005-22-W4M near Magrath, Alberta. The Magrath Irrigation District began supplying water to the area in 1987. The landowner of NW 14-005-22-W4M expressed an interest in moving the water allocation under the Licence to another area. However, the Licence was cancelled because the landowner did not respond to Alberta Environment's request for information, and because his needs were being met by the Magrath Irrigation District.

The Board held a Mediation Meeting on June 22, 2010, following which an agreement was reached by the participants. The Board recommends that the Minister of Environment accept and implement the agreement.

**TABLE OF CONTENTS**

I. BACKGROUND ..... 1

II. MEDIATION MEETING ..... 2

III. RECOMMENDATIONS ..... 2

IV. RESOLUTION ..... 4

## **I. BACKGROUND**

[1] On February 16, 2010 the Director, Southern Region, Environmental Management, Alberta Environment (the "Director"), cancelled Licence No. 17516 (Priority 1976-01-20-4) (the "Licence") under the *Water Act*, R.S.A. 2000, c. W-3.

[2] The Licence was issued on June 16, 1982 for an irrigation project on lands located at NW 14-005-22-W4M and SW 23-005-22-W4M near Magrath, Alberta. The Magrath Irrigation District began supplying water to the area in 1987. The landowner of NW 14-005-22-W4M expressed an interest in moving the water allocation under the Licence to another area. However, the Licence was cancelled because the landowner did not respond to the Director's request for information, and because his needs were being met by the Magrath Irrigation District.

[3] On March 10, 2010, the Environmental Appeals Board (the "Board") received a Notice of Appeal from Mr. K. Dean Anderson, the landowner of NW 14-005-22-W4M (the "Appellant"), appealing the Director's decision. The Board did not receive a Notice of Appeal from the landowner of SW 23-005-22-W4M.

[4] On March 10, 2010, the Board wrote to the Appellant and the Director (collectively the "Participants") acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board also requested the Director 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, preliminary motions hearing, or hearing.

[5] On April 12, 2010 the Board received a copy of the Record from the Director, and on April 15, 2010, forwarded a copy to the Appellant.

[6] On April 19, 2010, the Board wrote to the landowner of SW 23-005-22-W4M, notifying him of the appeal and requesting he advise by April 30, 2010, whether he wished to participate in the appeal. The Board did not receive a response.

[7] On May 3, 2010, in consultation with the Participants, the Board scheduled the mediation meeting for June 22, 2010, to be held in Lethbridge, Alberta.

## **II. MEDIATION MEETING**

[8] Pursuant to section 11 of the Environmental Appeal Board Regulations, Alta. Reg. 114/93, the Board conducted a mediation meeting in Lethbridge, Alberta, on June 22, 2010, with Dr. Dan L. Johnson as the presiding Board Member (the “Mediator”).

[9] In conducting the mediation meeting, the Mediator reviewed the appeal 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.

[10] Following productive and detailed discussions, a resolution evolved at the June 22, 2010 mediation meeting and is attached as page 4.

## **III. RECOMMENDATIONS**

[11] 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:

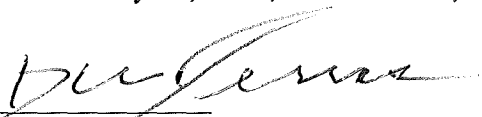
1. Reverse the February 16, 2010 decision of the Director and reinstate Licence No. 17516;
2. Amend Licence No. 17516 to limit it to diversion to the losses only. This means that the portion of the diversion that is for consumptive use will be removed from the Licence. The dam and reservoir that are authorized by the Licence will remain; and
3. The Amendment to the Licence will be in the form attached to the Resolution.

[12] Further, with respect to sections 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. K. Dean Anderson

- Ms. Aurelia Nicholls, Alberta Justice, on behalf of Mr. Robert Burland, Director, Southern Region, Environmental Management, Alberta Environment.

Dated on July 14, 2010, at Edmonton, Alberta.



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Delmar W. Perras  
Chair

## IV. RESOLUTION



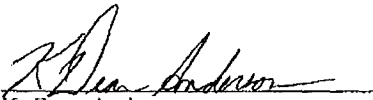
### RESOLUTION ENVIRONMENTAL APPEALS BOARD EAB File No. 09-045

In the matter of the mediation of the appeal of the decision of the Director, Southern Region, Environmental Management, Alberta Environment, to cancel Licence No. 17516 (Priority 1976-01-20-4) for an irrigation project for the lands located at NW 14-005-22-W4M and SW 23-005-22-W4M near Magrath, Alberta under the *Water Act*, R.S.A. 2000, c. W-3.


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

1. The Board is requested to make a recommendation to the Minister of Environment to reverse the Director's decision and reinstate the licence.
2. The Board is requested to make a recommendation to the Minister of Environment to amend the licence to limit it to diversion to the losses only. This means that the portion of the diversion that is for consumptive use will be removed from the licence. The dam and reservoir that are authorized by the licence will remain.
3. Alberta Environment will provide the Board with a revised version of the licence to implement these recommendations and the revised version of the licence will be provided to the Minister as part of the Board's recommendation.
4. THAT in consideration of the foregoing, the Appellant, K. Dean Anderson, withdraws his Notice of Appeal upon the acceptance of recommendation by the Minister of Environment.

RESOLUTION AGREED TO BY:

  
K. Dean Anderson

Date: June 22, 2010

  
Robert Burland, Director, Southern Region  
Environmental Management, Alberta Environment

Date: June 22, 2010



**Government of Alberta** ■  
Environment

## L I C E N C E A M E N D M E N T

PURSUANT TO THE PROVISIONS  
OF THE WATER ACT

**LICENCE No.**                      Dated 1982 06 18  
**FILE No.**                              17516  
**PRIORITY No.**                      1976-01-20-004  
**AMENDMENT No.**                  00033772-00-01

K. Dean Anderson and Grethe H. Anderson  
Box 144  
Magrath, Alberta  
T0K 1J0

**The licence is amended as follows:**

1.     To reflect the disposition of the licence from A. James Passey to K. Dean Anderson and Grethe H. Anderson;
2.     To delete the irrigable area,
3.     To delete the Estimate Consumptive Use of 150.0 acre-ft;
4.     To reduce the gross diversion to 10 acre-ft annually which are the estimated losses associated with the reservoir;
5.     To change the purposes from Irrigation to Other (recreation); and
6.     To record the appurtenance to the following lands: (i) the point of diversion described as the actual point of impoundment from a coulee on NW14-005-22-W4 and (ii) the point of use on the NW14 -005-22-W4 as referenced on plan number 17516-1 as amended.

Authorized pursuant to Ministerial Order \_\_\_\_/2010  
Issued pursuant to EAB Appeal No. 09-045.



ALBERTA  
ENVIRONMENT

*Office of the Minister  
MLA, Medicine Hat*

**Ministerial Order  
09/2010**

*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 No. 09-045**

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 No. 09-045.

Dated at the City of Edmonton, in the Province of Alberta, this 17<sup>th</sup> day of July, 2010.

Rob Renner  
Minister

*Alberta*

## Appendix

### Order Respecting Environmental Appeals Board Appeal No. 09-045

With respect to the February 16, 2010 decision of the Director, Southern Region, Environmental Management, Alberta Environment (the "Director") to cancel *Water Act* Licence No. 17516 (Priority 1976-01-20-4) (the "Licence") I, Mr. Rob Renner, Minister of Environment:

1. Order that the February 16, 2010 decision of the Director to cancel the Licence be reversed and the Licence reinstated,
2. Order that the Licence be amended by way of Licence Amendment 00033772-00-01 which is attached to this Ministerial Order.

Government of Alberta ■  
Environment

## LICENCE AMENDMENT

PURSUANT TO THE PROVISIONS  
OF THE WATER ACT

LICENCE No.           Dated 1982 08 18  
FILE No.               17518  
PRIORITY No.         1976-01-20-004  
AMENDMENT No.       00033772-00-01

K. Dean Anderson and Grethe H. Anderson  
Box 144  
Magrath, Alberta  
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**The licence is amended as follows:**

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5. To change the purposes from Irrigation to Other (recreation); and
6. To record the appurtenance to the following lands: (i) the point of diversion described as the actual point of impoundment from a coulee on NW14-005-22-W4 and (ii) the point of use on the NW14 -005-22-W4 as referenced on plan number 17516-1 as amended.

Authorized pursuant to Ministerial Order \_\_\_\_/2010  
Issued pursuant to EAB Appeal No. 08-045.