ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – April 10, 2012

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 Water Matters Society of Alberta, Alberta Wilderness Association, and Trout Unlimited Canada with respect to *Water Act* Licence Amendment Nos. 00045938-00-02 and 00045938-00-03 issued to the Western Irrigation District and *Water Act* Licence Amendment No. 00045808-00-01 issued to the Bow River Irrigation District by the Director, Southern Region, Operations Division, Alberta Environment and Water.

Cite as: *Water Matters Society of Alberta et al.* v. *Director, Southern Region, Operations Division, Alberta Environment and Water*, re: *Western Irrigation District and Bow River Irrigation District* (10 April 2012), Appeal Nos. 10-053-055 and 11-009-014-D (A.E.A.B.).

PRELIMINARY MOTIONS HEARING BEFORE:	Justice Delmar W. Perras (ret.), Chair; Dr. Alan J. Kennedy, Board Member; and Mr. Eric O. McAvity, Q.C., Board Member.

SUBMISSIONS BY:

Appellants:	Water Matters Society of Alberta, Alberta Wilderness Association, and Trout Unlimited Canada, represented by Mr. Barry Robinson, Ecojustice.
Director:	Mr. Kevin Wilkinson, Director, Southern Region, Operations Division, Alberta Environment and Water, represented by Ms. Charlene Graham, Alberta Justice.
Licence Holders:	Western Irrigation District, represented by Mr. C. Richard Jones, Vipond Jones LLP; and Bow River Irrigation District, represented by Mr. Richard Phillips, General Manager, Bow River Irrigation District.

EXECUTIVE SUMMARY

Alberta Environment and Water issued two Licence Amendments to the Western Irrigation District (WID) authorizing the provision of water for municipal, commercial, and industrial purposes. A Licence Amendment was also issued to the Bow River Irrigation District (BRID) authorizing the provision of water for industrial, agricultural, municipal, commercial, and habitat enhancement purposes.

The Board received Notices of Appeal from the Water Matters Society of Alberta, Alberta Wilderness Association, and Trout Unlimited Canada (the Appellants) on all three amendments.

The Board received and considered submissions on the following preliminary matters:

1. whether *res judicata* applies to these appeals;
2. the directly affected status of the Appellants;
3. whether the issues raised in the Notices of Appeal are within the jurisdiction of the Board or otherwise properly before the Board; and
4. the issues to be heard at a hearing, should one be held.

The Board determined that *res judicata* does not apply in these appeals. Even though the Appellants' issues were the same as those they raised in the appeals of the Eastern Irrigation District, the participants were not the same. Since the WID and BRID were not participants in the previous appeals, *res judicata* does not apply.

The Board found the Appellants did not meet the onus of demonstrating that they were directly affected by Alberta Environment and Water's decision to issue the Licence Amendments. Although the Appellants were genuinely interested in the protection and management of the riparian and aquatic ecosystems in the Bow River Basin, their interests were too general in nature to show they were directly affected by the Licence Amendments. The Board did not accept the public interest standing argument presented by these Appellants. The Board dismissed their appeals.

As the Board dismissed the appeals, the questions as to whether the Board has any jurisdiction under the *Irrigation Districts Act* and the issues for a hearing did not have to be determined.

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I. INTRODUCTION

[1] This is the Environmental Appeals Board's decision regarding the appeals filed by three environmental groups of the decision of Alberta Environment and Water to amend the water licences of the Western Irrigation District and Bow River Irrigation District. These amendments allow the irrigation districts to provide water to other users other than agricultural uses.

[2] The appellants argued they should be found directly affected or the Board should grant them public interest standing.

[3] The issue of *res judicata* was raised, because the same appellants appealed a similar decision of Alberta Environment and Water to issue an amendment to the Eastern Irrigation District's water licence to allow the water to be used for other purposes. In the Board's decision on the EID appeals, the Board dismissed the appeals of these three appellants.

II. BACKGROUND

[4] On February 18, 2011, the Director, Southern Region, Operations Division, Alberta Environment and Water (the "Director"), issued Licence Amendment No. 00045938-00-02 under the *Water Act*, R.S.A. 2000, c. W-3, to the Western Irrigation District (the "WID") authorizing the provision of water for municipal and commercial purposes. On May 13, 2011, the Director issued a further amendment, *Water Act* Licence Amendment No. 00045938-00-03,[1] authorizing the WID to also provide water for municipal, commercial, and industrial purposes. The WID Amendments amend the original licence issued to the WID, which was limited to the purpose of irrigation.

[5] On March 18, 2011, the Environmental Appeals Board (the "Board") received Notices of Appeal from the Water Matters Society of Alberta ("Water Matters"), Alberta Wilderness Association ("Alberta Wilderness"), and Trout Unlimited Canada ("Trout

[1] In this decision, the two WID amendments will be referred to collectively as the "WID Amendments."

Unlimited") (collectively, the "Appellants") appealing Licence Amendment No. 00045938-00-02, and on June 9, 2011, the Appellants appealed Licence Amendment No. 00045938-00-03.

[6] On March 18 and June 9, 2011, the Board wrote to the Appellants, WID, and Director acknowledging receipt of the Notices of Appeal and notifying the WID and Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the "WID Record") relating to these appeals, and that the Appellants, WID, and Director provide available dates for a mediation meeting, preliminary motions hearing, or hearing.

[7] The Appellants requested the appeals be placed in abeyance until the Board made a decision on the appeals filed regarding the Eastern Irrigation District (the "EID").[2] The Director and WID concurred, and the Board granted the abeyance. The reasons for the Board's decision on the EID were issued August 30, 2011.

[8] On May 13, 2011, the Director issued *Water Act* Licence Amendment No. 00045808-00-01 (the "BRID Amendment") to the Bow River Irrigation District (the "BRID"), allowing the BRID to deliver water for industrial, agricultural, municipal, commercial, and habitat enhancement purposes. On June 9, 2011, the Appellants appealed the BRID Amendment.[3] On June 10, 2011, the Board acknowledged the appeals and notified the Director and BRID of the appeals. The Board also requested the Director provide the Board with a copy of the records (the "BRID Record"[4]) relating to these appeals. The Appellants requested the appeals be held in abeyance pending the release of the decision regarding the EID. The Board granted the abeyance. The Board issued the reasons for its decision on the EID on August 30, 2011.

[9] On August 39, 2011, the Board requested the Appellants, WID, BRID, and Director (collectively, the "Participants") to confirm whether they wanted to proceed through

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[2] See: *Alberta Wilderness Association et al.* v. *Director, Southern Region, Environmental Management, Alberta Environment*, re: *Eastern Irrigation District* (30 August 2011), Appeal No. 10-038-043-ID1 (A.E.A.B.) (the "EID Decision").

[3] In this decision, the WID and BRID will be referred to, collectively, as the "Licence Holders." The WID Amendments and BRID Amendment will be referred to collectively as the "Licence Amendments."

[4] In this decision, the WID Record and BRID Record will be referred to collectively as the "Record."

mediation or preliminary motions. The participants requested the matter proceed through preliminary motions.

[10] On September 13, 2011, the Board set the schedule to receive submissions on the following preliminary matters respecting the appeals of the Licence Amendments:

1. Does *res judicata* apply to these appeals?
2. Is the Alberta Wilderness Association directly affected by the Licence Amendments?
3. Is the Water Matters Society of Alberta directly affected by the Licence Amendments?
4. (a) Is Trout Unlimited Canada directly affected by the Licence Amendments?
   (b) What is the nature of the property interest identified in the Notice of Appeal of Trout Unlimited Canada and how does this impact its directly affected status?
5. (a) Does the Board have any jurisdiction under the *Irrigation Districts Act*, R.S.A. 2000, c. I-11?
   (b) Are any of the issues raised in the Notices of Appeal solely under the jurisdiction of the *Irrigation Districts Act* and how does this impact the validity of the Notices of Appeal?
   (c) Are there any other issues raised in the Notices of Appeal that are not properly before the Board and how does this impact the validity of the Notices of Appeal?
6. If this matter proceeds to a hearing, what issues included in the Notices of Appeal should be considered by the Board?

[11] Submissions were received between November 2, 2011 and December 2, 2011.

[12] The Board notified the Participants on January 9, 2012, that the appeals were dismissed with reasons to follow. These are the Board's reasons.

III. RES JUDICATA[5]

A. Submissions

[13] The Appellants argued *res judicata* does not apply in these appeals, because the Board has not decided if the Appellants are directly affected. They argued the issue concerning whether they meet the test for public interest standing in these appeals is different from the issue decided in the EID Decision because, in the previous decision, the Board found there was another manner by which the appeal could be heard, specifically finding one of the other appellants directly affected. The Appellants stated the Board's jurisdiction to grant public interest standing and whether the amendments were legal under the *Irrigation Districts Act* were not decided in a judicial manner in the EID Decision. The Appellants argued the Board does not have jurisdiction to make a final decision on the extent of its own authority to grant public interest standing to the Appellants nor to make a decision on the extent of its authority to consider the lawfulness of the Licence Amendments under the *Irrigation Districts Act*. Therefore, the Board's decisions in the EID Decision on these matters were not a final decision made in a judicial manner.

[14] The Appellants stated the participants to the appeals are not the same as in the EID Decision, because the Licence Holders do not have a connection to the EID. The Appellants argued having a similar interest in the outcome of the appeals is insufficient to support issue estoppel (*res judicata*).

[15] The WID acknowledged the parties to these appeals are not the same as in the EID Decision, but the decision was *in rem*.[6] A decision *in rem* conclusively determines the

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[5] *Res judicata* is also referred to as "issue estoppel." *Res judicata* is defined as:

> "a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action."

See: *Black's Law Dictionary*, 6th ed., *s.v.* "res judicata."

[6] "*In rem*" is defined as:

> "Actions in which the court is required to have control of the thing or object and in which an adjudication is made as to the object which binds the whole world and not simply the interests of

status of a person or thing. The WID stated the Board's decision in the EID Decision gave a decision *in rem* concerning the Board's lack of jurisdiction to grant public interest standing and to consider matters under the *Irrigation Districts Act*. The WID noted the Appellants are asking the Board to adjudicate on the same questions in these appeals.

[16] The WID stated the EID Decision regarding the scope of the Director's and Board's jurisdiction affects the status of the Director and Board, which goes beyond the participants to the appeal and is an *in rem* determination. Therefore, the Appellants are "estopped" from relitigating the Board's jurisdiction on public interest standing and matters relating to the *Irrigation Districts Act*.

[17] The WID stated the Courts have relaxed the requirements of *res judicata* to dismiss proceedings for abuse of process by re-litigation. The WID argued the Appellants seek to re-litigate the issues determined by the Board in the EID Decision and, therefore, *res judicata* or the abuse of process by re-litigation should be applied and the appeals dismissed.

[18] The BRID argued *res judicata* applies, because any decision regarding the appeals made by the Appellants to one district's licence amendment applies equally to the appeals of the other districts' licence amendments. The BRID stated the principles of the amendments are the same for each district, including the EID.

[19] The Director conceded that *res judicata* does not apply as the participants are not the same.

[20] In their rebuttal submission, the Appellants noted that, in the March 30, 2011 letter from the WID to the Board, the WID stated the EID appeals did not have identical appellants, facts, or issues to those in the current appeals, and the EID appeals would not decide the current appeals of the WID Licence Amendments. However, now the WID argued the EID Decision on public interest standing and the Board's jurisdiction under the *Irrigation Districts*

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the parties to the proceeding."

See: *Black's Law Dictionary*, 6th ed., *s.v.* "In rem."

In this case, the WID argued the Board's decision in the EID Decision should apply to all decisions involving similar licence amendments regardless of who the licence holder is.

Act are judgments *in rem*. The Appellants argued *res judicata* does not apply and the EID Decision was not a judgment *in rem*.

[21] The Appellants submitted the Board has the authority to grant public interest standing in the current appeals, and until a court confirms the Board's authority, the Board's decision cannot apply *in rem* to the public interest standing of the Appellants or the Board's ability to determine lawfulness under the *Irrigation Districts Act* in all future appeals of water licence amendments.

[22] The Appellants argued that, since abuse of process was not raised in any motion before the Board, it is not properly before the Board. The Appellants denied there is any abuse of process. The Appellants explained they did not judicially review the EID Decision because of limited resources, the available legal options, and the EID appeals were proceeding with another appellant. The Appellants argued that, to find an abuse of process in raising an issue determined in a previous matter, would freeze the first final decision on any particular issue for all time.

B. Analysis

[23] Three requirements are needed to determine if issue estoppel (*res judicata*) applies in the circumstances. These requirements, as defined in the Supreme Court of Canada case of *Angle* v. *Canada (Minister of National Revenue – M.N.R.)*, [1975] 2 S.C.R. 248, are:

1. the same question has been decided;
2. the judicial decision which is said to create the estoppel was final; and,
3. the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[24] As stated by the Board in Villeneuve Sand & Gravel Alberta Ltd. (2001), 36 C.E.L.R. (N.S.) 119 (Alta. Env. App. Bd.), (sub nom. *Villeneuve Sand and Gravel Alberta Ltd.* v. *Director, Northeast Boreal Region, Alberta Environment* re: *Inland Aggregates Limited*) (10 November 2000), Appeal No. 00-015-D (A.E.A.B.) at paragraph [44]:

> "Issue estoppel is intended to protect the public interest by bringing about the end of the dispute and providing finality and conclusiveness to legal

> proceedings. In simple terms, it means that the same issue should not be decided twice. Often the concept is expressed in criminal law as double jeopardy. It is a fundamental tenant of our legal system."

[25] In *Wavel Ventures Corp.* v. *Constantini* (1996) 46 Alta. L.R. (3d) 292 at page 306, the Alberta Court of Appeal stated:

> "The doctrine of *res judicata* [issue estoppel is one form of *res judicata*] is founded on public policy so that there may be an end of litigation, and also to prevent the hardship to the individual of being twice vexed by the same cause. The rule which I deduce from the authorities is that a judgement between the same parties is final and conclusive not only as to the matters dealt with, but also as to questions which the parties had the opportunity of raising. The authorities also showed that principles of issue estoppel are applicable to the decision of administrative tribunals, as stated in *Rasanen* v. *Rosemount Instruments* (1994) 112 D.L.R. (4th) 683 at 687 (Ont.C.A.)"

[26] In order for *res judicata* to apply, all three of the requirements as stated above must be met. The concerns raised in these appeals are the same as those raised by the Appellants in the EID Decision, particularly a determination of whether the Appellants are directly affected by the Director's decisions and if they are not directly affected, then whether the public interest test should apply. Therefore, the first requirement is met.

[27] The second requirement is whether the decision was final. Under section 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"),[7] the Board makes the final decision on preliminary matters, such as directly affected, who can appear before the Board, and if the appeal is properly before the Board. Except for a provision allowing a

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[7] Section 95(5) of EPEA states:

"The Board

(a) may dismiss a notice of appeal if

(i) it considers the notice of appeal to be frivolous or vexatious or without merit,

(ii) in the case of a notice of appeal submitted under section 91(1)(a)(i) or (ii), (g)(ii) or (m) of this Act or section 115(1)(a)(i) or (ii), (b)(i) or (ii), (c)(i) or (ii), (e) or (r) of the *Water Act*, the Board is of the opinion that the person submitting the notice of appeal is not directly affected by the decision or designation,

(iii) for any other reason the Board considers that the notice of appeal is not properly before it,

(iv) the person who submitted the notice of appeal fails to comply with a written notice under section 92, or

(v) the person who submitted the notice of appeal fails to provide security in accordance with an order under section 97(3)(b)."

participant to request a reconsideration of the decision, the Board's decision on preliminary matters is final. If a participant is not satisfied, the Board's decision can be judicially reviewed by the Courts. This does not change the fact the Board's decisions on preliminary matters are final. Therefore, the second requirement is met.

[28] The third requirement is that the participants must be the same in the current appeals as those in the previous decision. In the EID Decision, the Appellants and Director were involved in the appeal process. However, the Licence Holders were not. In the EID Decision, the Licence Holders did not provide any submissions to argue whether or not the Appellants were directly affected. In addition, the Licence Amendments allow for water use in different locations within the respective irrigation districts. Even though the Appellants were not directly affected by the EID licence amendment, it does not automatically mean the Appellants are not directly affected by the Licence Amendments being considered in these appeals. Therefore, the third requirement has not been met, and *res judicata* does not apply.

[29] The WID argued that *in rem* should apply in these appeals. With respect, the Board does not agree. The Board considers each appeal on its own circumstances. In these appeals, the effect of the Licence Amendments could be different than what was previously considered in the EID Decision. Although the EID Decision is persuasive, it is not binding on the current appeals.[8]

[30] The Board concludes that *res judicata*, or more specifically issue estoppel, does not apply in these circumstances. But for the other preliminary matters that have been raised, the appeals of the Licence Amendments could have proceeded.

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[8] See: Section 3 of the Board's Rules of Practice states:

> "In light of the discretionary nature of the Board's powers, it must decide each case individually based on the material before it in that particular case. Over time, the Board's prior decisions may provide a useful benchmark to indicate how the Board will view particular types of cases. However, while the Board will generally try to decide similar cases similarly, as a matter of law it must decide each case on its own merits.

IV. DIRECTLY AFFECTED

A. SUBMISSIONS

1. Appellants

(a) Water Matters Society of Alberta

[31] Water Matters explained it is a duly incorporated society that was formed in 2007 partly in response to the 2007 application filed by the EID to amend the purpose of the original licence to permit the EID to allocate water to non-irrigation users through a change of purpose amendment rather than a water licence transfer. Water Matters stated it is not a membership based organization and, therefore, the majority membership test used by the Board does not apply. Water Matters explained it has a longstanding, active, and direct interest in the management and allocation of water resources in Alberta. Its activities support the public interest of Albertans with respect to water and the environment. One of the reasons it was established was to raise public awareness of inappropriate water transfers, including inter-basin transfers and the potential for irrigation districts to seek a change of purpose amendment to their licences to essentially implement water allocation transfers without complying with the transfer obligations of the *Water Act*.

[32] Water Matters stated the Director's decision to issue the Licence Amendments was contrary to law and directly impacts Water Matters' mandate and activities, specifically its participation in consultation processes and its ability to accurately advise government, the public, and other environmental organizations on the provisions of the *Water Act*.

[33] Water Matters stated it has been actively and directly involved in the development of water allocation policies and continues to have direct involvement on matters of water allocation and water licence amendments and transfers. Water Matters stated that, at the invitation of Alberta Environment, it responded to the Draft Policy Statement: Water Licence Change of Purpose, identifying the legal and policy failures, particularly the avoidance of the transfer provisions in the *Water Act* by amending the purposes allowed under a licence. Water Matters stated it has contributed to the development and understanding of the water licence

amendment and transfer policy and has a reasonable expectation the policies would be interpreted and implemented in accordance with the *Water Act*, South Saskatchewan River Basin Management Plan ("SSRB Plan"), and other relevant legislation and policies. Water Matters explained it relies on the proper interpretation, implementation, and enforcement of the *Water Act* and SSRB Plan when it participates in the consultation process and when advising the Government of Alberta, the public, and other environmental organizations.

(b) Alberta Wilderness Association

[34] Alberta Wilderness explained its mandate is to "…advance the protection and conservation of representative wilderness areas in Alberta, including a focus on achieving healthy watersheds and river corridors for general ecosystem health."[9] It stated it is a membership based organization with approximately 4,351 members throughout Alberta of which approximately 2,564 members reside within the Bow River Basin. Alberta Wilderness stated it has a long history of advocating against activities that would impair instream flow and aquatic ecosystems in the South Saskatchewan River Basin. It explained it contributed to the Alberta Water Council's Water Allocation Transfer System Upgrade Project Team that provided recommendations to the Minister of Environment in 2009. Alberta Wilderness stated it has been actively and directly involved in the development and interpretation of water-related legislation and policy in Alberta and management strategies and policies within the Bow River Basin, including:

(a) as a member of the Bow River Advisory Council, it advised the Government of Alberta during the development of the SSRB Plan;

(b) as a member of the Bow River Basin Council;

(c) as a steering committee member for the watershed report completed in 2005 and updated in 2010; and

(d) as a steering committee member for the development of the Bow River Basin Phase 1 and Phase 2 Watershed Management Plan.

[35] Alberta Wilderness stated it has been actively involved in the protection of terrestrial and aquatic ecosystems in and adjacent to the Bow River Basin. Alberta Wilderness argued it relies on the proper interpretation and implementation of the *Water Act*, *Irrigation*

Districts Act, SSRB Plan, and relevant legislation and policies in designing and implementing its conservation programs, when it participates in consultation processes sponsored by Alberta Environment and Water, and in advising its members, the public, and other environmental organizations with respect to the transfer and amendment provisions of the *Water Act*.

(c) Trout Unlimited Canada

[36] Trout Unlimited explained it is a national conservation organization with approximately 3,000 members across Canada, including approximately 800 members in its Bow River chapter. Its mission is to "…conserve and protect Canada's freshwater ecosystems and their cold water resources for current and future generations."[10] Trout Unlimited explained it is actively involved in watershed and conservation planning in Alberta including sitting as a member of the Bow River Basin Council, chairing the Nose Creek Watershed Group Technical Committee, and participating in several provincial technical and advisory groups.

[37] Trout Unlimited noted the protection of the health of the aquatic ecosystem of the Bow River falls within its mission and mandate. It explained its conservation and management work in the Bow River Basin deals with migratory fish species that may use different reaches of the Bow River during their life cycles, so water allocation decisions within the WID and BRID can impact the health of fish populations elsewhere in the Bow River Basin.

[38] Trout Unlimited stated it has a direct interest in improving aquatic and riparian habitats, but a transfer of water to other users by a water licence amendment rather than a water licence transfer avoids the 10 percent holdback for water conservation objectives and fails to contribute to the improvement of in-stream flows. Trout Unlimited operates a fish rescue program to capture and release fish trapped in irrigation canals prior to winter freezing of the canals. It explained fish rescued from the Western Headworks Canal and Carseland Bow River Headworks Canal are returned to the Bow River.

[39] Trout Unlimited stated the Bow River chapter of Trout Unlimited holds a recreational lease on public lands within the Bow River known as Jensen's Island, located at SE

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9 Appellants' submission, dated December 1, 2011, at paragraph 12.

10 Appellants' submission, dated November 2, 2011, at paragraph 106.

21 and SE 28-21-26-W4M. Trout Unlimited explained the primary use of the island is for public fishing access to the Bow River demonstrating its direct interest in the conservation, protection, restoration, and management of freshwater resources in the Bow River.

[40] Trout Unlimited argued the circumvention of the water transfer provisions of the *Water Act* directly impacts the effectiveness of its water conservation and fish management efforts. Trout Unlimited stated it relies on the proper interpretation and enforcement of the *Water Act* to meet its mandate and mission.

(d) Legal Arguments

[41] The Appellants argued the Board's approach in determining standing must be in keeping with the participatory role envisaged for Alberta citizens under section 2 of the *Water Act*.[11] The Appellants stated the question of standing is one of mixed fact, law, and policy. The Appellants submitted the types of harm that qualify for the purpose of determining standing are open-ended and determined by the plain meaning of the word "affected." They stated it is helpful if the interest affected is included in the purpose section of the *Water Act*, such as a direct interest in water management and water resource conservation to ensure a healthy environment.

[42] The Appellants argued there is a fundamental public right to have government operate in accordance with the law, and the rule of law guarantees citizens the right to protection against arbitrary government action. The Appellants stated it is a matter of constitutional principle that, if the Director does not follow the law, then any person offended or harmed should

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[11] Section 2 of the *Water Act* states:

"The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:

(a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;

(b) the need for Alberta's economic growth and prosperity;

(c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;

(d) the shared responsibility of all Alberta citizens for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;

(e) the importance of working co-operatively with the governments of other jurisdictions with respect to transboundary water management;

(f) the important role of comprehensive and responsive action in administering this Act."

be able to seek a remedy. It would be a serious matter if the merits of an appeal were not heard because of a narrow interpretation of standing.

[43] The Appellants argued the Board has applied the group majority test to community and environmental groups but not to other forms of corporate bodies such as municipalities and corporations. The Appellants argued their interests are directly affected in the same way as a corporate entity when the Director makes an error in law.

[44] The Appellants argued the Board developed a test for standing for environmental and community organizations that is not found in the *Water Act*. They argued the test is whether the Appellants are directly affected by the Director's decision, not whether the majority of their members or any of their members are directly affected. The Appellants note the test in *Court*[12] adds harm to a natural resource or harm to the appellant's use of a natural resource as an intermediary step not found in the legislation. They stated the intermediary step might have been applicable in the *Court* decision, but an appellant's interests may be directly affected without harm to a natural resource.

[45] The Appellants argued that, in the current appeals, harm may occur to a natural resource, but the *Water Act* does not require such harm as a precondition to finding the Appellants directly affected, and it does not require geographic proximity to determine the Appellants' interests are directly affected.

[46] The Appellants stated they have and continue to be involved in the protection of terrestrial and aquatic ecosystems in and adjacent to the Bow River and, therefore, they have a direct interest in the management of the water resources in the Bow River Basin that goes beyond the abstract interest of all Albertans.

[47] The Appellants argued applying the majority members test to a provincial organization with broad membership would have the result that they would unlikely be found to have standing in any local matter even if the organization itself is directly affected.

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[12] *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.) ("*Court*").

[48] The Appellants stated the Board is ultimately responsible for interpreting the *Water Act* and other relevant statutes and regulations. The Appellants stated the role of the Board is to ensure the Director acts reasonably, within his jurisdiction and statutory authority, and not contrary to the law.

[49] The Appellants explained that, as a legal entity, they do not rely on individual and personal impacts on their members in establishing standing. They argued the Director's decisions to issue the Amending Licences were contrary to law and have a direct impact on their mandate and activities as a corporate entity, including their ability to provide accurate information and advice to their members, the public, and other organizations on water management issues and to design their own conservation programs.

[50] The Appellants stated:

1. They have demonstrated a longstanding, active, and direct interest in the management and allocation of water resources in Alberta and have been actively and directly involved in the development of policy with respect to water licence amendments and transfers and the management of water resources in the Bow River Basin.
2. Their involvement in the policy and management processes initiated by Alberta Environment and Water is directly affected when the Director acts unreasonably, without jurisdiction or statutory authority, or contrary to the *Water Act* or other relevant legislation and policies. Participation in these processes requires the Appellants to rely on the proper interpretation of the *Water Act*, the SSRB Plan, and other relevant legislation and policies.
3. Their ability to advise their members or clients, the public, and other environmental groups as to the management, allocation, and conservation of water resources and the regulation of water licence transfers and amendments is directly affected when the Director acts unreasonably or without jurisdiction, authority, or contrary to relevant legislation, management plans, or policies, thereby creating uncertainty to the interpretation of the legislation and policies.
4. The Board has the discretion to find the Appellants directly affected considering the participatory role envisaged for Alberta citizens by section 2(d) of the *Water Act*. The direct and adverse effect on the interests and work of the Appellants falls within the normal meaning of affected and within the range of interests that have been recognized by the Board as legitimate interests that may be harmed. They have a direct interest in the proper administration of the *Water Act*.

5. The Appellants have a direct interest in ensuring the issuance of the Licence Amendments is consistent with the proper interpretation of the *Water Act*, the SSRB Plan, and other relevant legislation and policies. The Appellants have a right and responsibility to bring matters before the Board to ensure the Director acts reasonably, within his jurisdiction, and not contrary to the law.

6. The provisions of the *Water Act* dealing with standing should not be interpreted so narrowly that it permits the Director to act with impunity.

7. The Appellants requested the Board to determine the Appellants are directly affected and the matter be heard on its merits.

[51] The Appellants submitted that, if the Appellants are not found to be directly affected, then the Board has the discretion to determine the Appellants are parties to the appeals based on their public interest standing.

[52] The Appellants submitted the Board and the Court of Queen's Bench in *Kostuch* v. *Alberta (Director, Air and Water Approvals Division, Alberta Environmental)* (1996) 35 Admin. L.R. (2d) 160 ("*Kostuch #2*") erred in applying the decisions in *Friends of the Athabasca Environmental Association* v. *Alberta (Public Health and Advisory and Appeal Board)* (1996) 37 Alta. L.R. (3d) 148 (Alta. C.A.) ("*Friends of the Athabasca*") and *C.U.P.E. Local 30* v. *WMI Waste Management of Canada* (1996) 34 Admin. L.R. (2d) 172 (Alta. C.A.) ("*WMI*") to hearings before the Board, because both of the cases referred to the *Public Health Act*, S.A. 1984, c. P-27.1.

[53] They submitted the decisions in *Friends of the Athabasca* and *WMI* finding public interest standing cannot be extended to administrative tribunals generally was overly broad and should have been specific to the Public Health Advisory and Appeal Board. The Appellants stated the Public Health Advisory and Appeal Board did not have any discretion with respect to standing whereas the Board has discretion to forego dismissing an appeal under any circumstance listed in section 95(5)(a) of EPEA. Therefore, according to the Appellants, the Board is not obligated to dismiss a Notice of Appeal where the person submitting the Notice of Appeal is not directly affected. They stated the Board has the discretion pursuant to section 95(6) of EPEA and section 1(f) of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 (the "Regulation"), to determine that any person may be a party to an appeal if consistent with the principles of natural justice.

[54] The Appellants stated that, in *Hanson et al.* v. *Director, Southern Region, Regional Services, Alberta Environment* re: *Apple Creek Golf and Country Club* (29 November 2001) Appeal Nos. 01-123, 02-001, and 02-050-058-D ("*Hanson*") the Board granted full party status to the City of Airdrie when it did not submit a valid Statement of Concern. The Appellants stated that, in *Doull et al.* v. *Director, Northern Region, Regional Services, Alberta Environment* re: *Inland Cement Limited* (11 October 2002) Appeal Nos. 02-018-041, 047, 060, 061, 073, and 074-ID1 (A.E.A.B.) (*Doull*"), the Board granted two community groups full party standing rather than intervenor status because it was in the public interest to grant them standing.

[55] The Appellants stated they have a valid and genuine interest in the appeals, will present information that will assist the Board, and will represent the broad public interest of their members and the supporters.

[56] The Appellants argued it is appropriate that an organization with a broad based membership bring an appeal where the potential impacts are widespread and may impact a broad range of the public or where there are no individuals that are directly affected but there is a broad public interest in preventing the Director from acting unlawfully. Denying standing to the Appellants would have the effect of immunizing the Director's errors of law and jurisdiction from scrutiny.

[57] The Appellants referred to *Big Loop Cattle Co.* v. *Alberta (Energy Resources Conservation Board)* 2010 ABCA 328 ("*Big Loop*") and *Pembina Institute for Appropriate Development* v. *Alberta (Utilities Commission)* 2011 ABCA 302 ("*Pembina Institute*"), both decisions relate to leaves to appeal to the Alberta Court of Appeal. The Appellants stated the Court signaled that a party that did not have standing before the administrative decision maker and whose role is not contemplated in the relevant statute, may be found to have standing to bring an appeal where it raises an issue, such as the limits to administrative authority, that did not and could not exist in the initial proceedings. The Appellants stated it could not have been anticipated the Director would issue the Licence Amendments contrary to the *Water Act* and *Irrigation Districts Act*, the SSRB Plan, and other relevant legislation and policies. The Appellants argued the current appeals are the appropriate circumstances for the Board to grant public interest standing to a party that may not have a role contemplated by the *Water Act* but

where it is necessary in the public interest to hold the Director accountable for acting contrary to law.

[58] The Appellants argued the appropriate test for public interest standing is found in *Finlay* v. *Canada (Minister of Finance)* [1986] 2 S.C.R. 607 ("*Finlay*") and *Reese* v. *Alberta* (1992) 87 D.L.R. (4th) 1 (Alta. Q.B.) ("*Reese*"). The Appellants stated that in *Finlay*, the Supreme Court of Canada confirmed individuals can be granted public interest standing with respect to administrative decisions, particularly in situations where it is alleged the administrative decision maker acted outside his statutory authority. The Appellants stated the Court in *Reese* adopted the four-part test for public interest standing from *Finlay,* specifically:

1. the issue before the court is justiciable;
2. the issue is serious;
3. the applicant is directly affected by the issue or has a genuine interest therein as a citizen; and
4. there is no other reasonable and effective manner for the issue to be brought before the court.

[59] The Appellants agued the matter is justiciable and serious when the Director acts without jurisdiction and statutory authority. The Appellants stated the Court in *Reese* found that public interest standing may be granted even though the statute in question does not specifically contemplate a role for the party. The Appellants argued this includes parties who are not directly affected but have a genuine interest in the matter, such as ensuring the Director acts reasonably, within his jurisdiction and statutory authority, and in compliance with the *Water Act*, the SSRB Plan, and other relevant legislation and policies. The Appellants argued the fourth part of the test is not whether there is any other way to bring the action, but whether there is any other reasonable and effective manner to resolve the dispute.

[60] The Appellants stated that, if none of the Appellants are found to be directly affected, there is no other reasonable and effective way to bring the matter before the Board except by the Board granting public interest standing to one or more of the Appellants. The Appellants stated that, if the matter is not heard by the Board, it is likely the Appellants would proceed with a judicial review. Therefore, according to the Appellants, for efficiency and to

avoid unnecessary use of scarce court resources, it is appropriate for the Board to grant public interest standing to the Appellants and hear the matter on its merit.

2. Licence Holders

(a) WID

[61] The WID argued the Appellants are not directly affected for the following reasons:

2. Involvement in water management planning in Alberta is not personal and not the type of interest recognized by the Board as falling into the meaning of directly affected.

3. They did not demonstrate a specific link between the Licence Amendments to divert water for a different purpose and the use of natural resources or that a change in purpose without increasing the amount diverted would create a reasonable probability of harm or impairment to the Appellants' use of the resources.

4. They did not demonstrate that a significant portion of its members qualify as directly affected.

5. Alberta Wilderness has general concerns for water policy in Alberta.

6. Trout Unlimited does not have any greater right to Jensen Island for fishing purposes than the public at large, and no evidence was provided to demonstrate any link between any harm and the recreational lease.

(b) BRID

[62] The BRID acknowledged the Appellants are genuinely interested in the Bow River, value the river for its natural function and aesthetic value, and for recreational purposes. The BRID explained the BRID Amendment applies to 2,380 acre feet of the 70,000 acre feet licence.

[63] The BRID argued the Appellants are not affected by the BRID Amendment since the diversion rate, quantity of water diverted, and timing of the diversion will not change. Therefore, there would be no impact on the river and no impact on the Appellants' use and enjoyment of the river.

[64] The BRID noted there is nothing in the *Water Act* that prohibits the Director from adding or changing the terms or conditions of a licence, including the purposes for which water may be diverted under the licence. The BRID argued there is no irregularity or impropriety in its BRID Amendment, because the Director was acting within his authority in authorizing the diversion of water for purposes other than irrigation. The BRID stated the Appellants may not like this, but it is not a violation of legislation or policy, and they can advise those who may seek their opinions accordingly. The BRID argued the Licence Amendments do not affect the Appellants with respect to policy issues.

[65] The BRID explained Trout Unlimited has a lease on an island upstream of the Carseland Weir to facilitate access to the Bow River for anglers. The Carseland Weir creates dangerous water conditions for boating. The BRID diverts water from Carseland Weir in the "no boating zone" downstream of the island. The BRID stated that, even if the Licence Amendments had an impact on the river, the impact would occur downstream of the island. The BRID submitted Trout Unlimited would not be impacted in any way.

[66] The BRID explained that, if it chose to make water available to a party within the Bow River Basin that could not be served from the irrigation infrastructure, then it would have to transfer a portion of one of its licences. The BRID stated that when a potential user wants to obtain water from the irrigation infrastructure, it makes more sense to obtain an amendment to a licence because, if a user discontinues its use of the water, the BRID would still retain the licence, allowing it to serve other users.

[67] The BRID stated the public had an opportunity to file concerns about the Licence Amendments, and only the Appellants filed Statements of Concern.

[68] The BRID exclaimed nearly 10 percent of its BRID Amendment is reserved for wildlife habitat enhancement.

[69] The BRID noted that, under the *Irrigation Districts Act*, it is not required to hold a plebiscite for a change of purpose to a licence, because the BRID is still the licence holder.

[70] The BRID stated the Bow River Basin is closed to new applications for water licences, but it is not closed to a change of purpose of existing licences or to new users since new users have and will continue to be added to irrigation districts and municipalities.

[71] The BRID explained the BRID Amendment only allows it to provide water to new users able to be supplied from its existing infrastructure. It does not have unlimited authority to decide who is allowed to access water. New users make an application to the BRID for a water conveyance agreement, and if the application is denied, the applicant can file an appeal with the Irrigation Council. If the application is approved, public notice is given, and the parcel affected must be included in the Bow River Irrigation District through a process that requires approval from the Irrigation Council. An application for a new water conveyance under the BRID Amendment cannot be approved without final approval from the Irrigation Council. The BRID stated it has always had the authority to determine which water user receives water from its works, even if a party applied for their own water licence, and if the BRID declined the application, the Director would not issue a licence.

[72] The BRID stated the Director had no control on whether the BRID made an application to amend or transfer, and he was required to deal with the application made.

[73] The BRID noted the BRID Amendment does not change the licence allocation or the location of use as the use must be within the boundaries of the BRID, and the licence did not stipulate timing of use or return flow requirements.

[74] The BRID argued the following regarding the Appellants' submissions on their directly affected status:

1. Alberta Wilderness did not provide any indication if its members reside anywhere near the areas potentially affected and did not provide sufficient evidence to demonstrate it is directly affected;

2. providing input into water policies in the Bow River Basin does not merit consideration for directly affected status in regards to the Licence Amendments;

3. there is a difference between being concerned or interested and being affected;

4. the Appellants did not provide sufficient evidence to support their claim of being directly affected or to have public interest standing;

5. Trout Unlimited's work on aquatic and riparian habitats will not be affected by the BRID Amendment.

[75] The BRID explained that, if it transferred licences to small volume users as in the BRID Amendment, section 11(6) of the *Irrigation Districts Act* would be used.[13] The BRID Amendment meets both of the requirements of this section of the *Irrigation Districts Act*.

[76] The BRID stated it has not contravened the *Irrigation Districts Act*, because it is allowed to divert and use water in accordance with the terms and conditions of its water licence, and the Director can change the terms and conditions of the water licence. Irrigation districts can supply water to non-irrigation users subject to their licences and the provisions of the *Irrigation Districts Act*. The BRID clarified the use of the BRID Amendment is not under the non-irrigation use stipulated in the *Irrigation Districts Act*. The BRID noted section 6(1)(a)(b) and (c) of the *Irrigation Districts Act* anticipates that not all water deliveries by an irrigation district would fall under provisions in the *Irrigation Districts Act* and that some may fall under other statutes such as the *Water Act*.

3. Director

[77] The Director argued none of the Appellants met the Board's group test for directly affected. They did not provide any evidence or submissions that demonstrated they would be affected any differently than what was decided in the EID Decision. The Director

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[13] Section 11(6) of the *Irrigation Districts Act* states:

"Notwithstanding subsection (1), the Minister may waive the requirement for a plebiscite under this section if the board establishes to the Minister's satisfaction that

(a) the proposed transfer will have no significant effect on the risk of water shortage to the irrigators of the district, or

(b) the proposed transfer is in the general public interest."

stated the basis which the Appellants claim to be directly affected is the same as in the EID Decision and the nature of the Director's decision is the same.

[78] The Director stated no evidence was provided to show how the Appellants or any of their members are directly affected by the Licence Amendments. They did not provide any evidence regarding their memberships or to show how the majority of their individual memberships are directly affected.

[79] The Director stated the Appellants are concerned with large areas, and no nexus can be drawn between the Licence Amendments and the individual members of the groups. The Director noted the Appellants admitted in their submissions that they do not rely on individual and personal impacts on their members to establish standing.

[80] The Director submitted the Board's standing test for groups is applicable to the Appellants. The Director stated the purpose of a public interest group is to conduct its activities for a greater public benefit or interest, not for its own benefit. Regardless of the corporate structure of the group, the Appellants are in the same position as an unincorporated group of individuals seeking to publicly promote their shared general interests.

[81] The Director disagreed with the Appellants' argument that, if they could not appeal the Licence Amendments, then no one would have standing. The Director stated this is not a valid ground to obtain standing, and it was not correct because, in the EID Decision, the Board found someone did have standing and this could have occurred with these appeals as well.

[82] The Director stated the legislation clearly states an appellant must be directly affected, not "generally affected" or "affected."

[83] The Director stated arguing the Licence Amendments are contrary to law, does not meet the group standing test. A person is directly affected because of the factual consequence of the decision, not because the decision is right or wrong in law. The Director stated that, even though the Appellants may be upset by what they perceive as errors, their interest in ensuring government officials act within their scope of authority does not surpass the same interest of any Albertan and does not provide the basis for being directly affected.

[84] The Director argued the Appellants' broad-based mandates do not meet the group standing test, and no evidence was provided to describe how their mandates or activities would be impacted. He stated "direct" and "active" involvement in water issues does not mean the Appellants are directly affected by the Licence Amendments.

[85] The Director stated that holding a disposition under the *Public Lands Act* is not sufficient evidence to meet the directly affected test. No evidence was provided to show how Trout Unlimited's disposition would be impacted. The Director noted the Licence Amendments do not change the volume of water that will be taken from the Bow River, or the rate, timing, priority, or diversion point.

[86] The Director submitted that public interest standing does not exist before the Board. The Director stated the Appellants' authorities raise the concept of public interest standing in the context of judicial review applications or constitutional challenges to a court. The Director noted judicial review applications are different legal creatures compared to a statutory appeal to a statutorily created appeal body. The Board does not have the inherent jurisdiction of superior courts. The Director stated the Appellants are mixing separate and distinct concepts by relying on statutory authority of the Board to grant standing and participation by intervenors while trying to invoke the jurisdiction of a court to grant public interest standing. The Appellants' argument does not recognize that section 95(5) of EPEA must be read in context of the explicit provisions setting out who is entitled to submit a Notice of Appeal, and section 115(1)(c) of the *Water Act* specifically states who can file an appeal of a licence amendment. The Board does not have inherent jurisdiction to expand on the statutory list of potential appellants.

[87] The Director argued the Appellants misconstrued *Bildson* #2 in that the Board did not state it has the discretion to forego dismissing an appeal. He added the issue in *Hanson* was the City of Airdie's late filing of a Statement of Concern. The Director stated the Appellants were inaccurate when referring to the *Doull* decision and arguing the organizations were granted public interest standing.

[88] The Director stated the Board is not a public interest decision maker in the context of these appeals. A Director's decision on a licence amendment application does not include public interest considerations.

[89] The Director submitted the Appellants failed to satisfy the requirements of the public interest test. The Director stated:

> 2. There is no justiciable issue. Justiciability implies and relies on a court's jurisdiction to consider questions of law. The Appellants considered the elements of justiciability and seriousness together and failed to consider how the question of justiciability relates to forum. The power to grant public interest standing is derived from the Court's inherent jurisdiction, but the Board derives its powers from statute and lacks the inherent powers of the Court.
>
> 3. Although the Appellants are genuinely interested in the environment and water conservation and management issues in Alberta, they failed to demonstrate a genuine interest in the Licence Amendments. Their concerns are broad and policy based.
>
> 4. There is an effective means to bring the issue before the Board, specifically to have a directly affected person or group submit a Notice of Appeal such as what was done in the EID Decision.
>
> 5. The proper forum for the Appellants' issues on whether the Board can grant public interest standing may be the Courts.

4. Appellants' Rebuttal Submission

[90] The Appellants stated the BRID Amendment allocates 1,745 acre feet of the 2,380 acre feet for unidentified new users at unknown locations. The BRID Amendment does not limit where the unidentified users may be located so it is impossible for the Director or the Board to assess whether a person is directly affected or whether a natural resource they use may be harmed by unknown future uses at unknown locations. The Appellants stated the BRID application did not identify the point of diversion from the irrigation canals, location of use, or the quantity, timing, and quality of the return flow.

[91] The Appellants acknowledged the WID applications were more precise as to the location of the proposed users. However, the applications did not identify the location, quality, or timing of the return flow.

[92] The Appellants argued that, given the lack of information on location of use and return flows resulting in an inability to determine potential impacts on the natural resources or other water users, the test in *Court* cannot be applied, and the Director and Board cannot assess whether the Appellants are directly affected or the natural resource harmed by future uses at unknown locations. Therefore, the Board must take a different approach to determine directly affected.

[93] The Appellants stated the direct impact results from the Director acting outside his jurisdiction and statutory authority and the impact that has on water management in Alberta and the Appellants' interests.

[94] The Appellants referred to the Alberta Court of Appeal decision, *Pembina Institute for Appropriate Development* v. *Alberta (Utilities Commission)* 2011 ABCA 302 ("*Pembina Institute*") which was a statutory appeal pursuant to the *Alberta Utilities Commission Act*, S.A. 2007, c. A-37.2.

[95] The Appellants argued that, based on the *Pembina Institute* decision, public interest standing may be granted in the case of a statutory appeal of an administrative decision and must be considered where the party bringing the statutory appeal did not have standing before the administrative tribunal. They stated that, if the Appellants are denied standing, the Director is free to act outside the limits of his statutory authority with impunity, contrary to the principles discussed in *Pembina Institute*.

[96] The Appellants argued the Board has failed to distinguish between a party to an appeal and an intervenor. The *Environmental Appeal Board Regulation*, Alta. Reg. 113/93 (the "*Regulation*") provides that a "party" includes any person the Board decides should be a party to the appeal. The Appellants stated the Board clearly distinguishes between parties who are granted party status from persons who are granted intervenor status following applications made pursuant to sections 7(2)(c) and 9 the *Regulation*.

[97] The Appellants submitted the Board has the statutory authority and the discretion to grant public interest standing to the Appellants.

[98] The Appellants argued the Director erred in his assertion that justiciability relies on a court's jurisdiction to consider questions of law. The Appellants stated the Board has the power to determine questions of jurisdiction and law. They stated it is indisputable that a justiciable issue arises when a statutory body exceeds its jurisdiction, and therefore, the issues before the Board are clearly justiciable.

[99] The Appellants explained their interest in these appeals is directly concerned with the legality of the Licence Amendments and the unlawful conduct of the Director in approving the Licence Amendments. It is a matter of concern to a public interest group or any citizen when a public authority acts outside the law.

[100] The Appellants argued proximity is not a determining factor with respect to a test of genuine interest. They stated they have demonstrated a genuine interest in water conservation and environmental management, demonstrated an interest in water licence amendments, and have advised the government and public with respect to these areas. Therefore, they met the test for genuine interest.

[101] The Appellants argued there is no other person or group that can bring the issues before the Board. They noted the Court in *Pembina Institute* determined that, because there was no other means to bring the matter forward on appeal, public interest standing would be granted.

[102] The Appellants submitted they should be granted public interest standing since they meet the public interest standing test as set out in *Reese*.

B. ANALYSIS

1. Directly Affected Test

[103] The Board has discussed the issue of "directly affected" in numerous decisions. The Board received guidance on this issue from the Court of Queen's Bench in *Court*.

[104] 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. …

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. …

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:

> 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 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."[14]

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…."[15]

[105] When the Board assesses the directly affected status of an appellant, the Board looks at how the person uses the area where the project will be located, 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

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[14] *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.) ("*Mizera*"); 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.).

[15] *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.).

directly affected. The onus is on the appellant to present a *prima facie* case that he or she is directly affected.[16]

[106] In determining whether a person has standing to bring forward an appeal, the Board relies on the principles articulated in the *Court* decision.[17] The onus is on the Appellants to demonstrate to the Board that there is a reasonable possibility they will be directly affected by the decision of the Director. The effect must be plausible and relevant to the Board's jurisdiction in order for the Board to consider it sufficient to grant standing.

[107] At this point in the appeal process, the Board does not have all of the evidence and arguments before it. The determination of directly affected is a preliminary matter. As a result, the test for standing cannot be based on whether there is certainty the appellant is directly affected. Without all of the evidence, that cannot be conclusively determined. An appeal before the Board is a quasi-judicial process. The appeals process must adhere to the principles of natural justice and must be fair to all of the participants. The Board considers it appropriate that, in assessing preliminary matters, the standard should be less onerous than those found in a court. Therefore, the Board considers it appropriate that appellants show on a *prima facie* basis there is a reasonable possibility they are directly affected by the Director's decision.

[108] As stated, the effect must be reasonable and possible. It is not sufficient to show an appellant is possibly affected, they must also show the possibility is reasonable. An affect that is too remote, speculative, or is not likely to impact the appellant's interests will not form the basis to find an appellant directly affected. Both the reasonableness and the possibility of the affect must be shown.

[109] The effect on the appellant does not have to be unique in kind or magnitude.[18] However, the effect the Board is looking for needs to be more than an effect on the public at large (it must be personal and individual in nature), and the interest which the appellant is

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[16] 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.).

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

[18] 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.).

asserting as being affected must be something more than the generalized interest that all Albertans have in protecting the environment.[19] Under EPEA and the *Water Act*, the Legislature chose to restrict the right of appeal to those who are directly affected by the Director's decision. If the Legislature had intended for any member of the public to be allowed to appeal, it could have used the phrase "any person" in describing who has the right to appeal. It did not; it chose to restrict the right of appeal to a more limited class. The Legislature, in using the more restrictive language, also did not intend for the Board to provide a general right of review for the Director's decision; it intended it be something narrower.

[110] The Board uses this basic framework for assessing whether a person is directly affected and applies this framework to groups and organizations. The Board does not make a distinction between the right of an individual to appeal or the right of a group or organization to appeal. However, different information is required when a group files a Notice of Appeal and the group, as a distinct entity, seeks directly affected status before the Board.

[111] There are two pivotal cases in which the issue of a group filing an appeal was addressed - *Hazeldean*[20] and *Graham*.[21] In the *Hazeldean* case, the Community League filed an appeal in relation to a plywood manufacturing plant located immediately next to their community. The approval holder objected to the appeals on the basis that none of the parties that had filed an appeal were directly affected.

[112] In *Hazeldean*, the Board stated:

> "The Board notes that the residents of the Community live immediately across the street and in the vicinity of the Zeidler plant. The Community distributed a survey to all of the residents of the Hazeldean area and asked them to respond to certain questions concerning the Zeidler plant and its emissions. The results of

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[19] See: *Kostuch* v. *Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraphs 34 and 35 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch* v. *Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.). These passages are cited with approval in *Kostuch* v. *Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1997), 21 C.E.L.R. (N.S.) 257 at paragraph 25 (Alta. Q.B.).

[20] *Hazeldean Community League* v. *Director of Air and Water Approvals Division, Alberta Environmental Protection* (11 May 1995) Appeal No. 95-002 (A.E.A.B.).

[21] *Graham* v. *Director, Chemicals Assessment and Management, Alberta Environmental Protection*, (1996) 20 C.E.L.R. (N.S.) 287 ("*Graham*"). This case was judicially reviewed and then taken to the Court of Appeal. See *Graham* v. *Director, Chemicals Assessment and Management, Alberta Environmental Protection* (1997), 22 C.E.L.R. (N.S.) 141 (Alta. Q.B.) and (1997) 23 C.E.L.R. (N.S.) 165 (Alta. C.A.).

> the survey were submitted to the Board with the Community's representations. Seventy-five of 105 people who completed this survey indicated that they were very concerned about air quality in the neighbourhood. Over 50% of the residents who responded found the odour to be an unpleasant annoyance at least one-half of the time. The Community stated that its close proximity to the Zeidler plant gave rise to these odour complaints because of the prevailing westerly or south westerly winds which cause the emissions to blanket the community. It also stated that there was a great concern regarding the possibility of other compounds within the emissions that may raise health concerns. Their survey found that 55 of 105 completed responses indicated that the residents were concerned with health effects of the Zeidler emissions. Their concern is that the Approval will directly result in increased emissions to the atmosphere, where they will remain at a sufficiently low elevation that the plume distribution will undoubtedly affect the neighbours of the facility who have no choice but to breathe the air outside. Unlike the quality of water, which leaves the ultimate choice (to drink or not) to the user, there is no real option to breathing the ambient air. If the people of the Hazeldean district are not directly affected, no one will ever be.
>
> Herein lies the crux of the directly affected dilemma: how does an appellant discharge the onus of proving that he or she is directly affected when the nature of air emissions is such that all residents within the emission area may be directly affected to the same degree? One might be led to the conclusion that no person would have standing to appeal because of his inability to differentiate the affect upon him as opposed to his neighbour. This is unreasonable and it is not in keeping with the intent of the Act to involve the public in the making of environmental decisions which may affect them."

[113] The group in *Hazeldean* identified their members and provided the results of the survey that was taken to support their position. The major factor in accepting the *Hazeldean* group was that individual members of the group would probably have been determined to be directly affected since they lived in close proximity to the project.

[114] The *Graham* case involved appeals filed by three organizations. Mr. Graham filed his appeal on behalf of the Alberta Trappers Association. The other two organizations that appealed were the Lesser Slave Lake Indian Regional Council and the Toxics Watch Society (which later withdrew its appeal). The appeals related to an approval granted to the hazardous waste treatment facility located at Swan Hills. In *Graham*, the Board ruled that only one individual of one of the organizations was directly affected. This individual, Mr. Charlie Chalifoux, was a trapper that regularly trapped adjacent to the facility. The appeal proceeded accordingly.

[115] Although the Board assesses each appellant on their individual circumstance, it has been the exception rather than the general rule to have a group deemed to be directly affected. One exception has been the Lake Wabamun Enhancement and Protection Association ("LWEPA"). In the Board's decision, *Bailey*,[22] LWEPA was a group that was found to be directly affected. LWEPA provided a membership list to the Board, and the Board determined that LWEPA "…was created for the express purpose of engaging in the regulatory approval process, now appealed to the Board. LWEPA is the means by which … many of the local residents have in fact chosen to carry out their obligations to participate in the TransAlta Approval process."[23] In addition, two of its members filed separate, valid appeals, and the Board found there was sufficient evidence to determine that LWEPA, whose members surround and use the lake, had status to participate in these appeals. All of its members could have filed appeals in their own right and would have, in all likelihood due to their proximity to the lake, been determined to be directly affected.

[116] The cornerstone of all of the cases before the Board is the factual impact of the proposed project on individuals. It is important to understand that it is acceptable for an organization to file an appeal, but in order to demonstrate the personal impact required by section 91 of EPEA, individual members of the organization should also file an appeal – either jointly with the organization or separately. There will be cases, such as *Hazeldean* or *Bailey*, where an organization can proceed with an appeal on its own. However, in these cases, the Board will need to be clearly convinced the individual members of the organization (effectively the "in *personam*" of the organization) are individually and personally impacted by the project.[24]

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[22] *Bailey et al.* v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment* re: *TransAlta Utilities Corporation* (13 March 2001), Appeal Nos. 00-074, 075, 077, 078, 01-001-005 and 011-ID (A.E.A.B.) ("*Bailey*").

[23] Re: *TransAlta Utilities Corp.* (2001), 38 C.E.L.R. (N.S.) 68 (A.E.A.B.) at paragraph 56, (*sub nom. Bailey et al*. v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment,* re: *TransAlta Utilities Corporation)* Appeals No. 00-074, 075, 077, 078, 01-001-005 and 011-ID.

[24] "*In personam*: Against the person. Action seeking judgment against the person involving his personal rights and based on the jurisdiction of his person, as distinguished from his property." (*Black's Law Dictionary*, 6th ed.)

2. Discussion

[117] The Board acknowledges the Appellants are legal entities with rights and privileges similar to those of a person, including the right to file an appeal on their own behalf. As Appellants, they have the onus of showing how they, as legal entities, are directly affected by the Director's decision to issue the Licence Amendments.

[118] Section 2 of the *Water Act* notes the importance of the participatory role of Alberta citizens in protecting the environment. This role is not limited to filing appeals. It includes being involved in advisory groups, such as the Appellants are, and filing Statements of Concern to identify potential issues or concerns to the Director during the review stage of an application.

[119] A genuine interest does not equate to be directly affected. The legislation did not include as potential appellants those persons with a genuine interest in the environment. The test is whether the appellant is directly affected. This implies there must be a connection between the appellant and the decision of the Director. If all that was required was a genuine interest, almost anyone could file an appeal and be granted standing. The legislators clearly intended to narrow the list of potential appellants.

[120] Most of the arguments presented by the Appellants related to whether the Director's decisions to issue the Licence Amendments were contrary to law. This does not in and of itself demonstrate a direct affect. The Appellants needed to provide evidence on how there is a reasonable possibility they will be impacted by the decisions. Directly affected relates to the environmental impact a proposed project will have and how that environmental impact will affect the appellant.

[121] The Appellants' main concern is Alberta Environment and Water's policy regarding amending existing licences to allow the allocation of water to other users without the new user making a direct application to the Director for a licence transfer. The Board is not in a position to change this policy. Appearing before the Board is not the proper forum to make changes to existing policies.

[122] The Board has concluded the Appellants' use of the Bow River will not be impacted by the Licence Amendments. Trout Unlimited will have continued access to Jensen's Island as will the general public. Monitoring and protection of the riparian areas can continue by all of the Appellants.

[123] All of the Appellants are actively involved in the Bow River Basin, water management, and ecosystem protection and this participation is t be commended. However, the arguments provided demonstrate a general interest in the area and water policies and not an interest that will be impacted by the specific Licence Amendments issued.

[124] When the Board discusses "proximity," it is also referring to how closely tied the Director's decision is with the possible effect on a natural resource and the possible effect on the appellant's use of that resource. It does not only refer to whether the appellant lives adjacent to the proposed project site. It is only factor that is considered.

[125] In assessing the directly affected status of a group, the Board usually reviews the membership of the organization to determine if the individual members would be individually and personally impacted by the Director's decision. In this case, none of the Appellants provided a membership list. They explained their objectives as an organization and some of the work they have been involved in. This does not demonstrate how their members or the organizations themselves are directly affected by the Licence Amendments. There needs to be a direct link between the actual Licence Amendments, the potential environmental impact, and the suggested harm to the Appellants.

[126] Even if the Board did not use the group test that requires more than half of an organization's membership to be directly affected in their own right, the Appellants did not provide any of the evidence needed to demonstrate a link between the Amending Licences and an adverse affect on the Appellants' use of a natural resource. Advisory roles do not meet the test, and there is nothing that impacts the Appellants' ability to continue to advise their clients or public or to continue participating in government sponsored advisory groups.

[127] The Appellants stated the Board has applied the group test to community groups and environmental organizations seeking standing but has not applied the test to other forms of

corporate bodies such as municipalities or corporations. With a corporation all of the stakeholders would have the same interest in the matter and would be affected in the same way. Therefore, by the corporation filing an appeal, it is effectively filing for each stakeholder with the same interest, thereby meeting the group test for standing. When municipalities appeal, they are representing the interests of the residents. Municipalities have the obligation to act for the benefit of its residents.

[128] In a review of the appeals filed with the Board since its inception, there are few instances where a corporation or municipality has filed an appeal unless it was the approval holder. Depending on the circumstances, corporate or municipal bodies would have a strong argument for being found directly affected by their property or estate interest more than an *in personam* interest. While this is not an essential requirement to be directly affected, the potential impacts that can occur to this property is often easier to demonstrate than most other types of interest.

[129] A common problem is that groups, particularly the type that have appealed in this case, do not have a property right that can be impacted by a project. As a result, groups such as the ones here, are left to argue there will be an effect on their "*in personam*" rights as the basis of their directly affected claim. The Appellants do not have a property or an estate interest in the Bow River Basin, and they do not have an identifiable *in personam* interest. This distinguishes the position of corporate and municipal entities from groups such as the Appellants. This does not mean there will not be circumstances where these groups will be granted standing, but based on the circumstances of these appeals and the submissions provided, they have not demonstrated they are directly affected by the Licence Amendments.

[130] The Appellants have not demonstrated they are directly affected by the Licence Amendments. Therefore, the Board dismisses their appeals.

3. Public Interest Standing

[131] The Appellants raised the issue of public interest standing. In the Appellants' submissions, they acknowledged the Board does not have the jurisdiction to make a final decision on its authority to grant public interest standing or its jurisdiction to consider lawfulness

of the Licence Amendments under the *Irrigation Districts Act*. However, the Appellants are asking the Board to grant them public interest standing. With respect, it appears the Appellants contradicted themselves in their submissions. They stated the Board cannot make a final decision on its authority to grant public interest standing, but yet the Appellants argued the Board has authority to grant public interest standing in these appeals. They are asking the Board to make a decision the Appellants know is outside the Board's jurisdiction. If the Board does not have the authority to grant public interest standing and if the Board grants public interest standing, the Appellants have already stated this would exceed the Board's jurisdiction and could be judicially reviewed by the Licence Holders or Director.

[132] The Appellants proposed to the Board that, if standing is not granted to the Appellants, the decision will be judicially reviewed, resulting in increased costs and time to all of the Participants, the Board, and the Courts. The Board cannot use the possibility of a judicial review and related costs as a basis to grant standing to any appellant. In the Board's view, this is contrary to the principles of natural justice. In addition, if standing was granted to avoid a judicial review filed by the Appellants, there is nothing preventing the Approval Holders or the Director from filing a judicial review on the basis the Board exceeded its jurisdiction. Filing a judicial review of the Board's decision is a legislated right for all of the Participants.

[133] The Appellants referred to the *Finlay* and *Reese* cases as being determinative of the matter and discussed the four-part test.[25] The Board notes these cases discuss the concept of public interest standing in relation to a review of an administrative decision by a Court, not an administrative tribunal. These cases do not address the ability of an administrative tribunal to allow public interest standing in the exercising of its jurisdiction. While the Board does not accept that these cases apply in these circumstances, the Board will examine the test in the context of these appeals.

[134] The *Finlay* and *Reese* cases establish a four-part test to deal with public interest standing. The first part of the test is whether the issue is justiciable. The powers of the Board are limited to those granted through the enabling legislation. It does not have the inherent

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[25] See: *Finlay* v. *Canada (Minister of Finance)* [1986] 2 S.C.R. 607, and *Reese* v. *Alberta* (1992) 87 D.L.R. (4th) 1 (Alta. Q.B.).

powers of the courts. The Board's enabling legislation does not provide it with the powers to determine public interest standing. In order for the Board to have the jurisdiction to hear an appeal, the legislation requires the appeal to be filed by someone who has filed a Statement of Concern and is directly affected by the Director's decision. This is a preliminary matter the Board must determine before it can proceed to a substantive hearing, but it does not give the Board the ability to determine if an appellant should be granted public interest standing.

[135] The second part of the test is whether there is a serious issue that needs to be heard. The Board agrees with the Appellants that there is a serious issue to be determined. The Appellants want the Board to determine if the Director acted outside his legislated authority and contrary to the law when he issued the Licence Amendments.

[136] The third part of the test is whether the applicant is directly affected or has a genuine interest in the matter. The Appellants are using the public interest test to argue they should be granted standing if they are found to be not directly affected. None of the Appellants are directly affected by the Director's decision to issue the Licence Amendments. The Board acknowledges the Appellants have a genuine interest in the protection of the Bow River Basin. However, what is at issue in the appeals are the Licence Amendments that were issued to the Licence Holders by the Director. It is questionable whether the Appellants have a direct interest in the actual Licence Amendments being appealed. Although they have an interest in how the Director issues licence amendments within the Bow River Basin, the appeals relate only to the specific Licence Amendments issued to the Licence Holders. Even though the Appellants have a genuine interest in the Bow River Basin, based on the information provided in their submissions, they only have an interest in the Licence Amendments as it pertains generally to the issuance of amendment licences in the Bow River Basin.

[137] The fourth part of the test requires there be no other reasonable and effective manner for the issue to be brought before the court. In the appeals before the Board, there is another reasonable and effective manner to bring the issues before the Board. What is required is a person who is directly affected by the Director's decision. In the EID Decision the Board found one of the appellants, Mr. Hohloch, was directly affected by the EID amending licence, and his appeal is proceeding to a hearing. It is conceivable that a person in a similar position

could have filed an appeal and brought the issues forward. Therefore, it is clear there are other alternatives to bringing the matter before the Board other than granting the Appellants public interest standing. In the EID Decision, as in all appeals before the Board, each appellant was assessed on their own merits as to whether they met the directly affected test. It was irrelevant that one appellant was found to be directly affected. It did not affect the other appellants' position. The Board did not decide that, because one appellant had standing, it did not have to consider the other appellants' positions.

[138] In granting intervenor status to an applicant, the Board can determine the extent to which the intervenor can participate in the hearing. The Board may allow only written submissions or it may allow oral presentations at the hearing. If oral representation is allowed, the Board may range from being restricted to giving a brief overview of the arguments or being able to participate similar to a party. However, there is one crucial difference between a party to an appeal and an intervenor; the intervenor cannot proceed in a hearing on their own. If the appellant withdraws his or her appeal, the intervenor does not have the ability to carry on with the hearing.

[139] The Appellants referred to the *Doull* decision, arguing that two organizations that were not directly affected were granted "public interest standing." With respect, they were not. In the *Doull* decision, the Board found the two groups, specifically the Edmonton Friends of the North Environmental Society ("EFONES") and the Edmonton Federation of Community Leagues ("EFCL"), did not meet the group standing test and dismissed their appeals. EFONES and the EFCL were allowed to participate pursuant to section 95(6) of EPEA, which allows a person to be added as a party if the Board determines the person should be allowed to participate in the hearing. The Board allowed these groups to participate as intervenors. If the parties that were found directly affected had withdrawn their appeals, EFONES and the EFCL would not have been able to proceed with the appeals on their own.[26]

[140] The Appellants referred to the *Hanson* decision where the Board granted standing to the City of Airdrie. In that appeal, the Board dismissed the City of Airdrie's appeal because it

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[26] It should also be noted that *Doull* was a unique situation in that standing was, in part, determined by an agreement between EFONES, the EFCL, the Director, and the approval holder, Inland Cement Limited.

did not file a Statement of Concern within the legislated time frame. However, the Board gave Airdie standing because it demonstrated there was a reasonable possibility a natural resource, specifically Nose Creek, could be affected by the issuance of the licence, and Airdrie held a licence and preliminary certificate that could be affected by the licence. There was a link between the Director's decision, a possible impact on a natural resource, and a potential affect on the appellant. The City of Airdie met the directly affected test. It is also important to note that, had the other appellants withdrawn their appeals, the City of Airdrie could not have continued its appeal.

[141] The Board cannot and will not grant public interest standing to the Appellants in these circumstances. Granting public interest standing is not within the Board's jurisdiction.

V. Jurisdictional Issues

[142] As the Board has determined none of the Appellants are directly affected by the Director's decisions, the Board does not have to consider the jurisdictional issues raised by the Appellants.

VI. Hearing Issues

[143] The Board has dismissed the appeals on the grounds the Appellants are not directly affected. Therefore, the Board does not have to consider the issues for a hearing.

[144] The Board cannot change legislation or Alberta Environment and Water's policies. The Appellants appeared to be discontented with the present legislative scheme, but there are no remedies available by appearing before the Board if their intent is to have the legislation or policies changed. There are other forums available to create and promote legislative reform.

VII. CONCLUSION

[145] The Board finds Water Matters Society of Alberta, Alberta Wilderness Association, and Trout Unlimited Canada did not meet the onus of demonstrating to the Board that they are directly affected by the Director's decision to issue the Licence Amendments. The Board dismisses the appeals, and the Board cannot and will not grant public interest standing.

Dated on April 10, 2012, at Edmonton, Alberta.

"*original signed by*"

D.W. Perras
Chair

"*original signed by*"

Alan J. Kennedy
Board Member

"*original signed by*"

Eric O. McAvity, Q.C.
Board Member