

13-011

Appellant – Colin Bussiere, **Operator** – 541466 Alberta Ltd. (JLG Ball Enterprises), **Location** – near Boyle

A Notice of Appeal was received on August 16, 2013 from Mr. Colin Bussiere, in relation to the July 30, 2013 decision of Alberta Environment and Sustainable Resource Development (AESRD) to issue *Water Act* Approval No. 00328026-00-00 to 541466 Alberta Ltd. (JLG Ball Enterprises) authorizing the draining of groundwater from aggregate extraction pits within SW-36-063-19-W4M, near Boyle. On August 6, 2013, the Board had previously received a Notice of Appeal and stay request with regards to the same Approval from Ms. Bodhil Jelhof Jensen (EAB 13-010).

On September 26, 2013, in consultation with the parties, the Board scheduled a mediation meeting for November 14, 2013 to address the appeals of Ms. Jensen and Mr. Bussiere. On November 15, 2013, the Board advised that further to certain steps within the mediation agreement, the appeal of Ms. Jensen was withdrawn, and the Board discontinued its proceedings and closed its file with respect to Ms. Jensen's appeal. The appeal of Mr. Bussiere remained outstanding. In consultation with the parties, a further mediation was held on July 29, 2014 in Edmonton regarding Mr. Bussiere's appeal. A resolution was not reached and the appeal proceeded to a hearing. In consultation with the parties, on August 15, 2014 the Board set the hearing for November 21, 2014.

The Board asked the parties for submissions on what issues the Board should hear at the hearing. The issues must: be included in the Notice of Appeal; relate to the Approval being appealed; and be within the Board's jurisdiction. The Board issued a decision stating the only activities covered in the Approval relate to the dewatering activities and the following issues would be heard at the hearing:

1. Are the monitoring requirements in the Approval adequate to ensure the protection of the environment, including groundwater sources and Long Lake, while the dewatering of the extraction pits is taking place?
2. Do the other terms and conditions in the Approval properly mitigate any potential environmental impacts caused by the dewatering of the extraction pits?

Cite as: *Bussiere v. Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: 541466 Alberta Ltd. (JLG Ball Enterprises)* (06 October 2014), Appeal No. 13-011-ID1 (A.E.A.B).

The Board received a letter dated September 25, 2014 from Mr. Bussiere in which Mr. Bussiere indicated he wished to withdraw his appeal based on his view that the issues set by the Board do not directly address his issues other than to deny them by exclusion. The Board noted that Mr. Bussiere had provided his withdrawal without the benefit of having reviewed the Board's reasons for setting the issues to be considered at the hearing. The Board noted that Mr. Bussiere's concerns included the effect of the project on the aquatic environment and public safety, and the hydraulic, hydrological and hydrogeological effects of the project. In the Board's view, these issues could be considered within the issues set.

With respect to the issue that dewatering could have on Long Lake and the surrounding groundwater, the Board stated at paragraph 52 of its decision that: "The Appellant raised

concerns regarding the potential impacts dewatering could have on Long Lake and the surrounding groundwater. As the potential impacts are related to the dewatering activity, this is a valid issue before the Board.” With respect to the potential hydrological, hydrogeological, and hydraulic effects of the project, the Board stated at paragraph 53 of its decision that: “...[T]he Appellant’s concern regarding the hydrological, hydrogeological, and hydraulic effects of dewatering, including impacts to groundwater sources and Long Lake, are within the Board’s jurisdiction.” With respect to public safety, the Board states at paragraph 55 of its decision that: “...[T]he impact to public safety as it relates to the quality of the water entering Long Lake as a result of the dewatering process is relevant to the Approval being appealed and is a valid issue before the Board that is captured in the issue regarding monitoring requirements.”

Finally, with respect to other potential environmental impacts of the project, the Board stated at paragraph 56 of its decision that: “The purpose of issuing an approval is to ensure the potential environmental impacts are prevented or mitigated. It is the specific terms and conditions of an approval that specify what the approval holder can do under the approval. Therefore, the Board considers the issue of whether the terms and conditions of the Approval properly mitigate any potential environmental impacts caused by the dewatering of the extraction pits as a valid issue.”

In its decision, the Board also stated that Mr. Bussiere’s concerns regarding the end pit lake were found to be outside the Board’s jurisdiction. Reclamation of the site, including the construction and maintenance of the end pit lake, are authorized under the approval issued by Public Lands, not the Approval being appealed.

The Board requested that Mr. Bussiere review the Board’s decision containing its reasons and advise whether he would still like to withdraw his appeal. On October 10, 2014 the Board received an e-mail from Mr. Bussiere withdrawing his appeal. Based on the withdrawal of the appeal by Mr. Bussiere, the Board discontinued its proceedings, cancelled the hearing scheduled for November 21, 2014 and closed its file.