



ALBERTA
ENVIRONMENTAL APPEALS BOARD

February 24, 2014

Via E-Mail

Ms. Debbie McDonald

Mr. Darin Stepaniuk
Alberta Justice and Solicitor General
Environmental Law Section
8th Floor, Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6

Dear Ms. McDonald and Mr. Stepaniuk:

Re: Debbie McDonald/Alberta Environment and Sustainable Resource Development/Information Letter/Our File No.: EAB 13-021

As stated in its February 14, 2014 letter, the Environmental Appeals Board (the “Board”) has decided to dismiss Ms. Debbie McDonald’s appeal as there is no decision made by Alberta Environment and Sustainable Resource Development (“AESRD”) that is appealable. These are the Board’s reasons.

Ms. McDonald (the “Appellant”) filed an appeal with the Board on January 21, 2014, appealing a letter she received from AESRD regarding public access to a water reservoir on her property.

The Board’s jurisdiction to hear appeals is given pursuant to the applicable legislation, in this case, the *Water Act*, R.S.A. 2000, c. W-3. Section 115 of the *Water Act* specifies the types of decisions made by an AESRD Director which can be appealed. A copy of section 115 of the *Water Act* is attached. The types of decision that can be appealed include: the refusal to issue an approval or licence; the issuance or amendment of an approval, a preliminary certificate, or a licence; the cancellation or refusal to renew an approval or licence; enforcement orders, or administrative penalties. It does not provide a right of appeal of an information letter.

The Appellant is appealing an information letter provided to her regarding the water reservoir on her land. The Appellant had asked clarification from AESRD on whether the public could access the “Pederson Reservoir.” The Appellant owns land adjacent to the Pederson Reservoir. The Appellant received a response from AESRD explaining the water in the reservoir is not private property, but the land under the reservoir is private property. This is not a “decision” as envisioned by the legislation as being appealable. The Board is bound by the limitations that are set out in the relevant legislation.

The Board's jurisdiction is limited to recommending Director's decision is confirmed, reversed or varied. The Appellant suggested the letter was an approval or an enforcement order. The Board does not agree. What the Appellant has is a letter from AESRD with an explanation of what is deemed private property versus non-private property by AESRD. The Board notes the letter was not signed by a Director as defined under the *Water Act*.

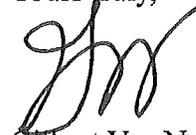
The Appellant requested an amendment to the letter provided by AESRD. The Board does not have the ability to amend an information letter or its content. The Board can recommend an amendment to an approval or licence, but in this appeal, there is no approval, licence, or enforcement order that has been issued.

The Board appreciates the Appellant's concerns regarding public access to the reservoir and the Appellant may not like the answer provided by AESRD regarding her concerns about trespassers on the reservoir. However, the Board has no jurisdiction to amend or reverse the contents of the information letter provided by AESRD.

Therefore, the Board must dismiss the Appeal filed by Ms. Debbie McDonald, because there is no right of appeal of an information letter.

Please do not hesitate to contact the Board if you have any questions. You may call toll-free by first dialling 310-0000, followed by 780-427-6207, or e-mail gilbert.vannes@gov.ab.ca.

Yours truly,



Gilbert Van Nes
General Counsel and
Settlement Officer

Att.