

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – November 24, 2014

IN THE MATTER OF sections 91, 92, 94, 95, and 98 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF an appeal filed by Jeff Colvin and Regional Water Services Ltd. with respect to Administrative Penalty No. WA-14/04-AP-SSR-14/07 issued to Jeff Colvin and Regional Water Services Ltd., under the *Water Act*, by the Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development.

Cite as: *Colvin and Regional Water Services Ltd. v. Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development* (24 November 2014), Appeal No. 14-010-D (A.E.A.B.).

BEFORE:

Justice Delmar W. Perras (ret.), Board Chair.

SUBMISSIONS BY:

Appellants: Mr. Jeff Colvin and Regional Water Services Ltd.

Director: Mr. Craig Knaus, Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development, represented by Ms. Nicole Hartman, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Sustainable Resource Development (AESRD) issued an Administrative Penalty in the amount of \$10,000.00 to Jeff Colvin and Regional Water Services Ltd. (the Appellants) for contravening the *Water Act*. AESRD determined the Appellants: (a) failed to equip Cochrane Lake with a device which measures the water level (\$2,500.00); (b) failed to measure the water levels in Cochrane Lake each month (\$2,500.00); (c) failed to measure the total volume of water returned to Cochrane Lake each month (\$2,500.00); (d) failed to submit a 2012 Annual Water Use Report to AESRD on or before February 28, 2013 (\$1,500.00); and (e) failed to submit a 2013 Annual Water Use Report to AESRD on or before February 28, 2014 (\$1,500.00). AESRD varied the assessment based on applicable factors by increasing the assessment by \$1,000.00 and dismissing Count 5.

The Board received a Notice of Appeal from the Appellants appealing the Administrative Penalty. A mediation meeting was held and a resolution was reached whereby the parties recommended to the Board that the Administrative Penalty be varied by deleting Counts 3 and 4, thereby reducing the Administrative Penalty to \$6,000.00, and removing Jeff Colvin as a party to the Administrative Penalty. The Board accepted the mediated agreement and varied the Administrative Penalty accordingly.

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I. BACKGROUND

[1] On May 29, 2014, the Director, South Saskatchewan Region, Alberta Environment and Sustainable Resource Development (the “Director”), issued Administrative Penalty No. WA-14/04-AP-SSR-14/07 (the “Administrative Penalty”) to Mr. Jeff Colvin and Regional Water Services Ltd. (collectively, the “Appellants”), for contraventions of section 142(1)(e) of the *Water Act*, R.S.A. 2000, W-3. The Director has the authority to issue an administrative penalty under section 152 of the *Water Act*.¹

[2] The Director issued the Administrative Penalty in the total amount of \$10,000.00 based on the following five counts:

1. Count 1: the Appellants failed to equip Cochrane Lake with a device which measures the water level (\$2,500.00);
2. Count 2: the Appellants failed to measure the water levels in Cochrane Lake each month (\$2,500.00);
3. Count 3: the Appellants failed to measure the total volume of water returned to Cochrane Lake each month (\$2,500.00);
4. Count 4: the Appellants failed to submit a 2012 Annual Water Use Report to the Director on or before February 28, 2013 (\$1,500.00); and
5. Count 5: the Appellants failed to submit a 2013 Annual Water Use Report to the Director on or before February 28, 2014 (\$1,500.00).

The Director varied the assessment based on applicable factors by increasing the assessment by \$1,000.00 and dismissing Count 5.

[3] On June 25, 2014, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from the Appellants. The Board acknowledged receipt of the appeal and notified the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to the Administrative Penalty, and that the Appellants and the Director (collectively, the “Parties”) provide available dates for a mediation

¹ Section 152 of the *Water Act* provides:

“If the Director is of the opinion that a person has contravened a provision of this Act that is specified for the purposes of this section in the regulations, the Director may, subject to the regulations, by notice in writing given to that person, require that person to pay to the Government an administrative penalty in the amount set out in the notice for each day or part of a day the contravention occurs or continues.”

meeting. The Record was received on September 8, 2014, and a copy was provided to the Appellants on September 19, 2008.

[4] A mediation meeting was held on October 9, 2014, in Calgary. Productive discussions resulted in a resolution of the appeal.

[5] On November 17, 2014, the Board received confirmation the terms of the mediated agreement had been met.

II. DISCUSSION

[6] The mediated agreement resulted in the Parties recommending to the Board that Counts 3 and 4 should be deleted, resulting in a decrease of the Administrative Penalty to \$6,000.00. The Parties also recommended that Mr. Colvin be removed as a party to the Administrative Penalty.

[7] The Board considers the mediated agreement as reasonable and will vary the Administrative Penalty as follows:

1. Counts 3 and 4 of the Administrative Penalty and the corresponding penalty amounts will be deleted; and
2. Mr. Jeff Colvin will be removed as a party to the Administrative Penalty.

III. DECISION

[8] Based on the mediated agreement and verification that the terms of the mediated agreement have been met, the Board deletes Counts 3 and 4, reducing the total Administrative Penalty to \$6,000.00. The Board also removes Mr. Jeff Colvin as a party to the Administrative Penalty.

IV. ORDER OF THE BOARD

[9] In accordance with section 98(2) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board has the authority to confirm, reverse or vary the decision of the Director.² Therefore, with respect to the decision of the Director to issue

² Section 98(2) of the Act provides:

Administrative Penalty No. WA-14/04-AP-SSR-14/07 to Mr. Jeff Colvin and Regional Water Services Inc. for contravention of section 142(1)(e) of the *Water Act*, the Board orders that the decision of the Director to issue the Administrative Penalty is varied as follows:

1. that Counts 3 and 4, with the corresponding penalty amounts, are deleted;
and
2. that Mr. Jeff Colvin is removed as a party to the Administrative Penalty.

[10] The Board notes the total of the varied Administrative Penalty, \$6,000.00, has already been received by the Regulatory Approvals Centre on behalf of the Director.

Dated on November 24, 2014, at Edmonton, Alberta.

“original signed by”
D.W. Perras
Board Chair