
ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – August 28, 2018

IN THE MATTER OF sections 91, 92, 93, 94, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF an appeal filed by William Ross with respect to the decision of the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, to issue *Water Act* Licence No. 00369196-00-00 to Terry and Catherine Gilbertson.

Cite as: Adjournment Decision: *Ross v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: Gilbertson (28 August 2018), Appeal No. 16-005-D (A.E.A.B.).

BEFORE:

Mr. Eric McAvity, Q.C., Panel Chair;
Mr. Jim Barlishen, Board Member; and
Dr. Brenda Ballachey, Board Member.

SUBMISSIONS BY:

Appellant: Mr. William Ross.

Licence Holder: Mr. Terry and Ms. Catherine Gilbertson,
represented by Mr. Ryan O'Connor, Nickerson
Roberts Holinski & Mercer.

Director: Mr. Todd Aasen, Director, Red Deer-North
Saskatchewan Region, Alberta Environment
and Parks, represented by Ms. Lisa
Semenchuk, Alberta Justice and Solicitor
General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued a Licence under the *Water Act* to Mr. Terry and Ms. Catherine Gilbertson for the diversion of groundwater for agricultural purposes.

Mr. William Ross appealed the decision to issue the Licence to the Environmental Appeals Board (the Board). The hearing was scheduled for March 24, 2017. On March 20, 2017, Mr. Ross asked for an adjournment of the hearing on the basis he had not received all of the submissions from the parties.

The Gilbertsons did not support the request for an adjournment and AEP had no issue with the adjournment request.

The Board denied the adjournment request since all of the submissions and the complete record had been emailed or couriered to Mr. Ross in time for him to properly prepare for the hearing.

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I. BACKGROUND

[1] On May 2, 2016, the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks (the “Director”), issued Licence No. 00369196-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to Mr. Terry and Ms. Catherine Gilbertson (the “Licence Holders”). The Licence allows the Licence Holders to operate a works and divert up to 3400 cubic metres of water annually from a groundwater well for the purpose of stock watering. The well is located in the County of Paintearth.

[2] On June 10, 2016, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. William Ross (the “Appellant”) appealing the Director’s decision to issue the Licence.

[3] On June 13, 2016, the Board wrote to the Appellant, the Licence Holders, and the Director (collectively, the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Licence Holder and Director of the appeal.

[4] On July 6, 2016, The Director provided the Board with copies of the documents relating to his decision (the “Record”), and hard copies and a USB drive containing the documents were provided to the Appellant and the Licence Holders on July 8, 2016.

[5] On August 18, 2016, the Board held a mediation meeting in Coronation, Alberta. Discussions continued among the Parties after the mediation meeting. However, no resolution was reached, and the Board proceeded to schedule the hearing for March 24, 2017.

[6] Written submissions for the hearing were received from the Licence Holders and the Director on March 16, 2017, and from the Appellant on March 17, 2017.

[7] On March 20, 2017, the Appellant requested an adjournment of the hearing. The Board requested the Licence Holders and the Director provide responses to the adjournment request.

[8] On March 21, 2017, the Board notified the Parties it was denying the Appellant’s adjournment request. These are the Board’s reasons.

II. SUBMISSIONS

A. Appellant

[9] On March 20, 2017, the Appellant requested the Board adjourn the hearing scheduled for March 24, 2017. He asked for the adjournment claiming he did not receive all of the written submissions and documents in a timely manner for him to prepare for the hearing.

[10] The Appellant said he received all the documents and emails to date, as did the Licence Holders, and it was the Licence Holders' responsibility to provide the documents to their legal counsel, not the Board's responsibility. The Appellant stated the Licence Holders' counsel received all the documentation on a USB drive, and the Appellant felt he was entitled to the same convenience at the same time. The Appellant said that, had the USB drive been sent to him at the same time it was sent to the Licence Holders' counsel, he would have received it before March 20, 2017. The Appellant understood the USB drives were sent to him, but complained that if he did not receive them by March 20, 2017, he would not be able to retrieve them from his post box for another two days.

[11] The Appellant understood he was to receive more documents by courier, but he was not aware of any courier service that would deliver to his residence. He noted these documents may be the only documents that were not in electronic format. The Appellant stated the lack of an electronic version would add to the time he would need to prepare for the hearing.

[12] The Appellant requested the hearing be rescheduled so he would have a fair chance to prepare his case with all the documents in his possession.

B. Licence Holders

[13] The Licence Holders opposed the adjournment of the hearing since the hearing date had been set with the Appellant's consent and all of the documentation had been exchanged. The Licence Holders stated the Appellant received all of the submissions by email and, therefore, had all of the documents necessary to prepare for the hearing. The Licence Holders did not agree the adjournment should be granted on the basis the Appellant had not received hard copies of the documents.

[14] The Licence Holders stated the Appellant had the same amount of time to prepare as the other Parties and had received additional time to prepare his written submission.

[15] The Licence Holders stated their witnesses were ready and available to attend the hearing on March 24, 2017.

[16] The Licence Holders requested the hearing proceed as scheduled on March 24, 2017.

C. Director

[17] The Director had no issue with an adjournment.

III. DISCUSSION

[18] After reviewing the file and submissions, the Board denies the Appellant's adjournment request. The Board sent a copy of the Record and the entire file, in hardcopy and electronic format, to the Appellant and the other parties on July 8, 2016. The Director's supplemental record was emailed to the Parties, including the Appellant, on March 13, 2017. All correspondence between the Board and the Parties was emailed to the Appellant, as it was to the other Parties, on the dates the covering letters were written. If the Appellant printed the correspondence as it was received, the entire record would be complete as the appeal progressed.

[19] Throughout the appeal process, the Board was forwarding letters to the Appellant, and the other Parties, via email. The Appellant did not express any concerns to the Board about receiving the documents via email or that he had difficulty in downloading any information. The Appellant acknowledged he had received all the documents and emails up to the date he requested the adjournment.

[20] All the Parties received a copy of the Director's record in hard copy and on a USB drive on July 8, 2016, so the Appellant had most of the information on a searchable USB drive near the beginning of the appeal process. A supplemental record, consisting of fewer than 20 pages, was sent to the Parties on March 8, 2017. These documents would not have been included on the USB drive provided to the Licence Holders' counsel on March 2, 2017. The same is also

true of the written submissions provided for the hearing. The Parties were all in the same position in that none of the submissions for the hearing would have been provided on a USB drive, only by email and hard copy.

[21] The Appellant requested another copy of the updated file on March 6, 2017, after the Board notified the Parties the Licence Holders' legal counsel was being provided with a copy of the file on a USB drive. It is standard procedure for the Board to provide the complete file to a party's legal counsel on a USB drive if they are retained part way through the appeal process, which was the case here.

[22] The Board emailed a letter to the Parties notifying them the USB drive was being sent to the Appellant. The Board sent the USB drive with the updated file to the Appellant on March 8, 2017. Based on the "postal rule," the Appellant should have received it on March 15, 2017.¹ The Appellant's decision(s) as to when he actually picked up his mail were the Appellant's alone, as the Board has no involvement with or control over those actions. The Appellant was aware the USB was sent, and he must take some responsibility for checking his mail regularly particularly when he was advised by the Board the documents had been sent. If the Appellant had not received the USB by March 16 or 17, 2017, he should have notified the Board.

[23] The Board appreciates internet connection in rural areas may not be high speed, and it may be unreliable. If the Appellant had issues with receiving the documents by email, he had a responsibility to notify the Board to determine alternative methods of receiving the material in a timely manner. The Board used email, courier, and regular mail to send documents to the Appellant. Again, the Appellant needed to contact the Board if he had issues receiving the documents. The Board makes every effort to ensure the parties to appeals receive the documents in a timely manner. If the Appellant had not received documents in a timely manner, the Appellant should have notified the Board.

[24] If the Appellant had printed the communications as they were sent to him, the Appellant would have had a complete file in hard copy. Most documents sent to the Appellant were not large and should not have been a problem to download and print. The submissions for

¹ According to the Interpretation Act, R.S.A. 2000, c. I-**,

the hearing were larger, 77 pages for the Licence Holders and 55 pages for the Director. However, in reviewing the submissions, a number of the Licence Holders' attachments were documents the Appellant was familiar with, such as land title documents, court procedure cards, and other documents already in the Director's Record, including the application for the Licence and the Licence itself. The attachments to the Director's submission contained excerpts of the *Water Act*. Neither the Licence Holders' nor Director's submissions were so large as to have prevented the Appellant from reading them thoroughly and printing relevant portions. In documents of this size, a search feature would not be required to prepare for the hearing.

[25] Although the Appellant stated it took considerable time for him to download documents on his internet connection, the Board notes he was able to email his submission and attachments to the Board in a number of sections. The Board notes the size of some of the emails sent by the Appellant used more megabytes to upload than the Licence Holders' and Director's submissions took to download. It is the Board's understanding it is approximately five times faster to receive a file than to send a file. This indicates the Appellant had sufficient internet capability to receive and download all of the submissions for the hearing.

[26] The fact the Appellant did not receive another USB drive on the same date it was provided to legal counsel for the Licence Holders in no way affected his ability to use an electronic format to search the Director's Record. Most of the subsequent correspondence sent by the Board, from the time the Appellant received the original USB drive in July of 2016 until the hearing submissions were received, related to mediation and letters about the Board's process, normally not relevant when preparing arguments on the issues at the hearing.

[27] The Appellant notified the Board on March 20, 2017, that he had not yet received the Licence Holders' submissions for the hearing. The Board emailed the submissions to him that day. The Appellant still had time to prepare for the hearing if he focused on the issues identified by the Board. It was clear in the Appellant's letter of March 14, 2017, the Appellant was preparing for the hearing. He had a list of questions he wanted answered before the hearing. The Board advised the Appellant that it did not have a discovery process similar to what might occur in a civil litigation court process, but the Appellant would be able to ask the questions at the hearing if he felt they were relevant to the issues identified by the Board. The Board believes

the Appellant had the information needed to prepare for cross-examination of the Licence Holders and Director at the hearing and to present his case.

[28] Given the Appellant had the Record available on a searchable USB drive and hard copy since July 8, 2016, and the submissions, which were not large documents to review, were emailed to the Appellant in advance of the hearing, the Appellant had sufficient time to prepare for the hearing. Accordingly, the Appellant has not demonstrated the need for an adjournment, and the Board denies his adjournment request.

IV. DECISION

[29] Having reviewed the relevant information and taken into consideration the submissions of the Parties, the Board denies the adjournment request.

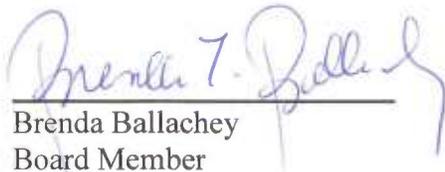
Dated on August 28, 2018, at Edmonton, Alberta.



Eric McAvity, Q.C.
Panel Chair



Jim Barlishen
Board Member



Brenda Ballachey
Board Member