

16-038-041

2017 AEAB 8

Appellants – Harvey Schmidt, Edwin Neumann; the Estate of Ms. Pauline Neumann; and Edwin Neumann as a beneficiary to Pauline Neumann’s Estate, **Operator** – Capital Power GP Holdings Inc., **Location** – Thorsby

Notices of Appeal were received from Harvey Schmidt on November 24, 2016, and from Edwin Neumann, the Estate of Ms. Pauline Neumann filed by Edwin Neumann, and Edwin Neumann as a beneficiary to Pauline Neumann’s Estate on November 25 and 28, 2016. These appeals are in relation to the November 9, 2016 decision of Alberta Environment and Parks to issue to Capital Power GP Holdings Inc., *Water Act* Licence No. 00151663-01-00 for the operation of a works and the diversion of up to 709,000 cubic metres of water annually for industrial cooling purposes as follows: 523,000 cubic meters from Genesee Creek; 39,000 cubic meters from a surface water tributary to the North Saskatchewan River (via Creek 5); 108,000 cubic meters from a surface water runoff tributary to the North Saskatchewan River (via Creek 4); and 39,000 cubic meters from a surface water runoff tributary to the North Saskatchewan River (via East Creek) at Sections 22, 23, 24, 25, 26, 27, 34 and 35 located in 50-03-W5M near Thorsby.

In consultation with the parties, a mediation meeting was scheduled for April 25, 2017. However, the mediation was cancelled as a result of a request from Capital Power to dismiss the appeals. On February 22, 2017, Capital Power requested the appeals be dismissed because the Appellants participated in a review of the Licence when Capital Power applied to the Alberta Energy Regulator (AER) to amend various existing Approvals for the Genesee Mine Extension Project which included the Licence under appeal. Pursuant to sections 95(2)(a) and 95(5)(b)(i) of the *Environmental Protection and Enhancement Act*, the Board must consider whether the project being appealed was the subject of a hearing or review under any Act administered by the AER and whether the persons submitting the notice of appeal received notice of and participated in or had the opportunity to participate in the hearing or review. If those persons had an opportunity to participate in a hearing or review conducted by the AER, at which all of the matters in the Notice of Appeal were adequately dealt with, the Board may not have jurisdiction to hear the appeals. The Board set a schedule to receive written submissions from the parties to determine whether the Board had jurisdiction to hear the appeals.

In a letter dated May 25, 2017, Capital Power advised that additional information was provided to the Appellants to address their concerns. As a result of receiving the additional information, on May 26, 2017 and June 8, 2017 the Appellants withdrew their appeals. Based upon the withdrawal of the appeals, on June 12, 2017 the Board discontinued its proceedings and closed its files in these matters and no decision was made on Capital Power’s motion to dismiss the appeals.