ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – June 28, 2022

IN THE MATTER OF sections 91, 92, 95, and 101 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 appeals filed by Mohinder Singh Gill and Five Pillar Holdings Ltd. with respect to the decision of the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks, to cancel *Water Act* Interim Licence No. 11738 and issue Water Management Order No. WMO-2017/01-SSR.

Cite as: Reconsideration Decision: *Gill and Five Pillar Holdings Ltd.* v. *Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (28 June 2022), Appeal Nos. 16-057 & 16-061-063-RD2 (A.E.A.B.), 2022 ABEAB 27.

BEFORE: Mr. Chris Powter, Board Member and Panel Chair.

PARTIES:

Appellants: Mr. Mohinder Singh Gill, and Five Pillar Holdings Ltd.

Director: Mr. Craig Knaus, Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks, represented by Ms. Shannon Keehn, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

The Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the Director) cancelled Interim Water Licence No. 11738 (the Licence) and issued Water Management Order WMO-2017/01-SSR (the Order) to Mr. Mohinder Singh Gill and Five Pillar Holdings Ltd. (the Appellants). The Licence and the Order related to a water well (the Well) located at LSD 3-15-24-25-W4M, used by the Appellants to divert water to supply the Wheatland County Inn (the Hotel), located on the same property as the Well, in Strathmore, Alberta. The Director previously declared the Well to be a problem water well pursuant to the *Water (Ministerial) Regulation*, Alta Reg 205/1998. The Order required the Appellants to reclaim the Well.

The Appellants appealed the cancellation of the Licence and the issuing of the Order to the Environmental Appeals Board (the Board). After holding a hearing, the Board determined: (1) the Director's decision to cancel the Licence was appropriate, (2) the Director's decision to issue the Order was appropriate, and (3) the terms and conditions of the Order were, in principle, appropriate. The Board provided a Report and Recommendations to the Minister of Environment and Parks (the Minister), who accepted the Board's recommendations.

The Appellants requested the Board reconsider its Report and Recommendations on the basis the Board made unreasonable errors of fact by misinterpreting the facts presented by the Appellants. The Appellants submitted two new reports from a recent well water test and a well inspection.

After a review of the Report and Recommendations, and the submissions from the Appellants and the Director, the Board found the Appellants did not provide a basis for a reconsideration of the Board's Report and Recommendations. The Board found no unreasonable finding of fact. The Board found the Appellants were dissatisfied with the recommendations and were attempting to reargue the appeal.

The Board denied the reconsideration request.

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I. INTRODUCTION

[1] This is the decision of the Environmental Appeals Board (the "Board") on the request by Mr. Mohinder Singh Gill and Five Pillar Holdings Ltd. (the "Appellants") for the Board to reconsider its Report and Recommendations regarding appeal Nos. EAB 16-057, 16-061, 16-062 and 16-063.[1]

[2] The Board considered the written submissions of the Appellants and the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the "Director"), along with its Report and Recommendations, and determined the Appellants did not meet the onus of demonstrating there were exceptional circumstances that would warrant the Board exercising its discretion to grant a reconsideration of its Report and Recommendations. The Board dismissed the Appellants' reconsideration request.

II. BACKGROUND

[3] On January 12, 2017, the Director cancelled Interim Water Licence No. 11738 (the "Licence") and issued Water Management Order WMO-2017/01-SSR (the "Order") to the Appellants. The Licence and the Order related to a water well (the "Well") located at 3-15-24-25-W4M, in the Town of Strathmore, Alberta (the "Town"). The Appellants used the Well to supply water to the Wheatland County Inn (the "Hotel"), on the same property as the Well. The Director previously declared the Well to be a problem water well pursuant to section 40 of the *Water (Ministerial) Regulation*, Alta. Reg. 205/1998.[2] The Order required the Appellants to reclaim the Well under section 66 of the *Water (Ministerial) Regulation*.[3]

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1 *Gill and Five Pillar Holdings Ltd.* v. *Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (26 November 2021), Appeal Nos. 16-057 and 16-061-063-R (A.E.A.B.), 2021 ABEAB 36 (the "Report and Recommendations").

2 Section 40 of the *Water (Ministerial) Regulation* states: "The Director may declare a well to be a problem well if the Director is satisfied that the well may cause, is causing or has caused an adverse effect on the environment, human health, property or public safety."

3 In 2018, the relevant provisions of section 66 of the *Water (Ministerial) Regulation* were replaced by a requirement to follow the *Water Wells and Ground Source Heat Exchange Systems Directive*, < https://open.alberta.ca/publications/9781460141588>.

[4] On February 7, 2017, the Board received Notices of Appeal from the Appellants appealing the Director's decisions to cancel the Licence and issue the Order.

[5] The Board held an oral hearing for the appeals by video conference on October 26, 2021. The issues heard by the Board were:

1. Was the Director's decision to cancel the Licence appropriate?
2. Was the Director's decision to issue the Order appropriate?
3. Are the terms and conditions of the Order appropriate?

[6] On November 26, 2021, the Board provided its Report and Recommendations to the Minister of Environment and Parks (the "Minister"). The Minister confirmed the Director's decision to cancel the Licence and varied the Order based on the Board's recommendations.[4]

[7] On March 3, 2022, the Appellants submitted a request for reconsideration of the Board's Report and Recommendations and provided the following documents for the Board to consider:

(a) a letter dated December 14, 2015, from Environmental Public Health, Alberta Health Services – Calgary Zone, to the Town, providing inspection reports and provincial lab reports related to the Well;[5]

(b) an Originating Application filed by the Town in the Court of Queen's Bench on August 15, 2014, naming Five Pillar Holdings Ltd., and seeking an order requiring the Appellants to comply with the Town's Water Bylaw;[6]

(c) a letter dated January 20, 2015, from Alberta Environment and Parks ("AEP") to the Appellants advising that diversion of water from the Well is without authorization and ordering the Appellants to cease all diversions and reclaim the Well;[7]

(d) a letter dated March 26, 2015, from the Director to the Appellants, advising that there was no licence authorizing diversion of the Well water;[8]

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4 See: Ministerial Order 03/2022.

5 Appellants' Reconsideration Request, March 22, 2022, at pages 3 to 9.

6 Appellants' Reconsideration Request, March 22, 2022, at pages 10 to 13.

7 Appellants' Reconsideration Request, March 22, 2022, at pages 14 to 15.

8 Appellants' Reconsideration Request, March 22, 2022, at page 16.

(e) a Calgary Herald article dated March 23, 2015, titled "Untreated Well to be Shutdown on Strathmore Hotel Land";[9]

(f) a letter dated July 13, 2015, from the Senior Director, Contracts Compliance, Wyndham Hotel Group Canada, to the Appellants, advising that they were in breach of the Franchise Agreement between Wyndham and the Appellants because of the Order;[10]

(g) a document from the Canada West Foundation titled, "The Evolution of Water Policy in Alberta";[11]

(h) Well water Test Results from WSH Labs (1992) Ltd. dated March 9, 2022 (the "WSH Report");[12]

(i) a webpage from MyHealthAlberta.ca titled, "High Levels of Fluoride in Drinking Water";[13]

(j) an article titled, "Alberta Environment's Drinking Water Program: A 'Source to Tap,' Multi-Barrier Approach";[14]

(k) an article titled "Ground Source Heat Exchange Systems in Alberta";[15]

(l) an article titled "Groundwater Management;"[16] and

(m) a Well inspection report prepared by the water well driller, M&M Pumps Inc. ("M&M Pumps"), dated March 18, 2022 (the "M&M Report").[17]

[8] On April 13, 2022, the Board wrote to the Appellants and the Director (collectively, the "Parties") and noted that the Appellants provided new evidence and had requested a reconsideration of the Board's Report and Recommendations. The Board requested the Director provide comments on the Appellants' reconsideration request by April 28, 2022, and the Appellants provide a written rebuttal by May 12, 2022. The Board received the Parties' written submissions and made its decision.

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9 Appellants' Reconsideration Request, March 22, 2022, at pages 17 to 18.

10 Appellants' Reconsideration Request, March 22, 2022, at pages 19 to 20.

11 Appellants' Reconsideration Request, March 22, 2022, at pages 21 to 25.

12 Appellants' Reconsideration Request, March 22, 2022, at pages 27 to 30.

13 Appellants' Reconsideration Request, March 22, 2022, at page 32.

14 Appellants' Reconsideration Request, March 22, 2022, at pages 33 to 36.

15 Appellants' Reconsideration Request, March 22, 2022, at pages 37 to 38.

16 Appellants' Reconsideration Request, March 22, 2022, at pages 39 to 44.

17 Appellants' Reconsideration Request, March 22, 2022, at page 45.

III. ISSUE

[9] The issue the Board is to determine is whether there are sufficient grounds to warrant a reconsideration of the Board's Report and Recommendations.

IV. SUBMISSIONS

A. Appellants

[10] The Appellants submitted the Board erred in fact when it found the Licence could not be used for the purpose it was issued for, due to high fluoride levels, location of the well, and risk of contamination. The Appellants also stated the Board failed to appropriately consider the following factors:

(a) Alberta Health's website information indicated water with fluoride levels above 1.5 mg/L may be used for purposes other than drinking or cooking;

(b) the Hotel's water uses are regulated by Alberta Health, not the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA");

(c) the Well is an asset that can be used for geothermal heating; and,

(d) the Appellants have a statutory right to use the groundwater for household purposes.[18]

[11] The Appellants submitted that the WSH Report and the M&M Report (collectively, the "Reports") showed the Board's "decision was not appropriate."[19] The Appellants noted the WSH Report showed the Well's fluoride levels were below the drinking water regulatory limit of 1.5 mg/L.[20] The Appellants noted the inspector for M&M Pumps wrote in a letter dated March 18, 2022: "In summary, I have very little concerns regarding contamination being introduced from the use of this well."[21]

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18 Appellants' Reconsideration Request, March 22, 2022, at page 2.

19 Appellants' Reconsideration Request, March 22, 2022, at page 2.

20 Appellants' Reconsideration Request, March 22, 2022, WSH Report, at page 2.

21 Appellants' Reconsideration Request, March 22, 2022, M&M Pumps Inc. letter, March 18, 2022, at page 1.

B. Director

[12] The Director submitted the Appellants had provided no new information on which the Board could reconsider its Report and Recommendations. The Director stated the Appellants had not provided evidence indicating "… the Board made an error in interpreting the law that was the basis of the November 26, 2021 Report and Recommendations." The Director concluded the Appellants' reconsideration request was "based entirely on the argument that there is new information available that was not available at the time of the October 26, 2021 hearing of the appeal."[22]

[13] The Director raised concerns about the testing methods and results outlined in the Reports. Specifically, the Director noted there were discrepancies in the sample collection date in the M&M Report (March 3, 2022) and the date in the WSH Report (March 7, 2022). The Director stated the discrepancies in the dates called into question if there were two samples and which sample was analyzed.[23] In addition, the Director noted there was no information on the sample collection methods used, which the Director submitted was important because the Well has two completion zones. The Director stated: "In order to obtain a sample representative of all of groundwater accessed by this Well, the pumping time from the Well must be long enough so that the groundwater below both screens is fully mixed, prior to the sample(s) being collected."[24]

[14] The Director stated the Appellants knew groundwater quality would be a fundamental issue at the hearing and the Appellants had "limitless opportunities"[25] from the date of the Director's decision to the date of the hearing to analyze the Well's water and provide that analysis to the Board and the Director, but only did so after the hearing.

[15] The Director argued the M&M report did not contain new information. The Director stated: "All of the conclusions and statements in the M&M Pumps Report, save for the

22 Director's Response Submission, April 28, 2022, at paragraph 2.

23 Director's Response Submission, April 28, 2022, at paragraph 26.

24 Director's Response Submission, April 28, 2022, at paragraph 31.

25 Director's Response Submission, April 28, 2022, at paragraph 29.

references to the March groundwater sampling, are a reiteration of information that was already put before the Board leading up to and at the hearing."[26]

[16] The Director noted the statement in the M&M Report that the writer had very little concerns regarding contamination being introduced to the municipal system from the use of the Well was the same information the Appellants provided during the hearing, both in the Appellants' testimony and the testimony of the Appellants' witness, Mr. Steve Sturrock, of Waterline Resources Inc. The Director stated: "Simply because the same information is provided by an entity not previously involved in the hearing, does not mean that same information constitutes 'new' evidence."[27]

C. Appellants' Rebuttal

[17] The Appellants' rebuttal submission included a revised letter from M&M Pumps, stating the Well water sample was taken March 7, 2022, not March 3, 2022, and therefore, the sampling dates noted in the WSH Report and the M&M Report were consistent.[28] The Appellants reiterated their position that the Well water quality was not an issue for human consumption.

[18] The Appellants stated Mr. Gill witnessed the water sample being taken by M&M Pumps and that M&M Pumps emptied the storage tanks and then ran the pump before taking the sample. The Appellants noted that M&M Pumps originally drilled the Well and has been in the water well business since 1952.[29]

[19] The Appellants stated that the Hotel was suffering daily financial loss because it purchased its water supply from the Town. The Appellants submitted the Director had, "… taken away the statutory right to use the groundwater for hotel domestic purposes."[30]

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26 Director's Response Submission, April 28, 2022, at paragraph 24.

27 Director's Response Submission, April 28, 2022, at paragraph 25.

28 Appellants' Rebuttal Submission, May 12, 2022, Attachment 1.

29 Appellants' Rebuttal Submission, May 12, 2022, at page 1.

30 Appellants' Rebuttal Submission, May 12, 2022, at page 2.

[20] The Appellants concluded by stating that the water sample was collected properly, and the test results show the fluoride level is within government guidelines. They also noted that the Well was not a problem well as defined in the *Water (Ministerial) Regulation*,[31] and was maintained according to the requirements of section 68 of the *Water (Ministerial) Regulation*.[32]

[21] The Appellants reiterated the position that the Director's decision to declare the Well to be a problem water well and to cancel the Licence and Order was "based on wrong assumptions, wrong interpretation of law, misuse of authority without duty of care and due diligence."[33]

V. APPLICABLE LAW

[22] The legislative authority giving the Board jurisdiction to reconsider a decision is found in section 101 of EPEA, which provides: "Subject to the principles of natural justice, the Board may reconsider, vary or revoke any decision, order, direction, report, recommendation or ruling made by it."

[23] The Board has stated in previous decisions that its power to reconsider "…is an extraordinary power to be used in situations where there are exceptional and compelling reasons to reconsider."[34] The power to reconsider is an exception to the general rule that decisions of the

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31 Section 40 of the *Water (Ministerial) Regulation* reads:

"The Director may declare a well to be a problem well if the Director is satisfied that the well may cause, is causing or has caused an adverse effect on the environment, human health, property or public safety.

32 Section 68 of the *Water (Ministerial) Regulation* states:

"After a water well is completed, the owner of the water well must(a) maintain the water well and the water well site in a manner that will prevent the entry of surface water or other foreign materials into the water well,(b) maintain the area immediately surrounding the water well in a sanitary condition,(c) if non-metallic pipe is used as casing, ensure that the water well is protected at ground surface by steel casing firmly anchored in the ground, and(d) protect the water well at ground surface from any physical damage."

33 Appellants' Rebuttal, May 12, 2022, at page 3.

34 Whitefish Lake First Nation Request for Reconsideration, re: *Whitefish Lake First Nation* v. *Director, Northwest Boreal Region, Alberta Environment* re: *Tri Link Resources Ltd.* (September 28, 2000), Appeal No. 99-009-RD (A.E.A.B.); Reconsideration Request: *Blodgett* v. *Director, Northeast Boreal Region, Regional Services, Alberta Environment* (14 June 2002), Appeal No. 01-074-RD (A.E.A.B.).

Board are intended to be final. However, the Board does realize there are specific circumstances that warrant reconsidering a decision, but it is not intended as a tool for parties to reargue the same issues a second time.

[24] When a reconsideration request is filed, there are two steps in the process. The first step is to determine whether there are grounds sufficient to warrant a reconsideration. If the Board is provided with sufficient new evidence that was not reasonably available at the time of the hearing or the parties demonstrated there has been an error in law, then the Board will proceed to the second step, the actual reconsideration of its decision.

[25] What is currently before the Board is the first step in the reconsideration process: are there sufficient grounds to warrant a reconsideration of the Board's Report and Recommendations?

[26] The Supreme Court of Canada, in *Palmer* v. *The Queen* ("*Palmer*"), outlined the following regarding the admittance of new evidence into a trial:

> "(1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial…. [;]
>
> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial [;]
>
> (3) The evidence must be credible in the sense that it is reasonably capable of belief[;] and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result."[35]

[27] Although these principles were stated in the context of a criminal case, the general principles apply when considering a request to provide new evidence before the Board, such as when a party is requesting a reconsideration of the Board's decision.

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[35] *Palmer* v. *The Queen*, [1980] 1 S.C.R. 759, at page 775.

[28] The onus is on the party making the request to demonstrate to the Board there are exceptional and compelling reasons to reconsider the decision.[36] The factors the Board will consider include: the public interest; delays; the need for finality; whether there was a substantial error of law that would change the result; and whether there is new evidence not reasonably available at the time of the previous decision.[37]

[29] The party requesting the reconsideration must differentiate between two types of new evidence. Evidence acquired since the decision was made, but was available at the time of the hearing, is not relevant for the purposes of reconsideration. However, information that was not available at the time the decision was made or was not practically obtainable by the parties, would be relevant for purposes of reconsideration.[38]

[30] In *Alberta (Director, Child, Youth & Family Enhancement Act)* v. *M. (B.)*, the Alberta Court of Appeal noted a court should be reluctant to re-open a decision, stating:

> "[T]he Courts should be sparing in their reopening of a pronounced decision, and should not do so simply for the asking. This is not an occasion for the losing party to advance new argument which he or she simply did not think of before. Or worse still, one which he or she held back. If parties are not forced to prove fully their whole case once and for all, then endless wrangling and never-ending rehearings will result."[39]

[31] A reconsideration is not an opportunity for a party to have a second chance to present arguments.

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[36] Preliminary Motions: *Bailey et al.* v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment* re: *TransAlta Utilities Corporation* (April 17, 2001), Appeal Nos. 00-074, 077, 078, and 01-001-005-ID (A.E.A.B.).

[37] Preliminary Motions: *Bailey et al.* v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment re: TransAlta Utilities Corporation* (April 17, 2001), Appeal Nos. 00-074, 077, 078, and 01-001-005-ID (A.E.A.B.).

[38] Preliminary Motions: *Bailey et al.* v. *Director, Northern East Slopes Region, Environmental Service, Alberta Environment* re: *TransAlta Utilities Corporation* (17 April 2001), Appeal Nos. 00-074, 077, 078, and 01-001-005-ID (A.E.A.B.).

[39] A*lberta (Director, Child, Youth & Family Enhancement Act)* v. *M. (B.)* 2009 ABCA 258 (Alta. C.A.) at paragraph 11.

VI. ANALYSIS

[32] The Board heard and considered all the evidence, arguments, and submissions provided by the Parties and their consultants during the hearing process. The Board placed appropriate weight on the evidence based on relevance and reliability. A party who is unhappy with the results of a hearing cannot request a reconsideration to achieve a different result.

[33] The Board disagrees with the Director's statement in paragraph 25 of the Director's Response Submission that "[s]imply because the same information is provided by an entity not previously involved in the hearing, does not mean that same information constitutes 'new' evidence." The Board notes in cases where the information is provided by a party who has more credibility or greater direct experience with the issue the information could be considered "new" for the purposes of determining if a *prima facie* case has been made for a reconsideration.

[34] The Board found the Appellants did not meet the onus of demonstrating, on a *prima facie* basis, that there were factual errors made by the Board to warrant a reconsideration of the Report and Recommendations. The Board found the Appellants' arguments for reconsideration were previously made in the hearing or could have reasonably been presented when the Board heard the matter.

[35] The central issues in the appeal were the question of the Well's water quality and protection of the Well against contamination, which could result in the contamination of the Town's water supply. The Appellants provided the WSH Report and the M&M Report as new evidence for the reconsideration request, purporting to address these issues. While the Board makes no findings as to the credibility of the Reports, nor whether they could have affected the outcome of the hearing had they been presented in a timely manner, the Board finds the Appellants had sufficient opportunity to obtain the Reports and present them as evidence before or at the hearing. The Appellants have provided no reasons for not introducing the Reports earlier. As noted by the Supreme Court of Canada in *Palmer*, evidence should not be generally admitted if it could have been reasonably provided before a trial or hearing.

[36] The Appellants' argument that the Well's water could be used for purposes other than drinking or cooking, such as bathing, handwashing, laundry, toilets, dishwashing, and geothermal heating, was previously argued by the Appellants in the hearing and considered by the Board. The Board stated in its Report and Recommendations:

> "The Board heard evidence the Appellants planned to use the groundwater for other purposes, such as geothermal uses, greywater uses, and non-potable uses around the Hotel such as grounds keeping. As noted above, using the water only for these purposes is not consistent with the stated purpose of the Licence which is hotel water supply.
>
> The Board heard evidence that for the Appellants to use the Licence from the Well for other purposes, they would have to file an application with AEP for a change in purpose with supporting documentation, which would encompass reports, engineering plans and studies. The Board heard evidence the Well was unsuitable as constructed for geothermal use because it was completed in multiple aquifers."[40]

The Appellants' evidence on the issue of using the Well water for other purposes was already considered by the Board at the time of the hearing.

[37] The Appellants attached an AEP document titled, "Groundwater Management"[41] to support their argument that they had a statutory right to use groundwater for "… cooking, drinking, washing and sanitation…"[42] Under the heading of "Household use" the document states:

> "Albertans living on property under which groundwater exists have the statutory right to use up to 1250 m^3 of water per year (275,000 imperial gallons) for drinking, cooking, washing and sanitation. The average home uses 200 – 250 gallons per day."[43]

[38] The Board notes that the statutory right for household users to divert groundwater is found in section 21(2) of the *Water Act*:

> **"**Subject to subsection (3) and section 23 and any exemptions specified in the regulations, a person who owns or occupies land under which groundwater exists

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40 *Gill and Five Pillar Holdings Ltd.* v. *Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (26 November 2021), Appeal Nos. 16-057 and 16-061-063-R (A.E.A.B.), 2021 ABEAB 36, at paragraphs 228 and 229.

41 Appellants' Reconsideration Request, March 22, 2022, at pages 39 to 44. See: <open.alberta.ca/publications/focus-on-groundwater-groundwater-management>.

42 Appellants' Reconsideration Request, March 22, 2022, at page 2.

43 Appellants' Reconsideration Request, March 22, 2022, at page 39.

(a) has the right to commence and continue the diversion of the groundwater for household purposes, and

(b) may not obtain a licence for the diversion of the groundwater for household purposes."

Section 1(3)(b) of the *Water (Ministerial) Regulation* provides the definition of "household" as: "… one or more individuals living in a single, private and detached dwelling place." The Hotel does not meet this definition of household, therefore, the Board finds section 21(2) of the *Water Act* does not apply to the Hotel.

[39] The Appellants stated the Hotel's water uses were regulated by Alberta Health and do not require "Public Water Systems under EPEA."[44] The Appellants did not state which of their documents referred to this argument other than stating "(4 page document),"[45] in their reconsideration request. The Board assumes the Appellants are referring to the four-page document in their reconsideration request, which contains excerpts from a document titled, "Alberta Environment's Drinking Water Program: a 'source to tap, multi barrier approach."[46] The document includes a graph that shows Hotels as a waterworks system not requiring an approval under EPEA. The Appellants appealed the Director's decision to cancel the Licence and issue the Order, which were both issued under the *Water Act*. The Board noted in its Report and Recommendations that, "the Appellants would likely need to apply for an EPEA approval to authorize such a 'potable' waterworks distribution system."[47] Whether the Appellants would require an approval under EPEA was not a question for the Board to determine in the appeal and was not a determining fact in the Board's recommendations to the Minister. Approvals under EPEA are also not an issue in this reconsideration request.

[40] The Board will not allow a reconsideration unless the applicant can meet the onus of demonstrating there was a misinterpretation of the facts, or that new evidence is available that

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44 Appellants' Reconsideration Request, March 22, 2022, at page 2.

45 Appellants' Reconsideration Request, March 22, 2022, at page 2.

46 Appellants' Reconsideration Request, March 22, 2022, at pages 33 to 36. See also: <open.alberta.ca/publications/alberta-environment-s-drinking-water-program-a-source-to-tap-multi-barrier-approach>.

47 *Gill and Five Pillar Holdings Ltd.* v. *Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (26 November 2021), Appeal Nos. 16-057 and 16-061-063-R (A.E.A.B.), 2021 ABEAB 36, at paragraph 245.

is relevant and could not have been reasonably obtained for the hearing. The Appellants' argument that the Board erred in fact by not considering certain evidence is invalid for the following reasons:

(a) the evidence was already presented to the Board at the hearing; or

(b) the Appellants could have reasonably obtained the evidence before the hearing but did not do so; or

(c) the evidence is irrelevant to the issues before the Board and the Board's considerations.

VII. DECISION

[41] The Board finds the Appellants have not met the onus of demonstrating there were exceptional circumstances that would warrant the Board exercising its discretion to grant a reconsideration of its Report and Recommendations, and it would not be in the public interest to grant a reconsideration request where the onus has not been met. Therefore, the Board denies the reconsideration request pursuant to section 101 of EPEA.

Dated on June 28, 2022, at Edmonton, Alberta.

"*original signed by*"
Chris Powter
Board Member and Panel Chair