

DECISIONS 2005

05-001 and 05-003

Appellant(s) – Mr. Darren and Ms. Toni Daniel and Mr. Ron and Ms. Judy Plett, **Operator** – Sanjo and Benchmark Developments Inc., **Location** – near Lloydminster, **Type of Appeal** – Discontinuance of Proceedings

On April 14 and 15, 2005, the Board received Notices of Appeal from Mr. Darren and Ms. Toni Daniel and Mr. Ron and Ms. Judy Plett, respectively, regarding Approval No. 00197206-00-00 issued under the *Water Act* to Sanjo and Benchmark Developments Inc. The Approval authorized the construction, operation and management of a stormwater management facility located within NE 21-050-01-W4 for the purpose of collecting and draining stormwater to an unnamed tributary of Big Gully Creek, near Lloydminster, Alberta. The Board held a mediation meeting on September 23, 2005, in Lloydminster and as a result of productive discussions, a resolution was reached, and the Appellant's withdrew their appeals. On October 5, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Daniel et al. v. Director, Central Region, Regional Services, Alberta Environment re: Sanjo and Benchmark Developments Inc.* (05 October 2005), Appeal No. 05-001 and 05-003-DOP (A.E.A.B.).

05-002

Appellant(s) – Deer Creek Energy Limited, **Operator** – Deer Creek Energy Limited, **Location** – County of Vermillion River, **Type of Appeal** – Discontinuance of Proceedings

On April 21, 2005, the Board received a Notice of Appeal from Deer Creek Energy Limited with respect to the refusal of Alberta Environment to issue a reclamation certificate to Deer Creek Energy Limited for the Medcon Joffre Lloyd 8A-14-51-1 W4M well in the County of Vermillion River, Alberta. The Board held a mediation meeting on June 21, 2005, in Lloydminster. Following discussions at the mediation meeting, the Appellant stated he would advise the Board if he wished to continue with his appeal. On June 23, 2005, the Board was advised that the Appellant would not be proceeding with his appeal. As a result, the Board issued a Discontinuance of Proceedings on June 29, 2005, and closed its file.

Cite as: *Deer Creek Energy Limited v. Director, Central Region, Regional Services, Alberta Environment* (29 June 2005), Appeal No. 05-002-DOP (A.E.A.B.).

05-004

Appellant(s) – Buffalo River Dene Nation and the Metis Nation Clearwater Clear Lake Region, **Operator** – Buffalo River Dene Nation and the Metis Nation-Clearwater Lake Region **Location** – near Conklin, **Type of Appeal** – Discontinuance of Proceedings

On May 16, 2005, the Board received a Notice of Appeal from the Buffalo River Dene Nation and the Metis Nation Clearwater Clear Lake Region with respect to a decision by the Alberta Energy and Utilities Board which reviewed requests by the Appellants on Approval No. 9426 issued to Devon Canada Corporation for Devon's Jackfish SAGD project, original application no. 1321211. The Board advised the Appellants that the initial view was that the appeal did not fall within the jurisdiction of the Board, but provided the participants with an opportunity to supply additional comments. As a result, the Appellants withdrew their appeal and on May 24, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Buffalo River Dene Nation and Metis Nation Clearwater Clear Lake Region re: Devon Canada Corporation* (24 May 2005), Appeal No. 05-004-DOP (A.E.A.B.).

05-005

Appellant(s) – Husky Oil Operations Limited, **Operator** – Husky Oil Operations Limited, **Location** – near Lloydminster, **Type of Appeal** – Discontinuance of Proceedings

On May 20, 2005, the Board received a Notice of Appeal from Husky Oil Operations Limited with respect to Alberta Environment refusing to issue a reclamation certificate to Husky Oil Limited for the Husky Blackfoot Lloyd 14A-25-49-2-W4 well near Lloydminster, Alberta. The Board held a mediation meeting in Edmonton, Alberta on July 14, 2005. As a result of the mediation meeting, a resolution was reached between the parties and the Appellant withdrew the appeal. On July 15, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Husky Oil Operations Limited v. Director, Central Region, Regional Services, Alberta Environment* (15 July 2005), Appeal No. 05-005-DOP (A.E.A.B.).

05-007

Appellant(s) – Mesken Contracting Limited, **Operator** – Mesken Contracting Limited, **Location** – Wheatland County, **Type of Appeal** – Discontinuance of Proceedings

On June 23, 2005, the Board received a Notice of Appeal from Mesken Contracting Limited with respect to Administrative Penalty No. WA-05/01-AP-SR-05/01 issued to Mesken Contracting Limited. The Administrative Penalty was issued for failing to ensure that a copy of the licence authorizing the diversion of water from the Bow River at NW ¼ 33-021-25-W4M in Wheatland County was kept in the vehicle transporting the water, and for failing to submit the monitoring data to the Director within 30 days of the completion of the water diversion. The Board began processing the appeal; however, during that time, the Appellant withdrew the appeal. As a result, the Board issued a Discontinuance of Proceedings on August 15, 2005, and closed its file.

Cite as: *Mesken Contracting Limited v. Director, Southern Region, Regional Services, Alberta Environment* (15 August 2005), Appeal No. 05-007-DOP (A.E.A.B.).

05-008

Appellant(s) – Mr. Rodney Sargent, **Operator** – PrimeWest Energy Inc., **Location** – near Mirror, **Type of Appeal** – Discontinuance of Proceedings

On July 8, 2005, the Board received a Notice of Appeal from a landowner, Mr. Rodney Sargent, with respect to Reclamation Certificate No. 00208740-00-00 issued to PrimeWest Energy Inc. for the Gardex Nevis 10-34-40-23 W4 well near Mirror, Alberta. The Board held a mediation meeting in Lacombe, Alberta on September 15, 2005 and following productive discussions, a resolution was reached and the Appellant withdrew his appeal. On September 16, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Sargent v. Inspector, Central Region, Regional Services, Alberta Environment re: PrimeWest Energy Inc.* (16 September 2005), Appeal No. 05-008-DOP (A.E.A.B.).

05-009

Appellant(s) – Mr. Wolfgang Artin Dittrich, **Operator** – Mr. Wolfgang Artin Dittrich, **Location** – County of Grande Prairie, **Type of Appeal** – Discontinuance of Proceedings

On July 20, 2005, the Board received a Notice of Appeal with respect to Enforcement Order No. WA-EO-2005/03-NR issued under the *Water Act* to Mr. Wolfgang Artin Dittrich for the removal of an obstruction from a water body, in the county of Grande Prairie, Alberta. The Board held a mediation in Grande Prairie and after productive discussions, an agreement was reached between the participants, and Mr. Dittrich withdrew his appeal. On November 25, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Dittrich v. Director, Northern Region, Regional Services, Alberta Environment* (25 November 2005), Appeal No. 05-009-DOP (A.E.A.B.).

05-010-012

Appellant(s) – Ms. Elin H. Barlem, Ms. Linda Covey, and Mr. Ray Cerniuk, **Operator** – Mr. Hal Willis, **Location** – Innisfail, **Type of Appeal** – Decision

On August 2, 2005, the Board received Notices of Appeal from Ms. Elin Barlem, Ms. Linda Covey and Mr. Ray Cerniuk with respect to Amending Approval No. 00193447-00-02 issued under the *Water Act* to Mr. Hal Willis. The Amending Approval amended the expiry date of Approval No. 00193447-00-00 to October 31, 2005, and updated the Operator's address. The original Approval authorized the placement of clean fill on property adjoining Dodds Lake at SW 28-35-28-W4M in Innisfail, Alberta. The Appellants also requested a Stay of the Amending Approval and a reconsideration of the Board's Report and Recommendations (03-017, 024-026, 031, 033 and 03-037-R) issued in response to the appeals of the original Approval. The Board dismissed the appeals of the Amending Approval, as the Appellants did not provide sufficient reasons to demonstrate that section 115(2)(c)(iii) of the *Water Act* should not apply in this circumstance. Section 115(2)(c)(iii) clearly states there is no right of appeal when the Director amends an approval by extending the expiry date. As there was no valid appeal before the Board, a Decision was issued on December 14, 2005 advising the Stay request was denied. The Board also denied the reconsideration request of its Report and Recommendations issued May 12, 2004, as the Appellants did not demonstrate there were exceptional circumstances that would justify the Board reconsidering its recommendations and introducing unwarranted uncertainty into its decision-making process.

Cite as: *Barlem et al. v. Director, Central Region, Regional Services, Alberta Environment re: Hal Willis* (14 December 2005), Appeal Nos. 05-010-012-D (A.E.A.B.).

05-013

Appellant(s) – Husky Oil Operations Limited, **Operator** – Husky Oil Operations Limited, **Location** – near Jenner, **Type of Appeal** – Discontinuance of Proceedings

On August 26, 2005, the Board received a Notice of Appeal from Husky Oil Operations with respect to a refusal to issue a reclamation certificate to Husky Oil for the Renaissance 16C Suffield 16-14-20-8 well at Surface Point in LSD 1-23-20-8-W4M, near Jenner, Alberta. The Board held a mediation meeting on November 7, 2005, and after productive discussions, an agreement was reached and Husky Oil withdrew the appeal. Therefore, on November 25, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Husky Oil Operations Limited v. Director, Southern Region, Regional Services, Alberta Environment* (25 November 2005), Appeal No. 05-013-DOP (A.E.A.B.).

05-014 – 05-019, 05-021, 05-032 – 05-040, 05-041

Appellant(s) – Dr. Dennis and Mrs. Linda Mercer, Mr. Hans and Ms. Katherine Weinacker; Mr. Lyle Braunworth; Mr. Donald and Ms. Bette Green; Mr. Ron and Ms. Lorraine Gorsche; Mr. Keith Spackman; and Mr. Wayne Adams for Ms. Helen Adams, **Operator** – Town of High River, **Location** – High River, **Type of Appeal** – See below

Overview – On August 25, 2005, the Director, Southern Region, Regional Services, Alberta Environment, issued Approval No. 00209177-00-00 under the *Water Act* to the Town of High River, authorizing the construction of the Golf Course Dyke, and Baker Creek Dyke on the floodplain and/or floodway of the Highwood River, near High River, Alberta; and on October 12, 2005, the Director issued Amending Approval No. 00209177-00-01 under the *Water Act* to the Town of High River, changing the alignment of the Baker Creek Dyke. Between August 30, 2005 and September 2, 2005, the Board received Notices of Appeal in relation to Approval Number 00209177-00-00 from Dr. Dennis and Mrs. Linda Mercer (05-014); Mr. Hans and Ms. Katherine Weinacker (05-015); Mr. Lyle Braunworth (05-016); Mr. Donald and Ms. Bette Green (05-017); Mr. Ron and Ms. Lorraine Gorsche (05-018); Mr. Keith Spackman (05-019); and Mr. Wayne Adams for Ms. Helen Adams (05-021). Between October 14 and 18, 2005, the Board received Notices of Appeal in relation to Amending Approval No. 00209177-00-01 from Dr. Dennis and Mrs. Linda Mercer (05-032); Mr. Hans and Ms. Katherine Weinacker (05-033); Mr. Lyle Braunworth (05-034); Mr. Donald and Ms. Bette Green (05-035); Mr. Ron and Ms. Lorraine Gorsch (05-036); Mr. Keith Spackman (05-037); Mr. Emile Rocher (05-038); Mr. Cam Crawford on behalf of the Beachwood Homeowners Association (05-039); and on October 18, 2005, the Board received Notices of Appeal from Mr. Bruce and Ms. Carol Miles (05-040 & 05-041) in relation to both the Approval and Amending Approval.

Discontinuance of Proceedings (05-014 & 05-032) – In consultation with the participants, the Board held mediation meetings on November 25, 2005, and June 20, 2006. A final meeting was held on January 31, 2007, in High River. Following the January 31, 2007 meeting, the participants were advised that the mediation process has formally ended. The participants were advised the Town of High River would be filing an application with Alberta Environment for an approval to build a tight wrap dyke in order to minimize the potential for future flooding of Beachwood Estates. In light of this application proceeding, on March 12, 2007, the participants were advised that all the appeals would be held in abeyance pending the outcome of the application. The Board received a call on May 28, 2007 from Mrs. Linda Mercer advising that she and Dr. Dennis Mercer were withdrawing their appeals. As a result of the Appellants' withdrawal of the appeals on May 28, 2007, the Board issued a Discontinuance of Proceedings on June 1, 2007.

Cite as: *Mercer v. Director, Southern Region, Regional Services, Alberta Environment*,
re: *Town of High River* (1 June 2007), Appeal Nos. 05-014 and 05-032-DOP (A.E.A.B.).

05-020

Appellant(s) – Camp Okotoks Society, **Operator** – Town of Okotoks, **Location** – near Okotoks, **Type of Appeal** – Decision

On August 31, 2005, the Board received a Notice of Appeal from the Camp Okotoks Society with respect to Approval No. 00222483-00-00 issued under the *Water Act* to the Town of Okotoks authorizing the Town to realign the channel and stabilize the banks on the Sheep River, near Okotoks, Alberta. The Board held a mediation meeting on October 24, 2005, at which time an interim resolution was reached. On November 25, 2005, December 2 and 13, 2005, the Board wrote to Mr. Hettinga and requested he provide a status report to the Board as agreed to in the interim agreement. Telephone calls were also placed on December 8, 12, and 13, 2005. On December 15, 2005, Mr. Hettinga advised that he would be withdrawing his appeal and the Board requested written confirmation by December 22, 2005. As no response was received by December 22, 2005, the Board forwarded an e-mail to Mr. Hettinga on December 30, 2005, requesting that he provide written notice of his withdrawal. No response was received to this request. On January 10, 2006, the Board advised the participants that the appeal of Mr. Hettinga filed on behalf of the Camp Okotoks Society, had been dismissed for failing to respond to the Board in a timely manner. On January 18, 2006, the Board issued a Decision dismissing the appeal and closed its file.

Cite as: *Camp Okotoks Society v. Director, Southern Region, Regional Services, Alberta Environment* re: *Town of Okotoks* (18 January 2006), Appeal No. 05-020-D (A.E.A.B.).

05-022 and 05-023

Appellant(s) – Ms. Linda Covey and Ms. Elin Barlem, **Operator** – Town of Innisfail, **Location** – Innisfail, **Type of Appeal** – Decision

On September 6, 2005, the Board received Notices of Appeal and a request for a Stay from Ms. Linda Covey and Ms. Elin Barlem with respect to Approval No. 00076694-00-00 issued under the *Water Act* to the Town of Innisfail. The Approval was for the purpose of constructing flood control works at NW 28-35-28-W4M at Dodd's Lake in Innisfail, Alberta. The time period in which an appeal may be filed with the Board with respect to an approval under the *Water Act* is seven days, unless the Board finds there is sufficient reason for extending this filing period. The Board requested the Appellants provide reasons as to why the Board should extend the time limit for filing the appeals. After reviewing the reasons provided, the Board found the Appellants did not present sufficient reasons to demonstrate that special circumstances existed to warrant an extension of the time limit for filing the appeals. The appeals were filed more than five years after the original Approval was issued and the work authorized under this Approval was completed in 2002. As there was no valid appeal before the Board, the Board issued a Decision on January 13, 2006, advising the Stay request could not be considered. The Appellants also requested a reconsideration of the Board's decision regarding appeals previously filed with respect to the amendment of the Approval. The Board also denied the reconsideration request, as the Appellants did not provide any new information that could have resulted in a different decision of the Board, and all of the documents provided by the Appellants were available at the time of the original appeals.

Cite as: *Covey and Barlem v. Director, Central Region, Regional Services, Alberta Environment*
re: *Town of Innisfail* (13 January 2006), Appeal Nos. 05-022 and 05-023-D (A.E.A.B.).

05-024

Appellant(s) – Mr. Michael O’Reilly, **Operator** – Mr. Michael O’Reilly, **Location** – near Turner Valley, **Type of Appeal** – Discontinuance of Proceedings

On September 12, 2005, the Board received a Notice of Appeal from Mr. Michael O’Reilly with respect to Alberta Environment’s refusal to issue a *Water Act* Licence to him for the diversion of water from the Highwood River Basin in E ½ 36-019-04-W5M (a restricted water basin) near Turner Valley, Alberta. The Board held a mediation meeting on November 23, 2005 in Calgary, Alberta and following a productive discussion, an agreement was reached and the Appellant withdrew his appeal. On November 25, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *O’Reilly v. Director, Southern Region, Regional Services, Alberta Environment* (25 November 2005), Appeal No. 05-024-DOP (A.E.A.B.).

05-025-028 & 05-045

Appellant(s) – Ms. Ally Ulfsten, Ms. Inez and Mr. Dave Stone, Mr. Peter Harwerth, Mr. Ted Ganske, and Mr. John Roux, **Operator** – BlackRock Ventures Inc., **Location** – near Cold Lake, **Type of Appeal** – Decision

On August 19, 2005, Alberta Environment issued EPEA Approval No. 141258-00-00 to BlackRock Ventures Inc. authorizing the construction, operation and reclamation of the Orion enhanced recovery in-situ oil sands project or heavy oil processing plant and oil production site near Cold Lake, Alberta. The Board received Notices of Appeal and a request for a Stay on September 19, 2005 from Ms. Sally Ulfsten on behalf of Mr. Peter Harwerth, Mr. Ted Gankse, Mr. John Roux, and Mr. Dave and Ms. Inez Stone (collectively the “Appellants”).

The Board requested that the Appellants respond to questions in relation to their Stay request. Submissions were received from the Appellants on October 3, 2005. On October 14, 2005, the Board notified the participants that it was denying the Stay request, but advised the Appellants they would be free to apply for Stay, if appropriate, after the preliminary motions raised by Alberta Environment were dealt with. The Board provided reasons for the Stay decision in its November 10, 2005 letter to the participants.

In response to Alberta Environment’s motions raised regarding the Board’s jurisdiction to hear the appeal, the Board asked the participants to respond to the following questions:

1. Have valid Statements of Concern been filed by the Appellants?
2. If valid Statements of Concern have been filed by the Appellants with Alberta Environment, are the Appellants directly affected?
3. Has the Alberta Energy and Utilities Board (AEUB) held a hearing or review where the Appellants had the opportunity to participate in that hearing or review at which all of the matters in their Notices of Appeal were adequately dealt with?
4. Can the Stone family rely upon the Statement of Concern filed by the previous landowner?

The Board reviewed the submissions and determined the primary question in these appeals was whether the Appellants had the opportunity to participate in a hearing or review by the AEUB at which all of the matters in the Notices of Appeal were adequately dealt with. All of the participants agreed there was a hearing by the AEUB, the Appellants had the opportunity to participate, and most of the Appellants did participate in the hearing.

The Board reviewed the submissions as well as AEUB Decision Report No. 004-089 and the Notices of Appeal and determined all of the concerns expressed by the Appellants were adequately dealt with by the AEUB, and it was evident the AEUB panel did consider the issues presented. Therefore, the Board was required to dismiss the appeals pursuant to section 95(5)(b)(i) of the *Environmental Protection and Enhancement Act*. As the Board did not have jurisdiction to hear the appeals, the remaining questions would not affect the outcome of the Board’s decision and were not addressed.

On June 2, 2006, the Board was advised by the Appellants that BlackRock Ventures Inc. was being purchased by Shell Canada Ltd. The ownership of the project that has been approved has no bearing on the Board's decision. Pursuant to section 75 of the *Environmental Protection and Enhancement Act*, Approvals can be transferred.

Cite as: *Ulfsten et al. v. Director, Northern Region, Regional Services, Alberta Environment re: BlackRock Ventures Inc.* (8 August 2006), Appeal Nos. 05- 025-028 & 05-045-D (A.E.A.B.)

05-029-05-031

Appellant(s) – Ms. Tia Bartlett, Mr. Ken Bartlett, Ms. Alysha Bartlett, Ms. Heather Garon and Ms. Cheryl Henkelman, **Operator** – BA Energy Inc., **Location** – Strathcona County, **Type of Appeal** – Discontinuance of Proceedings

On September 27, 2005, the Board received Notices of Appeal from Mr. Gary Henderson on behalf of Ms. Tia Bartlett, Mr. Ken Bartlett, Ms. Alysha Bartlett, Ms. Heather Garon and Ms. Cheryl Henkleman (collectively the “Appellants”). The Notices of Appeal were with respect to Approval No. 203303-00-00 issued to BA Energy Inc. for the construction, operation, and reclamation of the Heartland Oil Sands Processing Plant (Bitument Upgrader) in Strathcona County. On October 24, 2005, the Alberta Energy and Utilities Board (“AEUB”) wrote the Board to advise that they had considered an application made by BA Energy Inc. to construct and operate the Heartland Upgrader and associated infrastructure in Decision 2005-079. The AEUB also noted that on October 12, 2005, the Alberta Court of Appeal denied an application for leave to appeal Decision 2005-079. The Board requested written submissions from the participants in order to determine whether the issues in the Notice of Appeal had been adequately dealt with by the AEUB. However, on January 10, 2006, the Board received a letter from the Appellants advising that they were withdrawing the appeals. As a result, the Board issued a Discontinuance of Proceedings on January 18, 2006, and closed its files.

Cite as: *Bartlett et al. v. Director, Northern Region, Regional Services, Alberta Environment re: BA Energy Inc.* (18 January 2006), Appeal Nos. 05-029-05-031-DOP (A.E.A.B.).

05-042

Appellant(s) – Kinder Morgan Canada Inc., **Operator** – Kinder Morgan Canada Inc., **Location** – near Newbrook, **Type of Appeal** – Discontinuance of Proceedings

On September 23, 2005, the Director, Northern Region, Regional Services, Alberta Environment refused to issue a reclamation certificate under the *Environmental Protection and Enhancement Act* to Terasen Pipelines (Corridor) Inc. (now Kinder Morgan Canada Inc.) relating to the parcel of land at SE 10-62-20-W4M near Newbrook, Alberta. The Director's September 23, 2005 letter stated pursuant to section 3 of the Conservation and Reclamation Regulation, Alberta Environment has a guideline for the reclamation of land used in connection with the construction of industrial pipeline. As a general rule, certificates are not issued for portions of pipelines. Kinder Morgan's pipeline is operational and will not be reclaimed for some time. On October 21, 2005, the Board received a Notice of Appeal from Kinder Morgan. On October 27, 2005, the Board wrote to the landowners (Mr. Dalton Trenholm, Ms. Gertrude Trenholm and Mr. Darwin Trenholm) notifying them of the appeal.

The Board decided to proceed to a mediation meeting, however, due to scheduling issues of the landowner then Kinder Morgan, the mediation meeting was set for April 18, 2006 in Westlock. Following productive and detailed discussions at the mediation meeting, an Interim Agreement was reached and the participants agreed to continue discussions. A second mediation meeting was held via conference call on August 8, 2006. During the conference call the participants agreed to a site visit and to continue with a mediation meeting on October 31, 2006 in Newbrook. Following the mediation meeting, Kinder Morgan advised it would provide a status report to the Board by November 15, 2006. On November 17, 2006, the Board received a letter from Kinder Morgan requesting the Board hold the appeal in abeyance because they were continuing discussions with Alberta Environment only. On March 2, 2007 the Board received a letter from

the Appellant requesting a hearing. The Board began to schedule the hearing, however, on March 19, 2007 the Board received a letter from Kinder Morgan requesting the Board hold the appeal in abeyance. The Board also received a letter from the Director on March 20, 2007 advising he had withdrawn his September 23, 2005 decision that gave rise to the appeal. The Director requested the Board dismiss the appeal. The Board responded by letter on March 22, 2007 asking Kinder Morgan if they would be withdrawing their appeal as it was moot, at which Kinder Morgan agreed on March 28, 2007.

On April 9, 2007, the Board received a letter from the landowners requesting the issue of costs be dealt with. The Board responded on April 10, 2007, advising that the participants had signed a Participants' Agreement to Mediate prior to the start of the mediation meeting on April 18, 2006 that states the participants agree they shall not submit a request to the Board for costs respecting the mediation after the conclusion of the mediation, however, it did not preclude costs between the participants being addressed in an agreement between them. The Board, in its April 10, 2007 letter, also stated it would issue a Discontinuance of Proceedings shortly and would be closing its file. On April 9 and 14, 2007, the Board received letters from the landowners pursuing the issue of costs, and on April 16, 2007, the Board scheduled a written submission process to determine whether the landowners are entitled to make an application for costs to the Board. On May 17, 2007, the Board denied the landowners' request to apply for costs as the landowners did not provide any information on the types of costs incurred, how the costs were the result of further processes beyond the mediation process, or arguments as to why the Participants' Agreement to Mediate should not apply in this case. The Board issued a Discontinuance of Proceedings on May 23, 2007 and closed its file.

Cite as: *Terasen Pipelines (Corridor) Inc. (now Kinder Morgan Canada Inc.) v. Director, Northern Region, Regional Services, Alberta Environment* (23 May 2007), Appeal No. 05-042-DOP (A.E.A.B.).

05-043

Appellant(s) – Mr. Clive Palichuk, **Operator** – TransCanada Pipelines Limited, **Location** – Smoky Lake, **Type of Appeal** – Discontinuance of Proceedings

On August 11, 2005, the Director, Northern Region, Regional Services, Alberta Environment, issued Reclamation Certificate No. 00199105-00-00 under the *Environmental Protection and Enhancement Act* to TransCanada Pipelines Limited in connection with or incidental to the Smoky River Meter Station well in SE 9-59-17-W4M near Smoky Lake, Alberta. On October 28, 2005 the Board received a Notice of Appeal from Mr. Clive Palichuk appealing the Certificate. On December 12, 2005, the Board received a telephone call from the Director advising the participants would like to schedule a mediation meeting in the spring of 2006 so that a site visit could also be conducted. On December 15, 2005, the Board received a letter from the Certificate Holder requesting the Board hold the appeal in abeyance until August 2006 to allow the participants to conduct an assessment of the site. The Board granted the abeyance and requested the participants provide status reports by August 15, 2006, September 8, 2006, and September 18, 2006. On October 10, 2006, the Board wrote to the participants advising that the presiding Board Member assigned as the Mediator would commence the mediation process and hold conference calls with the participants on October 20, 2006. On November 30, 2006, the Board received a letter dated October 26, 2006 addressed to the Certificate Holder from the Director, advising that Alberta Environment had conducted a surface audit of the site and as a result of the audit, cancelled the Certificate. The Board responded on December 1, 2006 stating that it was in the process of mediating this appeal and was not aware that an audit had been conducted on the site. The Board requested the participants advise the Board if they would like to continue with their mediation discussions with the Mediator. The Board also asked the Certificate Holder if they would be filing a Notice of Appeal with the Board in relation to the cancellation of the Certificate. On December 7, 2006, the Board received a letter from the Certificate Holder advising that they wished to continue discussions with the Mediator, and would not be appealing the cancellation of the Certificate. On December 21, 2006, further to the October 20, 2006 conference calls with the Mediator, and the December 7, 2006 letter from the Certificate Holder, the Board wrote to the participants advising that a mediation meeting would be conducted via conference call between the Appellant, Certificate Holder and the Director. Following productive and detailed discussions during the participants reached an agreement. In signing the Resolution on July 10 and 18, 2007, Mr. Palichuk withdrew his appeal. As a result of the appeal being withdrawn, the Board issued a Discontinuance of Proceedings on August 13, 2007.

Cite as: *Palichuk v. Director, Northern Region, Regional Services, Alberta Environment, re: TransCanada Pipelines Limited* (13 August 2007), Appeal No. 05-043-DOP (A.E.A.B.).

05-044 and 05-047

Appellant(s) – Ms. Marilyn and Mr. Lee Fenske, and Mr. Markus and Ms. Tracey Janus, **Operator** – Beaver Regional Waste Management Services Commission, **Location** – near Ryley, **Type of Appeal** – Report and Recommendations

On November 10 and 15, 2005, the Board received Notices of Appeal from Ms. Marilyn and Mr. Lee Fenske and Mr. Markus and Ms. Tracey Janus (collectively the “Appellants”), respectively. The appeals were with respect to Amending Approval No. 20754-00-04 issued to the Beaver Regional Waste Management Services Commission, amending the approval for the construction, operation and reclamation of a Class II Landfill, located at NE-10-50-17-W4M near Ryley, Alberta. The amendment allows leachate (liquid removed from the landfill cells) with a chloride ion concentration of greater than 3,000 mg/l to be recirculated within the Stage 1 Cell of the landfill. The Board held a mediation on January 17, 2006, that did not result in a resolution. The Board proceeded with the appeals and held a hearing on April 21, 2006, in Edmonton, Alberta. The Appellants did not provide sufficient evidence for the Board to consider reversing the decision to issue the amending approval. However, the Board noted that there were some important gaps in the scientific information in the application and at the hearing regarding possible negative impacts of recirculating leachate with higher chloride levels. Therefore, the Board issued a Report and Recommendations on May 19, 2006, recommending that the Minister of Environment vary the amending approval and require the Beaver Regional Waste Management Services Commission to prepare a number of reports, for review by Alberta Environment, to ensure that there are no outstanding technical, environmental, or health concerns with the recirculation of leachate with higher chloride levels. These reports included: 1. A written report detailing the effects that varying concentrations of chloride in leachate will have on the anaerobic digestion of landfill waste; 2. A written report detailing the effects that various types, fractions, and concentrations of hydrocarbons from the produced sand will have on the landfill’s high-density polyethylene liner; 3. A written report detailing the potential hydrogeological connections between the landfill site and Mr. Lee and Ms. Marilyn Fenske’s property; 4. A written report reviewing the results from the analysis of the water from the dugout on Mr. Lee and Ms. Marilyn Fenske’s property that is used as a domestic water supply; and 5. An updated written report listing all of the wells drilled on the landfill site, including abandoned and reclaimed wells. The Board noted that this information will also be of assistance to Alberta Environment when it reviews the Beaver Regional Waste Management Services Commission’s application to renew the approval for the landfill, which expires in September 2006. The Minister approved the recommendations on June 28, 2006.

Cite as: *Fenske and Janus v. Director, Central Region, Regional Services, Alberta Environment re: Beaver Regional Waste Management Services Commission* (19 May 2006), Appeal Nos. 05-044 & 05-047-R (A.E.A.B.).

05-046

Appellant(s) – Mr. Bruce Francis, **Operator** – Penn West Energy Trust, **Location** – near Taber, **Type of Appeal** – Discontinuance of Proceedings

On October 17, 2005, the Director, Southern Region, Regional Services, Alberta Environment, issued Reclamation Certificate No. 00219021-00-00 under the *Environmental Protection and Enhancement Act* to Petrofund Energy Trust (now Penn West Energy Trust) with respect to the Tikal Nycan Turin well located at NE 16-36-10-18-W4M, near Taber, Alberta. On November 14, 2005 the Board received a Notice of Appeal from Mr. Bruce Francis appealing the Certificate. The Board advised that further to its review of the file, and the request from the Appellant for a site visit, it had decided to proceed to a mediation meeting. On December 15, 2005, the Board received a copy of a letter from the Certificate Holder to the Appellant, requesting a meeting to address the outstanding issues. The Certificate Holder and the Appellant provided the Board with status reports on January 30, 2006, and continued to work towards a resolution of the appeal and provide status reports. As the status reports indicated progress, on July 10, 2007, the participants agreed to the Board’s assistance in reaching a final resolution and it forwarded a resolution for their review. The resolution was revised at the request of the Appellant and the Certificate Holder and on July 26, 2007

the Board received the signed resolution, resulting in the Appellant withdrawing his appeal. Based on the withdrawal of the appeal by the Appellant, the Board issued a Discontinuance of Proceedings on August 7, 2007 and closed its file.

Cite as: *Francis v. Director, Southern Region, Regional Services, Alberta Environment re: Petrofund Energy Trust (now Penn West Energy Trust)* (07 August 2007), Appeal No. 05-043-DOP (A.E.A.B.).

05-048

Appellant(s) – West Fraser LVL, Sundre Forest Products Inc., a subsidiary of West Fraser Mills Ltd., **Operator** – Fraser LVL, Sundre Forest Products Inc., a subsidiary of West Fraser Mills Ltd., **Location** – near Rocky Mountain House in Clearwater County, **Type of Appeal** – Report and Recommendations

On November 29, 2005, the Board received a Notice of Appeal from West Fraser LVL, Sundre Forest Products Inc., a subsidiary of West Fraser Mills Ltd. (the “Appellant”) with respect to Approval No. 1424-01-00 issued to the Appellant authorizing the construction, operation, and reclamation of the Strachan wood processing plant near Rocky Mountain House, Alberta, in Clearwater County. The Board held a mediation on February 7, 2006, at the Board’s office in Edmonton, Alberta, following which an agreement was reached by the participants. The Board issued a Report and Recommendations to the Minister of Environment on May 2, 2006, recommending the Minister accept the agreement. On May 8, 2006, the Minister approved the agreement.

Cite as: *West Fraser LVL v. Director, Central Region, Regional Services, Alberta Environment* (2 May 2006), Appeal No. 05-048-R (A.E.A.B.).

05-049

Appellant(s) – Lakeland County, **Operator** – Parkland Developments Limited, **Location** – Lakeland County, **Type of Appeal** – Discontinuance of Proceedings

On December 9, 2005, the Board received a Notice of Appeal and a request for a Stay from Lakeland County with respect to Amending Approval No. 00139297-00-01, issued under the *Water Act* to Parkland Developments Limited. The Amending Approval was to revise the construction completion dated under condition 12 of original Approval No. 00139237-00-00. The original Approval authorized the construction of a storm water management works and a fish spawning pond in Lakeland County. In consultation with the participants, the Board scheduled a mediation meeting for March 14, 2006, in Lac La Biche, Alberta. However, on February 24, 2006, the Board received a letter from the Director requesting the Board adjourn the mediation sine die and dismiss the appeal. As a result, a written submission process began. On March 21, 2006, the Board received a letter from the Appellant withdrawing the appeal. On March 22, 2006, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Lakeland County v. Director, Northern Region, Regional Services, Alberta Environment re: Parkland Developments Limited* (22 March 2006), Appeal No. 05-049-DOP (A.E.A.B.).

05-050-052

Appellant(s) – Stonebridge Farms Ltd., **Operator** – Stonebridge Farms Ltd., **Location** – near Galahad, **Type of Appeal** – Discontinuance of Proceedings

On December 12, 2005, the Board received a Notice of Appeal from Mr. H. Grant Jackson on behalf of Stonebridge Farms Ltd. with respect to Approval No. 00183682-00-00 issued under the *Water Act* on January 21, 2005, Amending Approval 00183682-00-01 issued on June 30, 2005, and Amending Approval No. 00183682-00-02 issued on November 1, 2005, to Stonebridge Farms Ltd. The Approval authorizes the construction and maintenance of a berm in an unnamed water body and maintenance of the existing drainage ditch in NW 34-40-14-W4M, near Galahad, Alberta while the Amending Approvals amend the completion dates of the berm. The Board requested dates to conduct a mediation, and on January 6, 2006, was notified by Environment that Mr. Leonard and Ms. Jean Keichinger should be included in the mediation as they submitted a Statement of Concern during the application review process that led to the issuance of the original Approval. The Board held a mediation meeting on February 8, 2006, in Stettler,

Alberta in which all participants, including the Keichingers attended. At the conclusion of the mediation, the Appellant agreed to advise the Board whether he would withdraw his appeals. On February 15, 2006, the Board received a letter from the Appellant withdrawing the appeals. Therefore, the Board issued a Discontinuance of Proceedings on February 24, 2006, and closed its file.

Cite as: *Stonebridge Farms Ltd. v. Director, Central Region, Regional Services, Alberta Environment* (24 February 2006), Appeal Nos. 05-050-052-DOP (A.E.A.B.).

05-053, 054, 070, & 06-070

Appellant(s) – Ms. Donna Breaker and the Siksika Nation Elders Committee, the Siksika Nation, Mr. Darrell Breaker, and Mr. Kelly Breaker, **Operator** – The Town of Strathmore, **Location** – Strathmore, **Type of Appeal** – see below.

Overview - On November 24, 2005, Alberta Environment issued Amending Approval No. 11901-01-13 under the *Environmental Protection and Enhancement Act*, to the Town of Strathmore authorizing the construction, operation and reclamation of a wastewater system in Strathmore. The Amending Approval is an amendment to an existing approval to construct a wastewater pipeline and associated outfall to the Bow River. The effluent is treated to tertiary standards at the Strathmore wastewater treatment facility and conveyed by the pipeline and discharged from an armoured outfall to the Bow River.

The Board received 4 Notices of Appeal between December 20, 2005 and October 25, 2006, and from Ms. Donna Breaker (EAB 05-053); Siksika Nation (EAB 05-054); Mr. Darrell Breaker (EAB 05-070), and Mr. Kelly Breaker (EAB 06-070). Ms. Breaker and Siksika Nation also applied to the Board for a Stay, which was subsequently denied by the Board.

(05-070-DOP) Discontinuance of Proceedings - The Amending Approval was issued on November 24, 2005 and Mr. Darrell Breaker's Notice of Appeal was filed on January 17, 2006. The Notice of Appeal appeared to have been filed outside the timeframe specified in section 91(4)(c) of EPEA. The Board's February 1, 2006 letter to the Appellant requested he provide the Board with reasons for filing the Notice of Appeal late, and that he advise the Board whether he wished to request an extension of time to appeal. On March 22, 2006, the Board advised that although a response from the Appellant had not been received, he would be permitted to participate in the information/technical session and mediation meeting being scheduled. However, the Board would decide the status of the Appellant's appeal, if the appeals proceeded to a hearing. The Board was in the process of collecting comments with respect to proceeding with the information/technical session and mediation meeting, when on June 20, 2006, it received a letter from the Appellant advising the Board that he no longer wished to be involved in the appeal process. The Board also received a telephone call from counsel for Siksika Nation on June 23, 2006 confirming that the Appellant wished to withdraw his appeal. The Board issued a Discontinuance of Proceedings on July 11, 2006 and closed its file in relation to Mr. Darrell Breaker.

Cite as: *Breaker v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Strathmore* (11 July 2006), Appeal No. 05-070-DOP (A.E.A.B.)

(06-070) Letter of Dismissal - The Board reviewed Mr. Breaker's Notice of Appeal and his response explaining why the appeal deadline should be extended and why the appeal was filed outside of the 30 day time limit. The timeframe for filing an appeal of an approval, or as in this case an Amending Approval, is not later than 30 days as stated in section 91(4)(c) of EPEA. The Board has the authority to extend the filing time if there are sufficient grounds to do so as outlined in section 93 of EPEA.

The Amending Approval was issued on November 24, 2005, and Mr. Breaker filed his Notice of Appeal on October 5, 2006. Therefore, the deadline for filing a Notice of Appeal would have been approximately December 24, 2005, making Mr. Breaker's Notice of Appeal approximately 9 months late.

The Board determined the appeal must be dismissed based on two grounds – the need for certainty in the regulatory process and for failing to meet the onus in applying for an extension to file the Notice of Appeal. The legislation has provided the Board with some flexibility to allow for late filed appeals in certain circumstances, but the Board uses this authority in only limited situations. It is evident from the

submission and the Notice of Appeal that Mr. Breaker was aware of the issuance of the Amending Approval, but did not file a Notice of Appeal until approximately 9 months after the appeal period had passed. The onus is on the appellant to demonstrate there are exceptional circumstances that warrant an extension of time to file an appeal. Mr. Breaker did not provide any information to demonstrate special or extenuating circumstances existed that prevented him from filing his Notice of Appeal on time. Therefore, on November 10, 2006, the Board dismissed the appeal of Mr. Kelly Breaker as the Notice of Appeal was filed outside of the legislated timeframe, and no compelling reason was provided to warrant an extension of time to file his appeal.

(05-053-054-ID1) Intervenor Decision - The Board scheduled a hearing for February 12, 13, and 14, 2007, and in response to the published notice of hearing, it received 13 intervenor requests. After reviewing the submissions from the Town of Strathmore, the Siksika Nation Elders Committee, the Siksika Nation, Alberta Environment, and the intervenor requests, the Board determined the Wheatland County, which represents the interests of its residents including the residents of the Hamlet of Gleichen, and the Western Irrigation District, which received the treated wastewater from the Approval Holder for six years and could provide specific information on the system previously used to dispose of the treated wastewater, would be able to provide evidence at the hearing and would be subject to cross-examination by the Appellants; Mr. Kelly Breaker, a member of the Siksika Nation, could provide a written submission; the intervenor applications of Communities in Bloom Strathmore Chapter, Rich-Lee Custom Homes, Royop Corporation (Pine Centre Development Ltd.), Aztec Real Estate, Strathmore Homes Ltd., Happy Gang Society, Wild Rose Economic Development Corporation, and United Communities L.P. were denied because the Board believed the environmental issues and concerns raised by these intervenors would be fully presented by the Approval Holder; and based on the information provided by the Approval Holder, the intervenor requests of Ms. Patricia Cross of Madawaska Consulting and Dr. Steve Stanley of EPCOR, were withdrawn as they were slated to be members of the Town of Strathmore's panel of witnesses.

Cite as: Intervenor: *Siksika Nation Elders Committee and the Siksika Nation v. Director, Southern Region, Regional Services, Alberta Environment, re: Town of Strathmore* (May 18, 2007), Appeal Nos. 05-053 and 054-ID1 (A.E.A.B.).

(05-053 & 054-ID2) Stay Decision - Just days before the hearing of these appeals, the Siksika Nation filed a request for a Stay of the Amending Approval. The Board received written submissions from the parties and heard additional arguments at the Hearing on this question. In making its decision on February 16, 2007 on the Stay, the Board had to balance denying the Stay, thereby allowing the Town to discharge treated wastewater at full pipeline capacity and by that discharge, imposing a plausible, but undetermined risk to the drinking water sources of the Siksika Nation; or granting the Stay and likely precipitating a treated wastewater storage crisis for the Town that could lead to serious environmental consequences. Under the circumstances, the Board determined that the balance of convenience and the public interest required that a partial Stay, with conditions, be granted.

One of the conditions was that the Town had to provide 6,000 litres of bottled water per day to the Siksika Nation to be used as drinking water for their citizens. This condition was included because, although the Board did not expect there to be a certain danger to health during the time it took to hear the appeals, the Siksika Nation presented a plausible case that a substantial health risk may exist. Without credible evidence provided by the Town to demonstrate some realistic bounds on the plausible health risks, the Board had to apply a precautionary approach and ordered bottled water to be provided. The Board noted that the Town and the Siksika Nation made a number of suggestions as to how to address the Stay, particularly regarding how to protect the Siksika Nation potable water supply, but the evidence of the witnesses from both sides indicated that it was unlikely that these suggestions were viable. When the Board presented the parties with the suggestion of using bottled water to address this concern, none of the parties objected to the idea, subject to concerns about the logistics of delivering and distributing the bottles.

The Board granted a partial Stay of the Amending Approval, subject to certain conditions. The conditions were to remain in effect until the Ministerial Order arising from the Hearing of the appeals is issued.

Cite as: Stay: *Siksika Nation Elders Committee and the Siksika Nation v. Director, Southern Region, Regional Services, Alberta Environment, re: Town of Strathmore* (18 May 2007), Appeal Nos. 05-053 and 054-ID2 (A.E.A.B.).

(05-053-054-R) Report and Recommendations - The Board held a hearing on February 12-14, 2007 in Strathmore. The Amending Approval was issued in response to a requirement from Alberta Environment that the Town of Strathmore implement a long-term solution for treated wastewater disposal. The approval requires the Town of Strathmore, with a current population of about 10,000, to provide tertiary treatment of its wastewater, a technology-based requirement normally reserved for communities with a population larger than 20,000. The more stringent standards were required because of concerns for water quality in the Bow River, which was acknowledged by Alberta Environment, the Town of Strathmore, the Siksika Nation, and the Siksika Nation Elders Committee to be under stress from the growing population and development in the Bow River basin. Alberta Environment's decision relied upon a water quality assessment prepared by consultants retained by the Town of Strathmore as the basis to accept these more stringent standards as being sufficient to minimize impacts on the water quality of the river.

The Board found that the water quality assessment prepared for the Town was not a reliable basis for making the decision to issue the Amending Approval. As a result, Alberta Environment's decision was not consistent with its own policy guidelines. If the water quality assessment had been reliable, it might have provided a basis to consider some variation from these guidelines, but no case was presented for such a variation. Rather, Alberta Environment and the Town argued that the guidelines were followed. The Board found that on the basis of the water quality evidence presented for the Bow River, the Alberta Environment guidelines required the Town to limit the total phosphorus in its treated wastewater that will be discharged to the Bow River to 0.05 mg/l. This is five percent of the 1.0 mg/l limit that was included as the operating limit in the approval for the plant. In addition, the Alberta Environment guidelines do not support a discharge to the secondary channel of the Bow River at the location where the outfall has been approved because the available dilution in the secondary channel is well below the guideline requiring a minimum 10 to 1 dilution. Discharging treated wastewater to the secondary channel with the ammonia limits allowed in the approval and no control on pH may contravene the federal Fisheries Act provisions prohibiting the deposit of a deleterious substance into waters frequented by fish. Finally, the Board did not agree that the Town's treated wastewater discharge, without dilution, would satisfy Alberta Environment's guidelines for use as source water for a potable water supply and for contact recreation. These guidelines require knowing specifically what kind of treatment will be provided for potable water, and when assessing suitability for contact recreation, assessing substances which have not been regulated by the Amending Approval.

The Board found that Alberta Environment had an inadequate basis to judge potential impacts on downstream users of the Bow River, including the Siksika Nation. The information base was inadequate because of: the unreliable water quality assessment; the lack of information on mixing behaviour in the Bow River; and the inadequate information on downstream recreational and potable water uses by the Siksika Nation.

The Board noted that the Siksika Nation Elders Committee expressed existing health concerns, which they attributed to their water supplies. These could not have been caused by the Town's treated wastewater because it had not yet been discharged to the Bow River. On the basis of the evidence available, the Board anticipates that the most substantive risk to the Siksika Nation is the potential for adverse impacts on the aesthetic quality of downstream water supplies and recreational use being impaired by excess nutrient additions to the Bow River. While the Board was of the view that the discharge to the Bow River under the current circumstances is unacceptable, the Board has no basis to expect that the discharge would pose an immediate health risk. However, before this can be determined conclusively, the Town would have to undertake some sort of risk assessment to confirm that the discharge of its treated wastewater poses no health concerns to the Siksika Nation. Unfortunately, in this case, the Town did not undertake such an assessment.

The Board recommended that the Amending Approval be substantially varied to avoid adverse impacts on downstream users and adverse impacts on the water quality of the Bow River and its secondary channel. The Board's recommendations were intended to manage the Town's treated wastewater in a manner that will avoid adverse impacts until a comprehensive new approval can be issued to the Town in March 2008. The new approval must provide a long-term solution for the Town's treated wastewater that balances the

valid interests of regional stakeholders now and in the future within a framework that is consistent with the Water for Life Strategy by assuring safe, secure drinking water supplies, and a healthy aquatic ecosystem for this reach of the Bow River basin.

The Board did not change any of Alberta Environment's guidelines or policies with these findings. The Board only sought to assure that the relevant guidelines and policies were either being followed or were not being varied without an appropriate justification based on sound environmental evidence specific to the circumstances. On May 18, 2007 the Minister issued his Order varying the Board's recommendations.

Cite as: *Siksika Nation Elders Committee and Siksika Nation v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Town of Strathmore* (18 April 2007), Appeal Nos. 0-053-054-R (A.E.A.B.).

05-056

Appellant(s) – George Kerekanich, **Operator** – Penn West Petroleum Ltd., **Location** – near High Prairie, **Type of Appeal** – Discontinuance of Proceedings

On January 16, 2006, the Board received a Notice of Appeal from Mr. George Kerekanich with respect to Reclamation Certificate No. 00222660-00-00 issued to Penn West Petroleum Ltd. for the Petromet et al. Shadow 13-35-74-18 well and Barrow Pit near High Prairie, Alberta. The Board held a mediation meeting on May 29, 2006, in High Prairie, Alberta. As a result of productive discussions, the participants reached a resolution and the Appellant withdrew his appeal. The Board issued a Discontinuance of Proceedings on June 1, 2006, and closed its file.

Cite as: *Kerekanich v. Director, Northern Region, Regional Services, Alberta Environment* re: *Penn West Petroleum Ltd.* (01 June 2006), Appeal No. 05-056-DOP (A.E.A.B.).

05-057-069

Appellant(s) – Mr. Don and Ms. Amanda Lee Faltermeier, Future of Blackfoot and Area Environmental Association, Ms. Lori Fradette, Mr. Gerry Fradette, Mr. Dwight and Ms. Lynn Janzer, Mr. John Gerich, Ms. Judy Gerich, Mr. Doug Kuchenbrand, Ms. Anna Kuchenbrand, Ms. Gail Moore, Mr. Don Gilmour, and Ms. Laura Jacques-Gilmour **Operator** – DJ Hog Farms Ltd., **Location** – near Blackfoot, **Type of Appeal** – See below.

Overview: On January 25, 2006, the Board received 13 Notices of Appeal with respect to Licence No. 00207448-00-00 issued under the *Water Act* to DJ Hog Farms Ltd. authorizing the operation of a works and the diversion of up to 9,137 cubic metres of water annually from the source of water from wells at NE 12-050-02-W4M, near Blackfoot, Alberta, for agricultural purposes (confined feeding operation).

(05-065-066-DOP) Discontinuance of Proceedings: On April 20, 2006, the Board advised that it had scheduled a mediation meeting for May 17, 2006 in Lloydminster, Alberta. On May 1, 2006, the Board received a telephone call from the Faltermeiers withdrawing their appeals. As a result, the Board issued a Discontinuance of Proceedings on May 16, 2006 and closed its file related to the Faltermeiers.

Cite as: *Faltermeier et al. v. Director, Northern Region, Regional Services, Alberta Environment* re: *DJ Hog Farms Ltd.* (16 May 2006), Appeal Nos. 05-065 & 066-DOP (A.E.A.B.).

(05-057-064, 067-069-R) Report and Recommendations: A mediation meeting was held May 17, 2006 at which the participants reached an agreement with respect to the Licence. Further discussions took place and an additional agreement was struck. The Board issued a Report and Recommendations to the Minister of Environment on September 29, 2006, recommending the Minister accept the agreement. On October 10, 2006, the Minister approved the agreement.

Cite as: *Future of Blackfoot and Area Environmental Association et al. v. Director, Northern Region, Regional Services, Alberta Environment* re: *DJ Hog Farms Ltd.* (29 September 2006), Appeal Nos. 05-057-064, 067-069-R (A.E.A.B.).

05-071

Appellant(s) – Wayne Sommerstad, **Operator** – Wayne Sommerstad, **Location** – near Okotoks, **Type of Appeal** – see below

Overview – Alberta Environment issued an Enforcement Order on January 24, 2006 to Mr. Wayne Sommerstad for an alleged contravention of section 36(1) of the *Water Act* for the construction of a dam and a culvert and the diversion of water, on his land, in the Municipal District of Foothills near Okotoks, Alberta. On February 1, 2006 Mr. Sommerstad appealed the Enforcement Order and requested a Stay of the Order.

Stay Decision - The Board received submissions from Mr. Sommerstad and Alberta Environment on whether the Stay should be granted. After reviewing the submissions and the Enforcement Order, the Board determined that although there is a serious issue that needs to be determined, the Stay should not be granted. The Board found the harm that could result to Mr. Sommerstad could be compensated for monetarily, and the public interest in this case was particularly relevant as neighbouring properties were being affected by the works.

The Appellant did raise serious issues that should be heard and therefore part of the Stay test is satisfied. The Appellant could be monetarily compensated for any damages that may occur should the Stay be denied or the damages could be reversed. Therefore, the Appellant would not be irreparably harmed if the Stay was not granted. The balance of convenience favours the Order remain in effect, as the Order requires the Appellant to collect information and data and to prepare a remedial plan prior to work starting on the removal of the Works. It is not certain if removal of the Works will cause adverse effect to other landowners, but there is evidence of adjacent properties currently being affected. Additional information may clarify who will be affected and how they will be affected with changes to the Works. Alberta Environment issued the Order in the public interest with the intent of protecting adjacent lands from further damage due to the Works. On March 6, 2007, the Board issued its decision denying the Stay request of the Appellant, and determining the Order is to remain in place.

Cite as: Stay Decision: *Sommerstad. v. Director, Southern Region, Regional Services, Alberta Environment* (6 March 2007), Appeal No. 05-071-ID1.

Discontinuance of Proceedings – A mediation meeting was held on March 17, 2006. Following detailed discussions at and after the mediation meeting, the mediation meeting was reconvened on November 21, 2006 for further deliberations. Discussions continued after the mediation meeting between the Appellant and the Director, but no resolution was reached by March 29, 2007, and the Board proceeded to schedule a hearing. In consultation with the parties, the Board scheduled the hearing for June 20, 2007, in Calgary, Alberta. On June 12, 2007, the Board received a letter from the Director advising the Order had been cancelled, and on June 13, 2007, the Board received a letter from Ms. Sommerstad advising he was withdrawing his appeal. As a result of withdrawal, the Board issued a Discontinuance of Proceedings on June 19, 2007 and closed its file.

Cite as: *Sommerstad v. Director, Southern Region, Regional Services, Alberta Environment* (19 June 2007), Appeal No. 05-071-DOP (A.E.A.B.).

05-072

Appellant(s) – Rock Ranches Ltd., **Operator** – Rock Ranches Ltd., **Location** – near Sundre, **Type of Appeal** – Discontinuance of Proceedings

On February 3, 2006, the Board received a Notice of Appeal from Rock Ranches Ltd. with respect to Licence No. 00220551-00-00 issued under the *Water Act* to Rock Ranches Ltd. The Licence authorized the operation of works and the diversion of up to 1,136.4 cubic metres of water annually from the source of water for the purpose of watering livestock, near Sundre, Alberta. As the Board began to process the appeal, on February 10, 2006, it received an e-mail from the Appellant withdrawing the appeal. Therefore, on February 14, 2006, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Rock Ranches Ltd. v. Director, Southern Region, Regional Services, Alberta Environment* (14 February 2006), Appeal No. 05-072-DOP.

05-073

Appellant(s) – Ms. Mary Frebrowski, **Operator** – Burlington Resources Canada Ltd. **Location** – County of Lamont, **Type of Appeal** – Discontinuance of Proceedings

On February 23, 2006, the Board received a Notice of Appeal from Ms. Mary Frebrowski, with respect to Reclamation Certificate No. 00216335-00-00 issued to Burlington Resources Canada Ltd. (“BRCL”) for the BRCL Inland well located at NE-12-52-17-W4M in the County of Lamont, Alberta. As the Board began to process the appeal, it received a telephone call from the Appellant withdrawing the appeal. The Board advised the Appellant to notify the Board if the information was incorrect in writing. The Board did not receive any communication to the contrary, and therefore, confirmed the appeal was withdrawn and the Board would be closing its file. Therefore, on March 22, 2006, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Frebrowski v. Inspector, Northern Region, Regional Services, Alberta Environment*
re: *Burlington Resources Canada Ltd.* (22 March 2006), Appeal No. 05-073-DOP
(A.E.A.B.).
