

CLERK OF THE COURT
FILED
MAR 14 2014
JUDICIAL CENTRE
OF CALGARY

Clerk's stamp:

**Form 7
[Rule 3.8]**

COURT FILE NUMBER 1401-02680
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Calgary
APPLICANT(S) WATER CONSERVATION TRUST OF CANADA
RESPONDENT(S) THE ENVIRONMENTAL APPEALS BOARD,
DIRECTOR, SOUTHERN REGION, ALBERTA
ENVIRONMENT AND SUSTAINABLE RESOURCE
DEVELOPMENT,
THE MINISTER OF JUSTICE AND ATTORNEY
SOLICITOR GENERAL FOR ALBERTA and HER
MAJESTY THE QUEEN IN RIGHT OF ALBERTA as
represented by THE MINISTER OF ENVIRONMENT
AND SUSTAINABLE RESOURCE DEVELOPMENT

DOCUMENT AMENDED ORIGINATING APPLICATION FOR
JUDICIAL REVIEW

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
**Maureen Bell
Barrister & Solicitor
Suite 278, 1811 4th Street SW
Calgary, Alberta T2S 1W2
Tel. 403-228 0377
Fax 403-243 3710
Email mbell@waterrights.net**

AMENDED this 14th day of March Pursuant to
Rule 3.62
Dated the 14 day of MARCH 2014
CLERK OF THE COURT

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.
You have the right to state your side of the matter before the Court.
To do so, you must be in Court when the application is heard as shown below:

Date: Tuesday July 15th, 2014
Time: 10:00 a.m.
Where: Calgary Court Centre, 601 – 5th Street SW, Calgary, AB T2P 5P7
Before: Justice in Motions Court

to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. The Minister of Environment and Sustainable Resource Development in her Order dated September 17th, 2013 (the “Order”) and the Report and Recommendations in Appeal No. 10-056-R (the “Report”) of the Environmental Appeals Board (the “Board”) dated March 8th, 2013, upholding the Decision of the Director, Central Region (the “Director”) dated February 11th, 2011 (the “Decision”) to refuse an application for the transfer of a portion of an existing water license under section 81 of the *Water Act*, RSA 2000, c W-3 for the stated purposes of habitat enhancement, recreation, fish and wildlife, and water management, pursuant to sections 11 (k), (l), (h), (i), and (m) of the *Water Act*, *Water (Ministerial) Regulation*, AR 205/1998, to the Water Conservation Trust of Canada (the “Appellant”), erred in jurisdiction or law, or otherwise made unreasonable findings in her Decision, in the Report of the Board, and the Decision of the Director including:
 - (a) in determining or confirming that the Director did not have the authority under the *Water Act* to issue what the Appellants had applied for, namely a transfer of a portion of an existing water licence for the purposes of habitat enhancement, recreation, fish and wildlife, and water management;
 - (b) in determining or confirming that the Appellants had applied under the *Water Act* for a water licence for the purpose of implementing a water conservation objective, (section 11 (j) of the *Water Act (Ministerial Regulation)*), which the Appellant did not do;
 - (c) in making numerous errors in interpretation of the *Water Act*, and the corresponding error that the Director lacked jurisdiction under the *Water Act* to consider and grant the application, and regarding the Director’s discretion and responsibilities under the *Water Act*, including, but not limited to:
 - i. regarding the term “diversion of water,” and wrongly concluding on the basis of the errors that the Appellant’s application for an instream water use for the purposes set out in the application was not for a diversion of water, as defined in the *Water Act*;
 - ii. regarding “appurtenant to an undertaking,” “undertaking,” and “activity,” and wrongly concluding in paragraph 128 of the Report on the basis of the errors that the Appellant’s application for a transfer would not be complete without the written consent of the Crown as owner of the bed and shores; this is incorrect as under the *Water Act* a licence may be appurtenant to land or an undertaking, and the latter in the Appellant’s circumstances would not require Crown consent;
 - iii. regarding section 51(1) and section 51(2) of the *Water Act*, and their components and the relationship among them, “water conservation objective,” “for the purpose of implementing a water conservation objective,” and the role of the list of licence purposes set out in section 11 of the *Water Act*, *Water (Ministerial) Regulation* in the schema of *Water Act* and regulations, and wrongly concluding

- that an application for a licence for the purposes of habitat enhancement, recreation, fish and wildlife, and water management was an application to implement a water conservation objective; ~~not only is this erroneous in fact and law, there was not even a water conservation objective set for the portion of the river in the basin to which the applicant's proposed transferred licence would apply;~~
- iv. by wrongly concluding that only the government may hold a licence that providing or maintaining a rate of flow of water or water level requirements, including on the basis of an erroneous interpretation of section 51(2) of the *Water Act*, which section in fact and law provides that only the government may hold a licence that providing or maintaining a rate of flow of water or water level requirements *for the purpose of implementing a water conservation objective*, and the Appellant's application was for other purposes authorized under the *Water Act* and regulations and not for the purpose of implementing a water conservation objective;
 - v. by wrongly interpreting the role that out of stream diversions play in issued licences in interpreting the *Water Act*, including, but not limited to purposes for which a licence may be issued, the term "rate of flow" and the role of rate of flow in water licences and the licencing process;
 - vi. in misconstruing and misinterpreting the role of policy in interpreting the *Water Act*, and in accepting, or appearing to accept the Director's unreasonable, unfounded, speculative, and irrelevant policy considerations (paragraph 60 of the Report);
 - vii. in misinterpreting and misapplying the purposes of the *Water Act*, and the scheme of the *Water Act*;
 - viii. in misinterpreting the relationship between the *Water Resources Act*, RSA 1980, c W-5, and the *Water Act*, and the corresponding errors regarding Director's jurisdiction, discretion and responsibilities under the *Water Act*, to grant the licence for which the Appellant applied for on its application for a transfer of a water licence under section 82(1)(b) of the *Water Act*;
- (d) in refusing the Appellant's application for a transfer of a water licence under section 82(1)(b) of the *Water Act* without considering any of the mandatory matters listed in Table 1 of the Approved Water Management Plan for the Saskatchewan River Basin as required pursuant to section 82(5)(a), as is clear from the Report of the Board in finding that the Director refused the Appellant's application without considering it on its merits (for example paragraphs 102-104 of the Report of the Board);

Remedy sought:

2. An Order adjourning the Application to a Justice Chambers Special Date;
3. An Order in the nature of *certiorari* quashing the Decision, the Report of the Board, and the Decision of the Director;

4. An Order in the nature of *mandamus* referring the matter to the Director for determination in accordance with the *Water Act* and *Regulations*;
5. A Declaration that the Director has the jurisdiction to consider and grant an application for a transfer of a license for the stated purposes applied for;
6. A Declaration that the Director erred in jurisdiction, law or made an unreasonable finding that the application for transfer was for the purpose of a Water Conservation Objective;
7. A Declaration that the Board made errors in interpretation of the *Water Act*, and corresponding errors regarding Director's jurisdiction to consider and grant the application, and the Director's discretion and responsibilities under the *Water Act*, as set out in paragraph 1(c) of this Originating application, and its subparagraphs;
8. An Order granting the Applicants costs; and
9. Such further or other Orders or Directions as this Honourable Court deems appropriate.

Affidavit or other evidence to be used in support of this application:

10. The Record of proceedings before the Board; and
11. Such further and other materials as counsel may advise and this Honourable Court may allow.

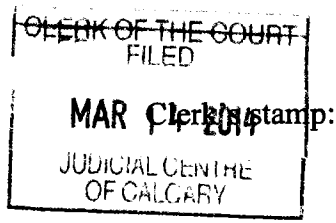
Applicable Acts and regulations, and Plan:

12. The *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, the *Environmental Appeal Board Regulation*, AR 114/93, the *Water Act*, RSA 2000, c W-3, *Water (Ministerial) Regulation*, AR 205/1998, the *Water Resources Act*, RSA 1980, c W-5; the *Approved Water Management Plan for the Saskatchewan River Basin*, 2006, the *Alberta Rules of Court*, and such other Acts and Regulations as counsel may advise and this Honourable Court may permit.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

Form 8
[Rule 3.18]



COURT FILE NUMBER 1401-02680

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT(S) WATER CONSERVATION TRUST OF CANADA

RESPONDENT(S) **THE ENVIRONMENTAL APPEALS BOARD,
DIRECTOR, SOUTHERN REGION, ALBERTA
ENVIRONMENT AND SUSTAINABLE RESOURCE
DEVELOPMENT,
THE MINISTER OF JUSTICE AND ATTORNEY
SOLICITOR GENERAL FOR ALBERTA and HER
MAJESTY THE QUEEN IN RIGHT OF ALBERTA as
represented by THE MINISTER OF ENVIRONMENT
AND SUSTAINABLE RESOURCE DEVELOPMENT**

DOCUMENT **AMENDED NOTICE TO OBTAIN RECORD OF PROCEEDINGS**

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**Maureen Bell
Maureen Bell Barrister & Solicitor
Suite 278, 1811 4th Street SW
Calgary, Alberta T2S 1W2
Tel. 403-228 0377
Fax 403-243 3710
Email mbell@waterrights.net**

AMENDED this 14th day of March, 2014 Pursuant to Rule 362
Dated the 14 day of MARCH 2014

CLERK OF THE COURT

NOTICE TO THE ENVIRONMENTAL APPEALS BOARD

Requirement

You are required to provide the following or an explanation as to why they, or any of them, cannot be provided:

- (i) the decision or written record of the act that is the subject of the originating application for judicial review,
- (ii) the reasons given for the decision or act, if any,
- (iii) the document starting the proceeding,
- (iv) the evidence and exhibits filed with you, if any, and
- (v) anything else in your possession relevant to the decision or act.

RECEIVED BY E-MAIL
MAR 13 2014
ALBERTA ENVIRONMENTAL
APPEALS BOARD

Form 7
[Rule 3.8]

CLERK OF THE COURT
FILED
MAR 13 2014
CLERK'S stamp:
COURT CENTRE
OF CALGARY

COURT FILE NUMBER **1401-02680**
COURT **COURT OF QUEEN'S BENCH OF ALBERTA**
JUDICIAL CENTRE **Calgary**
APPLICANT(S) **WATER CONSERVATION TRUST OF CANADA**
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ENVIRONMENT AND SUSTAINABLE RESOURCE
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GENERAL FOR ALBERTA**

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APPEALS BOARD

Form 8
[Rule 3.18]

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MAR 12 2014
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JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER 1401-02680

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT(S) WATER CONSERVATION TRUST OF CANADA

RESPONDENT(S) THE ENVIRONMENTAL APPEALS BOARD, and
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THE MINISTER OF JUSTICE AND ATTORNEY
GENERAL FOR ALBERTA

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