

Form 7
[Rule 3.8]

COURT FILE NUMBER 1101-16997

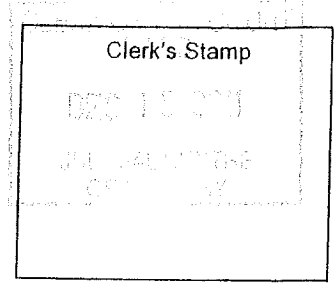
COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT WESTRIDGE UTILITIES INC.

RESPONDENTS HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, THE LIEUTENANT GOVERNOR IN COUNCIL, THE MINISTER OF ENVIRONMENT AND THE ENVIRONMENTAL APPEALS BOARD

DOCUMENT **ORIGINATING APPLICATION**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Westridge Utilities Inc.
(Attn: John Gruber)
80 Stone Pine Way SW
Calgary, AB T3Z 3E9

Telephone: 403 542 0705
Facsimile: 403 242 9277
File Number: 200.001

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

- Date: January 12, 2012
- Time: 10:00 am
- Where: Calgary Courts Centre
601 - 5 Street SW, Calgary, AB, T2P 5P7
- Before: Justice in Chambers

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

Basis for this claim:

1. The Applicant, Westridge Utilities Inc. ("Westridge") is utility providing potable water to residents of the Springbank Area in Calgary, Alberta.
2. On February 26, 2009, Rockyview County ("RVC") submitted an application (the "Application") to Alberta Environment ("AENV") pursuant to the *Water Act*, R.S.A. 2000, c. W-3 (the "*Water Act*") to transfer 308,370 m³ (250 acre-feet) of water to the County from an existing 11,940,104 m³ (9,680 acre-feet) allocation held by Allen's Trout Farm Inc. from a spring tributary of Lott Creek pursuant to a license dated 1979 04 23, with a priority number 1974-10-24-001.
3. A Statement of Concern was submitted by Westridge to AENV on March 19, 2010. On June 11, 2010 a letter was sent from the Director to Westridge advising that Westridge's letter was considered an official Statement of Concern pursuant to the *Water Act*.
4. On September 9, 2010, the Director issued a response to Westridge regarding its concerns with the Application.
5. On October 29, 2010, the Director issued Licence No. 00255373-00-00 (the "Licence") to RVC authorizing the operation of a works and the diversion of up to 277,533 cubic metres of water annually at a maximum rate of diversion of 0.009 cubic metres per second from the Elbow River for municipal purposes.
6. On November 26, 2010, Westridge filed a Notice of Appeal (the "Appeal") of the Director's decision to issue the Transfer License to the Environmental Appeals Board (the "Board") pursuant to section 115 of the *Water Act*.

7. On December 22, 2010 RVC filed a motion with the Board seeking to have the Appeal dismissed on a preliminary basis for lack of standing.
8. By letter dated February 22, 2011 the Board reserved the date of June 14, 2011 for an oral hearing if necessary. The Board also set the dates for the submissions of the parties. Pursuant to this schedule, Westridge was required to make the first submission on RVC's December 22, 2010 standing motion.
9. Westridge filed its submission in accordance with the deadlines set out in the Board's February 22, 2010 letter. In this submission, Westridge took the position that requiring it, as the Respondent to the RVC motion, to file first placed Westridge at an unwarranted disadvantage.
10. Prior to the date set out for the reply submission of the applicant, RVC, the Board issued a letter dated March 23, 2011. In this letter, the Board indicated that an oral hearing would take place on June 14, 2011, and set dates for the parties to submit materials. The Board also substituted (or added) its own motion with respect to standing and other issues. The issues on the Board's motion included the fairness and propriety of its own motion with respect to the preliminary motion process.
11. The parties filed submissions in accordance with the timetable set out in the Board's March 23, 2011 letter.
12. The oral hearing was held before the Board on June 14, 2011. During the hearing, Westridge was denied the opportunity to fully test the evidence of the RVC witnesses on cross-examination.
13. As at November 25, 2011, the Board had yet to issue a decision with respect to its motion and that of RVC.

14. On November 25, 2011 Westridge filed a motion with the Board requesting that it declare itself to have lost jurisdiction due to the delay in issuing a decision on an interim application. On November 30, 2011 the Board summarily dismissed this application.
15. On November 30, 2011 the Board issued Decision 10-032, which is the disposition of the June 14, 2011 hearing.
16. Westridge states that Decision 10-032 is properly set aside as a consequence of the following errors of law and jurisdiction:
 - (a) The Board lost jurisdiction due a breach of the principles of natural justice by declining Westridge a full and fair opportunity to respond to the motion brought against it;
 - (b) The Board, in concluding that Westridge was not directly affected by the Transfer, misinterpreted the law with respect to standing;
 - (c) The Board erred in law by failing to correctly interpret and apply the provisions of the *Water Act*, including without limitation, section 115;
 - (d) The Board erred in law by failing to correctly interpret and apply the test for standing as the same has been set out by the Alberta Court of Appeal;

Remedy sought:

17. The Applicant requests the following relief pursuant to Rule 3.15(1):
 - (a) A declaration that the Board lost jurisdiction due to a contravention of the principles of natural justice;
 - (b) An order setting aside Decision 10-032;
 - (c) A declaration Westridge has standing to prosecute its Appeal before the Board;
and
 - (d) Such other relief as is deemed proper by the Court in the circumstances.

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

18. The record of proceedings produced in response to Form 8; and
19. Such further and other evidence as counsel may request and this Court may allow.

Applicable Acts and regulations:

20. The *Water Act*, R.S.A. 2000, c. W-3.
21. The *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12.

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) and against all persons claiming under 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]

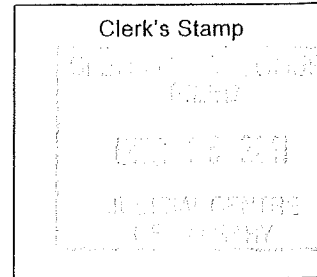
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DOCUMENT **NOTICE TO OBTAIN RECORD OF PROCEEDINGS**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Westridge Utilities Inc.
(Attn: John Gruber)
80 Stone Pine Way SW
Calgary, AB T3Z 3E9

Telephone: 403 542 0705
Facsimile: 403 242 9277
File Number: 200.001

NOTICE TO: 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:

- a) the decision or written record of the act that is the subject of the originating application for judicial review,
- b) the reasons given for the decision or act, if any,

- c) the document starting the proceeding,
- d) the evidence and exhibits filed with you, if any, and
- e) anything else in your possession relevant to the decision or act.