

February 2, 1994

IN THE MATTER OF Sections 84, 85, 86 and 87 of the *Environmental Protection and Enhancement Act* (S.A. 1992, ch.E-13.3) as amended;

and

IN THE MATTER OF an appeal filed by Maurice Boucher et al dated December 4, 1993 with respect to Approval 93-MUN-008 issued on November 8, 1993 by Mr. David Spink, then Acting Director, Department of Environmental Protection, relative to the construction of a water transmission line from the village of Nampa to the Hamlet of Marie Reine.

DECISION

Cite as: Maurice Boucher v. Director, Alberta Environmental Protection

Before: William A. Tilleman, Chair
David H. Marko, Vice-chair
Joan C. Copp
Max A. McCann

I. BACKGROUND

On December 4, 1993, Mr. Maurice Boucher, on his own behalf and 16 other “concerned residents of Improvement District 17 West” wrote a letter of objection to the Environmental Appeal Board (the “Board”). In this letter, Mr. Boucher and his group sought to appeal the Approval 93-MUN-008 issued by then Acting Director Mr. Spink (“the Director”), Department of Environmental Protection (the “Department”) on November 8, 1993 to the Improvement District No. 17(W) (the “ID”) for the construction of a water transmission line from the Village of Nampa (“Nampa”) to the Hamlet of Marie Reine (“Marie Reine”).

The Board received and filed Mr. Boucher’s letter on December 15, 1993. By letter dated December 16, 1993, the Board wrote to Mr. Boucher and asked him to provide further information as required by the Board’s “Notice of Appeal” form. Also, on December 16, 1993, the Board wrote to the Director, asking him for a copy of the Approval issued to the ID.

The Board met on January 5, 1994, and discussed the information submitted by Mr. Boucher in his December 4, 1993 letter (“first submission”) and his Notice of Appeal dated December 22, 1993 (“second submission”). On January 7, 1994, the Board asked Mr. Boucher to submit further information to the Board, pursuant to section 85 and 87(3) of the *Environmental Protection and Enhancement Act*, S.A. 1992, ch. E-13.3 (the “Act”). These sections read:

85 Where the Board receives a notice of objection it may by written notice given to the person who submitted the notice of objection require the submission of additional information specified in the written notice by the time specified in the written notice...;

87(3) Prior to making a decision (to conduct a hearing) the Board may, in accordance with the regulations, give to a person who has submitted a notice of objection and to any other person the Board considers appropriate, an opportunity to make representations to the Board with respect to which matters should be included in the hearing of the appeal.

Among other things, the Board asked Mr. Boucher to provide specific information to the Board regarding the following issues:

- (a) how Mr. Boucher and his group were directly affected by the decision to approve the construction of a water transmission line from Nampa to Marie Reine;
- (b) where Mr. Boucher and his group live, or have interests in land, relative to the proposed water transmission line; and
- (c) information regarding the source of water for Mr. Boucher and his group.

On January 27, 1994, in compliance with the Board’s request, Mr. Boucher sent in the additional information (“third submission”).

The Board also sought further information from the Director and from the Manager of the ID -- again, relying on section 87(3) of the Act. Among other things, the Board wanted information from the ID regarding the appellants' allegations that they were directly affected and what water-related impacts the proposed pipeline would have on the appellants. The Board sought information from the Director about the impact of the project on the appellants and whether other parties should be allowed to make representations should the appeal proceed. Submissions from the Director and the ID have since been received by the Board.

II THE BOARD'S PRELIMINARY CONSIDERATIONS

Upon receipt of a Notice of Objection filed under the Act, the Board meets to review a number of preliminary matters before proceeding. In this appeal, the Board is particularly interested in determining whether or not the appellants have standing to appeal the Director's decision, i.e., whether they are directly affected by the construction of a water transmission line from Nampa to Marie Reine.

III ISSUES

Mr. Boucher is relying on section 84(1)(a)(v) of the Act for his appeal of the Director's decision. This section of the Act permits an appeal to be submitted "by the approval holder or by any person who is directly affected by the Director's decision..."

The issue of Mr. Boucher's standing is fundamental to this appeal.

IV THE EVIDENCE

In Mr. Boucher's first submission he states:

"The supply of water from the Heart River is not adequate for such a project as to transport water from Nampa to Marie Reine or any other area. The quality and supply of water is inferior... As a long time resident of this area, I can see and remember the changes to the Heart River. When I was growing up, the Heart River was an adequate supply of water. As years pass and more farmland is opened up the Heart River is continually decreasing in flow. Many residents in the Nampa area prefer to use water from their dugouts than use Nampa water."

In Mr. Boucher's second submission he states his objections are:

"...to the use of Nampa water--water originating in the Heart River - for transmission of water to Marie Reine. The water is poor quality and supply will not sustain such extended use. This project will be a forerunner of others in the ID. Cost of project(s) will be partly funded through ID taxes. Residents are opposed to use of Nampa water and the use of taxes for such projects when we see no future for it."

In Mr. Boucher's third submission he states:

"The direct affect (sic) this construction of a water transmission line from Nampa to Marie Reine is financial. We are residents of the Improvement District 131 (previously 17W) and we will assume a portion of the tax burden this construction will create."

In response to the Board's question inquiring where the appellants live vis a vis the pipeline, Mr. Boucher also states:

"We do not reside in the direct line of this pipeline. We reside closer to St. Isidore and Peace River. (We will probably not stop this construction but)...we hope that our appeal will stop the Improvement district from proceeding with another line within the Improvement District without residential participation."

(2) The Evidence of the ID

When asked by the Board whether the ID felt the appellants were directly affected, the ID states:

"The appellants are not directly or even indirectly affected by this proposal."

And, responding to the issue of where the appellants live in relation to this pipeline and how the appellants might be impact by the project, the ID states:

"None of the landowners that we are able to identify by their signatures live on or near the project... The Heart River has been evaluated by our feasibility study... (and design) engineers... It is their position that the proper treatment and raw water storage capabilities the Heart River is an adequate source for this project. We are tapping into the existing water treatment plant for the Village of Nampa which has been designed to service a population of approximately 1,200 and is currently servicing less than 500."

V DECISION OF THE BOARD

As stated in an earlier decision of this Board"

"The Act requires that a person be "directly affected" by a decision to appeal to the Board. The Board believes that the definition of which persons are "directly affected" is flexible and will depend upon the circumstances of each case." (Fred J. Wessley v. Director, Alberta Environmental Protection).

In the case of Mr. Boucher, his first submission begins by addressing concerns about the impacts of the project primarily upon the Heart River — adjacent to Nampa. Further, the appellants states their concern with the pipeline between Nampa and Marie Reine, but admit that they do

not reside in direct proximity to this pipeline. In response to the Board's, the appellants admit (and have accordingly marked on their attached maps) that they live closer to St. Isidore and Peace River, some 10-20 kilometres from the project. Indeed, the essence of the appellants' case — found in all three submissions — is their concern with the direct or indirect costs of the project and the possible impact on their property taxes. They admit these interests are shared by other residents of the ID who will receive the benefits (and cost burdens directly or indirectly) of the project.

The Board finds that the appellants do not have a substantial interest in the outcome of this proposed water transmission line that surpasses the common interests of all residents in the ID who will be affected by this approval. To be directly affected by this project, the appellants must show some special indicia of environmental effect that will directly be felt by them — as opposed to the residents of the ID at large. Showing special indicia depends upon the nature of the causal connection between the project appealed and the effect upon the complaining party. It is possible that concerns over economic matters may be relevant in establishing a causal connection with the project appealed, but there must first be an environmental effect that is directly felt by the appellants.

These appellants will not be directly affected because their concerns are a remote, non-environmental consequence of the issuing of this approval. Further, their concern with respect to property taxes is typical of every resident of the ID and is not within the jurisdiction of this Board.

VI CONCLUSION

The appeal by Mr. Boucher et al is dismissed for lack of standing. In making this decision, the Board has carefully considered all of the supporting evidence used by Mr. Boucher and his group whether or not their evidence was specifically referenced herein.

Dated on February 2, 1994 at Edmonton, Alberta

William A. Tilleman, Chair

David H. Marko, Vice-chair

Joan C. Copp, Board Member

Max A. McCann, Board Member