

# ALBERTA ENVIRONMENTAL APPEAL BOARD

## Decision

---

Date of Decision – March 6, 2001

**IN THE MATTER OF** Sections 85 and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3 and Section 115 of the *Water Act*, S.A. 1996, c.W-3.5.

**-and-**

**IN THE MATTER OF** appeals filed November 9, 2000 by Mr. Robert and Mrs. Christine Lederer and Mr. Pat and Mrs. Rita Chant with respect to Preliminary Certificate 00079765-00-00 issued under the *Water Act* on October 10, 2000 to Spruce Valley Ranch Ltd. by the Director, Bow Region, Alberta Environment.

Cite as: *Lederer and Chant v. Director, Bow Region, Alberta Environment re: Spruce Valley Ranch Ltd.*

**PRELIMINARY MEETING  
BEFORE**

Dr. William A. Tilleman, Chair

**WRITTEN SUBMISSIONS**

Appellants: Mr. Robert and Mrs. Christine Lederer  
Mr. Pat and Mrs. Rita Chant

Department: Director, Bow Region, Alberta  
Environment, represented by Ms. Charlene  
Graham, Alberta Justice

Approval Holder: Mr. Terry Williams, Spruce Valley Ranch  
Ltd. represented by Mr. Alex MacWilliam,  
Fraser Milner Casgrain

## TABLE OF CONTENTS

I. BACKGROUND .....	1
II. DECISION.....	5

## **I. BACKGROUND**

[1] On October 10, 2000 Preliminary Certificate No. 00079765-00-00 (the “Certificate”) was issued to Spruce Valley Ranch Ltd. (the “Approval Holder”) under the *Water Act*, S.A. 1996, c.W-3.5, by the Director, Bow Region, Alberta Environment (the “Director”). The Certificate states that the Approval Holder will receive a licence to divert 59,018 cubic metres of water annually at a maximum rate of 0.0037 cubic metres per second from the Coulee Tributary of Threepoint Creek in the NW ¼ of Section 2, Township 21, Range 3, West of the 5<sup>th</sup> Meridian with priority number 1999-09-7-003 upon compliance with certain conditions.

[2] On November 9, 2001 the Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Rob and Mrs. Christine Lederer and from Mr. Pat and Mrs. Rita Chant (the “Appellants”) with respect to the Certificate. In their Notices of Appeal, the Appellants express concern regarding the scope of the planned project, the nature of the water storage reservoir, and the downstream effects of the construction on the unnamed creek. The Appellants asked the Board to “...carefully examine the nature and intent of the application by Spruce Valley Ranch Ltd. and their plans to redirect the natural watercourse of the unnamed creek.”

[3] On November 14, 2000 the Board acknowledged receipt of the Notices of Appeal filed by the Appellants. On November 14, 2000 the Board also provided copies of the Notices of Appeal to the Director and the Approval Holder. By copy of this letter the Board requested the Director provide all documents (the “Record”) related to the appeals.

[4] According to standard practice, on November 14, 2000 the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective Boards’ legislation. A reply was subsequently received from the NRCB on November 20, 2000 and from the AEUB on November 30, 2000 stating that they did not hold

any hearings or reviews under their respective legislation.

[5] On December 4, 2000 the Board received the Record from the Director and forwarded copies to the Appellants and the Approval Holder on December 21, 2000.

[6] The Director wrote to the Board on December 5, 2000 making a motion to dismiss the Notices of Appeal filed by the Appellants on the grounds that the concerns raised by the Appellants were not contained within the Certificate issued to the Approval Holder. Specifically, the Director stated:

“The Preliminary Certificate does not authorize the construction of the silt ponds, the channel modifications or the reservoir. Spruce Valley has applied for an approval under the *Water Act* to authorize these activities. Such approval has not yet been granted by the Director. As such, the concerns in the Notices of Appeal relating to these types of activities are not properly before the Board as they relate to activities which have not been approved and are not the subject matter with which the Preliminary Certificate relates.”

The Director further states that the Appellants raise concerns that are related to land use that are not within the jurisdiction of the Board. The Director indicates that issues related to the development are “...to be decided by the local authority in their development permit and subdivision approval process.” Finally, the Director questions how the Appellants are directly affected by the Certificate given that they appear to “...live upstream (based on the legal description of their address) of the diversion (which will be off the proposed reservoir). Given this fact, the Appellants would not be personally affected by this diversion.”

[7] The Board responded to the Director’s motion by establishing a schedule of submissions in a letter dated December 22, 2000.<sup>1</sup>

---

1 The Board’s letter of December 22, 2000 set out the following schedule of submissions based on the two questions listed below:

- “1. What specific issues contained within the Preliminary Certificate issued to the Spruce Valley Ranch Ltd. do the Appellants object to? The submissions should only address conditions within the Preliminary Certificate and not issues that may form part of an Approval or Licence to diver water or other issues such as planning or the quality of life within the hamlet.

[8] On January 12, 2001 the Board received a letter from Mr. Daryl Seaman indicating that he was a "...landowner downstream from the proposed development by Spruce Valley Ranch Ltd." Mr. Seaman designated the Appellants to act as his agent in order to share his concerns with the Board. On January 16, 2001 the Board received a letter from Mr. R.B. McBride stating that he was a resident downstream of the proposed development and also designated the Appellants as his agent to present his concerns to the Board. The Board responded to Mr. Seaman and Mr. McBride on January 22, 2001 by indicating that the appeal period with regard to the issuance of the Certificate had expired, but that they could apply as intervenors should this matter proceed to a hearing or that they could file an appeal in the event an Approval is issued to the Approval Holder to construct the works listed in their application. The Board noted that both Mr. McBride and Mr. Seaman had filed Statements of Concern and would likely be notified in the event that an Approval was issued.

[9] The Board received an Initial Submission from the Appellants on January 16, 2001. Staff from the Board spoke with the Appellants on January 16, 2001 to clarify what was required in the written submission that was due on January 17, 2001. As a result of that conversation, the Appellants indicated that they would be sending a revised Submission, which was received by the Board on January 17, 2001. In that submission, they requested that the Board deny the Certificate on the basis that

"...the diversion of water to provide potable water for these homes is unnecessary. Every other home in the hamlet of Millarville has their water needs

- 
2. The Appellants are asked to clarify how they are directly affected by the decision of the Director to issue the Preliminary Certificate. In other words, how are they affected in a way that exceeds the interest of the general public?

The following schedule of submissions will deal with the above noted questions:

- Initial Submissions from the Appellants (Mr. and Ms. Lederer and Mr. and Ms. Chant), due **January 10, 2001.**
- Response Submissions from the Director and Spruce Valley Ranch Ltd., due **January 17, 2001.**
- Rebuttal Submissions from the Appellants (Mr. and Ms. Lederer and Mr. and Ms. Chant), due **January 24, 2001."**

met by individual wells on individual properties.”

[10] The Board acknowledged and forwarded the Appellants’ Initial Submission to the Director and the Approval Holder on January 22, 2001. The Director and Approval Holder were asked to respond to the Initial Submission on January 29, 2001 with a Rebuttal Submission due from the Appellants on February 6, 2001.

[11] Response Submissions were received from the Director and the Approval Holder on January 29, 2001. In his Response Submission, the Director states:

“What the Preliminary Certificate (‘PC’) allows is for the holder of the certificate over a period of 5 years (the term of the PC) to prove to the Director they require the water to a maximum of 59,018 m<sup>3</sup>/yr...it is a promise if they prove they need that amount and certify they have complied with the PC conditions, they can be licenced for that amount...

Given that the application assumed a 62-lot subdivision, it is likely that the licence that is issued for the 14 homes would be much less than the 59,018 m<sup>3</sup>/yr. As such it is the Director’s submission that the submission of ‘excessive and unwarranted’ is not a matter that is properly before the Board.”

The Director also raises a concern that the Appellants concern about the source of the water (diversion as opposed to individual wells on private property), relates more to development/planning issues as opposed to environmental concerns. The Approval Holder, in his submission, “...endorses the written submissions of Alberta Justice dated January 29, 2001...” and further outlines arguments challenging the standing of the Appellants in that they “...are not directly affected by the issuance of the Preliminary Certificate”. The reasons stated include the location of the Appellants’ property (upstream from the proposed development), that the Notices of Appeal filed by the Appellants contain “...statements as to why the proposed appellants object to other aspects of the Spruce Valley project, but none of these reasons relate with the decision of the Director to issue the Preliminary Certificate...” and that the Appellants, after being asked to clarify their positions by the Board, “...failed to provide responses to these questions and have continued to focus on issues outside the scope of the Preliminary Certificate.”

[12] A Rebuttal Submission was received by the Board from the Appellants in which they state that their letter of January 15, 2001 "...was not intended to be part of our final submission...We object to the use of quotations from the other document by Spruce Valley Ranch Ltd. in their written submissions." They go on to state that despite their upstream location, they are impacted by the decision in that "...we are still residents of a hamlet whose current water course may be compromised by the promise of water to Spruce Valley Ltd." They conclude by stating "...[t]he promise for any amount of water is, in our opinion, not required by the developer..." and request that the Board "...cancel the Preliminary Certificate on this basis."

[13] The Board wrote to the parties on February 6, 2001 indicating that all submissions had been received and that a decision concerning the Director's and the Approval Holder's motion to dismiss the appeals would be issued in due course.

## **II. DECISION**

[14] The Board dismisses the appeals pursuant to section 87 of *the Environmental Protection and Enhancement Act.*, S.A. 1992, ch-E-13.3; (the "Act"). The Notices of Appeal do not disclose clear grounds of appeal. The onus is on the Appellants to demonstrate that they have a valid appeal before the Board. The Appellants must demonstrate that the issues they raise in their Notices of Appeal are properly within the Board's jurisdiction. The Appellants' November 8, 2000 Notice of Appeal referred to municipal planning approvals and the Board finds that these matters are outside the Board's jurisdiction. In relation to water use and diversion, the Appellants stated:

"In this light, [a reference to the previous paragraph of their letter concerning municipal planning matters] we believe that the nature of the water storage reservoir and the planned construction on the unnamed creek may provide unreasonable interference to the other water users in the immediate area and may in fact compromise the aquatic environment downstream".



[15] In its letter of December 22, 2000, the Board invited written submissions and specifically requested the Appellants to identify issues in relation to the Approval Holder's Certificate and to clarify how they are directly affected by the decision to issue the Certificate. However, the Appellants' response in their letter of January 16, 2001, failed to provide the information necessary to clearly delineate grounds of appeal. The diversion of water by the Approval Holder that will be authorized by water licence, should the Director accept a Certificate of Completion by the Approval Holder confirming that the terms and conditions of the Certificate have been fulfilled, is merely characterized by the Appellants as "unnecessary" and "excessive and unwarranted". No grounds of a factual or process nature are stated. The burden of proof is on the Appellants and they have failed to discharge that burden. Neither the General Conditions under the Certificate, nor the Conditions in the Certificate that are proposed for the water licence that may be issued, are addressed by the Appellants.

[16] It is particularly important that the Appellants provide information to substantiate their grounds of appeal when the appeal is against the issuance of a Preliminary Certificate. This is the stage of the allocation process under the *Water Act* at which contemplates a promise by the Director of water to be allocated, subject to satisfactory completion of the requirements prescribed by the terms and conditions of the Preliminary Certificate.

[17] The scheme of the *Water Act* requires any issues concerning the promised water allocation, including the potential appeals, be resolved prior to the issuance of a water licence following a Preliminary Certificate. Section 115(1)(b) of the *Water Act* clearly provides rights of appeal in relation to issuance or amendment of Preliminary Certificates by the Director. However, it is equally clear that grounds of appeal must be stated with reasonable clarity and certainty to engage the appeal process. Accordingly the appeals are dismissed.

Dated on March 6, 2001, at Edmonton, Alberta.

---

Dr. William A. Tilleman, Chair