

ALBERTA ENVIRONMENTAL APPEAL BOARD

Decision

Preliminary Meeting By Written Submission Only

Appellant Submission: May 8, 2000

Department Submission: May 23, 2000

Appellant Rebuttal: May 29, 2000

Date of Decision: November 10, 2000

IN THE MATTER OF sections 84, 85 and 87 of the *Environmental Protection and Enhancement Act*, S.A. 1992, c. E-13.3;

-and-

IN THE MATTER OF an appeal filed by Ms. Judy Stewart of Fleming Kambeitz on behalf of Westridge Water Supply Ltd. with respect to Licence No. 00074129-00-00 issued under the *Water Act*, S.A. 1996, c. W-3.5 to Westridge Water Supply Ltd., by the Director, Bow Region, Natural Resources Service, Alberta Environment.

Cite as: *Westridge Water Supply Ltd. v. Director, Bow Region, Natural Resources, Alberta Environment.*

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	ANALYSIS	8
	A. Issues	8
	B. No Expiry Date	8
	C. Reduction in Water Quantity Allocation	10
III.	DECISION OF THE BOARD	12

**HEARING BY WRITTEN
SUBMISSION ONLY BEFORE:**

Dr. William A. Tilleman (Chair)
Dr. Steve Hrudehy
Dr. Ted Best

WRITTEN SUBMISSIONS BY:

Appellant: Westridge Water Supply Ltd.
Represented by Ms. Judy Stewart, Fleming Kambeitz

Department: Mr. G. Alan McMillan, Director, Bow Region,
Natural Resources Services, Alberta Environment.
Represented by Ms. Charlene Graham, Alberta Justice

I. BACKGROUND

[1] The Environmental Appeal Board (the “Board”) received a Notice of Appeal from Ms. Judy Stewart of Fleming Kambeitz, Barristers and Solicitors on August 11, 1999. The Notice of Appeal was filed on behalf of Ms. Kambeitz’ client, Westridge Water Supply Ltd. (the “Appellant”). The Notice of Appeal was with respect to Licence No. 00074129-00-00 (the “Licence”) issued under the *Water Act*, S.A. 1996, c.W-3.5 to the Appellant authorizing the diversion of 329,341 cubic metres of water annually at a maximum rate of 0.029 cubic metres per second from the water source well hydraulically connected to the Elbow River in NE 06-24-02-W5M for municipal purposes. The Licence was issued by Mr. G. Alan McMillan, Director, Bow Region, Natural Resources Service, Alberta Environment (the “Director”) on July 13, 1999.

[2] In summary, the Appellant was concerned that the Licence did not reference section 18 of the *Water Act*, nor does it provide for a term in accordance with section 51(5) of the *Water Act* and section 12(2) of the Water (Ministerial) Regulation, A.R. 205/98.¹ The Appellant argued that the

¹ The *Water Act* provides:

18(1) Every authority or licence other than a temporary authority, agreement, permit, interim licence, updated and reissued interim licence and supplementary interim licence, granted under a predecessor Act that, on the date this Act comes into force, authorizes the diversion of water is a deemed licence that has a priority number that corresponds to the priority number of the original authority or licence.

(2) A person who holds a deemed licence under this section may continue to exercise the right to divert water in accordance with

- (a) the priority number of the deemed licence, and
- (b) the terms and conditions of the deemed licence and this Act, and if a term or condition of the deemed licence is inconsistent with this Act, that term or condition prevails over this Act....

(4) A temporary permit, permission for temporary diversion and interim licence, including an updated and reissued interim licence and supplementary interim licence, granted under a predecessor Act that, on the date this Act comes into force, authorizes the diversion of water may, by order of the Minister, be

- (a) a deemed approval, deemed preliminary certificate or deemed licence under this Act, or
- (b) a deemed approval as well as a deemed preliminary certificate or deemed licence under this Act,

and, in the case of a temporary permit, permission for temporary diversion or interim licence that is

Licence should specify “no expiry date”.

[3] The Board acknowledged receipt of the Notice of Appeal on August 11, 1999 and requested from the Director copies of all related correspondence, documents and materials (the “Records”). The Records were received from the Director on March 8, 2000 following a number of requests by the Appellant to hold this matter in abeyance. Copies of the Records were provided by the Board to the Appellant on March 9, 2000.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “EUB”) asking whether this matter had been the subject of a hearing or review under their respective Boards’ legislation. Replies were subsequently received from the NRCB on August 13, 1999 and the EUB on August 17, 1999, advising that they did not hold any hearings or reviews.

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- (c) a deemed licence, has a priority number that corresponds to the priority number of the original permit, permission or licence, or
 - (d) a deemed preliminary certificate, has a number that corresponds to the priority number of the original permit, permission or licence.

(5) Subject to subsection (2)(b), a deemed approval, preliminary certificate and licence under this section are subject to this Act. ...

51(5) When the Director issues a licence the Director must include an expiry date determined in accordance with the regulations.

The Water (Ministerial) Regulation provides:

12(2) Subject to subsection (3), if there is no applicable approved water management plan, order of the Minister or water guideline that specifies what an expiry date of a licence should be or how an expiry date of a licence should be determined, the Director must issue a licence with an expiry date of

- (a) 10 years,
- (b) less than 10 years if
 - (i) the applicant for the licence has applied for a licence with an expiry date of less than 10 years, or
 - (ii) in the opinion of the Director, the expected duration of the project is less than 10 years,

or

- (c) more than 10 years if the Director has considered any one or more of the criteria specified in subsection (4) and is of the opinion that the licence should be issued with an expiry date of more than 10 years.

[5] On August 13, 1999, the Board received a letter from Ms. Stewart stating the following:

“Please be advised that we were contacted by Mr. Hui of Alberta Environment on August 13, 1999. ... Mr. Hui is aware that we have filed the Appeal with the Environmental Appeal Board. Mr. Hui will be sending a letter to this office to clarify the issuance of Licence No. 00074129-00-00/*Water Act*. ... We ask that you take no further action in this matter until we have had the opportunity to receive the letter of clarification from Ernie Hui, and review it with our client.”

The Board granted Ms. Stewart’s request in a letter dated August 13, 1999, and requested a status report from the parties by August 25, 1999.

[6] On August 25, 1999, the Board received a further letter from Ms. Stewart. Ms. Stewart attached a letter dated August 18, 1999, from Mr. Ernie Hui, Head, Licencing and Permitting Standards Branch, Alberta Environment. Ms. Stewart noted in her letter to the Board that the issue of the expiry date had been clarified to some extent in Mr. Hui’s letter. Ms. Stewart requested that the Board hold the appeal in abeyance until September 25, 1999, as she was in the process of advising her client. On August 31, 1999, the Board granted this request.

[7] Mr. Hui’s letter of August 18, 1999, indicated that the Appellant held Interim Licence No. 18753 (the “Interim Licence”) issued under the *Water Resources Act*, R.S.A. 1980, c.W-5, the predecessor legislation to the *Water Act*. Further, Mr. Hui explained that “... where an interim licence was in effect prior to the ... [*Water Act*] coming into force, a licence that is subsequently issued does not carry a specific expiry date. ... This letter confirms that Licence No. 00074129-00-00 issued to Westridge was issued without an expiry date.”

[8] On September 17, 1999, the Board received a further letter from Ms. Stewart advising that she had been in contact with an employee of Alberta Environment who suggested that she expand her client’s appeal to include a second matter concerning the Licence. The additional matter she wished to add to the appeal was changes to the quantity of water allocated under the Licence. Specifically, it was Ms. Stewart’s position that water allocated under the Licence was reduced from 414 acre feet to 267 acre feet. Ms. Stewart advised that this amendment occurred while the Licence was still an interim licence owned by the predecessor to the Appellant, the Elbow Valley

Development Corporation.

[9] On September 30, 1999, counsel for the Director, Ms. Charlene Graham, wrote the Board in response to Ms. Stewart's request of September 17, 1999 to add the additional matter of the quantity of water allocated under the Licence to her appeal. Ms. Graham took the position that the amendments Ms. Stewart referred to were decisions made under the *Water Resources Act* and were based on information provided to Alberta Environment by the Elbow Valley Joint Venture Group. Ms. Graham advised that pursuant to the transition provisions of the *Water Act*, Interim Licence No. 18753 held by Elbow Valley Development Corporation was deemed to be a preliminary certificate and approval under the *Water Act*, and once a Certificate of Completion was submitted (by the Appellant), the deemed preliminary certificate and approval became Licence 00074129-00-00 under the *Water Act*. Further, Ms. Graham was of the view that because the decision which Ms. Stewart seeks to add to her appeal was made under the *Water Resources Act*, it is not appealable to the Environmental Appeal Board. Finally, Ms. Graham restates the position that the Licence held by Ms. Stewart's client does not have an expiry date. As a result, Ms. Graham states, the Board does not have jurisdiction to hear these matters and the Notice of Appeal must be dismissed.

[10] On October 8, 1999, Ms. Stewart responded to Ms. Graham's letter of September 30, 1999. With respect to the issue of the quantity of water, Ms. Stewart confirmed that the amendment to the quantity of water allocated under the Interim Licence was made under the *Water Resources Act*. However, Ms. Stewart advised that this decision was made by Alberta Environment without the knowledge or consent of the Appellant even though Alberta Environment had received an application to transfer the Interim Licence from the Elbow Valley Development Corporation to the Appellant a year before the Amendment was made. It was the Appellant's position that the Department incorrectly refused to transfer the Interim Licence at that time. Ms. Stewart acknowledged that the Appellant did not become the licence holder until January 1999. With respect to the expiry date, the Appellant remains of the position that a licence issued under the *Water Act* must contain an expiry date. Ms. Stewart goes on to say:

"However, as we have received assurance from Ernie Hui ... that the Licence issued from an Interim Licence under the *Water Resources Act* and no expiry date need to be on the face of the document, we are willing to accept his written assurance that no further record of expiry date is required. ... As it is, the Licence was clearly issued under the *Water Act* and does not comply with the requirement that an

expiry date must appear on the Licence. However, since our client has been assured that his pre-existing rights have been protected, this becomes a moot point.” [Emphasis added.]

Ms. Stewart disagreed with Ms. Graham’s assertion that the Board lacks jurisdiction. Ms. Stewart was of the view that the issuance of the Licence under the *Water Act* was appealable, and that “Ms. Graham confuses the issue of no expiry date with Al McMillan’s previous decision to amend the Licence reducing the allocation under the *Water Resources Act*.”

[11] Between October 14, 1999 and February 28, 2000, the Board received a number of letters from the parties requesting that the appeal be held in abeyance pending on-going discussions. The Board granted these requests and eventually asked for a status report from the parties by February 28, 2000.

[12] Ms. Stewart wrote to the Board on February 29, 2000 and advised that the Appellant wished to continue with the Appeal and to “join issue” with the Notice of Appeal currently before the Board to include the issue of quantity of water allocated under Licence No.00074129-00-00/*Water Act* as set out in her correspondence of September 17, 1999 to the Board.

[13] On March 8, 2000, Ms. Graham wrote to the Board reiterating the Director’s view that the Notice of Appeal should be dismissed. Ms. Graham advised that Interim Licence No. 18753 was issued to Elbow Valley Development Corporation on April 23, 1992 under the *Water Resources Act*. In 1998, Elbow Valley Development Corporation applied to amend the Interim Licence to reduce the quantity of water allocated. Alberta Environment decided to reduce the quantity of water allocated as requested by Elbow Valley Development Corporation under the *Water Resources Act*. After this decision was made, the Appellant applied to transfer the Interim Licence from Elbow Valley Development Corporation. This transfer occurred on January 8, 1999.²

² Ms. Graham further advised in her letter of March 8, 2000 that under the transitional provisions of the *Water Act*, the Interim Licence became a deemed preliminary certificate/approval under the *Water Act*. According to Ms. Graham, pursuant to the transition mechanism of the *Water Act*, the expiry date of the deemed preliminary certificate/approval is the same as the expiry date for the Interim Licence. Therefore there is no expiry date for the Interim Licence. The Appellant eventually provided the Certificate of Completion for the project, and the Director issued the Licence under the *Water Act*. According to Ms. Graham, section 68 of the *Water Act* required that the Licence must be granted on the same terms and conditions as set out in the preliminary certificate (or in this case the deemed

[14] On March 23, 2000, Ms. Graham wrote to the Board and suggested that the Board address the issues raised by the parties by exchange of written submissions. On March 24, 2000, Ms. Stewart wrote to the Board and agreed with the proposal to deal with these issues by way of written submissions.

[15] Ms. Stewart responded to Ms. Graham's letter of March 8, 2000 by providing a submission dated March 30, 2000.³

preliminary certificate), and the Director has no discretion to change the quantity of water allocated.

Ms. Graham continued in her letter of March 8, 2000, that this is not a matter that is appealable under the *Water Act*. According to Ms. Graham, section 115 of the *Water Act* does not provide for an appeal in this circumstance. Specifically, Ms. Graham advised, that in the case before the Board the preliminary certificate in question was not applied for and issued under the *Water Act*, and the licence issued by the Director was issued under s.115(1)(c). The Licence that was issued was issued as the result of a deemed preliminary certificate/approval.

Finally, in her letter of March 8, 2000, Ms. Graham addressed the "additional matter" that the Appellant wished to add to the appeal. It was the Director's view that the additional matter can not be "joined" to the Notice of Appeal. Specifically, Ms. Graham advised that there are no circumstances here that would permit the Board to amend and expand the Notice of Appeal or extend the time limits for doing so. The "additional matters" that the Appellant sought to add were known to Ms. Stewart at the time the Notice of Appeal was filed.

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In this submission, Ms. Stewart advised:

1. The Appellant operates a water treatment and water distribution system, supplying these services to the public. The water is supplied by intakes from naturally occurring ponds. The Appellant notes that due to flooding in 1995, the Appellant's water supply was contaminated. Following this, the Appellant began looking for an alternate water supply. In 1996, the Appellant began negotiations with Elbow Valley Joint Venture Corporation to supply water.
2. On July 25, 1997, the Appellant and the Elbow Valley Joint Venture Corporation entered into an agreement that included the transfer of Interim Licence 18753 to the Appellant along with an additional interim licence. It would appear that on July 15, 1997, this additional interim licence was canceled by the Department at the request of Elbow Valley Joint Venture Corporation.
3. In August of 1997, an agent for the Elbow Valley Joint Venture Corporation is said to have contacted Alberta Environment and requested that Interim Licence 18753 be transferred to the Appellant. Alberta Environment declined to transfer Interim Licence 18753 because of the manner in which it interpreted the law. There were further requests to transfer this Interim Licence. Alberta Environment is said to have know about the Appellant's beneficial interest in this Interim Licence.
4. In late 1997, an agent for the Elbow Valley Joint Venture Corporation sent a request to Alberta Environment for an amendment to Interim Licence 18753 which in effect reduced the quantity of water allocated. The Appellant advises that it did not know of this request for an amendment and only discovered this amendment on March 8, 2000. The Appellant also advises that it learned on November 12, 1998 that the other interim licence had been canceled.
5. On May 28, 1998, when Alberta Environment issued the amendment to Interim Licence 18753 for 267 acre feet, the Appellant still understood that Interim Licence 18753 and the other interim licence, with a combined volume of 678 acre feet, would be transferred to it.
6. The Appellant is concerned that, had the Interim Licence been transferred at the time of the initial request, it would have been the owner at the time that the amendment was proposed and could have

[16] On April 3, 2000, the Board wrote to the parties with respect to preliminary issues. In consultation with the parties, the Board, in a letter of April 4, 2000, confirmed the procedures for the preliminary meeting.

[17] On May 11, 2000, Ms. Graham wrote to the Board and advised that the Director is prepared to agree to an amendment to the Licence stating that there is no expiry date. Given this position, Ms. Graham was of the view that the issue detailed in the Notice of Appeal is moot.

[18] On May 17, 2000, the Board wrote to Ms. Graham and asked the parties to proceed with their submissions, taking into account the position stated in the May 11, 2000 letter. On May 19, 2000, Ms. Stewart wrote to the Board asking for clarification of the Board's letter of May 17, 2000. On May 26, 2000, the Board wrote to Ms. Stewart and asked the parties to take Ms. Graham's letter of May 11, 2000 into account when preparing their submissions. The Board indicated that if Ms. Stewart required more time to address this issue, then she should indicate this to the Board. No request for a time extension was received.

[19] In considering the issues that the parties have presented, the Board notes that it has received a

acted to stop it. Further, had the Interim Licence been transferred to the Appellant at the time of the initial request, it would have taken steps to perfect that Interim Licence under the terms of the *Water Resources Act*, instead of the *Water Act*. The Appellant has been objecting to Alberta Environment's delay in processing the transfer since October 1998.

7. The Appellant points to a suggestion by an employee of the Department to consider "joining" the quantity of allocation issue to the expiry date issue before the Board and argues, therefore, that the Director is estopped from raising jurisdictional challenges to their application before the Board.
8. The Appellant continues to object to the Director's decision not to include an expiry date on the face of the Licence. The Appellant alleges that the Director has made a number of decisions under the *Water Act* in relation to Interim Licence 18753.
9. The Appellant argues that the Board has the jurisdiction to hear this appeal pursuant to sections 115(1)(c)(ii) because the Director did not issue a preliminary certificate, but instead interpreted the legislation and decided that a preliminary certificate and approval had been deemed. Further, the Appellant argues that it obtained a right to appeal when it was notified by the Director that it may have a right to do so when the Licence was provided to the Appellant.
10. The Appellant is of the view that the Director was incorrect in applying the transitional provision, and instead, the Director should have applied the transitional rules that apply to groundwater supply instead of surface water supply.
11. The Appellant argues that an expiry date - specifically no expiry date - should have been specified on the licence.
12. Finally, the Appellant argues that the Director's decision to issue the licence included a decision to reduce the allocation of water.

number of submissions.⁴

II. ANALYSIS

A. Issues

[20] The issue between the parties is whether the Environmental Appeal Board has the jurisdiction to hear the appeal filed by the Appellant. More specifically, this issue can be broken down into two sub-issues:

- (a) Does the Board have the jurisdiction to deal with the “no expiry date” on Licence No. 00074219-00-00 as stated in the Notice of Appeal dated August 11, 1999?
- (b) Does the Board have the jurisdiction to deal with the “reduction in the water quantity allocation” which the Appellant purports to add to the Notice of Appeal pursuant to the letter dated September 17, 1999?

B. No Expiry Date

[21] In the Notice of Appeal dated August 11, 1999, the Appellant objected to the fact that the Licence that was issued by the Director on July 13, 1999, did not include a statement that the Licence had a term of “no expiry date”.

⁴ The submissions received by the Board include, but are not limited to:

- 1. The Notice of Appeal and attachments dated August 11, 1999;
- 2. Ms. Stewart’s letter of September 17, 1999;
- 3. Ms. Stewart’s letter of September 30, 1999;
- 4. Ms. Graham’s letter of October 8, 1999;
- 5. Ms. Graham’s letter of March 8, 2000;
- 6. Ms. Stewart’s submission of March 30, 2000;
- 7. Appellant’s Initial Submission by Ms. Stewart dated May 8, 2000;
- 8. Director’s Response Submission by Ms. Graham dated May 23, 2000;
- 9. Director’s Supplement to Response Submission by Ms. Graham dated May 23, 2000; and
- 10. Appellant’s Rebuttal Submission by Ms. Stewart dated May 29, 2000.

[22] Through the course of this appeal, the Director provided repeated assurances that the Licence in question, which has its origins under the *Water Resources Act*, has no expiry date. These assurances included a letter dated August 18, 1999, from Mr. Ernie Hui, Head, Licencing and Permitting Standards Branch, Alberta Environment. The Board understands that Mr. Hui was Controller under the *Water Resources Act* and one of the principle spokespersons for Alberta Environment during the development of the *Water Act*.

[23] The Appellant initially accepted these assurances, indicating in a October 8, 1999 letter by Ms. Stewart that stated:

“However, as we have received assurance from Ernie Hui ... that the Licence issued from an Interim Licence under the *Water Resources Act* and no expiry date need to be on the face of the document, we are willing to accept his written assurance that no further record of expiry date is required. ... As it is, the Licence was clearly issued under the *Water Act* and does not comply with the requirement that an expiry date must appear on the Licence. However, since our client has been assured that his pre-existing rights have been protected, this becomes a moot point.” [Emphasis added.]

Subsequent to this and despite these comments, the Appellant decided to continue to pursue its appeal.

[24] This prompted the Director, in a letter from Ms. Graham dated May 11, 2000, to advise that the Director is prepared to agree to an amendment to the Licence stating that there is no expiry date. Ms. Graham continued that, in light of this position, it is the Director’s view that the issue detailed in the Notice of Appeal is now moot.

[25] The Board agrees with the position initially expressed by Ms. Stewart and now by Ms. Graham that the issue of the expiry date is moot. Since the Department is prepared to agree to the amendment that the Appellant has requested, the Appellant gets all of the relief that it requests in its Notice of Appeal. Since no issue remains between the parties, the Board dismisses the Notice of Appeal in accordance with section 87(5)(a)(i.2) of the Act.⁵

⁵ Section 87(5)(a)(i.2) provides:

“The Board (a) may dismiss a notice of appeal if ... (i.2) for any other reason the

C. Reduction in Water Quantity Allocation

[26] In the letter of September 17, 1999, the Appellant asks the Board to permit an additional ground of appeal be added to the Notice of Appeal. This additional ground of appeal was concerned with changes to the quantity of water allocated under the Licence. Specifically, it is the Appellant's position that water allocated under the Licence was reduced from 414 acre feet to 267 acre feet. The Board notes that the Appellant advised that this amendment occurred while the Licence was still an interim licence owned by the predecessor to the Appellant, the Elbow Valley Development Corporation.

[27] The Board notes that the amendment to the quantity of water allocated under the Licence occurred on May 28, 1998. Further, the Board notes that the Appellant only became the licensee in January 1999, although it claims to have been the beneficial owner of the Licence much earlier.

[28] In order to accept this additional ground of appeal, the Appellant also asks the Board to extend the 30 day appeal deadline. The Notice of Appeal indicates that the decision being appealed was made on July 13, 1999. As a result, the 30 day period appears to have started to run on July 13, 1999. The Board notes, as stated in the Appellant's Initial Submission dated May 8, 2000 at page 5, paragraph 11, that: "The Appellant had discovered in 1998 that the Director had amended Interim Licence 18753 to reduce the allocation of water to 267 acre feet per year." As a result, the Appellant was clearly aware of the changed in the allocation of water at the time that it filed the Notice of Appeal.

[29] At page 10, paragraph 31 of the Appellant's Initial Submission, the Appellant argues that it is appealing the Director's decision to issue the Licence, which occurred on July 13, 1999, and that this decision includes everything "on the face of the Licence." Further, the Appellant argues at page 11, paragraph 35 of the same submission, that it is attempting to add this ground of appeal at the suggestion of an employee of Alberta Environment, and therefore, the Director is estopped from arguing the Board lacks the jurisdiction to deal with this issue.

[30] The Director replies, in the Director's Response Submission dated May 23, 1999 at pages 3 to 4, paragraph 19 that: 1) the new ground of appeal is radically different than the issue raised in the original Notice of Appeal; 2) the reduction of the quantity of water occurred under the *Water Resources Act*, was known to the Appellant since November 1998, and as a result could have been included in the original Notice of Appeal; 3) the Appellant is well aware of the 30 day time limit for filing appeals; 4) the purported statement by the employee of Alberta Environment does not bind the Director and does not act to estop the Director; 5) this is not the case as in *Bilson*⁶ where the Director "accepted" a document filed late; and 6) the additional ground of appeal would be an abuse of process.

[31] In the Response Submission at page 4 to 5, the Director also adds that the ground is not properly before the Board because it deals with an amendment under the *Water Resources Act*, and that the intent of the transitional provisions of the *Water Act* do not include the ability to appeal a decision made under the *Water Resources Act*. The Director cites the case of *Walker and Haugen et al v. Director of Standards and Approvals*, EAB Appeal No. 93-005 in support of this provision. The Director argues, at page 7 to 8, paragraphs 37 to 38, that no discretion was exercised in issuing the Licence. On pages 8 to 10, the Director also expands on his arguments respecting estoppel. Finally, on page 11 of the submission, the Director argues that the Notice of Appeal should be dismissed because it amounts to an abuse of process in that the real dispute lies in the business dealings between the Appellant and Elbow Valley Development Corporation.

[32] The Appellant responded to the Director's submissions in the Appellant's Rebuttal Submission dated May 29, 2000. In this Rebuttal Submission, at page 10, the Appellant indicates that it received the Licence on July 22, 1999. The Board concludes from this that the 30 day deadline for filing an appeal would be up on August 24, 1999, at the latest. As a result, the September 17, 1999 letter asking that the additional ground of appeal be added to the Notice of

⁶ *Bilson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection, re: Smoky River Coal Limited.*, EAB Appeal No. 98-230-D.

Appeal is still outside this 30 day period.

[33] Having regard for all of the submissions, the Board dismisses the Appellant's request to add the additional ground of the reduction in the quantity of water to the Notice of Appeal. The Board also dismisses the request of the Appellant to extend the 30 day deadline for the following reasons.

[34] First, it is fundamental to our legal system that everyone is deemed to know the law. This includes the provisions of the *Water Resources Act*, the *Water Act*, and the *Environmental Protection and Enhancement Act*. As a result, and unless the equities suggest otherwise, which they do not, the Appellant is deemed to have been aware of the 30 day time limit for filing an appeal with the Board.

[35] Second, the Appellant relied upon this 30 day time limit. This is clear in the Appellant's letter of August 11, 1999, attached to the Notice of Appeal. Specifically, the Appellant advised:

“We are unable to determine this matter prior to the deadline for filing a Notice of Appeal with the Environmental Appeal Board. To be on the safe side, we are attaching a letter to Al McMillan and a Notice of Appeal.

We understand that Mr. Wilkinson will be in his office on August 12, 1999. If we have not heard from Mr. Wilkinson by August 12, 1999, we will have no choice but to file the Notice of Appeal.”

[36] In short, the equities do not favour extending the 30 day time limit in this case, because, among other things, it is clear that the Appellant was well aware of the issue of the reduction in the quantity of water, well in advance of the filing of the Notice of Appeal on August 11, 1999.

III. DECISION OF THE BOARD

[37] Based on the foregoing reasons, that the Notice of Appeal is moot and is dismissed accordingly.

[38] Further, for the reasons listed above, the Board is of the view that there are no grounds upon which to permit the Appellant to add the issue of the quantity of water allocated under the Licence to the Notice of Appeal. The Board dismisses the request of the Appellant to extend the 30 day deadline.

Dated November 10, 2000, at Edmonton, Alberta.

“original signed by”

Dr. William Tilleman

“original signed by”

Dr. Steve Hrudehy

“original signed by”

Dr. Ted Best