

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Mediation – December 5, 2001

Date of Discontinuance of Proceedings – December 12, 2001

IN THE MATTER OF Sections 84, 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 by Mr. Robert Lederer and Ms. Christine Lederer on behalf of Mr. Pat and Mrs. Rita Chant, Mr. and Mrs. Rod McBride and Mr. Daryl K. Seaman, and Dr. E.W. Paul Luxford, with respect to Approval No. 00076520-00-00 issued by the Director, Bow Region, Regional Services, Alberta Environment, to Spruce Valley Ranch Ltd.

Cite as: *Lederer et al. v. Director, Bow Region, Regional Services, Alberta Environment re: Spruce Valley Ranch Ltd.*

MEDIATION BEFORE

Mr. Ron V. Peiluck

APPEARANCES

Appellants: Mr. Robert and Mrs. Christine Lederer, and Dr. E.W. Paul Luxford.

Director: Mr. David L. Ardell, Director, Bow Region, Regional Services, Alberta Environment, and Mr. Randy Poon, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Approval Holder: Mr. Terry Williams and Mr. Brent Ling, Spruce Valley Ranch Ltd. represented by Mr. Alexander G. MacWilliam and Ms. Carolyn Wilton, Fraser Milner Casgrain.

Staff Member: Ms. Denise Black.

EXECUTIVE SUMMARY

Alberta Environment issued a *Water Act* Approval to Spruce Valley Ranch Ltd. authorizing them to construct works for the realignment of a coulee and construction of a silt pond and a raw water storage reservoir on a coulee tributary to Threepoint Creek near Millarville, Alberta.

The Board received Notices of Appeal from Mr. Robert Lederer, on behalf of Ms. Christine Lederer, Mr. Pat and Mrs. Rita Chant, Mr. and Mrs. Rod McBride and Mr. Daryl Seaman, and from Dr. E.W. Paul Luxford, with respect to the Approval.

In consultation with the parties, the Board held a mediation meeting/settlement conference in Calgary, Alberta, following which the Appellants withdrew their appeals.

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I. BACKGROUND

[1] On October 4, 2001, the Director, Bow Region, Regional Services, Alberta Environment (the “Director”), issued Approval No. 00076520-00-00 (the “Approval”) to Spruce Valley Ranch Ltd. (the “Approval Holder”) which authorizes the construction of works for the realignment of a coulee and construction of a silt pond and a raw water storage reservoir on a coulee tributary to Threepoint Creek in NW 02-021-03-W5 and NE 03-021-03-W5 near Millarville, Alberta.

[2] On October 11, 2001 the Board received and acknowledged a Notice of Appeal dated October 10, 2001 from Mr. Robert Lederer on behalf of Mrs. Christine Lederer, Mr. Pat and Mrs. Rita Chant, Mr. and Mrs. Rod McBride and Mr. Daryl K. Seaman (the “Appellants”). At that time the Board provided a copy of the Notice of Appeal to the Director and the Approval Holder and also requested copies of all documents relevant to this appeal (the “Record”) from the Director. Parties to the appeal were requested to provide the Board with available dates for a mediation meeting/settlement conference or hearing and were requested to advise the Board if there were any other persons that may have an interest in this appeal.

[3] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or a review under their respective Boards’ legislation. Both Boards responded in the negative.

[4] On October 17, 2001, the Board acknowledged receipt of a letter from the Appellants advising of available dates for a hearing. On October 26, 2001, the Director advised the Board of available dates for a mediation meeting/settlement conference, noted that the Appellants had given dates for a hearing only and requested that the matter be set down for a mediation meeting in an effort to resolve the appeal. On October 31, 2001, the Approval Holder advised the Board of their available dates. The Board advised the parties on November 2, 2001, that a mediation meeting/settlement conference was scheduled for December 5, 2001 in Calgary,

Alberta, and provided a copy of the Participants' Agreement to Mediate for their review prior to the mediation meeting/settlement conference.

[5] On October 24, 2001, the Board received the Record from the Director and on October 31, 2001 forwarded a copy to the Appellants and the Approval Holder.

[6] On November 13, 2001, the Board received and acknowledged a letter from the Director advising of issues the Director would be willing to discuss during the mediation meeting/settlement conference. In this same letter, the Director was requested to provide the Board with the names of the participants that would be in attendance at the mediation meeting and this information was provided on November 16, 2001.

[7] On November 22, 2001, the Board received an undated letter from Dr. E.W. Paul Luxford, the purpose of which was unclear to the Board. On November 26, 2001, the Board advised Dr. Luxford that if the purpose of his letter was to file an appeal, he was outside of the time frames allowed under section 116(1)(a)(ii) of the *Water Act* and that section 116(2) provides that the Board may extend the time period for filing an appeal where the Board believes there are "sufficient grounds" for doing so. The letter also advised Dr. Luxford that he could apply for intervenor status in the appeal, should it proceed to a hearing.

[8] On November 26, 2001, the Board received an undated Notice of Appeal from Dr. Luxford regarding the Approval issued to the Approval Holder. On November 27, 2001, the Board forwarded a copy of Dr. Luxford's Notice of Appeal to the other parties, advised the Board had no record of receiving Dr. Luxford's appeal, requested Dr. Luxford indicate the reason for the extension of time to file his Notice of Appeal and provide an explanation as to why the appeal was filed outside of the 7-day time limit. By the same letter, the Board requested that the other parties provide their comments on the participation of Dr. Luxford in the mediation meeting scheduled for December 5, 2001 pending the Board's determination on the status of Dr. Luxford's Notice of Appeal, and requested the Director review its record for information relating to Dr. Luxford's attempt to file a Notice of Appeal. On November 28, 2001, the Board forwarded a copy of its file to Dr. Luxford.

[9] On November 28, 2001, the Director forwarded to the Board, Dr. Luxford's original Notice of Appeal that was in fact addressed to the Board, but appears to have been faxed to Alberta Environment in error. The Director indicated that he had no concerns regarding Dr. Luxford's attendance at the mediation meeting, but referred Dr. Luxford to the Director's letter of November 13, 2001, which outlined the issues that the Director was prepared to discuss. On November 28, 2001, the Board received a letter from the Approval Holder advising that Dr. Luxford has not established sufficient grounds for the Board to extend the statutory time limit and that this new appeal would delay the resolution of the Approval.

[10] On November 28, 2001, the Board acknowledged the Director and Approval Holder's letters. The Board requested that Dr. Luxford provide comments regarding the extending of time to file the appeal, that the Approval Holder and the Director provide comments to Dr. Luxford's submission once received, followed by a final comment from Dr. Luxford. The Board also requested that Dr. Luxford make himself available for the mediation meeting scheduled for December 5, 2001.

[11] In the Appellants' letter of November 28, 2001, they advised that Dr. Luxford filed a statement of concern with Alberta Environment and that he could provide background and historical information to the participants in the mediation meeting.

[12] On November 29, 2001, the Board received Dr. Luxford's response to its November 28, 2001 letter wherein he states "...that Dr. P. Luxford has no intention of delaying the appeal process." The Board acknowledged the Appellants' letter of November 28, 2001 and Dr. Luxford's response of November 29, 2001. The Board again requested the Approval Holder and the Director provide comments in response to Dr. Luxford's submission of November 29, 2001, followed by a final comment from Dr. Luxford.

[13] On November 30, 2001, the Approval Holder advised the Board that "We are content to have this matter determined by the Board's discretion...." The Board acknowledged this letter on November 30, 2001 and requested that Dr. Luxford provide his final comments.

[14] On December 3, 2001, the Board acknowledged a telephone conversation with Dr. Luxford wherein he advised that he attempted to file his Notice of Appeal. The Board advised the parties that:

“The Board advises that Dr. Luxford may participate in the mediation on December 5, 2001, however, by stating that Dr. Luxford may participate, the Board is not making a determination on the status of his appeal at this time. Should the mediation meeting/settlement conference be unsuccessful, the Board will then address the issue of Dr. Luxford’s appeal”.

II. THE MEDIATION MEETING/SETTLEMENT CONFERENCE

[15] Pursuant to section 11 of the Environmental Appeal Board Regulation, AR 114/93, the Board conducted a mediation meeting/settlement conference in Calgary, Alberta, on December 5, 2001, with Mr. Ron Peiluck as presiding Board member.

[16] According to the Board’s standard practice, the Board called the mediation meeting to facilitate through settlement conference the resolution of these appeals; or failing that, to structure procedural arrangements for the oral hearing. The Board invited representatives from each party to participate in the mediation meeting/settlement conference.

[17] In conducting the mediation meeting/settlement conference, Mr. Peiluck circulated copies of the “Participants’ Agreement to Mediate”, discussed the appeals and mediation process and explained the purpose of the mediation meeting. Following detailed discussions, the parties agreed to withdraw their appeals.

[18] On December 7, 2001, the Board received a letter dated December 6, 2001, from the Appellants stating:

“We are writing to ask you to remove our appeal to the above mentioned file. We thank you and the Board members for your participation in the mediation yesterday. We appreciated all your efforts on our behalf and the great deal of work demonstrated by you and your staff.”

[19] On December 12, 2001, the Board received a letter from Dr. Luxford advising:

“Please be advised that I E.W. Paul Luxford withdraw my objection to the application of Spruce Valley Ranch Ltd. for a water reserve pond at Millarville Alberta.”

III. DECISION

[20] Pursuant to section 87(7) of the *Environmental Protection and Enhancement Act*, and based on the letter of December 6, 2001 from Mr. Robert and Mrs. Christine Lederer and letter of December 12, 2001 from Dr. Luxford, the Board discontinues its proceedings in Appeal Nos. 01-094 and 01-109 and is closing its files.

Dated on December 12, 2001, at Edmonton, Alberta.

William A. Tilleman, Q.C.