

ALBERTA ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation Meeting – April 22, 2003
Date of Report and Recommendations – July 22, 2003

IN THE MATTER OF Sections 91, 92 and 95 of the
Environmental Protection and Enhancement Act R.S.A. 2000, c.
E-12 and section 115 of the *Water Act*, R.S.A. 2000, c. W-3.

-and-

IN THE MATTER OF appeals filed by James and Annette
McClelland with respect to *Water Act* Approval No. 00148782-00-
00 and *Water Act* Licence No. 00154364-00-00 issued to Mountain
Creeks Ranch Inc. by the Director, Central Region, Regional
Services, Alberta Environment.

Cite as: *McClelland v. Director, Central Region, Regional Services, Alberta Environment*
re: *Mountain Creeks Ranch Inc.* (22 July 2003), Appeal Nos. 02-078 and 138-R
(A.E.A.B).

MEDIATION MEETING BEFORE:

Frederick C. Fisher, Q.C.

PARTIES:

Appellants:

Mr. James and Ms. Annette McClelland, and
Mr. Dennis Debrinski.

Director:

Mr. Darryl Seehagel, Director Central
Region, Regional Services, Alberta
Environment, Mr. Doug Jeremy, Alberta
Environment, Mr. Renato Chiarella, Alberta
Environment, represented by Ms. Heather
Veale, Alberta Justice.

**Approval Holder and
Licence Holder:**

Mr. Jim Brown, Mountain Creeks Ranch
Inc., Ms. Verna Brown and Mr. Les Brown.

Board Staff:

Ms. Marian Fluker, Senior Research Officer.

EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to Mountain Creeks Ranch Inc., authorizing the construction of a storm water management works on a surface runoff tributary of Maskuta Creek and a Licence under the *Water Act* to Mountain Creeks Ranch Inc., authorizing the diversion of up to a maximum of 3,272 cubic metres of water annually from the well in SE 25-050-26-W5M for recreational purposes near Hinton, Alberta.

The Board received Notices of Appeal from Mr. James and Ms. Annette McClelland appealing the Approval and the Licence.

The Board held a mediation meeting in Hinton, Alberta, at which the parties agreed to continue discussions with a view towards resolution of the appeals. The parties also agreed to provide status reports to the Board on a regular basis.

The parties subsequently reached a resolution and the Board recommends the Minister of Environment accept the resolution.

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I. BACKGROUND

[1] On October 23, 2002, the Director, Central Region, Regional Services, Alberta Environment (the “Director”) issued Approval No. 00148782-00-00 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Approval”) to Mountain Creeks Ranch Inc. (the “Approval Holder”) authorizing the construction of a storm water management works on the surface runoff tributary of Maskuta Creek. On December 16, 2002, the Director issued Licence No. 00154364-00-00 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Licence”) authorizing the diversion of up to a maximum of 3, 272 cubic metres of water annually from the well in SE 25-050-26-W5M for recreational purposes near Hinton, Alberta.

[2] On November 7, 2002, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. James and Ms. Annette McClelland (the “Appellants”) appealing the Approval and on January 24, 2003, the Board received a Notice of Appeal from the Appellants, appealing the Licence. On November 8, 2002 and on January 28, 2003, the Board wrote to the Appellants, the Approval Holder and the Director (collectively the “Parties”) acknowledging receipt of the appeals and notifying the Approval Holder and the Director of the appeals. In the same letters, the Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to the Approval and the Licence and requested the Parties provide available dates for a mediation meeting or hearing.

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

[4] On November 29, 2002, the Board received a copy of the Record with respect to the Approval from the Director, and on December 12, 2002, forwarded a copy of the Record to the Appellants and the Approval Holder. On February 11, 2003, the Board received a copy of the Record with respect to the Licence from the Director and on February 13, 2003 forwarded a copy of the Record to the Appellants and the Approval Holder.

[5] On January 8, 2003, the Board wrote to the Parties and requested further available dates for a mediation meeting.

[6] On January 10, 2003, the Board acknowledged receipt of two letters dated January 9, 2003, from the Appellants advising that there appeared to be correspondence missing from the Record of the Approval with respect to the "...filers and their statements of concerns...". The second letter dated January 9, 2003, was received from the Appellants requesting a Stay of the Approval. The Board advised the Parties that a Preliminary Meeting would be held on January 28 or 30, 2003 to deal with the request for a Stay and the directly affected status of the Appellants and requested the Parties advise the Board of their preference between the two dates.

[7] The Board began to schedule a Preliminary Meeting to deal with the Stay request, however, on January 14, 2003, the Board received a letter dated January 13, 2003, from the Appellants advising that they were withdrawing their application for a Stay, and stating that they would like to continue with the mediation process. In a letter dated January 14, 2003, the Board scheduled the mediation meeting with respect to the Approval for February 18, 2003 in Hinton, Alberta.

[8] The Board received a letter dated January 13, 2003 from the Director enclosing the documents that were missing from the Record of the Approval and forwarded these documents to the Appellants and the Approval Holder.

[9] On February 7, 2003, the Board advised the Parties that the appeals of the Approval and the Licence would both be dealt with at the mediation meeting of February 18, 2003.

[10] On February 7, 2003, the Board received a letter from the Appellants advising that they had not yet received the Record of the Licence, and requesting that the mediation meeting of February 18, 2003 be rescheduled. The Board granted this request and, in consultation with the Parties, rescheduled the mediation meeting to April 22, 2003.

[11] On February 11, 2003, the Board received additional records from the Director relating to the Approval and on February 12, 2003, forwarded a copy to the Appellants and Approval Holder.

II. MEDIATION MEETING

[12] Pursuant to section 11 of the Environmental Appeal Board Regulation, A.R. 114/93, the Board conducted a mediation meeting in Hinton, Alberta on April 22, 2003 with Frederick C. Fisher, Q.C. as the presiding Board Member (the “Mediator”).

[13] In conducting the mediation meeting, the Mediator reviewed the appeals and mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants’ Agreement to Mediate. All Parties signed the Agreement and discussions ensued.

[14] At the April 22, 2003 mediation meeting, the Parties agreed to continue discussions amongst themselves with a view towards a resolution of the appeals. The Board requested the Parties provide status reports to the Board.

[15] Upon receipt of the status reports from the Parties, the Mediator contacted the Parties by telephone on June 3 and 4, 2003, to assist them in concluding a resolution.

[16] A Resolution was concluded and is attached as pages 5 and 6.

III. RECOMMENDATIONS

[17] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the “Act”), the Board recommends that the Minister of Environment confirm *Water Act* Approval No. 00148782-00-00 and vary *Water Act* Licence No. 00154364, issued by the Director, Centgral Region, Regional Services, Alberta Environment, in accordance with the Resolution contained herein. Attached for the Minister’s consideration are draft Ministerial Orders implementing the recommendations.

[18] Further, with respect to sections 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister be sent to the following Parties:

- Mr. James and Ms. Annette McClelland;
- Mr. Jim Brown, Mountain Creeks Ranch Inc.; and
- Ms. Heather Veale, Alberta Justice, representing Mr. Darryl Seehagel, Director, Central Region, Regional Services, Alberta Environment.

Dated on July 22, 2003, at Edmonton, Alberta.

“original signed by”
Frederick C. Fisher, Q.C.

IV. RESOLUTION

Resolution of Appeal Nos. 02-078 and 02-138 regarding the decision of the Director, Central Region, Regional Services, Alberta Environment, to issue Approval No. 00148782-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, to Mountain Creeks Ranch Inc. for the purpose of constructing a storm water management works on a surface runoff tributary of Maskuta Creek near Hinton, Alberta and Licence No. 00154364-00-00 issued under the *Water Act*, R.S.A. 2000, c. W-3, to Mountain Creeks Ranch Inc. authorizing the diversion of up to a maximum of 3,272 cubic metres of water annually from the well in SE 25-50-26-W5M for recreational purposes (campground).

All parties to the appeal have agreed to the following terms and conditions:

1. THAT Mountain Creeks Ranch Inc. will provide a copy of the Canadian Septic Services report and a copy of the Permit Pro report to the Alberta Environmental Appeal Board.
2. THAT in signing this agreement, the Director confirms to Mr. and Ms. McClelland that he has (1) reviewed the map overlay as provided by the Director to the Alberta Environmental Appeal Board on May 16, 2003, and forwarded to the parties on May 21, 2003, (2) reviewed the Yellowhead County Seabolt Floodplain Study, (3) reviewed other information available to him, and (4) has considered the concerns of Mr. and Ms. McClelland that the dry ponds may cause additional or enhanced flooding to neighbouring properties, and has concluded that that the Approval and Licence issued under the *Water Act* were appropriate.
3. THAT the parties to the appeal agree to additional times for specific reports be submitted to the Director by Mountain Creeks Ranch Inc., and therefore, the Licence is amended by adding the following immediately after clause 8:

“8.1 In addition to the above stated reporting requirements, the licensee shall submit to the Director:

- (a) on a weekly basis from July 15, 2003, to July 14, 2004, the readings of the number of cubic metres of water pumped from the diversion site(s) including dates and times the readings were taken;
- (b) on a weekly basis from July 15, 2003, to July 14, 2004, the measurements of the water levels at the diversion site(s) including dates and times the readings were taken;
- (c) on a monthly basis from July 15, 2003, to July 14, 2004, the water quality data and water level data for the monitoring wells required pursuant to condition 7(a); and
- (d) at the end of the respective months, the monthly data for July and September from July 15, 2004, to July 14, 2008,

regarding the water quality data and water level data for the monitoring wells required pursuant to condition 7(a).”

4. THAT in consideration of the foregoing, the Appellants Mr. James McClelland and Ms. Annette McClelland, agree to withdraw their Notices of Appeal.

RESOLUTION AGREED TO BY:

"original signed by"
James McClelland

Date: July 27, 2003

"original signed by"
Annette McClelland

Date: July 27, 2003

"original signed by"
Jim Brown
Mountain Creeks Ranch Inc.

Date: July 15, 2003

"original signed by"
Verna M. Brown
Mountain Creeks Ranch Inc.

Date: July 15, 2003

"original signed by"
Doug Jeremy, Director
Central Region, Regional Services
Alberta Environment,
represented by Ms. Heather Veale,
Alberta Justice

Date: June 26, 2003

V. DRAFT ORDER FOR APPROVAL

**Ministerial Order
/2003**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal No. 02-078**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal No. 02-078.

Dated at the City of Edmonton, in the Province of Alberta this _____ day of _____, 2003.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board Appeal No. 02-078

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”) to issue Approval No. 00148782-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Mountain Creeks Ranch Inc. (the “Approval Holder”), I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Approval is confirmed.

VI. DRAFT ORDER FOR LICENCE

Ministerial Order /2003

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

Order Respecting Environmental Appeal Board Appeal No. 02-138

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal No. 02-138.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2003.

Honourable Dr. Lorne Taylor
Minister of Environment

Draft Appendix

Order Respecting Environmental Appeal Board Appeal No. 02-138

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”) to issue Licence No. 00154364-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to Mountain Creeks Ranch Inc. (the “Licence Holder”), I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Licence is confirmed subject to the following provisions.
2. Order that the Licence be amended by adding the following immediately after clause 8:
 - “8.1 In addition to the above stated reporting requirements, the licensee shall submit to the Director:
 - (a) on a weekly basis from July 15, 2003, to July 14, 2004, the readings of the number of cubic metres of water pumped from the diversion site(s) including dates and times the readings were taken;
 - (b) on a weekly basis from July 15, 2003, to July 14, 2004, the measurements of the water levels at the diversion site(s) including dates and times the readings were taken;
 - (c) on a monthly basis from July 15, 2003, to July 14, 2004, the water quality data and water level data for the monitoring wells required pursuant to condition 7(a); and
 - (d) at the end of the respective months, the monthly data for July and September from July 15, 2004, to July 14, 2008, regarding the water quality data and water level data for the monitoring wells required pursuant to condition 7(a).”

**Ministerial Order
45/2003**

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Water Act
R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal No. 02-078**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal No. 02-078.

Dated at the City of Edmonton, in the Province of Alberta this 28th day of July, 2003.

“original signed by”

Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeal Board Appeal No. 02-078

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”) to issue Approval No. 00148782-00-00 (the “Approval”) under the *Water Act*, R.S.A. 2000, c. W-3, to Mountain Creeks Ranch Inc. (the “Approval Holder”), I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Approval is confirmed.



ALBERTA ENVIRONMENT

Office of the Minister

**Ministerial Order
46/2003**

Environmental Protection and Enhancement Act

R.S.A. 2000, c. E-12

Water Act

R.S.A. 2000, c. W-3

**Order Respecting Environmental Appeal Board
Appeal No. 02-138**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeal Board Appeal No. 02-138.

Dated at the City of Edmonton, in the Province of Alberta this 28th day of July, 2003.

“original signed by”

Honourable Dr. Lorne Taylor
Minister of Environment

Appendix

Order Respecting Environmental Appeal Board Appeal No. 02-138

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the "Director") to issue Licence No. 00154364-00-00 (the "Licence") under the *Water Act*, R.S.A. 2000, c. W-3, to Mountain Creeks Ranch Inc. (the "Licence Holder"), I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Licence is confirmed subject to the following provisions.
2. Order that the Licence be amended by adding the following immediately after clause 8:
 - "8.1 In addition to the above stated reporting requirements, the licensee shall submit to the Director:
 - (a) on a weekly basis from July 15, 2003, to July 14, 2004, the readings of the number of cubic metres of water pumped from the diversion site(s) including dates and times the readings were taken;
 - (b) on a weekly basis from July 15, 2003, to July 14, 2004, the measurements of the water levels at the diversion site(s) including dates and times the readings were taken;
 - (c) on a monthly basis from July 15, 2003, to July 14, 2004, the water quality data and water level data for the monitoring wells required pursuant to condition 7(a); and
 - (d) at the end of the respective months, the monthly data for July and September from July 15, 2004, to July 14, 2008, regarding the water quality data and water level data for the monitoring wells required pursuant to condition 7(a)."