
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – November 10, 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 an appeal filed by Mr. Robert A. Berrien and 766364 Alberta Ltd. with respect to the cancellation of a portion of *Water Act* Licence No. 989 by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Berrien v. Director, Southern Region, Regional Services, Alberta Environment* (10 November 2003), Appeal No. 03-126-DOP (A.E.A.B.).

EXECUTIVE SUMMARY

On August 26, 2003, Alberta Environment cancelled a portion of *Water Act* Licence No. 989. The Licence pertained to a portion of land within the S ½ 05-20-28-W4, near Okotoks, Alberta, belonging to Mr. Robert A. Berrien and 766364 Alberta Ltd. The Licence was issued in 1967 to divert up to 65 acre-feet of water from the Highwood River in SW 05-020-28-W4 to irrigate up to 100 acres of land within the S ½ 05-020-28-W4.

On September 9, 2003 the Board received a Notice of Appeal from Mr. Robert A. Berrien and 766364 Alberta Ltd. appealing Alberta Environment's decision.

The Board scheduled an appeal hearing for November 21, 2003 in Calgary. However, the Board received a letter from Mr. Berrien advising that he wished to withdraw the appeal.

The Board therefore closes its file in this matter.

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I. BACKGROUND

[1] On August 26, 2003, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) cancelled a portion of *Water Act* Licence No. 989 (the “Licence”). The Licence pertained to a portion of land within S ½ 05-020-28-W4, near Okotoks, Alberta, belonging to Mr. Robert A. Berrien and 766364 Alberta Ltd. The licence was issued in 1967 to divert up to 65 acre-feet of water from the Highwood River in SW 05-020-28-W4, to irrigate up to 100 acres of land within the S ½ 05-020-28-W4.

[2] On September 9, 2003 the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. Robert A. Berrien and 766364 Alberta Ltd. (the “Appellant”) appealing the Director’s decision.

[3] On September 10, 2003, the Board wrote to the Appellant and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal, and that the Parties provide available dates for a mediation meeting or hearing, and to provide the names of any other persons that may have an interest in this appeal.

[4] 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 review under their respective legislation. Both boards responded in the negative.

[5] On September 24, 2003, the Board received a copy of the Record from the Director, and on September 26, 2003, forwarded a copy to the Appellant. The Director, in her letter of September 24, 2003, advised that she was not prepared to enter into a mediation, and that she wished to proceed directly to a hearing of the appeal.

[6] On September 11, 2003, the Appellant provided the names of persons that may have an interest in the appeal. The Board contacted Mr. Ronald Taylor, Mr. Eric Nissen and Mr. Brian and Ms. Sharon McCaughan (the “Interested Parties”) on October 1, 2003, notifying them

of the appeal. The Board received an inquiry from Ms. McCaughan on October 17, 2003, respecting the appeal hearing, but the Board did not receive requests from any of the Interested Parties to intervene.

[7] In consultation with the Parties, the Board scheduled a hearing of the appeal, to be held in Calgary on November 21, 2003. The Board notified the Interested Parties of the hearing. The Board also placed a Notice of Public Hearing advertisement in the Okotoks Western Wheel on October 22, 2003 advising of the hearing to be held on November 21, 2003, in Calgary and asked that if any person, other than the parties, wished to make representations before the Board, to advise the Board office by October 31, 2003. A news release was forwarded to the Public Affairs Bureau regarding the hearing and placed on the Alberta Government website on October 17, 2003. It was distributed on the same day to 95 daily newspapers, radio stations and television stations within Alberta. The Board did not receive any requests from members of the public to intervene in the appeal.

[8] On November 4, 2003, the Board received a letter from the Appellant advising that he wished to withdraw his appeal. The November 4, 2003 letter stated:

“Upon further review we have decided to withdraw our appeal of the licence cancellation. Please take this letter as official confirmation of that withdrawal.”

II. DECISION

[9] Pursuant to section 97(7) of the *Environmental Protection and Enhancement Act* R.S.A. 2000, c. W-3, and based upon the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal 03-126 and closes its file.

Dated on November 10, 2003, at Edmonton, Alberta.

William A. Tilleman, Q.C.
Chair