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ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Discontinuance of Proceedings

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Date of Mediation Meeting – July 21, 2003

Date of Discontinuance of Proceedings – August 29, 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 Dean and Verna Hart, Randy and Betty Landis, Stella Hart and Cattlemen's A.I. Ltd., and Michael Hart, with respect to Licence Amendment No. 00036350-00-01 issued under the *Water Act* to Ducks Unlimited Canada by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Hart et al. v. Director, Southern Region, Regional Services, Alberta Environment, re: Ducks Unlimited Canada* (29 August 2003), Appeal Nos. 02-146 – 02-149-DOP (A.E.A.B).



**PARTIES:**

**Appellants:** Mr. Dean and Ms. Verna Hart; Mr. Randy and Ms. Betty Landis; Ms. Stella Hart and Cattlemen's A.1. Ltd.; Mr. Michael Hart; and Mr. Dean Lien, Farmers' Advocate of Alberta.

**Director:** Ms. May Mah-Paulson, Director, Southern Region, Regional Services, Alberta Environment, Mr. Kevin Wilkinson, Alberta Environment, and Mr. Randy Poon, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

**Licence Holder:** Mr. Eric Haldorson, Ducks Unlimited Canada, Mr. Rick Harland, Ducks Unlimited Canada, represented by Mr. Ken Lutes, Q.C., Lutes and Bell.

## **EXECUTIVE SUMMARY**

Alberta Environment issued a Licence Amendment under the *Water Act* to Ducks Unlimited Canada, authorizing the changes to: the source of supply and point of diversion; the gross diversion; and the reservoir capacity.

The Environmental Appeal Board received Notices of Appeal from Mr. Dean and Ms. Verna Hart, Mr. Randy and Ms. Betty Landis, Ms. Stella Hart and the Cattlemen's A.I. Ltd., and Mr. Michael Hart, appealing the Licence Amendment.

The Board began processing the appeals. However, the Board received a request from Alberta Environment to dismiss the appeals. The basis of this request was that, according to Alberta Environment, the appeals are not properly before the Board and the people who filed the appeals are not directly affected by the Licence Amendment. Alberta Environment also stated that there have been no changes in the water rights granted to Ducks Unlimited and that the Licence Amendment is merely an administrative clarification. Finally, Alberta Environment stated that the remedy sought by the people who filed the appeals is in relation to the priority system under the *Water Act*, and that there is no new impact that resulted from the Licence Amendment.

The Board scheduled a preliminary meeting via written submissions to address Alberta Environment's motion. After considering the submissions of the parties, the Board concluded that it may be more appropriate to deal with these appeals by way of a mediation meeting.

In consultation with the parties the Board scheduled a mediation meeting on July 21, 2003 in Airdrie, Alberta. An agreement was subsequently reached between Ducks Unlimited and the Appellants that resulted in the Appellants withdrawing their appeals. The Board therefore closes its file in this matter.

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## I. BACKGROUND

[1] On February 21, 2003, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Licence Amendment No. 00036350-00-01 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to Ducks Unlimited Canada (the “Licence Holder”). The Licence allows the Licence Holder to change the source of supply and point of diversion from Contra Costa Lake in NE 26-031-12-W4 to Contra Costa Lake in NE 26-031-12-W4, Berry Creek in NE 02-032-12-W4 and Berry Creek in NE 26-031-12-W4. The Licence also allows a change in the gross diversion from 1,583 acre-feet (1,953 dam<sup>3</sup>) to 951 dam<sup>3</sup> from Contra Costa Lake and 1,002 dam<sup>3</sup> from Berry Creek and a change to the reservoir capacity from 2,083 acre-feet (2569 dam<sup>3</sup>) to 2,735 dam<sup>3</sup>.

[2] The Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Dean and Ms. Verna Hart (02-146) on March 10, 2003, Ms. Stella Hart and Cattlemen’s A.I. Ltd. (02-147) on March 12, 2003, Mr. Randy and Ms. Betty Landis (02-148) on March 13, 2003, Mr. Michael Hart (02-149) on March 12, 2003 (collectively the “Appellants”) appealing the Licence. An appeal was also received from Mr. David Kingcott (02-150) on March 17, 2003 appealing the Licence.<sup>1</sup>

[3] On March 11 and 18, 2003, the Board wrote to the Licence Holder, the Appellants, and the Director, (the “Parties”) acknowledging the Notices of Appeal and notifying the Licence Holder and the Director of the appeals. The Board also requested that the Director provide the Board with a copy of the records related to these appeals (the “Record”), and requested the Parties provide available dates for a mediation meeting or a hearing.

[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.

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<sup>1</sup> The appeal of Mr. Kingcott (02-150) was dismissed on June 5, 2003, pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*, for failure to comply with a written notice. The Board’s written reasons were issued June 12, 2003. See: *Kingcott v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Ducks Unlimited Canada* (12 June 2003), Appeal No. 02-150-D (A.E.A.B).

[5] On March 26, 2003, the Board received a copy of the Record from the Director and on March 28, 2003, forwarded a copy to the Appellants and the Licence Holder.

[6] On March 28, 2003, the Board received a letter dated March 26, 2003 from the Director requesting the Board dismiss the appeals as they “are not properly before the Board” and the Appellants “are not directly affected” by the Licence. The Director stated that there have been no changes in the water rights granted to the Licence Holder and that the amendment of the Licence is merely an administrative clarification. The Director also stated that the remedy sought by the Appellants is in relation to the priority system under the *Water Act*, and that there is no “new” impact that resulted from the amendment of the Licence.

[7] On, March 28, 2003, the Board scheduled a written submission process to address the Director’s request to dismiss the appeals.

[8] Written submissions were subsequently received from the Parties. After considering the submissions of the Parties, the Board concluded that it required additional information in order to make a decision on the matter, and further that it may be more appropriate to deal with these appeals by way of a mediation meeting.

[9] In this regard, the Board wrote to the parties on June 5, 2003 stating:

“...The Board has concluded that in order to make a determination on this matter it requires additional information. Specifically, the Board would like to receive, from Alberta Environment, a complete copy of all documentation relating to (1) the original Ducks Unlimited application filed on May 31, 1946 (File No. 7845-13), (2) the Interim Licence issued on January 31, 1952 (No. 2817), (3) the Update and Reissue of the Interim Licence re-issued on March 26, 1984 (No. 02817, File No. 14013), and (4) the Licence issued on March 26, 1984 (File No. 14013). The documentation should include any correspondence leading up to the filing of the original application, all documentation leading up to these various decisions, and any documentation following the issuance of the Licence that may be of assistance to the Board....In reviewing the submissions of the parties and in considering the issues raised, the Board has also concluded that it may be more appropriate to deal with these appeals by way of a mediation meeting. In this regard, the parties are requested to provide their available dates for a mediation meeting in the later half of July....”

[10] On June 23, 2003, in consultation with the Parties the Board scheduled a mediation meeting for July 21, 2003, in Airdrie, Alberta.

[11] Pursuant to section 11 of the Environmental Appeal Board Regulations, A.R. 114/93, the Board conducted a mediation meeting in Airdrie, Alberta, on July 21, 2003, with Mr. Ron V. Peiluck as the presiding Board Member (the “Mediator”).

[12] In conducting the mediation meeting, the Mediator reviewed the appeals and the 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.

[13] Following productive and detailed discussions, the Appellants and the Licence Holder subsequently reached an agreement and the Appellants withdrew their appeals.

## **II. DECISION**

[14] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act* R.S.A. 2000, c. W-3, and based on the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 02-146 – 02-149 and closes its file.

Dated on August 29, 2003, at Edmonton, Alberta.

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William A. Tilleman, Q.C.  
Chairman