

ALBERTA ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – October 3, 2008

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 Leonard Chomistek and Big Bear Hills with respect to *Environmental Protection and Enhancement Act* Environmental Protection Order No. EPO-2008/01-SR and *Water Act* Enforcement Order No. WA-EO-2008/01-SR issued to Griffin Valley Ranches Ltd. by the Director, Southern Region, Environmental Management, Alberta Environment.

Cite as: *Chomistek and Big Bear Hills v. Director, Southern Region, Environmental Management, Alberta Environment, re: Griffin Valley Ranches Ltd.* (3 October 2008), Appeal Nos. 08-002 & 08-003-DOP (A.E.A.B.).

I. BACKGROUND

[1] On April 4, 2008, the Director, Southern Region, Environmental Management, Alberta Environment (the “Director”) issued Environmental Protection Order EPO-2008/01-SR under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12, and Enforcement Order WA-EO-2008/01-SR under the *Water Act*, R.S.A. 2000, c. W-3 (the “Orders”) to Griffin Valley Ranches Ltd. in relation to peat mining activities on NW 30-27-5-5WM in the MD of Rocky View No. 44.

[2] On April 23, 2008, the Environmental Appeals Board (the “Board”), received a Notice of Appeal from Mr. Leonard Chomistek and Big Bear Hills (the “Appellant”) appealing the Orders.

[3] On April 24, 2008, the Board wrote to the Appellant and the Director, and on May 9, 2008 wrote to Griffin Valley Ranches Ltd. (collectively the “Participants”) acknowledging receipt of the Notice of Appeal and notifying the Director and Griffin Valley Ranches Ltd. of the Appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals and that the Participants provide available dates for a mediation meeting, a preliminary motions hearing or a hearing.

[4] On April 28, 2008, the Board received a letter from the Director requesting that the Board not accept the appeal, pursuant to sections 91 of the *Environmental Protection and Enhancement Act* and section 115 of the *Water Act* because the Appellant was not named on the Orders¹.

[5] On May 9, 2008, the Board wrote to the Participants advising it would set a written submission process to determine whether the Appellant is a person entitled to file an appeal in relation to the Orders, once it had reviewed the Record. The Board asked the Director

¹ *Environmental Protection and Enhancement Act* Section 91(1)(f) states: a notice of appeal may be submitted to the Board by the following persons in the following circumstances: where an inspector issued an Environmental Protection Order regarding conservation and reclamation under s.140 of 141, the person to whom the order is directed may submit a notice of appeal.

Water Act Section 115(1)(p)(i) states: a notice of appeal under this Act may be submitted to the Environmental Appeals Board by the following persons in the following circumstances: the person to whom the Enforcement Order is directed, if the Director issues an Enforcement Order directing the suspension or cancellation of an approval.

to provide it with a copy of the Record as soon as possible. The Board also requested that the Participants advise as soon as possible if they wished the Board to schedule a mediation meeting.

[6] The Board received the Record from the Director on May 31, 2008, and on June 2, 2008 forwarded a copy to the Appellant and Griffin Valley Ranches Ltd. The Board's June 2, 2008 letter stated:

“Further to the Board's letter of May 20, 2008, Mr. Chomistek is requested to provide the Board with a written submission on why, in his view he should be entitled to appeal, despite the fact he is not named in the Order. Mr. Chomistek is requested to provide the Board with this submission by **June 16, 2008**. Once the Board has received Mr. Chomistek's submission, the Board will make a decision as to whether Mr. Chomistek has made out a *prima facie* case, that is, whether Mr. Chomistek has provided the Board with sufficient information to convince the Board to proceed with his appeal, and if he has, the Board will ask the Director and Mr. MacLeod to provide response submissions. In the event that the Board determines that Mr. Chomistek has not made out a *prima facie* case, the Board will dismiss the appeal and close its file.”

[7] On June 9, 2008, the Board received a letter from the Appellant requesting an extension of time to provide a written submission because he was in the process of retaining legal counsel. The Board granted the request on June 10, 2008 and requested the Appellant provide his written submission by July 18, 2008.

[8] On July 17, 2008, the Board received a further request from the Appellant to extend the time to provide a written submission because his legal counsel was away on vacation. The Board granted the request and set a new date of September 15, 2008 for the Appellant to file his written submission.

[9] The written submission was not received from the Appellant and on September 16, 2008, the Board wrote to the Participants requesting the Appellant provide his written submission by September 22, 2008. The written submission was not received and on September 24, 2008, the Board wrote again to the Appellant requesting he provide his written submission by September 26, 2008. The Board also cautioned the Appellant that his appeals could be dismissed for failure to respond to the Board in a timely manner pursuant to section 95(5)(a)(i) of the *Environmental Protection and Enhancement Act*.

[10] On September 26, 2008 the Board received a letter from the Appellant stating:

“The Parties, Big Bear Hills and Leonard Chomistek, acknowledge receipt of the letter dated September 24, 2008. The Parties will be focusing 100% on concluding the outstanding civil matter before the Court of Queen’s Bench. That being said, the Parties thank the Board for their consideration and patience in regards to providing written submissions regarding these matters.”

[11] On September 26, 2008, the Board responded to the Appellant by letter stating:

“It is the Board’s understanding that Mr. Chomistek is withdrawing his appeal. The Board will issue a Discontinuance of Proceedings for appeals 08-002 and 08-003 in relation to his appeals of the Orders issued to Griffin Valley and will then close its file. If the Board’s understanding is incorrect, Mr. Chomistek is to advise the Board by Monday, **September 29, 2008.**”

[12] On October 1, 2008, the Board received a telephone call from the Appellant confirming the withdrawal of the appeals.

II. DECISION

[13] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, and based upon the withdrawal of the appeal by the Appellant, the Board hereby discontinues its proceedings in Appeal Nos. 08-002 and 08-003 and closes its files.

Dated on October 3, 2008, at Edmonton, Alberta.

Dr. Steve E. Hrudehy, FRSC, PEng
Chair