

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Decision

---

Date of Decision – May 22, 2012

**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** seventy-one appeals filed with respect to *Water Act* Licence No. 00285465-00-00 issued to Matt Schultz by the Director, Central Region, Operations Division, Alberta Environment and Water.

Cite as: *Wilkening et al. v. Director, Central Region, Operations Division, Alberta Environment and Water, re: Matt Schultz* (22 May 2012), Appeal Nos. 11-060, 064-067, 072-074, 077-96, 113-146, 151-155, 166-168, and 174-ID1 (A.E.A.B.).



**BEFORE:**

Alex G. MacWilliam, Panel Chair;  
Jim Barlishen, Board Member; and  
Gordon Thompson, Board Member.

**SUBMISSIONS BY:**

**Appellants:**

Joanne Wilkening, Marcel and Colleen Lapointe, Russell Blair, Arthur Frey, Elizabeth Frey, Debbie Kluk, Ronald Kluk, Rene Lemay, Aurora Murray, Ryan Hamilton, Betty Hamilton, Randall Hamilton, Ken Eberle, Sandra Wright, Lloyd Wright, Kevin Wright, James Harvey, Trisha Atkinson, Lyle Gamblin, Helmut Amelang, Beatrice Berezowski, John Berezowski, Marc Poissant, Lara Goertz, Patrick David Goertz, Robert Horne, Karl Graetz, Shauna Graetz, Leonard and Carol Ulmer, Nathan Wright, Michelle Dionne, Sheri Reich, Barney Reich, Bruce O'Brien and Lorraine Beamish, Danny and Janice Kos, Dayne and Danelle Majeau, Merlin G. Seely, Jerrod Seely, Karin Ellen Ness, Barry Ness, Shannon and Bill Davie, Melina and John Cameron, Pearl Graham-Smith, Danny Steven Smith, Sharon Darragh, Pat Darragh, James Strickland, Gary Edwards, George Cook, Keith Carpenter, Teresa Shaw, Brady Hamilton, Debra Herold, Keith Stec, Shann Vick, Donna Johnson, Wesley R. Davidson, John Luchyk, Dwight Dancey, Denise Godin, Milo Meston, Denis Poissant, Petra Smithinsky, David Smithinsky, Jessie Dryden, Garrett Swap, Larry Henderson, Everett Ness, Dan and Colene Davie, Tom Cameron, Tina and Len Hein, represented by Albert Orban, Alberta Water Watch Association.

**Licence Holder:** Matt Schultz, represented by Richard Secord, Ackroyd LLP.

**Director:** Neil Hollands, Director, Central Region, Operations Division, Alberta Environment and Water, represented by Andrew Bachelder, Alberta Justice.

## EXECUTIVE SUMMARY

Alberta Environment and Water issued a Licence under the *Water Act* to Mr. Matt Schultz allowing him to divert up to 70,000 cubic metres of water annually for commercial purposes (hauling heated water).

The Board received 71 Notices of Appeal and reviewed written submissions on the following preliminary matters:

1. Did each of the Notice of Appeal filers file valid Statements of Concern and Notices of Appeal within the time frames specified in the *Water Act*?
2. Are the appellants directly affected by the Licence?
3. Some of the Notices of Appeal received in relation to the Licence were in “template form.” How does this impact (i) each appellant’s standing, and (ii) the validity of their Notice of Appeal?
4. Are there any other issues raised in the Notices of Appeal that are not properly before the Board?
5. If this matter proceeds to a hearing, what issues should be considered by the Board?

The Board dismissed 62 of the appeals for failing to submit a valid Statement of Concern within the legislated time frame. Of the remaining 9 Notices of Appeal, 5 were found to have been filed within the time frame required under the *Water Act* and two filed within the time set by the Board to receive additional information from signatories to the petition filed with the Board. The remaining two Notices of Appeal were filed after the appeal period had passed, however, the Board’s letter to the signatories asking for additional information was subsequently deemed ambiguous because it could have been interpreted as extending the appeal period for anyone. Due to this possible misunderstanding, the Board accepted the Notices of Appeal filed by these two appellants.

In summary, the Board found the following persons had valid appeals: Ms. Joanne Wilkening, Mr. Marcel and Ms. Colleen Lapointe, Mr. Russell Blair, Mr. Arthur Frey, Ms. Elizabeth Frey,

Mr. Danny and Ms. Janice Kos, Mr. Bill and Ms. Shannon Davie, Mr. Gary Edwards, and Mr. Dan and Ms. Colene Davie.

The Board accepted these remaining appellants as directly affected because it was unclear as to the exact impact the proposed well would have on aquifers in the area and the potential impact on the appellants' wells. Conflicting information was provided by the Appellants and Mr. Schultz to explain the area of possible impact, if any. The Board decided there was a reasonable possibility the appellants could be impacted by the proposed project and therefore meet the directly affected test for the purposes of standing.

The Board accepted the template form of the Notice of Appeal in this case, but was of the view that such a form is not the preferred manner for filing an appeal. Such templates may not be accepted in other cases.

The issues to be heard at the hearing are:

1. Did Alberta Environment and Water comply with applicable legislation, guidelines, and policies when considering the Licence application and issuing the Licence?
2. Do the terms and conditions of the Licence adequately protect the environment and address the appellants' concerns? Included in this issue are the concerns regarding the volume of water allowed to be withdrawn under the Licence, complaint mechanisms, and remedies to mitigate adverse effects.
3. Was the information relied on by Alberta Environment and Water in making the decision to issue the Licence sufficient and accurate?

## TABLE OF CONTENTS

|      |                                |    |
|------|--------------------------------|----|
| I.   | INTRODUCTION .....             | 1  |
| II.  | BACKGROUND .....               | 1  |
| III. | STATEMENTS OF CONCERN .....    | 2  |
| A.   | SUBMISSIONS .....              | 2  |
| 1.   | Notice of Appeal Filers.....   | 2  |
| 2.   | Licence Holder.....            | 3  |
| 3.   | Director.....                  | 3  |
| B.   | Legal Basis.....               | 4  |
| C.   | Analysis .....                 | 4  |
| IV.  | NOTICES OF APPEAL .....        | 6  |
| A.   | Submissions .....              | 6  |
| 1.   | Appellants .....               | 6  |
| 2.   | Licence Holder.....            | 6  |
| 3.   | Director.....                  | 6  |
| B.   | Analysis .....                 | 7  |
| V.   | DIRECTLY AFFECTED.....         | 8  |
| A.   | Submissions .....              | 8  |
| 1.   | Appellants .....               | 8  |
| 2.   | Licence Holder.....            | 9  |
| 3.   | Director.....                  | 11 |
| 4.   | Rebuttal Submission .....      | 11 |
| B.   | Legal Basis.....               | 13 |
| C.   | Analysis .....                 | 17 |
| VI.  | TEMPLATE NOTICE OF APPEAL..... | 18 |
| A.   | Submissions .....              | 18 |
| 1.   | Appellants .....               | 18 |
| 2.   | Licence Holder.....            | 19 |
| 3.   | Director.....                  | 19 |
| 4.   | Rebuttal.....                  | 19 |

|       |                      |    |
|-------|----------------------|----|
| B.    | Analysis .....       | 20 |
| VII.  | HEARING ISSUES ..... | 21 |
| A.    | Submissions .....    | 21 |
| 1.    | Appellants .....     | 21 |
| 2.    | Licence Holder.....  | 21 |
| 3.    | Director .....       | 22 |
| 4.    | Rebuttal.....        | 22 |
| B.    | Analysis .....       | 22 |
| VIII. | CONCLUSION.....      | 25 |

## **I. INTRODUCTION**

[1] The Director, Central Region, Operations Division, Alberta Environment and Water (the “Director”), issued a *Water Act* Licence to Mr. Matt Schultz (the “Licence Holder”). The Licence allows the Licence Holder to divert up to 70,000 cubic metres of water annually from an aquifer accessed in 6-23-48-8-W5M for commercial purposes (hauling heated water).

[2] Seventy-one Notices of Appeal were filed. This preliminary decision determines whether the appeals are validly before the Environmental Appeals Board (the “Board”) and what issues would be heard at a hearing, if one were held. Under Section 115(1) of the *Water Act*, a Notice of Appeal can be filed by a person who has previously filed a valid Statement of Concern in respect to an application. The Notice of Appeal must be filed within the legislated time frame, and the person must be directly affected by the Director’s decision.

## **II. BACKGROUND**

[3] On August 30, 2011, the Director issued Licence No. 00285465-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Licence Holder.

[4] Between September 29 and November 7, 2011, the Environmental Appeals Board (the “Board”) received 71 Notices of Appeal (collectively, the “Notice of Appeal Filers”) appealing the Approval.<sup>1</sup> The Board acknowledged the appeals and notified the Licence Holder and Director of the appeals. The Board requested the Notice of Appeal Filers, Licence Holder, and Director (collectively, the “Participants”) provide available dates for a mediation meeting, preliminary motions hearing, or hearing.

[5] On November 25, 2011, the Board notified the Participants that the Stay requests of Mr. Dan Smith, filed on November 14, 2011, Mr. Denis Poissant and Ms. Denise Godin, filed on November 18, 2011, and Ms. Debra Herold, filed on November 24, 2011, were dismissed because they did not demonstrate that irreparable harm would occur during the time it takes for the appeals to be addressed.



[6] On November 9, 2011, the Alberta Water Watch Association<sup>2</sup> requested a Stay of the Licence. The Board received submissions from the Alberta Water Watch Association November 29, 2011. On December 5, 2011, the Board notified the Participants that the Stay request was denied.

[7] The Licence Holder and Director challenged the appeals and, on November 25, 2011, the Board set the schedule to receive submissions on the following preliminary matters:

1. Did each of the Notice of Appeal Filers file a Statement of Concern with Alberta Environment and Water?
2. Were the Notices of Appeal filed within the time frames specified in the *Water Act*?
3. Are the Appellants directly affected by the Licence?
4. Some of the Notices of Appeal received in relation to the Licence were in “template form.” How does this impact (i) each Appellant’s standing and (ii) the validity of their Notice of Appeal?
5. Are there any issues raised in the Notices of Appeal that are not properly before the Board and how does this impact the validity of the Notices of Appeal?
6. If this matter proceeds to a hearing, what issues included in the Notices of Appeal should be considered by the Board?

[8] The Board received submissions from the Participants between December 23, 2011 and February 29, 2012.

### **III. STATEMENTS of CONCERN**

#### **A. SUBMISSIONS**

1. Notice of Appeal Filers

[9] The Notice of Appeal Filers identified the following as filing Statements of Concern: Ms. Joanne Wilkening, Mr. Marcel and Ms. Colleen Lapointe, Mr. Russell Blair, Mr.

---

<sup>1</sup> Please see Appendix A for the list of Notice of Appeal Filers.

<sup>2</sup> The Alberta Water Watch Association was formed by a number of the Appellants to represent their

Arthur Frey, Ms. Elizabeth Frey, Mr. Danny and Ms. Janice Kos, Mr. Bill and Ms. Shannon Davie, Mr. Gary Edwards, and Mr. Dan and Ms. Colene Davie.

[10] They stated some of the remaining Notice of Appeal Filers filed Statements of Concern after the time limit because they were not informed of the notice to file Statements of Concern in sufficient time to do so. The Notice of Appeal Filers stated the notification process was inadequate.

2. Licence Holder

[11] The Licence Holder noted that, of the 71 Notices of Appeal filed, only the following nine filed Statements of Concern within the required 30 days: Ms. Joanne Wilkening; Mr. Marcel and Ms. Colleen Lapointe; Mr. Russell Blair; Mr. Arthur Frey; Ms. Elizabeth Frey; Mr. Danny and Ms. Janice Kos; Mr. Bill and Ms. Shannon Davie; Mr. Gary Edwards; and Mr. Dan and Ms. Colene Davie, the same persons identified by the Notice of Appeal Filers.

[12] The Licence Holder noted the only explanation provided by those who did not file Statements of Concern or filed them late was that they were not informed of the opportunity to file a Statement of Concern in time to do so. The Licence Holder stated he provided sufficient notice as required in the *Water Act* and the *Water (Ministerial) Regulations*, Alta. Reg. 205/98. The Licence Holder submitted the Board should dismiss the appeals of those Notice of Appeal Filers who did not submit Statements of Concern within the required timeframe.

3. Director

[13] The Director stated 13 persons and two organizations filed Statements of Concern within the legislated time frame: Ms. Joanne Wilkening; Mr. Marcel and Ms. Colleen Lapointe; Mr. Russell Blair; Mr. Arthur Frey; Ms. Elizabeth Frey; Mr. Danny and Ms. Janice Kos; Mr. Bill and Ms. Shannon Davie; Mr. Gary Edwards; Mr. Dan and Ms. Colene Davie; Pembina Agriculture Protection Association; SCI – Drayton Valley Chapter; Mr. Raymond and Ms. Darlene Broadbent; Mr. Richard and Ms. Bridget Schnell; Mr. Gerry and Ms. Elizabeth Pohling;

---

interests in these appeals.

and Mr. Wayne and Ms. Beth Boser. With respect to those who filed Notices of Appeal, these are the same persons identified by the Notice of Appeal Filers.

**B. Legal Basis**

[14] The issue of whether someone filed a Statement of Concern can determine whether that person is entitled to file an appeal. Under section 115(1)(c)(i) of the *Water Act*,<sup>3</sup> an appellant must file a Statement of Concern with the Director in response to the Notice of Application before a valid Notice of Appeal can be filed. Filing a Statement of Concern preserves the filer's right to appeal, but it also provides the filer with the opportunity to bring concerns forward early in the application process. The Director takes valid concerns into consideration and can incorporate terms and conditions in the licence to address these concerns. Statements of Concern also notify the proponent of the project of these concerns, allowing the proponent the opportunity to mitigate the concerns. Filing a Statement of Concern balances the interests of those involved, because it provides notice to the Director and project proponent of the concerns early in the process, rather than waiting until the approval is issued and bringing the concerns forward for the first time in an appeal.

**C. Analysis**

[15] The Participants all agreed that Ms. Joanne Wilkening, Mr. Marcel and Ms. Colleen Lapointe, Mr. Russell Blair, Mr. Arthur Frey, Ms. Elizabeth Frey, Mr. Danny and Ms. Janice Kos, Mr. Bill and Ms. Shannon Davie, Mr. Gary Edwards, and Mr. Dan and Ms. Colene

---

<sup>3</sup> Section 115(1)(c)(i) of the *Water Act* states:

“A notice of appeal under this Act may be submitted to the Environmental Appeals Board by the following persons in the following circumstances:

- (a) if a preliminary certificate has not been issued with respect to a licence and the Director issues or amends a licence, a notice of appeal may be submitted
  - (i) by the licensee or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108...”

Davie filed Statements of Concern within the legislated timeframe. The remaining Statement of Concern filers identified by the Director did not file appeals.

[16] Five Notice of Appeal Filers, Ms. Sheri Reich, Mr. Barney Reich, Mr. Denis Poissant, Mr. Everett Ness, and Mr. Tom Cameron, filed Statements of Concern, but the Director rejected their Statements of Concern because they were filed late. None of these Notice of Appeal Filers provided any reason for filing their Statements of Concern late other than to state the public notice was inadequate. The Board generally will not consider Statements of Concern filed after the specified timeline unless the filers can establish that there were exceptional or extenuating circumstances that prevented them from filing on time. One example where the Board accepted the Notices of Appeal even though valid Statements of Concern were not filed was in *Vipond et al. v. Director, Southern Region, Environmental Management, Alberta Environment*, re: *EcoAg Initiatives Inc.* (06 January 2011), Appeal Nos. 09-006-009, 016, 017, & 019-ID1 (A.E.A.B.) (“*EcoAg*”). In *EcoAg*, the Board found there were issues with the public notice that may have impacted the appellants’ abilities to file valid Statements of Concern. In the current case, the public notice complied with the legislative requirements, and it clearly stated what the proposed project was, where it would take place, and who was making the application. The Notice of Appeal Filers in the current case did not show there were extenuating circumstances to demonstrate why they could not have filed their Statements of Concern on time. Therefore, the appeals of Ms. Sheri Reich, Mr. Barney Reich, Mr. Denis Poissant, Mr. Everett Ness, and Mr. Tom Cameron are dismissed for failing to file a valid Statement of Concern with the Director within the legislated time frame.

[17] None of the other Notice of Appeal Filers filed Statements of Concern. Therefore, the Board also dismisses their appeals.

[18] The Board will consider the appeals filed by Ms. Joanne Wilkening, Mr. Marcel and Ms. Colleen Lapointe, Mr. Russell Blair, Mr. Arthur Frey, Ms. Elizabeth Frey, Mr. Danny and Ms. Janice Kos, Mr. Bill and Ms. Shannon Davie, Mr. Gary Edwards, and Mr. Dan and Ms. Colene Davie (collectively, the “Appellants”) because they met the legal requirement of filing valid Statements of Concern. The Board will not consider any other matters in relation to those persons whose appeals were dismissed for failing to file valid Statements of Concern.

## **IV. NOTICES OF APPEAL**

### **A. Submissions**

#### 1. Appellants

[19] The Appellants stated they filed Notices of Appeal within the extended deadline granted by the Board.

#### 2. Licence Holder

[20] The Licence Holder noted that, pursuant to section 116(1)(b) of the *Water Act*, Notices of Appeal are required to be filed within 30 days of receiving notice of the decision granting the Licence, but the Board has the discretion to extend the deadline if sufficient grounds are present.

[21] The Licence Holder stated the Board should not have granted the extension to those who filed Statements of Concern and received notice of the Director's decision on August 30, 2011. The notice indicated the Appellants had 30 days to file a Notice of Appeal. None of the Appellants provided any grounds for requesting an extension other than they wanted to contact individuals to organize a mass appeal. The Licence Holder argued this does not explain why the Appellants, except for Ms. Wilkening, were not capable of filing their appeals on time.

[22] The Licence Holder accepted the remaining appeals were filed within the extended deadline.

#### 3. Director

[23] The Director took no position on whether the Notices of Appeal were filed on time. The Director noted that, of the Appellants, those who filed Notices of Appeal within the time lines specified in the *Water Act* were Ms. Wilkening, Mr. and Ms. Lapointe, Mr. Blair, Mr.

Frey, Ms. Frey, Mr. and Ms. Kos, Mr. Bill and Ms. Shannon Davie, Mr. Edwards, and Mr. Dan and Ms. Colene Davie.

**B. Analysis**

[24] Under section 116(1) of the *Water Act*, a Notice of Appeal must be filed within 30 days of receipt of the decision being appealed.<sup>4</sup> The Licence was issued on August 30, 2011, and most of the Appellants stated they received notice of the decision on or about September 14, 2011. Therefore, the period for filing a Notice of Appeal would end on October 15, 2011. The Board received the Notice of Appeal from Ms. Wilkening on September 29, 2011, from Mr. and Ms. Lapointe and Mr. Russell Blair on October 12, 2011, from Mr. and Ms. Frey on October 14, 2011, from Mr. and Ms. Kos, Mr. Bill and Ms. Shannon Davie, and Mr. Edwards on October 27, 2011, and from Mr. Dan and Ms. Colene Davie on October 31, 2011. The appeals of Ms. Wilkening, Mr. and Ms. Lapointe, Mr. Russell Blair, Mr. Frey, and Ms. Frey were filed within the legislated time frame and the Board will accept their Notices of Appeal as valid.

[25] An email was sent to the Board on October 4, 2011, from Mr. Frey requesting additional time to contact the signatories to a petition provided to the Board and time for the signatories to file Notices of Appeal. The Board allowed the signatories until November 4, 2011, to file a Notice of Appeal. The Board sought the additional information pursuant to section 92 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”).<sup>5</sup> The Board requested the information from the signatories to the petition to clarify which of those persons intended to pursue an appeal. At the time the Board requested further information and

---

<sup>4</sup> Section 116(1) of the *Water Act* states:

“A notice of appeal must be submitted to the Environmental Appeals Board ...

- (b) in any other case, not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.”

<sup>5</sup> Section 92 of EPEA provides:

“Where the Board receives a notice of appeal, it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice.”

clarification from the petition signatories, the Board had not yet received the Director's record. There was no way the Board could determine who actually filed Statements of Concern or who might otherwise not have a valid appeal before the Board.

[26] Mr. and Ms. Kos and Mr. Bill and Ms. Shannon Davie had signed the petition and filed their Notices of Appeal prior to the November 4, 2011 deadline set by the Board. Therefore, since they complied with the Board's requests within the specified time, the Board accepts their Notices of Appeal.

[27] In reading the Board's October 5, 2011 letter, the wording can be interpreted as providing an extension to allow further Notices of Appeal to be filed. While this was not the Board's intent, based on the wording, the Board will accept those appeals that were filed by persons who had filed valid Statements of Concern and who filed Notices of Appeal up to or prior to November 4, 2011.

[28] The Board notes Mr. Edwards and Mr. Dan and Ms. Colene Davie did not sign the petition and filed their Notices of Appeal after the legislated timeline but prior to the November 4, 2011 date granted for additional information from the petition signatories. Since the Board acknowledges the confusion the wording in its letter may have caused and given the community would, in all likelihood, discuss the proposed project and the appeal mechanisms that exist, the Board will accept the Notices of Appeal filed by Mr. Edwards and Mr. Dan and Ms. Colene Davie as well as those filed by Ms. Wilkening, Mr. and Ms. Lapointe, Mr. Russell Blair, Mr. Frey, Ms. Frey, Mr. Bill and Ms. Shannon Davie, and Mr. and Ms. Kos as having been filed in time.

## **V. DIRECTLY AFFECTED**

### **A. Submissions**

#### **1. Appellants**

[29] The Appellants argued they are directly affected since they depend on groundwater wells completed in the Paskapoo Formation, which is the same formation the

licenced well is completed in. The Appellants noted their wells, with the exception of Mr. Edwards', are completed in the same member of the Paskapoo Formation as the licenced well. The Appellants argued this proves the licenced well and the Appellants' wells are in the same aquifer and, therefore, they are directly affected by the Licence.

[30] The Appellants stated the Licence Holder's consultant's report (the "HCL Report"), indicates residents 5,000 metres away will see a predicted one metre drawdown within 20 years. They argued this confirms the Appellants are directly affected.

[31] The Appellants noted the Licence Holder's prediction of the drawdown of the licenced well is radial. However, the Paskapoo Formation is heterogeneous and, therefore, the water will not draw equally in all directions. The Appellants questioned the validity of the estimated drawdown and argued it may be greater than predicted. The Appellants noted the HCL Report used storativity and transmissivity values, without justification of the values chosen, which lowered the predicted drawdown more than tenfold.

[32] The Appellants noted that a number of wells within 1.6 kilometres of the water test hole could experience a decline in water levels to such an extent that a lowering of the intake would not be sufficient to return the water supply.

## 2. Licence Holder

[33] The Licence Holder stated it is not enough the Appellants show they are affected by an activity; they must show a direct connection between the Licence and its alleged adverse effect on each Appellant's personal or private interests. The Licence Holder stated declarations by Appellants that they live in proximity to the project is not sufficient to be found directly affected.

[34] The Licence Holder submitted the Appellants did not show they will be directly affected by the Licence and that any alleged harm to their interests is speculative. He stated the Appellants did not provide any details how a possible decrease in water level would affect their interest. The Appellants did not describe how they used the water, how much they used, and whether they would be harmed by a decrease in water levels and at what level they would feel an



adverse effect. The Licence Holder stated the Appellants only made generalized statements about concerns of a possible decrease in water level, but this does not show the Appellants would suffer an adverse effect.

[35] The Licence Holder stated the Appellants did not establish a causal connection between the operation of the Licence and their use of the water. He argued the report prepared by the Appellants' consultant, Hackbarth Environmental Consulting Ltd. ("Hackbarth Report"), did not support the concerns expressed in the Statements of Concern and Notices of Appeal other than to say additional monitoring may be required. The Licence Holder stated the Hackbarth Report did not oppose the HCL Report or the issuance of the Licence, did not refer to any water wells belonging to the Appellants, and did not make any finding the Appellants would be or have the potential to be adversely affected.

[36] The Licence Holder argued the Appellants cannot each rely on the Hackbarth Report to establish their "direct, proximate, and closely held rational connection."<sup>6</sup>

[37] The Licence Holder explained that a drawdown might be experienced by those Appellants whose water wells are likely in the same aquifer as the licenced well. The three Appellants who filed Statements of Concern that fall into this category are Ms. Wilkening, Mr. Frey, and Ms. Frey, but whether they will be adversely affected depends on the amount of change to their groundwater supply.

[38] The Licence Holder noted a groundwater licensing program completed for the well in 2010 in and around the subject aquifer showed there is no overall declining water level in existing wells, and water levels measured in 2011 show they are generally rising.

[39] The Licence Holder noted that, other than the three wells identified in the HCL Report as possibly being in the same aquifer as the Licenced well, the Appellants' residences are located at a sufficient distance so that that any possible effect would be too remote. The further the distance from the licenced well, the less significant the drawdown and the less effect felt.

[40] The Licence Holder explained the HCL Report found the water wells closest to and completed in the same aquifer as the licenced well would be first to show any adverse

---

<sup>6</sup> Licence Holder's submission, dated January 25, 2012, at page 8.

impact, and the conditions of the Licence take this into consideration so no additional monitoring is required. The Licence Holder argued the Appellants did not provide any scientific data to show the possibility of an adverse effect on their water wells and they did not demonstrate their wells would be impacted. The Licence Holder stated the Appellants' concerns are speculative. The Licence Holder submitted the scientific foundation for the issuance of the Licence is sound and should be relied on to determine if the Appellants are directly affected.

[41] The Licence Holder noted most of the Notices of Appeal indicate a concern about the end use of the diverted water and suggest a legislative change. The Licence Holder stated this is not a personal or private concern and, as it is a non-environmental consequence, it is not a direct effect. The Licence Holder stated the issue is not within the Board's jurisdiction and cannot be used to determine individual standing.

[42] The Licence Holder submitted the Appellants failed to demonstrate they are directly affected by the Licence.

### 3. Director

[43] The Director explained he accepted any person within a five kilometre radius of the proposed well as directly affected for the purposes of filing a Statement of Concern. The Director stated that even though he considered the Appellants directly affected due to their proximity to the licenced well, he does not consider any of the Appellants to be adversely affected.

### 4. Rebuttal Submission

[44] The Appellants explained they rely on their water wells for daily use and two of the Appellants use wells for watering stock. The Appellants noted the Hackbarth Report indicated the productivity of the Appellants' wells could potentially be adversely affected.

[45] The Appellants stated the extraction of large quantities of water that are taken offsite and not returned to the local hydrological cycle harms the overall quantity of groundwater available for use by surrounding residents. They stated their use of the groundwater resource

would be harmed if the Licence allows water levels to be drawn down to levels that would interrupt their water supply or reduce well productivity.

[46] The Appellants explained their consultant, Dr. Hackbarth, noted the HCL Report acknowledged the geology in the area is complex and aquifers may not be continuous between various local wells. The Paskapoo Formation is structurally complex in terms of fractures and joints that form part of the aquifer, so making a distinction of aquifers based on depositional changes is largely irrelevant. The Appellants stated there is a small but significant probability the aquifer parameters are more adverse so all the Appellants could experience adverse effects.

[47] The Appellants stated that, by omission and error, the aquifer data collected and synthesized for the Licence Holder may present an inaccurate prediction of the true impact of the project. Therefore, there is uncertainty regarding the drawdown prediction.

[48] The Appellants noted the aquifer yields and predictions used by the Licence Holder were based on the assumption the aquifer is homogeneous and isotropic with infinite areal extent, but research indicates the Paskapoo Formation varies in composition and orientation. The Appellants stated the calculations used by HCL and Dr. Hackbarth assume a symmetrical cone of depression and radial draw, but if the aquifer is associated with channel deposits that allow the flow to favour a particular direction, then the predicted effect on a particular appellant could change drastically. The Appellants referred to research that indicates the spread of the pressure wave is not equal in all directions since connectivity and permeability are not equal in all directions.

[49] The Appellants requested the Board allow those with the potential to be adversely affected to have their concerns heard since the response of the aquifer to the water diversion has not yet been fully and reliably characterized.

[50] The Appellants noted the observation well has significantly different hydrogeologic properties than the licenced well.

[51] The Appellants questioned why the Licence Holder's consultant did not provide justification for not following policy regarding aquifer testing and for omitting data from an application report. The Appellants noted the Alberta Environment Guide to Groundwater

Authorization requires one or two observation wells be monitored during aquifer testing. The Appellants noted the “recovery data from the observation well during AT-II was not recorded on the data sheet but was plotted on a hydrograph within the report.”<sup>7</sup> The hydrograph showed only 63 percent recovery of drawdown after nine days, which raises questions about the condition of the aquifer around the observation well.

[52] The Appellants noted the observation well was monitored during AT-III and AT-IV, but no record of the monitoring exists in the HCL Report. They noted the transmissivity of observation well 1 was 1 m<sup>2</sup>/day, but the HCL Report uses a transmissivity of 14.7 as the lowest value. If a value of 1 were used, all the drawdown predictions of the affected wells would increase.

[53] The Appellants questioned whether the unexplained drop in water level in the observation well may be due to reduced pressure causing fractures to close and reducing the open area for flow. The Appellants raised doubt on the assumptions used in the HCL Report.

[54] The Appellants stated the Hamlet of Buck Creek experienced a steady decline of its water supply, and demonstrated that caution should be exercised with this Licence diversion given its proximity to the Hamlet of Violet Grove and the large number of surrounding landowners.

## **B. Legal Basis**

[55] The Board has discussed the issue of “directly affected” in numerous decisions. The Board received guidance on this issue from the Court of Queen’s Bench in *Court*.<sup>8</sup>

[56] In the *Court* decision, Justice McIntyre summarized the following principles regarding standing before the Board.

“First, the issue of standing is a preliminary issue to be decided before the merits are decided. See *Re: Bildson*, [1998] A.E.A.B. No. 33 at para. 4. ...

---

<sup>7</sup> Appellants’ submission, received February 28, 2012, at page 8.

Note: “AT” in this decision refers to “aquifer test.”

<sup>8</sup> See: *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)*, 1 C.E.L.R. (3d) 134, 2 Admin. L.R. (4d) 71 (Alta. Q.B.) (“*Court*”).

Second, the appellant must prove, on a balance of probabilities, that he or she is personally directly affected by the approval being appealed. The appellant need not prove that the personal effects are unique or different from those of any other Albertan or even from those of any other user of the area in question. See *Bildson* at paras. 21-24. ...

Third, in proving on a balance of probabilities, that he or she will be harmed or impaired by the approved project, the appellant must show that the approved project will harm a natural resource that the appellant uses or will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use and the approved project, the more likely the appellant will be able to make the requisite factual showing. See *Bildson* at para. 33:

What is 'extremely significant' is that the appellant must show that the approved project will harm a natural resource (e.g. air, water, wildlife) which the appellant uses, or that the project will harm the appellant's use of a natural resource. The greater the proximity between the location of the appellant's use of the natural resource at issue and the approved project, the more likely the appellant will be able to make the requisite factual showing. Obviously, if an appellant has a legal right or entitlement to lands adjacent to the project, that legal interest would usually be compelling evidence of proximity. However, having a legal right that is injured by a project is not the only way in which an appellant can show proximity between its use of resources and the project in question.

Fourth, the appellant need not prove, by a preponderance of evidence, that he or she will in fact be harmed or impaired by the approved project. The appellant need only prove a potential or reasonable probability for harm. See *Mizera* at para. 26. In *Bildson* at para. 39, the Board stated:

[T]he 'preponderance of evidence' standard applies to the appellant's burden of proving standing. However, for standing purposes, an appellant need not prove, by a preponderance of evidence, that he will in fact be harmed by the project in question. Rather, the Board has stated that an appellant need only prove a 'potential' or 'reasonable probability' for harm. The Board believes that the Department's submission to the [A]EUB, together with Mr. Bildson's own letters to the [A]EUB and to the Department, make a prima facie showing of a potential harm to the area's wildlife and water resources, both of which Mr. Bildson uses extensively. Neither the Director nor Smoky River Coal sufficiently rebutted Mr. Bildson's factual proof.

In *Re: Vetsch*, [1996] A.E.A.B.D. No. 10 at para. 20, the Board ruled:

While the burden is on the appellant, and while the standard accepted by the Board is a balance of probabilities, the Board may accept that the standard of proof varies depending on whether it is a preliminary meeting to determine jurisdiction or a full hearing on the merits once jurisdiction exists. If it is the former, and where proof of causation is not possible due to lack of information and proof to a level of scientific certainty must be made, this leads to at least two inequities: first that appellants may have to prove their standing twice (at the preliminary meeting stage and again at the hearing) and second, that in those cases (such as the present) where an Approval has been issued for the first time without an operating history, it cannot be open to individual appellants to argue causation because there can be no injury where a plant has never operated.”<sup>9</sup>

Justice McIntyre concluded by stating:

“To achieve standing under the Act, an appellant is required to demonstrate, on a *prima facie* basis, that he or she is ‘directly affected’ by the approved project, that is, that there is a potential or reasonable probability that he or she will be harmed by the approved project. Of course, at the end of the day, the Board, in its wisdom, may decide that it does not accept the *prima facie* case put forward by the appellant. By definition, *prima facie* cases can be rebutted....”<sup>10</sup>

[57] When the Board assesses the directly affected status of an appellant, the Board looks at how the person uses the area where the project will be located, how the project will affect the environment, and how the effect on the environment will affect the person’s use of the area. The closer these elements are connected (their proximity), the more likely the person is directly affected. The onus is on the appellant to present a *prima facie* case to demonstrate to the Board that there is a reasonable possibility they will be directly affected by the decision of the Director. The effect must be plausible and relevant to the Board’s jurisdiction in order for the Board to consider it sufficient to grant standing.

---

<sup>9</sup> *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraphs 67 to 71, 2 Admin. L.R. (4d) 71 (Alta. Q.B.). See: *Bildson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection*, re: *Smoky River Coal Limited* (19 October 1998), Appeal No. 98-230-D (A.E.A.B.) (“*Bildson*”); *Mizera et al. v. Director, Northeast Boreal and Parkland Regions, Alberta Environmental Protection*, re: *Beaver Regional Waste Management Services Commission* (21 December 1998), Appeal Nos. 98-231-98-234-D (A.E.A.B.) (“*Mizera*”); and *Vetsch v. Alberta (Director of Chemicals Assessment & Management Division)* (1997), 22 C.E.L.R. (N.S.) 230 (Alta. Env. App. Bd.), (*sub nom. Lorraine Vetsch et al. v. Director of Chemicals Assessment and Management, Alberta Environmental Protection*) (28 October 1996), Appeal Nos. 96-015 to 96-017, 96-019 to 96-067 (A.E.A.B.) (“*Vetsch*”).

[58] At this point in the appeal process, the Board does not have all of the evidence and arguments before it. The determination of directly affected is a preliminary matter. As a result, the test for standing cannot be based on whether there is certainty the appellant is directly affected. Without all of the evidence, that cannot be conclusively determined. An appeal before the Board is a quasi-judicial process. The appeals process must adhere to the principles of natural justice and must be fair to all of the participants. The Board considers it appropriate that, in assessing preliminary matters, the standard should be less onerous than those found in a court.

[59] As stated, the effect must be reasonable and possible. It is not sufficient to show an appellant is possibly affected, they must also show the possibility is reasonable. An affect that is too remote, speculative, or is not likely to impact the appellant's interests will not form the basis to find an appellant directly affected. Both the reasonableness and the possibility of the affect must be shown.

[60] The effect on the appellant does not have to be unique in kind or magnitude.<sup>11</sup> However, the effect the Board is looking for needs to be more than an effect on the public at large (it must be personal and individual in nature), and the interest which the appellant is asserting as being affected must be something more than the generalized interest that all Albertans have in protecting the environment.<sup>12</sup> Under EPEA, the Legislature chose to restrict the right of appeal to those who are directly affected by the Director's decision. If the Legislature had intended for any member of the public to be allowed to appeal, it could have used the phrase "any person" in describing who has the right to appeal. It did not; it chose to restrict the right of appeal to a more limited class. The Legislature, in using the more restrictive language, also did not intend for the Board to provide a general right of review for the Director's decision; it intended it be something narrower.

---

<sup>10</sup> *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134 at paragraph 75, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

<sup>11</sup> See: *Bildson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection re: Smoky River Coal Limited* (19 October 1998) Appeal No. 98-230-D (A.E.A.B.).

<sup>12</sup> See: *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1995), 17 C.E.L.R. (N.S.) 246 at paragraphs 34 and 35 (Alta. Env. App. Bd.), (*sub nom. Martha Kostuch v. Director, Air and Water Approvals Division, Alberta Environmental Protection*) (23 August 1995), Appeal No. 94-017 (A.E.A.B.). These passages are cited with approval in *Kostuch v. Alberta (Director, Air and Water Approvals Division, Environmental Protection)* (1997), 21 C.E.L.R. (N.S.) 257 at paragraph 25 (Alta. Q.B.).

**C. Analysis**

[61] The Board notes the Director accepted all of the Statements of Concern from the Appellants as valid. The Director accepted Statements of Concern from those individuals who live within five kilometres of the well. Although the Board is not bound by the decision of the Director in determining directly affected status, the Board considers the five kilometre radius a reasonable starting point. In addition, the HCL Report indicated wells within a five kilometers radius of the licenced well could see a one metre drawdown within 20 years. This supports the use of a minimum five kilometre radius. Since questions were raised regarding the data and parameters used in the analysis, it seems reasonable that a broader radius should be used to determine directly affected in this case.

[62] The information provided to this point, including the Director's record and the submissions, raises questions regarding the accuracy of the data provided by the Licence Holder in his application for the Licence. The questions arise from information provided regarding the heterogeneity of the Paskapoo Formation in the area of the proposed well and the potential impacts of drawdown that may not be the same distance in all directions from the licenced well. There is competing or conflicting evidence provided by the consultants for the Appellants and the Licence Holder. The Board is not in a position to assess the merits of these arguments at this stage of the appeal process.

[63] Without further analysis and discussion of the properties of the aquifer in the area of the proposed well, the Board cannot make an assessment as to the boundaries of the aquifer or the extent of any possible drawdown effect. To be found directly affected for the purposes of proceeding to a hearing, the Appellants must demonstrate there is a reasonable possibility they will be impacted by the proposed activity. They do not have to show it is certain they will be impacted. It is after the substantive hearing, where all of the evidence and arguments are presented, that the Board will determine if the Appellants will actually be impacted and, if impacted, to what extent, and whether the terms and conditions of the Licence adequately address the potential impacts.



[64] The effect being argued must also be reasonable. If no connection can be drawn between the proposed project and the impact being brought forward by the Appellants, then the argument would fail because the reasonableness of the effect is not present. The onus is on the Appellants to demonstrate the alleged effect is reasonable.

[65] The Board recognizes the difficulties that exist when mapping aquifers. However, the Licence Holder acknowledged some, if not all of the Appellants, have wells that are potentially completed in the same aquifer as the proposed well. This raises the possibility the Appellants may be impacted by the Licence. Since it is not known with any degree of certainty at this stage how far the aquifer extends and in what directions, it appears reasonable that there is a possibility the Appellants as far out as five kilometres and possibly farther could be impacted. The farthest Appellant lives approximately six kilometres from the licenced well site. This is still within the area that could potentially be impacted. The Appellants explained they use groundwater for their water supply and to water livestock. If the proposed activity impacts their water supply, they will suffer an adverse effect. Although it is not known at this stage what degree of drawdown would cause an adverse effect on the Appellants, there is a reasonable possibility their use of the water could be negatively impacted.

[66] Therefore, the Board accepts all of the Appellants (Ms. Wilkening, Mr. and Ms. Lapointe, Mr. Blair, Mr. Frey, Ms. Frey, Mr. and Ms. Kos, Mr. Bill and Ms. Shannon Davie, Mr. Edwards, and Mr. Dan and Ms. Colene Davie) are directly affected and their appeals will be heard by the Board.

## **VI. TEMPLATE NOTICE OF APPEAL**

### **A. Submissions**

#### **1. Appellants**

[67] The Appellants stated the use of the Board's Notice of Appeal form should not affect the Appellants' standing.

2. Licence Holder

[68] The Licence Holder noted the majority of the Appellants used the same answers in completing their Notices of Appeal. The Licence Holder expressed concern the majority of the Appellants did not fully understand the appeal and were being misled into signing the Notices of Appeal. The Licence Holder questioned whether the Notices of Appeal were true reflections of the Appellants' intent to appeal. He argued that, if the Appellants had been misled or misrepresented into filing an appeal, then their appeals were based on false information or misrepresentation and are not valid.

[69] The Licence Holder stated the template Notices of Appeal suggest a general concern, not an individualized interest. He argued it would have been the same if the Appellants signed a petition, an action the Board has rejected in the past. The Licence Holder argued that, if the Notice of Appeal does not demonstrate how the Appellant would be individually and directly affected, the appeal is not valid.

[70] The Licence Holder acknowledged the Notices of Appeal filed by Ms. Wilkening, Mr. and Ms. Lapointe, Mr. Blair, Mr. Frey, and Ms. Frey contained somewhat individualized content, but the remaining Notices of Appeal the Board is considering did not explain how each of them are directly affected by the Licence.

3. Director

[71] The Director took no position on the Notices of Appeal filed in template form.

4. Rebuttal

[72] The Appellants argued that, because a group of landowners are concerned with the same issues, it does not mean they did not fully understand the appeal or that they were misled into signing the Notices of Appeal.

[73] The Appellants stated that if some of the Notices of Appeal were similar, it should have no bearing on the standing of that Appellant. Each Appellant agreed to validate and submit a Notice of Appeal by signing their names and filling in their contact information. The

Appellants stated that if any of the Appellants did not want to be involved in the appeal, they could have contacted the Board.

## **B. Analysis**

[74] Section 5(1) of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 (the “Regulation”), stipulates what must be included in a Notice of Appeal.<sup>13</sup> The legislation does not prevent appellants from copying other appellants’ Notices of Appeal.

[75] Four of the Appellants, Mr. and Ms. Kos, Mr. Bill and Ms. Shannon Davie, Mr. Edwards, and Mr. Dan and Ms. Colene Davie, filed Notices of Appeal in template form. Notices of Appeal are intended to demonstrate to the Board how the Director’s decision to issue the Licence will impact the Appellants personally. Although it is feasible that all appellants could be impacted similarly, there may be other issues specific to an appellant that would not be included in the template. If it is not included in the Notice of Appeal, then it cannot be an issue at a hearing, if one was held.

[76] In this case the concerns identified in the Notice of Appeal were relatively general. Although submitting a generic template Notice of Appeal is not the preferred way to file an appeal, in this case, it does not affect the Appellants’ standing because of the similarity of the potential negative impacts among the Appellants. However, it should be noted that in other cases, the use of a generic template as a Notice of Appeal may not be accepted.

---

<sup>13</sup> Section 5(1) of the Regulation provides:

“A notice of appeal submitted pursuant to section 91 of the Act shall contain the following:

- (a) the provision of the Act under which the notice of appeal is submitted;
- (b) the name and title of the person whose decision is the subject of the notice of appeal and the details of the decision being appealed;
- (c) a description of the relief requested by the person appealing;
- (d) the signature of the person appealing, or the person’s lawyer or other agent;
- (e) an address for service for the person appealing.”

[77] The Board accepts the Notices of Appeal filed by Mr. and Ms. Kos, Mr. Bill and Ms. Shannon Davie, Mr. Edwards, and Mr. Dan and Ms. Colene Davie.

## **VII. HEARING ISSUES**

### **A. Submissions**

#### 1. Appellants

[78] The Appellants raised the following issues:

1. effect on the aquifer as a result of the water diversion;
2. the accuracy of the predictions of impacts and drawdowns, including structure of the Paskapoo Formation, variation in pumping rate, transmissivity and storativity rates, and use of the observation well during testing;
3. monitoring system;
4. distribution of monitoring information;
5. adequacy of boundary to survey existing wells and impacts on the wells; and
6. emergency plans to supply water if there is an impact.

#### 2. Licence Holder

[79] The Licence Holder stated the Board can only consider those concerns raised by the directly affected persons. The Licence Holder noted the majority of the Appellants asked the Board to require new legislation that prevents potable water from being used by industry. However, the Licence Holder argued that whether potable water should be used by industry is a decision to be made by the Legislature and is outside the Board's jurisdiction.

[80] The Licence Holder stated issues such as land use, property value, other economic matters, and whether public consultation was sufficient are not proper issues for the Board to consider. The Licence Holder argued the issue of whether one's water may result in economic benefits is irrelevant to whether the Licence should have been issued.

[81] The Licence Holder stated the issue to be determined at the hearing is:

“Are the conditions imposed by the Licence appropriate and adequate with respect to the environmental impacts on the Paskapoo Formation?”

3. Director

[82] The Director submitted the following issues as properly before the Board:

1. Did the Director comply with the *Water Act*, and in particular section 51, and the current applicable policies when considering the application and issuing this Licence?
2. Did the Director properly apply the Alberta Environment Guide to Groundwater Authorization in issuing the Licence?
3. Within the scope of issues 1 and 2, do the terms and conditions of the Licence address the Appellants' concerns?

[83] The Director submitted other issues such as policy issues, legislative issues, and county land use issues are not properly before the Board.

4. Rebuttal

[84] The Appellants asked for the following to be considered at the hearing:

1. whether the sale of potable water is a breach of Alberta Environment and Water policy;
2. precautionary conditions be placed on the Licence to protect surrounding landowners from harm;
3. if notice to potentially adversely affected persons was adequate;
4. adequacy of the data that were before the Director prior to making his decision;
5. adequacy of the testing of the production well;
6. volume of water allowed to be diverted under the Licence; and
7. adequacy of Licence conditions to reflect risk associated with the water withdrawal.

**B. Analysis**

[85] Under section 95 of EPEA, the Board has the authority to set the issues for a hearing.<sup>14</sup> The Board has reviewed and discussed the submissions of the Licence Holder, Director, and Appellants and determined the issues for this hearing.

[86] In order for a concern expressed by an appellant to be an issue at a hearing, the concern must be within the Board's jurisdiction, be specific to the licence being appealed, and have been included in their Notice of Appeal.

[87] The Appellants raised issues that are not proper issues before the Board, including land use, property values, and public consultation. Land use is within the municipality's jurisdiction, not the Board's jurisdiction. Property values are not an environmental issue and there is no remedy the Board can provide with relation to property values. Public consultation is also not within the Board's jurisdiction. The Board notes the notice of the Licence application was published as required under the legislation. The Director is not required to notify, or have the applicant notify, individual landowners of a licence application.

[88] In their Notices of Appeal, the Appellants expressed concern regarding the policy of allowing potable water to be used in the oil and gas industry. The Board does not have the jurisdiction to change legislation or Alberta Environment and Water policy. The Board can review the Licence and determine if the Director complied with existing policies. However, there are no remedies available by appearing before the Board if the Appellants' intent is to have the legislation or policies changed. There are other forums available to promote and create legislative reform.

[89] The Appellants referred to the economic impacts resulting from the issuance of the Licence. The economic benefits or liabilities of the proposed operation are the Licence Holder's concern. It does not factor into the Director's decision or the Board's

---

<sup>14</sup> Section 95 of EPEA states:

“(2) Prior to conducting a hearing of an appeal, the Board may, in accordance with the regulations, determine which matters included in notices of appeal properly before it will be included in the hearing of the appeal....

(4) “Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing.”

recommendations. It is not within the Board's jurisdiction to conduct a benefit-cost analysis of the project.

[90] In reviewing the Notices of Appeal, submissions, and Licence, the Board considers the issues regarding monitoring, the accuracy of the data and modeling provided in the Licence application, emergency response plans, and volume of water allowed to be diverted, are within the Board's jurisdiction and are relevant to the Licence.

[91] The Appellants raised concerns regarding the data provided by the Licence Holder when he submitted the Licence application. They noted: (1) some data were not provided; (2) testing of the proposed well was not conducted as recommended in Alberta Environment and Water guidelines; (3) modeling did not take into consideration heterogeneity of the Paskapoo Formation; and (4) modeling did not use conservative values to determine potential impacts.

[92] In order to ensure the terms and conditions of the Licence adequately protect the environment and those persons living the area, the data provided in the Licence application must accurately portray the conditions that exist in the area. The Director relies on the information provided in the application and his staff's knowledge to determine if the Licence should be granted. The Appellants raised concerns about the information provided and missing data. They also raised concern regarding the modeling conducted and whether the parameters used were as conservative as claimed. At this point in the appeal process, the Board does not have all of the evidence before it; that occurs at the substantive hearing. Based on the information provided at this time, the Board considers the matters of the accuracy of the data provided and modeling conducted as relevant to the decision to issue the Licence and are matters the Board can address at a hearing.

[93] The Appellants also raised concern regarding the monitoring and reporting requirements under the Licence. These are relevant to the Licence and within the Board's jurisdiction to consider.

[94] Therefore, the Board has determined the issues that will be heard at the hearing will be:

1. Did the Director comply with applicable legislation, guidelines, and policies when considering the Licence application and issuing the Licence?
2. Do the terms and conditions of the Licence adequately protect the environment and address the Appellants' concerns? Included in this issue are the concerns regarding the volume of water allowed to be withdrawn under the Licence, complaint mechanisms, and remedies to mitigate adverse effects.
3. Was the information relied on by the Director in making his decision to issue the Licence sufficient and accurate?

[95] Pursuant to section 95(4) of EPEA, the parties to the hearing may not make representations on other matters.<sup>15</sup> Submissions on other matters will not be considered by the Board.

## **VIII. CONCLUSION**

[96] The Board finds the appeals of Ms. Joanne Wilkening, Mr. Marcel and Ms. Colleen Lapointe, Mr. Russell Blair, Mr. Arthur Frey, Ms. Elizabeth Frey, Mr. Danny and Ms. Janice Kos, Mr. Bill and Ms. Shannon Davie, Mr. Gary Edwards, and Mr. Dan and Ms. Colene Davie are properly before the Board. They filed valid Statements of Concern and filed Notices of Appeal within the time frame stipulated by the Board. The Appellants are directly affected since there is a reasonable possibility the groundwater they use could be impacted by the issuance of the Licence. The remaining appeals are dismissed for failing to file valid Statements of Concern with Alberta Environment and Water.

[97] The issues that will be heard at the hearing are:

1. Did the Director comply with applicable legislation, guidelines, and policies when considering the Licence application and issuing the Licence?
2. Do the terms and conditions of the Licence adequately protect the environment and address the Appellants' concerns? Included in this issue are the concerns

---

<sup>15</sup> Section 95(4) of EPEA provides: "Where the Board determines that a matter will not be included in the hearing of an appeal, no representations may be made on that matter at the hearing."



regarding the volume of water allowed to be withdrawn under the Licence, complaint mechanisms, and remedies to mitigate adverse effects.

3. Was the information relied on by the Director in making his decision to issue the Licence sufficient and accurate?

Dated on May 22, 2012, at Edmonton, Alberta.

*“original signed by”*

---

Alex G. MacWilliam  
Panel Chair

*“original signed by”*

---

Jim Barlishen  
Board Member

*“original signed by”*

---

Gordon Thompson  
Board Member

## Appendix A

Joanne Wilkening (11-060)  
Marcel and Colleen Lapointe (11-064)  
Russell Blair (11-065)  
Arthur Frey (11-066)  
Elizabeth Frey (11-067)  
Debbie Kluk (11-072)  
Ronald Kluk (11-073)  
Rene Lemay (11-074)  
Aurora Murray (11-077)  
Ryan Hamilton (11-078)  
Betty Hamilton (11-079)  
Randall Hamilton (11-080)  
Ken Eberle (11-081)  
Sandra Wright (11-082)  
Lloyd Wright (11-083)  
Kevin Wright (11-084)  
James Harvey (11-085)  
Trisha Atkinson (11-086)  
Lyle Gamblin (11-087)  
Helmut Amelang (11-088)  
Beatrice Berezowski (11-089)  
John Berezowski (11-090)  
Marc Poissant (11-091)  
Lara Goertz (11-092)  
Patrick David Goertz (11-093)  
Robert Horne (11-094)  
Karl Graetz (11-095)  
Shauna Graetz (11-096)  
Leonard and Carol Ulmer (11-113)  
Nathan Wright (11-114)  
Michelle Dionne (11-115)  
Sheri Reich (11-116)  
Barney Reich (11-117)  
Bruce O'Brien & Lorraine Beamish (11-118)  
Danny and Janice Kos (11-119)  
Dayne and Danelle Majeau (11-120)  
Merlin G. Seely (11-121)  
Jerrod Seely (11-122)  
Karin Ellen Ness (11-123)  
Barry Ness (11-124)  
Shannon and Bill Davie (11-125)  
Melina and John Cameron (11-126)  
Pearl Graham-Smith (11-127)  
Danny Steven Smith (11-128)  
Sharon Darragh (11-129)  
Pat Darragh (11-130)  
James Strickland (11-131)  
Gary Edwards (11-132)  
George Cook (11-133)  
Keith Carpenter (11-134)  
Teresa Shaw (11-135)  
Brady Hamilton (11-136)  
Debra Herold (11-137)  
Keith Stec (11-138)  
Shann Vick (11-139)  
Donna Johnson (11-140)  
Wesley R. Davidson (11-141)  
John Luchyk (11-142)  
Dwight Dancey (11-143)  
Denise Godin (11-144)  
Milo Meston (11-145)  
Denis Poissant (11-146)  
Petra Smithinsky (11-151)  
David Smithinsky (11-152)  
Jessie Dryden (11-153)  
Garett Swap (11-154)  
Larry Henderson (11-155)  
Everett Ness (11-166)  
Dan and Colene Davie (11-167)  
Tom Cameron (11-168)  
Tina and Len Hein (11-174)