
ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – June 27, 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 an appeal filed by the Stoney Tribal Administration with respect to the decision of the Director, Southern Region, Operations Division, Alberta Environment and Sustainable Resource Development, to cancel *Water Act* Licence No. 08316 held by the Stoney Nation.

Cite as: *Stoney Tribal Administration v. Director, Southern Region, Operations Division, Alberta Environment and Sustainable Resource Development* (27 June 2012), Appeal No. 12-001-R (A.E.A.B).

MEDIATION MEETING BEFORE:

Dr. Alan Kennedy, Board Member.

APPEARANCES:

Appellant:

Mr. Ian Getty, Stoney Tribal Administration, represented by Mr. Douglas Rae, Rae and Company.

Director:

Mr. Brock Rush, Director, Southern Region, Operations Division, Alberta Environment and Sustainable Resource Development, and Mr. Randy Poon, Alberta Environment and Sustainable Resource Development, represented by Mr. William McDonald, Alberta Justice and Solicitor General.

Board Staff:

Mr. Gilbert Van Nes, General Counsel and Settlement Officer.

EXECUTIVE SUMMARY

Alberta Environment and Sustainable Resource Development cancelled a water licence held by the Stoney Nation as no diversion of water had been reported since the closure of the Fort Chiniquay Petro Canada service station that was located on Highway 1 near Kananaskis, Alberta.

The Stoney Tribal Administration filed an appeal of the cancellation of the water licence.

The Board held a mediation meeting on June 26, 2012, following which a resolution was reached. The Board recommends that the Minister of Environment and Sustainable Resource Development accept the resolution reversing the Director's decision to cancel the licence and reinstate the licence in the name of Chiniki Development Corporation.

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I. INTRODUCTION

[1] This is the Environmental Appeals Board's Report and Recommendations to the Minister of Environment and Sustainable Resource Development regarding the appeal filed by the Stoney Tribal Administration.

[2] Alberta Environment and Sustainable Resource Development cancelled a water licence held by the Stoney Nation because no diversion had taken place for more than 3 years. The Stoney Tribal Administration appealed the decision.

[3] The Board held a mediation meeting on June 26 2012, following which a resolution was reached by the participants.

II. BACKGROUND

[4] On March 16, 2012, the Director, Southern Region, Operations Division, Alberta Environment and Sustainable Resource Development (the "Director"), cancelled Licence No. 087316 (the "Licence") under the *Water Act*, R.S.A. 2000, c. W-3, held by the Stoney Nation as no diversion had taken place for more than 3 years. The purpose of the Licence was to supply water to the Fort Chiniquay Petro-Canada service station that was located on Highway 1 east of Kananaskis River and Highway 1X overpass, however, it has since closed.

[5] On April 20, 2012, the Environmental Appeals Board (the "Board") received a Notice of Appeal from the Stoney Tribal Administration (the "Appellant") appealing the cancellation of the Licence stating that the appropriate interested persons were not notified of the decision to cancel the Licence and further requested the Licence be transferred to the name of Chiniki Development Corporation.

[6] On April 23, 2012, the Board wrote to the Appellant and the Director (the "Participants") 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 Participants provide available dates for a mediation meeting, preliminary motions hearing, or hearing.

[7] On May 11, 2012, the Board received a copy of the Record from the Director, and on May 17, 2012 forwarded a copy to the Appellant.

[8] On May 24, 2012, in consultation with the Participants, the Board scheduled the mediation meeting for June 26, 2012, in Calgary, Alberta.

III. MEDIATION MEETING

[9] Pursuant to section 11 of the Environmental Appeal Board Regulations, Alta Reg.114/93, the Board conducted a mediation meeting in Calgary, Alberta, on June 26, 2012, with Dr. Alan Kennedy, Board Member, as the presiding mediator (the “Mediator”).

[10] In conducting the mediation meeting, the Mediator reviewed the appeal and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants’ Agreement to Mediate. All those in attendance signed the Participants’ Agreement to Mediate.

[11] Following productive and detailed discussions, a resolution evolved at the mediation meeting and is attached as page 4 of this Report and Recommendations.

IV. RECOMMENDATIONS

[12] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, the Board recommends that the Minister of Environment and Sustainable Resource Development reverse the Director’s March 16, 2012 decision and reinstate Licence No. 08316 in accordance with the resolution reached by the Participants.

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

- Mr. L. Douglas Rae, Rae and Company;
- Mr. William McDonald, Alberta Justice and Solicitor General, on behalf of Mr. Brock Rush, Director, Southern Region, Operations Division, Alberta Environment and Sustainable Resource Development.

Dated on June 27, 2012, at Edmonton, Alberta.

“original signed by” _____

Delmar W. Perras

Chair

V. RESOLUTION

RESOLUTION ENVIRONMENTAL APPEALS BOARD EAB File No. 12-001

In the matter of the mediation of the appeal in relation to the March 16, 2012 decision of the Director, Alberta Environment and Sustainable Resource Development, to cancel under the *Water Act*, R.S.A. 2000, c. W-3, Licence No. 08316, which was issued on December 12, 1978, for the diversion and use of water for lands located at NW 34-24-08-W5M (the Licence).

Whereas there was miscommunication between the Director and the Stoney Tribal Administration regarding notification of the cancellation of the licence.

Where as the Stoney Tribal Administration has advised the Director that they have a use for the water and will provide the Director with a clear plan for the use of the water within a reasonable time.

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

1. The Licence shall be reinstated in the name of the Chiniki Development Corporation (Corporation).
2. The proper contact information for the Corporation is Shirley Ketterer, who is an administrative officer of the Corporation. (Phone: 403-881-3505; E-mail: sketterer@chiniki.com; Address: c/o Rae and Company, #900 1000 – 5 Ave SW, Calgary, AB T2P 4V1.)
3. The Director shall provide copies of all correspondence to the Chiniki Chief and Council, c/o Heather Carnahan, Stoney Tribal Administrator. (Phone: 403-881-2810; Email: heatherc@stoney-nation.com; Address: Box 40, Morley, AB T0L 1N0.)
4. THAT in consideration of the foregoing, the Appellant, the Stoney Tribal Administration, withdraws their Notice of Appeal.

RESOLUTION AGREED TO BY:

“original signed by”

Ian Getty, Stoney Tribal Administration
Represented by L. Douglas Rae
Rae and Company
Dated: June 26, 2012

“original signed by”

Brock Rush, Director, Southern Region
Operations Division, Alberta Environment and
Sustainable Resource Development
Represented by William McDonald, Alberta Justice

Dated: June 26, 2012



ALBERTA
ENVIRONMENT AND SUSTAINABLE RESOURCE DEVELOPMENT

Office of the Minister

**Ministerial Order
20/2012**

Environmental Protection and Enhancement Act

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

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

**Order Respecting Environmental Appeals Board
Appeal No. 12-001**

I, Diana McQueen, Minister of Environment and Sustainable Resource Development, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 12-001.

Dated at the City of Edmonton, in the Province of Alberta, this 7th day of August, 2012.

“original signed by”

Diana McQueen
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No. 12-001

With respect to the decision of the Director, Southern Region, Operations Division, Alberta Environment and Sustainable Resource Development (the “Director”) to cancel Licence No. 08316 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, held by the Stoney Nation, I, Diana McQueen, Minister of Environment and Sustainable Resource Development, order that:

1. the decision of the Director to cancel the Licence is reversed; and
2. the Licence is reinstated and issued to the Chiniki Development Corporation.