

2012 ABEAB 27

Appeal Nos. 11-060, 064-067, 072-074, 077-96, 113-146, 151-155, 166-168, and 174

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 Luchy, 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, **Operator** – Matt Schultz, **Location** – Drayton Valley

On August 30, 2011, Alberta Environment and Sustainable Resource Development (AESRD) issued *Water Act* Licence No. 00285465-00-00 to Matt Schultz for the diversion of up to 70,000 cubic metres of water annually from an aquifer accessed in 6-23-48-8-W5M for commercial purposes (selling and hauling heated water) in Drayton Valley.

The Board received 71 Notices of Appeal objecting to the Licence. The Alberta Water Watch Association, who represented 69 of the appellants in this application, requested a stay of the Licence. Even though there were serious issues to be heard at a hearing, if one was held, the appellants did not demonstrate they would suffer irreparable harm during the time it would take to hear the appeals. Neither the appellants nor Mr. Schultz would suffer a greater harm if the stay was denied or granted. Although the number of appeals signified the concerns of the residents living in the area, the appellants did not demonstrate the public interest warranted a stay. The Board denied the stay request. (See: Stay Decision: Wilkening et al. v. Director, Central Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: Matt Schultz (27 August 2012), Appeal Nos. 11-060, 064-067, 072-074, 077-096, 113-146, 151-155, 166-168, and 174-ID2 (A.E.A.B.)).

AESRD and Mr. Schultz challenged the validity of the appeals. The Board received submissions from all the participants on whether the appellants were directly affected, whether they filed statements of concern with AESRD (a prerequisite to filing an appeal), and whether the Notices of Appeal were filed on time.

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 2 filed within the time set by the Board to receive additional information from signatories to the petition filed with the Board. The remaining 2 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 2 appellants.

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. If the appeals proceeded to a hearing, the issues to be dealt with were: 1. Did AESRD 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 was 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 AESRD in making the decision to issue the Licence sufficient and accurate?

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. (See: 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.); and Erratum: Wilkening et al. v. Director, Central Region, Operations Division, Alberta Environment and Water, re: Matt Schultz (08 June 2012), Appeal Nos. 11-060, 064-067, 072-074, 077-096, 113-146, 151-155, 166-168, and 174-E (A.E.A.B.))

On July 24, 2012 a mediation meeting was held in Drayton Valley involving those persons with valid appeals, AESRD and Mr. Schultz. As a result of a resolution reached at the mediation, 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 were withdrawn, and the Board closed its file.