
ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – October 18, 2012

IN THE MATTER OF sections 91, 92, 95, and 99 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 Walter Hohloch with respect to *Water Act* Licence Amendment No. 00071066-00-01 issued to the Eastern Irrigation District by the Director, Southern Region, Environmental Management, Alberta Environment and Sustainable Resource Development.

Cite as: *Hohloch v. Director, Southern Region, Environmental Management, Alberta Environment and Sustainable Resource Development, re: Eastern Irrigation District* (18 October 2012), Appeal No. 10-043-R (A.E.A.B.).

BEFORE:

Justice Delmar W. Perras (ret.), Chair;
Mr. Jim Barlishen, Board Member; and
Mr. Eric O. McAvity, Q.C., Board Member.

BOARD STAFF:

Ms. Denise Black, Board Secretary; and Ms.
Marian Fluker, Associate Counsel.

SUBMISSIONS BY:

Appellant: Mr. Walter Hohloch, represented by Mr. Barry
Robinson, Ecojustice.

Director: Mr. Kevin Wilkinson, Director, Southern
Region, Environmental Management, Alberta
Environment and Sustainable Resource
Development, represented by Ms. Charlene
Graham and Ms. Alison Altmiks, Alberta
Justice and Solicitor General.

Licence Holder: Eastern Irrigation District, represented by Mr.
C. Richard Jones and Mr. Wilson McCutchan,
Vipond Jones LLP.

WITNESSES:

Appellant: Ms. Cheryl Bradley; and Mr. Heinrich Unger.

Director: Mr. Dave McGee, Senior Water Policy and
Implementation Manager, Alberta
Environment and Sustainable Resource
Development.

Licence Holder: Mr. Earl Wilson, General Manager, Eastern
Irrigation District; and Mr. Len Ring.

EXECUTIVE SUMMARY

Alberta Environment and Sustainable Resource Development issued a Licence Amendment to the Eastern Irrigation District (EID) authorizing the provision of water for municipal, agricultural, commercial, industrial, habitat enhancement, and recreational purposes.

The Board received a Notice of Appeal from Mr. Walter Hohloch. After finding Mr. Hohloch directly affected, the Board set two issues for the hearing:

1. Did the Director, in issuing the Licence Amendment, act in accordance with the *Water Act* and the applicable Alberta Environment and Sustainable Resource Development policies, including the South Saskatchewan River Basin Water Management Plan and the Water Licence Change of Purpose: Administrative Licencing Criteria?
2. What effect will the Licence Amendment have on Mr. Hohloch's water supply for his cattle?

The second issue was resolved through a mediation meeting held on May 10, 2012. The Board held a hearing on September 18, 2012, to hear submissions on the first issue only.

The appellant argued the Director erred in issuing the Licence Amendment on three basic grounds: (1) the Director could not have acted in accordance with the legislation and policies given the information that was in front of the Director when the decision was made; (2) the Director erred in determining that appurtenance did not change; and (3) the decision undermined the South Saskatchewan River Basin Water Management Plan and the *Bow, Oldman and South Saskatchewan River Basin Water Allocation Order*.

The Board found there was adequate information before the Director to ensure the applicable legislation and policies were followed. There was no change in the rate, timing, or volume of water withdrawn from the Bow River. No other user would be adversely impacted by the Licence Amendment.

The Board found the appurtenance did not change since the appurtenance was to the EID undertakings, not the lands.

The South Saskatchewan River Basin Water Management Plan closed the river basin to new licences for surface water. The Licence Amendment does not create a new licence with a new priority number. The only thing changed from the original licence was the purpose. The water

that is to be used for non-irrigation purposes is water that was conserved by the EID through improved infrastructure and irrigation methods.

After reviewing and assessing the evidence and arguments, the Board recommended the Minister of Environment and Sustainable Resource Development confirm the Licence Amendment as issued. The Board found the Licence Amendment was issued in accordance with current applicable legislation and policies.

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I. INTRODUCTION

[1] Under the *Water Act*, R.S.A. 2000, c. W-3, an application can be made to amend an existing water licence. While the *Water Act* does not list “a change in purpose of use” as possible reason for an amendment, sometime prior to 2009, Alberta Environment and Sustainable Resource Development (“AESRD”)¹ decided, based on a review provided by their legal services, that a change in purpose fell within the authority of the Director under section 54(1)(b) of the *Water Act* within the “but not limited to” ambit. AESRD issued an amendment to a licence held by the Eastern Irrigation District for a change in purpose. The amendment allowed the Eastern Irrigation District to supply 5,000 acre-feet of water for non-irrigation purposes, including municipal, agricultural, commercial, industrial, habitat, and recreational purposes. The appellant argued the decision to amend the licence contravened the *Water Act* and other policies. The Environmental Appeals Board (the “Board”) held a hearing to determine the issue: Did the Director, in issuing the Licence Amendment, act in accordance with the *Water Act* and the applicable Alberta Environment and Sustainable Resource Development policies, including the South Saskatchewan River Basin Water Management Plan and the Water Licence Change of Purpose: Administrative Licencing Criteria?

[2] The appellant argued the AESRD erred in issuing the Licence Amendment on three basic grounds: (1) AESRD could not have acted in accordance with the legislation and policies given the information that was in front of the Director when the decision was made; (2) AESRD erred in determining that appurtenance did not change; and (3) the decision undermined the South Saskatchewan River Basin Water Management Plan and the *Bow, Oldman and South Saskatchewan River Basin Water Allocation Order*.

[3] The Board found there was adequate information before the Director to ensure the applicable legislation and policies were followed. There was no change in the rate, timing, or volume of water withdrawn from the Bow River. No other user would be adversely impacted by the Licence Amendment.

¹ At the time the Approval was issued, the Department was named Alberta Environment. However, as of

[4] The Board found the appurtenance did not change since the appurtenance was to the Eastern Irrigation District undertakings, not the lands.

[5] The South Saskatchewan River Basin Water Management Plan closed the river basin to new licences for surface water. The Licence Amendment does not create a new licence with a new priority number. The only thing changed from the original licence was the purpose. The water that is to be used for non-irrigation purposes is water that was conserved by the Eastern Irrigation District through improved infrastructure and irrigation methods.

[6] Under section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), the Board provides the Minister of Environment and Sustainable Resource Development (the “Minister”) with a report and recommendations on whether the licence amendment should be confirmed, reversed, or varied. This is the Board’s Report and Recommendations.

II. BACKGROUND

[7] On November 18, 2010, the Director, Southern Region, Environmental Management, Alberta Environment and Sustainable Resource Development (the “Director”), issued Licence Amendment No. 00071066-00-01 (the “Licence Amendment”) under the *Water Act* to the Eastern Irrigation District (the “Licence Holder” or “EID”) authorizing the provision of water for municipal, agricultural, commercial, industrial, habitat enhancement, and recreational purposes. The Licence Amendment amends the original licence issued to the EID which was for the limited purposes of irrigation and agricultural (stockwatering).

[8] On December 17, 2010, the Board received a Notice of Appeal from Mr. Walter Hohloch (the “Appellant”) appealing the Licence Amendment. The Board also received appeals from the Alberta Wilderness Association, Trout Unlimited Canada, Water Matters Society of Alberta (“Water Matters”), Ms. Cheryl Bradley, and Mr. Lorne Fitch. These appeals, with the exception of the appeal filed by Mr. Hohloch, were dismissed.²

May 8, 2012, the Department was renamed Alberta Environment and Sustainable Resource Development.

² See: *Alberta Wilderness Association et al. v. Director, Southern Region, Environmental Management*,

[9] On December 21, 2010, the Board notified the Director and Licence Holder of the appeals and requested the Director provide the Board with a copy of all documents in his possession relating to the application and the issuance of the Licence Amendment (the “Record”). The Board also requested the Appellant, Director, and Licence Holder (collectively, the “Parties”) provide available dates for a mediation meeting, preliminary motions hearing, or hearing.

[10] The Record was received on January 26, 2011, and was provided to the other Parties on February 11, 2011.

[11] On January 26, 2011, the Director raised preliminary motions to dismiss the appeals. The Board responded on February 2, 2011, indicating the preliminary motions hearing would be through written submissions. On February 11, 2011, the Board asked the participants to provide written submissions on a number of preliminary matters.³ On February 17, 2011, the

Alberta Environment, re: Eastern Irrigation District (30 August 2011), Appeal No. 10-038-043-ID1 (A.E.A.B.).

³ The matters to be determined were:

1. Is the Alberta Wilderness Association directly affected by the Licence Amendment?
2. Is the Water Matters Society of Alberta directly affected by the Licence Amendment?
3. Is Ms. Cheryl Bradley directly affected by the Licence Amendment?
4. Is Mr. Lorne Fitch directly affected by the Licence Amendment?
5.
 - (a) Is Trout Unlimited Canada directly affected by the Licence Amendment?
 - (b) What is the nature of the property interest identified in the Notice of Appeal of Trout Unlimited Canada and how does this impact its directly affected status?
6.
 - (a) Is Mr. Walter Hohloch directly affected by the Licence Amendment?
 - (b) Will Mr. Hohloch continue to get his water for stock watering purposes in a manner that is unaffected by the Licence Amendment and how does this impact his directly affected status?
 - (c) Are Mr. Hohloch’s concerns about how the Licence Holder will deliver water to its customer unrelated to the Licence Amendment and how does this impact his directly affected status?
 - (d) Is the Notice of Appeal filed by Mr. Hohloch a “duplicate” of the Notices of Appeal filed by the other Appellants such that that is not his Notice of Appeal and how does this impact (i) his standing and (ii) the validity of his Notice of Appeal?
 - (e) Do the issues raised in Mr. Hohloch’s Notice of Appeal not match his Statement of Concern and how does this impact (i) his standing and (ii) the validity of his Notice of Appeal?
7.
 - (a) Does the Board have any jurisdiction under the *Irrigation Districts Act*?
 - (b) Are any of the issues raised in the Notices of Appeal solely under the jurisdiction of the *Irrigation Districts Act* and how does this impact the validity of the Notices of Appeal?

Appellant requested an extension to provide his submission. The Board granted the request on February 18, 2011. The Board received written submissions from the Parties between March 8, 2011, and April 19, 2011.

[12] On June 1, 2011, the Board notified the Parties that the Appellant was directly affected. In its decision on the preliminary matters,⁴ the Board stated the issues for the Hearing were:

1. Did the Director, in issuing the Licence Amendment, act in accordance with the *Water Act* and the applicable Alberta Environment [and Sustainable Resource Development] policies, including the South Saskatchewan River Basin Water Management Plan and the Water Licence Change of Purpose: Administrative Licencing Criteria?
2. What effect will the Licence Amendment have on Mr. Hohloch's water supply for his cattle?

[13] On June 9, 2011, the Director requested a mediation meeting be held to resolve the issues. The Appellant indicated he wished to proceed to a hearing.

[14] After canvassing the Parties for available dates, the Board notified the Parties on January 20, 2012, that the Hearing would be held on April 24, 2012. In response to the Appellant's request for additional time for closing comments, the Board rescheduled the Hearing to April 23 and 24, 2012.

[15] The Notice of Hearing was published in the Brooks and County Chronicle, Brooks Bulletin, Brooks Weekend Regional, and Bassano Times, and a news release was distributed by the Public Affairs Bureau to media throughout the Province and placed on the Alberta Government and Board websites. The Notice of Hearing was also provided to the City of Brooks, County of Newell, and Town of Bassano to place on their public bulletin boards. In

(c) Are there any other 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?

8. If this matter proceeds to a hearing, what issues included in the Notices of Appeal should be considered by the Board?

⁴ See: *Alberta Wilderness Association et al. v. Director, Southern Region, Environmental Management, Alberta Environment*, re: *Eastern Irrigation District* (30 August 2011), Appeal No. 10-038-043-ID1 (A.E.A.B.).

response to the Notice of Hearing, the Board received intervenor requests from the Water Matters and the Western Irrigation District. The Board denied the intervenor requests.⁵

[16] On March 28, 2012, counsel for the Licence Holder requested the Hearing be re-scheduled. The Appellant and Director were in agreement with the request. On March 29, 2012, the Board postponed the Hearing.

[17] On April 5, 2012, the Director recommended a meeting of the Parties, with or without counsel. He also recommended the Hearing be held through written submissions. The Licence Holder agreed to hold the Hearing through written submissions. The Appellant asked the issues be heard at an oral hearing.

[18] No common dates were available in May and June 2012, and the Director notified the Board that no dates were available in July and August to participate in the Hearing.

[19] Based on the available dates between the Parties, the Board notified the Parties on April 23, 2012, that the Hearing was scheduled for September 17 and 18, 2012.

[20] On April 25, 2012, the Board wrote to the Parties suggesting a mediation meeting might be useful in addressing the Appellant's concerns. The Parties agreed and a mediation meeting was held on May 10, 2012, in Calgary. As a result of the mediation, the second issue, whether the Appellant's water supply would be affected by the Licence Amendment, was resolved. The Board proceeded to schedule the Hearing to hear submissions on the first issue only.

[21] On May 11, 2012, the Director requested the remaining issue be determined through written submissions only, and the Licence Holder agreed with this request. The Appellant requested an oral hearing.

[22] On June 25, 2012, the Board confirmed the oral Hearing would be held on September 18, 2012.

⁵ See: Intervenor Decision: *Hohloch v. Director, Southern Region, Environmental Management, Alberta Environment and Water*, re: *Eastern Irrigation District* (29 March 2012), Appeal No. 10-043-ID2 (A.E.A.B.).

[23] The Board received submissions from the Parties between July 17, 2012, and August 28, 2012.

[24] On August 21, 2012, the Appellant wrote the Board expressing concern that the Licence Holder's submission included evidence that was not properly before the Board, specifically the issue of non-compliance with the *Irrigation Districts Act*, R.S.A. 2000, c. I-11, and the contracts the Licence Holder entered into pursuant to the *Irrigation Districts Act*. He brought forward a motion that the sections of the Licence Holder's submission be excluded and not considered by the Board and, in the alternative, that if the referenced paragraphs are not excluded, that he be given an opportunity to provide evidence and argument with respect to these matters. The Board asked the Director and Licence Holder to respond to the Appellant's motion. Responses were received on August 23 and 24, 2012, from the Director and Licence Holder, respectively.

[25] On August 27, 2012, the Board denied the Appellant's motion, indicating it was not prepared to assess the admissibility of the evidence prior to the Hearing, but would assess the evidence following the Hearing taking into account all of the evidence and submissions of the Parties. The Board reiterated it does not have jurisdiction under the *Irrigation Districts Act*. It confirmed the following matters would not be considered at the Hearing:

- whether or not the EID is in compliance with the *Irrigation Districts Act*;
- contracts entered into by the EID pursuant to the *Irrigation Districts Act*;
- the effect of the EID's water licence and the amendment on the Appellant's water supply (as this matter has been addressed by the resolution reached at the mediation);
- whether or not the EID has corporate capacity under the *Irrigation Districts Act*; and
- whether or not the EID's water licence and the amendment are contrary to the *Irrigation Districts Act*.

[26] The Hearing was held on September 18, 2012, in Calgary.

III. SUBMISSIONS

A. Appellant

[27] The Appellant requested the Board recommend the Licence Amendment be reversed.

[28] The Appellant submitted:

1. The intent of the approved South Saskatchewan River Basin Water Management Plan (“SSRB Plan”) and the *Bow, Oldman and South Saskatchewan River Basin Water Allocation Order* (“Water Allocation Order”), Alta. Reg. 171/2007, is to close the Bow River basin to new water users except by way of a water licence transfer.
2. The Director erred in issuing the Licence Amendment knowing the intent of the SSRB Plan is to have the Bow River basin closed to allocations of water to new users and knowing the application avoided procedural requirements of a water licence transfer application.
3. The Director erred in approving the Licence Amendment when there was a change in the appurtenance of the water allocation, contrary to the Water Licence Change of Purpose: Administrative Licencing Criteria (the “Licencing Criteria”).
4. The application failed to identify how the water allocation would be used, the specifics of the quantity of water required for each amended purpose, any new works required to deliver the water, and any changes to return flow, all of which are required under the Licencing Criteria.
5. The Director erred in determining whether the Licence Holder was in compliance with the existing Licence prior to the amendment.
6. The Director could not have reasonably determined there will be no adverse effect on the rights of a household user, other licensees or traditional agricultural users, and no adverse effect on the ability to conserve or manage a water body as

required under section 54(1)(b) of the *Water Act*,⁶ given the application failed to identify specific use, location of use, quantity, timing, return flow, water quality, or point of return flow for the water to be allocated to existing and future non-irrigation purposes.

7. The Director abdicated his obligation pursuant to the *Water Act* to determine the wise allocation and use of water.

[29] The Appellant explained he is a rancher and owns several sections of grazing land within the EID boundaries. He holds five Rural Water Use Purposes Agreements with the Licence Holder for livestock watering.

[30] The Appellant explained one of the issues addressed in the SSRB Plan process was water allocation transfers. According to the Appellant, AESRD indicated to the advisory committees that were involved in the review process leading up to the creation and implementation of the SSRB Plan that non-irrigation users within the EID would be required to obtain their own water licences. The Appellant explained some members of the advisory

⁶ Section 54(1)(b) of the *Water Act* states:

“If an amendment of a licence does not increase the volume of the diversion of water specified in the licence, the Director may, subject to the regulations and subsection (3), amend a licence

- (b) on application by the licensee, including but not limited to an amendment
 - (i) to increase or decrease the rate of diversion of water specified in the licence,
 - (ii) to add a rate of diversion of water if none is specified in the licence,
 - (iii) to add terms and conditions to the licence,
 - (iv) to change the timing of the diversion of water specified in the licence,
 - (v) to change the point of use or add another point of use of the diverted water if the use is located on the same land specified in the licence or plan attached to the licence, and
 - (vi) to move the point of diversion of water or add another point of diversion of water if the diversion of water at the new point of diversion of water is from the same source of water and the new point of diversion of water is located on the same land that is specified in the licence or plan attached to the licence,

if the Director is of the opinion that there is no or will be no adverse effect on the rights of a household user, other licensee or traditional agriculture user and that the proposed change will not adversely affect the ability to conserve or manage a water body.”

committee were concerned about the inclusion of water allocation transfers into the SSRB Plan because of the commodification of water, the lack of transparency in the transfer process, and the 10 percent holdback for water conservation objective purposes was at the Director's discretion. These members of the advisory committee agreed to the transfer process because of the possibility of the holdback and that the Director would be required to consider an identified list of factors relating to the potential impact to other users and the aquatic environment when approving a transfer.

[31] The Appellant stated the first phase of the SSRB Plan, as approved, recommended no further applications for new water licences be accepted in the St. Mary, Belly, and Waterton Rivers, and any new demands or development in the closed basins would require water allocation transfers.

[32] The Appellant explained that, during the development of the second phase of the SSRB Plan, the possibility of irrigation districts amending the purpose of their licences to supply water to new users in the closed basins was not raised. He stated this would be contrary to the role of water allocation transfers in a closed basin, particularly the 10 percent holdback for water conservation objective purposes. As a result of the recommendations in the second phase of the SSRB Plan, the Bow, Oldman, and South Saskatchewan River sub-basins were closed to new water allocations, reserving all water to the Director and permitting the Director to issue new licences only for certain limited, specified purposes.

[33] The Appellant argued that, based on the definitions of "allocation" and "diversion of water" in the *Water Act*, the Bow River basin was closed to "...any new impoundment, storage, consumption, taking or removal [of] water for any purpose by any person who did not hold a licence prior to August 1, 2007, except by way of a transfer of a water allocation."⁷

[34] The Appellant also noted the SSRB Plan does not mention the use of licence amendments to supply water to a new person, organization, or enterprise within the Bow River basin. He stated the Alberta Water for Life Strategy confirms the intent of the government that

⁷ Appellant's submission, dated July 13, 2012, at paragraph 40.

new enterprises within the closed basins should obtain a water allocation by way of a licence transfer. The Appellant stated that an irrigation district could supply water to a non-irrigation user who did not hold a water licence but only in accordance with the limitations in the *Irrigation Districts Act*.

[35] The Appellant argued the intent of the SSRB Plan and the Water Allocation Order is that: (1) the Bow River basin be closed to new water allocations; (2) new users are to acquire water allocations by way of a water transfer; and (3) the Director is to review and apply conditions to the transfers consistent with the Director's obligation to protect other water users and the aquatic environment in the public interest. He argued it was not the intent of the SSRB Plan to have the Licence Holder become the water supplier to new municipal, commercial, industrial, and agricultural operations by way of a licence amendment instead of a water licence transfer. The Appellant argued that allowing a new user to obtain a water allocation simply by agreement with the Licence Holder undermines the transfer framework of the *Water Act* and the intent of the SSRB Plan.

[36] The Appellant argued the Director approved the Licence Amendment knowing the application was contrary to the intent that the Bow River basin be closed to allocations of water except by way of a licence transfer and knowing the application avoided the transfer provisions of the *Water Act*.

[37] The Appellant noted that, in an explanation of the amendment application provided by the Licence Holder to the Director, it stated:

“It does not make sense to have an irrigation district have to go through the transfer procedure of a plebiscite, then go through a public notice and hearing with Alberta Environment [and Sustainable Resource Development] to transfer 50 acre feet to a livestock operation. This will take a minimum of 6 months....’

It is not practical, nor applicable, to go through the requirements of a water transfer for every small user such as a feedlot, 1,000 head ranch, or small industry where the irrigation district still diverts the water and conveys it to the end user within the boundaries of the district.”⁸

⁸ See: Appellant's submission, dated July 13, 2012, at paragraphs 54 and 55.

[38] The Appellant argued the Licence Holder indicated its intent to amend its water licence to avoid the transfer provisions before and after the SSRB Plan was approved. The Appellant stated the Director acknowledged the intent of the Licence Amendment was to avoid the plebiscite required by the *Irrigation Districts Act* for a water licence transfer.

[39] The Appellant noted the *Water Act* does not contain any exemptions for small transfers. He argued the complexity of the transfer process and the requirement for a plebiscite under the *Irrigation Districts Act* are not grounds to circumvent the requirements of the transfer provisions of the *Water Act*. The Appellant noted the Licence Holder referred to the water allocations as “transfers.”

[40] In response to the Licence Holder’s argument that the Licence Amendment would allow it to act similar to a municipality, the Appellant noted the supply of water to new users within a municipality by a public utility is subject to the *Public Utilities Act*, R.S.A. 2000, c. P-45. The Appellant stated the Licence Holder is not a public utility as defined in the *Public Utilities Act* and it is not a municipality as defined in the *Municipal Government Act*, R.S.A. 2000, c. M-26.

[41] The Appellant acknowledged the *Irrigation Districts Act* allows an irrigation district to add, transfer, or delete irrigation parcels, and it allows an irrigation district to supply water to non-irrigation users, subject to certain limitations.

[42] The Appellant also argued the Director erred in determining the amendment resulted in no change in the appurtenancy of the Licence.

[43] The Appellant noted that “appurtenant” and “land” are only defined in section 58(2) of the *Water Act*.⁹ “Undertaking” is defined in section 1(1)(ddd) and “works” is defined in section 1(1)(mmm) of the *Water Act*.¹⁰

⁹ Section 58(2) of the *Water Act* provides:

“Subject to Part 5, Division 2, a licence and all works operated under the licence

- (a) are appurtenant to the land or undertaking specified in the licence,
- (b) are inseparable from the land or undertaking specified in the licence, and

[44] The Appellant stated the *Guidelines Regarding Appurtenance* (“Appurtenance Guidelines”) clarify that appurtenance is determined by both the point of diversion and the point of use, and irrigation district licences are normally appurtenant to the undertaking because the irrigation district does not own the lands where the water is used. Specifying appurtenance in a water licence ensures there is certainty as to the location of the impacts to the aquatic environment and other users.

[45] The Appellant noted the existing Licence, prior to the amendment, was appurtenant to the works shown in Plan No. 631-P628. However, the Licence Amendment is appurtenant to the undertaking described in Plan No. 631-P629, including the diversion works at the point of removal from the Bow River, the water canals and pipelines, storage reservoirs, and water distribution network. The Appellant argued there was a *prima facie* change in the appurtenance under the Licence Amendment. The Appellant conceded the description of the appurtenance in the Licence Amendment describes essentially the same undertaking and works as in the existing Licence.

[46] The Appellant stated the Licence Amendment is appurtenant to the undertaking described and not all of the lands within the EID boundaries. The Appellant noted the Licencing Criteria states a change of purpose may be considered through an application for an amendment

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- (c) run with the land or undertaking on any disposition of the land or undertaking unless the Lieutenant Governor in Council orders otherwise.”

¹⁰ Section 1(1)(ddd) of the *Water Act* states:

“‘undertaking’ means a project that is established, proposed to be established, required to be established or carried on pursuant to this Act by any person and that is related to

- (i) an activity, diversion of water or operation of a works, and
- (ii) anything that is defined as an undertaking in the regulations for the purposes of this Act.”

Section 1(1)(mmm) of the *Water Act* defines “works” as:

“‘works’” means any structure, device or contrivance made by persons, or part of it, including a dam and canal, and

- (i) land associated with it, and
- (ii) mitigative measures associated with it,

and includes anything that is defined as a works in the regulations for the purposes of this Act.”

where there are no changes to the appurtenance of the licence, but where there is a change to the appurtenance of the licence, an application for transfer is required.

[47] The Appellant argued point of use is determinative of appurtenancy. He noted water formerly used on irrigation lands has been conserved and is not to be used for unspecified non-irrigation lands. The Appellant argued the Director could not have determined the point of use has not changed as the lands on which the water has been conserved are not the same lands to which the conserved water will be allocated. The Appellant noted the change of appurtenance is not documented in the Licence Amendment.

[48] The Appellant argued the points of re-diversion from the canal system will change under the Licence Amendment. The Appellant stated the Director cannot argue the change of point of use from anywhere in the boundaries of the EID to anywhere else within the 6,070 square kilometers of the EID is within the same lands, as that would be contrary to the intent of specifying appurtenancy.

[49] The Appellant argued the diversion of water under the Licence Amendment is neither concrete nor substantive as a significant portion of the allocated water is designated for future unspecified activities at unspecified locations. The Appellant noted section 54(1)(b)(v) of the *Water Act* allows the Director to amend a licence to change the point of use or add another point of use if the use is located on the same land specified in the licence.¹¹

[50] The Appellant stated the Licence Amendment clearly states it is appurtenant to the undertaking and works of the Licence Holder and not to all lands within the EID boundary. The Appellant argued a new point of use that is not on lands that are part of the EID undertaking or works and not on lands owned by the Licence Holder cannot be within the same lands specified in the licence as required for an amendment under section 54(1)(b)(v).

¹¹ Section 54(1)(b)(v) of the *Water Act* states:

“If an amendment of a licence does not increase the volume of the diversion of water specified in the licence, the Director may, subject to the regulations and subsection (3), amend a licence on application by the licensee, including but not limited to an amendment to change the point of use or add another point of use of the diverted water if the use is located on the same land specified in the licence or plan attached to the licence.”

[51] The Appellant argued the Director erred in issuing the Licence Amendment when the application failed to provide the information required by the Licencing Criteria.

[52] The Appellant quoted the Licencing Criteria:

“The public must be aware: Applicants for an amendment or transfer must describe how the water allocation that is the subject of the application will be used; including specifics of the quantity of water required for each of the amended purpose(s), and any new works to deliver water to that use and any changes to return flow.”¹²

[53] The Appellant noted the application lists the following possible future uses:

1. Municipal – allow additional country residential agreements;
2. Agriculture – including livestock water, feedlots, which may be included over the next five years;
3. Commercial – includes golf courses, oil and gas drilling water, dust control, construction, and campgrounds. Some water will be used to supply a nine hole golf course and two campgrounds, and the balance will be reserved for potential new users over the next five years;
4. Industrial – including value added processors. All of this water is reserved for potential users within the district in the next five years; and
5. Recreation – including fair grounds, community halls, stables, water ski lakes. The Licence Holder is currently supplying 3 community halls under Rural Water Use agreements, and the remainder will be reserved for future community projects.

[54] The Appellant argued the Licencing Criteria require the application identify the specific quantity of water required for each of the purposes. In the Licence Holder’s application, the quantity of water for each category of amended use is identified, but it does not provide specifics of the quantity of water for any particular use. The Appellant stated the different uses might be in different locations, require different works, have different diversion volumes and timing, and have different return flows, including timing and quality. The Appellant argued the public and Director have no means of determining where and under what conditions the potential future uses may occur.

¹² Appellant’s submission, dated July 13, 2012, at paragraph 86, quoting the *Criteria* at page 2.

[55] The Appellant noted the Director accepted the Licence Holder's assertion the return flow from all other possible uses contemplated will be equal to or higher than from irrigation, without knowing the specific uses. The Appellant stated the Licencing Criteria require the application identify changes to return flow, not just reductions in flow.

[56] The Appellant noted the Director acknowledged the return flows from municipal uses may be greater than from irrigation, but he did not address the possible adverse effects of those return flows into canals that do not have an outlet back to a natural watercourse. The Appellant argued the Director cannot determine where the increased return flow will be deposited, the timing of the return flow, or whether the return flow will have an adverse effect on other water users or the aquatic environment since the Director does not know the location and specifics of the future uses.

[57] The Appellant argued the Director erred in determining the Licence Holder was delivering water in compliance with the existing Licence.

[58] The Appellant noted the existing Licence was for irrigation and agriculture (stockwatering) purposes. However, in its amendment application, the Licence Holder indicated it had been providing water to country residential developments, schools, Hutterite colonies, and camps. The Appellant stated these uses do not fall within the permitted irrigation and stockwatering purposes.

[59] The Appellant stated AESRD indicated the Licence Amendment would provide clarity to who the Licence Holder could provide water to in the future since some of the uses it historically provided for, such as feedlots, multiple housing units, and golf courses, may or may not be reasonably interpreted as included in the existing Licence.

[60] The Appellant argued the Director could not have determined there would be no adverse effect on the rights of a household user, other licensee, or traditional agricultural user, and no adverse effect on the ability to conserve or manage a water body as required under section 54(1)(b) of the *Water Act*.

[61] The Appellant argued that, even though the volume, rate, timing, priority, and point of diversion from the Bow River remain the same, the volume, rate, timing, priority, and

point of diversion from the irrigation canal system, as well as the use, and the location, quantity, timing, and quality of the return flow are not known to the Director, but they have the potential of affecting other water users and the Director's ability to manage or conserve water bodies.

[62] The Appellant stated it was impossible for the Director to determine if all the proposed uses, at any location within the EID boundary, would have no adverse effect on the rights of any water user. It was also impossible to determine if there would be no adverse effect on the ability to conserve or manage any water body within the EID boundary.

[63] The Appellant argued the Director abdicated his responsibility to determine the potential adverse effects on other users or on water bodies. He submitted the decisions of the Licence Holder would determine the impacts on other users and water bodies, outside the purview and control of the Director. Some of the proposed future water users, such as golf courses and feedlots, do not require an approval under EPEA, so no Director will have any control over the potential impacts of these water uses.

[64] The Appellant stated that, had the changes to the allocations been made by way of licence transfers rather than by licence amendment, the Director could have retained a 10 percent holdback of the transferred allocation as a contribution to the water conservation objective for the Bow River. Water that could have been conserved in the Bow River will now be allocated to consumptive uses. Therefore, according to the Appellant, the Licence Amendment will have an adverse effect on the Director's ability to meet the water conservation objective. The Appellant stated the Licence Holder will not be subject to the Director's discretion to set terms or conditions on the other users, thereby limiting the Director's ability to manage or conserve the water body.

[65] The Appellant submitted the Director has an obligation under the *Water Act* to determine the wise allocation and use of water. The Appellant also referred to the Water for Life Strategy and the SSRB Plan to demonstrate the Director's authority and responsibility to consider the potential adverse impacts on other water users and the aquatic environment and to ensure the wise allocation and use of water given the purposes of the *Water Act*, the principles of the Water for Life Strategy, and the conditions of the SSRB Plan.

[66] The Appellant noted the Director acknowledged the decision as to which projects receive water would now transfer to the Licence Holder. The Appellant argued the Director failed to identify the statutory authority that grants the Licence Holder the power to provide water to new water users and uses or to provide water to non-irrigation uses in excess of 20 acre-feet annually.

[67] The Appellant argued the Director's decision to issue the Licence Amendment undermines the purposes of the *Water Act* and the Director's ability to manage the resource in the public interest.

[68] The Appellant argued the Licence Amendment creates a "special economic zone" within the EID boundary where the Licence Holder can determine who can obtain a new water allocation and under what conditions, even though the *Water Act*, Water for Life Strategy, and the SSRB Plan intend the Director to have those powers.

B. Licence Holder

[69] The Licence Holder explained the Licence Amendment allows it to use less than one percent of its water licence allocation for other non-irrigation purposes.

[70] The Licence Holder submitted the Appellant failed to meet the onus of showing the Director failed to act in accordance with the *Water Act* and applicable policies.

[71] The Licence Holder stated it is an irrigation district established under the *Irrigation Districts Act*. It explained the purpose of the *Irrigation Districts Act* is to ensure the management and delivery of water in the district occurs in an efficient manner that provides for the needs of users, and users means all users within the district, not just irrigators.

[72] The Licence Holder explained it owns and operates a diversion dam on the Bow River, 4,000 kilometres of canals and drains, and 13 storage reservoirs. It supplies raw water to 10 municipalities, industries, farmyards, country residential acres, 295,000 acres of irrigation, and 30,000 acres of constructed wetlands. The Licence Holder stated its expansion plan indicates it will irrigate 311,000 acres of land with the same allocation.

[73] The Licence Holder stated it has proactively conserved water so it can use its current water allocation to irrigate more acres and for other purposes so it can live up to its statutory purpose of maintaining and promoting the economic viability of the district. Its conservation plan included: (1) rehabilitation of its canal system by installing pipe; (2) raising and constructing new reservoirs; (3) installing control structures; (4) lining its canals to prevent seepage; and (5) encouraging irrigators to convert to more efficient methods of irrigation.

[74] The Licence Holder stated it has added new irrigation acres and has a net savings of 7,000 acre-feet of water annually.

[75] The Licence Holder explained the Licence Amendment changes the purpose of 5,000 acre-feet of water of its existing Licence (0.735 percent of the annual licenced volume) for the following purposes: (1) municipal – 2,000 acre-feet; (2) agriculture – 1,200 acre-feet; (3) commercial – 500 acre-feet; (4) industrial – 7500 acre-feet; (5) habitat – 500 acre-feet; and (6) recreation – 50 acre-feet.

[76] The Licence Holder argued the standard of review of the Director's decision is correctness, and the Appellant has the burden of proving the Director did not make the correct decision and that the Licence Amendment should be reversed.

[77] The Licence Holder noted section 54 of the *Water Act* grants the Director the power to amend a water licence. The Licence Holder stated the Director determined the amendment would not have an adverse effect on the rights of household users, other licence holders, or traditional agricultural users, or adversely affect the ability to conserve or manage the water body, because there would be no change to the existing volume, rate, timing, priority, and point of diversion.

[78] The Licence Holder anticipated the return flow would not be changed with the amendment. The Licence Holder explained the Director still has means to protect water users and the aquatic environment since conditions in the Licence Amendment allow the Director to amend monitoring systems or the rate of diversion.

[79] The Licence Holder noted the Licence Amendment requires annual reporting of the use of water for non-irrigation purposes. This allows the Director to determine the impact of

the use of water for non-irrigation purposes, which in turn allows the Director to manage water in the South Saskatchewan River basin.

[80] The Licence Holder noted the SSRB Plan recommended applications for new water allocations not be accepted in the Bow, Oldman, and South Saskatchewan River basins, but it did not recommend closing the basin to new users. The Licence Holder acknowledged the basin is closed to new applications for water licences, but it stated the basin is not closed to new users since they can be served through terms and conditions of existing licences. The Licence Holder argued it is not contrary to the SSRB Plan to serve new users through an existing water licence. The Licence Holder stated the "...SSRB Plan recognized the unique role of irrigation districts and the provincial government in the conveyance and delivery of water."¹³

[81] The Licence Holder noted the Director, even though it was not required, applied the SSRB Plan "Matters and Factors" for making a decision on applications to transfer a water allocation and applications of licences, preliminary certificates, or approvals affecting surface water. The Licence Holder notes the Appurtenance Guidelines has no restriction on amendments when there is a change in the point of use or a change in the purpose of use.

[82] The Licence Holder noted the Licencing Criteria allows a change of purpose to be considered where there are no changes to the appurtenance of the licence. The Licence Holder stated the Licencing Criteria provides the following guidance to the Director when considering applications that include a change of purpose:

1. The public must be aware: applicants must describe how the water that is the subject of the application will be used, including specifics of the location of the end use and the means to deliver the water to that use.
2. Limits to resale: where multiple purposes are proposed, the end user must take delivery of the water from the licensee's works or works contracted by the licensee as part of the undertakings identified in the licence. The end user is the first consumer of the water or the producer of a product that contains the water.

¹³ Licence Holder's submission, dated August 14, 2012, at paragraph 47.

3. Limits to the water volume of additional multiple purposes: Where new purposes are added through an amendment, there is a maximum of two percent of the original licence allocation. A transfer application must be filed for additional amounts.
4. Promote conservation of water: An application for an amendment or transfer may only apply to water that is being used under the licence at the time of the application and has been used by the licensee in the previous three years or, to promote conservation of water, is identified as a quantity of water that has been used and subsequently conserved by an identified project initiated after January 1, 1999.
5. Prevent speculation: Wasting of water to increase the water used is not eligible for inclusion under the promotion of water conservation. Water is considered wasted for the purpose of the guideline if any part of the licenced water is used for any purpose in an amount exceeding the median water use for similar purpose licensees in the area by 10 percent or that exceeds any standards set by the Minister.

[83] The Licence Holder submitted the Licence Amendment satisfied the Licencing Criteria guidelines. It stated the Licence Amendment describes how the water will be used, including specifics of the end use (within the EID boundaries) and the means to deliver the water to that use. The water will be delivered to the end users from the Licence Holder's works, and the end users will be the first consumers of the water. The Licence Holder confirmed the water volume delivered for non-irrigation purposes is less than two percent of the original licence allocation.

[84] The Licence Holder stated the Licence Amendment ensures the water supplied pursuant to the amendment will not be wasted. The Licence Holder explained it may deliver up to 5,000 acre-feet per year for non-irrigation purposes, but it is not obligated to divert any or all of that volume in any one year. The Licence Holder stated the water would not be diverted unless there is an identified use for it and, therefore, the volume of water diverted for non-irrigation purposes will only be the volume requested and put to such uses. If less than 5,000 acre-feet of water is requested, the balance remains in the river.

[85] The Licence Holder stated the *Water Act* requires the Director specify the land or undertaking to which the licence is appurtenant. The Licence Holder noted the requirement for an appurtenance came into effect after the EID was granted its Licence by the Dominion of Canada. The provision does not have retroactive effect. The Licence Holder noted the Appurtenance Guidelines states that, in relation to an irrigation district, the appurtenance is its undertaking.

[86] The Licence Holder submitted the Licence Amendment complies with the Guideline since the water for other purposes will be supplied within the EID boundaries.

[87] The Licence Holder explained its role under the *Irrigation Districts Act*.

[88] The Licence Holder stated that nine other irrigation districts have been granted amendments to their water licences similar to this requested Licence Amendment. The Licence Holder noted the amendments prior to 2010 did not specify the annual volume of water for each non-irrigation purpose.

[89] The Licence Holder stated the Licence Amendment does not change the volume of water allocated to it, and it does not change the conditions regarding the rates of diversion allowed.

[90] The Licence Holder explained it treats all types of water supply agreement holders equally in times of drought. If it is required to ration below 18 inches, it rations the same percentage to irrigators as well as non-irrigation users.

C. Director

[91] The Director submitted his decision to issue the Licence Amendment should be upheld as issued. He stated the application was a proper amendment application and was not a transfer application since there was no change in appurtenance to the Licence.

[92] The Director explained he has the authority to issue the Licence Amendment under section 54 of the *Water Act*. He stated there is no adverse effect on the rights of a household user, other licensee, or traditional agricultural user, and there will be no adverse effect on the ability to conserve and manage the water body given the Licence Amendment does not

change the volume, rate, and timing of the diversion, the priority, or the point of diversion on the Bow River. The Director stated the Licence Amendment was issued in accordance with the Licencing Criteria and the SSRB Plan.

[93] The Director argued the Appellant's submission misconstrues the *Water Act* and applicable policies. The Director noted the *Water Act* provides a variety of tools to achieve a variety of goals allowing flexibility and adaptability to the Director. The Director noted the Appellant argued only transfers should be used in this situation, because the only purpose to be achieved is to retain more water in the rivers. According to the Director, this is too narrow a view, because there are a variety of uses for water and neither the *Water Act* nor any applicable policies rank one purpose or tool over another.

[94] The Director explained the SSRB Plan was created to address defined issues, but it was not an overarching water management review. He explained the main issues for the SSRB Plan were the closure of the basin, water conservation objectives, and the authorizing of transfers; it was not designed to look at every possible water management tool.

[95] The Director noted the SSRB Plan recommended the closure of the Bow, Oldman, and South Saskatchewan River basins to new allocations/licences being issued from surface waters within these basins, but it was not the intent that there could never be any new user. The Director noted a number of ways persons who were not using water could now use water, including:

1. they have a statutory water right;
2. they become a holder of a traditional agricultural user registration;
3. they use true groundwater and obtain a licence;
4. they use water within the terms of an existing allocation; or
5. they obtain a transfer of an existing surface water licence.

[96] The Director stated he has the authority to consider and decide an application by a licence holder to change a term or condition of its licence, including the term or condition relating to purpose. The Director explained a licence holder could apply for any type of amendment provided it does not increase the volume of the diversion.

[97] The Director stated the application was a proper amendment, because the appurtenance of the Licence did not change. The Director explained a licence sets out the volume, rate, timing, allocation number, source, and appurtenance of that allocation. He explained “appurtenance” is what the licence is tied to or runs with, and it can be either the land or the undertaking but not both. The Director stated that in an amendment, the appurtenance does not change whereas in a transfer, the appurtenance changes.

[98] The Director explained it is an amendment if the proposed change of the point of diversion or point of use is within the same lands or the same plans if the licence is appurtenant to the undertaking. The Director noted the appurtenance of an irrigation district licence is the undertaking, and this is confirmed by the terms and conditions of the Licence and the Appurtenance Guidelines. The Director explained it is AESRD’s practice to attach the plans which set out the appurtenance as the undertaking.

[99] The Director stated the Licence Amendment is appurtenant to the undertaking located within the boundaries of the EID. The Director noted the Appellant conceded the new plan contained in the Licence Amendment describes essentially the same undertaking and works as the original Licence.

[100] The Director stated the amendment application stated the planned other purposes would be part of the existing allocation, be delivered through the Licence Holder’s infrastructure, and be used within the EID boundaries.

[101] The Director argued the Appellant wants to define “appurtenance” and “point of use” to a level of detail that would render the management of licences inoperable and impractical. The Director stated the Appellant argued that, if the Licence Holder conserves water on a specific piece of land, then the water would still have to be used on that specific piece of land and not some new land that was previously unirrigated without it being a transfer. The Director argued this cannot be because, based on the Appellant’s argument, if the Licence Holder decided to change which parcels served by the EID undertaking within its boundaries are irrigated, it would be a change of appurtenance and would require a transfer. This would also

have to apply to other licensees, such as when a municipality wanted to change the point of use within its boundaries.

[102] The Director stated there is no change to the appurtenance of the original Licence with the Licence Holder being able to provide water to its users within its boundaries and using its infrastructure to deliver the water.

[103] The Director explained section 54 of the *Water Act* creates the threshold for an amendment.¹⁴ He argued his conclusion was correct, because the Licence Amendment maintains the status quo of its impact to the Bow River and other users. The Director noted the Licence Amendment did not change the allocation (volume, rate, and timing of the diversion), the priority number, or the actual point of diversion from the Bow River, so the location where priority could be called is not being changed. The Director submitted there were no actual or potential adverse effects arising from the Licence Amendment, because the impacts to the Bow River and other users will not change and the conservation and management of the Bow River will not change from what was authorized in the original Licence.

[104] The Director explained the “users” he is to consider under section 54 of the *Water Act* are household users, traditional agriculture users, and other licence holders, but he cannot consider new users or users as defined under the *Irrigation Districts Act* or any other legislation.

[105] The Director stated that, based on the Alberta Court of Appeal decision in *Friends of the Oldman River Society v. Alberta (Minister of Environmental Protection)* 1996 ABCA 136, 134 DLR (4th) 414 (“Friends Of the Oldman”), the identification of the specific location of the proposed use within the irrigation district is not required. The Director stated that he knew if a user of water needs to undertake further works within or to a water body for a specific project, further authorization under the *Water Act* or EPEA may be needed, and at that time, specific site impacts to other water bodies would be considered.

¹⁴ Section 54 of the *Water Act* provides:

“...if the Director is of the opinion that there is no or will be no adverse effect on the rights of a household user, other licensee or traditional agriculture user and that the proposed change will not adversely affect the ability to conserve or manage a water body.”

[106] The Director stated the Appellant contended that section 54 of the *Water Act* implies an obligation to improve the state of the river by restoring flows through decision making on the amendment application. The Director argued neither the *Water Act* nor the SSRB Plan provides that type of policy direction, because they refer to “no adverse effect” not “improve upon the state of the river.” The Director stated the Licence Amendment does not impact the water conservation objective in the Bow River because there is no change to the river. The Director stated the Licence Holder could have used all of the reserved water for additional irrigation, but it chose to assist the community in and around its works.

[107] The Director stated there is no statutory authority to take the 10 percent water conservation objective holdback in an amendment application; the Legislature made the policy decision when it provided that authority in the context of a transfer application.

[108] The Director argued the Appellant’s argument that a transfer would have improved the river is moot, because the Director does not have the authority to change an application for an amendment into an application for a transfer.

[109] The Director stated the Appellant seemed to impute the decision to apply for an amendment and not a transfer was a questionable decision and brings the Director’s decision into disrepute and subject to challenge. The Director submitted this is an irrelevant consideration for the Board. The Director noted an application for an amendment is not contrary to the *Water Act* or SSRB Plan. He explained accepting an application is not acceding to or in conspiracy with an applicant to avoid something. The Director concluded the change the Licence Holder was seeking could be achieved through an amendment. He stated he does not have the statutory authority to change an application for an amendment into an application for a transfer.

[110] The Director stated the Appellant implied one of the reasons for avoiding the transfer was to avoid the 10 percent water conservation objective holdback. He explained that, as a statutory decision-maker who has to comply with administrative law principles, he is not an advocate for the 10 percent holdback to the exclusion of all other water management goals and water uses. The Director stated that if he forced everyone to apply for transfers, he would be biased and not acting in accordance with the *Water Act* and administrative law principles.

[111] The Director noted the SSRB Plan made a plan on how to achieve the SSRB Plan's goals and what options were available to manage the water to achieve the water conservation objective. He noted none of the recommendations require the Director to refuse valid amendment applications in favour of transfer applications. The Director stated the *Water Act* creates, and the SSRB Plan acknowledges, there are a whole suite of tools available for water allocation and management. The Director argued:

“Just because the Appellant highly values the goal of the WCO [Water Conservation Objective] and wants the GOA to get as much water for the WCO, does not mean these are the goals of other Albertans. The *Water Act* and all its policies are an attempt to provide for the various tools for the achievement of the various, and often conflicting, goals.”¹⁵

[112] The Director argued the Appellant's categorization of the Licence Holder's amendment application as an avoidance of a transfer is an irrelevant consideration for the Board, and it ignores the choices available to the Licence Holder, misconstrues the statutory role of the Director, and misinterprets the policy statements made by the SSRB Plan.

[113] The Director stated that, in granting the amendment, he did not give authority to the Licence Holder to issue licences or allocations under the *Water Act*. The amendment adds specific purposes that the Licence Holder can use 5,000 acre-feet of water. It does not create a special economic zone.

[114] The Director explained that a person moving into the Bow, Oldman, or South Saskatchewan River sub-basins who wants water has choices: (1) use their statutory household right; (2) use water as an exempted agricultural user; (3) there may be a traditional agriculture registration running with the land; (4) apply for a groundwater licence from the Director; (5) apply for a transfer of an existing surface water licence if they found a willing licensee; (6) purchase land or undertaking with an existing licence appurtenant to it; (7) locate within the appurtenance of an existing licensee with growth capacity and enter into a contract for use; or (8) see if they fit within the scope of the purposes of an irrigation district licence and enter into an agreement with the district under the *Irrigation Districts Act*.

¹⁵ Director's submission, dated August 15, 2012, at paragraph 66.

[115] The Director stated the Board is not the forum to raise issues regarding policy decisions under the *Irrigation Districts Act*, and there is no remedy available for the Appellant before the Board involving legislative and policy reform.

[116] The Director confirmed that he considered the SSRB Plan and the Licencing Criteria in reviewing the amendment application.

[117] The Director explained he applied the “Matters and Factors” of the SSRB Plan even though it does not specifically refer to amendment applications. The Director stated he applied these factors to ensure the Department was meeting the spirit and intent of the SSRB Plan. The Director explained the analysis of the factors found there were no adverse effects to the water body, other users, instream objectives, or the water conservation objective as a result of the Licence Amendment, because there was no change in volume, rate, timing, priority, appurtenance, or point of diversion. The Director explained he assessed whether the Licence Amendment would affect the flows in the Bow River and whether it would change how often the Bow River meets the instream objective or the water conservation objective.

[118] The Director noted the Appellant referred to portions of the SSRB Plan that focused on the authorization of transfers and was of the opinion the amendment application undermines the SSRB Plan. The Director stated the consideration of and decision on an amendment application is not fundamentally undermining the *Water Act* or SSRB Plan, and transfers are only one water management tool. The Director stated the SSRB Plan addressed transfers because they were a new water management tool and were needed for public acceptance of a basin closure.

[119] The Director explained the SSRB Plan was intended to be of limited scope to deal with specific issues facing the basin at that time. The Director noted the basin advisory committees were not asked to comment on every issue that might exist in the basins or every water management tool.

[120] The Director stated the SSRB Plan does not prohibit new users from using water under terms of existing licences, including new irrigators moving into the EID and irrigating a

new irrigation parcel that was now available because the Licence Holder has available water for use.

[121] The Director submitted all five requirements of the Licensing Criteria were met, specifically:

1. The public must be aware: The amendment application included: (1) the specific quantity for each use; (2) the statement that the proposed change of purpose water would be conveyed through the Licence Holder's canal and drainage infrastructure; and (3) a statement that the Licence Holder did not anticipate any change to return flows. The Director considered the issue of return flow and found some projects under the amendment will have more return flow than what currently occurs.

The Appellant interpreted the policy requirement as requiring the public notice and application contain the exact nature of each new user. The level of detailed analysis contemplated by the Appellant is impractical and of a *de minimus* nature given the application is for 5,000 acre-feet of a 680,000 acre-foot Licence. Return flow for the Licence Holder was 117,700 acre-feet in 2010 and 112,300 acre-feet in 2011. The change to the return flow is insignificant against the annual variation in return flow that is greater than the total amendment volume.

Some of the new purposes may require some other type of permit that may require public notices and detailed application requirements.

The original Licence does not contain any regulatory conditions requiring the Licence Holder to return any amount of flow to the river system.

2. Limits to re-distribution: The application sets out the specific purposes and volumes for the amended purposes to be used within the EID boundaries. The Licence Amendment clearly states the water used for other purposes must be within the EID boundaries, and it provides certainty as to the EID boundaries.

3. Limits to water volumes of additional multiple purposes: The total volume applied for other purposes was 5,000 acre-feet, approximately 0.735 percent of the total allocation of the original Licence. The Licencing Criteria states the application may not exceed 1,000 acre-feet of water plus 2 percent of the remaining licence allocation, so the maximum amendment for the Licence would be 14,500 acre-feet.
4. To promote water conservation: The Licence Holder explained it had conserved over 33,000 acre-feet of water through conservation efforts. A portion of the conserved water was to be used for irrigation purposes and the 5,000 acre-feet being applied for is to be used for other purposes. The 5,000 acre-feet for other purposes is below the volume the Licence Holder has conserved.
5. Prevent speculation: The Licence Holder indicated in the application there was a demand for the other purposes and provided information on current and proposed projects for the next five years. The Licence Holder must report annually on the projects that receive water for non-irrigation purposes.

[122] The Director explained that if a certain activity is not authorized by a regulatory permit, the person responsible must stop doing the activity or apply for the applicable authorization so they can do it legally. The Director stated the Licence Holder did the latter by applying for the Licence Amendment.

D. Rebuttal Submission

[123] The Appellant argued the Director misinterpreted the requirement to consider the location of the proposed new uses. He stated the existing Licence was appurtenant to the works shown on the plan that was attached. The Appellant agreed the appurtenance described in the Licence Amendment was intended to describe essentially the same undertaking and works as the original Licence. He argued the appurtenancy of the Licence Amendment is not all lands within the boundaries of the EID but only the lands associated with the EID works.

[124] The Appellant stated the point of diversion and the point of use are both determinants of appurtenancy.¹⁶ The Appellant noted the plans attached to the original Licence and the Licence Amendment do not specify point of use within the boundaries of the EID, and the future uses under the Licence Amendment are within the existing EID boundaries.

[125] The Appellant argued the appurtenancy of the Licence Amendment does not include all lands within the EID boundaries, and the Director could not have determined the water would be used in the same “black box” of appurtenancy when the location of future uses are unknown.

[126] The Appellant stated the Friends of the Oldman Society did not involve a change in purpose of the licence; the decision was with respect to changes and upgrades to works for irrigation purposes.

[127] The Appellant stated the issue in the appeal is not whether the Licence Holder must apply for a licence transfer every time water is used at a new location for irrigation or to change or upgrade the irrigation works. He argued the issue is whether the Director is required to know and consider the specifics of the proposed new uses in order to approve an application to amend a water licence to add new purposes.

[128] The Appellant referred to the Licencing Criteria, quoting:

“Applicants for an amendment or a transfer must describe how water allocation that is the subject of the application will be used; including specifics of the quantity of water required for each of the amended purpose(s), and any new

¹⁶ At paragraph 9 of the Appellant’s submission, dated August 28, 2012, he referred to the following from the Appurtenance Guidelines:

“It should be noted that where the appurtenance statement includes a plan reference, it must be a complete plan specifying all components of appurtenance. If the POD [Point of Diversion] and POU [Point of Use] aren’t clearly shown on the plan, a separate plan is required or the appurtenancy needs to be specifically highlighted on the plan showing the POD and POU to satisfy the POD and POU requirements of the Act. This in effect draws a boundary around what the approval, licence or preliminary certificate is appurtenant to and could be considered as the fenceline plan, the appurtenance plan or just the plan. Whatever term is used to describe the approved plan, the plan must clearly show the appropriate appurtenance such that the appurtenance condition actually sets out what the authorization is appurtenant to.”

works to deliver the water to that use and any changes to return flow.” (Emphasis omitted.)¹⁷

[129] The Appellant noted the Appurtenance Guidelines state one of the purposes of specifying appurtenance is to ensure certainty as to the location of impacts to the aquatic environment and other users.

[130] The Appellant stated the Director, in approving new purposes in a licence amendment must meet the criteria of the *Water Act*, Licencing Criteria, and Appurtenance Guidelines, specifically that the Director determine: (1) the point of use will be the same; (2) if any works are required to deliver water to that use; (3) if there are any changes to return flow related to the new uses; and (4) the location of use with sufficient certainty to determine the location of impacts to the aquatic environment and other users.

[131] The Appellant argued the Director could not have met these requirements because the specifics and locations of the proposed users are unknown. The requirements are not met by stating unspecified municipal, agricultural, commercial, or industrial use at some unknown location within the EID boundaries.

[132] The Appellant argued the Director misinterpreted the requirement under section 54(1) of the *Water Act* to consider the effect on other users and the ability to conserve or manage a water body, because the Director only considered the potential or actual adverse effects on the Bow River and on water users downstream of the Licence Holder’s point of diversion on the Bow River.

[133] The Appellant noted section 54(1)(b) of the *Water Act* requires the proposed amendment will not affect the ability to conserve or manage a water body, but the Director only considered effects to the Bow River. The Appellant stated the Director did not consider the potential impacts of the proposed new uses on household users, traditional agricultural users, other licensees, or water bodies within the EID boundary including natural wetlands and the Red Deer River which forms the northeast boundary of the EID. The Appellant argued the Director could not have determined the impacts when the re-diversion from the EID canals, locations of

¹⁷ Appellant’s submission, dated August 28, 2012, at paragraph 20.

use, and the location, quantity, timing, and quality of return flow from the proposed future uses are unknown. The Appellant stated the Director is required to consider the effect on all listed users and all water bodies that are or may be affected by the Licence Amendment, but he did not meet this requirement as the location and specifics of the future uses are unknown.

[134] The Appellant noted the Licence Holder's assertion that, because it is required to annually report to the Director about the use of water for non-irrigation purposes, the Director will be able to determine the impact of non-irrigation purposes. The Appellant argued section 54(1)(b) of the *Water Act* requires the Director determine the potential adverse impact on other water users and the ability to manage and conserve a water body before, not after, approving the Licence Amendment.

[135] The Appellant argued the Director's unlawful approval of the Licence Amendment impacts his ability to conserve and manage the Bow River basin. The Appellant stated it is clear the SSRB Plan provides a policy direction to improve the state of the river by restoring flows, and it was the intent of the SSRB Plan and the Water Allocation Order that the basin closure, licence transfer process, and water conservation holdbacks were to prevent further environmental degradation and restore flows to the aquatic environment.

[136] The Appellant argued the Director's unlawful issuance of the Licence Amendment precluded the Director from taking the 10 percent holdback that would have been available if the change in water allocation had been lawfully done by a water transfer.

[137] The Appellant clarified he has no issue with the legislative and policy scheme of the *Water Act*, SSRB Plan, the Appurtenance Guidelines, Licencing Criteria, or Water for Life Strategy. His concern is the Director failed to act in accordance with the legislative and policy documents in approving the Licence Amendment.

[138] The Appellant stated there are several natural water bodies and wetlands within the EID boundaries that are not associated with EID works. The Appellant noted the County of Newell, which roughly coincides with the boundaries of the EID, has 1,245 water wells, indicating there are usable aquifers within the EID boundaries.

IV. Analysis

[139] Under section 99 of EPEA, the Board must provide the Minister of Environment and Sustainable Resource Development with a report and recommendations. Based on the evidence and arguments presented, the Director's record, and considering the applicable legislation and policy, the Board provides recommendations to confirm, reverse, or vary the issuance of the Licence Amendment.

[140] In determining the recommendations for the Minister, the Board assesses whether the Director's decision was reasonable and rational given the information before him at the time the decision was made and taking into consideration the relevant legislation and policies. A hearing before the Board is a de novo hearing. The Board hears evidence from the appellants as well as the project proponent and Director, and there may be more evidence and further arguments than were before the Director when he made his decision. Based on all of the arguments and evidence presented before the Board, including the Director's record on which he based his decision, the Board determines whether it should recommend the Director's decision be confirmed, reversed, or varied.

[141] After reviewing and listening to the evidence and arguments in this appeal, the Board recommends the Minister confirm the Licence Amendment.

[142] The Appellant argued there were three main grounds on which the Licence Amendment should not have been issued, specifically: (1) the Director could not have acted in accordance with the legislation and policies given the information that was in front of him when he made his decision; (2) the Director erred in determining that appurtenance did not change; and (3) the Director's decision undermined the SSRB Plan and the Water Allocation Order. The Board will assess each of these arguments.

1. Acting in Accordance with Applicable Legislation

[143] The applicable legislation and policies in this case were the *Water Act*, SSRB Plan, Licencing Criteria, and Appurtenance Guidelines. "Water for Life" is an important

document to understand the direction of the Government of Alberta regarding water resources and, therefore, needs to be recognized by the Director when making a decision. However, it is not a policy document and it does not provide specific requirements for the Director's decision making.

[144] Although the *Irrigation Districts Act* was raised in the submissions and during questioning by the Board, the Director and this Board has no jurisdiction to determine whether the Licence Holder complied with or is in compliance with the *Irrigation Districts Act*. Further, whether the Licence Holder has complied with the *Irrigation Districts Act* is not a relevant consideration for the Board.

[145] Section 54 of the *Water Act* gives the Director the authority to amend a water licence.¹⁸ While the *Water Act* does not list “a change in purpose of use” as a reason for amending a licence, AESRD deemed the Director had that authority to do so under the ambit of “including but not limited to” contained in section 54(1)(b). This authority was determined prior

¹⁸ Section 54(1)(b) of the *Water Act* provides:

“If an amendment of a licence does not increase the volume of the diversion of water specified in the licence, the Director may, subject to the regulations and subsection (3), amend a licence ...

- (b) on application by the licensee, including but not limited to an amendment
 - (i) to increase or decrease the rate of diversion of water specified in the licence,
 - (ii) to add a rate of diversion of water if none is specified in the licence,
 - (iii) to add terms and conditions to the licence,
 - (iv) to change the timing of the diversion of water specified in the licence,
 - (v) to change the point of use or add another point of use of the diverted water if the use is located on the same land specified in the licence or plan attached to the licence, and
 - (vi) to move the point of diversion of water or add another point of diversion of water if the diversion of water at the new point of diversion of water is from the same source of water and the new point of diversion of water is located on the same land that is specified in the licence or plan attached to the licence,

if the Director is of the opinion that there is no or will be no adverse effect on the rights of a household user, other licensee or traditional agriculture user and that the proposed change will not adversely affect the ability to conserve or manage a water body.”

to October 2009 and presumably prior to October 2003 when a change in purpose was granted to the St. Mary Irrigation District for 12,000 acre-feet. As well, the Director must consider specific criteria before deciding to amend a licence, specifically the amendment must not: (1) increase the volume of the diversion of water; (2) cause an adverse effect on the rights of household users, other licensees, or traditional agricultural users; or (3) cause an adverse effect on the ability to conserve or manage the water body.

[146] In reviewing the application it is clear there is no increase in the volume of water being diverted from the Bow River.

[147] The Appellant argued the Director must determine the impacts of the Licence Amendment on all water bodies within the EID boundaries. Section 54 of the *Water Act* does not require this assessment be completed. What has to be assessed is whether there will be an impact on the water body where the water is being withdrawn from and, in some circumstances, where the water is returned. With this Licence Amendment, the withdrawal point from the Bow River has not changed. The rate, timing, and volume of water withdrawal from the Bow River have not changed. Therefore, there is no change to the impacts on the Bow River.

[148] The Licence Holder explained that when there is a shortage of water, all users, existing and potential future non-irrigation users will be impacted the same. If irrigation users are required to reduce the amount of water they receive, the non-irrigation users would also receive less water. The Licence Holder will not reduce the volume of water they currently provide to irrigation users and those with existing contracts in order to provide the volume of water agreed to for non-irrigation users. In times of drought, all users, existing and future users, irrigation and non-irrigation users, will be impacted the same. Even if the Licence Amendment had not been issued, the impacts would be the same. The Licence Holder is able to increase the acres irrigated, so the impacts of a drought would still be dealt with in the same manner.

[149] Agreements that currently exist with the Licence Holder would not be impacted. The water the Licence Amendment allows to be used for non-irrigation purposes is water that has been conserved through steps taken by the Licence Holder, such as improved irrigation

methods and updated infrastructure. Therefore, the irrigation users will not be affected by the change in use.

[150] Household users, traditional agricultural users, and other licensees will not be impacted by the issuance of the Licence Amendment. The water that is included in the amendment is already allocated to the Licence Holder. That will not change. Priority numbers will not be impacted. If a water call is implemented, those with newer priority numbers would still be impacted in the same way because the water is still allocated to the Licence Holder, regardless of the end users.

[151] The Appellant argued the Director is required to assess potential adverse impacts to all water bodies within the EID boundary. The Board accepts the evidence provided by the Licence Holder that there are no other water bodies within the EID boundary except those formed as a result of the Licence Holder's works. The Board can also see it is feasible that, over time, these manmade water bodies will develop enough characteristics of a natural water body to be declared a water body under the *Water Act*. The Director may consider declaring these manmade water bodies a natural water body in order to effectively protect them.

[152] Since the volume of water allocated, point of diversion, timing, and rate of diversion have not changed, there will be no adverse effect on the rights of household users, other licensees, or traditional agricultural users.

[153] The Board finds the Director's interpretation and implementation of the applicable legislation and policies was reasonable and rational given the information available to him.

2. Appurtenance

[154] The issue of appurtenance is important considering the Appurtenance Guidelines require the Director to consider appurtenance in determining whether an application for a change of purpose can be done by way of an amendment or whether a transfer is required.

[155] The Appellant argued the appurtenance has changed as a result of the Licence Amendment. According to Appurtenance Guidelines, the appurtenance must be either to the undertakings or the land. In this case, as it always is for irrigation districts, the Amendment Licence is appurtenant to the undertakings. The Licence Amendment clearly indicates it is attached to the diversion works, water supply canals, pipelines, storage reservoirs, and water distribution network within the EID boundaries. The Appellant acknowledged the drawings attached to the Licence Amendment represented the EIA boundaries to which the Licence Holder supplies water. Under the Licence Amendment, the Licence Holder cannot supply water to any user outside the EID boundaries.

[156] The Appellant argued the point of use is determinative of the appurtenance. The Board would agree in situations where the appurtenance is connected to the land. However, in this case, it is connected to the undertakings. The existing Licence and the Licence Amendment do not have to list every parcel of land that receives water from the Licence Holder or has a portion of the undertaking traversing it. The land that is specified by the Licence Amendment is the land that falls within the EID boundaries.

[157] The Licence Amendment remains attached to the undertakings of the Licence Holder. There have been no changes to the EID boundaries and the Licence Amendment does not change the undertakings. Non-irrigation users who obtain water under the Licence Amendment are responsible for any approvals that might be required to move the water from the Licence Holder's canals or pipelines to the location of the end use of the water. During the application for the approval, an assessment would be made on the potential impacts of other users and others in the area.

[158] The Board finds the appurtenance has not changed as a result of the Licence Amendment.

3. Purpose of SSRB Plan and Water Allocation Order

[159] The Board understands the concerns raised by the Appellant regarding the understanding of what he and others in the environmental community considered was the purpose of the SSRB Plan and the Water Allocation Order.

[160] The Appellant argued the Licence Amendment allows the Licence Holder to provide water to new users, even though the river basin is closed to new users. The South Saskatchewan River basin is closed to the issuance of new licences for surface water. In this case, the amendment is to an existing Licence. It does not create a new licence. There is no new priority number, no change in volume, timing, or rate of diversion. The only thing changed in the existing Licence is the purpose.

[161] The *Irrigation Districts Act* allows the Licence Holder to expand its irrigated land base. The Licence Holder explained that it has and continues to take measures to minimize water loss through its system, thereby conserving water. It is not required to return any conserved water back to the Province. Instead, it can use the conservation measures to increase its irrigable land base, apply for a transfer of the water to non-irrigation users or, as it has done in this case, seek an amendment to its Licence to allow for other, non-irrigation uses. Under the legislation, the Director cannot make the Licence Holder choose one option over the other, even though under the transfer option the Director can order a holdback to keep water in the river system.

[162] It is clear from the Appellant's submission and the witnesses that appeared before the Board, that they believed the intent of the SSRB Plan and Water Allocation Order was to not

only to ensure no further deterioration in the river ecosystems occurred, but also to improve the state of the rivers in southern Alberta, not just maintain the status quo. In reading the legislation and the applicable policies, the Director is required to determine if a change in a licence will cause an adverse effect on another user or the environment. He is not required to determine if another option would improve environmental conditions. Although this might appear counter intuitive, the Director complied with the legislation and policies.

[163] When assessing whether the Licence Amendment should be issued, the Director reviewed each step in the “Matters and Factors” that were outlined in the SSRB Plan, even though these criteria are not required to be used in an amendment of a licence. This demonstrates the Director was aware of the intent of the SSRB Plan. In doing the analysis, the Director found there would be no significant adverse impacts on the aquatic environment, in-stream flows, hydrological elements, existing reservoirs or water infrastructure, or First Nations rights and traditional uses.¹⁹

[164] The Board finds the Director adhered to the legislation and policies in issuing the Licence Amendment. He does not have the ability to change an application from an application for an amendment to an application for a transfer. It is up to the applicant to decide which option to apply under.

[165] During the Hearing, the Licence Holder stated its members are environmentally conscientious and want to do what is best for the environment. In the future, to demonstrate this concern, the Licence Holder may consider using a water transfer for non-irrigation users or to voluntarily return the unused water to the Province.

[166] It appears the ability of an irrigation district to expand its irrigated land base to its full potential depending on the constraints of its water allocation, the approval of its board pursuant to section 12 of the *Irrigation Districts Act*, and the fact that one of the legislated purposes of an irrigation district is “to maintain and promote the economic viability of the district,” is contrary to the intent to restore water flows in degraded reaches of the river.

¹⁹ See: Director’s Record, Tab 10, Decision Statement Amendment for Change of Purpose Easter Irrigation District.

Irrigation districts are in a unique position, given the extremely large volumes of water licenced to the districts. The Licence Holder stated it is the largest licenced water user on the Bow River. Therefore, what it does and how it chooses to conserve and manage the water allocated to it can have a significant impact on the river basin. The irrigation districts could affect the magnitude of restored flows in the rivers, should transfers be used to provide water to non-irrigation users. At the same time, the Board also recognizes one of the purposes of the irrigation districts is to maintain and promote the economic viability of the district. Therefore, there needs to be a balancing of interests when the Director makes his decision.

[167] In this case, the Board finds the Director considered all relevant legislation and policy documents and acted in accordance with them. Therefore, the Board recommends the Licence Amendment be confirmed as issued.

V. GENERAL RECOMMENDATIONS

[168] The Licencing Criteria issued on July 15, 2009, was identified as an interim measure pending a complete review of water allocation policies by the Minister. During questioning by the Board, the matter of what portion of an existing licence could be amended under this Licencing Criteria to allow for non-irrigation purposes was raised. The Director considered the cap was 1,000 acre-feet plus 2 percent of the remaining licenced water, resulting in a maximum of 14,000 acre-feet of the 680,000 acre-foot that could then be allotted to non-irrigation users in the EID. However, in reading the Licencing Criteria, it appears the description of the cap could be interpreted as allowing a licence holder to submit multiple amendment applications for a change to “other purposes,” each relying on the aforementioned cap. Because this uncertainty exists in the interpretation of the Licencing Criteria, it would seem prudent for steps to be taken to clarify the intent of the cap.

[169] The wording of the legislation and policies does not require the Director to take any steps to improve conditions in the river basins. The Director is only required to assess

whether an amendment will cause an adverse effect. There is a difference in what is required to not cause an adverse effect compared to what is required to improve conditions.

[170] When asked at the Hearing when the Licence Holder would consider a transfer instead of an amendment, the Licence Holder stated it depended on the volume of water being considered. However, the Licence Holder provided no indication of what volume of water would trigger a transfer request as opposed to a further application for a licence amendment. This aspect of the amendment and transfer provisions in the legislation and policies should be clarified to ensure consistency between irrigation districts and other large water users.

[171] The Board is cognizant that, with the release of the SSRB Plan in 2006 along with the provisions in the *Water Act* that provided a means for the Director to withhold up to 10 percent of water transfers, expectations were raised in the environmental community that these could enable restoration of flows in portions of the Bow River basin. However, the following all mitigate against that occurring: (1) the decision to allow a change in “purpose of use” as an amendment;²⁰ (2) bestowing on irrigation districts the ability to allocate water to future users similar to that of municipalities; (3) allowing irrigation districts to expand its irrigable land base to use water gained through efficiency improvements; and (4) the absence of any mechanism for the Director to retain any of the water that becomes available through improved delivery and application efficiencies within the district. The Board is also concerned that no significant quantities of water can be retained for conservation or management purposes in the South Saskatchewan River basin by the Director without the involvement of the irrigation districts. Even had the 5,000 acre-foot amendment been a transfer and had the Director retained a 10 percent holdback, it would have equated to an increased flow of approximately 0.04 cms (1.4 cfs) over the irrigation diversion season, an amount hardly measurable on a river the size of the Bow River. Should the Director decide that flow restoration is required for improved management of the Bow River or any other river reaches in the South Saskatchewan River basin, the Director would have to consider mechanisms to retain portions of water use efficiency gains

²⁰ The range of potential ramifications of the decision are listed in the Licencing Criteria released on July 15, 2009, namely: undermining the intentions of the *Water Act*; stimulating water speculation; impacting water markets and transfer applications; and allowing large users to be water brokers or co-ops.

achieved within irrigation districts. For example an opportunity appears to exist currently in the EID; the initial application for a change in purpose of use was for 20,000 acre-feet. This was subsequently altered to the 5,000 acre-foot amendment that was granted. This would suggest that 15,000 acre-feet of water allocation is available in the EID licence that could be used elsewhere in the basin.

[172] The Board understands the Minister intends to conduct a full review of the existing legislation and policies that govern water allocations in the province. It may be appropriate for the Director to pursue these types of changes with the Minister during the policy review. The Director's witness suggested in answer to the Board's questions that this review, initiated in 2007, was expected to be continued in the near future. Given the complexity of the issues raised in this Hearing, the challenges associated with effective water conservation initiatives in the South Saskatchewan River Basin, and the current status of the legislation and policies in place affecting water allocations, the Board believes the Minister's review is the best way to determine ongoing water allocation policies for the province.

VI. RECOMMENDATIONS

[173] The Board recommends the Licence Amendment be confirmed as issued.

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

1. Mr. Barry Robinson, on behalf of the Appellant, Mr. Walter Hohloch;
2. Mr. C. Richard Jones, Vipond Jones LLP, on behalf of the Licence Holder, Eastern Irrigation District; and
3. Ms. Charlene Graham, Alberta Justice and Solicitor General, on behalf of the Director, Southern Region, Environmental Management, Alberta Environment and Sustainable Resource Development.

VII. COSTS

[175] The Appellant and Licence Holder reserved their right to submit a final costs application. The Board requests that an application for costs be provided to the Board within two weeks of the date of the Minister's Order with respect to this Report and Recommendations. The Board will then provide the Parties with information regarding the submission process should a costs application be made.

Dated on October 18, 2012, at Edmonton, Alberta.

“original signed by”

D.W. Perras
Chair

“original signed by”

Jim Barlishen
Board Member

“original signed by”

Eric O. McAvity, Q.C.
Board Member



ALBERTA
ENVIRONMENT AND SUSTAINABLE RESOURCE DEVELOPMENT

*Office of the Minister
MLA, Drayton Valley-Devon*

**Ministerial Order
15/2013**

*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. 10-043**

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. 10-043.

Dated at the City of Edmonton, in the Province of Alberta, this 6th day of February, 2013.

“original signed by”

Diana McQueen
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No. 10-043

With respect to the decision of the Director, Southern Region, Operations Division, Alberta Environment and Sustainable Resource Development (the “Director”), to issue Licence Amendment No. 00071066-00-01 (the “Licence Amendment”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Eastern Irrigation District, I, Diana McQueen, Minister of Environment and Sustainable Resource Development, order that the decision of the Director to issue the Licence Amendment is confirmed.