

September 27, 2012

Via E-Mail

Mr. Rich Thul
Mr. Craig McLeod
Gull Lake Water Quality Management Society
RR 3, Box 21, Site 1
Lacombe, AB T4L 2N3

Mr. Andrew Bachelder
Alberta Justice and Solicitor General
Environmental Law Section
8th Floor, Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6

Mr. Lance Dzaman
Delta Land Co. Inc.
8, 10 Street
Sylvan Lake, AB T4S 2P3

Mr. Chris Simard
Box 5, Site 2, RR 1
Lacombe, AB T5L 2N1

Dear Gentlemen:

**Re: Delta Land Co. Inc./Water Act Licence Nos. 00293413-00-00 and 00293311-00-00, and
Water Act Approval Nos. 00292313-00-00 and 00279021-00-00/Our File Nos.: EAB 12-019-030
Decision: IDL-1**

This is the decision of the Board with respect to the timing of the filing of the Notices of Appeal. The decision was made by the Chair, Mr. Delmar W. Perras. A formal decision of the Board's reasons will only be provided if requested by any of the participants.

The Board has reviewed and considered the comments provided by Mr. Bachelder and Mr. Dzaman regarding the timing of the filing of the Notices of Appeal.

Mr. Bachelder, on behalf of the Director, Alberta Environment and Sustainable Resource Development ("Director") acknowledged an error was made in the August 3, 2012 letter notifying the Statement of Concern filers of the Director's decision to issue the Approvals and Licences ("Notice of Decision"). The letter did not distinguish the appeal periods for the Licences and the Approvals issued under the *Water Act*. Mr. Bachelder requested the Board accept the Notices of Appeal filed within the 30 day period provided in the Notice of Decision.

Mr. Dzaman, on behalf of Delta Land Co. Inc. ("Delta Land"), opposed accepting the Notices of Appeal. He questioned whether the Director has the authority to change timelines for submitting Notices of Appeal. Mr. Dzaman asked all appeals with a 7 day appeal period be dismissed and for the Board to consider dropping all the appeals because they did not fit within the

30 day time period. He stated timelines are in place for a reason and need to be adhered to.

In the Notice of Decision, the Director notified the Statement of Concern filers that he issued the Licences and Approvals to Delta Land. All of the authorizations were issued under the *Water Act*. In the Notice of Decision, the Director explained that Statement of Concern filers, who are directly affected, can submit a Notice of Appeal. He added: “A notice of appeal must be submitted not later than 30 days after the receipt of notice of decision....”

Section 116 of the *Water Act* sets the timelines for filing a Notice of Appeal.¹ According to the legislation, the appeal period for Licences is 30 days and the appeal period for Approvals is 7 days. The appeal period starts upon receipt of notice of the decision from the Director.

The legislation does not give the Director the authority to extend the timeline to file an appeal. However, section 116(2) of the *Water Act* allows the Board to extend the appeal period if there are sufficient grounds to do so.² The Notice of Decision clearly states the appeal period for all of the decisions is 30 days. It does not distinguish between the Licences and the Approvals. It seems reasonable to expect the recipients of the Notice of Decision would rely on the contents of the Director’s letter. This would be similar to the concept of officially induced error that exists in criminal procedures. Therefore, the Board will accept those Notices of filed within the 30 day time period.

The Notice of Decision was dated August 3, 2012, the same date as the Licences and Approvals were signed. There is no indication on whether the Notice of Decision was sent on the same day. In the Notices of Appeal, the Appellants stated they received the Notice of Decision on August 15, 2012. The Board accepts this date as a reasonable possibility given the letter was forwarded through the postal service and there was no clear indication as to when the Director actually mailed the letter. It is not unusual that the date the letter was signed is not necessarily the date the letter was mailed.

¹ Section 116(1) of the *Water Act* states:
 “A notice of appeal must be submitted to the Environmental Appeals Board
 (a) not later than 7 days after
 (i) receipt of a copy of a water management order or enforcement order, or
 (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from,
 or
 (b) in any other case, not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.”

² Section 116(2) of the *Water Act* states:
 “The Environmental Appeals Board may, on application made before or after the expiry of the period referred to in subsection (1), extend that period, if the Board is of the opinion that there are sufficient grounds to do so.”

Starting from the premise the Appellants received the Notice of Decision on August 15, 2012, the 30 day appeal period would end on September 14, 2012. All of the Notices of Appeal were received on or before September 13, 2012. Therefore, the Board will accept the Notices of Appeal as being filed on time.

Please do not hesitate to contact me if you have any questions. You may call toll-free by first dialling 310-0000, followed by 780-427-4179, or e-mail gilbert.vannes@gov.ab.ca.

Yours truly,

Gilbert Van Nes
General Counsel
and Settlement Officer