

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – February 2, 2015

IN THE MATTER OF sections 91, 92, 94, 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 appeals filed by Gwenda and Robin Gravely and the Lone Pine Hutterian Brethren with respect to Licence Nos. 00329424-00-00 and 00333986-00-00 issued to the Lone Pine Hutterian Brethren, under the *Water Act*, by the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development.

Cite as: *Gravely and Lone Pine Hutterian Brethren v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development* (02 February 2015), Appeal Nos. 14-014-017-R (A.E.A.B.).

BEFORE:

Justice Delmar W. Perras (ret.), Board Chair.

PARTIES:

Appellants: Ms. Gwenda and Mr. Robin Gravely; and the Lone Pine Hutterian Brethren.

Director: Mr. Todd Aasen, Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development, represented by Ms. Erika Gerlock, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Sustainable Resource Development (AESRD) issued two water licences to the Lone Pine Hutterian Brethren for agricultural purposes.

The Board received a Notice of Appeal from Gwenda and Robin Gravely appealing the issuance of the licences. The Board also received a Notice of Appeal from the Lone Pine Hutterian Brethren, appealing the amount of water that can be withdrawn under the licences.

Mediation meetings were held and a resolution was reached whereby the parties requested the Board recommend the licences be varied. The Board recommended to the Minister the licences be varied as agreed to by the parties.

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I. INTRODUCTION

[1] This is the Environmental Appeals Board's Report and Recommendations to the Minister of Environment and Sustainable Resource Development regarding the appeals of two water licences issued to the Lone Pine Hutterian Brethren.

[2] Alberta Environment and Sustainable Resource Development ("AESRD") issued two water licences to Lone Pine Hutterian Brethren for agricultural purposes. Ms. Gwenda and Mr. Robin Gravely appealed the issuance of the licences, and the Lone Pine Hutterian Brethren appealed the amount of water allocated under the licences.

[3] The Board held mediation meetings on November 21, 2014 and January 19, 2015, following which a resolution was reached by the parties.

II. BACKGROUND

[4] On August 29, 2014, the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development (the "Director"), issued Licence Nos. 00329424-00-00 and 00333986-00-00 (the "Licences") to the Lone Pine Hutterian Brethren ("Licence Holder"), under the *Water Act*, R.S.A. 2000, c. W-3. The Licences allowed the Licence Holder to withdraw, respectively, 4,210.0 and 5,210.0 cubic metres of water annually from wells PW1-12 and PW2-12 located at SW 23-39-18-W4M, near Botha, Alberta, for agricultural purposes.

[5] On September 22, 2014, the Environmental Appeals Board (the "Board") received a Notice of Appeal from Ms. Gwenda and Mr. Robin Gravely (the "Appellants") appealing the issuance of the Licences. On September 30, 2014, the Board received a Notice of Appeal from the Licence Holder, appealing the amount of water allocated under the Licences. The Licence Holder had requested licences to divert a total of 28,669.0 cubic metres of water annually from the two wells. The Board acknowledged receipt of the appeals and notified the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the "Record") relating to the issuance of the Licences, and that the Appellants, Licence Holder, and Director (collectively, the "Parties") provide available dates for a mediation meeting. The

Record was received on November 3, 2014, and a copy was provided to the Parties on November 6, 2014.

[6] Pursuant to section 11 of the *Environmental Appeal Board Regulation*, Alta Reg.114/93, a mediation meeting was held on November 21, 2014, with a subsequent mediation meeting on January 19, 2015, in Stettler. Productive discussions resulted in a resolution of the appeals, and the Parties requested the Board recommend to the Minister the Licences be varied.

III. RECOMMENDATIONS

[7] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), the Board recommends the Minister of Environment and Sustainable Resource Development vary Licence Nos. 00329424-00-00 and 00333986-00-00 in accordance with the resolution reached by the Parties.

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

- Ms. Gwenda and Mr. Robin Gravely;
- the Lone Pine Hutterian Brethren; and
- Ms. Erika Gerlock, Alberta Justice and Solicitor General, on behalf of Mr. Todd Aasen, Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development.

Dated on February 2, 2015, at Edmonton, Alberta.

“original signed by”
D.W. Perras
Board Chair



IV. RESOLUTION

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RESOLUTION ENVIRONMENTAL APPEALS BOARD EAB File Nos. 14-014-017

In the matter of the mediation of the appeals of the decisions of the Director, Regional Approvals, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development, to issue Licence Nos. 00329424-00-00 and 00333986-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, to Lone Pine Hutterian Brethren authorizing them to draw water from PW1-12 and PW2-12 wells located at SW 23-039-18-W4, in Botha, Alberta, for agricultural purposes.

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

1. Licence No. 00329424-00-00 is amended in condition 2.4 by replacing the phrase “The Licensee must” with the phrase “Unless authorized by the Director in writing, the Licensee must”.
2. Licence No. 00329424-00-00 is amended by adding the following conditions immediately after condition 2.4:

“2.5 The water shall not be used for human consumption.

2.6 The Licensee shall not divert water from the well IDs 1270223(PW1-12) or 1270224 (PW2-12) to the Colony’s residences or kitchens.”
3. Licence No. 00333986-00-00 is amended in condition 2.4 by replacing the phrase “The Licensee must” with the phrase “Unless authorized by the Director in writing, the Licensee must”.
4. Licence No. 00333986-00-00 is amended by adding the following conditions immediately after condition 2.6:

“2.7 The Licensee shall not divert water from well IDs 1270223 (PW1-12) or 1270244 (PW2-12) to the Colony’s residences or kitchens.”
5. The Colony shall permit Brett Penosky to observe the reading and recording of the water volume metre and the water depth metre on well IDs 1270223 (PW1-12) and 1270224 (PW2-12) on a quarterly basis starting in the month that the wells go into production for five quarters.

6. The Colony shall provide Brett Penosky and Robin and Gwenda Gravely a copy of all recordings of the water volume metre and the after depth metre for well IDs 1270223 (PW1-12) and 1270224 (PW2-12) for the preceding three months starting in the month that the wells go into production for five quarters by regular mail or hand delivery.
7. The Colony shall pay the bill provided to them by the gravely's in the amount of \$341.25 for water testing.
8. THAT in consideration of the foregoing, the Appellants, Gwenda Gravely, Robin Gravely, and Lone Pine Hutterian Brethren, withdraw their Notices of Appeal.

RESOLUTION AGREED TO BY:

"original signed by" _____ Date: January 19, 2015
Gwenda Gravely

"original signed by" _____ Date: January 19, 2015
Robin Gravely

"original signed by" _____ Date: January 19, 2015
Jacob Wipf
Lone Pine Hutterian Brethren

"original signed by" _____ Date: January 19, 2015
Sam Kleinsasser
Lone Pine Hutterian Brethren

"original signed by" _____ Date: January 19, 2015
Peter Entz
Lone Pine Hutterian Brethren

"original signed by" _____ Date: January 19, 2015
Tom Wipf
Lone Pine Hutterian Brethren

"original signed by" _____ Date: January 19, 2015
Todd Aasen, Regional Approvals
Red Deer-North Saskatchewan Region
Alberta Environment and Sustainable
Resource Development
Represented by Erika Gerlock
Alberta Justice and Solicitor General



ALBERTA
ENVIRONMENT AND SUSTAINABLE RESOURCE DEVELOPMENT

*Office of the Minister
MLA, Calgary – Klein*

**Ministerial Order
17/2015**

*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 Nos. 14-014-017**

I, Kyle Fawcett, 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 Nos. 14-014-017.

Dated at the City of Edmonton, in the Province of Alberta, this 25 day of February, 2015.

“original signed by”

Kyle Fawcett
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 14-014-017

With respect to the decision of the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development, to issue Licence Nos. 00329424-00-00 and 00333986-00-00 (the “Licences”) under the *Water Act*, R.S.A. 2000, c. W-3, to the Lone Pine Hutterian Brethren, I, Kyle Fawcett, Minister of Environment and Sustainable Resource Development, order that the Licences are varied as follows:

1. Licence No. 00329424-00-00 is amended in condition 2.4 by replacing the phrase “The Licensee must” with the phrase “Unless authorized by the Director in writing, the Licensee must”.
2. Licence No. 00329424-00-00 is amended by adding the following conditions immediately after condition 2.4:
 - “2.5 The water shall not be used for human consumption.
 - 2.6 The Licensee shall not divert water from the well IDs 1270223 (PW1-12) or 1270224 (PW2-12) to the Colony’s residences or kitchens.”
3. Licence No. 00333986-00-00 is amended in condition 2.4 by replacing the phrase “The Licensee must” with the phrase “Unless authorized by the Director in writing, the Licensee must”.
4. Licence No. 00333986-00-00 is amended by adding the following condition immediately after condition 2.6:
 - “2.7 The Licensee shall not divert water from the well IDs 1270223 (PW1-12) or 1270224 (PW2-12) to the Colony’s residences or kitchens.”