
ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – November 12, 2021

IN THE MATTER OF sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF an appeal filed by BURNCO Rock Products Ltd., with respect to the decision of the Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks, to refuse the renewal application for *Water Act* Licence No. 00223671-00-00 by BURNCO Rock Products Ltd.

Cite as: Interim Decision: *BURNCO Rock Products Ltd. v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks* (November 12, 2021), Appeal No. 19-049-ID1 (A.E.A.B.), 2021 ABEAB 32.

BEFORE:

Mr. Alex MacWilliam, Board Chair (ret.).

SUBMISSIONS BY:

Appellant:

BURNCO Rock Products Ltd., represented by Mr. Travis Coates.

Director:

Ms. Kathleen Murphy, Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks, represented by Ms. Lisa Semenchuk, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

BURNCO Rock Products Ltd. (BURNCO) applied for a renewal of a *Water Act* Licence (the Licence) for the purposes of gravel washing near Lethbridge, on the Oldman River. The Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks (the Director), refused to renew the Licence because BURNCO did not have access to the lands to which the Licence was appurtenant, as required by the *Water Act*.

BURNCO filed a Notice of Appeal with the Environmental Appeals Board (the Board), seeking a reversal of the decision, on the grounds it had been in the process of securing access to the lands to which the Licence was appurtenant at the time the renewal application was refused. The Director filed a preliminary motion to dismiss the appeal, arguing the appeal was without merit as BURNCO did not have access to the lands to which the Licence is appurtenant and no remedy is available for the Board to grant. The Director argued the appeal should, therefore, be dismissed under section 95(5)(a)(i) of the *Environmental Protection and Enhancement Act*.

In addressing the Director's motion that the appeal was without merit, the Board requested and received written submissions from the Director and BURNCO on the following questions:

1. Is the motion appropriate to be decided as a preliminary matter, or is the challenge posed by the Director more correctly one that needs to be decided at a hearing of the merits?; and
2. Assuming the matter is an appropriate preliminary matter, is the appeal without merit?

The Board found the motion posed by the Director should be decided following a hearing of the merits.

The Board dismissed the Director's preliminary motion.

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I. INTRODUCTION

[1] The Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks (the “Director”) filed a motion with the Environmental Appeals Board (the “Board”) to dismiss the appeal of BURNCO Rock Products Ltd. (the “Appellant”) of the Director’s decision to refuse to renew *Water Act* Licence No. 00223671-00-00 (the “Licence”). The Director argued the appeal is without merit. These are the Board’s reasons for its decision to deny the Director’s motion.

II. BACKGROUND

[2] The Licence was issued to the Appellant on June 8, 2007. The Licence allowed for the operation of works and diversion of up to 65,000 cubic metres of water annually for the purpose of washing gravel.¹ The Licence was appurtenant to lands legally described in the Licence as NW 30-08-22-W4M, SW 30-08-22-W4M, NE 25-08-23-W4M, and SE 25-08-23-W4M, near Lethbridge, Alberta, and the Appellant was only permitted to divert water from those points of diversion.²

[3] The Licence was effective from June 8, 2007, and expired on June 7, 2017. On March 9, 2017, the Appellant filed an application for renewal of the Licence under section 59(1) of the *Water Act*.³

[4] On November 8, 2019, the Director issued a letter to the Appellant refusing to renew the Licence. In the letter, the Director stated she had reviewed the Appellant’s application and noted the caveat providing the Appellant access to the W½ 30-08-22-W4M⁴ and source of supply had expired in May 2018. The Director also noted a letter submitted to Alberta Environment and Parks (AEP) by the landowner in April 2019.⁵ The Director further noted she

¹ *Water Act* Licence No. 00223671-00-00, issued June 8, 2007, at the Purpose.

² *Water Act* Licence No. 00223671-00-00, issued June 8, 2007, Conditions 3 and 3.3.

³ Section 59 of the *Water Act*, R.S.A. 2000, c. W-3, provides:

“A licensee may apply for a renewal of the licence in a form and manner satisfactory to the Director at any time prior to the expiry date of the licence.”

⁴ The legal land description of the property was noted in the Letter of Intent between the Appellant and landowner.

⁵ The Director referenced correspondence submitted to AEP in April 2019, from the landowner whose lands the Appellant was using to exercise its rights under the Licence. The correspondence was dated May 4, 2017. Further, the Board notes the correspondence was from the landowner and addressed to Burnswest Corporation,

could not find evidence of any diversion of water having occurred in accordance with the terms and conditions of the Licence for the purpose stated in the Licence since 2014. The Director relied on section 50(4) of the *Water Act* in refusing the renewal application for the Licence, as the Appellant did not own the lands to which the Licence was appurtenant and did not have the consent of the landowner.⁶ The Director also relied on section 60(3)(e) of the *Water Act*⁷ in refusing the renewal application.⁸

[5] On December 5, 2019, the Board received a Notice of Appeal from the Appellant. The Appellant disagreed with the Director's conclusion that there was "no reasonable prospect that the [Appellant] will resume diversion." In the Notice of Appeal, the Appellant explained that it had applied for a renewal of the Licence and that, while it acknowledged a current disagreement with the landowner, it still held its registration under Code of Practice Registration (201538-00-01) for the operation of a gravel pit on the lands in question, held municipal road use agreements with the City of Lethbridge and the County of Lethbridge, and said "...it is not unreasonable to assume that this disagreement might be resolved and operations on the site might resume."⁹

[6] On December 12, 2019, the Board wrote to the Appellant and the Director (collectively, the "Parties"), acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board also requested the Director provide the Board with copies of all documents and electronic media she reviewed and were available to her when making her decision, including policy documents (the "Record").

which the Board understands is affiliated with the Appellant. In the letter, the landowner rejected the offer of a lease renewal and lease amendment. Landowner's Letter, May 4, 2017.

⁶ Section 50(4) of the *Water Act* provides in part:

"If an applicant for a licence does not own the land in fee simple or the undertaking to which the licence is to be appurtenant, the applicant must submit the written consent of the owner of the land or of the undertaking as part of the application for the licence."

⁷ Section 60(3)(e) of the *Water Act* provides in part:

"The Director may decide not to renew a licence only if

- (i) there has been no diversion of any of the water allocated in the licence or there has been a failure or ceasing to exercise the rights granted under the licence over a period of 3 years, and
- (ii) there is no reasonable prospect that the licensee will resume diversion of all or part of the water specified in the licence or resume the exercise of the rights granted under the licence,"

⁸ Director's Refusal Letter, November 8, 2019.

⁹ Appellant's Letter, as attached to its Notice of Appeal, dated December 4, 2019, at page 2.

[7] On December 18, 2019, the Director requested the Board dismiss the appeal pursuant to section 95(5)(a)(i) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (EPEA), on the ground that it was without merit.¹⁰ The Director based this request on the Appellant not being the owner of the land appurtenant to the Licence and its failure to submit the consent of the landowner with the Licence renewal application. In support of the request, the Director also noted the Appellant indicated it did not have the consent of the landowner and acknowledged a current disagreement with the landowner in its Notice of Appeal. The Director also submitted that the Appellant could not be granted a licence without the consent of the landowner, as there was no authority to interfere with a private landowner's rights in that fashion under the *Water Act*. The Director stated the fact the relief requested in the appeal is not available, also rendered its appeal without merit.¹¹

[8] In its correspondence dated January 6, 2020, the Board acknowledged receipt of the Director's request to dismiss the appeal. The Board requested a limited Record from the Director in support of the Director's request; specifically, the landowner's letter, the caveat (and associated document that was on title), and confirmation the caveat had expired.

[9] On January 15, 2020, the Director provided the requested documents to the Board. On January 30, 2020, the Board acknowledged receipt of the documents and set the process for receiving submissions from the Parties on the Director's motion to dismiss the appeal.

[10] Between February 10 and March 12, 2020, the Board received written submissions from the Parties.

[11] On April 1, 2020, the Board advised the Parties the Board had concluded the motion posed by the Director was more correctly one that needed to be decided in a hearing of the merits of the appeal.

[12] The following are the Board's reasons for this decision.

¹⁰ Section 95(5)(a)(i) of EPEA provides:
"The Board
(a) may dismiss a notice of appeal if
(i) it considers the notice of appeal to be frivolous or vexatious or without merit ..."

¹¹ Director's Letter, December 18, 2019.

III. ISSUES

[13] The Board received submissions from the Parties on the following questions regarding the Director's motion to dismiss the Appeal:

1. Is the motion appropriate to be decided as a preliminary matter, or is the challenge posed by the Director more correctly one that needs to be decided at a hearing of the merits?; and
2. Assuming the matter is an appropriate preliminary matter, is the appeal without merit?

IV. SUBMISSIONS

A. Initial Submissions

1. Appellant

[14] The Appellant argued the Director did not follow proper process in deciding to cancel the Licence and, as a result, the decision should be overturned. The Appellant stated it had filed its application to renew the Licence on March 9, 2017, and "... the next correspondence received on this file was the decision dated November 8th, 2019 informing [the Appellant] of the cancellation of the licence." The Appellant stated no notice was provided that its application was deficient, and it was not given an opportunity to address the deficiencies.¹²

[15] The Appellant said AEP has taken a significant amount of time to process applications and in one case took 26 years to provide a decision after an initial application.¹³ In the case of the Appellant's application, it took 32 months for the Appellant to receive a decision. The Appellant argued it was improper that AEP be afforded months and years to review applications, while a proponent is not provided a reasonable opportunity to resolve any deficiencies in its application.

¹² Appellant's Submission, February 10, 2020.

¹³ Director's Refusal Letter January 28, 2019, re: Application No. 001-00428590 under the *Water Resources Act* for Surface Water Licence from Highwood River at SW 08-20-28-W4M.

2. Director

Appropriateness of Motion

[16] The Director stated the primary fact she relied on in making the motion was not in dispute; namely, the Appellant did not have the requisite consent of the landowner. The Director further stated the Appellant had admitted to this fact in its Notice of Appeal and in its previous submissions to the Board.¹⁴

[17] The Director further stated she had provided "...the three documents which indisputably demonstrate that [the Appellant] does not have the consent of the landowner and has no other means of accessing the lands to which the Licence is appurtenant."¹⁵

[18] The Director argued there was no further information that could be gained at a hearing in relation to this fact and argued it was "...appropriate that the Board avoid an unnecessary hearing" and decide the motion to dismiss on a preliminary basis.¹⁶

Appeal wholly without merit

[19] The Director argued that section 50(4) of the *Water Act* requires the applicant for a licence who does not own the land to which the licence is to be appurtenant to submit the written consent of the landowner, and the Director required the same consent to be included in an application to renew a licence under section 59 of the *Water Act*.¹⁷

[20] The Director further argued this was "...not a matter of the consent from the landowner being inadvertently missed from the application materials or an 'application

¹⁴ Director's Submission, February 14, 2020, at page 1.

¹⁵ Director's Submission, February 14, 2020, at page 2. The Director attached the following to her January 15, 2020, letter:

1. A copy of the letter from the landowner to the Appellant dated May 4, 2017, stating the landowner did not consent;
2. A copy of the now expired caveat previously registered on the lands by the Appellant; and
3. A copy of the Discharge of Caveat, executed by a duly authorized representative of the Appellant.

¹⁶ Director's Submission, February 14, 2020, at page 2.

¹⁷ Section 50(4) of the *Water Act* provides:

"If an applicant for a licence does not own the land in fee simple or the undertaking to which the licence is to be appurtenant, the applicant must submit the written consent of the owner of the land or of the undertaking as part of the application for the licence."

Section 59 of the *Water Act* provides in part:

"(1) A licensee may apply for a renewal of the licence in a form and manner satisfactory to the Director at any time prior to the expiry date of the licence."

deficiency’ – [the Appellant] does not have the consent of the landowner.”¹⁸ The Director argued the lack of consent from the landowner, admitted to by the Appellant, rendered the Appellant’s Notice of Appeal without merit.

[21] The Director stated the documents it submitted demonstrated the landowner had expressly withdrawn any consent he may have previously given to the Appellant, and by discharging its caveat, the Appellant had no other means of accessing the land to which the Licence is appurtenant.¹⁹

[22] The Director argued the relief requested by the Appellant was unavailable. The Director stated neither the Board, the Director, nor the Minister has the authority under the *Water Act* to “... ‘override’ the landowner’s property right to refuse to consent to a diversion of water occurring on his own land.”²⁰ The Director stated that without landowner consent, the Appellant has no means to resume diverting water under the Licence.

[23] The Director stated AEP’s application processing times were irrelevant to the fact the Appellant does not have the consent of the landowner. The Director argued the inability of the Board or even the Minister to override the landowner’s property rights and grant the relief requested by the Appellant also rendered the Appellant’s Notice of Appeal without merit.²¹

B. Response Submissions

1. Appellant

[24] The Appellant argued the Director did not follow proper process in providing her decision to cancel the Licence and stated the decision should be overturned.

[25] The Appellant stated it was not provided notice of the deficiencies in its application or an opportunity to address the deficiencies. The Appellant further stated that, while the Director had provided documents (landowner letter to Burnswest, a copy of the caveat, and a copy of the discharge of the caveat) as indisputable evidence the Appellant could not secure landowner consent, those documents were not conclusive. The Appellant stated it was

¹⁸ Director’s Submission, February 14, 2020, at page 2.

¹⁹ Director’s Submission, February 14, 2020, at page 2.

²⁰ Director’s Submission, February 14, 2020, at page 2.

²¹ Director’s Submission, February 14, 2020, at page 3.

negotiating with the landowner to secure a consent letter and attached a fax received from the landowner in relation to their ongoing discussion.²²

[26] The Appellant argued the existence of that correspondence from the landowner demonstrated the landowner may be willing to provide consent, and the Director's evidence was disputable. The Appellant further argued the appeal should not be dismissed on a preliminary basis.

2. Director

[27] The Director stated in her rebuttal submission that the primary fact she relied on in making the motion was that the Appellant did not have the required consent of the landowner at the time of submitting its application to renew the Licence on March 9, 2017. The Director argued the new information put forward by the Appellant in its Response Submission showed the Appellant did not obtain the required consent of the landowner over the two-year period between the time of the Appellant's application and the time the Director rendered the decision on November 8, 2019.²³

[28] The Director further stated the new information confirms the Appellant still does not have the landowner's consent as of March 2, 2020. The Director argued the Appellant cannot rely on a possible future state where the landowner consents or base its appeal on the fact the future is uncertain and unpredictable.²⁴

[29] The Director stated the Appellant, in its correspondence to the landowner, appeared to tie its duty to reclaim the operations it conducted on the landowner's property to the renewal of the Licence. The Director noted the Appellant's duty to reclaim exists under EPEA and is entirely separate from the refusal to renew the Licence.²⁵

²² Appellant's Response Submission, March 2, 2020, at page 1. Attached as an exhibit to the Appellant's Response was correspondence from the landowner to the Appellant, dated February 19, 2020, demonstrating the landowner and Appellant were in active negotiations regarding the Appellant's access to the landowner's lands, as stated by the Appellant. Note the Appellant referred to the landowner by the incorrect name in the Appellant's Response.

²³ Director's Rebuttal Submission, March 4, 2020, at page 1.

²⁴ Director's Rebuttal Submission, March 4, 2020, at page 2.

²⁵ Director's Rebuttal Submission, March 4, 2020, at page 2.

[30] The Director stated that although referenced by the Appellant, future transfers require applications and statutory decisions which cannot be assured by the licence holder, and future transfer applications and related decisions are not at issue in this appeal.²⁶

C. Response Submission

1. Appellant

[31] The Appellant argued the Director followed improper procedure in arriving at her decision to cancel the Licence. The Appellant stated it properly submitted a renewal application as a required step for a renewal of the Licence. The Appellant stated the Director informed the Appellant of the cancellation of the Licence 32 months after receiving the renewal application for the Licence, and during the 32 month period, no notice was provided to the Appellant that its application was deficient. The Appellant also stated it was not provided an opportunity to address the deficiencies during the 32 month period.²⁷

[32] The Appellant stated its appeal is based on the Director failing to follow proper procedure and the lack of remedy being afforded to the Appellant.²⁸ The Appellant stated it will incur harm as a result of the Director's decision as the area of the Oldman River in which the Licence is located is in a closed basin, and the Appellant would have no reasonable means to secure a replacement water licence had the cancellation not been appealed.²⁹

[33] The Appellant argued the documents the Director provided as grounds for her determination that consent could and would not be secured are not conclusive. The Appellant stated it had provided a letter from the landowner detailing the ongoing discussions between the Appellant and landowner which demonstrated the landowner may be willing to provide the required consent.³⁰

²⁶ Director's Rebuttal Submission, March 4, 2020, at page 2.

²⁷ Appellant's Response Submission, March 12, 2020, at page 1.

²⁸ Appellant's Response Submission, March 12, 2020, at page 1.

²⁹ Appellant's Response Submission, March 12, 2020, at page 1.

³⁰ Appellant's Response Submission, March 12, 2020, at page 1.

V. ANALYSIS

[34] The Board may dismiss an appeal in the circumstances outlined in section 95(5)(a)(i) of EPEA, which states:

“The Board
(a) may dismiss a notice of appeal if
(i) it considers the notice of appeal to be frivolous or vexatious or without merit”

[35] The issue before the Board is whether the Notice of Appeal filed by the Appellant is without merit. An appeal without merit, means an appeal with no factual or legal basis. It is a case that does not have a “reasonable chance of success.”³¹

[36] The Alberta Court of Appeal has provided some guidance to assist in determining if an appeal is “without merit.” In *Mis v. Alberta Human Rights Commission*,³² it stated:

“The determination whether a complaint should be dismissed as 'without merit' is a screening or gatekeeping function performed as a paper review. We are disinclined to set the specific test as low as 'arguable case' or as high as 'reasonable prospect of success'. In our view, the standard is somewhere in between.... The gatekeeper can be expected to apply his or her experience and common sense in evaluating the information in the investigator's report.

The threshold assessment of merit is low and the gatekeeper (here, the Chief Commissioner) is given wide latitude in performing the screening function. The courts are not to lightly interfere.”³³

The gatekeeping function described in *Mis v. Alberta Human Rights Commission* is not taken lightly by the Board. The Board has discretion when determining whether or not an appeal is without merit.

[37] The Director has challenged the merit of the Appellant’s appeal pursuant to section 95(5)(a)(i) and asked the Board to dismiss the appeal as being without merit. This is not unlike asking a Court for a summary judgment dismissing an action, where the burden rests with

³¹ *R. v. Ewanchuk*, 2000 CarswellAlta 1250 at para. 4. Although this is a criminal law case, the definition is applicable.

³² *Mis v. Alberta Human Rights Commission*, 2001 ABCA 212.

³³ *Mis v. Alberta Human Rights Commission*, 2001 ABCA 212, at paragraphs 8 and 9.

the party making the application to show there is either no merit or no defence, and there is no genuine issue requiring a trial.³⁴

[38] The Director, in challenging the merit of the Appellant's appeal, must be able to demonstrate there is no factual or legal basis for the appeal and no reasonable chance of success.

[39] The Director stated the primary fact she relied on in making the motion was that the Appellant did not have the required consent of the landowner at the time of making the application on March 9, 2017. The Director argued the new information put forward by the Appellant in its Response Submission showed the Appellant did not obtain the required consent of the landowner by the time the Director rendered the decision on November 8, 2019. The Director further stated that, as of March 2, 2020, the Appellant's new information showed the Appellant still did not have the consent of the landowner.³⁵

[40] The Appellant argued the Director did not follow proper procedure in making her decision to cancel the Licence. The Appellant stated it was not provided notice of the deficiencies in its application or an opportunity to redress the deficiencies. The Appellant stated it was negotiating with the landowner to secure a consent letter.³⁶

[41] The Director provided documents, specifically the landowner letter to Burnswest, a copy of the caveat, and a copy of the discharge of caveat, as evidence the Appellant did not have the consent of the landowner at key times during the renewal application: when the application was submitted, when the decision was made, and when the appeal of the decision was filed with the Board.

[42] The Board notes the Licence is located in a closed river basin (the South Saskatchewan River basin), and there are significant consequences to the Appellant if the appeal is dismissed.³⁷ The Director stated the primary obstacle to the Appellant's appeal is the lack of landowner consent for the purposes of accessing the point of diversion. The Board further notes

³⁴ *Andersen v. Canadian Western Trust Company*, 2019 ABQB 413, at paragraph 25. This is derived from the test from *Hyrniak v. Maudlin*, 2014 S.C.R. 7. There are other elements to the test which relate to the standard of proof, the record, and fairness. The analysis does not occur in any particular order, and the element most applicable to the matter before the Board is who bears the burden when an application for dismissal is made.

³⁵ Director's Rebuttal Submission, March 4, 2020, at page 1.

³⁶ Appellant's Response Submission, March 2, 2020, at page 1. Attached as an exhibit to the Appellant's Response was correspondence from the landowner to the Appellant, dated February 19, 2020, indicating the landowner and Appellant were in active negotiations regarding the Appellant's access to the landowner's lands.

³⁷ *Bow, Oldman, and South Saskatchewan River Basin Allocation Order*, Alta. Reg. 171/2007, at section 6.

the Appellant has stated it is in ongoing discussions with the landowner to acquire the landowner's letter of consent to the Appellant's application for the Licence renewal application.³⁸ The Appellant stated it was not provided an opportunity to remedy this deficiency prior to the Director issuing her refusal letter.³⁹

[43] The Board is of the view that it is not appropriate to rule on the Director's challenge to the appeal in a preliminary motion, as it goes beyond the scope of whether or not the appeal is without merit. The consent of the landowner is central to the issues between the Parties. The Director is asking the Board to make findings of fact and law on evidence and issues that cannot be made without the benefit of the full Record and arguments that accompany a hearing.

[44] The Director asked the Board to make findings of fact on the existence of the landowner's consent at various points of time based on a letter written three years ago and a discharge of caveat. The Director also asked the Board to make a finding of fact, that this evidence, when taken together, means the Appellant will not be able to acquire the landowner's consent. The Board notes the Director in arguing the point, stated the "...landowner has expressly withdrawn any consent he may have previously given to the [Appellant],..."⁴⁰ While this may have been true three years ago or even a year ago, the Appellant has provided contrary evidence of ongoing negotiations between the Appellant and landowner.⁴¹

[45] In refusing the Licence renewal application in November of 2019, the Director determined the past withdrawal of consent equated to no possibility of future consent being granted by the landowner. The Director has now asked the Board to make a similar finding of fact that this prior withdrawal of consent by the landowner now precludes the possibility of the Appellant obtaining the consent of the landowner in the present, even in light of the Appellant's evidence of ongoing negotiations with the landowner.

[46] The Director has also indirectly asked the Board to make findings of law on the implications of the Appellant not having the consent of the landowner at specific points in time.

³⁸ Appellant's Response Submission, March 12, 2020, at page 1

³⁹ Appellant's Response Submission, March 12, 2020, at page 1

⁴⁰ Director's Submissions, February 14, 2020, at page 2.

⁴¹ Appellant's Response Submission, March 12, 2020, at page 1. Attached as an exhibit to the Appellant's Response was correspondence from the landowner to the Appellant, dated February 19, 2020, indicating the landowner and the Appellant were in active negotiations regarding the Appellant's access to the landowner's lands.

The Director argued the Appellant's lack of landowner consent at each of these instances, renders the appeal without merit.

[47] Much like the findings of fact, these are not issues that can be decided on a preliminary motion. The Board cannot make a fair and just determination without the full Record and arguments of the Parties.

[48] The Director also argued the Board and the Minister do not have the ability to renew the Licence absent the landowner's consent and the appeal is therefore without merit.⁴² The Board agrees that it cannot recommend renewal of the Licence absent the consent of the landowner.

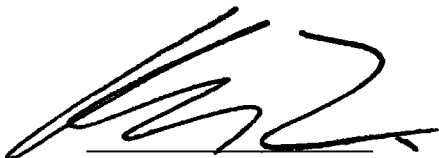
[49] The Board's jurisdiction on an appeal such as this is to recommend the Minister either confirm, reverse, or vary the decision of the Director.⁴³ This suggests there may be other remedies available to the Appellant beyond a recommendation of renewal of the Licence.

[50] The Board dismisses the Director's application. The submissions of the Parties give rise to sufficient uncertainties regarding the landowner's consent and the deficiencies in the application to renew the Licence to warrant a review of the full Record and the hearing of arguments from the Parties before making a determination.

VI. DECISION

[51] The Board denies the Director's application to dismiss the Appellant's Notice of Appeal. The Board will proceed to a hearing of the substantive issues.

Dated on November 12, 2021 at Edmonton, Alberta.



Alex MacWilliam
Board Chair (ret.)

⁴² Director's Submission, February 14, 2020, at page 3.

⁴³ Section 98(2) of EPEA provides:

"In its decision, the Board may

- (a) confirm, reverse or vary the decision appealed and make any decision that the Director whose decision was appealed could make, and
- (b) make any further order the Board considers necessary for the purposes of carrying out the decision."