

# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Report and Recommendations

Date of Report and Recommendations – November 26, 2021

**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** appeals filed by Mohinder Singh Gill and Five Pillar Holdings Ltd. with respect to the decision of the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks, to cancel *Water Act* Interim Licence No. 11738 and issue Water Management Order No. WMO-2017/01-SSR.

Cite as: *Gill and Five Pillar Holdings Ltd. v. Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (26 November 2021), Appeal Nos. 16-057 and 16-061-063-R (A.E.A.B.), 2021 ABEAB 36.

**BEFORE:**

Mr. Chris Powter, Panel Chair;  
Dr. Brenda Ballachey, Board Member; and  
Ms. Tamara Bews, Board Member.

**BOARD STAFF:**

Mr. Gilbert Van Nes, General Counsel and  
Settlement Officer; Ms. Denise Black, Board  
Secretary; and Ms. Aurelia Gordon, Board  
Counsel.

**SUBMISSIONS BY:**

**Appellants:** Mr. Mohinder Singh Gill and Five Pillar  
Holdings Ltd., represented by Mr. Neil  
Tichkowsky, Scott Venturo Rudakoff LLP.

**Director:** Mr. Craig Knaus, Director, Regional  
Compliance, South Saskatchewan Region,  
Alberta Environment and Parks, represented by  
Ms. Shannon Keehn, Alberta Justice and  
Solicitor General.

**Intervenor:** Town of Strathmore, represented by Mr. Ethan  
Wilson, Manager of Infrastructure, Town of  
Strathmore.

**WITNESSES:**

**Appellants:** Mr. Mohinder Singh Gill, Five Pillar Holdings  
Ltd.; and Mr. Steve Sturrock, Senior  
Hydrogeologist, Waterline Resources Inc.

**Director:** Mr. Craig Knaus, Director, Regional  
Compliance, South Saskatchewan Region,  
Alberta Environment and Parks; Dr. Jianrong  
Wang, Hydrogeologist, Alberta Environment  
and Parks; and Mr. Rick McClelland,  
Environmental Protection Officer, Alberta  
Environment and Parks.

## EXECUTIVE SUMMARY

The Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the Director) cancelled Interim Water Licence No. 11738 (the Licence) and issued Water Management Order WMO-2017/01-SSR (the Order) to Mr. Mohinder Singh Gill and Five Pillar Holdings Ltd. (the Appellants). The Licence and the Order relate to a water well (the Well) located at LSD 3-15-24-25-W4M, which the Appellants used to divert water to supply the Wheatland County Inn (the Hotel), which is located on the same property as the Well in Strathmore, Alberta. The Director previously declared the Well to be a problem water well pursuant to the *Water (Ministerial) Regulation*. The Order required the Appellants to reclaim the Well in accordance with the standard rules for reclaiming water wells.

The Appellants filed appeals with the Environmental Appeals Board (the Board) of the decisions to cancel the Licence and issue the Order. The Appellants disputed the facts and grounds on which the Director based his decisions to cancel the Licence and issue the Order.

Following an unsuccessful mediation meeting, the Board scheduled an oral hearing via videoconference.

The Board granted intervenor standing to the Town of Strathmore.

The Board received and reviewed written submissions, assessed the oral evidence and arguments presented at the hearing, and reviewed the Director's records on the following issues:

1. Was the Director's decision to cancel the Licence appropriate?
2. Was the Director's decision to issue the Order appropriate?
3. Are the terms and conditions of the Order appropriate?

The Board determined the Director's decision to cancel the Licence was appropriate. The Licence could not be used for the purpose for which it was issued, specifically a hotel water supply. The water in the Well was not potable due to its high fluoride concentration, and because of its physical location and the way it was maintained, the Well was at risk of contamination. Consequently, the Well posed a serious risk of causing an adverse effect on the

environment, human health, and public safety. The Board recommended the Director's decision to cancel the Licence be confirmed.

The Board determined the Director's decision to issue the Order was appropriate. The Board finds the Director had the factual and jurisdictional authority under section 97(1)(f) of the *Water Act* to issue the Order. After the Licence for the Well was cancelled, the Well could no longer be used to divert water to the Hotel or any other purpose on the Hotel property without applying for and receiving certain amendments and approvals from Alberta Environment and Parks (AEP). There were serious concerns with having an active water well, which is not properly licenced, remaining on lands when the water well cannot be legally used, particularly when the water well poses a significant risk of having an adverse effect on the environment, human health, and public safety. There were tangible risks of contamination arising from leaving the active Well in place.

The Board was also concerned the Appellants provided no evidence to show that they conducted regular testing of the Well over the past 30 years, which would demonstrate the Well complied with the applicable water well standards. Further, they did not provide evidence to show they had taken steps to address water quality concerns when raised by AEP in 2015. Finally, they did not provide evidence they had put into place proper control or protective measures to protect the Well or the aquifer to mitigate identified risks to the Well such as inland flooding or tampering. Considering the risks posed by the Well, and that the Well could no longer be used for the purpose for which it was originally licensed, it was reasonable for the Director to require the Well to be reclaimed. The Board recommended the Director's decision to issue the Order be confirmed, subject to certain variations to bring the Order up to date.

The Board also determined the terms and conditions of the Order were, in principle, appropriate. It is in the public interest to have all abandoned water wells or problem water wells reclaimed to the same set of standards and requirements. As the deadline to reclaim the Well has passed in the Order, the Board recommended a new date be established for completion of the work to reclaim the Well. The Board also recommended the Appellants be required to submit a reclamation plan and schedule to the Director for the Director's approval, to facilitate timely completion of the reclamation. All other terms and conditions should be confirmed as issued.

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## I. INTRODUCTION

[1] This is the Report and Recommendations of the Environmental Appeals Board (the “Board”) to the Minister of Environment and Parks (the “Minister”) concerning the appeals of the decisions of the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the “Director”), to cancel Interim Licence No. 11738 (the “Licence”) and to issue the Water Management Order No. WMO-2017/01-SSR (the “Order”) under the *Water Act*, R.S.A. 2000, c. W-3 (the “*Water Act*”). The Licence and Order relate to a water well (the “Well”) used by Mr. Mohinder Singh Gill and Five Pillar Holdings Ltd. (“the Appellants”) to supply water to the Wheatland County Inn (the “Hotel”), located in Strathmore, Alberta.

[2] The Board held an oral hearing by videoconference on October 26, 2021, and received submissions and evidence on the following issues:

1. Was the Director’s decision to cancel the Licence appropriate?
2. Was the Director’s decision to issue the Order appropriate?
3. Are the terms and conditions of the Order appropriate?

[3] Based on the evidence and arguments presented at the hearing, the Board concluded the Director’s decision to cancel the Licence and issue the Order were appropriate. The Director had the legal and factual basis to cancel the Licence and issue the Order. The Well poses a significant risk of having an adverse effect on the environment, human health, and public safety.

[4] The Board also concluded the terms and conditions of the Order were appropriate. The Director had the authority under section 97(1)(f) the *Water Act*<sup>1</sup> to order the reclamation of the Well. It was reasonable for the Director to order the Well be reclaimed given the significant risk of adverse effects the Well posed to the environment, human health, and public safety, and for the Director to hold the Appellants to the reclamation requirements for abandoned water

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<sup>1</sup> Section 97(1)(f) of the *Water Act* provides:

“An inspector or the Director may issue a water management order ... (f) to the person responsible for a water well if, in the opinion of an inspector or the Director, the water well is a problem water well or any actions related to the drilling of a water well caused, causes or may cause an adverse effect on the environment or on human health, property or public safety....”

wells. Moreover, without the Licence, the Well could no longer be used to divert water to the Hotel, and no other use could be made of the Well without the Appellants applying for and receiving the requisite approvals from Alberta Environment and Parks (“AEP”). The Board was concerned that the Appellants did not provide any evidence to show that they did regular testing such as water sampling over the last 30 years to demonstrate that the Well complied with the applicable regulatory requirements and was potable. The Appellants also failed to demonstrate that they had taken steps to secure the Well or put protective measures in place. Without either, the Well was at risk of contamination caused by tampering, damage caused by motor vehicle accident, or inland flooding. Given the risks posed by the Well, the only reasonable course of action remaining was for the Director to require the Appellants to reclaim the Well. The Board recommended the Director’s decision to cancel the Licence be confirmed.

[5] In the Board’s view, the Order should be changed to amend the date by which the Appellants complete the reclamation work required under the Order. The Board recommended the Appellants be given six months to complete the work, with the option of the Director having the ability to extend the timelines in the Minister’s Order, should the Director view it necessary.

[6] The Board further recommended the Appellants be required to submit a plan and schedule for the reclamation work to the Director, for the Director’s approval, within two months of the date of the Minister’s Order in this matter.

## **II. BACKGROUND AND FACTS**

[7] On July 29, 1982, the Director issued the Licence under the *Water Resources Act* R.S.A. 1980, c. W-5 (“*Water Resources Act*”) to White Wezel Enterprises Ltd., the predecessor in interest to the Appellants, for the purpose of using a water well located at LSD 3-15-24-25-W4M, to supply water to the Hotel. The Hotel was built in 1978, and later that year water and sewer lines from the Town of Strathmore (the “Town”) were connected to the Hotel.

[8] The Appellants purchased the Hotel on March 4, 1998, but the Appellants did not apply to Alberta Environment and Parks (“AEP”) to transfer the Licence from White Wezel

Enterprises Ltd. to Five Pillar Holdings Ltd. As a result, the Licence remains in the name of White Wezel Enterprises Ltd.<sup>2</sup>

[9] The Hotel, owned by the Appellants, continued to use the Well as a source of water until February 2016, despite being connected to the Town's water distribution system ("Town Water Distribution System").

[10] On April 4, 2012, the Town passed Bylaw No. 18-06, Water Utilities Bylaw (the "Bylaw") prohibiting anyone connected to the Town Water Distribution System from interconnecting the Town Water Distribution System to any other water source, including a water well.

[11] On December 18, 2015, the Alberta Safety Codes Council (the "ASCC"), a provincial agency responsible for water safety standards, ordered the Appellants to disconnect the Well from the Hotel's plumbing system, noting there was a risk of the Town water supply being contaminated if well water entered the Town Water Distribution System.

[12] On January 6, 2016, the Director advised the Appellants that test results of a water sample taken from the Well exceeded the maximum acceptable concentration for fluoride in drinking water as determined by Health Canada.<sup>3</sup> The concentration of fluoride also exceeded the amounts allowed in the *Activities Designation Regulation*, Alta Reg. 276/2003 ("*Activities Designation Regulation*"). The Appellants did not respond to the Director's letter.

[13] On January 12, 2017, the Director:

1. declared the Well to be a "Problem Water Well" pursuant to section 40 of the *Water (Ministerial) Regulation*, Alta. Reg. 205/98 ("WMR"),<sup>4</sup> noting the Well: (1) was interconnected to the public water supply; (2) was in a location that puts the groundwater at risk in the event of a flood or

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<sup>2</sup> Regardless of the failure to formally transfer the Licence into the name of Five Pillar Holdings Ltd., water licences run with the land and the Licence is the legal responsibility of the Appellants. See section 58 and section 80(3) of the *Water Act*.

<sup>3</sup> The maximum concentration of fluoride permitted in drinking water is 2.4mg/L. Health Canada's Guidelines for Canadian Drinking Water Quality, online: <<https://www.Canada.ca/en/healthcanada/services/environmental-workplace-health/water-quality/drinking-water/canadian-drinking-waterguidelines.html>> ("Guidelines").

<sup>4</sup> Section 40 of the WMR, states: "The Director may declare a well to be a problem well if the Director is satisfied that the well may cause, is causing or has caused an adverse effect on the environment, human health, property or public safety."



tampering with the Well; and (3) could possibly cause an adverse effect on the environment, human health, property, or public safety;

2. issued the Order requiring the Appellants to reclaim the Well in accordance with the WMR and other legislative requirements; and
3. cancelled the Licence due to the potential adverse impact on human health or public safety.

[14] On February 7, 2017, the Board received Notices of Appeal from the Appellants appealing the Director's decisions to cancel the Licence and issue the Order.

[15] On February 13, 2017, the Board wrote to the Director and the Appellants (the "Parties") acknowledging the appeals and notifying the Director of the appeals. The Board requested the Director provide a copy of the documents upon which his decisions were based (the "Director's Record").

[16] The Director provided the Director's Record to the Board on March 28, 2017, and the Board provided a copy to the Appellants.

[17] Supplemental Director's records were received on September 13, 2019 and October 20, 2021, and the Board provided copies to the Appellants.

[18] On May 10, 2017, a mediation meeting was held between Appellants and Director. A resolution was reached, however, the Appellants later withdrew from the resolution.

[19] On September 25, 2017, the Director submitted a motion to the Board requesting the Appellants' appeals be dismissed on the grounds the appeals were without merit and any recommendations from the Board, and any decision by the Minister, would be moot.

[20] The Board received written submissions from the Appellants and the Director between October 11 and November 24, 2017, on the Director's motion. In a decision dated July 5, 2019, the Board found the appeals were not without merit or moot as there may be appropriate remedies the Board could recommend to the Minister. The Board dismissed the Director's motion.<sup>5</sup>

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<sup>5</sup> See: *Mohinder Singh Gill and Five Pillar Holdings Ltd. v. Director, South Saskatchewan Region, Alberta Environment and Parks* (5 July 2019), Appeal Nos. 16-057, 061, 062, and 063-ID1 (A.E.A.B.), 2019 AEAB 24.

[21] On July 19, 2019, the Director filed a motion with the Board for the Board to reconsider its July 5, 2019 decision based on alleged errors in fact and law.

[22] The Board received written submissions from the Appellants and the Director between September 27 and November 29, 2019, on the motion to reconsider the Board's previous decision.

[23] In a decision dated June 24, 2021, the Board dismissed the Director's motion to reconsider its decision to dismiss the Appellants' appeals for being without merit or moot.<sup>6</sup>

[24] The Board concurrently scheduled the hearing for April 8, 2020.

[25] On February 6, 2020, the Board proposed three issues for the hearing.<sup>7</sup> The Board finalized the issues for the hearing on February 21, 2020.

[26] On February 6, 2020, the Board provided a copy of the Notice of Hearing to the Town to post on its public bulletin board or website. The Notice of Hearing was published in the Strathmore Times on February 14, 2020. The Government of Alberta's Public Affairs Bureau issued a news release to the media throughout the Province on February 18, 2020. The notice stated that if any persons wished to file an application to intervene, they were to do so by March 6, 2020.

[27] The Board received one application to intervene, from the Town. After reviewing comments from the Parties, the Town's application to intervene was granted in a decision dated May 22, 2020.<sup>8</sup> The Board limited the participation of the Town to presenting evidence only and asked the Town to focus on its Bylaws and the Safety Codes.

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<sup>6</sup> Reconsideration Decision: *Gill et al. v. Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (24 June 2021), Appeal Nos. 16-057, 061-063-RD (A.E.A.B.), 2021 ABEAB 18.

<sup>7</sup> The Board suggested the following issues:

- “1. Was the Director's decision to cancel *Water Act* Interim Licence 11738 appropriate?
2. Was the Director's decision to issue Water Management Order No. WMO-2017/01-SSR appropriate?
3. Are the terms and conditions of Water Management Order No. WMO-2017/01-SSR appropriate?”

<sup>8</sup> See: Intervenor Decision: *Gill et al. v. Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks* (22 May 2020), Appeal Nos. 16-057, 061-063-DL1 (A.E.A.B.), 2020 ABEAB 19.

[28] On March 24, 2020, the April 20, 2020 hearing was adjourned by agreement of the Parties due to the COVID-19 Pandemic.

[29] On July 23, 2021, in consultation with the Parties, the Board advised the Parties the hearing was rescheduled to October 26, 2021, by video conference.

[30] The written submissions and materials for the hearing, including expert reports, were received from the Parties between October 5 and 22, 2021.

[31] An oral hearing was held by video conference on October 26, 2021. The issues heard by the Board were:

1. Was the Director's decision to cancel the Licence appropriate?
2. Was the Director's decision to issue the Order appropriate?
3. Are the terms and conditions of the Order appropriate?

### **III. Evidence and Arguments**

#### **1. Appellants**

[32] The Appellants advanced three main arguments in their submissions in their appeals:

- a. the Licence is permanent and can only be cancelled by the Director in accordance with the provisions of the *Water Act*;
- b. the decisions to cancel the Licence and issue the Order were not based on proper evidence and therefore were not reasonable; and
- c. the Well could be used for non-potable purposes such as geothermal energy production, greywater systems and grounds keeping uses.

[33] The Appellants presented the following evidence and arguments.

[34] The Appellants noted the purpose of the Licence was "hotel water supply." The Appellants explained the Well was used to supplement the water being supplied to the Hotel by the Town.

[35] The Appellants stated adequate backflow valves were installed to prevent the well water from entering the Town Water Distribution System.

[36] The Appellants argued they had used water from the Well for nearly 30 years without issue, until approximately 2012, when the Town passed the Bylaw, which prohibited anyone connected to the Town Water Distribution System from using water from a well.

[37] The Appellants sought an exemption from the Bylaw multiple times to continue using their Well, but they were unable to obtain an exemption. Instead, the Town initiated legal proceedings against the Appellants to cease the use of the Well.

[38] According to the Appellants, the Town also contacted the Director and asked the Director to take action against the Appellants. The Appellants stated this led the Director to issue an enforcement order against the Appellants in error, based on the Director's misunderstanding that the Appellants did not have a valid water licence to be diverting water from the Well.<sup>9</sup>

[39] According to the Appellants, the Town also had a building code inspector attend at the Hotel in order to have the Hotel's water supply system inspected. This inspection led to the building code inspector issuing an order requiring the Appellants to "...disconnect the private water system (Well) from the building's water system."<sup>10</sup>

[40] The Appellants explained that on May 26, 2015, the Town advised the Director of the building code order that had been issued and again asked the Director to take action against the Hotel. The Director took a water sample in June 2015,<sup>11</sup> which showed higher than normal levels of fluoride which led to the Director sending another enforcement letter to the Appellants on January 6, 2016.<sup>12</sup>

[41] The Appellants explained that in February 2016, they disconnected the Hotel plumbing from the Town Water Distribution System. They stated this was done to comply with the December 18, 2015 ASCC decision and order ("ASCC Order").

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<sup>9</sup> The Director withdrew the enforcement order. Director's Record, at Tab 14, page 3.

<sup>10</sup> Director's Record, at Tab 14, page 7.

<sup>11</sup> The Board understands the water sample was collected by Alberta Health Services on June 17, 2015.

<sup>12</sup> The Board understands that this was not an enforcement letter, but rather a letter from AEP advising the Appellants of the water analysis results, the regulatory requirements applicable to the Appellants continued use of the Well, and requesting further information from the Appellants.

[42] The Appellants stated that, although nothing further appeared to have come of the January 6, 2016 letter from the Director regarding the fluoride, and despite having disconnected from the Town Water Distribution System, the Director still took steps to shut down the Well by cancelling the Licence and issuing the Order.

[43] The Appellants argued the Director based his decision to cancel the Licence on the risk of the Well being tampered with or affected by flooding, but the Director had no actual evidence or basis to conclude the Well could be tampered with or affected by flooding.

[44] The Appellants stated the Director based the Licence cancellation and issuance of the Order on the ASCC Order, as evidenced by the preamble of the Order which quotes the ASCC Order:

“...should the well not be properly sealed there is potential for any person to take the cap off and pour something into the well making not only the well water non-potable, but could get into the municipal water; there is the potential for flooding in the area which could contaminate the well and groundwater.”

[45] The Appellants noted the Director did not undertake an independent investigation or form an independent opinion into the exact nature of the type of tampering that put the Well at risk.

[46] The Appellants stated there was no evidence the location of the Well put the groundwater at risk, and there was no actual evidence, analysis, or otherwise regarding how the current location of the Well might lead to a risk of flooding or tampering.

[47] The Appellants said the Director based his decisions on the mistaken belief that the Well was still connected to the Town Water Distribution System.

[48] The Appellants argued the Director's grounds for cancellation of the Licence and decision to issue the Order were unfounded and invalid, and the Director's actions were an arbitrary and improper use of his regulatory powers. The Appellants submitted that, given the significant impact of cancelling the Licence, it was incumbent upon the Director to “... have

actual and reasonable information, not ‘simply the best information... available.’ (which itself does not provide a sufficient/rational basis for cancellation).”<sup>13</sup>

[49] The Appellants explained the Well had been in place for 39 years and had been an effective source of water to supplement the Hotel’s water usage. They argued the reasons for declaring the Well to be a problem water well were without basis and appeared to be an effort to stop the use of the Well. The Appellants stated there was no health risk to customers of the Hotel or residents of the Town caused by the Hotel’s use of the Well.

[50] The Appellants stated the Well had been continuously tested since it was dug to confirm its potability. Mr. Gill stated that “[o]ver 60 tests had been conducted and at no time was the Well water noted to be unfit for human consumption.”<sup>14</sup>

[51] The Appellants explained the well casing extends three feet above ground and there was minimal chance the surrounding water could reach levels which would make flooding a risk. The Appellants noted that according to the Province’s flood zones maps, the Hotel is not located in a flood zone, and there was no support for the Director’s opinion the Well was at risk of flooding.

[52] The Appellants’ consultant, Waterline Resources Inc. (“Waterline”), confirmed there were no concerns about the Well or its location, stating “... the Well is completed with adequate and proper flood prevention mechanisms and materials.”<sup>15</sup> Waterline also noted the Well was completed with a driven seal, which was intended to protect the Well from surface environmental factors, including flooding. Waterline confirmed that concerns about tampering could be dealt with by putting in place adequate measures such as ensuring the area was locked with restricted access.

[53] The Appellants noted the Director did not consider tampering prevention measures, provide any analysis of the same, or allow the Appellants to address any such concerns before cancelling their rights to use the Well.

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<sup>13</sup> Appellants’ Rebuttal Submission, October 22, 2021, at paragraph 13.

<sup>14</sup> Statutory Declaration of Mr. Gill, October 13, 2021, at paragraph 17, attached to the Appellants’ Initial Submission, October 13, 2021.

[54] The Appellants argued the Director was conflating issues. They said the Licence cancellation and issuance of the Order did not speak to water quality issues such as fluoride as the basis for his decisions. The Appellants argued water quality was not the basis for either decision.

[55] The Appellants stated that as the Well was disconnected from the Hotel plumbing system, the potable water issue was not relevant or applicable grounds for cancellation.

[56] Waterline stated the Well infrastructure is not a determinative factor and the location of the Well could be moved if necessary.

[57] The Appellants argued that, as the Well was disconnected in February 2016, there was no basis for the Director forming the opinion the Well might have an adverse effect on the environment or human health.

[58] According to the Appellants, the Director's decisions were based on speculation, and were based on unsubstantiated grounds, were unreasonable, and did not have a rational basis.

[59] The Appellants submitted that a decision-maker's decision that does not have supportable evidence, ignores relevant considerations, and is unreasonable "...must be quashed."<sup>16</sup>

[60] The Appellants relied on *Baker*<sup>17</sup> and argued the Director needed to provide reasons for his decision when making a decision that has such a significant impact. The Appellants further relied on *Singh*<sup>18</sup> and argued the Director failed to connect the reasons for his decisions with evidence. The Appellants argued the Director's decision was like that of the finding in *Singh*, "capricious or just arbitrary."<sup>19</sup>

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<sup>15</sup> Appellants' Initial Submission, October 13, 2021, at paragraph 26, citing Waterline Resources Inc. Report, August 28, 2019, at page 4 ("Waterline Report").

<sup>16</sup> Appellants' Initial Submission, October 13, 2021, at paragraph 37.

<sup>17</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 SCC 699 at paragraphs 38 and 43 ("*Baker*").

<sup>18</sup> *Singh v. Canada (Immigration, Refugees and Citizenship)*, 2018 FC 225 at paragraphs 31, 32 and 36 ("*Singh*").

<sup>19</sup> Appellants' Rebuttal Submission, October 22, 2021, at paragraph 22.

[61] The Appellants noted there are only specific circumstances in which the Director can suspend or cancel a licence under section 55 of the *Water Act*.<sup>20</sup> The Appellants stated it was unclear what conditions changed from the time the Licence was issued to the present day to justify the Director concluding there were significant potential adverse effects to human health or public safety to warrant cancelling the Licence.

[62] The Appellants relied on *Denison Mines*<sup>21</sup> to argue the Director was required to make sure the criteria of section 55(1)(j) of the *Water Act* were met. The Appellants noted the risk of flooding and tampering of the Well, and other surrounding conditions existed at the time the Licence was issued over 30 years ago. The Appellants said the Director failed to establish a risk to human health. The Appellants said there had been no change to the Well location or infrastructure since the Licence was issued from which the Director could form his opinion and rely on section 55(1)(j) of the *Water Act*.

[63] The Appellants noted that in regard to the flood risk, the Director provided a Global News Article which referred to flash flooding at a discrete time, in an inexact location, and was not considered by the Director at the time of the Licence cancellation and issuance of the Order.

[64] The Appellants said the Director asserted he must and did consider the risk of inland flooding and the risk the Well posed to human health if well water were to be contaminated. The Appellants noted, there was no reference to such consideration in the Director's materials, and there was no actual risk to human health as the Well was disconnected from the Hotel plumbing system and the Town Water Distribution System.

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<sup>20</sup> Note the Appellants drew specific attention to section 55(1)(j) of the *Water Act* which provides: "The Director may suspend or cancel a licence ... (j) if, in the opinion of the Director, a significant adverse effect on human health or public safety occurred, occurs or may occur that was not reasonably foreseeable at the time the licence was issued."

<sup>21</sup> *Denison Mines Ltd. v. Ontario Hydro*, [2002] OJ No 3464, 116 ACWS (3d) at paragraphs 4 and 12 ("*Denison Mines*").



[65] The Appellants stated they were not provided with any notice of the subsections of the Licence they were violating. The Appellants submitted section 110(3) of the *Water Act*<sup>22</sup> and the rules of natural justice require the Director to provide reasons for cancelling such a valuable asset.

[66] The Appellants argued cancellation of the Licence and the issuance of the Order were performed improperly and were done *ultra vires* to the Director's powers under the *Water Act*.

[67] The Appellants stated the Director conflated potable water use with any use that is permitted by the Licence's hotel water supply purpose. The Appellants said the Director argued the Appellants' use of the water required an approval because of the fluoride concentration, however this only applied if the water was going to be used for drinking or human consumption.

[68] The Appellants said the Director ignored any uses that could be made of the water other than drinking purposes. The Appellants noted the Director admitted there was non-consumptive uses, but then he implies the Licence could only be used for potable and human consumption purposes.

[69] The Appellants argued the Town's concerns were not relevant to the matter at hand. The Appellants noted the Well was not connected to the Town Water Distribution System, and it was not being used for human consumption.

[70] The Appellants stated the Town provided no evidence for its assertion the well head could be compromised by vandalism, by accident, or by being struck by a motor vehicle.

[71] The Appellants argued speculation of the Well being contaminated by vandalism, accident, or being struck by a motor vehicle could arbitrarily be applied to any well or appurtenance upon which a water licence operates.

[72] The Appellants stated the ASCC Order itself did not provide any basis for finding flooding or tampering could occur. The Appellants argued that, considering the ASCC's

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<sup>22</sup> Section 110(3) of the *Water Act* provides: "If the Director suspends or cancels an approval or licence or cancels a preliminary certificate, the Director must give notice of the suspension or cancellation to the approval holder, preliminary certificate holder or licensee."

analysis, which the Director relied upon, was tenuous at best, the Director's decision was equally without merit.

[73] The Appellants noted the Director provided only the ASCC Order as the basis for his decision. The Appellants stated the Director misunderstood or misrepresented the Hotel plumbing system and Town Water Distribution System as still being interconnected as of January 12, 2017, when the Licence was cancelled and the Order was issued. The Appellants stated the Hotel plumbing system and Town Water Distribution System had already been disconnected in February 2016. The Appellants said that, considering this information there was no basis for the Director to conclude the Well posed a risk of having an adverse effect on the environment, human health, and public safety.

[74] At the hearing, the Appellants provided the history of their ownership of the Hotel and the Hotel's use of the well water. Mr. Gill advised the Board that he owned and operated berry farms in British Columbia and used two water wells for those operations. He stated one was for domestic use, and one was for irrigation purposes. He explained that under the British Columbia rules he was not required to license those wells.

[75] The Appellants explained that they purchased the Hotel in 1998 because they were looking for a new business. The Appellants stated they expanded the Hotel in 2002 by adding rooms and upgrading the sprinkler system. The Appellants explained that at the time the Town gave them a permit to use both the Well and the Town Water Distribution System. They stated adequate backflow devices were installed.

[76] The Appellants explained the Town did not have an issue with the use of the Well until the Bylaw was passed in 2012. They stated after the passage of the Bylaw, there was an inspection, and during that initial inspection they were asked about a licence, and they replied they had a legal well. They further stated they did not have to apply to change the name on the Licence because the Licence stays with the Hotel property and land.

[77] The Appellants refused AEP access to obtain a water sample when Mr. McClelland, an Environmental Protection Officer with AEP, told the Appellants to shut the Well down because there was no licence. The Appellants did not think that AEP would help them.

[78] The Appellants stated they have not used the Well for any purpose since the Well was disconnected.

[79] The Appellants' consultant, Mr. Steve Sturrock of Waterline, stated he began his review of the Well by examining the Licence. He noted it was an old *Water Resources Act* licence that identified: the aquifer; the legal land description; the point of diversion which is the LSD; two production intervals; and that it was given its permanent status on March 25, 1993, without an expiry date.

[80] The Appellants' consultant examined the AEP water well database and found the water well record appeared to match the well referenced in the Licence. He noted it indicated multiple aquifer completions, the annular seal, which was a driven seal and driven casing, and provided a tested rate of 150m<sup>3</sup> per day.

[81] The Appellants' consultant explained a well with multiple aquifer completion is a well that is completed in two different aquifer zones. The well would then be able to draw from both aquifers. He said this could lead to a risk of one aquifer potentially mixing with another aquifer and the risk of contamination. The consultant explained wells with multiple aquifer completions were allowed under the *Water Resources Act* and grandfathered when the *Water Act* came into force, but new wells are no longer permitted to be drilled with multiple aquifer completions.

[82] The Appellants' consultant explained he then examined the environmental setting, surface topography, and major tributaries. He stated aquifers and groundwater tend to follow the flow direction of surface water.

[83] The Appellants' consultant said he also looked at what the groundwater resources were in the area by looking at who was using water in the area. He explained he looked in a 1.6 km radius of the Well and he located 18 wells. He explained the bulk of those wells were for domestic or stock water use, but that five wells were licensed for industrial use. He stated that the Hotel represented 10 percent of the allocation of the aquifer.

[84] The Appellants' consultant believed that, as this was an old *Water Resources Act* licence, it was permanent in nature, it did not expire and there were only certain circumstances in which it could be cancelled.

[85] The Appellants' consultant's interpretation of the *Water Act* was the Licence was for an allocation from the aquifer tied to the Hotel's property, and if there was a problem with the Well that made it unusable it could be twinned or recompleted for the same production interval with a minor amendment to the Licence without having to apply for a new licence. He did not notice anything unusual about the Well's completion given its age.

[86] The Appellants' consultant concluded by stating there was likely a greater environmental impact by having water supplied from the City of Calgary to the Town for municipal purposes than drawing water from the Well.

[87] When asked if cancellation of the Licence was a serious consequence, the Appellants' consultant agreed it was, stating many holders of licences without expiry dates treat them as permanent and as property. He stated many will try to maintain them as best as they can because the priority number was very important under the legislation, which operates on a first in time, first in right basis.

[88] The Appellants' consultant stated he visited the site and examined the Well. He stated he did not notice anything abnormal about the risk of flooding when compared to the thousands of wells he had seen across the Province. He noted the well head was near the Hotel, set back from the Hotel's parking lot, above ground, and he assumed there was some sort of engineered drainage away from the Hotel building and the Well.

[89] The Appellants' consultant said he looked at the well cap, and it was standard. He did not notice a lock, but said an Allen key would be needed to open the well cap. He did not open it, because he did not want to disrupt the environmental seal as there was a chance it could break and fall into the Well. The Appellants' consultant said the Well could be made more secure without redrilling it, and he had never come across a situation of well tampering.

## **2. The Town**

[90] The following evidence and arguments were presented by the Town.

[91] The Town stated it supported the Director's decision to cancel the Licence and issue the Order.

[92] The Town explained an interconnection of a private water well with the Town's Water Distribution System could present significant risk. It stated the interconnection of the Well with the Town Water Distribution System and the Town's safety code concerns cannot be considered mutually exclusive.

[93] The Town stated the current interconnection status of the Well to the Town Water Distribution System had not been confirmed, however, previous visits to the site indicated physical connections existed between the Well and the Hotel's plumbing system. The Town said that while the Well was believed to be powered off, having not been decommissioned, the Well could be put to use again.

[94] The Town stated its primary concern was contamination of the Town Water Distribution System. The Town stated it does not believe the integrity of the Town water supply could be guaranteed if an alternate water supply was permitted such as an interconnection with the Well, even if backflow protections were put into place.

[95] The Town further stated it was contractually obligated to the City of Calgary, who supplies potable water to the Town, to not allow any connection of the potable water provided by the City of Calgary, to any other potable water source.

[96] The Town observed the well head was located at the front of the building, near the main entrance, and did not appear to be decommissioned in any way. The Town noted the well head was easily accessible to the public and it was not surrounded by a fence or any other protective mechanism. There were no protections to the well head to prevent it from being struck by a motor vehicle. The Town argued contamination at the well head was possible as a result of accident or vandalism.

[97] The Town stated previous test results indicate water quality from the Well does not meet the *Guidelines*, particularly with respect to fluoride.<sup>23</sup> The Town said that it and its

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<sup>23</sup> Guidelines for Canadian Drinking Water Quality, Health Canada, September 4, 2020, at pg. 13.

utility operator are held to the Guidelines and argued the citizens and visitors to the Town expect a minimum quality of water to be provided.

[98] The Town noted that should the water supply from the Well be treated to meet the Guidelines, the Appellants would have to regularly test the water supply, as well as comply with the *Code of Practice for Waterworks Systems Consisting Solely of a Water Distribution System*.<sup>24</sup> The Town stated it did not believe the water from the Well was currently being tested.

[99] The Town also stated that the *National Plumbing Code*<sup>25</sup> requires the separation of water supply systems. The Town explained it accepts applications, issues permits, and completes inspections to ensure all projects within the Town meet or exceed the codes at the time of application and inspection. The Town stated that if the Well was interconnected to the Town Water Distribution System, it would not meet the current or previous codes.

[100] At the hearing, Mr. Ethan Wilson from the Town provided background about the water and sewer infrastructure in place for the Hotel. The Town stated that water and sewer infrastructure exists along Westridge Road and service connections are provided to 960 Westridge Road, which is the municipal address of the Hotel.

[101] The Town indicated, that for the past year, the Hotel had consistently used between 200m<sup>3</sup> to 300m<sup>3</sup> of Town water per month, and the Town would expect a hotel and restaurant of that size to use approximately 475m<sup>3</sup> per month when operating at full capacity.<sup>26</sup>

[102] The Town stated the well head was located adjacent to the entrance of the building and site visits as recent as September 2021 confirmed no changes to protect the Well had been made since 2014. It stated damage to the well head was possible through intent or accident, and there were no protections against vehicle damage.

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<sup>24</sup> *Code of Practice for Waterworks Systems Consisting Solely of a Water Distribution System*, Alberta Environment and Parks, June 1, 2012. The Board understands that rather than complying with this Code, the Appellants would be required to obtain an approval under the *Environmental Protection and Enhancement Act*, R.S.A. 2000. c. E-12 (“EPEA”).

<sup>25</sup> *National Plumbing Code of Canada 2015*, Canadian Commission on Building and Fire Codes (“*National Plumbing Code*”).

<sup>26</sup> While the Board found this evidence interesting, the Board did not give this evidence much weight, noting that there was no evidence before the Board of the Hotel’s occupancy rates and how the COVID-19 Pandemic may have impacted them.

[103] The Town stated there is no physical barrier between the well head and the public allowing for “vandalism or contamination to occur with relative ease.”

[104] The Town stated the interconnection between a private and public water supply had not been allowed under the *National Plumbing Code* since before the Hotel was constructed. The Town noted the ASCC Order confirmed the *National Plumbing Code* was applicable to the Hotel and disconnection of the Well was required by the ASCC Order,<sup>27</sup> because interconnection could lead to possible contamination of the Town water supply.

[105] The Town believed there was still a physical connection between the Well and the Town Water Distribution System in some capacity. It stated that utility invoices confirm that Town water was being used, but the Town could not confirm this was the only source of water being used.

[106] The Town stated that, without decommissioning the Well, water could be sourced from the Well and only regular inspections could verify that the Well was not in use.

[107] The Town stated that the fluoride levels exceed the *Guidelines*. It stated both the Town and the City of Calgary, the Town’s water supplier since 2010, were within the Guidelines limitations. It stated the *Guidelines*, the maximum concentration was 1.5mg/L for fluoride, while the City of Calgary had an internal mandate of 0.7mg/L. The Town noted the fluoride levels in the water from the Well were 3.5mg/L.

[108] The Town stated it provides water services to most residential, commercial, and industrial sites within the Town boundary. It further stated that residents and visitors reasonably expect safe and healthy water within all developed areas of the Town, including the Hotel.

[109] The Town stated it requires backflow devices to be installed in all industrial, commercial, and institutional premises through the Town of Strathmore Bylaw 19-19. It stated that while this would protect the Town water supply from being contaminated by the Well, it would not protect those on the premises or the Hotel’s patrons. The Town stated the last inspection of the Hotel’s backflow device on record is dated November 18, 2019. It further stated two letters sent in January and July 2021 regarding the requirement to have the backflow

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<sup>27</sup> Alberta Safety Codes Council Order No. 0015456, December 18, 2015.

devices inspected have been sent to the Hotel without response. The Town said testing of the backflow devices was required annually by a certified inspector, and the results of the inspection must be sent to the Town. The Town said that without the results of these regular inspections, the Town could not be certain there was no cross contamination from the Well.

[110] The Town said the alternative uses raised by the Appellants, such as geothermal, grounds keeping and grey water, are not permitted under the Bylaw. It stated that, under the Bylaw, any parcel that is connected to the Town's water system must be done so exclusively, and while there were exemptions, these were only for properties greater than 150 metres away from the Town's water main at their property line.

[111] When asked, the witness for the Town verified there were some commercial users that used wells within Town boundaries, but he noted these users were completely disconnected from the Town Water Distribution System. He also noted there were some agricultural users who used wells, but they were mostly annexed into the Town boundary and the exemptions applied to them.

[112] The Town stated that, while it was understood the Bylaw was not a part of the Board's matter, the Town would uphold its Bylaw, regardless of the outcome of the hearing.

### **3. Director**

[113] The following evidence and arguments were presented by the Director.

[114] At the hearing, Mr. Rick McClelland, Environmental Protection Officer with AEP, provided the history and context leading up to the Director's decisions to cancel the Licence and issue the Order.

[115] Mr. McClelland stated the Hotel is adjacent to the TransCanada Highway and is surrounded by motor vehicle dealerships, a tire shop and food establishments.



[116] He stated that on November 17, 2014, AEP<sup>28</sup> received a report from AHS advising the Hotel was connected to a private water well, which AHS believed was being used for an unlicensed allocation.

[117] Mr. McClelland said that he conducted a site visit on February 10, 2015, and verified there was active water well infrastructure connected to the Town Water Distribution System. Mr. McClelland stated he also observed well head infrastructure adjacent to the front door of the Hotel lobby.

[118] Mr. McClelland noted there were no restrictions to public access or protective measures in place to prevent tampering with the Well, the cap covering the Well was not locked and the ground around the Well's casing was flat and gravel covered.

[119] Mr. McClelland explained that on April 22, 2015, AEP sent a letter to the Appellants requesting Mr. Gill meet with AEP regarding:

- a. the requirement for an assessment for Groundwater Under the Direct Influence of Surface Water as per the EPEA Standards for Municipal Waterworks (Part 1) and a detailed water analysis report;
- b. the requirements of EPEA for the operation of a waterworks system that does not use high quality groundwater, should the Well not be using high quality groundwater;
- c. the fact the Licence was held by someone other than the Appellants; and
- d. the possibility of amending the Licence.

Mr. McClelland stated that there was no response to the letter, and a further letter was sent on May 14, 2015, which was also unanswered.

[120] Mr. McClelland said on June 18, 2015, AHS emailed AEP to advise a water sample had been collected from the Well. On July 13, 2015, AHS followed up to advise the Alberta Centre of Toxicology analysis showed the fluoride level in the water sample from the Well was high, as it had tested at 3.5mg/L.

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<sup>28</sup> AEP received the report on their environmental reporting line, the Co-Ordination and Information Centre ("CIC"), which is now known as "Edge."

[121] Mr. McClelland stated concurrently, on June 10, 2015, the Town commenced legal action regarding safety codes violations due to the Hotel connecting a private well to the Town Water Distribution System. This arose from an inspection conducted by the Town on November 7, 2014.

[122] Mr. McClelland explained AEP sent a letter to the Appellants on January 16, 2016, outlining a sample from the Well showed the groundwater contained 3.5mg/L of fluoride, exceeding:

- a. the 1.5 mg/L Maximum Acceptable Concentration for fluoride in drinking water as set by the Guidelines; and
- b. the 2.4 mg/L maximum acceptable fluoride concentration in high quality groundwater set out in the definitions for activities described under section 2(4)(b)(ii) of the *Activities Designation Regulation*, Alta. Reg. 205/98 (“*Activities Designation Regulation*”).<sup>29</sup>
- a. He further stated this letter outlined several options for complying with EPEA as an approval for a waterworks system would be required if the Appellants wished to recommence providing potable water from the Well.

[123] Mr. McClelland stated the current regulatory requirements outstanding that needed to be satisfied before using the Licence for the Hotel’s water supply were:

- a. the Licence needed to be transferred from White Wezel Enterprises Ltd. into the name of Five Pillar Holdings Ltd.;
- b. the Well construction needed to be updated to meet current requirements;
- c. water usage and water levels need to be reported regularly;
- d. water samples need to be collected and analyzed annually for public safety reasons; and
- e. an EPEA approval to construct, operate and reclaim a waterworks system needed to be obtained.

[124] Mr. McClelland stated AEP did not receive a response to the letters.

[125] Mr. McClelland further stated AEP did not receive a response from the Appellants regarding their plans to address concerns about:

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<sup>29</sup> Section 2(4)(b)(ii) of the *Activities Designation Regulation* provides: “(ii) contains a concentration of naturally occurring fluoride of less than or equal to 2.4 milligrams per litre....”

- a. the quality of the groundwater that may be under the influence of surface water;
- b. an assessment of the groundwater quality, to determine whether the water meets the definition of “high quality groundwater;” and
- c. the use of properly treated water in the Hotel that meets the regulatory requirements set out in EPEA and the *Water Act*.

[126] Mr. McClelland stated that, on February 12, 2016, AHS provided photos showing the removal of a small section of pipe between the water well infrastructure and the Hotel’s plumbing system.

[127] Mr. McClelland said that, on a site visit on July 24, 2019, he observed much of the Well’s plumbing infrastructure appeared to remain connected to the Hotel laundry equipment. He noted the Well appeared to still be intact and had not been reclaimed. Mr. McClelland stated that, although a section of the pipe from the Well was missing near the Hotel’s main water supply line, it would take minimal effort to reconnect the Well to the rest of the Hotel’s water supply.

[128] Dr. Jianrong Wang, a hydrogeologist with AEP, gave evidence at the hearing on general contamination problems with water wells, and more specifically the potential contamination problems presented by the Well.

[129] Dr. Wang explained contamination of groundwater is hard to detect in the early stages. He stated by the time the problem is obvious, little can be done to remove the contaminant and often, it can take decades or longer to flush a contaminant out. He stated prevention of pollution is the only effective approach.

[130] Dr. Wang stated the easiest way to contaminate groundwater is through a water well. He explained a well provides a direct path for a contaminant to travel from the surface to the aquifer.

[131] Dr. Wang explained an inadequate well cap, casing or annular seal, or casing corrosion may allow surface water or contaminated groundwater to seep along the outside or inside of the casing and enter the well. He also explained multiple aquifer completion allows mixing of water from several aquifers which may have significantly different water qualities.

[132] Dr. Wang explained contaminants such as fuel storage tanks, hazardous material storage, improper storage of manure or fertilizer or pesticides, and poor sewage systems can leak contaminants into the groundwater. Then, through old unused wells that are poorly constructed or have corroded steel casings, there can be contamination to an aquifer.

[133] Dr. Wang stated the specific adverse effects associated with the Well included:

- b. risk of vandalism (pouring of gasoline or chemicals down the Well);
- c. accidentally being struck by a vehicle;
- d. inland flooding after heavy rain;
- e. flooding after snow melt;
- f. salt seepage into the well through the snow piling and the nearby TransCanada Highway; and
- g. potential gasoline leakage from neighbours into the shallow aquifer, travelling horizontally to the Well and then contamination occurring to the deep aquifer through the aged seal or possibly corroded steel casing.

[134] Dr. Wang explained the Hotel was surrounded by car dealerships which usually store gasoline. He stated there was also a gasoline station nearby. In both cases there was the potential for contaminants to make its way to the Well. He further explained there were already six known instances of environmental issues in the area near the Hotel.

[135] Dr. Wang stated the Well itself had issues. He explained the Well was nearly 40 years old and the water from the Well had a fluoride level of 3.5mg/L. Dr. Wang said there were two possible explanations to account for the fluoride level. He explained either both aquifers had the same level of fluoride, which would be a near impossibility, or the more likely case, one aquifer had a higher level of fluoride, than the other.

[136] Dr. Wang stated the Well had multiple aquifer completions and, therefore, could not be used for an open loop geothermal system pursuant to section 3.2.10(1)(a) of the *Water Wells and Ground Source Heat Exchange Systems Directive* (“*Water Wells Directive*”).<sup>30</sup>

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<sup>30</sup> Section 3.2.10(1)(a) of the *Water Wells Directive* provides:

[137] With respect to the Appellants' suggestion that the Licence could be used for an open loop geothermal system, Dr. Wang explained that a *Water Act* approval is required, but no licence is required because consumptive use of groundwater was not allowed. He explained at least two wells would need to be drilled, one for extraction and one for injection. The quantity diverted must be equal to the quantity injected. He stated both wells would need to meet current well completion requirements and no multiple aquifer completions would be permitted.

[138] Dr. Wang explained the Well was not suitable for a closed loop geothermal system. He said in closed loop geothermal systems, no water is circulated. He explained only heat transfer fluid inside a closed tube is circulated through pipes, which are used to circulate the heat transfer fluid. The heat transfer fluid transfers the temperature from the underground to a building. He stated there are vertical and horizontal options. Dr. Wang explained that several wells would be required to extract enough energy for the Hotel space if a vertical method is used. He stated that the existing Well could not be used for a closed loop geothermal system pursuant to section 4.2.7(3)(b)(iii) of the *Water Wells Directive*.<sup>31</sup>

[139] Dr. Wang stated AEP is not in receipt of any applications from the Appellants for groundwater use for the purpose of geothermal applications or to change the purpose of the Licence to any other use. He restated the Appellants never responded to AEP's letters, and added the Appellants never provided information about potential alternative uses such as geothermal uses. He noted significant plumbing changes would need to be installed for a greywater system, and the Appellants would need to apply to amend the Licence to change the purpose.

[140] Dr. Wang concluded the Well might have a significant adverse effect on human

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"Production Interval

- (1) The driller must meet the following requirements in relation to a water well that is required to be licensed for a diversion of groundwater:
  - (a) construct the water well in a manner that does not result in multiple aquifer completions ...."

<sup>31</sup> Section 4.2.7(3)(b)(iii) of the *Water Wells Directive* provides:

"Within 24 hours after the placement of the earth loop into a vertical closed-loop ground source heat exchange well, the earth loop technician must, at a minimum, ... (b) grout the entire length of the vertical closed-loop ground source heat exchange well in accordance with section 4.2.7(4) to, ... (iii) prevent mixing of water from one aquifer to another."

health or public safety if it were used, and the Well might have a significant adverse effect on the environment in its current condition.

[141] The Director noted the Licence was issued under the *Water Resources Act*. He stated that when the *Water Act* replaced the *Water Resources Act*, the *Water Resources Act* licences were transitioned into *Water Act* licences. The *Water Act* would then apply to all water licences, including the cancellation and suspension provisions. He explained this was important, because the *Water Resources Act* licences “do not go on into perpetuity.” The Director stated the act that created them ended, and the only reason they still exist was because of a transitional provision that converted them into licences under the *Water Act*.<sup>32</sup>

[142] The Director stated that under section 3(2) of the *Water Act*,<sup>33</sup> the “property in and right to the diversion and use of all water in the Province is vested in the Province.” He explained that it was important to note no Albertan owns the water that flows under or adjacent to their property. He stated there are certain provisions that allow them to access the water.

[143] The Director explained one such provision is section 49(1) of the *Water Act*,<sup>34</sup> which allows for use of water if there is a licence for the diversion.

[144] The Director noted section 58 of the *Water Act* states that licences are appurtenant to the land or the undertaking and not the aquifer.<sup>35</sup>

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<sup>32</sup> Section 1(1)(nn) of the *Water Act* provides: In this Act ... (nn) “predecessor Act” means the *Water Resources Act*, RSA 1980 cW-5, *Irrigation Act* (Canada), RSC 1927 c104, *Dominion Lands Act* (Canada), RSC 1927 c113 or *Dominion Water Power Act* (Canada), RSC 1927 c210....”

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

“Every authority or licence other than a temporary authority, agreement, permit, interim licence, updated and reissued interim licence and supplementary interim licence, granted under a predecessor Act that on January 1, 1999 authorizes the diversion of water, is a deemed licence that has a priority number that corresponds to the priority number of the original authority or licence.”

<sup>33</sup> Section 3(2) of the *Water Act* provides: “The property in and the right to the diversion and use of all water in the Province is vested in Her Majesty in right of Alberta except as provided for in the regulations.”

<sup>34</sup> Section 49(1) of the *Water Act* provides:

“Subject to subsection (2), no person shall

(a) commence or continue a diversion of water for any purpose, or

(b) operate a works, except pursuant to a licence unless it is otherwise authorized by this Act.”

<sup>35</sup> Section 58 of the *Water Act* provides:

“58(1) When issuing a licence, including licences issued under Part 5, Division 2, the Director must specify in the licence the land or undertaking to which the licence is appurtenant.

[145] The Director stated the Licence was issued to White Wezel Enterprises Ltd. under the *Water Resources Act*. He further said the Licence did not grant ownership in the water. He explained the Licence provided the right to divert groundwater from a point of diversion from a specific interval (groundwater level), for a specified amount of water and diversion rate, for a specified point of use. It is not a guarantee of water, and if for example, the aquifer is depleted, there is no further right to water.

[146] The Director stated under clause 7 of the Licence, the rights and privileges were subject to periodic review and modification to ensure the most beneficial use of water in the public interest.

[147] The Director argued the Board had already clarified that the Licence runs with the land as opposed to the undertaking in the Board's May 5, 2015 letter to the Parties, wherein the Board stated: "Pursuant to section 58 of the *Water Act*, R.S.A. 2000, c. W-3, the Licence runs with the land. ... Although the land has transferred to new owners, the Licence still applies to the same parcel of land."<sup>36</sup>

[148] The Director stated that on December 18, 2015, the ASCC issued Council Order No. 0015456, which ordered the Appellants to disconnect the Well from the building's water system, by February 5, 2016. The Director stated that in its decision, the ASCC stated that no private water well system shall be interconnected to a public water supply system.

[149] The Director said the ASCC took note of the risk of the groundwater and the municipal water system being contaminated should the Well not be properly sealed, and there was a potential for flooding in the area which could contaminate both the Well and groundwater. The Director stated there was no evidence the ASCC's conclusions were challenged by the Appellants or the conclusions and decision of the ASCC were unfounded or inappropriate.

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(2) 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
- (c) run with the land or undertaking on any disposition of the land or undertaking unless the Lieutenant Governor in Council orders otherwise."

<sup>36</sup> Director's Response Submission, October 20, 2021, at paragraph 84, citing the Board's letter to the Parties, May 5, 2015.

[150] The Director said he waited more than a year after AEP's January 6, 2016, letter and almost two years after AEP's April 22, 2015, letter to make any decisions regarding the Licence. The Director argued that having received no information from the Appellants to address the environmental or human health concerns expressed by AEP, the Director, on January 12, 2017, declared the Well to be a "Problem Water Well" under section 40 of the WMR. In the declaration, the Director advised the Well was both interconnected with the public water supply of the Town and was in a location that puts the groundwater at risk of being adversely impacted should the area flood or the well head be tampered with, possibly resulting in an adverse effect on the environment, human health, property, or public safety.<sup>37</sup>

[151] The Director stated that on January 12, 2017, he cancelled the Licence, citing the potential adverse effects on human health or public safety that may occur because of the continued diversion of water from the Well, and no protective measures were in place to protect the aquifer.

[152] The Director said he issued the Order at the same time, which requires the Appellants to reclaim the Well in accordance with the WMR, among other associated requirements.

[153] The Director submitted the decisions to cancel the Licence and issue the Order were reasonable and appropriate.

[154] The Director argued the location and characteristics of the Well to which the Licence is appurtenant continue to present a potential significant adverse effect on human health or public safety.

[155] The Director argued the requirements of the Order are appropriate.

[156] The Director submitted he has jurisdiction under section 55(1)(j) of the *Water Act*<sup>38</sup> to cancel the Licence. The Director stated that under section 55(1)(j) of the *Water Act*, the Director may suspend or cancel a licence if, in the opinion of Director, a significant adverse

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<sup>37</sup> Director's Record, at Tab 2.

<sup>38</sup> Section 55(1)(j) of *Water Act* provides: "The Director may suspend or cancel a licence ... if, in the opinion of the Director, a significant adverse effect on human health or public safety occurred, occurs or may occur that was not reasonably foreseeable at the time the licence was issued."



effect on human health or public safety has occurred, occurs, or may occur that was not reasonably foreseeable at the time the licence was issued.

[157] The Director said he had a factual basis to cancel the Licence. The Director noted he had previously stated in both the Problem Well Declaration<sup>39</sup> and the Licence Cancellation<sup>40</sup> that "...he is of the opinion that the presence of the Well constitutes a situation where a significant adverse effect on human health or public safety may occur."<sup>41</sup>

[158] The Director restated section 1(1)(c) of the *Water Act*<sup>42</sup> and said that in April 2015, AEP had sent the Appellants a letter indicating AEP had concerns with the groundwater quality, as indicated by the request for a detailed water analysis and other inquiries regarding:

- h. a. groundwater under the direct influence of surface water; and
- i. b. whether the ground water was high quality groundwater.

[159] The Director noted the Appellants did not respond to the letter or the concerns regarding the water quality and did not provide a water quality analysis.

[160] The Director stated AEP attempted to obtain water samples from the Well on June 2, 2015, however the Appellants would not allow AEP to collect samples. The Director stated AEP made further attempts in June 2015 to contact the Appellants to obtain a water sample, however the Appellants did not respond to AEP.

[161] The Director stated the Appellants have resisted and refused all attempts by AEP to substantiate the claim "...that no contamination of the Well has ever occurred..."<sup>43</sup>

[162] The Director stated that in June 2015, the Appellants advised AEP that AHS had taken a water sample from the Well. The Director explained that subsequent discussions with AHS indicated the water sample taken by AHS did not encompass all the water quality parameters necessary for AEP to properly evaluate the quality of the water. The Director said he received the water analysis results from AHS showing fluoride levels above those acceptable for

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<sup>39</sup> Director's Record Tab 2.

<sup>40</sup> Director's Record Tab 3.

<sup>41</sup> Director's Response Submission, October 20, 2021, at paragraph 24.

<sup>42</sup> Section 1(1)(c) of the *Water Act* provides: "'adverse effect' means impairment of or damage to...."

potable water, which was contrary to Mr. Gill's October 13, 2021 Statutory Declaration, which stated "...at no time was the Well water noted to be unfit for human consumption."<sup>44</sup>

[163] The Director stated that on January 6, 2016, AEP sent a letter to the Appellants advising them of the results of the AHS analysis, setting out the applicable regulatory requirements, and requesting the Appellants address the concerns for human health and public safety through an application for an EPEA approval for a waterworks system for the Hotel that would use tested water as its source water.

[164] The Director argued the Well has never been fully disconnected from the Hotel's plumbing system and remains interconnected to at least some aspects of the Hotel's plumbing system.

[165] The Director argued that, contrary to Mr. Gill's Statutory Declaration, where he declared a hydrological engineer completed a study of the Well and surrounding area and determined there were no risks of overland flooding and zero chance flood waters would affect the Well, the Waterline Report drew no conclusions about the potential for the Well to be impacted by flooding. The Director further argued the Waterline Report contained no further information about the inspections the report's author conducted or what assessments the author carried out to assess the risks to the groundwater from inland flooding.

[166] The Director explained the provincial flood mapping referred to by the Appellants includes only information about breach-bank flooding, when water overtops the banks. The Director argued the Appellants ignored inland flooding, which occurs as a result of heavy rain or snow melts and does not form a part of the Province's flood mapping.

[167] The Director stated he must consider inland flooding and did consider the risk to human health and safety if inland flood waters entered the Well and contaminated the source water.

[168] The Director said he further considered the many possible means by which Well tampering could occur. The location and status of the Well makes it possible for the Well to be

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<sup>43</sup> Director's Response Submission, October 20, 2021, at paragraph 30.

<sup>44</sup> Director's Response Submission, October 20, 2021, at paragraph 32.

vandalized, hit by a vehicle, or subject to the public pouring a contaminant down the Well. The Director stated the groundwater from the Well could also be impacted by road salt from the TransCanada Highway, which is a dangerous goods route, or the migration of hydrocarbons from surrounding commercial operations. The Director stated the flat topography around the Well would not prevent inland flooding from impacting the Well. The Director noted inland flooding had occurred in the area, as evidenced by such events as the severe storm experienced by the Town on June 30, 2016, which closed down the TransCanada Highway and caused flooding several feet deep in some areas of the Town, including areas a few blocks from the Hotel.<sup>45</sup>

[169] The Director stated it did not appear that Waterline inspected the Well's current casing or seal. The Director said the Appellants have not implemented any measures to ensure the Well's integrity or security.

[170] The Director said while the Appellants stated the Director's concerns about the location and status of the Well could likely be addressed, the Appellants did not provide any information to the Director or the Board about the steps that would be taken to resolve those concerns.

[171] The Director submitted he has demonstrated a significant and ongoing concern over the Well's water quality since at least April 2015. The Director stated the water quality analysis he was able to obtain, showed at least one parameter exceeded its threshold, and indicated further consumption of untreated water from the Well might cause a significant and adverse effect on human health.

[172] The Director argued that in light of the information made available in January 2017 and in accordance with section 55(1)(j) of the *Water Act*, he reasonably formed the opinion that a significant adverse effect on human health or public safety might occur if the Appellants used water from the Well in their Hotel, and given the concerns over the changes in water quality, the adverse effect was not foreseeable at the time the Licence was issued.

[173] The Director argued it was improper for the Appellants to ignore every request made by AEP to assess the Well's water quality for the purposes of protecting public safety,

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<sup>45</sup> "It was just a sheet of water and hail: Strathmore roads flooded by severe thunderstorm," Global News

forcing the Director to obtain water quality and Well information through other means, and then proceeding to argue the Director had no information upon which to conclude there may be an adverse effect caused by that Well.

[174] The Director stated the Appellants had multiple opportunities to provide the Director with the information requested and to provide the Director with whatever other proposals the Appellants might have had, but they repeatedly chose not to do so.

[175] The Director relied on *Berjak Construction Ltd.*<sup>46</sup> and he argued that he should not be faulted for issuing decisions based on the best information available to him, when the Appellants decided to ignore, or otherwise refused to participate in the Director's pre-decision efforts to gather information from the Appellants.

[176] The Director argued AEP generally, and the Director specifically, has the responsibility and authority to take steps to protect the health of water users from potential adverse effects. The Director argued that when cancelling the Licence, the Director considered all the information before him, including:

- a. data showing this was not high quality groundwater;
- b. the unchallenged conclusions of the ASCC regarding the risks posed by the location and condition of the Well; and
- c. the fact those in charge of the Well and diversions from it refused to provide information to AEP.

[177] The Director argued that, based on the information before him, he had the factual basis necessary to come to the opinion there may be a significant risk to human health and public safety.

[178] The Director explained both EPEA and the *Water Act* apply to the Well and groundwater diversions from the Well. The Director stated EPEA and its regulations regulate the operation and required monitoring of water treatment and distribution systems. The Director stated the *Water Act* and its regulations govern the drilling of the Well and the diversion of water

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Article, June 30, 2016, Sarah Offin. Director's Response Submission, October 20, 2021, at Tab D.

<sup>46</sup> *Berjak Construction Ltd. (Re)*, 2019 BCEST 70, at paragraph 16 ("*Berjak Construction Ltd.*").

from the Well. The Director explained AEP is responsible for regulating the allocation and use of water through legislative tools such as EPEA and the *Water Act*.

[179] The Director explained section 5(1) of the *Activities Designation Regulation*,<sup>47</sup> states activities listed in Schedule 1 are designated as activities for which an approval is required. The Director noted the legislation applicable to a waterworks system.<sup>48</sup>

[180] The Director reiterated water from the Well had a fluoride concentration of 3.5mg/L, which was greater than the 2.4 mg/L maximum threshold set out in the *Activities Designation Regulation*. The Director argued the groundwater was not high quality groundwater.

[181] The Director stated that, as a result, an approval was required for the operation of a waterworks system that serves the Hotel, a privately owned development, which uses as the source of its water supply groundwater other than high quality groundwater. The Director stated the Appellants would require an EPEA approval to continue to provide groundwater from the Well to the Hotel. The Director stated this requirement was conveyed to the Appellants a year before the Director made any decisions affecting the Licence, and he argued that was a reasonable amount of time in which to expect a regulated party to respond.

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<sup>47</sup> Section 5(1) of the *Activities Designation Regulation* provides: “The activities listed in Schedule 1 are designated as activities in respect of which an approval is required.”

<sup>48</sup> Division 5 of Schedule 1 of the *Activities Designation Regulation* provides in part:

“(a) the construction, operation or reclamation of a waterworks system  
(i) that

(A) serves a city, town, specialized municipality, village, summer village, hamlet, settlement area as defined in the Metis Settlements Act, industrial development, municipal development or privately owned development....”

Section 2(4)(f) of the *Activities Designation Regulation* provides:

“‘privately owned development’ means a recreational development, school, mobile home park, restaurant, motel, community hall, work camp, holiday trailer park, campsite, picnic site, information centre or other similar development, including such a development owned or operated by the Government, that is on a parcel of land that is not subdivided, but does not include (i) a single family dwelling, or (ii) a farmstead....”

Section 2(4)(b) of the *Activities Designation Regulation* provides in part:

“‘high quality groundwater’ means groundwater that ...

(i) contains a concentration of naturally occurring fluoride of less than or equal to 2.4 mg/L,  
and  
(ii) is not under the direct influence of surface water.”

[182] The Director submitted statutory decisions, especially those aimed at environmental and public safeguards through drinking water protection should not be impeded by the failure of a regulated party to respond in a timely manner to reasonable requests regarding regulated activities. The Director argued regulated parties that fail to provide the Director with information within their control, should not then be allowed to argue the Director did not have that information in the exercise of his statutory authority.

[183] The Director stated that even if the Minister were to ultimately reverse the Licence cancellation and the Order requiring reclamation of the Well, the Appellants would still not be able to legally supply groundwater from the Well to the Hotel without an EPEA approval authorizing that activity or use the Well for another purpose without an amendment to the Licence to change the use. The Director noted the Licence confers the right to divert water for hotel water supply, but that right cannot be exercised until an EPEA approval for a waterworks system is obtained.

[184] The Director noted the December 18, 2016, decision of the ASCC required the Appellants to disconnect the Well from the Hotel's plumbing system. The Director stated the sole purpose for which the Licence was issued, hotel water supply, was therefore, no longer valid and the Licence had been rendered unusable by the ASCC Order.

[185] The Director noted the Appellants had previously suggested the purpose of the Licence could be changed.

[186] The Director stated geothermal heating and cooling could not be considered a hotel water supply purpose. The Director explained geothermal projects are exclusively non-consumptive, which means no consumptive use is permitted from wells that are used for geothermal purposes.

[187] The Director explained open-loop geothermal systems use the geothermal properties of groundwater for heating or cooling purposes. He stated "[t]his is achieved by diverting groundwater from a well, circulating the water through a heat transfer system, and returning the water to the subsurface through another well."<sup>49</sup> The Director stated where there is

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<sup>49</sup> Director's Response Submission, October 20, 2021, at paragraph 65.

no loss of water, and where the withdrawal and return points are in the same aquifer, the installation and operation of an open-loop system is an activity as defined by the *Water Act*, for which an approval is required.

[188] The Director noted if the withdrawal and return points are between two different aquifers, or if there are water losses in the system, a *Water Act* licence is also required.

[189] The Director stated it is unclear how the Appellants plan to use the groundwater for grounds keeping or greywater systems, or how either of the proposed uses and the associated infrastructure fit within the regulatory regime.

[190] The Director argued it was unfair to constrain him from making statutory decisions when faced with actual information available regarding the risks to the environment and human health, while the Appellants speculate on possible uses for the groundwater.

[191] The Director explained that through the *Water for Life Strategy*,<sup>50</sup> the Province is committed to the wise management of Alberta's water quantity and water quality for Albertans now and in the future. The Director noted the purpose of the *Water Act* is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing the factors set out section 2 of the *Water Act*.<sup>51</sup>

[192] The Director explained the Appellants would need to apply to the applicable statutory decision-maker for an amendment to change the purpose of the Licence. The

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<sup>50</sup> *Water for Life Strategy*, November 2003, Alberta Environment and Parks.

<sup>51</sup> Section 2 of the *Water Act* provides:

“The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing

(a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;

(b) the need for Alberta's economic growth and prosperity;

(c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;

(d) the shared responsibility of all residents of Alberta for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;

(e) the importance of working co-operatively with the governments of other jurisdictions with respect to trans-boundary water management;

(f) the important role of comprehensive and responsive action in administering this Act.”

application would need to include some other allowable purpose for the diversion. This application would also need to include an application to change the name on the Licence from White Wezel Enterprises Ltd. to Five Pillar Holdings Ltd.

[193] The Director stated the Appellants have not proposed to AEP, either formally or informally, what other allowable purpose there may be for which the diversion could be licensed. The Director stated that AEP cannot change the purpose on the Licence without an application. He said the legislative requirements for an application require proper supporting technical documentation and public notice.

[194] The Director argued that it is not sufficient for the Appellants to promise not to use the Well for potable uses. He noted the Appellants had been invited on several occasions to interact with AEP.

[195] The Director stated that, even if some other allowable purpose was to be offered and the required licence amendment application was made by the Appellants, the AEP director with the appropriate statutory authority would have to make the decision. The Director said he does not have the authority to make that decision, and, therefore, the Minister does not have the authority to make that decision.

[196] The Director said the Appellants suggested they might be able to sell or otherwise transfer the Licence to a third party to drill a new well in the same aquifer, and then use the Licence to authorize the diversion of groundwater from that new well. The Director submitted this suggestion was highly improbable.

[197] The Director stated the Licence point of diversion was 3-15-24-25-W4M for well number 82-06-24-01, which is the Well that is the subject to these appeals.

[198] The Director explained that under section 58(2) of the *Water Act*,<sup>52</sup> a licence is appurtenant to the land specified in the licence, is inseparable from the land specified in the

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<sup>52</sup> Section 58(2) of the *Water Act* provides:

“58(2) 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



licence, and runs with the land in the licence unless the Lieutenant Governor in Council orders otherwise.

[199] The Director argued the Appellants' submissions that the approval was granted for the aquifer and that the Well infrastructure, and diversion points could be moved if the diversion was in the same aquifer, were incorrect. The Director argued section 58(2) of the *Water Act* is clear the Licence is appurtenant to and runs with the land specified in the Licence. The Director argued the Appellants cannot separate the Licence from the land at 3-15-24-25-W4M and drill a well elsewhere. It is prohibited under the *Water Act* unless the Lieutenant Governor in Council orders otherwise.

[200] The Director said he was aware there had been some suggestion that the Well and groundwater from the Well could be used for household purposes, which would allow the Well to remain without triggering any other regulatory requirements that might apply to the Well. The Director argued this proposal was without merit.

[201] The Director stated the common law right to divert water for household purposes is limited by the *Water Act*. The Director noted that, subject to section 21(3) of the *Water Act* and the exemptions specified in the regulations, section 21(2) of the *Water Act*<sup>53</sup> provides the right to divert groundwater for household purposes.

[202] The Director noted section 8 of the WMR<sup>54</sup> was one of the exemptions specified in the regulations and contemplated by section 21(2) of the *Water Act*. The Director stated section 8 of the WMR prohibits a person from diverting groundwater for household purposes when that person is entitled to receive municipal water, which is water distributed under a

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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.”

<sup>53</sup> Section 21(2) of the *Water Act* provides:

“Subject to subsection (3) and section 23 and any exemptions specified in the regulations, a person who owns or occupies land under which groundwater exists

(a) has the right to commence and continue the diversion of the groundwater for household purposes, and

(b) may not obtain a licence for the diversion of the groundwater for household purposes.”

<sup>54</sup> Section 8 of the WMR provides: “A person who is entitled to receive or receives water under a licence that has been issued to another person for municipal purposes, including community water supply purposes, does not have the right to commence and continue the diversion of water under section 21 of the Act.”

licence to another person for municipal purposes, as the Appellants are entitled to receive from the Town. The Director explained that section 8 of the WMR is considered a “double dipping clause.” He stated this provision translates into other decisions AEP makes for conservation purposes, and if there is access under one licence for a purpose, access is not needed under another licence for that same purpose.

[203] The Director stated sections 21(3) and 23 of the *Water Act* were not relevant to the appeals. The Director stated the Appellants have the right to divert water, but only in accordance with section 21 of the *Water Act*, which is subject to the exemption in section 8 of the WMR. The Director said the Appellants may not divert water for any other purpose unless authorized by the Act, or under an approval, licence, or registration.

[204] The Director noted section 8 of the WMR specifically limits the Appellants’ rights to divert water for household purposes under section 21(2) of the *Water Act*. The Director argued the fact the statutory right and Licence predated the entitlement to receive water from the Town was irrelevant to the application of section 8 of the WMR.

[205] The Director stated he considered the applicable regulatory system under the *Water Act* for the proper regulation of the diversion of groundwater, the distribution and use of groundwater, and the Well itself. The Director argued the decision to cancel the Licence was appropriate.

[206] The Director submitted he has the jurisdiction under section 97(1) of the *Water Act* to issue water management orders. The Director referenced section 97(1)(f) of the *Water Act*<sup>55</sup> and noted he may issue a water management order to the person responsible for a water well, if in his opinion, the water well is a problem water well.

[207] The Director argued he determined the Well was a problem water well, because having regard to all the same factual considerations detailed for the cancellation of the Licence,

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<sup>55</sup> Section 97(1)(f) of the *Water Act* provides:

“An inspector or the Director may issue a water management order ... (f) to the person responsible for a water well if, in the opinion of an inspector or the Director, the water well is a problem water well or any actions related to the drilling of a water well caused, causes or may cause an adverse effect on the environment or on human health, property or public safety;”

he was satisfied the Well might have a significant adverse effect on human health, property, or public safety.

[208] The Director submitted he had the facts necessary to issue the Order, and the following facts were sufficient basis to exercise his discretion under section 97(1)(f) of the *Water Act*:

- a. analytical results showing that the Well was producing water that was not high quality groundwater;
- b. the uncontested observations of ASCC of the potential risks posed by both the state of and location of the Well;
- c. the substantiated observations of the February 10, 2015 inspection and photos of the Well;<sup>56</sup>
- d. the Well is an unprotected, unsecured area, was at risk of being tampered with, and could be subject to inland flooding; and
- e. the Appellants had multiple opportunities to respond and communicate with AEP, and they chose not to respond.

[209] The Director stated that pursuant section 99(1)(a)(xv) of the *Water Act*, the Director has the authority to order the reclamation of a problem water well, and section 99(1)(a)(ii)(A) gives the Director the authority to order the person to whom the water management order was directed to submit to the Director any information on the subject-matter of the order.<sup>57</sup>

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<sup>56</sup> Director's Record at Tabs 9 and 46.

<sup>57</sup> Section 99(1)(a)(xv) and (ii)(A) of the *Water Act* provide:

“99(1) A water management order issued by the Director may

(a) order the person to whom it is directed to take any measures that the Director considers necessary, including but not limited to any or all of the following: ...

(ii) to submit to the Director

(A) any information on the subject-matter of the order, or ...

(xv) with respect to a problem water well, to reclaim the water well or take any remedial action with respect to the water well and to prevent, minimize or remedy any adverse effects on the environment, human health, property or public safety....”

[210] The Director submitted he had the legal basis for issuing the problem water well declaration and cancelling the Licence. The Director argued he had adequate factual basis to make those decisions and the terms and conditions of the Order were simple and straightforward.

[211] The Director stated that, as the Well had been declared a problem water well, and as the Licence had been cancelled, there could be no further use of the Well as a hotel water supply. The Director argued reclamation of the Well was the only reasonable step.

[212] The Director stated he ordered the Appellants to reclaim the Well in accordance with the then applicable abandoned well reclamation requirements in the former section 66 of the WMR.<sup>58</sup> The Director argued that, since these were the departmental requirements for the reclamation of all abandoned wells, it would be reasonable to impose the same requirements on the reclamation of the Well.

[213] The Director noted that since the Order was issued, the relevant subsections of section 66 had been repealed and replaced<sup>59</sup> with new language which requires that wells be reclaimed in accordance with the *Wells Directive*.

[214] The Director stated he required the Well to be reclaimed by a driller holding a Class A Approval. The Director explained this recognized the fact that a person reclaiming a well must have suitable equipment, materials, and experience to complete the reclamation properly.

[215] The Director stated the final requirement was to provide proof of the completed Well reclamation by way of photos and a report, so that he could be satisfied that the requirements of the Order had been met and he could close the Order. The Director submitted it was appropriate for him to include these types of provisions in a water management order.

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<sup>58</sup> Section 66 of the WMR at the time the Order was issued is now section 3.7.2 and 3.7.3 of the *Wells Directive. Water Wells and Ground Source Heat Exchange Systems Directive*, Alberta Environment and Parks, December 11, 2018, (“*Wells Directive*”).

<sup>59</sup> Section 66(3) of the WMR provides: “If a water well is abandoned after completion, the owner of the water well must reclaim the water well or cause the water well to be reclaimed in accordance with the *Wells Directive*.”

[216] The Director argued that, contrary to the Appellants' submissions, he adhered to section 110(3) of the *Water Act*,<sup>60</sup> and provided reasonable and adequate notice of the cancellation of the Licence to the Appellants, including reasons.

[217] The Director stated that on January 12, 2017, the Licence cancellation letter and the Order, along with the problem water well declaration, were hand delivered to the registered office of Five Pillar Holdings Ltd. listed in the Alberta Corporate Registry.

[218] The Director argued that, contrary to the Appellants' submissions, he was only required to identify instances of non-compliance when an enforcement order has been issued. The Director stated no enforcement order had been issued, he had no obligation to identify the sections of the Licence with which the Appellants failed to comply.

#### **IV. ANALYSIS**

[219] The Board appreciates the participation of the Town at the hearing. The Town provided the Board with information regarding the Town's position on its Bylaw and the safety code, as well as the Town's interpretation of the Bylaw.

[220] The Town was helpful in explaining how some persons using wells within the Town's boundaries were not connected to the Town Water Distribution System, since these domestic users were located on agricultural lands that had been annexed into the Town.

[221] Under section 99(1) of EPEA, the Board must provide the Minister with its recommendations regarding the issues in these appeals.<sup>61</sup>

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<sup>60</sup> Section 110(3) of the *Water Act* provides: "If the Director suspends or cancels an approval or licence or cancels a preliminary certificate, the Director must give notice of the suspension or cancellation to the approval holder, preliminary certificate holder or licensee."

<sup>61</sup> Section 99(1) of EPEA provides:

"In the case of a notice of appeal referred to in section 91(1)(a) to (m) of this Act or in section 115(1)(a) to (i), (k), (m) to (p) and (r) of the *Water Act*, the Board shall within 30 days after the completion of the hearing of the appeal submit a report to the Minister, including its recommendations and the representations or a summary of the representations that were made to it."

[222] The Board considered the oral evidence, arguments, and written submissions provided by the Parties, the Director's Records, and relevant legislation in making its recommendations to the Minister.

**1. Was the Director's decision to cancel the Licence appropriate?**

[223] With regard to the first issue in the appeals, whether the Director's decision to cancel the Licence was appropriate, the Appellants challenged whether the Director based the cancellation on the correct facts and circumstances, and argued the Director's decision was not reasonable as it was based on unsubstantiated evidence.

[224] The Appellants argued the Director did not have sufficient basis to form the opinion required under section 55(1)(j) of the *Water Act* to cancel the Licence.<sup>62</sup> The Appellants argued the Director improperly relied on the ASCC Order and the ASCC's statements regarding the risks posed should the Well not be properly sealed and someone vandalize the Well, or the risks to the Well of flooding. The Appellants further argued the Director based his decision, at least in part, on the incorrect belief that the Well was still connected to the Town Water Distribution System. In the Board's view, it was reasonable of the Director to rely, at least in part, on the information that was before the ASCC.

[225] The Board heard evidence the Licence cannot be used for its stated purpose. The Licence's current stated purpose is hotel water supply. A licence having the purpose of hotel water supply permits both potable (i.e. human consumption) and non-potable (i.e. grounds keeping) uses. However, the Board heard evidence the fluoride content in the water from the Well is 3.5mg/L, 1.1mg/L or 24% above the level recommended by the Guidelines. Therefore, the water is not suitable for potable uses. The Board heard further evidence that, because the Appellants would not allow the water to be tested by AEP or submit their own water analysis to AEP, the full extent of the water quality issue is unknown. The Board understands that this is because AHS tested the water sample to its standards, for its purposes under its regulatory regime.

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<sup>62</sup> Section 55(1)(j) of the *Water Act* provides: "The Director may suspend or cancel a licence ... if, in the opinion of the Director, a significant adverse effect on human health or public safety occurred, occurs or may occur that was not reasonably foreseeable at the time the licence was issued."

[226] The Board heard evidence that, to use water from the Well for potable water purposes, the Appellants would need to treat the water to make it potable and apply for the appropriate EPEA approval. The Board heard this would require a renovation to the Hotel's plumbing system to ensure there was no interconnection with the Town Water Distribution System.

[227] The Board heard evidence that even if the Appellants were to comply with EPEA and utilize a waterworks system which ensured water from the Well was potable, the Town's Bylaw states that any parcel connected to the Town Water Distribution System must be supplied with water by the Town exclusively. The Board also heard there were no exemptions from the Bylaw which would apply to the Hotel. The Board noted the Town stated that, regardless of the outcome of the hearing, the Town intended to uphold the Bylaw.

[228] The Board heard evidence the Appellants planned to use the groundwater for other purposes, such as geothermal uses, greywater uses, and non-potable uses around the Hotel such as grounds keeping. As noted above, using the water only for these purposes is not consistent with the stated purpose of the Licence which is hotel water supply.

[229] The Board heard evidence that for the Appellants to use the Licence from the Well for other purposes, they would have to file an application with AEP for a change in purpose with supporting documentation, which would encompass reports, engineering plans and studies. The Board heard evidence the Well was unsuitable as constructed for geothermal use because it was completed in multiple aquifers.

[230] The Board also heard evidence that if the Appellants were to use the Licence for greywater uses and non-potable water uses around the Hotel or geothermal uses, extensive plumbing renovations would need to be undertaken at the Hotel. The Board understood these were future plans, and the Appellants have not submitted an application to AEP to change the purpose of the Licence. In the absence of filing the required applications, the Board finds these proposed uses are speculative.

[231] The Board heard evidence from the Appellants' consultant, who stated that it was his opinion that because the Licence was an old *Water Resources Act* licence that had been

transitioned into a *Water Act* licence, it was treated as permanent in nature and like property, had no expiry date. It was his view that the Licence was a “legal licence,” and it could only be cancelled for certain offences. The Appellants’ consultant believed the Licence was appurtenant to the aquifer. The Board rejected this view. As discussed by the Director, pursuant to section 3(2) of the *Water Act*, “... property in and the right to the diversion and use of all water in the Province is vested in Her Majesty in right of Alberta...” Further, pursuant to section 58(2) of the *Water Act*, water licences are appurtenant to land or an undertaking, not an aquifer.<sup>63</sup>

[232] The Board heard evidence from the Director the Licence was a *Water Resources Act* licence that had been transitioned to the *Water Act* under the transitional provisions of the *Water Act* when the *Water Resources Act* was repealed. The Director stated that while the Licence may not have an expiry date, it was subject to the provisions of the *Water Act* including those provisions that speak to suspension and cancellation.

[233] The Board heard evidence from the Director that pursuant to the *Water Act* the Licence was appurtenant to the land and not the aquifer, and could only be severed from the land through an order from the Lieutenant Governor in Council. In the Board’s view, the Director’s interpretation of the legislation is correct. The Licence is now a licence under the *Water Act*, and subject to the provisions of the *Water Act*. While the Licence does not have an expiry date, it can be cancelled under the provision of the *Water Act*, including section 55(1)(j).<sup>64</sup>

[234] The Board heard evidence the Director based his decision to cancel the Licence on the potential adverse effects to the environment, human health, or public safety that may occur because of the continued diversion of water from the Well which were not reasonably foreseeable at the time the Licence was issued, and no protective measures were in place to protect the Well or the aquifer. The potential adverse effects result from the high concentration

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<sup>63</sup> 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
- (c) run with the land or undertaking on any disposition of the land or undertaking unless the Lieutenant Governor in Council orders otherwise.”

<sup>64</sup> Section 55(1)(j) of the *Water Act* provides: “The Director may suspend or cancel a licence ... if, in the opinion of the Director, a significant adverse effect on human health or public safety occurred, occurs or may occur



of fluoride and the risk of contamination to the groundwater by inland flooding, vandalism to the Well or an accident.

[235] The Board heard evidence the Appellants used water from the Well as a water supply in the Hotel's laundry system. The Board was shown photographic evidence that demonstrated a portion of the pipe which supplied water into the laundry system from the Well was removed, and currently only water from the Town Water Distribution System went into the laundry system. The Well was not decommissioned in any other way and only a small portion of pipe was removed. All other plumbing and structures associated with the Well remained intact. The evidence before the Board was the power to the Well could be turned back on and the piece of pipe replaced, resulting in the Well being restored.

[236] The Board heard evidence that AEP sent a letter to the Appellants in April 2015,<sup>65</sup> stating AEP had concerns regarding the groundwater quality, whether the groundwater was affected by the surface water, and requesting a detailed water analysis. The Board heard the Appellants did not respond to this letter, and refused to allow AEP to take water samples from the Well on June 2, 2015. The Board heard additional evidence that AEP attempted to contact the Appellants via email and telephone call on June 16 and 17, 2015, respectively, also without success. The Board heard evidence AEP attempted to collect a water sample from the Well, but the Appellants would not allow AEP to collect the sample.

[237] The Board heard evidence that on June 17, 2015, AHS took a water sample from the Well, which was able to provide a limited test of the water quality, but they did not test for all the chemicals, minerals, and metals AEP requested of the Appellants. The results of the analysis indicated the fluoride concentration in the water was 3.5 mg/L, well above the 2.4 mg/L maximum concentrations set by the Guidelines.

[238] The Board also heard evidence that AEP attempted to contact the Appellants in January 2016<sup>66</sup> to advise the Appellants of the AHS water analysis results, set out the applicable regulatory requirements, and requested the Appellants address the human health and safety

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that was not reasonably foreseeable at the time the licence was issued.”

<sup>65</sup> Director's Record, at Tab 6.

<sup>66</sup> Director's Record, Tab 8.

concerns through an application for an EPEA approval for a waterworks system for the Hotel. Again, the Appellants did not respond to this letter.

[239] The evidence before the Board shows a continued pattern of the Appellants failing to cooperate with AEP. While the Board appreciates the Appellants expressed concern that AEP would not help them and they were attempting to maintain the status quo, ignoring all correspondence and attempts by AEP to verify the groundwater quality pursuant to the Licence was not the appropriate action.

[240] Moreover, the Appellants' reasons for not cooperating with AEP do not override their obligations under both the legislation and the Licence to comply with the written requests of AEP. The Board notes generally, that when a person holds a water licence such as the Appellants, if correspondence is received from AEP, there is an obligation to respond to that correspondence. The Appellants' protracted lack of cooperation with AEP suggests a limited likelihood of the Appellants' willingness to bring the Licence into compliance.

[241] Perhaps more troubling is the Appellants' insistence that the groundwater is good, without any testing to support this assertion, and "... at no time was the Well water noted to be unfit for human consumption."<sup>67</sup> Without any testing to support this statement, this is an assertion with no evidentiary weight. The Appellants continued to assert that the water from the Well was of good quality even when faced with evidence that the fluoride content was 1.1 mg/L higher than the *Guidelines* and despite the Appellants' consultant's comments that the groundwater quality in the area was generally moderate to poor due to the high concentration of total dissolved solids. The Board notes the Appellants did not provide any evidence, including technical evidence, to rebut the AHS test results or of maintenance they performed on the Well other than replacing the pump. If the Appellants disagreed with the AHS test result, the Appellants had the option of submitting samples of the Well water to be tested on their own accord. Given the only evidence as to the water quality is the AHS test results, the Board concludes the water is not potable.

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<sup>67</sup> Statutory Declaration of Mr. Gill, October 13, 2021, at paragraph 17, attached to the Appellants' Initial Submission, October 13, 2021.

[242] The Board also heard evidence the Well was completed in two aquifers. Dr. Wang believed there had likely been some measure of mixing between the aquifers already. The Director was concerned the Well may potentially cause contamination to the aquifers to which it was connected, if the Well were to be tampered with, or subjected to contamination by inland surface flooding, vandalism, or accidental damage. The Board was shown pictures of the Well head which demonstrated that there were no protective measures in place to keep the Well head secure. The Board notes the Well head is immediately next to the front door of the Hotel, with easy access by the public.

[243] The Licence was issued for hotel water supply, but the groundwater is not potable given the high fluoride content. The fluoride content, which exceeds the limit set in the *Guidelines*, limits what the water can be used for without causing potential health concerns. The purpose as stated in the Licence is for hotel water supply, which requires potable water be used for people staying or visiting the Hotel. Given the high fluoride concentration in the Well water and concerns for public health, the Board finds the Licence cannot be used for the purpose for which it was issued.

[244] The Board understands that before the Director would allow the Appellants to keep the Licence and use it for potable uses at the Hotel, substantial upgrades or renovations to the Hotel plumbing system would be required. This would include treating and regularly testing the Well water.

[245] In addition, the Appellants would likely need to apply for an EPEA approval to authorize such a “potable” waterworks distribution system. The evidence before the Board is that such an application would require supporting documentation in the form of reports, studies and engineering plans. The Board questions whether the Appellants would be willing to undertake this work, and whether they would be able to meet the terms and conditions of an EPEA approval considering the Appellants’ lack of response to AEP.

[246] The Board further understands that even if the Appellants were to make the necessary renovations to both the Well and the Hotel plumbing system, and acquire the necessary EPEA approvals, the Bylaw prevents the Hotel from using the Well water. While the Bylaw and its interpretation is not before the Board, the Town has made it clear that it will

uphold its Bylaw regardless of the outcome of the hearing. Although this is a matter outside the Board's jurisdiction, it is worth noting this is another impediment to the Appellants' use of the Licence.

[247] The Board finds the Well poses a risk of having an adverse effect on the environment, human health, or public safety. The Board finds the Director's decision to cancel the Licence to be appropriate and in the public interest. Moreover, the Licence is for a particular purpose, hotel water supply, and the Licence cannot be used for that purpose.

## 2. Was the Director's decision to issue the Water Management Order appropriate?

[248] The Appellants challenged the reasonableness of the Director's decision to issue the Order and challenged the Order based on it having been issued without proper evidence.

[249] The Board notes that under section 97(1)(f) of the *Water Act*<sup>68</sup> the Director has the authority to issue a water management order to a person responsible for a problem water well if the Director is of the opinion the water well has caused, causes, or may cause an adverse effect on the environment, human health, property, or public safety. Under section 99(1)(a)(xv) of the *Water Act*<sup>69</sup> the Director has the authority to order the person to whom a water management order is directed at, to take any measures the Director considers necessary, including remedial action or reclamation of the well, to prevent, minimize, or remedy any adverse effects on the environment, human health, property, or public safety.

[250] The Board further notes that to rely on sections 97(1)(f) and 99(1)(a)(xv), the Director first needs to form the opinion the Well is a problem water well as contemplated by the *Water Act*.

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<sup>68</sup> Section 97(1) of the *Water Act* provides:

"An inspector or the Director may issue a water management order ... to the person responsible for a water well if, in the opinion of an inspector or the Director, the water well is a problem water well or any actions related to the drilling of a water well caused, causes or may cause an adverse effect on the environment or on human health, property or public safety...."

<sup>69</sup> Section 99(1)(a)(xv) of the *Water Act* provides:

"A water management order issued by the Director may ... order the person to whom it is directed to take any measures that the Director considers necessary, including but not limited to any or all of the following ... with respect to a problem water well, to reclaim the water well or take any remedial action with respect to the water well and to prevent, minimize or remedy any adverse effects on the environment, human health, property or public safety...."

[251] The Board heard evidence that much of the Director's considerations regarding the cancellation of the Licence applied to his determination the Well was a problem water well. The Board heard evidence that the Director based his decision on:

- a. the analytical results showing the Well is not producing high quality water;
- b. the location of the Well in an unprotected and unsecured area where it is at risk of being tampered with or subject to inland flooding;
- c. the substantiated observations of the Environmental Protection Officer and, photos taken during his investigation on February 10, 2015;
- d. the lack of cooperation and response by the Appellants, despite being given multiple opportunities to respond and communicate with AEP; and
- e. the uncontested observations contained in the ASCC decision.

[252] The Board notes the evidence of Dr. Wang, which expanded upon the concerns of the Director. Dr. Wang explained the easiest way to contaminate groundwater is through a well, as a well provides a direct path for a contaminant to travel to an aquifer. According to Dr. Wang, there are several ways in which a contaminant could potentially enter the Well, either through vandalism from the unlocked lid, accident through the lack of protections, or through contaminants entering from either overland flooding or through the breakdown and aging of the Well such as wear in the casing joints.

[253] The Board noted Dr. Wang's evidence that contamination of water is hard to detect in the early stage, and by the time contamination is detected, it would be too late to stop the contamination. It could take decades to flush a contaminant out of an aquifer. Dr. Wang presented evidence that contamination may have occurred to some degree through the Well, in the form of mixing water between the aquifers through which the Well is completed. Consequently, the Board finds if the Well were to be contaminated, two aquifers could potentially be adversely affected.

[254] The Appellants argued the Director's decision to issue the Order was based on speculation. The Board views the Director's assessment of the risks posed by the Well as reasonable in the circumstances given the vacuum of information caused by the Appellants' lack of cooperation with AEP. It is inappropriate for the Appellants to frustrate AEP's attempts to

gather evidence regarding the state of the Well and its water quality, and then criticize the Director acting on information the Director had available to him.

[255] As stated, the Well cannot be used for the stated purpose on the Licence. The Well has no purpose without its Licence. There are serious concerns associated with having a well that has no purpose.

[256] The Director declared the Well was a problem water well on January 12, 2017, based on its posing a potential significant adverse risk to the environment, human health, or public safety.

[257] The Board finds that the Director's declaration the Well was a problem water well was reasonable based on the evidence, and for the same reasons the Well posed a risk to the environment, human health and public safety noted above. The Board finds the Well was a problem water well because of the fluoride concentration, lack of protective measures, and risks of inland flooding and tampering by way of accident or vandalism.

[258] The Director argued the Well posed a risk to the environment and public, and reclamation of the Well was the only next reasonable step. The Director further argued the Appellants' promise to not use the Well was insufficient given their previous lack of cooperation, insistence that the well water is safe, and the ease with which the Well could be used again. The Director argued the risks of an adverse effect arising from the Well were too great to allow the Well to remain in place. The Board agrees with the Director on this point.

[259] The Board finds that having found that the Well was a problem water well the Director had the jurisdiction and authority under section 97(1)(f)<sup>70</sup> and section 99(1)(a)(xv)<sup>71</sup> of

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<sup>70</sup> Section 97(1) of the *Water Act* provides:

“An inspector or the Director may issue a water management order ... to the person responsible for a water well if, in the opinion of an inspector or the Director, the water well is a problem water well or any actions related to the drilling of a water well caused, causes or may cause an adverse effect on the environment or on human health, property or public safety....”

<sup>71</sup> Section 99(1)(a)(xv) provides:

“A water management order issued by the Director may ... order the person to whom it is directed to take any measures that the Director considers necessary, including but not limited to any or all of the following ... with respect to a problem water well, to reclaim the water well or take any remedial action with respect to the water well and to prevent, minimize or remedy any adverse effects on the environment, human health, property or public safety....”

the *Water Act* to issue the Order. The Board finds it was reasonable and appropriate for the Director to issue the Order. Given the risks the Well poses to the environment, human health, and public safety, the Appellants' inability to use the Well for its stated purpose, and the history of the Appellants' lack of cooperation with AEP, the only reasonable step to be taken is for the Well to be reclaimed.

**3. Are the terms and conditions of the Water Management Order appropriate?**

[260] The Board notes that section 99(1)(a)(xv) of the *Water Act*<sup>72</sup> gives the Director the authority to order a person to take any measures the Director considers necessary, including reclamation, to prevent or minimize any adverse effects on the environment, human health, property, or public safety. The Board notes there are no provisions in the *Water Act* that specifically pertain to the requirements for reclaiming a problem water well such as those set out for abandoned water wells.

[261] The Director stated the conditions of the Order are straight forward. The Director said the Order requires the Appellants to reclaim the Well to the same standards as those applicable to abandoned wells and argued it would be reasonable to hold the Appellants to the same standards. The Director stated a driller with a Class A Approval would have the necessary skills and experience to reclaim the Well to the requirements of the Order. The Director argued it was reasonable for him to require proof of the Well's reclamation so he would know the terms and conditions of the Order had been satisfied. The Appellants did not make submissions on this point.

[262] The Board finds that, from a practical perspective, for the purposes of reclamation, there is not much difference between a water well that has no purpose and a water well that has been abandoned. The Board finds it is in the public interest to have water wells reclaimed to consistent standards.

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<sup>72</sup> Section 99(1)(a)(xv) provides:

“A water management order issued by the Director may ... order the person to whom it is directed to take any measures that the Director considers necessary, including but not limited to any or all of the following ... with respect to a problem water well, to reclaim the water well or take any remedial action with respect to the water well and to prevent, minimize or remedy any adverse effects on the environment, human health, property or public safety....”

[263] It was reasonable for the Director to order the Appellants to reclaim the Well to requirements set out in section 66 of the WMR<sup>73</sup> and for the Director to verify the terms and conditions of the Order have been satisfied.

[264] Given the physical location of the Well head close to the Hotel building and the awning above it, there may be potential logistical challenges for the equipment required to reclaim the Well. In consideration of this, the Board considers it appropriate to grant the Appellants extra time for the reclamation of the Well to be undertaken by the driller with a Class A Approval. The Board also considers it appropriate to allow the Director to extend the dates in the Order, should further difficulties arise.

[265] The Board finds the terms and conditions of the Order are appropriate having regard for the need to reclaim the Well to standards to which the reclamation of other water wells are held. The terms and conditions of the Order do not require the Appellants to reclaim the Well beyond the requirements set for any well that needs to be reclaimed.

[266] As the date in the Order has passed and given the complexity of the reclamation work, the Board finds it appropriate to recommend varying the dates and timing contained in the Order.

[267] To facilitate timely reclamation of the Well, the Board is further recommending the Appellants be required to submit a plan including a schedule for the proposed reclamation to the Director for his approval. This will ensure that the Appellants use the additional time recommended by the Board to their advantage.

[268] In making these recommendations, the Board notes the Appellants had suggested alternate uses for the Well, including greywater applications and geothermal uses. In both cases, an application to AEP and significant upgrades to the Hotel would be required. In the case of geothermal, the Well was entirely unsuited for the proposed use.

[269] The Board notes the Director presented arguments about section 8 of the WMR. The Board notes this section does not apply in the present appeals. From a general conservation

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<sup>73</sup> Note section 66 of the WMR has been repealed in part and the relevant sections are now found in sections 3.7.2 and 3.7.3 of the *Water Wells Directive*.



perspective, the Board agrees double dipping by acquiring multiple means to access water for the same purpose under two different rights or authorizations is something to be avoided. However, this section applies to household uses, and there is not a household use in the present circumstance. The Board appreciates the completeness of the Director's argument in this regard.

## V. CONCLUSION

[270] The issues before the Board were:

1. Was the Director's decision to cancel the Licence appropriate?
2. Was the Director's decision to issue the Order appropriate?
3. Are the terms and conditions of the Order appropriate?

[271] The Board finds the cancellation of the Licence was appropriate.

[272] The Board finds the decision to issue the Order was appropriate.

[273] Further the Board finds the terms and conditions of the Order were, in principle, appropriate.

[274] Under section 99(1) of EPEA, the Board must provide the Minister with its recommendations regarding the issues in these appeals.<sup>74</sup>

[275] The onus was on the Appellants to provide sufficient, reliable, and relevant evidence for the Board to recommend to the Minister to confirm, reverse, or vary the Director's decisions to cancel the Licence and issue the Order. The Board is not convinced the decisions to cancel the Licence and issue the Order should be reversed.

[276] Based on the evidence presented, the Board recommends the Minister confirm the Director's decision to cancel the Licence.

[277] Further, the Board finds the evidence supports a recommendation the Order be varied. The Board is recommending the Order be varied to reflect an updated timeline for

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<sup>74</sup> Section 99(1) of EPEA states:

"In the case of a notice of appeal referred to in section 91(1)(a) to (m) of this Act or in section 115(1)(a) to (i), (k), (m) to (p) and (r) of the *Water Act*, the Board shall within 30 days after the completion of the hearing of the appeal submit a report to the Minister, including its

completing the reclamation of the Well, the requirement to submit a reclamation plan and schedule, and the amendments to the WMR.

## **IX. RECOMMENDATIONS**

[278] The Board recommends the Minister confirm the Director's decision to cancel *Water Act* Interim Licence No. 11738.

[279] The Board recommends the Minister vary Water Management Order No. WMO-2017/01-SSR issued to Mohinder Singh Gill and Five Pillar Holdings Ltd. as follows:

1. Condition 1 of the Order is repealed and replaced as follows:

“1. The Parties shall, within 6 months of the date of the Minister's Order in Environmental Appeals Board Appeal Nos. 16-057 and 16-061-063 (the “Minister's Order”), reclaim the Well in accordance with Section 3.7.2 and Section 3.7.3 of the *Water Wells and Ground Source Heat Exchange Systems Directive*, Alberta Environment and Parks, December 11, 2018.”

2. Condition 3 is repealed and replaced with the following:

“The Parties shall submit to the Director within 2 months of the date of the Minister's Order, a reclamation plan for the Well including a schedule, signed by a driller holding a Class A Approval, for the Director's approval;

The Parties shall submit to the Director within 6 months of the date of the Minister's Order, a written report (“Written Report”), signed by a driller holding a Class A Approval confirming the Well has been reclaimed;”

3. The Director has the discretion to extend the dates contained in this Order if the Director deems it appropriate.

[280] With respect to sections 100(2) of EPEA,<sup>75</sup> the Board recommends copies of this Report and Recommendations, and the decision of the Minister, be sent to the following:

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recommendations and the representations or a summary of the representations that were made to it.”

<sup>75</sup> Section 100(2) of EPEA provides:

“The Minister shall immediately give notice of any decision made under this section to the Board and the Board shall immediately upon receipt of the decision, give notice of the decision to all person who submitted notices of appeal or made representations or written submissions to the Board and to all other persons who the Board considers should receive notice of the decision.”

1. Mr. Neil Tichkowsky, Scott Venturo Rudakoff LLP, on behalf of Mr. Mohinder Singh Gill and Five Pillar Holdings Ltd.;
2. Mr. Ethan Wilson, Town of Strathmore, on behalf of the Town of Strathmore; and
3. Ms. Shannon Keehn, Alberta Justice and Solicitor General, on behalf of the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks.

[53] The Board notes the Appellants reserved their right to ask for costs. A process for the costs application will be established after the Minister makes his decision in these appeals.

Dated on November 26, 2021, at Edmonton, Alberta.

*- original signed -*

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Chris Powter  
Board Member and Panel Chair

*- original signed -*

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Dr. Brenda Ballachey  
Board Member

*- original signed -*

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Tamara Bews  
Board Member



ALBERTA

ENVIRONMENT AND PARKS

*Office of the Minister*

*Government House Leader*

*MLA, Rimbey-Rocky Mountain House-Sundre*

**Ministerial Order  
03/2022**


*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. 16-057 and 16-061-063**

I, Jason Nixon, Minister of Environment and Parks, 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. 16-057 and 19-061-063.

Dated at the City of Edmonton, in the Province of Alberta, this 6 day of Feb, 2022.

  
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Jason Nixon  
Minister

## APPENDIX

### Order Respecting Environmental Appeals Board Appeal Nos. 16-057 and 16-061-063

With respect to the decisions of the Director, Regional Compliance, South Saskatchewan Region, Alberta Environment and Parks (the "Director") to cancel *Water Act* Interim Licence No. 11738 and issue Water Management Order WMO-2017/01-SSR to Mohinder Singh Gill and Five Pillar Holdings Ltd., I, Jason Nixon, Minister of Environment and Parks, order that:

**The decision of the Director to cancel *Water Act* Interim Licence No. 11738 is confirmed.**

**The decision of the Director to issue Water Management Order WMO-2017/01-SSR is varied as follows:**

1. Condition 1 of the Order is repealed and replaced as follows:

"1. The Parties shall, within 6 months of the date of the Minister's Order in Environmental Appeals Board Appeal Nos. 16-057 and 16-061-063 (the "Minister's Order"), reclaim the Well in accordance with Section 3.7.2 and Section 3.7.3 of the *Water Wells and Ground Source Heat Exchange Systems Directive*, Alberta Environment and Parks, December 11, 2018."

2. Condition 3 is repealed and replaced with the following:

"3.1 The Parties shall submit to the Director within 2 months of the date of the Minister's Order, a reclamation plan for the Well including a schedule, signed by a driller holding a Class A Approval, for the Director's approval;

3.2 The Parties shall submit to the Director within 6 months of the date of the Minister's Order, a written report ("Written Report"), signed by a driller holding a Class A Approval confirming the Well has been reclaimed;"

3. The Director has the discretion to extend the dates contained in this Order if the Director deems it appropriate.