

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – June 1, 2023

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

-and-

IN THE MATTER OF appeals filed by Mary Ellen Jeans-Moline and Melvin Moline, Melanie Parker and Charles Parker, Debbie Stephenson Nesbitt and Bruce Nesbitt, the Chickakoo Lake Area Stewardship Society, the Chickakoo Water Protection Group, Deborah Bloomer, Shelley Gordon, Susanne Greenhowe-Weis, Genevieve Olivier, Leanne Warrenchuk, Amy Garrison, Courtney Dahl and Bryan Dahl, Karen Fisher and Ed Fisher, Heather Warrenchuk, Tyler Lawrence, Melanie Silliphant, Mike Hillaby and Misty Tomashewsky Hillaby, Rachel Melynychuk and Michael Melynychuk, Tracy Shoup and Mark Shoup, Kate Meads and Kel Meads, Warren Kudras, Michael Fyk, Vern Trimble and Buffy Trimble, Brian Skov and Shelley Gordon, James Sorenson, Leah Vanderjagt, Heidi Hoflin, Wendy Tiemer, Louis Babin and Rochelle Chamczuk, Tom Hughes, Kate Polkovsky, Barbara Riczu and Brent Riczu, Tina Leblanc, James Steven, Tim Wimbleton, Rochelle Chamczuk, Sheila Perdue, and Colin LeBray with respect to the decision of the Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks, to issue *Water Act* Licence No. 00469305-00-00 to the Canadian Carmelite Charitable Society Inc.

Cite as: Standing Decision: *Jeans-Moline et al. v. Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks, re: Canadian Carmelite Charitable Society Inc.* (1 June 2023), Appeal Nos. 21-025-026 and 22-001-034, 036-037-ID1 (A.E.A.B.), 2023 ABEAB 9.

BEFORE:

Dr. Chidinma Thompson, Board Chair.

SUBMISSIONS BY:

Appellants:

Ms. Mary Ellen Jeans-Moline and Mr. Melvin Moline; Ms. Melanie Parker and Mr. Charles Parker; Ms. Debbie Stephenson Nesbitt and Mr. Bruce Nesbitt; Ms. Deborah Bloomer; Ms. Shelley Gordon; Ms. Susanne Greenhowe-Weis; Ms. Genevieve Olivier; Ms. Leanne Warrenchuk; Ms. Amy Garrison; Ms. Courtney Dahl and Mr. Bryan Dahl; Ms. Karen Fisher and Mr. Ed Fisher; Ms. Heather Warrenchuk; Mr. Tyler Lawrence; Ms. Melanie Silliphant; Mr. Mike Hillaby and Ms. Misty Tomashewsky Hillaby; Ms. Rachel Melynychuk and Mr. Michael Melynychuk; Ms. Tracy Shoup and Mr. Mark Shoup; Ms. Kate Meads and Mr. Kel Meads; Mr. Warren Kudras; Mr. Michael Fyk; Mr. Vern Trimble and Ms. Buffy Trimble; Mr. Brian Skov and Ms. Shelley Gordon; Mr. James Sorenson; Ms. Leah Vanderjagt; Ms. Heidi Hoflin; Ms. Wendy Tiemer; Mr. Louis Babin and Mrs. Rochelle Chamczuk; Mr. Tom Hughes; Ms. Kate Polkovsky; Ms. Barbara Riczu and Mr. Brent Riczu; Ms. Tina Leblanc; Mr. James Steven; Mr. Tim Wimbleton; Ms. Rochelle Chamczuk; Ms. Sheila Perdue; Mr. Colin LeBray; and the Chickakoo Lake Area Stewardship Society and the Chickakoo Water Protection Group, represented by Ms. Deborah Bloomer and Ms. Shelley Gordon.

Director:

Mr. Muhammad Aziz, Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks, represented by Mr. Paul Maas, Alberta Justice and Solicitor General.

Licensee:

Canadian Carmelite Charitable Society Inc., represented by Mr. Paul Owens, John Clark Architect Inc.

EXECUTIVE SUMMARY

A Director from Alberta Environment and Parks (the Director) issued a licence under the *Water Act* (the Licence) to the Canadian Carmelite Charitable Society Inc. (the Licensee) to operate a works and divert up to 6,355 cubic metres of water annually for the Mount Carmel Spirituality Centre located at NW 27-53-1-W5M in Parkland County.

The Board received 38 Notices of Appeal filed by three individuals, the Chickakoo Lake Area Stewardship Society (CLASS), five individual members of CLASS, the Chickakoo Water Protection Group (CWPG), and 28 individual members of CWPG (collectively the Appellants). The Director filed motions to dismiss the appeals of CLASS and two individual members of CLASS, on the basis that those appellants did not submit statements of concern during the Licence application process, which is a prerequisite for filing a Notice of Appeal. The Director also alerted the Board that some of the Appellants may not be directly affected by the Licence.

The Board requested and received information and submissions on whether the Appellants in the Director's motions filed valid statements of concern, and whether the remaining Appellants, except Ms. Debbie Stephenson Nesbitt and Mr. Bruce Nesbitt, are directly affected by the Director's decision or the activities authorized by the Licence.

The Board found that three Appellants, Ms. Genevieve Olivier, and Ms. Leanne Warrenchuk, both members of CLASS, and CLASS, did not submit valid statements of concern during the Licence application process. The Board granted the Director's motions and dismissed the Notices of Appeal of Genevieve Olivier (EAB 22-005), Leanne Warrenchuk (EAB 22-006), and CLASS (EAB 22-036) for not meeting a prerequisite for filing a notice of appeal.

Of the remaining 35 Appellants, the Board found 11 Appellants directly affected by the Director's decision or the activities authorized by the Licence. These appellants are Ms. Deborah Bloomer (EAB 22-002), Ms. Susanne Greenhowe-Weis (EAB 22-004), Mr. Tyler Lawrence (EAB 22-011), Ms. Melanie Silliphant (EAB 22-012), Mr. Vern and Ms. Buffy Trimble (EAB 22-019), Ms. Leah Vanderjagt (EAB 22-022), Ms. Wendy Tiemer (EAB 22-024), Mr. Tom Hughes (EAB 22-026), Ms. Kate Polkovsky (EAB 22-027), Mr. James Steven (EAB 22-030), and Mr. Tim Wimbleton

(EAB 22-031). The Board exempted Ms. Debbie Stephenson Nesbitt and Mr. Bruce Nesbitt from filing evidence and submissions on their standing, as their appeal and standing were not challenged, and the Board agreed with the Director that Debbie Stephenson Nesbitt and Bruce Nesbitt (EAB 22-001) are directly affected. Accordingly, the Board concluded that 12 appeals may proceed to be heard by the Board at the substantive hearing.

The Board dismissed the Notices of Appeals of the remaining 23 Appellants, referenced as EAB 21-025 to 026, EAB 22-003, EAB 22-007 to 010, EAB 22-013 to 018, EAB 22-020 to 021, EAB 22-023, EAB 22-025, EAB 22-028 to 029, EAB 22-032 to 034, and EAB 22-037, for not being directly affected by the Director's decision or the activities authorized by the Licence.

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I. INTRODUCTION

[1] These appeals concern Licence No. 00469305-00-00 (the “Licence”) issued under the *Water Act*¹ (“*Water Act*”), to the Canadian Carmelite Charitable Society Inc. (the “Licensee”) by the Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks (the “Director”). The Licence authorizes the operation of a works and the diversion of up to 6,355 cubic metres of water per year at NW-27-53-1-W5M in Parkland County for municipal (institution) purposes at the Mount Carmel Spirituality Centre (the “Development”).

[2] The Environmental Appeals Board (the “Board”) received 38 Notices of Appeal² from Ms. Mary Ellen Jeans-Moline and Mr. Melvin Moline (the “Molines”), Ms. Melanie Parker and Mr. Charles Parker (the “Parkers”), Ms. Debbie Stephenson Nesbitt and Mr. Bruce Nesbitt (the “Nesbitts”), the Chickakoo Lake Area Stewardship Society (“CLASS”), five individual members of CLASS, the Chickakoo Water Protection Group (“CWPG”), and 28 individual members of CWPG (collectively, the “Appellants”).

[3] The Director filed motions to dismiss the Notices of Appeal of three Appellants who did not submit statements of concern during the Licence application process, and therefore did not meet the statutory prerequisite for filing an appeal at the Board. The Director also advised that most of the Appellants may lack standing, as he found only the Nesbitts to be directly affected during the Licence application process.

[4] The Board considered the Director’s motions, and whether the Appellants are directly affected by the Director’s decision, or the activities authorized by the Licence, to determine the appeals that are valid and properly before the Board.

[5] The Board granted the Director’s motions and dismissed the Notices of Appeal of three Appellants, Ms. Genevieve Olivier (EAB 22-005), Ms. Leanne Warrenchuk (EAB 22-006), and CLASS (EAB 22-036), for not filing valid statements of concern during the Licence application process.

[6] The Board granted standing to 11 Appellants found to be directly affected by the Director’s decision or the activities authorized by the Licence, and whose appeal may proceed to

¹ R.S.A. 2000, c. W-3.

² See Appendix for a complete list of the Appellants.

a substantive hearing. These Appellants are Deborah Bloomer (EAB 22-002), Susanne Greenhowe-Weis (EAB 22-004), Tyler Lawrence (EAB 22-011), Melanie Silliphant (EAB 22-012), Vern and Buffy Trimble (EAB 22-019), Leah Vanderjagt (EAB 22-022), Wendy Tiemer (EAB 22-024), Tom Hughes (EAB 22-026), Kate Polkovsky (EAB 22-027), James Steven (EAB 22-030), and Tim Wimbleton (EAB 22-031). The appeal of Debbie Stephenson Nesbitt and Bruce Nesbitt (EAB 22-001) will also proceed to substantive hearing, as their appeal and standing were not challenged, and the Board agreed with the Director that the Nesbitts are directly affected.

[7] The Board dismissed the Notices of Appeal of the remaining Appellants for not being directly affected by the Director's decision or the activities authorized by the Licence.

II. BACKGROUND

[8] The Director received a *Water Act* application for a licence from the Licensee on November 4, 2020 (the "Licence Application"), to operate a works and divert up to 8,833 cubic metres of water per year at a diversion rate of 40 gallons per minute from an aquifer at a point of diversion located at NW 27-53-1-W5M by production well GIC 1717000 (the "Production Well"). Appended to the Licence Application was a Groundwater Supply Evaluation Report, prepared by Tetra Tech Canada Inc. ("Initial Tetra Tech Report").³ The groundwater will be used for human consumption as potable drinking water, sewage usage, and for fire suppression system supply.

[9] From March 19 to April 14, 2021, the Director received 37 statements of concern, which came to a total of 32 statements of concern after combining multiple statements of concern received from the same household.

[10] On April 21, 2021, the Director wrote to the statement of concern filers, requesting clarification and further information to determine whether they were directly affected by the Licence Application, and therefore, whether the Director would consider their statements of concern as valid. The requested information included:

- a. the filer's legal land location, both Alberta Township System and cadastral system,

³ *Groundwater Supply Evaluation, Mount Carmel Spirituality Centre, N.W. 1/4-27-053-01 W5M, Parkland County, Alberta*, Tetra Tech Canada Inc., October 2020, Director's Record, Tab 173.2. Note that the Initial Tetra Tech Report was revised twice: Rev 01, March 2021, Director's Record, Tab 157.1, and Rev 02, August 2021, Director's Record, Tab 165.2.

- b. the filer's distance from the Licence's point of diversion in m, km, or miles, and/or
 - c. the filer's water well depth and, if possible, a driller's report for the well,
- collectively referred to as the "AEP Information Requests."⁴

[11] Between April 22 and April 30, 2021, the Director received responses to the AEP Information Requests from some of the statement of concern filers. On October 22, 2021, the Director wrote to all the statement of concern filers, except the Nesbitts and Mr. Warren Kudras, advising that their submissions would not be considered valid statements of concern. The Director accepted the Nesbitts' submission as a valid statement of concern.

[12] On October 25, 2021, the Director requested further clarification from Mr. Kudras. On November 22, 2021, the Director advised Mr. Kudras that he was not directly affected, and his submission would not be considered a valid statement of concern.

[13] On November 26, 2021, Tetra Tech provided a response to the Nesbitts' statement of concern, which predicted that there would be minimal impact to the Nesbitts' water well, a negligible drawdown at the second closest water well, and a further lower drawdown at other water wells within 983 to 2400 m distance from the point of diversion.

[14] On March 8, 2022, the Director issued the Licence for a term of 25 years, authorizing the diversion of up to 6,355 cubic metres of water per year from an aquifer at a maximum rate of 203.53 litres per minute (l/m), and as described in 00469305-R001 (the "Tetra Tech Report").⁵ The monitoring well associated with the authorized diversion of water is well ID 358453 (the "Monitoring Well"), belonging to Swiss Valley Farms Ltd., also located at NW 27-053-01-W5M, the Swiss Valley Village where the Nesbitts reside.

⁴ "AEP" is Alberta Environment and Parks.

⁵ *Groundwater Supply Evaluation Revision 02, Mount Carmel Spirituality Centre, N.W. ¼-27-053-01 W5M, Parkland County, Alberta*, Tetra Tech Canada Inc., August 2021, is appended to the Licence as 00469305-R001.

[15] Between March 18 and April 7, 2022, the Board received Notices of Appeal of the Licence from the Molines, the Parkers, the Nesbitts, CLASS,⁶ five individual members of CLASS, CWPG, and 28 individual members of CWPG.⁷

[16] The Nesbitts are represented by CLASS, and the contact person for CLASS is Ms. Deborah Bloomer. CWPG and its individual members are represented by CLASS and the contact person is Ms. Deborah Bloomer. While Ms. Deborah Bloomer, Ms. Shelley Gordon, and Ms. Susanne Greenhowe-Weis, are listed as co-representatives of CLASS and its five individual members, Ms. Deborah Bloomer is the contact person for CLASS and its five individual members.

[17] The Board notified the Licensee and the Director of the Notices of Appeal and requested the Director provide copies of the records relating to the decision (the “Director’s Record”). The Director provided a limited Director’s Record on May 13, 2022, and the complete Director’s Record on June 1, 2022.

[18] On April 20, 2022, the Director advised that he found only the Nesbitts directly affected during the Licence Application process, therefore, the other Notices of Appeal may have standing issues. However, the Director took no position on whether the Appellants are directly affected. The Director also made a preliminary motion to dismiss Ms. Olivier’s Notice of Appeal, as AEP did not receive a statement of concern from Ms. Olivier.

[19] On April 25, 2022, the Board requested more information from Ms. Olivier regarding her statement of concern and set a written submission process for determining the directly affected status of the other Appellants, except the Nesbitts.

[20] On April 26 and April 28, 2022, respectively, Ms. Bloomer advised the Board that Ms. Olivier could not locate a copy of her statement of concern and has no proof of filing same with AEP. Ms. Bloomer advised that they respect the Director’s position that there is no statement of concern from Ms. Olivier in AEP’s file.

⁶ CLASS is a small membership of neighbours, who formed a Society to focus on protection of the Environmentally Sensitive Area (ESA), surrounding Chickakoo Lake Area, where they live. CLASS became a legal society after the statement of concern process. See Response Letter of Deborah Bloomer, May 10, 2022.

⁷ See Appendix for a complete list of the Appellants. CWPG was formed to research and share information with the purpose to protect an ESA, the Chickakoo Lake Area bodies of water. This group was formed in response to learning of an Application for Water Diversion by the Licensee. See Response Letter of Deborah Bloomer, May 10, 2022. CWPG has 618 members. Twenty-eight members filed statements of concern and appeals in this matter.

[21] On May 6 and May 12, 2022, respectively, the Director filed preliminary motions to dismiss the Notices of Appeal of CLASS and Ms. Leanne Warrenchuk for not filing statements of concern during the Licence Application process. The Director also sought clarification on the role of CLASS as a representative of the Nesbitts, CWPG, and the individual members.

[22] On May 9, 2022, the Board advised the parties that CLASS is representing these Appellants and Ms. Bloomer, the contact for CLASS, will be presenting the information for each of the Appellants. The Board further advised that, even if CLASS' Notice of Appeal is dismissed, it does not prevent CLASS from continuing to represent these Appellants.

[23] On May 10, 2022, Ms. Bloomer advised that CLASS did not file a statement of concern, as CLASS became a legal society after the statement of concern process. Ms. Bloomer acknowledged it was an error on their part to have filed an appeal by CLASS based on the statements of concerns submitted by its individual members.⁸ On May 12, 2022, the Board dismissed CLASS' Notice of Appeal for not filing a statement of concern during the Licence Application process.

[24] On May 16, 2022, Ms. Bloomer advised the Board that Ms. Leanne Warrenchuk did not file a statement of concern with AEP during the Licence Application process. On May 16, 2022, the Board dismissed Ms. Leanne Warrenchuk's Notice of Appeal for not filing a valid statement of concern during the Licence Application process.

[25] On May 16, 2022, the Molines filed an initial written submission on their directly affected status. On May 19, 2022, the Parkers filed an initial written submission on their directly affected status. On May 19, 2022, Ms. Bloomer filed an initial written submission on the directly affected status of the Appellants she represents and the statements of concern of Ms. Olivier and Ms. Warrenchuk ("Initial Group Submission").

[26] On May 19, 2022, Ms. Bloomer advised the Board that Ms. Olivier did not file a statement of concern with AEP during the Licence Application process. On May 26, 2022, the Board granted the Molines' request for an extension of time to file a rebuttal submission on their directly affected status.

⁸ Response Letter of Deborah Bloomer, May 10, 2022.

[27] On May 31, 2022, the Licensee filed its response written submission on the Director's motions and the directly affected status of the Appellants. On June 1, 2022, the Director filed its response written submission on the Director's motions. While the Director made submissions, he continued to take no position before the Board on whether the Appellants are directly affected.⁹

[28] On June 13, 2022, Ms. Bloomer filed a rebuttal submission on the directly affected status of the Appellants ("Rebuttal Group Submission"). On June 14, 2022, the Molines filed a rebuttal submission on their directly affected status. On June 16, 2022, the Parkers filed a rebuttal submission on their directly affected status.

III. ISSUES

[29] The issues determined by the Board are:

1. Did the Appellants in the Director's motions submit statements of concern to AEP to be eligible to appeal to the Board; and
2. Are the remaining Appellants directly affected by the Director's decision or the activities authorized by the Licence?

IV. ANALYSIS AND FINDINGS

Issue 1: Did the Appellants in the Director's motions submit statements of concern to AEP to be eligible to appeal to the Board?

A. Submissions of the Parties

1. *The Director*

[30] The Director submitted that filing a statement of concern is a statutory prerequisite to filing an appeal under section 115(1)(c)(i) of the *Water Act*.¹⁰ Given that the Director did not receive a statement of concern from Ms. Olivier, CLASS, or Ms. Warrenchuk during the Licence Application process, the Director urged the Board to dismiss the Notices of Appeal of these Appellants on the basis that they did not meet the statutory prerequisite. The Director relied on *Corrigan and Reiss et al. v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks, re: Spruce Ridge Capital Inc.*¹¹

⁹ Director's Response Submission, June 1, 2022, at para. 2.

¹⁰ See Appendix, Excerpts from Legislation.

¹¹ (25 February 2022), Appeal Nos. 19-112-122 & 20-001-D (A.E.A.B.), 2022 ABEAB 11.

2. *Ms. Olivier*

[31] Ms. Olivier, through her representative Ms. Bloomer, initially stated that she submitted a statement of concern to the Director and received a response that because her home has a cistern, and does not have a well, her statement of concern was not accepted by AEP.¹² Ms. Olivier subsequently submitted that she was unable to locate a copy of her statement of concern or a record of her submission to the Director, as she cleared her 2021 emails. She submitted that they respect the Director's position that there is no statement of concern from her in AEP's file.¹³ It was confirmed in the Initial Group Submission that Ms. Olivier did not file a statement of concern.¹⁴

3. *CLASS*

[32] CLASS, through its representative Ms. Bloomer, stated that it did not submit a statement of concern to AEP. CLASS became a legal society after the statement of concern process. However, its individual members submitted statements of concerns during the Licence Application process. CLASS acknowledged that it was an error to have filed its own Notice of Appeal based on the statements of concern submitted by its individual members.¹⁵

4. *Ms. Warrenchuk*

[33] Ms. Warrenchuk, through her representative Ms. Bloomer, advised in correspondence to the Board¹⁶ and in the Initial Group Submission¹⁷ that she did not submit a statement of concern to the Director.

5. *The Licensee*

[34] The Licensee concurred with the Director's motion on the basis that those Appellants did not submit statements of concern during the Licence Application process. The Licensee argued that submitting a statement of concern is an important prerequisite to filing of an appeal, and those appeals should be dismissed in accordance with government policy.

¹² Email correspondence of Deborah Bloomer, April 26, 2022.

¹³ Email correspondence of Deborah Bloomer, April 28, 2022.

¹⁴ Initial Group Submission, May 19, 2022.

¹⁵ Email correspondence of Deborah Bloomer, May 10, 2022.

¹⁶ Email correspondence of Deborah Bloomer, May 16, 2022.

¹⁷ Initial Group Submission, May 19, 2022.

B. The Board's Analysis and Findings

1. The Law

[35] Section 115(1)(c)(i) of the *Water Act*, provides:

“A notice of appeal under this Act may be submitted to the Environmental Appeals Board by the following persons in the following circumstances: ...

(c) if a preliminary certificate has not been issued with respect to a licence and the Director issues or amends a licence, a notice of appeal may be submitted

(i) by the Licensee or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, ...” [Emphasis added]

[36] The requirement to submit a statement of concern at the Licence Application stage has been discussed by the Board in previous decisions made under the *Environmental Protection and Enhancement Act*, (“EPEA”),¹⁸ and the *Water Act*. The statement of concern and notice of appeal processes under EPEA are very similar to those under the *Water Act* and therefore the Board is of the view that the same principles apply.¹⁹

[37] In *O'Neill v. Regional Director, Parkland Region, Alberta Environmental Protection*, re: *Town of Olds* (“*O'Neill*”), the Board stated:

“Statements of concern are a legislated part of the appeal process. Though it is seldom seen, circumstances could arise where it may be possible for the Board to process an appeal where a statement of concern was filed late. Or perhaps an appeal could be processed even when a statement of concern has not been filed-- due to an extremely unusual case (e.g. a directly affected party being hospitalized) where a person's intent to file is otherwise established in advance. But those circumstances are highly fact-specific, exceptionally rare, and they do not apply to the present case.” (Footnotes omitted.)²⁰

[38] The Board agrees with the Director and Licensee that submission of a statement of concern is a statutory requirement to appeal the Director's decision in respect of the Licence.

¹⁸ R.S.A. 2000, c. E-12.

¹⁹ *St. Michael Trade and Water Supply Ltd. v. Director, Environmental Service, Parkland Region, Alberta Environment*, re: *Cam-A-Lot Holdings*, (17 July 2001), Appeal Nos. 01-055-D (A.E.A.B.), at para. 14.

²⁰ *O'Neill v. Regional Director, Parkland Region, Alberta Environmental Protection*, re: *Town of Olds*, (March 12, 1999) EAB Appeal No. 98-250-D, at para. 14.

Absent special circumstances, the Board will not accept the Notices of Appeal that did not meet this requirement.

2. Analysis and Findings

i. Ms. Genevieve Olivier

[39] Ms. Olivier was unable to provide a record of her submission to the Director, and the Director's Record does not contain a record of a submission from Ms. Olivier, or any correspondence exchanged with Ms. Olivier. Ms. Olivier neither argued nor provided evidence of any special circumstances that would warrant the Board to accept her Notice of Appeal without the required statement of concern.

[40] The Board particularly notes Ms. Olivier's further correspondence, through her representative Ms. Bloomer, that "...[w]e confirm that we have no proof of a SOC filed by Mrs. Olivier from our side. We respect Mr. Aziz' statement there is no SOC on file with AEP from Mrs. Olivier."²¹ The Board also considered the Initial Group Submission, which stated that "(Genevieve Olivier ... named in the list above, as we determined, did not send in a SOC)."²²

[41] The Board finds that Ms. Olivier did not file a statement of concern with the Director during the Licence Application process. Therefore, the Board dismisses Ms. Olivier's Notice of Appeal for not meeting the prerequisite for filing a Notice of Appeal.

ii. CLASS

[42] Ms. Bloomer, the representative for CLASS, acknowledged that CLASS did not file a statement of concern, given that CLASS became a legal society after the statement of concern process. She further acknowledged that it was an error to file CLASS' appeal based on the statements of concern submitted by individual members of CLASS.²³ The Board agrees.

²¹ Email correspondence of Deborah Bloomer, April 28, 2022. The term "SOC" stands for "statement of concern".

²² Initial Group Submission, May 19, 2022.

²³ Email correspondence of Deborah Bloomer, May 10, 2022.

[43] The Board notes, however, that CLASS filed a late “Letter of Concern” on May 19, 2021, after the submission deadline of April 16, 2021,²⁴ and did not provide any reason at that time for its late filing. CLASS did not argue any special circumstances on appeal.

[44] For the above reasons, the Board found that CLASS did not file a valid statement of concern with the Director during the Licence Application process and dismissed the Notice of Appeal of CLASS for not meeting the prerequisite for filing a Notice of Appeal.²⁵

iii. Ms. Leanne Warrenchuk

[45] Ms. Warrenchuk advised that she did not submit a statement of concern. The Board particularly notes Ms. Warrenchuk’s correspondence, through her representative Ms. Bloomer, that “Leanne Warrenchuk did not file a Statement of Concern with the AEP regarding Canadian Carmelite Charitable Society (EAB 22-006 L. Warrenchuk)...”²⁶ The Board also considered the Initial Group Submission which states that “(... Leanne Warrenchuk named in the list above, as we determined, did not send in a SOC).”²⁷ Ms. Warrenchuk neither argued nor provided evidence of any special circumstances that would warrant the Board to accept her Notice of Appeal without the required statement of concern.

[46] For the reasons set out above, the Board found that Ms. Warrenchuk did not file a statement of concern with the Director during the Licence Application process and dismissed her Notice of Appeal for not meeting the prerequisite for filing a Notice of Appeal.²⁸

C. Conclusion

[47] The Board finds that the three Appellants in the Director’s motion, Ms. Olivier (EAB 22-005), Ms. Warrenchuk (EAB 22-006), and CLASS (EAB 22-036) did not meet the statutory prerequisite for filing a Notice of Appeal. The Board grants the Director’s motion and dismisses the Notices of Appeal of these three Appellants.

²⁴ Director’s Record, Tabs 91 and 91.1.

²⁵ Board’s Letter, May 12, 2022.

²⁶ Email correspondence of Deborah Bloomer, May 16, 2022.

²⁷ Initial Group Submission, May 19, 2022.

²⁸ Board’s Letter, May 16, 2022.

Issue 2: Are the remaining Appellants directly affected by the Director’s decision or the activities authorized by the Licence?

A. Submissions of the Parties

1. The Director

[48] The Director had found only the Nesbitts to be directly affected during the Licence Application process. While the Director took no position before the Board as to whether the Appellants are directly affected, he submitted that he has an interest in the reasonable application of the test for determining an appellant’s directly affected status.²⁹

[49] Relying on Alberta Court of Appeal’s decision in *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board* (“*Normtek*”),³⁰ and previous Board decisions,³¹ the Director argued, among other things, that the Appellants have the onus to show a reasonable probability that they will be directly affected.

[50] The Director explained his process for reviewing the Appellants’ statements of concern, the information he considered, and his reasons for finding the Appellants not directly affected.³² The Director submitted that he applied AEP’s applicable policies, guidelines, and practices. He found the Appellants not to be directly affected for numerous reasons, and provided a chart of his reasons organized by Appellant, which fell into one or more of the following:

- a. a lack of geographical proximity to the point of diversion, i.e., the Appellant’s residence is more than two km away from the proposed Production Well;
- b. a lack of water well on the Appellant’s property or the Appellant provided no information about a water well on their property;
- c. a lack of hydrological connection between an Appellant’s well and the aquifer from which water will be diverted under the Licence;

²⁹ Director’s Response Submission, June 1, 2022, at para. 37.

³⁰ 2020 ABCA 456.

³¹ *McDonald-Harker and Silvertip Ranch Committee v. Director, Regulatory Assurance Division, South Region, Alberta Environment and Parks*, re: *Foothills County*, (31 March 2022), Appeal Nos. 20-030-039-D (A.E.A.B.), 2022 ABEAB 15, at paras. 122 and 126; *Janzen v Director (Red Deer-North Saskatchewan Region, Alberta Environment and Parks)*, 2018 Alta Environmental App Bd, 2018 CarswellAlta 3257 at paras. 58 and 59; and *Brookman and Tulick v Director, South Saskatchewan Region, Alberta Environment and Parks*, re: *KGL Constructors, A Partnership*, Appeal Nos. 17-047 and 17-050-R (AEAB) 2017 Alta Environmental App Bd 13, 2017 CarswellAlta 2925 at para. 197.

³² Director’s Response Submission, June 1, 2022, at paras. 38 to 48.

- d. the negligible rates of theoretical drawdown at wells further away from the Licence's point of diversion;
- e. the Appellant did not submit a response to the AEP Information Request; and
- f. the technical hydrological information provided by the Licencee showing a very low likelihood of hydrological impacts to neighbouring wells, particularly at further distances.

[51] The Director relied on the following technical information to determine that the proposed activity would result in minimal or no direct adverse effects to the Appellants:

- a. Data provided by Tetra Tech, showed:
 - i. the Production Well would result in a negligible drawdown of 9.8 mm after 20 years of continuous pumping at the second closest well, assuming no aquifer recharge, and even lower rates of drawdown of 3.7 mm to 0.6 mm after 20 years of continuous pumping at further distances of 983 m to 2.4 km;
 - ii. other water wells in the vicinity of the Production Well have been constructed either in different aquifers or at a very significant distance, minimizing any chances of real or potential impacts from the diversion; and
 - iii. Tetra Tech's conclusion that given the calculated theoretical drawdown of less than one cm, the influence of the Production Well will be negligible on surrounding wells;³³
- b. the AEP hydrogeologist's review of potential impacts of the diversion to the nearest neighbouring wells, and the conclusion that the drawdown at the nearest neighbouring wells is expected to be minimal and should have no noticeable effect on water supply; and
- c. the AEP hydrogeologist's conclusion that the diversion authorized by the Licence is not expected to have any measurable impact on surface water bodies in the vicinity of the point of diversion because:
 - i. the lakes are not connected to the Production Well's groundwater source; and
 - ii. the Production Well would be constructed in coarse-grained sand and gravel, which is isolated from the surface bodies of water by large volumes of fine-grained material and clay.³⁴

³³ Director's Response Submission, June 1, 2022, at para. 43, citing: *Response to Statement of Concern*, Tetra Tech, November 26, 2021, Limited Director's Record, at Tab 137.1, at section 2.1.

³⁴ Director's Response Submission, June 1, 2022, at para. 45.

The Director also submitted that many of the statements of concern raised issues outside of the Licence Application, which he did not consider, including concerns about the Licensee's Development, the capacity of the Development, and road safety.³⁵

2. *The Licensee*

[52] The Licensee submitted that the Appellants' land locations and residences are outside the area of environmental impact from the Licensee's Development. Further, the Director and AEP's hydrogeologist determined that some of the Appellant's water wells were not completed within the same water source as the Licensee's Production Well, and the other Appellants did not have water wells.

[53] The Licensee submitted that the Appellants did not qualify to submit statements of concern and supported the Director's decision on the invalidity of their statements of concern. The Licensee questioned the objectives of the Appellants' Notices of Appeal, given that the Licensee is complying with the Licence requirements in respect of the only valid statement of concern, the Nesbitts' water well, including covering the costs for all equipment and monitoring.

3. *The Molines*

[54] The Molines submitted that they are located approximately 1.5 miles from the Licensee's diversion site. They stated that they have an excellent domestic water well drilled in November 1999. They provided their water well drilling report and quality test. They are concerned that a diversion of up to 6,355 cubic metres per year could negatively affect the quality and quantity of water their well currently provides. In their rebuttal submissions, the Molines stated that hydrogeology is not an exact science as it relates to underground aquifers. They expressed a concern about the uncertain nature of the terms used to decide the impact of the Licence on their well, such as "unlikely to affect" and "should have no noticeable effect."³⁶

[55] The Molines submitted that the Licence makes no provision to protect or monitor the on-going status of their well. They requested a provision in the Licence, similar to the provision for the Nesbitts, to include a new benchmark drawdown and recovery test for their well, ongoing monitoring of the water level for the duration of the Licence, and public access to the data.

³⁵ Director's Response Submission, June 1, 2022, at para. 47.

³⁶ Molines' Rebuttal Submission, June 14, 2022.

4. *The Parkers*

[56] The Parkers submitted that their water well is within one mile of the Licensee's Production Well. They are concerned about the quantity and quality of their water well's output, and their wellbeing, that may be affected by the Production Well's drawdown. The Parkers are concerned that the size of the Licensee's Development will require a great deal of water to operate, which may cause damage to aquifers in proximity and risk to viability of the many numbers of wells in the area. They are also concerned that due to climate change, global warming worldwide and reduction of surface water levels, reduction in the aquifers may further reduce the Chickakoo, Saur, and Byers lake levels, which have been suffering from loss of volume in a designated sensitive area.

[57] The Parkers expressed further concern about their water well's future water supply, the lack of guarantee of supply from aquifers, and uncertainty of future water volumes due to climate change conditions and predicted unusual weather patterns. In their rebuttal submissions, the Parkers concluded that, as there can be no proof that they would be affected by the Licence, neither is there any proof that they will not be affected.³⁷ The Parkers requested that the information from monitoring the Licensee's Production Well be made publicly available. They also requested the Board to order the monitoring of all aquifers in the area to determine drawdown.

5. *Individual CLASS Members, 28 Individual CWPG Members, and CWPG*

[58] The Board notes that one Notice of Appeal was filed on behalf of CLASS and its five members, and one Notice of Appeal was filed on behalf of CWPG and its 28 members ("Group Notices of Appeal"). The Board further notes that the Nesbitts, the three remaining CLASS members, CWPG and its 28 members ("Group Appellants"), represented by CLASS through Ms. Bloomer, filed one initial submission (the Initial Group Submission) and one rebuttal submission (the Rebuttal Group Submission). These submissions and the Group Notices of Appeal are collectively referred to as the "Group Filings."

[59] The Group Appellants submitted that the Licence directly affects them individually, and collectively as residents and neighbours, in the Chickakoo Lake Environmental Sensitive Area (the "ESA"). They stated in the Group Filings that the Licence threatens the safety of their

³⁷ Parkers' Rebuttal Submission, June 16, 2022.

community water levels and water quality. They submitted that their primary concern is the quality and quantity of water in their wells, as well as water use, safety, and protection.

[60] Based on published studies and reports,³⁸ the Group Appellants are concerned that the quantity and quality of groundwater, surface waters, watersheds, aquifers, and water systems in the Parkland County area are endangered. They argued that persistent large draw from an aquifer affects or alters water flow direction and water quality in surrounding areas. They argued that while wells on higher elevation and wells with shallow depth are more vulnerable, other neighbourhood wells drawing from a different aquifer could still experience changes in water quality due to persistent pumping of a well in proximity.

[61] The Group Appellants argued that the aquifer accessed by the Licence is not completely isolated from the water systems, rather it is part of a waterbody system in the Parkland County Lake District watershed. They argued that the aquifers, lakes, surface waters, streams and groundwater are all interconnected in the Lake District; therefore, dismissing their statements of concern because their wells did not draw from the same aquifer is an outdated paradigm.

[62] The Group Appellants also relied on the lowering water levels in their wells as evidence that water quantity and quality are at risk in the Chickakoo ESA. They submitted that Chickakoo Lake represents the state and health of their groundwater within and around the Chickakoo Lake area in the Parkland County Lake District/Carvel Pitted Delta. They argued that the Chickakoo Lake area is an interconnected system of water bodies, consisting of ground water, aquifers, streams, freshwater lakes, and pothole lakes of the Carvel Pitted Delta. They submitted that the health of the interconnected water bodies, including their individual water wells and neighbourhood lakes, relies on groundwater protection.

[63] They are concerned that the Licensee's actual water needs when in full operation, based on the size of the Development, does not match the Licence water allocation. They expressed

³⁸ Environmental Law Center and Water Matters Society of Alberta, "Groundwater Policy and Planning in Alberta: A Path forward for Sustainable Groundwater Management and Protection" 2018; K.U. Weyer, Ph.D., P.Geol. WDA Consultants Inc., "Determination of hydrogeological parameters from pumping of water wells in Alberta" 2003; Ahmed S Elshall et al., "Groundwater sustainability: a review of the interactions between science and policy" 2020 Environ. Res. Lett. 15 093004; Wen-Ying Wu et al., "Divergent effects of climate change on future groundwater availability in key mid-latitude aquifers" 2020 Nature Communications 11 3710; "Parkland County Environmental Master Plan" Jun 18, 2014; "Parkland County State of the Environment Report" 2012 (approved May 2013); Alex Oiffer, M.Sc. P. Geol, "Summary of Groundwater Conditions in the Sturgeon River Basin" 2019; Alex Oiffer, M.Sc. P. Geol, "Overview of Groundwater Conditions in the Sturgeon River Watershed" 2019.

concern about the lack of transparency of real and actual projected water needs of the Licensee and how that need will be fulfilled. They believe that the Licensee's ability to operate at projected future capacity will involve drawing water from unlicensed wells on the Licensee's property.

[64] The Group Appellants also challenged the process, research, and technical evidence underlying and supporting the Director's decision to issue the Licence. They stated that the information and the basis of the Director's decision were not disclosed to them. They argued that AEP, by not reading the published reports and studies they submitted, was not fully informed and did not understand the nature of their Parkland Lake District/Carvel Pitted Delta, Chickakoo ESA. They argued that the AEP did not know the value, water supply, and interconnectedness in functionality of the Chickakoo Lake Area water body system they seek to conserve.

[65] The Group Appellants argued that there is no reliable evidence to support the safety of the neighbourhood wells' water levels and water quality. Based on the following reasons, the Group Appellants argued that the Tetra Tech Report is unreliable and uninformed. First, Tetra Tech was hired to obtain a water license for the Licensee and could not at the same time protect the neighbouring community's groundwater within one mile radius of the Licence site and outlying neighbouring areas in the Chickakoo Lake Area ESA and the Parkland County Lake District of the Carvel Pitted Delta waterbody system. They submitted that this is a conflict of interest and a fallacy.

[66] Second, Tetra Tech performed an incomplete well survey, only within two miles diameter around Chickakoo Lake, and used the inconclusive neighbourhood well data in its analysis. The Group Appellants argued that the study is a meaningless formality without appropriate oversight, given that many neighbours who have wells were not contacted to provide data for the survey. Third, Tetra Tech used calculations it obtained during an unusual heavy rain period, did not perform water flow and recovery tests throughout all seasons, including the driest season, and did not provide a full year's picture.

[67] Fourth, there is no accurate well data of quantity, water draw, and water quality change comparison in the Chickakoo Lake ESA, as the water well database throughout Parkland County and the Province is in disarray, incomplete and needs updating in consultation with Alberta Health. The Group Appellants argued that it is unknown how much water is being drawn, or the number of wells in the Chickakoo Lake Area, as no accurate well surveys have been done.

[68] Fifth, relying upon various climate change published studies on groundwater, the Group Appellants expressed concern that climate change is not factored into the Q20 formula used by Tetra Tech to determine water draw from the Licence aquifer.³⁹ They argued that in the new era of climate change, old and previously accepted, largely desktop studies and hypothetical formulas, are unreliable and climate change has not been included in the decision-making processes. They argued that laws and Codes of Practice currently being used need to be updated to mitigate climate change and protect water bodies, given that groundwater, although seemingly abundant, is a non-renewable resource.

[69] Sixth, the Group Appellants argued that the Q20 formula is derived from limited data and relies upon hypothetical supply of water that is “good enough for 20 years”. They argued that the Q20 formula provides assurance of neither a 20-year yield nor beyond 20 years; therefore, it is an inconclusive short-sighted hypothesis that should be abandoned for more comprehensive modelling that incorporates a realistic portrayal of the interconnected waters bodies in the Parkland Lake District. Relying upon studies on limitations of hypothetical formulas, the Group Appellants argued that the outdated Moell Method used by Tetra Tech to determine the drawdown, and the assumptions on which the formulas were based, did not meet modern requirements.

[70] The Group Appellants submitted that their intent is to bring attention to the need for change in water sustainability determination and to support a “Good Neighbour Resolution.” They requested, among other things, a reduction in the Licence’s water allocation, and an amendment to the Licence that will include a Good Neighbour Agreement. They proposed that the Good Neighbour Agreement should contain mutual monitoring of the Production Well and the Nesbitts’ water well by the Licensee, the Nesbitts, and two public parties (CLASS and the Office of the CAO Parkland County). It should also contain public access to data on water use, levels, and quality.

[71] The Group Appellants also expressed concerns about maintenance of the dirt gravel road, dust pollution, noise pollution, wildlife corridor protection, emergency vehicle access to the

³⁹ The Q20 is the “[t]heoretical long-term yield, representing the amount of water that may be sustained by the aquifer in the vicinity of the tested well for 20 years, without lowering the water below the top of the aquifer for confined aquifers, or without resulting in a drawdown of more than two-thirds of the saturated thickness of an unconfined aquifer.” Alberta Environment: Guide to Groundwater Authorization, March 2011.

residents' homes in times of high traffic, light pollution, traffic, speed limits, drainage, and septic issues.

B. Board's Analysis and Findings

1. The Law

[72] Sections 115(1)(c)(i) of the *Water Act*, and section 91(1)(a)(i) of EPEA, both require that a person filing a Notice of Appeal must be directly affected by the Director's decision. The Board has recently considered the term "directly affected" in a few of its decisions, in accordance with the direction of the Court of Appeal in *Normtek*.⁴⁰ The Board avoids defining in advance or limiting the circumstances in which an appellant might be found directly affected. The Board interprets "directly affected" as limiting the class of persons who can appeal a director's decision. However, the Board retains broad discretion to determine who is directly affected.

[73] The Board's recent decision in *McMillan et al. v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks, re: Badlands Recreation Development Corp.* ("Badlands")⁴¹ sets out the new framework the Board uses to determine if a person who filed an appeal before the Board is directly affected.

[74] The Board further refines its three-part test and guiding principles for a "directly affected" person in section 115(1) of the *Water Act* and section 91(1) of EPEA. An appellant must meet all three parts of the following test:

1. whether there is a personal or private interest, consistent with the underlying policies of the applicable statutes, being asserted by a person;
2. whether there is an adverse effect to the identified interest; and
3. whether the adverse effect to the identified interest is direct.

[75] The following principles guide the Board's application of its directly affected test:

1. ***Factual circumstances vary.*** The Board determines the directly affected status of an appellant on a case-by-case basis, considering the varying facts and circumstances of each appeal.

⁴⁰ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456.

⁴¹ *McMillan et al. v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks, re: Badlands Recreation Development Corp* (31 May 2022), Appeal Nos. 19-066 to 071, 074, 081, and 083-085-ID4 (A.E.A.B.), 2022 ABEAB 22, at paras. 53 to 58.

2. **Interest.** The appellant must have a direct personal or private interest greater than the abstract or generalized interest of the community in an area or all Albertans. The interest affected must be consistent with the underlying policies of the applicable statute. Subject to the applicable statute, the Board examines the alleged adverse effects of the Director's decision, or the activity authorized by the Director's decision, on (a) the environment, (b) human health, (c) safety, or (d) property interests. The Board may also examine any alleged (e) social, (f) economic, and (g) cultural impacts of the Director's decision or the activity authorized by the Director's decision, if those impacts directly affect the appellant's identified interests.
3. **Natural Resources.** The Board examines harm to a natural resource which an appellant uses, or harm to an appellant's use of a natural resource, as this may be sufficient but is not a prerequisite to find an appellant directly affected where other adverse effects are alleged.
4. **Adverse Effect.** The Board interprets "affected" as meaning the Director's decision or the activity authorized by the Director's decision will harm or impair the appellant's identified interests. "Directly affected" connotes an adverse effect.⁴² Adverse effect as defined under EPEA and the *Water Act* means "impairment of or damage to."⁴³ The effect does not have to be unique in kind or magnitude but must be more than an effect on the public at large.
5. **Direct.** The Board interprets "directly" as meaning the Director's decision must have a clear and uninterrupted chain of cause and effect, or there must be an unbroken causal link between the Director's decision and the harm on the appellant's identified interest. In other words, the alleged harm to the identified interest must be caused by the Director's decision or authorized activity. Further, the adverse effect must be actual or imminent, not speculative, and not at an undetermined time in the future. Some types of future harm, but not all, may be too remote or speculative to be considered direct;⁴⁴
6. **Evidence required.** The Board considers the nature and merits of the appellant's Notice of Appeal when considering if they are directly affected by the Director's decision or the activity authorized by the Director's decision. The appellant must provide *prima facie* evidence to support their

⁴² The Concise Oxford Dictionary defines the adjective "affected" as "acting on physically" or "producing a material effect on." The Court of Appeal in *Normtek* agreed with the Board previously defining "affected" as meaning "harmed or impaired." *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at para. 79, which cites *Bildson v. Acting Director of North Eastern Slopes Region, Alberta Environmental Protection, re: Smoky River Coal Limited* (19 October 1998), Appeal No. 98-230-D, (A.E.A.B.), 1998 ABEAB 42, at para. 25.

⁴³ Section 1(b) EPEA; section 1(1)(c) *Water Act*.

⁴⁴ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paras. 79 and 81. As discussed in *Normtek*, the adverb "directly" restricts or limits the effects that can give rise to standing. The *Concise Oxford Dictionary* defines "directly" as meaning "in a direct manner." It defines "direct" as "straight, not crooked or roundabout, following an uninterrupted chain of causes and effect." There also appears to be a temporal aspect to "direct" and "directly." "Direct" is defined as "immediate." Further, "directly" is defined as "at once, without delay."

position that they are directly affected. This evidence need only establish a reasonable possibility they will be directly affected.

7. **Summary dismissal.** The Board may summarily dismiss a notice of appeal where it determines that the appellant is not directly affected, but such summary dismissal can only be made after there has been some consideration of the merits of the appellant's appeal.

[76] The Board has previously considered standing of a community group to bring an appeal before the Board. In *Hazeldean Community League v. Alberta (Director, Air & Water Approvals Division, Environmental Protection)*,⁴⁵ the residents of the community in the immediate vicinity of a facility were concerned that the emissions to the atmosphere from the facility would affect them, and they had no choice but to breathe the ambient air. The Board found that, unlike the quality of water which leaves the ultimate choice (to drink or not) to the user, there was no real option to breathing the ambient air.

[77] The Board considered how an appellant can discharge the onus of proving that he or she is directly affected when the nature of air emissions is such that all residents within the impact area may be directly affected to the same degree. Noting the risk in such situations that no person would have standing to appeal, because of their inability to differentiate the effect upon them from their neighbour's, the Board held that it would be unreasonable and contrary to the intent of the Act to deny standing in such cases. On the facts of that case, the Board found the community group to be directly affected, and its notice of appeal valid, because the individual members of the affected group would have surely had standing in their own right.

[78] In *Kostuch v. Alberta (Director, Air & Water Approvals Division, Environmental Protection)*,⁴⁶ the Board considered an argument that the appellant was not differentially affected from the general community in the area. The Board noted that while the point is significant, it is not determinative in every case. The Board confirmed that it would be unreasonable to deny standing where the adverse impacts are common to a group of people living in close proximity to the source of that impact, and the nature of the impact renders it impossible to prove or to differentiate impacts between individuals who would clearly be directly affected. The Board

⁴⁵ *Hazeldean Community League v. Alberta (Director, Air & Water Approvals Division, Environmental Protection)*, 1995 ABEAB 9 (11 May 1995), Appeal No. 95-002 (A.E.A.B.), at page 4.

⁴⁶ *Kostuch v. Alberta (Director, Air & Water Approvals Division, Environmental Protection)*, 1995 ABEAB 16.

reiterated that denying standing in such cases would mean that nobody could question widespread events that generate direct effect on groups of individuals or an entire community.

[79] In *Jericho v. Director, Southern Region, Regional Services, Alberta Environment re: St. Mary River Irrigation District*,⁴⁷ the Board considered a group appeal by the Southern Alberta Environmental Group (“SAEG”) to an amendment of a water licence. The Board noted that the cornerstone of the previous cases before it was the factual impact of the proposed project on individuals. A single group Notice of Appeal usually does not contain sufficient information to determine whether the individual members of the group are directly affected.

[80] The Board noted that while it is acceptable for a group or an organization to file an appeal, individual members of the organization should also file an appeal, either jointly with the organization, or separately, to demonstrate the personal impact required by section 115 of the *Water Act*. As a result, the Board encourages groups to file both as an organization and as individual members.⁴⁸

[81] The Board also noted that it has been the exception rather than the general rule to have a group deemed to be directly affected. While those exceptions exist, such as *Hazeldean*, the Board will need to be clearly convinced that the majority of the individual members of the organization are individually and personally impacted by the project. It is not enough for a group to show that more than half of its membership “supports” the filing of an appeal, the group must show that more than half of its membership is directly affected by the Director’s decision.⁴⁹ Therefore, in that case, for the Board to accept SAEG as directly affected, SAEG had to prove that over half of its 77 individual members were directly affected.⁵⁰

[82] The Board also determined that in cases where only an individual member or members of a group can meet the directly affected test, they can have an organization or association

⁴⁷ *Jericho v. Director, Southern Region, Regional Services, Alberta Environment re: St. Mary River Irrigation District*, 2004 ABEAB 57, (4 November 2004) Appeal Nos. 03-145 and 03-154-D, at paras. 70 to 71, and 110 to 123.

⁴⁸ See also *Bailey et al. v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment, re: TransAlta Utilities Corporation*, 2001 ABEAB 10, (2001), 38 C.E.L.R. (N.S.) 68, Appeals No. 00-074, 075, 077, 078, 01-001-005 and 011-ID, at paras 52 and 53.

⁴⁹ *Jericho v. Director, Southern Region, Regional Services, Alberta Environment re: St. Mary River Irrigation District*, 2004 ABEAB 57, (4 November 2004) Appeal Nos. 03-145 and 03-154-D, at paras. 114, and 119 to 121.

⁵⁰ See also *Castle-Crown Wilderness Coalition v. Director, Southern Region, Regional Services, Alberta Environment re: Castle Mountain Resort Inc.* 2006 ABEAB 19, (8 August 2006) Appeal No. 03-144-D2 (A.E.A.B.) at paras. 145 to 180.

represent them if they wish. However, the organization or association will only be a representative of the individual or individuals, confined to the concerns expressed in the valid Notices of Appeal, and cannot argue the organization's or association's own agenda.⁵¹

[83] In *Bailey et al. v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment*,⁵² the Lake Wabamun Environmental Protection Association ("LWEPA") was one of the appellants against the approval issued to TransAlta Utilities Corporation for the Wabamun Thermal Electric Power Plant. LWEPA alleged that its members were owners and occupants who made use of the lake and had been party to the approval application process with the Director and TransAlta. Upon reviewing LWEPA's membership list, the Board found that most members of LWEPA were probably riparian owners, and at least two LWEPA members were Appellants with established standing before the Board.

[84] The Board found that, in essence, LWEPA was created for the express purpose of engaging in the regulatory approval process by the lake resident owners and occupants. Most, if not all, of the members of LWEPA could have filed appeals in their own right, given their proximity to the lake.⁵³ The Board concluded that there was sufficient evidence to determine that LWEPA, whose member owners and occupants surround and use the lake, had standing as an appellant.

[85] In this decision, the Board clearly distinguishes associations or organizations that have distinctive personal or private interests separate from their members, such as property rights or other recognized interests. Each association or organization with its own distinctive personal or private interest will be considered in its own right or merit under the *EPEA* and the *Water Act*. The Board also recognizes that "person" under both pieces of legislation includes natural and non-natural persons.⁵⁴

⁵¹ See also *Graham v. Director, Chemicals Assessment and Management, Alberta Environmental Protection*, (1996) 20 C.E.L.R. (N.S.) 287, at paras. 21 to 29.

⁵² *Bailey et al. v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment, re: TransAlta Utilities Corporation*, 2001 ABEAB 10, (2001), 38 C.E.L.R. (N.S.) 68, Appeals No. 00-074, 075, 077, 078, 01-001-005 and 011-ID, at paras. 47 to 56.

⁵³ *Jericho v. Director, Southern Region, Regional Services, Alberta Environment re: St. Mary River Irrigation District*, 2004 ABEAB 57, (4 November 2004) Appeal Nos. 03-145 and 03-154-D, at para. 121.

⁵⁴ *Interpretation Act*, RSA 2000, c I-8, section 28(1)(nn).

[86] The Board will consider groups, associations or organizations that have no personal or private interests distinct from their members as collective interest groups. The Board only uses the term “collective interest” to capture the various interests of all the members of the group and does not mean or equate this term with public interest.

[87] From the foregoing review, the Board confirms that it is an exception rather than the general rule to have a collective interest group, association or community deemed to be directly affected. The Board recognizes that the majority rule generally applies in organizations under various governing statutes and the *Interpretation Act*.⁵⁵ In light of the direction of the Alberta Court of Appeal in *Normtek*, the Board sets out the following framework to determine “directly affected”, in section 115(1) of the *Water Act* and section 91(1) of EPEA, when a collective interest group, association or community files an appeal before the Board. Such group, association or community appellant must meet all six parts of the following test:

1. is there a personal or private interest, consistent with the underlying policies of the applicable statutes, being asserted by persons in the group;
2. is there an adverse effect to the identified personal or private interests;
3. is the adverse effect to the identified interests direct;
4. is the direct adverse effect shared by, or common to, the persons in the group who have clearly identified interests;
5. does the nature of the adverse impact render it impossible to prove, or to differentiate, impacts between persons in the group who would clearly be directly affected; and
6. will a majority (more than half) of the persons in the group be directly affected personally and therefore have standing in their own right.⁵⁶

[88] In the following paragraphs, the Board applies the legal principles from this section to its consideration of whether the Appellants are directly affected by the Director’s decision, or the activity authorized by the Licence.

⁵⁵ *Interpretation Act*, RSA 2000, c I-8, section 17.

⁵⁶ *Jericho v. Director, Southern Region, Regional Services, Alberta Environment re: St. Mary River Irrigation District*, 2004 ABEAB 57, (4 November 2004) Appeal Nos. 03-145 and 03-154-D paras. 70 to 71, and 110 to 123. See also *Bailey et al. v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment, re: TransAlta Utilities Corporation* (2001), 38 C.E.L.R. (N.S.) 68 (A.E.A.B.) at para. 53; and *Graham v. Director, Chemicals Assessment and Management, Alberta Environmental Protection*, (1996) 20 C.E.L.R. (N.S.) 287. See also *Graham v. Director, Chemicals Assessment and Management, Alberta Environmental Protection* (1997), 22 C.E.L.R. (N.S.) 141 (Alta. Q.B.) and (1997) 23 C.E.L.R. (N.S.) 165 (Alta. C.A.).

2. Analysis and Findings

[89] The Licence authorizes the operation of works and the diversion of up to 6,355 cubic metres of water per year, at a maximum rate of 203.53 litres per minute (l/m), for the Development located at NW 27-053-01-W5M in Parkland County. The Licence Application and the Tetra Tech Report state that the groundwater will be used for human consumption as potable drinking water, sewage usage, and for fire suppression system supply.

[90] The water well drilling report provided with the Licence Application⁵⁷ and the Licence indicate that the Production Well (GIC 1717000) was drilled to the total depth of 71.63 m below grade (mbg) or 235 ft, completed to a total depth of 69.49 m (228 ft), and installed in a coarse-grained sand and gravel aquifer at production intervals of 61.87 m (203 ft) to 69.49 m (228 ft), and maximum pump intake depth of 60.96 m (200 ft).

[91] The Licensee, through Tetra Tech, initially conducted a field verification survey (“FVS”) to obtain information about water wells within 1.6-km (1 mile) radius of the Licensee’s property boundary. Upon the direction of AEP on July 5, 2021, the FVS was extended to a 2.0-km (1.24 mile) radius (and beyond in some instances) of the property boundary.⁵⁸

[92] As noted in the Licence, the Monitoring Well owned by Swiss Valley Farms Ltd., is located at NW 27-053-01-W5M, in Swiss Valley Village where the Nesbitts reside. The Director found only the Nesbitts directly affected during the Licence Application process. The Nesbitts’ appeal and standing were not challenged. The Board exempted the Nesbitts from filing evidence and submissions on their standing, as the Board agreed with the Director that the Nesbitts are directly affected, given the Licence Monitoring Well is in Swiss Valley Village.

[93] The Board, in the following paragraphs, considers the personal facts and circumstances of each of the remaining Appellants to determine the personal impact required by section 115 of the *Water Act*.

⁵⁷ Initial Tetra Tech Report, at pages 8 to 9 and Appendix C. See also Application Form, Director’s Record, Tab 173.1.

⁵⁸ Tetra Tech Report, at page 1.

1. *The Molines*

[94] The Molines own about 30 acres and a domestic water well approximately 1.5 miles from the Licence location. The Board notes that the Molines are incorrectly shown in the Licensee's FVS as "Marry Jeans-Maline."⁵⁹ Applying the first part of the Board's test, the Board finds that the Molines, as owners of land and a water well about 1.5 miles (2.41 km) from the Licence location, have a property interest and have satisfied the first part of the Board's directly affected test.

[95] For the second and third components of the test, the Molines must provide evidence to show a reasonable possibility that their property interest will be negatively impacted. The required evidence must show a reasonable possibility that the asserted negative effect or harm will be caused by the Director's decision, or the activity authorized by the Licence. The asserted harm must not be speculative or too remote.

[96] The Molines are concerned that a diversion of up to 6,355 cubic metres per year under the Licence could negatively affect the quality and quantity of their water well. In response to AEP's Information Request, the Molines provided information including their water well's drilling report and quality test. The Director determined during the Licence Application process that the Molines were not directly affected because their water well is not hydrologically connected to the aquifer accessed by the Licensee's Production Well.

[97] The Board notes that the Production Well was drilled to the total depth of 71.63 m (235 ft), completed to a total depth of 69.49 m (228 ft), and installed in a coarse-grained sand and gravel aquifer in the lowest point of the Beverly Buried Valley of the Sturgeon River Basin, at the production intervals of 61.87 m to 69.49 m.⁶⁰

[98] The Production Well's driller's report provided in the Tetra Tech Report shows the lithology encountered during drilling and well construction. The Tetra Tech Report interpreted a grey clay layer between 25.3 m and 59.7 m, which it considered an aquitard. A thin layer of fine sand (grey) material was observed from 59.74 m to 60.96 m, underlain by a coarse-grained sand

⁵⁹ Tetra Tech Report, Table 2: Summary of Field Verification Survey Results.

⁶⁰ Tetra Tech Report, pages 8 to 9, and 12 to 13.

and gravel aquifer to the depth of 69.49 m. Further, green shale was observed beneath the sand and gravel aquifer to the total depth of 71.63 m.⁶¹

[99] The well drilling report and water well diagram provided by the Molines show that their well was drilled to a total depth of 301 ft, with perforation from 260 to 301 ft (79.2 m to 91.8 m) and pumping intake at 280 ft (85.3 m). The lithology description shows grey shale at 210 ft (64 m), green shale at 246 ft (75 m), grey shale at 282 ft (86 m), and sandstone at 301 ft (91.74 m). The Board notes that within the perforated interval of the Molines' well, sandstone only occurs at 301 ft (91.74 m). Based on the *prima facie* evidence the Molines presented, the Board finds that the Molines' water well is installed in a different unit from the aquifer accessed by the Licensee's Production Well.

[100] The Molines did not provide any rebuttal evidence to the Director's assessment that their well is not hydrologically connected to the aquifer accessed by the Production Well. The Molines merely stated that hydrogeology is not an exact science as it relates to underground aquifers. The Molines did not provide any evidence to show a reasonable possibility of adverse effects to their water well by drawdown from the Licensee's Production Well installed in a different aquifer. In the absence of any evidence, the Board finds that the potential adverse effect asserted by the Molines to their water well is speculative and too remote. The evidence presented by the Molines, even on a *prima facie* basis, did not show a causal connection between their stated potential adverse effect and the Licence.

[101] The Molines failed to meet their onus to demonstrate a reasonable possibility of direct adverse effect by the Director's decision or the activity authorized by the Licence. As a result, the Molines do not meet the second and third parts of the directly affected test. Therefore, the Board finds that the Molines are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

2. The Parkers

[102] The Parkers' household water well is within one mile (1.6 km) from the Licensee's Production Well. In their email response to AEP's Information Request, the Parkers provided their well ID and the total drilled depth of 305 ft (92.96 m). The Parkers are concerned about the quantity

⁶¹ Tetra Tech Report, pages 8 to 9.

and quality of water in their well and their wellbeing, which may be affected by the Production Well's drawdown under the Licence.

[103] They are also concerned about damage to other aquifers in proximity, risk to viability of several wells in the area, and further reduction in the Chickakoo, Saur, and Byers lake levels resulting from reduction in the aquifers. The Parkers are also concerned about their water well's future water supply, given the lack of guarantee of supply from aquifers due to climate change conditions and predicted unusual weather patterns.

[104] Applying the first part of the Board's test, the Board finds that the Parkers did not provide any evidence to show what personal or private interests they have in the area water wells or in the Chickakoo, Saur, and Byers lake levels. The Board appreciates their concerns about the health of water bodies in the area. However, a general interest in water protection in the area is not sufficient to appeal the Licence. The Parkers must demonstrate, with some particularity, how they are personally interested in or connected to the area water wells and the Chickakoo, Saur, and Byers lakes. The Board finds that the Parkers did not demonstrate, on a *prima facie* basis, that they have interests in these matters greater than the generalized goal of the area communities in environmental protection.

[105] However, as owners and users of a household water well within one mile of the Licence location, the Board finds that the Parkers have shown property and health interests, and therefore, have satisfied the first part of the Board's directly affected test.

[106] For the second and third parts of the test, the Parkers must provide evidence to show a reasonable possibility that the Director's decision or the activity authorized by the Licence will negatively and directly affect their property and health interests identified. The Director found the Parkers not directly affected during the Licence Application process because the water well on their property is not hydrologically connected to the aquifer accessed by the Production Well.⁶² The Parkers argued in their appeal there is a risk of damage to other aquifers in proximity.

[107] Other than their well ID and depth of their borehole, the Parkers provided no evidence to show that their water well is either in the same aquifer or is hydrologically connected to the aquifer accessed by the Licensee's Production Well. They did not provide any evidence to

⁶² Director's Response Submission, June 1, 2022, at para. 46.

show a reasonable possibility of adverse effects to their water well or to their health by the Production Well's drawdown.

[108] The Parkers provided no evidence to support their argument that the Production Well's drawdown will damage the Licence's aquifer, neither did they provide any evidence to support their assertion that a damage to an aquifer can definitely damage other aquifers. The Board particularly notes the Parkers rebuttal argument that, as there can be no proof that they will be affected, neither is there any proof that they will not be affected.⁶³

[109] In the absence of any evidence, the Board finds that the arguments provided by the Parkers, regarding potential adverse effect of the Licence on their water quality, volume, future supply, and their health, are speculative and too remote. The Board notes the Parkers' references to global warming worldwide, climate change conditions and unusual weather patterns are some of the causes of the stated threat to water resources, lack of guarantee of supply from aquifers and uncertainty of future volumes. Evidence of the Parkers' potential adverse effects as presented, even on a *prima facie* basis, did not show a sufficiently close causal connection with the Licence.

[110] The Parkers failed to meet their onus of providing evidence to demonstrate a reasonable possibility of direct adverse effect by the Director's decision or the activity authorized by the Licence. As a result, the Parkers do not meet the second and third parts of the directly affected test.

[111] The Board finds that the Parkers are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

3. Individual CLASS Members, 28 Individual CWPG Members, and CWPG

[112] As noted above, group appeals usually do not contain sufficient information to determine the personal and private interests of the persons in the group, and the claimed direct adverse effects on any identified personal interests. Therefore, in addition to the group filings, the Board reviewed the individual statement of concern of each Group Appellant to enable it to make

⁶³ Parkers' Rebuttal Submission, June 16, 2022.

these determinations.⁶⁴ To avoid repetition, the Board first sets out the concerns of the Group Appellants in the group appeals before analyzing the specific concerns of each of them.

[113] The Group Appellants are primarily concerned about the quality and quantity of water in their water wells. They are also concerned about the quantity and quality of groundwater, surface waters, watersheds, aquifers, and water systems in their area of Parkland Lake District. They argued that the Licensee's aquifer is not completely isolated from the water systems, rather it is part of an interconnected water body system of aquifers, lakes, surface waters, streams, and groundwater in the Lake District watershed.

[114] They argued that the Chickakoo Lake area is an interconnected system of water bodies, consisting of groundwater, aquifers, streams, freshwater lakes, and pothole lakes of the Carvel Pitted Delta, Parkland County's district of lakes. They stated that the Chickakoo Lake represents the state and health of their interconnected water bodies, including their individual water wells, neighbourhood lakes and groundwater within and surrounding the Chickakoo Lake area in the Parkland County Lake District/Carvel Pitted Delta. The Group Appellants provided published reports and studies in support of their assertions.

[115] The Group Appellants also expressed interest in conserving the value in the water supply and interconnected functionality of the Chickakoo Lake Area water body system.

[116] Applying the first part of the Board's test, any of the Group Appellants who shows ownership or use of a water well near the Licence location will have a property interest in the stated interconnected water system within the Chickakoo Lake area. Such a Group Appellant will be able to satisfy the first part of the Board's directly affected test.

[117] A Group Appellant who does not have or use water wells near the Licence location will establish, on a *prima facie* basis, personal or private interests in the conservation of the water supply and potential interconnected functionality of the stated Chickakoo Lake Area water body system. Such interest must be greater than the generalized goal of the area communities and Albertans in water and environmental protection.

[118] For the second part of the test, the Group Appellants who are able to demonstrate identifiable interests have provided evidence, through published studies and reports, to show on a

⁶⁴ The Board notes that some of the statements of concern are very similar, and in some cases, they appeared to have identical content except personal information such as names, addresses and land description.

prima facie basis that the Licence's Aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The Board notes that both the Group Appellants and the Tetra Tech Report rely on the same publication by Mr. Alex Oiffer.⁶⁵

[119] The Group Appellants provided evidence, through published studies and reports, to show a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers.

[120] The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within the same aquifer, or interconnected regional system of aquifers, as PW-02 and OW-02."⁶⁶ The Board also notes the Director's and Tetra Tech's evidence that some degree of potential impact, albeit negligible, may be expected on wells within 2.4 km (1.5 miles) of the Production Well's drawdown.⁶⁷

[121] The Board finds that the Group Appellants' concerns about adverse effects such as light pollution, dust pollution, noise pollution, traffic, sewage, effluent, drainage and septic, and adverse effects on country dirt gravel road, wildlife corridor, emergency vehicle access, approval process, and lack of community consultation for the Development are matters outside the *Water Act* or the Board's jurisdiction in respect of the Licence. The Board does not consider such concerns in each Group Appellants' specific analysis.

[122] For the third part of the test, the Group Appellants who are able to demonstrate identifiable interests and potential negative impacts will further show a reasonable possibility that the asserted harm will be directly caused by the Director's decision or the Licence drawdown. The asserted potential harm must not be speculative or too remote.

i. Ms. Deborah Bloomer

⁶⁵ Alex Oiffer, M.Sc. P. Geol., "Summary of Groundwater Conditions in the Sturgeon River Basin.", North Saskatchewan Watershed Alliance, July 2019, cited in Initial Tetra Tech Report, pages 5, 6 and 12; Tetra Tech Report pages 8 and 15. See CLASS Notice of Appeal and CWPG Notice of Appeal.

⁶⁶ Initial Tetra Tech Report, page 10. PW-02 is the Production Well. OW-02 is the Observation Well.

⁶⁷ Director's Response Submission, at para. 43; Tetra Tech Report, page 12.

[123] Ms. Bloomer lives approximately 1.5 km (0.93 miles) from the Licence location and has a water well on her property. Ms. Bloomer is concerned about water quantity and quality impacts on the health, habitat, wildlife corridor, and the bird sanctuary within and around the Chickakoo Recreation Area. She is concerned about potential effects on the approximately 68 wells within a mile radius of the Licence location, as no baseline study of those wells in the immediate area has been performed or documented.

[124] Ms. Bloomer also expressed concern about a Q20 rating description that water supply would be adequate for at least 20 years. She is concerned about the resulting uncertainty beyond 20 years without studies of environmental impact of effects of the Development and climate change. Ms. Bloomer argued that aquifers and surface waters are related, particularly shallow sand and gravel aquifers.

[125] Applying the first part of the Board's test, the Board finds that Ms. Bloomer did not provide any evidence to show what personal or private interests she has in the approximately 68 wells within a mile radius of the Licence location, the habitat, and bird sanctuary within and around the Chickakoo Recreation Area. Ms. Bloomer did not provide any evidence to show her personal or private interests in these matters that is greater than the generalized goal of the area communities in environmental protection.

[126] However, as an owner and user of a household water well approximately 1.5 km (0.93 miles) from the Licence location, the Board finds that Ms. Bloomer has shown property and health interests, and therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*. The Board notes that Ms. Bloomer is shown on the Licensee's FVS.

[127] Applying the second and third parts of the test, the Board notes the Director determined that Ms. Bloomer was not directly affected during the Licence Application process because the well on her property is not hydrologically connected to the aquifer accessed by the Production Well. The water well drilling report attached to Ms. Bloomer's response to AEP's Information Request showed her total well depth at 416 ft (126.8 m) and perforated from 300 ft (91.44 m).⁶⁸ Tetra Tech's FVS noted Ms. Bloomer's well's production interval as 91.44 m (300 ft) to 126.80 m (416 ft) in a sandstone and shale aquifer.⁶⁹ Based on Ms. Bloomer's *prima facie*

⁶⁸ Director's Record, Tab 85 and 85.1.

⁶⁹ Tetra Tech Report, Table 2: Summary of Field Verification Survey Results.

evidence and Tetra Tech's FVS, the Board finds that Ms. Bloomer's water well is installed in a different aquifer from the aquifer accessed by the Licensee's Production Well.

[128] Regardless, the Board finds that Ms. Bloomer, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁷⁰

[129] The Board finds that Ms. Bloomer has provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quality and quantity of her water well by the Production Well's drawdown and meets the Board's directly affected test.

[130] Based on the foregoing reasons, the Board finds that Ms. Bloomer is directly affected by the Director's decision, or the activity authorized by the Licence, and grants her standing in these appeals.

ii. Mr. Brian Skov and Ms. Shelley Gordon⁷¹

[131] Ms. Shelley Gordon and Mr. Brian Skov stated that they live approximately two km (1.86 miles) from the Licence location, but do not have a well that will be directly impacted by the Licensee's water diversion request. They expressed concerns about risk to personal wells in the area, and as active users of the Chickakoo Lake Recreational Area, the significant impact increased demand for water will have on surrounding homes and recreational area. They are also concerned about lowering ground water tables and surface water levels, and environmental impact on the delicate ecosystems of the lakes surrounding the Licensee in the Chickakoo ESA.

[132] The Director determined during the Licence application process that Ms. Shelley Gordon and Mr. Brian Skov were not directly affected because they do not have a water well on their property. Applying the first part of the Board's test, the Board finds that Ms. Shelley Gordon

⁷⁰ Initial Tetra Tech Report, page 10.

⁷¹ Ms. Shelley Gordon filed an appeal as a member of CLASS (EAB 22-003), and an appeal together with Mr. Brian Skov as members of CWPG (EAB 22-020).

and Mr. Brian Skov did not provide any evidence to show what personal or private interests they have in the private wells in the area or surrounding homes.

[133] While they stated they are active users of the Chickakoo Recreation Area, Ms. Shelley Gordon, and Mr. Brian Skov failed to provide evidence to show details of how they personally use the Chickakoo Recreation Area. They failed to demonstrate, with some particularity, the nature of their personal or private use of the Chickakoo Recreational Area and how such personal use is related to the underlying policies of the *Water Act*, the Director's decision, or the activity authorized by the Licence.

[134] In the absence of details of personal use of a multi-purpose public amenity and the relationship between such personal use and the underlying policies of the applicable statute or the Director's decision, an appellant will not be able to demonstrate, on a *prima facie* basis, the required personal or private interest. As stated above, subject to the applicable statutes, such interests include property, human health, safety, social, economic, cultural, and environmental interests.

[135] Ms. Shelley Gordon and Mr. Brian Skov also failed to provide evidence to show any personal or private interest in the conservation of the ground water tables, surface water levels and ecosystems of the lakes in the Chickakoo area, that is greater than the generalized goal of the area communities and Albertans in water protection. A general interest in the protection of water resources in an area is not sufficient to ground an appeal of the Licence.

[136] The Board finds that Ms. Shelley Gordon and Mr. Brian Skov have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to Ms. Shelley Gordon and Mr. Brian Skov.

[137] The Board finds that Ms. Shelley Gordon and Mr. Brian Skov are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

iii. Ms. Susanne Greenhowe-Weis

[138] Ms. Greenhowe-Weis stated that her house is 5.5 km (3.42 miles) from the Licence location, and she has a domestic water well on her property that probably shares access to the same aquifer as the Production Well. Ms. Greenhowe-Weis is concerned about redirection and withdrawal of an enormous amount of groundwater from a shared aquifer. She expressed concern about the quantity and quality of her well's water supply, noting that more than once, due to little rainfall, the aquifer became very dry with the water turning brown and full of sand. She stated that the aquifer is not fed by a stream or river but by rainfall, and the lakes of the Chickakoo system are glacial ponds, which, once emptied of their water, cannot be topped up by a stream or river.

[139] Applying the first part of the Board's test, as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, the Board finds that Ms. Greenhowe-Weis has shown property and health interests. Ms. Greenhowe-Weis, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[140] For the second and third parts of the test, the Board notes the Director determined that Ms. Greenhowe-Weis was not directly affected during the Licence Application process because the well on her property is not hydrologically connected to the aquifer used by the Production Well. Ms. Greenhowe-Weis' asserted that she shared the aquifer with the Licensee's Production Well despite that her well's total well depth is 340 ft (103.63 m) with perforations from 300 ft (91.44 m) to 340 ft (103.63 m).

[141] Regardless, the Board finds that Ms. Greenhowe-Weis, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated, but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁷²

⁷² Initial Tetra Tech Report, page 10.

[142] The Board finds that Ms. Greenhowe-Weis provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quality and quantity of her water well by the Production Well's drawdown and meets the Board's directly affected test.

[143] Based on the foregoing reasons, the Board finds that Ms. Greenhowe-Weis is directly affected by the Director's decision, or the activity authorized by the Licence, and grants her standing in these appeals.

iv. Ms. Amy Garrison

[144] Ms. Garrison stated that she is a concerned resident in the Chickakoo area. She expressed concern about the proposed volume of diversion from their local aquifer, which services hundreds of single-family homes and wildlife. She is also concerned about impacts to already low water drawdown rates from the aquifer, and risk to their personal wells' ability to support their dwellings.

[145] The Director determined during the Licence Application process that Ms. Garrison was not directly affected because she did not provide a response to AEP's Information Request. Applying the first part of the Board's test, the Board finds that Ms. Garrison did not provide any evidence to show that she has a water well on her property. She did not provide any evidence to show what personal or private interests she has in the other wells in the area, the local aquifers, or the wildlife that use groundwater as she stated. Ms. Garrison also failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities in environmental and water protection. As stated above, a general interest in the protection of water resources in the area is not sufficient to appeal the Licence.

[146] In the absence of any evidence, the Board finds that Ms. Garrison has not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. She does not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to Ms. Garrison.

[147] The Board finds that Ms. Garrison is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies her standing in these appeals.

v. ***Mr. Bryan and Ms. Courtney Dahl***

[148] The Dahls expressed concern about the quantity of water allocated under the Licence. They are concerned about impacts to already low water drawdown rates from the aquifer, and risk to their personal wells' ability to support their dwellings.

[149] The Director determined during the Licence Application process that the Dahls were not directly affected because they did not provide a response to AEP's Information Request. Applying the first part of the Board's test, the Dahls did not provide any evidence to show where they live, their connection to the Chickakoo Lake area and its aquifers, or that there is a water well on the property they own or use that is related to the Chickakoo Lake area.

[150] The Board finds that the Dahls did not provide any evidence to show what personal or private interests they have in the private wells in the area and the aquifer accessed by the Production Well. The Dahls also failed to provide evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities in environmental protection.

[151] In the absence of evidence, the Board finds that the Dahls have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to the Dahls.

[152] The Board finds that the Dahls are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

vi. ***Mr. Ed and Ms. Karen Fisher***

[153] The Fishers stated that they are Parkland County residents and users of the Chickakoo Recreation Area. They live six km (four miles) from the Licence location. They are concerned about the volume of water allocated to the Licence, subsequent impact to surrounding area and residents, and impact on approximately 68 wells within a mile (1.6 km) radius of the Licence location. They are concerned about water quantity and quality, and the negative impact

on private water wells due to depletion of groundwater tables and surface water levels. They argued that aquifers and surface waters are related, particularly shallow sand and gravel aquifers.

[154] They expressed concern about the Q20 rating description that the water supply would be adequate for at least 20 years, as well as the resulting uncertainty beyond 20 years without an environmental impact study of effects of the Development, and a climate change study.

[155] The Fishers are also concerned that lower water levels will negatively impact the local diverse ecosystem of the Chickakoo Lake Recreational Park, habitat, wildlife corridor, and the bird sanctuary within and around the Chickakoo Recreation Area. They stated that the Chickakoo Recreation Area is used extensively by residents and is the only such recreation space in the area. They stated that the area is of significance for its undisturbed forest, lakes and wetlands that attract a diversity of birds, wildlife, and is also migratory habitat for water birds and shorebirds.

[156] The Director determined during the Licence Application process that the Fishers were not directly affected because their residence is more than two km away from the Production Well, and they provided no information about a water well on their property. Applying the first part of the Board's test, the Fishers did not provide any evidence to show they have a water well on their property. They failed to provide any evidence to show what personal or private interests they have in the approximately 68 wells within a mile radius of the Licence location, other private wells in the area, and the Production Well's aquifer.

[157] While they stated they are users of the Chickakoo Recreation Area, the Fishers failed to provide evidence to show details of how they personally use the Chickakoo Recreation Area. They failed to demonstrate, with some particularity, the nature of their personal or private use of the Chickakoo Recreational Area, particularly in light of their evidence that the Chickakoo Recreation Area is also used extensively by local residents. They failed to provide evidence to show how such personal use is related to the underlying policies of the *Water Act*, the Director's decision, or the activity authorized by the Licence.

[158] In the absence of details of personal use of a multi-purpose public amenity and the relationship between such personal use and the underlying policies of the applicable statute or the Director's decision, an appellant will not be able to demonstrate on a *prima facie* basis, the required

personal or private interest. Subject to the applicable statutes, such interests include property, human health, safety, social, economic, cultural, and environmental interests.

[159] The Fishers failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the Chickakoo Lake Area water body system that is greater than the generalized goal of the area communities and Albertans in water and environmental protection. They failed to show, on a *prima facie* basis, personal or private interest in the habitat, wildlife that use groundwater, and in the bird sanctuary within and around the Chickakoo Recreation Area that is greater than the generalized interests of the area communities and Albertans.

[160] In the absence of evidence, the Board finds that the Fishers have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to the Fishers.

[161] The Board finds that the Fishers are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

vii. Ms. Heather Warrenchuk

[162] Ms. Warrenchuk, who lives in St. Albert, stated she is a frequent user of the Chickakoo Recreational Area. She expressed concern about the water levels in the lake and surrounding areas. Ms. Warrenchuk stated that neither a cumulative impact study nor environmental assessment was done for the Development.

[163] The Director determined during the Licence Application process that Ms. Warrenchuk was not directly affected because she did not provide a response to AEP's Information Request. Applying the first part of the Board's test, while Ms. Warrenchuk stated she is a frequent user of the Chickakoo Recreation Area, she failed to provide evidence to show details of how she personally uses the Chickakoo Recreation Area that is also used by the public for multiple purposes. She failed to demonstrate, with some particularity, the nature of her personal or private use of the Chickakoo Recreational Area. She failed to provide evidence to show how such personal use is related to the underlying policies of the *Water Act*, Director's decision, or the activity authorized by the Licence.

[164] In the absence of details of personal use of a multi-purpose public amenity and the relationship between such personal use and the underlying policies of the applicable statute or the Director's decision, an Appellant will not be able to demonstrate, on a *prima facie* basis, the required personal or private interest. As stated above, subject to the applicable statutes, such interests include property, human health, safety, social, economic, cultural, and environmental interests.

[165] Ms. Warrenchuk failed to show, on a *prima facie* basis, personal or private interest in the water levels in the lake and surrounding areas that is greater than the generalized interests of the area communities and Albertans. In the absence of evidence, the Board finds that Ms. Warrenchuk has not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. She does not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to Ms. Warrenchuk.

[166] The Board finds that Ms. Warrenchuk is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies her standing in these appeals.

viii. Mr. Tyler Lawrence

[167] Mr. Tyler Lawrence is a landowner with a domestic water well within one km of the Licence location. He is concerned that the volume of diversion from his local aquifer on an annual basis may impact his water well, and a majority of other wells in the area, that already have low water drawdown rates. He is concerned that by allowing such substantial amount of additional water to be drawn from the aquifer, their personal wells are at risk of inadequate output to support their homes. He argued that all the reports state that this glacial lake is hydraulically fed by the groundwater table.

[168] Applying the first part of the Board's test, the Board finds that, as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, Mr. Lawrence has shown property interests. Mr. Lawrence, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[169] Applying the second and third parts of the test, the Board notes the Director determined that Mr. Lawrence was not directly affected during the Licence Application process

because the well on his property is not hydrologically connected to the aquifer accessed by the Production Well. In his response to AEP's Information Request, Mr. Lawrence advised that his well has a total well depth of 410 ft deep (125 m) and located on a hill about 50 ft (15.24 m) above the road level. The Licensee's FVS in the Tetra Tech Report shows Mr. Lawrence's well information.⁷³ The recorded distance from the Production Well is 1,339 m (0.83 miles). The production interval is from 82.30 m (270 ft) to 125.00 m (410 ft) in a sandstone and shale aquifer.

[170] The Board notes the Group Appellants' submission that wells on higher elevation and wells with shallow depth are more vulnerable to potential harm from large or persistent draw from an aquifer. The Board also notes Mr. Lawrence's evidence that his well is higher in elevation. The Board finds that Mr. Lawrence, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area.

[171] The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁷⁴

[172] The Board finds that Mr. Lawrence provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quantity of his water well by the Production Well's drawdown and meets the Board's directly affected test.

[173] Based on the foregoing reasons, the Board finds that Mr. Lawrence is directly affected by the Director's decision, or the activity authorized by the Licence, and grants him standing in these appeals.

ix. Ms. Melanie Silliphant

[174] Ms. Melanie Silliphant is a resident of Parkland County with a domestic water well 4.6 km (92.86 miles) from the Licence location. She is concerned that the proposed quantity of diversion from their local aquifer on an annual basis may impact their water wells that already

⁷³ Tetra Tech Report, Table 2.

⁷⁴ Initial Tetra Tech Report, page 10.

have low water drawdown rates. She is also concerned that by allowing such substantial amount of additional water to be drawn from the aquifer, their personal wells are at risk of inadequate output to support their homes.

[175] Applying the first part of the Board's test, the Board finds that, as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, Ms. Silliphant has shown property interests on a *prima facie* basis. Ms. Silliphant, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[176] Applying the second and third parts of the test, the Board notes the Director determined that Ms. Silliphant was not directly affected during the Licence Application process because her residence is more than two km (1.24 miles) away from Production Well, and she provided no information about a water well on her property. However, in her response to AEP's Information Request, Ms. Silliphant advised that she was unable to locate her well's information, given that the well was drilled long before she acquired her property.

[177] Regardless, the Board finds that Ms. Silliphant, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's Aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁷⁵

[178] The Board finds that Ms. Silliphant provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quantity of her water well by the Production Well's drawdown and meets the Board's directly affected test.

[179] Based on the foregoing reasons, the Board finds that Ms. Silliphant is directly affected by the Director's decision, or the activity authorized by the Licence and grants her standing in these appeals.

⁷⁵ Initial Tetra Tech Report, page 10.

x. Ms. Misty Tomashewsky Hillaby and Mr. Mike Hillaby

[180] The Hillabys stated that they are Parkland County residents located approximately 4.5 km (2.79 miles) from the Licence location. They expressed concern that the Licensee's Development may cause significant environmental impact and undue hardship for private water wells in nearby residences. They stated that the Chickakoo Lake area provides habitat for many local wildlife and a diverse ecosystem that includes aqua/wetland animals and plants. They are concerned that such large diversion of water will significantly impact the conservation of species and plant life.

[181] The Director determined during the Licence Application process that the Hillabys were not directly affected because they did not provide information about a water well on their property. Applying the first part of the Board's test, the Hillabys did not provide any evidence to show that they have a water well on their property. The Board finds that the Hillabys did not provide any evidence to show what personal or private interests they have in the private wells in the area, the habitats, wildlife, and plants that use groundwater as they claimed.

[182] The Hillabys also failed to provide any evidence to show any personal or private interest in the conservation of the water levels, species, and ecosystems of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities in environmental protection. As stated above, a general interest in the protection of water bodies in the area is not sufficient to appeal the Licence.

[183] In the absence of evidence, the Board finds that the Hillabys have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to the Hillabys.

[184] The Board finds that the Hillabys are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

xi. Ms. Rachel and Mr. Michael Melynychuk

[185] The Melynychuks stated that they are resident in the area. They are concerned that the proposed quantity of diversion from their local aquifer on an annual basis may impact water wells that already have low water drawdown rates. They are concerned that by allowing such

substantial amount of water to be drawn from the aquifer, their personal wells are at risk of inadequate output to support their dwellings.

[186] The Director determined during the Licence Application process that the Melynychuks were not directly affected because they do not have a well on their property. Applying the first part of the Board's test, the Melynychuks did not provide any evidence to show that they have a water well on their property. The Board finds that the Melynychuks did not provide any evidence to show what personal or private interests they have in the private wells in the area and the aquifer accessed by the Production Well.

[187] The Melynychuks also failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities in environmental protection.

[188] In the absence of evidence, the Board finds that the Melynychuks have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to the Melynychuks.

[189] The Board finds that the Melynychuks are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

xii. Ms. Tracy and Mr. Mark Shoup

[190] The Shoups stated that they are residents of Parkland County. They are concerned that the proposed quantity of diversion from their local aquifer on an annual basis may impact homes in their subdivision that have wells, as the wells already have low water drawdown rates. They are concerned that by allowing such substantial amount of water to be drawn from the aquifer, those wells are at risk of inadequate output to support their dwellings.

[191] The Director determined during the Licence Application process that the Shoups were not directly affected because they did not provide a response to the AEP's Information Request. Applying the first part of the Board's test, the Shoups did not provide any evidence to show that they have a water well on their property. The Board finds that the Shoups did not provide any evidence to show what personal or private interests they have in the private wells in the area and the aquifer accessed by the Production Well.

[192] The Shoups also failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities in environmental protection.

[193] In the absence of evidence, the Board finds that the Shoups have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to the Shoups.

[194] The Board finds that the Shoups are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

xiii. Mr. Kel and Ms. Kate Meads

[195] The Meads stated they are Parkland County residents located approximately 4.5 km (2.8 miles) from the Licence site. They expressed concern that the Licensee's Development may cause significant environmental impact and undue hardship for private water wells in nearby residences. The Meads also stated that the Chickakoo Lake area provides habitat for many local wildlife and a diverse ecosystem that includes aqua/wetland animals and plants. They stated that such large diversion of water will significantly impact the conservation of species and plant life.

[196] The Director determined during the Licence Application process that the Meads were not directly affected because they did not provide a response to AEP's Information Request. Applying the first part of the Board's test, the Meads did not provide any evidence to show that they have a water well on their property. The Board finds that the Meads did not provide any evidence to show what personal or private interests they have in the private wells in the area, the habitats, wildlife, and plants that use groundwater as they stated.

[197] The Meads also failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities in environmental protection. As stated above, a general interest in the protection of water bodies in the area is not sufficient to appeal the Licence.

[198] In the absence of evidence, the Board finds that the Meads have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying

policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to the Meads.

[199] The Board finds that the Meads are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

xiv. Mr. Warren Kudras

[200] Mr. Warren Kudras stated that he is a resident of Lac Ste. Anne County. He is concerned that the proposed quantity of diversion from their local aquifer on an annual basis may impact water wells that already have low water drawdown rates, particularly the water well for Swiss Valley Village. He is concerned that by allowing such substantial amount of water to be drawn from the aquifer, the Swiss Valley Village families are at risk of their personal wells having inadequate output to support their dwellings.

[201] The Director determined during the Licence Application process that Mr. Kudras was not directly affected because he did not provide a response to the AEP's Information Request and his residence is more than two km (1.24 miles) away from the Production Well. Applying the first part of the Board's test, Mr. Kudras did not provide any evidence to show that he has a water well on his property. The Board finds that Mr. Kudras did not provide any evidence to show what personal or private interests he has in the Swiss Valley Village well, the private wells in the area, and the aquifer accessed by the Production Well.

[202] Mr. Kudras also failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities in environmental protection.

[203] In the absence of evidence, the Board finds that Mr. Kudras has not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. He does not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to Mr. Kudras.

[204] The Board finds that Mr. Kudras is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies him standing in these appeals.

xv. Mr. Michael Fyk

[205] Mr. Michael Fyk stated that he is a Parkland County resident, and he is concerned about the lake water levels being affected by the proposed diversion. The Director determined during the Licence Application process that Mr. Fyk was not directly affected because he did not provide a response to the AEP's Information Request.

[206] Applying the first part of the Board's test, Mr. Fyk did not provide any evidence to show that he has a water well on his property. The Board finds that Mr. Fyk did not provide any evidence to show any personal or private interest in the conservation of the water levels of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities in environmental protection.

[207] In the absence of evidence, the Board finds that Mr. Fyk has not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. He does not meet the first part of the Board's directly affected test. There is no need to apply the second and third parts of the test, which is direct adverse effect, to Mr. Fyk.

[208] The Board finds that Mr. Fyk is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies him standing in these appeals.

xvi. Mr. Vern and Ms. Buffy Trimble

[209] The Trimbles stated that they are landowner residents in Parkland County within 1.82 km (1.1 miles) of the Licence location. They have a domestic water well on their property and are concerned that the substantial amount of drawdown under the Licence puts their well at risk of inadequate output to support their home.

[210] Applying the first part of the Board's test, as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, the Board finds that the Trimbles have shown property interests. The Trimbles, therefore, have satisfied the first part of the Board's directly affected test under the *Water Act*.

[211] For the second and third parts of the test, the Director determined during the Licence Application process that the Trimbles were not directly affected because the water well on their property is not hydrologically connected to the aquifer for the Production Well. The Trimbles driller's report, provided with their response to AEP's Information Request, shows their

well's total depth as 432 ft (131.67 m) with perforations from 332 ft (101.19 m) and the withdrawn depth at 350 ft (106.68 m). Based on the Trimbles' *prima facie* evidence, the Board finds that their water well is installed in a different aquifer from the aquifer accessed by the Licensee's Production Well.

[212] Regardless, the Board finds that the Trimbles, as Group Appellants, have provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁷⁶

[213] The Board finds that the Trimbles provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quantity of their water well by the Production Well's drawdown and meets the Board's directly affected test.

[214] Based on the foregoing reasons, the Board finds that the Trimbles are directly affected by the Director's decision, or the activity authorized by the Licence and grants them standing in these appeals.

xvii. Mr. James Sorenson

[215] Mr. James Sorenson stated that he wished to appeal the decision to grant the development permit. The Director determined during the Licence Application process that Mr. Sorenson was not directly affected because he did not provide a response to the AEP's Information Request.

[216] Applying the first part of the Board's test, the Board finds that Mr. Sorenson's stated interest in the Licensee's development permit is outside the *Water Act* and the Board's jurisdiction. As a Group Appellant, Mr. Sorenson did not provide any evidence to show that he owns or uses a water well at his residence. He did not provide any evidence to show any personal

⁷⁶ Initial Tetra Tech Report, page 10.

or private interest in the conservation of the water supply and potential interconnected functionality of the Chickakoo Lake Area water body system.

[217] In the absence of evidence, the Board finds that Mr. Sorenson has not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. He does not meet the first part of the Board's directly affected test. It is not necessary to apply the second and third parts of the test, which is direct adverse effect, to Mr. Sorenson.

[218] The Board finds that Mr. Sorenson is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies him standing in these appeals.

xviii. Ms. Leah Vanderjagt

[219] Ms. Leah Vanderjagt stated that she lives 2.98 km (1.85 miles) southwest of the Licence location, and she has a domestic water well upon which her home relies entirely for their water. Ms. Vanderjagt is primarily concerned about the potential effect of the large volume of water draw by the Licence on the quantity and quality of her well's water supply.

[220] Applying the first part of the Board's test, the Board finds that, as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, the Board finds that Ms. Vanderjagt has shown a property interest. Ms. Vanderjagt, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[221] For the second and third parts of the test, the Director determined during the Licence Application process that Ms. Vanderjagt was not directly affected because her residence is more than two km (1.24 miles) away from the Production Well. In her response to AEP's Information Request, Ms. Vanderjagt provided her driller's report, which shows that her well has a total depth of 211 ft (64.31 m), and the depth withdrawn from at 174 ft (53.04 m). The Board notes the Group Appellants' submission that wells on higher elevation and wells with shallow depth are more vulnerable to potential harm from large or persistent draw from an aquifer.

[222] Regardless, the Board finds that Ms. Vanderjagt, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative

persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁷⁷

[223] The Board finds that Ms. Vanderjagt provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quality and quantity of her water well by the Production Well's drawdown and meets the Board's directly affected test.

[224] Based on the foregoing reasons, the Board finds that Ms. Vanderjagt is directly affected by the Director's decision, or the activity authorized by the Licence and grants her standing in these appeals.

xix. Ms. Heidi Hoflin

[225] Ms. Heidi Hoflin stated that she lives 12.9 km (8.02 miles) from the Licence location. She does not have a well on her property. She is concerned about the lack of any studies on how diverting the volume of water allocated to the Licence could potentially impact ecosystem of the Chickakoo Recreation Area and residents in area. She expressed concern about impact on private water wells due to level of water tables.

[226] Ms. Hoflin stated that the area is of significance for its undisturbed forest, lakes and wetlands that attract a diversity of birds, wildlife, and is also migratory habitat for water birds and shorebirds.

[227] The Director determined during the Licence Application process that Ms. Hoflin was not directly affected because her residence is more than two km (1.24 miles) away from Production Well, and she does not have a water well on her property. Applying the first part of the Board's test, Ms. Hoflin failed to provide any evidence to show what personal or private interests she has in the private water wells and level of water tables in the area.

[228] Ms. Hoflin failed to provide any evidence to demonstrate any personal or private interest in the conservation of the water levels and ecosystems of the Chickakoo Lake Area water body system that is greater than the generalized goal of the area communities in environmental protection. She failed to show, on a *prima facie* basis, a personal or private interest in the habitat,

⁷⁷ Initial Tetra Tech Report, page 10.

wildlife that use groundwater, and in the bird sanctuary within and around the Chickakoo Recreation Area that is greater than the generalized interests of the area communities. A general interest in the protection of water bodies or the environment in the area is not sufficient to appeal the Licence.

[229] In the absence of evidence, the Board finds that Ms. Hoflin has not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. Ms. Hoflin does not meet the first part of the Board's directly affected test. It is unnecessary to apply the second and third parts of the test, which is direct adverse effect, to Ms. Hoflin.

[230] The Board finds that Ms. Hoflin is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies her standing in these appeals.

xx. Ms. Wendy Tiemer

[231] Ms. Wendy Tiemer is a resident of Parkland County located 2.16 km (1.34 miles) from the Licence location. She has a domestic water well on her property. Ms. Tiemer is concerned about the impact of the Licence's water use on the wells of surrounding homes, given there appears to be no contingency plan. She expressed concern about the quantity and quality of her well's water supply.

[232] Ms. Tiemer stated that she is a frequent user of the Chickakoo Recreation Area and extremely concerned about the ongoing health of the Chickakoo Lake environmentally sensitive area. She stated that the water studies for the Licence was completed in 2020 when the local water table was unusually high, and she is very concerned that drawing such quantity of water from the water table will negatively impact the Chickakoo Lakes.

[233] Relying on the publication by Alex Oiffer "Summary of Groundwater Conditions in the Sturgeon River Basin" (January 2019), Ms. Tiemer submitted that the groundwater system and the lake water are hydraulically connected. She also submitted that there is a significant risk that diverting millions of liters of water annually under the Licence will negatively impact the environmentally sensitive areas critical for waterfowl breeding and migratory birds.

[234] Applying the first part of the Board's test, the Board finds that, while Ms. Tiemer stated she is a frequent user of the Chickakoo Recreation Area, she failed to provide evidence to show details of how she personally uses the Chickakoo Recreation Area, which is also used by the

public for multiple purposes. She failed to demonstrate, with some particularity, the nature of her personal or private use of the Chickakoo Recreational Area and to show how her personal use is related to the the underlying policies of the *Water Act*, the Director's decision or the activity authorized by the Licence. She failed to describe the nature of her personal or private use of the Chickakoo Lake environmentally sensitive area or her personal or private interest in the waterfowl and migratory birds that breed there.

[235] In the absence of details of personal use of a multi-purpose public amenity and the relationship between such personal use and the underlying policies of the applicable statute or the Director's decision, an appellant will not be able to demonstrate, on a *prima facie* basis, the required personal or private interest. As stated above, subject to the applicable statutes, such interests include property, human health, safety, social, economic, cultural, and environmental interests.

[236] Ms. Tiemer also failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the lakes in the Chickakoo area that is greater than the generalized goal of the area communities and Albertans in environmental protection. A general interest in the protection of water bodies in the area is not sufficient to appeal the Licence.

[237] However, as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, the Board finds that Ms. Tiemer has shown property interest. Ms. Tiemer, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*. The Board notes that the Licensee's FVS shows Ms. Tiemer's well.⁷⁸

[238] For the second and third parts of the test, the Director determined during the Licence Application process that Ms. Tiemer was not directly affected because her residence is more than two km away (1.24 miles) from the Production Well. In her response to AEP's Information Request, Ms. Tiemer provided her well's driller's report, which shows her well was drilled to a total depth of 170 ft (51.82 m) and production interval from at 165 ft (50.29 m) in a sand and gravel aquifer. Further, the Licensee's FVS in the Tetra Tech Report shows Ms. Tiemer's well information. The distance from the Production Well is 2,137 m (1.33 miles). The production

⁷⁸ Tetra Tech Report, Table 2.

interval is from 50.29 m (165 ft) to 51.82 m (170 ft) in a sand and gravel aquifer, like the Production Well. The landowner volume remarks stated that pumping rate decreased from seven gpm in 1992 to five gpm in 2016.

[239] The Board also finds that Ms. Tiemer, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁷⁹

[240] The Board finds that Ms. Tiemer provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quality and quantity of her water well by the Production Well's drawdown and meets the Board's directly affected test.

[241] Based on the foregoing reasons, the Board finds that Ms. Tiemer is directly affected by the Director's decision, or the activity authorized by the Licence and grants her standing in these appeals.

xxi. Mr. Louis Babin and Ms. Rochelle Chamczuk

[242] Mr. Louis Babin and Ms. Rochelle Chamczuk stated that they are Parkland County residents. They live four km (2.49 miles) from the Licence location. They are concerned about the volume of water allocated to the Licence, subsequent impact to surrounding area and residents, and impact on approximately 68 wells within a mile radius (1.6 km) of the Licence site. They are concerned about water quantity and quality, and the negative impact on private water wells due to depletion of groundwater tables and surface water levels that already tend to be low. They argued that aquifers and surface waters are related, particularly shallow sand and gravel aquifers.

[243] Mr. Louis Babin and Ms. Rochelle Chamczuk expressed concern about a Q20 rating description that water supply would be adequate for at least 20 years, as well as the resulting

⁷⁹ Initial Tetra Tech Report, page 10.

uncertainty beyond 20 years, without studies on environmental impacts of the Development and climate change.

[244] Mr. Louis Babin and Ms. Rochelle Chamczuk are also concerned that lower water levels will negatively impact the local diverse ecosystem of the Chickakoo Lake Recreational Park, the habitat, wildlife corridor and the bird sanctuary within and around the Chickakoo Recreation Area ESA. They stated that there is a risk of losing the lakes forever. They stated that the area is of significance for its undisturbed forest, lakes and wetlands that attract a diversity of birds, wildlife, and is also migratory habitat for water birds and shorebirds.

[245] The Director determined during the Licence Application process that Mr. Louis Babin and Ms. Rochelle Chamczuk were not directly affected because they provided no information about a water well on their property. Applying the first part of the Board's test, Mr. Louis Babin and Ms. Rochelle Chamczuk did not provide any evidence to show they have a water well on their property. They failed to provide any evidence to show what personal or private interests they have in the approximately 68 wells within a mile radius of the Licence site, other private wells in the area, and the Production Well's aquifer.

[246] They failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the Chickakoo Lake Area water body system that is greater than the generalized goal of the area communities and Albertans in environmental protection. A general interest in the protection of water bodies in the area is not sufficient to appeal the Licence. They failed to show, on a *prima facie* basis, personal or private interest, in the habitat, wildlife that use groundwater, and in the bird sanctuary within and around the Chickakoo Recreation Area, that is greater than the generalized interests of the area communities and Albertans.

[247] In the absence of evidence, the Board finds that Mr. Louis Babin and Ms. Rochelle Chamczuk have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is unnecessary to apply the second and third parts of the test, which is direct adverse effect, to Mr. Louis Babin and Ms. Rochelle Chamczuk.

[248] The Board finds that Mr. Louis Babin and Ms. Rochelle Chameczuk are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

xxii. Mr. Tom Hughes

[249] Mr. Tom Hughes stated he is a Parkland County resident located five km (3.1 miles) from the Licence site. He has a domestic water well on his property. He is concerned about the volume of water allocated to the Licence, subsequent impact to surrounding area and residents, and impact on approximately 68 wells within a mile (1.6 km) radius of the Licence location. He is concerned about water quantity and quality, and the negative impact on private water wells due to depletion of groundwater tables and surface water levels. He argued that aquifers and surface waters are related, particularly shallow sand and gravel aquifers.

[250] He expressed concern about a Q20 rating description that water supply would be adequate for at least 20 years, as well as the resulting uncertainty beyond 20 years without studies on environmental impacts of the Development and climate change.

[251] Mr. Hughes is also concerned that lower water levels will negatively impact the local diverse ecosystem of the Chickakoo Lake Recreational Park, habitat, wildlife corridor and the bird sanctuary within and around the Chickakoo Recreation Area. He stated that the area is of significance for its undisturbed forest, lakes and wetlands that attract a diversity of birds, wildlife, and is also migratory habitat for water birds and shorebirds.

[252] Applying the first part of the Board's test, the Board finds that as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, the Board finds that Mr. Hughes has shown property interest. Mr. Hughes, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[253] For the second and third parts of the test, the Director determined during the Licence Application process that Mr. Hughes was not directly affected because his residence is more than two km (1.24 miles) away from Production Well. In his response to AEP's Information Request, Mr. Hughes provided his well's driller's report, which shows his well was drilled to a total depth of 315 ft (96 m) and perforated from 178 ft (54.25 m) to 312 ft (95.1 m). The lithology description within the perforated interval shows mostly sandy shale and shale. Based on Mr.

Hughes' *prima facie* evidence, the Board finds that his water well is installed in a different aquifer from the aquifer accessed by the Licensee's Production Well.

[254] Regardless, the Board finds that Mr. Hughes, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's Aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative persistent draw from an Aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different Aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁸⁰

[255] The Board finds that Mr. Hughes provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quality and quantity of his water well by the Production Well's drawdown and meets the Board's directly affected test.

[256] Based on the foregoing reasons, the Board finds that Mr. Hughes is directly affected by the Director's decision, or the activity authorized by the Licence and grants him standing in these appeals.

xxiii. Ms. Kate Polkovsky

[257] Ms. Kate Polkovsky stated that she is a Parkland County resident located approximately 4.7 km (2.92 miles) from the Licence site. She has a domestic water well on her property. She is concerned that the increase in water draw by the Licence will directly affect the ability for her home and family to continue to reliably draw potable water from their licenced domestic well. She also expressed concern that the quantity of water being drawn under the Licence is likely to impact the quality and quantity of available water within the aquifer system in the area. She is concerned about potential greater impact to 68 residents with wells within one mile radius (1.6 km).

[258] Ms. Polkovsky is concerned that the 4500 gallons per day allocated to the Licence would likely reflect average flow conditions as opposed to peak flows, and if daily draws were peaked during peak weekend periods, it would cause localized and increased water table

⁸⁰ Initial Tetra Tech Report, page 10.

depression. She stated that the geotechnical makeup of the area is generally very sandy and there is a tremendous movement of water throughout the hydro-geomorphology in the area. Therefore, increased depression in the groundwater system by the Licence will 100 percent impact the existing wells in the area and will 100 percent impact her family's source of potable water.

[259] Ms. Polkovsky stated that reports prepared by Parkland County (State of the Environment, 2012) and the North Saskatchewan Water Shed Alliance (Sturgeon River Watershed Management Plan, 2020) provide technical insight that the groundwater system in the area is at risk and needs to be protected from heavy users. She stated that the Chickakoo Lake area has a number of highly unique conservation reserves and changes in subsurface water availability will impact the waterways, the natural ecosystems, and the existing licenced wells in the area.

[260] Ms. Polkovsky expressed concern that the Tetra Tech Report provides no context on the longer-term impact to the area or the impact to surrounding wells based on the re-stabilized static water level or the peak draw depressions within the aquifer system. She stated that a more in-depth Environmental Impact Study should be required to delineate the impacts on the greater hydro-geomorphology of the area, changes that could result due to climate change, and evolving environmental regulations. She stated that considerations should also be given to existing wells in the area factoring in depth, flow, water quality, and geotechnical considerations.

[261] Applying the first part of the Board's test, the Board finds that, as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, Ms. Polkovsky has shown property interests on a *prima facie* basis. Ms. Polkovsky, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[262] For the second and third parts of the test, the Director determined during the Licence Application process that Ms. Polkovsky was not directly affected because her residence is more than two km (1.24 miles) away from Production Well, and she provided no response to AEP's Information Request.

[263] Regardless, the Board finds that Ms. Polkovsky, personally and as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated but may potentially form part of an interconnected water body system in the Chickakoo Lake area.

[264] The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁸¹

[265] The Board finds that Ms. Polkovsky provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quantity of her water well by the Production Well's drawdown and meets the Board's directly affected test.

[266] Based on the foregoing reasons, the Board finds that Ms. Polkovsky is directly affected by the Director's decision, or the activity authorized by the Licence and grants her standing in these appeals.

xxiv. Ms. Barbara and Mr. Brent Riczu

[267] The Riczus stated that they are Parkland County residents, and their home and well are 3.3 km (2 miles) from the Licence location. They are concerned about the volume of water allocated to the Licence, subsequent impact to surrounding area and residents, and impact on approximately 68 wells within a mile radius (1.6 km) of the Licence location. They are concerned about water quantity and quality, and the negative impact on private water wells due to depletion of groundwater tables and surface water levels that already tend to be low. They argued that aquifers and surface waters are related, particularly shallow sand and gravel aquifers.

[268] The Riczus expressed concern about a Q20 rating description that water supply would be adequate for at least 20 years, as well as the resulting uncertainty beyond 20 years without environmental impact study of effects of the development and climate change study.

[269] They are also concerned that lower water levels will negatively impact the local diverse ecosystem of the Chickakoo Lake Recreational Park, the habitat, wildlife corridor and the bird sanctuary within and around the Chickakoo Recreation Area ESA. They stated that there is a risk of losing the lakes forever. They stated that the area is of significance for its undisturbed forest, lakes and wetlands that attract a diversity of birds, wildlife, and is also migratory habitat for water birds and shorebirds.

⁸¹ Initial Tetra Tech Report, page 10.

[270] The Director determined during the Licence Application process that the Riczus were not directly affected because they provided no information about a water well on their property. Applying the first part of the Board's test, other than a reference to the distance of their home and well to the Licence location, the Riczus did not provide any detail or evidence to show they have a water well on their property. They failed to provide any evidence to show what personal or private interests they have in the approximately 68 wells within a mile radius of the Licence location, other private wells in the area, and the Production Well's aquifer.

[271] The Riczus failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the Chickakoo Lake Area water body system that is greater than the generalized goal of the area communities and Albertans in environmental protection. They failed to show, on a *prima facie* basis, personal or private interest, in the habitat, wildlife that use groundwater, and in the bird sanctuary within and around the Chickakoo Recreation Area, that is greater than the generalized interests of the area communities and Albertans.

[272] In the absence of evidence, the Board finds that the Riczus have not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. They do not meet the first part of the Board's directly affected test. It is unnecessary to apply the second and third parts of the test, which is direct adverse effect, to the Riczus.

[273] The Board finds that the Riczus are not directly affected by the Director's decision, or the activity authorized by the Licence, and denies them standing in these appeals.

xxv. Ms. Tina LeBlanc

[274] Ms. Tina LeBlanc stated that she is a Parkland County resident located approximately within three km (1.86 mile) radius of the Licence location. She expressed concern about the low and drying surface water levels in the lakes at Chickakoo, which threatens the vast ecosystem and wildlife served by the system of lakes and the wetlands. She relied on the Parkland State of the Environment Report 2012, which indicated the area water levels are lowering, and Parkland County water needs to be protected. She is concerned that increased demand for water under the Licence will have a significant negative impact on highly sensitive ecosystem of the lakes without assessment of the potential long-term impact.

[275] The Director determined during the Licence Application process that Ms. LeBlanc was not directly affected because she did not provide information about a water well on her property. Applying the first part of the Board's test, Ms. LeBlanc did not provide any evidence to show that she has a water well on her property.

[276] The Board finds that Ms. LeBlanc did not provide any evidence to show what personal or private interests she has, in the conservation of the lakes' water levels and ecosystem, and the wildlife served by the system of lakes and wetlands that is greater than the generalized goal of the area communities and Albertans in environmental protection. As stated above, a general interest in the protection of water bodies in the area is not sufficient to appeal the Licence.

[277] In the absence of evidence, the Board finds that Ms. LeBlanc has not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. Ms. LeBlanc does not meet the first part of the Board's directly affected test. It is unnecessary to apply the second and third parts of the test, which is direct adverse effect, to Ms. LeBlanc.

[278] The Board finds that Ms. LeBlanc is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies her standing in these appeals.

xxvi. Mr. James Steven

[279] Mr. James Steven stated that he is a Parkland County resident located 1.3 km (0.8 miles) from the Licence site. He has a domestic water well on his property. He is concerned about the volume of water to be withdrawn under the Licence from the Chickakoo Lake area and the ability of the groundwater to support such a volume. He is concerned about potential negative impacts to his well's water quantity and quality, as well as his family's health if their drinking water becomes affected. He expressed concern about potential impacts to wildlife, ponds, lakes, and the environment.

[280] Applying the first part of the Board's test, the Board finds that as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, Mr. Steven has shown property and health interests. Mr. Steven, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[281] For the second and third parts of the test, the Director determined during the Licence Application process that Mr. Steven was not directly affected because his water well is

not hydrologically connected to the aquifer of the Production Well. In his response to AEP's Information Request, Mr. Steven provided his well's driller's report, which shows his well was drilled to a total depth of 307 ft (93.57 m) and perforated from 267 ft (81.38 m) to 307 ft (93.57 m). The Licensee's FVS in the Tetra Tech Report shows Mr. Steven's well information.⁸² The distance from the Production Well is 1,427 m. The production interval is from 81.38 m (267 ft) to 93.57 m (307 ft) in a sandstone and shale Aquifer.

[282] Regardless, the Board finds that Mr. Steven, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁸³

[283] The Board finds that Mr. Steven provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quality and quantity of his water well by the Production Well's drawdown and meets the Board's directly affected test.

[284] Based on the foregoing reasons, the Board finds that Mr. Steven is directly affected by the Director's decision, or the activity authorized by the Licence and grants him standing in these appeals.

xxvii. Mr. Tim Wimbleton

[285] Mr. Tim Wimbleton stated that he is a Parkland County resident located close to the Licence location. He has a domestic water well on his property 1,092 m (0.68 miles) from the Production Well. He is concerned about the volume of water to be withdrawn under the Licence from the Chickakoo Lake environmental sensitive area. He is concerned about potential negative impacts to his well's water quantity and quality.

⁸² Tetra Tech Report, Table 2.

⁸³ Initial Tetra Tech Report, page 10.

[286] Applying the first part of the Board's test, the Board finds that, as an owner and user of a domestic water well that may potentially be installed in the potential interconnected system of aquifers as the Production Well, Mr. Wimbleton has shown property interest. Mr. Wimbleton, therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[287] For the second and third parts of the test, the Director determined during the Licence Application process that Mr. Wimbleton was not directly affected because he did not provide a response to AEP's Information Request. However, in his response to AEP's Information Request, Mr. Wimbleton provided his well's driller's report, which shows his well was drilled to a total depth of 290 ft (88.4 m) and depth withdrawn at 280 ft (85.34 m). The Licensee's FVS in the Tetra Tech Report shows Mr. Wimbleton's well information.⁸⁴ The distance from the Production Well is 1,092 m (0.68 miles). The production interval is from 84.73 m (278 ft) to 86.26 m (283 ft) in a sand and gravel aquifer, like the Production Well.

[288] Regardless, the Board finds that Mr. Wimbleton, as a Group Appellant, has provided published studies and reports to show a reasonable possibility that the Licence's aquifer may not be completely isolated but potentially may form part of an interconnected water body system in the Chickakoo Lake area. The evidence shows a reasonable possibility that cumulative persistent draw from an aquifer may potentially affect or alter water flow direction and water quality in areas surrounding the draws, including wells drawing from different aquifers. The Board also notes Tetra Tech's evidence in the Initial Tetra Tech Report that some of the wells in the area "may be installed within ... interconnected regional system of aquifers, as PW-02 and OW-02."⁸⁵

[289] The Board finds that Mr. Wimbleton provided evidence, on a *prima facie* basis, to show a reasonable possibility of potential negative impact to the quality and quantity of his water well by the Production Well's drawdown and meets the Board's directly affected test.

[290] Based on the foregoing reasons, the Board finds that Mr. Wimbleton is directly affected by the Director's decision, or the activity authorized by the Licence and grants him standing in these appeals.

⁸⁴ Tetra Tech Report, Table 2.

⁸⁵ Initial Tetra Tech Report, page 10.

xxviii. Ms. Sheila Perdue

[291] Ms. Sheila Perdue stated that she is a resident of Lac Ste. Anne County. She stated that her concern is not as an immediate close residence of Chickakoo Lake, but as someone who enjoys everything the park and lake have to offer. She is opposing the application for the Licence to draw water from the lake. She referred to its biodiversity and the enrichment it supplies to the environmentally sensitive area. She stated that issuing the Licence will cause injustice to current and future users given the proximity of the Development to the Chickakoo Lake and its park.

[292] Relying on a study, Ms. Perdue argued that the lake is eutrophic and will slowly be lost over time. She argued against hastening the loss of the lake or interfering with the nature of the lake itself. She stated that even without the water Licence, the lake is seeing more use and traffic. The public has been visiting in larger numbers as it has been listed on a number of websites for parks and things to do in the greater Edmonton area. She stated that she has been frequenting the park year-round for several years and attests to the fact of the growing number of users.

[293] Ms. Perdue stated that the beauty and nature of a mostly undeveloped area around Chickakoo drew her to the area. She spent countless hours at the lake and park with friends, family, but mostly with her granddaughters to learn about our natural environment and teach them how to conserve nature. She is concerned for the sustainability of the beauty of the area.

[294] Applying the first part of the Board's test, the Board recognizes personal or private social and cultural interests as being consistent with the underlying policies of the *Water Act*. The Board notes Ms. Perdue's evidence that she spent countless hours at the lake and park in social gatherings with friends and family. The Board also notes Ms. Perdue's evidence that she spent countless hours at the lake and park with her granddaughters for cultural education to teach them about the natural environment and how to conserve nature. The Board finds that Ms. Perdue has shown, on a *prima facie* basis, social and cultural interests, and therefore, has satisfied the first part of the Board's directly affected test under the *Water Act*.

[295] Applying the second and third parts of the test, Ms. Perdue is required to provide evidence to show a reasonable possibility that the water drawdown under the Licence will harm her social and cultural interests she identified. The potential harm she claims must be greater than an effect on the public at large. The potential harm must be actual or imminent, not speculative, and not at an undetermined time in the future. Ms. Perdue must also provide evidence to show a

reasonable possibility that it is the water drawdown under the Licence that will cause the harm on her social and cultural interests.

[296] From her own specific evidence, Ms. Perdue's stated potential harm or adverse effect on her interests is loss of the lake. The Board notes her specific evidence that the lake will slowly be lost over time, regardless of the Licence. The Board specifically notes her evidence that some of the causes of the lake loss, among others, include more public use and traffic given that the public has been visiting in larger numbers, as it has been listed on a number of websites for parks and things to do in the greater Edmonton area. The Board particularly notes Ms. Perdue's misunderstanding that the Licence Application was to draw water from the lake.

[297] Ms. Perdue did not provide sufficient evidence to show, *prima facie*, "direct adverse effect" to her social and cultural interests. She did not provide sufficient evidence to show a reasonable possibility that the Production Well's drawdown from a confined aquifer will harm her social interest with friends and family or her cultural education interest with her granddaughters at the lake and park. She did not provide any evidence to show a reasonable possibility that it is the Production Well's drawdown that will cause the loss of the lake and the park. Ms. Perdue's potential harm as presented (loss of the lake), even on a *prima facie* basis, did not show a sufficiently close causal connection with the Licence.

[298] The Board finds that Ms. Perdue's concerns are not actual or imminent, rather they are speculative and too remote. Ms. Perdue was unable to show, on a *prima facie* basis, a clear unbroken causal link between the Licensee's water drawdown and the potential harm on her claimed social and cultural interests.

[299] Ms. Perdue failed to meet her onus of providing sufficient evidence to demonstrate a reasonable possibility of direct adverse effect by the Director's decision or the activity authorized by the Licence. As a result, she does not meet the second and third parts of the directly affected test. The Board finds that Ms. Perdue is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies her standing in these appeals.

[300] The Board notes that the Director determined during the Licence Application process that Ms. Perdue was not directly affected because she submitted her statement of concern late, on April 28, 2021, after the notice period for submission of statements of concern from March

16, 2021 to April 16, 2021, had passed. Therefore, Ms. Perdue's statement of concern was not considered a valid statement of concern by the Director.

[301] Given the above finding that Ms. Perdue is not directly affected by the Director's decision, or the activity authorized by the Licence, it is unnecessary for the Board to determine the validity of Ms. Perdue's statement of concern.

xxix. Mr. Colin LeBray

[302] Mr. Colin LeBray stated that they are Parkland County residents, and their home is located 8 km (4.97 miles) from the Licence Production Well. Mr. LeBray stated they have been using well water for over 35 years that they have lived in their home.

[303] They are concerned that the volume of water allocated to the Licence will impact all those with a well in the area. Without knowing where and how far the water aquifer extends, they are concerned about negative impact on a large number of wells in this area. Mr. LeBray noted there has been a moratorium on drilling wells in the area, and forced cut back on watering, so as not to deplete the water table in the area.

[304] The Director determined during the Licence Application process that Mr. LeBray was not directly affected because his residence is more than two km (1.24 miles) away from the Production Well. Applying the first part of the Board's test, other than a reference to their use of well water in their home, Mr. LeBray did not provide any detail or evidence of a water well on their property. He failed to provide any evidence to show what personal or private interests they have in the other wells in the area.

[305] Mr. LeBray failed to provide any evidence to show any personal or private interest in the conservation of the water levels and ecosystems of the Chickakoo Lake Area water body system that is greater than the generalized goal of the area communities and Albertans in environmental protection. A general interest in the protection of water bodies in the area is not sufficient to appeal the Licence.

[306] In the absence of evidence, the Board finds that Mr. LeBray has not demonstrated, on a *prima facie* basis, any identifiable personal or private interest consistent with the underlying policies of the *Water Act*. He does not meet the first part of the Board's directly affected test. It is unnecessary to apply the second and third parts of the test, which is direct adverse effect, to Mr. LeBray.

[307] The Board finds that Mr. LeBray is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies him standing in these appeals.

xxx. *Chickakoo Water Protection Group (CWPG)*

[308] The Group Appellants stated that CWPG was formed and set up on Facebook on March 22, 2021, in response to learning of the Licensee's Licence Application. It was formed to research and share information with the purpose of protecting the ESA and Chickakoo Lake Area bodies of water.⁸⁶

[309] They stated that CWPG has 618 public members.⁸⁷ However, 28 members submitted statements of concern during the Licence Application process and only those 28 members filed appeals against the Licence.

[310] As set out above, it is an exception rather than the general rule to have a collective interest group or association deemed to be directly affected. Applying the Board's directly affected test for a group to CWPG, and based on the result of the foregoing assessment of each of the 28 CWPG members that filed appeals, the Board finds as follows:

1. There are personal or private interests, consistent with the underlying policies of the *Water Act*, identified by some of the 28 CWPG members that filed appeals at the Board. The identified personal and private interests are property interest in the quantity and quality of domestic water wells.
2. There is a reasonable possibility of adverse effect to the the quantity and quality of the domestic water wells of some of the 28 CWPG members that filed appeals at the Board.
3. There is a reasonable possibility that the Director's decision or activity authorized by the License may cause direct potential adverse effect to the quantity and quality of the domestic water wells of some of the 28 CWPG members that filed appeals at the Board.
4. The stated direct adverse effect is common to some of the 28 CWPG members that filed appeals at the Board, who own or use water wells near the Licence location.
5. It will be possible to prove, or to differentiate, potential impacts to the quantity and quality of each of the domestic water wells of the CWPG members who are directly affected.
6. Of the total 618 members, only nine of the 28 CWPG members that filed appeals at the Board are found directly affected and have standing in their

⁸⁶ See Response Letter of Deborah Bloomer, May 10, 2022; and the Notices of Appeal of CWPG and CLASS.

⁸⁷ CLASS is made up of private residents. See Director's Record Tab 091.1.

own right to appeal. To have standing, CWPG needs more than half or a majority of its membership to have standing in their own right.

[311] The Board finds that CWPG did not meet the fifth and sixth parts of the Board's directly affected test for a group. The Board finds that CWPG is not directly affected by the Director's decision, or the activity authorized by the Licence, and denies it standing in these appeals.

[312] The Board also notes that Ms. Shelley Gordon submitted a "Letter of Concern" on behalf of both CLASS and CWPG, to Minister Nixon and Mr. Guy Hancock on May 19, 2021, after the notice period for submission of statements of concern from March 16, 2021 to April 16, 2021, had passed.⁸⁸

[313] As set out above, the Board dismissed the Notice of Appeal of CLASS for failure to file a valid statement of concern during the Licence application process, and therefore failed to meet the prerequisite for filing a Notice of Appeal. The Board notes that CLASS and CWPG share the same invalid statement of concern. However, given the above finding that CWPG is not directly affected by the Director's decision, or the activity authorized by the Licence, it is unnecessary for the Board to determine the validity of CWPG's statement of concern.

C. Conclusion

[314] The Board's refined test for a "directly affected" person in section 115(1) of the *Water Act* and section 91(1) of EPEA has the following three parts, all of which such person must meet:

1. whether there is a personal or private interest, consistent with the underlying policies of the applicable statutes, being asserted by a person;
2. whether there is an adverse effect to the identified interest; and
3. whether the adverse effect to the identified interest is direct.

[315] It is an exception rather than the general rule to have a collective interest group, association or community deemed to be directly affected. In light of the direction of the Alberta Court of Appeal in *Normtek*, the Board sets out the following framework to determine "directly affected" in section 115(1) of the *Water Act* and section 91(1) of EPEA, when a collective interest

⁸⁸ Director's Record, Tabs 091 and 091.1.

group, association, or community files an appeal before the Board. Such group, association or community appellant must meet all six parts of the following test:

1. is there a personal or private interest, consistent with the underlying policies of the applicable statutes, being asserted by persons in the group;
2. is there an adverse effect to the identified interests personal or private interests;
3. is the adverse effect to the identified interests direct;
4. is the direct adverse effect shared by, or common to, the persons in the group who have clearly identified interests;
5. does the nature of the adverse impact render it impossible to prove, or to differentiate, impacts between persons in the group who would clearly be directly affected; and
6. will a majority (more than half) of the persons in the group be directly affected personally, and therefore, have standing in their own right.

[316] Applying the above tests, the Board finds that the following 11 persons showed, on a *prima facie* basis, that they are directly affected by the Director's decision, or the activities authorized by the Licence: Ms. Deborah Bloomer, Ms. Susanne Greenhowe-Weis, Mr. Tyler Lawrence, Ms. Melanie Silliphant, Mr. Vern and Ms. Buffy Trimble, Ms. Leah Vanderjagt, Ms. Wendy Tiemer, Mr. Tom Hughes, Ms. Kate Polkovsky, Mr. James Steven, and Mr. Tim Wimbleton. The Nesbitts' standing was not challenged, the Board agreed with the Director that the Nesbitts are directly affected and exempted them from filing evidence and submissions on their standing.

[317] The Board finds that the remaining 23 persons did not demonstrate a reasonable possibility they are directly affected by the Director's decision, or the activities authorized by the Licence. These persons are: Mary Ellen Jeans-Moline and Melvin Moline, Charles Parker and Melanie Parker, Shelley Gordon, Amy Garrison, Bryan and Courtney Dahl, Ed and Karen Fisher, Heather Warrenchuk, Mike Hillaby and Misty Tomashewsky Hillaby, Rachel and Michael Melynychuk, Tracy and Mark Shoup, Kel and Kate Meads, Warren Kudras, Michael Fyk, Brian Skov and Shelley Gordon, James Sorenson, Heidi Hoflin, Louis Babin and Rochelle Chamczuk, Barbara and Brent Riczu, Tina Leblanc, Rochelle Chamczuk, Sheila Perdue, Collin LeBray, and CWPG.

[318] In addition, the Board notes that the Director determined during the Licence application process that Ms. Perdue submitted a late statement of concern, after the notice period

for submission of statements of concern had passed. Given that the Board found her not directly affected, it is unnecessary to determine the validity of Ms. Perdue's statement of concern.

[319] Further, the Board notes that CLASS and CWPG share an invalid statement of concern. Given the above finding that CWPG is not directly affected, it is unnecessary to determine the validity of CWPG's statement of concern.

V. DECISION

[320] The Board grants standing to 11 Appellants to proceed to hearing in these appeals, for being directly affected by the Director's decision, or the activities authorized by the Licence. These Appellants are, Deborah Bloomer (EAB 22-002), Susanne Greenhowe-Weis (EAB 22-004), Tyler Lawrence (EAB 22-011), Melanie Silliphant (EAB 22-012), Vern and Buffy Trimble (EAB 22-019), Leah Vanderjagt (EAB 22-022), Wendy Tiemer (EAB 22-024), Tom Hughes (EAB 22-026), Kate Polkovsky (EAB 22-027), James Steven (EAB 22-030), and Tim Wimbleton (EAB 22-031). The appeal of Debbie Stephenson Nesbitt and Bruce Nesbitt (EAB 22-001) will also proceed as their appeal was not challenged and the Board agreed with the Director that they are directly affected.

[321] The Board dismisses the Notices of Appeal of three Appellants, for not submitting valid statements of concern during the Licence application process, and therefore, for not meeting the prerequisite for filing a notice of appeal. These appellants are Genevieve Olivier (EAB 22-005), Leanne Warrenchuk (EAB 22-006), and CLASS (EAB 22-036).

[322] The Board dismisses the Notices of Appeals of 23 Appellants, for not being directly affected by the Director's decision or the activities authorized by the Licence. These Appellants are Mary Ellen Jeans-Moline and Melvin Moline (EAB 21-025), Charles Parker and Melanie Parker (EAB 21-026), Shelley Gordon (EAB 22-003), Amy Garrison (EAB – 22-007), Bryan and Courtney Dahl (EAB 22-008), Ed and Karen Fisher (EAB 22-009), Heather Warrenchuk (EAB 22-010), Mike Hillaby and Misty Tomashewsky Hillaby (EAB 22-013), Rachel and Michael Melynychuk (EAB 22-014), Tracy and Mark Shoup (EAB 22-015), Kel and Kate Meads (EAB 22-016), Warren Kudras (EAB 22-017), Michael Fyk (EAB 22-018), Brian Skov and Shelley Gordon (EAB 22-020), James Sorenson (EAB 22-021), Heidi Hoflin (EAB 20-023), Louis Babin and Rochelle Chamczuk (EAB 22-025), Barbara and Brent Riczu (EAB 22-028), Tina Leblanc (EAB

22-029), Rochelle Chamczuk (EAB 22-032), Sheila Perdue (EAB 22-033), Collin LeBray (EAB 22-034), and CWPG (EAB 22-037).

Dated on June 1, 2023, at Edmonton, Alberta.

“original signed by”
Dr. Chidinma Thompson
Board Chair

Appendix

I. List of Appellants

1. Ms. Mary Ellen Jeans-Moline and Mr. Melvin Moline (EAB Appeal No. 21-025)
2. Ms. Melanie Parker and Mr. Charles Parker (EAB Appeal No. 21-026)
3. Ms. Debbie Stephenson Nesbitt and Mr. Bruce Nesbitt (EAB Appeal No. 22-001)

Chickakoo Lake Area Stewardship Society (CLASS) Appellants

- 4 Ms. Deborah Bloomer (EAB Appeal No. 22-002)
- 5 Ms. Shelley Gordon (EAB Appeal No. 22-003)
- 6 Ms. Susanne Greenhowe-Weis (EAB Appeal No. 22-004)
- 7 Ms. Genevieve Olivier (EAB Appeal No. 22-005)
- 9 Ms. Leanne Warrenchuk (EAB Appeal No. 22-006)
- 9 CLASS (EAB Appeal No. 22-036)

Chickakoo Water Protection Group (CWPG) Appellants

- 10 Ms. Amy Garrison (EAB Appeal No. 22-007)
- 11 Ms. Courtney Dahl and Mr. Bryan Dahl (EAB Appeal No. 22-008)
- 12 Ms. Karen Fisher and Mr. Ed Fisher (EAB Appeal No. 22-009)
- 13 Ms. Heather Warrenchuk (EAB Appeal No. 22-010)
- 14 Mr. Tyler Lawrence (EAB Appeal No. 22-011)
- 15 Ms. Melanie Silliphant (EAB Appeal No. 22-012)
- 16 Mr. Mike Hillaby and Ms. Misty Tomashewsky Hillaby (EAB Appeal No. 22-013)
- 17 Ms. Rachel Melynychuk and Mr. Michael Melynychuk (EAB Appeal No. 22-014)
- 18 Ms. Tracy Shoup and Mr. Mark Shoup (EAB Appeal No. 22-015)
- 19 Mr. Kel Meads and Ms. Kate Meads (EAB Appeal No. 22-016)
- 20 Mr. Warren Kudras (EAB Appeal No. 22-017)
- 21 Mr. Michael Fyk (EAB Appeal No. 22-018)
- 22 Mr. Vern Trimble and Ms. Buffy Trimble (EAB Appeal No. 22-019)
- 23 Mr. Brian Skov and Ms. Shelley Gordon (EAB Appeal No. 22-020)
- 24 Mr. James Sorenson (EAB Appeal No. 22-021)
- 25 Ms. Leah Vanderjagt (EAB Appeal No. 22-022)
- 26 Ms. Heidi Hoflin (EAB Appeal No. 22-023)
- 27 Ms. Wendy Tiemer (EAB Appeal No. 22-024)
- 28 Mr. Louis Babin and Ms. Rochelle Chamczuk (EAB Appeal No. 22-025)
- 29 Mr. Tom Hughes (EAB Appeal No. 22-026)
- 30 Ms. Kate Polkovsky (EAB Appeal No. 22-027)
- 31 Ms. Barbara Riczu and Mr. Brent Riczu (EAB Appeal No. 22-028)
- 32 Ms. Tina Leblanc (EAB Appeal No. 22-029)
- 33 Mr. James Steven (EAB Appeal No. 22-030)
- 34 Mr. Tim Wimbleton (EAB Appeal No. 22-031)
- 35 Ms. Rochelle Chamczuk (EAB Appeal No. 22-032)
- 36 Ms. Sheila Perdue (EAB Appeal No. 22-033)
- 37 Mr. Colin LeBray (EAB Appeal No. 22-034)
- 38 CWPG (EAB Appeal No. 22-037)

II. Legislation

Excerpts from EPEA

Section 91(a)(i) of EPEA provides:

- 91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:
- (a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted
 - (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or ..."

Section 95(5)(a) of EPEA provides in part:

- "95(5) The Board
- (a) may dismiss a notice of appeal if ...
 - (ii) in the case of a notice of appeal submitted under section 91(1)(a)(i) or (ii), (g)(ii) or (m) of this Act or section 115(1)(a)(i) or (ii), (b)(i) or (ii), (c)(i) or (ii), (e) or (r) of the *Water Act*, the Board is of the opinion that the person submitting the notice of appeal is not directly affected by the decision or designation,
 - (iii) for any other reason the Board considers that the notice of appeal is not properly before it, ..."

Excerpts from the *Water Act*

Section 115(1)(c)(i) of the *Water Act* provides:

- "(1) A notice of appeal under this Act may be submitted to the Environmental Appeals Board by the following persons in the following circumstances: ...
- (c) if a preliminary certificate has not been issued with respect to a licence and the Director issues or amends a licence, a notice of appeal may be submitted
 - (i) by the Licensee or by any person who previously submitted a statement of concern in accordance with section 109 who is directly affected by the Director's decision, if notice of the application or proposed changes was previously provided under section 108, or ..."