

---

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Decision

---

Date of Preliminary Meeting – April 27, 2001

Date of Decision – May 10, 2001

**IN THE MATTER OF** Sections 84, 85 and 87 of the *Environmental Protection and Enhancement Act*, S.A. c. E-13.3 and section 115 of the *Water Act*, S.A. 1996, c. W-3.5;

-and-

**IN THE MATTER OF** an appeal filed by Westridge Water Supply Ltd. with respect to the decision of the Director, Bow Region, Natural Resources Service, Alberta Environment, to issue Preliminary Certificate 00081364-00-00 under the *Water Act* on July 12, 2000.

Cite as: *Westridge Water Supply Ltd. #2 v. Director, Bow Region, Natural Resources Service, Alberta Environment.*

**PRELIMINARY MEETING  
BEFORE**

William A. Tilleman, Q.C., Chairman

**APPEARANCES**

Appellant: Westridge Water Supply Ltd. and Westridge Utilities Inc.,  
represented by Ms. Judy Stewart, Fleming, Kambeitz

Department: Director, Bow Region, Natural Resources Service, Alberta  
Environment, represented by Ms. Charlene Graham,  
Alberta Justice

Board Staff: Ms. Valerie Higgins, Hearing Officer

## TABLE OF CONTENTS

I.	BACKGROUND .....	1
II.	THE BOARD’S ANALYSIS .....	4
A.	Can Westridge Water Remain As The ‘Jurisdictional’ Appellant? .....	4
B.	Can Westridge Utilities Be Substituted For Westridge Water As The Appellant On the Existing Appeal?.....	5
C.	Should Westridge Water Remain A ‘Party’ In This Appeal?.....	8
III.	CONCLUSION.....	8

## I. BACKGROUND

[1] On July 12, 2000, the Director, Bow Region, Natural Resources Services, Alberta Environment (the “Director”), issued Preliminary Certificate 00081364-00-00 (the “Preliminary Certificate”) under the *Water Act*, S.A. 1996, c.W-3.5, to Westridge Water Supply Ltd. (the “Appellant” or “Westridge Water”). The Preliminary Certificate states that the Appellant will receive a licence, upon compliance with certain conditions, to divert up to 787,101 cubic metres of water annually with the source of water supply being the Elbow River in NE 6-24-2-W5, through two production wells identified as Production Well No. 1 and Production Well No. 2 with Priority No. 199-09-09-002.

[2] On August 15, 2000, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Westridge Water Supply Ltd. objecting to a number of terms and conditions of the Preliminary Certificate and the proposed licence.

[3] As a threshold matter, the Board must decide whether this appeal can continue, given that the Appellant has sold its rights under the Preliminary Certificate to a successor company, and the Director has formally transferred the Preliminary Certificate to that successor. The Director argues that, although the Preliminary Certificate transfer is lawful under the *Water Act*, causing no apparent prejudice to the Director or anyone else, it nevertheless, due to statutory reasons, forces this appeal into a box canyon, potentially precluding the Board from any further review of the merits of this appeal. For the reasons provided below, the Board believes that the equities of the case should prevent this result.

[4] The *Water Act* provides a comprehensive system for managing and allocating surface and groundwater supplies in Alberta. As relevant here, this system includes the issuance of licences, by the Director for the diversion of surface and groundwater.<sup>1</sup> The *Water Act* also authorizes the Director to grant an applicant a water licence or a preliminary certificate prior to receiving an actual water licence. The applicant must then fulfill the terms and conditions of the preliminary certificate as a prerequisite for receiving the requested licence.<sup>2</sup>

[5] Pursuant to these provisions of the *Water Act*, the Appellant applied for and received the Preliminary Certificate as a step toward receiving a licence to divert water from two

production wells having a source of supply from the Elbow River. In its Notice of Appeal, the Appellant listed numerous, complex grounds of appeal, the gist of which are that the Appellant has allegedly been deprived of the full water rights to which it believes it is entitled under the *Water Act*. In response to the Notice of Appeal, the Director requested that the Board dismiss the appeal outright because all of the appeal grounds allegedly lack merit. By early December 2000, the parties had filed extensive written submissions relating to the Director's application to dismiss the Notice of Appeal.

[6] However, while the Board was in the midst of considering those written submissions and rendering a decision respecting the Director's application to dismiss the Notice of Appeal, the Appellant advised the Board that it had sold all of its assets to Westridge Utilities Inc. ("Westridge Utilities"), including its rights under the Preliminary Certificate which are the subject of this appeal.<sup>3</sup> As a result of this asset transfer, and in response to an application filed by the Appellant, the Director amended the Preliminary Certificate to name Westridge Utilities as the Preliminary Certificate holder.

[7] As a result of this change to the Preliminary Certificate, the Director has taken the position that the appeal is no longer properly before the Board because neither the Appellant nor Westridge Utilities allegedly have standing to continue the appeal. The parties have addressed this matter in complete written submissions,<sup>4</sup> and again in an oral preliminary meeting before the Chairman on April 27, 2001.

[8] Before proceeding to its analysis, however, the Board notes with considerable regret the late stage at which this issue came to the Board's attention. In early September 2000, the Board wrote to the parties asking if there were any other persons who might have an interest in the appeal, so that they could be notified and, if necessary, allowed to participate to protect their interests. In its September 18, 2000 response, the Appellant stated that it knew of no other interested parties.<sup>5</sup> Yet, on October 31, 2000, one-and-a-half months after making this statement, the Appellant entered into its asset sale agreement with Westridge *Utilities*, who until then had been the operator of the Appellant's water supply system. If, as the Board would expect, the two companies had begun to even discuss this asset sale prior to the Appellant's September 18, 2000 letter to the Board, it would have been prudent for the Appellant to have given the Board notice that Westridge Utilities was interested in the appeal.

[9] Even if the Companies did not have an inkling of their impending asset transfer until after the Appellant submitted its September 18, 2000 letter, they should have brought that transfer to the Board's attention immediately the agreement had been reached, in late October. Instead, the Appellant waited an additional three months - during which time the parties were vigorously briefing the merits issues raised by the Director - to give the Board even an indirect hint that there might be another person interested in the outcome of the appeal.<sup>6</sup> Still another week went by before counsel for the Appellant brought this matter more squarely before the Board, by submitting a letter which announced the asset transfer and surmised that, "... [u]nder the circumstances, it may be prudent to add Westridge Utilities Inc. as a party to the Appeal."<sup>7</sup> That was an understatement.

[10] Although the Board regrets and cannot comprehend this delay, it has no significant bearing on the Board's disposition of the standing issues now before the Board, because there is no evidence that either company intended to use the delay to gain any strategic advantage over the Director, or that the delay has prejudiced the Director in any other way.<sup>8</sup> If anything, it is the Director who gained a strategic advantage from the Preliminary Certificate transfer, by being in a position to argue that the routine transaction of a transfer is grounds for automatic dismissal of an otherwise procedurally valid appeal.<sup>9</sup>

[11] In response to the February 6, 2001 letter from the Appellant's counsel, which suggested that Westridge Utilities be added as an Appellant, the Director's counsel stated that the issue of party status should be deferred until after the Director decided whether to transfer the Preliminary Certificate to Westridge Utilities.<sup>10</sup> The Appellant's counsel replied by, essentially, querying why this was anything more than a trivial procedural issue and asking the Board whether a more formal request for party status was necessary.<sup>11</sup> The Board then asked both parties to provide additional clarification by February 26, 2001 on how the asset transfer affected the appeal.<sup>12</sup> Three days before the February 26, 2001 deadline set by the Board, the Director amended the Preliminary Certificate to substitute Westridge Utilities for the Appellant as the Preliminary Certificate holder. In her February 26, 2001 Initial Submission, the Director's counsel then argued that the entire appeal should be dismissed in light of this substitution.<sup>13</sup>

[12] At the oral hearing, the Appellant's counsel suggested that the Director's substitution decision was rushed for the *express strategic purpose* of providing the Director's

counsel with the ammunition she needed to argue for dismissal of the appeal in her February 26, 2001 Initial Submission. There is no direct evidence of this intent, so the Board will not address this further.

[13] Having expressed these reservations about how this matter has arisen, the Board now turns to the main issue of whether the Director's standing claims are valid.

## **II. The Board's Analysis**

### **A. Can Westridge Water Remain As The 'Jurisdictional' Appellant?**

[14] The Companies argue that the Preliminary Certificate transfer should have no bearing on the Appellant's ability to carry this appeal and that the Appellant desires to keep that status in order to help protect Westridge Utilities' interests. By contrast, the Director argues that the Appellant has lost its legal standing to continue the appeal because it has "...no continuing rights/obligations under the Preliminary Certificate under appeal i.e. they no longer 'exist' in relation to this Certificate."<sup>14</sup>

[15] Ms. Graham, counsel for the Director, has wisely thought the matter through and appears to be correct: unfortunately, the *Water Act* does not provide clear guidance on how this issue is to be resolved. As relevant here, section 115(1)<sup>15</sup> provides that a notice of appeal may be submitted only by a Preliminary Certificate (or other authorization) holder or by a directly affected person. By its use of the term "submitted," that section refers to the requisite standing of an appellant for purposes of the *initiation* of an appeal; neither that section, nor any other section of the *Water Act*, expressly addresses whether that standing test is an ongoing requirement *throughout the course of an appeal*. The Board expects that Alberta Environment will address this issue and provide greater certainty for those undertaking commercial transactions.

[16] Under a strict reading of section 115(1), one might then conclude that an appellant who has the requisite standing at the commencement of an appeal, can remain as an appellant even if it later no longer falls within the standing categories listed in that section. However, the Board believes that this is a strained construction of the *Water Act* because the legislative

policies underlying the standing requirement would generally seem to apply equally at all stages of an appeal.<sup>16</sup> A more rational reading of section 115(1) is that the Board retains discretion to dismiss an appeal if an appellant loses standing after the appeal is commenced. This discretion is consistent with the Board's broad discretion in conducting appeals and even in deciding the appropriate issues to be considered on appeal.<sup>17</sup>

[17] For purposes of exercising its discretion, Westridge Water should not be allowed to remain as the Appellant because it is no longer the Preliminary Certificate holder and there is no other compelling reason why Westridge Water should be allowed to maintain the appeal.<sup>18</sup> On this point, the Board agrees with the Director.

**B. Can Westridge Utilities Be Substituted For Westridge Water As The Appellant On the Existing Appeal?**

[18] As noted above, the Director seeks not only to knock Westridge Water out as the Appellant, which it did, but also to dismiss the appeal altogether on the ground that Westridge Utilities, the new company, cannot itself maintain the appeal. The second part of the Director's "1-2 punch" is based on its observation that "... [t]here are no provisions in the *Water Act* that allow for the 'transfer of statutory appeal rights' to a new appellant."<sup>19</sup> The Director's observation is absolutely correct, but it does not conclude the matter. While not *affirmatively* authorizing the transfer of appeal rights, the *Water Act* does not affirmatively preclude that transfer, either. Unfortunately, the *Water Act* is simply silent on the matter.<sup>20</sup>

[19] What *default* rule did the Legislature intend the Board to apply with respect to matters that are not squarely addressed in the text of the *Water Act* or other applicable legislation? On one hand, the Director implies that the Legislature should be presumed to have intended to deny any appeal transfer, absent an express legislative authorization. On the other hand, the Companies argue that the Legislature should be presumed to have intended to allow the transfer of an appeal by a valid appellant, absent any express legislative prohibition.<sup>21</sup>

[20] Both parties offer compelling support for their position. This support includes sources of legal interpretation outside of the *Water Act*, namely, analogous principles, under the *Alberta Rules of Court* and the common law, for allowing substitution of parties in judicial actions.<sup>22</sup>

[21] The Director argues that the Board should exercise caution in adopting the *Alberta Rules of Court*, because they apply in a wide variety of judicial actions but not “...statutory administrative appeals.”<sup>23</sup> The Board agrees, but feels that this caution should apply primarily to avoid using judicial rules of procedure to define the *maximum* extent of procedural flexibility in tribunal proceedings. Here, the Director seeks to apply a *less* flexible rule than that adopted in Alberta courts.

[22] The Director also urges the Board to take “...care . . . not to adopt ‘rules’ [of court] that are in effect amendments to the legislation.”<sup>24</sup> The Board once again agrees with Ms. Graham if the *Water Act* was not silent on whether the appeal could be transferred.

[23] The Companies’ legislative interpretation is also based on provisions within the *Water Act*, namely, section 80<sup>25</sup> which *requires* a Preliminary Certificate holder to notify the Director of the holder’s asset transfer to another entity as a pre-condition for the original holder to be absolved of all further obligations under the Preliminary Certificate. According to the companies, it would be unfair, and contrary to notions of free trade underlying the “economic growth” component of the *Water Act*’s purposes,<sup>26</sup> for the Legislature to have intended properly-filed appeals to subsequently fail as a result of the notice required by the statute. That chain reaction would also frustrate the notice requirement itself, because it might discourage companies from actually providing the required notice until an underlying appeal has concluded.<sup>27</sup>

[24] It may simply boil down to the fact that the equities favour the Companies’ interpretation. As the new Preliminary Certificate holder, Westridge Utilities now meets the standing requirement, under section 115(1)(b) of the *Water Act*, for filing a *new* appeal of the Preliminary Certificate.<sup>28</sup> However, as a practical matter, it would be a waste of the parties’ and Board’s resources to actually require Westridge Utilities to submit a new Notice of Appeal and to re-litigate this appeal from scratch.<sup>29</sup>

[25] The Board simply turns to common sense and logic to decide this point.<sup>30</sup> While disagreeing with the Director’s position that the Legislature’s silence spells doom for this particular appeal, the Board is also unwilling to presume that the Legislature intended to always allow a new Preliminary Certificate holder to continue an appeal initiated by a previous holder.

The Board believes instead that the Legislature intended the Board to have discretion to decide whether or not to allow the appeal to continue. As noted previously, the Legislature expressly addressed standing requirements at the *initiation* of an appeal, suggesting that the Legislature left it up to the Board to decide standing-related matters after an appeal has been properly commenced. In this case, we agree with Power J. in *Rainbird Sprinkler*<sup>31</sup> that Westridge Utilities should have standing due to legitimate business reasons with genuine commercial interests being at stake.

[26] Of course, this discretion is not unlimited, but is bounded by principles of fairness, reasonableness, and the underlying objectives and structure of the *Water Act*. Applying these principles, and for the reasons discussed previously, the Board surmises that it would deny an appeal transfer request by a new Preliminary Certificate holder only under unique circumstances, for example, if the transfer gained an unfair strategic advantage over the Director.

[27] The Director refers to one additional factor bearing on the Board's discretionary decision, that Westridge Utilities allegedly lacks "any knowledge" of the merits issues in this appeal, because that company did not participate in the application for the original Preliminary Certificate or in the filing of the Notice of Appeal.<sup>32</sup> The parties' actually dispute the nature of Westridge Utilities' role prior to the asset transfer, and of the Director's knowledge of that role, but these factual disputes are irrelevant. Even if the Director's allegations about Westridge Utilities' prior non-involvement are true, it would be unreasonable to presume that they preclude Westridge Utilities from now understanding the appeal issues sufficiently to adequately pursue this appeal. Westridge Utilities' current status as the Preliminary Certificate holder would presumably provide sufficient incentive for it to acquire the requisite knowledge. The Companies' use of Westridge Water's counsel for the appeal, and Westridge Water's own desire to continue to participate, provide ample assurance that Westridge Utilities will be able to pursue this appeal as vigorously as its predecessor.

[28] Based on the above discussion, the Board concludes that there are no unique circumstances militating against allowing Westridge Utilities to continue the appeal. Even under a more neutral test for the Board's exercise of discretion, the equities discussed above weigh in favour of granting Westridge Utilities' request to be allowed to continue the appeal in its own name.

**C. Should Westridge Water Remain A ‘Party’ In This Appeal?**

[29] Given the Board’s conclusion that Westridge Utilities can be substituted for Westridge Water as the appellant, the Board believes it would be appropriate to allow Westridge Water to continue to participate as a party.<sup>33</sup> As the Companies’ counsel suggested at the oral hearing, and the Director’s counsel did not refute, Westridge Water continues to feel responsible for achieving a successful outcome of the appeal. In addition, the same counsel represents the Companies and, thus, it appears there will be no duplication of the parties’ representations to the Board.

**III. CONCLUSION**

[30] For the above reasons, the Board orders the following:

1. Westridge Utilities will be substituted for Westridge Water as the sole appellant for jurisdictional purposes;
2. Westridge Water may continue to participate in the appeal, but as a “party”; and
3. All parties should contact the Board (through its Registrar of Appeals) as soon as possible to set a quick hearing date.

Dated on May 10, 2001, at Edmonton, Alberta.

\_\_\_\_\_  
□

William A. Tilleman, Q.C.  
Chairman

<sup>1</sup> See section 49(1) of the *Water Act*, which states:

49(1) Subject to subsection (2), no person shall  
 (a) commence or continue a diversion of water for any purpose, or  
 (b) operate a works,  
 except pursuant to a licence unless it is otherwise authorized by this Act.

<sup>2</sup> See the *Water Act*, sections 51, 66-68 which in part provided:

- 
- 51(1) On application for a licence by a person in accordance with this Act the Director may, subject to subsection (2) and sections 34, 46 and 47, issue or refuse to issue
- (a) a preliminary certificate to that person, or
  - (b) a licence to that person for
    - (i) the diversion of water, or
    - (ii) the operation of a works,for any purpose specified in the regulations.
- 66(1) If a person has applied for a licence, other than a licence for the temporary diversion of water, the Director may issue a preliminary certificate under section 51 to that person for the period of time stated in the preliminary certificate.
- (2) The Director may issue a preliminary certificate under section 51 subject to any terms and conditions and for any specified period of time.
- (4) In a preliminary certificate the Director
- (a) must specify the conditions that must be complied with before a licence will be issued, including but not limited to a requirement for securing any necessary rights of way.
  - (b) must specify
    - (i) a volume of water and related terms and conditions that are to be included in a licence, and
    - (ii) the priority number to be assigned to the licence, when the preliminary certificate holder fulfils all conditions specified in the preliminary certificate,
  - (c) must specify the date for submission of a certificate of completion by the preliminary certificate holder,
  - (d) may specify any other terms and conditions to be included in the licence that the Director considers appropriate, including but not limited to the rate and timing of the diversion of water, when the preliminary certificate holder fulfils all the conditions specified in the preliminary certificate, and
  - (e) may specify that any further terms and conditions may be added to a licence that is issued subsequent to the preliminary certificate.
- 67 On completion of the conditions specified in a preliminary certificate, the preliminary certificate holder may submit, in a form and manner satisfactory to the Director, a certificate of completion containing the information required by the Director, confirming that the conditions referred to in section 66(4)(a) have been fulfilled.
- 68(1) If the holder of a preliminary certificate submits a certificate of completion that meets the requirements of section 67, the Director must
- (a) issue a licence under section 51, or
  - (b) if in the Director's opinion the conditions set out in the preliminary certificate have not been fulfilled, refuse to issue a licence.
- (2) If the Director issues a licence referred to in subsection (1), the Director must include in the licence
- (a) the volume of water and related terms and conditions specified in the preliminary certificate, and
  - (b) the number specified in the preliminary certificate.
- (3) Notwithstanding subsection (2),
- (a) if a certificate of completion indicates that
    - (i) a smaller volume of water will be diverted than the volume specified in the preliminary certificate, or

- 
- (ii) there is a change in the rate or timing of the diversion of water from that specified in the preliminary certificate, the Director may issue the licence for the same or a smaller volume of water and with a change in the rate or timing of the diversion of water, that corresponds to the changes specified in the certificate of completion, and
- (b) if, in the Director's opinion, the capacity of the works constructed is insufficient to divert the volume of water specified in the preliminary certificate and any applicable approval, the Director may issue the licence for the same or a smaller volume of water and with a change in the rate or timing of the diversion of water that corresponds to the capacity of the works.
- (4) If a licence has been issued subsequent to a preliminary certificate, the licensee has only those rights provided in the licence and has no rights with respect to the preliminary certificate.
- (5) If the holder of a preliminary certificate fails to submit a certificate of completion by the preliminary certificate's expiry date, the preliminary certificate and the application for the licence become void on the date that the preliminary certificate expires.

<sup>3</sup> Ms. Judy Stewart acts on behalf of both Westridge Water and Westridge Utilities (collectively the "Companies"). The submissions provided to the Board were provided jointly on behalf of these two companies.

<sup>4</sup> Initial Submissions from the Appellant and the Director both dated February 26, 2001. Response Submissions from the Appellant and Westridge Utilities dated March 20, 2001. Rebuttal Submission from the Director dated March 23, 2001.

<sup>5</sup> Appellant's Response Submission dated March 20, 2001.

<sup>6</sup> See January 24, 2001 letter from Judy Stewart providing Alberta Environment with notice of the asset transfer and requesting that the Director transfer the Preliminary Certificate to Westridge Utilities (copy received by the Board on January 30, 2001).

<sup>7</sup> See February 6, 2001 letter from Judy Stewart.

<sup>8</sup> At the oral hearing on this matter, the Chairman asked the Director's counsel whether, if the appeal is continued, the Appellant or Westridge Utilities will have gained any strategic advantage over the Director due to the asset and Preliminary Certificate transfer. The Director's counsel could think of no such prejudice, other than the Director's need to defend itself in an appeal that the Director felt was no longer authorized under the *Water Act*.

For her part, counsel for the Companies stated that the delay resulted in large part from the Companies' failure to realize that they needed to provide timely notice of their asset transfer even to the Director, and also from counsel's failure to anticipate that the Director would treat the Preliminary Certificate transfer as a significant issue in the appeal. The Board accepts this explanation as showing an innocent mistake, at most.

<sup>9</sup> To be clear, the Board expresses no opinion at this time on the validity of the *merits* of the appeal.

<sup>10</sup> February 13, 2001 letter from Charlene Graham.

<sup>11</sup> February 16, 2001 letter from Judy Stewart.

<sup>12</sup> February 20, 2001 letter from the Board.

<sup>13</sup> Director's Initial Submission dated February 26, 2001.

---

14 Director's Initial Submission dated February 26, 2001.

15 The relevant portions of section 115(1) provided:

115(1) A notice of objection under this Act may be submitted to the Environmental Appeal 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 objection 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

(ii) by the licensee or by any person who is directly affected by the Director's decision, if the Director waived the requirement to provide notice under section 108(6) and notice of the application or proposed changes was not provided; ...

16 The Board stresses the *general* nature of this principle, because there may be circumstances where it would be fair to allow an appellant to continue an appeal even if the appellant has somehow lost its standing at some point during the appeal. As a practical matter, the Board will be loathe to entertain repeated challenges to an appellant's standing at numerous points in an appeal, if the appellant has properly demonstrated its standing at the outset.

On the other hand, it may be appropriate to revisit an appellant's factual proof of its standing if it was unreasonable to expect the appellant to fully prove those bases at the outset of the appeal. See *Leduc (County) v. Alberta (Local Authorities Board)* (1985), 54 Alta.L.R.(2d) 396 (Alta. C.A.) (In order to meet the standing test for a hearing, person should not be "force[d] . . . to succeed on the principal issue in the hearing before he has a right to appear in it. . .").

17 See section 87(2) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3.

18 Of course, this conclusion is dependent on the Board's conclusions below that Westridge Utilities can and should be substituted as the proper appellant. By the same token, if there was *no* current Preliminary Certificate holder, the Board would dismiss the appeal.

19 Director's Initial Submission dated February 26, 2001.

20 As noted previously, the standing requirement in section 115(1)(b) speaks expressly only to the *initiation* of an appeal. It says nothing expressly about who may continue an appeal once it is already filed.

21 Westridge Water/Westridge Utilities Response Submission dated March 26, 2001, at paragraphs 16 and 20.

22 Westridge Water/Westridge Utilities Response Submission dated March 26, 2001 at paragraph 18. In *Rainbird Sprinkler Mfg. C. (Canada) Ltd. v. Elpat Holdings Ltd. et al.* (1993), 146 A.R. 281 at 289 (Alta. Q.B.), Justice Power suggested that substitution of parties should be allowed when the parties' own assignment of the legal action "arose from a bona fide pre-existing business relationship and was made for legitimate business reasons and the assignee had a genuine commercial interest in taking the assignment and enforcing it for its own benefit." All of these factors warrant transferring the appeal to Westridge Utilities. The Board also notes that the kinds of judicial actions which are not readily transferred—*e.g.* actions in tort and actions to compel specific performance of personal obligations under a contract—are not analogous to the appeal of the Director's Certificate. See *Collar et al. v. Edmonton (City) et al.* (1991), 116 A.R. 39 at 44-54 (Alta. Q.B.), Funduk, M.C.

23 March 22, 2001 letter from Charlene Graham.

---

24 March 22, 2001 letter from Charlene Graham.

25 Section 80 of the *Water Act* states:

- 80(1) Unless exempted in the regulations, if an approval holder, preliminary certificate holder, licensee or registrant disposes of land or an undertaking to which an approval, preliminary certificate, licence or registration is appurtenant, the approval holder, preliminary certificate holder, licensee or registrant must notify the Director in writing of that disposition in a form and manner satisfactory to the Director.
- (2) If the owner of land to which an approval, preliminary certificate or licence is appurtenant is not the approval holder, preliminary certificate holder or licensee and the owner of land disposes of the land or the undertaking, the owner and the approval holder, preliminary certificate holder or licensee must notify the Director in writing of that disposition in a form and manner satisfactory to the Director.
- (3) If an owner of land, approval holder, preliminary certificate holder, licensee or registrant who disposes of land or an undertaking to which the approval, preliminary certificate, licence or registration is appurtenant fails to provide notice to the Director in accordance with this section, the owner of the land, approval holder, preliminary certificate holder, licensee or registrant and the purchaser of the land or undertaking to which the approval, preliminary certificate, licence or registration is appurtenant.
- (a) are jointly and severally liable for carrying out the duties and responsibilities specified in the approval, preliminary certificate, licence or registration, and
- (b) are subject to the duties and obligations under this Act including those related to the approval, preliminary certificate, licence or registration.
- (4) In addition to the ability to issue a water management order to a person who has purchased land or an undertaking to which an approval, preliminary certificate, licence or registration is appurtenant, if the Director has not received a notification under this section, the Director may issue a water management order to the land owner, approval holder, preliminary certificate holder, licensee or registrant who has disposed of the land or undertaking.
- (5) Notwithstanding subsections (1) to (4), if
- (a) the Director receives notice of a disposition of land or an undertaking in a manner other than from the land owner, approval holder, preliminary certificate holder, licensee or registrant, and
- (b) the approval, preliminary certificate, licence or registration has been amended to reflect the disposition referred to in clause (a),
- all previous land owners, approval holders, preliminary certificate holders, licensees and registrants are relieved of their obligations under this section.

26 Section 2 of the *Water Act* states:

- (2) The purpose of the Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:
- (a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;
- (b) the need for Alberta's economic growth and prosperity;
- (c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;
- (d) the shared responsibility of all residents of Alberta for the conservation and wise use of water and their role in providing advice with respect to water management planning and

- 
- decision-making;
  - (e) the importance of working co-operatively with the governments of other jurisdictions with respect to trans-boundary water management;
  - (f) the important role of comprehensive and responsive action in administering this Act.

27 Westridge Water/Westridge Utilities Response Submission dated March 20, 2001, paragraphs 14 to 29.

28 Of course, if filed now, that appeal would not be timely because, under section 116(1)(b), the new appeal must be filed within thirty days of the appellant's receipt of notice of the decision being appealed. Whether that notice is said to have occurred when Westridge Water received notice, when the asset transfer occurred, or even when the Director amended the Preliminary Certificate to substitute Westridge Utilities as the Preliminary Certificate holder, the thirty-day appeal period has already passed.

However, section 116(2) grants the Board broad discretion to extend that thirty-day period on application by the appellant and if the Board believes there are "sufficient grounds" to do so. If Westridge Utilities made that application, the Board believes that ample grounds would likely exist to grant it, namely, the fairness in and policies favouring allowing Westridge Utilities to step into Westridge Water's shoes, and the lack of any prejudice to the Director or the general public.

For these reasons, the Director errs in stating that the *Water Act* "does not allow new holders to 'go back in time' and appeal decisions made prior to their becoming the holder of the 'water right'." Director's Initial Submission dated February 26, 2001. The Director also argues that Westridge Utilities "...had no involvement or legal standing at all in relation to this application and subsequent issuance of this Preliminary Certificate." *Ibid.* Once again, this misses the point that Westridge Utilities is now the Preliminary Certificate holder and, as such, has legal standing to appeal the Preliminary Certificate if the Board waives the limitations deadline.

29 Besides the likely inefficiencies, it might be strategically prejudicial to the Director to allow Westridge Utilities to re-start the appeal.

30 See, e.g., *Canadian Lawyers Insurance Association v. Alberta* (1993), 146 A.R. 171 at (Alta. Q.B.), Moore, J., *aff'd* (1995) 169 A.R. 298 (Alta. C.A.), *application for leave to appeal dismissed*, [1975] S.C.C.A. No. 424 ("To understand . . . [the legislative clause in issue], we must use the principles of language, logic and common sense.").

31 *Rainbird Sprinkler Mfg. C.(Canada) Ltd. v. Elpat Holdings Ltd. et al.* (1993), 146 A.R. 281 (Alta. Q.B.).

32 Director's Initial Submission dated February 26, 2001.

33 The Board has broad discretion to determine the parties to an appeal, other than the original appellant and the Director whose decision is being appealed. See section 116(3) of the *Water Act* cross-referencing the appeal procedures in regulations adopted under the *Environmental Protection and Enhancement Act* and the Environmental Appeal Board Regulation, A.R. 114/93, section 1(f)(iii) defining "party" as the person who files the appeal, the Director whose decision is being appealed, and "any other person the Board decides should be a party to the appeal."