

ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – June 28, 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 on February 20, 2001 by Mr. Douglas B. Leschert with respect to Licence No. 00143247-00-00/*Water Act*, issued to the Hutterian Brethren Church of Erskine by the Director, Parkland Region, Natural Resources Service, Alberta Environment, for the diversion of 2,150 cubic metres of water annually from the well in SW 01-039-21-W4 for the purpose of agriculture (stock water) subject to certain conditions.

Cite as: *Leschert v. Director, Parkland Region, Natural Resources Service, Alberta Environment re: Hutterian Brethren Church of Erskine.*

EXECUTIVE SUMMARY

On February 15, 2001, the Environmental Appeal Board received a Notice of Appeal from Mr. Douglas B. Leschert appealing Licence No. 00143247-00-00 issued under the *Water Act* to the Hutterian Brethren Church of Erskine. The Licence authorizes the diversion of 2,150 cubic metres of water annually from the well in SW 01-039-21-W4 for the purpose of agriculture (stock water) subject to conditions specified in the Licence.

The parties subsequently met to discuss the impacts the Licence would have on the Appellant's well.

On June 1, 2001, the Board received a letter from the Appellant wishing to be assured that he would be compensated for any financial loss due to any action by the Licensee relating to water usage. The Director advised the Board on June 8, 2001, that he was not prepared to consider any modifications to the terms of the Licence with respect to financial guarantees.

In consultation with the parties, the Board subsequently requested that the parties provide written submissions to the Board with respect to their arguments for or against the compensation issue.

To date the Appellant has not responded to the Board. Accordingly the Board hereby exercises its discretion under section 87(5)(a)(ii) of the *Environmental Protection and Enhancement Act* and dismisses the Notice of Appeal filed by Mr. Douglas B. Leschert for a failure to respond to our written request.

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I. BACKGROUND

[1] On January 15, 2001, the Director, Parkland Region, Alberta Environment (the “Director”) issued Licence No. 00143247-00-00 (the “Licence”) under the *Water Act* to the Hutterian Brethren Church of Erskine (the “Licensee”). The Licence authorizes the diversion of 2,150 cubic metres of water annually from the well in SW 01-039-21-W4 for the purpose of agriculture (stock water) subject to conditions specified in the Licence.

[2] On February 15, 2001, the Environmental Appeal Board (the “Board”) received a Notice of Appeal from Mr. Douglas B. Leschert (the “Appellant”) appealing the Director’s decision to issue the Licence.

[3] The Board acknowledged the Notice of Appeal on February 16, 2001 and requested a copy of all records (the “Records”) related to the appeal from the Director. The Board also notified the Licensee that the Notice of Appeal had been filed.

[4] According to standard practice, on February 16, 2001, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective legislation. Both the NRCB and the AEUB replied in the negative.

[5] On March 26, 2001, the Board received a copy of the Records from the Director in response to the Board’s request and on March 27, 2001, the Board forwarded a copy of the Records to the Appellant and the Licensee. In a letter to the parties on that same date, the Board requested the parties advise if they wished to participate in a mediation meeting/settlement conference. The Board also asked the Appellant to provide further information to us with respect to his Notice of Appeal.

[6] On April 5, 2001, the Board received a letter from the Director advising that the Licensee and the Appellant had arranged a meeting between themselves for April 10, 2001, and requested an abeyance pending the outcome of the meeting.

[7] On April 9, 2001, the Board received a letter from Mr. Don McClymont, UMA Engineering Ltd. on behalf of the Licensee advising that they were willing to proceed to a

mediation meeting/settlement conference. On April 9, 2001, the Board acknowledged both the Director's and Licensee's letters and granted an abeyance, with status reports to be provided to the Board on April 12, 2001.

[8] On April 11, 2001, the Director wrote to the Board advising that he would be agreeable to attending a mediation meeting/settlement conference. The Board acknowledged the Director's letter on April 17, 2001 advising that further correspondence would be forthcoming once it had received status reports from the Licensee and the Appellant. In this regard, the Licensee and Appellant were again asked for status reports with a due date of April 20, 2001 with respect to their meeting on April 10, 2001.

[9] On April 23, 2001, the Board received a letter dated April 19, 2001, from the Licensee. The Licensee advised that the meeting with the Appellant "did not result in an understanding or conclusion with regard to his concerns". The Licensee advised that they still preferred to proceed to mediation if required.

[10] The Board acknowledged the Licensee's letter on April 24, 2001 and advised the Appellant that the Board was unable to move forward with the appeal unless the requested information had been received. The Board also cautioned the Appellant that pursuant to section 87(5)(a)(i) of the *Environmental Protection and Enhancement Act*, S.A. 1992, c-E. 13-3, (the "Act") failure to respond may result in the dismissal of his appeal. The Board had not received a response from the Appellant to its March 27, 2001 letter and no status report was received regarding the April 10, 2001 meeting.

[11] On May 1, 2001, the Appellant contacted the Board and advised that the only concern he had with the Licensee's well is the close proximity to the Appellant's well, and that he wanted to make sure that it would not affect his well.

[12] On May 16, 2001, the Board acknowledged the Director's letter of May 1, 2001 and telephone call advising an informal meeting was being scheduled with the Appellant to discuss any impacts the Licence would have on his well. The Board also asked to be notified when the meeting was scheduled. A meeting was subsequently scheduled between the Director and the Appellant on May 31, 2001 and the parties were requested in a letter of May 18, 2001 to provide the Board with a status report by June 1, 2001.

[13] In follow-up to a telephone call of June 1, 2001 with Board staff, the Appellant provided a letter on June 5, 2001 stating:

“If we were to suffer financial loss due to action by the Hutterian Brethren Church of Erskine as it relates to the water usage so specified in the license they have applied for, we wish to be assured that we will be compensated for that loss.”

[14] In a letter to the parties on June 5, 2001, the Board acknowledged the Appellant’s letter and requested the Director provide a status report to the Board with respect to the meeting. The Director provided a status report to the Board on June 8, 2001 advising:

“...I can advise that Departmental Officials met with Mr. Leschert at the end of May to discuss his concerns. At this meeting, it was explained to him the various protections that were in the licence issued to the Hutterian Brethren as well as the protection that the *Water Act* provides. It was the Departmental Officials conclusion that Mr. Leschert was not satisfied with those levels of protection and wanted a financial guarantee...If Mr. Leschert wants such financial guarantees, it is suggested that he speak with the Hutterian Brethren to see if they are agreeable to providing such a guarantee. If Mr. Leschert wishes to make such a request in the context of an Environmental Appeal Board mediation, the Department would be willing to attend such a mediation, to again describe the protections in the *Act* and in, as Mr. Leschert’s wants, the Licence. However, again, I reiterate that the Director is not prepared to consider such a modification to the terms of the licence.”

[15] On June 14, 2001, the Board wrote to the parties stating:

“Upon review of the file, the Board, in consultation with the parties, has decided to proceed to a preliminary meeting via written submissions. In this regard the Board requests the parties provide written submissions to the Board on the following issue:

Whether the Notice of Appeal is properly before the Board, given that Mr. Leschert’s concern with the Licence is that he wants to be compensated for any financial loss due to the actions of the Licencee.

The Board has established the following schedule for receipt of written submissions for the above preliminary issue.

1. The Initial Submission from Mr. Leschert is due on **Friday, June 22, 2001.**
2. The Response Submissions from the Director and Mr. Hofer are due on **Friday, June 29, 2001,** and

3. The Rebuttal Submission from Mr. Leschert is due on **Friday, July 6, 2001**.

Upon receipt of the written submissions, the Board will decide whether this appeal will proceed.”

[16] On June 26, 2001, the Board received a letter from the Licensee stating:

“The Hutterian Brethren have been using this well since 1988 without any reported impact. It is not expected that the diversion of 2,150 cubic metres per year (average of 0.9 imperial gallons per minute) will unreasonably impact the supply of groundwater at the Leschert residential well.

It is the Hutterian Brethren’s position that they will not provide a financial compensation guarantee to Mr. Leschert with respect to his well on NE 05-039-21-W4. It should be noted that the terms of the licence pursuant to the provisions of the Water Act includes a monitoring and reporting component intended to protect the groundwater resource.”

[17] To date the Initial Submission, requested in the Board’s letter of June 14, 2001, has not been received from the Appellant. Courier records indicate that the Board’s letter of June 14, 2001, was delivered to Mr. Leschert and was signed for on June 20, 2001.

II. DECISION

[18] Section 87(5)(a)(ii) of the Act states:

- 87(5) The Board
- (a) may dismiss a notice of appeal if
 - (ii) the person who submitted the notice of appeal fails to comply with a written notice under section 85, or

[19] The Board hereby exercises its discretion under section 87(5)(a)(ii) of the Act and dismisses the Notice of Appeal filed by Mr. Douglas B. Leschert for a failure to respond to our written request.

Dated on June 28, 2001, at Edmonton, Alberta.

William A. Tilleman, Q.C.