

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – January 24, 2005

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 the Mountain View Regional Water Services Commission, Gerald Oxtoby, City of Red Deer, Terry Little, and Kelly Smith, with respect to *Water Act* Preliminary Certificate No. 00198509-00-00 issued to Capstone Energy Ltd. by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: Intervenor Decision: *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (24 January 2005), Appeal Nos. 03-116 and 03-118-121-ID2 (A.E.A.B.).

BEFORE:

Dr. Frederick C. Fisher, Q.C., Chair.

SUBMISSIONS:

Appellants: Mountain View Regional Water Services Commission, represented by Mr. Jim Romane; Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith, represented by Mr. Richard Secord, Ackroyd Piasta Roth & Day LLP; and the City of Red Deer, represented by Mr. Nick P. Riebeek, Chapman Riebeek.

Certificate Holder: Capstone Energy Ltd., represented by Mr. Alan S. Hollingworth, Gowlings LLP.

Director: Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Intervenors: Mr. Mike Gallie, represented by Mr. Don Bester; The Red Deer County Ratepayer Association; Ms. Dorene Rew; the Council of Canadians Red Deer Chapter; the Normandeau Cultural and Natural History Society; and Trout Unlimited.

EXECUTIVE SUMMARY

Alberta Environment issued a Preliminary Certificate and proposed licence to Capstone Energy Ltd. on July 23, 2003, for the diversion of water from the Red Deer River for industrial (oilfield injection) purposes at SW 4-36-1-W5M near Red Deer, Alberta.

The Board held a preliminary meeting and determined that the Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, the City of Red Deer, Mr. Terry Little, and Mr. Kelly Smith are directly affected. The Board dismissed Mr. Mike Gallie's appeal as he was found not directly affected, but as he could provide unique, relevant evidence, the Board named him a party to the appeals.

The Board set the hearing for February 23, 24, and 25, 2004, and in response to the published notice of hearing, it received intervenor requests from the Red Deer Ratepayer Association, Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited. After reviewing the submissions from the parties, the Board determined the intervenors could participate in the hearing by providing written submissions and a ten minute presentation at the hearing.

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I. BACKGROUND

[1] On July 23, 2003, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Preliminary Certificate No. 00198509-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c. W-3, to Capstone Energy Ltd. (the “Certificate Holder”). The Certificate included specific terms and conditions and the proposed licence (the “Licence”). The Certificate Holder is required to complete the terms and conditions of the Certificate before the actual Licence is issued. The proposed Licence allows for the diversion of water from the Red Deer River for industrial (oilfield injection) purposes at SW 4-36-1-W5M near Red Deer, Alberta.

[2] Between August 15 and September 8, 2003, the Environmental Appeals Board (the “Board”) received Notices of Appeal from the Mountain View Regional Water Services Commission (Appeal No. 03-116), Mr. Gerald Oxtoby (Appeal No. 03-118), the City of Red Deer (Appeal No. 03-119), Mr. Terry Little (Appeal No. 03-120), and Mr. Kelly Smith (Appeal No. 03-121), (collectively the “Appellants”). The appeals from the Butte Action Committee (Appeal No. 03-122), and Mr. Mike Gallie (Appeal No. 03-123) were dismissed, but Mr. Gallie was granted full party status.¹ On September 19, 2003, the Board received a Notice of Appeal from Ms. Dorene Rew.²

[3] The Board wrote to the Certificate Holder and the Director notifying them of the appeals and wrote to the Appellants acknowledging receipt of the Notices of Appeal. The Board requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals. The Board received the Record on August 22, 2003, and additional documents were provided on September 2, 2003.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had

¹ See: Board’s letter, dated December 1, 2003. See also: Preliminary Motions: *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (11 February 2004), Appeal Nos. 03-116 and 03-118-123-ID1 (A.E.A.B.).

² The Board dismissed the appeal of Ms. Dorene Rew as her Notice of Appeal was filed late. See: *Rew v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (30 October 2003), Appeal No. 03-138-D (A.E.A.B.).

been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[5] The Board received Stay requests from the Appellants and Mr. Mike Gallie.

[6] On September 18, 2003, the Board notified the Parties³ that it would not grant a Stay as the requests were premature.⁴

[7] On September 19, 2003, the Board received a reconsideration request from the Butte Action Committee regarding the Board's decision with respect to the Stay applications. The Board asked the Parties to provide submissions regarding the reconsideration request.

[8] After reviewing the submissions received between September 25 and October 8, 2003, the Board contacted the Parties on October 10, 2003, regarding the reconsideration of the Stay motion. The Board stated:

“The Board notes that Capstone has agreed not to undertake any work in relation to the Preliminary Certificate until the appeal has concluded. Therefore, it is the Board's view that it is not necessary for it to consider the Stay re-consideration requests at this time. The Board, however, directs Capstone to advise the Board immediately if they undertake steps in accordance with the Preliminary Certificate. If this occurs, the Board will consider the Stay re-consideration request.”

[9] On October 21, 2003, the Board notified the Parties that it would hold a Preliminary Meeting on November 14, 2003, to hear oral arguments on the following issues:

- “1. whether the Appellants (the Mountain View Regional Water Services Commission, the City of Red Deer, the Butte Action Committee, Mr. Gallie, Mr. Oxtoby, Mr. Little and Mr. Smith) are directly affected by Alberta Environment's decision to issue Preliminary Certificate No. 00198509-00-00 to Capstone Energy Ltd.;
2. what are the issues to be heard at a potential hearing;
3. Mr. Bester's request for interim costs; and

³ The “Parties” in this decision refers collectively to the Appellants, the Certificate Holder, and the Director.

⁴ In its letter, the Board stated:

“The Board notes that the Preliminary Certificate that is under appeal promises Capstone Energy Ltd. a Licence to divert water, once it has met certain conditions. As a result, Capstone may not take any water until these conditions are met. Once these conditions are met, Capstone must submit, and Alberta Environment must accept, a Certificate of Completion. It is only once this Certificate of Completion has been filed and accepted that Capstone may take water.

Therefore, until Capstone is allowed to take water, it is not possible for the ‘irreparable harm’ to occur. Without an immediate possibility of irreparable harm, the request for a Stay is premature.”

4. whether the Notice of Appeal filed by Mr. Bester in appeal No. EAB 03-122 is complete or properly before the Board because it appears to only appeal the Director's decision to reject Mr. Bester's Statement of Concern."

[10] On December 1, 2003, the Board notified the Parties that the Mountain View Regional Water Services Commission, the City of Red Deer, Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith are directly affected and their appeals would be heard. The Board dismissed the appeal of Mr. Mike Gallie, but the Board was of the view that Mr. Gallie has personal knowledge regarding the Red Deer River that may be of assistance to the Board, and therefore, he was granted full party status.

[11] In this same letter, the Board stated it would not provide interim costs based on the information presented, but the Board may consider a more detailed application for interim costs. With respect to the appeal filed by the Butte Action Committee on behalf of Mr. Gallie regarding the Director's decision to reject the Statement of Concern, the Board did not have to consider the issue as the Notice of Appeal had been dismissed.

[12] On December 3, 2003, the Board received an interim costs application, totaling \$8,854.00, on behalf of Mr. Terry Little, Mr. Gerald Oxtoby, Mr. Kelly Smith, and Mr. Mike Gallie. The Board received comments from the other Parties between December 5 and 8, 2003, regarding the interim costs application. The Board notified the Parties on December 18, 2003, that interim costs in the total amount of \$5,979.00 would be awarded to Mr. Terry Little, Mr. Gerald Oxtoby, and Mr. Kelly Smith, payable by the Certificate Holder in two installments.

[13] On January 7, 2004, the Board notified the Parties that the issues to be heard at the Hearing would be as follows:

- "1. Purpose
 - a. What role does purpose for which the water will be used have with respect to the allocation of water under the *Water Act*?
 - b. Is the use of water for oilfield injection a valid reason to refuse to grant an allocation of water under the *Water Act*?
 - c. Has the Director adequately balanced the economic benefits and environmental impacts of this project?
 - d. Has the Director adequately considered alternatives to the use of water for this project, including the economics of those alternatives?
 - e. Has the Director adequately considered the removal of the allocated water from the hydrological cycle?

2. Protection
 - a. Does the Preliminary Certificate and Proposed Licence provide adequate protection for: (1) other water users, (2) recreational users, (3) fish and wildlife, and (4) the aquatic environment, including instream flow needs?
 - b. Are the terms and conditions of the Preliminary Certificate and Proposed Licence adequate with respect to: (1) monitoring, (2) reporting, (3) minimum flow rates, and (4) maximum pump rates.
 - c. Is the term of the Proposed Licence appropriate?
 - d. Are the renewal mechanisms relating to the Proposed Licence appropriate?
3. Volume
 - a. Is the volume of water allocated appropriate, including taking into account the proposed length of the project and the availability of water in the Red Deer River?
 - b. Has the Director adequately considered the impact of this allocation on future water users, including the future needs of municipalities?
 - c. Should the volumes of water be allocated in some staged manner?
4. Immediate Neighbours
 - a. Has the Director adequately considered the potential impacts of the project on the immediate neighbours to the project, being Mr. Oxtoby, Mr. Little, and Mr. Smith?
 - b. Was the testing undertaken sufficient and adequate to predict the long-term impacts of the project on the immediate neighbours?
 - c. Do the immediate neighbours to the project have adequate protection in the event that there is an impact on them?
5. Policy Considerations
 - a. Has the Director properly taken into account all the applicable policies of the Government of Alberta?
 - b. Do the Preliminary Certificate and Proposed Licence adequately allow for any changes regarding the policy directions on oilfield injection?
 - c. Has the Director adequately taken into account the sustainability of the Red Deer River Basin and the South Saskatchewan River Basin?⁵

[14] The Board scheduled the process for the Parties to submit affidavits, rebuttal affidavits, and submissions. Affidavits were received from the Parties between January 29 and February 6, 2004.

⁵ See: Preliminary Motions: *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (11 February 2004), Appeal Nos. 03-116 and 03-118-123-ID1 (A.E.A.B.).

[15] The Board published notice of the Hearing scheduled for February 23, 24, and 25, 2004, in the Red Deer Express, Red Deer Advocate, Sylvan Lake News, the Lacombe Globe, and the Innisfail Province. Persons wanting to intervene were to submit their requests to the Board by January 30, 2004.

[16] The Board received requests for intervenor standing from the Red Deer County Ratepayer Association, Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited (collectively, the “Intervenors”). The Board provided the Parties with an opportunity to respond to the intervenor requests.

[17] On February 10, 2004, the Board notified the Parties and Intervenors that the Intervenors would be allowed to participate by providing written submissions only. However, as the Intervenors expressed concerns regarding the limited time provided to prepare written submissions, the Board notified the Parties and the Intervenors on February 12, 2004, that it would grant an extension to the filing deadline, and each Intervenor would be allotted ten minutes to speak at the Hearing.

II. SUBMISSIONS

A. Intervenors

[18] The Red Deer County Ratepayer Association explained it is a registered association of Red Deer County taxpayers that works to ensure good and fair government at all levels, and its purpose is to voice concerns regarding “...those decisions and proposals that work to the detriment of our farm industry, communities and the future sustainability and growth.”⁶ It argued using water for oil field injection is not a valid use for water because alternative methods of recovery are readily available and are being used by other energy companies, and the procedure permanently removes the water from the hydrogeological cycle. It argued the Certificate and Licence do not give adequate protection to other water users, instream needs, and the aquatic environment, and the volume of water asked for is inappropriate considering the availability of water, the unproven viability of the project, and given the future needs of

⁶ Red Deer County Ratepayer Association’s submission, dated December 8, 2003.

downstream and instream users.⁷ It argued that the proposal results in the permanent removal of a non-renewable resource to facilitate the “possible” recovery of another non-renewable resource.⁸ The Ratepayer Association submitted that the Alberta Government is encouraging Albertans to use water wisely and is using taxes to achieve the goal, but not allowing the Certificate seemed like a better way to start, especially when the water use is unnecessary. The Ratepayer Association stated that many of its members are directly affected by the project, and all are influenced.⁹

[19] Ms. Dorene Rew stated she is “...an environmentalist interested in sustainable use of water.”¹⁰ She stated she fears the quality of the drinking water will get worse if the Licence is granted. She submitted it sends a “...message to other oil and gas companies searching for ways to increase production in aging wells that there is no need to seek out alternative methods to water flood.”¹¹ She argued the *Water Act* is concerned mainly with licensing and does seem to consider the right of all creatures on this planet to have pure, clean drinking water. Ms. Rew stated the government is studying whether or not to continue the practice of using potable water for well production enhancement. She argued the Director granted a Certificate to the Certificate Holder that does not take into consideration the public concern regarding this practice that essentially loses the water from the hydrological cycle forever. Ms. Rew submitted the Certificate Holder had not thoroughly investigated alternatives to water flood and had no intention of considering anything except water flood. She presented some options to water flooding, including using microorganisms or using processed water from Innisfail. She stated the Certificate Holder mentioned the use of CO₂ flood, but it was dismissed as not being a viable option. Ms. Rew argued the Director should have asked the Certificate Holder to explain in more detail why it did not do more extensive research into alternate methods. Ms. Rew argued the Government of Alberta is sworn to act in the best interest of its citizens, and that while “...we have a lot of rules and regulations, we also have too much discretionary power laid in the hands of people who are vulnerable and easily influenced by industry, not to mention politicians,

⁷ See: Red Deer County Ratepayer Association’s submission, dated January 30, 2004.

⁸ See: Red Deer County Ratepayer Association’s submission, dated December 8, 2003.

⁹ See: Red Deer County Ratepayer Association’s submission, dated December 8, 2003.

¹⁰ Ms. Dorene Rew’s submission, received January 30, 2004.

¹¹ Ms. Dorene Rew’s submission, received January 30, 2004.

many of whom have little real knowledge of the effect that such actions will have on the future sustainability of either Alberta's environment or it's (*sic*) economy."¹²

[20] The Normandeau Cultural and Natural History Society explained it has the responsibility of managing the Gaetz Lake Sanctuary, a federal migrating bird sanctuary. It stated it has concerns about the impact of the project on the Sanctuary, water levels in its lakes, and the wildlife species it supports. It further stated it has a leadership role in the protection of its community's cultural and natural heritage resources, and the "...Red Deer River is one of the most significant of our natural resources."¹³

[21] Trout Unlimited stated it has concerns regarding instream flow needs required to protect spawning fish and aquatic fauna and to lower water temperature.¹⁴

[22] The Council of Canadians Red Deer Chapter stated it has concerns regarding the nature of the oil industry, in particular oil field flooding, and the claims made that "...it is just another industry making use of a natural resource for commercial purposes."¹⁵ It submitted the cumulative effect of water extraction over time needs to be considered, and each application should not be considered in isolation. It also expressed concerns regarding the interpretation of directly affected and suggested the concept should be expanded further, even though it was encouraged the downstream municipalities were considered as interested parties in these appeals. The Council of Canadians stated it wanted to address the close relationship between surface water and groundwater and the effect of withdrawals from one will affect the other. It stated there was a need to consider sustainable development in the context of the Alberta Water Strategy and, "Sustainable development precludes the possibility of externalizing production costs and would require that the true value of water be reflected in decisions regarding water use."¹⁶

¹² Ms. Dorene Rew's submission, received January 30, 2004.

¹³ Normandeau Cultural and Natural History Society's submission, dated January 30, 2004.

¹⁴ See: Trout Unlimited's submission, dated January 27, 2004.

¹⁵ Council of Canadians Red Deer Chapter's submission, dated January 29, 2004.

¹⁶ Council of Canadians Red Deer Chapter's submission, dated January 29, 2004.

B. Appellants

[23] The City of Red Deer stated it did not object to any of the Intervenors being granted intervenor status and urged the Board to permit them the opportunity to make representations at the Hearing.¹⁷

[24] The Board did not receive a response with regard to Intervenors from the appellants, Mr. Oxtoby, Mr. Little and Mr. Smith or from the Mountain View Regional Water Services Commission, nor from Mr. Gallie.

C. Certificate Holder

[25] The Certificate Holder stated, "...none of the proposed submissions to the hearing is directly relevant to the appeal, nor would they appear to add any information in addition to that already filed with the Board."¹⁸ It stated the addition of the Intervenors would unduly delay the appeal, and the type of submissions the Intervenors intend to present will not assist the Board in deciding these appeals. The Certificate Holder stated its concern "...about the prospect of cost claims by interveners who are not directly affected by the project and whose submissions would be in aid of consideration of the policy relating to water use in the province of Alberta, which is not the subject matter of this hearing."¹⁹

[26] The Certificate Holder stated that if the Intervenors are allowed to participate, their submissions can be made in the form of written submissions, and the Certificate Holder should be given sufficient time to review and respond to the submissions.²⁰

[27] The Certificate Holder further stated the Council of Canadians' submission did "...not demonstrate a tangible interest in the subject matter of the appeal, which is the diversion of water from a particular reach of the Red Deer River."²¹ It submitted the Parties will speak on the issues of oil field flooding, cumulative effects of water extraction, and the interrelationship between surface water and groundwater. It further submitted the proposed submissions on

¹⁷ See: City of Red Deer's submission, dated February 3, 2004.

¹⁸ Certificate Holder's submission, dated February 6, 2004.

¹⁹ Certificate Holder's submission, dated February 6, 2004.

²⁰ See: Certificate Holder's submission, dated February 6, 2004.

²¹ Certificate Holder's submission, dated February 6, 2004.

sustainable development are outside the scope of the Hearing and will not materially assist the Board in its decision. The Certificate Holder stated instream flow needs, as put forward by Trout Unlimited, are not the subject of these appeals and, therefore, would not materially assist the Board.²²

[28] In respect to the participation of Ms. Dorene Rew, the Certificate Holder argued she is a resident of the City of Red Deer, and she is well represented by the City of Red Deer's representatives.²³

D. Director

[29] The Director submitted the Intervenors did not provide any new or additional evidence directly relevant to the appeals. He argued the requests to intervene only referred to matters referenced or included in the affidavits previously submitted. The Director submitted that allowing the Intervenors full party status would result in duplication of the evidence and could lead to delays in the Hearing.

[30] The Director stated that if the Intervenors are permitted to participate, they should be restricted to written submissions only, and the "...written submission would consist of the information contained in the intervention requests that have been submitted to the Board."²⁴ He stated this would allow the Parties to respond to the material and to rebut any information contained in the intervenor requests prior to the start of the Hearing.

[31] The Director further submitted that if the Intervenors participate beyond a written submission, the Hearing process would have to be reformulated. He stated the Intervenors should be required to submit affidavit evidence with the ability for the Parties to submit rebuttal evidence. The Director argued that if the Intervenors are not required to follow the same process as the Parties have followed to date, there may be a prejudice to the Parties the Intervenors are in opposition to. The Director stated this process may "...unnecessarily delay the appeal."²⁵

²² See: Certificate Holder's submission, dated February 6, 2004.

²³ See: Certificate Holder's submission, dated February 6, 2004.

²⁴ Director's submission, dated February 6, 2004.

²⁵ Director's submission, dated February 6, 2004.

III. DISCUSSION AND ANALYSIS

A. Legislation

[32] Under section 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the “Act” or “EPEA”) the Board can determine who can make representations before it. Section 95(6) states:

“Subject to subsection (4) and (5), the Board shall, consistent with the principles of natural justice, give the opportunity to make representations on the matter before the Board to any persons who the Board considers should be allowed to make representations.”

[33] Pursuant to sections 7 and 9 of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 (the “Regulation”), the Board must determine whether a person submitting a request to make submissions should be allowed to do so at the hearing. Section 7 of the Regulation states:

“7(2) A published notice referred to in subsection (1)(a)(ii) or (b)(ii) must contain the following:

- (a) the date, time and place of the hearing, in a case where an oral hearing is to be held;
- (b) a summary of the subject matter of the notice of appeal;
- (c) a statement that any person who is not a party to the appeal and wishes to make representations on the subject matter of the notice of appeal must submit a request in writing to the Board;
- (d) the deadline for submitting a request in writing under clause (c);
- (e) the mailing address of the Board;
- (f) the location and time at which filed material with the Board will be available for examination by interested persons.”

[34] Section 9 of the Regulation provides:

“(1) A request in writing referred to in section 7(2)(c) shall

- (a) contain the name, address and telephone number of the person submitting the request,
- (b) indicate whether the person submitting the request intends to be represented by a lawyer or other agent and, if so the name of the lawyer or other agent,

- (c) contain a summary of the nature of the person's interest in the subject matter of the notice of appeal, and
 - (d) be signed by the person submitting the request.
- (2) Where the Board receives a request in writing in accordance with section 7(2)(c) and subsection (1), the Board shall determine whether the person submitting the request should be allowed to make representations in respect of the subject of the notice of appeal and shall give the person written notice of that decision.
- (3) In a notice under subsection (2) the Board shall specify whether the person submitting the request may make the representations orally or by means of a written submission.”

[35] In the Regulation, it also states that the Board can determine who will be a party to an appeal. Section 1(f)(iii) of the Regulation states:

“In this Regulation... ‘party’ means any other person the Board decides should be a party to the appeal.”

[36] The test for determining intervenor status is stated in the Board's Rules of Practice. Rule 14 states:

“As a general rule, those persons or groups wishing to intervene must meet the following tests:

- their participation will materially assist the Board in deciding the appeal by providing testimony, cross-examining witnesses, or offering argument or other evidence directly relevant to the appeal; the intervenor has a tangible interest in the subject matter of the appeal; the intervention will not unnecessarily delay the appeal;
- the intervenor in the appeal is substantially supporting or opposing the appeal so that the Board may know the designation of the intervenor as a proposed appellant or respondent;
- the intervention will not repeat or duplicate evidence presented by other parties....”

B. Discussion

[37] Most of the Intervenors identified similar issues to those of the Parties. For example, the Red Deer County Ratepayer Association, Ms. Dorene Rew, and the Council of Canadians had concerns regarding the use of potable water for oil well injection. Ms. Rew and the Ratepayer Association stated alternative methods should have been explored. The Council of Canadians raised the issue of the relationship between surface water and ground water and

cumulative effects of withdrawals. Trout Unlimited and the Normandeau Cultural and Natural History Society expressed concerns regarding wildlife habitat. These are all issues raised by the Appellants to these appeals and identified as issues that will be heard at the hearing.

[38] The issue of using potable groundwater for oil well injection is a concern to Albertans, and Alberta Environment and the Government of Alberta has identified it in its Water for Life Strategy as an issue that requires further study and possible regulation. Part of the government process is to hear what Albertans have to say about the issue. Although the Board's process is not intended to be used as a forum for gathering input into the review process, the issue is presently before us in a valid appeal, and hearing from Albertans on the issue will benefit the Board when it makes its report and recommendations to the Minister and will benefit Alberta Environment in its analysis of the issue in its Water for Life Strategy.

[39] Section 2 of the *Water Act* clearly places an obligation on the citizens of Alberta to be proactive in the management and conservation of water. Section 2 of the *Water Act* provides:

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

- (a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;
- (b) the need for Alberta's economic growth and prosperity;
- (c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;
- (d) the shared responsibility of all Alberta citizens 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 transboundary water management;
- (f) the important role of comprehensive and responsive action in administering this Act.”

[40] It is important for the Board, and Alberta Environment, to listen to the concerns of the citizens of Alberta. As the purpose of the *Water Act* is to encourage wise use of Alberta's water resources and to allow Albertans an opportunity to provide input into management

planning and decision-making, the Board will allow all of the Intervenors to provide written submissions to the Board on the identified issues, and ten minutes will be allotted to each Intervenor at the start of the Hearing for them to present their position. The Parties can respond to the Intervenors' submissions during the Hearing and in their closing submissions.

[41] The Appellants live adjacent to the area where the project has been approved, or they have existing water licences that allow water withdrawals from the Red Deer River. The Appellants are directly affected and have a direct, vested interest in the matters under appeal. They will, undoubtedly, argue their positions, which includes the same positions as the Intervenors, vigorously.

C. Additional Comments

[42] Ms. Dorene Rew had filed an appeal with respect to the Certificate, but the Board dismissed her appeal as it was filed out of time and no special circumstances existed to extend the appeal deadline.²⁶ The Board admires the interest and the passion Ms. Rew demonstrates in her concerns regarding our water resources. However, the arguments provided by Ms. Rew appear similar to the arguments of the Parties in these appeals, and therefore, her participation in these appeals will be limited to that of the other Intervenors.

[43] As for Ms. Rew's concerns of government accountability, one of the underlying responsibilities of this Board is to ensure the Director under the *Water Act* and EPEA remains accountable and responsible for all its decisions, not just those related to the use of water.

[44] The Council of Canadians raised the matter of interpreting "interested party," a matter that has been dealt with in previous decisions, and although the Board does believe that circumstances warrant some degree of flexibility in the interpretation of the term, there are still precedent guidelines that should be followed.

[45] The issues identified by the Board will also cover aspects of sustainable development, an issue raised by the Council of Canadians, including the volume of water allocated under the Licence and the potential impact on future water users.

²⁶ See: *Rew v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (30 October 2003), Appeal No. 03-138-D (A.E.A.B.).

[46] The Normandeau Cultural and Natural History Society did not indicate the location of the Gaetz Lake Sanctuary in relation to the site of the project so it is difficult to determine if there is the potential of the Sanctuary being affected by the issuance of the Certificate. However, as the Society's concerns relate to wildlife habitat and the Red Deer River itself, the Board considers it important to hear from this organization.

[47] Trout Unlimited is known for its interest in protecting fish habitat. The request for intervenor standing submitted by Trout Unlimited was extremely brief and limited in summarizing its interest in the appeals. Although the Board is willing to hear submissions from Trout Unlimited in these appeals, it should be noted that intervenor requests should include some indication of the arguments the intervenor intends to present, as required under section 9 of the Regulation. This would certainly have assisted the Board in making its determination and would have assisted the other Parties to these appeals in supporting or rejecting the intervenor request.

E. Summary

[48] The Parties to these appeals will provide evidence on the issues identified by the Board. However, in these circumstances, the public interest element warrants a broadening of the scope of participation, and therefore, the Intervenors can be involved in the appeal process. The public interest is a factor the Board must consider in all of the appeals before it, and there is no question the issue of potable water use for oil field injection is a major concern to Albertans.

[49] The Board will allow the Red Deer County Ratepayer Association, Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited to provide written submissions on the issues as specified in the Board's January 7, 2004 letter to the Parties. The scope of the hearing has not been expanded, and therefore, the Intervenors must limit their submissions to the specified issues, but the Board wants to hear what these persons have to say. Therefore, each of the Intervenors will be allowed to present a ten minute summary of their positions at the hearing, but they will not participate in the cross-examination process.

IV. CONCLUSION

[50] Pursuant to section 95(6) of the *Environmental Protection and Enhancement Act*, the Board allows the Red Deer County Ratepayer Association, Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited, to provide written submissions prior to the hearing and to provide a ten minute summary of their arguments at the hearing.

Dated on January 24, 2005, at Edmonton, Alberta.

“original signed by”

Dr. Frederick C. Fisher, Q.C.
Chair