

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Discontinuance of Proceedings

Date of Discontinuance of Proceedings – January 3, 2007

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 Katherine McCulloch and Richard Kelk in relation to *Water Act* Licence No. 00188451-00-00; File No. 80439 with priority numbers 1998-06-30-01, 1998-06-30-02 and 1998-06-30-03; Licence Amendments 00140731-00-01 and 00140731-00-02 issued to AAA Cattle Company Ltd. by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *McCulloch and Kelk v. Director, Southern Region, Regional Services, Alberta Environment re: AAA Cattle Company Ltd.* (3 January 2007), Appeal No. 06-055 and 06-056-DOP (A.E.A.B.).

I. BACKGROUND

[1] On June 26, 2006, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), granted an extension to AAA Cattle Company Ltd. (the “Licence Holder”), to comply with certain conditions pertaining to Licence No. 00188451-00-00; Licence dated 1999-02-03, File No. 80439; Licences 00140731-00-01, 00140731-00-02; and Licence Amendments 00140731-00-01 and 00140731-00-02. The Licence Holder was not in compliance with some of the monitoring and reporting requirements of the Licences and was given an extension of time to comply.

[2] Licence No. 0018451-00-00 was issued for the diversion of 126,150 cubic metres of groundwater annually from Production Well No. PW5-02, PW6-02, PW7-02 and PW8-02, located in SW 04-031-27-W4M for agricultural purposes; Licence dated 1999-02-03, File No. 80439; Licences 00140731-00-01, 00140731-00-02 issued for the diversion and use of quantities of water prescribed in Interim Licence No. 22169 with priority numbers 1998-06-30-01, 1998-06-30-02 and 1998-06-30-03 for agricultural purposes; and Licence Amendments 00140731-00-01 and 00140731-00-02 were issued in relation to file No. 80439, collectively (the “Licences”).

[3] On July 7, August 2 and August 10, 2006, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Ms. Katherine McCulloch, Mr. Richard Kelk, and Mr. Ross and Ms. Judy Warner. The Notices of Appeal were filed in relation to the extension of conditions in the Licences, and the alleged breach by the Licence Holder and Director of the Ministerial Order 28/2005 and the November 16, 2005 mediation resolution, contained in the Board’s Report and Recommendations dated November 25, 2005.¹ This Discontinuance of Proceedings deals with the appeals filed by Mr. Kelk and Ms. McCulloch (the “Appellants”) only.

[4] On July 13, 2006, the Board wrote to the Appellants, the Licence Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Licence Holder and the Director of the appeals. The Board also requested the

Director provide the Board with a copy of the records (the “Record”) relating to these appeals, and that the Participants provide available dates for a mediation meeting. On August 2, 2006, the Board received a copy of the Record from the Director, and on August 3, 2006 forwarded a copy to the Appellants and the Licence Holder.

[5] The Board was in the process of scheduling a mediation meeting, when on July 31, 2006, the Board received an e-mail from the Director advising the Licence Holder had provided some of the technical information the Director had requested regarding their noncompliance with the monitoring and reporting requirements contained in the Licences. The Director advised that a review of the technical information should be completed by mid-September, and that the Director would provide a status report at that time. On August 1, 2006, the Board asked the Appellants for their comments on whether a follow up mediation should take place after the Director’s review is complete, and in response the Appellants provided their schedules, and the Director advised that it would be preferable to wait until the technical review was complete.

[6] On August 24, 2006, the Board requested the Director provide a status report with respect to the technical review, and that the Director and Licence Holder provide their dates for a mediation meeting.

[7] The Board subsequently received a status report from the Director on August 29, 2006, advising the technical information was now complete, and requesting the Board assist the Director by facilitating an information meeting with the Participants and Mr. Warner so that the Director could provide the results of the technical review and Participants could communicate their respective concerns. The Board granted the Director’s request and scheduled the information meeting for September 22, 2006, to be facilitated by the Board’s General Counsel.

[8] In concluding the information meeting on September 22, 2006, and in consultation with the Participants and Mr. Warner, the Director issued a letter at the information meeting, stating in part:

¹ *McCulloch et al. v. Director, Southern Region, Regional Services, Alberta Environment* re: AAA Cattle Company Ltd. (25 November 2005), Appeal Nos. 02-079 and 02-080-R (A.E.A.B.).

“Further to our meeting of September 22, 2006, attended by the participants [and Mr. Warner]...this is to advise of the Director’s decision after consultation with the participants [and Mr. Warner] in attendance and after review of the material provided by AAA Cattle....The Director is satisfied that AAA Cattle has, to date, met the requirements of Ministerial Order 28/2005....AAA Cattle may commence production under Licence No. 00188451-00-00 on October 23, 2006....”

[9] The Board wrote to the Participants on September 25, 2006 advising it would like to proceed with the appeals. The Participants were requested to advise the Board if they wished to proceed to a mediation meeting, and to provide their available dates to the Board by October 4, 2006.

[10] On October 4, 2006, the Board received letters from the Director and the Licence Holder advising that given the outcome of the September 22, 2006 meeting, they did not feel there is a need for a mediation meeting. They requested the Board set up a process to determine if it has jurisdiction to deal with the appeals. The Appellants advised via a telephone call to the Board on October 5, 2006 that they did not believe further mediation is necessary. On October 5, 2006, in response to the Appellants, the Board requested they advise if they wished to proceed with a preliminary meeting to determine the Board’s jurisdiction to hear their appeals.

[11] On October 10, 2006, Mr. Warner requested additional information referenced in the Director’s September 22, 2006 letter. The Board forwarded the request to the Director requesting she provide it to Board, along with an updated Record by October 27, 2006, and requested the Appellants advise the Board by November 13, 2006 if they wished to proceed with their appeals. The Director provided the information requested on October 16, 2006 and the Board forwarded to the Appellants and Mr. Warner, and requested a response regarding their position by November 13, 2006.

[12] On November 13, 2006, the Board received a letter from the Appellants advising that they were prepared to withdraw their appeals “...with the understanding that an appeal may be filed with this Board if warranted in future.” The Board advised the Appellants on November 15, 2006, that the Board “...cannot not give assurance that an appeal will be accepted in the future regarding the current matters before the Board. Should Alberta Environment make future decisions respecting AAA Cattle, Ms. McCulloch and Mr. Kelk may be able to file an appeal at

that time, and the Board will make a decision whether to accept the appeal.” The Board also asked the Appellants what they would like to do with their appeals by November 22, 2006.

[13] On November 20, 2006, the Board received an e-mail from the Appellants withdrawing their appeals. The November 20, 2006 e-mail stated:

“...please accept this e-mail as notification that Ms. McCulloch and Mr. Kelk withdraw appeals (06-055 and 06-056)....”

II. DECISION

[14] Pursuant to section 95(7) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12, and based on the withdrawal of the appeals by the Appellants, the Board hereby discontinues its proceedings in Appeal Nos. 06-055 and 06-056 and closes its file.

Dated on January 3, 2007, at Edmonton, Alberta.



Steve E. Hrudehy, F.R.S.C., P.Eng
Chair