

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – July 30, 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-

IN THE MATTER OF an appeal filed by Roxanne Walsh with
respect to *Environmental Protection and Enhancement Act*
Amending Approval No. 1242-01-05 issued to the Town of Turner
Valley by the Director, Southern Region, Regional Services,
Alberta Environment.

Cite as: Intervenor Decision: *Walsh v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Town of Turner Valley* (30 July 2007), Appeal No. 06-071-ID2 (A.E.A.B.).

BEFORE:

Dr. Steve E. Hrudehy, Chair,
Mr. Ron V. Peiluck, Vice Chair, and
Mr. Alex G. MacWilliam, Board Member.

SUBMISSIONS FROM:

Appellant: Ms. Roxanne Walsh.

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

Approval Holder: Town of Turner Valley, represented by Mr.
Hugh Ham and Ms. Bonnie Anderson,
Municipal Counsellors.

Intervenors: Ms. Linda Abrams and Ms. Sue Williamson.

EXECUTIVE SUMMARY

Alberta Environment issued an Amending Approval to the Town of Turner Valley authorizing the construction, operation, and reclamation of a waterworks system. Specifically, the Amending Approval allows for the construction of a raw water storage reservoir. The raw water storage reservoir will supply the Town's potable water treatment plant, which provides the municipal water supply to the Town's residents.

The Environmental Appeals Board scheduled a hearing of the appeal for June 21, 2007, and in response to the Board's advertisement notifying the public of the hearing, the Board received intervenor requests from Ms. Linda Abrams and Ms. Sue Williamson.

The Board denied the intervenor requests. In her submission, Ms. Abrams did not indicate any arguments that related to the specific issues identified by the Board that could not be presented by the appellant. The intervenor request from Ms. Williamson was denied because the evidence she provided in her application could also be presented by the approval holder.

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I. BACKGROUND

[1] On September 8, 2006, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Amending Approval No. 1242-01-05 (the “Amending Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) to the Town of Turner Valley (the “Approval Holder” or the “Town”) authorizing the construction, operation, and reclamation of a waterworks system for the Town of Turner Valley, Alberta. Specifically, the Amending Approval allows for the construction of a raw water storage reservoir (the “Reservoir”). The Reservoir will supply the Town’s potable water treatment plant, which provides the municipal water supply to the Town’s residents.

[2] On October 13 and 17, 2006, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Ms. Roxanne Walsh (the “Appellant”) and Ms. Linda Abrams¹ appealing the Amending Approval.

[3] On October 13 and 23, 2006, the Board wrote to the Appellant, the Approval Holder and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the record (the “Record”) relating to these appeals, and that the Participants provide available dates for a mediation meeting, preliminary meeting, or hearing.

[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 been the subject of a hearing or review under their respective legislation. Both boards responded in the negative. The Board received a copy of the Record from the Director on November 20, 2006, and on November 22, 2006, copies were forwarded to the Appellants and the Approval Holder.

¹ A Preliminary Meeting was held on February 8, 2007, to hear arguments on a number of preliminary matters, including whether Ms. Abrams’ appeal was valid. After hearing the submissions from the parties and Ms. Abrams, the Board dismissed the appeal of Ms. Abrams for not being directly affected and for filing her Notice of Appeal after the deadline. See: Preliminary Motions: *Walsh and Abrams v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Town of Turner Valley* (2 May 2007), Appeal Nos. 06-071 and 072-ID1 (A.E.A.B.).

[5] The Board held a Preliminary Meeting on February 8, 2007, to determine a number of preliminary matters.² The Board's decision was released on May 2, 2007.³

[6] The Board scheduled the Hearing for June 21, 2007, at Black Diamond, Alberta. In response to the Board's advertisement notifying the public about the Hearing, the Board received an intervenor request from Ms. Linda Abrams on May 16, 2007, and on June 1, 2007, it received an intervenor request from Ms. Sue Williamson.

[7] The Board requested the Parties provide submissions on the intervenor requests. Submissions were received June 5 to 7, 2007, and from June 11 to 18, 2007.

[8] On June 6, 2007, the Board notified the Parties that the Hearing for June 21, 2007, was adjourned, and instead, the Board held another Preliminary Meeting to deal with issues raised by counsel for the Approval Holder.⁴ At the June 21, 2007 Preliminary Meeting, the

² The matters to be decided at the February 8, 2007 Preliminary Meeting were:

1. the Stay request filed by Ms. Walsh;
2. Ms. Graham's motion of October 27, 2006, that Ms. Abrams did not file a Statement of Concern;
3. whether Ms. Abrams' appeal was filed late (see the Board's letter of October 23, 2006);
4. Ms. Graham's motion of October 27, 2006, that the issues stated in Ms. Abrams' Notice of Appeal are not related to the current Amending Approval before the Board, that these issues would be the subject of a separate application to the Director for an approval, and that such an application for an approval has not been filed with Alberta Environment;
5. Ms. Anderson's motion of November 9, 2006, that an Amending Approval may not have been required, rendering the appeals and stay issue moot;
6. Ms. Anderson's motions of November 14, 2006, regarding the standing of Ms. Walsh to bring a stay application;
7. Ms. Anderson's motion of November 14, 2006, regarding the status of the Statement of Concern which should have been filed by Ms. Walsh;
8. Ms. Anderson's motion of November 14, 2006, regarding the request that security be posted by Ms. Walsh to indemnify the Town against losses attributed to any delay;
9. Ms. Anderson's motion of November 17, 2006, regarding the jurisdiction of Ms. Walsh to file a Notice of Appeal;
10. Ms. Anderson's motion of November 17, 2006, regarding the jurisdiction of Ms. Abrams to file a Notice of Appeal; and
11. the issues to be heard at a hearing should one be heard.

³ See: Preliminary Motions: *Walsh and Abrams v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Town of Turner Valley* (2 May 2007), Appeal Nos. 06-071 and 072-ID1 (A.E.A.B.).

⁴ The matters dealt with at the June 21, 2007 Preliminary Meeting were:

1. Length of the Hearing,
2. Date for Hearing,
3. Submissions Filing for the Hearing,

Parties and Board discussed alternative dates to hold the hearing, and a tentative date was scheduled for November 13 and 14, 2007. The Board provided its responses to the preliminary matters at the Preliminary Meeting and provided written confirmation of the responses to the Parties on June 29, 2007. The Board instructed that the matter of the intervenor requests would not be addressed at that Preliminary Meeting.

II. SUBMISSIONS

A. Intervenors

1. Ms. Abrams

[9] Ms. Abrams requested that she be allowed to intervene at the Hearing because she owns property along the Sheep River, downstream of the Reservoir. She explained the groundwater well on her property is shallow, with the well head about 20 feet below the river.

[10] Ms. Abrams also referenced the information she provided at the February 8, 2007 Preliminary Meeting.⁵

[11] Ms. Abrams also questioned whether there would be an opportunity to discuss the impact of withdrawing 20,000,000 to 40,000,000 gallons of water to fill the Reservoir on the Sheep River and associated aquifers.

[12] Ms. Abrams explained the Sheep River is a protected river, and it is home to protected and threatened species of trout.

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4. Issues for the Hearing,
 5. Cross Examination,
 6. Pre-Meeting of Experts,
 7. Document Production/Access to Information,
 8. Witness,
 9. Stay Application,
 10. Mr. Ham's Letters of June 1 and June 5, 2007, and
 11. Inquiry vs. Appeal.

⁵ See: Preliminary Motions: *Walsh and Abrams v. Director, Southern Region, Regional Services, Alberta*

2. Ms. Williamson

[13] Ms. Williamson stated that, based on the Alberta Environment website, it was her understanding that the Approval Holder has always met the Alberta Environment drinking water standards for potable water. She stated Alberta Environment set the standards which the Town of Turner Valley has met and will presumably continue to meet with the Reservoir.

[14] Ms. Williamson suggested that, if Alberta Environment had concerns about the drinking water quality from the reservoir, then "...perhaps the standards, or the parameters for testing, need to be expanded to meet the needs of a community such as Turner Valley, which obviously has been left with a footprint of possible contamination from the oil and gas activity which has in the past occurred and is still occurring in the area."⁶

[15] Ms. Williamson explained she trusts the expertise of the Approval Holder's consultants and the checks established by Alberta Environment to provide safe drinking water. Ms. Williamson argued that, although the Approval Holder should do its best to construct the highest quality reservoir, it is the testing of the water just prior to it entering the residential tap water system that is important, and Alberta Environment and the regional health authority need to provide the necessary regulations for testing the water to ensure safe, secure drinking water.

[16] Ms. Williamson explained she was not asking to make a verbal presentation at the Hearing, but she wanted her comments noted by the Board.

B. Appellant

[17] The Appellant understood that Ms. Abrams would not provide evidence that repeated or duplicated evidence presented by the Appellant. The Appellant believed Ms. Abrams' evidence would assist the Board in making its decision. The Appellant stated the Ms. Abrams has a tangible interest in the subject matter of the appeal as it relates to the impact of the Reservoir on the environment. The Appellant submitted that adding one more person to the

Environment, re: Town of Turner Valley (2 May 2007), Appeal Nos. 06-071 and 072-ID1 (A.E.A.B.).

⁶ Ms. Sue Williamson's letter, received June 1, 2007.

Hearing would not cause unnecessary delay and that Ms. Abrams' contribution would be valuable.

[18] The Appellant did not have an issue with Ms. Sue Williamson being considered for an intervenor, even though the intervenor request was filed past the deadline. However, the Appellant wanted clarification that the intervenor request was not being filed on behalf of Mr. Barry Williamson, because Mr. Williamson is a Town Counselor for the Approval Holder and is therefore already a party to the appeal and is represented by counsel.

C. Approval Holder

[19] The Approval Holder submitted that Ms. Abrams' participation in the Hearing would not materially assist the Board. The Approval Holder argued that the evidence and testimony provided by Ms. Abrams confirms that "...Ms. Abrams is not an expert, has not retained an expert, and has no special qualifications, expertise or evidence which might appreciably assist the board..."⁷ The Approval Holder argued Ms. Abrams had not submitted any relevant information and it was not reasonable to expect that she would or that she would effectively cross examine witnesses.

[20] The Approval Holder stated that Ms. Abrams' statement that she owns land located along the Sheep River is not relevant to the appeal or the Amending Approval. The Approval Holder noted that Ms. Abrams does not live in Turner Valley nor receive water from the Town of Turner Valley's waterworks system. The Approval Holder referred the Board to its submission for the February 8, 2007 Preliminary Meeting regarding directly affected.⁸

[21] The Approval Holder argued that Ms. Abrams' participation in the Hearing would unnecessarily delay the appeal, and the hearing process would have to be reformulated.

[22] The Approval Holder argued that Ms. Abrams' position is clearly that of the Appellant, and Ms. Abrams' evidence would duplicate that of the Appellant.

⁷ Approval Holder's submission, dated June 6, 2007, at page 4.

⁸ See: Preliminary Motions: *Walsh and Abrams v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Town of Turner Valley* (2 May 2007), Appeal Nos. 06-071 and 072-ID1 (A.E.A.B.).

[23] The Approval Holder requested that Ms. Abrams not be allowed to participate in the Hearing, but if the Board accepted Ms. Abrams as an intervenor, her participation should be limited to a written submission of the information contained in her intervenor application.

[24] The Approval Holder asked the Board to accept Ms. Williamson's intervenor request and that Ms. Williamson be allowed to participate on the same terms as Ms. Abrams, if the Board accepts Ms. Abrams as an intervenor.

D. Director

[25] The Director did not oppose the intervenor requests. The Director stated that Ms. Abrams' email did not provide any information that her intervention was related to the issues as set by the Board, and Ms. Abrams concerns were not related to the Amending Approval. In the submission regarding Ms. Abrams, the Director recommended that, if Ms. Abrams was granted intervenor status, that her intervention be through a written submission only.

III. Discussion

A. Legislation

[26] Under section 95 of 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.”

[27] Section 9 of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93 (the “Regulation”), requires the Board to determine whether a person submitting a request to make submissions should be allowed to do so at the hearing. Section 9(2) and (3) of the Regulation provides:

“(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.”

[28] 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. Application

[29] The Board recognizes that both intervenors want to have confidence in the potable water supply provided to the residents of the Town of Turner Valley and they wanted the Board to hear their concerns and views of the issues. The Board has read their submissions, and in the case of Ms. Abrams, the Board also heard her concerns at the February 8, 2007 Preliminary Meeting.

[30] The concerns expressed by Ms. Abrams regarding the quality of the water in the Reservoir are the same as those expressed by the Appellant. As a result, the Board does not believe Ms. Abrams would bring any new evidence to the Hearing that the Appellant would be unable to provide, and therefore, Ms. Abrams’ intervenor request is denied.

[31] Ms. Abrams’ concern expressed at the February Preliminary Meeting primarily related to the possibility of the Town of Turner Valley waterworks being included as part of a regional water supply to provide water to the Town of Black Diamond, where Ms. Abrams owns

a business. At this point in time, the amalgamation of the water resources is speculative, even though the Board notes the ongoing discussions in the area regarding amalgamation of the two communities. If the Town of Turner Valley starts to supply potable water to Black Diamond residents, the existing approval would have to be amended, and with such an amendment, the Director should receive Statements of Concern and a new appeal process would then apply.

[32] Ms. Abrams also raised the issue of the effect of withdrawing water from the Sheep River, a protected river, to fill the Reservoir and the possible effect on the trout species in the river. The quantity of water that the Town will remove from the Sheep River and its possible impact on the Sheep River are not related to the Amending Approval. The Board's jurisdiction in this appeal is limited to the conditions in the Amending Approval. The Board cannot conduct a general inquiry into the broad impacts of the water treatment facility; the Board is limited to hearing an appeal of the Amending Approval.

[33] Although the Board cannot grant Ms. Abrams intervenor status, the Appellant can include Ms. Abrams as part of her panel at the Hearing, if she wishes, or the Appellant can have Ms. Abrams assist in the preparation and presentation of the Appellant's submissions and arguments. However, Ms. Abrams' participation must be focused on the issues as identified by the Board in its May 2, 2007 decision. Ms. Abrams cannot provide evidence on her own issues, and if other issues are raised, they cannot be considered by the Board when preparing its recommendations.

[34] Ms. Williamson filed her intervenor request one day after the deadline. However, none of the Parties took issue with the late filed request.

[35] Ms. Williamson stated that she did not want to make an oral presentation at the Hearing but only wanted the Board to hear her views. Ms. Williamson does want a safe, secure water supply and has faith in the experts retained by the Approval Holder to build a safe Reservoir, and she believes Alberta Environment and the regional health authority will ensure the water that is provided to the residents of Turner Valley is safe. These are issues that the Board anticipates the Approval Holder will present evidence and arguments on to demonstrate that the appropriate steps are being taken and will be taken to ensure the potable water provided to the residents is safe and secure. Therefore, the Board does not believe Ms. Williamson would

provide any different evidence from that of the Approval Holder, and therefore, Ms. Williamson's intervenor request is denied. The Approval Holder can include Ms. Williamson as part of their panel at the Hearing, if it so desires, but her evidence must be limited to the issues identified for the Hearing.

IV. DECISION

[36] Pursuant to section 95(6) of the *Environmental Protection and Enhancement Act*, the Board concludes that the intervenor applications of Ms. Linda Abrams and Ms. Sue Williamson are denied, because the evidence they intended to bring forward that applied to the issues to be heard at the Hearing can be adequately addressed by the Parties.

Dated on July 30, 2007, at Edmonton, Alberta.

“original signed by”

Steve E. Hruddy, FRSC, PEng
Chair

“original signed by”

Ron V. Peiluck
Vice-Chair

“original signed by”

Alex G. MacWilliam
Board Member