



ALBERTA
ENVIRONMENTAL APPEALS BOARD

July 26, 2012

Via E-Mail or Mail

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Mr. David and Ms. Fran Geremia
[REDACTED]

Dear Ladies and Gentlemen:

**Re: Peter deGraaf and deGraaf Farming Company Ltd./Water Act Enforcement
Order No. WA-EO-2012/01-SR/Our File No.: EAB 12-002**

This is the Board's decision regarding the intervenor applications filed in this appeal.

The Board has reviewed the intervenor applications of Mr. Gerald and Ms. Diana Geremia, Mr. David and Ms. Fran Geremia, and the Bow River Irrigation District ("BRID"), and the response submissions provided by Mr. Peter deGraaf and deGraaf Farming Company Ltd. (the "Appellants") and Alberta Environment and Sustainable Resource Development (the "Director"). The Appellants and Director acknowledged the Geremias are directly affected and should be granted intervenor status. The Appellants and Director had no issue with the BRID being granted intervenor status.

Under section 95 of EPEA, the Board can determine who can make representations before it. Section 95(6) states:

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“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.”

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 representation should be allowed to do so at the hearing. Sections 9(2) and (3) of the Regulation provide:

- “(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.”

Rule 14 of the Board’s Rules of Practice outlines the factors the Board considers in an intervenor application.¹

The Geremias requested to participate as intervenors because they own property adjacent to the Appellants. They stated their lands and their ability to use their lands as part of their farming operations are impacted by the Appellants’ activity. In reviewing the Director’s record, it is clear the Geremias are adjacent landowners, and the area the Director states is a wetland extends from the Appellants’ property to the Geremias. Therefore, it is reasonable to expect any impact to the site that is the issue in the appeal would also impact the Geremias. It is evident the Geremias have a genuine interest in the subject matter of the appeal. The Geremias are in a position to have first hand knowledge about the site that is relevant to the appeal and that may be of assistance to the Board in preparing its Report and Recommendations for the Minister. Further, the Board is of the view that the Geremias’ evidence will not be duplicative of the Director’s or Appellants’ evidence. Therefore, the Board grants full intervenor status to Mr. Gerald and Ms. Diana Geremia and Mr. David and Ms. Fran Geremia.

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¹ Rule 14 provides:

“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 either likely to assist the appellant or respondent;
- the intervention will not repeat or duplicate evidence presented by other parties....”

The Appellants raised the possibility that some of the water issues raised in the Enforcement Order are a result of water seeping from the BRID works. This suggests to the Board that the BRID clearly has an interest in the outcome of the appeal hearing. The principles of natural justice require that the BRID has the opportunity to participate in the appeal to address evidence and respond to arguments relating to the question of whether it is responsible for contributing to water issues raised in the Enforcement Order. It is clear the BRID may have information it could bring forward regarding its works and whether there is possible seepage from the works that could impact the water issues. Its evidence will not duplicate that presented by the Appellants or Director, and it would be beneficial to the Board in making its recommendations. Therefore, the Board grants full intervenor status to the BRID.

The Board grants intervenor status to Mr. Gerald and Ms. Diana Geremia, Mr. David and Ms. Fran Geremia, and the BRID (collectively, the "Intervenors"). If the hearing is scheduled, the Board will provide a schedule for the Intervenors, Appellants, and Director to provide submissions on the following issues:

1. The Lands, (SE 19-13-17-W4M) or any portion of the Lands, do not constitute "wetlands" or a water body within the meaning of the definition section of the *Water Act*, R.S.A. 2000, c. W-3.
2. Any activity the Appellants have engaged in or on the Lands do not require an approval in accordance with the definition of an activity as defined by the *Water Act*, nor or required an approval pursuant to the *Water Act*.
3. Neither of the Appellants is a 'person responsible' for any wetland works as defined by the *Water Act* or the Water (Ministerial) Regulation, Alta. Reg. 205/98.
4. The Appellants maintain the Lands are not wetlands subject to the *Water Act* oversight or an approval.
5. In the alternative, if the Lands, or some portion of them, comprise wetlands or are subject to the *Water Act* which would require an approval, which is not admitted, the Appellants claim the terms of the Enforcement Order are unreasonable and that none of the conditions as referenced in paragraph 2 of the Enforcement Order should be of any force or effect.

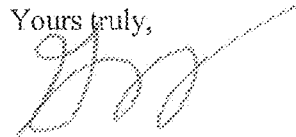
6. In the further alternative, the Appellants claim that if any of the lands, or any portion thereof, constitute a wetland, or are subject to the *Water Act*, or require an approval pursuant to section 36(1) of the *Water Act*, which is not admitted, then the Appellants, or either of them, should be able to pursue a wetland mitigation project on alternative lands on terms consistent with a wetland restoration plan and satisfactory to the Appellants and the Director.
7. The Appellants appeal the terms of the Enforcement Order and the Enforcement Order itself pursuant to section 115 of the *Water Act*, and claim the time for prosecuting this alleged offense is beyond the 2 year limitation referenced in section 141 of the *Water Act*.

At the hearing, the Intervenors will be given time to provide opening comments, direct evidence, cross-examine the Appellants, and provide closing comments. They will be subject to cross-examination by the Appellants, and the Board will also ask questions regarding their submissions.

If any of the participants require full reasons for the Board's decision on these intervenor applications, please notify the Board and full reasons will be provided. If no request is received, these are the only reasons that will be provided.

Please do not hesitate to contact me if you have any questions. You may call toll-free by first dialing 310-0000, followed by 780-427-4179, or e-mail gilbert.vannes@gov.ab.ca.

Yours truly,



Gilbert Van Nes
General Counsel and
Settlement Officer