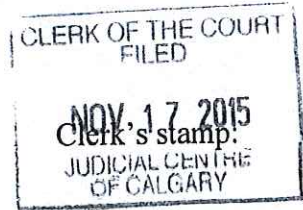


[Rule 3.8]



COURT FILE NUMBER 1501 12239

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT(S) PALMER RANCH (1984) LTD.

RESPONDENT(S) ALBERTA ENVIRONMENTAL APPEALS BOARD,  
HER MAJESTY THE QUEEN AS REPRESENTED  
BY THE MINISTER OF JUSTICE AND SOLITOR  
GENERAL

DOCUMENT ORIGINATING APPLICATION FOR JUDICIAL  
REVIEW

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

M. A. Bell  
Barrister & Solicitor  
278, 1811 4<sup>th</sup> Street S.W.  
Calgary, Ab  
T2S 1W2  
403 228 0377  
Email: mbell@waterrights.net

**NOTICE TO RESPONDENT(S) Environmental Appeals Board and Minister of Justice and Solicitor General**

This application is made against you. You are a respondent.

You have the right to state your side of the matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: January 15<sup>th</sup>, 2016  
Time: 10:00 a.m.  
Where: Calgary Court Centre, 601 – 5<sup>th</sup> Street SW, Calgary, AB T2P 5P7  
Before: Justice in Motions Court

Go to the end of this document to see what you can do and when you must do it.

**Basis for this claim:**

1. In 2000, Palmer Ranch (1984) Ltd. (the Applicant) applied for a water license to divert and use water on its land. The application was deemed complete in 2002 after public notice to which there were no objections. The Director issued her decision in 2014 significantly reducing the amount of water applied for. The Applicant appealed that decision of the Director to the Environmental Appeals Board (the EAB) due primarily to the significant reduction in the volume (the Decision). The appeal process included a mediation process at which a memorandum or letter of intent to demonstrate use of the entire volume of water was discussed and within in which deadlines were missed. Prior to consideration of the appeal from the decision on volume on its merits, the EAB dismissed the appeal refusing to grant an extension of time requested by the applicant to address new matters introduced by the Director not previously raised in the appeal and in doing so the EAB erred in jurisdiction or law, or otherwise made unreasonable findings in the Decision to dismiss including:

- a) The EAB failed to apply the principles of natural justice to the procedure for written submissions as required by s 94 (2) of the Environmental Protection and Enhancement Act, RSA 2000 and exceeded its jurisdiction by
  - i) allowing the Director to introduce new issues and new material two days before the written submission and affidavit was required to be filed by the Applicant without permitting the Applicant the opportunity to respond.
  - ii) allowing the Director to raise the issue of appurtenance which was not a matter set out in the Notice of Appeal nor had there been any notice in any discussion or correspondence with the Director over many months of negotiation and further allowing the Director to introduce into the record the Guideline on Appurtenance .
  - iii) failing to grant an extension or adjournment to allow the Applicant the opportunity to consider and reply to the matters raised by the late introduction of new issues including appurtenance, the definition of aquifer, the requirement for a pipeline, the easement all of which were indicated by the Director to be fundamental to the appeal as set out in the letter from the Director dated April 15<sup>th</sup>, 2015.
  - iv) failing to allow the Applicant to address the new matters and the issue of appurtenance in its affidavit in support if its application.
  - v) allowing the respondent Director to introduce the new issue of appurtenance in the Supplemental Record Index of Record without prior notice to the applicant contrary to the stated procedure of the EAB and the legitimate expectations of the Applicant.
  - vi) failing to identify the case the applicant had to meet regarding the issue of the easement and the pipeline which the Director stated were material to the appeal and counsel for the Director stated were not matters appropriately under appeal creating confusion respecting the matters under appeal;
  - vii) failing to allow time for the Applicant to address the issue of notification to the Director of any change to the Water Supply Agreement as being material to the appeal when it had not been previously raised as an issue in the appeal. The implications of the addition of this as a matter in the appeal denied the Applicant the opportunity to properly address the matter.
  - viii) failing to allow time for the Applicant to address the issue of fettering discretion;

- ix) failing to apply the *audi alteram partem* rule regarding the issues of appurtenance, the Guidelines Regarding Appurtenance, the pipeline and the easement which the Director advised two days prior to the due date for written submission were material to the Appeal.
- x) allowing the mediation process to adversely impact on the rules of natural justice required for the appeal and granting the application of the Director to dismiss the appeal for failing to meet the deadline which was as a result of the Director's actions.
- xi) Considering the deadlines set between the first mediation and the second scheduled mediation to be dates missed when the understanding and agreement made at the first mediation was that the Applicant had until the second mediation date to negotiate a letter of intent or memorandum of understanding.
- xii) providing a general rule regarding deadlines without giving appropriate consideration of the reasons for failing to meet a deadline contrary to the principles of natural justice and unreasonably fettering its discretion;
- xiii) failing to abide by the powers and duties of the Board set out in the Environmental Protection and Enhancement Act s 95 (2) (d) by not allowing additional information to be presented to the Board, that was not available to the Decision maker at the time the decision was made notwithstanding notice of it was given to the Board. The agreement requested by the Director and agreed to at the mediation to confirm the use of the amount of water applied for in the license, in the form of memorandum or letter of intent or agreement, was available for consideration by the Director and the Environmental Appeals Board but was not considered.
- xiv) failing to recognize the importance of the decision to the Applicant in respect of its rights and interests.
- xv) failing to recognize, due to closure of the Oldman River subbasin that the Applicant has no further opportunity to appeal or make an application respecting the rights interests and privileges applied for.

**Remedy sought:**

2. An Order in the nature of *certiorari* quashing the Decision of the Environmental Appeals Board rendering it void.
3. An Order in the nature of *mandamus* referring the matter to the Environmental Appeals Board to determine the matters under appeal and directing time for filing amended submission by the Applicant and a fair opportunity to address the matters under appeal.
4. An Order granting the Applicants costs; and
5. Such further or other Orders or Directions as this Honourable Court deems appropriate.

**Affidavit or other evidence to be used in support of this application:**

6. The Record of proceedings before the Board The Decision and reasons for the decision of the Alberta Environmental Appeals Board in the matter of Appeal to the Board no. 14-009-D.

7. The Affidavits of Tom Palmer
8. Such further and other materials as counsel may advise and this Honourable Court may allow.

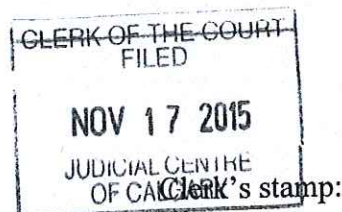
**Applicable Acts and regulations, and Guideline:**

9. The *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, the *Environmental Appeal Board Regulation*, AR 114/93, the *Water Act*, RSA 2000, c W-3, the *Alberta Rules of Court, Guidelines Regarding Appurtenance* April 23, 2014 and such other Acts and Regulations as counsel may advise and this Honourable Court may permit.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

Form 8  
[Rule 3.18]



COURT FILE NUMBER 1501 12239

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE Calgary

APPLICANT(S) PALMER RANCH (1984) LTD.

RESPONDENT(S) ALBERTA ENVIRONMENTAL APPEALS BOARD,  
HER MAJESTY THE QUEEN AS REPRESENTED  
BY THE MINISTER OF JUSTICE AND SOLITOR  
GENERAL

DOCUMENT NOTICE TO OBTAIN RECORD OF PROCEEDINGS

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT M. A. Bell  
Barrister & Solicitor  
278, 1811 4<sup>th</sup> Street S.W.  
Calgary, Ab  
T2S 1W2  
403 228 0377  
Email: mbell@waterrights.net

**NOTICE TO RESPONDENT(S) Environmental Appeals Board and Minister of Justice and Solicitor General**

**NOTICE TO THE ALBERTA ENVIRONMENTAL APPEALS BOARD**

**Requirement**

You are required to provide the following or an explanation as to why they, or any of them, cannot be provided:

- (i) the decision or written record of the decision or act that is the subject of the Originating Application for Judicial Review,
- (ii) the reasons given for the decision or act, if any,
- (iii) the document starting the proceeding,

- (iv) the evidence and exhibits filed with you, if any, and
- (v) anything else in your possession relevant to the decision or act.