

Action No.: 0801- 15729

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

WESTRIDGE UTILITIES INC.

Applicant

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA as represented by THE
MINISTER OF THE ENVIRONMENT, HER MAJESTY THE QUEEN IN RIGHT OF
ALBERTA as represented by THE ATTORNEY GENERAL and the REGIONAL
DIRECTOR, SOUTHERN REGION ALBERTA ENVIRONMENT**

Respondents

ORIGINATING NOTICE
PURSUANT TO PART 56.1 OF THE ALBERTA RULES OF COURT

**TO: HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA as represented by THE
MINISTER OF THE ENVIRONMENT and**

TO: REGIONAL DIRECTOR, SOUTHERN REGION ALBERTA ENVIRONMENT

TAKE NOTICE that an application will be made by Westridge Utilities Inc. ("WUI") on January 20, 2009 before the presiding Justice in Chambers, according to the practice of this Court, for:

1. Judicial review of the Decision 07-146-D (the "Decision") issued by the Environmental Appeal Board (the "EAB") on October 22, 2008; or,
2. In the alternative, an order directing the EAB to consider the Director's, Southern Region Alberta Environment, failure to reach a decision as a

decision in the negative, and to reconsider the Applicant's appeal to on that basis.

FURTHER TAKE NOTICE that the grounds upon which the application is made are as follows:

3. WUI filed an application for water diversion with Alberta Environment on April 8, 2004 (the "Diversion Application"), which was received by Alberta Environment on or about that date;
4. The Diversion application was in all respects complete as per the requirements of the *Water Act* R.S.A. c. W-3 (the "Act") and in all respects met the requirements for the issuance of a priority number and a license;
5. The Director, Southern Region Alberta Environment failed or neglected to issue a priority number or water license to WUI;
6. On February 29, 2008 WUI filed an appeal in respect of the Director's election to refuse to issue a diversion license;
7. By letter dated March 7, 2008 the EAB purported to bring a Preliminary Motion to determine if the WUI Appeal was properly before the EAB and whether it was filed beyond the statutory time limit;
8. The Preliminary Motion was heard on August 25th 2008 and the Decision was issued on October 22, 2008;
9. In the Decision the EAB made errors of law and jurisdiction as are set out in paragraphs 10-14 below;
10. The EAB erred in jurisdiction in concluding that it was permitted to bring a Preliminary Motion to determine whether the WUI appeal should be heard;
11. The EAB erred in law and jurisdiction in denying WUI the hearing of its appeal;

12. The EAB erred in law and jurisdiction in deciding that jurisdiction was not lost due to bias;
13. The EAB erred in law in determining that the appeal filed by WUI did not meet the requirements of section 115 of the *Act*;
14. The EAB erred in law in determining that there was no decision that was capable of being appealed; and,
15. The EAB erred in law in determining that WUI was not entitled to a priority number and diversion license.

FURTHER TAKE NOTICE that in support of the Application, reference shall be made to the following:

1. Part 56.1 of the *Alberta Rules of Court*;
2. The *Water Act*, R.S.A 2000 c. W-3 specifically, sections 29, 51, 115 and 166;
3. The Alberta Environment Groundwater Evaluation Guideline;
4. Part 4 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;
5. Portions of EAB Decision 07-146-D; and,
6. Such further material as may be advised and permitted by this Court.

DATED at the City of Calgary, in the Province of Alberta, this 12th day of December, 2008.

ISSUED out of the Office of the Clerk of the Courts of Queen's Bench of Alberta, Judicial District of Calgary, this 12th day of December, 2008.

Clerk of the Court

This Originating Notice is taken out by Thackray Burgess, counsel for the Applicant, whose address for service is 1900, 736 - 6th Avenue S.W., Calgary, Alberta, T2P 3T7.

NOTICE TO THE RESPONDENTS:

- TO: HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA as represented by THE MINISTER OF THE ENVIRONMENT;
- TO: HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA as represented by THE ATTORNEY GENERAL
- TO: REGIONAL DIRECTOR, SOUTHERN REGION ALBERTA ENVIRONMENT

If you do not attend in person or by counsel at the time and place stated in this Originating Notice, the Order(s) asked for may be granted in your absence or such Order(s) may be made or proceedings taken as according to the practice of the Court, without further notice to you.

You are required forthwith after service of this notice to return to the clerk of the Court of Queen's Bench at the Calgary Courts Centre the decision to which this notice refers and reasons, if any, together with the process commencing the proceedings, the evidence and all exhibits filed, if any, and all things touching the matter as fully and entirely as they remain in your custody, together with this notice.

Date: December 12, 2008

To A.B. Queen's Bench Justice at Calgary Courts Centre

Signed:

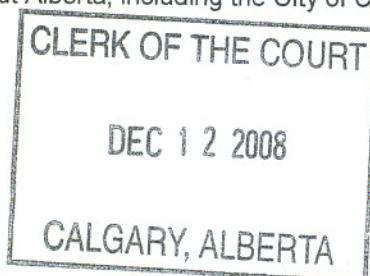

J. Gruber, Solicitors for the Applicant

This Originating Notice is issued by Thackray Burgess, Counsel for the Applicant, address for service is in the care of the said Counsel at:

Thackray Burgess
Barristers and Solicitors
1900, 736 - 6th Avenue S.W.
Calgary, Alberta
T2P 3T7

The Applicant is a corporation with offices in the City of Calgary, in the Province of Alberta.

The Respondents are public officials whose agency has offices throughout Alberta, including the City of Calgary.



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PURSUANT TO PART 56.1 OF THE
ALBERTA RULES OF COURT**

THACKRAY BURGESS
BARRISTERS & SOLICITORS

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Attention: John Gruber

File # 1612-1