



ALBERTA
ENVIRONMENTAL APPEALS BOARD

September 28, 2023

Via E-Mail

To Distribution List

Dear Ladies and Gentlemen:

**Re: Mountain Ash Limited Partnership/*Water Act* Approval No. DAUT0012841
Our File Nos.: EAB 23-045-052 & 23-056-057**

The Board acknowledges receipt of the attached letter dated September 25, 2023, from Mr. Fluker. On behalf of the Bighill Creek Preservation Society (“BCPS”), Mr. Fluker is requesting a stay pending the resolution of these appeals.

The Board has reviewed the submission for a stay and notes that it does not include arguments regarding the directly affected status of the BCPS. When the Board considers granting a stay at the request of an appellant, it must consider the directly affected status of the appellant. This is because the Board may only grant a stay at the request of a party to an appeal. Section 97(2) of the *Environmental Protection and Enhancement Act* provides: “The Board may, on the application of a party to a proceeding before the Board, stay a decision in respect of which a notice of appeal has been submitted.” (Emphasis added.)

When the Board considers granting this stay, the Board will consider the following matters:

1. Is BCPS directly affected by *Water Act* Approval DAUT0012841 issued to Mountain Ash Limited Partnership? As stated, this question is asked because the Board can only grant a stay where it is requested by someone who is directly affected. Please note the Board makes its own determination on directly affected independent of any decision made by the Director.

Please note that if the Board finds that BCPS is not directly affected, the Board may dismiss the appeal. Therefore, it is important that BCPS fully answer the question on how they are directly affected by the Approval. In responding to this question, the parties should have regard to: Standing Decision: *Jeans-Moline et al. v. Director, North Region, Regulatory Assurance Division, Alberta Environment and Parks, re: Canadian Carmelite Charitable Society Inc.* (1 June 2023), Appeal Nos. 21-025-026 and 22-001-034, 036-037-ID1 (A.E.A.B.), 2023 ABEAB 9 (attached).

2. What are the serious concerns raised by BCPS that should be heard by the Board?
3. Would BCPS suffer irreparable harm if the stay is refused?
4. Would BCPS suffer greater harm if the stay was refused than Mountain Ash Limited Partnership would suffer if the Board granted the stay, pending a decision of the Board?
5. Would the overall public interest warrant a stay?

Given the matters that the Board will consider, the Board will grant Mr. Fluker the opportunity to supplement his initial written submission before asking for comments from the other parties.

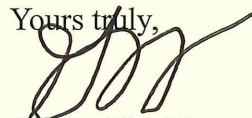
The Board would like to receive submissions as follows regarding the stay request:

- Mr. Fluker is requested to provide his supplemental written initial submission to the Board and other parties by **October 13, 2023**;
- the Other Appellants are permitted to file initial written submissions with the Board, with a copy to the other parties, by **October 13, 2023**, if they wish;
- Ms. Keehn and Ms. Finlay are requested to provide their response written submissions to the Board and the other parties by **October 27, 2023**;
- Mr. Fluker is requested to provide his rebuttal written submission to the Board and the other parties by **November 10, 2023**; and
- the Other Appellants are permitted to file rebuttal written submissions with the Board, with a copy to the other parties, by **November 10, 2023**, if they wish.

Once the Board has received and reviewed these submissions, the Board will proceed to make a decision on the stay request.

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialing 310-0000 followed by 780-427-6569 for Valerie Myrmo, Registrar of Appeals, and 780-427-7002 for Denise Black, Board Secretary. We can also be contacted via e-mail at valerie.myrmo@gov.ab.ca and denise.black@gov.ab.ca.

Yours truly,



Gilbert Van Nes
General Counsel

Att.

The information requested is necessary to allow the Environmental Appeals Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of these appeals. The information you provide will be considered a public record.

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Distribution List
Mountain Ash Limited Partnership
EAB 23-045-052 & 23-056-057

<p>Appellant 23-045 Mr. Tom Foss 48 Wildwood Drive SW Calgary, AB T3C 3C5 tom.foss@rbc.com</p> <p>Appellant 23-046 Mr. Gerry Bietz President Bighill Creek Preservation Society 40020 Retreat Road Rocky View County, AB T4C 2W4 ghbietz@xplomet.ca</p> <p>Representing Appellant 23-046 Mr. Shaun Fluker University of Calgary Public Interest Law Clinic Room 4340 Murray Fraser Hall 2500 University Drive NW Calgary, AB T2N 1N4 sfluker@ucalgary.ca</p> <p>Appellant 23-047 Ms. Kennedy Halvorson Alberta Wilderness Association 455 – 12 Street NW Calgary, AB T2N 1Y9 cs1@abwild.ca</p> <p>Appellant 23-048 Mr. Wendell Koning 1937 Green Ridge Road SW Calgary, AB T3B 4B2 wendell.koning@gmail.com</p>	<p>Appellant 23-049 Mr. Tako Koning 1419 – 4A Street NW Calgary, AB T2M 3B1 tako.koning@gmail.com</p> <p>Appellant 23-050 Mr. Keith Koebisch 271011 Range Road 40 Rocky View County, AB T4C 3A2 keithkoebisch@gmail.com</p> <p>Appellant 23-051 Mr. Harry Hodgson 265201 Range Road 35 Rocky View County, AB T4C 3A2 hhodgson149@gmail.com</p> <p>Appellant 23-052 Mr. Morley and Ms. Linda Kostecky 265094 Range Road 35 Rocky View County, AB T4C 3A2 morleymkostecky@gmail.com</p> <p>Appellant 23-056 Leah Pearce, Mark Pearce, Odin Pearce, and Mason Pearce 31 Big Hill Creek Estates Rocky View County, AB leah@mysticforge.ca</p> <p>Appellant 23-057 Muriel and Cornell Wynnobel 19 Big Hill Creek Estates Rocky View County, AB T4C 2X6 Whab1946@gmail.com</p>
<p>Representing Approval Holder Ms. Shauna Finlay Reynolds Mirth Richards & Farmer LLP 3200 Manulife Place 10180 – 101 Street Edmonton, AB T5J 3W8 sfinlay@rmrf.com</p> <p>Approval Holder Mr. Bruce Waterman Mr. Tige Brady Mountain Ash Limited Partnership 35181 Big Hill Springs Road Rocky View County, AB T4C 3A2 bruce@bgwaterman.ca tige.brady@telus.net</p>	<p>Representing Director, AEPA Ms. Shannon Keehn Environmental Law Section, Alberta Justice 8th Floor, Oxbridge Place 9820 – 106 Street Edmonton, AB T5K 2J6 shannon.keehn@gov.ab.ca environmental.law@gov.ab.ca</p> <p>Director, AEPA Mr. Craig Knaus Director, Regulatory Assurance Division South Alberta Environment and Protected Areas #303, 2938 – 11 Street NE Calgary, AB T2E 7L7 craig.knaus@gov.ab.ca environmental.law@gov.ab.ca</p>