



# PUBLIC LANDS APPEAL BOARD

306 Peace Hills Trust Tower  
10011 - 109 Street  
Edmonton, Alberta T5J 3S8  
Telephone: 780-427-6207  
Fax: 780-427-4693  
Email: PLAB@gov.ab.ca

2021 ABPLAB 10

June 23, 2021

## Via E-Mail

Mr. Jason Fimrite  
Mr. Dexter Gordey  
Gordeyville and Area Community  
Members Group  
Box 21, Site 12, RR1  
Sexsmith, AB T0H 3C0  
(Appellants)

Mr. Larry Nelson  
Alberta Justice and Solicitor General  
Environmental Law Section  
8<sup>th</sup> Floor, Oxbridge Place  
9820 – 106 Street  
Edmonton, AB T5K 2J6  
(Counsel for Director, AEP)

Mr. Bill McElhanney, Q.C.  
Ackroyd LLP  
1500 First Edmonton Place  
10665 Jasper Avenue NW  
Edmonton, AB T5J 3S9  
(Counsel for Appellants)

Mr. Mike Davison  
Saddle Hills Target Sports Association  
shtsboard@gmail.com  
(DML Holder)

Dear Gentlemen:

**Re: Decision 20-0025-ID2<sup>1</sup> - Saddle Hills Target Sports Association  
DML 200008/Our File No.: PLAB 20-0025**

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This is the Public Lands Appeal Board's response to the Director's April 23, 2021 letter in which the Director requested the opportunity to respond to the Appellants' rebuttal submission. The Director objected to references by the Appellants in its rebuttal submission to issues the Director submitted should have been included in the Appellants' initial submission.

The Director said the Appellants' submission regarding the applicability of a "majority test" was inappropriate for a rebuttal submission. In particular, the Director objected to paragraphs 23 to 26, which included commentary on decisions from the Alberta Utilities Commission and the Alberta Energy Regulator.

The Director noted the Director's February 26, 2021 letter to the Board referenced the Environmental Appeals Board's ("EAB") use of the "majority test" and the EAB's decision in *Jericho et al. v. Director, Southern Region, Regional Services, Alberta Environment, re: St. Mary River Irrigation District*.<sup>2</sup> The Director stated the Appellants should have anticipated the Director's arguments regarding the "majority test" and included a response in its initial submission.

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<sup>1</sup> *Gordeyville and Area Community Members Group v. Director, Industrial Charges Unit, Public Land Disposition Management Section, Alberta Environment and Parks, re: Saddle Hills Target Sports Association* (23 June 2021) Appeal No. 20-0025-ID2 (A.P.L.A.B.), 2021 ABPLAB 10.

<sup>2</sup> *Jericho et al. v. Director, Southern Region, Regional Services, Alberta Environment, re: St. Mary River Irrigation District* (4 November 2004), Appeal Nos. 03-145 and 03-154-D (A.E.A.B.).



Although the Board did not request submissions on this matter, the Appellants wrote to the Board on April 26, 2021, and objected to the consideration of the Director's request for time to respond to the Appellants' rebuttal submissions.

The Board must decide if the Appellants' references to other tribunal decisions and the "majority test" were inappropriate for a rebuttal submission, and if so, should the Director receive an additional two weeks to provide a response as requested.

The Board notes that strict evidence rules do not apply to the Board. The Board's purpose is to provide a summary of the arguments of the parties to an appeal and to provide the best possible advice to the Minister so that the Minister may make an informed decision on the appeal. In conducting the appeals process, the Board must abide by the rules of procedural fairness.

In the context of appeals before the Board, the general rule for rebuttals is that the purpose of an appellant's rebuttal is to "contradict or qualify new facts or issues raised"<sup>3</sup> by the Director. As the Director (or respondent) is entitled to know the case it has to meet, the appellant's rebuttal must only address items that could not have been reasonably anticipated when the appellant filed its initial submission.

When submitting a submission to the Board, the appellant is not required to anticipate every argument the Director may make. In most situations, the appellant may review the Director's Record to determine the arguments the Director is likely to make, but in a preliminary motion where the Director's Record is not available, the appellant cannot reasonably anticipate the Director's argument in advance. The appellant may only know for certainty the arguments the Director will rely on when those arguments are provided as a submission. The Board finds the Appellants could not have reasonably anticipated the "majority test" argument from the Director. The Board finds the Appellants' rebuttal to be appropriate where it responds to the Director's submissions on the "majority test" without relying on new evidence or case law.

The Board finds the Appellants' rebuttal is not appropriate where it introduces new evidence, such as decisions from the Alberta Utility Commission and the Alberta Energy Regulator. It would be procedurally unfair of the Board to accept the Appellants' reference to these decisions without providing the Director an opportunity to respond. As the Board has legislated timelines in which to hear appeals, and in order to move this appeal forward in a timely manner, the Board will not consider paragraphs 24, 25, and 26, of the Appellants' rebuttal submission. By rejecting these paragraphs, the Board ensures that procedural fairness is maintained, negating the need for additional submissions from the Director.

The Board did not consider paragraphs 24, 25, and 26, of the Appellants' rebuttal submission when issuing the decision regarding the Director's preliminary motion to dismiss the Appellants' Notice of Appeal for lack of standing.

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 780-427-6207, by e-mail at [PLAB@gov.ab.ca](mailto:PLAB@gov.ab.ca), or by fax at 780-427-4693.

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<sup>3</sup> John Sopinka and Sidney N. Lederman, *The Law of Evidence in Civil Cases* (Toronto: Butterworths, 1974), at page 517.

Yours truly,

A handwritten signature in black ink, appearing to read 'Gordon McClure', written in a cursive style.

Gordon McClure  
Board Chair and Appeals Coordinator  
Public Lands Appeal Board

Any information requested by the Public Lands Appeal Board is necessary to allow the 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 this appeal. The information you provide will be considered a public record.

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