

DECISION NOS. 2009-WIL-022(a) & (b)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

BETWEEN:	Jack Leggett	APPELLANT
AND:	Director, Fish and Wildlife	RESPONDENT
AND:	Freshwater Fisheries Society of BC	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board Alan Andison, Chair	
DATE:	Conducted by way of written submissions concluding on April 22, 2009	
APPEARING:	For the Appellant: David G. Perry, Counsel For the Respondent: Nancy E. Brown, Counsel	

PRELIMINARY DECISIONS: STAY APPLICATION AND APPELLANT'S STANDING

[1] Jack Leggett has appealed the April 9, 2009 decision of Tom Ethier, Director, Fish and Wildlife, Ministry of Environment (the "Ministry"), to issue a permit to possess and transport (the "Permit") live Kokanee salmon from a fish hatchery to Chimney Lake, located near Williams Lake, BC. The Permit was issued to the Freshwater Fisheries Society of BC (the "Society"), which seeks to stock Chimney Lake with Kokanee salmon for recreational anglers.

[2] In his Notice of Appeal, Mr. Leggett applied for a stay of the Permit, pending a decision by the Board on the merits of the appeal.

[3] By a letter dated April 15, 2009, the Director challenged Mr. Leggett's standing to appeal the Permit. The Director submits that Mr. Leggett is not a person affected by the Permit, and therefore, he has no standing under the *Wildlife Act* (the "Act") to bring the appeal.

[4] By a letter dated April 16, 2009, the Board requested written submissions from the parties regarding: 1) the issue of Mr. Leggett's standing to file an appeal of the Permit under sections 101(1) and 101.1 of the *Act*; and 2) the stay application.

[5] These preliminary matters were conducted by way of written submissions.

[6] The Society provided no submissions to the Board respecting these preliminary matters.

BACKGROUND

[7] The Permit is valid effective April 9, 2009 until July 31, 2009. The Permit forms part of Authorization No. 11060 Concerning The Movement of Live Fish in British Columbia, which also includes permission to transfer live fish within BC pursuant to the *Fishery (General) Regulation* under the federal *Fisheries Act*.

[8] In April 2008, Mr. Leggett on behalf of the Chimney Felker Lakes Landholders Association appealed a previous decision by the Director to issue a permit to possess and transport Kokanee salmon to Chimney Lake. That permit was issued to a Ministry employee. Mr. Leggett appealed on various grounds, including a concern that the Kokanee may spawn in the lake, thus competing with the rainbow trout population in Chimney Lake and invading downstream Felker Lake. He asked the Board to reverse the Director's decision.

[9] In June 2008, Mr. Leggett advised the Board that the Kokanee salmon had been transported to and deposited into Chimney Lake. In spite of this, Mr. Leggett requested that the Board hear his appeal.

[10] On July 16, 2008, the Board issued a decision dismissing Mr. Leggett's appeal as moot (*Jack Leggett v. Director, Fish and Wildlife*, Appeal No. 2008-WIL-006(a)) (unreported).

[11] On April 9, 2009, the Director granted the present Permit under the authority of section 3 of the *Freshwater Fish Regulation*, B.C. Reg. 261/83.

[12] On April 14, 2009, Mr. Leggett filed an appeal against the Permit. In his Notice of Appeal, Mr. Leggett submits that he is a resident of the Williams Lake area, he holds a 2009/2010 BC angling licence, and he is an "affected person" as described in section 101 of the *Act*. Also, he advised that he intended to bring a stay application supported by affidavit evidence. In the interim, he requested that the Board issue an immediate interim stay of the Permit, pending the Board's consideration of the stay application. He submitted that an interim stay was necessary "given the events of 2008 when a similar appeal... became moot as a result of the licence holder depositing live fish into Chimney Lake in spite of a valid appeal" before the Board.

[13] By letters dated April 15, 2009, the Board notified the Director and the Society of Mr. Leggett's appeal, and advised that it had granted Mr. Leggett's request for an immediate interim stay of the Permit. The Board stated that it issued the interim stay because "the matters under appeal would become moot if the fish... are transported". In addition, the Board offered the Society full party status in the appeal.

[14] By a letter dated April 15, 2009, the Director objected to the Board's decision to grant the interim stay, and challenged Mr. Leggett's standing to bring the appeal. The Director also requested an expedited hearing of the matter on the basis that the biological timeframe for stocking Kokanee in Chimney Lake is between late April and the end of May.

[15] By a letter dated April 16, 2009, the Board requested written submissions from the parties on the issues of whether Mr. Leggett has standing under sections 101(1) and 101.1 of the *Act* to appeal the Permit, and whether the Board should grant a stay pending a decision on the appeal. The Board set out an expedited schedule for the parties to provide submissions on those matters.

ISSUES

1. Whether Mr. Leggett has standing to appeal the Permit as an "affected person" within the meaning of sections 101 and 101.1 of the *Act*.
2. Whether the Board should grant a stay of the Permit, pending a decision on the merits of the appeal.

RELEVANT LEGISLATION

[16] Section 101.1 of the *Wildlife Act*, together with section 101, set out who may file an appeal with the Board (i.e., those with standing to appeal):

Reasons for and notice of decisions

- 101** (1) The regional manager or the director, as applicable, must give written reasons for a decision that affects
- (a) a licence, permit, registration of a trapline or guide outfitter's certificate held by a person, or
 - (b) an application by a person for anything referred to in paragraph (a).
- (2) Notice of a decision referred to in subsection (1) must be given to the affected person.

...

Appeals to Environmental Appeal Board

- 101.1** (1) The affected person referred to in section 101 (2) may appeal the decision to the Environmental Appeal Board continued under the *Environmental Management Act*.

[17] The Board's authority to grant a stay in an appeal under the *Act* is derived from section 101.1(6), which provides:

An appeal taken under this Act does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

[18] In *North Fraser Harbour Commission et al. v. Deputy Director of Waste Management* (Environmental Appeal Board, Appeal No, 97-WAS-05(a), June 5, 1997) (unreported), the Board concluded that the test set out in *RJR-Macdonald Inc. v. Canada (Attorney General)* (1994), 111 D.L.R. (4th) 385 (S.C.C.) applies to

applications for stays before the Board. That test requires an applicant to demonstrate the following:

1. There is a serious issue to be tried;
2. The applicant will suffer irreparable harm if the stay is not granted; and
3. The balance of convenience favours granting the stay.

[19] The onus is on the applicant, in this case Mr. Leggett, to demonstrate good and sufficient reasons why a stay should be granted. The Board will address each aspect of the *RJR-Macdonald* test as it applies to the matter at hand.

DISCUSSION AND ANALYSIS

1. Whether Mr. Leggett has standing to appeal the Permit as an “affected person” within the meaning of sections 101 and 101.1 of the Act.

[20] Mr. Leggett submits that he is an “affected person” as described in sections 101 and 101.1 of the *Act*. Specifically, he submits that he is a resident of the Williams Lake area and holds a 2009/2010 BC angling licence. He argues that he has an interest in the conservation of the trout fishery in Chimney Lake, and therefore, he is an affected person in relation to the Permit.

[21] In support of his submissions, Mr. Leggett provided a sworn affidavit, together with a copy of his valid 2009/2010 BC non-tidal angling licence. He deposes that he resides in Williams Lake, angles on Chimney Lake, is a registered professional biologist, and is the Director of the Chimney Felker Lake Landholders Association. He also attests that he was the Ministry’s Manager of Fisheries in the Cariboo Region from 1969 to 2003, and was the Region’s Section Head of Fish and Wildlife from 1998 to 2003, and has knowledge of fisheries management. He states that Chimney Lake currently supports a successful trout fishery, expresses his opinion that the release of Kokanee, some of which are capable of reproducing, will harm the trout fishery in the Lake, and will cause irreversible damage to the Lake’s ecosystem.

[22] The Director submits that Mr. Leggett is not an affected person who can appeal the Permit. The Director says that he did not notify Mr. Leggett of the issuance of the Permit pursuant to section 101(1) of the *Act*; rather, he informed Mr. Leggett’s counsel as a courtesy. The Director also argues that an angling licence does not create a proprietary right in fish, as indicated by section 67 of the *Act*, which states that an “angling guide’s licence does not give the holder any proprietary rights in wildlife or fish....”

[23] Further, the Director submits that the decision to issue the Permit is not a “... decision that affects a licence... held by a person...” as contemplated in sections 101(1) and 101.1(1) of the *Act*. The Director argues that the BC resident angling licence authorizes Mr. Leggett to fish in any non-tidal waters in BC, subject to the regulations governing that activity, but it is not a guarantee that fish will be caught, nor that fish of any particular species will be caught. The Director submits that stocking Kokanee in Chimney Lake this year will not affect Mr. Leggett’s ability to

angle for fish on that lake, nor will it prevent Mr. Leggett from exercising his fishing privileges under his angling licence.

[24] The Director also argues that Mr. Leggett's concerns about the introduction of Kokanee relate to the authorization under the federal *Fishery (General) Regulation* to release the fish, and not the provincial Permit to possess and transport the fish. The Director argues that the Board has no jurisdiction to review decisions made by federal officials.

[25] Additionally, the Director maintains that Chimney Lake has been stocked since 1947 with strains of trout that are native to BC but not native to Chimney Lake. The Director submits that the Lake's original wild trout stock has been supplanted by introduced strains due to years of trout stocking and inter-breeding.

[26] In reply, Mr. Leggett submits that he has standing to appeal not only as the holder of an angling licence and as a resident of the neighbourhood surrounding Chimney Lake, but also as a person who has demonstrated an immediate and vested interest in the conservation of Chimney Lake. Specifically, he argues that he has participated in consultation meetings regarding the stocking proposal, and has identified himself as a knowledgeable and vocal opponent of the proposal. Moreover, Mr. Leggett submits that he has disclosed sufficient information for the Board to reasonably conclude that the issuance of the Permit will prejudicially affect his interests. He submits that he has fished on Chimney Lake since 1970, and although his status as an affected person does not rest on his proximity to Chimney Lake, it is clear that stocking Chimney Lake with Kokanee will have an adverse affect on his personal interest in the existing trout fishery.

[27] Further, Mr. Leggett maintains that the Director draws an artificial distinction between the provincial Permit, which authorizes the Society to possess and transport Kokanee, and the federal authorization. Mr. Leggett argues that the federal and provincial authorizations are both part of the same transaction, and without the initial exercise of authority to issue the Permit, the release of the fish would not be possible.

Panel's findings

[28] Regarding the nature of the decision under appeal, the Board agrees with the Director that the Board has no jurisdiction over the federal authorization to "import/transfer live fish into or within the Province of British Columbia" pursuant to "Section 56(1) of the *Fishery (General) Regulations* made under the *Fisheries Act*".¹ However, the Board agrees with Mr. Leggett that, without the issuance of the Permit, the release of Kokanee into Chimney Lake would not be possible. The

¹ As a comment, the Board notes that there is no section 56(1) in that regulation; however, there is section 56(a) which authorizes the federal Minister to "issue a licence if the release or transfer of the fish would be in keeping with the proper management and control of fisheries...." Section 55(1) of that regulation refers to the "transfer" of live fish to a "fish rearing facility", and the "release" of live fish into "fish habitat." It is unclear why the federal licence in this case uses the word "transfer" rather than "release".

Permit expressly authorizes the transport of Kokanee from a hatchery "to Chimney Lake". The Permit is clearly intended to facilitate the deposit of Kokanee into Chimney Lake.

[29] Moreover, the Director's submissions describe the Ministry's mandate over non-tidal fisheries in BC, and the Ministry's policies and plans to promote angling opportunities by stocking small lakes. Although the Permit forms part of Authorization No. 11060 which also contains a federal authorization, it appears from the Director's own submissions that the Ministry takes a lead role in planning and managing fish stocking programs in BC lakes. As such, the Board finds that the concerns expressed by Mr. Leggett regarding the possession and transport of Kokanee to Chimney Lake in accordance with the Permit are within the Board's jurisdiction under the *Act*.

[30] Regarding Mr. Leggett's interests in relation to the Permit, there is no question that he holds a valid angling licence, which was issued under the *Act* and the *Angling and Scientific Collection Regulation*, B.C. Reg. 125/90. The Board finds that his angling licence is clearly a "licence" within the meaning of section 101(1) of the *Act*, regardless of whether the Director provided Mr. Leggett with notice of the decision to issue the Permit. The word "licence" in that section is not limited to any particular type of licence issued under the *Act* or its regulations.

[31] The parties dispute whether Mr. Leggett's rights or privileges under his angling licence are, or may be, "affected" by the Permit, for the purposes of sections 101 and 101.1(1) of the *Act*. The Director relies on section 67 of the *Act* as authority for the proposition that an angling licence does not create a proprietary right in fish. However, the Board notes that section 67 refers to an "angling guide licence", not an angling licence. The *Act* and the *Angling and Scientific Collection Regulation* clearly indicate that an angling licence is completely different from an angling guide licence, which authorizes a person to act as a guide for other anglers. Accordingly, the Board finds that section 67 is inapplicable to this case. However, the Board has considered the scheme of the *Act* as it relates to angling licences, and the rights or privileges that are granted under an angling licence.

[32] Section 2 of the *Act* states as follows:

Property in wildlife

- 2 (1) Ownership in all wildlife in British Columbia is vested in the government.
- (2) A person does not acquire a right of property in any wildlife except in accordance with a permit or licence issued under this Act or the Game Farm Act or as provided in subsection (3) of this section.
- (3) A person who lawfully kills wildlife and complies with all applicable provisions of this Act and the regulations acquires the right of property in that wildlife.

[33] Also, under section 12 of the *Act*, a person commits an offence if they angle for fish in the non-tidal waters of BC unless they hold an angling licence or another form of legal authorization. Under section 15 of the *Act*, a director may issue

licences. The *Angling and Scientific Collection Regulation* sets out various requirements and conditions regarding angling licences. In general, an angling licence entitles the holder to angle for fish on certain non-tidal waters in BC. In addition, a license holder may angle for specific species of fish if the licence bears the appropriate conservation stamp indicating that the licensee has paid the applicable fee and conservation surcharge.

[34] Based on the provisions of the *Act* and the *Angling and Scientific Collection Regulation* that relate to angling licences, the Panel finds that the holder of a valid angling licence does not acquire a right of property in any fish until the person lawfully catches and kills the fish in accordance with the provisions of the *Act*, the regulations, and an angling licence or other legal authorization. In addition, the Panel finds that holding a valid BC resident angling licence is not a guarantee that fish will be caught, nor that fish of a particular species will be caught.

[35] In this case, Mr. Leggett's angling licence authorizes him to fish for trout (and other fish) on Chimney Lake, and on other non-tidal water bodies in BC. It does not guarantee that he will catch trout from Chimney Lake, but it allows him to attempt to do so. It does not provide a right of property in any fish, but it does constitute authorization to angle for fish, and he will acquire a right of property in the fish that he lawfully catches.

[36] The Panel finds that Mr. Leggett's status as an affected person is not determined solely by the fact that he holds a valid BC resident angling licence. What distinguishes Mr. Leggett from most other holders of BC resident angling licences is that he has fished on Chimney Lake since 1970 and lives near the Lake. He is also a Director of the Chimney Felker Lake Landholders Association. Although neither the fact that he lives near Chimney Lake, nor the fact that he has fished there for many years, are in themselves determinative of whether he is an affected person, the Panel finds that his possession of a valid angling licence, together with his proximity to Chimney Lake, his many years of fishing for trout on that Lake, and the fact that he has actively opposed the stocking proposal for several years, establish that he is in a position to be more affected by the Permit than other holders of BC resident angling licences who do not share those circumstances.

[37] For all of these reasons, the Panel finds that Mr. Leggett is an "affected person" in relation to the Director's decision to issue the Permit, as contemplated in sections 101 and 101.1 of the *Act*, and he has standing to appeal the Permit.

2. Whether the Board should grant a stay of the Permit, pending a decision on the merits of the appeal.

1. Serious Issue

[38] In *RJR MacDonald*, the Court stated that, as a general rule, unless the case is frivolous or vexatious or is a pure question of law, the inquiry as to whether a stay should be granted should proceed to the next stage of the test.

[39] Mr. Leggett submits that the appeal raises the issue of whether the release of an alien species will harm the native fish population in Chimney Lake, and that this is a serious issue for the Board to decide. In support, he refers to his affidavit,

where he opines that the release of Kokanee, some of which will be capable of reproducing, may have a devastating effect on the Lake's ecology and will harm the trout fishery.

[40] The Director did not address this part of the test.

[41] The Panel finds that the appeal raises serious issues regarding the potential adverse effects of Kokanee stocking on trout fishing opportunities and on the ecology of Chimney Lake, and these issues should be decided by the Board based on full submissions by the parties. The issues raised by the appeal are neither frivolous nor vexatious, nor do they raise pure questions of law.

[42] Based on the above considerations, the Panel finds that Mr. Leggett has demonstrated that there are serious issues to be decided in this appeal.

2. Irreparable Harm

[43] The second factor to be considered is whether Mr. Leggett will suffer irreparable harm if the stay is not granted. As stated in *RJR-MacDonald* at page 405:

At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interest that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

[44] In assessing claims of irreparable harm, the Panel is guided by the following statement in *RJR-MacDonald*:

"Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision; where one party will suffer permanent market loss or irrevocable damage to its business reputation; or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined.

[45] Mr. Leggett argues that denying a stay will cause irreparable harm, because once the Kokanee are released, there will be no way to reverse that action. He submits that, if that occurs, there would be no remedy available to him if he was successful on the merits of the appeal, and the appeal would become moot.

[46] Mr. Leggett also submits there is a serious risk of irreversible damage to the ecosystem of Chimney Lake if the Kokanee are released, because the Kokanee are likely to adversely affect the trout population. Further, he maintains that the release of Kokanee that are capable of reproducing would, over the years, result in an overwhelming Kokanee population which would, among other things, disrupt the existing balance in the Lake and create competition for limited resources. The

stocking of the Lake with Kokanee will, therefore, adversely affect his personal interest in the trout fishery.

[47] The Director submits that the potential harm that Mr. Leggett asserts will be caused by the Permit, if a stay is denied, does not affect him personally. Specifically, the Director argues that Mr. Leggett will not be prevented from exercising his angling licence right to fish. The Director submits that Mr. Leggett cannot establish irreparable harm because his interests are insufficient to be affected by the issuance of the Permit.

[48] In addition, the Director submits that, although Mr. Leggett expresses concerns about the impact of the Kokanee on "native" trout, the trout strains that are stocked annually in the Lake are not the original wild rainbow trout that were native to the Lake.

[49] In support of those submissions, the Director provided an affidavit sworn by Michael K. Ramsey, Section Head for Fish and Wildlife, Cariboo Region. Mr. Ramsey is a registered professional biologist with a Master's of Science in Aquaculture, and he has worked for the Ministry since 1998.

[50] The Panel finds that denying a stay would cause irreparable harm to Mr. Leggett's interests, because the Permit will remain operable and the Society could transport Kokanee to Chimney Lake for release as soon as the lake conditions are suitable. That could occur as early as the beginning of May. The Board finds that, once the Kokanee are released, there is no way to reverse that action, and there would be no remedy available to Mr. Leggett even if he is successful on the merits of the appeal. Mr. Leggett's appeal rights could be severely prejudiced if the Kokanee were released. His appeal would become moot, just as his 2008 appeal became moot when the Ministry released Kokanee into the Lake despite that appeal. Given the time frame when Kokanee may be released into Chimney Lake, and the fact that Kokanee were released in 2008 despite the Board notifying the Respondent and permit holder of an appeal, the Board finds that there is a high probability that Kokanee would be released into Chimney Lake if a stay is denied.

[51] For all of these reasons, the Panel finds that Mr. Leggett has established that his interests would suffer irreparable harm if a stay is denied, pending the outcome of the appeal.

3. Balance of Convenience

[52] At this stage of the test, the Panel must determine which of the parties will suffer greater harm from the granting of, or refusal to grant, the stay, pending a determination of the appeal on its merits.

[53] Mr. Leggett argues that the balance of convenience favours granting a stay. He argues that there is no urgency to introduce Kokanee into Chimney Lake, because the intended release is purely for the purpose of augmenting the sport fishery on the Lake. In addition, he notes that the Ministry released Kokanee into Bobb's Lake instead of Chimney Lake in 2007, when the proposed stocking on Chimney Lake with Kokanee was aborted. He argues that no harm will come to anyone or the environment if the stay is granted and the release of Kokanee is

delayed or cancelled. He submits, therefore, that he will suffer greater harm from denying the stay than the Director will suffer if the stay is granted.

[54] The Director submits that, when a public authority is prevented from exercising its statutory powers, the balance of convenience must consider the potential for irreparable harm to the public interest. The Director maintains that Chimney Lake is a public resource owned by the Province, and the Province must be able to exercise the use and management of its resources. In that regard, the Director submits that section 5 of the *Environmental Management Act* and section 4 of the *Ministry of Environment Act*, respectively, provide the Minister of Environment and the Ministry with powers regarding the administration and management of fisheries. The Director submits that, in accordance with Ministry policies and plans developed pursuant to its statutory powers, the Ministry stocks lakes for the purposes of improving recreational fishing opportunities and diversifying angling opportunities in small lakes, which leads to economic benefits as a result of increased fishing activity. The Director submits that the public interest in stocking the Lake to promote recreational angling and associated economic benefits must be considered. The Director submits that, in weighing the balance of convenience, the public interest outweighs any personal interest of Mr. Leggett.

[55] Further, the Director submits that, if the Kokanee are not deposited in Chimney Lake by June 1, 2009, at the latest, the Society will likely be unable to carry out the stocking of Kokanee in Chimney Lake in 2009. In support, the Director refers to Mr. Ramsey's affidavit, where he attests that the appropriate time for stocking Kokanee in Chimney Lake is generally from early May until May 20th, with June 1 being the latest acceptable date, subject to actual water temperatures. He states that the beginning of this time frame generally coincides with the completion of "ice off", and the time frame ends when inshore temperatures rise to the level where the stress of being released into warm waters would cause unacceptably high mortality of juvenile Kokanee. He also states that, if the stocking of Kokanee in Chimney Lake does not proceed within that time frame in 2009, the economic benefit from increased angler opportunities due to the stocking would not be realized. The Ministry conservatively estimates that loss to be approximately \$150,000 per year.

[56] The Panel has already found that Mr. Leggett has established that his interests will suffer irreparable harm if the stay is denied, pending a decision on the appeal. The Panel must weigh that harm against the harm to the Director's interests if a stay is granted.

[57] The Panel agrees with the Director that the fisheries resources in Chimney Lake are a public resource, and the Ministry is responsible for the proper management of that public resource. In weighing the balance of convenience, the Panel has considered the public interest in stocking the Lake with Kokanee to increase the number and variety of recreational angling opportunities, and the associated economic benefits. The Panel has also considered the limited time frame for the Kokanee stocking to occur: early May until May 20, with June 1 likely being the latest acceptable date, depending on actual water temperatures. The Panel finds that, if the stocking of Kokanee does not proceed within that time frame, it

will likely have to be abandoned as there could be high mortality of juvenile Kokanee, and the economic benefit from increased angler opportunities in 2009 may be reduced. Further, if the stocking were to take place in a different lake, the diversity of fishing opportunities in Chimney Lake would be reduced. However, the fishing opportunities in the substitute lake may be increased.

[58] The Panel finds that Mr. Leggett has demonstrated that his interests will suffer irreparable harm if a stay is denied. The Panel further finds that the potential harm to the Director's interests, if a stay is granted, will be limited to a one-year stocking loss, which may be mitigated by the stocking of an alternate lake.

[59] In these circumstances, the Panel finds that the balance of convenience favours granting the stay application.

[60] Finally, the Panel finds that the public interest will be served if the hearing of this appeal is conducted on an expedited basis and preferably prior to the expiry of the 2009 Kokanee stocking period. Accordingly, the Board is ordering an expedited hearing of this matter.

DECISION

[61] In making this decision, the Panel has carefully considered all of the evidence before it, whether or not specifically reiterated here.

[62] For the above reasons, the Board finds that Mr. Leggett has standing to appeal the Permit. Further, the Board grants Mr. Leggett's application for a stay pending a decision on the merits of the appeal. Finally, the Board orders that the appeal be heard on an expedited basis.

"Alan Andison"

Alan Andison, Chair
Environmental Appeal Board

April 28, 2009