

Court File No. T-996-18

FEDERAL COURT

MARSHA WAGNER, DIANE JANE DREWRY,
JOHN ROGER ROBINSON, RYAN JOHN ROBINSON,
PHILIP COPITHORNE and MARY ELLEN ROBINSON

Applicants

and

MINISTER OF ENVIRONMENT AND CLIMATE CHANGE and
ALBERTA TRANSPORTATION

Respondents

APPLICATION UNDER sections 18 and 18.1 of the *Federal Courts Act*.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants request that this application be heard at Calgary, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: May 28, 2018

ORIGINAL SIGNED BY
JENNIFER SORVISTO
A SIGNÉ L'ORIGINAL

Issued by: _____
Registry Officer

Address of local office: Federal Court
Canadian Occidental Tower
635 – 8th Avenue SW
3rd Floor
Calgary, AB T2P 3M3

TO:

MINISTER OF ENVIRONMENT AND CLIMATE CHANGE

200 Sacré-Coeur Boulevard
Gatineau, QB K1A 0H3
Phone: (819) 938-3813
Fax: (819) 938-9431

c/o Prairie Regional Office – Calgary
Department of Justice Canada
Suite 601, 606 – 4th Street SW
Calgary, AB T2P 1T1
Phone: (403) 292-6813
Fax: (403) 299-3507

ALBERTA TRANSPORTATION

c/o Minister of Transportation
Honourable Brian Mason
320 Legislature Building
10800 – 97 Avenue
Edmonton, AB T5K 2B6
Phone: (780) 427-5041
Fax: (780) 422-2002

I HEREBY CERTIFY that the above document is a true copy of
the original Issued out of / filed in the Court on the

day of MAY 28 2018 A.D. 20

Dated this MAY 28 2018 day of _____ 20

Jennifer Sorvisto

JENNIFER SORVISTO
REGISTRY OFFICER
AGENT DU GREFFE

APPLICATION

This is an application for judicial review in respect of:

The Canadian Environmental Assessment Agency's ("Agency") decision that Alberta Transportation's Environmental Impact Statement ("EIS") for its Springbank Off-Stream Reservoir Project (the "Project") conforms to the Guidelines for the Preparation of an Environmental Impact Statement ("Guidelines").

The decision was communicated to the Applicants on:

April 30, 2018.

The Applicants make application for:

1. An Order quashing the Agency's decision that the EIS conforms to the Guidelines.
2. An Order referring the decision back to the Agency for reconsideration in accordance with any directions that the Court considers appropriate.
3. The costs of this Application.
4. Any such other relief that this Honourable Court deems just.

The grounds for the application are:

The Applicants

1. The Applicants are landowners of parcels of land in Rocky View County, west of Calgary, Alberta.
2. The Applicants will be directly affected by the Project.
3. Alberta Transportation intends to use the Applicants' land for infrastructure for the Project. The Applicants will lose their lands if Alberta Transportation receives approval to construct and operate the Project.

Background

4. The Project is flood mitigation infrastructure. It will be located 15 kilometres west of Calgary and involve the construction of an Off-stream Storage Reservoir, Diversion Structure and Channel, Off-stream Storage Dam, and Outlet Works.
5. The Project is a designated project.

6. The Agency posted a notice of commencement of the environmental assessment of the Project to the Internet site on June 23, 2016.
7. On October 17, 2017, Alberta Transportation filed an EIS with the Agency.
8. On November 16, 2017, the Agency advised Alberta Transportation that the EIS did not conform with the Guidelines. The Agency provided Alberta Transportation with a list of deficiencies and directed Alberta Transportation to provide a fully revised EIS.
9. On December 19, 2017, the Agency wrote to Alberta Transportation to provide an additional list of technical deficiencies in the EIS.
10. On March 28, 2018, Alberta Transportation filed a revised EIS with the Agency.
11. On April 30, 2018, the Agency decided that the EIS conformed with the Guidelines.

Grounds for review

12. In deciding that the EIS conformed to the Guidelines, the Agency committed the following errors of law or jurisdiction:
 - I. The Agency failed to consider relevant factors.
 - II. The Agency's reasons fail to meet the requirements of transparency and intelligibility.
 - III. The Agency erred in ignoring relevant evidence, including, but not limited to, the following deficiencies in the EIS:
 - i. Failure to properly define the Regional Assessment Area, including omitting federal reserve lands located only 400 metres from the Project;
 - ii. Failure to include the full groundwater modeling report in the EIS;
 - iii. Failure to incorporate information gathered from Traditional Land Use studies throughout the EIS;
 - iv. Failure to include the Bragg Creek Flood Mitigation Project and Redwood Meadows Flood Mitigation Project, resulting in artificial project splitting;
 - v. Failure to include Project design specifications, leading to an incomplete assessment of potential accidents and malfunctions; and,
 - vi. Failure to include specific measures to mitigate predicted environmental effects.

- IV. The Agency erred in its interpretation of the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52.
- V. The Agency erred in its interpretation of Operational Policy Statement Information Requests and Timelines.
- VI. The Agency erred in relying on irrelevant factors.
- VII. The Agency fettered its discretion.
- VIII. The Agency based its decision on erroneous findings of fact.

The Applicants rely upon the following statutes:

- I. *Federal Courts Act*, RSC 1985, c F-7.
- II. *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52.


This application will be supported by the following material:

1. Affidavit of Ryan John Robinson;
2. The record before the Canadian Environmental Assessment Agency; and
3. Such further material as the Court determines appropriate.

The Applicants request the Canadian Environmental Assessment Agency send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the Canadian Environmental Assessment Agency to the Applicants and to the Registry:

1. All of the material that was before the Canadian Environmental Assessment Agency in deciding that the EIS conforms to the Guidelines.

May 28, 2018

For: 

John Gruber
MLT Aikins LLP
1600 Centennial Place
520 – 3rd Avenue SW
Calgary, AB T2P 0R3
Telephone: (403) 693-4300
Fax: (403) 508-4349

Solicitor for the Applicants