

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*.

AMENDED 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: ~~September 16, 2016~~
December 20, 2016

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

APPLICATION

This is an application for judicial review in respect of:

The Minister of Environment and Climate Change's ("Minister") decision to not refer Alberta Transportation's Springbank Off-Stream Reservoir Project (the "Project") to a review panel, pursuant to section 38 of the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52 [CEAA, 2012].

The decision was communicated to the Applicants on:

No decision has been communicated to the Applicants.

The Applicants make application for:

1. An order quashing the Minister's decision to not refer the Project to a review panel;
2. An order referring the decision back to the Minister 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 needed for the Project. The Applicants will lose their lands if Alberta Transportation receives approval to construct and operate the Project.
4. On August 4, 2016, John R. Robinson wrote to the Minister requesting that the Project's environmental assessment be referred to a review panel, pursuant to section 38 of *CEAA, 2012*.

The Minister's Decision

5. 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.

6. The Canadian Environmental Assessment Agency ("CEAA") has determined that the Project is a designated project.
7. Under section 38 of the *CEAA, 2012*, the Minister of Environment and Climate Change may refer the environmental assessment of a designated project to a review panel if she is of the opinion that it is in the public interest. This determination must be made within 60 days after the commencement of the environmental assessment is posted on the Internet site.
8. CEAA posted a notice of commencement of the environmental assessment of the Project to the Internet site on June 23, 2016.
9. The Minister could have referred the environmental assessment to a review panel up to and including August 22, 2016.
10. The Minister's decision to refer an environmental assessment of a designated project to a review panel must be posted to the Internet site, pursuant to subsection 38(5) of the *CEAA, 2012*.
11. No such notice has been posted. As a result, it is apparent that the Minister has decided not to refer the Project to a review panel.

Grounds for review

12. In failing to refer the Project to a review panel, the Minister committed the following errors of law or jurisdiction:
 - I. The Minister failed to consider relevant factors, including, but not limited to:
 - A. The public interest;
 - B. Whether the Project may cause significant adverse environmental effects, including:
 - i. On fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act*, RSC 1985, c F-14;
 - ii. On aquatic species as defined in subsection 2(1) of the *Species at Risk Act*, SC 2002, c 29;
 - iii. On migratory birds as defined in subsection 2(1) of the *Migratory Birds Convention Act, 1994*, SC 1994, c 22;
 - iv. Effects with respect to aboriginal peoples health and socio-economic conditions, physical and cultural heritage, the current use of lands and resources for traditional purposes, and any structure, site or thing that is of historical, archaeological, paleontological or architectural significance;
 - v. The cumulative environmental effects of the Project.
 - C. Public concerns related to the significant adverse environmental

- effects that the Project may cause;
- D. The opportunity for cooperation with the Alberta Natural Resources Conservation Board with respect to an assessment of the Project's environmental effects.
- II. The Minister erred in ignoring relevant evidence;
 - III. The Minister erred in her interpretation of *CEAA, 2012*;
 - IV. The Minister erred in relying on irrelevant factors;
 - V. The Minister fettered her discretion;
 - VI. The Minister erred in pre-determining the need to refer the environmental assessment to a review panel, giving rise to a reasonable apprehension of bias;
 - VII. The Minister erred in refusing to exercise her jurisdiction; and,
 - VIII. The Minister based her decision on erroneous findings of fact.

13. Other errors may become apparent on receiving the reasons for the Minister's decision.

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;
- III. *Species at Risk Act*, SC 2002, c 29;
- IV. *Migratory Birds Convention Act, 1994*, SC 1994, c 22; and,
- V. *Fisheries Act*, RSC 1985, c F-14.

This application will be supported by the following material:

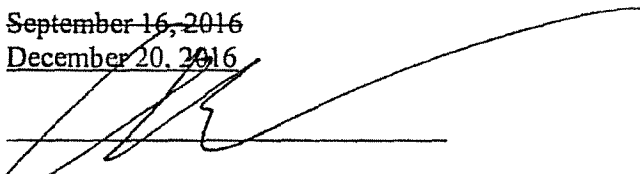
- 1. Affidavit of Marsha Wagner;
- 2. Affidavit of Diane Jane Drewry;
- 3. Affidavit of John Roger Robinson;
- 4. Affidavit of Ryan John Robinson;
- 5. Affidavit of Philip Copithorne;
- 6. Affidavit of Mary Ellen Robinson; and
- 7. The record before the Minister of Environment and Climate Change.

The Applicants request the Minister of Environment and Climate Change to send a certified copy of the following material that is not in the possession of the Applicants but is in the possession of the Minister of Environment and Climate Change to the Applicants and to the Registry:

1. The Minister's reasons for not referring the Project to a review panel, and
2. All of the material that was before the Minister in deciding not to refer the Project's environmental assessment to a review panel, pursuant to section 38 of *CEAA, 2012*.

~~September 16, 2016~~

~~December 20, 2016~~



John P. Gruber

MacPherson Leslie & Tyerman LLP

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Solicitor for the Applicants

FEDERAL COURT

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AFFIDAVIT OF RYAN JOHN ROBINSON

I, Ryan John Robinson, of the community of Springbank in the Rocky View County of Alberta, SWEAR THAT:

1. I am an applicant in this application for judicial review and have direct knowledge of the matters deposed to herein, except where stated to be based on information and belief.

Background

2. In October of 2015, the Government of Alberta announced that it would be moving forward with the Spring-Bank Off-Stream Reservoir Project (the "SR1 Project").
3. The SR1 Project is a 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.
4. My family has owned and run a cattle ranching operation in Springbank since 1905. Our cattle ranching operation is located on some of the parcels of land in the designated area for the SR1 Project.
5. We will lose our land if Alberta Transportation receives approval to construct and operate the SR1 Project.

6. All of the applicants are landowners who will lose their land if the SR1 Project is constructed and operated.

CEAA Invites Comments on Need for Federal Environmental Assessment

7. On May 9, 2016, the Canadian Environmental Assessment Agency ("CEAA") provided public notice on its website that it was seeking comments from the public on the SR1 Project and its potential effects on the environment. The public notice provided that CEAA would be deciding whether a federal environmental assessment was required for the SR1 Project. The public notice also provided that a summary of the project description could be found on CEAA's website. Attached and marked as **Exhibit "A"** to this Affidavit is a true copy of the May 9, 2016 Public Notice.
8. The CEAA website provided a document dated April 18, 2016 and labelled: Project Description of a Designated Project. Attached and marked as **Exhibit "B"** to this Affidavit is a true copy of the Springbank Off-Stream Reservoir Project, *Canada Environmental Assessment Act, 2012*, Project Description.
9. The CEAA website also provided a documented dated April 18, 2015 and labelled: Summary of a Project Description of a Designated Project. Attached and marked as **Exhibit "C"** to this Affidavit is a true copy of the Springbank Off-Stream Reservoir Project, *Canada Environmental Assessment Act, 2012*, Project Description, Executive Summary.
10. On May 30, 2016, MacPherson Leslie & Tyerman LLP wrote to CEAA, on behalf of forty-three (43) affected landowners, requesting that CEAA conduct a full environmental review. I was one of the affected landowners as set out in Schedule A of the May 30, 2016 letter. Attached and marked as **Exhibit "D"** is a true copy of MacPherson Leslie & Tyerman LLP's May 30, 2016 letter.

Commencement of Environmental Assessment

11. On June 23, 2016, CEAA provided notice that it had decided that a federal environmental assessment was required for the SR1 Project. Attached and marked as **Exhibit "E"** to this Affidavit is a true copy of the June 23, 2016 Notice of Environmental Assessment Determination.
12. On June 23, 2016, CEAA announced that the environmental assessment for the SR1 Project had commenced. Attached and marked as **Exhibit "F"** is a true copy of the June 23, 2016 Notice of Commencement of an Environmental Assessment.

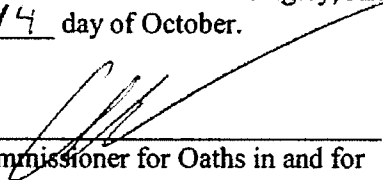
13. On June 23, 2016, CEAA provided notice inviting the public "to comment on which aspects of the environment may be affected by this project and what should be examined during the environmental assessment, as detailed in the draft Environmental Impact Statement (EIS) Guidelines." Attached and marked as **Exhibit "G"** is a true copy of the June 23, 2016 Public Notice.
14. On June 23, 2016, the Draft Environmental Impact Statement Guidelines were available on the CEAA website. Attached and marked as **Exhibit "H"** is a true copy of the Draft Guidelines for the Preparation of an Environmental Impact Statement.
15. On July 22, 2016, I wrote to CEAA, outlining my concerns with the SR1 Project. Attached and marked as **Exhibit "I"** is a true copy of the July 22, 2016 email.
16. On July 25, 2016, MacPherson Leslie & Tyerman LLP wrote to CEAA, on behalf of forty-three (43) affected landowners, providing the landowners' submissions on the draft environmental impact statement. I was one of the affected landowners as set out in Schedule A of the May 30, 2016 letter Attached and marked as **Exhibit "J"** is a true copy of MacPherson Leslie & Tyerman LLP's July 25, 2016 letter.
17. On August 10, 2016, the Final Environmental Impact Statement Guidelines were posted to the CEAA website. Attached and marked as **Exhibit "K"** is a true copy of the Final Environmental Impact Statement Guidelines.

The Environmental Assessment is Not Referred to a Review Panel


18. My legal counsel informs me and I verily believe that the Minister of Environment and Climate Change had 60 days from the commencement of the environmental assessment, June 23, 2016, to refer the environmental assessment to a review panel, pursuant to section 38 of the *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52.
19. No decision to refer the environmental assessment to a review panel was posted to the CEAA website or otherwise communicated to me.
20. On September 16, 2016, my legal counsel brought this application for judicial review of the Minister of Environment and Climate Change's decision to not refer the environmental assessment to a review panel.

21. My legal counsel informs me and I verily believe that on October 6, 2016, the Minister of Environment and Climate Change provided him with a certified tribunal record. Attached and marked as **Exhibit "L"** is a true copy of the certified tribunal record.

SWORN BEFORE ME at Calgary, Alberta,)
this 14 day of October.)



A Commissioner for Oaths in and for)
the Province of Alberta)
JOHN GRUBER)
Barrister & Solicitor)



Ryan John Robinson