

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: December 17, 2019

CASE NO.: 19-060

PROCEEDING COMMENCED UNDER section 100(4) of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40, as amended;

Appellant: John Sherk (File No. 19-060)
Appellant: Elizabeth Sherk (File No. 19-061)
Appellant: Kathryn Stouffer (File No. 19-062)
Appellant: Estate of Norma Sherk (File No. 19-063)
Respondent: Director, Ministry of the Environment, Conservation and Parks
Subject of appeal: Order issued to submit a completed application for a Permit to Take Water for the dam constructed 4567-BDKPTK
Reference No.: 4567-BDKPTK
Property Address/Description: Part of Lot 10, and Lot 11, Concession 14
Municipality: South Frontenac
Upper Tier: County of Frontenac
ERT Case No.: 19-060
ERT Case Name: Sherk v. Ontario (Environment, Conservation and Parks)

Heard: September 3, 2019 by telephone conference call

APPEARANCES:

Parties

John Sherk

Director, Ministry of the
Environment,
Conservation and Parks

Counsel

Self-represented

P. McCulloch

ORDER DELIVERED BY HUGH S. WILKINS

REASONS

[1] On August 7, 2019, John Sherk, Elizabeth Sherk, Kathryn Stouffer, and the Estate of Norma Grace Sherk (“Appellants”) filed an appeal regarding Director’s Order No. 4567-BDKPTK-1 (“Director’s Order”) made on July 24, 2019 by Trevor Dagilis, Kingston District Office, Ministry of the Environment, Conservation and Parks (“MECP”) under s. 100(4) of the *Ontario Water Resources Act* (“OWRA”). The Director’s Order requires the Appellants to submit a completed application for a permit to take water for a dam constructed at Part Lot 10 and Lot 11, Concession 14, South Frontenac (“subject property”).

[2] A status update telephone conference call (“TCC”) was held on September 3, 2019 at which the Parties proposed a stay of the Director’s Order on consent.

[3] This Order provides the Tribunal’s reasons for the granting of the stay.

Relevant Legislation and Rules

[4] The following are the relevant provisions of the *OWRA* and the *Rules of Practice* of the Tribunal (“Rules”):

Ontario Water Resources Act

Tribunal may grant stay

102 (2) The Tribunal may, on the application of a party to a proceeding before it, stay the operation of a direction, order, report or decision, other than,

- (a) a direction, order or report to monitor, record and report; or
- (b) an order issued under section 89.3, 89.8 or 89.12.

When stay may not be granted

(3) The Tribunal shall not stay the operation of a direction, order, report or decision if doing so would result in,

- (a) danger to the health or safety of any person;
- (b) impairment or serious risk of impairment of any waters or any use of waters; or
- (c) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.

Rules of the Tribunal

Motion Seeking an Interim Stay/Stay or a Removal of a Stay

110. The Party shall provide evidence and submissions in support of its motion respecting:

- (a) how the relevant statutory tests that are applicable to the granting or removal of a stay are met;
- (b) whether there is a serious issue to be decided by the Tribunal;
- (c) whether irreparable harm will ensue if the relief is not granted; and
- (d) whether the balance of convenience, including effects on the public interest, favours granting the relief requested.

Issue

[5] The issue is whether there should be a stay of the Director's Order.

Discussion, Analysis and Findings

[6] The parties submit that the Director's Order is not a direction, order or report to monitor, record or report or an order issued under section 89.3, 89.8 or 89.12 and the proposed stay therefore would comply with s. 102(2) of the *OWRA*. They submit that the proposed stay would not result in danger to the health or safety of any person, impairment or serious risk of impairment of any waters or any use of waters, or injury or damage or serious risk of injury or damage to any property or to any plant or animal life under s. 102(3) of the *OWRA*. They also submit that the requirements of Rule 110 are met.

[7] Having considered the submissions of the parties and the provisions in s. 102(2) and (3) of the *OWRA* and Rule 110, the Tribunal found that the requested stay satisfies

the relevant statutory tests and the Rules. It found that the proposed stay will ensure that the Director's environmental concerns will be met on an interim basis. It found that the proposed stay is in the public interest in that there are no immediate risks to the environment and the proposed stay provides the opportunity for the efficient resolution of the appeal. Taking into account the submissions of the parties and their consent to the proposed stay, the Tribunal found that there is a serious issue to be decided by the Tribunal in this proceeding and the balance of convenience favours granting the requested stay.

OTHER PROCEDURAL MATTERS

[8] The parties expressed an interest in engaging in Tribunal-assisted mediation in order to resolve the matters in dispute. The Tribunal directed that a mediation be held, which, subsequent to the TCC, was scheduled for November 22, 2019 in Kingston, Ontario.

ORDER

[9] The Tribunal orders that the Director's Order is stayed pending the outcome of the appeal.

Stay of Director's Order Granted

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
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Environmental Review Tribunal

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