Energy Resource Appeal Tribunal

Citation:	*Dorothee Huenseler v. BC Energy Regulator*, 2026 BCERAT 1
Decision No.:	ERAT-ERA-24-A010(a)
Decision Date:	2026-02-18
Method of Hearing:	Conducted by way of written submissions concluding on June 20, 2025
Decision Type:	Final Decision
Panel:	Jeffrey Hand, Panel Chair
Appealed Under:	*Energy Resource Activities Act*, SBC 2008, c. 36

Between:

Dorothee Huenseler

Appellant

And:

BC Energy Regulator

Respondent

And:

Vermilion Energy Inc.

Third Party

Appearing on Behalf of the Parties:

For the Appellant:	Elvin Gowman
For the Respondent:	Dorothy McDaid
For the Third Party:	Rick Williams

FINAL DECISION

NATURE OF APPEAL

[1] The Appellant brings this appeal in respect of permit number 100119733 (the "Permit"), issued by the British Columbia Energy Regulator (the "BCER") to the third party, Vermilion Energy Inc. ("Vermillion"). The Permit authorized Vermillion to, amongst other things, construct, maintain, and operate a sour gas pipeline on property owned by the Appellant. A sour gas pipeline conveys gas containing significant amounts of hydrogen sulfide. The Permit was issued on December 10, 2024, by Daniel Hanson, the Delegated Decision Maker for the BCER (the "Decision Maker"), in a determination of application (the "Determination") issued on that date.

[2] The Appellant asks that the Permit be set aside as the BCER did not give due consideration to submissions she made about having the pipeline on her property. The BCER says her submissions were considered prior to issuing the Permit. Vermillion supports the position of the BCER and both Vermillion and the BCER ask that the appeal be dismissed.

BACKGROUND FACTS

[3] The Appellant is the owner of a quarter section of land located approximately 33 km from Dawson Creek, British Columbia (the "Property"). It, and all surrounding land, is located within an agricultural land reserve ("ALR").

[4] Pursuant to section 26 of the *Agricultural Land Commission Act*, SBC 2002, c. 36, the Agricultural Land Commission entered into a delegation agreement dated December 8, 2017, delegating some of its power to approve non-agricultural uses involving oil & gas activities on ALR lands to the Oil & Gas Commission (now the BCER) (the "Delegation Agreement").

[5] The Delegation Agreement required the submission of a rationale describing how the impact of the proposed oil and gas activity on agricultural land would be minimized (the "Appendix II Rationale").

[6] The Delegation Agreement also required the provision of a schedule which would accompany the rationale, consisting of a site assessment prepared by a qualified specialist. This site assessment must include a soil assessment, a description of current land use, an identification of forested versus cultivated and uncultivated land, recommendations for the management of surface drainage, and an identification of any natural watercourses ("Schedule A").

[7] Starting in the summer of 2023, Vermillion began planning a multi-segment natural gas pipeline project. The proposed route for one of these segments would cross the Property.

[8] Before applying to the BCER for a permit to conduct an oil and gas activity, applicants are required to complete a notification and consultation process established by section 22 of the *Energy Resource Activities Act*, SBC 2008, c. 36 (the "Act"). As part of that process, an applicant must notify owners of land on which the applicant intends to carry out an oil and gas activity of the applicant's intention to apply for a permit, and the notice must advise the landowner that they may make a submission to the BCER with respect to the application.

[9] On April 3, 2024, Vermillion sent a letter to the Appellant to notify her of its intention to apply for a permit for the pipeline installation and inviting her to consult on the permit and to provide any written submission she might have to the BCER for its consideration.

[10] The Appellant lives in Germany. She appointed Aspen Grove Properties ("Aspen") to be her agent in her dealings with Vermillion and the BCER. Aspen, on the Appellant's behalf, provided a written submission dated September 24, 2024, to the BCER opposing the granting of the permit. The reasons for the Appellant's opposition were stated as follows:

a) the Property's use for agricultural purposes should be maintained;

b) there are soil erosion issues in the southwest corner of the Property to be considered;

c) there are water management concerns to be considered; and

d) an alternative route that does not enter the Property should be considered.

[11] Vermillion's application for the permit was accompanied by a pre-construction environmental assessment report dated June 19, 2024, prepared by Prospect Environmental Services Ltd. (the "Prospect Report"). The Prospect Report contained the required Appendix II Rationale and Schedule A, as required by the Delegation Agreement.

[12] The Appellant filed a Notice of Appeal from the Determination on December 23, 2024, and this appeal proceeded by way of written submissions.

[13] The powers of the Energy Resource Appeal Tribunal (the "Tribunal") are set out in section 72(6) of the Act:

> (6) On an appeal under subsection (1), the appeal tribunal may
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> (a) confirm, vary, or rescind the decision made under section 71 or the determination, or

(b) send the matter back, with directions, to the review official who made the decision or to the person who made the determination, as applicable.

ISSUE ON APPEAL

[14] Did the Determination give due consideration to the Appellant's submissions?

ANALYSIS

Position of the Parties

The Appellant

[15] The Appellant submits that the following concerns were not given due consideration by the BCER:

Agricultural use of the land

[16] The Appellant submits that the guidelines for carrying out an oil & gas activity within the ALR, as set out in the Appendix II Rationale, have not been met. However, no submission was provided, either as part of the Appellant's September 2024 submission or in this appeal, to explain how those guidelines have not been met. Neither is there any explanation provided as to how the pipeline will adversely impact the agricultural use of the land.

[17] In her reply submission, the Appellant says the pipeline will divide the property into two parcels. The Appellant further stated that the Decision Maker misconstrued the Delegation Agreement in granting approval of the permit, but no explanation is offered as what was misconstrued.

Wildlife habitat

[18] The Appellant says a forested area on the Property is home to wildlife and that this was not considered by the BCER. She says there is anecdotal evidence in the past year that a female bear with two cubs was seen in the forested area.

Drainage / Erosion

[19] The Appellant says that no consideration was given to what she called "water damage" that had previously occurred in some areas of the Property. She says a manmade ditch in the southern portion of the Property may be impacted by the pipeline, although no specifics of that damage, or how it might occur, were provided.

[20] She further says that no consideration was given to soil erosion that could occur as a result of the installation of the pipeline; however, no specifics of this erosion concern were identified.

Alternative pipeline route

[21] The Appellant says a route for the pipeline that does not cross the Property ought to have been considered. Details of this alternative routing were not provided in her September 2024 submission. However, in her submissions made in this appeal, the Appellant says that consideration should have been given to a pipeline route traveling west along the northern boundary of the Property and then south along the western boundary, where other pipeline rights-of-way currently exist.

[22] Further, the Appellant also says no consideration was given to making use of an existing, albeit deactivated, pipeline owned by Canadian Natural Resources Limited, which already crosses the Property (the "CNRL Pipeline"). In her reply submissions, the Appellant argues it is reckless to install a new pipeline adjacent to the CNRL pipeline.

Sufficiency of the Prospect Report

[23] The Appellant suggests the Prospect Report was prepared as a "desktop review," without actual attendance at the Property by Prospect personnel. She says the report's conclusions and recommendations are not sufficient to grant the Permit. She relies on the Tribunal decision in *Richard Bruce Mitchell v. Oil and Gas Commission*, 2017 BCOGAT 9 (CanLII) ("*Richard Bruce Mitchell")*, in support of this argument.

The Respondent

[24] The affidavit of Daniel Hanson submitted in this appeal sets out the process he followed in making the Determination. He submits that the BCER staff assessed the Permit by considering the following issues prior to the application being sent to him for final review:

- archeological values;
- agricultural values;
- forestry values;
- land and habitat values;
- pipeline engineering; and
- consultation and notification process.

[25] Mr. Hanson reviewed the Prospect Report, which contained the following observations and recommendations:

- the Property is within the ALR, but buried oil and gas pipelines are exempted from the permit process for nonagricultural use of ALR land;
- 390 meters of the 820-meter pipeline route through the Property was through forested or non-cultivated, rather than cultivated, land and does not affect agricultural use;

- there were low-lying areas and wetlands that had the potential to be subject to erosion so it was recommended that any natural watercourses and/or drainage paths be reinstated after construction to maintain the pre-construction flows;
- soils stripping was recommended to be undertaken in a way to preserve topsoil for use in backfilling to promote revegetation after construction;
- no endangered wildlife species were identified as being present on the Property but it was recommended that a qualified professional re-check for wildlife just prior to construction; and
- the proposed pipeline route would create the least amount of ground disturbance.

[26] Mr. Hanson's affidavit says the existing CNRL Pipeline crossing the property was deactivated in 2019. CNRL's future intentions for that pipeline were unknown.

[27] Mr. Hanson says he considered the objections made by the Appellant but concluded that the Prospect Report addressed those concerns and had mitigative recommendations responsive to those issues.

Third party, Vermillion

[28] Vermillion submits that the selected route minimized the amount of land to be disturbed by using the shortest, most direct route through the Property, bearing in mind the need to connect the pipeline to existing infrastructure located to the south of the Property.

[29] Vermillion considered an alternative route along the western boundary of the Property, but this would have involved a much longer pipeline with greater land disturbance, as well as the need for two additional crossings of existing rights-of-way to be constructed.

[30] Vermillion addressed the Appellant's erosion and drainage concerns by:

- boring under the manmade ditch for 50 meters so as to avoid disturbing a low-lying area in the southwestern portion of the Property; and
- using coconut matting and wattles during construction to slow the movement of water in order to address the risk of erosion and/or water damage.

[31] Loni Evans, the Vice President of the Prospect, provided an affidavit in this appeal. She says Prospect employees attended the Property on two occasions: in February and May 2024. She says Prospect completed test pits, assessed the wetlands and wildlife features, and documented vegetation and crops during these visits.

[32] Ms. Evans also says no significant wildlife was observed by Prospect on the Property. The *BCER Environmental Protection and Management Guidelines* define wildlife habitat as significant where there is evidence of use over several years by multiple animal

species. Ms. Evans says Prospect specifically looked for evidence of bears living on the Property, but none were found. Unoccupied songbirds and magpie nests were observed. No endangered or threatened species were identified. Recommendations were made to have a qualified professional conduct a further nest sweep within 24–48 hours prior to construction commencing.

[33] An alternative route along the northern and western boundaries was considered but rejected because it would:

- be considerably longer with more disturbed farmland;
- require more tree removal and there would be greater impact to vegetation;
- result in greater impact to the low-lying southern area of the Property;
- require a longer route to connect to an existing wellsite to the south; and
- require two crossings of existing pipeline rights-of-way.

Analysis

[34] The scope of a landowner's appeal is limited by section 72(2) of the Act, which provides:

> (2) A landowner of land on which an operating area is located may appeal a determination under this section only on the basis that the determination was made without due regard to
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> (a) a submission previously made by the landowner under section 22 (5) or 31 (2) of this Act, or
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> (b) a written report submitted under section 24 (1) (c) or 31 (6).

[35] The Tribunal has previously commented on the limited right of appeal at paragraph 109 of *Penalty Ranch Ltd. v. Oil and Gas* Commission, 2022 BCOGAT 1 (CanLII) ("*Penalty Ranch*"):

> *To succeed in this appeal, Penalty Ranch must demonstrate, on a balance of probabilities, that the Commission failed to give due regard to their submissions and that it ought to have decided the matter differently. Although this appeal proceeded as a new hearing of the matter, the Panel is to consider the submissions that were provided to the Decision Maker and the evidence tendered in the appeal with a view to determining whether the Decision Maker issued the Permit without due regard to the submissions of Penalty Ranch.*

[36] Although I am not bound to follow it, I agree with and adopt this reasoning of the Tribunal in Penalty Ranch. More specifically, reading the limited right of appeal set out in section 72(2), I consider Penalty Ranch to stand for the proposition that I am to determine whether there is evidence before me that the Decision Maker gave due regard to the

Appellant's submissions in making the Determination. I consider due regard to mean the Decision Maker had adequate information to fully consider any objections that were made and that there is evidence those objections were adequately considered. Whether or not those objections were adequately considered must be assessed in light of the specific circumstances of each case. Further, I am not to consider the Appellant's objections as a new hearing or to substitute my own decision for that of the Decision Maker's. I will now turn to the specific concerns raised by the Appellant.

Agricultural use

[37] While the Appellant says she wished to preserve the agricultural nature of the Property, she provided insufficient evidence of what use is currently being made of the Property. Additionally, the Appellant did not identify how the pipeline would adversely affect this agricultural use.

[38] The Delegation Agreement requires an Appendix II Rationale and Schedule A assessment for oil & gas activity situated on ALR lands. Both were submitted as part of the Prospect Report. The Act requires Vermillion to implement the recommendations found in the assessment and thus the expectation is that this implementation will minimize the impact on ALR lands.

[39] It is evident from the Prospect Report that any impact of the pipeline on agricultural use was minimized. The actual excavation work lasted roughly one month, following which the lands were remediated as set out in the Prospect Report. It is also evident that roughly half of the pipeline passed through forested and uncultivated areas of the Property.

[40] I find that the requirements for assessing the installation of oil & gas infrastructure on ALR land in relation to agricultural use have been considered by the BCER.

Erosion / Drainage

[41] The Appellant asserts there have been erosion issues on the Property. However, I find there was insufficient evidence provided to identify and substantiate specific erosion and/or drainage concerns.

[42] The Prospect Report recognized the potential for erosion and recommended re-establishing any natural drainage immediately after construction. Vermillion mitigated any erosion and drainage concerns by boring beneath the manmade ditch on the Property and through the use of techniques to reduce the movement of water during excavation for the pipeline.

[43] I find that the erosion and drainage concerns raised by the Appellant were given due consideration in the Determination and addressed through the recommended mitigation actions.

Alternate route

[44] The Appellant says consideration should have been given to locating the pipeline entirely off the Property. The observations found in the Prospect Report and in the affidavit evidence submitted by Vermillion say the most direct route, and the one with the least land disturbance, is the route proposed by Vermillion. Further, there was need to connect the new pipeline to existing services located south of the Property. If the route along the western boundary suggested by the Appellant were followed, there would be need to backtrack to the east before travelling south to connect to the exiting services, causing greater disturbance of land and a longer pipeline route.

[45] It is apparent that the BCER considered whether a pipeline route located off of the property was an option. The BCER concluded this alternate route was not a viable option, and I find this was a reasonable conclusion. I find that an alternative route was given due consideration.

[46] The Appellant says the pipeline should not be located adjacent to the existing CNRL Pipeline, although she does not explain why this should be concern. I do not accept her assertion that allowing the pipeline in this location was reckless.

Wildlife habitat

[47] The affidavit evidence from the authors of the Prospect Report says that no significant wildlife species were present on the Property when they conducted their review. The Appellant has not provided sufficient evidence to convince me, on the balance of probabilities, to the contrary. While the Appellant submitted there was a bear sighting on the Property, no corroborating evidence or more details of this was tendered. The authors of the Prospect Report say they specifically looked for evidence of bears on the Property and found none. I find there is insufficient evidence to establish the routine presence of bears.

[48] The question of wildlife habitat was addressed in the Prospect Report, and recommendations were made for obtaining the input of a qualified professional to perform a further wildlife sweep just prior to the commencement of construction.

[49] I find the Decision Maker gave due consideration to the concerns the Appellant raised regarding wildlife on the Property.

Sufficiency of the Prospect Report

[50] The Appellant says the report was insufficient to approve the permit because it was no more than a desktop review, without actual attendance at the Property.

[51] The affidavit evidence establishes that Prospect attended at the Property on two occasions. Prospect constructed test pits and assessed vegetation, drainage, and erosion issues. Staff documented watercourses and made observations of any wildlife habitat. There is ample evidence that Prospect was actually on site and that its report addressed all

of the concerns raised by the Appellant, which in turn was relied upon by the Decision Maker.

[52] The Appellant has not established that the Prospect Report was not based on observations made on site or that Prospect's investigation was not thorough.

[53] The Appellant's reliance on *Richard Bruce Mitchell* does not assist her argument. In that decision, the Tribunal found significant gaps and limitations in the environmental assessment such that it could not be said that due consideration had been given to concerns raised by the appellant in that case. There, the assessment of the relevant property was made when it was covered with snow and there was no ability to assess the drainage, erosion, and soil stability issues present on that property. Those omissions were a basis for the Tribunal to conclude the report was deficient. Here, the Appellant has not demonstrated that the Prospect Report contains any significant omissions or deficiencies.

CONCLUSION

[54] In reaching my decision, I have considered all the submissions and evidence provided by the parties, whether specifically referenced in my reasons or not. For the reasons provided above, I find the Appellant's submissions were given due consideration by the Decision Maker.

[55] The appeal is dismissed.

"Jeffrey Hand"

Jeffrey Hand, Panel Chair
Energy Resource Appeal Tribunal