



Province of
British Columbia

Ministry of
Environment

ENVIRONMENTAL APPEAL BOARD
Victoria
British Columbia
V8V 1X5

APPEAL NO. 85/13 WAT

J U D G E M E N T

In the appeal of Dwight D. Moore, et al, against the decision of the Deputy Comptroller of Water Rights, dated April 30, 1985, heard under Section 38(1) of the Water Act, and Section 11 of the Environment Management Act, relative to the cancellation of an Authority issued by the Deputy Comptroller of Water Rights, under Section 32 of the Water Act and dated May 13th, 1981, as it applied to Final Water Licence No. 8688.

The hearing was held in Creston, B.C. on August 27th, 1985, before a Panel of the Environmental Appeal Board.

Board members in attendance were:

Mr. G. E. Simmons, P. Eng. -	Chairman
Mr. D. W. Heddle, P. Eng. -	Member
Mrs. D. Kerr, B.A. -	Member

Miss Shirley Mitchell, Secretary to the Board, acted as Recorder of the proceedings.

APPELLANT:

Mr. & Mrs. Dwight D. Moore,

Mr. & Mrs. Moore gave evidence.

Mr. & Mrs. John E. Decker,

Mr. Decker gave evidence. Mrs. Decker provided written evidence.

Mr. & Mrs. James Currier,

Mr. Currier gave evidence.

Mr. John W. Stace-Smith,

Mr. Stace-Smith gave evidence.

Mr. Vaughn Mosher, P. Eng. - witness, gave evidence.

LICENSEE:

Mrs. Carmen Rother.

Mr. & Mrs. Rother gave evidence.

Mr. F. Charman, witness, gave evidence.

RESPONDENT:

Mr. J. E. Farrell, P. Eng., Deputy Comptroller of
Water Rights

Mr. Farrell and Mr. R. Cairns gave evidence. Mr. R.
Penner did not give evidence.

In 1934, Final Water Licence No. 8688 was issued to Mr. William Alma Pease, providing for the withdrawal of 9.5 acre feet of water from Rose Spring, in the vicinity of Creston, for irrigation and incidental domestic purposes. That same year, Mr. Pease sought authority to provide certain neighbours with small amounts of water for domestic use. The Comptroller of Water Rights was not prepared to grant that authority. Mr. Pease did, however, continue to make domestic water available, and received \$1.50 per month from each recipient for the use of the water system.

Mr. F. Foerster purchased the Pease property in 1943, and applied for authority under Section 29 of the Water Act to permit the continuation of the supply of what apparently was a limited amount of domestic water to three neighbours. The evidence suggests that the total for the three was in the order of 100 gallons per day. In September, 1943, Mr. Foerster was given Authority under Section 29 of the Water Act "....to supply water for domestic use on any lands adjacent to the works maintained under said Final Water Licence 8688". A charge was permitted, and one of the conditions set out in the Authority was that the same was subject to cancellation by the Comptroller of Water Rights at any time upon thirty days' notice.

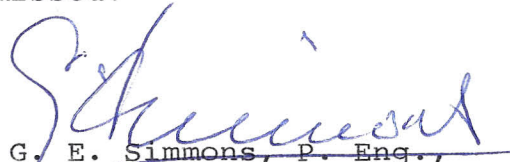
In the ensuing years, it would appear that difficulties arose in the supplying of the domestic quantities to the neighbours. Those neighbours, latterly new owners (the Appellants) of the original properties, paid certain annual amounts, and participated in the maintenance of a somewhat fragile system which had, over the years, been extended into four properties. The summer irrigation period was a time of water shortage, and the new landowners' needs were increasing.

Subsequently, Mrs. C. Rother, who purchased the ex-Pease property from her father, Mr. Foerster, sought clarification of the 1943 Authority. In May, 1981, a new Authority replaced the earlier one. Amongst other points set out, there was a clear description of the "adjacent" lands to be served. Further, it was stated that the Authority was subject to cancellation by the Comptroller of Water Rights upon one year's notice. The four property owners were provided with copies of this 1981 Authority.

It would appear that the problems of domestic supply during the irrigation period continued to mount, and in 1984, the licensee, Mrs. Rother, requested that the Authority be cancelled. In April, 1985, after obtaining background information, the Deputy Comptroller of Water Rights advised the Appellants that the Authority would be cancelled in April, 1987.

The Panel, having considered all the evidence placed before it, concluded that the decision of the Deputy Comptroller of Water Rights was the best under the circumstances, and that the Appellants failed to show conclusively that the Authority should remain in force.

The appeal, therefore, is dismissed.


G. E. Simmons, P. Eng.,
Panel Chairman,
Environmental Appeal Board

Victoria, B. C.
October 24th, 1985.