



Province of  
British Columbia

Ministry of  
Environment and Parks

ENVIRONMENTAL APPEAL BOARD  
Victoria  
British Columbia  
V8V 1X5

---

APPEAL NO. 86/29 WAT

JUDGEMENT:

In the appeal against two decisions of the Comptroller of Water Rights, dated 24th November, 1986, refusing to issue a new water licence and refusing to approve a Change of Works.

APPELLANT:

Mrs. Alexandra Poland  
Creston, B. C.

HEARING DETAILS:

The hearing was held in Creston, B. C., on March 24th, 1987.

The Panel of the Board in attendance were:

Mr. H.D.C. Hunter,	Chairman
Mr. Lou Osipov,	Member
Mr. G. Reed,	Member

Miss Shirley Mitchell acted as recorder for the proceedings.

APPELLANT:

Mrs. Alexander Poland. She gave evidence.

RESPONDENT:

The Comptroller of Water Rights, represented by Mr. J. Farrell, Deputy Comptroller

Mr. Farrell and Mr. R. G. Cairns, Appeals Technician, Water Management Branch, gave evidence

LEGAL OBJECTORS:

Mr. & Mrs. B. Rabbitt  
Mr. & Mrs. L. Weber  
Mr. & Mrs. P. Czar  
and Miss S. Bryan

were recognized as objectors and entitled to full party standing. Mr. Czar acted as spokesman and gave evidence.

Mr. Farrell produced, and entered as Exhibit 1, a book of relevant correspondence and documents.

Photographs were produced by Mrs. Poland but were not entered as exhibits.

THE EVIDENCE:

Mrs. Alexandra Poland, who holds a water licence on Glaser Creek in Creston, made two applications to the Comptroller of Water Rights. The applications were: (a) for an additional licence for 250 gallons per day for watering her horses; (b) for a Change of Works to move the Point of Diversion for her existing licence to a point some 150 yards upstream of the present location. The Comptroller had rejected both applications and this appeal resulted.

The evidence of the parties made clear that the situation of the various licence holders on this stretch of Glaser Creek is difficult. For much of the year, the creek contains more water than is licensed or needed; but during the summer, the flow decreases, and, indeed, appears to dry up on occasions, so that there is competition for the available water. Under such circumstances, the Water Act provides for the priorities. It provides that those licensees with the prior licences are entitled to their full licensed amount while subsequent licensees are deprived of water. The Act does not provide for equitable sharing; this can only be accomplished through the co-operation of licensees.

The law is clear, but it can only be enforced by strict and constant supervision by the Water Management Branch. The Branch does not have, and indeed cannot have, the resources to provide this supervision. The solution depends on the co-operation of the various licensees, with assistance from the Branch. It is painfully clear that in this stretch of Glaser Creek, there is no co-operation, rather active hostility. It is not the Board's function, and certainly not its wish, to apportion blame for this hostility, but it is unlikely that the blame is all on one side.

It is against this background that the applications were made by the Appellant. She claims that other licensees with subsequent licences together with a licensee with a prior license had obtained authority in 1977 to divert part of Glaser Creek as a combined Point of Diversion, and had thereby deprived the channel feeding her Point of Diversion of its fair share. She applied to move her own Point of Diversion to a point above this channel split.

The new Point of Diversion was on lands of others, and the other was not willing to grant an easement. The pipeline would also be on lands of others, and again there was refusal to grant an easement.

The Comptroller did not wish to grant this application as he anticipated it would lead to an immediate application by the others to divert above this new point. He could see no technical advantage to the licensee, either in saving water or in pumping costs, or anything else. The unwillingness of the landowners was also a factor, but not a governing factor. Accordingly, he refused the application.

The other application was for a new licence for 250 gallons per day in addition to the presently licensed 500 gallons per day. The point of use was on land over which the applicant had no legal rights. It was for watering horses, but there appeared to be only one horse involved, with a consumption of some 12 gallons per day. The Point of Diversion was to be the point applied for as an amendment to the existing licence. At this point, the stream is fully recorded, at least in the dry periods. For all these reasons, the Comptroller rejected the applications.

After hearing the evidence, the Board visited the site and inspected the alleged river channels and the existing channels and the Point of Diversion which is alleged to deprive the appellant of her water.

A multi-notch weir had been installed in 1985 by Mr. Cairns as a temporary measure to allocate the then low-flow appropriately between the channels. This weir was found in the channels, heavily silted up and not performing its function. As seen by the Board, erosion had dug the new channel deeply, and the old channel leading to the appellant's lands was heavily silted up, although water had flowed in it recently. Mr. Cairns salvaged the weir and reinstalled it with a board and earth, so that most of the flow was diverted to the appellant's channel and some to the other. The flow quickly eroded the silted channel. This operation vividly illustrated how easily the problem can be solved if the parties are willing to co-operate.

It is the decision of the Board that both decisions of the Comptroller of Water Rights be upheld and the appeals dismissed.

The Board does not wish to leave the matter there, although that is as far as the Board has jurisdiction to order.

The Board urges the appellant and the objectors equally to pause in their bickering. To continue will prevent any solution to the problems which arise from the vagaries of nature, and which affect them all. The Board believes that a proper concrete weir (or equal) at the creek split may prove useful in distributing the water more equitably. The Comptroller has the authority to order the parties to instal Joint Works to his specifications and approvals, and to order the parties to pay the costs as he may apportion them. However, even then, such works will not prevent any of the parties sabotaging the attempts to provide fairness to all. The Board recommends that if bickering continues, the Comptroller should seriously consider taking this step.

Such Works will require regular maintenance or they will suffer the fate of the temporary notched weir installed in 1985. This will also cost money, to be shared by the licensees.

It is recommended that the objectors give some consideration to the fact that they all have City water, whether legally connected or not, while the Appellant cannot obtain such water, and only has the creek to rely on.



H.D.C. Hunter,  
Panel Chairman,  
Environmental Appeal Board

Victoria, B. C.  
April 15th, 1987