



Province of  
British Columbia

Ministry of  
Environment  
and Parks

ENVIRONMENTAL APPEAL BOARD  
Victoria  
British Columbia  
V8V 1X5

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APPEAL NO. 86/36 WAT

JUDGEMENT

In the appeal of the Bridge River Indian Band against the decision of the Comptroller of Water Rights to issue a water license to the Village of Lillooet authorizing the diversion of 500,000 gallons of water per day from Moon Creek, a tributary of the Bridge River.

APPELLANT:

Bridge River Indian Band  
P.O. Box 190  
Lillooet, B.C.  
V0K 1V0

HEARING INFORMATION

The hearing was held on April 23, 1987 in Kamloops, B.C., before a Panel of the Environmental Appeal Board.

Board Members in attendance were:

Mr. G.E. Simmons, P.Eng.	-	Chairman
Mr. G.M. Reed	-	Member
Mr. J.D. Watts	-	Member

Registered Appellant:

Bridge River Indian Band, represented by Ms. Clarine Ostrove, Counsel.

Mr. Trevor Chandler gave evidence;  
Mr. Eddie Thomas gave evidence;  
Mr. Dave Terry gave evidence;  
Mr. Saul Terry gave evidence;  
Chief Leonard Sampson gave evidence; and  
Mr. Bradley Jack gave evidence.

Respondent:

Comptroller of Water Rights, represented by Ms. Livia Meret, Counsel.

Mr. J.E. Farrell, Deputy Comptroller of Water Rights, gave evidence; and  
Mr. R.J. Penner gave evidence.

Party Appearing:

The Corporation of the Village of Lillooet had been granted full party status, and was represented by Mr. Derek Donaldson, Counsel.

Mr. R.W. Watson, Village Clerk, gave evidence.

Before introduction of evidence by Counsel for the Appellant, Counsel for the Party Appearing raised a technical point relative to an item in correspondence addressed to the Bridge River Indian Band by the Deputy Comptroller on January 31, 1985. Specifically, Mr. Donaldson referred to clause 10 of the letter wherein it is noted that an earlier appeal against the issuance of a water licence to the Village of Lillooet filed by the Bridge River Indian Band had been rejected by the Environmental Appeal Board. In the same letter, Mr. Farrell confirmed the earlier decision that a water license would issue, and concluded by again advising the Band of the necessary steps to submit an appeal.

As recounted in the July 31st letter, the Band had been asked by the Board at an earlier date to abandon a previous appeal following upon a request by the Village to set aside its initial application for a water license on Moon Creek. The Band had acquiesced to the Board's recommendation. Subsequently, the Village sought reactivation of its application, and the Band was advised by the Deputy Comptroller on November 29th, 1984, that it could renew its appeal. The Board received the Band's appeal on January 2nd, 1985, and rejected it on January 11th, 1985, on the basis of late filing.

As noted in that January 31, 1985 letter to the Band, the Deputy Comptroller not only stated he was confirming the earlier decision of the Comptroller of Water Rights to issue the license, but, also, advised the Band that it could again appeal that decision if it so wished. The Board took no action to counter this invitation, thereby leaving the appellant with the belief that an appeal could be submitted.

As of the date of the hearing, a licence had not been issued.

It would appear that both the Deputy Comptroller and the Board took cognizance of the Band's somewhat frustrated attempts to appeal and were making some effort to assist the appellant. Since the decision to hold the hearing in itself would not prejudice either party, the Panel is of the opinion that the hearing was in order and served natural justice.

In view of the fact that the Band had steadfastly maintained its opposition to the issuance of the license, and further, that it had once again been advised that it could appeal the Comptroller's decision, the Board made what it then considered to be a just decision, and agreed to accept the appeal which arose from the January 31st letter.

On an appeal, the Board may make any order or decision that appears to it to be just. It would seem reasonable that such a position on the part of the Board could be taken before as much as after the acceptance of an appeal.

The issue before the Panel is not so much the provision of a license to the Village of Lillooet in the face of general opposition from the Bridge River Band as it is a conflict between communities for a scarce resource.

Since its inception, the Village of Lillooet has utilized local streams to provide water for its growing population. Currently, it holds licenses on Town Creek and Tyee Jimmie Creek in the order of 413,000 gallons per day. The Village also holds a license to extract up to 2,000,000 gallons per day from Cayoosh Creek. All sources are fed into two storage tanks of 1,250,000 gallons capacity. The supply from Cayoosh Creek is by way of a filtration gallery and two pumps to the storage tanks. The capacity of this latter pumping system is far short of the licensed amount, but the Village is apparently reluctant to increase that capacity because of anticipated high costs associated not only with new pumps but also with improvements to the filtration gallery where environmental and security factors would have to be considered. Lillooet also has a license on Dickie Creek for 200,000 gallons per day, but, so far, has not used this source.

From evidence presented, it appears that summer requirements for water in the Village has now reached the point where the system is only just meeting demand, and in fact, last year that demand even exhausted the Village's fire reserve of water for a short period.

The developing problem had been recognized earlier, and in 1977 a very preliminary study by an engineering firm identified a number of future water sources for the Village. Later that year an engineering pupil provided Lillooet with an appreciation of the potential for diverting flows from Moon Creek into the Village system. In 1979, Lillooet made application for the diversion of 2,000,000 gallons per day from Moon Creek to supplement its water supply. In 1982, the Comptroller of Water Rights advised the Village that a license would issue in the amount of 500,000 gallons per day from Moon Creek. Lillooet concluded that such an amount would ensure supply at least for another 10 to 15 years, when included with its undeveloped Dickie Creek license.

The choice of Moon Creek over Cayoosh Creek as one of the options, according to evidence given, was continuing problems with the two pumps and the filtration gallery. In addition, estimated costs for Moon Creek were less than alternatives such as Seton Lake, and other streams. Further, Order-in-Council #3184 approved October 13, 1977, placed a reserve on all unrecorded waters of Moon Creek, permitting, however, acquisition for waterworks purposes by a municipality.

Mr. Watson provided a considerable amount of information during the hearing but there was little evidence of engineering or demographic evaluations. Reference was made to the report by the engineering student, Mr. Jon Pritchard, which report it appeared was the basis for Lillooet's application in 1979. Present population was reported to be 1,850, increasing perhaps at the rate of 1.5% per year.

Major demand on the water system is in hot summer periods when normal household usage is increased through garden and lawn sprinkling. Mr. Watson noted that lawn and park watering had imposed such a demand that day-time sprinkling restrictions had been imposed in 1986 to some effect.

Moon Creek rises in the high land which separates Seton Lake and Seton Creek from the Bridge River. The Creek flows northward from a small lake, descending over bench lands and through Indian Reserve No. 1, before entering the deeply incised Bridge River. A gauging station was established by the Water Survey of Canada on the upper reaches of Moon Creek in 1981 and records were provided as evidence by the Respondent.

The Bridge River Indian Reserve No. 1, containing some 10,000 acres on either side of the Bridge River, sustains a population of around 100 people. A further 100 members currently live off the Reservation. The Band holds a water license on Moon Creek permitting the diversion of 344.1 acre feet of water for irrigation and domestic purposes. This license has a priority date of February 23, 1891. The point of diversion is outside the Reserve and the water is carried by an old ditch to the largest irrigated area in the Reserve. Much of the ditch apparently must be replaced because water losses are high. Additional irrigation water is obtained under license from Ama Creek, a small stream which, it was claimed, does not produce the allowable 133.2 acre feet of water. It was stated that there are no other sources of water for the Band on the south side of the Bridge River.

Evidence led with reference to the appeal described the steps which the Band has taken over recent years to improve life-style on the Reserve through better utilization of the resources along the south bank of the Bridge River. In 1981 a biologist was engaged to make a fishery study on the Bridge River. A forester carried out a study over the whole reserve which resulted in a logging program still operating. A land-use map was started and in 1984 Dr. Chandler was employed to provide a pre-feasibility review of agricultural and water resources in the Reserve. A housing study was instigated in 1986 to relate dwellings to agricultural areas. As an initial project, the people opted for the upgrading of 120 acres in the vicinity of Ama Creek - the area also served by the ditch from Moon Creek. Dr. Chandler completed a study of what has become known as the Ama-Moon project.

Currently, the area of the Ama-Moon project is only using a small portion of the allocation from Moon Creek together with Ama Creek. Two factors were introduced as reasons. First, the ditch losses are relatively high from exfiltration, and secondly, in low flow years, there is not enough water at the point of diversion from Moon Creek.

Dr. Chandler described the plans for the full agricultural potential of the Ama-Moon project. The ultimate 120 acres would be served by a pipe which would replace the ditch. This would be the first major step in upgrading the Board's agricultural projects. It was claimed that lack of funding because of potential water shortage was delaying the ditch replacement.

Other small areas in the vicinity of the Ama-Moon project where small holdings could develop are part of the larger plan for the Reserve. Looking to the future, Dr. Chandler was able to identify for the Band similar areas within the Reserve suitable for agriculture providing water was economically available. The Band believes that Moon Creek could be and is the only source of irrigation water for the Reserve's areas identified. The Bridge River is too deeply incised to be of economic value.

Mr. Eddie Thomas who has ranched on the south side of the Reserve for many years and draws upon the existing ditch for irrigation water, maintained that in dry years there was very little water in Moon Creek. He was of the opinion that there was substantial loss between the Water Survey-Canada gauge and the Band's licensed point of diversion. Some years ago when more land was being irrigated than now, there was barely enough water in dry years.

Chief Leonard Sampson and past Chief Saul Terry described the conditions on the Reserve over the last 30 to 40 years. More recently, and under the guidance of the two witnesses, plans had been formulated to upgrade the living conditions for their people. To both of them, water is their survival and the only source of any substance which could be relied on for the future of the Band is Moon Creek. Although the withdrawal of 500,000 gallons per day would not necessarily imperil the development of the Ama-Moon project since it is associated with the Band's own licenses, further irrigation on Reserve lands, particularly to the west of Moon Creek, could be impossible if a license was issued to the Village of Lillooet.

They argued that the efforts of the Band over the past 15 years should be a measure of its determination to utilize the land for the greatest benefit of its peoples. They considered that the Band will need all the available flow of Moon Creek for domestic and agricultural use as their plans develop in the future. Mr. Terry concluded by noting that the Village of Lillooet has options to satisfy its future needs: the Bridge River Band has no options - there is only Moon Creek.

The original application by Lillooet was based on intermittent measurements of Moon Creek flows at a point downstream from the presently existing stream gauge. Mr. Penner in producing flow records for the period 1981 to 1985 noted that for the most part, low flows occurred in late summer, and that the 7-day low flow average would have a short-fall probability of once in four years if the license was granted. He did note also that there was no record of flows downstream from the gauge, hence exfiltration losses were unknown.

Mr. Farrell advised that he took into consideration the Regional Water Manager's report, the objections received, the fact that there was an Order-in-Council relative to Moon Creek, and that the Indian Band has first priority, when he reviewed the earlier decision to grant a license to Lillooet. He noted that he has no authority to take into account possible future plans which may require water although he did accept some observations with respect to the future needs of the Village. He was still of the opinion that Moon Creek could supply both the Band's licensed quantity and the proposed 500,000 gallons per day for Lillooet.

The area encompassing the Village of Lillooet and the Bridge River Indian Reserve is one where long, hot, dry summers tax the water supplies of communities and other users. In the present case, the current and future needs of these two communities have resulted in competition for a limited supply of water. In short, the applicant seeks a water source which will ensure that the Village can meet its water requirements for the next ten to fifteen years, and perhaps longer. In seeking the additional supply from Moon Creek, the Village recognizes the prior rights of the Indian Band's Final Water Licence No. 10431. The Appellant sees the diversion of 500,000 gallons per day as a curtailment of the Indian Band's future agricultural development, since Moon Creek is the only reasonable source of water for the Reserve.

When communities vie with one another for a limited and essential resource, then management of that resource would appear to be a necessary consideration. Not only should any management concept encompass regulation, it may, at times, also need to recognize allocation. It appeared to the Panel that the water resources of the area in question require more than regulation if communities are to survive and grow. The conflict over water requirements between the communities of Lillooet, including the Riverside Improvement District and the Bridge River Indian Band might be addressed through water management programs, and in the instance before the Panel, it is conceivable that the Regional District could play a major role.

From the evidence presented, there would appear to be long periods when no action was being taken by the Band. There may very well be good reasons for these inactive periods, even with the degree of planning described. The so-called Ama-Moon project of 120 acres is still only a 20-acre program employing a very small number of people. As was pointed out, the project was held up pending replacement of the ditch with a pipeline. However, even with a long-term plan, there is, perhaps, little justification for allocating scarce resources to some uncertain and far distant possible use. A concerted move to get the ditch replaced would demonstrate the Band's intention to continue to develop their own management plans.

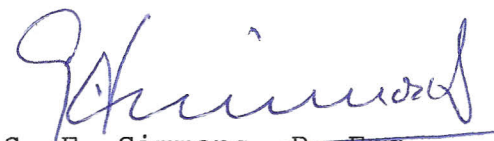


The Panel had some difficulty with the balance between the summer demand of the Village where evidence indicated that a substantial usage of water was for garden, lawn and park sprinkling on the one hand, and the current and planned agricultural needs of the Indian people on the other. Further, the Village had a number of options within the drainage area of Seton River, but chose to go over into the Bridge River basin for economic reasons.

The Panel felt that if Lillooet could be assured of only ten to fifteen years of supply from Moon Creek before further augmentation, it would be reasonable to consider instead other sources from which a much longer term of supply could be realized.

From evidence presented, there appeared to be only a relatively short period of information on the low flow periods of Moon Creek, particularly in the area of the Band's point of diversion. In view of the limited amount of hydrologic data for Moon Creek and the lack of options available to the Indian community, it does not seem reasonable to alienate the residual flows of Moon Creek until some form of management plan is in place. The Panel considered that the Village of Lillooet should not receive a licence to divert water from Moon Creek until such time as the water resources of the area encompassing the Village and the Bridge River Indian Reserve No. 1 have been evaluated fully and the needs of the communities which are party to this hearing, as well as any others within the prescribed area, have been taken into account.

The decision of the Comptroller of Water Rights to issue a water licence to the Village of Lillooet is reversed. The appeal is upheld.

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

Victoria, B. C.  
August 27th, 1987