



Environmental Appeal Board

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APPEAL NOS. 1991-WAT-028(a), 029(a), 030(a) and 1993-WAT-025(a)

In the matter of an appeal under section 40 of the *Water Act*, R.S.B.C. 1996, c. 483.

BETWEEN:	Tim and Galena Hadikin	APPELLANT
AND:	Philip and May Kanigan	APPELLANT
AND:	Marie Hadikin	APPELLANT
AND:	Deputy Comptroller of Water Rights	RESPONDENT
AND:	Charles L. and Bonnie L. Olsen	THIRD PARTY
AND:	Don L. and Fernande M. Wilson	THIRD PARTY
AND:	James E. Sutherland and Elsie Lazareff	THIRD PARTY
AND:	Arthur S. Coburn	THIRD PARTY
AND:	Bob and Bonnie Essuance	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board Margaret Eriksson, Chair	
DATE:	May 12, 2003	
PLACE:	Nelson, B.C.	
APPEARING:	For the Appellants Tim and Galena Hadikin, Marie Hadikin: Tim Hadikin	
	For the Respondent:	Livia Meret, Counsel
	For the Third Parties	
	Don and Fernande Wilson:	Fernande Wilson
	Charles and Bonnie Olsen,	
	James Sutherland, Elsie Lazareff:	Bonnie Olsen
	Bob and Bonnie Essuance:	Bonnie Essuance

APPEALS

This hearing involved the following appeals:

- 1 An appeal by Nick and Marie Hadikin from a June 21, 1991 decision of the Deputy Comptroller of Water Rights to substitute Conditional Water Licence 101658 for Conditional Water Licence 57545;
- 2 An appeal by Tim and Galena Hadikin from a June 21, 1991 decision of the Deputy Comptroller of Water Rights to substitute Conditional Water Licence 101622 for Conditional Water Licence 57542;
- 3 An appeal by Philip and May Kanigan from an August 23, 1991 decision of the Deputy Comptroller of Water Rights to substitute Conditional Water Licence 102427 for Conditional Water Licence 57543;

(Appeals 1 – 3 are hereafter collectively referred to as “the 1991 Appeals”)

- 4 The joint appeals by all three sets of appellants, commenced on July 21, 1993, against the June 29, 1993 decisions of the Deputy Comptroller of Water Rights to issue new Conditional Water Licences (106655, 106650, 106651, 106653, 106655, 100271, 100274, 100276) on Joseph Spring.

(“the 1993 Appeals”).

The appeals were scheduled to commence at 9:00 a.m. on May 12, 2003, at the Baker Street Inn in Nelson, B.C., within driving distance of the home of the Appellants Philip and May Kanigan. Letters confirming the date, time and place of the hearing, as well as the Notice of Hearing, had been sent to all parties by the Environmental Appeal Board office several days prior to the hearing. The Appellants Philip and May Kanigan did not file their Statement of Points prior to the hearing.

The Panel, the Appellant, Tim Hadikin (appearing on behalf of himself, his wife Galena Hadikin and his mother Marie Hadikin), the Respondent, and several Third Parties were all present in the hearing room by 9:00 a.m. on May 12, 2003. The Panel Chair, noticing that the Appellants Philip and May Kanigan had not yet arrived, suggested that the parties wait until 9:30 a.m. to give Philip and May Kanigan time to arrive in the event that they may have encountered difficulties on the way.

At approximately 9:30 a.m. calls were placed by the hearing recorder to the Kanigan’s residence, without response. The Panel Chair also made enquiries with the hotel front desk and to the Board office to determine whether the Kanigans, or someone on their behalf, had left any messages. Shortly thereafter, the Panel Chair called the hearing to order.

The hearing began with the Respondent’s preliminary motion that the 1991 Appeals be dismissed as moot, since on February 12, 1993, the Deputy Comptroller of Water Rights had revoked the decisions that were the basis of the 1991 Appeals and reinstated the original Conditional Water Licences. Counsel for the Respondent filed the February 12, 1993 Revocation Order of the Deputy Comptroller of Water Rights, J. E. Farrell. The Appellant, Mr. Hadikin, agreed that the 1991 Appeals were

moot. The Third Parties took no position on the issue. The Panel Chair ruled that the 1991 Appeals were moot and dismissed those appeals.

The Appellant Mr. Hadikin and the Respondent then requested an adjournment to discuss the issues relating to the 1993 Appeals. When the hearing resumed, Mr. Hadikin and the Respondent advised the Panel Chair that they had resolved the matter and that the Appellants, Tim and Galena Hadikin and Marie Hadikin, wished to abandon their appeals. Notices of Abandonment of Appeals were filed on behalf of Tim and Galena Hadikin and on behalf of Marie Hadikin. The Panel granted their request to abandon their appeals.

The Respondent then requested that the outstanding 1993 Appeal by the Appellants Philip and May Kanigan be dismissed as abandoned. The Respondent argued that the Kanigans had neither shown up for the hearing nor filed a Statement of Points. The Respondent pointed out that the Kanigans had received the Notice of Hearing and that the hearing dates were established some time ago. In addition, the Respondent stated that it had also sent its materials to the Kanigans by courier, which had to be signed for, and by fax. The other Appellants and the Third Parties took no position on the matter.

DECISION

(i) 1991 Appeals

The Panel orders that the following 1991 appeals are dismissed since the decisions under appeal were revoked on February 12, 1993 by the Deputy Comptroller of Water Rights, J. E. Farrell:

The appeal of Nick and Marie Hadikin from a June 21, 1991 decision of the Deputy Comptroller of Water Rights to substitute Conditional Water Licence 101658 for Conditional Water Licence 57545; [Appeal No. 1991-WAT-028]

The appeal of Tim and Galena Hadikin from a June 21, 1991 decision of the Deputy Comptroller of Water Rights to substitute Conditional Water Licence 101622 for Conditional Water Licence 57542; [Appeal No. 1991-WAT-029]

The appeal of Philip and May Kanigan from an August 23, 1991 decision of the Deputy Comptroller of Water Rights to substitute Conditional Water Licence 102427 for Conditional Water Licence 57543; [Appeal No. 1991-WAT-030]

(ii) 1993 Appeals

(a) 1993 Appeal of Philip and May Kanigan

The Appellants Philip and May Kanigan failed to appear at the hearing at the time and place stated in the Notice of Hearing and made no apparent attempt to notify the Board office, the hotel or the Panel of any problem with their attending on the time and date set down. The

Panel, therefore, orders that the appeal commenced on July 21, 1993 by Philip and May Kanigan against the June 29, 1993 decisions of the Deputy Comptroller of Water Rights issuing new Conditional Water Licences (106655, 106650, 106651, 106655, 100271, 100274, 100276) on Joseph Spring be dismissed as abandoned. [Appeal No. 1993-WAT-025]

(b) 1993 Appeals of Tim & Galena Hadikin and Marie Hadikin

The Panel orders that the appeals of the Appellants Tim and Galena Hadikin and Marie Hadikin commenced on July 21, 1993 be dismissed as abandoned, as per their Notices of Abandonment filed at the hearing on May 12, 2003. [Appeal No. 1993-WAT-25]

Margaret L. Eriksson, Panel Chair
Environmental Appeal Board
May 30, 2003