



# Environmental Appeal Board

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## **APPEAL NO. 94/42 - WATER**

In the matter of an appeal under section 38 of the *Water Act*, R.S.B.C. 1979, c.29

**BETWEEN:** Ron and Peg Waldron **APPELLANT**

**AND:** Deputy Comptroller of Water Rights **RESPONDENT**

**AND:** Richard Zammuto **THIRD PARTY**

**BEFORE:** A Panel of the Environmental Appeal Board  
Judith C. Lee, Chair  
Harry Higgins, Member  
Christie Mayall. Member

**DATE:** September 15, 1995

**PLACE:** Prince George, British Columbia

**APPEARING:**

<b>For Appellant:</b>	J. Robert Leverman, Counsel
<b>For Respondent:</b>	Jack Farrell
<b>Witnesses:</b>	Bruce Jamieson Dave Kalyn
<b>For Third Party:</b>	Richard Zammuto

## **APPEAL**

The authority for the Panel of the Environmental Appeal Board to hear this appeal is found in the Environment Management Act and the Water Act.

Ron and Peg Waldron are appealing the December 12, 1994, decision of the Deputy Comptroller of Water Rights to grant Conditional Water Licence (CWL) 101560 for the diversion and use of 500 gallons per day from McGovern Spring for domestic purposes to the licence holder, Richard Zammuto.

The grounds for appeal are:

1. That the Deputy Comptroller of Water Rights erred in declining to consider alternative sources of water availability; and
2. That the Deputy Comptroller of Water Rights erred in determining that the availability of alternative sources is irrelevant.

The order sought by the Appellant is that the Licence not be granted unless alternative sources are investigated and proven unfeasible.

## BACKGROUND

McGovern Spring is located on Crown Land near Crescent Spur, British Columbia. Estimates of flow range from 1,000 to 5,000 gallons of water per day. Far Away Spring is located on land owned by the Waldrons. Estimates of flow range from 100 to 160 gallons per day. The Waldron's property lies between McGovern Spring and Dr. Zammuto's property.

Dr. Zammuto currently holds CWL 103824 on Far Away Spring. Although Dr. Zammuto does not have an easement to enter the Waldron's property for the existing works of CWL 103824, he does have a verbal agreement with them and it is apparently an amicable arrangement.

The present appeal stems from a domestic water licence application filed by Dr. Zammuto on September 26, 1989, for 500 gallons per day from McGovern Spring. This licence, CWL 101560, was to be supplemental to CWL 103824; the combined total of water diverted under the two licences could not exceed 500 gallons per day. CWL 101560 requires works that would cross the Waldron's land.

## ISSUES, EVIDENCE AND ARGUMENT

Mr. Leverman, Counsel for the Appellants, stated that there was little disagreement as to the evidence in this case; rather, the issue concerned the role and responsibilities of the Water Management Branch in allocating water. The Appellant's particular concern is that after a water licence on CWL is granted to a licensee, section 24 of the *Water Act* of the gives the licensee "the right to expropriate any land reasonably required for the construction, maintenance, improvement or operation of work authorized under his licence...".

Mr. Leverman argued that, after obtaining water rights for works across a neighbouring property, the logical next step for an applicant is to expropriate the land required for the works. He contended that property rights should only be violated when there is no practical alternative.

The Respondent, Deputy Comptroller of Water Rights, pointed out that section 24 expropriation only occurs if "there is a failure to reach agreement respecting entry."

The Respondent points out that the *Water Act* and the *Water Regulation* sets out the procedure to be followed in making an application for a water licence. Under the Act and the Regulation it is the applicant who specifies the proposed source of supply and point of diversion, not the Regional Water Manager or the Deputy Comptroller of Water Rights.

Section 8(1) of the *Water Act* states:

Every person who applies for a licence shall comply with the directions of the comptroller or the regional water manager with respect to filing the application, giving notice of it by posting, service or publication and paying the prescribed fees, and shall furnish the plans, specifications and other information the comptroller or regional water manager requires.

Section 10(d) of the *Water Act* states:

**With respect to an application**, whether objections to it are filed or not, the comptroller or the regional water manager may...require additional plans or other information. (emphasis added)

The Act clearly states that additional information relates to the application under consideration. It states further that additional information is required at the discretion of the Comptroller or the Regional Water Manager. It is, therefore, not incumbent upon the Comptroller or the Regional Water Manager to investigate alternative sources of water.

In practice Mr. Jamieson, the Regional Water Manager, stated that in this case he looked briefly at alternative sources. He stated that he used his experience to dismiss the Fraser River and groundwater as sources and explained why the routing of the works around the perimeter of the Waldron property was too costly.

## DECISION

In making this decision, the Panel of the Environmental Appeal Board has carefully considered all of the documentary evidence placed before it and all comments made during the hearing, whether or not they have been reiterated within the body of this document.

Water is one of the most basic of human needs. The *Water Act*, therefore, has ensured that available water can be transported to the site where it is required. The *Water Act* recognizes that works will often be required on lands not owned by the licensee, and addresses this issue under sections 24, 25, 26 and 27. Under section 24(2), provisions are made for expropriation of the land reasonably required for the construction, maintenance, improvement, or operation of works authorized under a licence.

However in most cases, the licence holder and landowner work out a mutual agreement for entry via easements, etc., so that expropriation of land is neither an automatic nor inevitable consequence of holding a water licence.

The evidence established that Far Away Spring has insufficient water to supply Dr. Zammuto's allotted daily quota and the most practicable alternative to supplement his water supply is to route water from McGovern Spring across the northwest 1/4 of District Lot 8072.

**It is therefore, the unanimous decision of the Panel of the Board that the appeal is dismissed.**

Christie Mayall, Panel Member  
Environmental Appeal Board

January 11, 1996