



Environmental Appeal Board

APPEAL NO. 95/57 - WATER

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

BETWEEN:	George Gotzen	APPELLANT #1
AND:	D.J. Parshyn and J. Bruneau	APPELLANT #2
AND:	Mary-Lou Molsberry	APPELLANT #3
AND:	Deputy Comptroller of Water Rights	RESPONDENT
AND:	Frederick and Anita Slootweg	THIRD PARTY
AND:	Ronald Sawatzky	THIRD PARTY
AND:	William And Lilyan Upton	THIRD PARTY
AND:	Christian Sartori	THIRD PARTY
AND:	Roy Huband	THIRD PARTY
AND:	Robert and Margaret Hansen	THIRD PARTY
AND:	Teresa Callon	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board David Perry, Panel Chair Gary Robinson, Member Jack Lapin, Member	
DATE OF HEARING:	May 2 and 3, 1996	
PLACE OF HEARING:	Chilliwack, BC	
APPEARING:	For Appellant #1	George Gotzen
	For Appellant #2	D.J. Parshyn and J. Bruneau
	For Appellant #3	Mary-Lou Molsberry
	For Respondent	Jack Farrell
	For Third Party	Frederick and Anita Slootweg
	For Third Party	Ronald Sawatzky
	For Third Party	William and Lilyan Upton
	For Third Party	Christian Sartori
	For Third Party	Roy Huband

For Third Party
For Third Party

Robert and Margaret Hansen
Teresa Callon

APPEAL

This is an appeal brought against the decision of the Deputy Comptroller of Water Rights made November 22, 1995. The appeal is brought by three different Appellants. Mr. Gotzen opposes issuance of any further licences on Adams Spring. He is the holder of a water licence on both Watt Creek and Adams Spring. Ms. Molsberry is also an upstream user of Adams Spring and opposes issuance of the water licence. Mr. Parshyn, who appeared on behalf of both himself and Ms. Bruneau, is the recipient of a seasonal water licence from Adams Spring in the Farrell decision. Mr. Parshyn appeals the refusal of Mr. Farrell to order joint works and also appeals the decision to only grant him seasonal use on Adams Spring.

FARRELL DECISION

On reviewing the water use on Adams Spring, Mr. Farrell determined that there was unrecorded water for the period December 1 to June 30. His observation of the water levels in Adams Spring was based on water flow measurements provided by the existing users.

Based on this review of the water flows, Mr. Parshyn and Ms. Bruneau were issued a licence for 500 gal/day limited to between December 1 and June 30 of each year. The purpose of the diversion is for domestic use.

PARSHYN APPEAL

Mr. Parshyn argues that he has a right to more water than was ordered by Mr. Farrell and, furthermore, that an order for joint works should have been issued.

The factual background to the application for joint works is that there are two community water lines which service properties directly to the east of Mr. Parshyn. One line, known in these proceedings as the White Line, extends from Adams Spring crosses Frost Road South, proceeds across the Upton and Racine properties in a westerly direction and ends on the Croteau property near Frost Road.

Where the White Line crosses Frost Road South, there is convergence with a line to the north of Mr. Parshyn running to Watt Creek. From the point of the convergence to the Christian Sartori property, the line is known as the Black Line. Evidence was lead at the hearing that the White Line contains only Adams Spring water while the Black Line alternates between Watt Creek and Adams Spring. The evidence at this hearing was that the upstream users from Mr. Parshyn generally have two water licences, one for the winter from Adams Spring and a second supplementary licence from Watt Creek to deal with the drier summer months.

The hearing also heard evidence that there is an informal arrangement between Mr. Sartori and Mr. Gotzen. Mr. Sartori uses more than his water licence share of water from Adams Spring but in return allows his well water to enter the community water line which provides a sufficient flow for Mr. Gotzen.

There are no easements in place for the water lines and the operation of them is done on an informal basis. Maintenance of the lines is conducted by Mr. Gotzen and, given their advanced age, apparently require constant supervision.

Mr. Parshyn gave evidence that the community users were unwilling to allow him to gain access to either the White Line or the Black Line. However, he had not made any formal proposal to this group at the time of the hearing.

Mr. Farrell, giving evidence on his own behalf, says that the water management division is generally reluctant to order joint works. If an agreement cannot be reached between the parties, then an order requires a high level of supervision by water management staff in order to achieve an equitable outcome. The preferred outcome is agreement between the parties.

On this ground of appeal, the Board is in agreement with Mr. Farrell. There have been insufficient attempts by Mr. Parshyn to achieve accommodation with his neighbours. Although the Appellants Gotzen and Molsberry both indicated that they opposed joint works, they also became aware during the course of the hearing that failure to co-operate may result in an order being made against them. Given that there is power under the *Water Act* for joint works to be ordered and given that Mr. Parshyn has a valid licence to draw water from Adams Spring, the Board notes that it would certainly be in the best interests of the community water users to achieve a co-operative settlement with Mr. Parshyn. Failure to do so may result in an order for joint works being made which would not be either the most economical result for the parties nor the most convenient given the complex flows of water from the three sources of Watt Creek, Adams Spring and Mr. Sartori's wells.

SUFFICIENCY OF FLOWS

Mr. Parshyn took no issue with the water levels recorded in Adams Spring. However, from his analysis of the water licences issued for Adams Spring he was of the view that he should have priority over a stock water licence issued to Mr. Sartori.

The argument for this is based on the fact that a new licence dated May 5, 1995, was issued to Mr. Sartori after Mr. Parshyn's initial application for water from Adams Spring. However, evidence led by the water management division conclusively demonstrates that this new licence was simply a renaming of existing water rights held by Mr. Sartori. This issuance of the new licence did not increase the level of recorded use of water and continues to have priority over Mr. Parshyn's later application. Accordingly, Mr. Parshyn should have no greater priority than he has with his licence issued by Mr. Farrell and this ground of appeal fails.

It was argued by Mr. Gotzen that there is insufficient flow from Adams Spring to support a further water licence. However, this was contradicted by the evidence of Mr. Rod Upton, one of the upstream users. In his view there is sufficient water in the winter to support Mr. Parshyn's licence. In addition, water flow records provided to the Board demonstrate sufficient flows to accommodate Mr. Parshyn's licence.

Given that Mr. Parshyn is the last priority user, any shortages in water flows would come at his expense. Mr. Gotzen also gave extensive evidence with respect to relative elevations in the water line to provide an argument that water would flow to Mr. Parshyn ahead of him. The Board is of the view that problems with gravity feed in the line can be overcome either by pressurizing the line or by installing meters to ensure that no user takes a greater portion than they are entitled to by the priority of water licences.

It appears to the Board that the most pressing concern of Mr. Gotzen is that his informal arrangement to obtain well water from Mr. Sartori may be jeopardized by the issuance of a water licence to Mr. Parshyn. Given that this informal arrangement does not have any protection under the *Water Act*, any pumping of ground water from Mr. Sartori to the Gotzen's will have to be accommodated through private lines outside of the scheme of the *Water Act*. The Board finds that this is an insufficient basis to deny a licence to Mr. Parshyn.

Finally, Mr. Gotzen argues that it would be cheaper and more practical for Mr. Parshyn to obtain his water directly from Frost Creek. Neither the Comptroller of Water Rights nor this Board can direct an applicant for water to search for other sources and, accordingly, regardless of whether or not it would be cheaper, this is not sufficient basis to deny Mr. Parshyn his licence on Adams Spring.

CONCLUSION

Although only a handful of people use the joint lines from Adams Spring and Watt Creek, the past failure to regularize easements and use of these lines has resulted in a complex system. Mr. Parshyn has been issued a licence for a period of the year where there appears to be ample unrecorded water to satisfy his licence. Although issuance of his licence will add a higher level of complexity to use of the existing lines, it is apparent from the map provided dated September 1981, outlining the Frost Road South water lines, that it will be possible for Mr. Parshyn to connect to the White Line at the Croteau border. This may require him to obtain easements over intervening properties but should not interfere unduly with operation of other water lines. Should Mr. Parshyn be successful in his present application for a licence from Watt Creek, he can likewise make application for joint works to connect to the Black Line.

The Board joins with Mr. Farrell in urging the parties to reach a reasonable accommodation with respect to joint works. In the event that this is unsuccessful then Mr. Parshyn and Ms. Bruneau have the right to make further application to the Water Management Division and subsequent appeal to this Board should that be necessary.

The appeal of all Appellants is dismissed and the decision of Mr. Farrell is upheld.

David Perry, Panel Chair
Environmental Appeal Board

February 13, 1997