
ALBERTA
ENVIRONMENTAL APPEAL BOARD

Decision

Date of Decision – June 12, 2003

IN THE MATTER OF sections 91, 92, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000 c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c, W-3.

-and-

IN THE MATTER OF an appeal filed by David Kingcott with respect to Licence Amendment No. 00036350-00-01 issued under the *Water Act* to Ducks Unlimited Canada by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Kingcott v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Ducks Unlimited Canada* (12 June 2003), Appeal No. 02-150-D (A.E.A.B).

**PRELIMINARY MEETING
VIA WRITTEN SUBMISSIONS
BEFORE:**

Dr. Anne Naeth, Panel Chair;
Mr. Al Schulz, Board Member; and
Dr. James Howell, Board Member.

PARTIES:

Appellants:

Mr. Dean and Mr. Verna Hart, Mr. Randy and Ms. Betty Landis, Ms. Stella Hart and Cattlemen's A.I. Ltd., Mr. Michael Hart and Mr. David Kingcott.

Director:

Mr. Kevin Wilkinson, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Approval Holder:

Mr. Todd Aasen, Ducks Unlimited Canada.

EXECUTIVE SUMMARY

Alberta Environment issued a Licence Amendment under the *Water Act* to Ducks Unlimited Canada, authorizing the change of the source of supply and point of diversion, change in the gross diversion, change in the reservoir capacity to supersede existing plans.

The Environmental Appeal Board received Notices of Appeal from Mr. Dean and Ms. Verna Hart, Mr. Randy and Ms. Betty Landis, Ms. Stella Hart and the Cattlemen's A.I. Ltd., Mr. Michael Hart and Mr. David Kingcott, appealing the Licence Amendment.

The Board began processing the appeals. However, the Board received a request from Alberta Environment to dismiss the appeals citing that there have been no changes in the water rights granted to Ducks Unlimited and that the Licence Amendment is merely an administrative clarification. Secondly, the Director stated, the remedy sought by the Appellants is in relation to the priority system under the *Water Act*. Finally, the Appellants are not directly affected as the Amendment is merely administrative in nature and there is no "new" impact from the Licence Amendment.

The Board scheduled a preliminary meeting via written submissions to address Alberta Environment's motion.

The Board received written submissions from all of the Appellants except Mr. Kingcott. Despite several attempts to contact Mr. Kingcott, a response was not received by the Board. The Board therefore dismissed Mr. Kingcott's appeal for failing to respond to the Board in a timely manner pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*.

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I. BACKGROUND

[1] On February 21, 2003, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) issued Licence Amendment No. 00036350-00-01 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to Ducks Unlimited Canada (the “Licence Holder”). The Licence allows the Licence Holder to change the source of supply and point of diversion from Contra Costa Lake in NE 26-031-12-W4 to Contra Costa Lake in NE 26-031-12-W4, Berry Creek in NE 02-032-12-W4 and Berry Creek in NE 26-031-12-W4. The Licence also allows a change in the gross diversion from 1,953 dam³ (1,583 acre-feet) to 951 dam³ from Contra Costa Lake and 1,002 dam³ from Berry Creek and change the reservoir capacity from 2569 dam³ (2,083 acre-feet) to 2,735 dam³.

[2] The Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Dean and Ms. Verna Hart (02-146) on March 10, 2003, Ms. Stella Hart and Cattlemen’s A.I. Ltd. (02-147) on March 12, 2003, Mr. Randy and Ms. Betty Landis (02-148) on March 13, 2003, Mr. Michael Hart (02-149) on March 12, 2003, and Mr. David Kingcott (02-150) on March 17, 2003 (collectively the “Appellants”) appealing the Licence.

[3] On March 11 and 18, 2003, the Board wrote to the Licence Holder, the Appellants and the Director, (the “Parties”) acknowledging the Notices of Appeal and notifying the Licence Holder and the Director of the appeals. The Board also requested that the Director provide the Board with a copy of the records related to these appeals (the “Record”), and requested the Parties provide available dates for a mediation meeting or a hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both Boards responded in the negative.

[5] On March 26, 2003, the Board received a copy of the Record from the Director and on March 28, 2003, forwarded a copy to the Appellants and the Licence Holder.

[6] On March 28, 2003, the Board received a letter dated March 26, 2003 from the Director requesting the Board dismiss the appeals as they “are not properly before the Board” and the Appellants “are not directly affected” by the Licence. The Director stated in his request

that there have been no changes in the water rights granted to the Licence Holder and the amendment of the Licence is merely an administrative clarification. Secondly, the Director stated that the remedy sought by the Appellants is in relation to the priority system under the *Water Act*. Finally, the Director stated that the Appellants are not directly affected as the Amendment made to the Licence is merely administrative in nature and there is no 'new' impact from the Licence Amendment.

[7] On March 28, 2003, the Board scheduled a written submission process to address the Director's request to dismiss the appeals.

[8] On April 14, 2003, the Board received the initial written submissions from all of the Appellants with the exception of Mr. Kingcott. On that same date, the Board acknowledged receipt of the written submissions and in that same letter advised Mr. Kingcott that his appeal could be dismissed for failure to provide his response in a timely manner pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (the "Act")¹. On April 14, 2003, a telephone message was left by Board staff for Mr. Kingcott about his written submission, at the telephone number that he had provided to the Board. No response was received.

[9] On April 24, 2003, the Board received response written submissions from the Director and the Licence Holder. On that same date, the Board acknowledged the response submissions and in that letter again advised Mr. Kingcott of the consequences of failing to provide his written submission to the Board in a timely manner.

[10] On April 30, 2003, Board staff again attempted to contact Mr. Kingcott by telephone, leaving a message for Mr. Kingcott to contact the Board about his written submission.

[11] On May 1, 2003, the Board received the rebuttal written submissions from all of the Appellants except Mr. Kingcott. The Board acknowledged receipt of the written submissions on May 2, 2003 and in that same letter requested Mr. Kingcott contact the Board about his written submissions.

¹ Section 95(5)(a)(iv) of the Act states:
"The Board may dismiss a notice of appeal if the person who submitted the notice of appeal fails to comply with a written notice under section 92..."

[12] Courier records show that the Board's letters were delivered to Mr. Kingcott's address. To date, however, no response has been received from Mr. Kingcott to the Board's letters and telephone messages.

II. CONCLUSION

[13] Section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act* states:

“95(5) The Board

(a) may dismiss a notice of appeal if

(iv) the person who submitted the notice of appeal fails to comply with a written notice under section 92....”

[14] Pursuant to section 95(5)(a)(iv) of the *Environmental Protection and Enhancement Act*, the Board therefore dismisses the appeal of Mr. David Kingcott (02-150) for failure to comply with a written notice.

Dated on June 12, 2003, at Edmonton, Alberta.

“original signed by”

Dr. M. Anne Naeth
Panel Chair

"original signed by"

Mr. Al Schulz
Board Member

"original signed by"

Dr. James M. Howell
Board Member