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WATER RIGHTS — HISTORICAL USE OF WATER LICENSE TO BE EXAMINED AT TIME OF APPLICATION TO TRANSFER LICENSE

A regional water manager approved the transfer to the Sunshine Coast Regional District (SCRD) of two conditional water licenses issued in 1946 and 1972. This decision was appealed by residents and businesses dependent on the lake water for domestic and recreational purposes, because it would result in the diversion of up to 11,315,000 gallons of water annually. Lake water users had already strongly objected to a previous application by the SCRD for a new license to divert 14 million gallons annually.

They were concerned the annual rainfall would not replace the water used or lost through evaporation or seepage. This would cause water levels to fall, negatively impacting fish and fish habitat, and leading to a drop in property values. They also claimed the two licenses had been unused for years and, if full use was made of them, there would be a 70 per cent increase in water drawn from the lake.

Under s. 19 of the Water Act, a regional manager can approve the transfer of all or part of a license on terms satisfactory to him, following compliance by the applicant with the regional manager's directions as to whom should receive notice of the transfer application. A regional manager can

also waive notice of a transfer if satisfied that no one's rights will be injuriously affected.

In this case, the regional manager waived notice of the transfer application because the expected diversion of water was within the 11,315,000 permitted by the two licenses, and he would not "revisit a past decision to issue a license unless there is new scientific evidence that warrants a reconsideration of the license." However, the regional manager was already aware that water users felt they would be injuriously affected by a large diversion of water, and his decision didn't take this into account.

The regional manager had the power to set minimum lake levels and time to do that, because it would be years before the SCRD needed to draw down the maximum amount permitted by the licenses. He and the SCRD argued the transfer should be approved first and the water users' concerns would be addressed by the studies done to determine lake levels; however, that didn't satisfy the users who said guarding lake levels didn't necessarily address water quality.

The experts called by both sides to give scientific evidence said more studies were needed to determine the impact of the transfer on the lake and its water users. More licenses had been issued since 1946 and 1972, to the extent that no new licenses would be issued because the lake had reached its maximum use potential.

The Environmental Appeal Board decided the time to reassess water quantity and the impact on users occurred when a transfer was considered. It approved a transfer of an amount sufficient to cover the SCRD's current use shortfall. The regional manager was directed to assess the remaining rights when hydrological, economic, fish and fish habitat studies were complete.



Lawyer *Gerry Neely*

This order is significant because it demonstrates the historical use of a license may warrant a re-examination of the licensing scheme of the lake to avoid water shortages and over-allocation of water, and also justify notice to affected water users of the transfer application.'

Gerry Neely, B.A. LL.B.
Victoria, BC

McCarthy v. British Columbia, (Ministry of Water, Land and Air Protection) [2005] B.C.E.A. No. 25.

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Legally Speaking is published monthly by email and bi-monthly in print by the British Columbia Real Estate Association, and funded in part by The Real Estate Foundation of British Columbia. Real estate boards, real estate associations and licensed REALTORS® may reprint this content, provided that credit is given to BCREA by including the following statement: "Copyright British Columbia Real Estate Association. Reprinted with permission."

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Send questions and comments about the Legally Speaking to:

Author: Gerry Neely
Editor: Werna Miller
Assistant: Kyle Thom

600 - 2695 Granville Street
Vancouver, BC V6R 3K4

Phone: 604.683.7702
Fax: 604.683.8604
Email: bcrea@bcrea.bc.ca

www.bcrea.bc.ca

Printed on recycled paper.

ISSN: 1705-3307