



Province of  
British Columbia

# Environmental Appeal Board

Fourth Floor 747 Fort Street  
Victoria British Columbia  
**Telephone:** (250) 387-3464  
**Facsimile:** (250) 356-9923

Mailing Address:  
PO Box 9425 Stn Prov Govt  
Victoria BC V8W 9V1

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## APPEAL NO. 97-WAT-08

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

**BETWEEN:** Mike and Jackie Austin **APPELLANTS**

**AND:** Regional Water Manager **RESPONDENT**

**AND:** Ken and Virginia Peterson **LICENCE HOLDER**

**AND:** Ducks Unlimited Canada **THIRD PARTIES**  
Rodger and Tanis Stewart  
Neil and Jeanie Vant, Larry and  
Marion Wendel and Wayne Thiessen

**BEFORE:** A Panel of the Environmental Appeal Board  
Carol Quin, Chair  
Christie Mayall, Member  
Cindy Derkaz, Member

**DATE OF HEARING:** January 20, 1998

**PLACE OF HEARING:** Williams Lake, B.C.

**APPEARING:**

For the Appellants:	Mike and Jackie Austin
For the Respondent:	Livia Meret, Counsel
For the Licence Holder:	Brad Arner
For the Third Parties:	
Ducks Unlimited Canada:	Brad Arner
Rodger and Tanis Stewart:	Rodger Stewart
Neil and Jeanie Vant:	Neil Vant
Larry and Marion Wendel:	Larry Wendel

## APPEAL

On August 15, 1997, the Regional Water Manager issued Conditional Water Licence 111870 ("CWL 111870") to the Minister of Environment, Land and Parks ("MELP") as represented by the Regional Manager, Fish and Wildlife. The Austins appealed the issuance of the licence to the Environmental Appeal Board on September 12, 1997.

On October 1, 1997, prior to the Austins' appeal being heard, the Regional Water Manager issued Conditional Water Licence 112676 ("CWL 112676") in substitution of CWL 111870 to Mountain House Ranch and Ken and Virginia Peterson, in cooperation with Ducks Unlimited (Canada).

CWL 112676 authorizes the diversion and storage of water from Wise Creek near 150 Mile House, B.C. to a "reservoir" known as Borland Estates Pond (the "Pond") for conservation purposes – wildlife and waterfowl habitat enhancement. The maximum amount of water to be held in storage at any one time and used to fill the reservoir is 14 acre-feet. The maximum quantity of water that may be diverted is "the whole flow".

At the hearing, all parties agreed that this is an appeal against the substituted licence, CWL 112676.

The Environmental Appeal Board has the authority to hear this appeal under section 11 of the *Environment Management Act* and section 40 of the *Water Act*. The Board, or a panel of it, may, after hearing all evidence:

- (a) send the matter back to the ... regional water manager ... with directions,
- (b) confirm, reverse or vary the order being appealed, or
- (c) make any order that the person whose order is appealed could have made, and that the board considers appropriate in the circumstances.

The Appellants seek an order that CWL 112676 be amended to allow some of the water from Wise Creek to flow down the original Wise Creek channel which runs through their property.

## **BACKGROUND**

### **The Creek**

Wise Creek is a small seasonal creek that originates on forested Crown land and flows approximately six kilometres to its confluence with Borland Creek, near 150 Mile House, B.C. This area was previously part of a cattle ranch, which was established at the turn of the century.

In or around 1939, the ranch put an earth plug in the creek, which diverted the water into a ditch to irrigate pastures. Excess flow from the ditch rejoined the natural Wise Creek channel approximately two to three kilometres from the point of diversion. The two to three kilometre section of the original Wise Creek channel, which was then by-passed, received significantly less flow as a result of the diversion plug.

At some point in time, beavers moved into the new drainage course and built a dam. As water backed up behind the beaver dam, the Pond was created.

In the early 1980s, the land around the Pond and along the original channel of Wise Creek was subdivided; the lots were sold and houses and sewage disposal fields

were eventually built on them. The Pond along with a narrow fringe of uplands was returned to the Crown to be used as a park. At this point, the Pond persisted primarily from beaver activity at its outlet.

The Pond became appreciated by neighbouring lot owners for the waterfowl habitat it created and for recreation. Ducks Unlimited assessed the Pond as having significant wildlife habitat values.

In 1993, the Appellants purchased the family property along the portion of the original channel of the creek that had been by-passed as a result of the earth plug diversion and the ditch.

### **History of Licences**

The testimony at hearing produced this history.

The earth plug diversion on Wise Creek has been authorized under a succession of licences since approximately 1937. The original licences authorized the use of water for irrigation and domestic water supply. In 1988 the current licensees, the Petersons, held the water licence for the diversion.

The succession of water licences authorized specific amounts of water (60 acre-feet per annum in 1937 and 30 acre-feet in 1988) to be diverted, stored and used seasonally for the ranch. Clauses in the licences required continued beneficial use of the water by the licensee consistent with conditions contained in the licences.

While the licences varied with regard to the amount of water that could be stored behind a dam, diversion of *all* of the water from the creek was not authorized until the issuance of CWL 112676 in October 1997. It appears, however, that the old diversion structure, the earth plug placed in the creek, may have caused more water than was authorized to flow into the diversion ditch. Over time, this apparently resulted in the greatly lessened flow of water continuing on into the original Wise Creek channel below the diversion point – the by-passed area.

In January 1995, the Petersons advised the Water Management Branch that they no longer required the water from Wise Creek and requested that the licence be canceled. The Petersons were notified to remove or repair the diversion structure. The diversion plug was never repaired, replaced or removed and no water was “redirected” back into the original channel.

Just prior to this time, local residents near the Pond became increasingly concerned over the potential loss of the Pond due to the absence of beaver. The neighbouring landowners, wishing to retain the Pond, contacted Ducks Unlimited to seek their help in restoring it by building a new concrete dam to replace the beaver dam. A partnership was formed between Ducks Unlimited and surrounding landowners. To construct works to protect the Pond, the group required a water licence for “conservation purposes”. An application for a water licence was made to the Water Management Branch to construct a new dam to store 14 acre-feet of water in the Pond. No changes were sought to the original diversion structure, the earth dam, and the ditch.

On August 15, 1997, the Regional Water Manager issued water licence CWL 111870 to MELP. This licence was issued "for conservation purposes," in order to "...divert to storage 14 acre-feet of water per annum from Wise Creek," and to use a maximum of 14 acre-feet of water per annum to fill the Pond. The authorized works were a "diversion structure, ditch and dam".

This licence, gave a precedence date from December 3, 1996, for the rights it granted and permitted the licensees to fill the Pond with water diverted from Wise Creek only between October 1st and June 15th of each year. Water was to be released from the "conservation project" during the whole year.

In July 1997, the Appellants saw an advertisement in the Williams Lake Tribune notifying the public about the pending issuance of CWL 111870, which incorrectly stated that the licence would permit diversion of *all of the water* from Wise Creek into the Pond via the original diversion ditch. The Appellants submitted a letter of objection to the Regional Water Manager.

The Regional Water Manager decided, after investigating their objections to the licence and considering the information available, that their objection did not warrant a hearing. In his August 15, 1997, letter to the Appellants, the Regional Water Manager stated: "The project will not change the existing diversion structure on Wise Creek, which has been in place for many years, and will have no effect on the existing flows in Wise Creek through your property." In the same letter he advised them that they could appeal his decision to the Environmental Appeal Board.

The Appellants appealed to the Board on September 12, 1997, on the grounds that the licence appeared to continue the previously unauthorized diversion of almost all of the water from Wise Creek and, in fact, now would *officially permit* 100% diversion of it. They stated that "...an equitable solution would be to divert only that amount of water that is needed to maintain Borland Pond, and to allow the rest of the volume to remain in Wise Creek."

Approximately three months after issuing CWL 111870, but before the appeal was heard, the Water Management Branch replaced the licence with a new licence, CWL 112676. This licence was issued to "Mountain House Ranch Ltd. and Kenneth and Virginia Peterson in co-operation with Ducks Unlimited (Canada)." The new licence authorized the holders to "...store water and place works in and about Wise Creek." The licence grants the right to store 14 acre-feet of water from Wise Creek in the Pond and to use a maximum 14 acre-feet of water per annum to fill the Pond for conservation purposes ("wildlife and waterfowl habitat enhancement"). This time the 100% diversion provision, which was *not* included in the earlier licence held by MELP, was added to the new licence *authorizing*, but not *requiring*, the diversion of the "*whole flow*" of water from Wise Creek.

CWL 112676 states that the licence is appurtenant to Lot 1, Section 23, Township 42, Plan 30483, Cariboo District, which is the property owned by Mountain House Ranch, Ltd., a company controlled by Ken and Virginia Peterson. The evidence established that the change in licensees occurred because MELP did not hold the easements through Lots 1 and 2, Plan 30483, and because of the cost of acquiring

the necessary new easements. Easement #U40361 covers the ditch over Lot 2 and is appurtenant to Lot 1.

Because of the timing of the notice in the July 24, 1997 Williams Lake Tribune, which had stated, erroneously, that CWL 111870 would allow diversion of 100% of the water from Wise Creek when in fact it did not, the Appellants were technically appealing the earlier licence. However, they informed the Panel that it was the 100% provision, now actually in the second licence, CWL 112676, to which they were objecting.

The Appellants seek an "equitable diversion" of the water from Wise Creek for which they are willing to pay their "fair share".

A number of property owners along the original channel of Wise Creek, below the old diversion plug, were added as third parties to this appeal as their properties might be impacted in the event that the appeal is allowed and Wise Creek is returned, in part, to its original location.

It should be noted that a concrete weir has now been constructed at the outlet of the Pond where the beaver dam once was. It is designed to allow for storage of 14 acre-feet of water only. Any excess amount spills over the weir and rejoins Wise Creek downstream. The diversion on Wise Creek, which supplies water to the Pond, was not altered from its original condition nor was the ditch.

It should also be noted that there is a Conservation Agreement between Mountain House Ranch and Ducks Unlimited outlining, among other things, their responsibilities related to the maintenance of the licenced works.

## **ISSUES**

The Appellants do not take issue with the conservation project itself, nor with the 14 acre-feet of water being diverted to and stored in the Pond. They believe, however, that the licence authorizes too much water to be diverted to the Pond from the original channel – essentially 100% of the flow. The issues that were addressed in the appeal are summarized as follows:

1. Whether the Regional Water Manager has the authority to license the diversion up to "the whole flow" of Wise Creek.
2. If so, whether the Regional Water Manager was correct in authorizing diversion of up to the whole flow of Wise Creek, when only 14 acre-feet is to be used for the conservation project in the Pond.

## **DISCUSSION**

- 1. Whether the Regional Water Manager has the authority to license the diversion of up to "the whole flow" of Wise Creek.**

Representing themselves at the hearing, the Appellants stated that they had purchased their property with the understanding that Wise Creek ran through it and pointed to maps from both the Water Management Branch and the real estate office

showing the natural course of Wise Creek flowing through their land, while the diversion channel is shown as a ditch only.

The Appellants argued that none of the previous licences had authorized complete diversion of the water, and that some of the water had always managed to escape into the old channel, particularly with spring runoff, in spite of the diversion structure which had, in their view, for years been diverting more water than was authorized anyway. They strongly object to CWL 112676 because they fear that if all the water is to be diverted, that part of the original channel which runs through their property could completely dry up.

The Appellants also argued that the diversion of the water from Wise Creek above their property "...was not a legal diversion at the time of issuance of a new conditional licence, and therefore could not rely on precedence..." because the Petersons had abandoned their earlier licence, issued to them for irrigation, prior to the issuance of the subject licence. They pointed out that the Petersons had been told by the Water Branch to remove all the works including the diversion structure when they gave up the earlier licence. The Appellants submit that, in 1995, a staff engineer with the Water Management Branch had tried to correct the excessive diversion of water from the creek, but to no avail.

The Respondent's Statement of Points dated January 7th, 1997, states that the Respondent's decision to issue the CWL "...was correctly made having regard to all facts and the law." He argued that although the original channel of Wise Creek does run through the Appellants' property, the Appellants have no riparian rights under the law, because, except as granted through a water licence, riparian rights to the use and flow of water in a stream have been extinguished in British Columbia. The Respondent stated that, pursuant to section 2 of the Water Act, these rights have been vested in the government since 1925. Section 2 grants the provincial government the right to control all provincial creek beds and the water in them, except for that specifically licensed for legitimate use. There are no other licences (except the subject licence) on Wise Creek.

Section 2 states:

### **Vesting water in government**

- 2** (1) The property in and the right to the use and flow of all the water at any time in a stream in British Columbia are for all purposes vested in the government, except only in so far as private rights have been established under licenses issued or approvals given under this or a former Act.

The licensing provisions of the *Water Act* do not prohibit MELP from licensing the diversion of the entire creek. Rather, the Respondent submits that licences for a beneficial use of some or all of the flow of a creek may be issued as long as the licence(s) are consistent with other requirements of the *Water Act*.

The Panel agrees that the *Water Act* appears to grant the Regional Water Manager the authority to licence complete diversion of a creek for a beneficial use through a single water licence. Even if the diversion had been unauthorized for a period of time, or illegal, this does not restrict the Regional Water Manager from later

licensing or legitimizing the diversion, provided that the requirements of the *Water Act* are met.

The Respondent also argued that, as the Appellants do not hold a licence themselves, they "... cannot complain of the loss of the use and flow of water of Wise Creek, which is vested in the government, nor can they complain if others divert and use the water of Wise Creek under licence."

The Panel notes, however, that riparian owners such as the Appellants, have been given the ability to "object" to an application for a licence on the basis that their rights would be prejudiced by the granting of an application for a licence (section 11). Having said that, the Panel agrees that, unless they hold a water licence themselves, the Appellants do not have a "right" to the continued flow under the *Water Act*. Further, the Panel finds that the *Water Act* does not list the continued enjoyment of the flow of water or the protection of property values, as a "beneficial use" in section 15(2) which states:

- 15** (2) ... the ranking of the several purposes for which water may be used under licenses are, from highest rank to lowest rank: domestic, waterworks, mineral trading, irrigation, mining, industrial power, hydraulicking, storage, conservation, conveying and land improvement purposes.

Consequently, the Panel finds that the Regional Water Manager has the authority to divert up to the whole flow in Wise Creek in this case. The next question is whether he should have done so in the circumstances.

**2. Whether the Regional Water Manager was correct in authorizing diversion of up to the whole flow of Wise Creek, when only 14 acre-feet is to be used for the conservation project in the Pond.**

CWL 112676 allows for a maximum of 14 acre-feet to be stored in the Pond each year. The rest of the water will pass through the Pond, continuing on to rejoin the original Wise Creek channel further downstream.

The Appellants told the Panel that their "...concern and outrage is directed at the rationale being used to justify diversion of 100% of the flow from Wise Creek's natural watercourse..." which in their opinion, is more than the amount required to fill and freshen the Pond.

The Appellants want the creek flowing through their property to have water running through it year-round. They maintain that some of the flow has previously made its way to the original channel and that, at the very least, that flow should be allowed to continue in the original creek bed. They also argue that the water that is not needed for the Pond should be redirected back to the original channel, i.e., the licence should be amended so that the additional water flows back into the original channel.

Both Ducks Unlimited and the Respondent argue that the subject licence was issued based on the existing condition of the diversion plug and ditch. Therefore, the amount of flow being diverted has not changed - the diversion structure is the same

as the one in place years ago. They argue then, that the licence protects the status quo.

How much water is being diverted at present

There was a great deal of evidence and argument as to what exactly the status quo is at this time – i.e., whether 100% of the flow is currently making its way to the Pond. The evidence presented to the Panel on this issue is as follows:

- The Appellants asserted that in previous years there was a significant flow over the diversion plug and down the original channel of Wise Creek, but could not say that they had ever actually seen it, nor could any other party provide evidence that any significant volume of water flowed over the earth dam at any time.
- In a report prepared for the Respondent in August 1997, Water Management Technician, Connie Haeussler wrote, "the existing diversion diverts the whole creek into the Pond. It is possible that a portion of the flow may spill over into Wise Creek during freshet, otherwise the only flow of water which enters Wise Creek now is through seepage and local runoff." Ms. Haeussler's opinion is consistent with other evidence that the diversion structure was designed and always has effectively diverted the whole flow of the creek.
- Ducks Unlimited Engineering Technician, John Renner, wrote in May 1997 that "the ditch is working well, all the flow is diverted into Borland Marsh and it appears it has been this way for many years. I checked the old creek channel and found it to be almost non-existent.... Once the capacity of the diversion ditch is exceeded the water spills to the north side and may eventually find its way into the old creek channel."

The Panel finds that the evidence of water going over or through the diversion or overtopping the ditch and reaching the original channel is purely speculative. Without further evidence, the Panel has to accept the evidence of the water technicians that the water the Appellants said they see in the original creek channel, as it runs through their property, was likely seepage and local runoff coming from other sources such as the surrounding, low-lying, swampy area or the nearby uplands.

No party provided evidence indicating that water regularly flowed out of the ditch and down to the original channel in any significant amounts, or that there was any reported sign of erosion to the earth plug where water passed over or around it. The Appellants thought that there was evidence that the diversion structure had recently been shored up by machine work at the site. Ms. Haeussler stated that she could see no evidence of machine work and thought that the exposed earth on the bank of the creek was from cattle watering.

The Panel finds that there is no concrete evidence that water makes its way over or through the diversion structure or out of the ditch and back to the original channel of Wise Creek. However, even if it does, the licence, as issued, will not change that. As stated by the Respondent: "As no change to the existing diversion structure and channel of Wise Creek was authorized [only re-licensing of the



existing diversion structure], the diversion, use and storage of water under [the licence] should have no effect on the water which still reaches that part of the natural channel of Wise Creek crossing through the Appellants' property."

Should the licence be amended to allow additional water to flow into the original channel?

The Appellants argued that no evidence had been submitted to support the need to divert 100% of Wise Creek. As well, they stated that the property value of their land and their enjoyment of it had been decreased with the legalization of the previously unauthorized increase in the amount of water being diverted into the Pond. The Appellants suggested that "an equitable solution would be to divert only that amount of water that is needed to maintain the pond, and to allow the rest of the volume to remain in Wise Creek." They point out that the Licence Holders have agreed that there is ample water, especially between October and June, to fill and/or flush the Pond while allowing some water to remain in the original Wise Creek channel.

The Appellants also maintain that some of the water should go into the original channel to ensure the continuation of the wetlands and wildlife habitat along that channel. They argued that, in their view, the old diversion structure had, over the years, been left to deteriorate and plug up, thus allowing more and more of the water from Wise Creek to enter the diversion ditch and to flow into the Pond. This, they believed, had caused increased drying of the natural watercourse, especially in the summer.

The Appellants asserted that the original channel of Wise Creek could handle more water flowing in it without jeopardizing adjacent properties, and that some amount of flowing water would "freshen" the wetlands along the original creek bed. Thus, they assert that there is no good reason not to allow some of the flow back into the original channel.

The Respondent tendered a September 1997 report by Garth Wakelam, Land and Water Officer, which recommended an amendment to CWL 111870 to permit the *whole flow* of Wise Creek to be diverted, although only 14 acre-feet per annum could be stored in the Pond. His reasons for the amendment appeared to be taken from Ms. Haeussler's report, which noted that most of the water, in her view, was already being diverted into the ditch, and had been for some years. Further, most local residents did not want any flow proceeding into the original channel.

Mr. Roman Navratil, the Regional Land and Water Manager, who issued CWL 112676 containing the suggested amendments, stated that the licence was a result of "extensive consultation with the community". He stated as well that, based on Ducks Unlimited's agreement to assist the Licence Holder, the decision is both responsible and in the public interest. When cross-examined about the ecological impact of diverting 100% of the flow from any creek, he stated that nowadays MELP would not entertain such extreme measures, however, the land below the diversion plug has been developed, and concern was expressed about possible property damage if the original flow of Wise Creek were returned to its original channel.

The Respondent argued that allowing more water to return, once again, to the original creek channel would raise the question of responsibility, i.e. for altering the diversion structure. He argued that, since the Appellants are not licencees, the question arises about whether they could be held accountable for any damage should the flow, or some of it, be authorized to return to the natural channel at their request.

The Respondent argued that only through the issuance of a water licence for a "beneficial use" could he require any increase in flow into the original channel. A licence ensures that someone is accountable for any works constructed or damage which may occur from the redirection of water. In addition, the Respondent explained that the Appellants could apply for a water licence if they could use the water beneficially and were prepared to take responsibility for the cost of a structure which could send a limited amount of water down the old channel while ensuring a continuous flow through the diversion channel to freshen the Pond.

The Respondent questioned whether the Appellants would be prepared to take on the responsibility for liability of such a water licence including installing a new adjustable diversion structure and associated works. In addition, the Respondent noted that, because most of the water from Wise Creek has been flowing in its present location through the diversion ditch since 1939, *the Water Management Branch would have to consider that the diversion ditch is now Wise Creek's natural channel*. Respondent's counsel noted that, before water could be returned to the original creek channel, certain works, including the restoration of the pre-1939 channel, would likely be required to be put in place to prevent damage, such as basement flooding, to the bordering properties

Mr. Arner of Ducks Unlimited says the potential to return flows down the entire length of Wise Creek is physically possible. The potential to split the flows is also physically possible. What cannot be guaranteed is the level of control that could be achieved. Since we are dealing with relatively small flows through most of the year and the natural fluctuations that occur in all systems, he hesitates to speculate on the ability to achieve fine control of flow on the system. He states that Wise Creek does not have a particularly well defined channel – it may form small pools and overtop its banks – or go underground. Any of these changes could affect property owners on the section of the creek that is currently by-passed.

Mr. Arner also stated that Ducks Unlimited has agreed to repair the diversion structure if required, but that it would not be able to fund the building of a new two-way diversion structure capable of ensuring that some portion of the water from Wise Creek would flow in all seasons into the old channel, as requested by the Appellants.

He also testified as to the implications of diverting the excess flow away from the Pond. Having observed the flow through the Pond over the years, he estimates that the amount of water which is currently flowing into the Pond is adequate but that any decrease in flow could have a deleterious affect the Pond and on its waterfowl habitat. Conversely, he noted as well that any extra flow through the Pond would not adversely affect it, but would serve to freshen the water in it.

The three Third Party riparian owners, who live along the original by-passed channel, told the Panel that they do not favour a minimum flow requirement into that channel. They expressed concerns that any increase in the flow may cause property damage including damage to basements from flooding, and damage to their sewage disposal systems, should the soil saturation be increased. They also speculated that the surrounding trees and vegetation could be affected. They submit that an increase in the flow could negatively affect their property values unless the old channel could be re-defined to receive the additional water.

They argued that someone would have to accept responsibility for any damage or alterations needed to prevent it, and that they were concerned that any standing water would increase the mosquito population. Mr. Stewart estimated that to create a channel to receive additional flow, a survey would be required, aesthetic concerns would have to be addressed, and responsibility and costs assigned.

None of the Third Party residents object to the existing water regime.

The Panel has found that the flow of Wise Creek has, for the most part, been fully diverted for almost 60 years and that the new properties with residences have been built along the original channel much more recently. The Panel is not satisfied that a sufficient flow of water has been flowing around or through the old diversion plug to warrant changing the licence under appeal to require now that some quantity of water be directed into the original channel.

The Panel is aware that the way the diversion structure was built in 1937 and maintained in the past resulted in a lessened flow into the original Wise Creek channel. This has created a new water regime and vegetative and wildlife community in the original creek channel over the years, the one probably present when the adjacent landowners purchased their properties. The Panel is aware also that any significant increase in the flow of water now would likely change the existing vegetative community that is part of the aesthetic qualities the residents value. A significant increase in the flow of water could possibly cause problems for the residents now living along the old creek bed.

Further, the Panel is aware that Ducks Unlimited is not prepared to install a two-way diversion structure. While Mr. Austin stated that he would be willing, if necessary, to apply for a licence to increase the amount of water flowing into the original channel, the Panel finds it has no jurisdiction to consider this and that this is a matter that should be taken up with the Water Management Branch.

The Panel has not been convinced that water flowing in the original channel near the Appellants' home comes from the Wise Creek diversion point upstream. The Panel finds therefore that insufficient evidence has been provided by the Appellants to warrant including a provision in CWL 112676 which would require that some minimum amount of water flow into the old channel.

## **DECISION**

In making this decision, the Panel of the Environmental Appeal Board has considered all the relevant documented evidence and all comments made during the hearing, whether or not they have been specifically reiterated here. From the

evidence, information and personal views presented at the hearing, this Panel of the Environmental Appeal Board concludes that neither the Appellant nor the Respondent (nor the Third Parties) provided sufficient reason for changing the status quo with respect to the flow of the water in Wise Creek. The Panel finds that the decision of the Regional Water Manager to issue CWL 112676 reflects the status quo by *permitting* 100% diversion of the flow of Wise Creek but not *requiring* it.

None of the parties opposed the conservation project on the Pond and the need to maintain it. Further, to allow an increase in water to flow into the by-passed portion of the original channel would create a host of practical and legal problems that are better addressed through an application for a licence to the Water Management Branch where it can be fully investigated and assessed.

The Panel, therefore, has decided to uphold the Regional Water Manager's decision to issue CWL 112676 and thus dismisses the appeal.

"Carol Quin"

Carol Quin, Panel Chair  
Environmental Appeal Board

September 18, 1998