



Environmental Appeal Board

Citation: *Cottrell, A. v. Deputy Comptroller of Water Rights*, 2024 BCEAB 27

Decision No.: EAB-WSA-24-A006(a)

Decision Date: 2024-08-06

Method of Hearing: Conducted by way of written submissions concluding on July 26, 2024

Decision Type: Summary Dismissal

Panel: David Bird, Panel Chair

Appealed Under: *Water Utility Act*, RSBC 1996, c. 485

Between:

Arnold Cottrell

Appellant

Bryan Robinson, Deputy Comptroller of Water Rights

Respondent

Lang Bay Waterworks Ltd.

Third Party

SUMMARY DISMISS FOR LACK OF JURISDICTION

INTRODUCTION

[1] The Environmental Appeal Board (the “Board”) received a notice of appeal from Arnold Cottrell by email on July 22, 2024. Mr. Cottrell applies to appeal Order 2650 (the “Order”) dated June 24, 2024, issued by Bryan Robinson, Deputy Comptroller of Water Rights (the “Deputy Comptroller”).

[2] The Order approves increased water rates further to an application submitted by Lang Bay Waterworks Ltd. based on revenue requirements for fiscal years ending December 31, 2024, 2025, and 2026. The increased water rates became retroactively effective January 1, 2024. The Order was issued under the authority of the *Water Utility Act*, RSBC 1996, c. 485, and the *Utilities Commission Act*, RSBC 1996, c. 473.

[3] In a July 23, 2024 letter, the Board’s Intake Administrator raised the preliminary issue of whether the Board has the authority to hear an appeal of the Order made under the *Water Utility Act* and/or the *Utilities Commission Act*. Under section 31(1)(a) of the *Administrative Tribunals Act*, SBC 2004, c. 45 (the “ATA”), any time after receiving an application¹ the Board may dismiss all or part of the application if it is not within the jurisdiction of the Board.

[4] Mr. Cottrell was provided the opportunity to make a written submission to the Board by July 29, 2024 to explain why his application should not be dismissed, as required under section 31(2) of the ATA. Section 31(2) of the ATA does not require the Board to ask the Respondent or Third Party for submissions, although the Board has the discretion to request submissions from other parties.

[5] I am satisfied in the circumstances of this application that submissions from the other parties was not required to decide whether the Board had jurisdiction to accept this notice of appeal. The Respondent and Third Party will be provided with these reasons as required under section 31(3) of the ATA.

BACKGROUND

[6] The Order includes reasons for the decision (Appendix A) which provides a detailed background of Lang Bay Waterworks Ltd.’s October 2023 application to increase its water rates. Lang Bay Waterworks Ltd. owns and operates water systems near Powell River, British Columbia servicing existing residential water users and a sawmill. Lang Bay

¹ The ATA defines “application” to include an appeal.

Waterworks Ltd. is authorized to provide service to 124 lots and 203 single family residential water users and commercial users including a regional park, resort, community hall, store, restaurant, and a sawmill. Lang Bay Waterworks Ltd. has a Conditional Water Licence that allows it to divert up to 946 cubic metres of water per day.

[7] In the Order, the Deputy Comptroller states that the Comptroller of Water Rights (“Comptroller”) is responsible for the regulation of private water utilities under the *Water Utility Act* and the *Utilities Commission Act*. The Deputy Comptroller is authorized under section 114(2) of the *Water Sustainability Act*, SBC 2014, c. 15 (the “WSA”) to exercise the powers and preform the duties of the Comptroller. Section 3 of the *Water Utility Act* states that a water utility is subject to the regulation and control of the Comptroller. Under the *Water Utility Act*, the comptroller is defined as “the person designated as the Comptroller of Water Rights under section 114 (1) of the [WSA].” Section 4 provides that a water utility is subject to duties, responsibilities, and restraints imposed on a public utility under the *Utilities Commission Act*. Section 4 also provides the Comptroller’s powers and jurisdiction are the same as those vested in the British Columbia Utilities Commission.

ISSUES

[8] The issues before me in this application are:

1. Is the Order issued under the *Water Utility Act* and *Utilities Commission Act* appealable to the Board?
2. Is the Order appealable under the *WSA*?
3. Should the appeal be summarily dismissed under section 31(1)(a) of the *ATA* because the Board does not have jurisdiction to hear this appeal?

DISCUSSION AND ANALYSIS

Position of the Appellant

[9] In his July 26, 2024 email, Mr. Cottrell states that the Deputy Comptroller is authorized under the *WSA* to exercise the powers and perform the duties of the Comptroller, which includes issuing the Order. Mr. Cottrell submits that decisions made under the *WSA* are identified in the Board’s Practice and Procedure Manual (the “Manual”) as one of eight statutes appealable to the Board.

[10] Mr. Cottrell requests that the Board not dismiss his application because the Order was also made under the *WSA*.

Panel's Findings

Is the Order issued under the *Water Utility Act* and *Utilities Commission Act* appealable to the Board?

[11] As set out in the Manual, the Board is established under section 93 of the *Environmental Management Act*, SBC 2003, c. 53 (the “EMA”) to hear appeals from administrative decisions made under various environmental statutes. In order to have jurisdiction to hear an appeal of a decision made under a statute, that statute must expressly state that specified decisions can be appealed to the Board. The Manual lists the statutes that the Board has jurisdiction to hear appeals under: the *Environmental Management Act*, SBC 2003, c. 53, *Greenhouse Gas Industrial Reporting and Control Act*, SBC 2014, c. 29, *Low Carbon Fuels Act*, SBC 2022, c. 21², *Integrated Pest Management Act*, SBC 2003, c. 58, *Mines Act*, RSBC 1996, c. 293, *Water Sustainability Act*, SBC 2014, c. 15, *Water Users’ Communities Act*, RSBC 1996, c. 483, and the *Wildlife Act*, RSBC 1996, c. 488.

[12] As noted at page 13 in the Manual: “the types of decisions that are appealable to the Board vary from statute to statute. To determine whether a particular decision may be appealed to the Board, the statute under which the decision was made must be consulted.”

[13] In the context of the application before me, the Order is made under the *Water Utility Act* and the *Utilities Commission Act*. There is no reference in either the *Water Utility Act* or the *Utilities Commission Act* that orders arising from decisions under these enactments are appealable to the Board. Section 4(b) of the *Water Utility Act* provides that section 101 of the *Utilities Commission Act* applies to decisions made by the Comptroller under that act. Section 101 of the *Utilities Commission Act* provides for filing of an appeal to the Supreme Court or Court of Appeal of British Columbia. I also note that Section 99 of the *Utilities Commission Act* provides a procedure to apply to the commission to reconsider an order.

[14] I find that a plain reading of the *Water Utility Act* and the *Utilities Commission Act* supports a conclusion that the Order is not appealable to the Board. These acts do not identify that decisions made under them are appealable to the Board. As set out in section 93 of the *EMA*, the Board only has jurisdiction to hear appeals if the provisions of an enactment specify that decisions are appealable to the Board. Additionally, based on the language of section 101 of the *Utilities Commission Act*, the right of appeal for these decisions is filing with the Supreme Court or Court of Appeal of British Columbia.

[15] I find there is no jurisdiction under the *Water Utility Act* or the *Utilities Commission Act* to appeal the Order to the Board. However, given the Appellant’s submission that the

² Replaced the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act*, SBC 2008, c. 16 effective January 1, 2024.

decision was also made under the *WSA*, I will also consider whether the Order is appealable under that enactment.

Is the Order appealable under the *WSA*?

[16] The Appellant submits that the Order was also made under the *WSA*. The heading of the Order states that it is made under the *Water Utility Act* and the *Utilities Commission Act*. The reasons for decision attached to the Order say that the Comptroller is responsible for the regulation of private water utilities under the *Water Utility Act* and the *Utilities Commission Act*, and that Lang Bay Waterworks Ltd. is a utility that falls under that jurisdiction. The only reference to the *WSA* is the reference to the Deputy Comptroller's delegated authority.

[17] The Appellant argues that since the Deputy Comptroller has been delegated the authority of the Comptroller under section 114(2) of the *WSA*, the Order is appealable under the *WSA*. I disagree with this reasoning. While the Deputy Comptroller is delegated his authority under the *WSA*, his authority extends to specified decisions made under other statutes, including the *Water Utility Act*. The relevant statute to examine for the purpose of addressing this issue is the statute he made the Order under, not the statute under which he was delegated his authority. It is clear to me that the Order is made by the Deputy Comptroller under the *Water Utility Act* and *Utilities Commission Act* and not under the *WSA*.

[18] I will also examine whether the Order is otherwise appealable under section 105 of the *WSA*. Section 105 of the *WSA* states:

Appeals to appeal board

105 (1) Except as otherwise provided in this Act, an order resulting from an exercise of discretion of the comptroller, a water manager or an engineer may be appealed to the appeal board by any of the following:

- (a) the person who is subject to the order;
- (b) subject to subsection (2), an owner whose land is or is likely to be physically affected by the order;
- (c) the owner of the works that are the subject of the order;
- (d) the holder of an authorization, a riparian owner or an applicant for an authorization who considers that the holder's, owner's or applicant's rights are or will be prejudiced by the order.

(2) In the case of the issuance of a drilling authorization, a person whose consent has been given for the purposes of section 62 (4) (c) [*drilling authorizations*] has no right of appeal unless the order respecting the drilling authorization in respect of which the consent was given is inconsistent with that consent.

(3) The time limit for a person to commence an appeal is 30 days after the date on which notice of the order being appealed is delivered to the person.

(4) Subject to this Act, Division 1 of Part 8 of the *Environmental Management Act* applies to an appeal under this Act.

(5) The appeal board may conduct an appeal by way of a new hearing.

(6) On an appeal, the appeal board may

(a) send the matter back, with directions, to the comptroller, water manager or engineer who made the order being appealed,

(b) confirm, reverse or vary the order being appealed, or

(c) make any order that the person whose order is being appealed could have made and that the board considers appropriate in the circumstances.

[19] Reading the *WSA* as a whole, along with *EMA*, I find that section 105 of the *WSA* includes a right to appeal to the Board of decisions arising from the exercise of discretion of the Comptroller, water manager or engineer. However, that right of appeal is limited to certain decisions. Section 105 only applies to decisions made under *WSA*, unless it is expressly applied to other enactments.

[20] For example, section 100.1 of the *Water Users' Communities Act* applies section 105 of the *WSA* for the purposes of the Act, which includes powers of the Comptroller exercised under the *Water Users' Communities Act* can be appealed to the Board.

[21] To interpret the *WSA* as granting the Board the authority to hear appeals under other enactments (including the *Water Utility Act* and *Utilities Commission Act*) or to broadly hear any decision of the Comptroller, water manager, or engineer, would result in an error because the Board would exceed its authority under the *EMA* and any decision resulting from that type of action would not be supported under law. If the legislature intended to extend the Board's authority to hear appeals of the exercise of the Comptroller's discretion under the *Water Utility Act* and *Utilities Commission Act*, it would have expressly provided that authority in that legislation.

[22] I note that there are references to the powers and duties of the Comptroller in the *WSA* and the *Water Utility Act*. However, the Board only has the authority to hear appeals of the exercise of those powers and duties where it is specifically referenced in statute as discussed above. As such, I find that there is no authority for the Board to hear an appeal of this Order under *WSA*.

Should the appeal be summarily dismissed under section 31(1)(a) of the ATA because the Board does not have jurisdiction to hear this appeal?

[23] I have found that the Deputy Comptroller is exercising his discretion under the *Water Utility Act* and *Utilities Commission Act* in issuing the Order, which is not in the Board's jurisdiction to hear an appeal. I have also found that the Order was not made under the *WSA*, as suggested by the Appellant, and there is no right to appeal the Order under section 105 of the *WSA*.

[24] Therefore, I find that this appeal must be summarily dismissed under section 31(1)(a) of the ATA.

DECISION

[25] For the reasons provided above, I summarily dismiss the Appellant's appeal under section 31(1)(a) of the ATA because the Board lacks the jurisdiction to hear an appeal of the Order issued under the *Water Utility Act* and the *Utilities Commission Act*.

"David Bird"

David Bird, Panel Chair
Environmental Appeal Board