



Environmental Appeal Board

Citation: *Croxall v. Assistant Water Manager*, 2026 BCEAB 16

Appeal No.: EAB-WSA-25-A006

Decision Date: 2026-03-18

Method of Hearing: Conducted by way of written submissions concluding October 1, 2025

Decision Type: Preliminary Decision

Panel: Cynthia Lu, Panel Chair

Appealed Under: *Water Sustainability Act*, SBC 2014, c.15

Between:

Mark Croxall

Appellant

And:

Assistant Water Manager

Respondent

And:

Don Maruniak

Third Party

Appearing on Behalf of the Parties:

For the Appellant: Self-represented

For the Respondent: Livia Meret and Brian Blunt, Counsel

For the Third Party: Self-represented

PRELIMINARY DECISION ON STANDING

INTRODUCTION

[1] Mark Croxall (the “Appellant”) appeals a decision made by James Wyllie, Assistant Water Manager (the “Respondent”) of the Ministry of Water, Land and Resource Stewardship (the “Ministry”). The decision was made on August 21, 2023, to issue a Conditional Water Licence (the “Licence”). The Licence, issued under the *Water Sustainability Act*, SBC 2014, c. 15 (the “Act”), authorizes Don Maruniak (the “Third Party”) to divert and use groundwater for an industrial purpose.

[2] Section 105(1) of the *Act* provides for the circumstances under which a person may appeal a decision made pursuant to the *Act* to the Environmental Appeal Board (the “Board”). The Respondent has applied to challenge the Appellant’s standing to appeal the issuance of the Licence (the “Application”). The Respondent submits the Appellant does not have standing under section 105(1) of the *Act* to appeal and makes an Application for the Board to dismiss the appeal. The Appellant submits his land is likely to be physically affected by the Licence, his water rights are prejudiced by another user, and he has standing to appeal.

ISSUE

[3] The issue to be addressed in this preliminary decision is whether the Appellant has standing under section 105(1) of the *Act* to appeal the issuance of the Licence.

BACKGROUND

[4] The Appellant has a well on his property for domestic use. Domestic use is one of the purposes for which water may be diverted from a stream or aquifer under section 2 of the *Act*. Under section 6(4) of the *Act*, “a person may, in accordance with the regulations, divert, and beneficially use, including store, groundwater from an aquifer for domestic purpose” unless provided otherwise by the regulations. This means a person may divert water for domestic use without an additional authorization from the Ministry.

[5] The Third Party applied for, and received, the Licence, which allows the Third Party to use a specified amount of groundwater from May 1 to September 30 each year, for the purpose of “Lawn, Fairway & Garden,” a water use designated as an industrial purpose under the *Water Sustainability Regulation*, B.C. Reg. 36/2016. The Licence specifies watering hours outlined in the Licence conditions. The Appellant and Third Party are neighbours, and their water use draws from the same aquifer.

DISCUSSION AND ANALYSIS

Appellant's Submissions

[6] The Appellant submits his well was drilled in June 1997. The Appellant submits he had a well test performed as recently as July 2021 but does not submit documentary evidence of the test results. The Appellant argues the Third Party's water use, authorized by the Licence, has negatively impacted the volume of water available for his domestic use. The Appellant states he has kept a diary of the impacts of the Third Party's water use and his own water shortages; however, this diary was not submitted as evidence in response to the Application. The Appellant submits he is an owner whose land is likely physically affected by the decision to issue the Licence and his water rights are prejudiced by another user.

Respondent's Submissions

[7] The Respondent submits affidavit evidence which includes a Water Licence Technical Report dated August 15, 2022, prepared by Ministry staff to inform the decision-making process which led to the issuance of the Licence.

[8] The Respondent refers me to a previous decision of the Board: *Bruce Gibbons v. Assistant Water Manager*, 2018 BCEAB 10 (CanLII) ("*Gibbons*"). The Respondent submits, as found in *Gibbons*, it is the Appellant's responsibility to provide sufficient evidence that his land is likely to be physically affected as a result of the Licence. The Respondent argues the Appellant has only provided general information, speculations, and hearsay.

[9] The Respondent states that an alleged shortage of groundwater does not establish that the Appellant's land is, or is likely to be, physically affected by the decision. The Respondent submits that the definition of "land" as found in section 29 of the *Interpretation Act*, RSBC 1996, c. 238, makes "land" a term distinct and different from the term "water." The Respondent refers me to *Gibbons*, where the panel provided examples of when there may be a reasonable basis to find that land may be physically affected, including flooding or erosion. The Respondent submits both words "land" and "water" are used in the *Act* and in section 105(1)(b) the term "land" is purposefully used. The Respondent argues any effects on the Appellant's well water supply as a result of the Licence are not equivalent to physical effects on the land and therefore the Appellant does not have standing under section 105(1)(b).

[10] The Respondent submits the Appellant also does not have standing to appeal under section 105(1)(d) of the *Act*. The Respondent argues domestic groundwater users are explicitly excluded from section 105(1)(d) as they are not holders of an authorization, nor can they apply for an authorization for domestic groundwater use. The Respondent submits, given the definitions of "authorization," "licence," and "approval" under the *Act*, the Appellant cannot be said to be a "holder of an authorization."

[11] The Respondent argues section 22(8) of the *Act*, which deems domestic groundwater users to have rights, does not make those users holders of an authorization for the purposes of section 105(1)(d). The Respondent submits section 22(8) of the *Act* is only intended to deal with precedence of rights. The Respondent submits that if the Legislature intended to grant standing to appeal to domestic water users it would have explicitly said so in section 105(1)(d) of the *Act*.

Panel's Analysis and Findings

[12] Section 105(1) of the *Act* provides the circumstances that must apply in order for the Appellant to have standing to appeal the Respondent's decision to issue the Licence. To have standing to appeal, one of section 105(1)(a), (b), (c), or (d) must apply to the Appellant:

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.

[13] In this circumstance, the "order" is the decision to issue the Licence, which was an exercise of discretion by the Respondent.

[14] The Respondent argues domestic groundwater users are explicitly excluded from section 105(1)(d) as they are not the "holder of an authorization," and if domestic groundwater users were intended to have appeal rights they would have been specifically included in section 105(1). I disagree. The Legislature may, as it always may, specify in legislation that different rights are held by different persons, or groups of persons, so long as it conforms to all applicable legal requirements. However, to curtail or restrict the rights of specified persons, the Legislature must be explicit when it does so. The wording of the legislation must be the anchor of any interpretation. If section 105(1)(d) of the *Act* were to explicitly exclude domestic groundwater users it would state this, and it does not.

[15] It is clear to me, on a plain reading of section 105(1)(d) of the *Act*, that the Legislature did not explicitly include or exclude domestic groundwater users within the category of persons capable of appealing a decision under the *Act*. The next question I must determine, then, is whether domestic groundwater users are included within the category of persons to whom section 105(1)(d) applies: holders of an authorization.

[16] A domestic groundwater user cannot be granted an authorization for this use as the *Act* does not allow such an authorization to be granted. Instead, section 6(4) of the *Act* establishes:

6 (4) A person may, in accordance with the regulations, divert, and beneficially use, including store, groundwater from an aquifer for domestic purpose unless

(a) provided otherwise by regulations under section 135 (6), or

(b) this subsection does not apply to the applicable aquifer by regulations under section 136 [*regulations requiring authorizations for domestic use of groundwater*].

[17] As domestic groundwater users are directly authorized by the operation of section 6(4) of the *Act*, no residual discretion remains with any decision maker under the *Act* to determine if such use of groundwater should be permitted. The direct authorization of domestic groundwater use is subject to the restrictions explicitly set out in section 6(4); however, these restrictions do not apply in the present circumstances.

[18] The Respondent argues domestic groundwater users cannot appeal decisions under section 105(1)(d) of the *Act* because they are not holders of an authorization. This would be correct if the *Act* did not contain any further information on the rights of domestic groundwater users. However, the *Act* explicitly grants domestic groundwater users further rights.

[19] Section 22(8) of the *Act* sets out that domestic groundwater users are deemed to have rights that have precedence under sections 22(1) through (6), as if the deemed rights were granted under an authorization.

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...

(8) Despite subsections (1) to (6), **a person to whom section 6 (4)** [use of water — excluded groundwater users] **applies is deemed to have rights that have precedence under those subsections**, as if the deemed rights were granted under an authorization that

(a) sets out as the date of precedence the date of first use of the water, and

(b) authorizes the use of the greater of

(i) 2 000 litres of water per day for each private dwelling on a parcel,
or

(ii) the amount of water the engineer is satisfied the person has been using for domestic purposes.

(emphasis added)

[20] Since section 22(8) of the *Act* relates the rights granted under subsections one through six, a closer reading of those subsections is required. Sections 22(1), 22(2), and 22(3) of the *Act* pertain to surface water and are therefore not relevant to my analysis.

Sections 22(4), 22(5), and 22(6) of the *Act* establish the precedence, or hierarchy, of rights which apply when water is diverted from an aquifer. The definitions section of the *Act* sets out that every time the word “precedence” is used within the *Act* in relation to rights to divert and use water, this means the hierarchy of rights established under section 22.

[21] As noted above, the only way a person may be lawfully found within the category of a domestic groundwater user, and therefore gain the rights and protections found under sections 22(4) through (6), is by operation of section 6(4) of the *Act*. Through section 6(4), the *Act* automatically authorizes domestic groundwater use. This use is deemed, under section 22(8), to have rights of precedence as against other groundwater users as if those rights were granted under an authorization.

[22] While section 22(8) of the *Act* establishes the precedence of rights, it does not explain why this hierarchy matters. The remainder of section 22 of the *Act* is of little assistance in answering this question. Subsections ten and eleven refer to situations where an engineer is taking action to enforce the precedence of rights. However, these situations are limited by the explicit wording of these subsections to those where an engineer is considering the impact of such actions on the essential household use of water. Establishing a hierarchy of water use purposes is not required to operationalize sections 22(10) and (11), and these subsections are therefore not of assistance in determining the rationale of the Legislature in establishing this hierarchy.

[23] For my analysis, it is important to recognize section 20(3) of the *Act* requires that every authorization granted under the *Act* must have both a date of precedence of when the authorization is effective and one or more water use purposes. The combination of sections 20(3) and 22 of the *Act* results in a situation where every lawful use of water within British Columbia—whether granted or deemed—may be placed within a hierarchy of use. This creates a situation where every person lawfully using water is capable of knowing how their rights to use water relate to every other user on the same source of water or on a hydraulically connected source of water based on these dates of precedence.

[24] Section 22(8)(a) sets the date of precedence for a domestic groundwater user as the date of first use of the water. The Appellant submits his well was drilled June 6, 1997, and that he moved to the property in 2005. As the date of precedence in the Third Party’s Licence is August 11, 2022, the Appellant’s date of precedence is earlier than the date in the Licence.

[25] I have reviewed the *Act* and its regulations to understand how the hierarchy of water use purposes is used, as well as the context in which it is used. While the *Act* uses this hierarchy in many ways, I find the most useful to my analysis to be the incorporation of this hierarchy within sections 8 and 93 of the *Act*. Section 8(1) of the *Act* establishes that the exercise of any right is subject to the “rights of all authorization holders whose rights have precedence.” This precedence is, as stated above, set by section 22 of the *Act* and explicitly includes domestic groundwater users. Section 93 of the *Act* establishes the powers of an engineer, which may be directed to any person who has a right, permission,

or obligation under the *Act*. Section 93(2) explicitly states that the exercise of an engineer's power may be used for the enforcement of the precedence of rights to use water.

[26] Based on my reading of the wording of the *Act*, I find that the Legislature intended to provide domestic groundwater users with the same rights of precedence as holders of an authorization. Section 8(1) of the *Act* establishes that this precedence of rights must be adhered to when an individual exercises any right held under an authorization. Further, section 93 of the *Act* establishes that an engineer has the authority to make an order enforcing this precedence of rights. It would be illogical if the rights granted under an authorization were subject to enforceable domestic groundwater rights but those existing domestic groundwater rights were not considered when the authorization was issued.

[27] The rights granted under the Licence may only be used after existing groundwater use rights are exercised. It would be illogical and impractical for the *Act* to establish a system where an authorization may only be used if it does not interfere with pre-existing rights granted under the *Act*, yet does not allow the holder of those pre-existing rights to appeal the decision to grant the authorization. Such a reading of the *Act* is to be avoided and would not reflect the objective and scheme of the *Act*, as shown by reading the *Act* in its whole context, or the Legislature's intention in including domestic groundwater users under the scheme of determining water users' rights priority based on, among other factors, the date of precedence.

[28] Given the reasons above, I find that the term "holder of an authorization" found in section 105(1)(d) of the *Act* includes domestic groundwater users. Section 105(1)(d) of the *Act* provides that a holder of an authorization who considers their rights are or will be prejudiced by the order may appeal to the Board. Therefore, I find the Appellant has standing to appeal under section 105(1)(d) of the *Act*.

[29] Having determined the Appellant has standing to appeal the Licence under section 105(1)(d) of the *Act*, I do not need to consider the Appellant's standing under sections 105(1)(a), (b), or (c).

DECISION

[30] I have considered the parties' submissions and the available evidence, whether or not they have been specifically referenced above. For the reasons above, I find the Appellant has standing to appeal under section 105(1)(d) of the *Act* and I dismiss the Application.

"Cynthia Lu"

Cynthia Lu, Panel Chair
Environmental Appeal Board