

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Mediation Meeting - July 6, 2006

Date of Report and Recommendations – July 18, 2006

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 appeals filed by B. Van Laar and N. Tom Christensen with respect to Preliminary Certificate No. 00213958-00-00 issued under the *Water Act* to Van Laar Farms Ltd., by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Van Laar and Christensen v. Director, Southern Region, Regional Services, Alberta Environment re: Van Laar Farms Ltd.* (18 July 2006), Appeal Nos. 06-035 and 06-037-R (A.E.A.B.).

MEDIATION BEFORE:

Mr. Alex G. MacWilliam, Board Member.

APPEARANCES:

Appellant:

Mr. Tom Christensen and Ms. Donna Christensen, Triple G Farms Ltd.

Director:

Mr. David Ardell, Director, Southern Region, Regional Services, Alberta Environment, Mr. Claude Eckert, Hydrogeologist, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Certificate Holder/Appellant:

Mr. B. Van Laar and Ms. Heather Van Laar, Van Laar Farms Ltd., and Mr. Bob Nowak, Hydrogeologist.

Board Staff:

Ms. Marian Fluker, Associate Counsel.

EXECUTIVE SUMMARY

Alberta Environment issued a Preliminary Certificate to Van Laar Farms Ltd., authorizing the diversion of 13,950 cubic metres of groundwater annually for livestock purposes (4,200 feeder hogs) near Standard, Alberta.

The Board received two Notices of Appeal, one filed by Mr. B. Van Laar, Van Laar Farms Ltd., who is also the Preliminary Certificate Holder, and the other by Mr. N. Tom Christensen, Triple G Farms Ltd., both appealing the Preliminary Certificate.

The Board conducted a mediation meeting on July 6, 2006, in Standard, Alberta, at which the participants reached an agreement with respect to the Preliminary Certificate. The Board recommends that the Minister of Environment accept the agreement.

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I. BACKGROUND

[1] On April 19, 2006, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued Preliminary Certificate No. 00213958-00-00 (the “Certificate”) to Van Laar Farms Ltd. (the “Certificate Holder”) authorizing the diversion of 13,950.0 cubic metres of water annually from Production Well No. PW1-02, located in SW 2-26-22-W4M for agricultural purposes (4,200 feeder hogs) near Standard, Alberta.

[2] On May 8, 2006, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. B. Van Laar (on behalf of Van Laar Farms Ltd.) appealing the conditions of the Preliminary Certificate. On May 15, 2006, the Board received an appeal from Mr. N. Tom Christensen (the “Appellant”) also appealing the Preliminary Certificate.

[3] On May 11 and 15, 2006, the Board wrote to the Appellants, the Certificate Holder, and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Certificate Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to these appeals, and that the Participants provide available dates for a mediation meeting, preliminary meeting, or 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 May 17, 2006, the Board received a copy of the Record from the Director, and on May 19, 2006, forwarded a copy to the Appellant and the Certificate Holder.

[6] On May 30, 2006, in consultation with the Participants, the Board scheduled the mediation meeting for July 6, 2006, in Standard, Alberta.

II. MEDIATION MEETING

[7] Pursuant to section 11 of the Environmental Appeal Board Regulation, Alta. Reg. 114/93, the Board conducted a mediation meeting in Standard, Alberta, on July 6, 2006, with Mr. Alex MacWilliam as the presiding Board Member (the “Mediator”).

[8] In conducting the mediation meeting the Mediator reviewed the appeals and the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants’ Agreement to Mediate. All Participants signed the Agreement and discussions ensued. Following productive and detailed discussions at the mediation meeting, a Resolution evolved which all Participants signed. This document is attached as pages 3 to 5.

III. RECOMMENDATIONS

[9] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.-E-12 (the “Act”), the Board recommends that the Minister of Environment order that *Water Act* Preliminary Certificate No. 00213958-00-00 be varied in accordance with the Resolution reached by the Participants. Attached for the Minister’s consideration is a draft Ministerial Order implementing the recommendations.

[10] Further, with respect to sections 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following parties:

- Mr. B. Van Laar, Van Laar Farms Ltd.;
- Mr. N. Tom Christensen, Triple G. Farms Ltd.; and
- Ms. Charlene Graham, Alberta Justice, representing Mr. David Ardell, Director, Southern Region, Regional Services, Alberta Environment.

Dated on July 18, 2006, at Edmonton, Alberta.

“original signed by”

Steve E. Hrudehy, D.Sc. (Eng.), P.Eng.
Chair

IV. RESOLUTION

RESOLUTION ENVIRONMENTAL APPEALS BOARD EAB FILE NOS. 06-035 & 06-037

In the matter of the mediation of the appeal of the decision of the Director, Southern Region, Regional Services, Alberta Environment, to issue Preliminary Certificate No. 00213958-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, to Van Laar Farms Ltd., authorizing the diversion of 13,950.0 cubic metres of groundwater annually from SW 2-26-22-W4M for livestock purposes (4,200 feeder hogs) near Standard, Alberta.

All participants to the appeal have agreed to the following terms and conditions:

1. THAT the Board recommend to the Minister of Environment that Preliminary Certificate No. 00213958-00-00 be amended as follows:
 1. That the preliminary certificate be amended by deleting “will receive a licence to divert 13,950.0 cubic metres” and replace it with “will receive licence(s) to divert up to 13,950.0 cubic metres.”
 2. That the Expiry Date of the preliminary certificate shall be amended by deleting “2031-04-18” and replacing it with “2009-07-01.”
 3. That Condition 2 of the preliminary certificate be deleted and replaced with the following:
 - “2. The preliminary certificate holder shall submit to the Director a certificate(s) of completion stating the conditions of this preliminary certificate are complied with.”
 4. That General Conditions 4, 5, and 6 of the preliminary certificate be deleted.
 5. That the following conditions be added immediately after Condition 3 of the preliminary certificate:
 - “4. The preliminary certificate holder shall provide the cumulative current meter readings and the current water level measurements to the Director regarding the 8,000 cubic metres of groundwater annually.
 5. The preliminary certificate holder shall provide to the Director information satisfactory to the Director regarding the demonstrated need for a total maximum water allocation of 13,950.0 cubic metres which shall include, but not limited to, information on weight of animals, duration of stay, nature of water use.”
5. That Condition 8 be deleted and replaced with the following:

“On submission of a satisfactory certificate(s) of completion and upon compliance with the conditions in this preliminary certificate, the preliminary certificate holder shall be granted a licence(s) for the diversion of groundwater annually including the operation of works and subject to the following conditions:”

6. That Condition 4.1 be deleted and replaced with the following:

“4.1 Unless otherwise authorized in writing by the Director, the Licensee shall measure the water levels in the monitoring wells:

 - (a) The preliminary certificate holder shall drill and install a monitoring well (MW1-05) if the water level in the production well (PW1-02) goes below 48 feet from the top of the casing and remains at that level for 3 consecutive weeks. The monitoring well will be completed in the same quarter section as the production well (PW1-02), located between 50 and 100 metres from the production well, drilled to a similar depth and in the same water bearing aquifer as the production well and located in the general direction of the Christensen (N ½ 2-26-22W4) and Schultz (SE 2-26-22W4) spring supply sources.”; and
 - (b) any monitoring well(s) required by 4.0; on a weekly basis.”

7. That Condition 4.2 be deleted and replaced with the following:

“Unless otherwise authorized in writing by the Director, the Licensee shall measure the water levels in the production well on a:

 - (a) weekly basis for the term of the licence.”

8. That condition 4.3 of the Licence be deleted and replaced with the following:

“4.3 Unless otherwise authorized in writing by the Director, the Licensee shall:

 - (a) monitor the total number of cubic metres of water diverted; and
 - (b) record the total number of cubic metres of water diverted; from the production well on a weekly basis.”

9. That Condition 4.8 of the Licence shall be deleted and replaced with the following:

“4.8 Unless otherwise authorized in writing by the Director, the Licensee shall submit an annual Water Use Report to the Director

 - (a) on or before February 28th of each year following the year in which the information on which the report is based was collected; or
 - (b) within a time period specified in writing by the Director.”

2. THAT the holder of Priority Number 19500714003 will visually monitor the flow and levels in the water flowing from the spring onto NE 2-26-22-W4M. The registered holder of the well on SE 15-26-20-W4M will, at its option, monitor static levels in the well on an annual basis and provide the results of such monitoring to the Director.
3. THAT the Director shall notify Mr. N. Tom Christensen or the appropriate landowner if Mr. B. Van Laar requests to increase the maximum annual water allocation above the 8,000 cubic metres.
4. THAT in consideration of the foregoing, the Appellants, B. Van Laar and N. Tom Christensen, agree to withdraw their Notices of Appeal.

RESOLUTION AGREED TO BY:

“original signed by” _____ Date: July 6, 2006
N. Tom Christensen, Triple G Farms Ltd.

“original signed by” _____ Date: July 6, 2006
Donna Christensen, Triple G Farms Ltd.

“original signed by” _____ Date: July 6, 2006
B. Van Laar, Van Laar Farms Ltd.

“original signed by” _____ Date: July 6, 2006
Heather Van Laar, Van Laar Farms Ltd.

“original signed by” _____ Date: July 6, 2006
David Ardell, Director, Southern Region
Regional Services, Alberta Environment
represented by Charlene Graham, Alberta Justice

V. DRAFT ORDER

Ministerial Order
/2006

Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12;

and

Water Act, R.S.A. 2000, c. W-3.

**Order Respecting Environmental Appeals Board
Appeal Nos. 06-035 & 06-037**

I, Guy Boutilier, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal Nos. 06-035 & 06-037.

Dated at the City of Edmonton, in the Province of Alberta, this ____ day of _____, 2006.

Guy Boutilier
Minister

Draft Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 06-035 & 06-037

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Preliminary Certificate No. 00213958-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c.W-3, to Van Laar Farms Ltd. (the “Certificate Holder”), I, Guy Boutilier, Minister of Environment, order that:

1. The decision of the Director to issue Preliminary Certificate No. 00213958-00-00 is confirmed subject to the following variations:
2. For the purposes of interpreting this Ministerial Order, the Preliminary Certificate will be referred to in two parts: the “Certificate” which is composed of the cover page and the section entitled “GENERAL” having clauses numbered 1 to 8; and the “Proposed Licence” which is composed of sections “DEFINITIONS, GENERAL, DIVERSION OF WATER, MONITORING AND REPORTING, COMPLAINT INVESTIGATION, AND RECLAMATION” having clauses numbered 1.0 to 6.1.
3. The cover page of the Certificate is amended by deleting “will receive a licence to divert 13,950.0 cubic metres” and replacing it with “will receive licence(s) to divert up to 13,950.0 cubic metres”.
4. The cover page of the Certificate is amended by deleting the Expiry Date “2031-04-18” and replacing it with “2009-07-01”.
5. Condition 2 of the Certificate under the heading “GENERAL” is amended by deleting it and replacing it with the following:

“2. The preliminary certificate holder shall submit to the Director a certificate(s) of completion stating that the conditions of this preliminary certificate are complied with.”
6. Condition 4 of the Certificate under the heading “GENERAL” is amended by deleting it and replacing it with the following:

“4. The preliminary certificate holder shall provide the cumulative current meter readings and the current water level measurements to the Director regarding the 8,000 cubic metres of groundwater annually.”
7. Condition 5 of the Certificate under the heading “GENERAL” is amended by deleting it and replacing it with the following:

- “5. The preliminary certificate holder shall provide to the Director information satisfactory to the Director regarding the demonstrated need for a total maximum water allocation of 13,950.0 cubic metres that shall include, but is not limited to, information on weight of animals, duration of stay, and nature of water use.”
8. Condition 6 of the Certificate under the heading “GENERAL” is deleted.
9. Condition 8 of the Certificate under the heading “GENERAL” is amended by deleting it and replacing it with the following:
- “8. On submission of a satisfactory certificate(s) of completion and upon compliance with the conditions in this preliminary certificate, the preliminary certificate holder shall be granted a licence(s) for the annual diversion of groundwater including the operation of works and subject to the following conditions:”.
10. Condition 4.1 of the Proposed Licence under the heading “MONITORING AND REPORTING” is amended by deleting it and replacing it with the following:
- “4.1 Unless otherwise authorized in writing by the Director, the Licensee shall measure the water levels in the monitoring wells as follows:
- (a) The Licensee shall drill and install a monitoring well (MW1-05) if the water level in the production well (PW1-02) goes below 48 feet from the top of the casing and remains at that level for 3 consecutive weeks;
 - (b) The monitoring well (MW1-05) will be completed in the same quarter section as the production well (PW1-02), located between 50 and 100 metres from the production well, drilled to a similar depth and in the same water bearing aquifer as the production well and located in the general direction of the Christensen (N ½ 2-26-22-W4M) and Schultz (SE 2-26-22-W4M) spring supply sources; and
 - (c) any monitoring well(s) otherwise required by condition 4.0;
- on a weekly basis.”
11. Condition 4.2 of the Proposed Licence under the heading “MONITORING AND REPORTING” is amended by deleting it and replacing it with the following:

“4.2 Unless otherwise authorized in writing by the Director, the Licensee shall measure the water levels in the production well on a weekly basis for the term of the licence.”

12. Condition 4.3 of the Proposed Licence under the heading “MONITORING AND REPORTING” is amended by deleting it and replacing it with the following:

“4.3 Unless otherwise authorized in writing by the Director, the Licensee shall:

(a) monitor the total number of cubic metres of water diverted;
and

(b) record the total number of cubic metres of water diverted

from the production well on a weekly basis.”

13. Condition 4.8 of the Proposed Licence under the heading “MONITORING AND REPORTING” is amended by deleting it and replacing it with the following:

“4.8 Unless otherwise authorized in writing by the Director, the Licensee shall submit an annual Water Use Report to the Director:

(a) on or before February 28th of each year following the year in which the information on which the report is based was collected; or

(b) within a time period specified in writing by the Director.”



ALBERTA ENVIRONMENT
Office of the Minister

**Ministerial Order
15/2006**

Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12;

and

Water Act, R.S.A. 2000, c. W-3.

**Order Respecting Environmental Appeals Board
Appeal Nos. 06-035 & 06-037**

I, Guy Boutilier, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal Nos. 06-035 & 06-037.

Dated at the City of Edmonton, in the Province of Alberta, this 8th day of August, 2006.

“original signed by”

Guy Boutilier
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 06-035 & 06-037

With respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment (the “Director”) to issue Preliminary Certificate No. 00213958-00-00 (the “Certificate”) under the *Water Act*, R.S.A. 2000, c.W-3, to Van Laar Farms Ltd. (the “Certificate Holder”), I, Guy Boutilier, Minister of Environment, order that:

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2. For the purposes of interpreting this Ministerial Order, the Preliminary Certificate will be referred to in two parts: the “Certificate” which is composed of the cover page and the section entitled “GENERAL” having clauses numbered 1 to 8; and the “Proposed Licence” which is composed of sections “DEFINITIONS, GENERAL, DIVERSION OF WATER, MONITORING AND REPORTING, COMPLAINT INVESTIGATION, AND RECLAMATION” having clauses numbered 1.0 to 6.1.
3. The cover page of the Certificate is amended by deleting “will receive a licence to divert 13,950.0 cubic metres” and replacing it with “will receive licence(s) to divert up to 13,950.0 cubic metres”.
4. The cover page of the Certificate is amended by deleting the Expiry Date “2031-04-18” and replacing it with “2009-07-01”.
5. Condition 2 of the Certificate under the heading “GENERAL” is amended by deleting it and replacing it with the following:

“2. The preliminary certificate holder shall submit to the Director a certificate(s) of completion stating that the conditions of this preliminary certificate are complied with.”
6. Condition 4 of the Certificate under the heading “GENERAL” is amended by deleting it and replacing it with the following:

“4. The preliminary certificate holder shall provide the cumulative current meter readings and the current water level measurements to the Director regarding the 8,000 cubic metres of groundwater annually.”

7. Condition 5 of the Certificate under the heading "GENERAL" is amended by deleting it and replacing it with the following:
 - "5. The preliminary certificate holder shall provide to the Director information satisfactory to the Director regarding the demonstrated need for a total maximum water allocation of 13,950.0 cubic metres that shall include, but is not limited to, information on weight of animals, duration of stay, and nature of water use."
8. Condition 6 of the Certificate under the heading "GENERAL" is deleted.
9. Condition 8 of the Certificate under the heading "GENERAL" is amended by deleting it and replacing it with the following:
 - "8. On submission of a satisfactory certificate(s) of completion and upon compliance with the conditions in this preliminary certificate, the preliminary certificate holder shall be granted a licence(s) for the annual diversion of groundwater including the operation of works and subject to the following conditions:"
10. Condition 4.1 of the Proposed Licence under the heading "MONITORING AND REPORTING" is amended by deleting it and replacing it with the following:
 - "4.1 Unless otherwise authorized in writing by the Director, the Licensee shall measure the water levels in the monitoring wells as follows:
 - (a) The Licensee shall drill and install a monitoring well (MW1-05) if the water level in the production well (PW1-02) goes below 48 feet from the top of the casing and remains at that level for 3 consecutive weeks;
 - (b) The monitoring well (MW1-05) will be completed in the same quarter section as the production well (PW1-02), located between 50 and 100 metres from the production well, drilled to a similar depth and in the same water bearing aquifer as the production well and located in the general direction of the Christensen (N ½ 2-26-22-W4M) and Schultz (SE 2-26-22-W4M) spring supply sources; and
 - (c) any monitoring well(s) otherwise required by condition 4.0; on a weekly basis."

11. Condition 4.2 of the Proposed Licence under the heading “MONITORING AND REPORTING” is amended by deleting it and replacing it with the following:

“4.2 Unless otherwise authorized in writing by the Director, the Licensee shall measure the water levels in the production well on a weekly basis for the term of the licence.”
12. Condition 4.3 of the Proposed Licence under the heading “MONITORING AND REPORTING” is amended by deleting it and replacing it with the following:

“4.3 Unless otherwise authorized in writing by the Director, the Licensee shall:

 - (a) monitor the total number of cubic metres of water diverted;
and
 - (b) record the total number of cubic metres of water diverted

from the production well on a weekly basis.”
13. Condition 4.8 of the Proposed Licence under the heading “MONITORING AND REPORTING” is amended by deleting it and replacing it with the following:

“4.8 Unless otherwise authorized in writing by the Director, the Licensee shall submit an annual Water Use Report to the Director:

 - (a) on or before February 28th of each year following the year in which the information on which the report is based was collected; or
 - (b) within a time period specified in writing by the Director.”