

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Mediation Meeting – November 16, 2005
Date of Report and Recommendations – November 25, 2005

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 Katherine McCulloch and Richard Kelk, and Ross Warner with respect to the decision of the Director, Southern Region, Regional Services, Alberta Environment, to issue *Water Act* Licence No. 00188451-00-00 to AAA Cattle Company Ltd.

Cite as: *McCulloch et al. v. Director, Southern Region, Regional Services, Alberta Environment re: AAA Cattle Company Ltd.* (25 November 2005), Appeal Nos. 02-079 and 02-080-R (A.E.A.B.).

MEDIATION MEETING BEFORE: Mr. Ron V. Peiluck, Vice-Chair.

ATTENDEES:

Appellants: Ms. Katherine McCulloch and Mr. Richard Kelk, represented by Mr. Michael Niven, Carscallen Lockwood; Mr. Bryce Reiter, Komex International; Mr. Ross Warner; and Mr. Murray Marsh.

Director: Ms. May Mah-Paulson, Director, Southern Region, Regional Services, Alberta Environment, and Mr. Claude Eckert, Hydrogeologist, Southern Region, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

Licence Holder: Mr. Simon Cobban and Mr. Gerald Morasch, AAA Cattle Company Ltd.

EXECUTIVE SUMMARY

Alberta Environment issued a *Water Act* Licence to AAA Cattle Company Ltd. authorizing the diversion of 126,150 cubic metres of groundwater annually from four wells, near Didsbury, Alberta, for agricultural purposes (15,700 head feedlot expansion).

The Environmental Appeals Board received Notices of Appeal from Mr. Richard Kelk and Ms. Katherine McCulloch, and Mr. Ross Warner appealing the decision of Alberta Environment.

The Board held the appeals in abeyance, as the Natural Resources and Conservation Board had not yet completed their review of their decision related to AAA Cattle's operation. The appeals remained in abeyance while the decision of the Natural Resources Conservation Board was dealt with through the Court of Appeal of Alberta.

Once the Court of Appeal process was completed, the Board scheduled a mediation meeting at which a resolution was reached among the participants. The Board recommends the Minister of Environment accept the resolution and vary the Licence and another water licence held by AAA Cattle.

TABLE OF CONTENTS

I. BACKGROUND	1
II. MEDIATION MEETING.....	5
III. RECOMMENDATIONS.....	5
IV. RESOLUTION	7
V. DRAFT MINISTERIAL ORDER	12

I. BACKGROUND

[1] On October 3, 2002, the Director, Southern Region, Regional Services, Alberta Environment, (the “Director”) issued Licence No. 00188451-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3 to AAA Cattle Company Ltd. (the “Licence Holder”). The Licence authorizes the diversion of 126,150 cubic metres of groundwater annually from Production Well Nos. PW5-02, PW6-02, PW7-02 and PW8-02, located in the SW 4-31-27-W4M, near Didsbury, Alberta, for agricultural purposes (15,700 head feedlot expansion).

[2] On November 7, 2002, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Ms. Katherine McCulloch and Mr. Richard Kelk, and on November 8, 2002, a Notice of Appeal was received from Mr. Ross Warner (collectively the “Appellants”) appealing the Licence. On November 8 and 20, 2002, the Board wrote to the Appellants, the Licence Holder and the Director (collectively the “Participants”), acknowledging receipt of the Notices of Appeal and notifying the Licence 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 or hearing.

[3] According to standard practice, the Board wrote to the Natural Resources Conservation Board (the “NRCB”) and the Alberta Energy and Utilities Board (the “AEUB”) asking whether this matter had been the subject of a hearing or review under their respective legislation. The AEUB responded in the negative, and on November 19, 2002, the Board received a letter from the NRCB advising that it was holding a review with respect to the matters under appeal on February 5, 6 and 7, 2003, and the “...NRCB intends to consider all of the matters considered in the notice of appeal filed with the Environmental Appeal Board.”

[4] On November 20, 2002, the Board wrote to the Participants advising that it would hold the appeals in abeyance pending the completion of the NRCB review. The Board advised that once “...a decision is received from the NRCB, the Board will proceed to consider whether some or all of the matters included in the Notices of Appeal have been considered by the NRCB and determine how or if to proceed with these appeals....”

[5] On November 21, 2002, the Board received a letter from the Director advising the Record would not be provided to the Board as the appeals were in abeyance pending the NRCB review.

[6] On March 27, 2003, the Board wrote to the Participants advising the NRCB decision had been received and requested that the Participants provide written submissions to the Board in relation to the following:

“Have the Appellants received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under Part 2 of the *Agricultural Operation Practices Act* at which all of the matters included in the Notices of Appeal were adequately dealt with such that the EAB is required to dismiss the Notices of Appeal?”

[7] On April 14, 2003, the Board received Initial Written Submissions from the Appellants and on April 25, 2003, received the Response Written Submissions from the Director and the Licence Holder.

[8] The Board was in the process of reviewing these written submissions when it came to the Board’s attention that the decision of the NRCB was being appealed to the Court of Appeal. On April 29, 2003, the Board wrote to the Participants requesting confirmation of this information.

[9] On May 1, 2003, the Board received a telephone call from Mr. Kelk confirming that an application for leave to appeal the NRCB decision to the Court of Appeal was filed on April 24, 2003. The Board also received a letter from the Licence Holder on May 1, 2003, stating:

“...the appeal to the court is narrow.... There is no aspect of the court action that relates to the NRCB’s decision-making relating to water issues that are the subject matter of the ... appeal to the Alberta Environmental Appeal Board. Further, the appeal period for any further grounds of appeal against the NRCB has expired. In this regard, we refer the Board to section 27 of the *Agricultural Operation Practices Act*. Accordingly, the NRCB’s decision with respect to the water issues is final....”

[10] On May 6, 2003, the Board received Rebuttal Written Submissions from the Appellants in relation to the NRCB issue. Ms. McCulloch and Mr. Kelk also requested that the appeals be put into abeyance pending the decision of the Court of Appeal. The Board reviewed the request to put the appeals in abeyance and the May 1, 2003 letter from the Licence Holder

and advised that it would give the Participants an opportunity to provide additional comments before making its decision with respect to the request for an abeyance. Comments were received from the Participants, and on May 12, 2003, the Board wrote to the Participants advising that it would hold the appeals in abeyance pending the decision of the Court of Appeal.

[11] On December 15, 2004, the Board wrote to the Participants advising that it had received the decision of the Court of Appeal. In the Memorandum of Judgment filed on December 13, 2004, the Court of Appeal allowed the appeal and quashed the March 26, 2003 NRCB decision “and any decisions resulting therefrom.” The Board advised the Participants that it must now determine what effect if any the Court of Appeal decision may have on the appeals filed with the Board by the Appellants.¹

[12] On December 20, 2004, the Board wrote to the Participants postponing the written submission process as it had received information that the Licence Holder and the NRCB were in discussions with respect to the decision of the Court of Appeal. The Board requested a written status report from the Licence Holder.

[13] On January 7, 2005, a status report was received from the Licence Holder informing the Board the Licence Holder had applied to the NRCB for a reconsideration of the March 26, 2003 NRCB decision. The Licence Holder stated it would be “...appropriate for the EAB [Board] to hold the appeal of the water license in abeyance pending completion of the NRCB’s reconsideration of the matter and expiry of any appeal periods....” On January 10, 2005, the Board wrote to the Participants advising it would continue to hold the appeals in abeyance until February 10, 2005, and requested a further update from the Licence Holder.

[14] On February 10, 2005, the Board received a letter from the Licence Holder advising “...the NRCB is expected to issue a decision on the reconsideration in mid March 2005. We understand that decision will address matters relevant to whether the EAB has jurisdiction to hear the appeal currently in abeyance before the EAB...”

¹ The Board requested the Participants provide their comments to the following questions:

- ”1. What effect does the Court of Appeal decision have on the appeals before the Environmental Appeals Board? And
2. Should the Environmental Appeal Board re-open the submission process on the NRCB issue before it makes its decision as to whether it has jurisdiction to hear these appeals?”

[15] On March 29, 2005, the Board wrote to the Participants in response to an e-mail received from Mr. Kelk and Ms. McCulloch requesting the Board proceed "...immediately with this appeal..." The Board advised that it would like to proceed with the appeals as soon as possible and asked the Participants for a status report by April 12, 2005.

[16] On April 12, 2005, the Board received a letter from the Licence Holder requesting that the appeals be held in abeyance until the NRCB decision was released. The Licence Holder stated the "...NRCB decision might address ... concerns or it may raise new ones. Until this is known, it would be improper, in our respectful opinion, for the EAB to proceed with the appeal..." Status reports were received, and on April 29, 2005, the Board wrote to the Participants advising that it would hold the appeals in abeyance until the NRCB process was concluded.

[17] On May 30, 2005, the Board received a copy of the decision from the NRCB, dated May 27, 2005, in relation to the Licence Holder's request for a reconsideration. The NRCB stated in "...considering the filed requests for Board Review, in this instance, the Board determined that the grounds identified were insufficient to warrant a review..." The Board wrote to the Participants requesting written status reports by June 6, 2005. On June 9, 2005, the Board wrote to the Participants in response to the requested status reports. The Board granted a request for a continued abeyance of the appeals from Ms. McCulloch, as she was considering filing an application for leave to appeal to the Court of Appeal in relation to the May 27, 2005 NRCB review decision. The Board granted the abeyance request and requested the Participants provide status reports to the Board by July 11, 2005.

[18] On July 11, 2005, the Board received a letter from Mr. Kelk and Ms. McCulloch advising that leave to appeal the NRCB decision to the Court of Appeal had been filed. Mr. Kelk and Ms. McCulloch also requested the Board proceed with the appeal. On July 14, 2005, the Board wrote to the Participants advising that it would continue to hold the appeals in abeyance until the Court of Appeal application had been heard.

[19] On October 5, 2005, the application for leave to appeal was heard by the Court of Appeal. In the Reasons for Decision filed October 21, 2005, the application for leave to appeal to the Court of Appeal with respect to the NRCB matter was dismissed.

[20] On November 7, 2005, in consultation with the Participants, the Board decided to schedule a mediation meeting for November 16, 2005, in Calgary.

II. MEDIATION MEETING

[21] Pursuant to section 11 of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93, the Board conducted a mediation meeting in Calgary, Alberta on November 16, 2005, with Mr. Ron. V. Peiluck, Vice-Chair, acting as mediator (the "Mediator").

[22] In conducting the mediation meeting, the Mediator reviewed the mediation process and explained the purpose of the mediation meeting. He then circulated copies of the Participants' Agreement to Mediate. All persons in attendance signed the Agreement and discussions ensued. Following productive and detailed discussions, a resolution evolved. This document is attached.

III. RECOMMENDATIONS

[23] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA"), the Board recommends that the Minister of Environment order that Licence No. 00188451-00-00 be varied to reflect the Resolution. As part of the Resolution, the Participants also agreed to make amendments to another licence held by the Licence Holder. Therefore, in accordance with section 99 of EPEA, the Board recommends that the Minister of Environment order, pursuant to section 100(3) of EPEA, that Licence dated 1999 02 03 File No. 80439, with priority numbers 1998-06-30-01, 1998-06-30-02, and 1998-06-30-03 be varied to reflect the Resolution. Attached for the Minister's consideration is a draft Ministerial Order implementing the recommendations.

[24] During the course of the mediation, a number of errors were discovered in amendments to the other Licence held by the Licence Holder. The Participants agreed to correct these errors as part of the resolution. These corrections are included in the draft Ministerial Order and the Board recommends that the Minister, pursuant to section 100(3) of EPEA, implement these corrections.

[25] Further, with respect to section 100(2) and 103 of the EPEA, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following persons:

- Ms. Katherine McCulloch and Mr. Richard Kelk;
- Mr. Michael Niven, Carcallen Lockwood, representing Ms. Katherine McCulloch and Mr. Richard Kelk;
- Mr. Ross Warner;
- Mr. Keith Wilson, Wilson Law Office, representing AAA Cattle Company Inc.;
- Mr. Simon Cobban, AAA Cattle Company Ltd.;
- Mr. Gerald Morasch, AAA Cattle Company Ltd.;
- Ms. Charlene Graham, Alberta Justice, representing Ms. May Mah-Paulson, Director, Southern Region, Regional Services, Alberta Environment;
- Mr. Murray Marsh; and
- Mr. William Young Kennedy, Natural Resources Conservation Board.

Dated on November 25, 2005, at Edmonton, Alberta.



Steve E. Hruddy, D.Sc. (Eng.), P.Eng.

IV. RESOLUTION

**RESOLUTION
ENVIRONMENTAL APPEALS BOARD
EAB Appeal Nos. 02-079 and 02-080**

In the matter of the mediation of the appeals of the decision of the Director, Southern Region, Regional Services, Alberta Environment, to issue Licence No. 00188451-00-00 (the "Licence") under the *Water Act*, R.S.A. 2000, c. W-3, to AAA Cattle Company Ltd., authorizing the diversion of 126,150 cubic metres of groundwater annually from Production Well No. PW5-02, PW6-02, PW7-02 and PW8-02, located in SW 04-031-27-W4M, near Didsbury, Alberta for agricultural purposes (15,700 head feedlot expansion).

All participants to the appeal have agreed to recommend to the Environmental Appeals Board that the following amendments be made to the terms and conditions of *Water Act* Licence No. 00188451-00-00:

- 1. THAT the Licence be amended by adding the following after condition 5:

"5.1 (a) The licensee shall not divert any water under this licence until the monitoring and measuring equipment required under conditions 5(a), (b) and (c)(v) is installed and operational to the satisfaction of the Director and until the information required under condition 5(c)(vi) is provided.

(b) The monitoring and measuring equipment required under conditions 5(a), (b) and (c)(v) shall be installed and operational as foresaid and the information required under condition 5(c)(vi) shall be provided on or before June 1, 2006.

(c) This condition does not relieve the obligation of the licensee to carry out any other terms and conditions that must be met prior to diverting any water."

- 2. THAT the Licence be amended by adding the following immediately after condition 6:

"6.1 (a) The water supply survey and impact assessment shall be completed prior to any diversion of water under this licence. The water supply survey and impact assessment shall be completed on or before June 1, 2006.

(b) The water supply survey and impact assessment shall be completed in accordance with industry standards and in accordance with Alberta Environment's Groundwater Evaluation Guideline dated February 5, 2003, or as otherwise specified by the Director in writing. The water supply survey and impact assessment shall be performed based on a scenario of both well fields being pumped simultaneously.

(c) If the results of the water supply survey and impact assessment

KMC KM
RK RK
RW RW

MMP MMP
SC SC
GM GM

survey determines that there will be more than a 70% drawdown on any of the wells within the 3-kilometre radius, the Director may reduce the amount of water allocated annually under this licence, the rate of water diversion of the licence, and the term of the licence such that, in the opinion of the Director, there is adequate protection for other water users.”

3. THAT Condition 7 of the Licence be amended by deleting the following:

“The licensee shall record and retain for each calendar year the following information and shall provide this information to the Director, to Ross and Judy Warner, to the Estate of Jacob Friesen and to Richard Kelk & Katherine McCulloch on or before January 31 of the following year or at other times as required by the Director...”

and replace it with the following:

“The licensee shall record and retain the following information and shall provide this information in writing to the Director, to Ross and Judy Warner, to the Estate of Jacob Friesen and to Richard Kelk and Katherine McCulloch as required by condition 7.1...”

4. THAT the Licence be amended by adding the following immediately after condition 7:

“7.1 The licensee shall provide
(a) the information required under condition 7(a) to (c) on a monthly basis on the last day of the following month,
(b) the information required under condition 7(d) to (h) on an annual basis on or before January 31 of the following year, and
(c) any of the information required under condition 7 as the Director may require at any other time.

7.2 The licensee shall equip each production well with:
(a) a cumulative meter,
(b) an electric pressure transducer, and
(c) a data logger.

7.3 The licence shall equip each observation well with:
(a) an electric pressure transducer, and
(b) a data logger.

KMC KM
RK RK
JAW RW

MMP MMP
SC SC
GM GM

EAB Appeal Nos.
02-079 and 02-080

7.4 Each cumulative meter shall continuously register, at a minimum frequency of 20-minute intervals, the number of cubic metres of water diverted from each respective production well.

7.5 Each pressure transducer shall register, at a minimum frequency of 15-minute intervals, the water level in each respective production well and observation well.

7.6 A data logger shall continuously record, at a minimum frequency of 20-minute intervals,

(a) the cumulative number of cubic metres of water diverted from each respective production well, and

(b) the water level in each respective production and observation well.”

5. THAT the Licence be amended by adding the following immediately after condition 13:

“14 After June 1, 2006, the non-performance or breach of conditions 5, 5.1, 6, 6.1, 7(a) to (d), 7(f) to (h), or 7.1 (excluding 7(e)) of this licence is a non-performance and a serious breach of a term or condition of this licence in accordance with section 55(1)(e) of the *Water Act* and the Director may suspend or cancel this licence in accordance with section 55(1)(e). Where the Director suspends or cancels this licence the Director shall notify Mr. Ross Warner, and Ms. Katherine McCulloch and Mr. Richard Kelk.”

6. THAT Licence Dated 1999 02 03 File No. 80439, with priority numbers 1998-06-30-01, 1998-06-30-02, and 1998-06-30-03 (the ‘Other Licence’) be amended by adding the following immediately after condition 7.1:

“7.2 After June 1, 2006, the non-performance or breach of conditions 7 or 7.1 of this licence is a non-performance and a serious breach of a term or condition of this licence in accordance with section 55(1)(e) of the *Water Act* and the Director may suspend or cancel this licence in accordance with section 55(1)(e). Where the Director suspends or cancels this licence the Director shall notify Mr. Ross Warner, and Ms. Katherine McCulloch and Mr. Richard Kelk.”

7. THAT the Other Licence be amended in condition 7 by replacing “on the last day of each calendar month” with “for each calendar month on or before the last day of the

KMC KM
RK RK
RW RW

MMP MMP
SC SC
GM GM

EAB Appeal Nos.
02-079 and 02-080

following month”.

8. THAT the Other Licence be amended in conditions 4.1, 4.2, 6.1 and 6.2 by replacing “a minimum frequency of 15-minutes” with “a minimum frequency of 20-minutes”.
9. THAT AAA Cattle Company Ltd. shall be in full and complete compliance under the Licence (00188451-00-00) and under the Other Licence (Dated 1999 02 03) by June 1, 2006. If the AAA Cattle Company Ltd. is not in full compliance by June 1, 2006, AAA Cattle Company Ltd. will not divert any water under the Licence (00188451-00-00) until the Director authorizes withdrawals in writing. The Director shall provide 30 days written notice to Mr. Ross Warner and Ms. Katherine McCulloch and Mr. Richard Kelk prior to giving any such authorization.
10. THAT the Director shall copy Mr. Ross Warner and Ms. Katherine McCulloch and Mr. Richard Kelk with all investigation and enforcement correspondence and notice as the Director is permitted according to law.
11. That the reference to priority number “1998-06-03-001” in Licence Amendments 00140731-00-01 and 00140731-00-02 is amended to correct a typographical error by replacing this priority number with “1998-06-30-01”.
12. Provided that the above noted amendments to the licences are made by the Minister of Environment, the Appellants, Ms. Katherine McCulloch, Mr. Richard Kelk and Mr. Ross Warner, agree to withdraw their Notices of Appeal.
13. Where notice is to be provided to any person under the Licence, the Other Licence, or this Agreement, it shall be interpreted as the subsequent occupant of the person’s property. Where any person receives notice under the Licence, the Other Licence, or this Agreement, they shall advise the Licensee of any change of address, ownership, or occupancy.
14. The Licensee acknowledges that it chose to proceed with the mediation that resulted in this mediation agreement without the benefit of legal counsel.

KMC KM
RK RK
RW RW

MMP MMP
SC SC
GM GM

EAB Appeal Nos.
02-079 and 02-080

5

RESOLUTION AGREED TO BY:

Katherine McCulloch

Date: November 16, 2005

Katherine McCulloch represented by Michael Niven, Carscallen Lockwood

Richard Kelk

Date: November 16, 2005

Richard Kelk represented by Michael Niven, Carscallen Lockwood

Ross Warner

Date: November 16, 2005

Ross Warner

Simon Cobban

Date: November 16, 2005

AAA Cattle Company Ltd., represented by Simon Cobban

Gerald Morasch

Date: November 16, 2005

AAA Cattle Company Ltd., represented by Gerald Morasch

May Mah-Paulson

Date: November 16, 2005

May Mah-Paulson, Director, Southern Region, Regional Services,
Alberta Environment represented by Charlene Graham, Alberta Justice

KM KM
RK RK
RW RW

MMP MMP
SC SC
GM GM

V. DRAFT MINISTERIAL ORDER

Ministerial Order

/2005

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

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

**Order Respecting Environmental Appeals Board
Appeal Nos. 02-079 and 02-080**

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. 02-079 and 02-080.

Dated at the City of Edmonton, in the Province of Alberta this ____ day of _____, 2005.

Guy Boutilier
Minister

Draft Appendix

With respect to the decisions of the Director, Southern Region, Regional Services, Alberta Environment (the "Director"), to issue Licence No. 00188451-00-00 (the "Licence") and Licence dated 1999-02-03 File No. 80439 with priority numbers 1998-06-30-01, 1998-06-30-02 and 1998-06-30-03 (the "1999 Licence"), and Licence Amendments 00140731-00-01 and 00140731-00-02 (the "1999 Licence Amendments"), under the *Water Act*, R.S.A. 2000, c. W-3, to AAA Cattle Company Ltd., I, Guy Boutilier, Minister of Environment:

Order that the decision of the Director to issue the Licence is confirmed subject to the following variations:

1. The Licence is amended by adding the following immediately after condition 5:

“5.1 (a) The licensee shall not divert any water under this licence until the monitoring and measuring equipment required under conditions 5(a), (b) and (c)(v) is installed and operational to the satisfaction of the Director and until the information required under condition 5(c)(vi) is provided.

(b) The monitoring and measuring equipment required under conditions 5(a), (b) and (c)(v) shall be installed and operational as foreshad and the information required under condition 5(c)(vi) shall be provided on or before June 1, 2006.

(c) This condition does not relieve the obligation of the licensee to carry out any other terms and conditions that must be met prior to diverting any water.”

2. The Licence is amended by adding the following immediately after condition 6:

“6.1 (a) The water supply survey and impact assessment shall be completed prior to any diversion of water under this licence. The water supply survey and impact assessment shall be completed on or before June 1, 2006.

(b) The water supply survey and impact assessment shall be completed in accordance with industry standards and in accordance with Alberta Environment’s Groundwater Evaluation Guideline dated February 5, 2003, or as otherwise specified by the Director in writing. The water supply survey and impact assessment shall be performed based on a scenario of both well fields being pumped simultaneously.

(c) If the results of the water supply survey and impact assessment survey determines that there will be more than a 70% drawdown on any of the wells within the 3-kilometre radius, the Director may reduce the amount of water allocated annually under this licence, the rate of water diversion of the licence, and the term of the licence such that, in the opinion of the Director, there is adequate protection for other water users.”

3. The Licence is amended by deleting the following in condition 7:

“The licensee shall record and retain for each calendar year the following information and shall provide this information to the Director, to Ross and Judy Warner, to the Estate of Jacob Friesen and to Richard Kelk & Katherine McCulloch on or before January 31 of the following year or at other times as required by the Director...”

and replace it with the following:

“The licensee shall record and retain the following information and shall provide this information in writing to the Director, to Ross and Judy Warner, to the Estate of Jacob Friesen, and to Richard Kelk and Katherine McCulloch as required by condition 7.1...”

4. The Licence is amended by adding the following immediately after condition 7:

“7.1 The licensee shall provide
(a) the information required under condition 7(a) to (c) on a monthly basis on the last day of the following month,
(b) the information required under condition 7(d) to (h) on an annual basis on or before January 31 of the following year, and
(c) any of the information required under condition 7 as the Director may require at any other time.

7.2 The licensee shall equip each production well with:
(a) a cumulative meter,
(b) an electric pressure transducer, and
(c) a data logger.

7.3 The licensee shall equip each observation well with:
(a) an electric pressure transducer, and
(b) a data logger.

7.4 Each cumulative meter shall continuously register, at a minimum frequency of 20-minute intervals, the number of cubic metres of water diverted from each respective production well.

7.5 Each pressure transducer shall register, at a minimum frequency of 15-minute intervals, the water level in each respective production well and observation well.

7.6 A data logger shall continuously record, at a minimum frequency of 20-minute intervals,
(a) the cumulative number of cubic metres of water diverted from each respective production well, and
(b) the water level in each respective production and observation well.”

5. The Licence is amended by adding the following immediately after condition 13:

“14 After June 1, 2006, the non-performance or breach of conditions 5, 5.1, 6, 6.1, 7(a) to (d), 7(f) to (h), or 7.1 (excluding 7(e)) of this licence is a non-performance and a serious breach of a term or condition of this licence in accordance with section 55(1)(e) of the *Water Act* and the Director may suspend or cancel this licence in accordance with section 55(1)(e). Where the Director suspends or cancels this licence the Director shall notify Mr. Ross Warner, and Ms. Katherine McCulloch and Mr. Richard Kelk.”

For the purposes of carrying out this decision, further order that the decisions of the Director to issue the 1999 Licence and the 1999 Licence Amendments are confirmed subject to the following variations:

1. The 1999 Licence is amended by adding the following immediately after condition 7.1:

“7.2 After June 1, 2006, the non-performance or breach of conditions 7 or 7.1 of this licence is a non-performance and a serious breach of a term or condition of this licence in accordance with section 55(1)(e) of the *Water Act* and the Director may suspend or cancel this licence in accordance with section 55(1)(e). Where the Director suspends or cancels this licence the Director shall notify Mr. Ross Warner, and Ms. Katherine McCulloch and Mr. Richard Kelk.”

2. The 1999 Licence is amended in condition 7 by replacing “on the last day of each calendar month” with “for each calendar month on or before the last day of the following month”.
3. The 1999 Licence is amended in conditions 4.1, 4.2, 6.1, and 6.2 by replacing “a minimum frequency of 15-minutes” with “a minimum frequency of 20-minutes”.
4. The 1999 Licence Amendments are amended by deleting “priority number 1998-06-03-001” to correct a typographical error and replacing it with “priority number 1998-06-30-01”.



ALBERTA ENVIRONMENT

Office of the Minister

Ministerial Order

28 / 2005

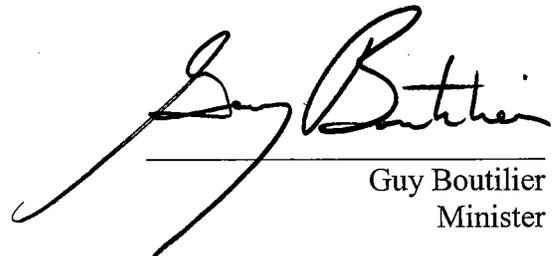
Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

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

Order Respecting Environmental Appeals Board Appeal Nos. 02-079 and 02-080

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. 02-079 and 02-080.

Dated at the City of Edmonton, in the Province of Alberta this 13th day of December, 2005.



Guy Boutilier
Minister

Appendix

With respect to the decisions of the Director, Southern Region, Regional Services, Alberta Environment (the "Director"), to issue Licence No. 00188451-00-00 (the "Licence") and Licence dated 1999-02-03 File No. 80439 with priority numbers 1998-06-30-01, 1998-06-30-02 and 1998-06-30-03 (the "1999 Licence"), and Licence Amendments 00140731-00-01 and 00140731-00-02 (the "1999 Licence Amendments"), under the *Water Act*, R.S.A. 2000, c. W-3, to AAA Cattle Company Ltd., I, Guy Boutilier, Minister of Environment:

Order that the decision of the Director to issue the Licence is confirmed subject to the following variations:

1. The Licence is amended by adding the following immediately after condition 5:

"5.1 (a) The licensee shall not divert any water under this licence until the monitoring and measuring equipment required under conditions 5(a), (b) and (c)(v) is installed and operational to the satisfaction of the Director and until the information required under condition 5(c)(vi) is provided.

(b) The monitoring and measuring equipment required under conditions 5(a), (b) and (c)(v) shall be installed and operational as foreshaid and the information required under condition 5(c)(vi) shall be provided on or before June 1, 2006.

(c) This condition does not relieve the obligation of the licensee to carry out any other terms and conditions that must be met prior to diverting any water."

2. The Licence is amended by adding the following immediately after condition 6:

"6.1 (a) The water supply survey and impact assessment shall be completed prior to any diversion of water under this licence. The water supply survey and impact assessment shall be completed on or before June 1, 2006.

(b) The water supply survey and impact assessment shall be completed in accordance with industry standards and in accordance with Alberta Environment's Groundwater Evaluation Guideline dated February 5, 2003, or as otherwise specified by the Director in writing. The water supply survey and impact assessment shall be performed based on a scenario of both well fields being pumped simultaneously.

(c) If the results of the water supply survey and impact assessment survey determines that there will be more than a 70% drawdown on any of the wells within the 3-kilometre radius, the Director may reduce the amount of water allocated annually under this licence, the rate of water diversion of the licence, and the term of the licence such that, in the opinion of the Director, there is adequate protection for other water users."

3. The Licence is amended by deleting the following in condition 7:

“The licensee shall record and retain for each calendar year the following information and shall provide this information to the Director, to Ross and Judy Warner, to the Estate of Jacob Friesen and to Richard Kelk & Katherine McCulloch on or before January 31 of the following year or at other times as required by the Director...”

and replace it with the following:

“The licensee shall record and retain the following information and shall provide this information in writing to the Director, to Ross and Judy Warner, to the Estate of Jacob Friesen, and to Richard Kelk and Katherine McCulloch as required by condition 7.1...”

4. The Licence is amended by adding the following immediately after condition 7:

“7.1 The licensee shall provide
(a) the information required under condition 7(a) to (c) on a monthly basis on the last day of the following month,
(b) the information required under condition 7(d) to (h) on an annual basis on or before January 31 of the following year, and
(c) any of the information required under condition 7 as the Director may require at any other time.

7.2 The licensee shall equip each production well with:
(a) a cumulative meter,
(b) an electric pressure transducer, and
(c) a data logger.

7.3 The licensee shall equip each observation well with:
(a) an electric pressure transducer, and
(b) a data logger.

7.4 Each cumulative meter shall continuously register, at a minimum frequency of 20-minute intervals, the number of cubic metres of water diverted from each respective production well.

7.5 Each pressure transducer shall register, at a minimum frequency of 15-minute intervals, the water level in each respective production well and observation well.

- 7.6 A data logger shall continuously record, at a minimum frequency of 20-minute intervals,
- (a) the cumulative number of cubic metres of water diverted from each respective production well, and
 - (b) the water level in each respective production and observation well.”
5. The Licence is amended by adding the following immediately after condition 13:
- “14 After June 1, 2006, the non-performance or breach of conditions 5, 5.1, 6, 6.1, 7(a) to (d), 7(f) to (h), or 7.1 (excluding 7(e)) of this licence is a non-performance and a serious breach of a term or condition of this licence in accordance with section 55(1)(e) of the *Water Act* and the Director may suspend or cancel this licence in accordance with section 55(1)(e). Where the Director suspends or cancels this licence the Director shall notify Mr. Ross Warner, and Ms. Katherine McCulloch and Mr. Richard Kelk.”

For the purposes of carrying out this decision, further order that the decisions of the Director to issue the 1999 Licence and the 1999 Licence Amendments are confirmed subject to the following variations:

1. The 1999 Licence is amended by adding the following immediately after condition 7.1:

“7.2 After June 1, 2006, the non-performance or breach of conditions 7 or 7.1 of this licence is a non-performance and a serious breach of a term or condition of this licence in accordance with section 55(1)(e) of the *Water Act* and the Director may suspend or cancel this licence in accordance with section 55(1)(e). Where the Director suspends or cancels this licence the Director shall notify Mr. Ross Warner, and Ms. Katherine McCulloch and Mr. Richard Kelk.”
2. The 1999 Licence is amended in condition 7 by replacing “on the last day of each calendar month” with “for each calendar month on or before the last day of the following month”.
3. The 1999 Licence is amended in conditions 4.1, 4.2, 6.1, and 6.2 by replacing “a minimum frequency of 15-minutes” with “a minimum frequency of 20-minutes”.
4. The 1999 Licence Amendments are amended by deleting “priority number 1998-06-03-001” to correct a typographical error and replacing it with “priority number 1998-06-30-01”.