

ALBERTA  
ENVIRONMENTAL APPEAL BOARD

Report and Recommendations

Date of Mediation Meeting – April 29, 2003

Date of Report and Recommendations – May 5, 2003

**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** an appeal filed by Ross Graham and Douglas and Sherry Brock with respect to *Water Act* Licence No. 00188715-00-00 issued to Brookfield Pork Ltd. by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Graham et al. v. Director, Central Region, Regional Services, Alberta Environment, re: Brookfield Pork Ltd. (05 May 2003) Appeal Nos. 02-081 and 02-082-R (A.E.A.B.).*

**MEDIATION MEETING BEFORE:** Dr. Alan J. Kennedy, Board Member

**APPEARANCES:**

**Appellants:** Mr. Ross Graham, represented by Ms. Jordan Harink, Sharek Reay; Mr. Douglas and Ms. Sherry Brock; Mr. Malcolm McIlroy; and Ms. Anita Brock.

**Director:** Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment, and Mr. Tim Chau, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.

**Licence Holder:** Mr. Shawn Morton, Brookfield Pork Ltd., and Mr. Ken Morton.

**Board Staff:** Mr. Gilbert Van Nes, General Counsel and Settlement Officer.

## **EXECUTIVE SUMMARY**

Alberta Environment issued a Licence under the *Water Act* to Brookfield Pork Ltd., for the purpose of diverting up to a maximum of 8,537 cubic metres of water annually from a well on NE-19-38-25-W4 near Lacombe, Alberta, for agricultural purposes.

The Board received two Notices of Appeal with respect to the Licence from Mr. Ross Graham and Mr. Douglas and Ms. Sherry Brock.

The Board held a mediation meeting in Red Deer, Alberta, on April 29, 2003, following which a resolution was reached by the parties. The Board recommends that the Minister of Environment accept the resolution.

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## **I. BACKGROUND**

[1] On October 18, 2002, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Licence No. 00188715-00-00 (the “Licence”) to Brookfield Pork Ltd. (the “Licence Holder”) authorizing the diversion of 8,537 cubic metres of water annually from the well in NE 19-038-25-W4 for agricultural purposes (confined feeding operation).

[2] On November 14 and 21, 2002 the Environmental Appeal Board (the “Board”) received Notices of Appeal from Mr. Ross Graham, and Mr. Douglas and Ms. Sherry Brock (the “Appellants”) appealing the Licence.

[3] On November 14 and 22, 2002, the Board wrote to the Appellants, the Licence Holder and the Director (collectively the “Parties) acknowledging receipt of the Notices of Appeal and notifying the Licence Holder and the Director of the appeals. The Board also requested that the Director provide the Board with a copy of the records (the “Record”) relating to these appeals and that the Parties provide available dates for a mediation meeting or hearing.

[4] 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 the NRCB advised on December 9, 2002 that they had considered and approved a registration for a 7000 weaner hog operation by the Licence Holder, and provided copies of the Decision Report and the Registration Decision.

[5] On November 28, 2002, the Board received a copy of the Record from the Director, and on December 9, 2002, forwarded a copy to the Appellants and the Licence Holder.

[6] On December 10, 2002, the Board wrote to the Parties and forwarded a copy of the documents received from the NRCB. Pursuant to section 95(5)(b)(i) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, (the “Act”) the Board set up a submission process to decide if the Appellants had an opportunity to participate in a review process before the NRCB.

[7] On January 13 and 14, 2003, the Appellants forwarded their submissions to the Board and advised that they were not involved in any hearing before the NRCB and were unaware of any public hearing or review of this matter.

[8] On January 22, 2003, the Board acknowledged receipt of the response submission dated January 16, 2003 from the Director which states:

“Given that the Notices of Appeal set out detailed concerns regarding the adequacy of the information before the Director i.e. the Matrix Solutions Report and the resulting terms of the *Water Act* Licence, and the contents of the Approval Officer’s Decision Report, it is submitted that the issues raised in the Notices of Appeal were not considered by the NRCB in the registration application process.

In conclusion, it is submitted that the requirements of s. 95(5)(b)(i) are not met in this situation.”

[9] On January 24, 2003, the Board acknowledged receipt of the response submission from the Licence Holder which stated in part:

“Although the NRCB did not hold a review or hearing because of the size of my business is was judiciously studied due to the past concerns of the appellants. In addition, to my understanding, Alberta Environment took extra time going over my application due to the appellants concerns”.

[10] On January 29 and 31, 2003 the Board acknowledged receipt of the rebuttal submissions from the Appellants.

[11] On February 27, 2003, the Board wrote to the Parties stating:

“The Board accepts the arguments of the parties, and particularly that of Alberta Environment. The Board has no evidence before it to suggest that the Appellants had notice of, participated in, or had the opportunity to participate in a hearing or review before the NRCB. In fact the evidence before the Board seems to suggest that no public notice is required in such situations. Further, the Board concludes that although the NRCB recognized that the requirements of Alberta Environment must also be complied with, it did not address any specific issues regarding the licence issued under the *Water Act*, and in particular the types of concerns raised by the Appellants in their Notices of Appeal. For that reason, the Board has determined that the issues brought forward by Mr. Graham and Mr. and Ms. Brock have not been dealt with at an NRCB hearing or review and that section 95(5)(b)(i) is inapplicable in this circumstance. The Board will therefore continue processing these appeals.

The Board requests the parties to these appeals provide their available dates for a mediation meeting for March and April 2003, by March 7, 2003.”

[12] On March 13, 2003, in consultation with the Parties, the Board scheduled the mediation meeting for April 29, 2003 to be held in Red Deer, Alberta.

## **II. MEDIATION MEETING**

[13] Pursuant to section 11 of the Environmental Appeal Board Regulations, A.R. 114/93, the Board conducted a mediation meeting in Red Deer, Alberta, on April 29, 2003, with Dr. Alan Kennedy as the presiding Board Member (the “Mediator”).

[14] 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 parties signed the Agreement and discussions ensued.

[15] Following productive and detailed discussions, a Resolution evolved at the April 29, 2003 mediation meeting and is attached as pages 5 and 6.

## **III. RECOMMENDATIONS**

[16] 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 the decision of the Director, Central Region, Regional Services, Alberta Environment, to issue *Water Act* Licence No. 00188715-00-00 to Brookfield Pork Ltd. be varied. Attached for the Minister’s consideration is a draft Ministerial Order implementing the recommendations.

[17] 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:

- Ms. Jordan Harink, Sharek Reay, representing Mr. Ross Graham;
- Mr. Douglas and Ms. Sherry Brock;
- Mr. Shawn Morton, Brookfield Pork Ltd.; and
- Ms. Charlene Graham, Alberta Justice, representing Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment.

Dated on May 5, 2003, at Edmonton, Alberta.

“original signed by”

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Dr. Alan J. Kennedy  
Board Member



#### IV. RESOLUTION

**RESOLUTION OF APPEAL NOS. 02-081 AND 02-082 REGARDING LICENCE NO. 00188715-00-00 ISSUED UNDER THE *WATER ACT*, R.S.A. 2000, c. W-3, BY THE DIRECTOR, CENTRAL REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT, TO BROOKFIELD PORK LTD., AUTHORIZING THE DIVERSION OF UP TO A MAXIMUM OF 8,537 CUBIC METRES OF WATER ANNUALLY FROM A WELL ON NE-19-38-25-W4M NEAR LACOMBE, ALBERTA FOR THE PURPOSE OF AGRICULTURE (FEEDLOT).**

**All parties to the appeal have agreed to the following terms and conditions:**

1. Brookfield Pork Ltd. ("Brookfield") agrees to reduce the amount of cattle to be watered under Licence No. 00188715-00-00 (the "Licence") from 1000 head for 100 days to 500 head for 100 days and therefore the cover page of the Licence is amended by deleting the phrase "...authorized to divert 8537 cubic metres of water annually..." and replacing it with the phrase "...authorized to divert 7162 cubic metres of water annually...".

2. Brookfield, Mr. Ross Graham ("Graham"), and Mr. Douglas Brock and Ms. Sherry Brock (the "Brocks") and the Director agree to expand the monitoring network and therefore the Licence is amended by adding immediately after clause 6, the following:

"6.1 (a) The licensee shall record and retain for each calendar year the following information and shall provide this information to the Director on or before January 31 of each year monthly measurements of water levels from the Brock Well (referenced as Well No. 76 in SE 18-038-25-W4M having Well I.D. 102828) and the Graham Well (referenced as Well No. 81 in SW 20-038-25-W4M having Well I.D. 159982).  
(b) These measurements shall be made on a monthly basis for one year starting on June 1, 2003, every other month for one year starting on June 1, 2004, and every six months starting on June 1, 2005 for every year thereafter.  
(c) In the event that an adverse (downward) trend is observed in the measurements in the Brock Well and/or the Graham Well the licensee shall take these measurements every two months starting on June 1, 2005 and every year thereafter.

6.2 The measurements of water level in clauses 5, 6 and 6.1 shall be carried out by an independent third party agreeable to the Brookfield, Graham, and the Brocks. Brookfield, Graham, and the Brocks have agreed that independent third parties include in order of preference: Cam Suominen, Annette Suominen, Brian Pyper, Hal Stuart, and Cathy Pyper.

6.3 The Licensee shall provide Graham and the Brocks with the monitoring results obtained under the clauses 5, 6, and 6.1 at the same time as provided to the Director."

3. Graham and the Brocks agree to provide access to the Graham Well and Brock Well for the purpose of carrying out the measurements required by the Licence.

4. Brookfield shall provide written confirmation of the position of the pump intake in

accordance with clause 4 of the Licence to the Director, Graham, and the Brocks by June 1, 2003.

5. Brookfield agrees that if the Graham Well is substantially interfered with as a result of the diversion authorized by the Licence, Brookfield will undertake or pay for any remedial measures required to restore the water supplied by the Graham Well.

6. Brookfield agrees that it will use best efforts to check and ensure that the three identified wells (Well I.D. 102833, Well I.D. 102878, and Well I.D. 102877) are properly abandoned.

7. Alberta Environment agrees to meet with Graham and the Brocks to discuss the regulatory process under the *Water Act*.

6. THAT in consideration of the foregoing, Mr. Ross Graham, Mr. Douglas Brock and Ms. Sherry Brock, agree to withdraw their Notices of Appeal.

RESOLUTION AGREED TO BY:

“original signed by” \_\_\_\_\_ Date: April 29, 2003  
Ross Graham  
Represented by Jordan Harink,  
Sharek Reay

“original signed by” \_\_\_\_\_ Date: April 29, 2003  
Douglas Brock

“original signed by” \_\_\_\_\_ Date: April 29, 2003  
Sherry Brock

“original signed by” \_\_\_\_\_ Date: April 29, 2003  
Shawn Morton  
Brookfield Pork Ltd.

“original signed by” \_\_\_\_\_ Date: April 29, 2003  
David Helmer, Director  
Central Region, Regional Services  
Alberta Environment  
represented by Charlene Graham,  
Alberta Justice

**V. DRAFT ORDER**

**Ministerial Order  
/2003**

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

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

**Order Respecting Environmental Appeal Board  
Appeal Nos 02-081 and 082**

I, Dr. Lorne Taylor, 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 Appeal Board Appeal Nos. 02-081 and 02-082.

Dated at the City of Edmonton, in the Province of Alberta this \_\_\_\_ day of \_\_\_\_\_, 2003.

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Honourable Dr. Lorne Taylor  
Minister of Environment

## Draft Appendix

### Order Respecting Environmental Appeal Board Appeal Nos. 02-081 and 082

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the “Director”) to issue Licence No. 00188715-00-00 (the “Licence”) under the *Water Act*, R.S.A. 2000, c. W-3, to Brookfield Pork Ltd., I, Dr. Lorne Taylor, Minister of Environment, order:

1. The decision of the Director to issue the Licence is confirmed subject to the following provisions.
2. The Licence be amended on the cover page by deleting the phrase “...authorized to divert 8537 cubic metres of water annually...” and replacing it with the phrase “...authorized to divert 7162 cubic metres of water annually...”.
3. The Licence be amended by adding immediately after clause 6 the following:
  - “6.1 (a) The licensee shall record and retain for each calendar year the following information and shall provide this information to the Director on or before January 31 of each year monthly measurements of water levels from the Brock Well (referenced as Well No. 76 in SE 18-038-25-W4M having Well I.D. 102828) and the Graham Well (referenced as Well No. 81 in SW 20-038-25-W4M having Well I.D. 159982).
  - (b) These measurements shall be made on a monthly basis for one year starting on June 1, 2003, every other month for one year starting on June 1, 2004, and every six months starting on June 1, 2005 for every year thereafter.
  - (c) In the event that an adverse (downward) trend is observed in the measurements in the Brock Well and/or the Graham Well the licensee shall take these measurements every two months starting on June 1, 2005 and every year thereafter.
- 6.2 The measurements of water level in clauses 5, 6 and 6.1 shall be carried out by an independent third party agreeable to the Brookfield, Graham, and the Brocks. Brookfield, Graham, and the Brocks have agreed that independent third parties include in order of preference: Cam Suominen, Annette Suominen, Brian Pyper, Hal Stuart, and Cathy Pyper.
- 6.3 The Licencee shall provide Graham and the Brocks with the monitoring results obtained under the clauses 5, 6, and 6.1 at the same time as provided to the Director.”

**Ministerial Order  
42/2003**

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

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

**Order Respecting Environmental Appeal Board  
Appeal Nos 02-081 and 082**

I, Dr. Lorne Taylor, 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 Appeal Board Appeal Nos. 02-081 and 02-082.

Dated at the City of Edmonton, in the Province of Alberta this 13 day of May, 2003.

“original signed by”  
Honourable Dr. Lorne Taylor  
Minister of Environment

## Appendix

### Order Respecting Environmental Appeal Board Appeal Nos. 02-081 and 082

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the "Director") to issue Licence No. 00188715-00-00 (the "Licence") under the *Water Act*, R.S.A. 2000, c. W-3, to Brookfield Pork Ltd., I, Dr. Lorne Taylor, Minister of Environment, order:

1. The decision of the Director to issue the Licence is confirmed subject to the following provisions.
2. The Licence is amended on the cover page by deleting the phrase "...authorized to divert 8537 cubic metres of water annually..." and replacing it with the phrase "...authorized to divert 7162 cubic metres of water annually...".
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6.3 The Licencee shall provide Graham and the Brocks with the monitoring results obtained under the clauses 5, 6, and 6.1 at the same time as provided to the Director."