

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Mediation Meeting – February 24, 2005

Date of Report and Recommendations – February 28, 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 by David and Carol Johnson, Dave and Ann Davidson, William Davidson, Terry and Marlene Capton, Gary Evans, Wayne Wilkie, Chester Black, Harold D. Waldron and Jean Riess, Kevin Sosnowski, Darrell and Karen Davidson, Dale Brawn, Ron and Linda Taylor, and Haldon and Marion Waldron with respect to *Water Act* Licence No. 00207490-00-00 issued to Barbra Wiens-Eeltink, operating as Immink Farms, by the Director, Central Region, Regional Services, Alberta Environment.

Cite as: *Johnson et al. v. Director, Central Region, Regional Services, Alberta Environment re: Barbra Wiens-Eeltink (Immink Farms) (28 February 2005), Appeal Nos. 04-059–04-071-R (A.E.A.B.).*

MEDIATION MEETING BEFORE:

Dr. Steve E. Hrudehy, Board Member.

APPEARANCES:

Appellants:

Mr. David and Ms. Carol Johnson; Mr. Dave and Ms. Ann Davidson; Mr. William Davidson; Mr. Gary Evans; Mr. Terry and Ms. Marlene Capton, represented by Mr. Terry Capton; Mr. Wayne Wilkie; Mr. Chester Black, represented by Mr. Wayne Wilkie; Mr. Harold Waldron and Ms. Jean Riess; Mr. Haldon and Ms. Marion Waldron, represented by Mr. Harold Waldron; Ms. Karen and Mr. Darrell Davidson, represented by Ms. Karen Davidson; Ms. Dale Brawn; Mr. Ron and Ms. Linda Taylor; and Mr. Kevin Sosnowski.

Director:

Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment; and Mr. Grant Nielsen, Contaminant Hydrogeologist, Central Region, Regional Services, Alberta Environment, represented by Mr. Jeffrey Moore, Alberta Justice.

Licence Holder:

Ms. Barbra Wiens-Eeltink, Immink Farms; Mr. Marcel Eeltink, Immink Farms; and Dr. Bob Nowak, represented by Mr. Keith Wilson, Wilson Law Office.

Board Staff:

Ms. Marian Fluker, Senior Research Officer.

EXECUTIVE SUMMARY

Alberta Environment issued a *Water Act* Licence to Ms. Barbra Wiens-Eeltink, operating as Immink Farms, authorizing the diversion of 9,642 cubic metres of water annually for agricultural purposes (stock water for confined feeding operation) near Clive, Alberta.

The Environmental Appeals Board received Notices of Appeal from Mr. David and Ms. Carol Johnson, Mr. Dave and Ms. Ann Davidson, Mr. William Davidson, Mr. Terry and Ms. Marlene Capton, Mr. Gary Evans, Mr. Wayne Wilkie, Mr. Chester Black, Mr. Harold Waldron and Ms. Jean Riess, Mr. Kevin Sosnowski, Mr. Darrell and Ms. Karen Davidson, Ms. Dale Brawn, Mr. Ron and Ms. Linda Taylor, and Mr. Haldon and Ms. Marion Waldron.

The Board held a Mediation Meeting in Red Deer, Alberta on February 24, 2005, following which an agreement was reached by the participants. The Board recommended that the Minister of Environment accept the resolution.

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I. BACKGROUND

[1] On October 22, 2004, the Director, Central Region, Regional Services, Alberta Environment (the “Director”), issued Licence No. 00207490-00-00 under the *Water Act*, R.S.A. 2000 c. W-3 (the “Licence”) to Ms. Barbra Wiens-Eeltink, operating as Immink Farms (the “Licence Holder”), authorizing the diversion of 9,642 cubic metres of water annually from the well in NW 29-38-24-W4M for agricultural purposes (stock water for a confined feeding operation) near Clive, Alberta.

[2] Between November 8, 2004 and November 22, 2004, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Mr. David and Ms. Carol Johnson, Mr. Dave and Ms. Ann Davidson, Mr. William Davidson, Mr. Terry and Ms. Marlene Capton, Mr. Gary Evans, Mr. Wayne Wilkie, Mr. Chester Black, Mr. Harold D. Waldron and Ms. Jean Riess, Mr. Kevin Sosnowski, Mr. Darrell and Ms. Karen Davidson, Ms. Dale Brawn, Mr. Ron and Ms. Linda Taylor, and Mr. Haldon and Ms. Marion Waldron (collectively the “Appellants”) appealing the Licence.

[3] Between November 8 and November 22, 2004, 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.

[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 November 22, 2004, the Board received a copy of the Record from the Director and on November 25, 2004, forwarded a copy to the Appellants and the Licence Holder.

[6] In consultation with the Participants, the Board scheduled a mediation meeting for February 25, 2005 to be held in Red Deer, Alberta.

II. THE MEDIATION MEETING

[7] 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 February 24, 2005 with Dr. Steve E. Hrudey 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.

[9] Following productive and detailed discussions, a Resolution evolved at the February 24, 2005 mediation meeting and is attached as pages 4, 5 and 6.

III. RECOMMENDATIONS

[10] 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 *Water Act* Licence 00207490-00-00 be varied. Attached for the Minister's consideration is a draft Ministerial Order implementing the recommendations.

[11] 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 participants:

- Mr. David and Ms. Carol Johnson;
- Mr. Dave and Ms. Ann Davidson;
- Mr. William Davidson;
- Mr. Terry and Ms. Marlene Capton;
- Mr. Kevin Sosnowski;
- Mr. Gary Evans;
- Mr. Darrell and Ms. Karen Davidson;

- Mr. Wayne Wilkie;
- Ms. Dale Brawn;
- Mr. Chester Black;
- Mr. Ron and Ms. Linda Taylor;
- Mr. Harold Waldron and Ms. Jean Riess;
- Mr. Haldon and Ms. Marion Waldron;
- Mr. Jeffrey Moore, Alberta Justice, on behalf of Mr. David Helmer, Director, Central Region, Regional Services, Alberta Environment; and
- Mr. Keith Wilson, Wilson Law Office, on behalf of Ms. Barbra Wiens-Eeltink, Immink Farms.

Dated on February 28, 2005, at Edmonton, Alberta.

“original signed by”

Dr. Steve E. Hrudehy
Board Member

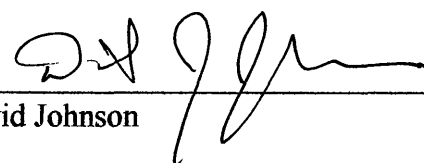
IV. RESOLUTION

RESOLUTION OF APPEAL NOS. 04-059-071 REGARDING LICENCE NO. 00207490-00-00 ISSUED UNDER THE WATER ACT, R.S.A. 2000, c. W-3, BY THE DIRECTOR, CENTRAL REGION, REGIONAL SERVICES, ALBERTA ENVIRONMENT, TO BARBRA WIENS-EELTINK OPERATING AS IMMINK FARMS, AUTHORIZING THE DIVERSION OF 9,642 CUBIC METRES OF WATER ANNUALLY FROM THE WELL IN NW 29-38-24-W4M NEAR CLIVE, ALBERTA.

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

1. THAT the parties agree to recommend that *Water Act* Licence No. 00207490-00-00 be amended by:
 - (a) Deleting the sentence on the cover page of Water Act Licence No. 00207490-00-00 and replacing it with the following:
 "...is authorized to divert a maximum of 4,897 cubic metres of water annually from the well in NW 29-38-24-W4 for the purpose of Agriculture (Confined Feeding Operation) subject to the attached conditions."
 - (b) In condition 6, deleting "... shall provide this information to the Director on or before January 31 of each year..." and replace it with "... shall provide to the Director on a quarterly basis until January 1, 2008, and on an annual basis on or before January 31 of each year thereafter..."
2. THAT Barbra Wiens-Eeltink will ensure a qualified well driller will decommission the PW-75 well to Alberta government standards by August 31, 2005.
3. THAT Barbra Wiens-Eeltink agrees to pay a total of \$600.00 to Darrell and Karen Davidson and a total of \$600.00 to Haldon Waldron to cover the expenses of having the water level in their water wells measured three times per year for two years, starting January 1, 2006. Such payment shall be made by cheque from Wilson Law Office prior to January 1, 2006.
4. THAT Darrell and Karen Davidson and Haldon Waldron agree to provide the results of the water well measuring to David and Carol Johnson, Dave and Ann Davidson, William Davidson, Terry and Marlene Capton, Gary Evans, Wayne Wilkie, Chester Black, Harold D. Waldron and Jean Riess, Kevin Sosnowski, Dale Brawn, and Ron and Linda Taylor.
5. THAT in consideration of the foregoing, the Appellants, David and Carol Johnson, Dave and Ann Davidson, William Davidson, Terry and Marlene Capton, Gary Evans, Wayne Wilkie, Chester Black, Harold D. Waldron and Jean Riess, Kevin Sosnowski, Darrell and Karen Davidson, Dale Brawn, Ron and Linda Taylor and Haldon and Marion Waldron, agree to withdraw their Notices of Appeal.

RESOLUTION AGREED TO BY:



 David Johnson

Date: February 24, 2005

MFM HDL D'S
 DA W D B
 KMS
 TC
 BR

Carol Johnson Date: February 24, 2005

Wash Date: February 24, 2005

Dave Davidson Date: February 24, 2005

Ann Davidson
represented by Dave Davidson

William Davidson Date: February 24, 2005
William Davidson

Terry Capton Date: February 24, 2005
Terry Capton

Marlene Capton Date: February 24, 2005
represented by Terry Capton

Kevin Sosnowski Date: February 24, 2005

Gary Evans Date: February 24, 2005
Represented by Wayne Wilkie

Darrell Davidson Date: February 24, 2005
represented by Karen Davidson

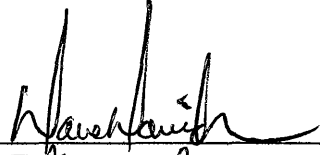
Karen Davidson Date: February 24, 2005

Wayne Wilkie Date: February 24, 2005

Dale Brawn Date: February 24, 2005

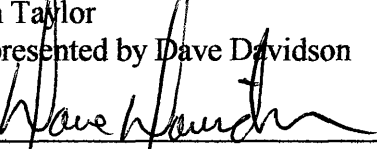
Chester Black Date: February 24, 2005
represented by Wayne Wilkie

Handwritten notes and signatures:
① MFN
QD
HOW DS TC
w D DB
MMS
MMS



Ron Taylor
Represented by Dave Davidson

Date: February 24, 2005




Linda Taylor
represented by Dave Davidson

Date: February 24, 2005




Harold Waldron

Date: February 24, 2005



Jean Riess

Date: February 24, 2005



Harold Waldron
represented by Harold Waldron

Date: February 24, 2005



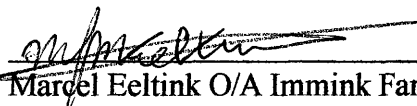
Marion Waldron
represented by Harold Waldron

Date: February 24, 2005



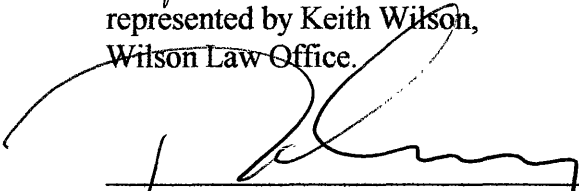
Barbra Wiens-Eeltink O/A Immink Farms
represented by Keith Wilson,
Wilson Law Office.

Date: February 24, 2005



Marcel Eeltink O/A Immink Farms
represented by Keith Wilson,
Wilson Law Office.

Date: February 24, 2005



David Helmer, Director, Central Region
Regional Services, Alberta Environment
represented by Jeffrey Moore, Alberta Justice.

Date: February 24, 2005

D.D *MFM*
TL.
D.S.
W.D.
HOLW
JMS
PALE

V. DRAFT 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. 04-059-04-071**

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. 04-059-04-071.

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

Guy Boutilier
Minister

Draft Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 04-059-04-071

With respect to the decision of the Director, Central Region, Regional Services, Alberta Environment (the "Director"), to issue Licence No. 00207490-00-00 (the "Licence"), under the *Water Act*, R.S.A. 2000, c. W-3, to Barbra Wiens-Eeltink operating as Immink Farms, I, Guy Boutilier, Minister of Environment:

1. Order that the decision of the Director to issue the Licence is confirmed subject to the following variations.
2. Order that the cover page of the Licence be amended by deleting the phrase "is authorized to divert 9,642 cubic metres of water annually from the well in NW 29-38-24-W4 for the purpose of Agriculture (Confined Feeding Operation) subject to the attached conditions:" and replacing with the phrase "is authorized to divert a maximum of 4,897 cubic metres of water annually from the well in NW 29-38-24-W4 for the purpose of Agriculture (Confined Feeding Operation) subject to the attached conditions:".
3. Order that Clause 6 of the Licence be amended by deleting the phrase "shall provide this information to the Director on or before January 31 of each year" and replacing with the phrase "shall provide to the Director on a quarterly basis until January 1, 2008, and on an annual basis on or before January 31 of each year thereafter".



ALBERTA ENVIRONMENT

Office of the Minister

Ministerial Order **8 / 2005**

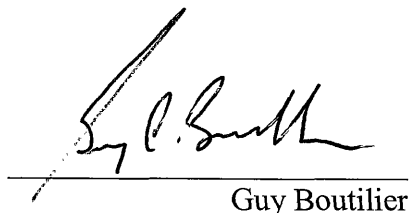
Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

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

Order Respecting Environmental Appeals Board **Appeal Nos. 04-059-04-071**

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. 04-059-04-071.

Dated at the City of Edmonton, in the Province of Alberta, this 7th day of Mar, 2005.



Guy Boutilier
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 04-059-04-071

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