

ALBERTA ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – September 29, 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 the Future of Blackfoot and Area Environmental Association, Lori Fradette, Gerry Fradette, Dwight and Lynn Janzer, John Gerich, Judy Gerich, Doug Kuchenbrand, Anna Kuchenbrand, Gail Moore, Don Gilmour, and Laura Jacques-Gilmour, with respect to *Water Act* Licence No. 00207448-00-00 issued to DJ Hog Farms Ltd. by the Director, Northern Region, Regional Services, Alberta Environment.

Cite as: *Future of Blackfoot and Area Environmental Association et al. v. Director, Northern Region, Regional Services, Alberta Environment re: DJ Hog Farms Ltd.* (29 September 2006), Appeal Nos. 05-057-064, 067-069-R (A.E.A.B.).

MEDIATION BEFORE:

Mr. Ron Peiluck, Vice-Chair.

APPEARANCES:

Appellants:

The Future of Blackfoot and Area Environmental Association, represented by Mr. Don Gilmour; Ms. Lori Fradette; Mr. Gerry Fradette; Mr. Dwight and Ms. Lynn Janzer; Mr. John Gerich; Ms. Judy Gerich; Mr. Doug Kuchenbrand; Ms. Anna Kuchenbrand; Ms. Gail Moore; Mr. Don Gilmour; and Ms. Laura Jacques-Gilmour.

Director:

Mr. Tom Slater, Director, Northern Region, Regional Services, Alberta Environment; Mr. Guy Hancock, Application Coordinator, Alberta Environment; Mr. Kevin Nipp, Hydrogeologist, Alberta Environment; Mr. Steve Wallace, Hydrogeologist, Alberta Environment; represented by Mr. William McDonald Alberta Justice.

Licence Holder:

Mr. Dwight Peregrym and Mr. Jason Peregrym, DJ Hog Farms Ltd., represented by Mr. Keith Wilson, Wilson Law Office.

Other Participants:

County of Vermilion River, represented by Mr. Don Whittaker, Reeve; Mr. Miles Latimer, Deputy Reeve; and Mr. Howie Bjorge, Agricultural Fieldman.

Board Staff:

Ms. Marian Fluker, Associate Counsel.

EXECUTIVE SUMMARY

Alberta Environment issued a Licence, under the *Water Act*, to DJ Hog Farms Ltd., authorizing the operation of a works and the diversion of up to 9,137 cubic metres of water annually for agricultural purposes (confined feeding operation) near Blackfoot, Alberta.

The Board received 11 Notices of Appeal from the Future of Blackfoot and Area Environmental Association, Ms. Lori Fradette, Mr. Gerry Fradette, Mr. Dwight and Ms. Lynn Janzer, Mr. John Gerich, Ms. Judy Gerich, Mr. Doug Kuchenbrand, Ms. Anna Kuchenbrand, Ms. Gail Moore, Mr. Don Gilmour, and Ms. Laura Jacques-Gilmour appealing the Licence.

The Board conducted a mediation meeting at which the participants reached an agreement with respect to the Licence. Further discussions took place and an additional agreement was struck. The Board recommends that the Minister of Environment accept the agreements.

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I. BACKGROUND

[1] On January 6, 2006, the Director, Northern Region, Regional Services, Alberta Environment (the “Director”), issued Licence No. 00207448-00-00 under the *Water Act*, R.S.A. 2000, c. W-3 (the “Licence”) to DJ Hog Farms Ltd. (the “Licence Holder”) authorizing the operation of a works and the diversion of up to 9,137 cubic metres of water annually from the source of water from wells at NE 12-050-02-W4M, near Blackfoot, Alberta, for agricultural purposes (confined feeding operation).

[2] On January 25, 2006, the Environmental Appeals Board (the “Board”) received 13 Notices of Appeal¹ appealing the Licence. Two of the 13 Notices of Appeal, were subsequently withdrawn.²

[3] On January 30, 2006, the Board wrote to the Appellants, the Licence Holder and the Director (collectively the “Participants”) acknowledging receipt of the Notices of Appeal, requesting additional information from certain Appellants, 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 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 (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. On February 7, 2006, NRCB wrote to the Board advising that a review had been conducted in relation to the Licence Holder’s confined feeding operation, however, the review was limited to issues relating to the “Minimum Distance Setback.” The NRCB further advised that their review did not deal with concerns regarding groundwater requirements or the Licence issued by Alberta Environment.

¹ Notices of Appeal received from: Mr. Don Gilmour, filed on behalf of himself and the Future of Blackfoot and Area Environmental Association; Ms. Lori Fradette; Mr. Gerry Fradette; Mr. Dwight and Ms. Lynn Janzer; Mr. John Gerich; Ms. Judy Gerich; Mr. Doug Kuchenbrand; Ms. Anna Kuchenbrand; Mr. Don Faltermeier; Ms. Amanda Lee Faltermeier; Ms. Gail Moore; and Ms. Laura Jacques-Gilmour.

² *Faltermeir et al. v. Director, Northern Region, Regional Services, Alberta Environment re: DJ Hog Farms Ltd.* (16 May 2006), Appeal Nos. 05-065 & 05-066-DOP (A.E.A.B.).

[5] On February 22, 2006, the Board received a copy of the Record from the Director, and on February 28, 2006, forwarded a copy to the Appellants and the Licence Holder, and again requested that certain Appellants provide additional information as previously requested.

[6] On April 6, 2006, due to delays in receiving the requested information, the Board requested the Participants again provide their available dates for a mediation meeting in May 2006. On April 20, 2006, the Board, in consultation with the Participants, scheduled a mediation meeting for May 17, 2006, to be held in Lloydminster, Alberta.

[7] On April 26, 2006, the County of Vermillion provided a copy of the draft Regional Water Study completed by Urban Systems and Golder Associates and advised there would be a representative of the County at the mediation meeting.

II. MEDIATION MEETING

[8] Pursuant to section 11 of the *Environmental Appeal Board Regulation*, Alta. Reg. 114/93, the Board conducted a mediation meeting on May 17, 2006 in Lloydminster, Alberta with Mr. Ron V. Peiluck, Vice-Chair, as the presiding mediator (the "Mediator").

[9] 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 Participants signed the Agreement and discussions ensued.

[10] Following productive and detailed discussions at the mediation meeting, and during subsequent conference calls, Resolutions were reached. These documents are attached as pages 4 to 15.

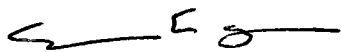
III. RECOMMENDATIONS

[11] 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* Licence No. 00207448-00-00 be varied in accordance with the Resolutions reached by the Participants. Attached for the Minister's consideration is a draft Ministerial Order implementing this recommendation.

[12] 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:

- Mr. Don Gilmour;
- Ms. Laura Jacques-Gilmour;
- Mr. Doug and Ms. Anna Kuchenbrand;
- Mr. Dwight and Ms. Lynn Janzer;
- Mr. Gerry and Ms. Lori Fradette;
- Mr. John and Ms. Judy Gerich;
- Ms. Gail Moore;
- Mr. Don Whittaker, Reeve, County of Vermilion River;
- Mr. Howie Bjorge, Agricultural Fieldman, County of Vermilion River;
- Mr. Keith Wilson, Wilson Law Office, representing Mr. Dwight Peregrym and Mr. Jason Peregrym of DJ Hog Farms Ltd.; and
- Mr. William McDonald, Alberta Justice, representing Mr. Tom Slater, Director, Northern Region, Regional Services, Alberta Environment.

Dated on September 29, 2006, at Edmonton, Alberta.



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

IV: RESOLUTION

**RESOLUTION
ENVIRONMENTAL APPEALS BOARD
EAB File No. EAB 05-057-064 and 05-067-069**

In the matter of the mediation of the appeal of the decision of the Director, Central Region, Regional Services, Alberta Environment, to issue Licence No. 00207448-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, to DJ Hog Farms Ltd. ("DJ Hog"), authorizing the operation of a works and the diversion of up to 9,137 cubic metres of water annually from the source of water from wells at NE 12-050-02-W4, near Blackfoot, Alberta, for agricultural purposes.

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

- 1. THAT Licence No. 00207448-00-00 be amended by adding immediately after condition 4.7 the following:

"4.7.1 The Licensee shall submit an Annual Water Use Report to the Future of Blackfoot and Area Environmental Association

- (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 by the Director."

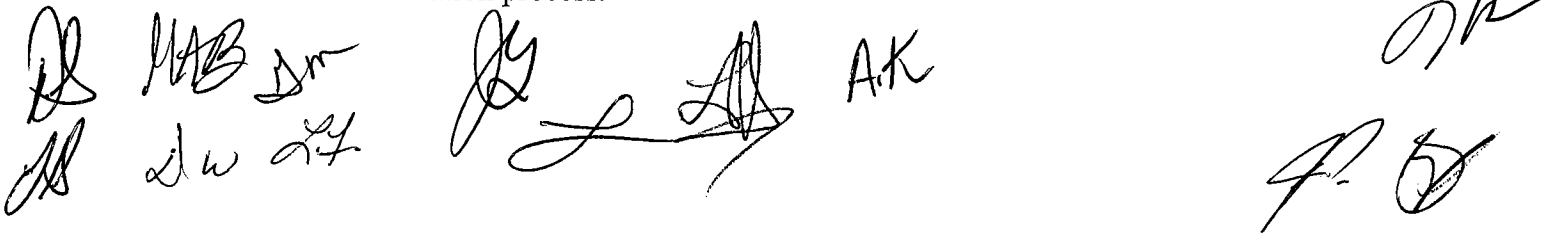
- 2. THAT the Representatives of the County of Vermillion River (the "County") agree to place a motion before the County Council, requesting that the County commit to having the results from the water level testing of one of the County's wells located at NW 01-50-02 W4M be provided to the Future of Blackfoot and Area Environmental Association ("FOBAEA") on an annual basis, starting February 2007.

- 3. THAT the Representatives of the County agree to place a motion before the County Council, requesting the County commit to having its independent agent or qualified person take annual water quality sampling from the DJ Hog well and analyzed on an equivalent basis to that required by the Natural Resources Conservation Board, and the independent agent or qualified person will submit the water sampling to a qualified laboratory and the County will provide the results to FOBAEA and DJ Hog.

- 4. THAT the Representatives of the County agree to place a motion before the County Council, requesting the County commit to having its independent agent or qualified person measure the pumping water level of DJ Hog Well PW3-98 on a quarterly basis, and the County will provide the results of these tests to FOBAEA and DJ Hog.

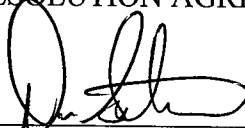
- 5. THAT the Representative of the County shall place the motion before the County Council on or before May 31, 2006.

- 6. THAT if the motion is not ratified by the County, the participants can request a continuation of the mediation process.



 A collection of handwritten signatures in black ink, including initials like 'AK', 'DW', and 'LH', and full names like 'MAB' and 'AK'.

7. THAT in consideration of the foregoing, and providing the County passes the motion as stated above, the Appellants, Mr. Don Gilmour on behalf of himself and the Future of Blackfoot and Area Environmental Association (FOBAEA), Ms. Lori Fradette, Mr. Gerry Fradette, Mr. Dwight and Ms. Lynn Janzer, Mr. John Gerich, Ms. Judy Gerich, Mr. Doug Kuchenbrand, Ms. Anna Kuchenbrand, Ms. Gail Moore, and Ms. Laura Jacques-Gilmour, agree to withdraw their Notices of Appeal.

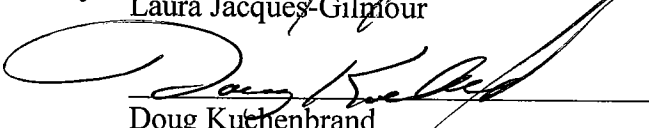
RESOLUTION AGREED TO BY:



Don Gilmour Date: May 17, 2006




Laura Jacques-Gilmour Date: May 17, 2006



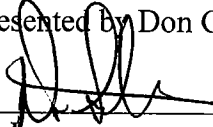
Doug Kuchenbrand Date: May 17, 2006



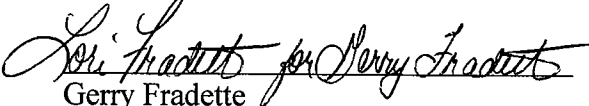
Anna Kuchenbrand Date: May 17, 2006



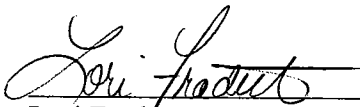
Dwight Janzer
Represented by Don Gilmour Date: May 17, 2006



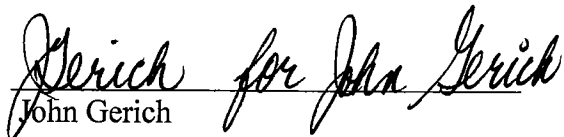
Lynn Janzer
Represented by Don Gilmour Date: May 17, 2006



Gerry Fradette Date: May 17, 2006

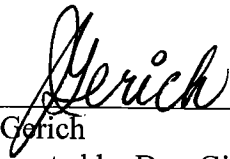


Lori Fradette Date: May 17, 2006



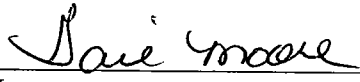
John Gerich
Represented by Don Gilmour Date: May 17, 2006


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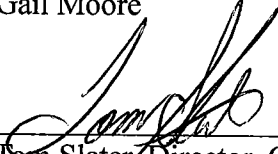
Judy Gerich
Represented by Don Gilmour

Date: May 17, 2006



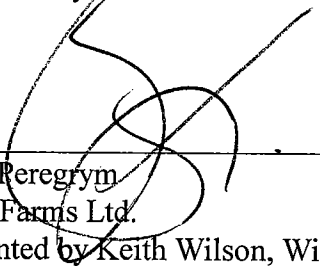
Gail Moore

Date: May 17, 2006



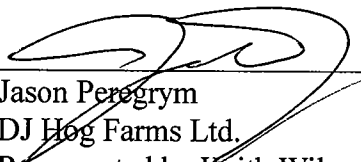
Tom Slater, Director, Central Region
Regional Services, Alberta Environment
represented by William McDonald, Alberta
Justice

Date: May 17, 2006



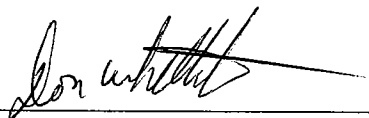
Dwight Peregrym
DJ Hog Farms Ltd.
Represented by Keith Wilson, Wilson Law
Office

Date: May 17, 2006



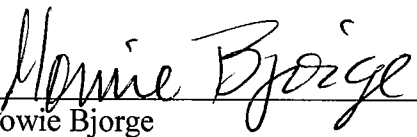
Jason Peregrym
DJ Hog Farms Ltd.
Represented by Keith Wilson, Wilson Law
Office

Date: May 17, 2006



Don Whittaker, Reeve
County of Vermilion River

Date: May 17, 2006



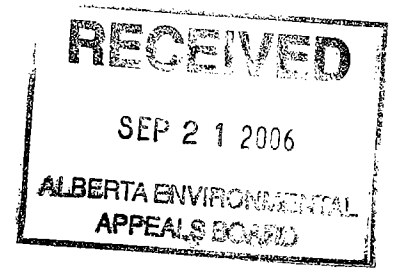
Howie Bjorge
Agricultural Fieldman
County of Vermilion River

Date: May 17, 2006



Miles Latimer
Deputy Reeve
County of Vermilion River

Date: May 17, 2006



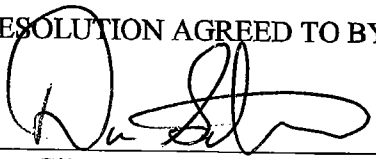
RESOLUTION
ENVIRONMENTAL APPEALS BOARD
EAB File No. EAB 05-057-064 and 05-067-069

In the matter of the mediation of the appeal of the decision of the Director, Central Region, Regional Services, Alberta Environment, to issue Licence No. 00207448-00-00 under the *Water Act*, R.S.A. 2000, c. W-3, to DJ Hog Farms Ltd. ("Licence Holder"), authorizing the operation of a works and the diversion of up to 9,137 cubic metres of water annually from the source of water from wells at NE 12-050-02-W4, near Blackfoot, Alberta, for agricultural purposes.

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

1. THAT this is an amendment to the Resolution agreed to by the Participants on May 17, 2006, and where there is a conflict between the Resolution signed on May 17, 2006 and this Resolution, this Resolution shall be followed. Otherwise, the terms in the May 17, 2006 Resolution will remain in force.
2. THAT the monitoring specified in the May 17, 2006 Resolution will start when the Licence Holder starts using the PW3-98 well in 2007.
3. THAT the Representatives from the County of Vermilion River (the "County") agree to place a motion before the County Council, requesting that the County amend motions 45-05-06 and 46-05-06 carried at the May 23, 2006 County Council meeting by deleting the phrase "its independent agent or qualified person" and replacing it with "a qualified, independent agent".
4. THAT the Representative of the County shall place the motion before the County Council on or before August 1, 2006.
5. THAT should the County decide in five years not to continue having its qualified independent agent conduct the testing on the PW3-98 well, then the Licence Holder shall hire an independent, qualified person to conduct the testing as stated in conditions 3 and 4 of the May 17, 2006 Resolution.
6. THAT with these changes, the Participants confirm that condition 6 of the May 17, 2006 Resolution has been satisfied.
7. THAT the Participants agree this Resolution can be signed by counterpart.

RESOLUTION AGREED TO BY:



Don Gilmour

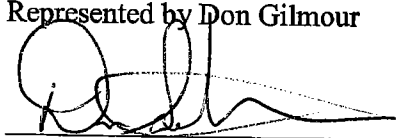
Date: Sept 18, 2006


Laura Jacques-Gilmour Date: Sept 18/06

Doug Kuchenbrand Date: _____

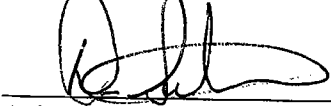
Anna Kuchenbrand Date: _____



Dwight Janzer Date: Sept 18/06
Represented by Don Gilmour

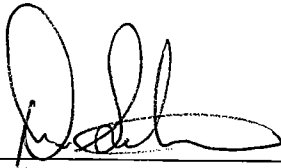

Lynn Janzer Date: Sept 18/06
Represented by Don Gilmour

Gerry Fradette Date: _____
Represented by Don Gilmour

Lori Fradette Date: _____
Represented by Don Gilmour


John Gerich Date: Sept 18/06
Represented by Don Gilmour


Judy Gerich Date: Sept 18/06
Represented by Don Gilmour



Gail Moore
Represented by Don Gilmour

3
Date: Sept 18/06

Tom Slater, Director, Central Region
Regional Services, Alberta Environment
represented by William McDonald, Alberta
Justice

Date: _____

Dwight Peregrym
DJ Hog Farms Ltd.
Represented by Keith Wilson, Wilson Law
Office

Date: _____

Jason Peregrym
DJ Hog Farms Ltd.
Represented by Keith Wilson, Wilson Law
Office

Date: _____

Don Whittaker, Reeve
County of Vermilion River

Date: _____

Howie Borge
Agricultural Fieldman
County of Vermilion River

Date: _____

Miles Latimer
Deputy Reeve
County of Vermilion River

Date: _____

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Laura Jacques-Gilmour

Date: _____

[Signature]
Don Kitchinstrand

Date: Aug 29, 2006

[Signature]
Aron Kuchelstrand

Date: Aug 29, 2006

Dwight Janzer
Represented by Don Gilmour

Date: _____

Lynn Janzer
Represented by Don Gilmour

Date: _____

Gerry Pradole
Represented by Don Gilmour

Date: _____

Lori Pradole
Represented by Don Gilmour

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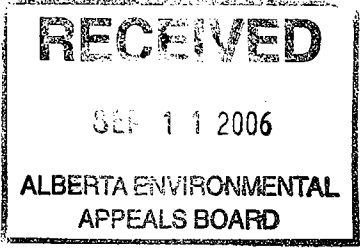
John Gerich
Represented by Don Gilmour

Date: _____

Judy Gerich
Represented by Don Gilmour

Date: _____

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ALBERTA ENVIRONMENTAL
APPEALS BOARD



2

Laura Jacques-Gilmour

Date: _____

Doug Kuchenbrand

Date: _____

Anna Kuchenbrand

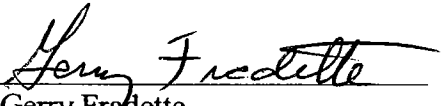
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Dwight Janzer
Represented by Don Gilmour

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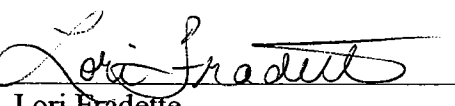
Lynn Janzer
Represented by Don Gilmour

Date: _____



Gerry Fradette
Represented by Don Gilmour

Date: Aug 31/06



Lori Fradette
Represented by Don Gilmour

Date: Aug 31/06

John Gerich
Represented by Don Gilmour

Date: _____

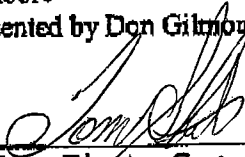
Judy Gerich
Represented by Don Gilmour

Date: _____

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Date: _____

Gail Moore
Represented by Don Gilmour



Date: Sept 05/06

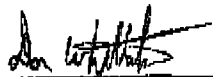
Tom Slater, Director, Central Region
Regional Services, Alberta Environment
represented by William McDonald, Alberta
Justice

Date: _____

Dwight Peregrym
DJ Hog Farms Ltd.
Represented by Keith Wilson, Wilson Law
Office

Date: _____

Jason Peregrym
DJ Hog Farms Ltd.
Represented by Keith Wilson, Wilson Law
Office



Date: Aug 22/06

Don Whittaker, Reeve
County of Vermilion River



Date: Aug. 22/06

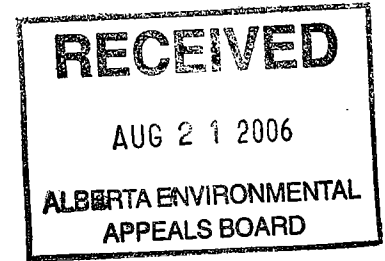
Howie Bjorge
Agricultural Fieldman
County of Vermilion River



Date: Aug 22/06

Miles Latimer
Deputy Reeve
County of Vermilion River

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 Gail Moore
 Represented by Don Gilmour

3
 Date: _____

 Tom Slater, Director, Central Region
 Regional Services, Alberta Environment
 represented by William McDonald, Alberta
 Justice

Date: _____

 Dwight Peregryn
 DJ Hog Farms Ltd.
 Represented by Keith Wilson, Wilson Law
 Office

Date: *Aug 8/06*

 Jason Peregryn
 DJ Hog Farms Ltd.
 Represented by Keith Wilson, Wilson Law
 Office

Date: *Aug 8/06*

 Don Whittaker, Reeve
 County of Vermilion River

Date: _____

 Howie Bjorge

Date: _____

ATT: DENISE BLACK

3

Date: _____

Gail Moore
Represented by Don Gilmour

Date: _____

Tom Slater, Director, Central Region
Regional Services, Alberta Environment
represented by William McDonald, Alberta
Justice

Date: _____

Dwight Peregrym
DJ Hog Farms Ltd.
Represented by Keith Wilson, Wilson Law
Office

Date: _____

Jason Peregrym
DJ Hog Farms Ltd.
Represented by Keith Wilson, Wilson Law
Office



Date: Aug 22/06

Don Whittaker, Reeve
County of Vermilion River



Date: Aug. 22/06

Howie Bjorge
Agricultural Fieldman
County of Vermilion River



Date: Aug 22/06

Miles Latimer
Deputy Reeve
County of Vermilion River

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. 05-057-064 and 05-067-069**

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. 05-057-064 and 05-067-069.

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. 05-057-064 and 05-067-069

With respect to the decision of the Director, Northern Region, Regional Services, Alberta Environment (the "Director") to issue Licence No. 00207448-00-00 (the "Licence") under the *Water Act*, R.S.A. 2000, c.W-3, to DJ Hog Farms Ltd. (the "Licensee"), I, Guy Boutilier, Minister of Environment, order that:

1. The decision of the Director to issue Licence No. 00207448-00-00 is confirmed subject to the following amendments:
2. The Licence is amended by adding the following immediately after condition 4.7:

"4.7.1 The Licensee shall submit an Annual Water Use Report to the Future of Blackfoot and Area Environmental Association

 - (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 by the Director."



ALBERTA ENVIRONMENT

Office of the Minister

Ministerial Order
22/2006

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. 05-057-064 and 05-067-069

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. 05-057-064 and 05-067-069.

Dated at the City of Edmonton, in the Province of Alberta, this 10 day of October, 2006.

Guy Boutilier
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal Nos. 05-057-064 and 05-067-069

With respect to the decision of the Director, Northern Region, Regional Services, Alberta Environment (the "Director") to issue Licence No. 00207448-00-00 (the "Licence") under the *Water Act*, R.S.A. 2000, c.W-3, to DJ Hog Farms Ltd. (the "Licensee"), I, Guy Boutilier, Minister of Environment, order that:

1. The decision of the Director to issue Licence No. 00207448-00-00 is confirmed subject to the following amendments:
2. The Licence is amended by adding the following immediately after condition 4.7:

“4.7.1 The Licensee shall submit an Annual Water Use Report to the Future of Blackfoot and Area Environmental Association

 - (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 by the Director.”