



BOARD DECISION

RFR 2019-01 / LA18058A

In Consideration of a Request for Board Review filed under the *Agricultural Operation Practices Act* in relation to Decision Summary LA18058A

Nelson Family Ranches Ltd.

January 18, 2019

Background

On December 5, 2018, NRCB approval officer Joe Sonnenberg issued Decision Summary LA18058A in relation to the approval officer amendment of the confined feeding operation (CFO) owned and operated by Nelson Family Ranches Ltd. (Nelson Ranches) at NE 07-006-19 W4M in the County of Warner (County). Pursuant to section 23 of the *Agricultural Operation Practices Act* (AOPA), the approval officer provided a notification letter dated October 4, 2018, to Nelson Ranches, stating that the purpose of the amendment was to:

1. Formalize the permitted animal numbers for the site. Development permit 98-25 states an increase from 3,000-7,000, but does not specify a beef animal category. We intend to amend the permit to clarify that the permitted livestock capacity of the CFO is 7,000 beef finishers.
2. Incorporate an NRCB approved dust control plan and the ability to revise that plan when required in writing.

By letters dated December 5, 2018, the approval officer provided a copy of Decision Summary LA18058A and Approval LA18058A to Nelson Ranches, Richard Hofer and Rodney Hofer. The approval officer letters also served as notice of the approval amendment decision and advised each of the parties that they had the right to request a board review of the decision. The approval officer's separate letters to Richard and Rodney Hofer stated that the approval officer determined that each of them are directly affected parties in relation to the approval officer's decision to amend the Nelson Ranches' permit, and that they had the right to request a Board review, subject to the 10-day filing deadline established by AOPA.

North & Company, on behalf of their clients, Richard and Rodney Hofer (Hofer Family), filed a request for Board review dated December 18, 2018 (RFR) with the Board, which met the filing deadline of January 4, 2019. While the RFR covered a number of issues, the RFR focused on one specific remedy: that the NRCB strictly enforce a capacity of "7,000 animals".

Jurisdiction

The Board's authority for granting a review of an approval officer's decision is found in section 25(1) of AOPA, which states:

- 25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,*
- (a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or*
 - (b) schedule a review.*

The Board considers that a party requesting a review has the onus of demonstrating that there are sufficient grounds to merit review of the approval officer's decision. Section 13(1) of the *AOPA Administrative Procedures Regulation* (AOPA Procedures Regulation) describes the information that must be included in each RFR.

Documents Considered

The Board considered the following information:

- Decision Summary LA18058A, dated December 5, 2018
- Approval LA18058A, dated December 5, 2018
- RFR filed by the Hofer Family, submitted December 20, 2018
- Field Services materials submitted January 10, 2019
- Submission of Field Services dated January 10, 2019
- Portions of the public record maintained by the approval officer

Board Deliberations

The Board met on January 9, 15, and 17, 2019 to deliberate on the RFR.

Deliberations on Request for Review (RFR)

In its deliberations, the Board concluded that the permitted animal capacity at the Nelson Ranches CFO is an issue that warrants consideration at a hearing.

The RFR asserts that a decision based on Development Permit #98-25 and the application package to the County, does not support the approval officer's finding of a 7,000 beef finishers permitted capacity. The RFR advocates a finding that the permit should specify a maximum of "7,000 animals" rather than attributing both a number and beef livestock type.

In Decision Summary LA18058A, in determining that the permit should be amended to provide for a capacity of 7,000 beef finishers, the approval officer states:

Development Permit #98-25 authorized an increase in capacity from 3,000 to 7,000, but does not specify a beef animal category. Further, the Development Permit application included reference to multiple beef livestock types which are not included in the municipal permit. I was not able to find any reference to how these livestock numbers were dealt with in the municipal permit itself. However, an Alberta Agriculture letter dated September 25th, 1998 which accompanied Development Permit #98-25, included information clarifying what was being proposed. It stated that "the proposed expansion is slated for the feeding of weaner calves through to full slaughter weight". As such, I determined it is appropriate to clarify the total permitted livestock capacity at the CFO as 7,000 beef finishers.

In his decision summary, the approval officer also states:

The purpose of this amendment is to formalize permitted livestock numbers for the site and to amend a dust control related condition to improve its clarity and enforceability. An official assessment of the CFO's grandfathered footprint will not be made as part of this approval.

The issue of animal numbers, and beef livestock type, has received considerable attention in relation to the Nelson Ranches CFO. For example, in the May 22, 2018 letter from North & Company to the NRCB Chief Legal Officer (Tab F, Field Services Materials), several specific references are made to the various considerations that would relate to permitted animal numbers at this site (deemed permit capacity).

The Board finds that in stating the permitted capacity as 7,000 beef finishers, the approval officer made a partial determination on deemed permit capacity for the Nelson Ranches CFO; however, it is not clear to the Board how the approval officer considered the various factors in concluding permitted livestock capacity should be stated as 7,000 finishers. As an example, it is unclear what consideration the approval officer gave to the documents that were prepared to assist the County in considering the development permit application (e.g., Nelson Ranches' development permit application and Intensive Livestock Operation Management Plan).

The Hofer Family raised concerns regarding dust control at the Nelson Ranches CFO. The Board finds that the approval officer amendment related to this issue is to state the CFO must maintain an NRCB approved dust control plan, and that the NRCB may amend the dust control plan from time to time. The Board finds this issue does not warrant review by the Board, as ongoing compliance with the dust control plan is a matter for the NRCB's Compliance Division.

As such, the scope of the Board's review is limited to the determination of the deemed capacity of the Nelson Ranches CFO.

Review Directives and Format

Directives:

The Board has determined that a review of the deemed capacity of the Nelson Ranches CFO would benefit from a complete assessment conducted by the approval officer. Rather than simply moving forward with a review on the basis of the Decision Summary LA18058A, the Board hereby directs the approval officer to determine the grandfathered footprint as of January 1, 2002 and to complete a deemed capacity determination for the Nelson Ranches CFO.

The Hofer Family asserted that additional pen space has been constructed at the Nelson Ranches CFO. The Board expects this issue to be resolved as part of this review. Therefore, the approval officer is directed to determine whether there has been unauthorized construction of additional pen space at the Nelson Ranches CFO.

NRCB policy titled "Determining Deemed Capacity for Grandfathered Confined Feeding Operations" (Operational Policy 2016-5) sets out the procedure for determining deemed capacity under AOPA section 18.1; further, section 11 of the AOPA Procedures Regulation establishes the process governing deemed permit determinations. The Board finds that it would be prudent to follow the principles set out in Operational Policy 2016-5, Operational Policy 2016-6, and section 11 of the AOPA Procedures Regulation as part of a comprehensive determination of permitted capacity at the Nelson Ranches CFO.

The Board further directs that the approval officer determine the deemed capacity at the Nelson Ranches CFO for all livestock types within the beef category, as described in Schedule 1 in the AOPA *Agricultural Operations, Part 2 Matters Regulation*.

Format:

The Board understands that further notice may be necessary as outlined in the AOPA Procedures Regulation and operational policies. The Board has not identified a specific deadline for the approval officer submission; however, the Board expects that Field Services will make every effort to expedite its decision in a timely manner. Once the Board has received the approval officer's deemed capacity determination, it will provide the opportunity for directly affected parties to make submissions and to rebut the submissions of other parties. While at this time the Board has not identified a need to conduct

an oral hearing, it has not ruled out either that possibility, or other review options available to the Board under AOPA section 25(4).

Decision

As a result of the Board’s deliberations, it has determined that a review is warranted to determine the deemed capacity of Nelson Ranches CFO in Approval LA18058A.

DATED at EDMONTON, ALBERTA, this 18th day of January, 2019.

Original signed by:

Peter Woloshyn

L. Page Stuart

Sandi Roberts

Daniel Heaney

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Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at www.qp.gov.ab.ca or through the NRCB website.