

Decision Summary LA24023

This document summarizes my reasons for issuing Approval LA24023 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24023. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the Act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On May 13, 2024, Beyer Feeders Ltd. (Beyer Feeders) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on June 19, 2024. On June 26, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing beef feeder calves from 1,200 to 2,200
- Constructing group pens – 27 m x 66 m
- Constructing a hutch area – 54 m x 66 m
- Extending the existing catch basin – 59 m x 20 m x 1.5 m deep (total dimensions)

a. Location

The existing CFO is located in the portion of pt. NW 16-009-25 W4M in the Municipal District (M.D.) of Willow Creek, roughly 1.7 km east of the Town of Fort Macleod. The Crowsnest Highway (Alberta Provincial Highway No. 3) and the Canadian Pacific Railway alignment run parallel along the southern property line of this parcel.

The terrain is relatively flat, with an overall slope to the north and west. The closest body of water is a seasonal wetland complex, approximately 195 m southwest of the existing CFO. The Old Man River is more than 1.0 km northwest from the CFO.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA22045. That permit allows for the construction and operation of a 1,200 beef feeder calf CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA24023.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines “affected parties” as:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is one mile. (The NRCB refers to this distance as the “notification distance”.)

A copy of the application was sent to the MD of Willow Creek, which is the municipality where the CFO is located. I also forwarded a copy to the Town of Fort Macleod as the proposed CFO expansion is within the Intermunicipal Development Plan (IDP) between town and the county.

There are no parts of the CFO that are located within 100 m of a bank of a river, stream, or canal and there are no other municipalities within the affected party radius.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Macleod Gazette newspaper in circulation in the community affected by the application on June 26, 2024, and
- sending 13 notification letters to people identified by the M.D. of Willow Creek as owning or residing on land within the notification distance.

The full application was made available for viewing in the NRCB’s Lethbridge office during regular business hours.

3. Notice to other persons or organizations

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Environment and Protected Areas (EPA), and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Atco Gas & Pipelines, Telus, and Fortis Alberta Inc. as right of way holders.

The NRCB received responses from Bradley Calder, a water administration technologist with EPA, and Leah Olsen, a development/planning technologist with TEC.

Mr. Calder (EPA) stated in his response that there are two well logs located on the NW 16-9-25 W4M including 1 chemistry and 1 new well, however there are no existing groundwater licenses registered under the applicant’s name. He continued to state that Beyer Feeders is not within an irrigation district, and therefore could not legally obtain water through the irrigation district. Mr. Calder also expressed that should the applicant currently be using the water well indicated in the application, or plan to use the well for the proposed feedlot expansion, the applicant must communicate this to EPA, Regulatory Assurance Division, as there may be requirements for a

licence amendment or authorization from the current licence holder to use the well or change the purpose of the licence.

The water well applicable to and included in this application is discussed in Technical Document LA24023 and a copy was forwarded to Beyer Feeders for their information and action. On August 19th, 2024, the applicant provided proof of communication with EPA, and confirmation of a request for water licensing at the CFO. The applicant is responsible to ensure the CFO has sufficient, licenced water prior to expanding their CFO.

Ms. Olsen (TEC) stated in her response that a Roadside Development Permit from Alberta Transportation will be required for the proposed expansion. A copy of Ms. Olsen's response was forwarded to Beyer Feeders for their information and action. On August 28, 2024, the applicant provided confirmation of a Roadside Development Permit application.

No other responses were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the M.D. of Willow Creek's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed expansion:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- Meets the required AOPA setbacks from springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 11 and in Appendix D, the application meets all relevant AOPA requirements. The exemptions and conditions that are required to address the AOPA requirements regarding groundwater protection and proximity within 100 metres of a water well are discussed in the following parts of this decision summary.

7. Responses from municipality and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the Act as "directly affected." The M.D. of Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, director of planning and development with the M.D. of Willow Creek, provided written responses on behalf of the M.D. of Willow Creek. Ms. Chisholm stated that the application must be consistent with the M.D. of Willow Creek's land use provisions of the municipal development plan. The application's consistency with the land use provisions of the M.D. of Willow Creek's municipal development plan is addressed in Appendix A, attached. The M.D. of Willow Creek's concerns from their response are addressed in Appendix B.

Apart from municipalities, any member of the public may request to be considered "directly affected." No responses were received from any other person, organization, or member of the public.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1). Teunis and Amanda Beyer provided an MDS waiver and are a directly affected party.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require groundwater/surface water/soil/construction supervision or an exemption. In this case a determination was made, and water well monitoring is required.

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall within either a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 9.17.

In this case, the risks posed by Beyer Feeders' existing CFO facilities were assessed in 2023 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

9. Exemptions

I determined that the proposed pen area and extended catch basin are located within the required AOPA setback from a water well. As explained in Appendix C, an exemption to the 100 m water well setback is warranted due to the naturally occurring protective layer, construction conditions of the proposed facilities, and water well monitoring condition included in Approval LA24023. The water well is approximately four feet above the surrounding area and drainage immediately surrounding the well is sloped away from the well head. More information regarding the exemption can be found in Appendix C of this document.

Under section 7(2)(b) of the regulation, I am requiring a water well monitoring condition to be included in Approval LA24023 to address the results of a water well exemption screening I completed (see Appendix C, below).

10. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Ms. Chisholm also listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the applicant submitted a site plan with setback distances for the proposed facilities and shall meet these setback requirements. The proposed site plan meets these setbacks, and the applicant is reminded that they must construct the facilities in the proposed locations.

I have considered the effects the proposed MSF/MCA may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act or section 109 of the Water Act in respect of the subject of this application. Furthermore, the application meets AOPAs technical requirements, and the applicant has been reminded that it is their responsibility to ensure they have received the appropriate water licensing for the proposed expansion of their CFO.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://eab.gov.ab.ca/status.htm>), accessed August 20, 2024.

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from the MD of Willow Creek, and my own observations from two site visits.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, I presumed that the effects on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the responses/concerns from the municipality have been addressed in Appendix B.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9). In my view, this presumption is not rebutted.

11. Terms and conditions

Approval LA24023 specifies the cumulative permitted livestock capacity as 2,200 beef feeder calves and permits the construction of the group pen, hutch area and the extension of the existing catch basin.

Approval LA24023 contains terms that the NRCB generally includes in all AOPA approvals, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Approval LA24023 includes conditions that generally address a construction deadline, monitoring, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix D.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA24023: Approval LA22045 (see NRCB Operational Policy 2016-7: *Approvals*, part 11.5). Permit consolidation helps the permit holder, municipality, neighbors, and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix D discusses which conditions from the historical permits are or are not carried forward into the new approval.

12. Conclusion

Approval LA24023 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24023.

Beyer Feeders' NRCB-issued Approval LA22045 is therefore superseded, and its content consolidated into this Approval LA24023, unless Approval LA24023 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA22045 will remain in effect.

September 6, 2024

(original signed)
Sarah Neff
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Responses from referral agencies and municipality
- C. Exemptions from water well setbacks
- D. Explanation of conditions in Approval LA24023

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

“Land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the Act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 9.2.7.)

Beyer Feeders’ CFO is located in the M.D. of Willow Creek and is therefore subject to that county’s MDP. The M.D. of Willow Creek adopted the latest revision to this plan in August of 2019, under Bylaw No. 1841.

As relevant here:

Part 2 states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. It also states that one of the main objectives of the MDP is to mitigate the siting of a CFO to minimize conflicts with adjacent land uses. Policy 2.3 states that the MD shall establish guidelines with regards to the NRCB for the regulation and approval of CFOs within the MD. These guidelines are found in section 9 of the MDP.

Policy 9.1. states that the applicable setbacks from new development to roadways, governed by the municipality, can be found in the municipal Land Use Bylaw and must be met. All other road setbacks are as required by TEC. The proposed development meets all of these setbacks.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below (in italics); each one is followed by my discussion of how the provision relates to this application. The requested matters to consider are:

(a) The cumulative effect of a new approval on any area near other existing CFO’s/ILO’s

This policy is likely not a “land use provision,” as it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects.

In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

For these reasons, I do not consider this MDP provision to be relevant to my MDP consistency determination.

(b) Environmentally significant areas contained in the Municipal District of Willow Creek: Environmentally Significant Areas in the Oldman River Region report [the report]

Beyer Feeder's CFO is not within any of the areas designated as of regional, provincial, or national significance in the referenced report (Map 1 of the report). However, areas of local significance are not presented in the report.

The report also assessed the planning area for major physical constraints such as flood plains, unstable slope potential, and areas of artesian flow. The map shows that the CFO is not located in any of these areas. I am of the opinion that the application is consistent with this provision; I have not been privy to information which refutes this.

(c) Providing notice to adjacent landowners including applications for registration or authorization

This is likely not a "land use provision" because of its procedural focus and thus I do not consider it to be relevant to my MDP consistency determination. Regardless, this application is for an approval, not a registration or authorization. At any rate, as explained above, the NRCB sent out courtesy letters to people identified by the MD of Willow Creek as owning or residing on land within the notification distance of one mile and gave public notice in the Macleod Gazette on June 26, 2024. The application therefore met the notification requirements of AOPA. (See also Operational Policy 2016-7: Approvals, part 8.7).

(d) Applying minimum distance separation calculations to all country residential development

I interpret "minimum distance separation" as referring to the minimum distance separation (MDS) requirements in section 3 and Schedule 1 of the Standards and Administration Regulation under AOPA. There is no country residential development located within the category 2 MDS for Beyer Feeder's CFO and the application meets AOPA's MDS requirements.

(e) Restricting development in the flood plain, floodway, the flood way fringe and flood prone, or hazard lands within or adjacent to any watercourse within the MD

As discussed in Technical Document LA24023, Beyer Feeder's CFO meets the AOPA setbacks to common bodies of water and is not located within a known flood plain as identified in the Alberta Environment and Parks flood hazard website. Based on this information, the application is consistent with this provision.

(f) Restricting development in any wetland or riparian area

The proposed CFO facilities are not located in a wetland or riparian area and meet the AOPA setbacks to common bodies of water. This provision is therefore met by the application.

For these reasons, I conclude that the application is consistent with the land use provisions of the M.D. of Willow Creek's MDP that I may consider.

In my view, the Land Use Bylaw is clearly incorporated in the MDP in several sections throughout the MDP, especially in Policy 15.5 which states:

The Development Authority shall require the NRCB to take into consideration the policies adopted in this plan and the Land Use Bylaw, when issuing an approval.

Therefore, I also considered the application's consistency with this document. Under the MD of Willow Creek's Land Use Bylaw (#1826 consolidated to Bylaw No. 383/2020), the subject land is currently zoned as Rural General. CFOs are not listed as prohibited, permitted, or discretionary land use under this zoning. Ordinarily, a land use bylaw intends to preclude land uses that are not listed as permitted or discretionary (and that do not meet any other relevant criteria). However, the land use bylaw lists "intensive livestock operations" (ILOs), defined essentially as CFOs below AOPA's permit thresholds, as a discretionary use within areas zoned Rural General. Therefore, I interpret the omission of CFOs from the lists of permitted and discretionary land uses as simply the municipality's recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs above AOPA thresholds.

As for the lot size restriction in section 2(4) of the Rural General section of the bylaw, which states that the "parcel size shall remain the same size for which the development approval was originally issued." Since CFOs are not listed in the LUB, it is my interpretation that the lot restrictions are intended to apply to ILOs that are permitted by the municipality and are not intended to apply to CFOs above AOPA's permit thresholds. Regardless, this application does not include a proposal to subdivide an existing land parcel.

Section 3 of the Rural General section of the bylaw lists several setbacks. The facilities meet the 22.9 m road and 6.1 m other adjacent property line setback requirements.

For these reasons, I conclude that the proposed expansion is consistent with the land use bylaw.

Because the CFO is located within the intermunicipal planning area of the MD of Willow Creek and the Town of Fort Macleod, the Intermunicipal Development Plan (Town of Fort Macleod Bylaw No. 1949 and, MD of Willow Creek Bylaw 1922, March 2022) also applies.

Section 3 of the planning document applies to CFOs:

Section 3.1 states that new confined feeding operations (CFOs) and expansions to existing permits which would increase livestock numbers are not permitted within the Intermunicipal Development Plan Confined Feeding Operation Policy Area (CFO Exclusion Area) as illustrated on Map 3 – CFO Policy Area.

This CFO does not reside within the IDP's CFO Exclusion Area. Therefore, this section has been met.

Section 3.2 states that regarding manure application on lands within the Plan Area or the lands adjacent to the Town boundary, the standards and procedures as outlined in the Agricultural Operation Practices Act, Standards and Administration Regulation shall be applied.

Manure application is addressed in sections 24(1), and 24(5) of the *Standards and Administration Regulation* under AOPA. The regulations provide rules for manure application as an ongoing operating matter, rather than a permitting matter. Regardless, this is not a land use provision and therefore does not apply to my MDP/IDP consistency determination.

Section 3.3 states both municipalities request the NRCB to circulate all applications for CFO registrations or approvals within the Plan Area to each respective municipality.

Although this section is not a land use provision and regulates the notification process between the Town of Fort Macleod and MD of Willow Creek, both municipalities were given notice of this application.

Section 3.4 states both municipalities recognize and acknowledge that existing CFOs located within the CFO Exclusion Area will be allowed to continue to operate under acceptable operating practices and within the requirements of the Agricultural Operation Practices Act and Regulations. Consistent with Policy 3.1 of the IDP, existing CFOs in the CFO Policy Area may continue to operate only within the scope of their existing permit.

This is likely not a land use provision, however, the CFO is not in an area identified as exclusion or restricted areas and is therefore consistent with this section.

Section 3.5 states that the municipalities agree that they will notify and consult with the other municipality prior to engaging the NRCB or other provincial authorities, should a problem or complaints arise regarding a CFO operator's practices.

This section is not a land use provision and speaks on the corporation between the two municipalities. This section does therefore not apply to my MDP/IDP consistency determination.

Section 3.6 states consistent with the MD's Land Use Bylaw and Municipal Development Plan, all applications regarding intensive livestock operation (ILO) and CFOs within the Plan Area shall be forwarded to the Town for review and comment.

Although this section is not a land use provision and regulates the notification process between the Town of Fort Macleod and MD of Willow Creek, both municipalities were given notice of this application.

Sections 3.7 and 3.8 discuss Land Use Bylaw amendments affecting the policy and planning between the two municipalities.

These sections are not land use provisions and speak on the corporation between the two municipalities. This section does therefore not apply to my MDP/IDP consistency determination.

For these reasons, I conclude that the proposed expansion is consistent with the IDP between the Town of Fort Macleod and the MD of Willow Creek.

APPENDIX B: Responses from referral agencies and the municipality

a. Alberta Environment and Protected Areas (EPA)

In their response, an EPA water administration technologist stated that there are 2 well logs on the NW 16-9-25 W4M including one chemistry and one new well. Furthermore, it was communicated that water well 256433, which was included in the application, is associated with a water licence under the name of the previous landowner. Furthermore, they stated there is no potential option for legally obtaining water for the proposed feedlot operation from an Irrigation District.

EPA further stated that should the applicant currently be using this well, or plan to use this well for the proposed feedlot expansion, the applicant must communicate this to Alberta Environment and Protected Areas, Regulatory Assurance Division, as there may be requirements for a licence amendment or authorization from the current licence holder to use the well or change the purpose of the licence.

Additionally, it was mentioned that should the applicant be using another well which is unlicensed, the applicant must obtain a groundwater licence; the licence may be dependent upon a sustainability study of the supplying aquifer and associated hydrogeological studies.

Beyer Feeders chose the declaration on page 5 of the TD indicating that they are unsure whether they require additional water licensing under the *Water Act*. The response from EPA has been forwarded to Beyer Feeders and explained that they must obtain water legally for their operation. Beyer Feeders have been advised that they are responsible for obtaining sufficient licensed water prior to expanding their CFO. On August 28, 2024, the applicant provided confirmation of a water license application for the CFO.

b. Alberta Transportation & Economic Corridors (TEC)

In their response, a TEC development and planning technologist stated that a Roadside Development permit from Alberta Transportation will be required for the proposed development.

Beyer Feeders has been forwarded this response and instructed to contact TEC to obtain a permit for their operation prior to expanding their CFO. On August 28, 2024, the applicant provided confirmation of a Roadside Development permit application.

c. Municipal District (MD) of Willow Creek (a directly affected party)

The MD Municipal Planning Commission (of Willow Creek) and Ms. Chisholm raised the following concerns and requested additional information be provided regarding:

1. Water licensing:

- *The MD requests confirmation that Beyer Feeders has legally attained water for their existing CFO and met the above requirements of obtaining a water license from AEPA for LA22045 approved by NRCB on May 25, 2023, before populating to 1,200 calf beef feeders. In addition, confirmation that a water license has been attained for the proposed expansion (LA24023) to increase numbers to 2,200 before populating.*

Alberta Environment and Protected Areas (EPA) is responsible for licencing the use of groundwater and surface water in the province. Therefore, for efficiency, and to avoid

inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licencing declarations listed in the Part 2 application form.

Beyer Feeders chose the declaration indicating that they are unsure whether they require additional water licencing under the *Water Act* for the proposed expansion. EPA has commented that the applicant may not have sufficient licenced water for their proposed expansion and must contact them to apply for a licence amendment or authorization. I forwarded the applicant the responses from the affected party and referral agencies for their information and action. Additionally, EPA stated in their response that the applicant is required to legally attain water for their operation. On August 28, 2024, the applicant provided confirmation of a water license application for the CFO.

On August 28, 2024, the MD of Willow Creek sent the NRCB a second letter outlining concerns over water licencing for the current CFO, and concerns over water supply for the proposed expansion. Ms. Chisholm stated that the Municipality “feels a Compliance Directive is in order” for the existing CFO for non-compliance by obtaining sufficiently licensed water. As stated above, the NRCB does not have jurisdiction over water licencing under the *Water Act*, and therefore cannot issue a Compliance Directive on this matter. On August 29, 2024, I forwarded the Municipality’s concerns directly to EPA for their information. Additionally, as the operator is responsible to ensure the CFO has sufficient licenced water for their CFO, I forwarded the County’s concern as well.

2. Solid manure storage

- *Confirmation of where manure stockpile is to be located on the lands and how long manure is allowed to be stored prior to being applied on JL Farms Ltd. (NE/NW 23-09-25-W4M).*

Short term solid manure storage is addressed in section 5 of the Standards and Administration Regulation. Section 5(1) states that “short term” means an accumulated total of not more than 7 months over a period of 3 years.

APPENDIX C: Exemption from water well setbacks

1. Water Well Considerations

The proposed pen area and extended catch basin are to be located less than 100 m from a water well. I have confirmed that one water well is located approximately 40 m from the catch basin and 80 m from the pen area during a site visit and via aerial photography. This conflicts with section 7(1)(b) of the *Standards and Administration Regulation (SAR)* under AOPA.

Section 7(2), however, allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure storage facility (MSF)/manure collection area (MCA), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MSF/MCA are presumed to be low if the applicant's proposed MSF/MCA meets AOPA's technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. Whether the well is up- or down-gradient from the MSF/MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 9.10.2.

Water well ID #256433

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 40 m west of the catch basin and 80 m NW of the pen area is likely EPA water well ID #256433. This well is reported to have been installed in 1982 and has no information whether there is a perforated or screened zone below ground level across stratigraphy. This well is pit-less and is used for both domestic and non-domestic purposes.

The well's log identifies protective layers from ground surface to 32 m below ground level. No details about the well's seal are available. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is up-gradient of the CFO and MSF/MCA.

The NRCB has developed a "water well exemption screening tool," based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.¹

¹ A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document LA24023.

Under the regulation, an approval officer may require a groundwater monitoring program of the water well in question. Despite the above, I am of the opinion that the existing water well monitoring condition should be carried forward to Approval LA24023.

In my view, a monitoring program is required due to the combination of moderate-high water well exemption screening tool scores, groundwater flow path, distances from the well to the catch basin and pen area, lack of available information regarding the well, and domestic use of the well. Therefore, a condition will be included in Approval LA24023 that well 256433 will be sampled on an annual basis for nitrates and chlorides in accordance with a water monitoring statement.

APPENDIX D: Explanation of conditions in Approval LA24023

Approval LA24023 includes several conditions, discussed below, and carries forward one condition from Approval LA22045 (see sections 2 of this appendix). Construction conditions from historical LA22045 that have been met are identified in the appendix to Approval LA24023.

1. New conditions in Approval LA24023

a. Construction Deadline

Beyer Feeders proposes to complete construction of the proposed new group pens, hutch area and extended catch basin by December 1, 2024. It is my opinion that a longer timeframe would be more reasonable for the proposed scope of work and would allow for construction or material delays. The deadline of December 1, 2025, is included as a condition in Approval LA24023.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval LA24023 includes conditions requiring:

- a. Beyer Feeders to provide a report prepared by a qualified third-party confirming that the catch basin is constructed to the proposed horizontal and vertical dimensions, including the below ground (depth) and inside wall slopes, and that any sand lenses are dealt in accordance with Technical Guideline Agdex 096-63 "Subsoil Investigations for Naturally Occurring Protective Layers".

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA24023 includes conditions stating that Beyer Feeders shall not place livestock or manure in the manure storage or collection portions of the new pen or hutch area or allow manure contaminated runoff to enter the extended portion of the catch basin until NRCB personnel have inspected the pen and hutch area and extended catch basin, and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward from Approval LA22045

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition 3 from Approval LA22045 should be carried forward and updated to ensure the continued protection of water well 256433:

Water well monitoring:

The permit holder shall sample and test raw groundwater on an annual basis, starting June 30, 2023, from water well 256433, according to the water well monitoring requirements prescribed by the NRCB in writing ("Sampling for Water Well Monitoring" Fact Sheet). The NRCB may, based on the monitoring results and at its discretion, revise those requirements in writing.