



BOARD DECISION REQUEST FOR REVIEW

RFR 2024-07 / RA24030

In Consideration of a Request for Board
Review filed under the *Agricultural
Operation Practices Act*

Ference Land and Cattle Corp.

October 8, 2024

The Board issues this decision under the authority of the *Agricultural Operation Practices Act* (AOPA or the Act), following its consideration of a request for the Board’s review (RFR) of Decision Summary RA24030.

1. Background

On September 6, 2024, a Natural Resources Conservation Board (NRCB) approval officer issued Decision Summary RA24030 (the Decision Summary). That decision granted an application by Ference Land and Cattle Corp. (Ference) for an NRCB Approval to expand an existing beef finisher confined feeding operation (CFO). The CFO is located at E ½ 17-34-2 W4M and SW 17-34-2 W4M in Special Area No. 4. The existing CFO was permitted by Approval RA24001, issued on April 12, 2024, pursuant to Decision Summary RA24001. NRCB Board Decision RFR 2024-03 dismissed a request for review (RFR) of Decision Summary RA24001.

The Board received one request for review (RFR) of Decision Summary RA24030 within the filing deadline of September 27, 2024, from Kevin Clark, a party who had been found to be directly affected by the approval officer. On September 30, 2024, the NRCB sent a Notice of Filed Request for Board Review and provided a rebuttal opportunity to the directly affected parties listed in the Decision Summary. The rebuttal opportunity gives parties that may have an adverse interest to the matters raised in the RFR a chance to submit their views. Ference submitted a rebuttal on September 30, 2024. NRCB Field Services made a submission on October 3, 2024. All submissions were made within the filing deadlines.

Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (panel) consisting of Rich Smith (chair), Sandi Roberts, Earl Graham, and Darin Stepaniuk was established to consider the RFR and decide whether a review is warranted.

As used here, a “review” is a quasi-judicial hearing or written review in which the parties can submit expert and witness testimony and other evidence, when relevant, to the issues selected by the Board to be considered at the oral hearing or written review.¹ References to the “Board” in this document are to findings of the panel of Board Members established specifically for this file.

2. Documents Considered

The Board considered the following information:

- Decision Summary RA24030, dated September 6, 2024
- Technical Document RA24030, dated September 6, 2024
- RFR filed by Kevin Clark, dated September 26, 2024
- Special Areas 2, 3, and 4 Land Use Order, Ministerial Order No. MSL: 007/15, dated March 3, 2015
- Ference rebuttal, dated September 30, 2024

¹ For more information on Board reviews, see NRCB, *Board Reviews & Court Decisions – Board Review Process*, [online](#).

- NRCB Field Services submission, dated October 3, 2024, which also provided Mr. Clark's July 22, 2024 response to application RA24030 and a video taken by Mr. Clark
- NRCB Decision RFR 2024-03 / RA24001, dated May 16, 2024

3. Board 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.

4. Submissions

4.1 Issues Raised in the RFR

The RFR submitted by Mr. Clark contained no specific grounds for requesting a Board review of the approval officer's decision. The RFR also did not request any Board action directly related to the approval officer's decision. Mr. Clark did confirm with the NRCB Manager, Board Reviews that he intended his submission to be a request for Board review and the Board has accepted it as an RFR.

Mr. Clark's submission referenced numerous previous instances of his providing evidence to municipal and provincial government agencies of manure contamination of a wetland on his property as a result of runoff from the Ference land. His submission indicated that he contacted Special Areas and Alberta Environment and Protected Areas about a new occurrence after a rainfall in September 2024.

According to the submission, the culvert that brings runoff from the Ference land to the wetland on Mr. Clark's property now has been plugged and Mr. Clark has capped two culverts on his side of the road separating the properties. Mr. Clark indicated that officials have advised him that the manure contaminated runoff coming on to his land is from a cow calf operation on Ference land and not from the proposed CFO. However, Mr. Clark noted that NRCB provisions for confined feeding of cow calf herds state that areas used for cow calf feeding must not pose a risk to surface water and groundwater quality. Mr. Clark concluded his submission by stating that the culvert capping is a temporary solution, while the contamination remains to be cleaned up.

4.2 Submission of NRCB Field Services

NRCB Field Services took no position on the outcome of the RFR. The submission included the response from Mr. Clark to the application for Approval RA24030 and a video submitted by Mr.

Clark showing runoff from Ference land flowing through a culvert to a wetland on his property. Mr. Clark's response and his commentary in the video expressed strong frustration over the lack of action to address the ongoing runoff issue and questioned the approval officer's conclusion about the direction of runoff flow from the feedlot.

4.3 Ference Land and Cattle Corp. Rebuttal

In the rebuttal, Mr. Ference stated that they are doing everything they can to resolve the situation with runoff flowing into the wetland on Mr. Clark's property. He noted that they have blocked off the culvert that allows runoff to flow to the wetland. Mr. Ference also made the point that he allows cattle to drink from the body of water on the Ference side of the culvert and he is confident that the water is safe for consumption by livestock.

5. Board Deliberations

The Board understands Mr. Clark's concerns about contaminated runoff flowing from the Ference operation into the wetland on his property. The Board also accepts the evidence that this has been an ongoing concern. The Board does not find it unreasonable for Mr. Clark to be frustrated by the perceived lack of action to address the runoff issue. However, the Board finds that the contaminated runoff has come from past and existing operations at the site, not from the CFO that is permitted by Approval RA24030.

In the Decision Summary, the approval officer stated that the NRCB Field Services compliance division is actively working with the applicant, Special Area No. 4, and Alberta Environment and Protected Areas to address the issue of runoff from the cow calf pens and feeding area. The Board expects that the NRCB compliance staff will continue to be involved in this matter until the runoff issue is resolved. The Board notes the operating condition in Approval RA24030 that the pens which drain toward the Clark property are to be used solely for cow calf feeding and are not to be used as part of a CFO. The Board expects that any future use of these pens and this feeding area will be in compliance with the AOPA requirements for seasonal feeding and bedding sites and the NRCB policy provisions for confined feeding of cow calf herds during the grazing season.

The Board recognizes that there have been compliance issues at this operation in the past, but NRCB Approvals Operational Policy 2016-7 states that approval officers generally do not consider an applicant's past compliance record as part of their decision to issue a permit. When an application meets the requirements of AOPA, approval officers presume that the applicant has the intent and resources to meet these requirements and that the NRCB Field Services compliance division can adequately deal with any compliance issues that may arise.

Despite Mr. Clark's questions about the direction of runoff flow from the Ference operation, the approval officer determined that the proposed CFO has sufficient means to control surface runoff of manure. The Board finds no evidence rebutting this conclusion of the approval officer. The Board is satisfied that the application meets the requirements of AOPA and expects that Ference will operate the CFO in full compliance with these requirements. The Board also

expects that the NRCB Field Services compliance division will take appropriate steps to ensure that the operation is in compliance with AOPA.

Mr. Clark’s concern about cleaning up the alleged contamination on his property is not within the authority of the Board to address in responding to an RFR of a CFO expansion approval decision. The Board’s authority to grant an RFR under s. 25(1) of AOPA is predicated on an RFR raising issues about the actual decision subject to review.

6. Board Decision

As a result of the Board’s review of the documents under consideration for this RFR and its deliberations on the issues raised in the RFR, the Board finds that the RFR did not bring forward any matters that would warrant a review of Decision Summary RA24030 based on inadequate consideration by the approval officer and merit. The issues raised in the RFR with respect to runoff from the cow calf areas of the Ference operation and past compliance issues at this operation do not warrant a review of Decision Summary RA24030. The RFR is dismissed.

DATED at EDMONTON, ALBERTA, this 8th day of October, 2024.

Original signed by:

Rich Smith (chair)

Sandi Roberts

Earl Graham

Darin Stepaniuk