

Decision Summary LA24032

This document summarizes my reasons for issuing Approval LA24032 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24032. 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 July 2, 2024, Hendrik Buijs and Janette Buijs-Brink operating as Buijs River Valley Ranch (Buijs) submitted a Part 1 application to the NRCB to expand an existing beef CFO.

The Part 2 application was submitted on October 21, 2024. On October 30, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing beef finisher numbers from 1,460 to 3,000
- Constructing row #3 pens – 152.4 m x 42.7 m
- Constructing catch basin #2 – 34.0 m x 23.0 m x 2.0 m deep

a. Location

The existing CFO is located at SW 32-008-24 W4M in the Municipal District (MD) of Willow Creek, roughly 12 km southeast of the town of Fort MacLeod. The terrain at the site slopes south towards the Belly River which is located 380 metres from the CFO. There is an unnamed tributary that feeds into the Belly River that is located 9 m from the existing, grandfathered catch basin, and 5 m from the existing, grandfathered row #1 feedlot pens.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA18009, which superseded all previous permits. That permit allowed the construction and operation of a 1,460 head beef finisher CFO. The CFO's existing permitted facilities are listed in the appendix to Approval LA24032.

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 1.5 miles. (The NRCB refers to this distance as the “notification distance”.)

None of the proposed CFO facilities are located within 100 m of a bank of a river, stream or canal.

A copy of the application was sent to the MD of Willow Creek, which is the municipality where the CFO is located. A copy of the application was also sent to the Blood Tribe Kainaiwa, as the notification distance went into the lands of I.R. 148.

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 November 6, 2024, due to an administrative error that missed the October 30, 2024, issue of the Macleod Gazette, and
- sending 16 notification letters to people identified by the MD of Willow Creek as owning or residing on land within the notification distance.

The full application was made available for viewing at the NRCB office in Lethbridge 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), Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Atco Gas & Pipelines which are utility right-of-way (ROW) holders on the subject land.

I received responses from Leah Olsen, a development/planning technologist with TEC, Bradley Calder, a water administration technologist with EPA, and Eileen Fecho, an administrative coordinator with Atco.

Leah Olsen stated that a permit from TEC will not be required for the proposed development.

Bradley Calder (EPA) stated that Buijs River Valley Ranch does not appear to have any open applications in the Digital Regulatory Assurance System (DRAS) and there are no surface water or groundwater diversion authorizations or Traditional Agricultural Registrations for the SW 32-008-24 W4 under the *Water Act* or the *Water Resources Act* for the water supply for the current livestock numbers. Mr. Calder did note that following a review of DRAS, that there are several

water licenses and temporary diversion licenses that are held by Hendrik Buijs and Janette Buijs-Brink. Mr. Calder also noted that the well listed as the point of diversion as the water source, Well ID 1250095, has a Temporary Diversion License, but does not have a license for the expansion. Mr. Calder calculated the proposed water use requirement for 3,000 beef finishers is about 49,780 m³ or about 40.4 acre-feet. Mr. Calder stated that Hendrik Buijs and Janette Buijs-Brink, operating as Buijs River Valley Ranch, are required to provide the licence number(s) from any quarters that may supply water to SW 32-008-24 W4, including any water conveyance agreements with any water co-ops or irrigation districts so they can be confirmed with EPA. Mr. Calder further stated that should it be determined that additional water is required, options for obtaining a legal water source for the additional diversions can be discussed with EPA. The response from EPA was forwarded to the applicant for their information and action.

Eileen Fecho stated that Atco Distribution has no concerns with the proposed feedlot expansion.

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 MD 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 all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from water wells, 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 10 and in Appendix B, the application meets all relevant AOPA requirements.

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 MD of Willow Creek is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Cindy Chisholm, a director of planning and development with the MD of Willow Creek, provided a written response on behalf of the MD of Willow Creek. Ms. Chisholm did not state whether the application is or is not consistent with the MD of Willow Creek’s land use provisions of the municipal development plan. Rather, Ms. Chisholm referred to the municipal development plan as an item related to land use planning. Ms. Chisholm stated the lands within 1.5 miles of the CFO are predominantly zoned “Rural General (RG)”. The application’s consistency with the land use provisions of the MD of Willow Creek’s municipal development plan is addressed in Appendix A, attached.

Ms. Chisholm did, however, raise concerns about the accumulative effects of the proposed increase in beef finishers. Ms. Chisholm stated that the increase in animal numbers will also increase municipal road use of Range Road 245 and will result in keeping the road in a reasonable state of repair. She stated that the MD of Willow Creek recommends that upon NRCB approval and prior to commencing with populating animal numbers, that the applicant contact the Director of Infrastructure to discuss road upgrades that may be required. While road use and maintenance is not under the regulatory authority of the NRCB, the applicant is reminded of the MD of Willow Creek’s request to discuss road upgrades.

Ms. Chisholm also requested that appropriate measures to mitigate all drainage of manure runoff from accessing the named or unnamed tributaries in the vicinity that affect the Belly River be ensured. This concern is taken care of via an operating condition carried forward from Approval LA18009 that requires the maintenance and inspection of berms and drainage ditches that divert water around the CFO.

On January 21, 2025, I sent a follow-up email to Ms. Clo Ann Wells, a development officer with the Blood Tribe Kainai, re-sending the application package I had sent on October 30, 2024, including a map showing lands falling within the 1.5 mile notification distance. I also inquired if they had any concerns, as I had not received any correspondence from them. On January 30, 2025, I phoned Ms. Wells and left her a message. On February 4, 2025, Ms. Wells phoned me and left a message that she had received the application, would send a map if the application would affect anyone on reserve, and also forwarded the application to a person who deals with the Blackfoot territory who could indicate if it would affect anyone. On February 18, 2025, I sent an email to Ms. Wells asking if there were any concerns regarding this application. I advised I would assume there are no concerns if I didn’t hear from them in a week. The NRCB has not received a response from the Blood Tribe to this date.

No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. There may be circumstances where, because of the proximity of a shallow aquifer, or course subsurface materials, and surface water systems an approval officer may require groundwater monitoring for the facility. Based on the information in the application, as well as from a site visit, I did not identify a shallow aquifer, course subsurface materials, or surface water systems near the proposed facilities. Therefore, groundwater

monitoring is not 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 Buijs's existing CFO facilities were assessed in 2018 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. 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 listed the setbacks required by the MD of Willow Creek's land use bylaw (LUB) and noted that the site plan submitted with the application did not provide setback distances from adjacent property boundaries of the municipal road allowance for any development associated with the existing CFO or proposed expansion. Ms. Chisholm stated that all proposed and existing development shall comply with the Municipal Land Use Bylaw No. 1826, Schedule 2 Rural General, Section 3 minimum setback requirements. In an email on January 6, 2024, I asked Ms. Chisholm to clarify which road she was referring to that the minimum setbacks must be met. In her reply, she stated that the existing catch basin appears to be located within close vicinity of the adjacent property line to the east and if there is any development within the required minimum setback, a development permit application is required to request a waiver from the Municipality. The existing catch basin is located within the 6.09 m setback to the property line. This catch basin was initially permitted as part of MD Permit 03-98 and was deemed a grandfathered facility in Approval LA18009. The proposed feedlot pens and catch basin meet the road and property line setbacks.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of

concerns submitted under section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* in respect of the subject of this application.

I am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed February 25, 2025.

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

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, with the conditions imposed in this permit. In my view, this presumption is not rebutted.

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). The land where the CFO is located is zoned Rural General. In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA24032 specifies the cumulative permitted livestock capacity as 3,000 beef finishers and permits the construction of the feedlot pens and catch basin.

Approval LA24032 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 LA24032 includes conditions that generally address construction deadline and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA24032: LA18009 (see NRCB Operational Policy 2016-7: *Approvals*, part 11.5). Permit consolidation helps the permit holder, municipality, neighbours, 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 B discusses which conditions from the historical permits are carried forward into the new approval.

11. Conclusion

Approval LA24032 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24032.

Buijs's NRCB-issued Approval LA18009 is therefore superseded, and its content consolidated into this Approval LA24032, unless Approval LA24032 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA18009 will remain in effect.

March 3, 2025

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA24032

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.)

Buijs’s CFO is located in the MD of Willow Creek and is therefore subject to that county’s MDP. The MD of Willow Creek adopted the latest revision to this plan in August, 2019, under Bylaw #1841.

Section 2 of the MD of Willow Creek’s MDP states that agriculture is a predominant land use in the MD though it also notes that it is important to balance other interests. Section 2 states that one of the main objectives of the MDP is to mitigate the siting of any CFOs 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.

I do not consider Section 2 and policy 2.3 to be “land use provisions.” Rather, I consider them to be a source of insight for the interpretation of the remaining portions of the MDP.

The MDP provisions relating to CFOs are in Section 9 Confined Feeding Operations / Intensive Livestock Operations.

Policy 9.1 of the MDP requests that the following setbacks are to be applied:

- a. *The appropriate setbacks from the right-of-way of any public roadway which is not designated as a primary highway as established in the municipal LUB.*

As discussed in section 9 above, the proposed facilities meet the municipal road setbacks.

- b. *As required by TEC for roads designated in the Memorandum of Agreement with the MD.*

As discussed in section 3 above, the application was sent to TEC for their review. TEC’s response stated that a permit from them is not required.

Policy 9.2 of the MDP directs the NRCB to consider six matters. These are quoted below, followed by my interpretation of how the provision is related to this application.

(a) the cumulative effect of a new approval on any area near other existing CFOs/ILOs

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 NRCB 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 page 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

Buijs’ CFO is very close to, but not within, an area designated as of national significance in the reference report (Map 1 of the report).

The report also assessed the planning area such as flood plains, unstable slope potential, and areas of artesian flow. The map shows that the CFO is close to, but not within, a floodplain.

(c) providing notice to adjacent landowners including applications for registrations 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. Nevertheless, as explained above, the NRCB sent out notification letters to people identified by the MD of Willow Creek as owning or residing on land within the notification distance of 1.5 miles and gave notice in the *Macleod Gazette*.

(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. The MDS is met to all neighbouring residences.

(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; and

Buijs’ CFO is not located within a known flood plain, floodway, the floodway fringe and flood prone, or hazard lands as identified in the Alberta Environment and Protected Areas flood hazard website. The existing, grandfathered facilities are close to an unnamed tributary, but the proposed feedlot pens and catch basins are not adjacent to any watercourse. Therefore, I am of the opinion the application is consistent with this provision.

(f) restricting development in any wetland or riparian area

Buijs’ CFO is not located in a wetland or riparian area. Therefore, the application is consistent with this provision.

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

APPENDIX B: Explanation of conditions in Approval LA24032

Approval LA24032 includes several conditions, discussed below, and carries forward a number of conditions from historical permits (see section 2 of this appendix). Construction conditions from historical permits that have been met are identified in the appendix to Approval LA24032.

Approval LA24032 includes several conditions, discussed below:

1. New conditions in Approval LA24032

a. Construction above the water table

Sections 9(2) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the manure storage facility or manure collection area (with a protective layer) to be not less than one metre above the water table of the site “at the time of construction.”

Based on the information included in the application, the proposed catch basin meets the one metre requirement of section 9(2). However, because the height of the water table can vary over time, a condition is included requiring Buijs to cease construction and notify the NRCB immediately if the water table is observed to be one metre or less from the bottom of the facility at the time of construction.

b. Groundwater protection requirements

Buijs proposes to construct the new catch basin with a 0.9 metre thick naturally occurring protective layer. Section 9 of AOPA’s *Standards and Administration Regulation* specifies a maximum hydraulic conductivity for this type of protective layer in order to minimize leakage.

Buijs measured the hydraulic conductivity of the protective layer by installing a monitoring well (or water table well) at the time of borehole drilling. This approach provides an adequate representation of the protective layers proposed to be used to protect the groundwater resource.

The regulations provide that the actual hydraulic conductivity of a 5 metre thick naturally occurring protective layer must not be more than 1×10^{-6} cm/sec.

In this case, the in-situ measurement was 1.2×10^{-7} cm/sec. Using the equivalency equation for single layer systems as outlined in Technical Guideline Agdex 096-61 “Determining Equivalent Protective Layers and Constructed Liners”, I determined that the proposed naturally occurring protective layer is equivalent to 7.5 m of naturally occurring material with a hydraulic conductivity of 1×10^{-6} cm/s, which exceeds the requirement in the regulations.

c. Construction Deadline

Buijs proposes to complete construction of the proposed new feedlot pens and catch basin by July 31, 2027. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of July 31, 2027 is included as a condition in Approval LA24032.

d. Post-construction inspection and review

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 LA24032 includes conditions stating that Buijs shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens, nor allow manure-impacted runoff to enter the catch basin until NRCB personnel have inspected the feedlot pens and catch basin and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward from Approval LA18009

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #4-6 from Approval LA18009 should be carried forward and re-numbered to #7-9 to reflect the new construction conditions in this Approval LA24032. These conditions require the maintenance of berms and drainage ditches that are required to divert surface water drainage, and manure spreading activities that are stricter than AOPA regulations.