

#1 - REQUEST FOR REVIEW: RA20032 / Starland Colony

Filed By:

Bishop Law, representing:

**John Kowalchuk
status is directly affected party**

and

**Cynthia and James Krywcun
status is NOT directly affected**

Deadline for RFRs:

October 13, 2020

Date RFR received:

October 13, 2020



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Tuesday, October 13, 2020

National Resources Conservation Board
#303, 4920 – 51 Street
Red Deer, Alberta T4N 6K8

Via email: laura.friend@nrcb.ca

Dear Ms. Friend:

**Re: Cynthia and James Krywcun (the “Krywcuns”) and John Kowalchuk
Hutterian Brethren Church of Starland (“HBCS”)
Application RA20032 – Notice of Decision
Review of Decision**

We are legal counsel for Cynthia and James Krywcun, as well as John Kowalchuk, who have requested that we submit the attached Request for Board Review with regards to the Decision made on Application RA20032.

Should you have any issues receiving our documents, or have any questions regarding the enclosed, please do not hesitate to contact us.

Yours very truly,

Debbie Bishop, P. Eng., LLB
BISHOP LAW.

**IN THE MATTER OF
THE HUTTERIAN BRETHREN CHURCH OF STARLAND
APPLICATION RA 20032**

AND IN THE MATTER OF

NATURAL RESOURCES CONSERVATION BOARD

**REQUEST FOR BOARD REVIEW
JOHN KOWALCHUK & JAMES & CYNTHIA KRYWCUN**

October 13, 2020

Submitted by:

Deborah P. Bishop Professional Corporation

o/a Bishop Law

Attention: Debbie Bishop

#904, 200 La Caille Place SW

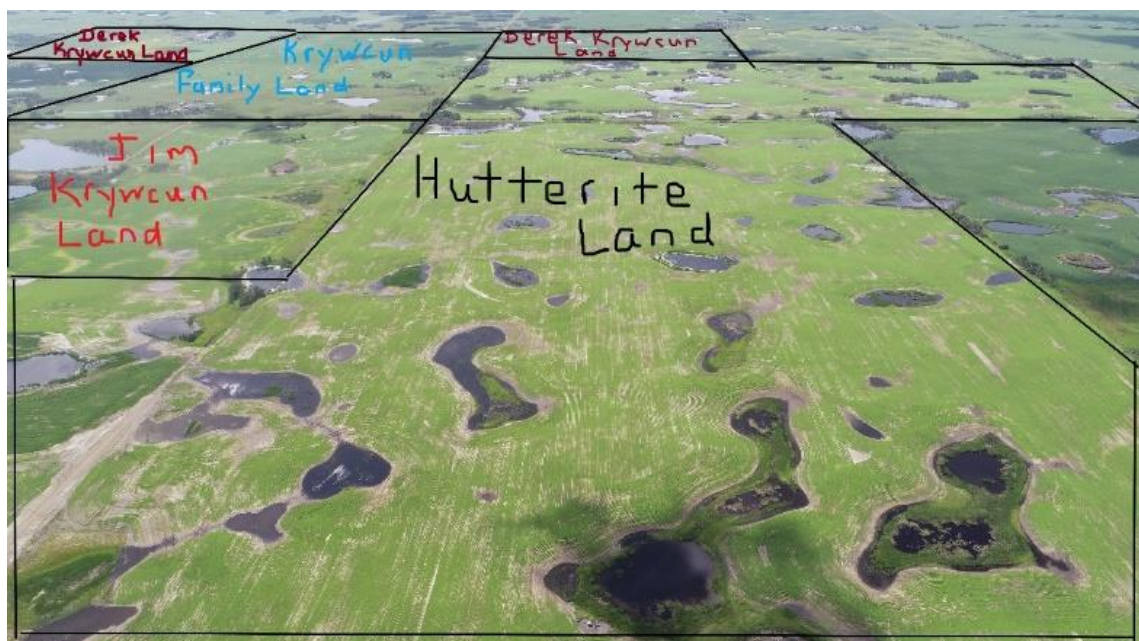
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A. PARTY STATUS:

1. We write to request a review of NRCB Application RA20032-Notice of Decision Hutterian Brethren Church of Starland, NW 15-33-21 W4M, (the "Decision") on behalf of affected party John Kowalchuk, owner of SW 15-33-21 W4M, that is adjacent to the proposed CFO and the County of Starland.
2. Additionally, these submissions request standing on behalf of James and Cynthia Krywcun who are affected parties, though not found to be so in the Decision.
3. The Applicant did not list the Lands to be used for manure and compost spreading in the Application available to the Kowalchuks and the Krywcuns.
4. However, in the NRCB Technical Requirements Review the NRCB assessed that the land base for manure spreading includes 2720 acres.
5. James and Cynthia Krywcun are owners and/or users of Land within 500 m of Lands that will be used by the CFO for manure spreading. Below is a photograph that was included with the Krywcun's statement of concern ("SOC") that shows where the Krywcun's Lands are with respect to the Applicant's Lands.



B. GROUNDS FOR REQUESTING A REVIEW:

6. The Kowalchuks and the Krywcuns would like the NRCB to hold a hearing as, Lynne Stone, the Approval Officer, identified in the Decision that there is uncertainty of the source of water for the CFO. It is unclear if the Applicant will be required to apply for a Water Act approval or licence.

7. Lynne Stone, the Approval Officer, relays that correspondence from Ms. Laura Partridge, a water administration officer with Alberta Environment and Parks, states; “[i]f they [the Applicants] are not diverting, then additional licensing and supporting groundwater evaluation report are required.”
8. Ms. Stone also states in the Decision that “[i]n a follow up conversation, the applicant told me that they intend to drill a water well and obtain a water licence for the location of their proposed CFO; however, if there is not adequate water available, they will proceed with applying to divert water from their already-held water licenses.”
9. Based on this uncertainty ; the affected parties believe a review hearing must be held by the NRCB as this is a unique situation where there appears to be a scenario available to the Applicant to divert water from an existing water licence. The correspondence from AEP suggests that this diversion could occur without any scrutiny of the groundwater quantities in the area and therefore, no opportunity for the affected parties to have their concerns heard by the Alberta Environmental Appeals Board.
10. The parties listed in this review request, are landowners who are affected by the potential for ground water depletion due to the massive amount of water the dairy barn(s) require, and/or the potential for surface water contamination as landowners who have property adjacent to land where the applicant will spread manure.
11. Additionally, as adjacent landowners they will be subjected to odors and noise and in accordance with AOPA will be precluded from any form of legal action against the Applicants as a result of nuisance from the CFO. As such, the NRCB’s review must be complete and be sure to protect the affected parties from any potential nuisance from the CFO. The affected parties submit that there are areas of uncertainty in this Application and Decision that require a hearing for the affected parties and the NRCB to be certain the information provided to the NRCB in reaching the Decision is correct and well understood by all parties.
12. The land is not considered Agriculture I as defined in Starland County’s MDP.
13. In Appendix A, Lynn Stone, Approvals Officer, under Section 8.2 refers to Starland Counties Map 6. At the time of the application, Starland County did not have access to the map due to a fire destroying their vital records that shows the groundwater risk area. They have since obtained the map and further clarification from the authors of the study has determined the areas where the manure will be spread is in a high-risk area. Ms. Stone indicates in her decision that she “concluded the proposed CFO is not in either of the two exclusion zones (urban areas and very high-risk groundwater) listed in the 2005 map.” She was “unable to conclude definitively whether the proposed CFO is within the high-risk groundwater area listed in the 2019 MDP map.” The attached map titled Starland County Water Contamination Map clearly shows the NE-15-33-21-W4, the NW-23-33-21-W4 and the SE-22-33-21-W4 are indeed in the high water contamination zone.

Tab 1- Starland County Water Contamination Map

14. The Krywcun Family own or rent land which is directly affected by runoff from the aforementioned quarter section of lands.
15. The attached report entitled, *Starland County Regional Groundwater Report 1999*, has been sourced by the affected parties and it shows that the CFO site is adjoins the NE-15-23-33-21-W4 which is in a high water contamination zone.

Tab 2- Starland County Regional Groundwater Report 1999

16. Additionally, the technical borehole information provided by the Applicant is not for the site in question but for a site 1.1 km away. It is questionable if information for a site 1.1 km away is more representative of the actual site, than the information for the adjacent Lands, NE-15-23-33-21-W4.
17. The Decision references the County of Starland's MDP 8.3 (c) which states that any quarter section that touches any area identified on Map 6 is considered part of the exclusion zone; the CFO in this application does indeed touch a quarter section (NE-15-33-21-W4) which is included in the exclusion zone. This development on the NW-15-33-21-W4 should therefore, also be considered in the exclusion zone.
18. The Decision refers to Starland County's MDP Section 8.6 which states that in areas of "high risk" of groundwater contamination, new and expanding CFO's should not be allowed "unless it can be proven that the groundwater contamination risk has been minimized and appropriate mitigation measures have been taken to prevent possible groundwater contamination in accordance with best practices and scientific methods." The Decision was based on the fact that "without evidence to the contrary, the proposed site is not on a "high risk" exclusion area. Tab 1 shows this CFO may be in a "high risk" exclusion zone as the land it is connected to on the NE-15-33-21-W4 is in the high-risk exclusion zone. This warrants further investigation.
19. The Decision mentions that there was a risk assessment completed by the NRCB however, this assessment is not included in the Decision. The affected parties must have access to this assessment and should have an opportunity to make submissions on materials used by the decision maker when making the decision. The affected parties understand that the Decision maker met with the Applicant on at least 2 occasions however, did not meet with either of the parties represented by these submissions.
20. The CFO is .38 km beyond the exclusion zone as stated in the County of Starland's MDP if you do not take into consideration that it touches the NE-15-33-21-W4. Without definitive proof that the Hamlet of Rumsey's municipal water will not be lowered, depleted, or contaminated, this application should have been denied.
21. Ms. Stone interpreted that Section 8.11 of the MDP refers to NRCB permits, when in fact, the County was referring to the Hutterian Brethren Church of Starland entering into a road agreement with the County. One of the main roads 21-3, has soft shoulders, especially where it is intersected by a slough on either side. James and Cynthia Krywcun own land on the west side of the slough and are familiar with its slope and soft shoulders. Because of the water flow underneath the road, the road will deteriorate due to the increase in heavy traffic and the weight of the heavy trucks. This road will be used by the milk truck 365 days a year, plus there will be additional heavy traffic on this road from the construction equipment that will be used to build the development.
22. The Decision states in the section titled Groundwater Contamination that "the respondents have not provided me with any additional evidence to show that the alleged affect would probably occur. Therefore, I find the parties are not directly affected based on groundwater contamination risks." It is not a reasonable conclusion that because the affected parties did not provide a hydrogeological study with their statement of concern that the NRCB can conclude that there is no risk to the groundwater. The only reasonable conclusion is that the effect on groundwater is unknown. For this reason, a review of the Decision should be granted so that a hydrogeological survey can be completed through the NRCB review process by either the affected parties or the Applicant before the CFO is approved.

23. In the section titled Surface water contamination the Decision states that “[t]he respondents have not provided me with any additional evidence to show that the alleged effect would probably occur. Therefore, I find that the parties are not directly affected based on surface water contamination risks.” In fact, evidence was provided that appears not to have been considered in the Decision. Several photographs were included in the SOC from James and Cynthia Krywcun as well as photos were attached to the letters the NRCB received from Shirley Bogle, Gayle Todd and June Aune showing the water flowing directly through their lands from lands owned by the applicant. If manure is spread or injected on land which directly flows onto the affected landowners land, then it cannot be ascertained that contamination will not occur. The pictures show the water flow onto their land which will bring contaminants from the applicants land onto their land.
24. With regards to Surface water alteration, Ms. Stone dismisses the drone photographs in the SOC from James and Cynthia Krywcun as well as photos were attached to the letters the NRCB received from Shirley Bogle, Gayle Todd and June Aune showing the water flowing directly through their lands from lands owned by the applicant which show how the land was before the applicants started farming it and how the land is now.
25. It is evident from the pictures the applicants have altered the water flow patterns which has flooded the lands belonging to Shirley Bogle, Gayle Todd and June Aune (NW & SW 14-33-21-W4). In their effort to stop the flooding onto the NW-14-33-21-W4 the Applicants further changed the water course and they are now flooding the SE-15-33-21-W4. The affected parties are requesting further review into the effects the applicants cropping practices and removal of vegetation have had upon the neighboring landowners. Ms. Stone references the fact that the applicants altered the water before they submitted this application so she “found no casualty between the alleged alterations in the past and the proposed CFO development.” It is evident from the pictures that the applicants have in the past shown little or no regard for the water contamination and flooding on neighboring lands. The applicants have also disregarded County property by ploughing undeveloped road allowances. This disregard for the Municipality and neighboring landowners in the past, sets a precedent for their behavior in the future.

C. REASONS YOU ARE AFFECTED BY THE DECISION

26. There was no evidence provided by the Hutterian Brethren Church of Starland to prove that the manure they will be injecting or spreading onto the surrounding lands will not contaminate the aquifer, the water wells or the surface water of the affected parties in this submission.
27. Until a review has been completed to definitively conclude that there is sufficient water to support the amount of water required for the CFO no further development should be allowed. The neighboring landowners must be able to participate in the decision-making process so all parties can be assured the water supply will not be depleted by this CFO.

D. ACTION REQUESTED

28. The affected parties request that the NRCB hold a hearing to ensure that the NRCB has accurate information and that the affected parties have an opportunity to know the case they have to meet.
29. The affected parties request a joint hearing with the Environmental Appeals Board and the NRCB to address these concerns. To date, the applicant has not applied for a Water License and the

affected parties ask that a NRCB review be postponed until such time as the applicant applies for the water license.

30. Alternatively, the affected parties request that the NRCB hold a hearing to assess if further conditions are warranted specifically relating to the conditions on manure spreading. The affected parties request that:

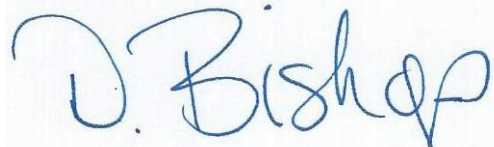
- No injecting or spreading manure on the NW & NE-15-33-21-W4, the NW-23-33-21-W4 and the SE-22-33-21-W4. This could protect the water of the persons named in this review request as well as the citizens of the Hamlet of Rumsey.
- That an independent qualified third-party cement installer be required to inspect the development to ensure all cement is poured according to the Alberta Building Code.
- A hydrogeological survey be completed as a condition of the approval to ensure the aquifer and water supply of the residents in the area will be protected.
- Noise suppressors placed on the fans in the dairy barn(s).

E. CONTACT INFORMATION

31. The affected parties can be contacted through:

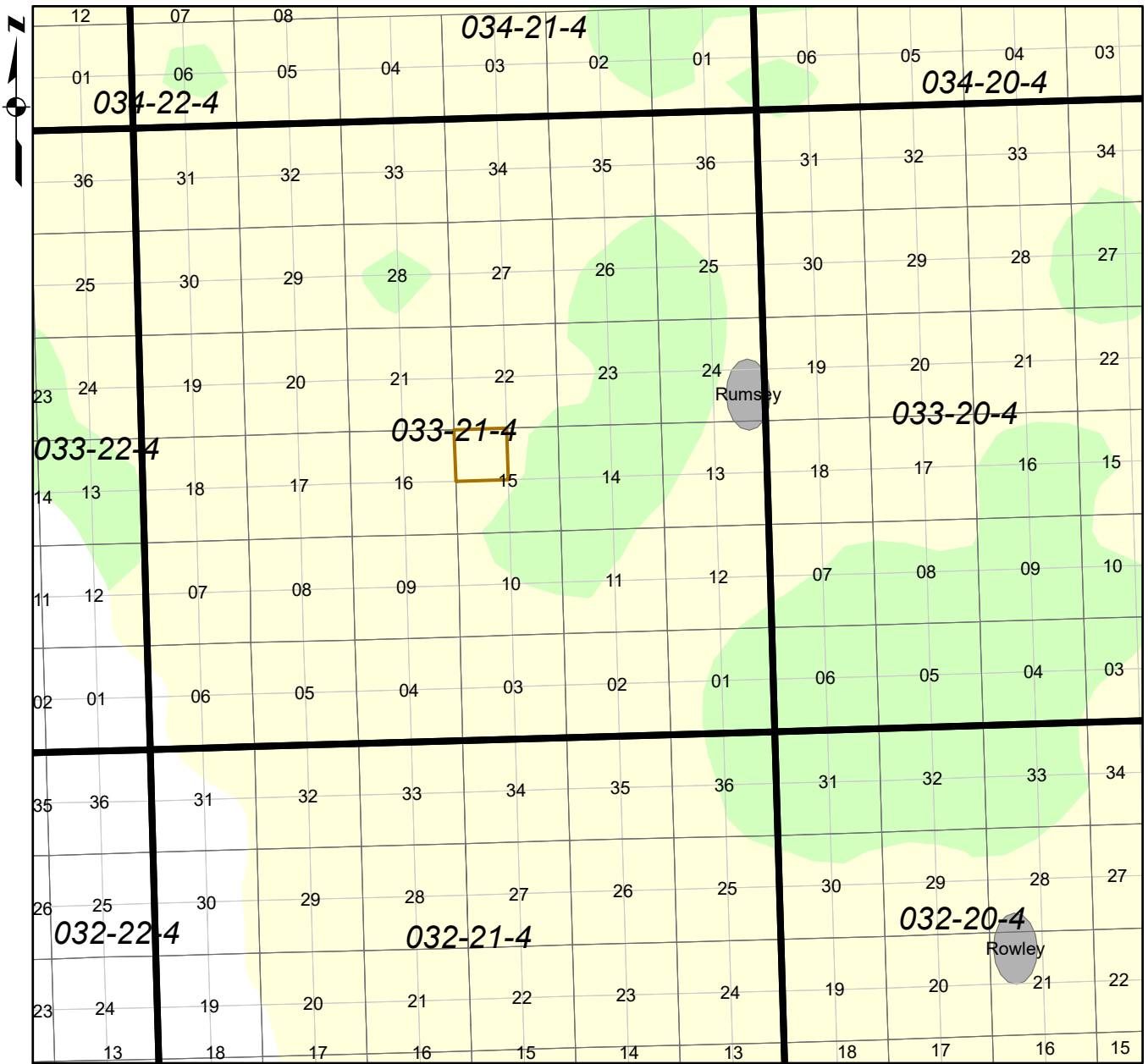
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All of which is respectfully submitted this 13th
day of October, 2020



Per:

Debbie Bishop, P. Eng., L.L.B



Risk of Groundwater Contamination (HCL, 1999)

NW 15-033-21 W4M
 High
 Low