



Environmental Appeal Board

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DECISION NO. 2010-WIL-002(a)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

BETWEEN: Linda Yaciw **APPELLANT**

AND: Regional Manager **RESPONDENT**

AND: British Columbia Wildlife Federation **PARTICIPANT**

BEFORE: A Panel of the Environmental Appeal Board
Loreen Williams, Panel Chair

DATE: Conducted by way of written submissions
concluding on August 3, 2010

APPEARING: For the Appellant: Linda Yaciw
For the Respondent: Maurice Lirette
For the Participant: Richard Daloise

APPEAL

[1] Linda Yaciw, the Appellant, appeals the March 5, 2010 decision of Mr. Maurice Lirette, Regional Manager of Environmental Stewardship and Parks and Protected Areas, Northern Region Peace (the "Regional Manager"), Ministry of Environment, denying Ms. Yaciw a five year permit to kill elk on her property (the "kill permit").

[2] The Environmental Appeal Board has the authority to hear this appeal under Part 8 of the *Environmental Management Act* and section 101.1 of the *Wildlife Act*. Section 101.1(5) of the *Wildlife Act* provides:

101.1(5) On an appeal, the appeal board may

- (a) send the matter back to the regional manager or director, with directions,
- (b) confirm, reverse or vary the decision being appealed, or
- (c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

[3] Ms. Yaciw seeks an order from the Board reversing the Regional Manager's decision, and granting her the requested kill permit.

BACKGROUND

[4] Ms. Yaciw owns property in the Peace River area of BC. Since 1995, she has operated a farm on which she breeds, raises and sells rare horse breeds (Cleveland Bay), as well as more common horses (Quarter Horses and Thoroughbreds). Although the numbers fluctuate, over the past year it appears that she had between 20 and 30 horses on her farm.

[5] Ms. Yaciw has encountered problems with wild elk on her property since she bought the farm, however, in recent years the problems have worsened. Among other things, the elk break down her fences in their search for food in the winter. They eat and/or contaminate the horses' food and minerals. When the fences are broken or weakened by the elk, her horses can and have escaped. She further alleges that, as a result of the close contact between the elk and her livestock, some of her horses have contracted lice. Ms. Yaciw fears that her livestock might also be exposed to diseases carried by the elk.

[6] On several occasions, Ms. Yaciw made complaints to the Ministry of Environment office in the Peace Region about the elk. On one occasion, Conservation Officers attended her property in the winter and chased away elk using snowmobile machines. On other occasions, Ministry staff have suggested various methods of trying to deal with the elk issue.

To reduce the number of elk on her property she has tried many different approaches. However, despite all of her efforts, the elk population continues to cause problems.

[7] On January 15, 2010, Ms. Yaciw completed and submitted a General Permit Application form to the Regional Manager seeking a kill permit that would allow her to shoot problem elk when needed over a five year period. Accompanying her permit form was an attachment outlining her reasons for seeking the permit. She stated that the permit was needed to reduce the size of the elk population in her area and to protect her livestock from harm caused by elk.

[8] A regional manager has the authority to issue a general permit for problem wildlife under section 19(1)(a) of the *Wildlife Act*. In this case, the permit sought by Ms. Yaciw was a "kill permit" under section 2(b)(ii) of the *Permit Regulation*, B.C. Reg. 253/2000.

[9] In his decision letter dated March 5, 2010, the Regional Manager denied Ms. Yaciw's application for a permit stating that:

In order to promote proper wildlife management, the Ministry of Environment currently has an open legal hunting season for elk. Furthermore, we also facilitate a booking service for hunters to access private land in order to re-direct hunting efforts to better manage wildlife population and reduce wildlife conflict on agriculture lands.

[10] Ms. Yaciw appealed this decision to the Board on March 14, 2010.

ISSUES

[11] The Panel has considered the following issue(s):

Whether Ms. Yaciw should be granted a five year permit to kill problem elk on her property under section 19(1) of the *Wildlife Act* and section 2(b)(ii) of the *Permit Regulation*.

RELEVANT LEGISLATION

[12] The following sections of the *Wildlife Act* are relevant to this appeal:

Property in wildlife

2 (1) Ownership in all wildlife in British Columbia is vested in the government.

...

(5) Despite anything in this Act, no right of action lies, and no right of compensation exists, against the government for death, personal injury or property damage caused by

(a) wildlife,

...

in British Columbia.

Permits

19 (1) A regional manager or a person authorized by a regional manager may, to the extent authorized by and in accordance with regulations made by the Lieutenant Governor in Council, by the issue of a permit, authorize a person

(a) to do anything that the person may do only by authority of a permit or that the person is prohibited from doing by this Act or the regulations, or

(b) to omit to do anything that the person is required to do by this Act or the regulations,

subject to and in accordance with those conditions, limits and period or periods the regional manager may set out in the permit and, despite anything contained in this Act or the regulations, that person has that authority during the term of the permit.

[13] The following provisions of the *Permit Regulation*, enacted pursuant to the *Wildlife Act*, are also relevant to this appeal:

Authorization by permit

- 2 A regional manager may issue a permit in accordance with this regulation on the terms and for the period he or she specifies

...

(b) authorizing a resident to hunt, trap or kill wildlife on his or her own property during the open or closed season, including by the use of poison, for the following purposes:

...

(ii) controlling wildlife populations

[Emphasis added]

[14] The following provisions of the Ministry of Environment's procedure entitled "*Management of Problem Wild Ungulates*", are also relevant to this appeal:

Short Term Approach

- 2.1 It is the responsibility of owners and/or operators to maintain agricultural practices that discourage the entry of wild ungulates into areas primarily used for agricultural purposes.
- 2.2 Where there has been acute damage and/or economic loss, and the cause has been identified as wild ungulates, one or more of the following may be implemented at the discretion of the person noted as responsible:
- a) fencing or relocation of product storage areas – operator is responsible;
- ...
- c) repellents, mechanical or acoustic scaring devices – operator is responsible with assistance from the Ministry of Agriculture, Fisheries and Food and/or the Ministry of Environment, Lands and Parks;
 - d) lure feeding – a cooperative program involving operators, local sportsmen's organizations and the Ministry of Agriculture/fisheries and Food and/or the Ministry of Environment, Lands and Parks;
 - e) removal of offending wildlife, non-migratory animals in particular, through shooting (season and bag limit extension, special season, kill permits) and/or relocation – Ministry of Environment, Lands and Parks Regional Manager or designate is responsible to recommend regulations.
- 2.3 Where preventive measures such as in 2.2 are not effective, or where a more immediate solution is required, the following may be applied:

2.3.1 In areas where it has been verified that wild ungulates are causing damage, kill permits may be issued by the Regional Manager or his designate, to qualified persons, if the producer has taken adequate preventive measure.

DISCUSSION AND ANALYSIS

Whether Ms. Yaciw should be granted a five year permit to kill problem elk on her property under section 19(1) of the *Wildlife Act* and section 2(b)(ii) of the *Permit Regulation*.

[15] Ms. Yaciw submits that the elk:

- break her fences, which both endangers her horses when they escape and adds additional labour and expense to her operation to repair and build fences;
- eat her horses' food and their salt and minerals; and
- have caused an infestation of lice on several of her horses.

[16] In addition, she states she had a pregnant mare who colicked last winter and, possibly to escape the pain, ran away. Ms. Yaciw was unable to follow her tracks in the snow due to the confusing number of elk tracks. The mare was found dead much later. She submits that, had the elk tracks been less in number, or non-existent, she may have been able to track the mare, take her to the veterinarian and save her and her foal's life.

[17] Ms. Yaciw is also concerned that the elk carry diseases that could be transmitted to her horses. She states that elk are known to carry brucellosis, TB [Tuberculosis] and chronic wasting disease.

[18] Ms. Yaciw has employed a wide range of measures to deter and/or control the elk, but they have not been effective; moreover, some of these measures have created additional problems. For example, in or around 2009, a Conservation Officer suggested that she change the feeding schedule for her horses. Specifically, in order to mitigate the loss of hay eaten by, or defecated on, by the elk, he suggested that she stop putting out several round bales every weekend and, instead, feed the horses at approximately 11 am every day, with only enough hay to last until about 5 pm. Since the elk tend to come around dusk and leave at dawn, he felt that that if there was no hay available during those hours, the elk would stop coming.

[19] As the modified feeding schedule conflicted with her full time employment, she made arrangements with her employer for an extended lunch hour. Ms. Yaciw explains that each weekday she makes the 25 km round trip in a truck that is "barely running", moves a bale from the stackyard to the "sacrifice area"¹, rolling it out (which she says is heavy, sweaty work), and returns to work. She explains

1. For most horse owners, a sacrifice area is a small enclosure, such as a corral, run or pen. It is called a sacrifice area because you are giving up the use of that small portion of land (as a grassed area) for the benefit of the rest of the pastures.

that, not only does she have to work longer hours at her office because of the extended lunch break, leaving her little or no time for errands and other farm chores, but the schedule has been detrimental to the health of her horses. She states:

As a result of this change of feeding schedule, my horses were unable to eat anytime they wished. (Horses use the digestive process to stay warm in the winter, as well – prior to Christmas we had temperatures down to 50 below.) The majority of my horses lost weight on this schedule, the Thoroughbreds lost the most weight.

[20] Based on the modified feeding schedule alone, Ms. Yaciw states that she has incurred direct economic losses. She states that her horses have lost value for resale due to low weight and poor health, and that this low weight has also resulted in reduced fertility. Regarding her Cleveland Bays she states:

My Cleveland blood horses are valuable animals, due in part to their rarity. Rare animals often have reproductive problems (that's why they're rare, in some cases). It takes a great deal of time, trouble, money, expertise, and heartache to produce my rare blood horses; they are not simply a matter of putting stallion to mare and producing a foal. Often, a foal is not produced despite my best efforts.

[21] Also because of the elk, she no longer leaves out mineral blocks and salt. She explains that the horses require salt and minerals to stay healthy, but a \$100 bucket of minerals that should have lasted 2 weeks was eaten in one night by the elk. Now she is concerned that this lack of minerals impacted the health of the foals born later that year.

[22] The modified feeding schedule also created other problems. Ms. Yaciw states that, "because they [the horses] weren't eating, the combination of boredom and hunger caused them to chew on my perimeter rail fences and the rails on my round pen." She says that she hasn't been able to work on the round pen as she is still trying to fix the barbed wire fences that were brought down by the elk. She was trying to fix those in the winter, at a time when she should have been breeding the horses. She also states that 30 horses escaped onto the road last winter because one of the rails came down completely.

[23] In addition to implementing the modified feeding schedule, Ms. Yaciw has also invited hunters onto her property to hunt the elk as recommended by Ministry staff. While she has had some success with this, she submits that there are many drawbacks to this strategy. She says that organizing the hunts is labour and time intensive, the hunters have not been reliable, having hunters on her property raises liability and insurance issues, and that having strangers on her land with loaded weapons raises concerns about her own personal safety and the safety of her tenant. She also believes that one of her mares miscarried due to the stress caused to it by a hunter who shot an elk just 20 feet away. The foal that was lost had been sired by a stallion with a very expensive stud fee; a very costly loss to her.

[24] Ms. Yaciw also states that hunters often leave a mess on her property, and that encouraging hunters to come onto her property raises "biosecurity" issues for

her farm. Under the *Farm Practices Protection Act* and according to the Canadian Food Inspection Agency, she states that farmers are expected to prevent devastating livestock and economic losses for the entire country, such as the “foot and mouth disease” (or hoof-and-mouth disease) outbreak that occurred in England. She states,

Many of the hunters I have spoken to travel from farm to farm during their time allotted for hunting.... It is very poor farm practice to allow a variety of people onto farm property, and is absolutely stupid to allow a variety of people onto farm property who are going from farm to farm like hunters.

[25] Ms. Yaciw has also:

- used a mechanical “banger” to scare elk away;
- trained a Great Pyrenees dog;
- used blood meal and blood meal with wolf scent at entrances to her property; and
- increased fencing in feeding areas.

[26] Despite all of her efforts, Ms. Yaciw submits that the elk continue to come onto her property, damage her fences, impact the health of her horses and cause economic loss to her horse farming operations. It is causing her a great deal of personal stress and she believes that a kill permit will be the only effective method for her to deal with the problem. She also submits that, as a result of all of the losses she has sustained, she may not make the annual profit needed to retain her farm status.

[27] In his materials, the Regional Manager outlined the questions that must be asked and considered before a kill permit may be issued, namely:

- Public safety concerns – is the applicant fully qualified to operate a firearm?
- Verification of loss – has the applicant provided documentation of acute economic loss?
- Best management practices – has the applicant adopted and maintained agricultural practices that discourage the entry of wild ungulates into areas primarily used for agricultural purposes, such as fencing of feeding and feed storage areas?
- Longer term solutions – are there other options for the control of wildlife population levels?

[28] In considering Ms. Yaciw’s application, the Regional Manager stated that he reviewed the information submitted and determined that:

- Ms. Yaciw did not supply the information needed to demonstrate her qualifications to possess and use a gun, the type of gun to be used, past hunting experience or a map of the area with buildings and shooting lanes. She also indicated that the elk were a problem at dusk which the Regional Manager noted was a concern since there is no hunting at night for safety reasons;

- the variety of techniques used by Ms. Yaciw to deter elk did not include the maintenance of agricultural practices such as the installation of a more secure fence to prevent elk from breaching the fence;
- the purpose of the application was to obtain a permit to reduce the elk population to protect livestock and facilities. Section 2 of the *Permit Regulation* does not allow for the issuance of permits to protect livestock and facilities – only for “controlling wildlife populations”;
- rather than issuing a kill permit, Ms. Yaciw could take advantage of the hunting opportunity on her own property in order to control the problem elk;
- alternatively, she could take advantage of the Ministry’s hunter booking service for farmers during hunting season as another method of elk control; and
- the Ministry’s long-term management plan for elk includes very liberal elk hunting seasons over a large area which included Ms. Yaciw’s property.

[29] For these reasons, the Regional Manager refused Ms. Yaciw’s application.

[30] In response to Ms. Yaciw’s submissions to the Board on this appeal, the Regional Manager submits:

- The Appellant’s concerns about disease and bio-security have been reviewed by the Ministry of Environment veterinarian who has determined that there is little or no concern about elk carrying the diseases identified by Ms. Yaciw. In the Regional Manager’s view, issuing a kill permit to prevent the spread of non-existent disease concerns would not be proper wildlife management.
- He does not accept the assertion that the presence of elk have caused poor health in Ms. Yaciw’s horses, such as wide spread lice infestations, and, more specifically, the premature birth and loss of a foal and the onset of colic and death of another horse.
- As a property owner, it is Ms. Yaciw’s responsibility to maintain agricultural practices that discourage the entry of wild ungulates into areas primarily used for agricultural purposes. He reiterates that a proactive solution to the elk problem would be to properly fence Ms. Yaciw’s stack yard and sacrifice area and/or facilitate scheduled/managed hunting on her property.
- It is the Government’s responsibility to manage wildlife and property owners should not be permitted to kill wildlife when it conflicts with their lifestyle or for financial reasons. Kill permits are “a measure of last resort” only. Further, the issuance of a kill permit in Ms. Yaciw’s case would not reduce the elk population in her area. The proper management of elk populations is through general species hunting seasons that provide elk harvest opportunity on both private and public lands over larger areas, which is what the Ministry has implemented for

the region (Management Unit 7-33). In this regard, he states: "With a hunting license and tag the appellant can presently shoot an elk on her property during the months of Sept, Oct, Dec, Jan and Feb."

[31] In reply, Ms. Yaciw acknowledges that it is unsafe to shoot at night. She says that she has her best opportunity to shoot elk for about an hour at dusk and dawn, and sometimes an opportunity in daylight when it is possible to shoot safely. She also does not understand what he (the Regional Manager) means by "section 2 cannot be used to protect livestock or facilities."

[32] Regarding obtaining her own license to hunt in the general season, she says that a kill permit is better because it allows her to shoot elk in November, not just from December to February, and would allow her to kill more than one elk if necessary. She advises that she would not kill lactating cows.

[33] Regarding the hunter booking service, Ms. Yaciw explains that she usually discovers elk after she gets home from work, i.e., after 4:30 pm. By then, the booking service is not available as the Ministry of Environment office is closed and, depending on the time of year, it could already be dark by the time that hunters could be called and arrive. In addition, if she discovers elk on a weekend, the office would be closed. She states, "I need to be able to help myself at the time of need and not depend on others who, even if their help is utilized, is generally not *timely*." [Emphasis in original]

[34] Regarding inadequate fencing, Ms. Yaciw explains that her feed storage area is fenced. She states further, "I do fence my stackyard and have an electric wire, but I do not fence my sacrifice area or the rest of the quarter with anything other than rails and barbed wire. I meet the definition of "normal farm practice" [under the *Farm Practices Protection (Right to Farm) Act*] and should therefore not be expected by the Ministry of Environment to install fencing that I cannot afford and the expense of which would put my continued farm ownership in jeopardy."

[35] Ms. Yaciw argues that the elk population, which is the property of the Government under section 2 of the *Act*, is not being effectively managed or controlled in her area by the Ministry of Environment. She says that the Ministry's implementation of an expanded hunting season on elk is not reducing the elk population sufficiently. She concludes, "I feel if nuisance wildlife stresses me to the breaking point, and/or put me out of the farming business, then Government has not managed wildlife properly at my farm." She states that she has no more money for fencing, and there are currently no government programs to assist her financially.

[36] Ms. Yaciw points out that the Regional Manager's statement that property owners should not be given a kill permit based on "lifestyle/job-style or financial reasons" is contradicted by the wording of the Ministry's own policy "*Management of Problem Wild Ungulates*." Section 2.2 states that where there has been "acute damage and/or economic loss", and where preventative measure for reducing wildlife conflicts are not effective, or a more immediate solution is required, then section 2.3.1 states: "kill permits may be issued by the Regional Manager ... to qualified persons" Ms. Yaciw submits that she has taken as many preventive

measures as she is capable of. The only reasonable option for the Ministry is to remove offending wildlife itself, which it has not offered to do.

[37] Therefore, Ms. Yaciw believes that a permit to allow her to shoot problem elk when necessary is now required. She states that, since she cannot provide fencing that will keep elk out and hunters are also unable to keep elk out, we are at "the last resort" and the Board should issue the permit so that she can exercise her right to farm. She submits:

Unless you are ACTUALLY in the position of having to maintain and care for 28 animals yourself, on your own budget that is already inadequate due to lack of livestock sales during this recession, with absolutely no wiggle room to provide for freeloading elk or fencing, all of you cannot properly know how desperate this situation is. I *must* keep the elk away this winter, or my horses will starve, because I cannot buy extra hay to allow for hay losses by elk.

[38] She states that she is prepared to take all necessary training in the use of firearms and hunting techniques.

[39] On June 8, 2010, the Board permitted the limited participation in the Appeal by the British Columbia Wildlife Federation (the "BCWF") on the following issues:

- "the impact that the granting of licenses to landowners to kill nuisance wildlife on their property will have on its membership" and,
- "the BCWF may have useful information respecting the impact that this activity may have on the elk population that would otherwise be available for harvest by BCWF membership".

[40] On behalf of the BCWF, Mr. Daloise received copies of Ms. Yaciw's and the Respondent's submissions and made the following points:

- Wildlife-human conflicts must be prevented wherever possible and managed by the implementation of "best management practices", in this case meaning the installation of 6 or 7 foot high-tensile fences to exclude elk from feeding areas.
- BCWF shares in the responsibility for managing wildlife populations and supports increased resident hunting opportunities to control problem wildlife in agricultural areas.
- If a kill permit is issued in this case it could lead to the killing of every elk in Ms. Yaciw's vicinity and create a "population sink", reducing the number of elk available for recreational hunting for all resident hunters and BCWF members.
- The BCWF is concerned about the precedence [sic] that may be set if granting such permits become a standard practice. Mr. Daloise states that "...other landowners may turn to the Ministry for a 'kill permit' before they attempt any best management practices to resolve or minimize damage from wildlife conflicts."

[41] Ms. Yaciw disagreed with the submissions of the BCWF.

The Panel's Findings

[42] The Panel appreciates and acknowledges all of the time and effort expended by the Appellant in compiling her informative and comprehensive submissions in this appeal. In trying to protect her horses and operate this business on her own, it is clear that the Appellant is facing enormous obstacles.

[43] The Appellant has elected to operate her horse farm in a relatively remote area of British Columbia in which wildlife populations abound. The Panel recognizes the formidable spirit such an enterprise requires and sympathizes with the difficulties the Appellant has faced in her horse farming operations due to the incursion of elk on her property. The question for the Panel is whether a kill permit should be issued to deal with these elk.

[44] The Panel agrees with the Respondent that a kill permit should only be issued as a "last resort". It gives the permit holder a significant amount of discretion as to when and how many of the Province's animals will be killed. At its extreme, it could be used to eliminate an entire herd of animals.

[45] The Panel has considered the Ministry's "short-term approach" for the management of problem ungulates as set out in sections 2.1 and 2.2 of its policy on the *Management of Problem Wild Ungulates*. The policy identifies certain preventive measures to be taken such as appropriate fencing or relocation of product storage areas before a kill permit may be issued, and states that such measures are the responsibility of an owner and/or operator.

[46] Under section 2.3.1 of the policy, it is only when such preventive measures are found to be ineffective that the Regional Manager may consider issuing a kill permit. The Panel finds the approach outlined in the policy a reasonable one.

[47] The Appellant says that she meets this policy as she has done everything she is reasonably capable of doing and nothing has worked. In fact, in some respects, her situation has worsened (e.g., the impacts of the modified feeding schedule).

[48] However, the Panel finds that the Appellant has not protected the horses and their food with adequate wildlife-proof fencing. The measures taken by the Appellant to exclude elk from the areas of her property where feed is stored, and the horses are fed, have not been sufficient. For personal financial reasons, and an inability to access governmental financing programs, she has not installed a fence which the Panel finds would prevent the elk from causing harm to the horses and economic loss to Ms. Yaciw's horse farm operation.

[49] The Panel understands that such fencing is expensive and that the Appellant's evidence is that she cannot afford such fences, nor does she have the time to construct them herself. The Panel has also considered the Appellant's submissions that her current fencing conforms to "normal farm practice". It is very difficult to determine what might constitute "normal" fencing in these circumstances. Even if her current fences could be described as normal fencing for some types of farms, her farm is not "normal" either in terms of what she "farms" or in terms of the type of animal that must be excluded to protect her livestock.

[50] In her submissions, the Appellant states that many of her horses are "rare" and "valuable". She is located in a remote area with what appears to be an expanding elk population. Her rare blood horses, she says, are particularly sensitive to "reproductive problems". Given the extensive concerns about her horses, their health and well-being, her concerns about losing her business and her "farm status", the Panel is of the view that this situation calls for fencing that is more resistant to wildlife than might be required of a fence that conforms to the "normal farm practice" standard. Considering all of the Appellant's concerns with the elk, elk-proof fencing would provide the best deterrent to the elk in both the short and long term. At the very least, an elk-proof fence around her sacrifice area would reduce her loss of hay and minerals and would provide a "safe zone" for her horses.

[51] Even if this is not possible for her, there is still another option available which has not been utilized: a general hunting license. The Panel is of the view that, before moving to the extraordinary step of issuing a kill permit, the Appellant should first try hunting elk on her property using hunting licenses and tags. In a written communication dated August 23, 2010, Ms. Yaciw informed the Board that she has obtained a Possession and Acquisition License and has completed her Conservation and Outdoor Recreation Education course. These qualifications should allow her to apply for a hunting license for elk. Although Ms. Yaciw was concerned that these licenses are only available from December to February, the Regional Manager has stated in his submissions that there are also licenses available in September and October.

[52] The Panel acknowledges that obtaining her own hunting license is not a perfect answer to her elk problems. As long as there are elk in the area, there is every likelihood that the elk will continue to enter her property because there are fences that allow them to do so, and there is food on the property. However, instead of relying upon other hunters to come and hunt on her property, obtaining her own general hunting license will provide the Appellant with the more timely response that she seeks in some cases. It will not allow the killing of unlimited elk, but according to the Appellant, this is not her intent. She acknowledged that even a kill permit would not solve all of her elk problems. In her letter to the Regional Manager requesting the permit, the Appellant states, "Although I am applying for a permit to be able to shoot them, I don't expect that I will make much of a difference to the elk population. However, it might be a useful tool in relieving me of dangerous situations when elk challenge my horses for feed or space." Further, in her submissions to the Board she submits that any reduction is a help and that if she shoots one animal, it may scare the rest of the herd into staying away from her farm for awhile.

[53] Given that her apparent intent is not to eliminate the herd, rather to use it as a tool to "scare them away, or to deal with a particular dangerous situation", the Panel is of the view that it is reasonable to require the Appellant to apply for a hunting license to allow her to kill elk on her property before resorting to a kill permit. If this is not sufficient, she is one step closer to trying all options as set out in the Ministry's policy.

[54] In addition to her own hunting, the Respondent also suggests that she continue to take advantage of the Ministry's hunting booking service. The Panel understands the Appellant's issues with this method of control. Those issues include personal safety, the additional work it creates for her, the lack of a timely response to her immediate need, as well as insurance and liability issues. These are all valid concerns. However, the question for the Appellant will be whether these are bigger problems for the Appellant than those caused by the elk.

[55] This has been a very difficult decision for the Panel. The Appellant's submissions clearly express her love of the horses, her frustration with the elk and her general exhaustion resulting from trying to do everything herself. The Panel appreciates that the Appellant has implemented the suggestions of Ministry staff and has tried to deal with the elk as best she can. However, for her business to survive in this location, even a kill permit will not solve all of her problems unless, of course, it is used to eliminate all of the elk from the area. This would not be in the best interests of the public or in the management of the public's wildlife resource and, according to the Appellant, it is not her intent.

[56] Ultimately, the problem for the Appellant is that the elk are enticed by readily available food and are acting predictably when they come onto her property. Before making them pay with their lives, it is reasonable to require the property owner to undertake additional preventive measures before issuing a kill permit—even if the kill permit has severe conditions/restrictions included. Until other reasonable preventive measures are implemented (as above), the Panel finds that a kill permit should not be issued.

[57] Finally, the Panel notes that the Appellant has not been satisfied with the Ministry's efforts to date. However, the evidence before the Panel is that the Regional Manager has attempted to provide assistance by establishing a hunter booking system that can direct hunters to her property when requested, has on one occasion sent officers to scare the elk away with a mechanized vehicle, has made suggestions for scheduled feedings to reduce the amount of feed available for elk, and has created an expanded hunting season for elk in her area. It is hoped that the Regional Manager will continue to provide the Appellant with assistance in managing and controlling problem elk and/or deer on her property as he is able and is authorized to do under the *"Management of Problem Wild Ungulates"* policy.

DECISION

[58] The Panel has carefully considered all the evidence before it, and the submissions of the parties, whether or not specifically reiterated herein.

[59] For the reasons stated above, the Panel finds that the Regional Manager appropriately exercised his discretion in denying Ms. Yaciw a kill permit.

"Loreen Williams"

Loreen Williams, Panel Chair
Environmental Appeal Board

October 1, 2010