

IN THE MATTER OF THE
FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT, RSBC 1996, c. 131
AND IN THE MATTER OF A NOISE COMPLAINT
ARISING FROM THE OPERATION OF A SMALL MIXED FARM
IN DUNCAN, BRITISH COLUMBIA

BETWEEN:

DAN FEEHAN

COMPLAINANT

AND:

DAN FERGUSON

RESPONDENT

AND:

DISTRICT "A" FARMERS INSTITUTES & COMMUNITY AGRICULTURE ASSOCIATIONS

INTERVENER

AND:

COWICHAN AGRICULTURAL SOCIETY

INTERVENER

DECISION

APPEARANCES:

For the British Columbia
Farm Industry Review Board:

Suzanne K. Wiltshire, Presiding Member
Sandi Ulmi, Vice Chair
Honey Forbes, Member

For the Complainants:

Dan Feehan

For the Respondent:

Jennifer Spencer, Counsel
Dan Ferguson

For the Interveners:

David Thompson, President District "A" Farmers
Institutes & Community Agriculture

David Wiebe, Vice-president Cowichan Agricultural
Society

Date of Hearing

June 22, 2010

Place of Hearing

Duncan, British Columbia

INTRODUCTION

1. The Farm Industry Review Board (BCFIRB) is a specialised administrative tribunal established under the *Natural Products Marketing (BC) Act*, R.S. B.C. 1996, c. 330. As part of its mandate, BCFIRB hears complaints about farm practices.
2. Under the *Farm Practices Protection (Right to Farm) Act* R.S.B.C. 1996, c. 330 (the *Act*), a person who is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, may apply to BCFIRB for a determination as to whether the disturbance results from a normal farm practice. If, after a hearing, a panel of BCFIRB is of the opinion that the odour, noise, dust, or other disturbance results from a normal farm practice, the complaint is dismissed. If the panel determines that the practice is not a normal farm practice, the panel must order the farmer to cease or modify the practice.
3. This complaint was initiated by Dan Feehan by way of a letter to BCFIRB dated February 17, 2010.
4. The respondent, Dan Ferguson, owns Dragonfly Farm on Vaux Road in Duncan. He was represented by counsel, Jennifer Spencer at the hearing.
5. The Cowichan Agricultural Society (CAS) and the District “A” Farmers Institutes & Community Agricultural Associations of BC’s Coastal Islands Region (District A) applied for, and were granted intervener status.
6. Robert Kline, P. Ag, was engaged as a knowledgeable person by BCFIRB under section 4 of the *Act* and was subsequently called as an expert witness at the hearing.
7. The matter proceeded to hearing on June 22, 2010, in Duncan, BC. In the morning, before the commencement of the hearing, the panel visited the neighbourhood where the properties are located in order to place the complaint in context geographically. Each party was present on their respective property during the site visit.

ISSUES

8. The following issues were identified at the April 8, 2010 prehearing conference:
 - a) Is the complainant aggrieved by noise generated from the guinea fowl and all other poultry on the Ferguson operation?
 - b) Is the complainant aggrieved by the uncontained birds that migrate onto his property from the Ferguson property?
 - c) If so, are the noise and the uncontained poultry from the Ferguson operation in accordance with normal farm practice?

9. At the hearing, Mr. Feehan confirmed he had withdrawn the complaint regarding noise from a donkey mentioned in the initial complaint.

BACKGROUND

10. The respondent, Dan Ferguson owns Dragonfly Farm, a property of 13.53 hectares (33.43 acres) on Vaux Road in Duncan. The farm, which is run as an integrated small mixed farm within the Agricultural Land Reserve (ALR), has been in his family since the late 1960's. The farm specializes in greenhouse vegetable production including spinach, swiss chard and mixed greens grown in four greenhouses, and a small area of field production. Mr. Ferguson also raises lamb and poultry. The farm output is sold to farmers markets and restaurants in the Victoria and Cowichan Valley areas. Recently his markets have expressed interest in purchasing guinea fowl and Mr. Ferguson is considering increasing his flock to produce up to 500 birds annually.
11. Dragonfly Farm has numerous animals including sheep, donkeys, chickens and roosters, guinea fowl, turkeys and ducks. The sheep and donkeys are pastured during the day, but are contained nightly in a main barn located on the northeastern part of the property bordering Vaux Road. The birds are contained in a fenced area of approximately five to six acres to keep them away from the greenhouses for bio-security reasons. They are housed nightly in three small coops just below the main barn and in sight of the Ferguson residence, but have free run of the pasture area during the day. The farm uses the manure as a soil amendment and organic nutrient source for its vegetable production.
12. The complainant, Dan Feehan, resides across Vaux Road from the Ferguson farm on a property which is in the ALR. The Feehan residence is situated on top of a slope somewhat above the pasture of the Ferguson farm where the birds are located and between 40 and 100 meters away from the pasture, coops and main barn. There is a partial barrier of deciduous trees on the Feehan property between it and Dragonfly Farm somewhat blocking the view of the farm from the Feehan residence.

PRELIMINARY ISSUE – JURISDICTION

13. Before the commencement of the hearing, Michelle Connerly, wife of the complainant Dan Feehan, raised the issue of BCFIRB's jurisdiction to hear this complaint on the basis that guinea fowl are not farm animals within the protection of the *Act*. Specifically, Ms. Connerly questioned whether guinea fowl are considered exotic animals or whether they fall within "partridge species, pheasant species, quail, silkie and squab" under the *Specialty Farm Operations Regulation*, BC Reg. 53/99.
14. Mr. Ferguson submits that guinea fowl are animals over which BCFIRB has jurisdiction pursuant to the *Act* where the guinea fowl are raised as part of a farm operation. His counsel provided evidence and argument in support of this position which is reflected in our reasons below.

15. In the course of the hearing, Mr. Feehan indicated he was no longer questioning BCFIRB's jurisdiction. In his subsequent written submissions, Mr. Feehan stated that after reading the respondent's submissions with respect to jurisdiction he had come to the conclusion that BCFIRB has jurisdiction under the *Act* over guinea fowl.
16. Despite the fact that Mr. Feehan no longer raises a question as to jurisdiction, since jurisdiction is a threshold issue, the panel has addressed this issue. The panel concludes that it has jurisdiction under the *Act* with respect to the guinea fowl raised by the respondent for the following reasons:
 - The *Act* defines "farm operation" to include "growing, producing, raising or keeping animals". While animals are not defined under the *Act*, as noted by the respondent provincial legislation both under the *Agriculture and Produce Grading Act* and the *Meat Inspection Regulation* under the *Food Safety Act* include guinea fowl in their definition of poultry. Federally, the *Livestock and Poultry Carcass Grading Regulations* under the *Canada Agricultural Products Act* also include guinea fowl in the definition of poultry. Since the principles of statutory interpretation require the *Act* to be interpreted broadly and harmoniously with other agricultural legislation, we conclude that guinea fowl, being commonly accepted as poultry, a regular farm animal, fall within the context of domesticated farm animals and are afforded protection under the *Act*.
 - Even if we were to consider domesticated guinea fowl to be an exotic animal, which we do not, we conclude the raising of guinea fowl would still fall within the definition of "farm operation" as a prescribed type of exotic animal under the *Specialty Farm Operations Regulation* which lists "partridge species, pheasant species, quail, silkie and squab" as exotic animals subject to "right to farm" protection. While the scientific community appears divided as to whether guinea fowl are in the pheasant family (*phasianidae*) or an offshoot from it (*numididae*), both are unanimously placed in the order *galliformes* which the Encyclopedia Britannica defines as fowl-like or chicken-like birds. We conclude that domesticated guinea fowl, similar to other domesticated poultry such as chickens and turkeys which fall into the pheasant family, can be considered a "pheasant species" for the purposes of the *Act* and BCFIRB therefore has jurisdiction under the *Act* where guinea fowl are raised as part of a farm operation.

KNOWLEDGEABLE PERSON

17. BCFIRB engaged Robert Kline as a knowledgeable person to view the two properties and prepare a report. Mr. Kline is a Professional Agrologist presently employed by the BC Ministry of Agriculture and Lands as a Regional Agrologist. He has a BSc in Agriculture, Soil Science from The University of British Columbia. He has extensive experience and in his present position provides advice on agricultural planning, policy, farm practice and environmental issues to 13 communities as well as advice and technical reports to the Agricultural Land Commission and Ministry briefings.
18. The panel qualified Mr. Kline as an expert in agrology with soil science and farm practice expertise.

19. Mr. Kline visited both the Feehan and Ferguson properties on the afternoon of April 13, 2010 and his report was supplied to all parties on May 18, 2010.
20. Mr. Kline did not attempt to measure noise levels during the site visit. However, he noted that during his visit to the Feehan residence he did not notice any noise of the guinea fowl while talking in the house; however, the flock did “sound off” while he was taking a tour of the farm. He stated that the flock of nine to ten birds was “relatively noisy”. The experience verified to him that guinea fowl have a strong sense of territory and use loud cries as an alarm.
21. Mr. Kline stated that while Dragonfly Farm’s main business is direct marketing of vegetables, the guinea fowl and donkeys contribute value to the farm business mainly as a predator alarm and deterrent. He noted that Dragonfly Farm is right next to a provincial park so wildlife such as cougar, bear and mink may move through the farm and it is important to protect the poultry and animals. He stated that it is normal practice to use the inherent qualities of different animals for the good of the other animals on a mixed farm.
22. In his report, Mr. Kline described the terrain on the Dragonfly Farm as having a considerable portion of the farm area in wetlands or riparian areas interspersed with gravel ridges. In his opinion, the gravelly ridges would be better sites for poultry production than their present wetter location; however, the area would then have to be fenced which would reduce some of the larger free run areas which guinea fowl seem to need to seek out insects. Mr. Kline indicated that while moving the guinea fowl to this area would help to reduce the noise to the Feehan and other residences along Vaux Road, it would move them closer to another residence just east of the Ferguson property. He also noted that this area is confined by wet marshy soil conditions and a pond so there is limited area that is really suited to free-range type pasturing of the guinea fowl and other poultry.
23. Mr. Kline noted that the BC Ministry of Agriculture and Lands has no specific guidelines on free-range guinea fowl management practices, or on the use of farm animals for their audible alarm attributes. The Ministry does, however, have guidelines for audible scare device management for bird predation for south coastal British Columbia, such as the use of bird scare propane cannons. Mr. Kline stated that comparing the guinea fowl to an audible bird scare device is the only comparison that he could make using ministry guidelines.
24. Mr. Kline’s opinion is that most farm practices on this farm fall within the range of commonly accepted practices of farms of similar size and form. He suggested that the location of the poultry coops could be improved by moving them to the better-drained location either further up the ridge just south of their current location, or further south of the main barn. He noted that this location would be about 100 meters from Vaux Road and would comply with the Ministry of Agriculture recommended property line setback distances that are used for other audible alarm systems, such as bird scare propane cannons.

25. Mr. Kline's recommendations to BCFIRB are to:
- a) consider requesting Dragonfly Farm relocate poultry coops to a drier part of the property by the barn and fence off the lower pasture by Vaux Road for (sic) use by poultry, and;
 - b) consider requesting Dragonfly Farm submit a farm management plan to identify containment and pasture areas that incorporate a setbacks (sic) that would effectively reduce noise impacts of Guinea Fowl, and;
 - c) consider requesting the submission of a farm plan identifying where a 500 Guinea birds/year operation facility and pasture would be located on this property.

POSITION OF THE COMPLAINANT

26. The complainant, Dan Feehan, states that as a result of the disturbance caused by the respondent's poultry he is unable to live free from noise and in peace to enjoy his home and yard. He finds the noise unbearable and intolerable and believes no one should have to endure it. Mr. Feehan would like the respondents to extend some reasonableness towards their neighbours and make an effort to mitigate the noise and disturbance caused by their birds.
27. Mr. Feehan maintains that the noise from the guinea fowl is a torment to him and his wife and causes them great suffering. He states that he had become accustomed to the tranquility of the neighbourhood before the Fergusons began to farm and keep donkeys, roosters, peacocks and guinea fowl, but now has to sleep with a sound machine on to quiet the sound of roosters and that sometimes he cannot hear his children talking to him and also has to turn up the sound on the television. In his view, Mr. Ferguson has demonstrated complete contempt for him by "staging peacocks under his window" and then raising guinea fowl whose noise invades his home and destroys his privacy. At times he must leave his home to get a break. He states that sheep would be acceptable to him, as they do not make as much noise.
28. Mr. Feehan states that the unique topography of his property seems to be a big part of the problem. The Ferguson farm is located in a hollow below the Feehan home and Mr. Feehan feels that the sound is accentuated as it moves up and is amplified in the process creating an intolerable situation. The Feehans provided the panel with a recording of a number of sound clips of the guinea fowl sounds to demonstrate the noise these birds make.
29. Mr. Feehan cites BCFIRB rulings which have stated that normal farm practice means the existence of practices showing some threshold of consideration for one's neighbours. He states that Mr. Ferguson has not taken any steps whatsoever to mitigate the problem he faces and in fact, is threatening to make it worse.
30. Mr. Feehan stated in his submission how painful and disturbing it was for him, who had never killed a thing in his life, to have been put into the position of having to cull the nuisance peacock pests from the Dragonfly Farm that were marauding on his land and destroying his crops.

31. Mr. Feehan says that over a five year period he has contacted numerous organizations, including the Royal Canadian Mounted Police, the Society for the Prevention of Cruelty to Animals, the Cowichan Valley Regional District, the Ministry of Agriculture, Fish and Game and others, to seek a solution to this noise problem but has found no satisfactory solution.
32. Mr. Feehan claims that no-one could understand the severity of the noise problem if they had not experienced it from his porch and that those speaking in support of Dragonfly Farm have never experienced the noise as he must endure it.
33. Further, Mr. Feehan maintains that he has offered Mr. Ferguson hundreds of dollars to stop the assault on his family, to no avail.
34. Michelle Connerly, wife of Dan Feehan, told the panel that she works shift work and the noise of animals on Dragonfly Farm such as roosters, donkeys and guinea fowl interrupt her sleep as there is no sound proofing between the two properties. She states that the unpredictability of the noise is a big factor as it can be silent for a time and then shrieking assaults occur which cause her headaches and a sense of panic. Ms. Connerly says that she and Mr. Feehan approached the Fergusons about her sleep being interrupted but were surprised at their lack of consideration.
35. Ms. Connerly states that during the month of June she saw the guinea fowl wandering on Vaux Road several times, but notes that the birds did not come onto their property.
36. Donnamarie Jurick, a candidate to become a real-estate appraiser, states that she has heard the guinea fowl regularly at the Feehan residence and experienced their loss of use and enjoyment of their property due to the negative influence of the guinea fowl noise. Ms. Jurick maintains that the noise would lessen the marketability and lower the market value of the Connerly/Feehan home.
37. Mr. Feehan introduced into evidence three letters - from a friend, a roofing worker, and his closest neighbour - all confirming how invasive and disruptive the sound of the guinea fowl is to the Feehans.
38. Mr. Feehan asks that the panel accept Mr. Kline's recommendation to move the bird coops to a different location as a solution to the noise problem and argues that this would be a "win-win" solution.

POSITION OF THE RESPONDENT

39. Dan Ferguson states that he is farming a small mixed farm on land that is marginal. He uses an integrated approach to make best use of all areas of the land and attempts to use best farming practices. He follows organic principles for the lamb, guinea fowl, turkeys, ducks and greens he raises. He has an Environmental Farm Plan in place and is in the 70-80th percentile for his management practices. He belongs to numerous organizations to keep abreast of best farming practices.

40. Mr. Ferguson argues that the birds are located where they are because this is the best area for them. The site allows the family to intervene if there is predation of the flock, and is also the best location for forage, dry ground and availability of water and electricity. It also keeps the poultry away from his vegetable crops which is important for bio-security.
41. In response to the Feehan's complaints, Mr. Ferguson notes that he has heeded the advice given in 2004 by Wayne Haddow, an agrologist with the BC Ministry of Agriculture and Lands, and done several things to mitigate the noise problem:
 - a) moved the coop as far from the property line as possible within the site suitable;
 - b) turned the poultry coop 90 degrees so the door faces away from the Feehan residence;
 - c) puts the guinea fowl in the coop each night at dusk;
 - d) keeps the guinea fowl in the coop until 9:00 am each morning;
 - e) planted an evergreen border of cypress trees along the property line between Dragonfly Farm and the Feehan residence;
 - f) improved fencing and installed a gate across the driveway to contain the animals;
 - g) pinions the guinea fowl to keep them within the pasture;
 - h) added two additional donkeys to prevent the solitary donkey from braying;
 - i) installed cross fencing for the donkeys;
 - j) did not replace the peacocks and peahens because of the noise they make.
42. Mr. Ferguson provided the panel with a video showing decibel readings he took of the bird noise both inside and outside the coop. The readings varied from approximately 70 decibels outside the coop up to almost 100 decibels inside the coop after the birds had been disturbed.
43. Margaret Thompson, BC representative for Rare Breeds Canada was qualified as an expert in breeding and raising game birds for meat in a small mixed farm environment. She maintains that Mr. Ferguson is using good farming practices. She does not think the suggestion of Mr. Kline to move the coops is practical as other areas are unsuitable for the birds because of the terrain and soil conditions, and the lack of space and forage. She states that she is impressed at how all parts of the farm contribute to the whole.
44. Allison Ryan, chef at Spinnaker's restaurant in Victoria, states that she purchases greens from Dragonfly Farm and would purchase guinea fowl if she could get them. She cites the growing emphasis on buying and using local foods and maintains that people like to try something new and she would like to have guinea fowl on her menu.
45. Alison Shiel, a neighbour living on Vaux Road across the street from the Ferguson farm, has lived at her present residence for 30 years. She states that she can hear the guinea fowl from Dragonfly Farm and can also hear the turkeys and roosters which make about the same amount of noise, but it doesn't bother her; she accepts this as background noise. Ms. Shiel introduced into evidence a letter of support for the Fergusons signed by 19 neighbours that live in the vicinity of Dragonfly Farm, and another signed by an additional 10 people. She states that she is proud of how the Fergusons farm.

46. Mr. Ferguson seeks dismissal of the entire Feehan complaint on the grounds that he is carrying on a farm business using normal farm practices and should be afforded protection under section 2 of the *Act*.

SUBMISSION OF THE INTERVENERS

District “A” Farmers Institutes & Community Agriculture Associations of BC’s Coast Islands Region (District A)

47. District A, comprised of all 12 Farmers’ Institutes on Vancouver Island, the Gulf Islands and Powell River and representing over 600 farms, intervened on behalf of Dragonfly Farm. It states that Dragonfly Farm is a small scale diversified farm maintaining high standards. It notes the fact that the farm has an Environmental Farm Plan in place which is a program that helps farmers practice due diligence as required by regulations and use best farm practices.
48. District A does not support the recommendation from Mr. Kline to move the coops to another area as this does not take into account that the birds must be close to the Ferguson residence for swift action in case of predation.
49. District A notes the fact that guinea fowl do best as free range poultry and need large areas to forage properly. One of their advantages is the fact that they reduce insect pests on the farm. In addition, they act as a natural audible warning system for predators to keep all the poultry secure. Combined with the donkeys, this intermingling of livestock and poultry is a beneficial practice for small scale farming operations creating a natural symbiosis which benefits all the birds and animals.
50. District A also argues that regulations such as the 100 meter setback suggested in the knowledgeable person’s report for audible alarm systems relate to large commercial scale farms and are not appropriate in the situation of a small mixed farm.
51. District A further argues that sound readings taken by Dan Ferguson did not go above 70 decibels at the fence line and 100 decibels inside the coop when the birds “sounded off”. This is well within normal sound levels for poultry operations and below acceptable sound levels for turkey operations – all of which are considered normal farm practices.
52. District A states that it does not believe that this issue is a matter for complaint as Dragonfly Farm is carrying on normal farm practices and is operating within the ALR where farming is recognized as the priority use.

Cowichan Agricultural Society (CAS)

53. The CAS, comprised of 60-70 farming members in the Cowichan Valley, supports Dan Ferguson’s right to operate a diversified farm in the manner he chooses, within the law. It believes that each aspect of the farm contributes to a solid, reasonable, normal farm within the guidelines of best farm practices and land use regulations and that no aspect of the farm can be disregarded as not being a primary source of income.

54. CAS argues that the farmer is the one best able to make decisions on his farm and while good relationships between neighbours are important, a neighbour cannot be allowed to dictate management practices. If this were the case, all farmers would be put into the untenable position of having to justify any actions found offensive by neighbours.
55. CAS strongly believes that specific management decisions are best left to the farmer and finds it troubling that Mr. Ferguson has had to justify his farming practices at considerable expense in time and money.

DECISION:

56. A complaint under the *Act* involves a two-step analysis. The panel must first be satisfied that the complainant is aggrieved by odour, dust, noise, or some other disturbance emanating from a farm operation. If the complainant fails to establish that he is aggrieved, the complaint is dismissed without need to consider whether the alleged source of the grievance results from a normal farm practice. If however, the panel finds that the initial threshold question is met, it must go on to make a determination as to whether the grievance results from a normal farm practice.

57. Section 1 of the *Act* defines “normal farm practice” as follows:

"normal farm practice" means a practice that is conducted by a farm business in a manner consistent with

(a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and

(b) any standards prescribed by the Lieutenant Governor in Council, and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

58. In various decisions, BCFIRB has considered the meaning of “normal farm practice” and “proper and accepted customs and standards as established by similar farm businesses under similar circumstances”. In determining whether a complained of practice falls within the definition of “normal farm practice”, the panel generally looks to whether it is consistent with “proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances”. This analysis involves an examination of industry practices but also includes an evaluation of the context out of which the complaint arises. This evaluation may include factors such as the proximity of neighbours, their use of their lands, geographical or meteorological features, types of farming in the area, and the size and type of operation that is the subject of the complaint.
59. In this case, the panel is satisfied that the Complainants have met the initial threshold of demonstrating that they are aggrieved by the noise of guinea fowl and roosters from Dragonfly Farm. The proximity of the Feehan home to the source of the noise and the ongoing nature of their complaints demonstrate sufficient personal interest in the subject

matter of the complaints. Having found the threshold question met on this issue, the panel must determine whether the noise results from normal farm practice.

60. The complainants have introduced little evidence with respect to “normal farm practice” of similar farms in similar circumstances. Their main submissions are that they are being aggrieved by the noise caused by the guinea fowl and rooster on Dragonfly Farm and that the farmer should fix the noise problem that bothers them.
61. There were no expert sound tests carried out. While the topography of the Feehan property may amplify the noise coming from Dragonfly Farm, the panel finds the evidence overall insufficient to establish that fact. The panel notes the evidence that without the noise of the guinea fowl and rooster the value of the Feehan home might be greater. The panel also acknowledges that it is distressing for Ms. Connerly to experience sleep interruptions during the day and that the level of noise experienced by the family from their home may be somewhat disruptive. However, the issue before this panel is whether Dragonfly Farm is operating in accordance with “normal farm practice”.
62. Regarding normal farm practice, the panel had the benefit of hearing from others in the industry including David Thompson representing District A; Margaret Thompson, an expert in raising game birds; and David Wiebe representing CAS. Each of these witnesses, representing over 600 farms, testified that the farming methods and the siting of poultry coops on Dragonfly Farm is normal farm practice.
63. Based on the evidence presented and the testimony of those familiar with normal farm practices of farms in similar situations, the panel has concluded that Mr. Ferguson is carrying on a farm business and is using normal practices for a small mixed farm. We accept the evidence of Margaret Thompson who states that every part of the Dragonfly Farm is helping every other part and the practices being used on the farm are “perfectly acceptable”. This was also the conclusion of David Thompson representing District A, who stated that Dragonfly Farm is being put to its best use the way it is being used and that of David Wiebe of CAS, who noted Mr. Ferguson’s consistently good farming practices. We also note that Mr. Kline, the knowledgeable person, stated that most farm practices on this farm fall within the range of commonly accepted practices of farms of similar size and form.
64. There was discussion during the hearing regarding the use of the guinea fowl and whether they were simply audible scare devices for predators or being grown as an economic benefit to the farm. In the opinion of the panel, either use for the birds is within normal farm practice as both contribute to the overall benefit and economic success of the farm.
65. Contrary to Mr. Feehan’s claim that the farm has done nothing to mitigate the noise problem, we find that Mr. Ferguson has made numerous efforts to diminish the noise coming from his farm. We commend Mr. Ferguson for these efforts; however, we suspect that no efforts on his part will satisfy the complainants, other than to get rid of all of his animals with the exception of his sheep, which Mr. Feehan states he would accept.

66. We do not accept the recommendation of Robert Kline that the coops on Dragonfly Farm be moved. We note that his evidence was that moving the coops could be an improvement, not that their present location was not normal farm practice. We accept the evidence of Mr. Ferguson, supported by the evidence of Margaret Thompson, that there is a good reason to have the coops where they are so they can be seen from the family residence and the family members can intervene if necessary when predators appear. While Mr. Kline's recommendation may have been helpful in mediating a compromise between the parties by alleviating the noise for the Feehans, we find the present position of the coops consistent with normal farm practice.
67. Nor do we accept Mr. Kline's suggestion that Dragonfly Farm submit a farm management plan to identify containment and pasture areas that incorporate setbacks that would effectively reduce noise impacts of guinea fowl. We do not accept the comparison of the noise made by guinea fowl to that of bird scare devices and therefore see no reason to adopt similar setbacks for birds as would be required for mechanical devices such as propane cannons. We heard no evidence to convince us that anything Mr. Ferguson was doing was not normal farm practice and see no reason for him to move his containment or pasture areas.
68. Further, the panel does not accept Mr. Kline's recommendation to request submission of a farm plan identifying where a proposed 500 guinea fowl per year operation facility and pasture would be located on this property. We are ruling on the farming practices of Dragonfly Farm as they exist today, not potential future farm operations.
69. With respect to the uncontained birds we note that Mr. Ferguson has done extensive fencing on his property to prevent his birds escaping and is now clipping the wings of the guinea fowl to prevent them from flying to the Feehan property. We find that these measures are within normal farm practice.
70. In conclusion, the panel heard no evidence of any kind to suggest that any of Mr. Ferguson's practices on his farm were anything but good farm management and that he is using best practices for a small, integrated farm to maximize the output on his marginal land. We believe this type of farm should be encouraged.
71. In our opinion, to prevent future disputes such as this one from arising and causing major distress to all parties concerned, people buying property in the Agriculture Land Reserve need to understand that agriculture is the primary activity of the area and that agriculture involves animals and animal sounds. It may also involve smells and dust from the operation. Living within the ALR also means that what is a sheep or llama farm today may become a chicken or hog farm tomorrow. This commonly happens in farming areas when circumstances change. Unfortunately, the seeming tranquility of rural areas is attractive to families until they experience the realities of farming, at which time they often feel betrayed. The *Farm Practices Protection (Right to Farm) Act* was put into place to provide a balanced approach to give neighbours a venue to complain when aggrieved by farming practices. At the same time, it protects farmers from these complaints when they are carrying on "normal farm practices" and taking reasonable actions to mitigate neighbour complaints.

ORDER

- 72. Section 6 of the *Act* provides that a panel must dismiss a complaint if it is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, and must order a farmer to cease the practice that causes the odour, noise, dust or other disturbance if it is not a normal farm practice, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.
- 73. Given that we have found that Dan Ferguson of Dragonfly Farm is conducting his business according to normal farm practices, the complaint is dismissed.

Dated at Victoria, British Columbia, this 17th day of August, 2010

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per



Suzanne K. Wiltshire, Presiding Member



Sandi Ulmi, Vice-Chair



Honey Forbes, Member