

Water Act

BEING CHAPTER W-3, R.S.A. 2000 (the "Act")

ENFORCEMENT ORDER NO. EO-WA-39800

Russel JOHNSON
Box 140 Valhalla Centre
County of Grande Prairie, AB T0H 3M0

WHEREAS Russel JOHNSON is the registered owner of the lands legally described as NW-32-075-09-W6M located in the County of Grande Prairie No. 1, in the Province of Alberta (the "Lands");

WHEREAS on September 9, 2022, Alberta Environment and Protected Areas ("EPA") received a complaint alleging that an unauthorized dugout or borrow pit appeared to be constructed in a wetland on the Lands;

WHEREAS on September 23, 2022, EPA Environmental Protection Officers ("EPOs") conducted a site inspection of the Lands, flew a Remotely Piloted Aircraft System to obtain aerial imagery, and observed the following:

- A large dugout (the "Dugout") had been created in the southern part of the Lands;
- Earthen material excavated from the Dugout appeared to be used to make a road that runs east/west along the southern border of the Lands;
- Soil had been piled in a large mound north of the Dugout;
- Vegetation around the area included spruce trees, poplar trees, willows, cattails, and grasses indicative of a wetland area;
- There were areas with standing water in them (apart from the Dugout);
- Tree clearing had occurred west of the Dugout (piles of dry grey coloured trees were observed);
- Soil had been cleared off of an area northeast of the Dugout and piled along the treeline; this soil appeared to contain peatmoss and a large amount of organics;
- A ditch had been dug that ran north/south in the east/west road just southeast of the Dugout, this appeared to be made for culvert installation purposes;
- Two culverts (side by side) exited from the south side of the road, the exit point of these culverts was half-filled with sediment;
- The natural drainage of the area seemed to flow from the north towards the south;
- Erosion of material from the east/west road is causing siltation in the lands to the south;
- Bulldozer equipment was parked northeast of the Dugout;
- The surface area of the Dugout was approximately 0.98 hectares;

[Hereinafter, collectively referred to as the "Unauthorized Activities"]

WHEREAS on March 21, 2023, an EPA Wetland Specialist completed a wetland assessment of the Lands as well as for SW 32-075-09-W6M due to the nature of the connectivity of the wetland across these two quarter sections. This assessment confirmed that a naturally occurring wetland exists across the two quarter sections (the "Impacted Wetland");

WHAEREAS the EPA Wetland Specialist determined that unauthorized activities within this wetland such as road, dugout and ditch construction have impacted the wetland size and the wetland functions provided by the Impacted Wetland. Further, the EPA Wetland Specialist determined that these unauthorized activities have reduced the overall wetland area and have impacted wetland functions such as water storage, water quality improvement, nutrient cycling and has resulted in habitat impacts that affect biodiversity;

WHEREAS on March 30, 2023, an EPO collected a statement from Russel JOHNSON, who said the following:

- He doesn't feel like the entire delineated area of the EPA Wetland Specialist's wetland assessment is actually a wetland;
- Before EPA told him that the area of the Lands is a wetland he did not know that it was a wetland;
- He had also removed more trees and vegetation to the north of the dugout during the winter of 2022/2023;
- There were willows and spruce trees in the area to the north of the dugout;
- If the delineated area in the wetland assessment is a wetland, then the whole quarter section was probably a wetland before;
- There is an old ditch that was created long before he purchased the property, which collects water from the north and then sends it down to the south through a culvert just north of where the northern tip of the treed area is on the Lands;
- The Dugout was dug between March and mid-April 2020;
- He dug the Dugout with his own equipment;
- He chose the location of the dugout because "it was the lowest part of the quarter where all the water would funnel down to;"
- By June 1, 2020 the dugout was full of water;
- The Dugout is approx. 45,000 cubic meters, and as such it is approximately 8 meters deep;
- He had the original intention of making the entire area within the Lands into farm land;
- He has maintained the ditch to the north of the Lands which collects water and sends it south through the trees on the Lands;
- If the ditch to the north was not there, water would run south through the Lands in about six different channels;
- All the material taken out of the Dugout was used to make the road to the south of the Dugout;
- He made the road south of the Dugout so he could access the east part of the Lands;
- He had no plan or thought to sell the excavated material;
- He made the Dugout because he likes having a pond, and eventually they'll need it as a new source of water for spraying; he also wanted to have it for recreational purposes like camping beside it;
- He made it so big because he "just wanted a big hole" and so that it didn't turn into weeds;
- He hasn't removed or used the water from the Dugout;
- He hasn't used water from the Dugout because his "road is very soft, it was built of

- frozen material so it needs time to tighten up”;
- Oilfield companies have approached him since the dugout was made to get permission to access the water;
 - He did not dig the Dugout with the intention of supplying or selling access to water to oilfield companies;
 - He just signed an agreement with the County of Grande Prairie No. 1 for them to have access to the water;

WHEREAS on April 27, 2023, an EPO conducted a site inspection of the Lands, and observed the following:

- The majority of the trees and vegetation on the Lands had been knocked over; there was only a small area of standing trees and vegetation to the east of the Dugout;
- The culvert under the lease road on the North edge of the Lands, which allows water movement from the north into the Lands, still had water flowing through it;
- This water flowed into the area where the trees and vegetation were knocked down and then ran parallel with the lease road for approx. 100 meters as it runs SE; the water then heads SW back into the knocked over trees and vegetation;
- Water had flowed and was still lightly flowing into the Dugout from the east side of the large mound that is directly north of the Dugout;
- The soil north of the large mound was very saturated with water;
- Moving further to the west the soil dried out more and appeared to be peat-like;
- The area east of the Dugout and north of the road had a lot of standing water in it;
- The land south of the road was a mix of spruce trees, willow bushes, and mossy ground; however, the ground to the south of the road did not have any standing water;

[Note that these further observations are now added to the collective reference of “Unauthorized Activities” in this document]

WHEREAS on April 27, 2023, Russel JOHNSON phoned the EPO and further stated that:

- The area to the south of the road was very similar to what the area north of the road looked like; however, the area to the north had more poplar trees present;
- He had knocked down the majority of the trees and vegetation on the Lands during the winter of 2022/2023; however, he had knocked down some trees and vegetation to the east of the Dugout while he was digging the Dugout;

WHEREAS the Impacted Wetland is a “water body” as defined in section 1(1)(ggg) of the *Water Act*;

WHEREAS each of the Unauthorized Activities are an “activity” as defined in section 1(1)(b) of the *Water Act*;

WHEREAS section 36(1) of the *Water Act* states that no person may commence or continue an activity except pursuant to an approval unless it is otherwise authorized under this Act;

WHEREAS EPA has not issued an approval to Russel JOHNSON or any other person authorizing any of the Unauthorized Activities in the Impacted Wetland on the Lands, and these activities are not otherwise authorized under the *Water Act*;

WHEREAS Russel JOHNSON is a person responsible for the Unauthorized Activities pursuant to section 1(1)(kk) of the *Act* and section 1(5) of the *Water (Ministerial) Regulation (AR*

205/1998);

WHEREAS Jack MCNAUGHTON, Compliance Manager, North Region, has been appointed a Director for the purpose of issuing enforcement orders under the *Water Act* (the “Director”);

WHEREAS the Director is of the opinion that Russel JOHNSON has contravened section 36(1) of the *Water Act*, which is an offense under section 142(1)(h) of the *Act*, by conducting the Unauthorized Activities without an approval;

THEREFORE, I, Jack MCNAUGHTON, Director, pursuant to section 135(1) and 136(1) of the *Water Act*, HEREBY ORDER THAT:

1. Russel JOHNSON shall immediately cease all unauthorized activity on the Lands.
2. Russel JOHNSON shall retain an authenticating professional that meets each of the requirements of section 4.0 of “Professional Responsibilities in Completion and Assurance of Wetland Science, Design and Engineering Work in Alberta” (Government of Alberta, May 1, 2017) (the “Authenticating Professional”).
3. Russel JOHNSON shall, on or before August 31, 2023, submit to the Director in writing, for the Director’s written approval, all of the following information:
 - (a) The name and contact information of the Authenticating Professional, and
 - (b) A summary of how the Authenticating Professional meets all the requirements of Clause 2 of this Order.
4. On or before November 17, 2023, Russel JOHNSON shall submit to the Director for the Director’s written approval, a written Wetlands Assessment Report, prepared, stamped and signed by the Authenticating Professional.
5. The Wetlands Assessment Report shall include, at a minimum, a detailed assessment of:
 - (a) The condition of the Impacted Wetland prior to the Unauthorized Activities being undertaken, including all of the following:
 - i. delineation of wetland boundary;
 - ii. classification, determined in accordance with the “Alberta Wetland Classification System” (Government of Alberta, June 1, 2015);
 - iii. landscape characteristics, including topography and slopes;
 - iv. hydrology;
 - v. soils, and
 - vi. vegetation;
 - (b) The current locations and current physical characteristics of the Unauthorized Activities;
 - (c) Whether current site conditions will accurately reflect wetland value from an ABWRET-A assessment (Government of Alberta, 2015);
 - (d) All of the effects of the Unauthorized Activities on the Impacted Wetland;
 - (e) A Wetland Replacement Proposal in which the total area of the Impacted Wetland is replaced by selecting the highest priority replacement option,

in the following priority order, with detailed justification if a higher priority option is not feasible:

- i. In-situ Wetland Replacement (Priority #1 - highest): restore the Impacted Wetland to its respective condition prior to the Unauthorized Activities, including wetland area and classification in the same location the loss occurred; or
- ii. Propinquity Wetland Replacement (Priority #2): replace the Impacted Wetland at a 1:1 ratio in close proximity to the Impacted Wetland within the Lands, and may including restoring wetlands of equal area and classification on the Lands (if available) as those lost as a result of the Unauthorized Activities; or
- iii. Permittee-Responsible Wetland Replacement (Priority #3): retain a third party wetland replacement agent to meet the remedial requirements of Russel JOHNSON to replace the Impacted Wetland in accordance with the Directive for Permittee-Responsible Wetlands Construction in Alberta and/or the Code of Practice for Wetland Replacement Works at a 3:1 ratio within Relative Wetland Value Assessment Unit 12; or
- iv. Utilization of the Wetland Replacement Program (Priority #4 – lowest): utilize the EPA Wetland Replacement Program to complete wetland restoration on behalf of Russel JOHNSON for wetland areas lost.

DATED at the Town of Peace River, in the Province of Alberta, this 31 day of July, 2023.



Jack MCNAUGHTON
Compliance Manager, Alberta Environment and Protected Areas

Section 115 of the *Water Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. A copy of section 115 is enclosed. There may be a strict limit for filing such an appeal.

**For further information, please contact the Board Secretary at:
Alberta Environmental Appeals Board
#306 Peace Hills Trust Tower, 10011 – 109th Street
Edmonton, Alberta, T5J 3S8
Telephone: (780) 427-6207; Fax: (780) 427-4693**

Notwithstanding the above requirements, Russel JOHNSON shall obtain all necessary approvals from any regulatory agency (provincial or federal) in complying with this order.

Take notice that this enforcement order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under the *Water Act* or any other legislation.