

**Government of Alberta** ■

Environment and Water

**WATER ACT  
BEING CHAPTER W-3 R.S.A. 2000**

ENFORCEMENT ORDER NO. WA-EO-2012/01-SR

Peter deGraaf  
2215 41<sup>st</sup> N  
Lethbridge, Alberta T1H 5W3

("deGraaf")

and

deGraaf Farming Company Ltd.  
c/o P.O. Box 219 Station Main  
Lethbridge, Alberta T1J 3Y5  
(the "Company")

WHEREAS deGraaf Farming Company Ltd. (the "Company") is the owner of the lands legally described as the SE Quarter of Section 19, Township 13, Range 17, West of the 4<sup>th</sup> Meridian (the "Lands");

WHEREAS Peter deGraaf ("deGraaf") is a shareholder and the sole director of the Company;

WHEREAS historical air photos (dated 1962, 1970, 1980, 1991 and 1998) show the presence of a wetland on the Lands and on the adjacent SW quarter of Section 19, Township 13, Range 17, West of the 4<sup>th</sup> Meridian (the "Adjacent Lands") (the "Wetlands");

WHEREAS the Wetlands is approximately 54.5 acres in size of open water area based on the 1998 aerial photo;

WHEREAS the Wetland would have been classified by Alberta Environment and Water ("AEW") as Class IV wetlands using the Stewart and Kantrud classification system<sup>1</sup>;

WHEREAS on May 7, 2004, an AEW Investigator inspected the Lands and determined that a substantial amount of work had been conducted in the Wetland area including the placement of earth in the Wetland on the Southern shore of the Wetland (the "deGraaf Wetland Works");

WHEREAS on May 11 2004, the AEW Investigator met with deGraaf on the Lands and determined that deGraaf had filled in a portion of the Wetland located on the Lands (the "deGraaf Wetland") and advised deGraaf that the Wetland area was a water body under the *Water Act* and that an approval was required for the work that deGraaf was doing;

WHEREAS on May 11, 2004, deGraaf was advised to stop the work and to apply for an approval under the *Water Act*;

WHEREAS on July 8, 2004, the AEW Investigator attended the site and measured the area affected by the infilling as of that date, and determined that approximately 1.2 acres had been filled in with approximately 2.3 acres being impacted;

WHEREAS on March 3, 2010 the AEW Investigator attended the site and determined that the deGraaf Wetland had been entirely filled in;

WHEREAS the AEW Investigator determined that no approval had been issued to deGraaf for this activity;

WHEREAS the deGraaf Wetland Works are an activity within the meaning of an "activity" in section 1(1)(b) of the *Water Act*, and as such, require an approval pursuant to section 36(1) of the *Water Act*;

WHEREAS the Wetlands are a "water body" within the meaning of section 1(1)(ggg) of the *Water Act*

WHEREAS no application for a Water Act approval was ever received from deGraaf or the Company, or any person acting on their behalf, for the Wetland Works and no wetland mitigation or compensation has been provided by deGraaf or the Company for the loss of the deGraaf Wetlands;

WHEREAS AENV has not issued any approvals to deGraaf or the Company under the Water Act in respect of any of the Wetland Works;

WHEREAS David A. Fisher, District Compliance Manager, Southern Region for Alberta Environment and Water (the "Director"), has been appointed a Director for the purposes of issuing enforcement orders under the *Water Act*;

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<sup>1</sup> Stewart, R. E., and H. A. Kantrud. 1971. Classification of natural ponds and lakes in the glaciated prairie region. U.S. Fish. Wildl. Serv., Resour.

Publ. 92. 57 pp. See: [www.fpwrc.usgs.gov/resource/wetlands/pondlake/classes.html](http://www.fpwrc.usgs.gov/resource/wetlands/pondlake/classes.html)

WHEREAS the Director is of the opinion that the Company and deGraaf have contravened section 36(1) of the *Water Act*, which is an offence under section 142(1)(h) of the *Water Act* for carrying out the Wetland Works without approvals;

WHEREAS the Company and deGraaf are each a "person responsible" for the Wetland Works pursuant to section 1(1)(II) of the *Water Act* and section 1(5) of the *Water (Ministerial) Regulation*, A.R. 205/98, as being the registered owner of the Lands and/or the entity who conducted or directed the activities on the Lands;

THEREFORE, I, David A. Fisher, Director, pursuant to sections 135(1) and 136(1) of the *Act*, DO HEREBY ORDER THAT:

1. deGraaf and the Company shall submit a restoration plan for the deGraaf Wetland to the Director by June 30, 2012 [the "Wetland Restoration Plan"], for the complete restoration of the deGraaf Wetland. The Wetland Restoration Plan must outline the methods to return the Wetlands to their pre-disturbance conditions at their original locations, including re-establishing the original native vegetation in and around the Wetlands.
2. The Wetland Restoration Plan shall include, at a minimum, the following requirements:
  - a) A description of the restoration work that will accomplish the objectives stated in paragraph 1, including the type of equipment, methods, and materials that will be used;
  - b) A description of the plans to restore the Wetlands, and re-vegetation of the Wetlands to their pre-disturbance condition with appropriate native plants, and re-establishment of habitat areas in and around the Wetlands;
  - c) A description of where the fill that is removed to restore the Wetlands will be placed, used and/or disposed of;
  - d) The long-term measures that will be implemented after the initial phase of the restoration work is completed, to ensure that the Wetlands have been successfully re-established, and to ensure that any future activities on the Lands will not disturb the newly restored Wetlands;
  - e) Perform a historical air photo assessment of the affected Wetlands that will be used in the development of the Wetland Restoration Plan; and
  - f) A comparison of nearby vegetation in nearby Class IV wetlands, and incorporating this information into the Wetland Restoration Plan.

3. The Wetland Restoration Plan shall also include a proposed schedule of implementation ("Schedule of Implementation") for the work that shall have October 31, 2012 as the completion date.
4. deGraaf and the Company shall retain a qualified professional aquatic specialist to prepare the Wetland Restoration Plan, and who shall also supervise the restoration work undertaken pursuant to the Plan.
5. Upon written acceptance of the Wetland Restoration Plan by the Director, deGraaf and the Company shall implement the work in the Wetland Restoration Plan pursuant to the Schedule of Implementation contained in the Wetland Restoration Plan.
6. deGraaf and Company may submit by June 30, 2012, an alternate to the Restoration Plan required in clause 1 of this order. If an alternate plan is submitted it must address the following objectives and be to the satisfaction of the Director.
  - Reduce the drainage impacts to the adjacent landowner to that which existed prior to the filling in of the wetland.
  - Obtain consent of the adjacent landowner for any changes impacting the wetland.
  - Provide detailed plans for the proposed work and if necessary obtain a Water Act Approval for the work.
  - Provide a schedule of implementation for the work which will have October 31, 2012 as its completion date.
  - Meet the Province of Alberta's Policy objectives for compensation for the loss of wetlands.
  - Provide for habitat maintenance for waterfowl and the Great Plains Toad.

DATED at the City of Lethbridge, in the Province of Alberta, this 2nd day of April, 2012.

**Original Signed by:** David A. Fisher  
Director  
District Compliance Manager  
Southern Region

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 time limit for filing such an appeal. For further information, please contact the Board Secretary at #306 Peace

Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party shall obtain all necessary approvals in complying with this order.

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