

WATER ACT

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

ENFORCEMENT ORDER NO. EO-WA-40660

K.G. Throness Ltd.
Gail and Kevin Throness
RR 1
Sexsmith, AB T0H 3C0

WHEREAS K.G. Throness Ltd. is the registered owner of lands legally described as NW-28-073-07-W6M located in the County of Grande Prairie No. 1, in the Province of Alberta (the "Lands") since December 17, 1998;

WHEREAS K.G. Throness Ltd. is a corporate entity registered in Alberta and Kevin and Gail Throness (the "Throness") are the directors of K.G. Throness Ltd;

WHEREAS the Lands contain a dugout (the "Dugout") measuring approximately 3600 square meters in area;

WHEREAS Appendix A is a map of the Lands including the Dugout;

WHEREAS on May 3, 2023, Alberta Energy Regulator staff reported a potential wetland disturbance on the Lands to Alberta Environment and Protected Areas ("AEPA");

WHEREAS on May 17, 2023, an AEPA Environmental Protection Officer and Wetland Specialist inspected the Lands, collected photos, GPS data, and drone imagery, and observed the following:

- A dugout was present on the Lands;
- A trench approximately 40 meters long had been dug west of the dugout;
- An oil and gas plant was being expanded approximately 80 meters south of the Dugout;

WHEREAS on June 26, 2023, AEPA staff obtained a statement from Kevin Throness, during which he stated the following:

- He has owned the land since September 1998;
- There is an oil and gas lease south of the Dugout on the Lands which was previously held by Anegada Oil Corp. and then by Tamarack Valley Energy Ltd.;
- The Dugout was built in three phases:
 - The eastern third was excavated in October to December 2018 for clay for the oil lease and access road by Anegada Oil Corp. with his permission;
 - He expanded the hole to a more rectangular shape in 2019 for the purpose of

- water extraction for the nearby oil lease;
 - The third, shallow expansion on the southeast part of the dugout was excavated in March 2023 for clay by Tamarack Valley Energy Ltd. with his permission;
- The Dugout was built to be approximately 12,000 to 14,000 cubic meters in size and 12 feet deep;
- He constructed the 40 meter long trench west of the Dugout;

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

- He did not know about *Water Act* approvals prior to the construction of the Dugout;

WHEREAS on June 28, 2023, the AEPA Wetland Specialist completed a wetland assessment of the Lands and stated that a wetland (the "Wetland") was present and that the Dugout had been built in the Wetland (the "Impacted Wetland Area");

WHEREAS on August 31, 2023, Kevin Throness provided AEPA staff with a Wetland Assessment which stated the following:

- The Wetland was a mix of seasonal shrubby swamp and seasonal marsh, and was approximately 11.8 acres in size;
- The Dugout was 0.9 acres;
- An ABWRET-A would be needed to complete the assessment and establish the relative wetland value;

WHEREAS the Wetland is a "water body" as defined in section 1(1)(ggg) of the *Water Act*,

WHEREAS 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 in a water body except pursuant to an approval unless it is otherwise authorized under this *Act*;

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

WHEREAS the Throness' are persons 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 the Throness' have contravened section 36(1) of the *Water Act*, which is an offence 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. The Throness' shall immediately cease all unauthorized activity on the Lands.
2. The Throness' 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. The Throness' shall, on or before November 15, 2023, submit to the Director in writing 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 June 15, 2024, the Throness' 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 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 Area;
 - (e) a Wetland Replacement Proposal in which the total area of the Impacted Wetland Area 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) Proximity 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 to undertake permittee-responsible wetland replacement to meet the remedial requirements of the Throneess' 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 AEPA Wetland Replacement Program to complete wetland replacement on behalf of the Throneess' for wetland areas lost.

DATED at Peace River in the Province of Alberta, this 26 of October, 2023.



Jack McNaughton
Director, North Region

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

**For further information, please contact the Board Secretary at:
Alberta Environmental Appeals Board
30 6 Peace Hills Trust Tower, 10011-109 Street,
Edmonton, Alberta, TSJ 3S8
Telephone 780-427-6207; Fax 780-427-4693.**

Notwithstanding the above requirements, the Throneess' shall obtain all other necessary approvals or authorizations required to comply 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.

APPENDIX A



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