

WATER ACT

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

ENFORCEMENT ORDER NO. EO-WA-DCOM1372

Kevin BRUNESKI
7020 Twp Rd 693
Grovedale, AB T0H 1X0

WHEREAS Kevin BRUNESKI is the registered owner of lands legally described as SE-24-069-07-W6M located in the Municipal District of Greenview No. 16, in the Province of Alberta (the "Lands");

WHEREAS on November 16, 2021, Alberta Environment and Protected Areas ("EPA") received a complaint alleging that a drainage ditch and a pond area had been created on the Lands;

WHEREAS on June 13, 2022, EPA Environmental Protection Officers ("EPOs") conducted a desktop analysis of the Lands utilizing satellite imagery from September 2020 and April 2021. The EPOs found that a road with water filled ditches on either side was made through the Lands in a southeast direction towards a small dugout (the "2020 Dugout") with an approximate surface area of 0.1 hectares;

WHEREAS on June 22, 2022, EPA EPOs inspected the Lands and flew a Remotely Piloted Aircraft System to obtain aerial imagery and observed the following:

- The road that had been made to the 2020 Dugout had been shortened, and another dugout (the "2021 Dugout") had been created further north of the 2020 Dugout;
- The 2021 Dugout had an approximate surface area of 0.12 hectares;
- The ditches on either side of the road were attached to the 2021 Dugout;
- Both of the ditches and the 2021 Dugout were full of water;
- The ditches varied in depth from 30 centimeters to approximately one meter deep;
- The ditches had aquatic vegetation growing in them;
- The water in the ditch on the north side of the road had a surface area of approx. 0.07 hectares;
- The water in the ditch on the south side of the road had a surface area of approx. 0.09 hectares;
- Aquatic invertebrates and tadpoles were seen using the water in the ditches;
- The 2020 Dugout and the section of road to it (with its associated ditches) had been mainly filled in; however, there was still approximately 0.07 hectares of standing water in that area;
- The total area affected by the work was approximately 1.37 hectares;

WHEREAS on August 19, 2022, an EPO collected a statement from Kevin BRUNESKI, who said the following:

- Work on the road and its ditches started in 2019, but the majority of the work was done during the spring of 2020;
- The 2020 Dugout was dug during the spring of 2020;
- Material taken to make the ditches and 2020 Dugout was used to create the road;
- The work was done by himself and friends with borrowed heavy equipment;
- The work was done to improve the property as he thought it is his land so he can do what he wants to on it, with the intention of improving the aesthetics, access, recreational enjoyment, and future development potential of the area;
- The 2021 Dugout was dug during the summer of 2021;
- The material taken from the 2021 Dugout was used to fill in the 2020 Dugout and access road with its ditches;

- The 2021 Dugout was built further to the north because he felt that the 2020 Dugout was too close to Township Road 693 and because he prefers the location of the 2021 Dugout better than the 2020 Dugout;
- He did not know the area that the work was done in was considered a wetland;

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

WHEREAS the area of the Unauthorized Activities was analyzed by an EPA Wetland Specialist and it was determined that the area is comprised of a naturally occurring wetland with evidence of its existence dating back to 1950 (the "Impacted Wetland");

WHEREAS the EPA Wetland Specialist determined that potential negative impacts of the Unauthorized Activities may include, but are not limited to, changes in the water level and down-gradient impacts including increased water runoff and reduced water quality;

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 is an "activity" as defined in section 1(1)(b)(i)(A) 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 never received an application from nor issued an approval under the *Water Act* to Kevin BRUNESKI or to anyone else to conduct the Unauthorized Activities, and the Unauthorized Activities are not otherwise authorized under the *Water Act*,

WHEREAS Kevin BRUNESKI is a person responsible for the Unauthorized Activities pursuant to section 1(1)(kk) of the *Water Act*,

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 Kevin BRUNESKI has contravened section 36(1) of the *Water Act*,

WHEREAS WA-EO-38639 was served to Kevin BRUNESKI on September 21, 2022;

WHEREAS Kevin BRUNESKI complied with clauses 2 and 3 of WA-EO-38639 on October 5, 2022 by retaining Daina ANDERSON and Steven TANNAS as Authenticating Professionals and submitting that information via email to the Director;

WHEREAS on October 6, 2022, the Director (via the Acting Director, Andrea SANDFORD) acknowledged receipt of Kevin BRUNESKI's submission regarding clauses 2 and 3 of WA-EO-38639 and approved the submission;

WHEREAS on November 22, 2022, Steven TANNAS submitted an initial version of the Wetland Assessment Report to the Director in response to clauses 4 and 5 of WA-EO-38639;

WHEREAS on January 30, 2023, Steven TANNAS submitted the final version of the Wetland Assessment Report to the Director in response to clauses 4 and 5 of WA-EO-38639;

WHEREAS on March 6, 2023, after a comprehensive review of the Wetland Assessment Report, the Director had an EPO send Steven TANNAS and Kevin BRUNESKI a compiled list of inquiries regarding the

Wetland Assessment Report;

WHEREAS on March 20, 2023, Steven TANNAS provided a written response to the Director regarding the inquiries made regarding the Wetland Assessment Report;

WHEREAS on May 10, 2023, a meeting to discuss plans on how to move forward was held between the Director, the Director's staff, Steven TANNAS, Daina ANDERSON, and Kevin BRUNESKI;

WHEREAS on May 31, 2023, an EPO sent Steven TANNAS and Kevin BRUNESKI information regarding what a new order would look like to meet the requests of Steven TANNAS and Kevin BRUNESKI as well as the needs of EPA;

WHEREAS on November 1, 2023, Steven TANNAS, on behalf of Kevin BRUNESKI, submitted their acceptance of the new order process with supporting documentation/draft plans regarding this new process;

WHEREAS on January 25, 2024, the Director cancelled WA-EO-38639;

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

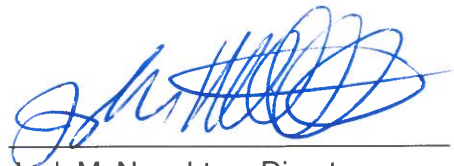
1. Based upon the Wetlands Assessment Report submitted in response to WA-EO-38639 and written correspondence and conversations with EPA, Kevin BRUNESKI must complete the following:
 - a. replace 0.83 hectares of wetland area through utilization of the Wetland Replacement Program by March 31, 2024; and
 - b. complete and submit to the Director, for the Director's written approval, a Wetland Mitigation Measures Plan (the "Plan") to address impacts to hydrology within the Wetland by March 31, 2024.
2. The Plan must be stamped and signed by 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).
3. The Plan shall provide mechanisms to ensure that the functionality and hydrology of the Wetland are unimpacted by the Unauthorized Activities.
4. The Plan shall, at a minimum, include each of the following:
 - a. A detailed plan to mitigate the direct and indirect impacts to the Wetland as a result of the Unauthorized Activities, including mitigation measures for at least each of the following:
 - i. hydrology, including:
 - I. an assessment of the catchment area to support wetland size and function,
 - II. flow and connectivity between both sides of the Unauthorized Activities, and
 - III. a statement certifying no impacts to upstream or downstream landowners;
 - ii. berms;
 - iii. ditches; and
 - iv. vegetation loss.
 - b. A description of the wetland mitigation objectives to meet the conditions outlined in clause 4(a) of this Order.
 - c. A complete list of the types of:
 - i. equipment;
 - ii. methods, including earth works; and
 - iii. materials

that will be used in the implementation of the Plan.

- d. A detailed description of the measures that will be taken to prevent all erosion, siltation, and other adverse effects to
 - i. the Impacted Wetland; and
 - ii. all other water bodiesduring all of the work carried out in the implementation of the Plan.
 - e. A detailed proposal to monitor the Wetland (the "Wetland Monitoring Proposal") following the completion of the Plan including, at minimum:
 - i. a proposed schedule that includes the duration, frequency and intensity of monitoring with:
 - I. a minimum of two years of monitoring during years with normal annual precipitation (e.g. 90 day antecedent precipitation analysis),
 - II. monitoring events scheduled for the first spring season following implementation of the mitigation measures described in the Plan, and
 - III. monitoring events scheduled during the normal wet portion of the growing season;
 - ii. the monitoring methods and performance indicators to be used for vegetation, soils, and hydrology assessments in determining the success of the mitigation measures outlined in the Plan including:
 - I. vegetation, soils, and hydrology metrics and associated performance indicators, and
 - II. established photo monitoring points at each paired sampling location;
 - iii. verification that the Unauthorized Activities have not had further impacts on the hydrology of the Wetland; and
 - iv. adaptive management strategies should one or more of metrics fail to meet the performance indicator by the end of the monitoring period identified in the Wetland Monitoring Proposal.
5. The Plan must include a schedule of implementation for the work proposed within it, excluding the proposal required in clause 4(e) of this Order, with a completion date of no later than December 31, 2024 (the "Completion Date").
 6. Kevin BRUNESKI shall inform the Director, in writing, of the completion of the work as laid out in the Plan, excluding clause 4(e), within seven days of its completion.
 7. Within one year of the completion of the monitoring outlined in the Wetland Monitoring Proposal, Kevin BRUNESKI shall submit to the Director for approval, a Wetland Monitoring Report (the "Monitoring Report").
 8. The Monitoring Report must be stamped and signed by 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).
 9. The Monitoring Report must assess and show that the wetland mitigation measures were undertaken and completed according to the Plan. The Monitoring Report shall, at a minimum, include the following information:
 - a. whether or not the mitigation measures are currently operating as intended;
 - b. whether or not the hydrology has been adequately maintained;
 - c. whether or not the functionality of the wetland has stabilized;
 - d. any noted impacts or abnormalities;
 - e. a statement indicating whether the mitigation measures have achieved the objectives from the Plan;

- f. how the monitoring targets were reached and to what success;
 - g. evidence (including photographs) and data to support the above; and
 - h. the dates of the monitoring site assessments.
10. If an issue arises during the monitoring and further mitigation measures and/or modifications are required, Kevin BRUNESKI must contact the Director within seven days of discovering the issue and seek approval to implement further mitigation measures and/or modifications to resolve the issue.
 11. Kevin BRUNESKI shall only complete the work described in the Wetland Mitigation Measures Plan in accordance with the Director's written authorization.
 12. Kevin BRUNESKI shall provide the Director with five days' notice either by phone or email prior to commencing the work in the Wetland Mitigation Measures Plan as approved by the Director.
 13. Kevin BRUNESKI shall implement the Wetland Monitoring Proposal in accordance with the Director's written authorization.

DATED at the Town of Peace River in the Province of Alberta, this 2nd day of February 2024.



Jack McNaughton, Director
Compliance Manager
North Region, Boreal West District

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
306 Peace Hills Trust Tower, 10011-109 Street,
Edmonton, Alberta, TSJ 3S8
Telephone 780-427-6207; Fax 780-427-4693.**

Notwithstanding the above requirements, Kevin BRUNESKI 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.