

WATER ACT

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

ENFORCEMENT ORDER NO. WA-EO-38639

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 Parks ("AEP") received a complaint alleging that a drainage ditch and a pond area had been created on the Lands;

WHEREAS on June 13, 2022, AEP 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, AEP 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 vary 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 AEP 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 AEP 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 AEP 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*;

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

1. Kevin BRUNESKI shall immediately cease all unauthorized activity on the Lands.
2. Kevin BRUNESKI 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. Kevin BRUNESKI shall, on or before October 5, 2022, 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, November 7, 2022, Kevin BRUNESKI 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, including, all of the following:
 - i. delineation of wetland boundary;
 - ii. wetland 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 Alberta Wetland Rapid Evaluation Tool – Actual ("ABWRET-A") assessment (Government of Alberta, 2015);
 - (d) all of the effects of the Unauthorized Activities on the Impacted Wetland; and
 - (e) a proposed wetland replacement method to address the Unauthorized Activities in the following order of priority:
 - i. in-situ re-establishment to restore the Impacted Wetland to the condition prior to the Unauthorized Activities; or
 - ii. wetland replacement in the same parcel of land which results in wetland(s) of equal area and classification as the wetland area lost as a result of the Unauthorized Activities; or
 - iii. retain a third party wetland replacement agent to meet the remedial requirements of Kevin BRUNESKI to replace the Impacted Wetland; or
 - iv. pay wetland replacement service fees to the AEP Wetland Replacement Program to compensate for the Impacted Wetland.
6. Based upon the Wetlands Assessment Report, Kevin BRUNESKI must replace the total area of the Impacted Wetland by selecting one of the following actions:
 - (a) 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
 - (b) replace the Impacted Wetland at a 1:1 ratio within the Lands, including restoring wetlands of equal area and classification as those lost as a result of the Unauthorized Activities; or
 - (c) retain a third party wetland replacement agent to meet the remedial requirements of Kevin BRUNESKI to replace the Impacted Wetland at a 3:1 ratio within Relative Wetland Value Assessment Unit 12; or
 - (d) pay wetland replacement service fees to the AEP Wetland Replacement Program by December 4, 2023 to compensate for the Impacted Wetland.
7. On or before February 6, 2023, Kevin BRUNESKI must submit to the Director for the Director's written approval, a Remedial Plan indicating the remedial action selected as per Clause 6 of this Order, including:
 - (a) all plans Kevin BRUNESKI proposes to meet Clause 6(a) or (b) of this Order, including a detailed Wetland Restoration Plan outlined below in Clauses 8 - 11 of this Order;
 - (b) any agreements signed with a third party wetland restoration agent to meet Clause 6(c) of this Order;

- (c) confirmation of agreement to pay the AEP Wetland Replacement Program a service fee of \$202,760.00 for the replacement of 1.37 ha of wetland area as a result of the Unauthorized Activities on the Impacted Wetlands; or
 - (d) confirmation of agreement to pay the AEP Wetland Replacement Program a service fee for the replacement of the Impacted Wetland based upon the area of the Impacted Wetland determined by the Wetlands Assessment Report and the ratio determined by the classification of the Wetland as determined by an ABWRET-A assessment and the average replacement cost per hectare of \$18,500 as a result of the Unauthorized Activities on the Impacted Wetland.
8. If Clause 6(a) or (b) is chosen then a written Wetland Restoration Plan must be prepared, stamped, and signed by the Authenticating Professional as outlined below in Clauses 9 – 11.
9. The Wetland Restoration Plan will provide a mechanism to restore all wetland area lost as a result of the Unauthorized Activities.
10. The Wetland Restoration Plan shall include at least each of the following:
- (a) a detailed plan to restore the required area of wetlands lost as a result of the Unauthorized Activities, including restoring at least each of the following:
 - i. wetland size;
 - ii. wetland classification;
 - iii. zones of wetland function;
 - iv. topography and slopes;
 - v. soils;
 - vi. hydrology, including
 - 1. a water balance calculation to support targeted wetland classification, and
 - 2. a statement certifying no impacts to upstream or downstream landowners; and
 - vii. vegetation;

[hereafter referred to as the "Restored Wetland"]
 - (b) a complete list of the types of:
 - i. equipment,
 - ii. methods, including earth works and planting techniques, and
 - iii. materials, including salvaged and donor soils and vegetation,that will be used in the implementation of the Wetland Restoration Plan;
 - (c) a detailed description of the measures that will be taken to prevent all erosion, siltation, and other adverse effects to
 - i. the Restored Wetland, and
 - ii. all other water bodiesduring all of the work carried out in the implementation of the Wetland Restoration Plan;
 - (d) a detailed proposal to monitor the Restored Wetland (the "Restored Wetland Monitoring Proposal") following the completion of the Wetland Restoration Plan including, at minimum:
 - i. a proposed schedule for completing monitoring, including both the time of year of the assessments and the number of years monitoring is to be completed, and
 - ii. the monitoring methods and targets to be used for vegetation, soils, and hydrology assessments in determining restoration success; and
 - (e) a detailed proposal, prepared in accordance with Section 6 of the Alberta Wetland Restoration Directive (Government of Alberta, November 1, 2016) to complete a

Wetlands Restoration Verification (the "Wetlands Restoration Verification Proposal") for the Restored Wetland including, at minimum:

- i. wetland size and classification, based on the evaluation of monitoring results and comparison to monitoring targets and confirmed by a field assessment, and
- ii. submission of all monitoring results and analysis to the Director for review.

11. In the Wetland Restoration Plan, Kevin BRUNESKI shall include a schedule of implementation for the work proposed in the Wetland Restoration Plan, excluding the proposals required in clauses 10(d) and (e) of this Order, with a completion date of no later than December 4, 2023 (the "Completion Date").
12. Kevin BRUNESKI shall only complete the work described in the Wetland Restoration Plan in accordance with the Director's written authorization.
13. Kevin BRUNESKI shall provide the Director with 5 days' notice either by phone or email prior to commencing the work in the Wetland Restoration Plan as approved by the Director.
14. If Clause 6(a) or (b) is chosen then Kevin BRUNESKI shall implement the Restored Wetland Monitoring Proposal in accordance with the Director's written authorization.
15. If Clause 6(a) or (b) is chosen then Kevin BRUNESKI shall implement the Wetlands Restoration Verification Proposal in accordance with the Director's written authorization.
16. Where a deadline or reporting frequency has been specified in this Order, the Director may authorize in writing a different deadline or reporting frequency as applicable without amending the Order.

DATED at the City of Peace River in the Province of Alberta, this 21 day of September, 2022.



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.

