



# Environmental Appeal Board

Fourth Floor 747 Fort Street  
Victoria British Columbia  
V8W 3E9  
**Telephone:** (250) 387-3464  
**Facsimile:** (250) 356-9923

Mailing Address:  
PO Box 9425 Stn Prov Govt  
Victoria BC V8W 9V1

Website: [www.eab.gov.bc.ca](http://www.eab.gov.bc.ca)  
E-mail: [eabinfo@gov.bc.ca](mailto:eabinfo@gov.bc.ca)

---

**DECISION NO. 2013-WAT-026(a)**

**IN THE MATTER OF AN APPEAL TO THE  
ENVIRONMENTAL APPEAL BOARD  
UNDER THE *WATER ACT***

**BETWEEN:**

**LOTHAR VOLLMER**

**APPELLANT**

**AND:**

**MUHAMMED A SABUR, REGIONAL HYDROLOGIST**

**RESPONDENT**

**AND:**

**JAMES McKITRICK**

**PARTICIPANT**

WHEREAS: Lothar Vollmer appealed the September 12, 2013 order (the "Order") of Muhammed A. Sabur, Regional Hydrologist, Ministry of Forest, Lands and Natural Resource Operations, and an Engineer under the *Water Act*.

AND WHEREAS: The Order required the Appellants to remove certain changes in and about a stream, specifically a retaining wall in or adjacent to Bowron Lake.

AND WHEREAS: The Appellant has partially removed the retaining wall referred to above.

AND WHEREAS: The Appellant and Assistant Regional Water Manager have reached consensus on terms and conditions for resolving the matters under appeal.

Therefore, the Appellant and Regional Water Manager, hereby respectfully request that the Environmental Appeal Board make the following Consent Order by consent of the Parties, and, if the following Consent Order is made, the Appellant abandons the appeal of the Order.

## CONSENT ORDER

1. Pursuant to section 92(8)(b) of the *Water Act* the Environmental Appeal Board reverses the Order.
2. Pursuant to section 92(8)(c) and section 88(1)(e) of the *Water Act* the Environmental Appeal Board orders that the Appellant implement the following mitigation works according to the following terms:
  - (a) The Appellant will plant in the areas circled in red on the attached Schedule to this order
    - (i) stem cuttings for live stakes of willow, cottonwood, or red-osier dogwood or a combination of those species, and
    - (ii) seedlings of hybrid spruce (*Picea glauca x engelmannii*), aspen (*populus tremuloides*) or lodgepole pine (*pinus contorta*), or a combination of those species.
  - (b) The plantings required under paragraph (a) will consist of an equal number of seedlings and stem cuttings.
  - (c) The planting of live stakes under paragraph (a) must occur after October 1, 2015 and before April 30th 2016, or if the Habitat Biologist for Ministry of Forests, Lands and Natural Resource Operations, Quesnel Office (the "Habitat Biologist") advises the Appellant in writing that an earlier or later time is within dormant season for these species, within such dates as are approved by the Habitat Biologist in writing, provided that planting of live stakes must be completed no later than May 31, 2016.
  - (d) The planting of seedlings under paragraph (a) must occur after April 20<sup>th</sup> and before June 16th 2016, or if the Habitat Biologist advises the Appellant in writing that an earlier or later time is acceptable, within such dates as are approved by the Habitat Biologist in writing, provided that planting of seedlings must be completed no later than June 30, 2016.
  - (e) The planting of live stakes under paragraph (a) must be consistent with guidance in *Soil Bioengineering for Site Restoration*, by David Polster, dated November, 2013.
  - (f) Planting of seedlings under paragraph (a) must be consistent with good practices including:
    - (i) Roots must be straight and vertical,
    - (ii) Seedlings must be vertical, firmly planted in the soil, with soil not covering leaves of the seedling,
    - (iii) Roots must be below surface and with no air pockets in the soil adjacent to the roots,

- (iv) Sites chosen for planting of seedlings must be chosen to avoid
  - (A) loose gravel or dry mounds that are likely to dry out,
  - (B) depressions or streambeds that are likely to retain water,
  - (C) Sites with overhead obstacles,
  - (D) Areas where soil depth is not sufficient to plant straight roots.
- (g) Each live stake and seedlings planted under paragraph (a) shall be no closer than 0.9 meters and no further than 1.1 meters (measured horizontally) from the closest of other live stakes and seedling planted under paragraph (a), provided that if the sites available that meet this spacing criteria are not consistent with good practices for site selection identified in paragraph (f)(iv), the Appellant may space stakes and seedlings in appropriate sites that are that are as close as possible to the specified spacing criteria, provided that spacing is not closer than 0.8 meters and further than 1.5 meters.
- (h) No earlier than October 1, 2016 and no later than April 30<sup>th</sup>, 2017 the Appellant will inspect the live stakes planted under paragraph (a), and, if any live stakes have not survived, by April 30, 2017, or such later date that Habitat Biologist advises the Appellant in writing is acceptable, the Appellant will replace such stakes that have not survived with new live stakes planted in accordance with paragraphs (a)(i), (e) and (g) above.
- (i) No earlier than April 20<sup>th</sup>, 2017 and no later the June 16, 2017, the Appellant will inspect the seedlings planted under paragraph (a), and, if any seedlings have not survived as of the time of inspection, by June 16, 2017, or such later date that Habitat Biologist advises the Appellant in writing is acceptable, the Appellant will replace such seedlings that have not survived with new seedlings planted in accordance with paragraphs (a)(ii), (f) and (g) above.
- (j) The Assistant Regional Water Manager or Engineer may make such further orders as they consider appropriate if the Respondent fails to comply with this Order or if, at any time after June 16, 2018 fewer than 80% of the seedlings and live stakes planted pursuant to this order have survived.

3. This Consent Order does not prevent the Appellant, Lothar Vollmer, from applying in future under section 9(1) of the *Water Act* for approval to make changes in and about a stream, in particular to apply for approval to build, repair, modify, or replace a retaining wall on or adjacent to the Appellant's property for the purpose of preventing erosion of or damage to that property.

Dated this 18<sup>th</sup> day of September, 2015.

“Alan Andison”

Alan Andison, Chair  
Environmental Appeal Board

“Chris Rolfe”

Chris Rolfe, Counsel for the Assistant Regional Water Manager

“Brad Chudiak”

Brad Chudiak, Counsel for the Appellant

# SCHEDULE

