

LEVEL OF DESCRIPTION:

Series

No.:

AU023.023S

FORMS PART OF:

AU023 Martha Kostuch fonds

TITLE:

Tay River series

CREATOR:

Kostuch, Martha

DATE RANGE:

1985-2002

EXTENT:

0.84 meters of textual records and other material

ADMINISTRATIVE HISTORY/ BIOGRAPHICAL SKETCH:

In May 1997, Alberta Environment issued a permit to the Municipal District (MD) of Clearwater to upgrade an existing roadway. The MD hired Richardson Brothers Ltd. to do the construction work on Secondary Highway 752, southwest of Rocky Mountain House, Alberta. An environmental organization, the Rocky Mountain Ecosystem Coalition (RMEC) was contacted by an informant, Steven Haupt, who alleged the road construction resulted in the harmful alteration, disruption and destruction of fish habitat contrary to section 35(1) of the *Canada Fisheries Act* (the Act) and, in the deposition of deleterious materials in fish bearing water contrary to section 36 of the Act. The offense occurred where Highway 752 crossed the Tay River, a major tributary to the Clearwater River, and a significant spawning area for several fish species including the endangered Bull Trout. The terms and condition of the license issued to the MD of Clearwater stated that the MD was responsible for construction of the project, and that they had to follow the terms of the federal *Fisheries Act*.

The RMEC contacted the Federal Minister of Fisheries and Oceans with the complaint and was told they would investigate the matter themselves. As well, when contacted, the Attorney General for Alberta declined to intervene in the matter; due to the work being ongoing and the damage to the river was immediate, on August 13, 1997 David Jensen proceeded to lay a private charge against the MD of Clearwater and Richardson Brothers Ltd. for contravening the terms of the permit and for not having federal permission to alter the river.

Dave Jensen asked Martha Kostuch to assist him with the filing of statements and evidence. With her help, a series of requests were made under the *Access to Information Act* and they received material which showed that the MD of Clearwater and Fish and Wildlife departments were aware of, but unable to stop, the heavy silting and damage to the river incurred that summer by heavy rains.

On March 28, 2000, Jensen withdrew charges after reviewing the MD of Clearwater's ongoing and planned environment protection measures in the reconstructed area. They included, sediment control, erosion control and vegetation planting. Kostuch was pleased that the MD sought to remediate the problems incurred by the bridge construction and were going to continue to be aware of erosion control in future projects. The case against the MD of Clearwater and Richardson Brothers Ltd. was the first attempt to enforce federal and provincial environmental laws set to protect waterways and fish habitat which had been in place but had long been ignored and abused in contravention of legislation.

CUSTODIAL HISTORY:

In April 2008, Martha Kostuch signed an agreement with Athabasca University to have her records digitized but she passed away before this work could be started. After her death on April 23, 2008, her records went into the custody of her son Edward and in July 2008, he donated the records to Athabasca University, Athabasca, Alberta.

SCOPE AND CONTENT:

The series consists of material pertaining to the legal case of David Jensen vs. the Municipal District of Clearwater for allowing their contractors, Richardson Brothers Ltd. to alter the Tay River contrary to the *Fisheries Act*.

Textual records in this series consist of copies of material obtained under the *Access to Information Act*, legal documents and maps of the construction area, correspondence, newspaper clippings, notes, copies of the *Fisheries Act* and other legal precedents. As well, much of the material has been annotated by Martha Kostuch.

The photographs, transparencies and negatives taken as evidence, depict the construction site, the Tay River, the Prairie River and the Clearwater River.

SOURCE OF TITLE:

Title taken from the contents of the fonds.

PHYSICAL DESCRIPTION:

Series also contains ca. 146 photographs. – 15 transparencies. – 13 negatives. – 7 maps.

CONSERVATION:

Conservation copies have been made of some of the newspaper clippings, thermal fax paper and mimeograph paper.

ARRANGEMENT NOTE:

Series have been based on the major topics identified from the creator's arrangement, though some records may pertain to a number of series.

LANGUAGE NOTE:

The material is in English.

ACCESS CONDITIONS:

None.

USE CONDITIONS:

Permission for use required. Subject to *The Copyright Act*.

FINDING AIDS:

Box list and file list are available. Some of the material is available in electronic form.

INCLUDES THE FOLLOWING ACCESSIONS:

2008.015

Further accruals are not expected.

GENERAL NOTE:

Information for the administrative history was obtained from the records and from *The Edmonton Journal*, *Calgary Herald* and *Red Deer Advocate* newspapers.

SUBJECT HEADINGS:

Actions and defenses

Fisheries

Environmental policy

Environmental law

Water - - Pollution

Water - - Law and legislation

Rivers