

**IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY CONSENT ORDER**

IN THE MATTER OF: TOM & RHONDA BRAKKE D/B/A PINE RIDGE HUNTING LODGE Davis County, Iowa	EMERGENCY CONSENT ORDER NO. 2013-HP-
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TO: Tom and Rhonda Brakke, Owners of Pine Ridge Hunting Lodge
22529 Balsam Ave.
Clear Lake, IA 50428

I. SUMMARY

This Emergency Consent Order is entered into between the Director of the Iowa Department of Natural Resources ("DNR") and Tom and Rhonda Brakke D/B/A Pine Ridge Hunting Lodge ("the Brakkes") related to violations alleged by the DNR to have occurred at the premises they previously managed as a hunting preserve, Pine Ridge Hunting Lodge ("Pine Ridge"). This Emergency Consent Order is entered into between the parties for the purpose of settling the issues which were the subject of a hearing for a stay of the Emergency Order issued by the DNR on June 6, 2013 ("Emergency Order").

This Emergency Consent Order supersedes the Emergency Order issued on June 6, 2013 with respect to sections V.5 and V.6 only and only to the extent the terms herein are inconsistent with the terms of sections V.5 and V.6 of such Emergency Order. Nothing herein shall be construed in any way as an admission of any issues or liability by any of the parties to this Emergency Consent Order.

Questions regarding this Emergency Consent Order should be directed to:

Relating to technical requirements (DNR):

Dr. Dale Garner, Wildlife Bureau Chief
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515-281-6156

Relating to legal requirements (DNR):

Kelley Myers, Attorney for the DNR
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515-281-5634

Angie Bruce, Wildlife Bureau Executive Officer
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319
Phone: 515-281-8070

Relating to technical requirements (Brakkes):

Relating to legal requirements (Brakkes):

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Tom Brakke
22529 Balsam Avenue
Clear Lake, IA 50428
Phone: (641)425-2095

Rebecca A. Brommel
BrownWinick
666 Grand Avenue, Suite 2000
Des Moines, IA 50309
Phone: (515)242-2452

II. PROCEDURAL BACKGROUND

1. DNR issued an Emergency Order on June 6, 2013, which required the Brakkes to comply with six separate provisions.
2. Upon issuance of the Emergency Order, DNR requested the Iowa Department of Inspections and Appeals to set the case for a contested case hearing consistent with Iowa Code chapter 17A and 561 IAC chapter 7.
3. The Brakkes, through their counsel, appealed the Emergency Order on June 25, 2013. The Brakkes, through their counsel, filed a Motion for Stay on June 27, 2013, requesting the administrative law judge stay the Emergency Order.
4. The presiding administrative law judge, Judge Heather Palmer, issued the Notice for Hearing on June 18, 2013.
5. The parties, in prehearing conference with the judge, agreed that the hearing would be treated as a hearing on a motion for a stay, consistent with 561 IAC section 7.18(5).
6. The parties agreed to settle prior to the judge deciding whether to issue a stay of the Emergency Order. This Emergency Consent Order includes the terms of that settlement.

III. ORDER

THEREFORE, DNR orders and the Brakkes agree, without admitting any fault or any liability, to do the following:

1. The parties agree that an electrified fence just inside the existing high perimeter fence shall be restored or reconstructed on the following terms:
 - a. Electric Fence. The Brakkes shall maintain such electrified fence until such time as described in paragraph b below. The following terms shall apply to the electric fence:
 - i. Initiation of the construction and reconstruction efforts must commence by July 10, 2013, and be completed by July 22, 2013 unless unforeseen conditions are encountered or extenuating circumstances arise.
 - ii. The Brakkes and DNR shall split the cost of the materials for and/or installation of the fence 50-50. DNR intends to provide its staff for labor

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and such labor costs shall be the responsibility of DNR and not included in the costs to be divided with the Brakkes.

- iii. The fence shall be installed in such a manner as to ensure its effectiveness but also ease its maintenance. This may require, among other features, attachment to existing perimeter fencing so that the electrified portions come up from the ground at an approximate 45 degree angle. Regardless of the design, the fence must include an electrified wire every linear foot for at least three feet. The final design, which should be consistent with this section, shall be subject to the approval of at least one of the DNR's biologists identified in paragraph c below and the Brakkes. The fence should be designed and installed in a manner that the 50 percent amount to be paid by the Brakkes for such fence does not exceed the amount the Brakkes paid pursuant to the September 7, 2012 Agreement for Chronic Wasting Disease Recovery Plan at Pine Ridge Hunting Lodge, unless otherwise agreed to by the parties.
- iv. After construction is complete, the Brakkes shall be solely responsible for all fence repairs, maintenance and associated costs, except as stated in paragraph 3(a)(vii) below.
- v. One of the DNR Wildlife biologists identified in paragraph c shall conduct a weekly internal perimeter fence inspection and shall note all reasonable repairs that must be made to make and keep the fence functional. All necessary repairs identified by the biologist shall be submitted to the Brakkes in writing and completed within 24 hours from the date of the submission, unless such repairs cannot be reasonably completed within such time but provided such repairs are completed within a reasonable time thereafter.
- vi. One of the DNR Wildlife biologists identified in paragraph c shall conduct an internal perimeter fence inspection at the washout locations along the perimeter of Pine Ridge within one day of a significant rain event and shall note all reasonable repairs that must be made to make and keep the fence functional. All necessary repairs identified by the biologist shall be submitted to the Brakkes in writing and completed within 24 hours of the date of the submission, unless such repairs cannot be reasonably completed within such time but provided such repairs are completed within a reasonable time thereafter.
- vii. If during their inspection, one of the biologist observes a breach or other damage to either the perimeter or electric fence that requires immediate action to prevent animal release or harm, DNR shall repair such damage on the spot and at its own expense. The biologist shall notify the Brakkes of such repairs and direct them to make additional repairs if needed.

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- viii. At no time during the time in which the electric fence is required shall the DNR wildlife biologists identified in paragraph c enter Pine Ridge without first providing notice to the Brakkes.
 - ix. The electric fence requirements set forth herein shall terminate once depopulation, as set forth below, is completed and such depopulation is confirmed by DNR.
- b. Depopulation. The Brakkes shall depopulate the wild deer on Pine Ridge or shall authorize one of the DNR Wildlife biologists identified in paragraph c, to conduct such activities, as soon as is practicable or feasible given weather and terrain conditions. The following conditions shall apply:
- i. The Brakkes may destroy the deer through any lawful means or may rely on the DNR Wildlife Biologists identified in paragraph c below to conduct such depopulation.
 - ii. Depopulation activities shall occur until the DNR Wildlife biologists conclude that all wild deer on Pine Ridge are destroyed or are likely destroyed. Such judgment shall be based on the observation and professional judgment of the biologist. To that end, the biologist must be provided with reasonable access to Pine Ridge to make such judgment.
 - iii. Depopulation activities must occur prior to the end of the 2013-2014 hunting season.
 - iv. Any deer destroyed pursuant to this Emergency Consent Order shall be immediately provided to or made available to DNR staff identified in paragraph c in order to ensure that testing and disposal can occur. DNR shall collect requisite samples and submit them for CWD testing. DNR shall share all results related to deer killed on Pine Ridge with the Brakkes upon receipt of the same. DNR shall be responsible for all testing and disposal costs related to these efforts.
- c. DNR Wildlife Staff. The Brakkes shall refer all communications related to fencing or depopulation to the following DNR Wildlife Staff: Dr. Dale Garner, Wildlife Bureau Chief; Angi Bruce, Executive Officer 3; Bill Ohde, Wildlife District Supervisor; Keith Wilcox, Natural Resources Technician 2; Lincoln Utt, Natural Resources Technician 1; and Darwin Emmons, Natural Resources Technician 1. The Brakkes may suggest additions to this list during the term of this Emergency Consent Order with such request being made, in writing or email, to Dr. Dale Garner.
2. The Brakkes shall not be required to submit an operational plan, as described in section V.6 of the Emergency Order, pending a hearing on the merits or resolution of this case.

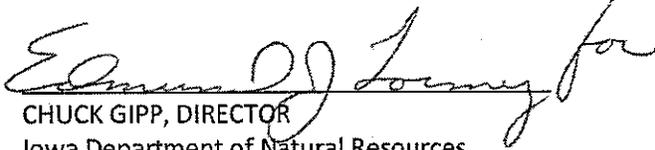
IV. DISPOSITION OF MOTION FOR STAY

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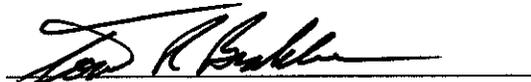
This Emergency Consent Order resolves the Motion for Stay filed by the Brakkes on June 27, 2013. DNR acknowledges the Brakkes have appealed the Emergency Order and such portions that are subject to their appeal may be heard in the hearing on the merits that is tentatively set for November of 2013 regardless of this Emergency Consent Order.

V. NONCOMPLIANCE

Failure to knowingly comply with this Emergency Consent Order may result in referral of this matter to the Attorney General or any other appropriate legal authority for relief as allowed by law.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 3rd day of
July, 2013.


TOM BRAKKE, CO-OWNER
Pine Ridge Hunting Lodge

Dated this 3 day of
July, 2013.


RHONDA BRAKKE, CO-OWNER
Pine Ridge Hunting Lodge

Dated this 3rd day of
July, 2013.

CC: Kelley Myers, Rebecca Brommel