

WATER ACT

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

Enforcement Order. WA-EO-2019/10-LAR

Lise Leguerrier
P.O. Box 6066
Bonnyville, AB
T9N 2G7

and

The Estate of Ken Leguerrier
c/o P.O. Box 6066
Bonnyville, AB
T9N 2G7

[collectively "the Parties"]

WHEREAS the current land titles search for the lands legally described as NE 20-62-4-W4M and NW 21-62-4-W4M in the Municipal District of Bonnyville No. 87, Alberta [the "Lands"] shows that the named registered owners are Ken Leguerrier and Lise Leguerrier;

WHEREAS Alberta Environment & Parks ["AEP"] has been advised that Ken Leguerrier passed away earlier in 2019;

WHEREAS an unnamed natural watercourse [the "Watercourse"] conveys surface flows from the west across the Lands in an easterly direction, and is a tributary to Muriel Creek;

WHEREAS there are three permanent and naturally-occurring wetlands on the Lands whose bed and shores are Crown-owned by virtue of Section 3 of the *Public Lands Act*, and the Water Boundaries Unit of AEP has affirmed Crown ownership over each of them;

WHEREAS attached to this Order is Appendix "A" being a 2008 satellite image of the Lands showing the boundaries of the Lands, adjacent land parcels, and the three Crown-owned wetlands, which will be hereafter referred to as "Wetlands 1, 2 and 3" (or collectively as the "Impacted Wetlands"), and the "Ditch" (all further described below);

WHEREAS on December 17, 2018, AEP received a public complaint from the owner of the NE 21-62-4-W4M ["the NE-21"] which is adjacent to the Lands on the east side stating that:

- historical ditching conducted by the Parties on the Lands had altered the natural surface water flows, and water no longer filled his dugout on the NE-21 as occurred prior to the Parties conducting their activities;

- Ken Leguerrier had conducted work on the Lands over the previous four years to dry out the Impacted Wetlands; and
- Ken Leguerrier had conducted work in the Watercourse to straighten and deepen it into a ditch to drain the Impacted Wetlands [“the Ditch”].

WHEREAS on January 3, 2019, an AEP Environmental Protection Officer interviewed Ken Leguerrier who stated:

- He could not farm 80 acres of his farmland due to the water backup on his quarter
- He used heavy equipment to remove manure from the Ditch but had never dug below the clay level of soil, and maintains it for drainage
- He previously infilled historical dugouts on the Lands to increase usable farmland

WHEREAS on January 10, 2019, AEP met with Ken Leguerrier to inspect the Lands and observed:

- The Ditch (within the Watercourse) was still present
- Brush piles and mounds of soil present among wetland vegetation in Wetlands 2 and 3

WHEREAS during this January 10, 2019 inspection, Ken Leguerrier stated:

- He had worked on the Ditch on his Lands, and also extended it into the neighbour’s property to the east (the NE-21) with permission from that neighbour
- He did not obtain any authorization from AEP prior to conducting the above activities in the Impacted Wetlands or creating the Ditch in the Watercourse

WHEREAS on January 10, 2019, AEP also inspected the NE-21 and observed the portion of the Ditch present on that property, with the owner of the NE-21 stating:

- Since construction of the Ditch, water would not naturally fill his dugout as it did previously, and the dugout would dry up during the summer months;
- Since construction of the Ditch there is an increase in water flowing through his property that is causing downstream flooding to the next property to the east (the NW-22-62-4-W4M, hereafter the “NW-22”); and
- He gave Ken Leguerrier verbal permission to remove a beaver dam on NE-21, but never gave permission to extend the Ditch onto his property.

WHEREAS on January 25, 2019, AEP reviewed the historical files relating to the Lands and the Parties, and noted:

- On August 5, 2009, AEP inspected the Lands and observed extensive filling and draining of Wetlands 1 and 2, and realignment of the Watercourse into the Ditch;
- No records of any applications for authorizations having been made or issued under the *Water Act* for the above activities;
- Ken Leguerrier had stated in 2009 that he conducted the activities in 2008-09 to drain his Lands for agricultural purposes, and did not have any authorizations from AEP;
- On September 27, 2010, a *Water Act* approval [the “Approval”] was issued to Ken Leguerrier for the purpose of restoring the pre-disturbance condition of the Ditch and the Impacted Wetlands, and to permit the construction of a cattle crossing over the Watercourse (with an expiry date of December 31, 2011); and
- On December 22, 2011, AEP inspected the Lands and observed no restoration work had yet been conducted under the Approval.

WHEREAS on February 20, 2019, AEP spoke with the owner of the NW-22 who stated:

- The unauthorized activities on the Lands has increased the amount of water flowing through to his property;
- Ken Leguerrier offered him equipment to build a trench on the NW-22 to accommodate the increased water flows coming from the Leguerrier Lands;
- Approximately 30 acres of the NW-22 is now unusable due to the extra amount of water entering his property;

WHEREAS on May 6, 2019, AEP confirmed by inspection of the Lands that the infilling of all the Impacted Wetlands and the Ditch remain in place;

WHEREAS the Impacted Wetlands and the Watercourse are each a "water body" as defined in section 1(1)(ggg) of the *Water Act*;

WHEREAS altering the flow, direction of flow or level of water or changing the location of water for the purpose of drainage are an "activity" as defined in section 1(1)(b) of the *Water Act*;

WHEREAS section 36(1) of the *Water Act* states, no person may commence or continue an activity, except pursuant to an approval unless it is otherwise authorized under the *Act*;

WHEREAS the unauthorized infilling of the Impacted Wetlands, and the construction and operation of those portions of the Ditch that is within the Watercourse, or that is draining the Watercourse, are activities within section 1(1)(b) of the *Act*, and AEP has not issued an approval or otherwise authorized these activities;

WHEREAS the Parties are each a "person responsible" for the unauthorized activities described in this Order pursuant to section 1(1)(kk) of the *Water Act*, and section 1(5) of the *Water (Ministerial) Regulation* (AR 205/1998) as the owner(s) of the land on which the activity was carried out and/or the person(s) who carried out the activities, or an executor of any such persons;

WHEREAS for the purposes of this Order, "wetland restoration" means the re-establishment of hydrology, vegetation and wetland processes as existed prior to the unauthorized activities;

WHEREAS, Simon Tatlow, AEP Compliance Manager, Lower Athabasca Region [the "Director"] has been designated as a Director for the purpose of issuing enforcement orders under the *Water Act*;

WHEREAS the Director is of the opinion that the unauthorized activities noted in this Order are also impacting adjacent properties, and that the following are required:

- Wetland restoration of the Impacted Wetlands
- Restoration of the Watercourse back to its pre-disturbance condition prior to construction of the Ditch, including restoration of all natural flows in the Watercourse prior to construction of the Ditch.

THEREFORE, I, Simon Tatlow, Director, pursuant to sections 135 and 136(1) of the *Water Act*, DO HEREBY ORDER THAT:

1. The Parties must immediately cease all unauthorized activities on the Lands.

Restoration of the Impacted Wetlands

2. The Parties shall submit to the Director, for the Director's approval, the name and qualifications of a Professional who is a member in good standing with a Professional Regulatory Organizations [the "Professional"], with experience in preparing a remedial plan and managing Wetlands on or before **November 29, 2019** with the following information:
 - a. the name and contact information of the Professional, and
 - b. a summary of how the Professional meets the requirements of Clause 2 of this Order.
3. The Parties shall submit to the Director, for the Director's approval, a written wetlands restoration plan [the "Wetlands Restoration Plan"] signed by the Professional by **February 21, 2020**.
4. In the Wetland Restoration Plan, the Parties shall include the following:
 - a. a detailed plan to restore each of the Impacted Wetlands to their respective conditions prior to the unauthorized activities described in this Order, including restoring each of the following:
 - i. wetland size;
 - ii. wetland classification;
 - iii. zones of wetland function; topography and slopes,
 - iv. soils,
 - v. hydrology, including all
 1. inlet locations;
 2. outlet locations;
 3. elevations; and
 - vi. vegetation in and around the Impacted Wetlands,
 - b. a detailed plan to restore the flow of water into and out of each of the Impacted Wetlands to their conditions prior to the unauthorized activities, including rendering ineffective any unauthorized drainage from the Wetlands,
 - c. a complete list of the:
 - 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,
 - d. a description of the measures to prevent all erosion, siltation and other adverse effects to the Impacted Wetlands during implementation of the Wetland Restoration Plan,
 - e. a detailed proposal to monitor the Impacted Wetlands after completion of the Wetland Restoration Plan, the "Restored Wetlands Monitoring Proposal", including:

- b. A description of the type of equipment, methods, and materials that will be used in implementing the Watercourse Restoration Plan.
 - c. A description of the measures to prevent and minimize any erosion, siltation, or other adverse effects to the Watercourse during implementation of the Wetland Restoration Plan.
 - d. A description of the long-term monitoring and maintenance measures (including length of time during which monitoring will occur) to ensure that the Watercourse has been restored to its pre-disturbance condition.
 - e. A schedule for implementing the Plan with a completion date no later than **July 31, 2020**.
11. The Parties must implement the Watercourse Restoration Plan as approved in writing by the Director and in accordance with the approved schedule of implementation.
12. The Parties must provide the Director with a minimum of 2 business days' notice by email prior to commencing any work under the Watercourse Restoration Plan.
13. Once the work under the Watercourse Restoration Plan is complete, the Parties must submit to the Director a final written report prepared and signed by the approved Professional describing the work undertaken to restore the Watercourse by **August 28, 2020**.

DATED at the Town of Bonnyville in the Province of Alberta, this 3rd day of October, 2019.



Simon Tatlow
Compliance Manager
Lower Athabasca Region

Section 115 of the Water Act may provide a right of appeal against this decision to the Alberta Environmental 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 #306 Peace Hills Trust Tower, 10011-109th Street, Edmonton, Alberta, T5J 3S8; Telephone (780) 427-6207; Fax (780) 427-4693.

Notwithstanding the above requirements, the Parties shall obtain all other necessary approvals from any regulatory agency (provincial or federal) in complying 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 this Act or any other legislation.

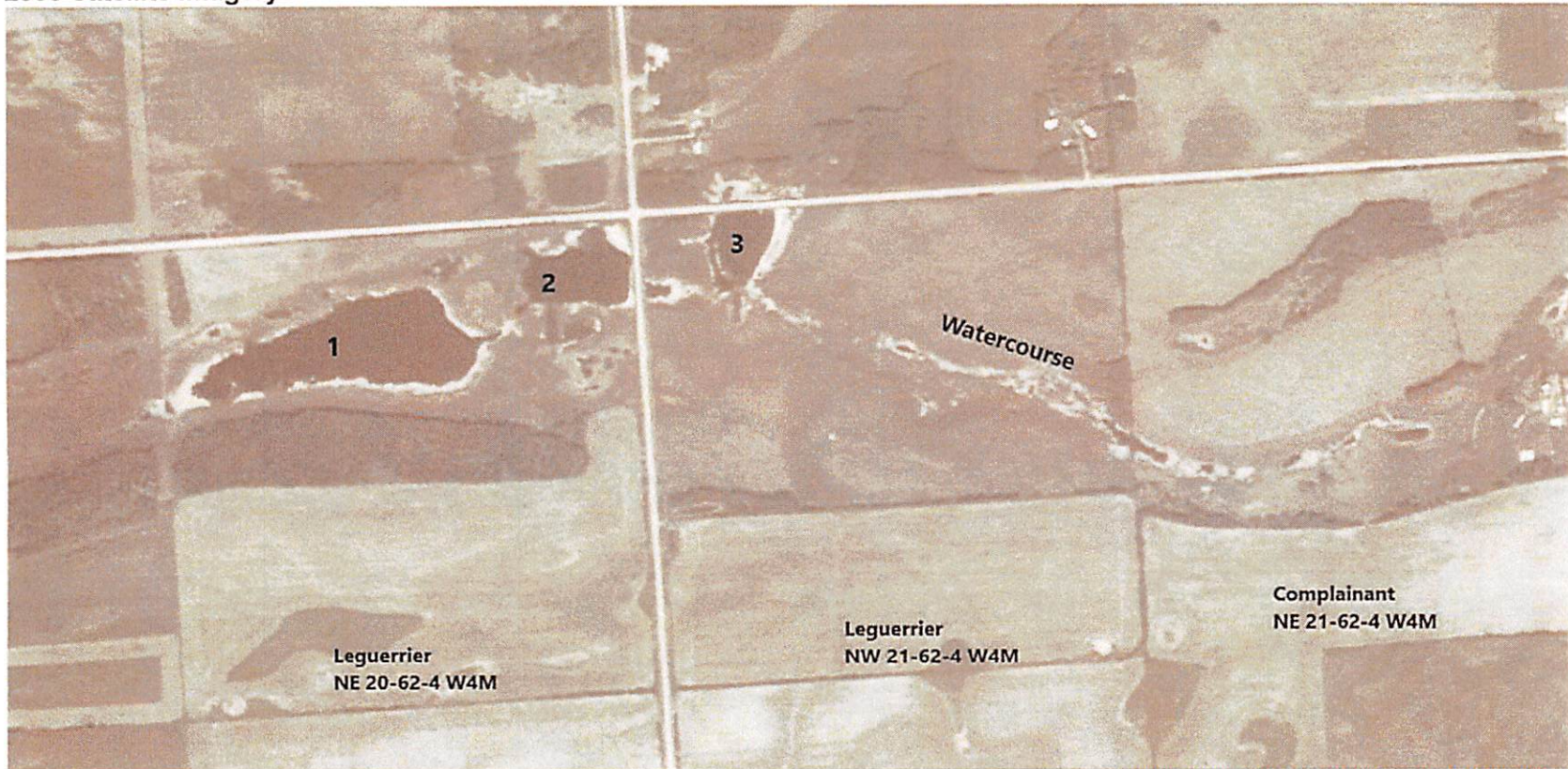
- i. a proposed schedule for completing monitoring, including annual frequency, time of year, and the proposed length of time over which the monitoring will occur (number of years)
 - ii. the monitoring methods and targets to be used for vegetation, soils and hydrology assessments in determining restoration success,
 - f. 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 each of the Impacted Wetlands 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, and
 - iii. a proposed schedule for conducting the verification following completion of the monitoring in the Restored Wetlands Monitoring Proposal that was accepted by the Director.
 - g. a schedule of implementation for all of the work proposed in the Wetland Restoration Plan [except the proposals required in clauses 4(e) and 4(f) which shall have their own proposed schedules], with a completion date of no later than **July 31, 2020**.
5. The Parties shall only complete the work described in the Wetland Restoration Plan in accordance with the Director's written authorization.
 6. The Parties shall provide the Director with 3 days' notice in writing prior to commencing the work in the approved Wetland Restoration Plan.
 7. The Parties shall implement the Restored Wetland Monitoring Proposal in clause 4(e) in accordance with the Director's written authorization.
 8. The Parties shall implement the Wetland Restoration Verification Proposal in clause 4(f) in accordance with the Director's written authorization.

Restoration of the Watercourse

9. The Parties must submit to the Director, for the Director's written approval, a written "Watercourse Restoration Plan" signed by the Professional by **February 21, 2020**, which will have as its objective the restoration of the Watercourse by remediating to meet the objective of restoring the Watercourse to its pre-disturbance condition, including hydrology, soils, and vegetation.
10. The Watercourse Restoration Plan shall include:
 - a. A detailed description of the restoration work that meets the objectives of restoring the pre-disturbance hydrology, vegetation, and soils of the Watercourse.

Appendix A

2008 Satellite Imagery



0.1 0 0.07 0.1 Kilometers

Projection: NAD_1983_10TM_AEP_Forest

Map Scale: 9,028

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