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**WATER ACT**

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

Enforcement Order No. WA-EO-2019/09-LAR

Yvon and Lea Lapointe  
Box 7935  
Bonnyville, Alberta  
T9N 2H6

(collectively the "Parties")

WHEREAS Yvon Lapointe and Lea Lapointe are joint registered owners of the lands legally described as SE 24-61-6-W4M in the Municipal District of Bonnyville #87, Alberta [the "Lands"];

WHEREAS there are natural surface water drainage flows across the Lands in a northerly direction, including coming from the property on its southeast corner, legally described as Plan 8621749 Lot B ["Lot B"];

WHEREAS on July 16, 2012, AEP received a complaint from the owner of Lot B stating that the Parties had "constructed a 50-80 foot berm [on the Lands] to back water up onto his property";

WHEREAS the Lands were inspected by AEP in July of 2012, and again on September 26, 2014, and the AEP Environmental Protection Officers observed the following:

- Soil and material had been used to fill areas on the Lands along the southeast property line apparently intended to block water flows coming across from Lot B
- Alteration of natural surface water flows on the Lands

WHEREAS during these inspections, the Environmental Protection Officers also noted land development activity on Lot B which was also altering natural surface water flows, including the deepening of a natural drainage swale into a drainage ditch which was concentrating water flows onto the Lands;

WHEREAS attached as Appendix "A" is an aerial map showing the Lands, the earthen berm, Lot B and the constructed drainage ditch on Lot B that is the subject of a separate investigation by AEP;

WHEREAS between 2014-2018, AEP was communicating with the MD of Bonnyville No. 87, the Parties, and the owners of Lot B, regarding the drainage issues between the Lands and Lot B and the MD's sewage requirements;

WHEREAS by 2017, the MD's sewage requirements on Lot B were satisfied, and AEP thereafter continued working with the Parties to ensure that the infill material they placed on the Lands was removed as it was not authorized as required under the *Act* and was altering the natural surface flows;

WHEREAS AEP had no evidence that any berm had been constructed on the Lands prior to 2018, notwithstanding the public complaint received in 2012 which described "a berm";

WHEREAS in or about the spring of 2018, AEP confirmed that the Parties had conducted further infilling work and constructed an earthen berm along the southeast and southwest boundaries of the Lands (see Appendix A) to block the flow of water coming from Lot B;

WHEREAS on April 17, 2018, AEP confirmed that the berm was still on the Lands and was approximately 200 metres in length across the south and east boundaries of the Lands, and 1 metre high;

WHEREAS on April 20, 2018, an AEP Inspector issued a Water Management Order to the Parties under section 97 of the *Act*, requiring they breach the berm and restore the natural surface water flows, though the Order expired on April 24, 2018 as section 97(3) of the *Act* states that a Water Management Order issued by an Inspector can only be in effect for a maximum of four days;

WHEREAS inspections by AEP on April 24, 2018 and March 26, 2019 confirm the berm has not been breached, and still blocks the northerly natural surface water flows causing flooding on portions of Lot B;

WHEREAS constructing, operating and maintaining works in or on any land that alters, may alter or is capable of altering the flow, or direction of flow, of water, either temporarily or permanently by any means, or that changes the location of water, is an "activity" as defined in section 1(1)(b) of the *Act*;

WHEREAS the berm is a works that is altering the natural surface water flows and location of water and direction of surface flows, and is therefore an "activity" under the *Act*;

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

WHEREAS AEP has not issued an approval or otherwise authorized construction and operation of the berm on the Lands;

WHEREAS the Parties are persons responsible for the berm pursuant to section 1(1)(kk) of the *Act*, and section 1(5) of the *Water (Ministerial) Regulation*;

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

WHEREAS the Director is of the opinion that the Parties have contravened section 36(1) of the *Act* for the construction and operation of the berm without an approval or authorization from AEP;

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

1. The Parties must immediately cease all unauthorized activities on the Lands.
2. The Parties shall submit to the Director by **November 21, 2019**, for the Director's approval, a written Remedial Plan ("the Plan") signed and stamped by a Professional with experience in hydrology and restoration of natural surface water flows, that shall have as its objective restoring the natural surface drainage patterns across the Land that existed prior to the commencement of the infilling activities and construction of the berm, by:
  - A. Removing the berm, or breaching it sufficiently, that will restore natural surface drainage that existed prior to these unauthorized activities, and
  - B. Removal of any fill materials in any other areas of Land (other than in the vicinity of the berm) that are impacting the natural surface drainage patterns across the Lands.
3. The Parties shall include in the Plan, at a minimum the following:
  - A. A map to determine:
    - i. The historical drainage patterns prior to the infilling and the installation of the berm by the Parties; and
    - ii. The currently altered drainage patterns on the Lands, including where the water is entering and exiting the Lands, in order to determine the scope of work to restore the surface water drainage patterns to their pre-disturbance state.
  - B. Details as to how the berm will be removed, or otherwise breached, in a manner that will meet the objectives stated in Clause 2.
  - C. Details as to the management of water exiting the Lands, including after the proposed remedial work under the Plan, to minimize impacts to neighbouring properties while ensuring natural surface drainage patterns.
  - D. A description of the type of equipment, methods, and materials that will be used in implementing the Plan.
  - E. A schedule for implementing the Plan with a completion date no later than **January 23, 2020**.
4. The Parties shall implement the Plan as approved in writing by the Director in accordance with the schedule of implementation approved by the Director.
5. The Parties shall provide the Director with a minimum of 2 business days notice by email prior to commencing any work under the Plan.



6. The Parties shall submit to the Director a final report prepared and signed by the approved Professional describing the work undertaken to comply with this Order 30 days after completion of the Plan.

DATED at the Town of Bonnyville, in the Province of Alberta, this 2<sup>nd</sup> day of October, 2019.



Simon Tatlow  
Compliance Manager  
Lower Athabasca Region

**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. Failure to comply with this order may result in further enforcement proceedings.**

**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. 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



