

**WATER ACT**

**BEING CHAPTER W-3, RSA 2000 ("the Act")**

**ENFORCEMENT ORDER NO. WA-EO-2017/10-PR**

Homeland Hutterian Brethren  
Box 688  
Fahler, Alberta  
T0H 1M0

WHEREAS a parcel of land located at SW-11-73-22-W5M (the "Lands"), and is owned by Homeland Hutterian Brethren in the M.D. of Greenview No. 16, Alberta;

WHEREAS an aerial photograph, attached as Appendix A to this Order, shows that the Lands contain a creek called "New Fish Creek" that flows in a southeasterly direction, crossing the Lands in the southwest corner;

WHEREAS on February 2, 2017, Alberta Environment and Parks ("AEP") received a complaint regarding a diversion of New Fish Creek from the Lands to a road allowance that is adjacent to the Lands;

WHEREAS during a site inspection on May 31, 2017, an AEP Environmental Protection Officer ("EPO") observed the following on the Lands, and on the bed and shore of New Fish Creek adjacent to the Lands:

- A berm was created at the point where the New Fish Creek entered on to the Lands from the West,
- A shallow ditch was created to direct the flow of water in the Creek south to the road allowance right-of-way and across the southern perimeter of the Lands to reconnect with the Creek in its natural location,
- A berm of soil and vegetation was created along the southern perimeter of the Lands to prevent flow of water onto the Lands

(Collectively, the above activities comprise "The Works");

WHEREAS during a conversation with an EPO on May 31, 2017, Elias Wipf, a Director of Homeland Hutterian Brethren admitted the following:

- He constructed the Works on behalf of the Brethren;
- He had neither applied for nor obtained a *Water Act* (the "Act") approval prior to commencing construction of the Works;

WHEREAS New Fish Creek is a "water body" within the meaning of section 1(1)(ggg) of the Act;

WHEREAS the Works are an "activity" within the meaning of section 1(1)(b)(i) of the Act as removing, or disturbing ground, vegetation or other material or carrying out any undertaking in or on any land, water or waterbody that alters, may alter or may become capable of altering the flow or level of water, or that changes, may change or may become capable of changing the location of water or the direction of flow

of water, or causing siltation of water or the erosion of the bed or shore of New Fish Creek, and may cause or may become capable of causing an effect on the aquatic environment of New Fish Creek;

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

WHEREAS AEP has never received an application from nor issued an approval to Homeland Hutterian Brethren for the construction and operation of the Works, and the construction and operation of the Works are not otherwise authorized under the *Act*;

WHEREAS the Homeland Hutterian Brethren is a "person responsible" for the Works pursuant to section 1(1)(kk) of the *Act* and section 1(5) of the *Water (Ministerial) Regulation* (A.R. 205/1998) as a registered owner of the Lands on which the activity was carried out and as the person carrying out the Works;

WHEREAS Owen Cook, Compliance Manager, Peace Region, has been designated as a Director under the *Act* for the purposes of issuing enforcement orders (the "Director");

AND WHEREAS the Director is of the opinion that the Homeland Hutterian Brethren has contravened section 36(1) of the *Act*, which is an offence under section 142(1)(h) of the *Act*, by conducting an "activity" without an approval;

THEREFORE, I, Owen Cook, the Director, pursuant to section 135(1) and 136(1) of the *Act*, DO HEREBY ORDER THAT:

1. The Homeland Hutterian Brethren shall immediately cease conducting any further unauthorized activities relating to the Works.
2. The Homeland Hutterian Brethren shall by December 15, 2017, submit to the Director, for the Director's approval, a written remedial plan (the "Remedial Plan").
3. The Homeland Hutterian Brethren shall employ an Authenticating Professional with experience in preparing watercourse remediation plans to:
  - a. Complete and
  - b. Signthe Remedial Plan.
4. The Remedial Plan shall include, at a minimum, the following:
  - a. detailed description of how the entirety of the Works will be removed
  - b. how the portions of the bed and shore of New Fish Creek affected by the Works will be restored to pre-disturbance conditions;
  - c. how the undisturbed portions of the bed and shore of New Fish Creek adjacent to the Lands will remain undisturbed during the implementation of the Remedial Plan;

- d. the types of
  - i. equipment,
  - ii. methods, and
  - iii. materials

that will be used in implementing the Remedial Plan;

- e. A description of the measures that will be implemented to prevent all erosion of the bed and shore of New Fish Creek adjacent to the Lands:
    - i. during the implementation of the Remedial Plan; and
    - ii. after completion of the work set out in the Remedial Plan;
  - f. A description of the measures that will be implemented to restore the vegetation on the affected portions of the bed and shore of New Fish Creek;
  - g. A schedule of implementation for the work required by the Remedial Plan that shall have a completion date of no later than **June 30, 2018.**
- 5. The Homeland Hutterian Brethren shall implement the Remedial Plan in accordance with the schedule of implementation as authorized by the Director.
  - 6. The Homeland Hutterian Brethren shall provide the Director with three (3) days' notice either by phone or email prior to commencing the work in the Remedial Plan.
  - 7. Within 30 days of completion of the requirements of this Order, Homeland Hutterian Brethren shall submit to the Director a final written report (the "Final Report") describing the work undertaken to comply with this Order, and signed by the Authenticating Professional who prepared or contributed to the Remedial Plan.

DATED at the Town of Peace River in the Province of Alberta, this 10 day of Nov, 2017.

Original signed by:

Owen Cook  
Compliance Manager

**Notwithstanding the above requirements, the Party 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 Environmental Appeals Board. There may be a strict time limit for filing such an appeal.**

**For further information, please contact the Board at:**

**Environmental Appeals Board  
306 Peace Hills Trust Tower  
10011 - 109 Street  
Edmonton, Alberta  
T5J 3S8  
Telephone (780) 427-6207  
Fax (780) 427-4693**

**<http://www.eab.gov.ab.ca/>**

Appendix A



Map 1 – Map with aerial photography with the original creek location (blue line) and unauthorized diversion location (purple line) affecting New Fish Creek.