



**WATER ACT**

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

**ENFORCEMENT ORDER NO. WA-EO-2012/04-CR**

Ron Duffy  
Rural Route #4  
Lacombe, Alberta  
T4L 2M4

and

Donna Lynn Duffy  
Box 249  
Rochester, Alberta  
T0G1Z0

(collectively "the Duffys")

WHEREAS Donna Lynn Duffy is the registered owner of lands legally described as NE 13-39-25-W4M, located in County of Lacombe, Alberta (the "Lands");

WHEREAS Donna Duffy and Ron Duffy are siblings and Ron Duffy farms the Lands;

WHEREAS prior to 2009 the northeast portion of the Lands had a drainage pattern which contained an unnamed tributary of Haynes Creek that meandered in a south easterly direction through a treed and vegetated corridor (the "Natural Watercourse") and nearby but not part of the Natural Watercourse were a series of low lying areas that contained water at certain times of the year (collectively the "Potholes");

WHEREAS on July 27, 2009, an Alberta Environment and Water ("AEW") investigator received a complaint that Ron Duffy was knocking down trees and disking in the Natural Watercourse on the Lands;

WHEREAS on July 28, 2009, the AEW Investigator attended the Lands and observed Ron Duffy on a caterpillar machine moving soil in the vicinity of the Natural Watercourse. The AEW Investigator observed that the Natural Watercourse had been altered by vegetation removal, disking and localized reshaping of the bed and banks. The AEW Investigator spoke to Ron Duffy who advised that he would apply for an approval for future activities affecting the Natural Watercourse;

WHEREAS on December 9, 2009, the AEW Investigator sent a letter to the Duffys describing the types of activities that require an approval under the *Water Act* and indicating that AEW would return to the Lands to further assess changes to the Natural Watercourse;

WHEREAS on August 5, 2011, the AEW Investigator returned to the Lands and observed that the Natural Watercourse had been realigned to form a main drainage channel (the "Channel"). The Channel was excavated into subsoil to form drainage works that had a larger cross section, a steeper gradient, less vegetation and a straighter alignment than the Natural Watercourse. Attached to this Order and marked as Exhibit "A" is a 2010 aerial photograph of the Lands entitled "2007 Channel Trace Overlay (2010)", which shows the Channel overlaying the original treed corridor, which contained the Natural Watercourse;

WHEREAS on September 12, 2011, the AEW Investigator sent a letter to the Duffys that included applicable sections of the *Water Act* and the requirement to submit a remediation plan for the Channel, designed by a qualified water resource professional, aimed at restoring the natural function of the Natural Watercourse;

WHEREAS on February 15, 2012, the AEW Investigator received a complaint that Ron Duffy was undertaking further excavation and fill activities on the Lands;

WHEREAS on February 24, 2012 and April 3, 2012, the AEW Investigator attended the Lands and observed that portions of the Lands in the northeast quadrant had been excavated to form a series of smaller drainage ditches and that a total of ten (10) Potholes had been altered by excavation or fill activities (collectively "the Wetland Works");

WHEREAS attached to this Order and marked as Exhibit "B" is an untitled 2010 aerial photograph showing the following:

- the Channel is identified by a solid white line with an arrow running between points "D" and "E" on the Lands; and
- the Wetland Works which includes ditching which is identified by solid red lines with arrows and the altered Potholes which are identified by numbers. Specifically, the Wetland Works includes:
  - One ditch related to Potholes #1, 2, 3 and 4 which begins near the northern boundary of the Lands and follows a crude "Y" pattern in north-to-south direction to drain surface water south towards the Channel;
  - Another ditch related to Potholes #5, 7 and 8 which is located in the northeast corner of the Lands and follows a crude "Y" pattern in a north-to-east direction to drain surface water southeast towards a county road culvert (shown in yellow) on the eastern boundary of the Lands; and
  - Three smaller isolated ditches related to Potholes #6, 9 and 10 which are located in the northeast quadrant of the Lands;

WHEREAS the AEW Investigator met with the Duffys and their legal counsel on November 24, 2011 and January 19, 2012 to discuss the remediation of the Channel;

WHEREAS on April 4 and 5, 2012, the AEW Investigator sent a Notice of Investigation to Donna Duffy and Ron Duffy respectively to advise that AEW was undertaking an investigation of the Lands in relation to the Channel and the Wetland Works;

WHEREAS the Natural Watercourse and the Potholes are water bodies within the meaning of section 1(1)(ggg) of the *Water Act*;

WHEREAS the realignment of the Natural Watercourse to form the Channel, and construction of the Wetland Works are activities within the meaning of section 1(1)(b)(i) and 1(1)(b)(ii) of the *Water Act*, which require approvals pursuant to section 36(1) of the *Act*;



WHEREAS the AEW Investigator determined that AEW has never received applications from nor issued any approvals under the *Water Act* to the Duffys to authorize activities on the Lands

WHEREAS remedial works, as designed by a qualified environmental professional, are required to restore the natural functioning of the Natural Watercourse by ensuring that the Channel minimizes flooding, erosion and siltation on the Lands and adjacent properties, and to restore the Wetland Works to their pre-disturbance conditions or, alternatively, to create a consolidated wetland feature on the Lands;

WHEREAS Martin Paetz, District Compliance Manager, Central Region (the "Director") has been appointed a Director for the purposes of issuing enforcement orders under the *Water Act*;

WHEREAS the Director is of the opinion that the Duffys have contravened section 36(1) of the *Water Act*, which is an offence under section 142(1)(h) of the *Water Act* by realigning the Natural Watercourse to form the Channel and by constructing the Wetland Works without approvals;

WHEREAS Donna Duffy is a "person responsible" under section 1(1)(kk) of the *Water Act* and section 1(5) of the *Water (Ministerial) Regulation* (A.R. 205/98) for the activities on the Lands as the registered owner of the Lands, and Ron Duffy is a "person responsible" as the person who carried out the activities on the Lands;

THEREFORE, I, Martin Paetz, District Compliance Manager, Central Region, pursuant to section 135(1) and 136(1) of the *Water Act*, DO HEREBY ORDER THAT:

1. The Duffys shall immediately cease all activities on the Lands in regard to the realignment of the Natural Watercourse or the further development of the Wetland Works.
2. The Duffys shall submit a written remedial plan to the Director by **July 15, 2012** (the "Remedial Plan") that is prepared and signed by a qualified environmental professional.
3. The Remedial Plan shall include, but not be limited to, the following:
  - (a) The results of a review and analysis of historic photography of the Lands to locate and plot the alignment of the original Natural Watercourse, the drainage patterns and the Potholes relative to the present landscape;
  - (b) The results of a delineation and hydrologic analysis of the sub-basin contributing flow to the Natural Watercourse and to the Potholes, including the calculation of the maximum instantaneous discharge for the 1:2, 1:5, 1:10, 1:25 and 1:50 annual return (natural) flow received by the Natural Watercourse and Potholes;
  - (c) A description of the remedial works for the Channel that replicates the effect of the erosion and flood control function of the Natural Watercourse and accommodates the maximum instantaneous discharge along the Channel, including the methods, equipment and materials that will be used;
  - (d) A description of the remedial works for the Wetland Works that either
    - i. restores the original Potholes and drainage patterns; or
    - ii. provides the design of a wetland consolidation feature in the same drainage pathway providing the equivalent retention and detention capability of the impacted Potholes,including the methods, equipment and materials that will be used.

- (e) A description of the measures to prevent and minimize any erosion and siltation of the Channel and downstream areas.
4. The Remedial Plan shall be accompanied by a Schedule of Implementation for the remedial work that shall have no later than **September 15, 2012** as the completion date.
  5. The Duffys shall implement the work described in the Remedial Plan pursuant to the Schedule of Implementation that is approved by the Director.
  6. Within 14 days of completion of the remedial work required by this Order, the Duffys shall submit to the Director a final written report (the "Final Report") signed by the qualified environmental professional who supervised the remedial work confirming the remedial work undertaken to comply with this Order. The Final Report shall include an "As Built" survey confirming the remedial work undertaken to comply with this Order.
  7. The Duffys shall submit before November 1, 2013 and before November 1, 2014 a monitoring report signed by the qualified environmental professional, documenting the performance and maintenance needs of the remedial work undertaken to comply with this Order.

DATED at the City of Red Deer in the Province of Alberta this 31<sup>st</sup> day of May 2012.

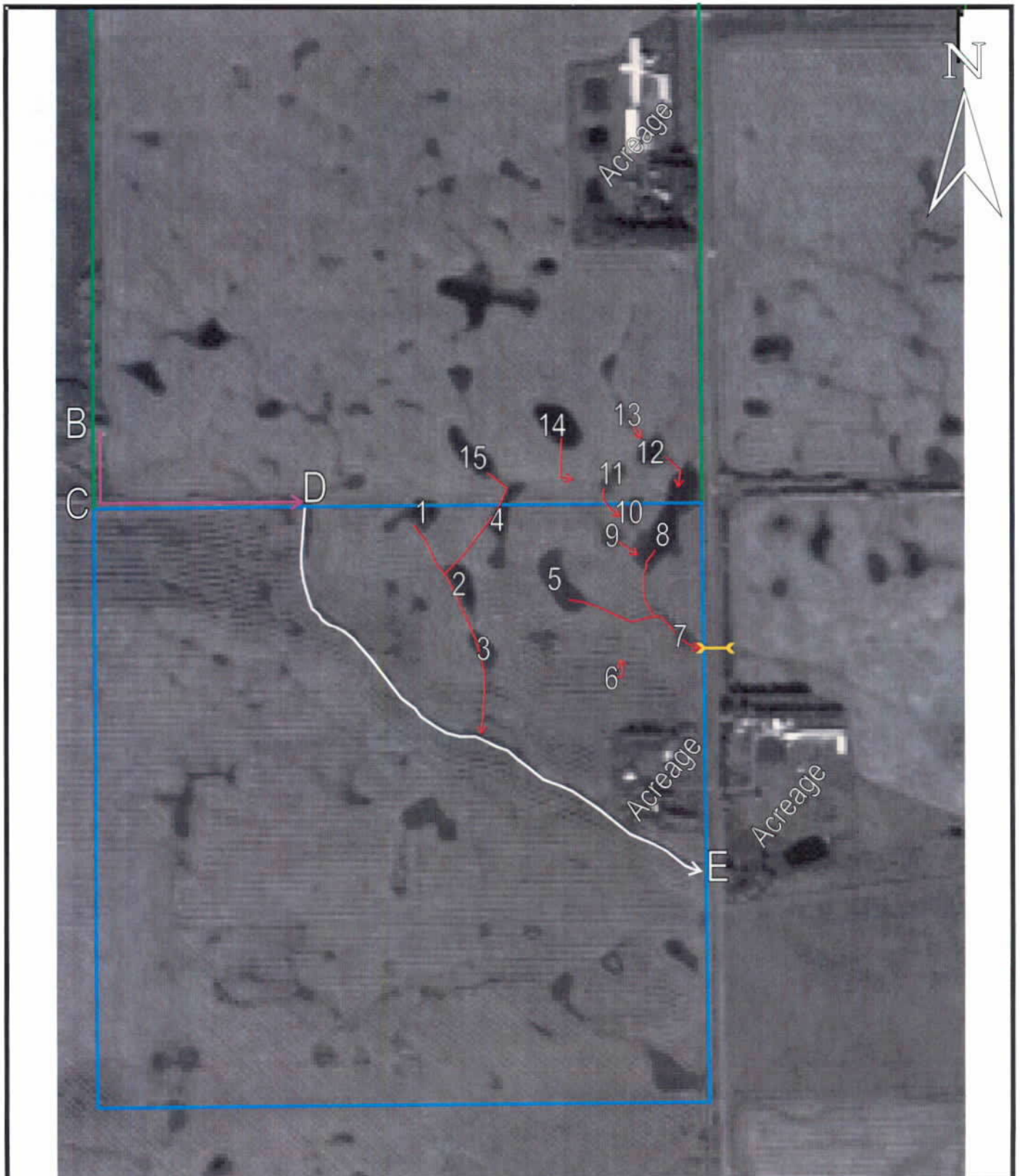
**Original Signed by: Martin Paetz**  
**District Compliance Manager**  
**Central Region**

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 – 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party(ies) shall obtain all necessary approvals in complying with this order.

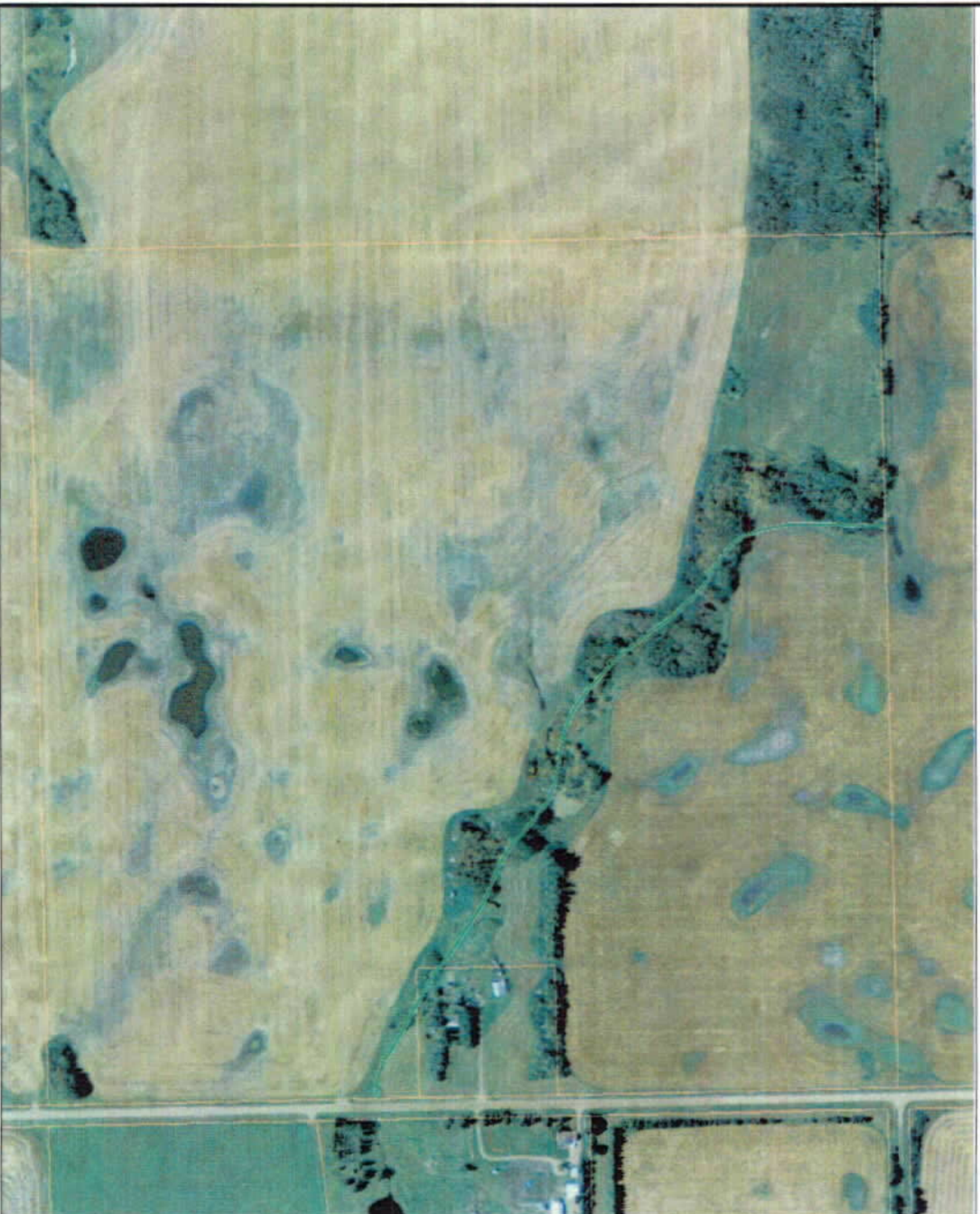
Take notice that this enforcement order is a remedial tool only, and in no way precludes any enforcement proceedings being taken regarding this matter under this or any other legislation.





Alberta Environment and Water Compliance Central Region	SCALE: Approximate	Unauthorized Activity - NE 13-39-25-W4/SE 24-39-25-W4
	DATE: March 2012	COMMENTS: Numbers identify potholes/red lines ditching Blue solid line outlines approximately the NE 13-39-25-W4 White solid arrow - locates watercourse realignment - NE 13 Purple solid arrow - locates watercourse realignment - SE 24 Green solid line represents east & west boundaries on SE 24
	DISPLAY NO: EXHIBIT B 2010 Photo	
	DRAWN BY: Ron Hanson	

## 2007 Channel Trace Overlay (2010)



0 170 340 510 m.

Scale: 1:5,686



### Legend

- Ownership
  - Land-use Framework Planning Regions
- Urban Service Areas
- Cities
- ASRD Management Areas
- Capital or Major City
  - Capital City
  - Major City
- Road
  - Major Road
  - Ferry Route
- Water
- Boundaries
- Ocean

## EXHIBIT A

Display may contain: Base data provided by Spatial Data Warehouse Ltd. Communication Towers provided by NAV CANADA. Weisite and raw pipeline data provided by IHS Energy (Canada) Ltd. ©Geocye, all rights reserved. ©Iunclius Geomatics Corp.

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