

WATER ACT

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

ENFORCEMENT ORDER NO. EO-WA-39841

Michel (Mich) MAISONNEUVE
1031590 Alberta Ltd.
Box 257
Guy, Alberta T0H 1Y0

WHEREAS Darrel and Lorraine REED are the registered owners of lands legally described as the NW and NE of 12-072-20-W5M located in the Municipal District of Greenview No. 16, in the Province of Alberta (the "Lands");

WHEREAS on October 28, 2022, Alberta Environment and Protected Areas ("EPA") received a complaint alleging that an unnamed drainage creek (a tributary of Boulder Creek) on the Lands was being cleared;

WHEREAS on November 4, 2022, an EPA Environmental Protection Officer ("EPO") conducted a desktop analysis of the Lands utilizing Government of Alberta Base Map aerial imagery from 2003 to 2021. The EPO found that multiple watercourses are shown to travel through the Lands and that treed areas where watercourses most likely travel had always been present throughout that time;

WHEREAS on November 4, 2022, the EPO inspected the Lands and observed the following:

- All the trees and vegetation around the tributary (except in the southeast corner of the Lands) were no longer standing in a living state;
- The trees and vegetation had been pulled, ripped, and pushed out of the ground and then piled in many different large piles along the edges of the tributary;
- The general thalweg of the tributary followed the treed area that had been observed as being undisturbed in the 2003 to 2021 aerial imagery (the exact thalweg could not be determined due to the work that had already taken place);
- A bulldozer and excavator were found on the Lands in close proximity to the work that had been done;
- Markings and tracks from the heavy equipment could be seen going through the tributary;
- The removal of the trees and vegetation by the heavy equipment had left large holes in the earth and had disturbed the soil within and around the tributary;
- The bulldozer was equipped with a large metal toothed apparatus which could be lowered into the ground and drug behind the bulldozer to breakup and plow the ground, and it was evident that the apparatus had been used throughout the impacted area including within the tributary;
- Soil had been pushed into the tributary to fill it in;
- The tributary was very diverse with multiple channels, shallow and deep areas, curves and straight areas, and supported various types of vegetation;
- The southeast corner of the Lands had not yet been cleared;
- The excavator was observed knocking trees over and pulling trees out of the ground in the southeast corner of the Lands;

[hereinafter, collectively referred to as the "Unauthorized Activities"]

WHEREAS on November 4, 2022, a male was operating the excavator and identified himself as Germain, and said the following:

- He was hired by Maisonneuve Farms to do the tree and vegetation clearing;
- Maisonneuve Farms owns the heavy equipment;
- Mich MAISONNEUVE is the owner of Maisonneuve Farms;
- Mich MAISONNEUVE is in the process of buying the property;
- He is there to clear all the trees and vegetation up to the property line;
- He doesn't understand the problem because they have done this type of work before;
- The plan is to leave the area of the tributary still lower, but to clear all the vegetation on the land and then re-slope the land so they can farm right across the tributary;

WHEREAS on November 4, 2022, the EPO had a phone conversation with Mich MAISONNEUVE, who said the following:

- Darrel REED died about three months ago, and he has a 'handshake deal' with Lorraine REED to buy the property from her, but the deal is not finalized;
- Water is only in the tributary during the spring;
- The tributary only exists on the Lands – it is not east of the Lands;
- This kind of work has been done in the past on land around the area; however, he didn't want to report any of this other work to the EPO;
- The tributary wasn't always there and neither were the trees (they have grown back);
- They are not harming the creek or infilling it;
- He doesn't want the EPO to bother Lorraine REED as she is grieving;
- He wants to take full responsibility for what was done;

WHEREAS on November 4, 2022, after Germain initially spoke with the EPO he moved the excavator to the east side of the property and was clearing vegetation, but after Germain spoke with Mich MAISONNEUVE and the EPO again, he decided to stop working with the excavator that day;

WHEREAS the path of the tributary shown on Alberta Base Map is not correct as it goes through the uplands of the Lands;

WHEREAS on November 7, 2022, the EPO contacted Lorraine REED via a phone call and she said the following:

- She has a 'handshake deal' with Mich MAISONNEUVE for him to buy the Lands;
- Mich MAISONNEUVE asked if he could take down a fence and clear some trees so she said yes, but she had no idea that he would harm the tributary;
- She assumed that Mich MAISONNEUVE would get the necessary approvals to do the work to and in the tributary because he has done a lot of this kind of work in the area;

WHEREAS on November 7, 2022, the EPO collected a statement from Michel MAISONNEUVE, who said the following:

- His company is 1031590 Alberta Ltd.;
- He thought he was doing things good and okay as he has done work in the past to other areas with more substantial creeks and thought that the work to this area was of lower impact and less important;
- He has a 'handshake deal' with Lorraine REED to buy the Lands and he told her that he would be doing some work on the Lands;
- The contract to buy the Lands should be signed later that week;
- They started working on the Lands on October 25, 2022;
- The intention of the work was to remove the trees to speed up efficiency in the spring;
- It was not his intention to divert water or to speed water up, only for efficiency of the farming operation;
- If they feel that someone could hit a creek with a vehicle they make the creek less steep - so it is safer for others traveling on the property;
- Water flows in the greater area where the Lands are situated for three to five days in the spring and then is done;

- If there is a heavy rainfall in the summer there will be flooding in the area, but he'll also get flash flooding in 95 percent of the fields that he farms;
- If one doesn't do things like the work he did, one can't get on the land in time to plant;
- His company did the work and he wants to take full responsibility for it;
- Lorraine REED did not fully understand what was going to happen on the Lands;
- He needs to talk with his accountant, but either his company or he personally will buy the land from Lorraine REED;
- Employees and/or people working for his company were working on the Lands;
- He didn't realize this was a tributary;
- He wants to work with the Government of Alberta and do things properly; as such, he stopped work on the Lands and won't go back until he hears from the Government of Alberta about it;
- He didn't know what he was doing was wrong when he did it, but he now understands that he can't remove soil and work in the bed and shore of a watercourse without an order or approval;

WHEREAS Mich MAISONNUVE and Michel MAISONNEUVE are the same person;

WHEREAS on November 8, 2022, Michel MAISONNEUVE phoned the EPO and said the following:

- He had talked with Lorraine REED and she said that there hasn't been water in the creek for many years;
- Water collects in the ditch on the east side of the Lands and then runs north;
- There is a plugged culvert on Range Road 200 that is stopping water from running to the west;
- He wants this information noted on the file;

WHEREAS on November 15, 2022, Michel MAISONNEUVE phoned the EPO and said the following:

- He has talked to more people around the area and has statements from people saying that the area is dry a lot of the time and there hasn't been water in the tributary for a long time - maybe since the road to the east was put in;
- He talked with Lorraine REED's brother-in-law who said that Darrel REED had cattle on the Lands for a long time and there wasn't enough water there to sustain the cattle, so he had to haul water all the time to have the cattle there;

WHEREAS on December 9, 2022 Michel MAISONNEUVE phoned the EPO and requested an update; he also said that if a culvert is silted in or blocked, it has been that way for decades, and that the water now flows north in the ditches and then finds its way to the creek by a different route;

WHEREAS Government of Alberta aerial photos of the Lands from 1950, 1952, 1961, 1973, 1974, 1977, 1978, 1979, 1984, 1986, 1989, 1990, 1999, 2003, 2004, 2006, and 2012, as well as Government of Alberta Color Spot6 1.5 meter imagery from 2013-2021 were reviewed by EPA staff and it was determined that the tributary associated with the Unauthorized Activity (the "Impacted Tributary") had been undisturbed throughout the entire time of review. The aerial photo review showed that throughout this time, the land was developed around the Impacted Tributary, but historically the majority of the Impacted Tributary on the Lands was left undisturbed;

WHEREAS an EPA Hydrologist conducted a desktop review of the hydrology of the Lands and surrounding area, but since the data was too coarse as a result of only 15 meter Light Detection and Ranging imagery being available for the area, the review was inconclusive. Thus, in-field verification of the water flow patterns during a runoff event was suggested;

WHEREAS the EPA Hydrologist suggested that possible impacts of infilling the tributary could be wetter land and/or water backup on the adjacent lands;

WHEREAS the Water Boundaries Unit of the Government of Alberta utilized aerial photos from 1960 to 2021, the 1905 township survey, and the EPO's November 4, 2022 site visit photos and GPS data to review

the Lands and determined that three watercourse channels or tributaries exist within and exit from the Lands. The Impacted Tributary is not Crown claimable under the *Public Lands Act*; however, the other two watercourse channels (or tributaries) in the northeast part of the Lands may be Crown claimable, but further in-field assessment is required for this to be determined;

WHEREAS Big Lakes County confirmed that a 700 millimeter diameter centreline culvert exists in Range Road 200 at the place where the Impacted Tributary receives water flow from the land to the east;

WHEREAS the Municipal District of Greenview No. 16 confirmed that over the last 22 years, they have seen consistent high flow rates of water in the area around the Lands, these high flow rates are evidenced by approaches washing out, water overtopping roads in multiple locations, and concerns raised by residents during peak flow times;

WHEREAS Municipal District of Greenview No. 16 operations staff have noted that water flow in ditches has increased over the last 22 years due to more and more land clearing happening in the area; they fear that infrastructure will not be able to keep up with a further increase of flow into the ditches;

WHEREAS the Impacted Tributary is a water body as defined in section 1(1)(ggg) of the *Water Act*,

WHEREAS each of the Unauthorized Activities is an "activity" as defined in section 1(1)(b)(i)(A) of the *Water Act*;

WHEREAS section 36(1) of the *Water 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 EPA has never received an application from nor issued an approval under the *Water Act* to Darrel REED, Lorraine REED, Michel MAISONNEUVE, 1031590 Alberta Ltd., or to anyone else to conduct the Unauthorized Activities, and the Unauthorized Activities are not otherwise authorized under the *Water Act*,

WHEREAS Lorraine REED and Michel MAISONNEUVE are persons responsible for the Unauthorized Activities pursuant to section 1(1)(kk) of the *Water Act*;

WHEREAS Jack MCNAUGHTON, Compliance Manager, North Region, has been appointed a Director for the purpose of issuing enforcement orders under the *Water Act* (the "Director");

WHEREAS the Director is of the opinion that Lorraine REED and Michel MAISONNEUVE have contravened section 36(1) of the *Water Act*;

THEREFORE, I, Jack MCNAUGHTON, Director, pursuant to section 135(1) and 136(1) of the *Water Act*, HEREBY ORDER THAT:

1. Michel MAISONNEUVE shall immediately cease all unauthorized activity on the Lands.
2. Michel MAISONNEUVE shall retain a professional currently in good standing with the Association of Professional Engineers and Geoscientists of Alberta (the "Professional").
3. Michel MAISONNEUVE shall, on or before March 31, 2023, submit to the Director in writing, for the Director's written approval, all of the following information:
 - (a) the name and contact information of the Professional, and
 - (b) a summary of how the Professional meets all the requirements of Clause 2 of this Order.
4. Michel MAISONNEUVE shall, on or before June 30, 2023, submit to the Director a written Hydraulic Technical Analysis (the "Report"), as described below in Clause 6.

5. The Report must be prepared, stamped, and signed by the Professional.
6. The Report, shall include, at a minimum:
 - (a) A field verified analysis of regional drainage patterns and topography;
 - (b) Analysis, including hydrographs, of
 - i. Pre-development flow rates, and
 - ii. Post development flow rates;
 - (c) The classification of the Impacted Tributary,
 - (d) Reclamation options available,
 - (e) An explanation of the methods, theory, and models used in the assessment.
7. Where a deadline or reporting frequency has been specified in this Order, the Director may authorize in writing a different deadline or reporting frequency as applicable without amending the Order.

DATED at the City of Peace River in the Province of Alberta, this 2nd day of March, 2023.



Jack McNaughton, Director
Compliance Manager
North Region, Boreal West District

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

Notwithstanding the above requirements, Michel MAISONNEUVE shall obtain all other necessary approvals or authorizations required to comply 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 the *Water Act* or any other legislation.

