

Government of Alberta ■

Environment and Sustainable Resource Development

WATER ACT

BEING CHAPTER W-3 R.S.A. 2000

ENFORCEMENT ORDER NO. WA-EO-2014/01-RDNSR

Hendrik Krijger and Gerritje Krijger
R. R. #1, Site 3, Box 37
Ponoka, Alberta
T4J 1R1

WHEREAS Hendrik Krijger and Gerritje Krijger (hereinafter referred to as the "Krijgers") are the registered owners and operators of lands legally described as SE 30-42-24-W4M, County of Ponoka, Alberta ("SE 30") subject to the exception on title as it relates to ownership of Lake No. 21 described below;

WHEREAS the portion of SE 30 covered by the waters of Lake No. 21, which is described in the Land Title Certificate for SE 30, is owned by Her Majesty the Queen in Right of Alberta (the "Crown") and is excepted from title to SE 30;

WHEREAS on August 30, 2011, when the Krijgers purchased SE 30 there were works unauthorized under the *Water Act* and the *Public Lands Act* on SE 30 whose function was to drain Lake No. 21, and these works consisted of an excavated area near the outlet at the southwest edge of Lake No. 21 ("Dugout"), a trench running west from the Dugout ("Trench 1") and a trench running northeast from the Dugout to the centre of Lake No. 21 (collectively the "Existing Works");

WHEREAS the portion of the lands legally described as SW 29-42-24-W4M ("SW 29") covered by the waters of Lake No. 21, which is described in the Land Title Certificate for SW 29, is owned by the Crown and is excepted from title to SW 29;

WHEREAS on October 4, 2011, Alberta Environment and Sustainable Resource Development ("ESRD") received a public complaint that a person or persons were draining a water body on SE 30 and that as a result, were directing the flow of water to the west and flooding neighbouring lands;

WHEREAS in response to the public complaint, an ESRD Inspector inspected SE 30 on November 7, 2011 and observed the Dugout and Trench 1, as generally depicted on Exhibit "A";

WHEREAS during the November 7, 2011 inspection, the Inspector observed that:

- Trench 1 had recently been deepened and widened and water was flowing at a high volume and rate away from Lake No. 21 along the trench to the west towards neighbouring lands
- water was flowing at full capacity through the first culvert crossing Trench 1 to the west of Lake No. 21 with water pooled upstream of the culvert
- a number of trees had recently been cut along the edge of Trench 1 and soil had been piled adjacent to the Dugout;

WHEREAS on February 1, 2012 during a follow-up inspection at SE 30, the Inspector observed that Trench 1 was continuing to drain Lake No. 21, that vegetation along the trench had been cleared, and that additional excavation into the bed and shore of Lake No. 21 had recently occurred at the Dugout;

On February 1, 2012, the Inspector further observed a second trench that had recently been constructed from a wetland located to the southwest of Lake No. 21 ("Wetland") towards Lake No. 21 ("Trench 2") and had been draining water from the Wetland and directing the water to flow towards Lake No. 21, as depicted on Exhibit "A";

WHEREAS during the February 1, 2012 site visit, Hendrik Krijger advised the Inspector that Trench 1 was present when the Krijgers purchased SE 30 in 2011, that in the fall of 2011 he removed soil from Trench 1 and cut the trees along the edges of the trench to direct water to flow away from Lake No. 21, and that he constructed Trench 2 to dry out the Wetland and direct water to flow to Lake No. 21;

WHEREAS on February 22, 2012, ESRD sent a letter to the Krijgers summarizing the results of the inspection on February 1, 2012, explaining the nature of the unauthorized activities relating to Lake No. 21 as it relates to the *Water Act* and the *Public Lands Act*, and setting out the remedial work required to render Trench 1 and Trench 2 ineffective and restore Lake No. 21;

WHEREAS the Krijgers to date have conducted no remedial works despite additional attempts by ESRD to get them to do so;

WHEREAS on November 27, 2013, ESRD received a public complaint that earthmoving activities directing the flow of water on Lake No. 21 were continuing to occur on SE 30;

WHEREAS on November 29, 2013, an ESRD Inspector inspected SE 30 and observed that soil from a hill located along the southeast edge of Lake No. 21 had been removed and deposited in the southern portion of Lake No. 21, as generally depicted on Exhibit "A", and in the Wetland;

WHEREAS Lake No. 21 is a "water body" within the meaning of section 1(1)(ggg) of the *Water Act*;

WHEREAS the deepening and widening of Trench 1, the construction of Trench 2, the excavation of the Dugout, and the deposit of soil in the southern portion of Lake No. 21 by the Krijgers are activities within the meaning of section 1(1)(b) of the *Water Act*;

WHEREAS, ESRD has reviewed historical aerial photographs of SE 30 and SW 29 and observed that over time, the flow and direction of flow of water on SE 30 has been altered and the level of water in Lake No. 21 on SE 30 and SW 29 has been lowered by the activities conducted by the Krijgers and one or more of their predecessors on title to SE 30;

WHEREAS ESRD has at no time received an application from, or issued an approval under the *Water Act* or the *Public Lands Act*, or predecessor legislation, to the Krijgers or any other person to conduct these activities on SE 30;

WHEREAS Lake No. 21 has a retention and detention function that regulates the flow of water to protect lands downstream from SE 30 from flooding, and Lake No. 21 is part of the Chain Lakes watershed;

WHEREAS the function of Lake No. 21 helps to reduce soil erosion, retain sediments, absorb nutrients, store water to moderate impacts of floods and droughts, and helps to provide clean water, wildlife viewing opportunities and other outdoor recreation activities;

WHEREAS the function of the Wetland helps to reduce soil erosion, retain sediments, absorb nutrients, store water to moderate impacts of floods and droughts, and helps to provide clean water, wildlife viewing opportunities and other outdoor recreation activities;

WHEREAS remedial work is required to restore:

- a) the outlet of Lake No. 21 to the condition and function as it was before the construction of manmade drainage
- b) the bed and shore of Lake No. 21 to its location as it was before the construction of manmade drainage, and the placing of soil in the southern portion of Lake No.21
- c) the Wetland to the condition and function as it was before the construction of manmade drainage;

WHEREAS Michael Aiton, Regional Compliance Manager, (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 construction of manmade drainage

- a) continue to alter the flow and direction of flow of water on SE 30 and from SE 30 to the west
- b) have changed the location of water that would otherwise remain on SE 30 and SW 29
- c) significantly altered the level of water in Lake No. 21 and the Wetland;

WHEREAS the Director is of the opinion that the:

- a) presence of the Existing Works to drain Lake No. 21,
- b) deepening and widening of Trench 1 to drain Lake No. 21,
- c) construction of Trench 2 to drain the Wetland,
- d) excavation of the Dugout in Lake No. 21, and
- e) removal of soil from the hill located along the southeast edge of Lake No. 21 and the placing of the soil in the southern portion of Lake No. 21 and in the Wetland

have drained all or a portion of Lake No. 21, have caused or may cause an effect on the aquatic environment at SW 29, SE 30, including an effect on the acreage property at the southeast corner of SE 30, and neighbouring land(s) to the west of SE 30, and that altering the location and level of the water in Lake No. 21 may result in flooding to downgradient lands;

WHEREAS the Director is of the opinion that the Krijgers have contravened section 36(1) and 142(1)(h) of the *Water Act* by continuing to conduct unauthorized activities on SE 30 as set out in this Order, and which activities would not have been authorized under the *Water Act*;

WHEREAS Hendrik Krijger and Gerritje Krijger are each 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 Existing Works and the unauthorized activities conducted by the Krijgers on SE 30, as the registered owners of SE 30;

THEREFORE, I, Michael Aiton, Regional Compliance Manager, pursuant to section 135(1) and 136(1) of the *Water Act*, DO HEREBY ORDER THAT:

1. The Krijgers shall immediately cease:
 - (a) directing the flow and direction of flow of water from SE 30 to the west and onto neighbouring lands
 - (b) any and all activities altering the water level in Lake No. 21 and the Wetland, and/or depositing soil and/or other materials therein, or otherwise having an effect on the aquatic environment in Lake No. 21 or surrounding wetlands, unless authorized in writing by the Director.
2. The Krijgers shall, by March 10, 2014, implement and maintain the interim measures set out below until such time as the final natural boundary contour elevation of Lake No. 21 under the *Water Act* is established as part of the Remedial Plan (defined below):
 - (a) prior to spring runoff, or March 10, 2014, whichever occurs first, install a temporary control structure such as an erosion resistant ditch block/plug, berm, or other structure consisting of impermeable material (such as clay), to restore the approximate overflow elevation of Lake No. 21;
 - (b) this temporary control structure will be constructed as near as practicable to the elevation contour of 863.25 meters at or near the location depicted on Exhibit "B" and labelled as the "Ditchblock Area";
 - (c) prior to spring runoff, or March 10, 2014, whichever occurs first, remove the soil placed in the southern portion of Lake No. 21 and return it to the location in the southeast corner of SE 30 where it had previously defined the natural boundary of Lake No. 21;
 - (d) provide written notification to the Director at least five days prior to the scheduled implementation of the interim measures so that all activities in and near Lake No.21 are conducted under the supervision and direction of an Environmental Protection Officer.
3. The Krijgers shall, by June 30th, 2014, submit to ESRD a written remedial plan to permanently restore the pre-construction condition and function of the outlet of Lake No. 21, the Wetland, and the southern portion of Lake No. 21 (the "Remedial Plan") that is prepared and signed by a qualified water resource engineer for approval by the Director.
4. The Krijgers shall, by June 30th, 2014, advise the Director in writing whether, as an alternative to the restoration of the Wetland, they wish to provide wetland mitigation compensation in accordance with the Alberta "Provincial Wetland Restoration/Compensation Guide" program under the *Water Act*.
5. The Remedial Plan shall include, but not be limited to:
 - (a) an on the ground survey by an Alberta land surveyor (ALS), as defined in the *Land Surveyors Act*, to confirm and/or determine the lateral extent of the outlet of Lake No. 21 and the natural water boundary contour elevation of Lake. No. 21 under the *Water Act*,

and a survey of the Wetland prior to construction of the Existing Works and the drainage activities that have been conducted;

- (b) a report from the ALS that proposes the final lateral extent of Lake No. 21 based on a review of the 1917 survey for Lake No. 21, the 1918 township map included in the land title records for SW 29, the 1894 township plan survey included in the land title records for SE 30, pre-construction aerial photography, and any other investigative techniques that may be required, for review and acceptance by the Director;
 - (c) Installation of water monitoring gauges to monitor and track the progress of the restoration and refilling of Lake No. 21;
 - (d) An assessment of the potential for erosion in the area that will be affected by the interim measures, and a description of the erosion control measures to be constructed as part of the remedial work to make the interim measures permanent;
6. The Remedial Plan shall be accompanied by a schedule of implementation for the remedial work that shall have a completion date of no later than March 14, 2015.
 7. The Krijgers shall conduct the work described in the Remedial Plan according to the schedule of implementation that is approved by the Director, unless otherwise authorized in writing by the Director.
 8. Within 14 days after completion of the remedial work required by this Order, the Krijgers shall submit a final written report (the "Final Report"), including an "as built" survey, to the Director that confirms that the remedial work required to comply with this Order has been completed.

DATED at the City of Edmonton in the Province of Alberta, this 15th day of February, 2014.

Original signed by:

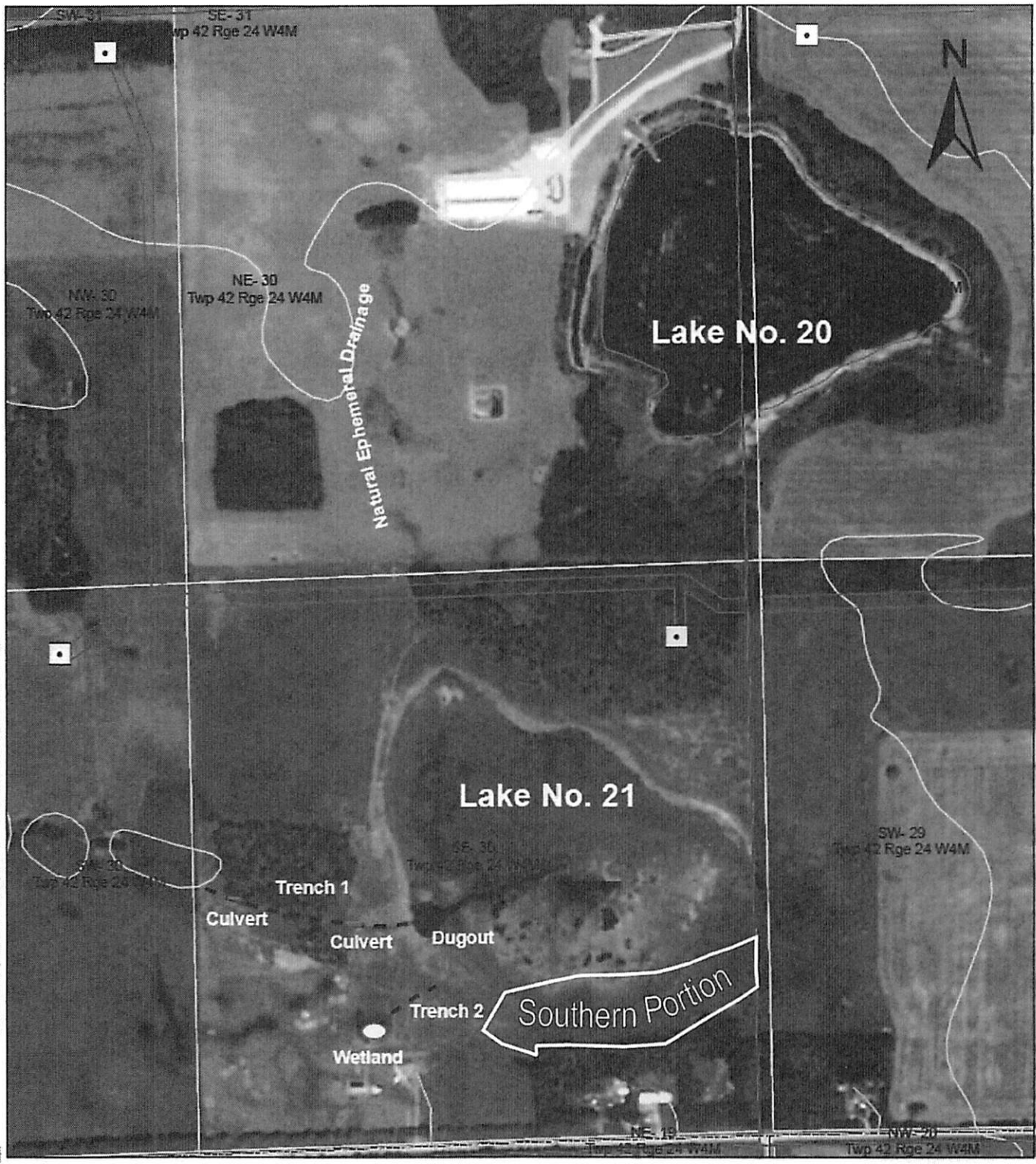
Michael Aiton

Regional Compliance Manager

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.



Location: W:\sagyn\Documents\complan\0611\0611\0611\References\201131 - Gainer & Kriger
Author: Jareyn Houshion




**Zealand Farms (Krijger Family) NE & SE 30-42-24-W4
SPOT ORTHO 2007**




Projection	UTM	Datum	NAD 83	Scale		Date	February 20, 2012
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2012-05-11 P <http://www.environment.ab.ca>

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Oil and Gas Wellsites

-  ABANDONED
-  ACTIVE
-  NEW LICENSE

Contour Interval 10m

Data Provided by Spadis Data

Exhibit A

EXHIBIT B

Crown Lake No. 21

Scale : 1:3,000

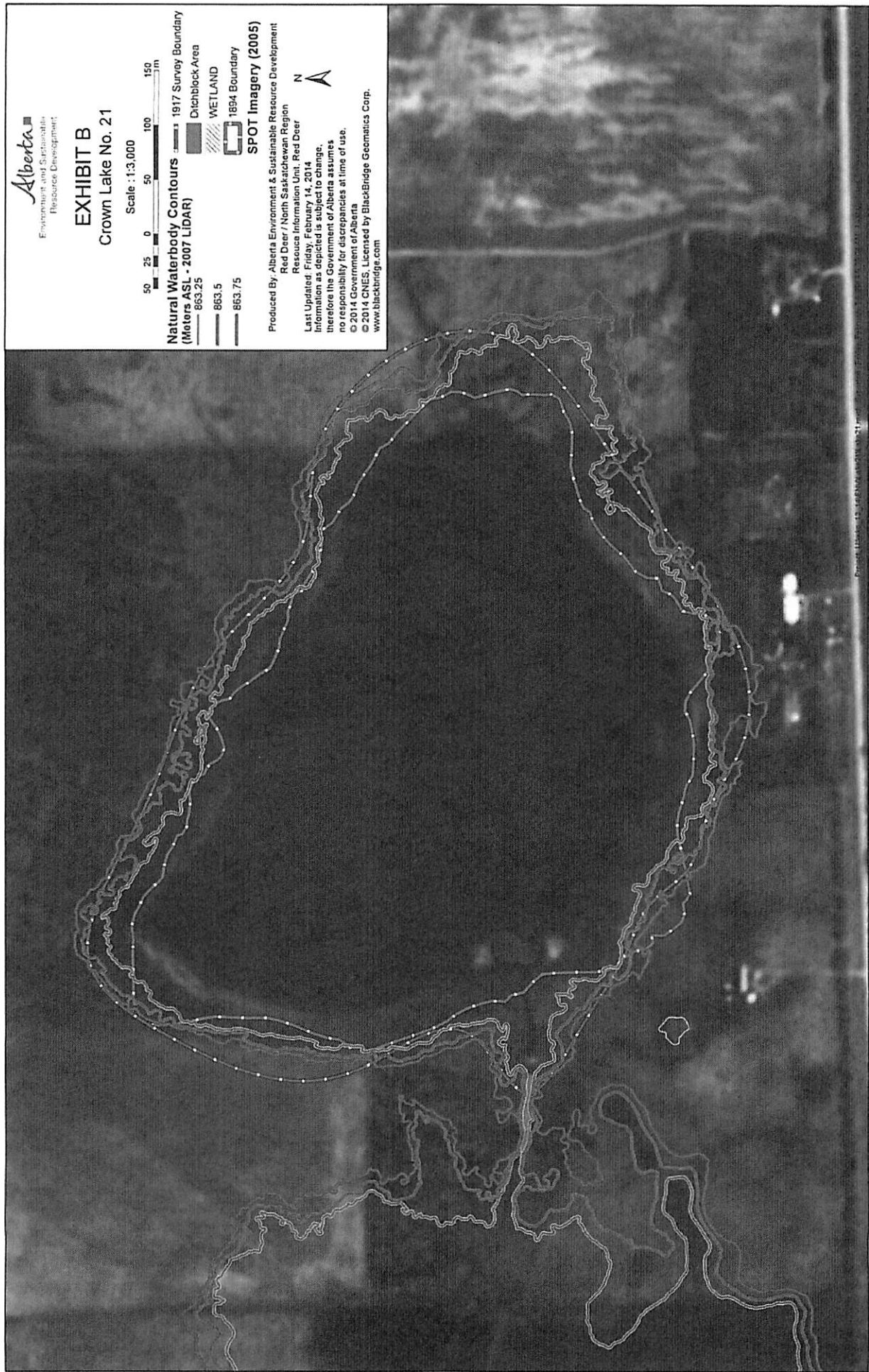


- Natural Waterbody Contours (Meters ASL - 2007 LIDAR)
 - 863.25
 - 863.5
 - 863.75
- 1917 Survey Boundary
- Ditchblock Area
- WETLAND
- 1894 Boundary

SPOT Imagery (2005)

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Red Deer / North Saskatchewan Region
Resource Information Unit, Red Deer

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