

**WATER ACT**

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

**ENFORCEMENT ORDER NO. EO-WA-35159**

Bowen Contracting Ltd.  
PO Box 1022  
Jasper, Alberta  
T0E 1E0

Jasper Concrete Ltd.  
PO Box 130  
Jasper, Alberta  
T0E 1E0

Murdock Bowen  
PO Box 1022  
Jasper, Alberta  
T0E 1E0

(Collectively "the Parties")

WHEREAS Bowen Contracting Ltd. and Jasper Concrete Ltd. are both registered Alberta corporations.

WHEREAS Bowen Contracting Ltd. is the owner of LOT 20, BLOCK 1, PLAN 9021558 within the lands legally described as the NE 24-50-26-W5M (the "Parcel") in Yellowhead County, Alberta;

WHEREAS Bowen Contracting Ltd. is the 100 % shareholder of Jasper Concrete Ltd. and Murdock Bowen is the sole Director of both Alberta corporations and at all material times made the decisions in respect of the issues which form the subject-matter of this Order;

WHEREAS the Maskuta Creek (the "Creek") transects the north east portion of the Parcel with a west to east flow direction in a meandering pattern;

WHEREAS the Creek is a fish bearing water body that flows throughout the year supporting fish species such as Brook Trout and Rainbow Trout;

WHEREAS according to the Alberta's Code of Practice for Watercourse Crossings, Edson Management Area Map, the Creek is a class C waterbody with a restricted activity period of September 1 to July 15 annually;

WHEREAS an Indefinite Stream (the "Stream") transects the southern portion of the Parcel with a west to east flow direction in a linear pattern;

WHEREAS the Stream flows directly into the Creek approximately 112 meters from the southern boundary of the Parcel;

WHEREAS on July 27, 2020, Alberta Environment and Parks ("AEP") EDGE hotline received a complaint stating that:

*"there is a whole lot of dirt being dumped into a floodway of Maskuta Creek (fish bearing) is being dumped adjacent to the creek. Caller is looking out of the office window and is noticing the construction work across the creek. There are dump trucks, loaders and a grater on site building a road and building site. There is a local bylaw against filling in the flood plain without AEP approval. The work on the site started today".*

WHEREAS an AEP Investigator searched the department's records and found no record of a *Water Act* or a *Public Lands Act* or any other statutory approval authorizing work in or adjacent to the Creek on the Parcel;

WHEREAS on July 27, 2020 the AEP Investigator accompanied by an Alberta Conservation Officer (the "AEP Officers") conducted a site investigation of the Parcel and observed the following:

- A significant amount of material (the "Materials") consisting of loose, unconsolidated soils (silt, sand, and clay) and aggregate had been imported and off loaded directly adjacent to the Creek;
- The Materials were visibly higher or built up compared the surrounding the natural topography and exhibited a slope of approximately 3:1;
- No sedimentation or erosion control measures were in place and the Materials placed on a descending slope exhibited erosion rills,
- The distance from the banks of the Creek and the Material varied between one meter and five meters;
- A loader, small car and a C-Can were stationed directly on top of the Materials in close proximity of the Creek;
- The Materials near the car exhibited fissures, indicating a potential to destabilize or separate.

WHEREAS on December 3, 2020, AEP Investigators received an email complaint that further Materials were being illegally placed by Bowen Contracting Ltd. into the Seabolt Floodplain; On December 4, 2020 AEP Officers conducted a site investigation of the Parcel and observed the following:

- A stockpile of aggregate / gravel was placed in an open area in front of the access to the Parcel;
- The east side of the access leading into the Parcel had piles of waste materials that included concrete rubble, asphalt shingles, woody debris inclusive of some treated processed wood as well as some cobble and boulder piles;
- The waste material piles were placed in close proximity to the Creek's bends;
- A track hoe was operating within one of the bends on the north western portion of the Parcel in close proximity to the Creek;

- The track hoe was scraping its bucket across the ground and conducting “earthworks” within the bend and further Materials had been placed, adding to the overall height of the natural topography at the time of the site investigation;
- Processed wood waste was observed directly adjacent to and partially covered by the Material and under White Spruce trees;
- Large wooden spools (origin and purpose unknown) were placed directly on top of the Materials, in close proximity to the Creek, and appeared to be compressing or compacting the built up Materials;
- A cabin was elevated on concrete blocks on the Parcel, and; a private sewage disposal system (“PSDS”) was under construction between the cabin and the Creek;
- The earthwork disturbance associated with the installation of the PSDS lacked any erosion and sedimentation control implementations and was visibly eroding into the bank and water of the Creek;
- In addition to the track hoe, at least six other vehicles and trailers were observed, including three vehicles with visible “Jasper Concrete” decals;
- The Stream had Materials pushed directly into its banks, the Materials were loose and unconsolidated and was visibly occupying where water would flow during non-frozen conditions, and lacked any sedimentation and erosion controls.

WHEREAS during the on December 4, 2020 site investigation the AEP Officers interviewed four individuals at the Parcel. The interviews disclosed that:

- The individuals were each employed by one or more of the Parties;
- They individuals were sent to the Parcel and were conducting work directed by one or more of the Parties;

WHEREAS on December 4, 2020 the AEP Investigator advised the employees that a search was conducted for an authorization under the *Water Act* and the *Public Lands Act* for the work and one could not be located. The AEP Investigator further advised the employees of the following:

- Conducting activities adjacent to waterbodies that are frequented by fish requires review and approval under the *Water Act*.
- Conducting activities in waterbodies that has the potential to occupy the beds and shores of creeks may require review and approval under the *Public Lands Act*.
- Work next to the Creek should discontinue and when performing work on the Parcel, the employees being advised of this information should immediately govern themselves accordingly.

WHEREAS on December 17, 2020 the AEP Investigator conducted an online video interview with the Parties and their legal counsel present. During the interview the Parties advised the AEP Investigator of the following:

- Any Materials imported into the Parcel in July probably came in from the lease by Kinky Lake;
- There is a lot of paperwork on what that Materials is and has been supplied multiple times to the Government of Alberta;
- The Material is soil “strippings” from the substation construction west of Hinton and all of this information was provided to an Environmental Protection Officer out of Whitecourt;
- The Parties worked all last winter hauling the Materials out of the Kinky Lake lease to the Parcel;

- The intent of importing the Material into the Parcel is to lift the property up and further back toward the dug out and then to cover it again;
- There are some low spots around the Parcel and the Parties were just trying to level it out;
- The Parties agree that they pushed Material too close to Iron Creek (the Stream);
- An employee who has some vision problems and a hard time seeing at night was working until late the night before and pushed the dirt the wrong way. "He made a mistake and pushed it the wrong way";
- This occurred the night before the AEP Investigator came to the Parcel on December 3, 2020;
- The Parties directed the employees to stay away from the water and directed the employees to fill in the low spots. Where the employee ended up pushing the Material next to the Stream, there were no low spots;
- The Parties stayed a long ways away from the water and the day the AEP Investigator was there, the employees were "just basically levelling it out so you can even walk on it";
- The placement of the Materials is in a flood zone there and it has to be built up;
- The Parties were just trying to get rid of the fill Material from Kinky Lake, that's all and no intention on doing anything else, the Material had to go somewhere;
- The low spots floods out and it might take those two creeks eventually together or flood that neighbors property out;
- The Parties directed the employees to basically place the Material and stay away from the water but the Parties were not anywhere near the Parcel when the work occurred;
- The Parties did not apply for an authorization under the *Water Act* to import the Materials in; "I wouldn't have any idea where to go with that";
- The Parties were far enough away from the water, they weren't that close to it;
- The Parties didn't think that they would need authorization if they stayed that far away from the Creek and they did, and that's why its build up so far back.
- The Parties will silt fence the whole thing;
- The Parties were unaware that a *Water Act* authorization would be required for the importation and placement of Materials and conducting work in and around waterbodies;

WHEREAS under section 3 of the *Public Lands Act*, the title to all beds and shores of all permanent and naturally occurring bodies of water, rivers, streams, watercourses, and lakes is vested in the Crown in right of Alberta.

WHEREAS the Parties are each a "person responsible" for the activity or works pursuant to section 1(1)(kk) of the *Water Act*, and section 1(5) of the *Water (Ministerial) Regulation* (AR 205/98) (the "*Regulation*");

WHEREAS the importation and placement of the Materials in or near waterbodies is an "activity" under section 1(1)(b)(i) and 1(1)(b)(ii) of the *Water Act*, and the Maskuta Creek and the Indefinite Stream are a "water body" as defined in section 1(1)(ggg) of the *Act*;

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

WHEREAS the importation and placement of the Material does not meet Schedule 1 of the *Water Ministerial Regulation*-Activities that are Exempt from the requirement of an approval;

WHEREAS the Director is of the opinion the importation and placement of the Material has, may, or become capable of:

- Altering the flow or level of water on the Parcel;
- Changing the location of water;
- Causing siltation of water or the erosion of the bed or shore;
- Causing an adverse effect on the aquatic environment.

WHEREAS the Director is of the opinion that the importation and placement of the Material may change the flow or volume of water on an adjacent parcel of land;

WHEREAS the Director is of the opinion that the Material must be removed in order to prevent further adverse effects to the aquatic environment, fish and fish habitat and property;

WHEREAS Jack McNaughton, Compliance Manager, North Region, Boreal West District (the "Director") has been appointed as Director for the purposes of issuing *Water Act* Enforcement Orders under the *Act*;

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

1. The Parties shall immediately implement the following on the Parcel with a completion date of February 22, 2021:
  - a. Measure and record the measurements of the elevation and slope of the Materials that were imported into the Parcel;
  - b. Install silt fencing within one meter of the Creek and the Stream in the areas shown in Appendix A- hatched in blue. The silt fencing must be:
    - i. installed without the use of heavy equipment and machinery;
    - ii. rated for and of sufficient strength and size for erosion and sediment control and the prevention of the Materials from migrating into the Creek or the Stream; and
    - iii. installed in accordance with manufactures specification.
  - c. Temporarily cap and stabilize the exposed surface of the Material in the areas shown in Appendix B- hatched in red. The temporary cap must be:
    - i. readily removable;
    - ii. sufficient to protect the exposed surface of the Materials from wind erosion, water erosion and water infiltration; and
    - iii. placed to extend over the crest of the Materials on a descending slope.
  - d. Document the measures taken under 1 b. and 1 c. with photographs, including date(s) of the photographs.
  - e. Provide the documented measures associated with 1 d. of this order to the Director at [jack.mcnaughton@gov.ab.ca](mailto:jack.mcnaughton@gov.ab.ca) on or before February 22, 2021.
2. With the exception of satisfying the requirements in Clause 1 of this order, the Parties

shall immediately cease activity in or near waterbodies on the Parcel including but not limited to landscaping, importation or placement of Materials or any further earthworks in the immediate vicinity of waterbodies on the Parcel.

3. The Parties shall on or before February 22, 2021 submit the names and qualifications of a Qualified Aquatic Environment Specialist ("QAES") with experience in preparing and implementing remedial and reclamation plans to the Director for review and approval.
4. The Parties shall on or before March 22, 2021 submit to the Director for approval a written remedial plan to remove the Materials (the "Remedial Plan"). The Remedial Plan shall include, at minimum, all of the following:
  - a. Detailed descriptions of:
    - i. The tools, equipment and methods that will be used to remove the imported Materials and remediate and remove the Materials pushed into waterbodies;
    - ii. How the bed and banks will be protected from adverse effects during the removal of the Materials;
    - iii. How the deposition of sediment, and any other deleterious substances, will be prevented from entering the waterbodies both during the removal of the Material and after;
    - iv. How the banks of the Creek and the Stream will be stabilized to prevent erosion or sedimentation into the waterbodies both during and after the removal of the Materials; and
    - v. The location of where the Materials will either be placed or disposed of lawfully.
5. The Remedial Plan shall include a specific schedule of implementation with a completion date no later than April 26, 2021.
6. The Parties shall on or before May 10, 2021 submit to the Director for approval a written reclamation plan to assess and reclaim the Parcel areas where the Materials were imported, placed or moved (the "Reclamation Plan"). The Reclamation Plan shall include, at minimum, all of the following:
  - a. An assessment of soil conditions, after removal of the Materials through implementation of the approved Remedial Plan, including:
    - i. The basic soil horizons of the original underlying soils present and their measurements;
    - ii. The soil structure, texture, and the friability of or compaction of the underlying original soils;
    - iii. The degree of admixing of imported the Materials with the original underlying soils and implications for reclamation; and
    - iv. A soil sampling plan that includes detailed descriptions and explanations for proposed parameters for analysis, number of sampling plots, and locations of sample plots;
  - b. A detailed description and rationale for all means of soil preparation such as

de-compaction or cultivation;

- c. A detailed description and rationale for all proposed soil amendments; and
  - d. A detailed description and rationale for proposed revegetation activities to achieve successful restoration of the native vegetation cover.
7. The Reclamation Plan shall include a specific schedule of implementation for the reclamation work with a completion date no later than July 5, 2021.
  8. The Remedial Plan and the Reclamation Plan shall be prepared, stamped and signed by a QAES.
  9. The Parties shall implement all the work described in the Remedial Plan and Reclamation Plan pursuant to the schedules of implementation that are approved by the Director.
  10. The Parties shall provide the Director with with 3 days' notice in writing prior to commencing the remedial work in the Remedial Plan as approved by the Director.
  11. Within 30 days of completing the requirements of this Order, the Parties 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 QAES.

DATED at the Town of Peace River in the Province of Alberta, this 5 day of

February, 2021.



Jack McNaughton  
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 Environmental Appeals Board. A copy of section 115 is provided below. 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 – 109<sup>th</sup> Street, Edmonton, Alberta, T5J 3S8; Telephone: (780) 427-6207; Fax: (780) 427-4693.**

**Notwithstanding the above requirements, the Parties shall obtain all other necessary approvals from any regulatory agency (provincial or federal) in complying with this order.**

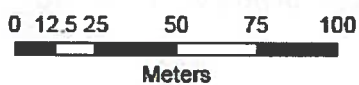
# Appendix A



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1 cm = 20 meters



### Legend

-  Blue Hatching - Silt Fencing
-  ATS Section

Produced by North Central Geospatial Unit,  
Provincial Geospatial Centre, Operations Branch  
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Date: February 2, 2021  
Author: Jan Vassaboin  
Projection: NAD\_1983\_10TM\_AEP\_Forest

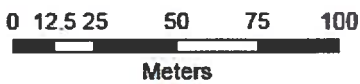
Environment Parks & Forestry, Ministry of Environment and Parks, Government of Alberta, 10000 104 Avenue, Edmonton, Alberta T5H 0A6



# Appendix B



1 cm = 20 meters



**Legend**

- Red Hatching - Erosion Cap
- ATS Section

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