

WATER ACT

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

ENFORCEMENT ORDER NO. EO – WA - 38019

1958612 Alberta Ltd.
150 - 4th Street South
Lethbridge, Alberta
T1J5G4
["1958612"]

And

Heritage Ranch Landowners Association
537 - 7th Street South
Lethbridge, Alberta
T1J2G8
["HRLO"]

[collectively, the "Parties"]

WHEREAS on June 7, 2019, Alberta Environment and Parks ["AEP"] received a public complaint indicating that sediment was entering Lee Creek from a road at or near the SE 9 – 1 – 27 W4M;

WHEREAS Lee Creek [the "Waterbody"] flows through the SE 9-1-27-W4M in a southeast to northwest direction;

WHEREAS the Waterbody has been deemed Critical Habitat for Bull Trout under the *Species at Risk Act* by Fisheries and Oceans Canada;

WHEREAS on June 10, 2019, in response to the public complaint an AEP Environmental Protection Officer inspected the Lands and observed the following:

- A partially constructed dirt and gravel road [the "Road"], the extent of which is identified on the Map attached as Appendix A ["Appendix A"], running North to South, climbing a steep hill, and located approximately 30 meters to the West of the Waterbody;
- Visible erosion scours on the Road surface and shoulders, particularly on the eastern shoulder of the Road that slopes steeply downward toward the Waterbody;
- A sediment plume, originating from the eastern shoulder of the Road and extending downhill to the east, across land adjacent to the Road, and stopping approximately 3 meters from the Waterbody within a vegetated buffer of trees and shrubs;
- No erosion or sediment controls were present at the site at the time of the inspection.

WHEREAS a review of historical aerial images for the SE 9-1-27 W4M determined that construction of the Road was initiated on or about June of 2016;

WHEREAS on or about June 2016 during the relevant time that the Road construction appears to have commenced, 1958612 was the registered owner of SE 9-1-27-W4M between June 2, 2016 and January 28, 2019;

WHEREAS a portion of SE 9-1-27 W4M was excepted out of the land parcel, and between January 28, 2019 to February 1, 2019, 1958612 remained the registered owner of these lands on which the Road is located;

WHEREAS between January 28, 2019 to February 1, 2019, 1958612 was the registered owner of land on which the Road is present, at the SE 9 – 1 – 27 W4M including 162 acres, more or less, excepting 78.41 acres, more or less, as defined in subdivision plan 1910181 and as indicated on cancelled land title 191 019 775 +38;

WHEREAS from February 1, 2019 until August 10, 2021, HRLO was the registered owner of the land parcel on which the Road is present;

WHEREAS from August 10, 2021 until January 12, 2022, 1958612 was again the registered owner of land on which the Road is present (within the SE 9 – 1 – 27 W4M), and on January 12, 2022, ownership of the lands on which the Road is located again transferred back to HRLO (as indicated on land title 221 005 238), and HRLO remain the current owner of these lands;

WHEREAS a CORES search confirmed that Dustin Michel is the sole Director of 1958612 and a second CORES search also reveals that Dustin Michel, Paul Beattie and Allan Burton are listed as Directors of HRLO;

WHEREAS on April 12, 2022, Paul Beattie advised AEP staff, that Brandon Hall is now the President of HRLO;

WHEREAS following AEP's inspection of the Road and Waterbody in June 2019, 1958612 installed silt fencing on the downhill slope of the Road toward the Waterbody in the spring of 2020 at the request of AEP;

WHEREAS on August 16, 2021 AEP received a further public complaint, indicating that sediment was being released from the Road and entering the Waterbody at the SE 9 – 1 – 27 W4M;

WHEREAS on August 23, 2021 an AEP Environmental Protection Officer inspected the SE 9 – 1 – 27 W4M and observed the following:

- The Road is partially constructed and is composed of silty clay, with no gravel or paving on the surface of the Road;
- The eastern shoulder of the Road slopes steeply towards the Waterbody;

- Silt fencing at the eastern shoulder of the Road has been overwhelmed with sediment and is no longer functional;
- A sediment plume [the “Sediment Plume”] approximately 30 meters wide and 24 meters long originating from the eastern shoulder of the Road, running eastward, across land adjacent to the Road, and entering the Waterbody;
- A sediment deposit [the “Sediment Deposit”] measuring approximately 34 centimeters in depth within the Waterbody at the terminal end of the Sediment Plume;

WHEREAS a report titled “Lee Creek Harmful Alteration of Riparian Critical Habitat – Report on Harmful Alteration, Disruption and Destruction (HADD)” and dated December 23, 2021, which was prepared by Amanda Conway, Biologist, Fish and Fish Habitat Protection Program, Fisheries and Oceans Canada (DFO), indicates “based on observations made in the field by DFO staff, it appears that material from the road was transported into the creek, and additional material will continue to enter the creek without proper mitigation”.

WHEREAS as of the inspection on August 23, 2021, the Road was present on land owned by 1958612;

WHEREAS following the August 23, 2021 inspection, Dustin Michel was contacted by an AEP Environmental Protection Officer and facilitated the re installation of the failed silt fencing on the Road;

WHEREAS to date, the Sediment Plume continues to exist on land immediately adjacent to the east side of the Lands on which the Road is located toward the Waterbody; and within the bed of the Waterbody itself;

WHEREAS the land immediately adjacent to the east side of the land on which the Road is located [the “Adjacent Lands”] are owned by 1958612, and are also indicated on the map that is attached as Appendix B [“Appendix B”];

WHEREAS the Waterbody is a “water body” as defined in section 1 (1) (ggg) of the *Water Act*;

WHEREAS removing or disturbing ground, vegetation, or other material in or on any land, water or waterbody that causes or may cause siltation, erosion, or an effect on a waterbody of the aquatic environment, are “activities” within section 1 (1) (b) of the *Water Act*;

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

WHEREAS the disturbance of ground and vegetation for the construction, use and maintenance of the Road is an “activity” under section 1 (1) (b) of the *Water Act*, and requires an approval pursuant to section 36(1) of the Act;

WHEREAS the construction, use and maintenance of the Road in proximity to the Waterbody, which has resulted in the release of sediment to the Waterbody, the accumulation of the Sediment Plume on Adjacent Lands, and the Sediment Deposit in the waters of the Waterbody, are hereinafter referred to as the “Unauthorized Activities”;

WHEREAS the Parties are each a “person responsible” for the Unauthorized Activities described in this Order pursuant to section 1(1)(kk) of the *Water Act* and section 1(5) of the *Water (Ministerial) Regulation*, as the person or persons who owned or previously owned the lands that the activity was carried out on, or the person or persons who carried out the activity;

WHEREAS Coreen Bates, Compliance Manager, Southern Region, 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 Parties have contravened section 36(1) of the *Water Act*, by carrying out the Unauthorized Activities, being the construction of the Road in proximity to the Waterbody which has caused impacts to the Waterbody without the required approval, and is also of the opinion that remedial works are required to address these impacts;

THEREFORE, I, Coreen Bates, Director, pursuant to section 135 (1) and 136 (1) of the *Water Act*, DO HEREBY ORDER:

1. The Parties shall
 - a. Immediately; and
 - b. continuously

prevent any further sediment from entering the bed and shore of the Waterbody from the Adjacent Lands and the Road.

Erosion and Sediment Control Plan

2. The Parties shall, by not later than April 29th, 2022, prepare and submit for the Directors written Approval, an erosion and sedimentation control plan [the “Erosion and Sedimentation Control Plan”] stamped and signed by an independent third-party professional currently registered in good standing with the Association of Professional Engineers, Geoscientists of Alberta;
3. The Erosion and Sedimentation Control Plan shall include at least each of the following elements:

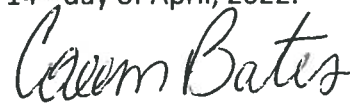
- a. a detailed description of all potential sources of sediment on the Road and the Adjacent Lands with the potential to migrate to the Waterbody;
 - b. a detailed description of the step-by-step processes and methods that will be used to prevent further erosion on the Road and the Adjacent Lands;
 - c. a detailed description of the step-by-step processes and methods that will be used to prevent any sediments being mobilized from the Road and the Adjacent Lands from reaching the Waterbody;
 - d. a schedule for the maintenance and monitoring of all implemented erosion and sediment controls;
 - e. a schedule for the implementation of the Erosion and Sedimentation Control Plan with a completion date of no later May 13th, 2022;
4. The Parties shall implement the Erosion and Sediment Control Plan in accordance with the schedule of implementation once approved by the Director in writing.

Remedial Plan

5. The Parties shall, by not later than May 6th, 2022, prepare and submit for the Directors written approval, a remedial plan [the "Remedial Plan"] stamped and signed by an independent third-party professional currently registered in good standing with the Alberta Society of Professional Biologists;
6. The Remedial Plan shall include at least each of the following elements:
- a. a detailed assessment of the location and extent, within the Waterbody, of the sediment that has been released from the Road and the Adjacent Lands;
 - b. a detailed description of the step-by-step processes and methods that will be used to remove from the Waterbody, all sediments that have been mobilized from the Road and the Adjacent Lands;
 - c. a detailed description of the step-by-step processes and methods that may be used to prevent the further mobilization of sediments to the Waterbody from the Road and the Adjacent Lands during the execution of the Remedial Plan;

- d. a step-by-step description of the processes and methods that may be used to prevent impacts to aquatic life in the Waterbody, and particularly on species listed under the *Species at Risk Act*, during the execution of the Remedial Plan;
 - e. a schedule for implementing the Remedial Plan, with a completion date of no later than May 20th, 2022;
7. The Parties shall fully implement the Remedial Plan in accordance with the schedule of implementation once approved by the Director in writing.
 8. Within 30 days of the completion of the requirements of this Order, the Parties shall submit to the Director, a final written report describing the work undertaken to comply with this order [the "Final Report"], stamped and signed by an independent third-party professional currently registered in good standing with the Alberta Society of Professional Biologists

DATED at the City of Lethbridge in the Province of Alberta, this 14th day of April, 2022.



Coreen Bates
Compliance Manager
Southern Region

Notwithstanding the above requirements, the Parties 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 Alberta Environmental Appeals Board. 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 – 109th Street

Edmonton, Alberta, T5J 3S8

Telephone: (780) 427-6207

Fax: (780) 427-4693

Appendix A



Appendix B

