

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

ENFORCEMENT ORDER NO. WA-EO-2017/09-LAR

Randolph Henry Batke  
PO Box 6515  
Bonnyville, Alberta  
T9N 2H1

WHEREAS Randolph Henry Batke ["Batke"] and Eileen Morea Batke are joint owners of 64.47 acres of land legally described as Plan 9724117, Lot 3 [the "Lands"] located within the Municipal District of Bonnyville No. 87 [the "MD"];

WHEREAS the Lands are bordered to the north by Plan 9724117 Lot 5ER [the "ER Lands"] which are owned by the MD, and are designated as an environmental reserve around unnamed creek #299660 [the "Water Body"];

WHEREAS the Water Body flows in an east to west direction across the ER Lands;

;WHEREAS the Water Body is a "water body" as defined in section 1(1)(ggg) of the *Water Act*;

WHEREAS on October 16, 2017 Alberta Environment and Parks ["AEP"] received a call via the Coordination and Information Center from a member of the public that the Water Body was being excavated and disturbed with a track hoe;

WHEREAS on October 26, 2017, an AEP Environmental Protection Officer ["EPO"] – who is designated as an inspector and investigator under the *Water Act* – inspected the Water Body and observed:

- Soil and vegetation piled along the south bank of the Water Body on the ER Lands;
- Heavy equipment tracks leading to the edge of the Water Body from the driveway on the Lands;
- Bucket marks and soil piles indicating dredging had occurred along an approximately 200 meter portion of the bed of the Water Body on the ER Lands [the "Unauthorized Activity"]; and
- A Northern Pike was confined to standing water along the disturbed portion of the Water Body.

WHEREAS on October 26, 2017 the EPO phoned Batke and:

- Batke told the EPO he had personally conducted the Unauthorized Activity in the Water Body including dredging and the removal of a beaver dam to alleviate flooding concerns;
- Batke told the EPO he had phoned MD staff and obtained permission to remove a beaver dam from the Water Body; and

- the EPO advised Batke that work outside the scope of beaver dam removal had occurred at the Water Body;

**WHEREAS** a person is exempt from requiring an approval under the *Water Act* to remove beaver dam if they own or occupy the land adjacent to the water body where the beaver dam is located (exemption is under section 2(g) of Schedule 1 of the *Water (Ministerial) Regulation*);

**WHEREAS** Batke does not own or occupy the ER Lands;

**WHEREAS** removing or disturbing ground, vegetation or other material in or around the Water Body that has caused, may cause or may become capable of causing:

- the siltation of water or the erosion of the bed or shore of the Water Body, or
- an effect on the aquatic environment,

is an "activity" as defined in section 1(1)(b)(i) 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** AEP has not issued an approval to Batke or to any person for the Unauthorized Activity in or around the Water Body, and this was not otherwise authorized under the *Water Act*;

**WHEREAS** on October 26, 2017 the EPO issued a Notice of Non Compliance letter to Batke, advising him to cease all further unauthorized activities in the Water Body, and to await further correspondence from AEP;

**WHEREAS**, Neil Brad, AEP Regional Compliance Manager, Lower Athabasca Region [the "Director"] has been designated as a Director for the purpose of issuing enforcement orders under the *Water Act*;

**WHEREAS** the Director is of the opinion that Batke has contravened section 36(1) of the *Water Act*, which is an offence under section 142(1)(h) of the *Water Act*, by commencing or continuing an activity without an approval;

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

1. Batke shall immediately cease all unauthorized activities in or around the Water Body.
2. Batke shall submit to the Director, for the Director's approval, the name and qualifications of a Qualified Aquatic Environmental Specialist ["QAES"] with experience in preparing a remedial plan by November 30, 2017.
3. Batke shall submit to the Director, for the Director's approval, a written remedial plan [the "Remedial Plan"] prepared and signed by the approved QAES by January 31, 2018.
4. Batke shall include in the Remedial Plan at least all of the following:
  - a. A description of the remedial work that will prevent any further sedimentation and erosion of the bed and bank of the Water Body;

- b. A description of the remedial work that will restore fish habitat in the Water Body to pre-disturbance conditions;
  - c. A description of the type of equipment, methods, and materials that will be used in implementing the Remedial Plan;
  - d. A description of the measures that will be taken to minimize any further disturbance to, in or around the Water Body while implementing the Remedial Plan;
  - e. A description of the long-term monitoring and maintenance measures that will be implemented to ensure that the remedial work remains effective at achieving the goals in Paragraphs 4a and 4b of this Order; and
  - f. A schedule for implementing the Remedial Plan with a completion date no later than April 30, 2018.
5. Batke shall implement the Remedial Plan as approved in writing by the Director in accordance with the schedule of implementation approved by the Director.
  6. Batke shall provide the Director with a minimum of 2 business days' notice by email prior to commencing any work under the Remedial Plan.
  7. Batke shall submit to the Director a final report prepared and signed by the approved QAES describing the work undertaken to comply with this Order by May 15, 2018.

DATED at the Town of Bonnyville in the Province of Alberta, this November 14, 2017.

Original signed by:  
Neil Brad  
Regional Compliance Officer  
Lower Athabasca 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:**

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10011 – 109th Street  
Edmonton, Alberta, T5J 3S8  
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