

**WATER ACT**

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

**ENFORCEMENT ORDER NO. EO-WA-35659-01**

2161889 Alberta Ltd.  
P.O. Box 6977  
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T9N 2H4

Byron Levkulich, former Director of 2161889 Alberta Ltd.  
JMB Crushing Systems Inc.  
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United States

Aaron Patsch, former Director of 2161889 Alberta Ltd.  
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Jeffrey Buck, former Director of 2161889 Alberta Ltd.  
JMB Crushing Systems Inc.  
3439 Keswick Boulevard SW  
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T6W 3B2

Lisa Ball, former Director of 2161889 Alberta Ltd.  
2161889 Alberta Ltd.  
PO Box 211  
Boyle, AB  
T0A 0M0

541466 Alberta Ltd.  
o/a JLG Ball Enterprises  
2300, 10180 – 101 St NW  
Edmonton, AB  
T5J 1V3

Robert W. Beaverford  
52547 RR 223  
Sherwood Park, AB  
T8A 4P7

[Collectively, the “Parties”]

WHEREAS 2161889 Alberta Ltd. (“216”) has operated a gravel pit (the “Pit”) in 2019 and 2020 on a portion of public land legally described as SW-13-065-18-W4M [the “Lands”] in Athabasca County, in the Province of Alberta;

WHEREAS the Pit covers approximately 11.271 hectares on the Lands and the approximate boundaries of the Pit are shown on the map in Appendix A to this Order;

WHEREAS the Lands are contained in surface material lease 060060 (“SML 060060”) that is a disposition issued to 216 under the *Public Lands Act* as a result of an assignment on March 15, 2019. SML 060060 expires on May 28, 2024;

WHEREAS Byron Levkulich, Aaron Patsch, Jeffrey Buck, and Lisa Ball are former Directors for 216;

WHEREAS Robert W. Beaverford held SML 060060 between June 27, 2008 and March 15, 2019;

WHEREAS 541466 Alberta Ltd. (“541”) operated the Pit between May 2017 and March 15, 2019;

WHEREAS Lisa Ball has been a Director for 541 from November 1999 to March 10, 2021 (present);

WHEREAS Clause 6 of Schedule A to SML 060060 – “Operating Conditions to the Agreement” requires the holder to reclaim any land disturbed in accordance with the approved Conservation and Reclamation Business Plan (CRBP). CRBP dated: May 28, 2014;

WHEREAS on May 28, 2014, Alberta Environment and Parks (“AEP”) approved the Conservation and Reclamation Business Plan Approval for SML060060 (“CRBP”);

WHEREAS Clause 13 of Schedule A to SML 060060 – “Operating Conditions to the Agreement” requires the holder to leave a buffer zone of undisturbed vegetation a minimum width of 100 m between the Lands and all waterbodies and courses;

WHEREAS on May 10, 2017, an AEP Public Lands Officer [“PLO”] inspected the Lands and observed that the Lands had been recently logged, but had not yet been disturbed by mining activities;

WHEREAS on January 22, 2019 Robert Beaverford filed an annual return documenting the removal of 174,965.19 cubic yards of material from SML 060060 during the 2018 operating year;

WHEREAS on March 26, 2019 the Director issued an administrative penalty to 541466 Alberta Ltd. and Robert Beaverford, for:

- Entering public land without authorization;

- Cleared public land without authority;
- Causing loss and damage with rutting and vegetation removal by heavy equipment;
- Contravened the terms of the lease by operating during a timing restriction; and
- Caused loss and damage to public land with root removal and vegetation piling and the removal of topsoil, which are all contraventions of the *Public Lands Act* or SML 0600060;

WHEREAS on May 1, 2020, 216 entered into proceedings under the *Companies Creditors Arrangement Act* R.S.C., 1985, c. C-36;

WHEREAS on October 7, 2020, the PLO inspected the Lands, took photos, and identified:

- An end pit waterbody (“Lake”) in the Pit (refer to Appendix A);
- Drainage patterns in the south of the Pit do not match details shown in the CRBP;
- Erosion washing to the adjacent vegetation resulting in trespass of public land (“trespass” on map in Appendix A);
- Rills and gullies formed along southern boundary of the Lands (refer to Appendix A);
- Subsoil and aggregate stockpiles were located on the edges of the Lake;
- A trench (“Ditch A”) that was not identified on the CRBP that functioned as outflow for the Lake;
- The trench exited the Lands near a small waterbody located across from the northwest corner of SML 060060 in SE-14-065-18-W4M; and
- Siltation occurring to the small waterbody;

WHEREAS on January 31, 2020 216 filed an annual return documenting the removal of 3,384.41 cubic yards of material from SML 060060 during the 2019 operating year;

WHEREAS on February 10, 2021 216 filed an annual return documenting the removal of 2,254 cubic yards of material from SML 060060 during the 2020 operating year;

WHEREAS the *Public Lands Administration Regulation* section 105(c) defines operations as the removal of surface material from public land described in a lease;

WHEREAS the *Public Lands Administration Regulation* section 105(g) defines surface material means sand and gravel;

WHEREAS on February 10, 2021, an AEP Environmental Protection Officer (“EPO”) identified that the approved CRBP committed to dry excavation only in the pit sequencing;

WHEREAS on February 10, 2021, the EPO conducted a search of the AEP Authorization Viewer for the Lands for a *Water Act* Approval to conduct activities and determined there is no authorization on record;

WHEREAS on February 17, 2021, Nathan Polturak, an EPO and Inspector under the *Water Act*

RSA 2000, c W-3 (the "Inspector"), conducted a review of the terms and conditions of SML 060060 and 2019 satellite imagery of the area and determined that 216 contravened the *Public Lands Act* and the *Water Act* by:

- Contravened one or more provisions of the disposition; and
- commencing or continuing an activity except pursuant to an approval where no authorization was granted

WHEREAS on February 23, 2021, AEP issued a Notice of Non-Compliance ("NONC") to 216 stating that AEP had identified issues of non-compliance of the *Public Lands Act* under SLM 060060.

WHEREAS the NONC stated that, by February 26, 2021 216 was to provide a written plan:

- detailing its assessment of the disposition against the terms and conditions of SML 060060, the *Public Lands Act* and the *Public Lands Administration Regulation*;
- describing how 216 plans to bring the disposition into compliance with the *Public Lands Act*, *Public Lands Administration Regulation*, and the terms and conditions of the disposition, including a timeline to completion; and
- stating its immediate plans to operate the pit on the lands contained in SML 060060.

WHEREAS on February 26, 2021, 216 provided AEP with its response to the NONC, which clarified with respect to SML 060060, that since March 2019, 216 has completed minor earthworks and hauling of crushed gravel and stated that 216's intentions were as follows;

- engage the services of a legal land surveyor to survey the southern boundary in question. Forward results to AEP for further consultation and possible action;
- work with AEP to determine final *Water Act* authorization requirements for filling in the constructed water body;
- update CRBP as needed; and
- submit non-compliance for construction of water body without authorization.

WHEREAS on February 26, 2021, the EPO identified off-site impacts to a waterbody due to erosion and siltation originating from the Lake. The observation was made on the Athabasca County MuniSight website using the 2019 ortho base layer. Observed impacts include silty water in a small waterbody across from the northwest corner of SML 060060 in SE-14-065-18-W4M as well as a siltation plume (refer to Appendix A) extending north from the small waterbody into a wetland complex ("the waterbodies") that empties to Amisk Lake;

WHEREAS altering the flow, direction of flow or level of water or changing the location of water for the purpose of drainage is an "activity" as defined in Section 1(1)(b)(i) and (ii) of the *Water Act*;

WHEREAS the maintaining, removing or disturbing ground or carrying out of any undertaking that causes, may cause or may become capable of causing the siltation of water 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 *Act*;

WHEREAS AEP has not issued an approval or licence to any of the Parties or to any person for the creation of the Lake and this activity is not otherwise authorized under the *Water Act*;

WHEREAS AEP has not issued an approval or licence to any of the Parties or to any person for any undertaking resulting in the siltation of the waterbodies and this activity is not otherwise authorized under the *Water Act*;

WHEREAS section 135(1) of the *Water Act* states the Director may issue an enforcement order to any person if, in the Director's opinion, that person has contravened this *Act*, whether or not that person has been charged or convicted in respect of the contravention;

WHEREAS Heather Dent, Compliance Manager, Alberta Environment and Parks, has been designated as a Director for the purpose of issuing enforcement orders under the *Water Act* [ the "Director"];

WHEREAS the Director is of the opinion that the Parties have contravened Section 36(1) of the *Water Act* by commencing or continuing an activity without an approval;

THEREFORE, I, Heather Dent, the Director, pursuant to Sections 135(1) and 136(1) of the *Water Act*, DO HEREBY ORDER THAT:

1. The Parties shall immediately cease all unauthorized activities on the Lands, including any work on, in or around the Lake.
2. The Parties shall submit to the Director, for the Director's approval, the name and qualifications of a Professional who is a member in good standing with a Professional Regulatory Organization, with experience in preparing a remedial plan and managing groundwater by **March 19, 2021**.
3. The Parties shall submit to the Director, for the Director's approval, a written remedial plan ("Remedial Plan") signed and stamped by the Professional by **March 31, 2021**.
4. The Parties shall include in the Remedial Plan all of the following:
  - a. A detailed assessment of the Lands including drainage, soils, vegetation, water (ground/surface) and any affected areas surrounding the Lands;
  - b. Apply for required authorization to conduct remedial activities of the Land;

- c. A detailed map to determine:
    - i. The source of the water in the Lake;
    - ii. The original drainage prior to any activity on the Lands; and
    - iii. The current drainage including the extent water is discharging off the Lands.
  - d. A hydrological assessment of:
    - i. the amount of water that is discharging off of the Lands annually; and
    - ii. The sediment load eroded from the Lands annually;
  - e. A detailed description of how the Lake on the Lands will be reclaimed;
  - f. A detailed plan on how water will be managed on the Lands and be returned to the natural drainage system once the Lake has been decommissioned;
  - g. A description of the type of equipment, methods, and materials that will be used in implementing the Remedial Plan;
  - h. A description of the long-term monitoring and maintenance measures that will be implemented to ensure that remedial works remain effective at achieving the goals in Paragraphs 4E and 4F of this Order; and
  - i. A schedule of implementing the Remedial Plan with a completion date no later than **October 1, 2021**.
5. In the Water Act Remedial Plan, the Parties must include a detailed plan to permanently render ineffective Ditch A
  6. The Parties shall implement the Remedial Plan as approved in writing by the Director in accordance with the schedule of implementation approved by the Director.
  7. The Parties shall provide the Director with a minimum of 2 business days' notice by email prior to commencing any work under the Remedial Plan.
  8. The Parties shall submit progress updates to the Director on **July 15, 2021**; **November 15, 2021**; **May 15, 2022**; and **July 31, 2022** that include a detailed summary of all remedial activities undertaken pursuant to this Enforcement Order;
  9. The Parties shall submit a final report prepared and signed by the approved Professional describing the work undertaken to comply with this Order by **October 30, 2022**.

DATED at the City of Edmonton in the Province of Alberta, this 12th day of March 2021.

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Heather Dent  
Compliance Manager  
Boreal North Region

**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 Parties shall obtain all necessary authorizations from any regulatory agency (federal, provincial, or municipal) in complying with this order.**

**Take notice that this environmental protection 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.**

## **APPENDIX A**





INV 35659

Scale: 1 : 4,000

Meters 100 75 50 25 0 100 Meters

- Pit (11.271 ha)
- Rills and gullies
- Draw
- Lake
- Plume
- Small waterbody
- Trespass on public land
- Pipeline
- Above Ground Pipeline
- Cut Trail
- Lake - Perennial
- Stream
- SML060060
- 3m buffer inside SML boundary



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courtesy of the County of Athabasca.  
Information as depicted is subject to change,  
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Coordinate System: NAD 1983 UTM Zone 12N  
Produced by Northeast Geospatial Unit  
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