

Clerk's Stamp

COURT FILE NO. 2001-05482
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889
ALBERTA LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **AFFIDAVIT OF BLAKE M. ELYEA**

ADDRESS FOR SERVICE AND CONTACT
Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue SW
Calgary, AB T2P 4K9

INFORMATION OF PARTY FILING THIS DOCUMENT
Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
Phone: 403.298.1938/403.298.1992/403.298.1018
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File No.: A163514

AFFIDAVIT OF BLAKE M. ELYEA
sworn March 5, 2021

I, **BLAKE M. ELYEA**, of the City of Burnaby, in the Province of British Columbia,
MAKE OATH AND SAY THAT:

1. I am the Chief Restructuring Advisor for JMB Crushing Systems Inc. ("**JMB**") and 2161889 Alberta Ltd. ("**216**", and with JMB, the "**Applicants**"). As such, I have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.
2. I was appointed as Chief Restructuring Advisor of JMB and 216 on May 4, 2020, immediately following the commencement of their proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"). In that



capacity, I have reviewed the business records of JMB relevant to the within proceedings and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

3. I swear this Affidavit further to my Affidavits sworn August 6, 2020, October 16, 2020 November 20, 2020, December 4, 2020 and February 19, 2021 in these proceedings.
4. I am authorized to swear this Affidavit as Chief Restructuring Advisor of JMB.
5. All capitalized terms not otherwise defined in this Affidavit are as defined in the Affidavit of Byron Levkulich sworn March 4, 2020 in these proceedings.
6. I make this affidavit in support of an order extending the Stay Period, as defined in the Initial Order granted in these proceedings by Justice K.M. Eidsvik on May 1, 2020, which Order was amended and restated by the Amended and Restated Initial Order pronounced on May 11, 2020 (the “**Initial Order**”), up to and including April 2, 2021. I am also providing an update to the Court with respect to steps being taken by Alberta Environment and Parks (the “**AEP**”).

Application for an Extension of the Stay of Proceedings

7. Since May 11, 2020, the Stay Period has been extended by Orders of this Honourable Court and currently ends on March 12, 2021.
8. Since the last application on February 24, 2021, the Applicants have continued to act diligently and in good faith in these proceedings by, among other things:
 - (a) continuing to maintain the Applicants’ property and assets;
 - (b) continuing discussions with the AEP in connection with the amended and restated orders being sought on the Application scheduled for March 5, 2021 in these proceedings;
 - (c) working with the Monitor and the senior secured creditors to revise the Original Transactions to eliminate the need for consent from the AEP for transfers;



- (d) negotiating the Amended Purchase Agreement and preparing the Amended Transaction Orders; and
 - (e) assessing the CRA Priority Claim and whether such claim may be secured by a deemed trust or statutory lien under the *Income Tax Act*, RSC 1985, c 1.
9. I am advised by counsel for the Applicants and believe that counsel for the AEP has requested an adjournment of the application scheduled for March 5, 2021 at 10:00am for a short period of time to permit the parties to continue to discuss the draft orders with a view to resolving a few outstanding matters. The Applicants have consented to the adjournment request, but have to address the cash flows to ensure that there are funds through the adjournment period and any additional time required to close the Amended Transactions.
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- (a) the Applicants, Mantle Materials Ltd. ("**Mantle**"), ATB Financial ("**ATB**"), and Fiera Private Debt Fund VI LP, by its general partner Fiera Private Debt Fund GP Inc. ("**Fund VI**") and Fiera Private Debt Fund V LP, by its general partner Fiera Private Debt Fund GP Inc., acting in its capacity as collateral agent for and on behalf of and for the benefit of Fund VI (collectively, "**Fiera**"), have entered into, a funding agreement (the "**Funding Agreement**") that provides for additional liquidity of least \$300,000 Canadian Dollars to the Applicants on or before 4:00 p.m. on March 12, 2021, which liquidity shall be used in connection with the general operating and corporate purposes of the Applicants; or
 - (b) the Applicants have otherwise obtained an injection of funds, or the agreement of each of Mantle, ATB, and Fiera to the release of previously restricted funds, on or before 4:00 p.m. on March 12, 2021, in which such persons may have a financial,



legal, or equitable interest (whether such funds were previously held in trust by the Monitor or otherwise), in either case, in the amount of at least \$300,000 Canadian Dollars, for use in connection with the general operating and corporate purposes of the Applicants; or

- (c) any other person has provided funds in the amount of at least \$300,000 Canadian Dollars to the Applicants, on or before 4:00 p.m. on March 12, 2021, for use in connection with the general operating and corporate purposes of the Applicants; or
- (d) the Monitor, on or before 4:00 p.m. on March 12, 2021, delivered the Monitor's certificate, substantially in the form attached as Schedule "A" to the Amended Sale Approval and Vesting Order, as contemplated in the Applicant's Application, originally returnable on March 5, 2021

(collectively, the "**Stay Extension Conditions**").

- 11. Based on my review of the Applicants' cash flow statement appended to the Fourteenth Report of the Monitor, the Applicants will have sufficient funds through to April 2, 2021 provided that one or more of the Stay Extension Conditions are met.
- 12. Having regard to the circumstances, I believe that the granting of an extension of the Stay Period to a date determined by this Honourable Court is necessary and in the best interests of the Applicants and their stakeholders.
- 13. The Applicants have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to the CCAA proceedings, and no creditor will be prejudiced by the proposed extension of the Stay Period.

AEP Environmental Protection Order

- 14. The background of the Applicants' discussions and negotiations with the AEP is set out in the Affidavit of Byron Levkulich sworn March 4, 2021.
- 15. On March 3, 2021, the AEP served an Environmental Protection Order (the "**AEP Order**") on JMB and its Directors in respect of Registration No. 293051-00-00 located on SE-34-



THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA
SWORN BEFORE ME
THIS 5th DAY OF MARCH, 2021

A Notary Public in and for the Province of
British Columbia



ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT

BEING RSA 2000, c. E-12 (the "Act")

ENVIRONMENTAL PROTECTION ORDER EPO-EPEA-35659-01

JMB Crushing Systems Inc.
Suite 2300, Bentall 5 550, Burrard Street
Vancouver BC
V6C 2B5,
Canada

Byron Levkulich, Director
JMB Crushing Systems Inc.
1400 16th Street, Suite 320
Denver CO 80202
United States

Aaron Patsch, Director
JMB Crushing Systems Inc.
1400 16th Street, Suite 320
Denver CO 80202
United States

Jeffrey Buck, former Director
JMB Crushing Systems Inc.
3439 Keswick Boulevard SW
Edmonton, AB
T6W 3B2

Collectively referred to as the "Parties"

WHEREAS JMB Crushing Systems Inc. ("JMB") operates a pit under Registration No. 293051-00-00 located on SE-34-056-07-W4M in the County of St. Paul No.19 (the "MacDonald Pit");

WHEREAS Byron Levkulich and Aaron Patsch are Directors of JMB and Jeffrey Buck is a former Director of JMB ("Parties");

WHEREAS Allan MacDonald owns the land on which the MacDonald Pit is located;

WHEREAS section 2.1.1 of the *Code of Practice for Pits* states "any person who carries out an activity at a pit must do so in accordance with this Code of Practice";

WHEREAS an "activity at a pit" is defined in the *Code of Practice for Pits* to mean the construction, operation or reclamation of a pit;

WHEREAS on January 20, 2020, Alberta Environment and Parks ("AEP") sent an email to JMB stating that the MacDonald Pit security Bond No. BND0015363, in the amount of \$16,695.00, was expiring on March 9, 2020 and AEP had previously on December 3, 2019 requested JMB to provide additional security in the amount of \$60,905.51 for a new total of \$77,600.51;

WHEREAS on May 1, 2020, JMB obtained an initial order from the Court under the *Companies Creditors Arrangement Act* ("CCAA"), R.S.C. 1985, c. C-36, as amended;

WHEREAS on May 22, 2020, JMB withdrew its application submitted to AEP on April 25, 2018 to update the Activities Plan for the MacDonald Pit;

WHEREAS on November 18, 2020, AEP sent a letter to JMB indicating they failed to replace security instruments on 7 pits that were registered to JMB and located on private land, including the MacDonald Pit;

WHEREAS on January 26, 2021, April Franks, an Environmental Protection Officer ("EPO") and Inspector under the *Environmental Protection and Enhancement Act* RSA 2000, c E-12 (the "Inspector"), conducted a review of the MacDonald Pit Activities Plan and 2019 satellite imagery of the area and determined that JMB contravened the *Code of Practice for Pits* by:

- failing to restore the required security as required under section 3.2.2 of the *Code of Practice for Pits*;
- failing to follow the Activities Plan mining sequence including not conducting reclamation noted as required under section 4.1.1 of the *Code of Practice for Pits*;
- failing to comply to the boundary approved in the Registration as required under section 4.1.1 of the *Code of Practice for Pits*;
- failing to report non-compliance issues to the Director as required under section 6.1.1 of the *Code of Practice for Pits*;

WHEREAS reclamation of the disturbed land on MacDonald Pit has not occurred to date;

WHEREAS section 3.2.2 of the *Code of Practice for Pits* states "unless exempted by the Act or the *Conservation and Reclamation Regulation*, as amended from time to time, no person shall commence or continue an activity at a pit unless the full amount of security for that pit has been provided to the Director, as authorized in writing by the Director."

WHEREAS section 4.1.1 of the *Code of Practice for Pits* states "no person shall conduct any activity at a pit except in accordance with the most recent Activities Plan.";

WHEREAS section 6.1.1 of the *Code of Practice for Pits* states "in addition to any other reporting required pursuant to this Code of Practice, the Act or the regulations under the Act, any person carrying out an activity at a pit shall immediately report any contravention of this Code of Practice to: (a) the registration holder; and (b) the Director: (i) by telephone at (780) 422-4505, or (ii) by a method: (A) in compliance with the release reporting provisions of the Act and the regulations; or (B) authorized in writing by the Director.";

WHEREAS on February 12, 2021, AEP issued a Notice of Non Compliance ("NONC") to JMB

stating that AEP had identified issues of non-compliance under the *Code of Practice for Pits* for pits registered to JMB located on private land, including the MacDonald Pit;

WHEREAS the NONC also stated that, by February 18, 2021, JMB was to provide:

- an assessment of the pits against the terms and conditions of the Registration and the *Code of Practice for Pits*, and
- a plan to bring each pit into compliance with the Registration and the *Code of Practice for Pits*;

WHEREAS JMB requested two extension requests that AEP granted to provide the information requested in the NONC;

WHEREAS on February 24, 2021, JMB provided AEP with its response to the NONC, which stated that JMB's intentions with respect to the MacDonald Pit were as follows:

- to submit an updated Activities Plan by March 31, 2021 for the purpose of reclamation,
- to post a security bond as a part of the closing of the CCAA court proceedings upon acceptance of the updated activities plan, and
- implement reclamation within three years of the updated activities plan approval;

WHEREAS on February 24, 2021, the EPO had a conversation with the landowner, Allan MacDonald, who indicated that:

- JMB last operated the MacDonald Pit on or about summer 2019, at which time they hauled approximately 10,000 tonnes of gravel off site without payment to the landowner, and
- JMB breached a number of agreements with Allan MacDonald including payment of royalties and completion of reclamation by December 31, 2020;

WHEREAS section 137 of the *Environmental Protection and Enhancement Act* states that an operator must conserve and reclaim specified land and unless exempted by the regulation, obtain a reclamation certificate in respect of the conservation and reclamation;

WHEREAS the MacDonald Pit is a "pit" as defined in the *Activities Designation Regulation* section 3(3)(d), for the purposes of Division 3 of Schedule 2;

WHEREAS the surface land disturbance in the MacDonald Pit is "specified lands" as defined by the *Conservation and Reclamation Regulation* section 1(t)(v);

WHEREAS the Parties are operators as defined in section 134(b)(i) of *EPEA*, i.e. an approval or registration holder who carries on or has carried on an activity on or in respect of specified land pursuant to an approval or registration, and section 34(b) vii), i.e. a person who acts as principal or agent of a person referred to in any of subclauses (i) to (vi);

WHEREAS section 3.1 of the *Conservation and Reclamation Regulation* states that the *Code of Practice for Pits*, as published by AEP, is adopted and forms part of that regulation and requires that a person carrying on an activity referred to in Column A of the Schedule must

comply with the corresponding Code of Practice in Column B of the Schedule in carrying on that activity;

WHEREAS the Schedule of the *Conservation and Reclamation Regulation* states that the construction, operation or reclamation of a pit that is listed in Schedule 2, Division 3 of the *Activities Designation Regulation* must comply with the *Code of Practice for Pits*;

WHEREAS April Franks, EPO North Region (the "Inspector") has been designated as an Inspector for the purposes of issuing environmental protection orders under section 140 the *Environmental Protection and Enhancement Act*;

WHEREAS the Inspector is of the opinion that the suspension of the operation in the MacDonald Pit and directing the performance of work is necessary in order to conserve and reclaim the MacDonald Pit;

THEREFORE, I April Franks, Inspector, North Region, pursuant to section 140 of the *Environmental Protection and Enhancement Act*, DO HEREBY ORDER:

1. The Parties shall immediately suspend any and all work at the MacDonald Pit, and shall not remove any stockpiled materials.
2. By March 13, 2021, the Parties shall submit to the Inspector for the Inspector's approval, the name and qualifications of a consultant who carries a professional designation authorized to practice reclamation on private land, which the Parties will retain to prepare and sign the below noted reclamation and remedial plan.
3. By March 20, 2021, the Parties shall submit to the Inspector for the Inspector's review and approval a written reclamation and remedial plan ("Plan").
4. The Parties shall include at minimum include all of the following in the Plan:
 - a. Particulars of the characteristics and properties of the land including topography, drainage, soils, vegetation and land capability.
 - b. A historical synopsis of the surface, subsurface and groundwater disturbance.
 - c. A description of the adjacent land uses.
 - d. An accounting of what volume of marketable aggregate is left within the MacDonald pit and its value.
 - e. A description of the reclamation work including the type of equipment, methods and materials that will be used in implementing the Plan.
 - f. A description of the proposed reclaimed land use that includes elevations, soil replacement and re-vegetation.
 - g. A description of how ground water infiltrating open excavations will be addressed and justification for any surface and water related improvements to be left in place.

h. A proposed Schedule of Implementation that shall have September 20, 2022 as the completion date.

i. A 6 month monitoring and maintenance program commencing September 20, 2022.

5. Upon approval of the Plan by the Inspector, the Parties shall conduct the work described in the approved Plan, according to the approved schedule of implementation, unless otherwise authorized in writing by the Inspector.

6. The Parties shall submit progress updates to the Inspector on July 30, 2021, November 30, 2021, March 31, 2022, and July 29, 2022 that include a detailed summary of all reclamation activities undertaken at MacDonald Pit;

7. Within 14 days of the completion of the requirements of this Order, the Parties shall submit to the Inspector a final written report prepared and signed by the consultant describing the work undertaken to comply with this Order.

DATED at the City of Spruce Grove in the Province of Alberta, this Tuesday on the 2nd day of March, 2021.



April Franks,
Inspector,
Environmental Protection Officer,
North Region



Section 91 of the *Environmental Protection and Enhancement 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 91 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 shall obtain all necessary approvals 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.

Further, contravention of the Environmental Protection Order may lead to additional enforcement proceedings, up to and including prosecution.



Part 4 Environmental Appeals Board

Environmental Appeals Board established

90(1) There is hereby established the Environmental Appeals Board consisting of persons appointed by the Lieutenant Governor in Council.

(2) The Board shall hear appeals as provided for in this Act or any other enactment.

(3) The Board may convene a panel of Board members to conduct a hearing of an appeal and appoint a person to chair the panel.

(4) Where a panel is convened, the panel has all the powers of the Board and is subject to all the same duties the Board is subject to, and a reference in this Act to the Board is to be read as a reference to the panel.

RSA 2000 cE-12 s90;2003 c42 s6

Notice of appeal

91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

- (a)** where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted

- (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or
 - (ii) by the approval holder or by any person who is directly affected by the Director's decision, in a case where no notice of the application or proposed changes was provided by reason of the operation of section 72(3);
- (b) where the Director refuses
- (i) to issue an approval, or
 - (ii) to make an amendment, addition or deletion in respect of an approval pursuant to an application under section 70(1)(a),
- the applicant may submit a notice of appeal;
- (c) where the Director cancels or suspends an approval under section 70(3)(b) or (4), the approval holder may submit a notice of appeal;
- (d) where the Director cancels a certificate of qualification under section 83(1)(b), the holder of the certificate of qualification may submit a notice of appeal;
- (e) where the Director issues an enforcement order under section 210(1)(a), (b) or (c), the person to whom the order is directed may submit a notice of appeal;
- (f) where an inspector issues an environmental protection order regarding conservation and reclamation under section 140 or 141, the person to whom the order is directed may submit a notice of appeal;
- (g) where the Director issues an environmental protection order under section 129,
- (i) the person to whom the order is directed, and
 - (ii) any person who is directly affected by the designation of the contaminated site
- may submit a notice of appeal;
- (h) where the Director issues an environmental protection order, except an environmental protection order directing

- the performance of emergency measures under section 114, 151 or 160 and an environmental protection order referred to in clause (g), the person to whom the order is directed may submit a notice of appeal;
- (i) where an inspector issues a reclamation certificate under section 138, or the Director or an inspector amends a reclamation certificate under section 139, the operator and any person who receives a copy of the certificate or amendment under section 145 may submit a notice of appeal;
 - (j) where the Director or an inspector cancels a reclamation certificate, the operator may submit a notice of appeal;
 - (k) where the Director or an inspector refuses to accept an application for a reclamation certificate or an inspector refuses to issue a reclamation certificate, the operator may submit a notice of appeal;
 - (l) where the Director or an inspector issues, amends or cancels a remediation certificate under section 117, any person who receives notice of the issuance, amendment or cancellation as provided for in the regulations may submit a notice of appeal;
 - (l.1) where the Director or an inspector refuses to accept an application for a remediation certificate or refuses to issue a remediation certificate under section 117, any person who receives notice of the refusal as provided for in the regulations may submit a notice of appeal;
 - (m) where the Director designates an area as a contaminated site under section 125, any person who is directly affected by the designation may submit a notice of appeal;
 - (n) where the Director requires a person to pay an administrative penalty under section 237, the person to whom the notice is directed may submit a notice of appeal;
 - (o) where the Director refuses a request for confidentiality under section 35(5)(b), the person to whom the notice is directed under section 35(6) may submit a notice of appeal;
 - (p) persons authorized under Part 9 of the *Water Act*, in accordance with Part 9 of the *Water Act*.
- (2) Notwithstanding subsection (1)(b), where the Director refuses to issue an approval pursuant to an order of the Minister under



section 64, no notice of appeal may be submitted in respect of that refusal.

(3) Where an activity prescribed in the regulations for the purposes of this subsection is the subject of an approval and is carried out in stages, and where the Director issues an approval in respect of a stage, no notice of appeal may be submitted in respect of a stage that is already covered by the approval.

(4) A notice of appeal must be submitted to the Board

- (a) not later than 7 days after receipt of a copy of the enforcement order or the environmental protection order, in a case referred to in subsection (1)(e), (f) or (h),
- (b) not later than one year after receipt of a copy of the reclamation certificate, in a case referred to in subsection (1)(i) relating to the issuing of a reclamation certificate, and
- (c) not later than 30 days after receipt of notice of the decision appealed from or the last provision of notice of the decision appealed from, as the case may be, in any other case.

(5) The Board may, on application made before or after the expiry of the appeal period referred to in subsection (4), extend that period, where the Board is of the opinion that there are sufficient grounds for doing so.

(6) A notice of appeal submitted to the Board under this Act or in accordance with the *Water Act* must contain the information and be made in the manner provided for in the regulations.

(7) A notice of appeal initiates an appeal of the decision objected to.

RSA 2000 cE-12 s91;2002 c4 s1;2003 c37 s14;
2003 c42 s6;2006 c15 s10

Additional information

92 Where the Board receives a notice of appeal, it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice.

1992 cE-13.3 s85;1998 c15 s9



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ADDRESS FOR **Gowling WLG (Canada) LLP**
SERVICE AND 1600, 421 – 7th Avenue SW
CONTACT Calgary, AB T2P 4K9

INFORMATION OF Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
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(collectively, the "**Stay Extension Conditions**").

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- 15. On March 3, 2021, the AEP served an Environmental Protection Order (the "**AEP Order**") on JMB and its Directors in respect of Registration No. 293051-00-00 located on SE-34-

AD

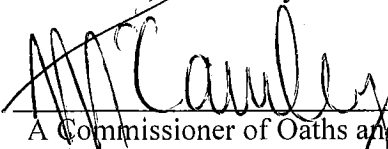
056-07-W4M in the County of St. Paul No. 19 (the “MacDonald Pit”). JMB operates the McDonald Pit. A copy of the AEP Order is attached as **Exhibit “A”**.

16. The AEP Order states, *inter alia*, the following:

- (a) JMB and its Directors shall immediately suspend work at the MacDonald Pit and not remove any stockpiled materials;
- (b) JMB and its Directors submit to April Franks, the Environmental Protection Officer and the Inspector (the “**Inspector**”) under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 (the “**EPEA**”) responsible for this matter, the name and qualifications of a consultant authorized to practice reclamation on private land who will be retained by JMB and its Directors to prepare and sign a reclamation and remedial plan;
- (c) JMB and its Directors will submit a written reclamation and remedial plan by March 20, 2021 (the “**Plan**”); and
- (d) the Plan is a comprehensive plan that requires approval by the Inspector with progress reports that include a detailed summary of reclamation activities undertaken at MacDonald Pit.

17. To date, the AEP Order is the only Order received from the AEP.

18. I was not physically present before the Commissioner for Oaths, but was connected to her by video technology and followed the process for remote commissioning.

SWORN BEFORE ME at the City of)
 Burnaby, in the Province of British)
 Columbia, this 5th day of March, 2021.)
)
)
)
 A Commissioner of Oaths and Notary)
 Public in and for the Province of British)
 Columbia)

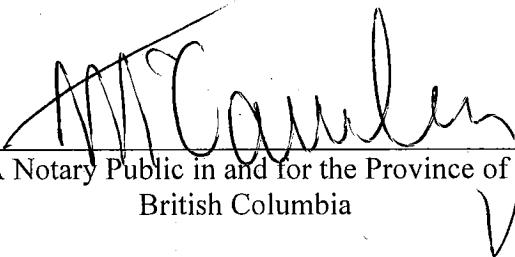
BLAKE M. ELYEA

ALEXANDRA L. MCCAWLEY
 GOWLING WLG (CANADA) LLP
 BARRISTER & SOLICITOR
 550 BURNARD STREET - SUITE 2300
 BENTALL 5 - VANCOUVER, B.C. V6C 2B5
 TELEPHONE: (604) 891-2772
 ACTIVE_CA\44258921\3

THIS IS EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF BLAKE M. ELYEA

SWORN BEFORE ME

THIS 5th DAY OF MARCH, 2021



A Notary Public in and for the Province of
British Columbia

ALEXANDRA L. MCCAWLEY
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
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TELEPHONE: (604) 891-2772



ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT

BEING RSA 2000, c. E-12 (the "Act")

ENVIRONMENTAL PROTECTION ORDER EPO-EPEA-35659-01

JMB Crushing Systems Inc.
Suite 2300, Bentall 5 550, Burrard Street
Vancouver BC
V6C 2B5,
Canada

Byron Levkulich, Director
JMB Crushing Systems Inc.
1400 16th Street, Suite 320
Denver CO 80202
United States

Aaron Patsch, Director
JMB Crushing Systems Inc.
1400 16th Street, Suite 320
Denver CO 80202
United States

Jeffrey Buck, former Director
JMB Crushing Systems Inc.
3439 Keswick Boulevard SW
Edmonton, AB
T6W 3B2

Collectively referred to as the "Parties"

WHEREAS JMB Crushing Systems Inc. ("JMB") operates a pit under Registration No. 293051-00-00 located on SE-34-056-07-W4M in the County of St. Paul No.19 (the "MacDonald Pit");

WHEREAS Byron Levkulich and Aaron Patsch are Directors of JMB and Jeffrey Buck is a former Director of JMB ("Parties");

WHEREAS Allan MacDonald owns the land on which the MacDonald Pit is located;

WHEREAS section 2.1.1 of the *Code of Practice for Pits* states "any person who carries out an activity at a pit must do so in accordance with this Code of Practice";

WHEREAS an "activity at a pit" is defined in the *Code of Practice for Pits* to mean the construction, operation or reclamation of a pit;

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WHEREAS on January 20, 2020, Alberta Environment and Parks ("AEP") sent an email to JMB stating that the MacDonald Pit security Bond No. BND0015363, in the amount of \$16,695.00, was expiring on March 9, 2020 and AEP had previously on December 3, 2019 requested JMB to provide additional security in the amount of \$60,905.51 for a new total of \$77,600.51;

WHEREAS on May 1, 2020, JMB obtained an initial order from the Court under the *Companies Creditors Arrangement Act* ("CCAA"), R.S.C. 1985, c. C-36, as amended;

WHEREAS on May 22, 2020, JMB withdrew its application submitted to AEP on April 25, 2018 to update the Activities Plan for the MacDonald Pit;

WHEREAS on November 18, 2020, AEP sent a letter to JMB indicating they failed to replace security instruments on 7 pits that were registered to JMB and located on private land, including the MacDonald Pit;

WHEREAS on January 26, 2021, April Franks, an Environmental Protection Officer ("EPO") and Inspector under the *Environmental Protection and Enhancement Act* RSA 2000, c E-12 (the "Inspector"), conducted a review of the MacDonald Pit Activities Plan and 2019 satellite imagery of the area and determined that JMB contravened the *Code of Practice for Pits* by:

- failing to restore the required security as required under section 3.2.2 of the *Code of Practice for Pits*;
- failing to follow the Activities Plan mining sequence including not conducting reclamation noted as required under section 4.1.1 of the *Code of Practice for Pits*;
- failing to comply to the boundary approved in the Registration as required under section 4.1.1 of the *Code of Practice for Pits*;
- failing to report non-compliance issues to the Director as required under section 6.1.1 of the *Code of Practice for Pits*;

WHEREAS reclamation of the disturbed land on MacDonald Pit has not occurred to date;

WHEREAS section 3.2.2 of the *Code of Practice for Pits* states "unless exempted by the Act or the *Conservation and Reclamation Regulation*, as amended from time to time, no person shall commence or continue an activity at a pit unless the full amount of security for that pit has been provided to the Director, as authorized in writing by the Director."

WHEREAS section 4.1.1 of the *Code of Practice for Pits* states "no person shall conduct any activity at a pit except in accordance with the most recent Activities Plan.";

WHEREAS section 6.1.1 of the *Code of Practice for Pits* states "in addition to any other reporting required pursuant to this Code of Practice, the Act or the regulations under the Act, any person carrying out an activity at a pit shall immediately report any contravention of this Code of Practice to: (a) the registration holder; and (b) the Director: (i) by telephone at (780) 422-4505, or (ii) by a method:(A) in compliance with the release reporting provisions of the Act and the regulations; or(B) authorized in writing by the Director.";

WHEREAS on February 12, 2021, AEP issued a Notice of Non Compliance ("NONC") to JMB

stating that AEP had identified issues of non-compliance under the *Code of Practice for Pits* for pits registered to JMB located on private land, including the MacDonald Pit;

WHEREAS the NONC also stated that, by February 18, 2021, JMB was to provide:

- an assessment of the pits against the terms and conditions of the Registration and the *Code of Practice for Pits*, and
- a plan to bring each pit into compliance with the Registration and the *Code of Practice for Pits*;

WHEREAS JMB requested two extension requests that AEP granted to provide the information requested in the NONC;

WHEREAS on February 24, 2021, JMB provided AEP with its response to the NONC, which stated that JMB's intentions with respect to the MacDonald Pit were as follows:

- to submit an updated Activities Plan by March 31, 2021 for the purpose of reclamation,
- to post a security bond as a part of the closing of the CCAA court proceedings upon acceptance of the updated activities plan, and
- implement reclamation within three years of the updated activities plan approval;

WHEREAS on February 24, 2021, the EPO had a conversation with the landowner, Allan MacDonald, who indicated that:

- JMB last operated the MacDonald Pit on or about summer 2019, at which time they hauled approximately 10,000 tonnes of gravel off site without payment to the landowner, and
- JMB breached a number of agreements with Allan MacDonald including payment of royalties and completion of reclamation by December 31, 2020;

WHEREAS section 137 of the *Environmental Protection and Enhancement Act* states that an operator must conserve and reclaim specified land and unless exempted by the regulation, obtain a reclamation certificate in respect of the conservation and reclamation;

WHEREAS the MacDonald Pit is a "pit" as defined in the *Activities Designation Regulation* section 3(3)(d), for the purposes of Division 3 of Schedule 2;

WHEREAS the surface land disturbance in the MacDonald Pit is "specified lands" as defined by the *Conservation and Reclamation Regulation* section 1(t)(v);

WHEREAS the Parties are operators as defined in section 134(b)(i) of *EPEA*, i.e. an approval or registration holder who carries on or has carried on an activity on or in respect of specified land pursuant to an approval or registration, and section 34(b) vii), i.e. a person who acts as principal or agent of a person referred to in any of subclauses (i) to (vi);

WHEREAS section 3.1 of the *Conservation and Reclamation Regulation* states that the *Code of Practice for Pits*, as published by AEP, is adopted and forms part of that regulation and requires that a person carrying on an activity referred to in Column A of the Schedule must

comply with the corresponding Code of Practice in Column B of the Schedule in carrying on that activity;

WHEREAS the Schedule of the *Conservation and Reclamation Regulation* states that the construction, operation or reclamation of a pit that is listed in Schedule 2, Division 3 of the *Activities Designation Regulation* must comply with the *Code of Practice for Pits*;

WHEREAS April Franks, EPO North Region (the "Inspector") has been designated as an Inspector for the purposes of issuing environmental protection orders under section 140 the *Environmental Protection and Enhancement Act*;

WHEREAS the Inspector is of the opinion that the suspension of the operation in the MacDonald Pit and directing the performance of work is necessary in order to conserve and reclaim the MacDonald Pit;

THEREFORE, I April Franks, Inspector, North Region, pursuant to section 140 of the *Environmental Protection and Enhancement Act*, DO HEREBY ORDER:

1. The Parties shall immediately suspend any and all work at the MacDonald Pit, and shall not remove any stockpiled materials.
2. By March 13, 2021, the Parties shall submit to the Inspector for the Inspector's approval, the name and qualifications of a consultant who carries a professional designation authorized to practice reclamation on private land, which the Parties will retain to prepare and sign the below noted reclamation and remedial plan.
3. By March 20, 2021, the Parties shall submit to the Inspector for the Inspector's review and approval a written reclamation and remedial plan ("Plan").
4. The Parties shall include at minimum include all of the following in the Plan:
 - a. Particulars of the characteristics and properties of the land including topography, drainage, soils, vegetation and land capability.
 - b. A historical synopsis of the surface, subsurface and groundwater disturbance.
 - c. A description of the adjacent land uses.
 - d. An accounting of what volume of marketable aggregate is left within the MacDonald pit and its value.
 - e. A description of the reclamation work including the type of equipment, methods and materials that will be used in implementing the Plan.
 - f. A description of the proposed reclaimed land use that includes elevations, soil replacement and re-vegetation.
 - g. A description of how ground water infiltrating open excavations will be addressed and justification for any surface and water related improvements to be left in place.

- h. A proposed Schedule of Implementation that shall have September 20, 2022 as the completion date.
 - i. A 6 month monitoring and maintenance program commencing September 20, 2022.
5. Upon approval of the Plan by the Inspector, the Parties shall conduct the work described in the approved Plan, according to the approved schedule of implementation, unless otherwise authorized in writing by the Inspector.
6. The Parties shall submit progress updates to the Inspector on July 30, 2021, November 30, 2021, March 31, 2022, and July 29, 2022 that include a detailed summary of all reclamation activities undertaken at MacDonald Pit;
7. Within 14 days of the completion of the requirements of this Order, the Parties shall submit to the Inspector a final written report prepared and signed by the consultant describing the work undertaken to comply with this Order.

DATED at the City of Spruce Grove in the Province of Alberta, this Tuesday on the 2nd day of March, 2021.



April Franks,
Inspector,
Environmental Protection Officer,
North Region



Section 91 of the *Environmental Protection and Enhancement 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 91 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 shall obtain all necessary approvals 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.

Further, contravention of the Environmental Protection Order may lead to additional enforcement proceedings, up to and including prosecution.

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Part 4 Environmental Appeals Board

Environmental Appeals Board established

90(1) There is hereby established the Environmental Appeals Board consisting of persons appointed by the Lieutenant Governor in Council.

(2) The Board shall hear appeals as provided for in this Act or any other enactment.

(3) The Board may convene a panel of Board members to conduct a hearing of an appeal and appoint a person to chair the panel.

(4) Where a panel is convened, the panel has all the powers of the Board and is subject to all the same duties the Board is subject to, and a reference in this Act to the Board is to be read as a reference to the panel.

RSA 2000 cE-12 s90;2003 c42 s6

Notice of appeal

91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

- (a)** where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted

- (i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director's decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or
 - (ii) by the approval holder or by any person who is directly affected by the Director's decision, in a case where no notice of the application or proposed changes was provided by reason of the operation of section 72(3);
- (b) where the Director refuses
- (i) to issue an approval, or
 - (ii) to make an amendment, addition or deletion in respect of an approval pursuant to an application under section 70(1)(a),
- the applicant may submit a notice of appeal;
- (c) where the Director cancels or suspends an approval under section 70(3)(b) or (4), the approval holder may submit a notice of appeal;
- (d) where the Director cancels a certificate of qualification under section 83(1)(b), the holder of the certificate of qualification may submit a notice of appeal;
- (e) where the Director issues an enforcement order under section 210(1)(a), (b) or (c), the person to whom the order is directed may submit a notice of appeal;
- (f) where an inspector issues an environmental protection order regarding conservation and reclamation under section 140 or 141, the person to whom the order is directed may submit a notice of appeal;
- (g) where the Director issues an environmental protection order under section 129,
- (i) the person to whom the order is directed, and
 - (ii) any person who is directly affected by the designation of the contaminated site
- may submit a notice of appeal;
- (h) where the Director issues an environmental protection order, except an environmental protection order directing

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- the performance of emergency measures under section 114, 151 or 160 and an environmental protection order referred to in clause (g), the person to whom the order is directed may submit a notice of appeal;
- (i) where an inspector issues a reclamation certificate under section 138, or the Director or an inspector amends a reclamation certificate under section 139, the operator and any person who receives a copy of the certificate or amendment under section 145 may submit a notice of appeal;
 - (j) where the Director or an inspector cancels a reclamation certificate, the operator may submit a notice of appeal;
 - (k) where the Director or an inspector refuses to accept an application for a reclamation certificate or an inspector refuses to issue a reclamation certificate, the operator may submit a notice of appeal;
 - (l) where the Director or an inspector issues, amends or cancels a remediation certificate under section 117, any person who receives notice of the issuance, amendment or cancellation as provided for in the regulations may submit a notice of appeal;
 - (l.1) where the Director or an inspector refuses to accept an application for a remediation certificate or refuses to issue a remediation certificate under section 117, any person who receives notice of the refusal as provided for in the regulations may submit a notice of appeal;
 - (m) where the Director designates an area as a contaminated site under section 125, any person who is directly affected by the designation may submit a notice of appeal;
 - (n) where the Director requires a person to pay an administrative penalty under section 237, the person to whom the notice is directed may submit a notice of appeal;
 - (o) where the Director refuses a request for confidentiality under section 35(5)(b), the person to whom the notice is directed under section 35(6) may submit a notice of appeal;
 - (p) persons authorized under Part 9 of the *Water Act*, in accordance with Part 9 of the *Water Act*.
- (2) Notwithstanding subsection (1)(b), where the Director refuses to issue an approval pursuant to an order of the Minister under

section 64, no notice of appeal may be submitted in respect of that refusal.

(3) Where an activity prescribed in the regulations for the purposes of this subsection is the subject of an approval and is carried out in stages, and where the Director issues an approval in respect of a stage, no notice of appeal may be submitted in respect of a stage that is already covered by the approval.

(4) A notice of appeal must be submitted to the Board

- (a) not later than 7 days after receipt of a copy of the enforcement order or the environmental protection order, in a case referred to in subsection (1)(e), (f) or (h),
- (b) not later than one year after receipt of a copy of the reclamation certificate, in a case referred to in subsection (1)(i) relating to the issuing of a reclamation certificate, and
- (c) not later than 30 days after receipt of notice of the decision appealed from or the last provision of notice of the decision appealed from, as the case may be, in any other case.

(5) The Board may, on application made before or after the expiry of the appeal period referred to in subsection (4), extend that period, where the Board is of the opinion that there are sufficient grounds for doing so.

(6) A notice of appeal submitted to the Board under this Act or in accordance with the *Water Act* must contain the information and be made in the manner provided for in the regulations.

(7) A notice of appeal initiates an appeal of the decision objected to.

RSA 2000 cE-12 s91;2002 c4 s1;2003 c37 s14;
2003 c42 s6;2006 c15 s10

Additional information

92 Where the Board receives a notice of appeal, it may by written notice given to the person who submitted the notice of appeal require the submission of additional information specified in the written notice by the time specified in the written notice.

1992 cE-13.3 s85;1998 c15 s9

This is the Certificate to accompany
the Affidavit of Blake Elyea
made on March 5, 2021

COURT FILE NO. 2001-05482

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and 2161889
ALBERTA LTD.

APPLICANTS JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

DOCUMENT **AFFIDAVIT OF BLAKE M. ELYEA**

ADDRESS FOR **Gowling WLG (Canada) LLP**
SERVICE AND 1600, 421 – 7th Avenue SW
CONTACT Calgary, AB T2P 4K9

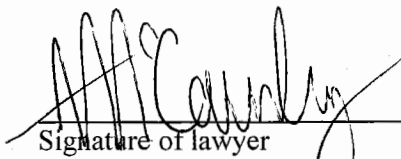
INFORMATION OF Attn: **Tom Cumming/Caireen E. Hanert/Stephen Kroeger**
PARTY FILING Phone: 403.298.1938/403.298.1992/403.298.1018
THIS DOCUMENT Fax: 403.263.9193
File No.: A163514

AFFIDAVIT OF BLAKE M. ELYEA

CERTIFICATE

I, Alexandra McCawley, am the commissioner who took the affidavit from Blake Elyea dated March 5, 2021, two copies of which are attached to this certificate. As commissioner I was satisfied that the process for taking the affidavit using video technology was necessary because it was impossible or unsafe, for medical reasons, for the deponent and me to be physically present together.

Certified March 5, 2021



Signature of lawyer
Alexandra L. McCawley

ALEXANDRA L. MCCAWLEY
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