

ALBERTA PUBLIC LANDS APPEAL BOARD

Report and Recommendations

Date of Decision – April 23, 2018

IN THE MATTER OF sections 119, 120 and 121 of the *Public Lands Act*, R.S.A. 2000, c. P-40; and sections 211, 212, 226, and 227 of the *Public Lands Administration Regulation*, A.R. 187/2011;

-and-

IN THE MATTER OF appeals filed by John MacArthur and Christoph Weder with respect to Administrative Penalty Nos. PLA-17/11-AP-PR-18/02 issued to John MacArthur and PLA-17/12-AP-PR-18/01 issued to Christoph Weder, under the *Public Lands Act*, by the Director, Peace Region, Alberta Environment and Parks.

Cite as: *MacArthur and Weder v. Director, Peace Region, Alberta Environment and Parks* (23 April 2018), Appeal Nos. 17-0032-0033-R (A.P.L.A.B.).

BEFORE:

Ms. Marian Fluker, Acting Board Chair.

PARTICIPANTS:

Appellants: Mr. John MacArthur and Mr. Christoph Weder, represented by Mr. Darin Hannaford, Miller Thomson LLP.

Director: Ms. Lorie Paulovich, Director, Peace Region, Alberta Environment and Parks, represented by Ms. Alison Altmiks, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks issued Administrative Penalties under the *Public Lands Act* to Mr. John MacArthur in the amount of \$15,500.00 in relation to loss or damage to a grazing lease and to Mr. Christoph Weder in the amount of \$5,000.00 in relation to failing to comply with a disposition for a temporary field authorization. Mr. MacArthur and Mr. Weder appealed the issuance of the Administrative Penalties to the Public Lands Appeal Board (the Board).

A mediation meeting was held and a resolution was reached whereby the parties asked the Board to recommend to the Minister that the Administrative Penalty issued to Mr. MacArthur be reduced to \$6,000.00 and the Administrative Penalty issued to Mr. Weder be reduced to \$3,500.00. The Board accepted the mediated agreement and recommended the Administrative Penalties be varied accordingly.

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I. BACKGROUND

[1] On January 11, 2018, the Director, Peace Region, Alberta Environment and Parks (the "Director"), issued under the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "PLA") Administrative Penalty No. PLA-17/11-AP-PR-18/02 to Mr. John MacArthur in the amount of \$15,500.00 for damage to a grazing lease (GRL 36034) and Administrative Penalty No. PLA-17/12-AP-PR-18/01 to Christoph Weder in the amount of \$5,000.00 for failing to comply with a temporary field authorization (TFA 155134) (collectively the "Administrative Penalties"). The offences occurred on January 12, 2016 on the same land.

[2] The Director issued an Administrative Penalty in the total amount of \$15,500.00 to Mr. MacArthur based on the following four counts:

1. Count 1: section 20 of the PLA, being an offence under section 56(1)(d) of the PLA (occupation of public land without authority), Base Assessment \$3,500.00;
2. Count 2: section 54(1)(a.1) of the PLA, being an offence under section 56(1)(g) of the PLA (damage to public land), Base Assessment \$3,500.00;
3. Count 3: section 54(1)(e) of the PLA, being an offence under section 56(1)(g) of the PLA (disturbance of public land that may cause injury to the bed or shore of a waterbody), Base Assessment \$3,500.00; and
4. Count 4: section 54(1)(f) of the PLA, being an offence under section 56(1)(g) of the PLA (causing soil erosion), Base Assessment \$3,500.00.

The base assessment was varied by Factor (a) +\$1,000.00 and Factor (b) +\$500.00. The total final assessment was \$15,500.00. Factor (a) is the importance to the regulatory scheme of compliance with the provision. Factor (b) is the degree of wilfulness or negligence on the part of the person responsible for the contravention.

[3] The Director issued an Administrative Penalty in the total amount of \$5,000.00 to Mr. Weder based on the following count:

Count 1: section 173(1) of the *Public Lands Administration Regulation*, A.R. 187/211 ("PLAR") (failing to comply with the terms and conditions of a disposition), Base Assessment \$3,500.00.

The assessment was varied by Factor (a) +\$500.00 and Factor (b) +\$1,000.00. The total final assessment was \$5,000.00.

[4] On January 30, 2018, the Public Lands Appeal Board (the “Board”) received Notices of Appeal from Mr. John MacArthur and Mr. Christoph Weder (the “Appellants”). The Board acknowledged receipt of the appeals, notified the Director of the appeals, and requested the Director provide a copy of the Director’s documents upon which his decisions were based. The Board also requested the Appellants and Director (collectively, the “Parties”) provide available dates for a mediation meeting.

[5] A mediation meeting was held on April 11, 2018, in Edmonton that resulted in a resolution of the appeals.

II. DISCUSSION

[6] The mediated agreement resulted in the Parties asking the Board to recommend to the Minister that the Administrative Penalty issued to Mr. MacArthur be reduced from \$15,500.00 to \$6,000.00 on the following basis:

1. Remove Count 3, Count 4, and Factor (b), a reduction of \$7,500.00;
2. Reduce the penalty for Count 1 from \$3,500.00 to \$2,500.00;
3. Reduce the penalty for Count 2 from \$3,500.00 to \$2,500.00; and
4. Factor (a) remains at \$1,000.00.

[7] The mediated agreement resulted in the Parties asking the Board to recommend to the Minister that the Administrative Penalty issued to Mr. Weder be reduced from \$5,000.00 to \$3,500.00 on the following basis:

1. Reduce the penalty for Count 1 from \$3,500.00 to \$2,500.00;
2. Factor (a) remains at \$500.00; and
3. Reduce the penalty for Factor (b) from \$1,000.00 to \$500.00.

III. RECOMMENDATIONS

[8] In accordance with section 124(3) of the *Public Lands Act*, R.S.A. 2000, c. P-40 ("PLA"),¹ the Board recommends the Minister of Environment and Parks order that Administrative Penalties PLA-17/11-AP-PR-18/02 and PLA-17/12-AP-PR-18/01 be varied in accordance with the attached agreement reached by the Parties (Appendix A).²

[9] Based on the mediated agreement, the Board recommends the Administrative Penalty issued to Mr. MacArthur be varied by reducing the penalty from \$15,500.00 to \$6,000.00 on the following basis:

1. Remove Count 3, Count 4, and Factor (b), a reduction of \$7,500.00;
2. Reduce the penalty for Count 1 from \$3,500.00 to \$2,500.00 (seriousness of the contravention being major and the extent of actual or potential loss as being minor);
3. Reduce the penalty for Count 2 from \$3,500.00 to \$2,500.00 (seriousness of the contravention being major and the extent of actual or potential loss as being minor); and
4. Factor (a) remains at \$1,000.00.

[10] Based on the mediated agreement, the Board recommends the Administrative Penalty issued to Mr. Weder be varied by reducing the penalty from \$5,000.00 to \$3,500.00 on the following basis:

1. Reduce the penalty for Count 1 from \$3,500.00 to \$2,500.00 (seriousness of the contravention being major and the extent of actual or potential loss as being minor);
2. Factor (a) remains at \$500.00; and
3. Reduce the penalty for Factor (b) from \$1,000.00 to \$500.00.


¹ Section 124(3) of PLA provides:
"On receiving the report of the appeal body, the Minister may, by order, confirm, reverse or vary the decision appealed and make any decision that the person whose decision was appealed could have made, and make any further order that the Minister considers necessary for the purpose of carrying out the decision."

² Section 227 of PLAR states:
"Where the parties to an appeal agree to a resolution of the appeal, the panel chair must
(a) have the parties sign an agreement that reflects the resolution they agree to, and
(b) include the signed agreement in the report and recommendations of the appeal body under section 124 of the Act."

[11] With respect to section 124(4) of the PLA,³ the Board recommends that copies of this Report and Recommendations, and the decision of the Minister, be sent to the following:

- Mr. John MacArthur;
- Mr. Darin Hannaford, Miller Thomson LLP, on behalf of Mr. John MacArthur and Mr. Christoph Weder; and
- Ms. Alison Altmiks, Alberta Justice and Solicitor General, on behalf of the Director, Peace Region, Alberta Environment and Parks.

Dated on April 23, 2018, at Edmonton, Alberta.


Marian Fluker
Acting Board Chair

³ Section 124(4) of PLA states:
“The Minister shall immediately give notice of any decision made under this section to the appeal body, and the appeal body shall immediately, on receipt of the notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the appeal body and to all the persons who the appeal body considers should receive notice of the decision.”

IV. Appendix A



PUBLIC LANDS APPEAL BOARD

RESOLUTION PUBLIC LANDS APPEAL BOARD PLAB File Nos. 17-0032 and 17-0033

In the matter of the mediation of the appeal (PLAB 17-0032) of the January 11, 2018 decision of the Director, Peace Region, Alberta Environment and Parks (the Director), to issue Administrative Penalty No. PLA-17/11-AP-PR-18/02, under the *Public Lands Act*, R.S.A. 2000, c. P-40, and the *Public Lands Administration Regulation*, Alta. Reg. 187/2011, to John MacArthur (the Appellant) in relation to grazing lease GRL 36034 located in Birch Hills County and the M.D. of Spirit River.


In the matter of the mediation of the appeal (PLAB 17-0033) of the January 11, 2018 decision of the Director, Peace Region, Alberta Environment and Parks (the Director), to issue Administrative Penalty No. PLA-17/12-AP-PR-18/01, under the *Public Lands Act*, R.S.A. 2000, c. P-40, and the *Public Lands Administration Regulation*, Alta. Reg. 187/2011, to Christoph Weder (the Appellant) for failing to comply with disposition TFA 155134 according to its terms for lands located in Birch Hills County and the MD of Spirit River.

All participants to the appeal have agreed to the following terms and conditions:

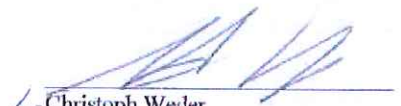
1. The Administrative Penalty assessed against Mr. Weder is amended by setting the base penalty for Count 1 at \$2500, based on the seriousness of the contravention being major, and the extent of actual or potential loss or damage being minor.
2. The Administrative Penalty assessed against Mr. Weder will include adjustment factors of the importance to the regulatory scheme of compliance with the provision that was contravened (factor a) in the amount of \$500 and the degree of wilfulness or negligence on the part of any person responsible for the contravention (factor b) in the amount of \$500. The total assessment is therefore \$3500.
3. The Administrative Penalty assessed against Mr. MacArthur is amended by withdrawing Count 3, Count 4, and adjustment factor b, being the degree of wilfulness or negligence on the part of any person responsible for the contravention.
4. The Administrative Penalty assessed against Mr. MacArthur is amended by setting the base penalty for Count 1 at \$2500, based on the seriousness of the contravention being major, and the extent of actual or potential loss or damage being minor.

5. The Administrative Penalty assessed against Mr. MacArthur is amended by setting the base penalty for Count 2 at \$2500, based on the seriousness of the contravention being major, and the extend of actual or potential loss or damage being minor.
6. The Administrative Penalty assessed against Mr. MacArthur will include adjustment factors of the importance to the regulatory scheme of compliance with the provision that was contravened (factor a) in the amount of \$1000. The total assessment is therefore \$6000.
7. In consideration of the foregoing, upon the Minister issuing a Ministerial Order amending the Administrative Penalties against Mr. Weder and Mr. MacArthur in accordance with this Resolution, the Appellant, Mr. MacArthur, withdraws PLAB Appeal No. 17-0033 and the Appellant, Mr. Weder, withdraws PLAB Appeal No. 17-0032.


RESOLUTION AGREED TO BY:


John MacArthur
Represented by Darin Hannaford,
Miller Thomson LLP

Date: April 11, 2018


Christoph Weder
(by his legal counsel Darin Hannaford)
Represented by Darin Hannaford,
Miller Thomson LLP

Date: April 11, 2018


Lorie Paulovich, Director, Peace Region
Alberta Environment and Parks
Represented by Alison Altmiks,
Alberta Justice and Solicitor General

Date: April 11, 2018



ALBERTA
ENVIRONMENT AND PARKS

*Office of the Minister
Minister Responsible for the Climate Change Office
MLA, Lethbridge-West*

**MINISTERIAL ORDER
21 /2018**

Public Lands Act, RSA 2000, c. P-40

**ORDER RESPECTING PUBLIC LANDS APPEAL BOARD
APPEAL NOS. 17-0032 & 17-0033**

I, Shannon Phillips, Minister of Environment and Parks, pursuant to section 124 of the *Public Lands Act*, make the order in the attached Appendix, being the Order Respecting Public Lands Appeal Board Appeal Nos. 17-0032 and 17-0033.

Dated at the City of Edmonton, in the Province of Alberta, this 18th day of May, 2018.

Shannon Phillips
Minister

APPENDIX

ORDER RESPECTING PUBLIC LANDS APPEAL BOARD APPEAL NOS. 17-0032 & 17-0033

With respect to the January 11, 2018, decisions of the Director, Peace Region, Alberta Environment and Parks (the "Director"), to issue under the *Public Lands Act*, R.S.A. 2000, c. P-40, Administrative Penalty PLA-17/11-AP-PR-18/02 to John MacArthur and Administrative Penalty PLA-17/12-AP-PR-18/01 to Christoph Weder, I, Shannon Phillips, Minister of Environment and Parks, order that:

1. The decision of the Director to issue Administrative Penalty PLA-17/11-AP-PR-18/02 is varied as follows:
 - a. Remove Count 3, Count 4, and Factor (b) from the Director's Decision;
 - b. Reduce the amount of the penalty for Count 1 from \$3,500.00 to \$2,500.00 in the Director's Decision;
 - c. Reduce the amount of the penalty for Count 2 from \$3,500.00 to \$2,500.00 in the Director's Decision; and
 - d. Reduce the final penalty amount from \$15,500.00 to \$6,000.00 in the Director's Decision and in the Notice of Administrative Penalty.

2. The decision of the Director to issue Administrative Penalty PLA-17/12-AP-PR-18/01 is varied as follows:
 - a. Reduce the amount of the penalty for Count 1 from \$5,000.00 to \$2,500.00 in the Director's Decision;
 - b. Reduce the amount of the penalty for Factor (b) from \$1,000.00 to \$500.00 in the Director's Decision;
 - c. Reduce the final penalty amount from \$5,000.00 to \$3,500.00 in the Director's Decision and in the Notice of Administrative Penalty.