

ALBERTA PUBLIC LANDS APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations – January 21, 2019

IN THE MATTER OF sections 121, 122, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 210, 211, 212, 213, 226, 227, and 235 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF an appeal filed by John MacArthur, with respect to the decision of the Director, Regional Compliance, Peace Region, Alberta Environment and Parks, to issue Administrative Penalty No. PLA-17/10-AP-PR-18/05 to John MacArthur.

Cite as: *MacArthur v. Director, Peace Region, Alberta Environment and Parks* (21 January 2019), Appeal No. 18-0010-R (A.P.L.A.B.).

BEFORE:

Ms. Marian Fluker, Acting Board Chair.

PARTIES:

Appellant: Mr. John MacArthur.

Director: Mr. Owen Cook, Director, Regional Compliance, Peace Region, Alberta Environment and Parks, represented by Ms. Alison Altmiks, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

The Director, Regional Compliance, Peace Region, Alberta Environment and Parks (the Director), issued an Administrative Penalty to Mr. John MacArthur (the Appellant). The Director alleged the Appellant occupied public land without appropriate authorization when the Appellant's cattle were observed on a grazing lease. The Administrative Penalty was assessed at \$4,000.00.

The Appellant filed a Notice of Appeal with the Public Lands Appeal Board (the Board), alleging the Director, in issuing the Administrative Penalty, erred in a determination of a material fact on the face of the Record, erred in law, and exceeded the Director's or Officer's jurisdiction or legal authority.

A mediation meeting was held and a resolution was reached whereby the parties asked the Board to recommend to the Minister she vary the Director's decision by reducing the amount of the Administrative Penalty to \$650.00.

The Board accepted the mediated agreement and recommended the Minister vary the Administrative Penalty accordingly.

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I. INTRODUCTION

[1] This is the Report and Recommendations from the Public Lands Appeal Board (the “Board”) to the Minister, Alberta Environment and Parks (the “Minister”), arising from a mediation held on an appeal filed by Mr. John MacArthur (the “Appellant”).

II. BACKGROUND

[2] The Appellant is the holder of Grazing Lease 35747 (the “MacArthur GRL”) in Birch Hills County, Alberta. On March 14, 2016, the Appellant applied for an assignment of Grazing Lease 36034 (“GRL 36034”) into his name. GRL 36034 is adjacent to the MacArthur GRL. The assignment application was refused on November 28, 2016, but subsequently approved in June 2018.

[3] On August 17, 2016, cattle belonging to the Appellant escaped from the MacArthur GRL and entered onto neighbouring private property, causing damage to canola and wheat crops. In order to move the cattle away from the crops and off the private property as quickly as possible, the Appellant herded the cattle onto GRL 36034 and the MacArthur GRL.

[4] On August 19, 2016, the Appellant informed Alberta Environment and Parks (“AEP”) staff of his cattle being on GRL 36034. AEP staff instructed the Appellant to remove the cattle from GRL 36034 immediately. The Appellant said he would do so on August 20, 2016.

[5] On August 25, 2016, AEP staff observed over 80 cattle present on GRL 36034 and noted the gates between the MacArthur GRL and GRL 36034 were open, allowing the cattle access between the two leases. During follow up inspections conducted by AEP staff on September 6, 2016, and September 13, 2016, cattle were observed still on GRL 36034. An inspection conducted by AEP staff on October 11, 2016, found the cattle were no longer on GRL 36034.

[6] In accordance with section 171(3) and (4) of the *Public Lands Administration Regulation*, AR 187/2011 (“PLAR”),¹ the Director, Regional Compliance, Peace Region, Alberta

¹ Section 171(3) of PLAR provides:

“Subject to subsections (4) and (5), the amount of an administrative penalty for each contravention that occurs or continues is the amount determined by the director, taking into account the seriousness of the contravention and the extent of any actual loss or damage that resulted or any potential loss or damage that may reasonably be expected to result from the contravention, in

Environment and Parks (the “Director”), after investigating the unauthorized entrance and grazing of the cattle on GRL 36034, issued a Preliminary Penalty Assessment, and recommended the Appellant be fined \$4,000.00, assessed as follows:

1. three counts of unauthorized occupation of public lands at \$1000.00 per count, assessed as “None” under the Base Penalty Table heading of “Extent of actual or potential loss or damage,” and “Major” as the seriousness of the contravention;
2. \$500.00 for factor (a) - the importance to the regulatory scheme of compliance with the provision that was contravened; and
3. \$500.00 for factor (b) - the degree of wilfulness or negligence, if any, on the part of any person responsible for the contravention.

[7] On December 22, 2017, the Appellant received notice from the Director of the Preliminary Penalty Assessment.

[8] On January 8, 2018, the Appellant, along with a representative from the Office of the Farmers’ Advocate, met with the Director and provided a verbal and a written response to the Preliminary Penalty Assessment, in which the Appellant disputed the assessment.

[9] On July 25, 2018, the Director issued Administrative Penalty No. PLA-17/10-AP-PR-18/05 (the “Administrative Penalty”) under the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”), in the amount of \$4,000.00, keeping the same assessment as the Preliminary Penalty

accordance with the following Base Penalty Table:

Extent of actual or potential loss or damage	Seriousness of contravention		
	Major	Moderate	Minor
Major	\$5000	\$3500	\$2500
Moderate	3500	2500	1500
Minor	2500	1500	1000
None	1000	650	250

Section 171(4)(a) and (b) states:

“The director may, in any particular case, increase or decrease the amount of the administrative penalty determined under subsection (3) if, after considering the following factors, the director considers it appropriate to do so:

- (a) the importance to the regulatory scheme of compliance with the provision that was contravened;
- (b) the degree of wilfulness or negligence, if any, on the part of any person responsible for the contravention...”

Assessment.

[10] On August 9, 2018, the Appellant filed a Notice of Appeal with the Board, alleging the Director, in issuing the Administrative Penalty, erred in the determination of a material fact on the face of the record, erred in law, and exceeded the Director's or Officer's jurisdiction or legal authority.

[11] On August 21, 2018, the Board requested the Director's Record from the Director. The Director's Record was received by the Board on October 5, 2018, and was provided to the Appellant on October 31, 2018.

[12] On November 26, 2018, the Board held a mediation meeting between the Appellant and the Director (collectively, the "Parties").

III. DISCUSSION

[13] The mediation meeting resulted in an agreement between the Parties, jointly requesting the Board submit a Report and Recommendations to the Minister recommending the Minister vary the Director's decision and vary the Administrative Penalty from \$4,000.00 to \$650.00 as follows:

1. the seriousness of the contravention be reduced from major to moderate on Count 1;
2. Counts 2 and 3 be deleted; and
3. factors (a) and (b) be changed to neutral.

[14] Amending the seriousness of the contravention for Count 1 from major to moderate reduces the penalty amount to \$650.00. Deleting Counts 2 and 3 and changing factors (a) and (b) to neutral eliminates any other penalty amount. With these variations, the total Administrative Penalty is reduced to \$650.00.

[15] The Board considers the mediated agreement to be reasonable and recommends the Minister vary the Director's decision and reduce the amount of the Administrative Penalty as requested by the Parties.

IV. RECOMMENDATION

[16] In accordance with section 122(3) of the Act², and PLAR, the Board recommends the Minister vary the Director's decision to issue the Administrative Penalty as follows:

1. the seriousness of the contravention be reduced from major to moderate on Count 1;
2. Counts 2 and 3 be deleted; and
3. factors (a) and (b) be changed to neutral.

This will reduce the Administrative Penalty from \$4,000.00 to \$650.00.

[17] In accordance with section 124(4) of the *Public Lands Act*,³ copies of this Report and Recommendations, and any decision by the Minister regarding this appeal, are to be provided to:

1. Mr. John MacArthur; and
2. Ms. Alison Altmiks, Alberta Justice and Solicitor General, on behalf of the Director, Regional Compliance, Peace Region, Alberta Environment and Parks.

Dated on January 21, 2019, at Edmonton, Alberta.


Marian Fluker
Acting Board Chair

² Section 122(3) of the *Public Lands Act* provides:

“The appeal body may, with the consent of the parties to the appeal, make its report to the Minister without conducting a hearing of the appeal.”

³ Section 124(4) of the *Public Lands Act* provides:

“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.”



ALBERTA
ENVIRONMENT AND PARKS

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

Ministerial Order
09/2019

Public Lands Act
R.S.A. 2000, c. P-40;

and

Public Lands Administration Regulation
Alta. Reg. 187/2011.

Order Respecting Public Lands Appeal Board
Appeal No. 18-0010

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 an Order Respecting Public Lands Appeal Board Appeal No. 18-0010.

Dated at the City of Edmonton, Province of Alberta, this 5th day of February, 2019.

Shannon Phillips
Minister



ALBERTA
ENVIRONMENT AND PARKS

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

Order Respecting Public Lands Appeal Board Appeal No. 18-0010

With respect to the decision of the Director, Peace Region, Alberta Environment and Parks, (the “Director”), to issue Administrative Penalty No. PLA-17/10-AP-PR-18/05, under the *Public Lands Act*, R.S.A. 2000, c. P-40, to Mr. John MacArthur, I, Shannon Phillips, Minister of Environment and Parks, order that:

Administrative Penalty No. PLA-17/10-AP-PR-18/05 is varied to make the penalty amount \$650.00 as follows:

1. the seriousness of the contravention is reduced from major to moderate on Count 1;
2. Counts 2 and 3 are deleted; and
3. factors (a) and (b) are changed to neutral.