



PUBLIC LANDS APPEAL BOARD

306 Peace Hills Trust Tower
10011 - 109 Street
Edmonton, Alberta T5J 3S8
Telephone: 780-427-6207
Fax: 780-427-4693
Email: PLAB@gov.ab.ca

2020 ABPLAB 10

July 16, 2020

Via E-Mail

Ms. Tara Hamelin
Mr. Josh Fortier
Bishop & McKenzie LLP
2300 Manulife Place
10180 – 101 Street
Edmonton, AB T5J 1V3
(Counsel for Appellants)

Ms. Vivienne Ball
Alberta Justice and Solicitor General
Environmental Law Section
8th Floor, Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6
(Counsel for Director, AEP)

Ms. Colette Benson
CRC Open Camp and Catering Ltd.
PO Box 2100
Lac La Biche, AB T0A 2C0
(Appellants)

Dear Ladies and Mr. Fortier:

**Re: Decision Letter* - Colette Benson and CRC Open Camp and Catering Ltd.
Administrative Penalty No. PLA-18/06-AP-LAR-18/10
Our File No.: PLAB 18-0015**

This is the Board's decision regarding the Appellants' July 3, 2020 request to add a jurisdictional question to the issues to be considered at the hearing of these appeals. This decision was made by Ms. Anjum Mullick, Panel Chair. In making this decision, the Board has considered the Appellants' July 3, 2020 letter and initial written submission for the hearing, the Director's letter of July 16, 2020, and the Appellants' letter of July 16, 2020.

The jurisdictional question the Appellants seek to add to the hearing of these appeals is: "Is the Public Lands Appeal Board ... prohibited from hearing the [appeals] as a result of loss of jurisdiction?" The basis for the Appellants' argument that the Board has lost jurisdiction is the general requirement that appeals must be heard within one year from being filed.¹ This

* *Colette Benson and CRC Open Camp and Catering Ltd. v. Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (17 August 2020), Appeal No. 18-0015-DL4 (APLAB), 2020 ABPLAB 10.

¹ The relevant portions of Section 236 of the *Public Lands Administration Regulation*, A.R. 187/2011 (the "Regulation") provide:

- "(1) An order under section 124 of the Act must be made in respect of an appeal ...
 - (b) within one year after the day the notice of appeal is served on the appeals co-ordinator, in the case of a complex appeal
- (2) If the hearing is not completed before the expiry of the applicable period under subsection (1)(a), (b) or (c), then, unless subsection (3) applies, the appeals co-ordinator must

general requirement is subject to the exception found in section 236(3) of the Regulation, which allows the Board's Appeals Co-ordinator to extend the timeline within which the appeal must be addressed. In these appeals, the Appeals Co-ordinator decided on January 3, 2020 (copy attached) that the time limit for hearing these appeals could extend past the normal one year period. It is the Appeals Co-ordinator's decision the Appellants object to, and which they argue has resulted in the Board losing jurisdiction.

A key aspect of the Appellants' argument is that in the January 3, 2020 decision, the Appeals Co-ordinator "...deferred the question of jurisdiction to the Board by indicating that a consideration of whether the factors in [section] 236(3) of the *Public Lands Administration Regulation* had been satisfied could only be determined after a full hearing of the appeal." Without making any decisions on this argument, the Board believes it is a sufficiently important jurisdictional question that should be considered as part of the hearing of the appeals. However, part of this consideration must include can and should the hearing panel reconsider or alter the decision of the Appeals Co-ordinator.

While the Board is concerned that the Appellants have raised this as an issue for the hearing at the 11th hour, the Board believes a fair hearing can still be completed by including this as an issue as part of the established hearing process. The Director will have an adequate opportunity to respond to the argument in the response written submission and in the oral closing arguments. However, given the addition of an issue, the Board will extend the length of time provided for the oral closing arguments.

Therefore, the issues for the hearing of the appeals are as follows:

1. Did the Director who made the decision to issue the Administrative Penalty to Colette Benson and CRC Open Camp & Catering Ltd., err in the determination of a material fact on the face of the record?
2. Did the Director err in law?
3. Did the Director exceed the Director's or Officer's jurisdiction or legal authority?
4. Is the Board prohibited from hearing the appeals as a result of loss of jurisdiction as a result of the January 3, 2020 decision of the Appeals Co-ordinator? The issue includes can or should reconsider or alter the decision of the Appeals Co-ordinator.

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- (a) in the case of an appeal from a decision, refer the decision back to the director or officer who made it, who must then rescind or vary the decision to the extent necessary to grant the relief requested in the notice of appeal of the decision, ... and may invoice the appellant for any fees, rents or other charges applicable to the decision appealed from.
 - (3) The appeals co-ordinator must not act under subsection (2)(a) or (b) if, in the opinion of the appeals co-ordinator, the decision, variation or rescission sought in the appeal is unlawful, absurd or likely to cause unreasonable loss or damage to public land or is likely to have a significant adverse effect on the interests of any person.
 - (4) Despite sections 221(1)(a) and (b) and 233(3), an appeal to which subsection (3) applies must proceed or be continued under this Part as if the applicable time period under subsection (1)(a), (b) or (c) had not expired."

The Board will proceed to complete the hearing of these appeals as follows:

First Step

3. Answers to Questions on Affidavits and the Department's Record from both Ms. Hamelin and Ms. Ball are due by **4:30 pm on July 17, 2020**;

Second Step

4. Response Submissions and Affidavits from both Ms. Hamelin and Ms. Ball are due by **4:30 pm on July 24, 2020**;
5. Questions on Affidavits from both Ms. Hamelin and Ms. Ball are due by **4:30 pm on July 31, 2020**;
6. Answers to Questions on Affidavits from both Ms. Hamelin and Ms. Ball are due by **4:30 pm on August 10, 2020**; and

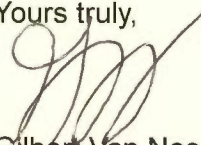
Third Step

7. Closing comments from both Ms. Hamelin and Ms. Ball will be held by Zoom video conference at **8:30 a.m. on August 14, 2020**.
8. **Ms. Hamelin** will be permitted **45 minutes** to provide the Board with closing comments, followed by questions from the Board Panel.
9. **Ms. Ball** will be permitted **45 minutes** to provide the Board with closing comments, followed by questions from the Board Panel.
10. **Ms. Hamelin** will be permitted **20 minutes** to provide the Board with final closing comments, followed by questions from the Board Panel.

The parties will not be permitted to question each other during the oral closings. The Board panel may ask questions.

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialling 310-0000 followed by 780-427-6207, by e-mail at PLAB@gov.ab.ca, or by fax at 780-427-4693.

Yours truly,



Gilbert Van Nes
General Counsel and
Settlement Officer

Any information requested by the Public Lands Appeal Board is necessary to allow the Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of this appeal. The information you provide will be considered a public record.

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APPEAL BOARD**

COPY

306 Peace Hills Trust Tower
10011 - 109 Street
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Telephone: 780-427-6207
Fax: 780-427-4693
Email: PLAB@gov.ab.ca

January 3, 2020

Via E-Mail

Ms. Tara Hamelin
Mr. Josh Fortier
Bishop and McKenzie LLP
2300 Manulife Place
10180 – 101 Street
Edmonton, AB T5J 1V3
(*Counsel for Appellants*)

Ms. Vivienne Ball
Alberta Justice and Solicitor General
Environmental Law Section
8th Floor, Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6
(*Counsel for Director, AEP*)

Ms. Colette Benson
CRC Open Camp and Catering Ltd.
PO Box 2100
Lac La Biche, AB T0A 2C0
(*Appellants*)

Dear Ladies and Mr. Fortier:

**Re: Colette Benson and CRC Open Camp and Catering Ltd./Administrative
Penalty No. PLA-18/06-AP-LAR-18/10/Our File No.: PLAB 18-0015**

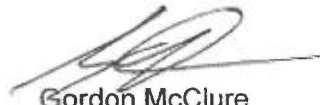
The Board notes the Notice of Appeal in this matter was filled with the Board on January 4, 2019 and the one-year mark for the appeal is January 5, 2020.ⁱ At this time, I am of the opinion that the appeal will not be heard within the prescribed timeframe for a complex appeal. As Appeal Coordinator, I am required by section 236 of the *Public Lands Administration Regulation* to consider the effect of delay in regards to this appeal. Having considered the effect of delay, I am of the opinion that to decide this matter in the absence of full consideration of the parties' arguments, the record, and the facts of the matter, would be contrary to the intent of the *Public Lands Act* and the *Public Lands Administration Regulation*.

As Appeals Coordinator, I am of the opinion that available public land in the area where the events underlying this appeal took place, is significantly limited. This is especially true given the requirements of the Lower Athabasca Regional Plan. Land use is constrained to such a degree that the decision, variation or rescission sought in this appeal may have significant and potentially adverse effects on public land that could result in potentially unreasonable loss or damage to public land. Further, the decision, variation or rescission sought in this appeal could adversely impact the interests of persons seeking to utilize public land. As such, all arguments associated with this case must be known, the facts considered, and a reasoned report with recommendations provided to the Minister at the conclusion of the appeal for the Minister's decision. I am of the opinion that to decide this appeal without a full hearing and a reasoned decision could cause unreasonable loss or damage to public land and could have a significant adverse effect on the interests of any person seeking to utilize lands within the Lower Athabasca Regional Plan. Therefore, this appeal will proceed as if the applicable time period had not expired as per section 236(1)(b) of the *Public Lands Administration Regulation*.

Finally, I am aware that my decision as Appeals Coordinator to extend the time period allowing appeal PLAB 18-0015 to proceed may create a perception of bias. Therefore, I have informed the panel chair that I am recusing myself from the panel that is hearing appeal PLAB 18-0015. The panel will conclude all preliminary matters with two members, and a third member will be appointed for the hearing of the appeal.

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialing 310-0000 followed by 780-427-6207, by e-mail at PLAB@gov.ab.ca, or by fax at 780-427-4693.

Yours truly,



Gordon McClure
Appeals Coordinator

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¹ Section 236 of the *Public Lands Administration Regulation* states:

236(1) An order under section 124 of the Act must be made in respect of an appeal...

(b) within one year after the day the notice of appeal is served on the appeals co-ordinator, in the case of a complex appeal,...

(2) If the hearing is not completed before the expiry of the applicable period under subsection (1) (b) then, unless

subsection (3) applies, the appeals co-ordinator must

(a) in the case of an appeal from a decision, refer the decision back to the director or officer who made it, who must then rescind or vary the decision to the extent necessary to grant the relief requested in the notice of appeal of the decision,...

(3) The appeals co-ordinator must not act under subsection (2)(a)... if, in the opinion of the appeals co-ordinator, the decision, variation or rescission sought in the appeal is unlawful, absurd or likely to cause unreasonable loss or damage to public land or is likely to have a significant adverse effect on the interests of any person.

(4) Despite sections 221(1)(a) and (b) and 233(3), an appeal to which subsection (3) applies must proceed or be continued under this Part as if the applicable time period under subsection (1)(a), (b) or (c) had not expired....