

# ALBERTA PUBLIC LANDS APPEAL BOARD

## Report and Recommendations

Date of Report and Recommendations: July 29, 2021

**IN THE MATTER OF** sections 121, 122, and 124, of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections, 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 Shawn Pitcher and Amber Acres Livestock Ltd., with respect to the decision of the Director, Compliance, Regulatory Assurance Division – South Region, Alberta Environment and Parks, to issue Notice of Administrative Penalty No. PLA-20/08-AP-SR-20/08 to Shawn Pitcher and Amber Acres Livestock Ltd.

Cite as: *Pitcher et al. v. Director, Compliance, Regulatory Assurance Division – South Region, Alberta Environment and Parks* (29 July 2021), Appeal No. 20-0026-R (A.P.L.A.B.), 2021 ABPLAB 14.

**BEFORE:**

Mr. Gordon McClure, Board Chair.

**PARTIES:**

**Appellants:** Mr. Shawn Pitcher and Amber Acres Livestock Ltd.

**Director:** Ms. Coreen Bates, Director, Compliance, Regulatory Assurance Division – South Region, Alberta Environment and Parks, represented by Ms. Nicole Hartman, Alberta Justice and Solicitor General.

## **EXECUTIVE SUMMARY**

The Director, Compliance, Regulatory Assurance Division – South Region, Alberta Environment and Parks (the Director), issued Notice of Administrative Penalty No. PLA-20/08-AP-SR-20/08 (the Administrative Penalty) in the amount of \$10,500.00 to Shawn Pitcher and Amber Acres Livestock Ltd. (the Appellants) on January 12, 2021, for violating the *Public Lands Act*. Specifically, the Appellants are alleged to have entered onto public land in Cardston County to dig two dugouts for cattle watering, operated a winter campsite without authorization from Alberta Environment and Parks, and provided payments totalling \$6,800.00 to gain access and use the public lands.

The Appellants appealed the issuance of the Administrative Penalty to the Public Lands Appeal Board (the Board) on February 12, 2021.

A mediation meeting was held on July 13, 2021, which resulted in a resolution whereby the parties asked the Board to recommend to the Minister of Environment and Parks that the Administrative Penalty issued to the Appellants be reduced to \$8,000.00 and Count 3 (payment to gain access and use public land) in the Director's Decision be removed. The Board accepted the mediated agreement and recommended the Minister vary the Administrative Penalty accordingly.

## TABLE OF CONTENTS

I. INTRODUCTION .....	1
II. BACKGROUND .....	1
III. DISCUSSION .....	2
IV. RECOMMENDATIONS .....	3
V. APPENDIX.....	4

## I. INTRODUCTION

[1] This is the Report and Recommendations of the Public Lands Appeal Board (the “Board”) to the Minister of Environment and Parks (the “Minister”), arising from a mediation of an appeal filed by Mr. Shawn Pitcher and Amber Acres Livestock Ltd. (the “Appellants”).

## II. BACKGROUND

[2] On January 12, 2021, the Director, Compliance, Regulatory Assurance Division – South Region, Alberta Environment and Parks (the “Director”) issued Notice of Administrative Penalty No. PLA-20/08-AP-SR-20/08 (the “Administrative Penalty”) in the amount of \$10,500.00 to the Appellants for alleged contraventions of sections 20(1)(e), 54.01(5) and 54(1)(b) of the *Public Lands Act* (the “Act”)<sup>1</sup> by entering onto public land in Cardston County to dig two dugouts for cattle watering, operating a winter campsite without authorization from Alberta Environment and Parks, and providing payments totalling \$6,800.00 to gain access and use of the public lands.

[3] The Administrative Penalty consisted of the following:

1. Count 1: \$3,500.00 penalty for causing or permitting an excavation on public land;
2. Count 2: \$3,500.00 penalty for unauthorized entry and occupation of public land;
3. Count 3: \$2,500.00 penalty for providing payment for the purpose of access onto public land; and
4. Adjustment Factor: \$1,000.00 increase for the seriousness of the Appellants’ contraventions.

[4] On February 12, 2021, the Appellants filed a Notice of Appeal with the Board appealing the Administrative Penalty. The Appellants stated that by issuing the Administrative

---

<sup>1</sup> Section 54.01(5) of the Act states:

“No person shall provide or receive money or other consideration for the purpose of gaining or allowing access to, passage on or over or use of public land unless

- (a) the person receiving the money or other consideration is the holder of a disposition or authorization under section 20 and is entitled at law to receive money or other consideration for that purpose, and
- (b) the access, passage or use is in respect of public land that is the subject of the disposition or authorization.”

Penalty, the Director erred in the determination of a material fact, erred in law, exceeded the Director's jurisdiction or legal authority, did not comply with a regional plan approved under the *Alberta Land Stewardship Act*, and the decision is expressly subject to appeal under section 15 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 ("PLAR") or section 59.2(3) of the Act.

[5] On February 17, 2021, the Board wrote to the Appellants and the Director (collectively the "Parties"), providing the Director with a copy of the Notice of Appeal, and requesting the Director provide a copy of the Department's records (all documents and all electronic media) (the "Department's Record") that were reviewed and that were available when making the decision, including policy documents and the records within the compliance group relating to the appeal, along with an index of the records.

[6] On February 22, 2021, the Director requested the Board direct the Appellants to provide an explanation for filing the appeal late per section 217(1)(b) of PLAR, state whether an extension of the filing period would be contrary to the public interest, and provide an opportunity for the Director to comment on the Appellants' submission.

[7] On March 16, 2021, in response to the Directors' motion challenging the filing time of the Appellants' appeal, the Board set a schedule to receive submissions. The Board received submissions and issued a decision on May 19, 2021 stating it was not contrary to the public interest to extend the time to appeal and accepting the appeal.<sup>2</sup>

[8] The Director provided the Department's Record on June 11, 2021 and a copy was subsequently provided to the Appellants on June 14, 2021.

[9] The mediation meeting held on July 13, 2021, via videoconference and facilitated by a Board member, resulted in a resolution of the appeal.

### **III. DISCUSSION**

[10] The mediated agreement resulted in the Parties asking the Board to recommend to the Minister that the Administrative Penalty issued to the Appellants be reduced from \$10,500.00

---

<sup>2</sup> *Pitcher et al. v. Director, Compliance, Regulatory Assurance Division – South Region, Alberta Environment and Parks* (19 May 2021), Appeal No. 20-0026-ID1 (A.P.L.A.B.), 2021 ABPLAB 6.

to \$8,000.00 and Count 3 referenced in the Director's Decision dated January 12, 2021 be removed. Count 3 relates to the payment for access and use of the public lands.<sup>3</sup>

#### **IV. RECOMMENDATIONS**

[11] In accordance with section 124(3) of the Act,<sup>4</sup> the Board recommends the Minister of Environment and Parks order that Notice of Administrative Penalty No. PLA-20/08-AP-SR-20/08 be varied by reducing the penalty from \$10,500.00 to \$8,000.00 and removing Count 3 from the Director's Decision dated January 12, 2021.

[12] With respect to section 124(4) of the Act,<sup>5</sup> the Board recommends that copies of this Report and Recommendations, and any decision by the Minister regarding this appeal, be provided to:

1. Mr. Shawn Pitcher and Amber Acres Livestock Ltd.; and
2. Ms. Nicole Hartman, Environmental Law Section, Alberta Justice and Solicitor General, representing Ms. Coreen Bates, Director, Alberta Environment and Parks.

Dated on July 29, 2021, at Edmonton, Alberta.

"original signed by"

Gordon McClure  
Board Chair

---

<sup>3</sup> Department's Record, Tab 1.2.

<sup>4</sup> Section 124(3) of the Act 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."

<sup>5</sup> Section 124(4) of the Act 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."

V. APPENDIX



**PUBLIC LANDS  
APPEAL BOARD**

**RESOLUTION  
PUBLIC LANDS APPEAL BOARD  
PLAB No. 20-0026**

In the matter of the mediation of the appeal filed by Shawn Pitcher, Amber Acres Livestock Ltd. (the Appellant), in relation to the January 12, 2021 decision of the Director, Regulatory Assurance Division, South Region, Alberta Environment and Parks (the Director), to issue Administrative Penalty No. PLA-20/08-AP-SR-20/08 (the Administrative Penalty) to Shawn Pitcher, Amber Acres Livestock Ltd., in the amount of \$10,500.00 for contravening sections 20(1)(e), 54.01(1)(5) and 54(1)(b) of the *Public Lands Act*.

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

1. The Director will facilitate contact between the Appellant and the appropriate employees of Alberta Environment and Parks (AEP) responsible for access control on public land, public lands signage, and issuing grazing leases.
2. The Director will arrange a site visit for the appropriate AEP employees and the Appellant.
3. The parties recommend that the Minister vary the Administrative Penalty as follows:
  - a. remove Count 3; and
  - b. reduce the total Administrative Penalty from \$10,500.00 to \$8,000.00.
4. In consideration of the foregoing, the Appellant withdraws their Notice of Appeal.

RESOLUTION AGREED TO BY:

\_\_\_\_\_  
Shawn Pitcher,  
Amber Acres Livestock Ltd.

Date: \_\_\_\_\_

Coreen Bates  
Coreen Bates, Director,  
Regulatory Assurance Division,  
South Region,  
Alberta Environment and Parks  
Represented by Nicole Hartman,  
Alberta Justice and Solicitor General

Date: July 26, 2021





## PUBLIC LANDS APPEAL BOARD

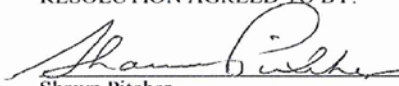
### RESOLUTION PUBLIC LANDS APPEAL BOARD PLAB No. 20-0026

In the matter of the mediation of the appeal filed by Shawn Pitcher, Amber Acres Livestock Ltd. (the Appellant), in relation to the January 12, 2021 decision of the Director, Regulatory Assurance Division, South Region, Alberta Environment and Parks (the Director), to issue Administrative Penalty No. PLA-20/08-AP-SR-20/08 (the Administrative Penalty) to Shawn Pitcher, Amber Acres Livestock Ltd., in the amount of \$10,500.00 for contravening sections 20(1)(e), 54.01(1)(5) and 54(1)(b) of the *Public Lands Act*.

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

1. The Director will facilitate contact between the Appellant and the appropriate employees of Alberta Environment and Parks (AEP) responsible for access control on public land, public lands signage, and issuing grazing leases.
2. The Director will arrange a site visit for the appropriate AEP employees and the Appellant.
3. The parties recommend that the Minister vary the Administrative Penalty as follows:
  - a. remove Count 3; and
  - b. reduce the total Administrative Penalty from \$10,500.00 to \$8,000.00.
4. In consideration of the foregoing, the Appellant withdraws their Notice of Appeal.

RESOLUTION AGREED TO BY:



Shawn Pitcher,  
Amber Acres Livestock Ltd.

Date: 2021-07-27

\_\_\_\_\_  
Coreen Bates, Director,  
Regulatory Assurance Division,  
South Region,  
Alberta Environment and Parks  
Represented by Nicole Hartman,  
Alberta Justice and Solicitor General

Date: \_\_\_\_\_



ALBERTA  
ENVIRONMENT AND PARKS

*Office of the Minister  
Government House Leader  
MLA, Rimbey-Rocky Mountain House-Sundre*

**MINISTERIAL ORDER**  
**76/2021**

*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. 20-0026**

I, Jason Nixon, 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 No. 20-0026.

Dated at the City of Edmonton, in the Province of Alberta, this 9 day of sept, 2021.

  
Jason Nixon  
Minister

## APPENDIX

### Order Respecting Public Lands Appeal Board Appeal No. 20-0026

With respect to the January 12, 2021, decision of the Director, Compliance, Regulatory Assurance Division – South Region, Alberta Environment and Parks (the “Director”), to issue under the *Public Lands Act*, R.S.A. 2000, c. P-40, Notice of Administrative Penalty No. PLA-20/08-AP-SR-20/08 (“Administrative Penalty”) to Shawn Pitcher and Amber Acres Livestock Ltd., I, Jason Nixon, Minister of Environment and Parks, order that:

1. The decision of the Director to issue the Administrative Penalty is varied as follows:
  - a. The amount of the Administrative Penalty is varied from \$10,500.00 to \$8,000.00;
  - b. Reference to Count 3 in the Director’s Decision dated January 12, 2021 is removed;
  - c. Shawn Pitcher and Amber Acres Livestock Ltd. shall submit payment for the Administrative Penalty within 30 days of the date of this Ministerial Order; and
  - d. No interest is payable on the Administrative Penalty until 30 days after the date of this Ministerial Order.