



PUBLIC LANDS APPEAL BOARD

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2021 ABPLAB 25

December 21, 2021

Via E-Mail and Mail

Mr. Mark W. Popowich



(Appellant)

Ms. Donna Zubko
Director, Lands Division, Lands Delivery &
Coordination–North Branch
Public Lands Disposition Management
Alberta Environment and Parks
5th floor, South Petroleum Plaza
9915 – 108 Street
Edmonton, AB, T5K 2G8
(Director, AEP)

Dear Mr. Popowich and Ms. Zubko:

Re: Decision – Popowich v. Director, Approvals and Dispositions Services Unit, Lands Delivery & Coordination-North, Public Lands Disposition Management, Lands Division, Alberta Environment and Parks (21 December 2021), Appeal No. 21-0007-ID1 (A.P.L.A.B.), 2021 ABPLAB 25

**Mark Popowich/Refusal to Issue Grazing Lease No. GRL930048
Our File No.: PLAB 21-0007**

This is the decision of the Appeals Co-ordinator, Public Lands Appeal Board (the “Board”), regarding the preliminary motion by the Director, Approvals and Dispositions Services Unit, Lands Delivery & Coordination-North, Public Lands Disposition Management, Lands Division, Alberta Environment and Parks (“the “Director”), to dismiss the Notice of Appeal filed by Mr. Mark Popowich (the “Appellant”) with the Board on November 16, 2021.

The Appellant appealed the decision of the Director not to issue Grazing Lease 930048 (the “GRL”) to the Appellant (the “Decision”). The Director submitted the Appellant’s Notice of Appeal was filed outside the prescribed timeframes established by the Public Lands Administration Regulation, A.R. 187/2011 (“PLAR”) and, therefore, should be dismissed by the Board.

The Director submitted the following:

- the Decision was sent by regular post;
- no date of delivery was able to be determined; and
- the 7 day period for service provided by section 23(1) of the *Interpretation Act*, R.S.A. 2000, c. I-8, should apply.¹

¹ Section 23(1)(a) of the *Interpretation Act* states:
“If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected
(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta...”

The Appellant provided a tracking receipt as evidence of a Priority Post letter delivered by Canada Post.

The Decision was made on October 15, 2021, and received by the Appellant on November 2, 2021, as evidenced by the Canada Post tracking receipt (Canada Post tracking number 2889-6253-8934-4359) provided by the Appellant.

Section 217 of PLAR states:

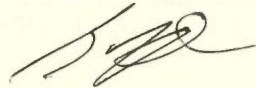
- “A notice of appeal must be served on the appeals co ordinator within
- (a) 20 days after the appellant received, became aware of or should reasonably have become aware of the decision objected to, or
 - (b) 45 days after the date the decision was made.”

The Director’s submission that the notice of appeal was presumed to have been made 7 days from the date of mailing as per section 23 of the *Interpretation Act* does not apply as section 217(1)(b) of PLAR provides for acceptance of the notice of appeal 45 days after the decision was made where receipt of the decision is unknown. Further, though not required in this case, section 217(2) of PLAR² allows the Appeals Co-ordinator to extend the time for service of the notice of appeal if, in the opinion of the Appeals Co-ordinator, it is not contrary to the public interest to do so.

The Appellant received the Decision on November 2, 2021, eighteen days after the Decision was made. The Appellant filed a Notice of Appeal on November 16, 2021, fourteen days after receipt of the decision and thirty-two days after the Director made the decision. The Notice of Appeal was filed within the prescribed timeframes of section 217 of PLAR. The Director’s motion to dismiss the Notice of Appeal is dismissed.

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
Board Chair & Appeals Co-ordinator

cc: Environmental Law Section, Alberta Justice and Solicitor General

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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² Section 217(2) of PLAR states:

“The appeals co-ordinator may, either before or after the expiry of a period described in subsection (1)(a) or (b), extend the time for service of a notice of appeal if, in the opinion of the appeals co-ordinator, it is not contrary to the public interest to do so.”