

ALBERTA ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – April 27, 2017

IN THE MATTER OF sections 91, 92, 94, 95, and 98 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by Chestermere Lake Land Enterprises Inc. and Kinniburgh South Limited Partnership with respect to Administrative Penalty No. WA-16/06-AP-SSR-16/06 issued to Chestermere Lake Land Enterprises Inc. and Kinniburgh South Limited Partnership under the *Water Act*, by the Director, South Saskatchewan Region, Alberta Environment and Parks.

Cite as: *Chestermere Lake Land Enterprises Inc. and Kinniburgh South Limited Partnership v. Director, South Saskatchewan Region, Alberta Environment and Parks* (27 April 2017), Appeal Nos. 16-033 & 036-D (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Board Chair.

PARTICIPANTS:

Appellants: Chestermere Lake Land Enterprises Inc., represented by Mr. Henry Yong; and Kinniburgh South Limited Partnership, represented by Mr. Craig Johnson.

Director: Mr. Craig Knaus, Director, South Saskatchewan Region, Alberta Environment and Parks, represented by Ms. Erika Gerlock, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Parks (AEP) issued an Administrative Penalty in the amount of \$15,000.00 to Chestermere Lake Land Enterprises Inc. and Kinniburgh South Limited Partnership (the Appellants) for contravening the *Water Act*. AEP determined the Appellants removed three wetlands within the Town of Chestermere between 2008 and 2009 without first obtaining an approval under the *Water Act*. AEP assessed a penalty of \$5,000.00 for each count for a total administrative penalty of \$15,000.00.

The Board received Notices of Appeal from the Appellants appealing the Administrative Penalty. A mediation meeting was held and a resolution was reached whereby the parties recommended to the Board the Administrative Penalty be varied by reducing the Administrative Penalty to \$10,000.00. The Board accepted the mediated agreement and varied the Administrative Penalty accordingly.

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I. BACKGROUND

[1] On October 5, 2016, the Director, South Saskatchewan Region, Alberta Environment and Parks (the “Director”), issued Administrative Penalty No. WA-16/06-AP-SSR-16/06 (the “Administrative Penalty”) to Chestermere Lake Land Enterprises Inc. and Kinniburgh South Limited Partnership (collectively, the “Appellants”), for contraventions of sections 36(1) and 142(1)(h) of the *Water Act*, R.S.A. 2000, W-3.¹ The Director has the authority to issue an administrative penalty under section 152 of the *Water Act*.²

[2] The Director issued the Administrative Penalty in the total amount of \$15,000.00 based on three counts for the removal of or adversely impacting three wetlands located in the Town of Chestermere without an approval under the *Water Act*. The Director assessed a penalty of \$5,000.00 per count for a total administrative penalty of \$15,000.00.

[3] On October 31 and November 15, 2016, the Environmental Appeals Board (the “Board”) received Notices of Appeal from the Appellants. The Board acknowledged receipt of the appeals and notified the Director of the appeals. The Board also requested the Appellants and Director (collectively, the “Parties”) provide available dates for a mediation meeting.

[4] A mediation meeting involving the Parties and a member of the Board acting as mediator was held on April 5, 2017, in Calgary. Productive discussions resulted in a resolution of the appeals.

¹ Section 36(1) of the *Water Act* states:

“... no person may commence or continue an activity except pursuant to an approval unless it is otherwise authorized under this Act.”

Section 142(1)(h) of the *Water Act* provides:

“A person who commences or continues an activity except under an approval or as otherwise authorized by this Act is guilty of an offence.”

² Section 152 of the *Water Act* provides:

“If the Director is of the opinion that a person has contravened a provision of this Act that is specified for the purposes of this section in the regulations, the Director may, subject to the regulations, by notice in writing given to that person, require that person to pay to the Government an administrative penalty in the amount set out in the notice for each day or part of a day the contravention occurs or continues.”

II. DISCUSSION

[5] The mediated agreement resulted in the Parties recommending to the Board the Administrative Penalty be reduced to \$10,000.00. The Parties also recommended the Administrative Penalty be varied to stipulate Chestermere Lake Land Enterprises Inc. pay \$7,000.00 of the penalty and Kinniburgh South Limited Partnership pay \$3,000.00 of the penalty. The Parties recommended the date for payment of the Administrative Penalty is to be paid be varied to April 30, 2017.

[6] The Board considers the mediated agreement as reasonable and will vary the Administrative Penalty according to the agreement reached between the Parties.

III. DECISION

[7] Based on the mediated agreement the Board varies the Administrative Penalty as follows:

1. The total of the Administrative Penalty is reduced to \$10,000.00 with Chestermere Lake Land Enterprises Inc. being required to pay \$7,000.00 of the penalty and Kinniburgh South Limited Partnership being required to pay \$3,000.00 of the penalty; and
2. The Administrative Penalty is to be paid by April 30, 2017.

[8] Pursuant to section 98(3) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12,³ a copy of this decision is to be provided to:

1. Mr. Henry Yong, Chestermere Lake Land Enterprises Inc;
2. Mr. Craig Johnson, Kinniburgh South Limited Partnership; and
3. Ms. Erika Gerlock, Alberta Justice and Solicitor General, on behalf of the Director, South Saskatchewan Region, Alberta Environment and Parks.

³ Section 98(3) of EPEA states:

“On making its decision, the Board shall immediately

- (a) give notice of the decision to all persons who submitted notices of appeal or made representations to the Board and to all other persons who the Board considers should receive notice of the decision, and
- (b) make the written decision available in accordance with the regulations.”

IV. ORDER OF THE BOARD

[9] In accordance with sections 98 (1) and (2) of the *Environmental Protection and Enhancement Act*, the Board has the authority to confirm, reverse, or vary the decision of the Director.⁴ Therefore, with respect to the decision of the Director to issue Administrative Penalty No. WA-16/06-AP-SSR-16/06 to Chestermere Lake Land Enterprises Inc. and Kinniburgh South Limited Partnership, for contravention of sections 36(1) and 142(1)(h) of the *Water Act*, the Board orders the decision of the Director to issue the Administrative Penalty is varied as follows:

1. The Administrative Penalty is reduced to \$10,000.00 with Chestermere Lake Land Enterprises Inc. being required to pay \$7,000.00 of the penalty and Kinniburgh South Limited Partnership, being required to pay \$3,000.00 of the penalty; and
2. The Administrative Penalty is to be paid by April 30, 2017.

Dated on April 27, 2017, at Edmonton, Alberta.

"original signed by"

Alex MacWilliam
Board Chair

⁴ Sections 98(1) and (2) of EPEA provide:

- "(1) In the case of a notice of appeal submitted under section 91(1)(n) or (o) of this Act or a notice of appeal submitted under section 115(1)(j), (l) or (q) of the *Water Act*, the Board shall, within 30 days after the completion of the hearing of the appeal, make a written decision on the matter.
- (2) In its decision, the Board may (a) confirm, reverse or vary the decision appealed and make any decision that the Director whose decision was appealed could make"