

**ALBERTA  
PUBLIC LANDS APPEAL BOARD**

**Interim Decision**

November 28, 2014

**IN THE MATTER OF** sections 211, and 216 of the  
Public Lands Administration Regulation, A.R. 187/2011;

**-and-**

**IN THE MATTER OF** an appeal filed by Trevor Greene and Cuyler Greene

**AND IN THE MATTER OF** a Preliminary Motion filed by the Director,  
Environment and Sustainable Resource Development.

*Cite as: Greene v. Alberta (Environment and Sustainable Resource Development) 2014  
A.P.L.A.B. 14-0006 Interim Decision # 1*

**Panel Members:**

Alex MacWilliam

A.J. Fox

Alan Kennedy

**Solicitors of Record:**

Andrew R. Bachelder on behalf of the Public Lands Appeal Board

Vivienne Ball on behalf of the Director, Alberta Environment and Sustainable Resource  
Development

## Summary

In 1980, grazing lease GRL 38968 was issued by the Department of Energy and Natural Resources, predecessor to Environment and Sustainable Resource Development (“ESRD”), to brothers Trevor and Cuyler Greene (the “Appellants”) for a term of 10 years. It was renewed in 1989 and again in 1999. Due to compliance issues a conditional two-year renewal was offered to the leaseholders in 2009 and again in 2012. On April 14, 2014 the leaseholders were advised that GRL 38968 had been removed from ESRD records.

Trevor and Cuyler Greene appealed the removal of the disposition from ESRD’s records. The Public Lands Appeal Board (the “Board”) appointed a Panel to decide whether the matter should go to hearing.

The Director applied to have the Appellants’ Notice of Appeal dismissed on the grounds that the removal of the disposition from ESRD’s records was not a decision from which an appeal is available under the Public Lands Administration Regulation (“PLAR”).

For the Board to hear an appeal and make recommendations to the Minister, the decision of the Director that is being appealed must be a decision prescribed under PLAR.

The Board requested submissions from the parties and appointed the Panel to determine the preliminary motion. The issue raised in the preliminary motion and to be decided by the Panel is as follows:

Is the Public Lands Appeal Board authorized under the *Public Lands Act* and the Public Lands Administration Regulation to consider the issues raised in the Appellants’ notice of appeal and make a recommendation to the Minister?

The Panel considered the Notice of Appeal, the Director’s record and the submissions from the parties in making a decision on the preliminary motion. The Panel finds that the Director’s Record reveals confusion in ESRD which resulted in the administering of GRL 38968 in a manner that was not fair and just given the circumstances. ESRD’s inconsistent and irregular actions deprived the Appellants of their right to appeal the decision to not renew the lease. The Panel finds that the Board is authorized under PLAR to consider the issues raised in the Appellants’ Notice of Appeal and make a recommendation to the Minister. The Panel dismisses the Director’s preliminary application to dismiss the Notice of Appeal.

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## Introduction

- [1] This is the decision of the Public Lands Appeal Board (the “Board”) regarding the preliminary application by the Director, Environment and Sustainable Resource Development, to dismiss appeal PLAB 14-0006. A Panel was convened by the Board to hear the preliminary application and render this decision.

## Background

- [2] Grazing lease GRL 38968 was issued by the predecessor to Environment and Sustainable Resource Development (Environment and Sustainable Resource Development and its predecessors are referred to as “ESRD”) to Virgil Trevor Greene and Robert Neal Cuyler Greene (“Appellants”) on September 24, 1980, for a 10 year term. On September 26, 1989, ESRD renewed the lease for another 10 years. A further 10 year renewal was granted September 21, 1999 with an expiry date of October 31, 2009.

Director’s Record Tab A.1 a), b) and c)

- [3] The Appellants are both illiterate. ESRD staff working on the Appellants’ file were aware of this, and over the years that the lease has been held by the Appellants, ESRD has taken action occasionally to accommodate this disability, such as phoning the Appellants or visiting them in person to read aloud letters addressed to them.

Director’s Record Tab 57, 42, 32

- [4] Due to various health concerns the Appellants claim they had difficulties maintaining compliance with the terms of the lease. In a letter dated September 24, 2009, ESRD advised the Appellants that they would be given until September 1, 2011 to bring the lease into compliance and that only a two-year renewal of the lease would be issued to them. Trevor Greene signed the lease renewal documents for himself and for Cuyler Greene.

Director’s Record Tab 46 and 45

- [5] In a letter dated November 9, 2009, ESRD sent back the lease renewal documents because they had not been signed by Cuyler Greene. The Director’s record is incomplete at this point because the next correspondence is dated February 10, 2010, and states “The renewal documents for Grazing Lease No. GRL 38968 have been received into our office. ESRD requires Power of Attorney when signing on behalf for Robert Neil Cuyler Greene.

Please send in the above document at your earliest convenience, upon completion for your grazing renewal." There is no documentation of the renewal documents referred to in the Director's record.

Director's Record Tab 44 and 43

- [6] A dispute over whether the Appellants had authority to clear part of the grazing lease resulted in a letter from ESRD requesting that a specified portion of the cleared land be left to revert to forested cover. In a letter to Trevor Greene dated May 8, 2012, ESRD outlines other compliance issues. The letter states that ESRD is recommending a one year renewal of the lease. Two days later on May 10, 2012 a second letter was sent to the Appellants advising that the lease was in arrears as a rental payment due April 1, 2012 was not received. The Appellants were warned that the one year renewal could not occur until the rental arrears were taken care of. A letter dated June 22, 2012 was sent by ESRD to the Appellants requesting that the arrears be paid within 30 days from the date of the letter. The letter has in its reference line "Notice of Intent to Cancel", but does not state within the body of the letter that the lease will be canceled if there is no payment. It says that the one year renewal cannot be completed until the arrears and interest charges are paid.

Director's Record Tab 41, 38, 36, and 33

- [7] In an internal memo to Jeffrey Watson, Section Head, Disposition and Technical Services Branch ("Director"), from Teresa Stokes, Senior Advisor, dated February 15, 2013, ESRD states:

Ms. Carol Lundgard, Team Lead, LDB emailed Mr. Politeski on September 5, 2012, indicating that LDB sent a "Notice of Intent to Cancel" GRI 038968 to Virgil and Robert Greene for money owing stating, "if ESRD does not have the money by September 14, 2012 the lease will be canceled on September 17, 2014 and as it is expired there will be no option for reinstatement".

Director's Record Tab 25

- [8] There is no letter dated September 5, 2012, or any other document in the Director's record that corresponds to a "Notice of Intent to Cancel" letter to the Appellants referred to in the memo from Teresa Stokes.

Director's Record Tab 31

- [9] A registered letter dated April 29, 2013, from Jeff Watson, Director with ESRD, was sent to the Appellants, stating that the grazing lease expired on October 31, 2009. The letter states that they are considered to be overholding tenants. The letter states in bold that ESRD is not prepared to issue a new grazing lease. The very next sentence states “you may submit a letter outlining the reasons why a new grazing lease should be issued to you.” The letter also states that a letter from the Appellants must be submitted within 30 days from the date of the letter, and that if it is not then they must vacate the lands on or before August 31, 2013.

Director’s Record Tab 18

- [10] Trevor Greene sent a response dated May 9, 2013. Trevor Greene explains that his brother Cuyler is a paraplegic and that Trevor is taking care of Cuyler’s interest in this matter. He also states that he and his brother are illiterate. The letter disputes some of the accusations made regarding the compliance concerns of ESRD. The letter also promises to have the fence in good repair by the end of summer, and to have cattle on the lease for the 2013 season. A second letter from Trevor Greene, dated May 27, 2013, was sent to ESRD. In this letter Mr. Greene again confirms that he will be in compliance with the rules, regulations, and bylaws, specifically the fencing and cattle grazing. He states that he will not be able to remove the sludge from the property but will ensure that it never happens again. He states “I need this land and will do whatever is necessary to keep it.”

Director’s Record Tab 16 and 15

- [11] ESRD responded with a letter dated July 17, 2013 from Jeff Watson. The letter gives the Appellants until December 31, 2013 to complete the repair of the fence, utilize the lease properly, and spread and mechanically incorporate into the soil the sludge piles. The letter states:

No decision will be made to issue you a new grazing lease until such time that compliance with these items has been achieved to the satisfaction of Environment and Sustainable Resource Development.

Director’s Record Tab 12

- [12] An interdepartmental email from Joel Politeski dated January 7, 2014 stated that the only outstanding compliance issue was whether the pulp mill sludge was incorporated into the soil. The email also states that the Appellants did not graze the lease but did hay it. A memo dated January 9, 2014 from Mr. Politeski to Jeff Watson recommended cancellation of the lease.

- [13] A letter dated April 14, 2014, was written from Connie Gagne to the Appellants. The letter states that the grazing lease expired October 31, 2011. It states:

Several field inspections since that time have indicated that you failed to bring the disposition to compliance. Therefore this disposition has been removed from Department records effective the expiry date of the lease.

The word "CANCELLATION" appeared at the bottom of the letter in the right-hand corner.

Director's Record Tab 2

- [14] The Appellants appealed the removal of the disposition from ESRD's records by way of a Notice of Appeal to the Public Lands Appeal Board dated May 18, 2014. The Appellants described this as "an appeal to the Farmers Advocate to review a decision to cancel the grazing lease dated April 14, 2014." Upon further communication with the Appeals Coordinator, it was confirmed that the appeal was in relation to the renewal of the lease.
- [15] In a letter dated June 13, 2014 counsel for the Director advised that the Director's position is that the appeal is not a decision from which an appeal is available under the Public Lands Administration Regulation. The Director's position is that the grazing lease expired on October 31, 2009, and that the Appellants are overholding tenants. The Director made a preliminary motion to have the Notice of Appeal dismissed.
- [16] The Board requested written submissions on the question of whether the decision can be appealed. The parties each provided initial submissions and rebuttal submissions.

## **Submissions**

### **Submission of the Director**

- [17] The Director submits that the lease expired on October 31, 2009. Upon expiration, the lease ceased to exist. From that point on, ESRD considered the Appellants to be overholding tenants on a month-to-month basis. The Appellants were notified by the Director in the April 14, 2014 letter that the overholding tenancy was being terminated. The Director submits that the

decision to terminate the tenancy is not a decision prescribed in PLAR section 211 and that the Board therefore does not have the jurisdiction to hear the appeal.

Submission of the Director at paras 22, 33, 34, and 39

- [18] The Director submitted that, alternatively, if the Board finds that ESRD's actions amounted to a refusal to renew the lease, then the only relevant section would be 211(c). However, as there was no application to either renew a disposition or to issue a disposition, then there is no right to appeal.

Submission of the Director at para 42

- [19] In the further alternative, the Director submits that if the Board were to find that the April 14, 2014 letter was a decision to cancel the grazing lease, then a cancellation of a disposition is not a prescribed decision under 211 that is appealable.

Submission of the Director at para 44

- [20] The Director's submission also includes a discussion regarding the Board's jurisdiction. The submission sets out various principles to demonstrate that the Board may not hear this matter as it is outside the Board's jurisdiction.

Submission of the Director at para 51

### **Submission of the Appellants**

- [21] The Appellants submit that ESRD's entire process for renewing the grazing lease was confusing and chaotic. The language and the actions of ESRD, up to the ESRD letter dated April 14, 2014, led the Appellants to understand that the lease was in existence and had not expired.

Submission of the Appellants at page 5

- [22] The Appellants submit that the April 14, 2014 letter suggested that the lease had expired and was not going to be renewed. The refusal to renew a grazing lease is a decision that is appealable under PLAR section 211(a) and (c). The lease expired contrary to the stated intentions of the Appellants, which were made clear by the Appellants in the signed November 2009, application, the appeal to ESRD dated May 9, 2013, and the completed Stewardship Self-Assessment Form dated October 2010.

Submission of the Appellants at pages 5 and 6

### **Director's Rebuttal Submission**

- [23] The Director acknowledges that during the transition from the Dispositions and Fees Regulation to PLAR that "there may have been some inconsistency

in the renewal process for grazing leases.” The Director submits that the April 29, 2013 letter from ESRD was clear in stating that the lease had expired as of October 31, 2009, and that the Appellants were overholding tenants.

Director’s Rebuttal Submission at para 5 and 6

- [24] The Director submits that the practice of referring to a disposition that has expired is acceptable as the former holder of the disposition is still bound by the terms and conditions of the lease.

Director’s Rebuttal Submission at para 9.

- [25] The Director submits that the two year extension of the lease that the Appellants allege was given to them was not valid because the Appellants did not provide a power of attorney as requested. Alternatively, even if the lease expired October 31, 2011 instead of October 31, 2009, the Appellants would still be overholding tenants.

Director’s Rebuttal Submission at para 13 and 14

### **The Appellants’ Rebuttal Submission**

- [26] In the Appellants’ Rebuttal Submission the Appellants claimed that very little effort was made to contact Cuyler Greene who had a fixed address in Edmonton. The Appellants also attached a memo dated 8 May 2014 from George Robertson, Regional Director, Environment and Sustainable Resource Development, stating that the lease was expired and not renewed. It was never canceled according to Mr. Robertson.

Appellants’ Second Rebuttal Submission at page 1

### **The Director’s Second Rebuttal**

- [27] The second rebuttal from the Director argues that the Appellants raise new issues in their rebuttal and that the Board should disregard these issues.

Director’s Second Rebuttal Submission at para 15

- [28] The Director also argues that the May 8, 2014 email from George Robertson is not relevant to the appeal as it is not part of the Director’s record and the Board does not have the jurisdiction to consider it.

Director’s Second Rebuttal Submission at para 21 - 22

### **Issue**

- [29] The issue for the Panel is:

Is the Public Lands Appeal Board authorized under the *Public Lands Act* and the Public Lands Administration Regulation to consider the issues raised in the Appellants' Notice of Appeal and make a recommendation to the Minister?

## Analysis

### Legislation

#### [30] *Public Lands Act*

##### **Procedure for cancellation**

**27(1)** Except in the case of cancellation under section 26(3) or (4) or section 82, 110 or 111, the director shall not cancel a disposition under this Act or pursuant to the disposition itself unless this section has been complied with.

(2) When the director intends to cancel a disposition, the director shall send a notice to the holder by mailing it to the holder's last known address according to the records of ESRD stating the director's intention to cancel the disposition after the 30th day following the date of the notice and the reason for the cancellation.

(3) If the holder does not object to the cancellation of the disposition or if, in the opinion of the director, the holder does not submit satisfactory reasons in objecting to the cancellation within the time limited for doing so, the director may cancel the disposition.

(4) When the provisions of the disposition itself prescribe a procedure for cancellation that is more advantageous to the holder than the procedure prescribed by this section, the director shall comply with the procedure prescribed in the disposition.

#### [31] Public Lands Administration Regulation

##### **Expiry**

**20(1)** Where a disposition expires without an application for renewal being made by its holder, the director may register its expiry without notice to the former holder of the disposition.

(2) Where an application for renewal of a disposition is made and is rejected or refused, all rights and interests of the disposition holder in respect of the subject land cease on the expiry or cancellation of the disposition.

(3) Where a disposition expires without being renewed and the former holder of the disposition does not vacate the subject land, the former holder is deemed to be an overholding tenant on a month-to-month basis in respect of the subject land, and the director may do one or more of the following as the director considers appropriate in the circumstances:

- (a) take one or more enforcement actions in respect of the subject land or any activity on it;
- (b) issue a formal disposition to the holder of the expired disposition in place of the expired disposition, whether or not an application has been made for the formal disposition;
- (c) issue an authorization to the holder of the expired disposition to carry out any work on the subject land that the director considers necessary, whether or not an application has been made for the authorization;

- (d) dispose of chattels and improvements in accordance with section 62 of the Act;
- (e) direct that any interest of the holder in the subject land be offered for sale by public tender or auction.

**211** The following decisions are prescribed as decisions from which an appeal is available:

- (a) the issuance, renewal, amendment or suspension of a disposition issued under the Act;
- (b) the rejection of an application under the Act for a disposition,
- (c) a refusal to issue a disposition or to renew or amend a disposition applied for under the Act;
- (d) the imposition or variation under the Act of a term or condition of a disposition;
- (e) a deemed rejection under section 15(1);
- (f) an order under section 35(1) to vacate vacant public land;
- (g) a refusal under section 43(1) of the Act;
- (h) an enforcement order, a stop order or an administrative penalty;
- (i) a removal under section 69(2)(f)(iii) of the Act;
- (j) an order under section 182;
- (k) a refusal to admit, or a requirement to remove, a pet animal under section 194(2);
- (l) an order under section 201(b) to vacate a public land recreation area;
- (m) an order under section 204(1) to vacate a campsite;
- (n) an order under section 205.

### **Confusion and Inconsistency in the record**

[32] The Panel has carefully reviewed the Record provided by the Director. The Record indicates significant confusion from both ESRD staff and the Appellants as to the status of the grazing lease at various points in time. In reviewing the actions of both ESRD and the Appellants, the Appellants' illiteracy must be kept in mind. Paragraphs 33 to 48 of this decision refer to examples of actions and letters which reveal or contribute to confusion in the file.

[33] The Director submits that the grazing lease expired October 31, 2009. However, no formal notification was provided to the Appellants that the lease had expired.

Submission of the Director, 17 July 2014, paragraph 8

- [34] In a letter to the Appellants dated February 8, 2010, from Lila Ready, Disposition Services Section (“DSS”), ESRD requires a Power of Attorney “when signing on behalf for Robert Neal Cuyler Greene.” The Appellants are told that they may send in the document at their “earliest convenience, upon completion for your grazing renewal.” It is unclear from this letter when the Power of Attorney needed to be provided as no deadline date was given.  
Director’s Record Tab 43
- [35] In a letter to the Appellants dated July 13, 2010, Joel Politeski, Rangeland Agrolgist, warns that “Failure to adhere to the provisions of the *Public Lands Act* and the terms and conditions of your lease agreement may jeopardize the tenure of your lease and may result in an enforcement response by Sustainable Resource Development.” This suggests that the lease has not expired.
- [36] An email dated March 21, 2012, from Joel Politeski to Darrell Kentner, Land and Range Manager at ESRD, acknowledges that a two-year renewal had been given to the Appellants and recommends a one year renewal of the grazing lease. Mr. Kentner agrees with Mr. Politeski’s recommendation. It appears that ESRD itself does not regard the lease as having expired on October 31, 2009.  
Director’s Record Tab 40
- [37] A letter dated May 8, 2012, from Mr. Politeski addressed to Trevor Greene only, states in bold “To bring this lease into compliance, please ensure utilization of the lease by livestock solely belonging to you is completed by July 1, 2012.” No indication is given that the Appellants are overholding tenants. Additionally, the letter was only addressed to Trevor Greene, which seems to ignore previous communication from ESRD that insisted a Power of Attorney was needed in order for Trevor Greene to act on behalf of his brother in matters regarding the lease.  
Director’s Record Tab 38
- [38] A letter dated May 10, 2012, from Michelle Legarie, Disposition Services Section, addressed to the Appellants, advises that the lease is up for a one year renewal but cannot be processed until the arrears are paid. Again, ESRD is not claiming that the lease expired October 31, 2009.  
Director’s Record Tab 36

- [39] A letter dated June 22, 2012, from Carol Lundgard, Disposition Services Section, addressed to the Appellants and copied to "Robert Neil Cuyler c/o Vergil [sic] Trevor Greene", is titled in the reference line "Notice of Intent to Cancel". The letter states:

Our records indicate that the rental payment due on April 1, 2012 had not yet been received. ESRD is prepared to issue a one year renewal but this cannot be completed until the arrears and interest charges are paid. Please remit payment within 30 days from the date of notice. Make the check or money order payable to minister of finance, province of Alberta.

If you have already paid these charges, or cannot meet the payment deadline, please contact Michelle Legarie at (780) 643-1852

**This is a FINAL NOTICE.**

Director's Record Tab 33

- [40] This letter is of particular note. The reference line refers to an intent to cancel the lease. If the lease had already expired October 31, 2009, why would ESRD embark on a cancellation process? This letter also refers to a one year renewal of the lease. The letter also states in bold and in capitals that this is a final notice, yet the line previous advises the Appellants to contact department staff if they cannot meet the payment deadline. Mixed messages are being sent to the Appellants in this letter.
- [41] An email was sent to Mr. Politeski from Carol Lundgard dated September 5, 2012 regarding the grazing lease. The email states:

DSS sent a Notice of Intent to Cancel GRL 38968 to Virgil and Robert Greene for o/s money. As of today they owe a total of 197.68. If you could contact they [sic] and let us know the outcome that would be great. If we do not have money by September 14, this lease will be canceled Sept 17 and as it is expired there will be no option for re-instatement.

We have not been able to do the one year renewal that you sent in March as the client is in debt.

Ms. Lundgard states that the lease will be canceled on September 17 if payment is not received by September 14. ESRD is not claiming or acting as if the lease had expired, but rather is making plans to cancel the lease.

Director's Record Tab 32

- [42] A series of emails between Mr. Politeski and Mr. Kentner discussed the fact that the Appellants are illiterate and that Mr. Politeski had attempted to deliver compliance letters to Trevor Greene but that he was not home at the time. The discussion concluded with the decision to "proceed with the cancellation." Is this a cancellation under section 27 of the *Public Lands Act* or is it the eviction of overholding tenants? ESRD does not seem to know.

Director's Record Tab 32

- [43] A memorandum was sent to Mr. Jeffrey Watson, Section Head, Disposition and Technical Services Branch from Ms. Stokes, dated February 15, 2013. The memorandum states:

Ms. Carol Lundgard, Team Lead, LDB [Land Dispositions Branch] emailed Mr. Politeski on September 5, 2012, indicating that LDB sent a "Notice of Intent to Cancel" GRL 38968 to Virgil and Robert Greene for money owing stating, "if ESRD does not have the money by September 14, 2012 the lease will be canceled on September 17, 2014 and as it is expired there will be no option for reinstatement."

Director's Record Tab 25

- [44] A review of the September 5, 2012 email referred to by Ms. Stokes shows that the above statement is incorrect. Ms. Lundgard makes the quoted statement in an email but that email was addressed to Mr. Politeski, and there is no evidence that the statement was made to the Appellants. If such a letter to the Appellants exists containing that statement then the Director has not included it in the record which is before the panel. In the same memorandum, Ms. Stokes also advises that the GRL 38968 expired on October 31, 2011 and that a short-term renewal for two years was sent to the Appellants, but that they did not execute the renewal properly as Trevor Greene had signed for Robert Neil Cuyler Greene. ESRD appears confused as to what actions have been taken, when they were taken and what statements have been made to the Appellants.

Director's Record Tab 25

- [45] In an email from Mr. Kentner to Mr. Politeski and Ms. Stokes dated April 3, 2013 Mr. Kentner advises that he was able to speak with Trevor Greene on the phone. Mr. Kentner states that:
- a. Mr. Greene was unaware that he had lost the disposition and unaware that he had not paid for the disposition.
  - b. Mr. Greene believes he had paid the disposition fees already.
  - c. Mr. Greene explained that he cannot read.
  - d. Mr. Greene provided several explanations for the noncompliance issues.
  - e. Mr. Kentner explained to Mr. Greene that he no longer “owns” the lease.
  - f. Mr. Greene explained that he had aging health problems and hearing problems and requested a meeting so that he could understand what was being said about the disposition.

This is the first indication in the Director’s record that ESRD advised the Appellants that the lease was no longer in effect.

Director’s Record Tab 23

- [46] A registered letter dated April 29, 2013, was sent to the Appellants from Mr. Watson. The reference line stated: “OVERHOLDING TENANT - Grazing Lease No. 38968 (Expired October 31, 2009)”. The letter states that the grazing lease expired October 31, 2009, and that the Appellants are considered to be overholding tenants. The letter also states: “As well, you may not cut hay until the compliance issues identified below have been properly dealt with to the satisfaction of ESRD **and** you are issued a new lease.” After listing the compliance issues the letter states: “As a result, **ESRD is not prepared to issue you a new grazing lease** (note that the expired lease cannot be renewed). You may submit a letter outlining the reasons why **a new grazing lease should be issued to you.**” The April 29, 2013 letter is the first formal notification given to the Appellants that the lease is expired and that they are considered overholding tenants.

Director’s Record Tab 18

- [47] Trevor Greene responded to Mr. Watson’s letter with a letter dated May 9, 2013. Trevor states that he believes Mr. Watson and Mr. Kentner have misinformation regarding the grazing lease. He advises that neither he nor Cuyler Greene can read or write and that Cuyler is in Edmonton and is a paraplegic and that Trevor is taking care of Cuyler’s interests in the matter. He then addresses the various compliance issues and promises to rectify them

as best that he can. He states “I feel this is **unjust** that you can just take this land from me for that reason I will appeal this decision.”

Director’s Record Tab 16

- [48] In a second letter to Mr. Watson and Mr. Kentner, dated May 27, 2013, Trevor Greene states: “... I will guarantee you that I will do everything necessary to make this property in compliance with your Rules and regulations and bylaws.” He concludes the letter by writing: “I need this land and will do whatever is necessary to keep it.”

Director’s Record Tab 15

## Decision

- [49] The Director has argued that the rebuttal submission from the Appellants raised new issues. The Panel has considered this in their deliberations and has given the rebuttals of both the Director and the Appellants the appropriate weight.
- [50] Having reviewed the record, it appears to the panel that if ESRD was intending to cancel the lease it did not take the steps required under the legislation, thus the lease was not cancelled.
- [51] The Director also argues that the lease expired and that the Appellants did not apply for a renewal as required under section 20 of PLAR. Although ESRD believed the lease to have expired, the actions of ESRD prevented the Appellants from knowing that the lease had expired and from exercising their rights of appeal. While there is no way of knowing exactly what the Appellants would have done had they been aware of the expiry of the lease and its implications, this appeal and the letters from the Appellants after being made aware of the lease expiry, are evidence that they would have likely opposed the refusal to renew and would have appealed it. At the very least, the Appellants have had the opportunity to take action to preserve their status as grazing lease holders denied to them by the inconsistent actions and communications of ESRD.
- Submission of the Director 17 Jul 14, para. 29 - 31
- [52] The Director acknowledges that during the transition from the Dispositions and Fees Regulation to PLAR that “there may have been some inconsistency in the renewal process for grazing leases.” Such inconsistency is evident in

the Director's Record and is all the more reason why ESRD should have taken better care to communicate clearly and effectively.

Submission of the Director 08 Aug 14 para. 5.

- [53] If the grazing lease expired October 31, 2009 as submitted by the Director, then why did ESRD continue to treat the lease as if it had not expired? It appears from the Record that no notification was provided to the Appellants that the lease expired and that they were overholding tenants, until Mr. Kentner spoke with Trevor Greene, on April 3, 2013. No formal notification that they were overholding tenants was provided to the Appellants until Mr. Watson's letter dated April 29, 2013.
- [54] The Director further submits "the April 29, 2013 ESRD letter clearly stated that Grazing Lease No. GRL 038968 ("GRL") expired on October 31, 2009 and as of that date, Messrs. Greene were considered to be overholding tenants by operation of the common law and PLAR section 20(3)." Based on the Director's submission, there is a three and a half year period between the alleged expiry of the lease and when ESRD clearly communicated to the Appellants that they were overholding tenants. The failure by ESRD to effectively advise the Appellants that, in ESRD's opinion, the lease had expired and that the Appellants were considered overholding tenants, along with ESRD's inconsistency, deprived the Appellants of the opportunity to exercise their rights to appeal the decision to not renew the lease. ESRD's actions (or lack of) also prevented the Appellants from knowing the case against them.
- [55] It is clear in the Director's Record that the Appellants wanted to continue to exercise the rights consistent with a grazing lease. It is also clear from the record that ESRD did not want the Appellants to do so. The Panel finds that the Director refused to issue or renew an existing grazing lease and that the Appellants would have appealed the Director's decision had it not been for the confusion and inconsistency of ESRD's actions which prevented the Appellants from being aware of the status of the grazing lease.
- [56] Based on principles of fairness and equity, the Appellants should be placed in the position they were in before the actions of ESRD prevented them from being able to appeal the refusal to issue or renew an existing grazing lease.

- [57] The Panel finds that this is an appeal of a refusal to issue or renew a disposition issued under the Act and is therefore, an appealable decision under section 211 of the Public Lands Administration Regulation.
- [58] The Panel finds that the Public Lands Appeal Board is authorized under the *Public Lands Act* and the Public Lands Administration Regulation to consider the issues raised in the Appellants' notice of appeal and make a recommendation to the Minister.
- [59] The Panel dismisses the Director's preliminary motion to dismiss the Appellants' Notice of Appeal. The Panel wishes to make it clear that, in dismissing this motion and allowing the appeal to proceed, the Panel is expressing no views on the merits of the issues raised in the Appellants' Notice of Appeal.

*Preliminary motion dismissed.*