



**Forest  
Practices  
Board**

## **Cattle Grazing on the Overton-Moody Range Unit**

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**FPB/IRC/160**

November 2009

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# Executive Summary

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This investigation is about cattle grazing on the Overton-Moody Range Unit near Grand Forks. The complainant asserts that the range licensee did not move its cattle according to its range use plan (RUP); that there was over-grazing, over-browsing and streamside damage; that a salt block was misplaced; that some fences were not maintained; and that government management was insufficient.

The Board found that the licensee moved its cattle on time, but because of inadequate fencing and public tampering, about 20 head of cattle periodically returned to one pasture for weeks after their scheduled removal date. Therefore, the grazing schedule for that pasture was not followed. The Board also found that parts of the two pastures investigated were over-used by cattle, but there still appeared to remain abundant browse available for deer and elk.

Two locations on Gilpin Creek had serious damage from cattle use. Other sites of concern were not significantly impacted but there was room for improvement. During the investigation, the licensee and the Ministry of Forests and Range (MFR) took corrective action, though not to the extent or by the methods preferred by the complainant.

Many fences on the range unit are obsolete and require continuous repairs because they are easily broken by cows, elk, fallen trees and vandals. Several fence segments are abandoned and awaiting removal. Fences and gates needed to contain cattle were adequately maintained, but abandoned fence segments need prompt attention or removal. Some fences need upgrading.

The licensee uses salt blocks as a nutritional supplement for its cattle and as an attractant to draw cattle from one grazing area to another. The licensee's RUP states that no salt will be placed within 200 metres of a riparian area. The Board is satisfied that the licensee did not put a salt block too close to Gilpin Creek.

A significant thing the Board found challenging while investigating this complaint was that the *Forest and Range Practices Act's* (FRPA) range regulation and the licensee's approved RUP criteria for assessing average stubble height and browse use by livestock provided complicated and impractical guidance for gathering this information.

The Board concluded that MFR has an appropriate framework for enforcement of the range management legislation on the range unit, but it is not effective because of the difficulties of verifying conditions specified in the regulation and licensee's RUP, incomplete range fencing and frequent vandalism. MFR did not effectively address a persistent non-compliance in 2008.

The findings of this investigation indicate that livestock damage on the range unit is not as severe as the complainant suggested but there are still practices that need improvement. The Board expects that government and its range licensees will continuously improve upon poor practices, and appreciates that MFR and the licensee have acted to remediate several of the sites of concern.

# The Investigation

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In October 2008, a resident of Grand Forks submitted a complaint to the Board about mismanagement of the Overton-Moody Range Unit near Grand Forks in the Arrow-Boundary Forest District.

In 2008, the complainant observed what he considered excessive cattle foraging in parts of two pastures (named Valentine and Morrissey) and was also concerned by other range practices involving water sources, fencing and salting. Over many years, the complainant has spoken frequently and publicly to the MFR about these and similar concerns, but considers the ministry's management and responses inadequate.

## Background

The complainant has been a guide-outfitter in the area for almost 30 years. His family's guiding tenure includes the 12,000 hectare Overton-Moody Range Unit. The complainant is concerned about management of the range unit because of its value as habitat for deer and bighorn sheep, among other species.

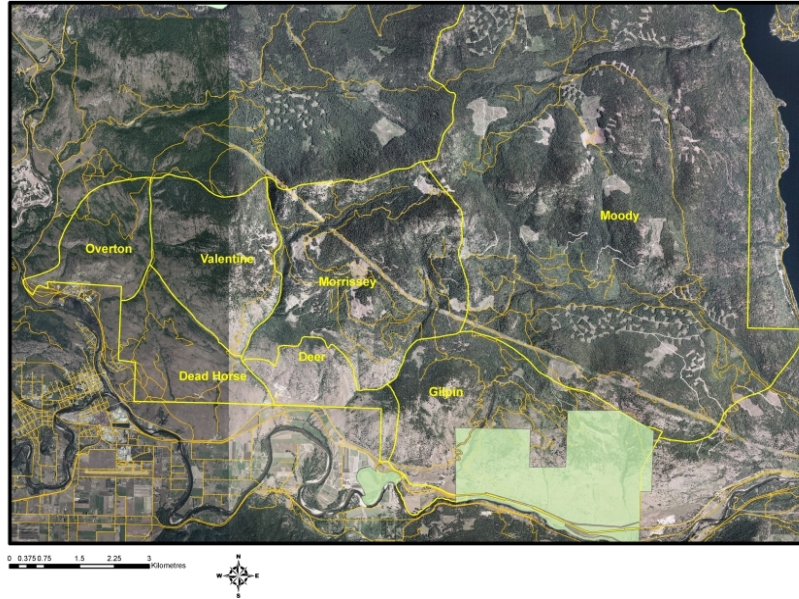
Mehmal Ranch is the range agreement holder in the area (the licensee). The Mehmal family has raised cattle on most of the range unit for over half a century. Five of seven pastures are grazed consecutively by about 170 cows and calves from May through November. The remaining two pastures (named Overton and Deer) are left for wildlife and other purposes.

MFR's range program in the district consists of two employees, 60 range units, over 80 range agreement holders and spans about two million hectares of Crown range. According to the ministry, the size of the program requires its staff to inspect areas and manage issues on the basis of risk, and to maintain cooperative working relationships with range agreement holders so that efficient and effective range management is ensured. The ministry considers the Overton-Moody Range Unit to be particularly large, one that takes a lot of time to inspect and significant effort and expense to manage. Nevertheless, the ministry said it and the licensee have a long and strong record of studying the range, improving range practices, and conducting restoration activities to address and maintain the health and productivity of the unit.

## Discussion

The complainant asserted that the licensee did not follow its range use plan (RUP); that there was insufficient cattle movement between pastures, which resulted in over-grazing, over-browsing and streamside damage; that a salt block was misplaced; and that some fences were not maintained.

Section 45 of the *Forest and Range Practices Act* (the Act) requires that a person who grazes livestock or maintains a range development on Crown range must do so in accordance with the Act and its regulations (FRPA), and the applicable RUP or range stewardship plan. In this case, the licensee has a RUP, which MFR approved in January 2008. MFR enforces the legislation for range management.



The Overton-Moody Range Unit near Grand Forks, BC.

The investigation considered these questions:

1. Did the licensee follow the grazing schedule in its RUP?
2. Was the Valentine or Morrissey pasture over-used by cattle?
3. Was there stream damage from cattle use?
4. Were fences and gates adequately maintained?
5. Did the licensee put salt too close to Gilpin Creek?
6. Was government enforcement effective?

### 1. Did the licensee follow the grazing schedule in its RUP?

The complainant is concerned that cattle were not where they were required to be according to the RUP's grazing schedule for 2008. During September and October, the complainant saw more than 20 cows in the Morrissey pasture. He understood that cattle were to be moved from the Morrissey pasture to the adjacent Moody pasture by mid-August.

Section 29(1) of FRPA's *Range Planning and Practices Regulation* (RPPR) requires that livestock be removed from Crown range by the first to occur of:

- the date specified for removal of livestock in the holder's RUP;

- the date when the forage has been reduced to the average stubble height<sup>1</sup> specified in the RUP; or
- the date when the average browse use level by livestock is reduced to the percentage of current annual growth specified in the RUP or, if not specified, 25 percent of the current annual growth.

The licensee's RUP:

- Sets a grazing schedule for the Morrissey pasture from June 21 to August 15.
- Does not specify an average stubble height for any pasture (instead, it lists eight separate stubble heights for 25 grass species).
- Specifies an overall browse use level of 15 percent, with cattle use of some shrub species limited to 10 percent.

Therefore, the latest date for cattle removal from the Morrissey pasture would be August 15, but they would have to be moved earlier if a specified average stubble height or degree of browsing was reached.

The only information available about forage use in the Morrissey pasture prior to mid-August in 2008 was an MFR range inspection. That was done August 5, over part of the pasture. MFR found that average stubble height in the area it inspected was 7.5 centimetres. The average stubble height was close to the limits specified in the RUP for the dominant grass species in the area, but the inspector also noted that lots of grass was still available. MFR did not inspect browse use. Therefore, August 15 became the first of the listed conditions to occur and was the required removal date for the Morrissey pasture in 2008.

However, the RUP also includes some flexibility for operational circumstances and incomplete round-ups. MFR confirmed that the grazing dates in the RUP are not meant to be precise. Thus, the RUP states:

- Dates are approximate and may be altered by actual range readiness and levels of utilization and weather conditions.
- Movement of cattle on these dates is approximately 85 percent of livestock numbers within two days.
- 85 percent removal of livestock can be within three days of the approximate dates in the grazing schedule followed by continued active herding.

The result is a muddled requirement for livestock removal. At a minimum, the licensee was required to remove at least 85 percent of its cattle by August 18, and then continue to round up and move stragglers.

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<sup>1</sup> The RPPR defines "average stubble height" as the height of plants remaining after harvesting or grazing.

In 2008, the licensee:

- Started to move its cattle from the Valentine pasture and into the Morrissey pasture on June 20 and was done by June 22.
- Began to move cattle out of Morrissey and into the Moody pasture on August 12 and had moved most of its cattle by August 14.
- Had a ranch hand visit the Morrissey pasture each day until August 19 to round up stragglers. After that, the licensee kept few records of its range-riding in the Morrissey pasture, but said it was on the range several times a week and continued to collect stragglers from the Morrissey pasture.

The complainant said that he saw more than 20 cows in the Morrissey pasture during September and at least half of October in 2008. The licensee responded that, about September 20, it too noticed that 10 cows with calves had made their way back to the Morrissey pasture. The licensee explained that cattle roam between pastures because people open gates and sometimes maliciously herd the animals, and because trees fall and break fences. In addition, some of the older cows know routes between the pastures where fences were never built. The licensee said that it continued to herd cattle every few days from the Morrissey pasture, but because someone was deliberately and maliciously opening gates, it could not prevent those or other cattle from returning. The result was that 20 or so head of cattle were periodically in the Morrissey pasture until early October when the licensee herded them home via the spring range. After that, MFR confirmed seeing a few cows in the Morrissey pasture until late October.

Although some cattle were in the Morrissey pasture long after the RUP-specified removal date, the licensee considers that it followed and complied with its grazing schedule because it moved the cattle on time and always had at least 85 percent of its cattle in the correct pasture. MFR confirmed that it does not expect all cattle to be in the correct pasture all the time, but said that the 15 percent flexibility in the RUP is intended to apply only during the three days following the scheduled removal date. After that, the grazed pasture was to be left to recover.

## **Finding**

The licensee attempted to follow its grazing schedule, but was unable to keep cattle out of the Morrissey pasture, so the grazing schedule for that pasture was not followed.

## **2. Was the Valentine or Morrissey pasture over-used by cattle?**

The complainant said that cattle grazing and browsing in 2008 had compromised winter feed for wildlife, particularly deer and elk, based on his observation of extensively browsed shrubs and closely-cropped grass in parts of the Valentine and Morrissey pastures.



Photos from the Morrissey Pasture by the Complainant, September 2008.

As discussed above, livestock must be removed from Crown range on the first to occur of:

- a. the date specified for removal of livestock in the licensee's RUP;
- b. the date when the forage has been reduced to the average stubble height specified in the RUP; or
- c. the date when the average browse use level by livestock is reduced to the percentage of current annual growth specified in the RUP or, if not specified, 25 percent of the current annual growth.

Presumably, if any of these conditions were exceeded, the area would be considered over-used. However, assessing compliance with FRPA's requirements for cattle removal based on forage and browse use is not straightforward. FRPA does not specify whether forage and browse use is to be assessed over: an inspected area; all areas in a pasture that have been grazed by cattle; all areas in a pasture accessible to cattle; or the entire area of a pasture.

MFR explained that the assessment of forage use is intended to be conducted on "key areas" established by the ministry. In the absence of key areas, the assessment occurs "over an inspected area."<sup>2</sup> However, FRPA's requirement for cattle removal applies to the area described in the plan, which is the pasture.

With eight separate stubble heights listed in the RUP for 25 grass species, estimating an "average stubble height" for a large, botanically- and geographically-complex pasture seems neither practical nor feasible.<sup>3</sup> Assessing "average browse use" may be equally problematic. The RUP specifies an overall limit for browse use of up to 15 percent of shoots of current year's growth "across the unit." It is not clear whether that percentage is the number of shoots browsed or the volume browsed from each shoot—two very different measures. Whichever it is, it would be time-consuming and probably pointless to determine average browse use by livestock over the entire 12,000 hectare range unit. In addition to that overall limit for browse use, the RUP also includes a list of shrub species that are to be browsed to just 10 percent of their

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<sup>2</sup> There are no key areas established on the Overton-Moody Range Unit. MFR, the Ministry of Environment (MOE), and the licensee intend to establish some in 2009.

<sup>3</sup> During the investigation, MFR said it will expect the licensee to submit an amendment to its RUP in 2009 to decrease the number of grass species listed in the RUP to three or four to avoid confusion.



current year's growth. A third measure limits cattle browsing to 10 percent of current year's growth "within a riparian area." The result is another hodgepodge of complicated and impractical measurements.

MFR disagrees with the Board's opinion. The ministry considers that the stubble height and browse use requirements are desirable and practical to measure, and believes the procedure will become simpler when it establishes key areas for each pasture. That may be – however, MFR did not produce pasture-level records of average stubble height or browse use for any Overton-Moody range pasture. Neither did the licensee keep records of average stubble height or the amount of browse used by its cattle.

The only recorded information about forage use by cattle in the Valentine and Morrissey pastures in 2008 is an early August inspection by MFR of parts of both pastures. The inspection occurred about two weeks after cattle were moved out of the Valentine and into the Morrissey pasture. MFR found stubble height in the Valentine pasture to be "good," but noted one place near a corral where the stubble height was three centimetres, much lower than the RUP specified.<sup>4</sup> Average stubble height was nearing the minimum in the inspected part of the Morrissey pasture, but the inspector noted "lots of grass still available." The inspection report did not include a map of the area inspected or reveal where the remaining grass was located. MFR's inspection indicated some localized over-use of grasses in the Valentine pasture and appropriate use at the time in the Morrissey pasture. MFR did not inspect browse use in either pasture.

In November, board staff visited the Morrissey and Valentine pastures to consider the amount of cattle browsing and grazing in areas previously visited with the complaint participants.

In the Morrissey pasture, board staff found evidence of over-use by cattle of both grass (cropped very close to the ground) and browse (more than 50 percent use) in some heavily-used locations, such as along the roadways and in a gently-sloped meadow. However, in a moderately-sloped cutblock away from the road edges, board staff found that cattle use of grass and shrubs diminished sharply to near nothing. Browsing there was mostly by deer and the amount of use (less than 15 percent of available forage) was likely appropriate for that late-fall, early-winter habitat.

In the Valentine pasture, board staff saw little evidence of over-use anywhere, other than in the corral area inspected earlier by MFR. Cattle had also congregated in a gently-sloped cutblock near that corral. The limited amount of grass there did not appear excessively grazed and browsing by cattle in the cutblock was variable; some shrubs were heavily browsed and hedged, and others browsed lightly or not at all.

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<sup>4</sup> The licensee explained that its cattle gather near the corral before moving to the next pasture, so that area is more heavily grazed than elsewhere.



Torn stems and abundant cattle sign indicated cattle browsing.



Tipped stems, cleanly clipped cuts and a lack of cattle sign indicated wildlife browsing.

Board staff concluded that both pastures had localized areas that were over-used by cattle, with the Morrissey pasture being the more severe. Although the cattle consumed grass that could have been used as food and cover by wildlife, there still appeared to be abundant browse available for both deer and elk.

## Finding

Localized parts of the Valentine and Morrissey pastures were over-used by cattle but there appeared to remain abundant browse available for deer and elk.

### 3. Was there stream damage from cattle use?

The complainant was concerned that cattle had damaged every readily accessible water source. The complainant identified several locations where cattle had trampled the ground, disturbed riparian vegetation and defecated in streams. These were all places that cattle regularly travelled to obtain water, cross the streams or linger in shade. Some of these sites had been developed by MFR or the licensee as cattle watering areas; one was a dugout and others had water-troughs.

Under FRPA, government's objectives in the RPPR for water are:

- (a) maintain or improve water resources;
- (b) maintain or promote healthy riparian and upland areas;
- (c) maintain or promote riparian vegetation that provides sufficient shade to maintain stream temperature within the range of natural variability;
- (d) maintain or promote desired riparian plant communities.

To help achieve those objectives, section 30 of the RPPR states that a range agreement holder must not carry out a range practice (e.g., cattle grazing) if it would result in a material adverse effect on the ability of the riparian area to:

- a) withstand normal peak flow events without accelerated soil loss, channel movement or bank movement,
- b) filter runoff,
- c) store and safely release water, and
- d) conserve wildlife habitat values in the area.

In 2007, MFR assessed the condition of parts of Gilpin and Morrissey Creeks.<sup>5</sup> The ministry found each stream embedded with fine sediment as a result of the combination of grazing, roads and logging. Overall, MFR described Morrissey Creek as being in generally good condition and Gilpin Creek as having livestock impacts at two locations.

The Board previously investigated concerns with range use near streams in its June 2002 report, *Effects of Cattle Grazing near Streams, Lakes and Wetlands*.<sup>6</sup> In that report, the Board discussed the concept of properly functioning condition of streams and noted that the Forest Practices Code *Riparian Management Area Guidebook*<sup>7</sup> and *Community Watershed Guidebook*<sup>8</sup> provided advice about range use near streams. That pre-FRPA guidance is still relevant today because section 30 of the RPPR under FRPA is, essentially, the same as the former Code's definition of properly functioning condition.<sup>9</sup> The two guidebooks describe some target conditions for range use to ensure maintenance of properly functioning condition.

- Livestock use should not destabilize stream banks or result in a significant change in stream channel form.
- Concentrated trampling (greater than 20 percent soil disturbance) should not occur along more than five percent of any 100 metre length of stream.
- Fords and watering areas should not show signs of unnatural active bank erosion.
- Shrub cover on stream banks should be at least 85 percent of natural.
- Range use should not result in obvious nutrient enrichment.

The guidance suggests that a certain amount of impact to riparian areas resulting from range practices is acceptable and the Board has previously said as much—where cattle must cross streams and other riparian features, it is reasonable to expect some damage to those areas from trampling, grazing of riparian vegetation, and introduction of cattle feces, provided the proper functioning condition of the riparian feature is maintained.<sup>10</sup> With such guidance in mind,

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<sup>5</sup> Ministry of Forests and Range. 2007. *An Evaluation of the Streams and Adjacent Uplands in Overton-Moody Range Unit*, Unpublished Report, Range Branch, Victoria.

<sup>6</sup> See FPB/SR/11: [http://www.fpb.gov.bc.ca/publications.aspx?id=3126&\\_taxonomyid=182](http://www.fpb.gov.bc.ca/publications.aspx?id=3126&_taxonomyid=182)

<sup>7</sup> <http://www.for.gov.bc.ca/tasb/legsregs/fpc/fpcguide/RIPARIAN/rip-toc.htm>

<sup>8</sup> <http://www.for.gov.bc.ca/tasb/legsregs/fpc/fpcguide/watrshed/watertoc.htm>

<sup>9</sup> See “properly functioning condition” in Section 52 of the former *Operational and Site Planning Regulation*.

<sup>10</sup> Forest Practices Board. 2002. *Compliance and Enforcement Audit and Special Report on Range Activity in the Horsefly Forest District*, FPB/ARC/47S, <http://www.fpb.gov.bc.ca/assets/0/114/178/296/354/16c473ee-a975-45ce-b14e-b0d66dbd39aa.pdf>

board staff investigated if streams were damaged by cattle by looking at four specific areas of concern to the complainant:

1. Gilpin Creek "3 kilometre" Crossing
2. Gilpin Creek "5 kilometre" Dugout
3. Water Troughs
4. Morrissey Creek

### *1. Gilpin Creek "3 kilometre" Crossing*

In 1999, the former owner of some private property on Gilpin Creek built a fence around its property. The fence caused the licensee's cattle, and likely some wildlife, to drift into a deep gully to get water and to cross the creek. MFR's 2007 riparian assessment classified the health of this site as "highly at risk" and recommended that both cattle and wildlife access be stopped. The complainant was concerned that nothing had since happened to stop cattle access.

At this crossing, the stream channel is embedded with sediment and the banks are trampled with little to no riparian vegetation remaining. The impact on Gilpin Creek is locally severe with steep and sloughing gully sidewalls over a distance of about 70 metres. The trampling and sloughing of soil into the creek indicates that the riparian area is losing soil even during normal flows. The disturbance appears to be mostly the result of cattle use. The situation does not meet several of the suggested target conditions for properly functioning condition and is thus a poor practice.



Disturbed streambank and soil at the Gilpin Creek "3 kilometre" crossing.

Initially, MFR said it wanted to help the licensee resolve the problem, but resolution was hampered by nearby private and park lands, and a lack of funds and labour resources. However, during the investigation, the licensee reported that it, MFR, MOE and the current property owner would cooperate to fence the area and provide an alternate water source for the cattle. That work began in September 2009 and should resolve the complaint issue. The complainant, however, remains concerned because barbed wire fences were installed instead of "wildlife-friendly" rail fences or large woody debris.



## 2. *Gilpin Creek “5 kilometre” Dugout*

Years ago, MFR dug a waterhole in the bed of upper Gilpin Creek for fire-fighting and to replace a water-trough that was repeatedly vandalized. Cattle congregated in and around the dugout, defecated in the water, trampled the soil and browsed the nearby shrubs. MFR’s 2007 assessment also classified this site as “highly at risk” and suggested that cattle be excluded from the area.

The dugout banks are trampled and the area heavily browsed by cattle. Nutrient (feces) input to the stream is obvious. Although the disturbance is not as severe as the “3 kilometre” crossing downstream, MFR’s “highly at risk” rating and recommendation to exclude cattle from the dugout area identifies the site as another poor practice.

Initially, MFR said it could build a fence and install a water-trough but the ministry anticipated further vandalism. The complainant did not want any additional fencing that might compromise the safety of wildlife or block their access to water; the complainant suggested a “wildlife-friendly” rail fence would be appropriate. In September 2009, the licensee and MFR built a combination of barbed-wire and rail fence around the dug-out and installed a water-trough nearby. That work should resolve the complaint issue. However, the complainant remains concerned about the potential harm to wildlife from the barbed-wire, that the fenced area is too small, and that the water-trough (and related feces) will continue to drain toward the creek.



New fence and water trough at the “5 kilometre” dugout.

## 3. *Water Troughs*

The complainant was concerned that several water troughs are too close to the streams that feed them. Cattle come to the troughs but also enter the streams, causing localized soil trampling, vegetation browsing and pollution of the watercourse. MFR said that it considers the trough locations and degree of disturbance to be typical of a forested range operation. However, MFR also said the localized impacts could be prevented with minimal fencing or other such barrier, similar to water-troughs recently installed by MFR and MOE near a lower part of Gilpin Creek.

Those troughs were placed away from the stream and have both water supply and return pipes. Again, the complainant is opposed to fencing or other such barriers if they prevent wildlife access to the site.

The location and degree of impact of the water-troughs are, in the Board's experience, typical of forested range operations. Their situation and arrangement could be improved. However, the Board does not consider the impact of cattle use of the water troughs to be significant to their related streams. Nevertheless, again late during the investigation, the licensee and MFR undertook to improve some of the sites by installing small perimeter rail fences, improved troughs and other cattle barriers. The complainant considers the areas fenced to be too small and notes that nearby areas will remain impacted by cattle.

#### *4. Morrissey Creek*

The complainant was concerned that cattle use about 100 metres of a Morrissey Creek tributary as a cow path. The licensee agrees that this part of the stream is selected by some of its cattle as an easy travel route; the channel is mostly embedded cobbles. Board staff saw cattle tracks and dung in this section of the stream. Cattle had browsed the streamside vegetation, although not to the same extent as at the Gilpin Creek dugout. The area is somewhat disturbed by cattle but the suggested target conditions appeared to be met.

In summary, the Gilpin Creek crossing and dugout have serious damage from cattle use. During the investigation, the licensee and MFR began corrective work, though not to the extent or by the methods preferred by the complainant. The other sites of concern to the complainant were not significantly impacted, but there was room for improvement. During the investigation, the licensee and MFR also undertook to improve some of those sites.

## **Finding**

There is some damage to Gilpin Creek from cattle use. The licensee and MFR have taken steps to correct the situation.

#### **4. Were fences and gates adequately maintained?**

The complainant considers fence and gate maintenance to be inadequate on the range unit. He said that during his many field trips over the years, he had counted at least one hundred breaks in various fences and never any evidence of repairs. Section 40(1) of the RPPR requires a range agreement holder to maintain range developments in the area covered by the agreement in an effective operating condition. A fence is a range development.

MFR estimates that about 100 kilometres of cattle fence are on the Overton-Moody Range Unit. It was beyond the scope of this investigation to review all the fences on the range unit.

The complainant referred to several fence segments that he had seen in disrepair. However, the fences observed by board staff were in generally good repair. Both the licensee and MFR commented that most of the fences were built in the 1970s and those that have not been rebuilt

are now obsolete and require continuous repairs. The older fences are easily broken, not only by cows, but also by elk, fallen trees, and vandals. In addition, MFR said that several fence segments are no longer necessary and are effectively abandoned and awaiting removal, thus considered surplus. MFR does not expect the licensee to maintain those “surplus” fences even as they fall into further disrepair. That is contrary to the RPPR requirement that range fences be maintained (or, presumably, promptly removed). Range fences are a public asset; abandonment of such fences is a poor range practice—broken, tangled or scattered wire can be a serious hazard to wildlife, livestock and people.

Both MFR and the licensee also commented on the difficulty of keeping gates closed and free of damage. The licensee said that gates it closed on one day were often found open the next, allowing the cattle to escape. However, the complainant’s observation is that gates adjacent to cattle-guards are never left open by the public because those gates do not block public access. The Board has no way to confirm or refute either claim. The range unit is close to town and used for public recreation, so it is not surprising that, if the public must go through gates, they would sometimes be left open. However, there is also mischief, and in 2008 one such gate was accidentally broken or vandalized several times (and repaired by the licensee each time).



Shattered gate post.

The licensee said that it inspects and fixes all fences and gates prior to grazing, as part of its frequent range visits or when a problem is reported. The complainant disputed the claim, citing no apparent evidence of fence repairs during many visits. However, MFR affirmed that the licensee responds promptly to reported issues, including cattle outside of their intended pasture. MFR does several site visits and inspections on the range unit each year. The ministry is generally satisfied with the licensee’s maintenance of essential fences, particularly given the age of the fences and the problem of gates being left open. However, MFR also said that fences around the Morrissey pasture need to be upgraded and soon will be if project funds come available.

## Finding

Fences and gates needed to contain cattle were adequately maintained but abandoned fence segments need prompt attention or removal. Fences around the Morrissey pasture need upgrading.

## 5. Did the licensee put salt too close to Gilpin Creek?

The licensee uses salt blocks as a nutritional supplement for its cattle and as an attractant to draw cattle from one grazing area to another. The licensee’s RUP states that no salt will be placed within 200 metres of a riparian area.

The complainant found a salt block within 100 metres of Gilpin Creek and reported it to MFR in October. The ministry reported that to the licensee the same day. The licensee responded that it had not put a salt block near Gilpin Creek. The next day, the licensee found the salt block and removed it. Board staff compared the found salt block to those used by the licensee; they were not the same brand. The problematic salt block could have been put there by a hunter to attract wildlife, a well-intended wildlife enthusiast or a trouble-maker; whichever, the Board is satisfied that the licensee did not put the salt block near Gilpin Creek.

## **Finding**

The licensee did not put salt too close to Gilpin Creek.

## **6. Was government enforcement effective?**

The complainant asserted that MFR does not effectively enforce the licensee's range practices. The Board considered how MFR managed its compliance and enforcement responsibilities for the Overton-Moody Range Unit.

MFR encourages compliance through helping the licensee to prepare its RUP, other frequent interaction with the licensee, monitoring visits and inspections, and, if there are problems, further follow-up with the licensee. If problems are serious or persistent, MFR may initiate enforcement by issuing orders or tickets, assessing administrative fines or prosecuting.

A RUP sets out expectations for range practices and thus should include enforceable conditions. MFR identified some problems with enforceability of the licensee's RUP (which MFR says is typical of many in the district). For example:

- Checking compliance with flexible removal dates can require substantive investigation to confirm cattle numbers and licensee range-riding activities.
- Pastures are large and have complex plant communities that cattle use unequally. That makes it difficult to assess such criteria as average stubble height and browse use at the pasture level. In this case, the licensee's RUP lists eight separate stubble heights for 25 grass species. The inspecting officer said he could confidently identify only four or five of those species.
- Determining whether shrubs have been browsed by cattle or wildlife can be difficult. However, the regulatory test for livestock removal is only the amount browsed by livestock, not the total amount browsed (i.e., by both wildlife and livestock).

MFR has ranked each pasture in the district for several risk factors including environmental sensitivity, history of the operation and experience of the licensee. All the Overton-Moody pastures rank high because of their multiple resource values, public profile and history of concern from the complainant. MFR tries to inspect each high-risk pasture at least once per year, near the time of cattle removal, but that cannot always be achieved.

MFR has carried out 24 inspections on the Overton-Moody Range Unit over the past 10 years. Four inspections noted non-compliance with either the licensee's grazing schedule or



maintenance of range developments. Four others noted some cattle in incorrect pastures, but the inspectors did not consider those cases to be non-compliance.

In 2008, MFR inspected four Overton-Moody pastures and visited the unit many times for other range management reasons. When problems were noted, such as cattle out of place, MFR usually contacted the licensee to correct the problem. However, on three occasions, the ministry noticed a few cattle in the Morrissey pasture well beyond their removal date and notified the licensee, but the problem persisted.

In these circumstances, MFR believed the licensee had made significant efforts to comply, but was thwarted by people deliberately opening gates and, presumably, by the incomplete and easy-to-breach older fences. The ministry considered that the non-compliance in 2008 did not result in any adverse impact to the health and productivity of the range unit and so did not merit enforcement action. The result was that cattle continued to return to the Morrissey pasture during a period when it was not supposed to be grazed.

## Finding

MFR has an appropriate framework for enforcement on the Overton-Moody Range Unit but it is not effective because of the difficulties of verifying the conditions specified in the RUP and regulation, incomplete range fencing and vandalism. MFR did not effectively address an obvious and persistent non-compliance in 2008.

## Conclusions

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1. Did the licensee follow the grazing schedule in its RUP?  
No. The licensee attempted to follow its grazing schedule, but was unable to keep some cattle out of the Morrissey pasture. Therefore, the approved grazing schedule for that pasture was not followed.
2. Was the Valentine or Morrissey pasture over-used by cattle?  
Somewhat. Parts of the Valentine and Morrissey pastures were over-used by cattle but there appeared to remain abundant browse available for deer and elk.
3. Was there stream damage from cattle use?  
Yes. There was some damage to Gilpin Creek from cattle use. The licensee and MFR have taken steps to correct the situation.
4. Were fences and gates adequately maintained?  
Partly. Fences and gates needed to contain cattle were adequately maintained but abandoned fence segments need prompt attention or removal. Fences around the Morrissey pasture need to be upgraded.
5. Did the licensee put salt too close to Gilpin Creek?  
No.

6. Was government enforcement effective?

No. MFR has an appropriate framework for enforcement on the Overton-Moody Range Unit but it is not effective because of the difficulties of verifying the conditions specified in the RUP and regulation, incomplete range fencing, and vandalism. MFR did not effectively address an obvious and persistent non-compliance in 2008.

The findings of this investigation indicate that range damage is not as severe nor is the situation as dire as the complainant suggested, but there are still practices that need improvement. Both the licensee and MFR described range management on the Overton-Moody Range Unit as on par or better than most other range units in the forest district. That is a concern because it implies that localized poor practices may be an acceptable norm.

The Board acknowledges that cattle are mobile, and that large and diverse range pastures cannot be micro-managed, but the Board expects that government and its range licensees will continuously improve upon poor practices. Insufficient or neglected infrastructure can lead to problems beyond the command of range licensees. Greater impacts and additional threats to other resource values result unless there is sufficient and sustained investment in effective fencing, water development and cattle-access control. The corrective works done by MFR and the licensee during the course of this investigation demonstrate the point, and the Board appreciates that MFR and the licensee have recently taken action to remediate several of the sites of concern.

In response to this report, MFR told the Board that its investigation focussed too much on the appropriateness of, and compliance with grazing schedules and browse-use levels in the licensee's RUP. The ministry said:

The schedules and browse levels are intended to be reasonable targets, and the tenure holder strives to achieve them; however, the management of cattle on rangelands is not a precise science—flexible application of the plan's requirements and practices is necessary to achieve desired outcomes. Furthermore, factors outside the control of the tenure holder, such as cattle movement and browse use, wildlife browse use and damage to fences, and tampering and vandalism of gates and fences, can undermine the tenure holder's strict adherence to plan requirements. Adjustments to grazing schedules, pasture use, and browse levels for different plant species/areas are often reasonable and appropriate in the context of reassessed needs for maintaining healthy and productive rangelands.

In the Board's view, such flexibility is limited by the legislated framework of FRPA and its regulations:

- Section 33(1)b of the Act requires that a RUP contain a schedule for each pasture that describes the period of grazing (among other things).
- Section 28 of the RPPR requires that grazing not commence (presumably in any scheduled pasture) until range readiness criteria are met, irrespective of the scheduled date of grazing (unless otherwise authorized in writing).

- Section 29 of the RPPR requires removal from grazing by the first to occur of:
  - the date specified;
  - the stubble height reached; or
  - browse use attained.

Sections 37 and 40 of the Act provide for amendment and minor changes to an approved RUP. Both those sections require a record of the change to be made, presumably for accountability and adaptive management reasons.<sup>11</sup>

Both MFR and the licensee also considered that vandalism and public interference thwarted the licensee's effort to comply with its grazing schedule, and the ministry's ability to conduct effective enforcement. In the Board's opinion, public tampering neither relieves the licensee's responsibility to comply with its RUP, nor the ministry's responsibility to effectively enforce the RUP.

The Board understands and acknowledges that the licensee and appropriate enforcement agencies are working to resolve the problems of vandalism and malicious herding of the licensee's cattle. However, the Board continues to be generally concerned about government's monitoring of range condition and the apparent poor enforceability of range use plans. The Board is currently assessing range planning under FRPA and will report separately on that topic.

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<sup>11</sup> For the Act section 40 see also RPPR section 20.