

COMPLAINT INVESTIGATION

Range Practices and Government Enforcement on the Overton-Moody Range Unit

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**Forest
Practices
Board**

BC'S INDEPENDENT
WATCHDOG FOR
SOUND FOREST &
RANGE PRACTICES

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Board Commentary

The Forest Practices Board (the Board) investigated a complaint from a land conservation organization that two ranchers were not grazing their cattle in the right place and at the right time, a fence was not being maintained, and government enforcement of these issues was not appropriate.

Over a period of three years, the complainant observed cattle on land it purchased to conserve wildlife habitat and on the adjacent Crown range. The complainant used GPS-equipped game cameras and observations it made on-site to record cattle, summarized the information in a spreadsheet, provided it to the Ministry of Forests (the ministry) range management staff, and made two complaints to the Compliance and Enforcement Branch (CEB). CEB followed up with the complainant regarding their concerns but did not provide them with a final outcome.

CEB forwarded the matter to ministry range staff. Range staff visited the field, but did not keep records of how often they did so or what they saw. Range staff told the Board that they contacted the two ranchers and instructed them to follow their grazing schedules, but the issues continued.

The Board has several concerns with government's approach to enforcement of range activities in this case. First, it is unacceptable to conduct inspections but not always record the results. Documentation is critical to evaluate the accuracy of complaints, the effectiveness of enforcement efforts and to support more punitive measures if necessary. Second, it is not appropriate for CEB to rely solely on district range staff to determine whether an investigation and/or enforcement action is warranted. CEB's purpose is to encourage compliance, and it cannot do that by handing off matters to range staff and not verifying that appropriate actions have been taken. The public expects CEB to fulfil its role.

The two ranchers are no longer authorized to graze in the area, and government will reallocate range resources. In light of the mix of private and public land, and the conservation and management goals of the government, the complainant, and other land managers, there is an opportunity to discuss and resolve fence maintenance and cattle scheduling issues. It is clear that government needs to lead those discussions to ensure the conservation and stewardship of the public range resource.

Following the investigation, district range staff told the Board that they learned from the Board's findings. Range staff committed to developing a better method of tracking and documenting all field visits and observations. Depending on the risk of non-compliance, staff will now field-verify commitments made by ranchers to follow their grazing schedules and document the inspections.

Finally, the Board would like to acknowledge the effort the complainant put into documenting these issues. The complainant took it upon itself to do a lot of the monitoring that the public expects government staff to do.

Introduction

The Complaint

On May 17, 2023, the Forest Practices Board (the Board) received a complaint from the Southern Interior Land Trust (SILT) about livestock grazing east of Grand Forks.

SILT was concerned that livestock was on its private property without authorization and that two range agreement holders on the adjacent Crown range were not following the grazing schedule of their range use plans or maintaining a fence as required. SILT said that it communicated its concerns about livestock grazing out of rotation to the Ministry of Forests (the ministry) district range staff on numerous occasions. SILT also filed two complaints with the ministry's Compliance and Enforcement Branch (CEB). However, SILT said their concerns were not addressed.

For relief, SILT wants the two range agreement holders to follow their grazing schedules and maintain their fences, and for government to effectively enforce requirements within the *Forest and Range Practices Act* (FRPA).

Background

The Overton-Moody range unit is a 13 000 hectare range unit located immediately northeast of Grand Forks in the Selkirk Natural Resource District. The range unit includes the Gilpin Grasslands Provincial Park and provides important ungulate winter range for deer, elk and bighorn sheep, the latter of which is a species at risk.

The range unit is within the territories of the Lower Similkameen Indian Band, Osoyoos Indian Band, Okanagan Indian Band, Penticton Indian Band, and Splotsin First Nation. Indigenous Peoples have been the stewards of this land since time immemorial, and the Board acknowledges their deep connection with the land that continues to this day.

The range unit is divided into seven pastures (Figure 1)—five of which are used for grazing livestock. At the time of the complaint, two range agreement holders grazed cattle within the range unit. Mehmal Ranch has raised livestock on most of the range unit for over half a century and holds a grazing licence (RAN 073397). In 2022, Mehmal Ranch entered into a partial non-use agreement with the ministry. The ministry also issued a two-year grazing permit (RAN 078139) to Amber and Keith Pomeroy in 2022 over much of the same range agreement area.

Both range agreement holders have a range use plan with similar grazing schedules. As specified in both grazing schedules of the range use plans, livestock are first turned out onto the Deadhorse pasture in the spring of each year. Livestock must then be moved to the adjacent Valentine pasture. After spending about a month in that pasture, they are moved to the much larger Morrissey-Moody pasture where they spend most of the summer. Livestock finish grazing in the Gilpin pasture by mid-November.

SILT is a not-for-profit charity that acquires and conserves wildlife habitat in the southern interior of British Columbia. In 2020, it purchased two fee simple properties from the Mehmal family—district lot (DL) 492 and Lot A of DL 493—totalling 144 hectares. Before selling the property, the Mehmal family had been using the land for grazing livestock.

Two parcels of land to the immediate north of SILT's property—sub lot (SL) 14 of DL 2700 and DL 2736—are owned by the Nature Trust of BC (Nature Trust). SL 14 (57 hectares) and DL 2736 (65 hectares) are under a 99-year lease to the Province (Figure 1). Under the terms of the lease agreement, the properties are to be preserved as a site of ecological interest for the enjoyment and benefit of the people of BC. As defined under the *Land Act*, the nature of the long-term lease means that the properties are Crown land and therefore, Crown range subject to FRPA's requirements.¹

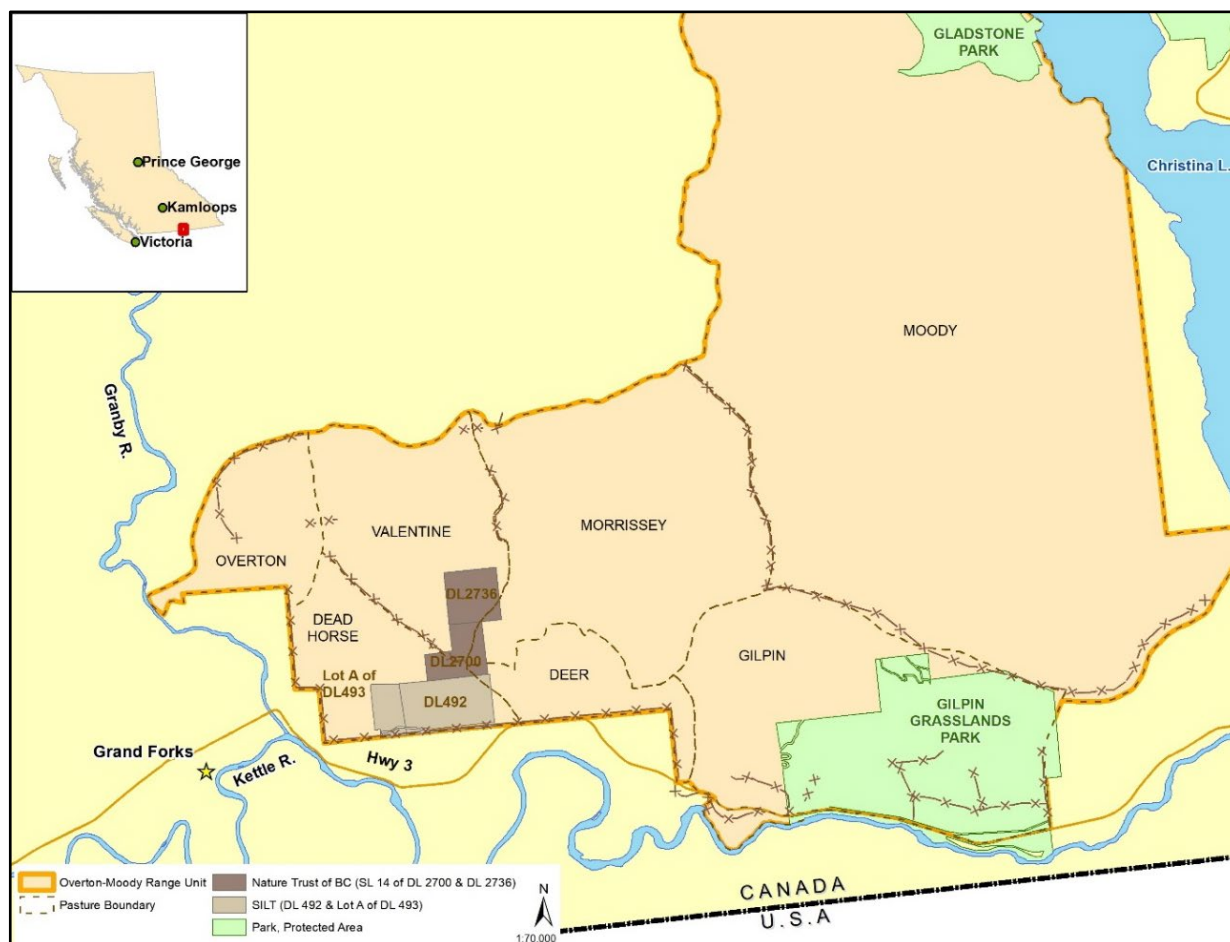


Figure 1. Map of the Overton-Moody range unit showing pasture boundaries and private lands held by SILT and the Nature Trust (under lease to the Province).

In 2021, SILT began monitoring the presence of livestock on its property, as well as SL 14 (Nature Trust property), which is part of the Deadhorse and Valentine pastures. Aided by remote cameras, SILT frequently monitored the presence of livestock and recorded its observations, including livestock brands belonging to each of the two range agreement holders. For example, between July 9 and November 1, 2023, SILT observed livestock on its property on 21 days.

SILT used the records to inform the range agreement holders and ministry district range staff that livestock were on its private property or were in the Deadhorse pasture beyond the period of use specified in the grazing schedules. SILT informed district range staff that the fence that divides the Deadhorse and Valentine pastures was not being maintained by the range

¹ The grazing licence held by Mehmal Ranch includes SL 14 and DL 2736 as Crown range, however, district range staff from the ministry said the parcels were inadvertently excluded from the grazing permit held by Amber and Keith Pomeroy. Range staff told the Board that it was their intention to allow Amber and Keith Pomeroy to graze livestock on the Nature Trust property.

agreement holders, which was contributing to livestock drifting between the two pastures and onto SILT's private land.

In 2022, SILT filed two complaints with CEB. According to SILT, it did not hear back from CEB on the outcome of their complaints.

In early 2023, SILT met twice with ministry district range staff, Mehmal Ranch, the Okanagan Nation Alliance, the Nature Trust, and staff from the Ministry of Water, Land and Resource Stewardship. The purpose of the meetings was to develop strategies—including fencing solutions—for managing livestock in and around the conservation lands and to clarify legal land access issues. After those meetings, district range staff decided to install an electric fence as an extension to the existing fence between the Deadhorse and Valentine pastures.

In early March of 2024, Mehmal Ranch surrendered its grazing licence. As well, the grazing permit held by Amber and Keith Pomeroy expired in December 2023. No livestock grazing is currently authorized on the Overton-Moody range unit.

Investigation Findings

Approach

With respect to Crown range, the Board has the authority to investigate compliance with FRPA and the appropriateness of government enforcement. The Board does not have authority to investigate concerns about livestock on private land.

The investigation considered these questions:

1. Did the range agreement holders comply with FRPA's requirements to follow the grazing schedules and to maintain range developments?
2. Was government enforcement appropriate?

Board investigators examined the planning and practices of both range agreement holders, interviewed participants to the complaint and reviewed documentation provided by the ministry and the complainant.

1. Did the range agreement holders comply with FRPA's requirements to follow grazing schedules and to maintain range developments?

In British Columbia, range authorization and planning on public land are governed by the *Range Act* and FRPA. Before grazing livestock, ranchers must obtain a *Range Act* agreement and prepare and submit to the ministry a range use plan that meets FRPA's content requirements.

Range Act agreement holders grazing livestock on Crown range must follow the approved range use plan and practice requirements described in FRPA and the *Range Planning and Practices Regulation* (RPPR).

Compliance with the Grazing Schedule

Section 45(1) of FRPA requires range agreement holders to follow their approved range use plans, which include the grazing schedule. For each pasture, the grazing schedule must specify the number and class of livestock and the period of use.

In 2021, SILT began monitoring the presence of livestock on its property, as well as SL 14, which is part of the Deadhorse and Valentine pastures. Using its knowledge of the grazing schedules, and aided by remote cameras installed on its property, SILT maintained records of its observations including livestock brands belonging to the two range agreement holders. SILT shared its records with the range agreement holders and ministry district range staff.

From 2021² through 2023, SILT recorded livestock grazing in the Deadhorse pasture beyond the period of use specified in the grazing schedule of the range use plan. In 2023, the grazing schedules permitted the range agreement holders to graze livestock in the Deadhorse pasture between May 7 and July 8, 2023. SILT observed livestock on SL 14 on 15 different days between July 9 and November 1, 2023.

On August 29, 2023, Board investigators undertook a field assessment over a portion of the Deadhorse and Valentine pastures adjacent to SILT's private property. Investigators did not observe livestock on the pastures. However, on that same day, SILT told investigators that one of its remote cameras detected livestock on its private property (DL 492).

Investigators did not independently observe livestock grazing out of rotation on the day that they visited the site. However, SILT collected geo-referenced photographic evidence of livestock grazing in Deadhorse pasture outside of the period specified in the grazing schedules of the range use plans. SILT provided this information to the ministry and the range agreement holders, and it is not in dispute.

Finding

In 2021, 2022 and 2023, Mehmaal Ranch did not follow the grazing schedule of its range use plan. In 2022 and 2023, Amber and Keith Pomeroy did not follow the grazing schedule of their range use plan. This is in non-compliance with section 45(1) of FRPA.

Compliance with the Requirement to Maintain Range Developments

Section 40(1) of the RPPR requires a range agreement holder to maintain range developments in an "effective operating condition". Range developments include fences, corrals and watering facilities used to manage livestock. Under RPPR section 40(2), the Minister of Forests (minister) may exempt an agreement holder from the requirement to maintain a range development for several reasons, including that it is not in the public interest to maintain the range development.

An old fence and a cattleguard divides the Deadhorse and Valentine pastures. Near the cattleguard, Board investigators observed gaps in the fence caused by slack or broken barbed wire. These gaps enable livestock to move through the fence and demonstrate that the fence has not been maintained by range agreement holders in an effective operating condition. SILT told

² In 2021, the livestock observed by SILT grazing beyond the period of use belonged to Mehmaal Ranch. Amber and Keith Pomeroy's livestock commenced grazing in 2022.

investigators that maintaining the fence could have helped to reduce livestock movement onto their private lands and between pastures on Crown range.

Ministry district range staff confirmed that the range agreement holders have not been maintaining the fence, primarily because the Nature Trust requested that the fence not be maintained. Range staff said it is unrealistic to expect ranchers to maintain a fence that is over 40 years old. District range staff also said there is no exemption in place from the requirement for the range agreement holders to maintain the fence.

Since the lands held by the Nature Trust are Crown range and are part of the range agreement area (see *Background* section of report), the requirements in section 40(1) to maintain a range development apply. The minister can exempt a range agreement holder from the requirement to maintain a range development on Crown range, however, an exemption has not been made.

Finding

Mehmal Ranch and Amber and Keith Pomeroy did not maintain the fence between the Deadhorse and Valentine pastures in an effective operating condition, and thus did not comply with section 40(1) of the RPPR.

2. Was government enforcement appropriate?

SILT said that it reported its concerns about livestock on its private land and on Crown range to ministry district range staff on numerous occasions and filed two complaints with CEB. SILT said that its concerns were not adequately addressed.

The purpose of enforcement is to promote compliance with legal requirements. Enforcement measures generally begin with monitoring and inspections. If problems are discovered, there are a series of options, escalating in severity, that are available to government to encourage compliance. These options include education and awareness, written instructions, warnings, compliance notice, stop-work orders, violation tickets, administrative penalties, prosecution, and licence cancellation, among others.

Government's strategy is to use the least punitive tool available to encourage compliance. The Board considers government enforcement to be appropriate if it is effective at achieving compliance. The investigation considered what efforts government made to ensure compliance. These included range inspections and the response to two formal complaints to CEB.

The ministry district range staff and CEB have roles in government's compliance and enforcement regime of livestock grazing on Crown range. Ministry district range staff monitor range activities in the field and communicate issues to range agreement holders. The ministry district manager has enforcement authority under FRPA and the *Range Act*. While CEB receives complaints through the Natural Resources Violation Reporting system, it often refers range-related complaints to ministry district range staff for advice or resolution. CEB does not conduct routine inspections but may undertake investigations and, when appropriate, take enforcement action.

Range Monitoring and Inspections

Inspections are an important part of the compliance and enforcement framework. Inspections must be frequent enough to detect problems should they occur. Between 2021 and 2023, ministry district range staff estimated they visited the Overton-Moody range unit two to three times per month during the grazing season, for a total of thirty to forty times over the three years. District range staff did not maintain records of the dates or observations made during the inspections, except when the inspections involved completing range health assessment forms. However, inspections involving the completion of these forms account for only a small portion of the number of inspections completed by range staff in the three-year period.

Range staff said that, on occasion, they observed that livestock were not in the correct pasture. When this was observed, staff said they contacted the agreement holders by phone or email and requested that they move their livestock to the correct pasture by a specified date. Range staff said that they did not conduct follow-up inspections to ensure that the agreement holders took corrective actions. Rather, compliance was assumed based on the range agreement holder's reports to range staff, which included the date and number of livestock moved.

CEB Complaint 1

On September 27, 2022, SILT complained to CEB that livestock belonging to the range agreement holders were on its private property, contrary to its expressed prohibition. In the complaint, SILT also said it suspected that the range agreement holders were not complying with the grazing schedule of their range use plans.

Soon after receiving SILT's complaint, CEB contacted district range staff, who then asked the range agreement holders to remove the livestock from the private land. District range staff told CEB and SILT that the agreement holders were actively managing their livestock but had been unable to locate and move all of them. District range staff communicated with the range agreement holders about moving their livestock but did not field-verify that the agreement holders were in compliance with their grazing schedules. CEB followed up with the complainant to clarify their complaint but did not communicate with them about how their complaint was dealt with.

CEB Complaint 2

On November 8, 2022, SILT complained to CEB that livestock continued to access its private property through October 2022. SILT also requested that CEB communicate with and respond to SILT. CEB subsequently responded to SILT, and SILT again reported that range agreement holders were not following the grazing schedule of their range use plans.

CEB again contacted district range staff who said that they had spoken to the range agreement holders. The agreement holders told district range staff that they frequently checked on their livestock to ensure they were not on SILT's property and were in the correct pasture on Crown range. District range staff did not verify that the livestock were grazing in the correct pasture and not on private property. Range staff said they have a trusting relationship with ranchers and, as a result, ranchers are generally willing to comply with directions given when asked to do so. CEB closed the file after hearing from district range staff that they had spoken to the range agreement holders.

CEB also informed SILT that, under the *Livestock Act*, it is the responsibility of the property owner to fence livestock out of their property unless the property is located within a pound district.³ CEB confirmed with the complainant that its property is located outside of a pound district. SILT disputes government's interpretation of the *Livestock Act*.⁴

Discussion

During the grazing season, ministry district range staff carried out monthly inspections of the Overton-Moody range unit. That frequency of inspections was sufficient to detect issues with compliance. When ministry district range staff observed a non-compliance, they followed-up with the agreement holders by phone or email and asked them to ensure that their livestock were moved to the correct pasture. However, district range staff did not verify that the livestock were moved to the correct pasture.

Both district range staff and SILT observed that range agreement holders did not always comply with the grazing schedules of their range use plans. Other than phone calls or emails with the range agreement holders, no additional enforcement measures were taken by government to achieve compliance. The lack of records, including dates of inspections, observations made and follow-up actions taken did not contribute to an effective compliance and enforcement regime.

CEB took steps to resolve SILT's complaint, including providing its interpretation of how the *Livestock Act* applies to livestock moving onto SILT's private land. CEB informed district range staff about SILT's complaint, including that livestock were observed on Crown range. However, CEB relied solely on district range staff to determine if the range agreement holders were in compliance. CEB should have followed-up with district range staff to ensure that compliance was being achieved.

In summary, between 2021 and 2023, district range staff inspected the Overton-Moody range unit; however, they did not keep records of all their inspections. When range staff observed that the range agreement holders were not complying with the grazing schedules of their range use plans, they phoned or emailed them to seek compliance. Despite the efforts to seek compliance, the range agreement holders continued to allow their livestock to graze out of rotation in accordance with the grazing schedules of the range use plans—a non-compliance with section 45(1) of FRPA. District range staff did not discuss further enforcement options with CEB, and CEB did not follow up to determine whether compliance was achieved.

Finding

Government enforcement was not appropriate because it was not effective in achieving compliance.

³ A pound district is a provincial designation on land where livestock are not permitted to roam freely.

⁴ The BC Forest Practices Board has authority to investigate matters related to FRPA and the *Wildfire Act*. It does not have the authority to investigate matters related to the *Livestock Act*.

Conclusions

In 2021, 2022 and 2023, Mehmam Ranch did not follow the grazing schedule of their range use plan. In 2022 and 2023, when they held a grazing permit, Amber and Keith Pomeroy did not follow the grazing schedule of their range use plan. This is a non-compliance with section 45(1) of FRPA. Further, Mehmam Ranch, Amber and Keith Pomeroy did not comply with the requirements of section 40(1) of the RPPR to maintain range developments in an effective operating condition.

Between 2021 and 2023, ministry district range staff conducted numerous inspections of the Overton-Moody range unit and occasionally found that the range agreement holders were not complying with the grazing schedules of their range use plans. Over the three-year period, no enforcement measures were taken to achieve compliance. Therefore, government enforcement was not appropriate because it was not effective in achieving compliance.



**Forest
Practices
Board**

PO Box 9905 Stn Prov Govt

Victoria, BC V8X 9R1 Canada

Tel. 250.213.4700 | Fax 250.213.4725 | Toll Free 1.800.994.5899

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