



CLOSING LETTER

FPB/IRC/83

File: 97250-20/020403

September 17, 2002

Dear Participants:

Re: Complaint Investigation 020403 / Quesnel Range

The purpose of this letter is to report the results of the Forest Practices Board's investigation into a complaint about cattle grazing on West Fraser Road, south of Quesnel.

The Complaint

On June 25, 2002, the Board received a complaint from a rancher who lives south of Quesnel. The complainant owns and leases land on both sides of West Fraser Road.

The complainant's neighbour (the licensee) holds a grazing permit for part of the West Fraser Road right-of-way, including the part that bisects the complainant's owned and leased property. Under the terms of the grazing permit, the licensee's cattle are permitted to graze in the road right-of-way for two weeks each spring. The complainant's fence separates his private property from the road right-of-way. According to the complainant, the licensee's bulls knock down the fence and breed with his cows.

The complainant contacted the Ministry of Forests, but the ministry told the complainant that it is his responsibility to fence the cattle out of his property. The complainant was not satisfied with that response, and he maintains that the ministry's enforcement efforts have been inappropriate because the ministry has not addressed his concerns. The complainant also doubts the legality of issuing a grazing permit for a right-of-way that bisects private property.

The complainant suggested that a cattle guard on the road would prevent the bulls from trespassing on his property.

The Investigation

The complaint involves three issues: the validity of the tenure, bulls knocking down the fence, and the appropriateness of government enforcement.

1. Validity of the tenure

The Forest Practices Code of British Columbia Act sets out the matters that the Board can investigate. Complaints about the validity of legal contracts between the government and a licensee, such as a grazing permit, are not within the jurisdiction of the Board to investigate.

However, the ministry suggests that the licensee's grazing permit is valid. Section 1 of the Land Act defines Crown land as land, whether or not covered by water, or an interest in land, vested in the government. This includes the West Fraser Road right of way. Section 1 of the Range Act defines Crown range in part as Crown land within the boundaries of a range district. The West Fraser Road is within the Cariboo range district.

The Motor Vehicle Act Regulations restrict the use by livestock on schedule 1 and 2 highways. The Coquihalla and the John Hart-Peace River highways are examples of schedule 1 and 2 highways respectively. The West Fraser Road is not a schedule 1 or 2 highway.

The ministry concludes that the grazing permit is valid because the West Fraser Road right-of-way is Crown range, and section 3 of the Range Act permits the district manager to enter into agreements granting rights to Crown range.

2. Bulls knocking down the fence

The Board also does not have jurisdiction to investigate this issue because it is not covered by the Forest Practices Code of British Columbia Act. However, the ministry suggested that section 3 of the Trespass Act indicates that the complainant is responsible for maintaining his fence if he wishes to keep out the bulls.

The complainant maintains that one cannot keep bulls away from cows when the cows are in heat. The ministry disagrees, maintaining that one can keep bulls away from cows with a stock-proof fence or with an electric wire, for example.

3. Appropriateness of government enforcement

The complainant first contacted the ministry with his concerns on May 27, 2002, and he followed-up with a letter on May 29, 2002. In addition to the issues of this complaint, the complainant advised the ministry that the licensee was not maintaining fences, gates and a cattle guard.

The ministry responded to the complainant's letter on June 3, 2002, and inspected the range that same day. The ministry discovered that there were in fact maintenance requirements. The ministry advised the licensee in writing on June 6, 2002, of the work that was required. The ministry conducted a follow-up inspection on July 3, 2002, and found that the work had been performed satisfactorily.

The purpose of government enforcement is to achieve compliance. It is apparent that the ministry was responsive to the complainant's concerns, and compliance was achieved in a short period of time. Government enforcement was appropriate.

Suggested Remedy

The complainant suggested that a strategically placed cattle guard would keep the bulls from trespassing on his property. The ministry does not consider that to be a viable solution because it is expensive, it will limit the licensee's spring range, and may set a precedent causing other ranchers to expect similar improvements.

Conclusion

The only issue of this complaint within the jurisdiction of the Board to investigate is the appropriateness of government enforcement. For the reasons stated above, I am of the opinion that government enforcement was appropriate.

The complainant remains frustrated by what he considers to be an unfair situation. He does not agree that it should be his responsibility to keep the licensee's cattle out of his property. However, the licensee's cattle use the spring range for two weeks per year. It should not be an insurmountable task to keep the licensee's bulls away from the complainant's cattle for that period. The ministry has some ideas and is willing to provide advice if asked.

The complainant has also recently suggested that the licensee is not completely complying with the grazing permit as the cattle return home this fall, as some gates are left open and others are closed. It would be appropriate for the complainant to contact the ministry with his concerns, as the ministry is responsible for enforcement.

This concludes the Board's involvement in this matter.

Yours sincerely,

W.N. Cafferata R.P.F.
Chair