



File: 97250-20/070791

March 5, 2008

Dear Participants:

Re: Report on Complaint - File 070791 / French Road Cattle

A resident of Kersley submitted a complaint to the Forest Practices Board on January 28, 2008. The complaint was that wind-thrown Crown timber and excessive undergrowth have damaged her fence and allowed cattle to trespass on her land. The construction of the Hill Lake Forest Service Road (Hill Lake FSR) has also removed natural range barriers and is contributing to the problem. Finally, the complainant asserts that trespassing cattle are not removed expeditiously from the private land. As a remedy, the complainant asks that the Ministry of Forests and Range construct and maintain a fence along the Hill Lake Forest Service Road.

The complainant asked the Board to clarify and help resolve these concerns. The following is my understanding of the situation, and documents the approach agreed upon by the Ministry of Forests and Range and the complainant.

Background

Crown land borders the complainant's private property on three sides. Range use permits have been issued for the parcels to the north, south and east respectively. The complainant manages this same Crown land under a woodlot licence.

Approximately ten years ago the Hill Lake Forest Service road (FSR) was built and since then the complainant has noticed an increase in cattle trespassing onto her property from the road right of way. The cattle come mainly from the south and east range units. The complainant identified the eastern and southern range units as the primary problem.

During the summer of 2007, cattle trespassed on to the complainant's property. She contacted the range user but was told that the cattle could not be removed expeditiously, so she did so herself. Based on that initial response, the complainant removed the cattle several times during 2007 rather than calling the rancher.

The complainant finds that maintaining her fence is difficult as wind-thrown timber and undergrowth damages it.

As a possible solution, the complainant offered to buy the narrow strip of Crown land between the private land and the Forest Hill FSR. It was her intent to build a new fence along the FSR at her expense. As well, she was going to include the new area as part of the private land portion of her woodlot, and manage the area for timber not agriculture. However, the application was denied on August 9, 2007, by the Ministry of Agriculture and Lands citing concerns with land use and environmental impacts.

The complainant wrote the Ministry of Forests and Range on August 7, 2007, requesting that they address the issue of the cattle trespass by maintaining the Crown side of the fence. The complainant subsequently contacted the Board with this complaint.

Discussion

In response to the complaint, the Ministry of Forests and Range called the complainant to discuss the issues.

The ministry noted that it would not fence the Hill Lake FSR. The responsibility for fencing between Crown Land and private land is the responsibility of a private land owner. Section 3 of the *Trespass Act* specifies that adjacent landowners in rural areas are jointly responsible for fences. However, section 3 also exempts the government from this responsibility.

Nevertheless, the ministry recognizes the legitimate concerns raised by the complainant and intends to address them through the range user and the complainant.

The ministry called the range user and discussed the concerns about cattle trespass. The ministry stressed the range user's responsibility under the range use plan which includes moving cattle as required. The range use plan requires the licensee to move cattle if the forage has been depleted. This could apply to the areas adjacent to the private land. As well, the range use plan outlines riding and salting as tools to ensure cattle are distributed on the range and there is a commitment to encourage them to use the less favourable portions of the range. These techniques could be used to move the cattle away from the complainant's private land.

The ministry also contacted the complainant, discussed the issues and agreed to jointly inspect the fence line this coming spring. This inspection will allow the complainant and ministry to discuss key areas of concern, and options for addressing those concerns.

At that time, several options will be discussed. The ministry noted that it would not pay for any clearing or timber removal but could permit the complainant to do so by use of permits or licences. For example, the ministry could issue a special use permit to the complainant to clear vegetation along the fence on Crown land. Such a permit would need to establish the width of such a clearing, what if any soil disturbance could occur and provide for slash pile and removal. Removal of trees that are not windfirm could be

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addressed through a cutting permit once the complainant has an approved woodlot licence plan. However, until the area is examined, it is premature to decide on what licences, permits or other authorizations would be necessary to manage the Crown timber and reduce potential for damage to the fence.

The complainant noted that, in the future, if there are problems with cattle trespass she plans to contact the range user and advise them to remove the cattle within a reasonable timeframe. The complainant also intends to inform the ministry Range Officer so that she is kept informed of any developing issues. Lastly, the complainant anticipates monitoring the fence to ensure its integrity.

Conclusion

Both the ministry and complainant have agreed to assess the fence line this spring to assess the potential for wind throw and excessive undergrowth on Crown land. This field trip and subsequent discussions will help identify the issues and options available to the ministry and the complainant. I consider that likelihood to be adequate to deal with this complaint.

If you have any remaining questions or concerns, please contact complaint analyst Richard Post at (250)542-6479.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Bruce Fraser". The signature is fluid and cursive, with the first name "Bruce" and last name "Fraser" clearly distinguishable.

Bruce Fraser, PhD
Chair