



**Forest
Practices
Board**

Aspen Logging – Grazing Conflict in the Dawson Creek TSA

Complaint Investigation 110982

FPB/IRC/184

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Investigation

In April 2011, a retired agrologist from Dawson Creek filed a complaint concerning the harvesting of mature aspen stands in the Peace River area. These stands provide good forage for cattle but, once logged, regenerate so thickly that cattle can no longer enter the area to forage.

The complainant stated that Louisiana Pacific Canada Ltd (LP) is not implementing recommended mitigation strategies contained in the Draft Guidelines for Timber and Range Mitigation.¹ As a result, the impact on many grazing tenures (including his own) in the South Peace area, and within LP's operating area, is greater than it should be.

Background

Since the 1950s there has been a history of livestock grazing in the Peace District with significant ranching and timber industry growth occurring in the 1960s and 1970s. There are currently over 230 range tenures in the district, with over 119 in the South Peace area around Dawson Creek.

In the early 1980s, LP constructed a mill in Dawson Creek to produce oriented strand board, an engineered wood product. The provincial government authorized the annual harvest of 348 000 cubic metres of deciduous timber from the Dawson Creek Timber Supply Area (TSA) to support the mill. Some wood for the mill comes from mature park-like aspen stands that also provide some of the best forage and grazing opportunities for cattle.

Aspen stands naturally regenerate by suckering² from live roots that remain after harvesting. However, within three to five years, regenerated aspen stands are so dense that they can become unusable for cattle grazing. Forage availability and grazing opportunities on areas harvested gradually starts to improve after 30 years of self-thinning.

Until the late 1990s, the range tenure holders and LP were able to coexist, even though grazing in the South Peace frequently occurred in mature aspen stands. A robust timber industry and an abundance of mature aspen stands, above what was required to meet forage needs authorized in existing forage licences, allowed the timber industry and the range tenures to meet their tenure objectives. Conflict between grazing and logging of mature aspen stands became apparent in the late 1990s, as the cumulative impacts of harvesting and other activities began to affect forage availability.

In 2004, the *Forest and Range Practices Act* (FRPA) was enacted, which effectively removed the forest district manager from adjudicating disagreements between forestry and grazing tenure holders. Resolution of conflicts between timber and grazing interests became the responsibility of the tenure holders. A method of resolving conflicts, with minimal government intervention was required.

¹ Timber and Range Impact Mitigation Committee (TRIMC), 2006. Timber and Range Impact Mitigation Initiative: Draft Guidelines for Timber and Range Mitigation, Peace Forest District. Version - January 11 2006.

² A new stem and [root system](#) grows from a root of a tree that has recently been harvested.

Carrying Capacity (CC)

The total amount of forage value, based on current grazing management regimes. It is used to determine AUM authorization.

Animal Unit Months (AUM)

The amount of forage required for one month by an average cow/calf pair.

Animal Unit Month Authorization

The livestock stocking rate set by government.

A Timber and Range Impact Mitigation Committee (TRIMC), composed of representatives from the range industry, timber industry, and government, was formed in the South Peace in February 2004. The key purpose of TRIMC was to assist timber and grazing operators achieve sustainable resource use and mitigate impacts. The committee did this by publishing non-legal Draft Guidelines for Timber and Range Mitigation (the Guidelines). The Guidelines set benchmarks for applying mitigation strategies to help offset the negative impacts of forest activities on range activities and vice versa. This was achieved through Timber and Range Action Plans (TRAP).

A TRAP encourages communication between range tenure holders and other licensees, and identifies issues and mitigation or best management practices that may be incorporated into operational plans for timber, range, and oil and gas.

Between 2006 and 2009, a range supply review³ (RSR) was conducted for each range tenure, which calculated the range carrying capacity based on the current range condition and range management. Range tenures were then categorized as green, yellow or red based on the amount of available forage compared to the number of animal unit months (AUM) authorized. Harvesting of mature aspen stands on:

- green range tenures would not impact on the ability of the range tenure to meet the AUMs authorized and would require fewer mitigation strategies.
- yellow range tenures is predicted to potentially impact the ability of the range tenure to meet the AUM's authorized and would require a greater number of mitigation strategies.
- red range tenures is predicted to impact the ability of the range tenure to meet the AUMs authorized and would require the greatest number of mitigation strategies.

The Guidelines assumed that the forest licensees would try to avoid red tenures and the government committed to issuing new range tenures only if the AUM authorized was at 60 percent of available forage. This would ensure that harvesting would not impact grazing objectives.

However, harvesting continues to occur in red tenures, which are typically closer to town, contain well-developed road networks, and have high timber and range values. Further, LP stopped implementing some recommended mitigation strategies that were effective but expensive, such as manual spacing and conversion of cut blocks to pasture, claiming that either there was no means to recover costs, or the strategy would conflict with its silviculture objectives.

³ A determination of the carrying capacity of the range tenure by the Range Agrologist, with the objective of being completed once every five years. The RSR is based on current conditions, rather than future projection, and thus accounts for upward and downward pressures on the range landbase. The RSR is conceptually similar to a timber supply review, although it is less formal and detailed, and applies over a much smaller landbase.

Discussion

The issue of aspen logging and grazing conflicts in the South Peace is unique in the province, although the issue of overlapping tenures is not. This is one of the few instances where timber harvesting can reduce grazing opportunities. Forestry and range are not the only land based resource users in the South Peace. Oil and gas tenures can also have an impact, often improving access and forage availability.

This issue primarily focuses around the roles and responsibilities that each party has in achieving a common goal of sustainable resource use. Planning of forestry and range activities is categorized into statutory obligations and non-statutory expectations. Statutory obligations are those obligations that are legally required to be carried out by the tenure holder. Non-statutory expectations are not specifically contained in, or directed by, legislation but they reflect both social and professional values. Many of those expectations are in the form of government policy, local agreements or professional codes of ethics. The Guidelines are non-statutory expectations.

FRPA is result-oriented, in that it provides the forest industry with flexibility on how to achieve desired results. Licensees do this by relying on advice from forest professionals, not government oversight, to achieve the desired results—commonly called professional reliance. There is an expectation under FRPA that the forest industry will be more innovative and efficient, and will work with other tenure holders to reasonably accommodate each other when conflicts arise.

A 2006⁴ discussion paper recognizes that FRPA relies on the integrity and experience of forest professionals to manage the forest resource. Due to their education, experience and Code of Ethics, forest professionals should be prescribing sound forest practices that address both statutory requirements and non-statutory expectations.⁵ Forest professionals recommend strategies to address non-statutory expectations, however, it is the licensee who makes the final decision on how non-statutory expectations will be addressed.

Therefore, within LP's operating area, the investigation considered:

- Are the statutory obligations being met?
- Is the intent of the Guidelines being met?

Statutory Obligations

Obligations that are legally required to be carried out by the tenure holder. They include obligations set in legislation and regulations, and those set out in land use plans.

Non-statutory Expectations

Are not specifically contained in, or directed by, legislation but they reflect both social values and professional values and include local area agreements with user groups.

⁴ *The Expectations That Affect The Management Of Public Forest and Range Lands In British Columbia: Looking Outside The Legislation*. A Discussion Paper prepared for the Ministry of Forests and Range and the Ministry of Environment by Roberta Reader (February 2006)

⁵ Guidance For Managing Non-statutory Expectations in Forest Practices
http://www.abcfp.ca/regulating_the_profession/documents/Non-Stat_Expectations.pdf

Are statutory obligations being met?

The main statutory obligations are those contained in the *Forest Act* (FA), *Range Act*, *Forest and Range Practices Act* (FRPA), *Government Actions Regulation* and land use objectives.

The use of Crown timber is regulated by the *Forest Act* and FRPA. The *Forest Act* grants the right, through licences and permits, to use Crown timber and requires setting of an Allowable Annual Cut⁶ (AAC) at least once every 10 years through a timber supply review (TSR). This process considers existing and future stand conditions, constraints on the land base, growth rates, current practices and other factors affecting access to the timber resource. No grazing objectives are contained in the licences or permits issued to forest licensees.

FRPA requires *Forest Act* agreement holders to prepare and submit a forest stewardship plan (FSP) before conducting forestry activities on Crown forest. The FSP outlines results or strategies to address objectives for soils, timber, wildlife, water, fisheries, biodiversity and cultural heritage resources. The results and strategies must not unduly reduce the supply of timber from British Columbia's forests.

The use of Crown range is regulated by the *Range Act* and FRPA. The *Range Act* grants the right, through licences and permits, to use Crown range for grazing cattle and for hay-cutting. The *Range Act* also provides government with authority to allocate the amount of forage, known as animal unit month (AUM), that livestock can consume within a given range tenure area. The Ministry of Forests, Lands and Natural Resource Operations (MFLNRO) district manager must decide whether forage will remain available to sustain the number of livestock units for the next 20 years before offering a replaceable grazing licence. However, there is no requirement for the ministry to complete a detailed forage inventory.

FRPA requires *Range Act* agreement holders to prepare and submit a range use plan (RUP) before grazing or hay-cutting on Crown range. The plan must outline the results or strategies to address objectives for soils, forage, water, fisheries, wildlife and biodiversity. The plan must include a grazing schedule that includes AUM objectives, but does not include a timber objective.

There is nothing to restrict activities of LP or the range tenure holder as long as LP meets the obligations in its FSP (which does not contain a grazing objective) and the range tenure holder meets the obligations in its RUP (which does not contain a timber objective).

Findings

- LP and the range tenure holders are meeting their statutory obligations. LP is working under an approved FSP, which includes measures to mitigate the effect of removing or rendering ineffective natural range barriers but does not contain a grazing objective. Range tenure holders are working under approved RUPs that do not contain a timber objective.
- Government periodically determines and adjusts tenure authorizations (AAC & AUMs).

⁶ The rate of timber harvesting determined for the area under section 8 of the *Forest Act*.

Is the intent of the Guidelines being met?

Timber and Range Action Plans (TRAP)

A TRAP is completed on yellow and red range tenures where harvesting may, or will, impact the ability of the range tenure holder to achieve the authorized AUMs. TRAPs are non-legal documents intended to be a collaborative effort between the range tenure holder and the forest licensee. They identify potential issues, along with mitigation strategies that may be incorporated into operational plans for timber and range. TRAPs are designed to be developed, agreed to and signed off by the range tenure holder and forest licensee.

The forest licensee leads the TRAP planning process. There are 119 range tenures in the South Peace; 65 are within LP's operating area and 55 are candidates for TRAPs. Range tenures vary in size from 48 hectares to 17 227 hectares, so the detail and level of communication and consultation will vary significantly from one TRAP to another. There are no formal standard best management practices that can be used in lieu of a formal TRAP to help streamline the process.

Between 2006 and 2011, 37 917 hectares (16 percent) of the 232 156 hectares of range tenures in the South Peace were logged under the TRAP planning process (Graph 1).

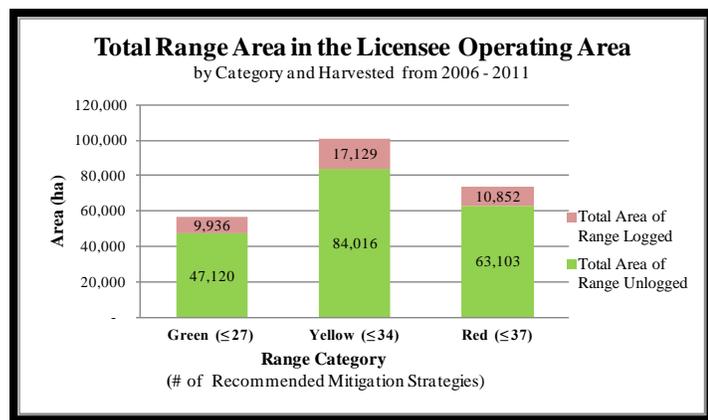
In 2009, government conducted an audit of TRAPs completed and implemented. A field review of a random selection of TRAPs found that, in general, they are being implemented as written, although there is no consistency in their format or the mitigation strategies they contain.

Currently, some range tenure holders have withdrawn from the TRAP process. They consider that by not implementing all the recommended mitigation strategies LP is not abiding by the spirit and intent of the Guidelines. On the other hand, LP considers that it is not obligated to implement activities that are not legally required and that it considers would be ineffective or result in additional costs that are not recoverable.

Role of Range Tenure Holder

The range tenure holder is responsible for preparing and implementing the RUP, which must address objectives identified by government. Range tenure management relies on the experience of the range tenure holder, with support from the government range agrologist, who helps with the review of RUPs and advises on how to deal with specific issues.

The range tenure holder also needs to identify specific concerns to LP. The Guidelines recommend ongoing communication between the range tenure holder and forest licensee, especially during the forest development planning stage. Some range tenure holders continue to provide comments and concerns to LP through ongoing communication, while others have walked away from the process.



Graph 1

Role of the Licensee and the Forest Professional

There is an increased level of reliance on forest professionals⁷ to plan, advise, carry out, take accountability for complex tasks and to achieve an appropriate balance between the interests of their employers and the public for both statutory obligations and non-statutory expectations. This does not mean that LP has to do everything that the range tenure would like, but there is an expectation that LP will address concerns brought forward by range tenure holders and will work in the spirit and intent of the Guidelines.

Role of Government

In British Columbia, over 94 percent of land is Crown owned and held in trust for the public. The provincial government is responsible for ensuring sound and sustainable stewardship over the environment and the forest and range resources on Crown land.

Up until 2004, the district manager of the Peace Forest District adjudicated disagreements between forestry and range tenure holders. When government enacted the *Forest and Range Practices Act* (FRPA) in 2004, resolution of conflicts between timber and grazing interests became the responsibility of the respective tenure holders.

Now when conflicts arise between resource uses, government believes its role is to facilitate communication and not to mediate a resolution. In an October 2010 letter, government told the Board that, "By design, government does not have a role in mediating conflicts between existing tenure holders about operational plans under FRPA."⁸ The letter goes on to say, "...at the local level, forest districts and other resource agencies take steps, as part of FSP administration, to facilitate relationship-building and information-sharing among licensees and other tenure holders."

Range agrologists support the implementation of RUPs and inspect range tenures. However, they do not have the capacity to oversee the implementation of every RUP and grazing schedule, or inspect every range tenure annually. They inspect about 20 percent of the range tenures each year, focusing on tenures with significant conflicts or where harvesting has impeded the ability of the range tenure to achieve the AUM's authorized. Range tenures are inspected on the ground within a five-year cycle.

Government is also responsible for maintaining an accurate land-based inventory. This allows government to re-calculate the AUM authorization periodically to reflect existing stand conditions, constraints on the land base, current practices and other factors affecting grazing opportunities. The district manager may amend the range tenure with adjustments to authorized AUMs.

Range agrologists used a manual ledger system to track harvesting and oil and gas activities, reconcile the impact of activities and mitigation strategies, and monitor the effectiveness of the guidelines. They are in the process of moving from a manual system to a computer mapping system. This will improve the efficiency and accuracy when conducting a RSR to estimate forage

⁷ Applying Professional Reliance Under FRPA

http://www.abcfp.ca/publications_forms/publications/documents/report_PR_Workgroup.pdf

⁸ October 25, 2010 letter to FPB from Ministry of Forests and Range, Ministry of Environment, Ministry of Agriculture and Lands and the Integrated Land Management Bureau.

availability. There are between 5 and 50 updates annually on each range tenure to reflect new and proposed disturbances from forestry and oil and gas licensees. According to the range agrologist, staffing shortages make it difficult to compile the updates in a timely manner. This has resulted in an outdated inventory and conducting RSR every 10 years, rather than the 5 years stated in the Guidelines. Government last completed RSRs in this area between 2006 and 2009.

Findings

- The intent of the Guidelines is generally being met, with the exception that LP continues to harvest in red range tenures without incorporating all the recommended mitigation strategies.
- Government does not resolve conflicts between tenure holders; this is now the responsibility of tenure holders.
- Government's role is to facilitate communication between the range tenure holders, LP and other land based resource users.
- Government is responsible for maintaining an accurate land based inventory. The current inventory is out of date and the impacts of land-based activities (forestry, range, oil and gas) are not tracked in a manner that facilitates accurate inventory updates and efficient analysis of the amount of available forage.

Conclusions

LP is not implementing all the recommended mitigation strategies contained in the Guidelines. As a result, there is a negative impact on forage availability in some of the range units in the South Peace area, including the complainant's. However, neither the range tenure holder nor LP has done anything that is in non-compliance with their legislated obligations. There is no legislated requirement for a tenure-holder to meet the objectives of an overlapping tenure and there is no guarantee that the tenure objectives (AAC or AUM's) can be met. Government periodically determines AACs and AUMs, which may cause them to increase or decrease.

Government issues overlapping tenures with potentially conflicting objectives and is no longer involved in adjudicating conflicts when they arise. This is now the responsibility of the tenure holders. Under FRPA, one tenure holder can make decisions that impact another tenure holder and there is no formal mechanism to resolve these conflicts. Unfortunately, there is often an imbalance of power with competing tenures. In this case, the forest licensee potentially has a greater impact on grazing than grazing has on timber. It is unreasonable to expect a fair and equitable resolution of conflicts in these situations without appropriate government involvement.

Although they are not legally binding, there is an expectation that the participants would follow the spirit and intent of the Guidelines. In general, LP is following the Guidelines. Unfortunately, economic factors have resulted in LP deviating from them in two main areas: first, LP continues to harvest in red range tenure areas and secondly, LP is not incorporating effective, but costly, mitigation strategies when harvesting in red areas. Together, these have resulted in loss of forage opportunities for range tenure holders. In contrast, the positive impacts of oil and gas development on forage availability is unknown.

Government is responsible for updating and maintaining inventory, and conducting analysis. The current inventory is out of date and currently not in a format that is readily available for analysis. An accurate inventory and use of current technology is needed to ensure carrying capacity is determined in an efficient and cost effective manner.

The Guidelines were developed in 2004 and may no longer reflect current operating conditions of the range or timber sectors. However, government has little authority to require LP and the range tenure holders to review and update the guidelines, or to implement them.

There is no evidence to suggest government has undertaken cumulative effect management⁹ nor are there clearly stated local objectives to guide combined use of timber and range resources, leaving tenure holders to resolve their own conflicts. Even if the tenure holders were to resolve their conflicts, the Board would still conclude that private interests are in the position of defining what is in the public interest.

⁹ In the context of this report, “cumulative effect management” is taken to mean managing the combined human footprint on public land values as well as the impact of one public land tenure holder on another.



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