



Forest Practices Board

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October 28, 2010

David Borth
Director, Range Branch
Ministry of Forests, Mines and Lands
441 Columbia St.
Kamloops, BC V2T 2C3

Dear David Borth:

The Forest Practices Board has taken the opportunity to review the Range Branch's discussion paper on Range Management and Water, dated May 2010. As you know, the Board has done a fair amount of work involving range practices under the *Forest and Range Practices Act*. Based on our experience and findings, we have put together some comments on the discussion paper for your consideration.

Over the years, the Board has received and investigated a number of complaints from people who draw consumptive or irrigation water from public lands where cattle are authorized to graze. Their concerns were related to the potential for grazing of cattle on Crown land in the area around their water intake to negatively affect water quality. The Board also examined the impacts of cattle grazing on riparian and upland areas in two major special investigations, and in 2009 published a major review of over 200 range plans prepared under the *Forest and Range Practices Act*. As well, Board audits have examined range activities for compliance with forest and range practices legislation.

To summarize our comments, there are legislative tools in place to help ensure drinking water quality is not compromised as a result of grazing cattle on Crown range lands. However, it is not clear that the tools are being effectively implemented. Range use plans are not clear about how water quality will be protected, range users may not be aware of the location of licensed waterworks, and there is limited monitoring or enforcement of legislative requirements by government. Effective measures to protect water (e.g., fencing, watering troughs, and range

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riders to manage cattle distribution) are beyond the financial capacity of many range tenure holders to implement. According to a Ministry of Agriculture and Lands publication,¹ in 2005 the average net income of a beef cattle farm in BC was just \$1060.

Specific Comments

p. 5, Why this discussion paper?

The statement that Victoria water is unsafe for pregnant women to drink is untrue. There are no current restrictions or advisories. It is true there was an outbreak of *Toxoplasma Gondii* in 1995, and that Victoria's water is currently treated, but the current wording is misleading and could cause unnecessary concern.

p. 9, Rules for Range Use

FRPA

While FRPA requires range plans to be consistent with government's general objectives for water (to improve or maintain water resources, improve or maintain riparian and upland areas, riparian vegetation providing shade, and desired plant communities), the Board's 2009 investigation of range planning under FRPA found that most range use plans do not show how the agreement holder will ensure their practices are consistent with these objectives.

More specifically, that investigation found:

- There is no requirement to identify water intakes in a range plan or on the associated map. It is possible that tenure holder may not be aware of, or attentive to, water intakes if the location is not clearly identified.
- Thirteen of the RUPs examined had a community watershed within their tenure, but only six identified the community watershed in the plan, and of those, four only identified it on the map, but did not speak to how activities would be managed within the community watershed.
- Although the RPPR enables the district manager to require these values to be identified in range plans, few have elected to do so. As a result, it remains uncertain whether agreement holders are aware of licensed waterworks or even community watersheds in their tenures.

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¹ Fast Stats, Agriculture, Aquaculture and Food, 2007, p. 25.
< http://www.cattlemen.bc.ca/docs/bc%20ag%20faststats_2007.pdf >

We also note that the discussion paper refers to various practice requirements in the RPPR, but does not mention the prohibition against depositing material harmful to human health in water diverted for human consumption by a licensed waterworks (section 33). It is a matter of debate whether or not cattle feces is harmful to human health. As you are aware, the Board is currently conducting an audit of forest and range practices and protection of water quality in the Oyama and Vernon Creek Community Watersheds, and this is something the Board is considering as part of the audit.

DWPA

The Board is concerned with a statement made on page 9 of the report regarding the potential for a prosecution under the *Drinking Water Protection Act*. The report says that "A person grazing livestock under a *Range Act* agreement and an approved range use plan or stewardship plan is exempt from the prohibition against introducing anything that is potentially a drinking water health hazard. Therefore a range agreement holder cannot be prosecuted under section 23 of the *Drinking Water Protection Act*."

The Board considers this statement to be in error because section 23(3)(b) of the *Act* does not support this interpretation. It states "The prohibitions in subsection (1) and (2) do not apply... if the introduction or activity is authorized or required under an enactment or the person is otherwise acting with lawful authority..." The Board's view is that, under section 23(3)(b), simply holding a *Range Act* agreement and an approved range use plan or stewardship plan does not exempt a person from being prosecuted for introducing anything that creates a drinking water health hazard. For the exemption to apply, the introduction of the offending material must be authorized or required by another enactment, or the person must be otherwise acting with lawful authority.

There is nothing in the *Range Practices and Planning Regulation* that specifically authorizes or requires a person to introduce material that creates a drinking water health hazard. In fact, section 33(1) prohibits the introduction of material that is harmful to human health. So, only if a person is otherwise acting with lawful authority does the exemption from prosecution apply. The Board considers "acting with lawful authority" to mean that a person must have a specific authority to introduce material that creates a drinking water health hazard, or an exemption from a requirement intended to protect water quality. Possible exemptions include sections 33(3), 34(4) and 39(2) of the *Range Planning and Practices Regulation*.

The Board is concerned that compliance with a *Range Act* agreement, an approved range use plan or stewardship plan, and with legislative requirements, may not be enough to prevent material from being introduced into water in contravention of the *Drinking Water Protection Act*. For this reason, the Board considers the proper interpretation of 23(3)(b) to be that a specific authority or exemption is needed to introduce material in contravention of sections 23(1) and 23(2) of the *Act* for the exemption from prosecution to apply. The severity of the prohibited harm suggests that this interpretation is what was intended by section 23 of the *Act*.

p. 13, How We Monitor

This section says the monitoring methods have been refined over time, and provides a link to the field guide and brochures, but does not say anything about how, when or where monitoring is actually done. In a 2002 audit of range practices,² the Board found that government was not inspecting range activities for compliance with legislation, even though there were domestic water intakes in the vicinity of the Crown range. Government's recent sharing of compliance and enforcement resources across resource ministries means water quality would have to be identified as a high priority for an area if any inspections or monitoring are to be resourced. As limited enforcement resources are reallocated to other government priorities, the Board is concerned that the monitoring of range practices will be further reduced. The Forest and Range Evaluation Program's strategic plan also proposes limiting monitoring of the forage resource to areas where water quality is a high risk, and then only if a district chooses to monitor it. There is little to no monitoring of how effective FRPA and current practices are at protecting drinking water from the potential impacts of range activities.

p. 15, Best Management Practices

The Board had the opportunity to visit the Kelowna Creek/Mill Creek Watershed in September and to hear about the best management practices from the various stakeholders involved in the watershed. While the testing of BMPs is commendable, the Board is concerned that most range tenure holders simply do not have the resources or the capacity to be able to engage in a similar level of active range management. The effectiveness of the best management practices may become evident once the ongoing audit of water protection is concluded. We look forward to further discussions with you as that work proceeds.

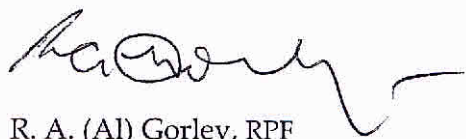
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² Forest Practices Board, *Compliance and Enforcement Audit and Special Report on Range Activity in the Horsefly Forest District*, FPB/ARC/47, July 2002.

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Thank-you for the opportunity to comment on the discussion paper. This is an important issue that is sure to get lots of attention as the modernization of the *Water Act* proceeds. Should you wish to have further discussions on the Board's interpretation of section 23 of the *Drinking Water Protection Act*, please contact Guy Brownlee, at 250-213-4712.

Yours sincerely,

A handwritten signature in black ink, appearing to read "R. A. Gorley", with a long horizontal flourish extending to the right.

R. A. (Al) Gorley, RPF
Chair

cc: Lynn Kriwoken, Director, Water Stewardship Division, Ministry of Environment