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File: 151-25/A Parks

December 8, 1997

To: Regional Managers
District Managers with Range Agreement Holders

From: Henry Benskin
Director
Forest Practices Branch



Re: Management of *Range Act* agreements in new parks

Enclosed is a jointly signed protocol agreement between BC Parks and the Ministry of Forests (MOF) concerning the management of *Range Act* agreements in newly created parks and Protected Areas. In summary, existing agreements at the time of park or protected area creation will continue and be managed according to the *Range Act* and *Forest Practices Code of British Columbia Act*. Cooperation between the two ministries on this management is encouraged.



A small work-group of MOF and BC Parks operational and headquarters staff have developed the protocol over the last two years. Drafts of the protocol were circulated to regions, districts and legal counsel for review. Comments and feedback were considered for the final version. The resultant protocol will assist MOF and BC Parks staff in understanding the role of each agency with *Range Act* agreement in new parks and facilitate inter-ministry cooperation in the following areas:

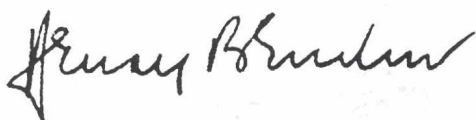
- preparation of range use plans
- sharing of park and range planning information
- compliance of range practices with the *Forest Practices Code of British Columbia Act*, and
- resolution of disagreements between MOF and BC Parks concerning administration and management of *Range Act* agreements.

One aspect of the protocol that is of particular significance to MOF operational staff is that only agreements in good standing (current or active) or in a vacancy process at the time of park creation are to continue in the new parks. Operational staff responsible for *Range Act* agreement renewal or replacement should be diligent to ensure tenures that are planned to be renewed, replaced, or advertised as a vacancy, are processed accordingly at the time of park creation. Clearly and completely identifying affected agreements including their authorized levels of forage use during the planning phases for the new parks is strongly recommended. This diligence will help to ensure that levels of authorized livestock forage use for the new parks are

maintained subject to changes from higher level plans, park management plan objectives or, park management direction statements.

This protocol complements the three ministry Memorandum of Understanding on the joint administration of the *Forest Practices Code of British Columbia Act* and is scheduled to be reviewed yearly and updated as necessary.

Additional copies or other information on this protocol can be obtained from Range Section of Forest Practices Branch.



Henry Benskin
Director
Forest Practices Branch

Enclosure: Protocol Agreement

cc: Larry Pedersen
Chief Forester

Janna Kumi
Assistant Deputy Minister
Operations Division



**Protocol Agreement between Ministry of
Forests and Ministry of Environment,
Lands and Parks - BC Parks, Regarding
Administration and Management of
Range Act Agreements in Provincial
Parks and Protected Areas**

September 1997

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Introduction

Many of the Class A provincial parks listed in Schedule D of the *Park Act* and many Protected Areas (defined below) are subject to *Range Act* Agreements (defined below). With respect to the provincial parks that are subject to *Range Act* Agreements, section 3 of the *Park Amendment Act, 1997*, provides that the *Range Act* Agreements will continue to be administered and managed in accordance with the *Range Act* and the *Forest Practices Code of British Columbia Act*. *Orders in Council* establishing Protected Areas may also allow the administration and management of *Range Act* Agreements to continue under the *Range Act*. Accordingly section 3 of the *Park Amendment Act, 1997*, and *Orders in Council* establishing Protected Areas permit *Range Act* Agreements to be transferred, renewed, replaced, suspended, cancelled, amended, consolidated, partitioned and subdivided in accordance with the *Range Act* and the *Forest Practices Code of British Columbia Act*. Apart from the *Range Act* Agreements, the Minister of Environment, Lands and Parks has jurisdiction over all matters concerning the provincial parks and Protected Areas that are subject to *Range Act* Agreements.

Definitions

In this protocol,

"Administration" includes the issuance, transfer, renewal, (replacement?), inspection, and enforcement of *Range Act* Agreements;

"BC Parks" means the Parks Department, Ministry of Environment, Lands and Parks;

"D.M. MOF" means the person holding the position of a district manager of the Ministry of Forests;

"D.M. BC PARKS" means the person holding the position of a district manager of BC Parks;

"FPC of BC Act" means the *Forest Practices Code of British Columbia Act*;

"Inspection" means a regular formal or informal process of officially examining performance at any point in time to determine achievement of compliance with required standards or obligations;

"Investigation" means the process undertaken to verify or substantiate a suspected violation;

"MOF" means the Ministry of Forests;

"Monitoring" means an ongoing and recurring examination of processes to ensure they are being performed, are functioning as intended, and are achieving the desired results;

"Official (or Designated Official)" means: a) a designated forest official; b) a designated environment official; c) a designated energy, mines and petroleum resources official as designated under the *Forest Practices Code of British Columbia Act*;

"Peer Review Committee" means 2 or more D.M. MOF or equivalents as selected by the requiring D.M. MOF. Equivalents could include representatives from other ministries ;

"Principal ministries" means Ministry of Environment, Lands and Parks(BC Parks) and the MOF;

"Protected Areas" means those Protected Areas with *Range Act* Agreements, established by Order in Council that contain wording similar to that of section 3 of the *Park Amendment Act, 1997*;

"Range Act Agreements or Agreements" means all grazing and hay-cutting licenses and permits issued under the *Range Act* which are contemplated by section 3 of the *Park Amendment Act, 1997*, and the Orders In Council establishing each Protected Area that contains *Range Act* Agreement(s);

"Range Act Agreement areas or Agreement Areas" means the area of park or Protected Area covered by a *Range Act* Agreement as used in this Protocol;

"Range development" is as defined in the *FPC of BC Act*;

"Range use plan" means a range use plan referred to in the *FPC of BC Act* and includes all amendments to it;

"Resource Monitoring" means the process of collecting and evaluating vegetation and site information to determine if management objectives are being attained;

"Senior Official" means a District or Regional Forest Manager(D.M. MOF or R.M. MOF) or a designated senior person from the MOF or BC-Parks designated by the respective minister to carry out provisions of the *Range Act* or *FPC of BC Act*;

"Vacancy" means forage on Crown land referred to in section 10(2) of the *Range Act*;

Purpose

The purpose of this Protocol is to assist staff of MOF and BC Parks in understanding the role of each agency in the *Range Act* Agreement Areas and to facilitate inter-ministry cooperation in the following areas:

- preparation of range use plans
- sharing of park and range planning information
- compliance of range practices with the *FPC of BC Act*, and
- resolution of disagreements between MOF and BC Parks concerning administration and management of *Range Act* Agreements

This Protocol addresses the application of the *Range Act* , the *FPC of BC Act*, the *Park Act*, the *Park Amendment Act, 1997*, and the *Orders In Council* creating new parks that contain *Range Act* Agreements, in the *Range Act* Agreement Areas. It also compliments the Memorandum Of Understanding among the Ministry of Forests, Ministry of Energy Mines and Petroleum Resources(now Ministry of Employment and Investment, Energy, and Mineral Division) and Ministry of Environment, Lands and Parks

regarding the joint administration of the *FPC of BC Act* (to be referred to as the joint MOU)

In the case of a conflict between anything set out in this protocol and any provisions of the above mentioned statutes and the regulations made under those statutes, the statute or regulation will govern. Nothing in this protocol should be construed to fetter the discretion of a statutory decision maker.

Planning

An approved range use plan is required for all *Range Act* Agreements. Normally, an Agreement holder will be responsible for plan preparation. For the purposes of this Protocol, the following three steps form the range use plan preparation process:

Development

Local staff from BC Parks and MOF are encouraged to discuss issues and concerns with respect to the Agreements with the preparer prior to plan development or amendment, as part of their ongoing planning processes. Where the D.M. MOF is responsible for developing a range use plan, normally MOF staff will develop the plan in consultation with BC Parks staff. Occasionally, staff from both ministries may work together on its development. To meet management objectives of BC Parks, a range use plan for these Agreement Areas may require more detail than other range use plans.

Referral

Range use plans and park management plans that apply to Agreement Areas will be referred or sent to the notice of the other ministry. Range use plans developed for areas adjacent to parks will be referred or sent to the notice of BC Parks district staff for consideration in their park planning process.

The goal for completion of referrals is 60 days or less. This includes requesting and responding to comments. Where referral comments are submitted, an acknowledgment of receipt and action if any will be returned to the approving ministry. There will be an opportunity for extensions should the need arise, such as coordinating required field reviews. All requests for extensions must be in writing to the approving official fully outlining the reasons for the request and be received well in advance of the expiration of the referral period. Referral comments must accompany the plan and may be included as an appendix to the range use plan.

The disagreement resolution process detailed at the end of this protocol can be used where professional differences of opinion arise or it is expected professional differences of opinion will arise during the referral process.

Approval

Requirements for approval of range use plans are mandated by statute and must be undertaken as identified in the joint MOU. For interagency disagreements that prevent the approval process from being completed within the set time frame, the decision maker should refer to the disagreement resolution process, detailed in this document, to provide recommendations for a solution.

Administration and Management

General

As mentioned above, the administration and management of *Range Act* Agreements within the scope of this Protocol continues under the *Range Act*. The management of range practices will be in accordance with the *FPC of BC Act*, its regulations, standards and guidelines. The following addresses specific topics of concerns to MOF and BC Parks in the administration and management of Agreements.

Continuation of *Range Act* Agreement rights

These rights are those for Agreements in existence on the date applicable legislation and orders identifying parks and Protected Areas came into force. These rights will continue unless modified as allowed in this legislation. MOF and BC Parks district staff will document these rights including the number of animal unit months authorized.

Transfer, renewal, replacement, suspension, cancellation, consolidation, partitionment, and subdivision of *Range Act* Agreements

These actions will be as allowed in the *Range Act* except that no consolidation with Agreements outside subject park may occur without prior referral to BC Parks.

Amendment to Agreement

Amendments will be as allowed in the *Range Act* subject to authorized use

Authorized use

No increase in total number of animal unit months authorized under all *Range Act* Agreements in a specific park area is contemplated in this Protocol.

Vacancy

Vacancies may occur and are subject to the procedures for section 10(2) of the *Range Act*.

Range Act Agreements with guide outfitters and packers

These Agreements are intended to continue if active and in good standing. If the Minister of Environment, Lands and Parks determines a Park Use Permit can be issued, then these Agreements may be converted to Park Use Permits with the agreement of BC Parks, MOF and the Agreement holder. These Agreements must be consistent with any park management plan or management direction statement.

BC Parks will control and monitor livestock grazing not covered by ~~Agreements according to applicable park management plans or~~ management direction statement and policy.

Range practices such as seeding, grazing schedules, structures and other developments

Range practices are to be as approved in applicable range use plans consistent with applicable higher level plan objectives and park management plan or management direction statement.

Weed control

MOF is responsible for the control of weeds resulting from range use activities in Agreement Areas. Otherwise BC Parks is responsible for weed control. MOF and BC Parks staff at the local level are encouraged to work cooperatively to determine appropriate weed control where weeds can not be determined to be the result of range use activities.

Range development standards

The Agreement holder will be responsible for construction and maintenance costs to MOF standards unless specified otherwise in the applicable range use plan. Where no standards exist, the two ministries will review current practices and make a decision on standards to be met. Where standards of developments different from than on adjacent Crown range are required to meet BC Parks objectives, related issues such as construction and maintenance costs will be settled prior to approval.

Cabins

A Park Use Permit under the *Park Act* will be considered as replacement authorization for cabins, used for range management purposes, that are authorized by Special Use Permits under the *Forest Act* or other authorization. These cabins will be identified in the applicable range use plan.

Water diversions

A Park Use Permit and a Water License under the *Water Act* are required for taking or diverting water for range management purposes. Other water developments such as dug-outs and wells require a Park Use Permit. These diversions will be identified in the applicable range use plan.

Trespass

MOF will carry out required enforcement action on **Agreement Areas** according to *FPC of BC Act* and associated legislation, policy and procedures

BC Parks will determine appropriate actions for trespass, including any livestock trespass, on park land outside the **Agreement Areas**. BC Parks and MOF are encouraged to work cooperatively on enforcement actions and recovery of associated costs for trespass on park land from any **Agreement area**.

Resource Monitoring

BC Parks has the responsibility for monitoring all resources within British Columbia's provincial parks. BC Parks may conduct resource monitoring activities within *Range Act Agreement Areas*.

MOF will ensure **Agreements** are in compliance with resource monitoring objectives of pertinent approved range use plans. Monitoring information will be shared and available for consideration in the development of these range use plans.

Communication

Range use plans for these *Range Act Agreement Areas* will be referred to BC Parks.

Staff at the local level of both ministries will communicate on and discuss issues of concern regarding the administration and management of **Agreements** whenever possible. Meetings at the local level may be required to confirm standards and the number of animal unit months authorized for the **Agreements**. Sharing of activity plans for the **Agreement Areas** will help staff from both ministries with scheduling of regular and as needed interagency meetings to discuss implementation and other issues related to this Protocol.

Reporting

The two ministries will cooperate in the use of information systems such as those for monitoring and enforcement and will provide reports from these systems for the **Agreement Areas** as requested.

Compliance and Enforcement

MOF will have primary responsibility for compliance and enforcement activities on *Range Act Agreement Areas*. These activities will be carried out in a coordinated fashion according to rules and procedures that are applicable outside designated parks. MOF will conduct inspections for compliance with the terms and conditions of the **Agreement** and the *Range Act* as well as for range practices compliance with the *FPC of BC Act*.

BC Parks will report potential non-compliance information to MOF.

Inspection and Monitoring

Process As a means of coordinating field inspection activities, district/local officials from the two ministries will meet periodically to:

- review the MOF district inspection plans;
- share copies of range use plans and park management plans that relate to **Agreements** as required; and

discuss other matters as necessary for the effective coordination of the two ministries' inspection and monitoring efforts.

MOF staff will conduct field inspections of the **Agreement Areas** in accordance with their inspection plans, policies and procedures.

Inspection and monitoring results will be communicated to the other ministry.

Reporting on Incidents of Noncompliance

Staff of the ministries who, in the course of their duties, observe cases of potential noncompliance with the *Range Act*, *FPC of BC Act* or other legislation will report these cases to the other ministry within two working days. MOF staff will ensure procedures are followed for the incident in the **Enforcement Action, Administrative Review and Appeals(ERA)** system. When appropriate, MOF will provide BC Parks district or local management with periodic or as needed reports. The two ministries will work on using this or a similar or joined system for incident reporting.

All activities within the scope of this Protocol which have resulted in or could imminently result in serious environmental damage will be reported to the appropriate BC Parks office within eight hours or within a reasonable time frame. Such cases would not be limited to Agreement Areas. Also, while this Protocol deals primarily with the *Range Act* and *FPC of BC Act*, it is assumed that MOF staff will notify BC Parks of any known or suspected violation of the *Park Act*.

Initial Response to Noncompliance

Incidents of suspected noncompliance will be documented by inspection staff according to established procedures.

Inspectors will, upon detection of serious environmental damage during an inspection:

- collect all possible evidence;
- take appropriate enforcement action; and
- report to the appropriate enforcement agency.

In cases of serious environmental damage affecting the mandates of other ministries or agencies outside this Protocol, the ministry detecting the damage will be the lead agency in all referral and coordination efforts.

Enforcement

Joint Consultation Regarding Enforcement Remedies

In all cases of noncompliance with the potential for serious environmental damage involving both Ministries mandates, there will be full, joint consultation between district management BC Parks and MOF to ensure the most effective and appropriate remedy is imposed or action taken. Failure to reach agreement on this matter will be resolved in accordance with the disagreement resolution process.

While the disagreement resolution is in progress, the ministry(ies) investigating a noncompliance will continue to conduct the investigation according to policies and procedures.

Remediation Orders (Section 118, FPC of BC Act)

A remediation order is issued by a Senior Official, and should be the result of a joint consultation between the MOF and BC Parks regarding remediation options. Remediation operations should avoid destroying evidence and making errors that might impede subsequent prosecution.

Though MOF will be the principal ministry for issuing these orders, in cases of imminent environmental damage it may be necessary for either ministry to invoke remediation orders without consultation. In such cases, the other ministry should be notified immediately or, if that is not possible, within eight hours or within a reasonable time frame. The Agreement holder responsible for a noncompliance will be required to follow the terms of the Order that may include a remediation plan. Where environmental damage has or is likely to occur outside of **Agreement Areas** but within a park as a result of an activity under the **Agreement**, BC Parks will take appropriate action and advise MOF.

Development of Policy and Procedures (Section 117-FPC of BC Act)

Minister's policies respecting penalties and remediation orders applicable to these **Agreement Areas** will be referred to BC Parks (under Section 122 of the *FPC of BC Act*).

Stop Work Orders (Section 123, FPC of BC Act)

Designated Officials from either MOF or BC Parks may issue stop work orders in accordance with Section 123 of the *FPC of BC Act*. However normally BC Parks Designated Officials will limit stop work orders to appropriate cases of serious environmental damage only. Immediately following the application of a stop work order, the official will report the action and provide documentation to the other ministry. Where this is not possible, the action will be reported within eight hours or within a reasonable time frame. Other statutory requirements of notification will be conducted as required. Appropriate incident tracking systems will be used.

Range Act

The MOF will be responsible for the application of all remedies available under the *Range Act* including suspension and cancellation of permits/licenses.

Resources and Logistics

Staff from both ministries will coordinate activities with respect to enforcement on these **Agreement Areas** and will share in the use of equipment where possible.

Disagreement Resolution

Introduction

Local parties are expected to work out the majority of local disagreements among themselves using the normal supervisory channels of decision making.

The intent of this disagreement resolution process is to resolve issues of major policy and technical concern and or to help resolve or provide third party perspective on major disagreements between MOF and BC Parks on matters relating to the administration and management of *Range Act Agreements*. The ministries will seek to avoid the need for disagreement resolution through ongoing local consultation on issues prior to decisions being taken.

When a determination/decision is made in a disagreement, it will be reported back to the initial line managers who initiated the disagreement resolution process. Normally, a disagreement should be resolved before either ministry takes action under appropriate legislation on the issue in dispute.

Process for Disagreement on Referral

In cases where disagreement between field staff occur on an issue of importance during the referral process, but prior to making recommendations to a D.M. MOF for a determination, the disagreement and opinions for resolution will be taken to the respective supervisors for resolution.

Where a resolution is agreed upon, the supervisors shall direct their staff accordingly.

Where a resolution can not be arrived at, the supervisors shall collaborate to prepare an informational briefing note on the issue for the attention of the D.M. MOF, setting out the options for consideration. This process for resolution of issues of importance shall take place within the agreed upon time period of completion of referrals unless extended by mutual agreement.

The D.M. MOF shall expeditiously communicate the decision and rationale in writing, to BC Parks.

Process for Disagreement on Decisions

Where the D.M. MOF advises the D.M. BC Parks of a pending decision and where the D.M. BC Parks disagrees with this decision, the D.M. MOF may refer to a **peer review committee** for recommendations.

The **peer review committee** would be expected to consult with whatever levels of authority and subject matter knowledge considered appropriate or necessary in preparing its recommendations

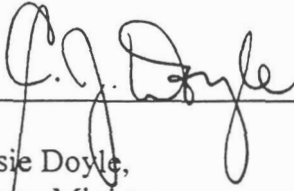
Recommendations from this committee will go back to the D.M. MOF. No decision regarding the matter in disagreement will be made by the D.M. MOF until the review committee has presented its recommendations.

Review and Amendment Process

This Protocol will be reviewed initially six months after coming into effect. Subsequent review will be annual and as required by joint agreement between the two principal ministries. Amendments will require joint approval from both MOF and BC Parks. Amendments may also be made at other times when situations arise that indicate a need, such as when the joint MOU is amended. Consideration should be made at this time for incorporation of this Protocol into the joint MOU.

Signatories to this Protocol Agreement

We the undersigned support and endorse the contents of this Protocol Agreement:



Cassie Doyle,
Deputy Minister,
Ministry of Environment, Lands and Parks



John Allan,
Deputy Minister
Ministry of Forests