

Our file: 2017-03-06

June 12, 2018

Carol Bellringer  
Auditor General of British Columbia  
623 Fort Street  
Victoria, BC V8W 1G1

Dear Ms. Bellringer:

**RE: Request for an audit and examination of cattle grazing leases on Crown land, and related issues**

On behalf of the BC Wildlife Federation,<sup>1</sup> we hereby request that you undertake an examination of the continued existence of cattle grazing leases; the government of British Columbia's practice of re-issuing cattle grazing leases under the *Land Act*,<sup>2</sup> and related issues with *Range Act* grazing tenures.<sup>3</sup>

We urge you to undertake this examination pursuant to:

- Section 11 (8) of the *Auditor General Act (AGA)*,<sup>4</sup> which authorizes you to assess and report on whether government is operating economically, efficiently, and effectively;
- Section 13 of the *AGA*, under your authority to conduct an examination respecting government, if it is in the public interest to do so; and
- Section 12 of the *AGA*, which grants you the broad general power to report to government, as you deem fit.

## Introduction

Rangelands with vegetation suitable for grazing and browsing by livestock and wildlife are located throughout most of British Columbia.<sup>5</sup> The BC government seeks to manage rangelands sustainability to "ensure a healthy, lasting resource for the ranching industry, guide outfitters,

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<sup>1</sup> The BC Wildlife Federation is BC's largest and oldest conservation organization, with over 50,000 members across the province. BC Wildlife Federation, "Mission", online: <[bcwf.net/index.php/about](http://bcwf.net/index.php/about)>.

<sup>2</sup> *Land Act*, RSBC 1996, c 245.

<sup>3</sup> *Range Act*, SBC 2004, c 71.

<sup>4</sup> *Auditor General Act*, SBC 2003, c 2 [AGA].

<sup>5</sup> Rangelands are lands that are managed as a natural ecosystem and support vegetation that is suitable for grazing and browsing by livestock and wildlife. See British Columbia, "Rangelands", online: <<https://www2.gov.bc.ca/gov/content/industry/natural-resource-use/land-use/rangelands>> [BC, "Rangelands"].

First Nations, government and non-government agencies, wildlife, recreationalists and the general public.”<sup>6</sup>

However, when government authorizes ranchers to use Crown land for livestock with a grazing lease (or other tenure),<sup>7</sup> it often does so to the detriment of these other user groups. The BC government’s grant of grazing tenures can lead to soil erosion, stream contamination, harm to fish and biodiversity, damage to riparian and grassland ecosystems, and other environmental damage – seriously undermining wildlife and other rangeland uses. In addition, grazing leases in particular diminish the public right to access Crown lands, by giving leaseholders the right to bar the public from the land.

Furthermore, it appears that BC’s current grazing tenure regime may not meet government’s overarching pricing goal for any use of Crown land: “a fair return for the use... based on market value for land... to ensure that the public benefits.”<sup>8</sup> Instead, government appears to be subsidizing the grazing industry by charging low annual rates and substantially funding range infrastructure such as fencing. Furthermore, other unnecessary costs may be incurred because government maintains separate grazing tenure frameworks for both grandfathered grazing leases and modern grazing licences and permits.

As demonstrated below, government’s administration of grazing leases appears to contravene BC’s Crown Land Allocation Principles – the principles which apply to all *Land Act* decisions about the use of Crown land.<sup>9</sup> The first Principle is that “Crown land values are managed for the benefit of the public”. However, renewing leases that allow leaseholders to bar the public from accessing Crown land as part of an environmentally damaging and economically inefficient regime may contravene this principle. As part of the second Principle, the policy states that “Crown land allocation should maintain or create a high quality natural environment.” However, grazing leases facilitate operations that frequently harm the environment. Furthermore, the fifth Principle states that “public accountability is maintained during the allocation of Crown land” by “ensuring that the public receives value for the use of Crown land”, but the public is not likely receiving good value for this type of land use.

We urge you to investigate whether the BC government’s current approach to grazing tenures – and particularly grazing leases – constitutes a failure to properly steward public resources of great importance to British Columbians, and a failure to operate “economically, efficiently, and

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<sup>6</sup> British Columbia, “Land Use – Grazing”, online: <<https://www2.gov.bc.ca/gov/content/industry/natural-resource-use/land-use/crown-land/crown-land-uses/agriculture/grazing>> [BC, “Land Use”].

<sup>7</sup> Grazing leases are issued under the *Land Act*, *supra* note 2. Many similar issues arise under grazing licences and permits issued under the *Range Act*, *supra* note 3.

<sup>8</sup> See British Columbia, Ministry of Forests, Lands and Natural Resource Operations, “Land Policy – Pricing” (26 May 2011) at 2, online: <<https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/pricing.pdf>> [FLNRO, “Pricing”].

<sup>9</sup> British Columbia, Ministry of Forests, Lands and Natural Resource Operations, “Crown Land Allocation Principles” (26 May 2011), online: <[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/allocation\\_principles.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/allocation_principles.pdf)>.

effectively” as per s.11(8) of the *Auditor General Act*.<sup>10</sup> An examination is necessary to determine if the public interest is served by government’s current legislative, regulatory, and administrative approach to grazing tenures – and, if not, how the situation may be rectified.

The argument for why you should investigate this matter is presented below as follows:

1. An Overview of BC Grazing Tenures: Leases, Licences, and Permits
2. The Current Regime Harms the Environment, Impedes Public Access, and Imposes Unnecessary Costs on Taxpayers
3. Key Questions to Consider
4. The Auditor General’s Legal Authority to Investigate
5. Conclusion

### 1. An Overview of BC Grazing Tenures: Leases, Licences, and Permits

BC ranchers may hold a grazing lease, or a grazing licence or permit, which authorizes them to graze their cattle on Crown land. Range Branch staff within the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD, formerly the Ministry of Forests, Lands and Natural Resource Operations) are responsible for administering these grazing tenures in districts throughout the province.<sup>11</sup> Although grazing leases are the primary focus of this submission, grazing licences and permits are also discussed to provide comparative context and highlight additional issues you may wish to examine.

In 2004, the Grasslands Conservation Council of British Columbia studied the types of grazing tenures found on provincial Crown land in the province’s critically important grassland regions.<sup>12</sup> Overall, 77.1% of BC’s provincial Crown grasslands were under a grazing licence or permit, while 11.2% were under a grazing lease.<sup>13</sup> Their detailed findings for BC’s six main grassland regions<sup>14</sup> are summarized in Table 1, below:

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<sup>10</sup> AGA, *supra* note 4.

<sup>11</sup> British Columbia, Ministry of Forests, Lands and Natural Resource Operations, “Legislation & Policies”, online: <<https://www.for.gov.bc.ca/hra/Legislation/index.htm>> [FLNRO, “Legislation & Policies”].

<sup>12</sup> Grasslands Conservation Council of British Columbia, *BC Grasslands Mapping Project: A Conservation Risk Assessment* (May 2004), online: <[trench-er.com/public/library/files/bc-grasslands-mapping.pdf](http://trench-er.com/public/library/files/bc-grasslands-mapping.pdf)> [Grasslands CC]. Note that rangelands are not limited to grasslands, but can also include forest and alpine environments. See BC, “Rangelands”, *supra* note 5.

<sup>13</sup> Grasslands CC, *supra* note 12 at 74.

<sup>14</sup> The report did not provide lease, license and permit data for the Muskwa Foothills-Liard Highland, Bulkley Basin, and East Vancouver Island-Gulf Islands regions.

| Region                   | Percentage of Provincial Crown grasslands under a grazing lease | Corresponding area in hectares | Percentage of Provincial Crown grasslands under a grazing licence or permit | Corresponding area in hectares |
|--------------------------|---|--------------------------------|---|--------------------------------|
| East Kootenay Trench     | 0.4   | 103                            | 88  | 22,725                         |
| Okanagan                 | 1   | 352                            | 82.3  | 30,356                         |
| Thompson-Pavilion        | 28.2  | 20,241                         | 60.6  | 43,573                         |
| Southern Thompson Upland | 8.5   | 2,405                          | 84.8  | 23,915                         |
| Cariboo-Chilcotin        | 9   | 11,155                         | 85.4  | 106,001                        |
| Peace                    | 3.7   | 686                            | 47.3  | 8,772                          |
| <b>Total:</b>            |   | <b>34,942</b>                  |   | <b>235,342</b>                 |

*Table 1: Percentage and area of provincial Crown grasslands under a grazing licence, permit, or lease in BC's main grassland regions in 2004<sup>15</sup>*

Thus, the Grasslands Conservation Council table indicated that 34,942 hectares of BC's main grassland regions were under a grazing lease in 2004. However, the area of total crown grazing lease areas appears to be much larger – 159, 787 hectares --as indicated by 2015 figures provided by Government<sup>16</sup>:

### Total Grazing Leases by District

|                  | No. of Leases | # of Individual Leaseholders | Area under lease (ha) | Average Area (ha) |
|------------------|---------------|------------------------------|-----------------------|-------------------|
| Arrow Boundary   | 2             | 2                            | 84                    | 42                |
| Cascades         | 23            | 20                           | 3514                  | 153               |
| Cariboo          | 120           | 103                          | 31680                 | 264               |
| Thompson Rivers  | 122           | 85                           | 68898                 | 564               |
| Okanagan Shuswap | 23            | 21                           | 2518                  | 109               |
| 100 Mile House   | 40            | 34                           | 5659                  | 141               |
| Quesnel          | 29            | 27                           | 2906                  | 100               |
| Rocky Mountain   | 7             | 6                            | 811                   | 116               |
| Fort Nelson      | 1             | 1                            | 262                   | 262               |

<sup>15</sup> Grasslands CC, *supra* note 12 at 7, 17, 36, 45, 53, 61.

<sup>16</sup> The table below comes from a Sept 21, 2015 email from BC Range Branch.

|                  |            |            |               |            |
|------------------|------------|------------|---------------|------------|
| Nadina           | 53         | 47         | 14400         | 272        |
| Peace            | 36         | 36         | 23928         | 665        |
| Prince George    | 8          | 8          | 826           | 103        |
| Queen Charlottes | 2          | 2          | 18            | 9          |
| Skeena Stikine   | 16         | 16         | 2389          | 149        |
| Vanderhoof       | 9          | 9          | 1896          | 211        |
| <b>TOTALS</b>    | <b>491</b> | <b>417</b> | <b>159787</b> | <b>325</b> |

It is important that this extensive Crown land area subject to grazing leases be managed in the public interest.

### Grazing Leases

Grazing leases are an outdated historical type of tenure that the provincial government issues under the *Land Act*.<sup>17</sup> In 1978, when the first *Range Act* was introduced, the provincial government intended to convert all grazing leases to licences and permits so that all BC Crown grazing land would be authorized by a single authority.<sup>18</sup> However, cattle ranchers preferred grazing leases because they carry a larger bundle of rights than licences and permits, including the ability to exclude the public from leased Crown land.<sup>19</sup> As a result, existing grazing leases were grandfathered, and the lease program continued alongside the new range tenure system.<sup>20</sup> Although the government no longer accepts new applications for grazing leases, individuals or agricultural corporations that hold an existing grazing lease can apply for a new one when it expires.<sup>21</sup> The government re-issues grazing leases for 20 year terms.<sup>22</sup> These leases tend to be located in the Agricultural Land Reserve.<sup>23</sup>

Grazing leaseholders are empowered to exclude members of the public from leased land. A person who enters a grazing lease area without the leaseholder's permission commits an offence under s 4 of the *Trespass Act*.<sup>24</sup> Section 65 of the *Land Act* also authorizes a leaseholder to take legal action against a person who enters an enclosed lease area (*i.e.* one that is legally

<sup>17</sup> *Land Act*, *supra* note 2, ss 11, 38.

<sup>18</sup> *Range Act*, RSBC 1996, c 396, as repealed by *Range Act*, *supra* note 3, s 84; British Columbia, Legislative Assembly, *Official Report of the Debates of the Legislative Assembly (Hansard)*, 31st Parl, 3rd Sess (19 June 1978) at 2452 (Hon Mr Waterland), online: <[https://www.leg.bc.ca/documents-data/debate-transcripts/31st-parliament/3rd-session/31p\\_03s\\_780619z](https://www.leg.bc.ca/documents-data/debate-transcripts/31st-parliament/3rd-session/31p_03s_780619z)> [Hansard].

<sup>19</sup> Communication with FLNRORD, 11 May 2018.

<sup>20</sup> *Ibid.*

<sup>21</sup> Individuals and agricultural corporations must meet certain criteria to apply for a replacement license. For example, individuals must be engaged in the operation of the farm or ranch – see BC, “Land Use”, *supra* note 6. Some of the grazing leases that existed in 1978 have been converted to licences or cancelled – see *ibid.*

<sup>22</sup> BC, “Land Use”, *supra* note 6.

<sup>23</sup> British Columbia, “Grazing Leases and Off-road Vehicle Recreation”, online: <[https://www.for.gov.bc.ca/hra/publications/legislation\\_policy/GrazingLeases\\_OffroadVehicleRecreation\\_FLNRO\\_Factsheet.pdf](https://www.for.gov.bc.ca/hra/publications/legislation_policy/GrazingLeases_OffroadVehicleRecreation_FLNRO_Factsheet.pdf)> [BC, “Grazing Leases”].

<sup>24</sup> *Ibid*; *Trespass Act*, RSBC 1996, c 462.

fenced or where ‘no trespassing’ signs are posted) or who undertakes activities in that area without the leaseholder’s permission.<sup>25</sup> Therefore, members of the public must request permission from the leaseholder to access the publicly-owned grazing lease area. The leaseholder may choose to permit or refuse public access – this decision appears to be wholly discretionary.

In contrast to this broad power to exclude the public from wild Crown land, grazing leases only entail a relatively narrow range of *responsibilities*. When applying for a replacement lease, grazing leaseholders must submit a Grazing Lease Management Plan to FLNRORD for approval.<sup>26</sup> They are also responsible for range improvements (*e.g.* fence maintenance) and weed control.<sup>27</sup> Additionally, government intends to require all grazing leaseholders to follow new best management practices, which will be included in Grazing Lease Management Plans. However, these policy changes are still being developed and finalized.<sup>28</sup>

### Grazing Licences and Permits

The *Range Act*,<sup>29</sup> the *Forest and Range Practices Act (FRPA)*,<sup>30</sup> and the *Range Planning and Practices Regulation (RPP Reg)*<sup>31</sup> regulate the issuance and use of grazing licences and permits on Crown land. The provincial government issues both grazing licences and permits under section 3 of the *Range Act*.<sup>32</sup> Government issues licences for 15-25 year terms, and issues permits for 10 year terms.<sup>33</sup>

Grazing licence- and permit-holders are authorized to access a specific amount of forage in a particular area of Crown land, *but they are not empowered to exclude the public from that land*. Instead, their grazing activity is meant to coexist with other business and recreational activities: the goal is “sustainable, integrated use.”<sup>34</sup> Like grazing leaseholders, licence- and permit-holders are responsible for maintaining range developments, such as fences.<sup>35</sup>

However, in comparison to grazing leases, licences and permits require far more formal planning to protect public values. Tenure-holders are required to develop Range Use Plans or Range Stewardship Plans, designed to meet environmental objectives set by government.<sup>36</sup>

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<sup>25</sup> BC, “Grazing Leases”, *supra* note 23; *Land Act*, *supra* note 2.

<sup>26</sup> BC, “Land Use”, *supra* note 6.

<sup>27</sup> BC, “Grazing Leases”, *supra* note 23; Personal communication with BC Range Branch, FLNRORD (7 May 2018).

<sup>28</sup> Communication with FLNRORD, 11 May 2018.

<sup>29</sup> *Range Act*, *supra* note 3, s 3.

<sup>30</sup> *Forest and Range Practices Act*, SBC 2002, c 69 [FRPA].

<sup>31</sup> *Range Planning and Practices Regulation*, BC Reg 19/2004 [RPP Reg].

<sup>32</sup> *Range Act*, *supra* note 3, s 3.

<sup>33</sup> *Ibid*, ss 4-5.

<sup>34</sup> British Columbia, Ministry of Forests, Lands and Natural Resource Operations, Kamloops Recreation District, “Key Messages”, online: <<https://www.for.gov.bc.ca/dka/orv/Grazing%20Lease%20Key%20Messages.pdf>>.

<sup>35</sup> *RPP Reg*, *supra* note 31, s 40(1); Moore, *supra* note 27.

<sup>36</sup> See Appendix A, “Planning and Regulations for Grazing Licences and Permits”.

## 2. The Current Regime Harms the Environment, Impedes Public Access, and Imposes Unnecessary Costs on Taxpayers

### Environmental Harm

The government is responsible for both fiscal and environmental sustainability, and must ensure grazing lands are managed in a manner that will allow future generations to continue benefiting from wild Crown land. However, livestock grazing can have far-reaching negative effects on grassland ecosystems, riparian health and habitat, water quality, and global greenhouse gas levels.

### *Damage to Grassland Ecosystems*

Grasslands provide critical habitat for more than 30% of BC's threatened and endangered species, but they are one of Canada's most endangered ecosystems.<sup>37</sup> Grazing alters species composition, decreasing the density and biomass of individual species and reducing species richness.<sup>38</sup> For example, cattle grazing can displace native species such as elk and mule deer. Cattle grazing disrupts ecosystem functions, interferes with nutrient cycling and ecological succession, alters ecosystem structures, changes vegetation stratification, contributes to soil erosion, and decreases water availability for biotic communities.<sup>39</sup>

Intense grazing pressure specifically undermines the integrity of range vegetation.<sup>40</sup> If ranges are overstocked or livestock are turned out before a range is ready, bunchgrasses may be overused, bluebunch wheatgrass and rough fescue can become scarce, and weedy species can invade grassland range.<sup>41</sup> Shrubs and trees may also be able to seed-in where grazing has broken the grass mat, converting grassland into shrub land or forest and shrinking the amount of grassland available for grazing and other uses.<sup>42</sup>

Overgrazing is a long-standing issue in British Columbia, with documented overuse problems in the East Kootenay Region stemming back to the 1950s.<sup>43</sup> A 2008 Forest Practices Board

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<sup>37</sup> Grasslands CC, *supra* note 12 at 1.

<sup>38</sup> Thomas L Fleischner, "Ecological Costs of Livestock Grazing in Western North America" (1994) 8:3 Conservation Biology 629 at 631.

<sup>39</sup> *Ibid.*

<sup>40</sup> Alison McLaughlin & Pierre Mineau, "The impact of agricultural practices on biodiversity" (1995) 55 Agriculture, Ecosystems & Environment 201 at 205.

<sup>41</sup> BM Wikeem, TJ Ross & RF Newman, *Long-term Effects of Cattle and Wildlife Grazing on Grassland Plant Community Recovery in the East Kootenay Region of British Columbia* (Victoria: BC Technical Report 072, 2012) at 1, online: <<https://www.for.gov.bc.ca/hfd/pubs/docs/Tr/Tr072.htm>>.

<sup>42</sup> John Theberge & Mary Theberge, "The Inadequacy of Current Land Tenure in the Proposed Okanagan Grasslands (Inter)National Park or The Ecological Impacts of Cattle Grazing" (October 2002).

<sup>43</sup> Wikeem, Ross & Newman, *supra* note 41 at 1.

investigation of grazing management in that region concluded that ongoing use by wildlife and cattle continued to exceed the carrying capacity of the grassland ecosystem.<sup>44</sup>

### ***Damage to Riparian Health and Habitat***

Riparian areas are nature's most biologically productive terrestrial systems. These unique waterside zones are critical to wildlife, and harbour almost two thirds of Canada's rare and endangered species. Riparian areas form important corridors for animal movement and plant dispersal, and are absolutely essential to healthy streams. Riparian vegetation shades streams, cooling the water and preventing fish kills. Such vegetation provides food inputs for streams, controls erosion and, along with intact soils, filters out water-borne pollutants. In sum, the quality and integrity of streams depends on the 'ribbon of life' found in the riparian zone.<sup>45</sup>

Yet intensive grazing can undermine riparian ecosystem integrity, jeopardizing this 'ribbon of life'. Livestock tend to congregate near water sources, and can trample and reduce riparian vegetation when foraging.<sup>46</sup> Riparian shrubs are particularly vulnerable to grazing activity, and long-term grazing is correlated with reduced numbers of birds and bird species in riparian areas.<sup>47</sup> Riparian grazing can also cause soil compaction, increase soil erosion, and compromise sediment filtration, thereby contributing to reduced vegetation, lower water quality, and higher water temperatures – all of which can negatively affect fish and amphibian habitat.<sup>48</sup> Spawning nests can also be trampled by grazing livestock, or silted in by the sediment they stir up.<sup>49</sup>

In 2002, the Forest Practices Board conducted an assessment of grazing activity's effects on 391 riparian sites in BC's southern interior. Overall, 16% of the riparian sites the Board assessed

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<sup>44</sup> Forest Practices Board, "Wildlife and Cattle Grazing in the East Kootenay: Complaint Investigation 060724", FPB/IRC/144 (July 2008) at 9, online: <<https://www.bcfpb.ca/wp-content/uploads/2016/04/IRC144-Wildlife-and-Cattle-Grazing-East-Kootenay.pdf>>. The Board provides oversight of range practices as well as forest practices.

<sup>45</sup> Cows and Fish, "Fact Sheet: Biodiversity and Riparian Areas: Life in the Green Zone" (February 2002), online: <[cowsandfish.org/pdfs/biodiversity.pdf](http://cowsandfish.org/pdfs/biodiversity.pdf)>; Calvin Sandborn, *Green Space and Growth: Conserving Natural Areas in BC Communities* (Victoria: Commission on Resources and Environment, 1996) at 91, online: <[www.elc.uvic.ca/documents/Sandborn\\_Greenspaces\\_Report\\_1996.pdf](http://www.elc.uvic.ca/documents/Sandborn_Greenspaces_Report_1996.pdf)>.

<sup>46</sup> *Ibid*; Timothy DelCurto et al, "Management Strategies for Sustainable Beef Cattle Grazing on Forested Rangelands in the Pacific Northwest" (2005) 58:2 *Rangeland Ecology & Management* 119 at 119; Wikeem, Ross & Newman, *supra* note 41 at 1.

<sup>47</sup> Cows and Fish, *supra* note 45.

<sup>48</sup> DelCurto et al, *supra* note 46 at 120; Theberge & Theberge, *supra* note 42 at 1; Fisheries and Oceans Canada, "Streamside livestock grazing" (2 March 2010), online: <[www.dfo-mpo.gc.ca/pnw-ppe/pathways-sequences/streamside-riverains-eng.html](http://www.dfo-mpo.gc.ca/pnw-ppe/pathways-sequences/streamside-riverains-eng.html)>; J Cragg, *The Effects of Livestock Grazing on the Amphibians of British Columbia*, Wildlife Working Report WR-111 (Victoria: BC Ministry of Environment, 2007) at 6, online: <[a100.gov.bc.ca/pub/eirs/finishDownloadDocument.do?subdocumentId=8421](http://a100.gov.bc.ca/pub/eirs/finishDownloadDocument.do?subdocumentId=8421)>.

<sup>49</sup> Cragg, *supra* note 48 at 15; Alberta Species at Risk Program, *Alberta Westslope Cutthroat Trout Recovery Plan 2012-2017* (Edmonton: Alberta, March 2013) at 17, online: <[aep.alberta.ca/fish-wildlife/species-at-risk/species-at-risk-publications-web-resources/fish/documents/SAR-WestslopeCutthroatTrout-RecoveryPlan-A-Mar2013.pdf](http://aep.alberta.ca/fish-wildlife/species-at-risk/species-at-risk-publications-web-resources/fish/documents/SAR-WestslopeCutthroatTrout-RecoveryPlan-A-Mar2013.pdf)>.

were classified as ‘at risk’, and 13% of sites were classified as ‘non-functional’.<sup>50</sup> In one district, only 49% of riparian sites were functioning properly, and 30% of riparian sites were found to be non-functional.<sup>51</sup>

### **Water Contamination**

Access to safe, clean drinking water is a basic human necessity, but grazing activity near waterways can contaminate this critical resource.<sup>52</sup> Under the *RPP Reg*, *FRPA* tenure-holders are required to ensure their range practices do not “cause material that is harmful to human health to be deposited in, or transported to, water that is diverted for human consumption.”<sup>53</sup> This can be achieved by fencing cattle out of riparian areas, or by providing off-stream water sources that can significantly reduce the amount of time livestock spend in riparian areas.<sup>54</sup>

However, the Forest Practices Board has found “pervasive non-compliance” with this important safety requirement.<sup>55</sup> In 2012, it released an audit that identified harmful bacteria in multiple samples of cattle feces “located in or very near watercourses that supply drinking water” to British Columbians.<sup>56</sup> The Board recommended that the BC government provide tenure-holders with guidance on implementing this practice requirement – but as of 2014, government had yet to act on this recommendation.<sup>57</sup> Cattle grazing on leased land may pose an even greater risk to drinking water because leaseholders are subject to less oversight than *FRPA* tenure-holders.

### **Contributions to Climate Change**

Livestock production contributes to climate change, which fundamentally threatens the well-being of current and future generations.<sup>58</sup> According to the UN Food and Agriculture Organization, 14.5% of all human-induced greenhouse gas (GHG) emissions can be attributed to livestock, and 65% of livestock-related GHG emissions come from raising beef and dairy cattle.<sup>59</sup>

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<sup>50</sup> Forest Practices Board, “Special Report: Effect of Cattle Grazing near Streams, Lakes and Wetlands”, FBP/SR/11 (June 2002) at iii, online: <<https://www.bcfpb.ca/wp-content/uploads/2016/04/SR11-Effect-of-Cattle-Grazing-near-Streams-Lakes-Wetlands.pdf>>.

<sup>51</sup> *Ibid* at 22.

<sup>52</sup> Forest Practices Board, “Audit of Forest and Range Planning and Practices Affecting Water Quality in Oyama and Vernon Creek Community Watersheds” FBP/ARC/140 (August 2012), online: <<https://www.bcfpb.ca/wp-content/uploads/2016/05/ARC140-Water-Quality.pdf>> [FPB, “Water Quality Audit”].

<sup>53</sup> *RPP Reg*, *supra* note 31, s 33(1).

<sup>54</sup> Cindy Meays, “Cattle – Grazing our watersheds: A study of water quality in streams in the North Okanagan area watersheds that are grazed by cattle each summer” North Okanagan Livestock Association, online: <[www.cattlemen.bc.ca/docs/cattle%20grazing%20in%20watersheds.pdf](http://www.cattlemen.bc.ca/docs/cattle%20grazing%20in%20watersheds.pdf)>.

<sup>55</sup> FPB, “Water Quality Audit”, *supra* note 52 at 39.

<sup>56</sup> *Ibid*.

<sup>57</sup> See Forest Practices Board, “A Decade in Review: Observations on Regulation of Forest and Range Practices in British Columbia – Special Report” (May 2014), FBP/SR/46 at 14-15, online: <<https://www.bcfpb.ca/wp-content/uploads/2016/04/SR46-A-Decade-in-Review.pdf>>.

<sup>58</sup> PJ Gerber et al, *Tackling Climate Change Through Livestock: A Global Assessment of Emissions and Mitigation Opportunities* (Rome: Food and Agriculture Organization of the United Nations, 2013) at ix.

<sup>59</sup> *Ibid* at 15.

Methane, nitrous oxide, and carbon dioxide are the three main GHGs released by livestock production.<sup>60</sup> Ruminant species – of which cattle are the most common – generate approximately 33% of all human-related methane emissions worldwide.<sup>61</sup>

Well-vegetated rangelands have the potential to offset GHG emissions by removing some CO<sub>2</sub> from the atmosphere and sequestering it in growing plants. Although much of this carbon is re-emitted when these plants naturally die and decay, some of it “may be converted into more stable carbon compounds that can stay in the soil for decades or even hundreds of years.”<sup>62</sup> Overgrazing can undermine rangelands’ sequestration potential,<sup>63</sup> while “better grazing land management... can contribute to carbon sequestration.”<sup>64</sup>

### Impeding Public Access

Public access to wild Crown land is extremely important, to ensure people engage with, understand, and develop a personal connection to the natural environment. A public that is connected to the land is more likely to defend the land. At its heart, this is also a human rights issue: everyone should have the right to access and experience nature, especially areas that are owned by the public.<sup>65</sup>

However, grazing leaseholders can and do use the *Land Act*<sup>66</sup> and the *Trespass Act*<sup>67</sup> to exclude the public from wild Crown land. As noted above, s 65 of the *Land Act* authorizes a leaseholder to take legal action against anyone who enters enclosed lease areas or undertakes activities there without leaseholder permission, while s 4 of the *Trespass Act* stipulates that anyone who enters a grazing lease area without leaseholder permission is committing an offence. This not only prohibits members of the public from accessing leased areas -- but also prevents access to areas that are not covered by a grazing lease but can only be reached through a leased area.

The BC Wildlife Federation and other recreation groups, naturalists, birders, and general members of the public report a growing number of incidents of grazing leaseholders restricting public access to wild Crown land. As longstanding grazing leases change hands and end up in corporate ownership, conflicts arise when the new corporate leaseholders decide to bar public access to Crown lease land that was previously open to the public. Locked gates and ‘No Trespassing’ signs on grazing leases are now proliferating.

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<sup>60</sup> *Ibid* at xiii.

<sup>61</sup> Tara Garnett et al, *Grazed and confused? Ruminating on cattle, grazing systems, methane, nitrous oxide, the soil carbon sequestration question – and what it all means for greenhouse gas emissions* (Oxford: Food Climate Research Network, University of Oxford, 2017) at 8, 120.

<sup>62</sup> *Ibid* at 39.

<sup>63</sup> *Ibid* at 119.

<sup>64</sup> Gerber et al, *supra* note 58 at 44.

<sup>65</sup> On the importance of public access to wild lands and historical recognition of access rights, see Graham Litman, Matt Hulse & Calvin Sandborn, “Enhancing Public Access to Privately Owned Wild Lands” Environmental Law Centre (March 2016) at 2, online: <[orcbc.ca/documents/EnhancingPublicAccess\\_PrivatelyOwnedWildLands.pdf](http://orcbc.ca/documents/EnhancingPublicAccess_PrivatelyOwnedWildLands.pdf)>.

<sup>66</sup> *Land Act*, *supra* note 2, s 65.

<sup>67</sup> *Trespass Act*, *supra* note 24, s 4.

This has become a serious issue in a number of places over the past ten years. The Kamloops area is particularly problematic.<sup>68</sup> For example, one hunter has identified at least four grazing leaseholders south of Kamloops who have started to bar the public from previously accessible leased lands.<sup>69</sup>

According to Rick McGowan of the Nicola Valley Fish and Game Club, “in the Merritt area alone there's over 30 lakes that are locked to the public and aren't supposed to be.”<sup>70</sup> Although privately-owned land may be involved in some cases, McGowan is confident that locked gates on grazing leases are responsible for blocking public access to some of these lakes.<sup>71</sup> Numerous instances of improper restriction of public access across grazing leases are obviously occurring, and the BC Wildlife Federation, the Nicola Valley Fish and Game Club, the Outdoor Recreation Council and others will be able to provide you with more specifics on this widespread problem.

### **Imposing Unnecessary Costs on the Taxpayer**

BC's current approach to grazing tenures – including grazing leases – appears to be imposing unnecessary costs on BC taxpayers in three significant ways. Low grazing tenure prices mean taxpayers are subsidizing an industry that may not otherwise be profitable. Taxpayer dollars are further subsidizing the grazing industry by covering maintenance and repair costs that grazing tenure-holders should likely be covering. Additionally, administering two parallel systems of grazing management is likely an inefficient use of government resources.

### ***Pricing Scheme***

Grazing leases and grazing licences and permits are subject to two substantially different pricing schemes.<sup>72</sup> Fees for both types of tenure appear to be lower than the cost of renting grazing land from a private landowner. Such a disparity suggests the BC government may be falling short of its pricing goal for the use of Crown land, which has been expressed as “a fair return... based on market values for land.”<sup>73</sup>

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<sup>68</sup> Personal communications (phone calls) with Jesse Zeman, Resident Priority Program Manager, BC Wildlife Federation (11 May 2018 & 18 May 2018).

<sup>69</sup> Email to Jesse Zeman of the BC Wildlife Federation (30 October 2017).

<sup>70</sup> Tanya Cronin, “New lawsuit over Merritt area lake access” *CFJC Today* (16 April 2018), online: <<https://cfjctoday.com/article/616724/new-lawsuit-over-merritt-area-lake-access>>.

<sup>71</sup> Personal communication (phone call) with Rick McGowan, Nicola Valley Fish and Game Club (18 May 2018).

<sup>72</sup> Annual fees for forage use under a grazing licence or permit are then calculated using the formula set out in s 15(1) of the *Range Regulation*, BC Reg 116/2005. [*Range Reg*]. Annual fees for grazing leases are calculated using the methods described in BC, “Land Use”, *supra* note 6.

<sup>73</sup> FLNRO, “Pricing”, *supra* note 8 at 2 [emphasis added].

In 2015, when total grazing fees for licence- and permit-holders were \$3.20 per animal unit month (AUM),<sup>74</sup> one environmentalist estimated the free market value of BC grazing land at \$17 per AUM.<sup>75</sup> This would have meant licence- and permit-holders were paying less than one fifth of market value to access grazing land. We do not have access to current BC data on the average cost of renting grazing land from private landowners,<sup>76</sup> but a 2012 Alberta Department of Agriculture survey found that private grazing land was renting for more than 10 times what the Alberta Crown was charging at the time.<sup>77</sup> Further investigation is warranted to ascertain whether a similar disparity currently exists in BC in relation to Crown grazing leases (as well as licences and permits).

A comprehensive assessment of BC's current pricing schemes for grazing tenures is necessary to determine if they are consistent with the Crown's pricing goal of securing a fair return for land use on behalf of the BC public.<sup>78</sup> Any such assessment should subject grazing leases to particular scrutiny, as a recent cost-benefit analysis by UBC economics students suggests that replacing existing grazing leases with grazing licences would result in net benefits for the BC public.<sup>79</sup> We invite you to conduct a comprehensive cost-benefit analysis to ascertain the full facts.

### ***Subsidized Maintenance and Repair Costs***

In addition to subsidizing grazing operations by seemingly charging below-market rates for grazing tenures, the BC government appears to be heavily subsidizing range maintenance with taxpayer dollars. Grazing leaseholders and licence- and permit-holders are legally responsible for maintaining range improvements and developments like fences,<sup>80</sup> but the government is using millions of taxpayer dollars to cover for the ranching industry.

Both grazing leaseholders and grazing licence- and permit-holders are eligible for funding through the Provincial Livestock Fencing Program, which covers the costs of building highway-

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<sup>74</sup> BC defines an AUM as 450kg of forage – the amount that would sustain an average cow with an unweaned calf for one month. *Range Act*, *supra* note 3, s 1(1); *Range Reg*, *supra* note 72, ss 1(a), 2(a), 2(b).

<sup>75</sup> "Feds looked at using BC grazing laws in national park" *Osoyoos Times* (30 June 2015), online: <[www.osoyoostimes.com/feds-looked-at-using-b-c-grazing-laws-in-national-park](http://www.osoyoostimes.com/feds-looked-at-using-b-c-grazing-laws-in-national-park)>. We assume this figure was in reference to the cost of renting equivalent land rather than buying it. Landowners offering extra services might account for part of the price disparity – see email from FLNRORD – but likely not the full price difference.

<sup>76</sup> According to information from FLNRORD, the Range Branch is in the process of compiling this information.

<sup>77</sup> Privately-owned grazing land was renting for \$20 to \$30.50 per AUM, more than 10 times the \$1.39 to \$2.79 per AUM Alberta was charging for grazing leases in 2012. See Alberta, *Report of the Auditor General of Alberta* (Edmonton: July 2015), online: <<https://www.oag.ab.ca/webfiles/reports/OAG%20Report%20July%202015.pdf>>.

<sup>78</sup> FLNRO, "Pricing", *supra* note 8 at 2.

<sup>79</sup> Alyssa Pembleton, Sanzhar Kopzhassar & Nimai Trivedi, "CBA for Assessing Land Management Applications in Kamloops, BC, Canada: Grazing Lease v Grazing Licence" (2017) [unpublished, prepared for ECON 370: Benefit-Cost Analysis and the Economics of Project Evaluation, University of British Columbia – Okanagan].

<sup>80</sup> BC, "Grazing Leases", *supra* note 23; *RPP Reg*, *supra* note 31, s 40(1); Moore, *supra* note 27; Letter from Rick Sommer, District Manager, to Thompson Rivers District Range Licence Holders, File 15700-01 (13 April 2016) at 2, online: <[https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/laws-and-policies/dm-letters-of-expectation/thompson\\_rivers\\_range.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/forestry/laws-and-policies/dm-letters-of-expectation/thompson_rivers_range.pdf)>.

adjacent range fencing.<sup>81</sup> Since 2010, the BC government has invested \$16 million in this program, and has recently extended it for another five years, committing \$1 million a year.<sup>82</sup> In March 2017, the outgoing government created a separate \$2.2 million fencing replacement program for non-highway adjacent fences on Crown range tenures.<sup>83</sup> Later in 2017, the Ministry of Transportation agreed to provide another \$2.2 million to repair highway-adjacent fences damaged by fire, and FLNRORD committed another \$4 million to repair damaged Crown range infrastructure, for a total of \$6.2 million.<sup>84</sup> Both leaseholders- and licence- and permit-holders were eligible for these extra funds, and may also have received additional funding through the AgriRecovery and Disaster Financial Assistance programs.<sup>85</sup>

Over the past nine years, it appears the BC government has spent in excess of \$22 million taxpayer dollars subsidizing commercial ranchers' range infrastructure. We invite you to consider whether providing this level of funding for rangeland maintenance is an economic, efficient, and effective use of taxpayer dollars – particularly in light of grazing tenure-holders' official responsibility for rangeland maintenance.

### ***The Cost of Administering Two Separate Grazing Tenure Frameworks***

In addition to the subsidies discussed above, the BC government is managing two separate grazing tenure frameworks, likely giving rise to administrative inefficiencies.

When BC's first *Range Act*<sup>86</sup> was drafted in 1978, the intent was to replace grazing leases with licences that would "provide, encourage and promote a multiple-use management of rangelands in British Columbia" – a vision fundamentally incompatible with the exclusive access rights inherent in grazing leases.<sup>87</sup> These changes were part of a legislative package of coordinated changes to BC forest and range resource management, and were intended to facilitate "best management of the range resource with benefit to all the people of British Columbia."<sup>88</sup> This was to take place through streamlined management: as the Minister explained, "[a]ll grazing responsibility through this legislation will fall to one government

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<sup>81</sup> Communication from FLNRORD, 10 May 2018; British Columbia, Ministry of Transportation and Infrastructure, News Release, "BC government beefs up highway safety by extending livestock fencing program" (1 March 2018), online: <<https://news.gov.bc.ca/releases/2018TRAN0004-000302>> [BC, "Fencing Program"].

<sup>82</sup> BC, "Fencing Program", *supra* note 81.

<sup>83</sup> British Columbia, Ministry of Forests, Lands, Natural Resource Operations & Rural Development, News Release, "Range fencing replacement program provides \$2.2 million" (31 March 2017), online: <<https://news.gov.bc.ca/releases/2017FLNR0066-000963>>.

<sup>84</sup> British Columbia, Ministry of Transportation and Infrastructure, News Release, "British Columbia government replaces livestock fencing destroyed in wildfires" (1 August 2017), online: <<https://news.gov.bc.ca/releases/2017TRAN0207-001372>>.

<sup>85</sup> Communication from FLNRORD, 10 May 2018, *supra* note 75.

<sup>86</sup> *Range Act*, RSBC 1996, *supra* note 18.

<sup>87</sup> Hansard, *supra* note 18 at 2451 (Hon Mr. Waterman).

<sup>88</sup> *Ibid* at 2449, 2452.

ministry for consistency of application” and “[e]xisting grazing leases... when they expire, will be converted to grazing licences.”<sup>89</sup>

However, in the end, all grazing leases that were active at the time were grandfathered into the new system,<sup>90</sup> resulting in administrative duplication instead of efficient integration. Forty years after their intended abolishment, many of these grandfathered leases continue to coexist with licences that were meant to replace them.<sup>91</sup> Instead of “consistency of application” under a single ministry, responsibility for grazing lease management has also shifted several times over the past four decades, bouncing between the Range program and the Land Tenures program, and sometimes falling under a different ministry than grazing licences and permits.<sup>92</sup>

Although the Range program appears to be managing both types of grazing tenure at present,<sup>93</sup> limited human resources within the program are still being devoted to two unnecessarily duplicative systems, likely resulting in inefficiencies. We invite you to examine whether maintaining two grazing tenure frameworks that perform the same function is an effective use of taxpayer dollars.

### 3. Key Questions to Consider

If the Auditor General chooses to conduct an audit of grazing tenures, there are a number of key questions that should be considered when making recommendations to government. These questions concern the continued existence of leases, the issue of public access to Crown land, and the continued provision of subsidies.

#### 1) Should all grazing leases be phased out?

The BC government’s intention in 1978 was to rationalize and streamline the system. Government originally intended to fully transition from grazing leases to *Range Act* grazing tenures that allow multiple land uses – and allow user groups to coexist. We invite you to consider whether there is any public benefit to retaining this outdated system of grazing tenure, which does not appear to provide the BC public with a fair return for the environmental, public access, and administrative costs it carries.

If you were to recommend that the BC government phase out grazing leases, government would have multiple means of doing so. It could stop allowing leaseholders to renew leases at end of their 20-year lifespan -- and could require them to transition to grazing licences or

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<sup>89</sup> *Ibid* at 2452.

<sup>90</sup> Communication from FLNRORD, 11 May 2018.

<sup>91</sup> FLNRO, “Legislation & Policies”, *supra* note 11.

<sup>92</sup> Hansard, *supra* note 18 at 2452 (Hon Mr. Waterman); Communication from FLNRORD, 11 May 2018.

<sup>93</sup> British Columbia, Ministry of Forests, Lands and Natural Resource Operations, “Range Program – Grazing Lease Administration”, online: <<https://www.for.gov.bc.ca/hra/legislation/grazing.htm>>.

permits if they wish to keep using Crown grazing land when their leases expire. Such a measure would eventually restore public access to these Crown lands.

Alternatively, Government could accelerate the transition by buying out grazing leases that still have a substantial term remaining. In areas that raise significant environmental concerns, government could potentially conduct these buyouts in partnership with concerned citizen groups – as has been done to protect sensitive grasslands in Oregon and elsewhere.<sup>94</sup> Or it could allow these groups to buy out grazing leases on their own. Several American jurisdictions allow voluntary grazing permit buyouts, providing possible precedents for BC.<sup>95</sup>

## **2) Should measures be taken to improve public access to Crown rangelands?**

While grazing leases continue to exist in BC, the issue of public access to leased rangeland and adjacent Crown lands will remain a live one. We invite you to consider how best to protect and facilitate the public's right to access these lands.

Multiple jurisdictions outside British Columbia have found ways to protect public access rights while balancing the rights of grazing leaseholders. Alberta leases a significant amount of Crown land to ranchers for grazing purposes. However, unlike BC, Alberta has recognized the importance of maintaining public access. Since 2003, the *Recreational Access Regulation* has prohibited leaseholders from barring reasonable public recreational access to Crown land under a grazing lease.<sup>96</sup> As long as the intended user has notified the leaseholder of their proposed use, the leaseholder can only deny or impose conditions on access in a narrow range of prescribed circumstances.<sup>97</sup> These include the presence of livestock in a fenced pasture in the area to be accessed, or an intention on the part of the recreational user to camp in the lease area or access it by bicycle, horse, or car.<sup>98</sup>

In Manitoba, public access rights appear to go even further. Members of the public are allowed to access most leased Crown lands for hunting purposes without leaseholder permission. "Limited areas" that are subject to intensive use, "such as livestock corrals, feeding areas and building sites", are seemingly the only areas of leased Crown land not subject to these generous access rules – and they must be marked with a Ministry-approved sign for the restriction to

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<sup>94</sup> In Oregon, negotiations between government, ranchers, and conservation groups led to the creation of a wilderness area in the Cascade-Siskiyou National Monument. Government provided 60% of the funding for the buyout, while community funds covered the remaining 40%. Over 24,000 acres of ecologically diverse land are now permanently protected from grazing. See Paul Fattig "Soda Mountain Wilderness bill clears key committee" *Mail Tribune* (8 May 2008), online: <[www.mailtribune.com/article/20080508/News/805080326](http://www.mailtribune.com/article/20080508/News/805080326)>; US Department of the Interior, Bureau of Land Management, "Soda Mountain Wilderness", online: <<https://www.blm.gov/visit/soda-mountain-wilderness>>.

<sup>95</sup> In the US, many ranchers are finding it beneficial to sell to facilitate retirement, avoid regulatory conflicts, or for financial reasons. See National Public Lands Grazing Campaign, "How to Retire Your Federal Grazing Permit or Lease for Compensation", online: <[www.publiclandsranching.org/htmlres/fs\\_rancher\\_primer.htm](http://www.publiclandsranching.org/htmlres/fs_rancher_primer.htm)>.

<sup>96</sup> *Recreational Access Regulation*, Alta Reg 228/2003, s 6(1).

<sup>97</sup> *Ibid*, ss 5-6.

<sup>98</sup> *Ibid*, s 6(1)

apply.<sup>99</sup> Members of the public who wish to use leased Crown land for recreational activities that are equally or less disruptive than hunting likely enjoy similarly generous access.

The BC government could make progress on this issue by adopting aspects of these models through MLA Andrew Weaver’s proposed ‘right to roam’ legislation<sup>100</sup> or by other means.

### **3) Should grazing tenure prices be raised to reflect market rates?**

Both grazing leaseholders and grazing licence- and permit-holders currently appear to be receiving BC government subsidies in the form of below-market rates for grazing tenure access – and significant funding for range infrastructure maintenance. If commercial ranching is economically non-viable without these subsidies, should taxpayers be expected to cover losses? We invite you to consider whether it is fair or economical for BC taxpayers to continue subsidizing the ranching industry in this way.

Other jurisdictions are taking a more fiscally responsible approach to this issue. For example, Manitoba appears to lease Crown lands “at comparable market value” using a formula that is reviewed every five years.<sup>101</sup> Lessees who make improvements to the rangeland they are leasing may qualify for reduced rent, but such reductions appears to be proportionate to the extent of the lessee’s development investment in the Crown land they are leasing. Adopting a similar system in BC could potentially ensure resource value is retained when grazing tenure-holders receive reduced rent.

### **4) What are the standards for grasslands and grazing leases that ensure sustainability of these ecosystems, including biodiversity and rare and endangered species?**

We invite you to consider how sustainability success should be measured, and how these sustainability standards should be balanced with commercial use by the agricultural sector.

## **4. The Auditor General’s Legal Authority to Investigate**

We have outlined how BC’s current approach to grazing leases, licences, and permits imposes unnecessary costs on BC’s natural and economic resources. The provincial government has a

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<sup>99</sup> See Manitoba, “2012 Manitoba Hunting Guide” (2012), online:

<[www.gov.mb.ca/sd/wildlife/hunting/general/publicland.html](http://www.gov.mb.ca/sd/wildlife/hunting/general/publicland.html)>.

<sup>100</sup> Bill M 223, *Right to Roam Act, 2017*, 6th Sess, 40th Parl, British Columbia, 2017, online:

<<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/40th-parliament/6th-session/bills/first-reading/m223-1>>; Claire Hume, “Introducing Right to Roam legislation in British Columbia” *Andrew Weaver, MLA* (27 February 2017), online: <[www.andrewweavermla.ca/2017/02/27/introducing-roam-legislation-british-columbia/](http://www.andrewweavermla.ca/2017/02/27/introducing-roam-legislation-british-columbia/)>.

<sup>101</sup> Manitoba Agriculture, “Agricultural Crown Lands Leasing Program”, online:

<<https://www.gov.mb.ca/agriculture/land/crown-land/leasing-program.html>>.

duty to sustainably manage and steward these resources in the public interest. A failure to mitigate environmental damage to Crown rangeland, ensure public access, and avoid unnecessary public spending is a failure to act “economically, efficiently and effectively” as per s 11(8)(b) of the *Auditor General Act*.<sup>102</sup> You have the mandate, pursuant to section 13 of the *Act*, to act in the public interest and examine whether the negative effects of grazing leases and *Range Act* grazing tenures are being adequately managed. Section 12 of the *Act* empowers you to make any report that should, in your opinion, be made, at any time.

Precedent for such a report is found in previous Office of the Auditor General audits of the province’s management of public resources such as agricultural land, forest resources, groundwater, drinking water, grizzly bears, and wild salmon.<sup>103</sup> You and your predecessors have previously recognized the economic and other values associated with public resources, and the critical importance in ensuring their proper management by Government.

## 5. Conclusion

BC’s current system of rangeland management fails to serve the public interest in a number of ways. Grazing leases – as well as certain aspects of the *Range Act* grazing tenure framework -- appear to be inconsistent with efficient, effective and optimal management of public finances and resources. Subsidizing the ranching industry with taxpayer dollars appears particularly unjustifiable in light of the environmental impacts of grazing tenures, the public access barriers created by grazing leases, and the inefficiency of maintaining two separate rangeland tenure frameworks. An examination of these matters is necessary to maintain public confidence that government is managing government finances and resources in the public interest.

We urge you to undertake an investigation of the BC government’s apparent failure to manage rangelands in the public interest. We ask that you undertake this investigation pursuant to sections 11, 12, and 13 of the *Auditor General Act*.

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<sup>102</sup> AGA, *supra* note 4.

<sup>103</sup> British Columbia, Office of the Auditor General, “Publications”, online: <[www.bcauditor.com/pubs](http://www.bcauditor.com/pubs)>.

We would be pleased to discuss this important matter at any time.

Yours sincerely,

"Gigi Pao"

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Gigi Pao, Law Student



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Calvin Sandborn Q.C., Legal Director

## Appendix A

### Planning and Regulations on Grazing Licences and Grazing Permits

The *FRPA* imposes detailed planning requirements on tenure-holders.<sup>104</sup> The *FRPA* is designed to consist of three “pillars” – objectives, plan and practice requirements, and compliance and enforcement – supported by two foundations: professional reliance, and effectiveness and monitoring.<sup>105</sup> In line with this structure, grazing licence or permit holders must prepare a range use plan (RUP) or a range stewardship plan (RSP) before they begin grazing on Crown range.<sup>106</sup> These plans must be consistent with objectives set by government.<sup>107</sup> For example, government objectives for soils, water, wildlife, biodiversity, water quality, wildlife habitat area, and ungulate winter range all apply to range lands.<sup>108</sup> When a district manager considers a range plan for approval, consistency with government objectives is one of the key decision-making criteria.<sup>109</sup>

Range use plans – a concept carried over from the old *Forest Practices Code of British Columbia Act*,<sup>110</sup> the forestry regime in place prior to *FRPA* – require tenure-holders to create a plan with a map, grazing schedule, actions to address any issues identified by the Minister, and certain prescribed content such as stubble heights.<sup>111</sup> Range stewardship plans include some of the same content as RUPs, but are designed to give pre-approved ranchers who meet certain knowledge and experience criteria more flexibility in their range planning.<sup>112</sup> Range stewardship plans allow the tenure-holder to propose their own results and strategies to achieve them, and in return, the RSP holder must monitor their range practices.<sup>113</sup> In 2008, there were 1,579 *Range Act* tenures that required an approved RUP or RSP.<sup>114</sup>

Apart from plans, the *RPP Reg* sets out additional environmental provisions related to riparian areas, watersheds, wildlife, and resource features.<sup>115</sup> For example, s 33(1) states, “A range agreement holder who carries out a range practice must ensure that the range practice does not cause material that is harmful to human health to be deposited in, or transported to, water that is diverted for human consumption by a licenced waterworks.”<sup>116</sup>

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<sup>104</sup> *FRPA*, *supra* note 30, s 32.

<sup>105</sup> FPB, “Decade in Review”, *supra* note 57 at 1.

<sup>106</sup> Forest Practices Board, “Range Planning under the Forest and Range Practices Act – Special Investigation” (November 2009), FPB/SIR/26 at 6, online: <<https://www.bcfpb.ca/wp-content/uploads/2016/04/SIR26-Range-Planning-under-FRPA.pdf>> [FPB, “Range Planning”]; *FRPA*, *supra* note 30, ss 32-33, 35.

<sup>107</sup> RPB, “Range Planning”, *supra* note 106 at 26.

<sup>108</sup> *Ibid* at 25; *RPP Reg*, *supra* note 31, ss 5-12.

<sup>109</sup> FPB, “Range Planning”, *supra* note 106 at 26.

<sup>110</sup> *Forest Practices Code of British Columbia Act*, RSBC 1996, c 159.

<sup>111</sup> *FRPA*, *supra* note 30, s 33; *RPP Reg*, *supra* note 31, s 13; FRB, “Range Planning”, *supra* note 106 at 6.

<sup>112</sup> FRB, “Range Planning”, *supra* note 106 at 6-7, 20; *FRPA*, *supra* note 30, ss 32, 35; *RPP Reg*, *supra* note 31, ss 4, 14.

<sup>113</sup> FRB, “Range Planning”, *supra* note 106 at 6-7.

<sup>114</sup> *Ibid* at 1, n 1.

<sup>115</sup> *RPP Reg*, *supra* note 31, ss 30-38.

<sup>116</sup> *Ibid*, s 33(1).

A 2009 Forest Practices Board investigation found numerous problems with RUPs. Many lacked basic required content, and failed to show how the agreement holder would ensure their practices were consistent with government-established objectives for range. Agreement-holders had difficulty applying range management concepts, and compliance and enforcement staff would have difficulty enforcing plans because of the vague nature of actions and commitments.<sup>117</sup> The Board found that while RSPs contained more information than RUPs, it was not clear how operators would use their monitoring and evaluation results to modify their range practices, and the plans were difficult to enforce.<sup>118</sup> The Board concluded that “the current framework for range planning under FRPA is not working well for agreement holders, MFR range staff or for management of the range resource.”<sup>119</sup>

In 2014, the Board audited the overall regulation of forest and range practices in BC. It reiterated its finding that range planning is not working well, stating it had “found significant and pervasive weaknesses in range planning, due to a combination of poorly prepared plans, lack of knowledge and confusion about government objectives on the part of ranchers.”<sup>120</sup>

Examining the situation in 2014, the Board observed that the “hierarchy of objectives and how or where they apply is confusing and complex”, and found there was “no general repository of objectives, no single place where licencees or members of the public can find out what objectives apply to a specific area of land.”<sup>121</sup> It recommended that government establish a single, publicly-accessible website listing all government objectives under *FRPA*.<sup>122</sup> It also found that government had not completed the “full suite of legal designations and objectives necessary to ensure the proper functioning of *FRPA*,” and recommended that government complete these designations and objectives – and establish an efficient process for updating objectives when necessary.<sup>123</sup> Finally, the Board concluded that range activities had been given a lower priority for inspection than forest practices, and stated that this was surprising given the high risk of harm that certain range activities (*e.g.* cattle grazing in riparian areas) can pose to resource values. Accordingly, it recommended that government increase its efforts to inspect range activities to ensure they are subject to the same level of oversight as forest practices.<sup>124</sup>

In sum, several aspects of the BC government’s management grazing licences and permits under the *FRPA* are overdue for improvement. We invite you to consider urging the BC government to implement the Board’s recommendations – including increased inspection and enforcement activity, updated management objectives, transparent public access to those objectives, and regulatory changes to increase public involvement in range management.

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<sup>117</sup> FRB, “Range Planning”, *supra* note 106 at 29.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid* at 30.

<sup>120</sup> FPB, “Decade in Review”, *supra* note 57 at 11.

<sup>121</sup> *Ibid* at 7-8.

<sup>122</sup> *Ibid* at 8.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid* at 16-17.