

FPB/IRC/52

File: 97250-20/010307

September 25, 2001

Dear Participants:

**Re: Complaint Investigation 010307 – Barclay Creek Pipeline**

The purpose of this letter is to inform you of my decision to stop the investigation of the Barclay Creek Pipeline complaint. I explain the reasons for my decision below.

**Nature of the Complaint**

On April 5, 2001, the Board received a complaint about the construction of the BC Gas southern crossing pipeline across Barclay Creek, near Fruitvale, BC. The complainant was concerned that pipeline construction activities during the summer and fall of 2000 disturbed Barclay Creek and seriously impacted his water supply. The complainant also asserted that government enforcement was inappropriate because government permitted BC Gas to disturb Barclay Creek in contravention of the Forest Practices Code of British Columbia Act (the Act). Finally, the complainant asserted that remediation activities had not been carried out.

**Background**

The Southern Crossing Pipeline (SCP) project involved the construction of 320 km of 24-inch natural gas pipeline between Yahk and Oliver, BC.

A committee consisting of representatives of federal, provincial and local governments and First Nations reviewed the project and made recommendations to the Minister of Environment, Lands and Parks. Government granted approval for the project under the Environmental Assessment Act in the form of a Project Approval Certificate (PAC). The PAC required BC Gas to comply with an environmental protection plan (EPP) during construction of the pipeline. The EPP set out, among other things, the techniques and mitigation measures for stream crossings.

Clearing of the pipeline right of way in the Boundary forest district was carried out under the authority of a Master Licence to Cut and a cutting permit. No operational plan, such as a logging plan, was required or prepared.

At Barclay Creek, a 30 metre-wide right of way was cleared on Crown land and a trench was dug. Pipe was placed in the trench and it was backfilled and the slope was recontoured. After construction,

the right of way consisted of bare soil. Remediation of the site began immediately and continued into the summer of 2001.

Three water users on Barclay Creek were impacted by the construction. BC Gas arranged for a temporary water system until the crossing was remediated and water quality returned to pre-construction levels.

### **Jurisdiction of the Board**

The matters on which a person may make a complaint to the Board under s. 177 of the Act are a party's compliance with the requirements of Parts 3 to 5 of the Act and the regulations made in relation to those Parts; and the appropriateness of government enforcement under Part 6 of the Act.

To determine whether or not the Board has jurisdiction to investigate the complaint, the complaint issues have been divided into instream works, right of way clearing, government enforcement, and remediation.

#### ***Instream Works***

The authority to construct the pipeline through Barclay Creek was provided under section 9 of the Water Act. Section 9 of the Water Act concerns "changes in and about a stream," which is defined in part as any activity or construction within the stream channel that has or may have an impact on a stream. The Oil and Gas Commission

granted the section 9 approval. The Board does not have jurisdiction to investigate an approval issued under the Water Act, or enforcement related to such an approval. As there are no Forest Practices Code requirements, the Board cannot investigate the issue of instream works.

#### ***Right of Way Clearing***

BC Gas was issued a Licence of Occupation (LOO) under the Land Act and a Master Licence to Cut (MLC) under the Forest Act by the Oil and Gas Commission, in part to permit clearing of the right of way. BC Gas was not required to prepare an operational plan, such as a logging plan, for the clearing.

Section 10 of the Timber Harvesting Practices Regulation prohibits the harvest of timber in a riparian reserve zone (RRZ), with some exceptions. Section 10(3)(c) permits harvesting in a RRZ if the harvesting is carried out by the holder of a license to cut for purposes related to their right to use Crown land granted under the Land Act. Compliance with section 10 of the Timber Harvesting Practices Regulation is within the jurisdiction of the Board to investigate.

#### ***Government Enforcement***

The Board does not have the jurisdiction to investigate enforcement of the Water Act or conditions set out in an Environmental Assessment Act project approval certificate. BC Gas was not required to prepare an operational plan under the Code, and there was no commensurate government enforcement of Code provisions.

#### ***Remediation***

Requirements for remediation were contained in the EPP. The Board does not have the authority to investigate compliance or enforcement related to the EPP.

In summary, in the circumstances of this complaint, the Board has jurisdiction only to investigate the harvest of trees in a riparian reserve zone associated with pipeline construction.

### **Reason to Stop the Investigation**

Section 177(2) of the Act provides reasons why the Board may choose to stop an investigation. One reason, contained in section 177(2)(d), is “having regard to all the circumstances, further investigation is not necessary to consider the complaint.”

With regard to the one issue within the Board’s jurisdiction – harvesting in a riparian reserve zone – the Code specifically permits it if carried out under a MLC in association

with an authority issued under the Land Act. In other words, the Code anticipated that riparian reserve zones would be harvested in certain circumstances. Investigation has revealed that BC Gas complied with section 10 of the Timber Harvesting Practices Regulation. Further investigation is not required to consider this issue.

### **Summary**

The Board cannot investigate the complaint issues related to construction of a pipeline in a stream, government enforcement of non-Code requirements, and remediation because the Board does not have the jurisdiction to do so. In addition, further investigation of the one remaining jurisdictional issue is not required to consider the complaint, because BC Gas complied with section 10 of the Timber Harvesting Practices Regulation. In light of these circumstances, I have decided to stop the investigation of the Barclay Creek Pipeline complaint.

### **Alternatives**

I would like to suggest two possible alternatives should the complainant wish to pursue this matter further. First, I understand that BC Gas and the three water users at Barclay Creek have discussed compensation and remediation for the impacts to their water supply. I encourage the parties to continue to work together to reach a mutually acceptable solution. Secondly, if the complainant feels he has been treated unfairly by a government ministry, he may make a complaint to the Office of the Ombudsman. He may reach the Office of the Ombudsman at 1-800-567-3247.

This concludes the Board’s involvement in this matter. If you have any questions, please call Chris Oman, Senior Complaint Analyst, at (250) 356-1329, or (800) 994-5899.

Yours sincerely,

W. N. Cafferata R.P.F.  
Chair