



CLOSING LETTER

File: 97250-20\010304

October 31, 2001

Dear Participants:

Re: Decision to Stop Further Investigation of Complaint 010304 – Twain Creek

This letter is to advise you that the Forest Practices Board has decided to stop further investigation of the complaint submitted on April 10, 2001.

The Complaint

The complainant said that Babine Forest Products Co. is:

1. falling culturally modified trees;
2. endangering salmon fry with its barge operating on Babine Lake;
3. allowing oil and diesel to leak into lakes and streams;
4. improperly disposing of oil and antifreeze;
5. allowing buildings to be constructed on traditional territory without permission; and
6. planning to spray pesticides in an area where plants are collected for traditional medicine.
7. The complaint is also that a guide outfitter has set up operations within traditional territory without permission.

Regarding issue 4, the complainant stated that operators of logging equipment working for the licensee improperly disposed of used oil and antifreeze about seven or eight years ago. The incident occurred prior to the Code being in effect. The Board therefore has no authority to investigate this issue.

Regarding issue 6, a process for the public to appeal the use of pesticides is provided through the *Environmental Appeal Board Regulation of the Pesticide Control Act*. The Board has no authority to investigate that issue.

Regarding issue 7, the regulation of guide outfitters falls under the Wildlife Act. The Board has no authority to investigate that issue.

Regarding issue 5, issues relating to aboriginal rights and title are not directly linked to the Board's mandate to address. The Board has no authority to investigate whether buildings were constructed on traditional territory without permission. However, the Board has authority to investigate if the construction and occupation of buildings complied with the Forest Practices Code of British Columbia Act (the Act). The buildings in question were in place for several years before the complaint was filed

with the Board. Because the issue was not brought to the Board in a timely manner, the Board has decided to stop investigating it under section 177(2)(b) of the Code.

The remaining issues are within the Board's authority to investigate. However, the Board has decided, under section 177(2) of the Act, to stop investigating those issues for the following reasons:

1. *Falling culturally modified trees*

The Board considered whether the licensee is harvesting culturally modified trees in contravention of the Code in its previous investigation, Logging and Management of Cultural Heritage Values near Babine Lake North of Burns Lake, BC, Complaint Investigation 990198, January 2000. The Board found that the licensee had complied with the Code in all regards to assessing and managing cultural heritage resources. The Board also found that the district manager considered relevant information when he satisfied himself that cultural heritage resources and culturally modified trees would be adequately managed and conserved.

The complainant has provided no new evidence to suggest that cultural heritage resources are not being adequately managed and conserved. The licensee's procedures for managing culturally modified trees have not changed since the Board's previous investigation. The Board's opinion is that the current complaint issue has already been investigated and that further investigation is not necessary.

2. *Endangering salmon fry with the barge operating on Babine Lake*

The complainant asserted that the pressurized air system, used to keep part of Babine Lake free from ice to allow year-round barging across the lake, is killing salmon fry. The Board's previous investigation 990198 had determined that barging of logging trucks across Babine Lake is a forest practice as defined by the Act. Section 45 of the Act prohibits a person from carrying out a forest practice if it results damage to the environment.

However, the complainant has not discussed his concerns regarding the effect of the pressurized air system on salmon fry with the Ministry of Water, Land and Air Protection, or Department of Fisheries and Oceans. These agencies have expertise to assess whether such systems are harmful to fish. Contacting these agencies are administrative remedies available to the complaint that should be pursued by the complainant. The Board has therefore decided to not investigate this issue.

3. *Allowing oil to leak into lakes and streams*

The complainant asserts that oil is leaking into Babine Lake from the licensee's barge. This same issue was considered in the Board's investigation 990198. That investigation found no evidence of fuel spilling from the barge operation. Following that investigation in May 2001, Thomas Perry submitted another complaint to MELP that oil was observed on the ground and in the nearby waters in the vicinity of the Babine Lake barge crossing. MELP investigated but determined that complaint to be unsubstantiated as well. The Board's opinion is that the current complaint issue has already been investigated and that further investigation is not necessary. The Board has therefore decided to not investigate the issue of contamination from the barging operation.

Summary

The Board has no authority to investigate the following issues raised in the complaint:

- contamination from the disposal of oil or antifreeze occurring before the Code came into effect in June 1995 (issue 4)
- construction of a house on traditional territory without permission (issue 5)
- approval of the use of pesticides (issue 6)
- the operation of a guide outfitter (issue 7)

The Board has decided to not investigate the following issues under section 177(2) of the Forest Practices Code of British Columbia Act:

- the falling of culturally modified trees (issue 1) because those issues have been previously investigated and further investigation is not necessary;
- the effect of the pressurized air system on salmon fry (issue 2) because the complainant has not taken advantage of alternative administrative remedies that are available; and
- contamination from the barge operation (issue 3) because those issues have been previously investigated and further investigation is not necessary.
- the construction and occupation of buildings on Crown land because that issue was not brought to the Board's attention in a timely manner.

Although the construction and occupation of buildings on Crown land was not investigated, evidence provided to staff suggests that the occupation of the crew quarters building may contravene the conditions of the special use permit. Such a contravention is unlikely to adversely affect the management of forest resources. However, I recommend that the licensee and district manager review the matter to ensure compliance with the Code.

The complainant may wish to contact the following agencies regarding issues that the Board cannot or will not investigate:

- Environment Appeal Board regarding the spraying of pesticides (tel. 250 – 387-3464)
- Department of Fisheries and Oceans regarding the affect of the pressurized air system on the salmon fry (tel. 250-847-7909); and
- Ministry of Water, Land and Air Protection regarding the contamination of oil and antifreeze from logging equipment (tel. 250-692-7777).

With this letter, the Board is concluding its investigation of the complaint. If you have any immediate questions or concerns, please contact Peter Nagati, Senior Complaint Analyst, at (250) 356-1657, or toll-free at 1-800-994-5899.

Yours sincerely,

W.N. (Bill) Cafferata, R.P.F.
Chair

cc Tom Pendray, DFO, Smithers
Environmental Appeal Board, Victoria
Mark West, Ministry of Water, Land, and Air Protection, Burns Lake