

K. Oler

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May 3, 2006

Forest Practices Board
Third Floor 1675 Douglas Street
P.O. Box 9905, Stn. Pro. Govt.
Victoria B.C.
V8W 9R1

Attn: Bruce Fraser

Re: Audit Report B.C.T.S. Rocky Mountain Forest District

Please consider this letter as the TSL holders's formal response to the final Audit Report. To date we have not received the bound copies requested so we are assuming the report last faxed to us is the final formal report. This letter once again details concerns with the accuracy of the report which has been prepared. We have brought these concerns forward on three previous occasions and have effectively been ignored by the Forest Practices Board. As you will see we have very significant concerns regarding the accuracy of many of the statements.

The following outlines our concerns:

Statement on page 5 referring to "1.8 km long newly constructed road that had no cross drains or waterbars and the ditch dissipated water in only two locations. Sections of the road surface and ditch had eroded, particularly the last 400 metres. The TSL holder did not ensure that the road drainage system controls ditch erosion (section 9(1) (ii) of the Forest Road Regulation)"

Cross drains and water bars were put in place on the stated piece of road by the TSL holder. However drainage control structures put in place by the TSL holder were taken out by other parties operating in the area. This access by the other parties was done with out any notification to the TSL holder or with out any road use agreement. FPB must also take into consideration that the TSL holder did not propose the road in it's present location. The road was reconstructed from a road built by the M.O.F. in a questionable location.

Also you must consider that shortly before your Audit, record rainfalls were received in the area. It is also very unlikely that the stream you make reference to is fish bearing. This statement is based on accepted professional standards to determine if a stream is fish bearing. The road segment in question has since been cross ditched by the TSL holder.

Statement on Page 6 referring to “*The one –half kilometre section of a new road lacked functioning ditches. Cross drains where present, drained onto erodable, fine textured fill slopes. Fine textured waste material from road construction had been stacked in oversteepened piles along the roadway. The TSL holder did not take steps to ensure that waste areas were left in a stable condition, or to locate waste areas where eroded soil materials would be prevented from entering streams (sections 8(1)(d) and 8(1) 9k) Of the Forest Road Regulation.)*”

The road you are referring to was proposed in a very questionable location. If sediment entered stream from the road or waste pile is very questionable. To the best of our knowledge no geotechnical assessment were carried out by B.C.T.S. No adequate stream assessment was carried out by B.C.T.S. The manner in which the TSL holder built the road as opposed to the original B.C.T.S. plan, has resulted in significantly less disturbance then would have resulted from the original proposal. A much more serious situation would have resulted if the B.C.T.S. plan was followed. The TSL holder did propose to recontour the portion of road in question. Once again the report does not take into account the record rainfall just previous to your audit. Also the area recently being burned and associated soil disturbance is not taken into account

Statement on page 6 referring to “*The Little Lamb FSR was originally an old mining road and parallels a fish bearing stream. The FSR is within the creek’s riparian reserve zone and, in some short sections, encroaches on the creek itself. While BCTS operational plan recommended constructing the cutblock access road in an alternative location, the TSL holder sought and received approval from the district manager to access the cutblock by upgrading the FSR under a road use permit. The audit found that portions of the upgraded section had unstable cutslopes and plugged ditchlines. The road surface cutslopes and fill had eroded. The TSL holder did not use the FSR in accordance with the conditions of the road use permit(section 54(6) (c) of the Forest Practices Code of British Columbia Act), intended to reduce sediment delivery to the stream. Specifically, the TSL holder did not ; place cross ditches in the locations where significant vegetation occurs between the existing road and the stream; remove all culverts put in place during hauling operations; upgrade the road in a manner that ensures that quality in the stream will not be negatively affected; place log cribbing to ensure that material does not enter the watercourse; and put erosion control socks in place.*”

The portion of the road with the unstable cutslopes, did not result from any activities of the TSL holder. The TSL holder simply repaired the significant damage which had resulted from the MOF protection branch attempt at reclamation after the fire. The manner in which the TSL holder used the existing road was very much in keeping with minimizing the sediment delivery to the stream adjacent to the road. After we finished using the road we backed up the existing culverts, did some water barring and cleaned out some short sections of ditch. This did not result in any significant increase in sediment delivery to the stream. Our less is more approach was definitely the correct approach

based on our experience, and has also been backed up by the reclamation plan prepared by the B.C.T.S. after the fact.

All of this work had been reviewed and approved by B.C.T.S.

The road location originally proposed by B.C.T.S. was very questionable from a terrain stability stand point. Numerous drainages and slope instability indicators were present on this proposed location. The proposed route was directly above the section of bank which had slumped onto the Little Lamb FSR. All indicators showed that building a road in this location would have been a serious mistake. It is also my understanding that the proposed route was laid out by B.C.T.S. with significant snow cover, making terrain and drainage assessment impossible. It is also my understanding that no terrain stability assessments were completed by B.C.T.S.

Statement on Page 6 referring to “ *Eroded materials from all three sections of road have entered fish streams. The TSL holder did not ensure the road drainage systems minimized the amount of sediment entering streams (section 9(1) (c) (v) of the Forest Road Regulation)*

The resulting sedimentation has , or has the potential to, adversely affect fish streams. Continued sedimentation of the fish streams is likely, given the exposed fine textured soils and inadequate/non –functioning drainage systems.

Again it is questionable if sediment from all three road sections entered fish streams. The question should not be if sediment entered the streams, but did the TSL holder make reasonable efforts to minimize sediment delivery. Using all accepted professional standards the TSL holder did make every reasonable effort to minimize sediment delivery to all watercourses. Again using accepted professional standards it is very questionable if any of these streams in question are fish bearing.

Seven factors contributed to sediment deliver to the streams:

- 1.) Soil disturbance as a result of the fire.
- 2.) Record rainfalls
- 3.) BCTS activities
- 4.) Activities of other operators in the area.
- 5.) Poor planning and assessments by B.C.T.S.
- 6.) M.O.F. Protection Branch activities.
- 7.) TSL Holder activities

Of these seven factors the TSL Holder only had control over one. Compared to the other six factors the TSL holder’s activities caused minimal sediment delivery.

It had been stated on several occasions by FPB that it was impossible to determine what work had been done on the FSR in question by the TSL holder and what work had been done by B.C.T.S. However it seems that the FPB has accepted the statements by

B.C.T.S. as fact and have disregarded the statements by the TSL holder and his representatives.

I would like to again ask on what basis that the Forest Practices Board has developed the belief that the TSL holder's statements are false and that B.C.T.S statements are true.

I would also question the investigative techniques that have been used by the Forest Practices Board in this case. To arrive at the conclusions, stated in your report clearly demonstrates that you have not adequately investigated any of the statements or positions brought forward by the TSL holder or his representatives.

Much of the work done by B.C.T.S. from the initial planning stages to attempts at reclamation, were done in a very questionable manner.

As a general statement I find it quite disturbing that considering the many questionable practices that were carried out during salvage operations associated with the Lamb creek fire, that this is the only area requiring improvement by B.C.T.S. which was discovered during your audit.

I would once again like to ask the Forest Practices Board if they have investigated the methodology used for riparian assessment, terrain stability assessment, block layout, road location, wildlife tree patch assessment and for determining stumpage values. I am sure that even cursory investigation of any of these points and how they relate to the operations in the Lamb Ck. Fire area will be very enlightening.

The concept that the TSL holder is unable to appeal the Forest Practices Board Report based on the current legislative structure is also very interesting. This effectively makes it possible for the Forest Practices Board to state anything in a report true or untrue without having to back it up or face the accused. Based on the this situation it is very disturbing that the board has seemly accepted your investigators report as fact with no further questioning of the TSL holder.

If you have any questions or require any further information or documentation please feel free to contact me or my representative at ph.(250) 425-9980 cell (250) 425-3711 or fax (250) 425-9981.

Sincerely



Ken Oler

cc. Shane Bowden B.C.T.S.
Steve Byford B.C.T.S.
All Public Enquires



File: 97150-20/2005-02

May 24, 2006

Ken Oler
RR#1, Site 18, Box 19
Sundre, Alberta T0M 1X0

Dear Ken Oler:

Re: Forestry Audit: BC Timber Sales, Rocky Mountain Forest District

Thank you for your letter dated May 3, 2006. I appreciate you taking the time to write to me to express your concerns with respect to the recent audit report. I trust that you have since received the bound copies of the report you have requested.

Your letter documents several points of concern that you have brought forward previously to the audit team but feel have been ignored. I assure you that the concerns that you had brought forward were thoughtfully considered prior to finalizing the audit report. Your representation letter was assessed point by point by not only the audit team, but also the two member Board panel. Although the audit documented several non-compliances with the legislation, the key issue relates to Section 54(6)(c) of the *Forest Practices Code Act* which states:

54. Use of roads on Crown land for timber harvesting or other industrial activity

(6)A person who uses a road in accordance with this section must do so in accordance with all of the following:

- (a) this act, the regulations and the standards;
- (c) any cutting permit, road permit, road use permit, special use permit or timber sale licence that does not provide for cutting permits.

Based on the evidence gathered during the audit, it was found by the auditors and supported by the Board panel and myself that you failed to operate in accordance with the conditions of a road use permit for the Little Lamb Creek FSR. Although you agreed to several conditions to minimize sediment delivery to Little Lamb Creek, outlined in your representative's August 6, 2004, letter to the district manager, those conditions were not met.

A specialist hired by the Board to assess this road segment estimated that over 300 cubic metres of fine sediment eroded into Little Lamb Creek from the area hydrologically

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connected to the creek. The audit team's opinion, supported by the Board, is that Oler's road construction practices resulted in considerable sedimentation. The road drainage systems did not minimize sediment delivery to a stream, contrary to section 9(1)(c)(v) of the *Forest Road Regulation*.

This failure to follow the conditions of the road use permit and the sedimentation resulting from road construction practices were the primary reasons for the significant non-compliance finding in the audit report. The points raised in your letter, previously considered by the Board, did not lessen Oler's obligations to follow the conditions of the road use permit and minimize sediment delivery to the fish stream.

The Forest Practices Board was created under the Forest Practices Code of British Columbia Act (the Code) as an independent watchdog for sound forest practices in BC's public forests. The mandate of the Forest Practices Board is to provide independent assurance, to both the British Columbia public and the international marketplace, that forest and range licensees are carrying out sound practices and complying with legal requirements. Therefore, it is also the duty of the Board to report publicly when we find that a licensee has failed to comply with legal requirements and has adversely affected a public resource.

I am disappointed that you feel the Board process was not fair and that "it is possible for the Forest Practices Board to state anything in a report true or untrue without having to back it up or face the accused." I must challenge your statement as it is a requirement of our audits to base our opinion on sufficient appropriate audit evidence, and to provide potentially adversely affected parties an opportunity to be heard by the Board. In this case, auditors spent four days examining the road construction in the Little Lamb Creek area. Observations and finding were discussed with your representative in the field and later at an exit meeting in Cranbrook. Your written representation was considered in detail by the audit team, a panel of Board members as well as myself prior to this report being released publicly.

Consequently, I believe that our normal audit standards were met with this audit, as with all of our audits, and I would hope you would take the Board's advice and attempt to operate to a higher standard of practice when doing road work near fish streams in the future.

Although this audit file is closed, I will remind you that the Board is interested in the outcome of the Ministry of Forest and Range ongoing compliance and enforcement investigation with respect to this road segment and the corresponding sediment issues, and may undertake further investigation if the Board determines such action is warranted.

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I thank you for raising your concerns, however I can assure you that your points had previously been assessed fully, but did not mitigate the issue of the non-compliance noted.

As the Board is a public agency, we have a responsibility to act in a transparent manner, therefore when an auditee raises a concern with our process; we post those concerns, as well as our response, on our public website. Therefore your letter and my response will be posted on our website.

Once again, on behalf of the Board I would like to thank you and your staff for the cooperation shown throughout the audit.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Fraser".

Bruce Fraser, PhD
Chair

cc: Shane Bowden, BCTS
Steve Byford, BCTS