

**Mountain Pine Beetle
Harvesting in the
Stake Lake Cross Country Ski Area**

Complaint Investigation 070758



FPB/IRC/126

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Table of Content

THE INVESTIGATION	1
INTRODUCTION	1
BACKGROUND	1
DISCUSSION	3
<i>1. Does the Kamloops Land and Resource Management Plan contain requirements or guidance that applies to the management of the Stake Lake ski trails?.....</i>	<i>3</i>
<i>2. Are there any recreation objectives that apply to the Stake Lake ski trails established under the Forest Practices Code of British Columbia Act?.....</i>	<i>4</i>
<i>3. Are the ski trails 'resource features' as defined by the Forest and Range Practices Act?</i>	<i>6</i>
<i>4. Does the Ministry of Tourism, Sport and the Arts authorize forest operations on recreation sites, trails and interpretative forests?</i>	<i>7</i>
CONCLUSIONS	8
BOARD COMMENTARY	8
<i>Cutting Permit Conditions.....</i>	<i>8</i>
<i>Communication</i>	<i>10</i>

The Investigation

On February 8, 2007, the Overlander Ski Club of Kamloops (the complainant) submitted a complaint to the Forest Practices Board. The club asked the Board to help resolve or clarify issues with respect to future forest management and ski trail use at the Stake Lake ski trails. During the winter of 2006, the harvesting of Mountain Pine Beetle (MPB) infested trees disrupted the use of the cross-country ski trails, located near Lac Le Jeune. In order to avoid future disruption, the complainant asked that the Ministry of Forests and Range (MoFR) ensure that any future logging be conducted between April 1st and November 15th.

This investigation does not examine the harvesting events of 2006. Rather, the investigation describes the history of the issue and clarifies how the *Forest and Range Practices Act* applies to the Stake Lake ski trails in future forest management activities.

Introduction

Upon receipt of this complaint, Board staff contacted the complainant and the affected parties to discuss the concerns. The participants agreed that a meeting would be useful to review the current forest management issues arising from the mountain pine beetle infestation. A meeting was held in April 2007 and was useful in clarifying issues and potential options for salvaging MPB trees.

This investigation report focuses on clarifying issues facing the participants and providing information for their use.

Background

The Stake Lake ski trails are located 25 kilometres south of Kamloops, adjacent to the community of Lac Le Jeune and Lac Le Jeune Provincial Park. The area is used year round for mountain biking and hiking and in winter for cross country skiing. There are approximately 50 kilometres of ski trails that wind through pine, spruce and Douglas-fir forests. The pine forests are nearly 100 percent attacked by the MPB. Stands of deciduous or non-pine species are not affected by the beetle.

The complainant has operated the ski trails since 1991 under an agreement with the province. The agreement is managed by the Ministry of Tourism, Sport and the Arts (MoTSA). The agreement requires the complainant to maintain the ski trails and, in exchange, the complainant is allowed to collect fees from the skiers.

In 2006, the residents of Lac Le Jeune and BC Parks approached Woodco Ltd. (the licensee) requesting that it harvest the infested forests in the ski trail area. The Lac Le Jeune residents

had invested in pheromone baiting on private land and wanted to increase the effectiveness of these efforts by having the infested pine in the ski trail area harvested. The licensee was approached because it held a non-renewable forest licence in the area. Neither the MoFR Small Scale Salvage Program nor the major forest licensees were available, as their harvest volumes were fully committed to other areas and the timeframe to harvest the timber was very short. The licensee agreed to amend its 2005 Forest Development Plan to include the beetle infested areas as part of its commitment to the community and to help the residents and the complainant. The licensee noted that many of the areas were operationally challenging, time-consuming and cost-inefficient from a production stand point.

As part of the planning process, the licensee held meetings with the public, including the complainant, to solicit their input. The complainant had been harvesting pine danger trees along the trails at its own expense, so it welcomed the opportunity for increased harvesting by the licensee. Both the licensee and MoFR made substantial efforts to expedite the administrative process to allow the harvesting. The licensee planned to harvest the infested pine in the summer in order to control the beetle. The approved amendment did not specify a harvesting season, nor was it required to do so by the legislation. Neither MoFR, the licensee nor the complainant expected the harvesting to be delayed until winter. All three assumed the harvesting would be complete that summer.

The forest development plan amendment was approved by the MoFR on May 26, 2006; however, due to administrative delays, extreme fire conditions, and provincial park concerns, the harvesting was delayed until the fall of 2006 when the licensee harvested timber located along the western edge of the trails before the ski season began. The complainant was pleased with the licensee's fall harvesting.

The licensee also planned to harvest during the winter of 2007 at the south end of the trails but in response to the proposed winter harvesting, the complainant sent a letter of concern to the MoFR. In response, the licensee made some changes to its plans. The complainant and the licensee met on December 6, 2006, to discuss the issues and on December 8, 2006, the complainant wrote the MoFR identifying priority areas for future tree removal. The complainant stressed that future harvesting should be completed outside the ski season as it did not want winter harvesting to interfere with trail use.

The licensee harvested beetle-infested timber during the winter of 2007, despite the complainant's objections, and the licensee and complainant worked together to minimize the impacts to the ski trails. However despite these efforts, the complainant said that skiing quality was reduced on one major trail and the long distance ski trail had to be closed from mid-January to the end of the ski season.

Discussion

A considerable amount of salvage harvesting still remains to be done in the area of the Stake Lake ski trails. The complainant asked that MoFR ensure that the Overlander Ski Club's interests, concerns and contract responsibilities be considered in future harvest planning and that any future logging be conducted between April 1st and November 15th. To that end, the complainant asked the Board to help resolve or clarify issues with the integration of the Stake Lake ski trails and future management of the surrounding forest.

To address future forest management issues and integration of the ski trail management, the Board examined how the *Forest and Range Practices Act* applies to the Stake Lake ski trails. Specifically the Board examined the following questions:

- 1) Does the Kamloops Land and Resource Management Plan contain requirements or guidance that applies to the management of the Stake Lake ski trails?
- 2) Are there any recreation objectives that apply to the Stake Lake ski trails established under the *Forest Practices Code Act of British Columbia*?
- 3) Are the ski trails 'resource features' as defined by the *Forest and Range Practices Act*?
- 4) Does the Ministry of Tourism, Sport and the Arts authorize forest operations on recreation sites, trails and interpretative forests?

1. Does the Kamloops Land and Resource Management Plan contain requirements or guidance that applies to the management of the Stake Lake ski trails?

FRPA requires forest stewardship plans to contain results or strategies consistent with objectives specified in higher level plans. Section 5 of Schedule 1 of the *Forest Planning and Practices Regulation* states that information contained in land use plans may be used as factors for preparing results and strategies in forest stewardship plans.

The Kamloops Land and Resource Management Plan (KLRMP) is a higher level plan¹. The KLRMP contains *Special Resource Management – Recreation and Tourism* management zones. The zones are subdivided into four categories of recreational activity. Each of the four categories has its own set of objectives and strategies.

The Stake Lake trails are located in the *Lac Le Jeune Special Resource Management – Recreation and Tourism Resource Management Zone* (R6 and W7). The Lac Le Jeune zone is a 'Natural

¹ Order Declaring the Kamloops Land and Resource Management Plan to be a Higher Level Plan pursuant to section 1(1) of the *Forest Practices Code of British Columbia Act* effective January 31, 1996. Amended by *Province of British Columbia Order of the Minister of Agriculture and Lands* - January 23, 2006 - Implementation of KLRMP in the context of the *Forest and Range Practices Act*.

Environment Zone". The KLRMP objective for this management zone is to:

Provide recreation and tourism opportunities in a natural environment.

The KLRMP says that in this zone, forest development can occur, but the zones are to be managed to:

...recognise and maintain the area's recreational attributes including a natural quality of the environment.

The KLRMP lists five management strategies for Lac Le Jeune. Two strategies in particular are most relevant. One strategy is to maintain the integrity of recreational quality and the natural environment. The second relevant strategy is to have one agency manage recreation use in both Enhanced and Special Resource Management Zones.

In addition to the specific management zones that apply to the Stake Lake trails, the KLRMP has an overall objective for recreation tourism zones for road and trail construction. Specifically:

Road and trail construction, maintenance and deactivation and other surface disturbances and construction will be undertaken in a manner that meets the management objectives of each recreation and tourism zone, in accordance with direction from an approved plan, local process, or enhanced referral.

Given the KLRMP objectives applicable to the Stake Lake ski trails, strategies in forest stewardship plans should promote dialogue between a licensee, the complainant and MoTSA to ensure that there will be coordination of future forest harvesting and management of the ski trails.

FRPA requires that future forest stewardship plans contain results or strategies consistent with several Kamloops Land and Resource Management Plan objectives. In the *Lac Le Jeune Special Resource Management – Recreation and Tourism Resource Management Zone* the objective is to provide recreation and tourism opportunities in a natural environment. This area includes the Stake Lake cross country ski trails.

2. Are there any recreation objectives that apply to the Stake Lake ski trails established under the *Forest Practices Code of British Columbia Act*?

FRPA provides for the transition of objectives from the former *Forest Practices Code of British Columbia Act* (Code Act). Under section 6 of the Code Act, recreation trails and sites could be established and objectives set for their management.

Section 1 of FRPA defines a "recreation trail" as a trail established under section 56 of this

Act, or established under section 6 of the Code Act or designated under the *Forest Act*.

In November 2000, the *Stake Lake Cross Country Recreation Trail* was advertised in the BC Gazette. The advertisement stated that the chief forester was establishing the trails effective September 29, 2000, under section 6(1) of the Code Act. The Order established the width of the trail right of way as five metres on either side of the trail centre line.

A draft objective was developed to provide guidance to forest management on the ski trails. Specifically:

The objectives are to manage the Stake Lake Trail area for a natural roaded recreation experience. The 43 kilometres of trail, small size lake and day use area will be managed. Opportunities for cross country skiing, mountain biking, hiking and picnicking will be provided. Access will be via a maintained highway to the trail head.

Objectives for recreation trails had to be legally established under section 6(3) of the Code Act. To be in effect, the Code Act required that objectives be set within six months of establishment. In this case the draft objective was not set in time. Consistent with section 6(3.1) of the Code Act, the trails were established effective September 29, 2000, without objectives.

In 2002, the MoFR decided it would no longer be responsible for funding the maintenance of Forest Service recreation sites and trails. All Forest Service recreations sites and trails were to be transferred to other agencies and organizations or closed by March 31, 2004. Consequently, the Kamloops Forest District did not complete the establishment of the recreation trail objectives for the Stake Lake ski trails. Subsequently, the government revisited the decision and sought out partnerships to deliver the recreation program with user groups or other levels of government. In June 2005, the Ministry of Tourism, Sport and the Arts (MoTSA) was created and made responsible for tourism and resort development. In January 2006, MoTSA took over responsibility for some recreation in provincial forests (at sites and trails) from the MoFR.

To date, MoTSA is not actively establishing objectives for recreation sites and trails nor establishing resource features for recreation. Instead MoTSA has stated that it "is relying on recreation objectives established in higher level plans and licensee's professional accountability to incorporate recreation values into their forest harvesting plans." However, the Board notes that unless recreation features are established as discussed above, there is no FRPA requirement for licensees to incorporate recreation values into forest stewardship plans.

The Stake Lake Cross Country Recreation Trail was established as a 'recreation trail' under section 6(1) of the Code Act on September 29, 2000. The established recreation trail is restricted to the width of the trail right of way as five metres on either side of the trail centre line. However, no objectives were set for the management of the trails as allowed by the Code Act.

3. Are the ski trails 'resource features' as defined by the *Forest and Range Practices Act*?

Regulations established under the *Forest and Range Practices Act* also provide protection of resources by prohibiting practices that are harmful to resource features. Section 70 of the *Forest Planning and Practices Regulation* provides protection to identified resource features. Section 70 prohibits licensees from damaging or rendering ineffective a resource feature.

Formal identification of resource features is contained in the *Government Actions Regulation* (GAR). Under section 19 of the GAR, a resource feature defined in the former *Operational and Site Planning Regulation* (OSPR) is continued under FRPA. Section 19 states that resource features as defined in section 1(2) of the former OSPR is a resource feature under section 5 of GAR if the resource feature was contained in a higher level plan, or made known (under section 1(1) of the OSPR which applies to holders of agreements under the *Forest Act*).

The OSPR definition of "resource feature" includes "recreation facilities". As well, the OSPR definition includes resource features as defined under section 51 of the Code Act, which defines previously unidentified resource features. Under section 51 of the Code Act, a resource feature includes a 'recreation feature'.

There is no definition of "recreation facilities" but section 57(1) of FRPA refers to "a trail or other recreation facility". This implies that a trail is a recreation facility.

As well, section 1 of FRPA defines recreation features as:

"recreation feature" means a biological, physical, cultural or historic feature that has recreational significance or value.

A cross country ski trail could be considered a cultural or physical feature.

The Kamloops LRMP, a higher level plan, depicts the Stake Lake ski trails complete with objectives and strategies for the Lac Le Jeune management zone. This can be interpreted as the KLRMP containing the recreation trails and therefore the trails are resource features. This would be consistent with section 19 of the GAR, which states that resource features that were previously contained in higher level plans continue under FRPA.

Section 1(1) of the *OSPR* stated that a resource feature is considered 'known' if it was otherwise made available by the district manager at least 4 months before the operational

plan was submitted for approval.

In this case, the Kamloops Forest District identified the ski trails as ‘known’ to forest licensees 4 months prior to approval of the forest development plans. The district had a 2001 policy that advised licensees, in preparing their development plans, to consider ‘known’ information”. The policy included an appendix which included the ski trails. As well, the MoFR district confirmed that a previous forest development plan (FDP) for the area (1996 to 2001) included the recreation trails. Thus the ski trails could be considered ‘known’ as stipulated by section 1(1) of the OSPR and, as such, the trails are resource features continued under FRPA.

Furthermore, the Stake Lake ski trails were established under section 6(1) of the Code Act by the chief forester’s Order, effective September 29, 2000. This can be interpreted as making the trails ‘known’.

Lastly, section 180 of the FRPA grandfathers specific designations for areas established under the Code Act, and this includes recreation trails. Recreation trails designated under the Code Act retain that specific designation. Similarly, section 181 grandfathers any objectives for the designated areas under section 180.

The Stake Lake cross country ski trails can be treated as a resource feature as the area was contained in the Kamloops LRMP, a higher level plan; was established as a recreation trail under the Code Act by the chief forester; and the trail areas were made known to forest licensees previously as resource features under the *Forest and Range Practices Act*. The *Forest Planning and Practices Regulation* states that future harvesting operations must not damage or render ineffective a resource feature, which includes recreation trails.

The Board finds that the Stake Lake ski trails are a ‘resource feature’ and cannot be harmed or rendered ineffective by persons conducting forest operations as specified by the *Forest Planning and Practices Regulation*.

4. Does the Ministry of Tourism, Sport and the Arts authorize forest operations on recreation sites, trails and interpretative forests?

Section 16 of the *Forest Recreation Regulation* requires authorization of the use of a recreation site, trail or interpretive forest site for a business or industrial activity. In the Board’s view, this would include timber harvesting. As of July 13, 2006, this regulation requires that any industrial activity on recreation trails or sites be authorized by a MoTSA recreation officer.

This means that forest licensees have to get authorization, under section 16 of the *Forest Recreation Regulation*, from a MoTSA recreation officer before they undertake any industrial activities, such as timber harvesting, road construction, or site preparation on recreation trails or sites.

Conclusions

1. **Does the Kamloops Land and Resource Management Plan contain requirements or guidance that applies to the management of the Stake Lake ski trails?**

Yes. The Stake Lake ski trails are located in the *Lac Le Jeune Special Resource Management – Recreation and Tourism Resource Management Zone*. Future forest stewardship plans must contain results or strategies consistent with the Kamloops LRMP objective to provide recreation and tourism opportunities in a natural environment.

2. **Are there any recreation objectives that apply to the Stake Lake ski trails established under the *Forest Practices Code of British Columbia Act*?**

No. While the Stake Lake Cross Country Recreation Trail was established as a ‘recreation trail’ under section 6(1) of the Code Act, no corresponding objectives for the management of the trails were established.

3. **Are the ski trails ‘resource features’ as defined by the *Forest and Range Practices Act*?**

Yes. The Stake Lake ski trails are a ‘resource feature’ which cannot be harmed or rendered ineffective by persons conducting forest operations as specified by the *Forest Planning and Practices Regulation*.

4. **Does the Ministry of Tourism, Sport and the Arts authorize forest operations on recreation sites, trails and interpretative forests?**

Yes. Industrial activities such as timber harvesting, and road construction located on recreation trails or sites require authorization under section 16 of the *Forest Recreation Regulation* by a MoTSA recreation officer.

Board Commentary

Cutting Permit Conditions

The complainant specifically asked the Board if conditions for recreation trails could be attached to a cutting permit, given that the permit stipulates site specific operations and the permit requirements are legally enforceable.

Cutting permits are administered under the *Forest Act* and as such are not strictly within the Board's jurisdiction. However, cutting permits are a tool for forest management and in this case the discussion may facilitate a better understanding of the options.

Once a stewardship plan is approved, licensees decide on specific cutblock boundaries and road locations. Prior to harvesting, the licensee must obtain a *Forest Act* cutting permit from the MoFR. A cutting permit is the authority that gives licensees the legal permission to harvest on a specific area. The cutting permit includes a term for when the harvesting is to occur (when it starts and ends) and it can include conditions. The MoFR district manager decides what conditions to include.

MoFR provides guidance to staff on the administration of cutting permits in its *Cutting Permit and Road Tenure - Administration Manual*². The manual notes that a cutting permit should not be used as planning tool. That is, cutting permit conditions should not be a method to duplicate or supplant the planning or practices regime set out in the *Forest and Range Practices Act*. That being said, the manual notes that conditions in cutting permits are appropriate '*where operations under the CP could impact other government-issued rights*'.

Furthermore the manual also specifies that a condition or clause must be essential to meet operational circumstances or government objectives that are unique or specific to a regional goal, site-specific requirement or a client group.

The complainant has a *Recreation Trail Management Agreement* which is administered by MoTSA. The agreement permits them to operate and maintain the ski trails and in exchange, is allowed to collect fees for use of the trails. The agreement does grant rights.

Article I of the agreement discusses the Minister granting rights to use the area. Active road construction and timber harvesting can directly impact the ability of the complainant to meet its obligations under the contract and can affect its ability to collect fees from skiers. Section 10.03 of the agreement also notes that the Province may deal with the land under various government Acts without the consent of the club and without compensation. However, in the Board's view, this does not mean without consultation or consideration.

For example, if harvesting should eliminate the ability of skiers to use the area for any extended period of time, consumers who have purchased season passes from the complainant could likely demand a refund. It is clear that the intent of these recreation agreements is to provide recreation services and facilities to the public through the private sector on behalf of government. Government's management of the recreation areas should anticipate the need to mitigate and integrate the rights and tenures it grants on Crown land.

² Version 1.00, March 22, 2006

Consequently, conditions to cutting permits can be appropriate in some circumstances. If the district manager felt it necessary or relevant, the manager could consider conditions on cutting permits that would respect the intent of those items and make specific reference to the complainant or the MoTSA. Therefore, in future harvest plans the MoFR can consider the operation of the ski trails when setting the term for cutting permits and attaching conditions that ensure that the government agreement with the complainant is not undermined.

Communication

There are at least four parties that must communicate and coordinate their activities on this piece of public land:

- the Ministry of Forests and Range (MoFR)
- the Ministry of Tourism, Sport and the Arts (MoTSA)
- the Kamloops Overlander Ski Club
- local forest licensees operating in the Stake Lake area

The Ministry of Forests and Range, the licensee and the ski club have worked hard to cooperate and address the dead trees left by the pine beetle in the ski trail area. The Board commends their efforts. However, this investigation also identifies that the MoTSA recreation officer has a legislated role to play and MoTSA needs to be consulted regarding management decisions that could affect the recreation resource. Given the prospect of continued forest operations in response to the beetle infestation in the Stake Lake area, the four parties need to structure their communication and forest planning to ensure that forest practices are integrated with the recreation management of the ski trails.

The Board would also like to note that the good working relationship that exists among the Overlander Ski Club of Kamloops; Woodco Ltd.; staff of the Kamloops Forest District and Southern Interior Forest Region of MoFR; and the staff of MoTSA, was indispensable in addressing the issues in this complaint.