



Forest Practices Board

File: 97250-20/090882

May 20, 2009

Dear Participants:

Re: Complaint 090882 - North Canyon Improvement District

The North Canyon Improvement District submitted a complaint to the Forest Practices Board on March 16, 2009. The complainant said that the local community forest agreement holder, Creston Valley Forest Corporation (the licensee):

- had not properly consulted the complainant about forest activities proposed in Camp Run Creek; and
- had not complied with its forest stewardship plan (FSP) strategies or a higher-level plan objective for logging in that consumptive-use watershed.

The complainant was also concerned that the *Forest Planning and Practices Regulation* (FPPR) under the *Forest and Range Practices Act* (FRPA) does not protect the complainant from risk and liability should logging activities result in an adverse impact to its water source.

Background

In October 2007, the complainant learned from a resident that the licensee had started to plan a road and cutblocks in the upper part of Camp Run Creek. Camp Run Creek is a 650-hectare domestic watershed that supplies water to several hundred residents in the community of North Canyon. The licensee has a probationary community forest agreement over about 18,000 hectares encompassing Camp Run Creek and several other domestic and community watersheds.

The complainant was unwilling to accept any additional risk from forest activities to the quality, quantity or timing of its water supply, particularly if such activities might result in a need for expensive water treatment such as disinfection or filtration.

The complainant and licensee talked and corresponded several times over 2008. By May 2008, the licensee had agreed to not carry out forest practices in the Camp Run Creek watershed during 2008 or 2009. However, the licensee maintained that the watershed

was part of its operating area and that logging was likely to occur in time. The timing of logging in the watershed would depend on the activity of mountain pine beetle already in the area. The licensee committed to involve the complainant in future planning and also invited the complainant to apply for a seat on its community-based board of directors (which could happen next year).

Analysis

How did the licensee consult the complainant about its proposed forest activities?

The licensee complied with FRPA requirements for public consultation about its proposed FSP. However, the complainant believed (based on a document prepared by the Ministry of Forests and Range) that it should also have received a referral letter from the licensee about the opportunity to review and comment on that FSP. There was no legal requirement for the licensee to send a letter to the complainant or any other water-user group (although, in this case, doing so may have helped with relations). There was also no consequence to forest resources from the lack of notification because the licensee has since delayed its plans for Camp Run Creek and has invited the complainant to participate in future planning.

Did the licensee comply with its FSP strategies in regard to forest activities in Camp Run Creek?

The licensee's FSP contains several on-the-ground strategies that, in the circumstances, do not yet apply because its planning of forest activities in Camp Run Creek is incomplete. However, the complainant remains concerned that it was not contacted by the licensee in April 2007 during the licensee's planning "reconnaissance phase". The licensee's FSP supporting documents contain a strategy committing the licensee to formally contact water users for information and advice during that stage. The licensee did not do so, but acknowledged its mistake as an oversight after being contacted by the complainant in November 2007. There was no legally defined non-compliance—documents supporting an FSP are not legally binding. There was no consequence to forest resources; therefore, there remains an opportunity for cooperative planning.

How did the licensee deal with Kootenay-Boundary Higher Level Plan Order Objective #6 for consumptive water use?

Forest licensees must comply with applicable higher level plan orders. Objective #6 of the higher level plan order for the Kootenay-Boundary Land Use Plan defines a streamside management zone for some consumptive-use streams and, where the objective applies, requires a licensee to describe specific measures for water protection. The licensee has not done assessments or started detailed planning for road construction or logging in Camp Run Creek. It is not clear that Objective #6 will apply to the

circumstances in Camp Run Creek; if it does, the licensee still has time to consider Objective #6 and apply those provisions as necessary during its site planning.

Does section 8.2 of the FPPR protect a water licensee from risk and liability should logging activities result in an adverse impact to water quality or quantity?

FPPR section 8.2 sets out government's objective for water in community watersheds. Six hectares of the Camp Run Creek watershed is designated a community watershed. The complainant's concern is that the regulation does not protect a water supplier (i.e. the complainant) from financial risk or liability should logging activities harm water quality or quantity. The complainant is correct; FPPR section 8.2 does not provide a remedy should water in a community watershed be damaged. In fact, there is no legal requirement for a forest licensee to achieve government's objective—only to include a consistent result or strategy in its FSP. However, the *Drinking Water Protection Act* and regulations require a water supplier to provide drinking water that meets specified standards. If new or additional treatment is required to address degraded water, the cost would fall to the water supplier (who might have to subsequently negotiate or litigate with the party that damaged the water).

Commentary

Government created community forest tenures so that communities could make their own decisions about stewardship of local forest resources such as timber and water. The participants to this complaint have initially had communication problems but they are resolvable and should now be put behind them. The licensee has asked the complainant to participate in its forest planning; the complainant wants to study and appropriately protect its water source. There appears to be ample opportunity for the participants to collaborate to achieve desirable results for both water supply and forest management.

I hope that the Board's involvement has been helpful. Thank you for your cooperation in investigation of this file.

Yours sincerely,



Bruce Fraser, PhD
Chair

cc: District Manager, Kootenay Lake Forest District