



**Forest
Practices
Board**

Upgrading of the Trout Mainline Road

Complaint Investigation 111002

FPB/IRC/180

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Board Commentary

In June 2011, the Stelat'en First Nation of Fraser Lake (the Stelat'en) asked the Forest Practices Board to investigate government approval of plans by Fraser Lake Sawmills (the licensee) to re-align and widen several haul roads through traditional Stelat'en territory, asserting that the roads would seriously disrupt traditional use of their territory and that they were not fully informed of the plans.

The history leading to this complaint exemplifies the difficulty that all participants (First Nations, government ministries and forest licensees) encounter when trying to operate in a system where bigger issues are unresolved.

While on the surface this complaint is about the adequacy of consultation, the Board found that much of the concern is about accommodation, particularly compensation. If the Stelat'en believed that they were receiving adequate benefit relative to the perceived costs, the situation would likely have been different. Courts and governments have gone to considerable efforts to define and refine adequate consultation, but not all First Nations have accepted the results of those efforts.

The Stelat'en indicated a limited capacity to process information about the road upgrade or to respond to government requests for specific information on Stelat'en use of resources in their traditional territory. This capacity issue is real, and government may have to make extra efforts to consult and accommodate effectively.

For example, much of the consultation in this case concerned road permit approvals; however, the 'stage' of road permit approvals is an awkward venue upon which to deal with broad issues such as the potential infringement of an upgraded road network on aboriginal rights in traditional territories. Ideally, these would be dealt with at a more strategic level. But, where project level consultation is necessary, there are ways to consolidate First Nations' capacity to make consultation more efficient, (e.g. - a clearing house concept is one of several ideas apparently being explored), and all participants would likely benefit from those.¹

Although the complaint arose despite the existence of a Forest and Range Agreement, such arrangements can be very useful in clarifying relationships with First Nations, particularly if they are interpreted with some flexibility. However, effective relationships are rarely based on written contracts, but rely instead on open, direct dialogue and respect.

¹ The "clearinghouse" concept was applied in BC's central coast in 2007 when the Nanwakolas Council was created to assist its member First Nations in responding to provincial government resource development referrals. With government financing, input from several First Nations was collected, consolidated and provided to the province.

Introduction

The Complaint

In June 2011, the Stelat'en First Nation of Fraser Lake (the Stelat'en) asked the Forest Practices Board to investigate government approval of plans by Fraser Lake Sawmills (the licensee) to re-align and widen several haul roads through traditional Stelat'en territory.

The Stelat'en asserted that:

1. government and the licensee referred a series of minor amendments to the Stelat'en but failed to inform the Stelat'en that the end result would be to create a major haul road;
2. it had not been informed that private property would be acquired by government to access the main highway;
3. such upgrading was unnecessary, given the supply of timber, and that it was fiscally irresponsible of government to approve the upgrade given the limited potential stumpage revenue; and
4. government had insufficient information on wildlife populations to assess the impact on wildlife of increased access for hunters.

In essence, the Stelat'en asserted that a major haul road would seriously disrupt traditional uses of their territory and that consultation and accommodation of Stelat'en interests by both the licensee and the government were inadequate.

The Board decided not to investigate the third assertion – whether government investment in the road upgrading was fiscally irresponsible – as it decided that examination of the many factors involved in a ministry's decisions on how to apply its budget allocation would require investigation far beyond forest practices. As well, and more importantly, such justification is at the discretion of the minister and subject to public scrutiny, not a Board investigation.

The Board was limited in its ability to investigate the second issue – a lack of consultation about government's intention to purchase private property so that the upgraded Trout Road could more safely access Highway 16 – because the Ministry of Forests, Lands and Natural Resource Operations² (MFLNRO) indicated that consultation would have jeopardized their negotiations to purchase the private land in question by significantly increasing its sale price. As well, MFLNRO received legal advice that it was not required to consult on acquisition of private property, though it was required to do so on proposed uses of that land if it became Crown land.

The Board considered that rationale to be reasonable and looked no further into the second issue.

² The ministry name has changed several times during the history of this issue. For the purposes of this report it is called the "forests ministry".

Therefore, the Board investigated only two of the concerns raised by the Stellat'en:

1. the adequacy of government and licensee consultation with the Stellat'en about the road upgrading; and
2. the adequacy of government information concerning impacts of a major haul road on wildlife.

Background

The Stellat'en (people of Stella) are Dene (Athapaskan) who have lived in the Central Interior of BC for at least 10 000 years. More than half of the 400-plus registered Stellat'en live in Stellako, a village on the western shore of Nadleh Bun (Fraser Lake), 160 kilometres west of Prince George.

Stellat'en traditional territory covers some 5 000 square kilometres. Elders have travelled their territories for many years and traditional resource use still occurs, but widespread salvage logging and a recent wildfire have altered wildlife habitat so that some Stellat'en complain that they see no large wildlife on their family territories any more. As well, traditional berry areas have been altered or degraded by activities such as logging, hydro development and mining, leaving them littered with machinery and empty oil cans. These resource-based activities have negatively impacted Stellat'en use of land and resources, while providing them little in the way of benefits; however, the Stellat'en are not opposed to logging and the band holds a non-replaceable forest licence, and is in the logging business.

Fraser Lake Sawmills (the licensee) is located at Lejac, just east of Fraser Lake. It employs some 300 people and has tenure over 600 000 cubic metres per year. It is one of 13 BC divisions of West Fraser Timber Co. Ltd., an international corporation based in Vancouver and Tennessee.

In the early 2000s, the licensee was operating both in the western portion of the Vanderhoof Forest District and the southwestern portion of the Nadina Forest District. Then, to expedite salvage of still-merchantable timber killed by the mountain pine beetle, government shifted the licensee's operations to the northeastern part of the Nadina district, adjacent to the licensee's Vanderhoof operating area. However, existing roads in the northeastern Nadina area led southwest to Highway 16, but the licensee's mill was to the southeast, near Fraser Lake. The licensee anticipated that some 500 000 cubic metres of wood would come from the Nadina area and another 1 million cubic metres from the Vanderhoof area so, in 2005, it examined options for a shorter, faster haul route, involving connecting the roads in its new operating area to existing roads in its Vanderhoof area.

Also in 2005, the Stellat'en and the forests ministry signed a Forest and Range Agreement that was intended to "address consultation and provide an interim workable accommodation ... (for) any infringements of Stellat'en ... aboriginal interests (resulting

from) forest ... resource development activities” within the Stelat’en traditional territory during its five-year term.³

The agreement set out a process for consultation with the Stelat’en that was expected to fulfill government’s duty to consult during the term of the agreement. Under it, the Stelat’en promised to fully participate in review of all forest development plans (FDPs) and forest stewardship plans (FSPs) provided by government and licensees. They also promised to provide government with all reasonably available information on potential impacts to aboriginal interests.

In turn, government (and by implication its forest licensees) promised to discuss and attempt to resolve any site-specific operational impacts on Stelat’en aboriginal interests. The agreement also provided economic benefits to the Stelat’en in two ways: a five-year non-replaceable forest licence for 150 000 cubic metres per year and a lump payment of \$190 000 per year.⁴

In 2006, the licensee applied to upgrade existing roads in its new operating area and to connect them to upgraded existing roads in its previous area. In combination, these upgrades would allow all of the wood to be hauled east and south to the licensee’s mill, shortening hauling distances by almost 50 kilometres and, with increased truck speeds, reducing hauling time by some two hours per truckload, thereby saving an estimated \$5 million in hauling costs over five years. Truck traffic was expected to triple, from 20 trucks per day to 60.

Consultation around this began in mid-2006, when the licensee advertised two FDP amendments. One amendment (#43) proposed re-alignment and upgrading of some 40 kilometres of the Shovel/Sutherland/Trout Roads (hereafter, the Trout Road) in the Vanderhoof Forest District. The other amendment (#25) proposed to do the same along the Hannay /Hanson Roads (hereafter the Hannay Road) in the adjacent Nadina Forest District (see map on following page). Consultation continued between the licensee, the Stelat’en and the forests ministry for four years, but there was little progress. A detailed chronology of communications and meetings is included as Appendix 1 and summarized here.

The licensee sent letters publicizing the road upgrades to potentially-affected trappers, guide-outfitters and First Nations, including the Stelat’en.⁵ However, the text of the letters differed, depending on the recipient. Letters to government agencies and to registered licence users (e.g. - trappers, guide-outfitters) included specific reference to connecting the two road systems,⁶ but the letter to First Nations did not. The Stelat’en did not respond to the initial notification.

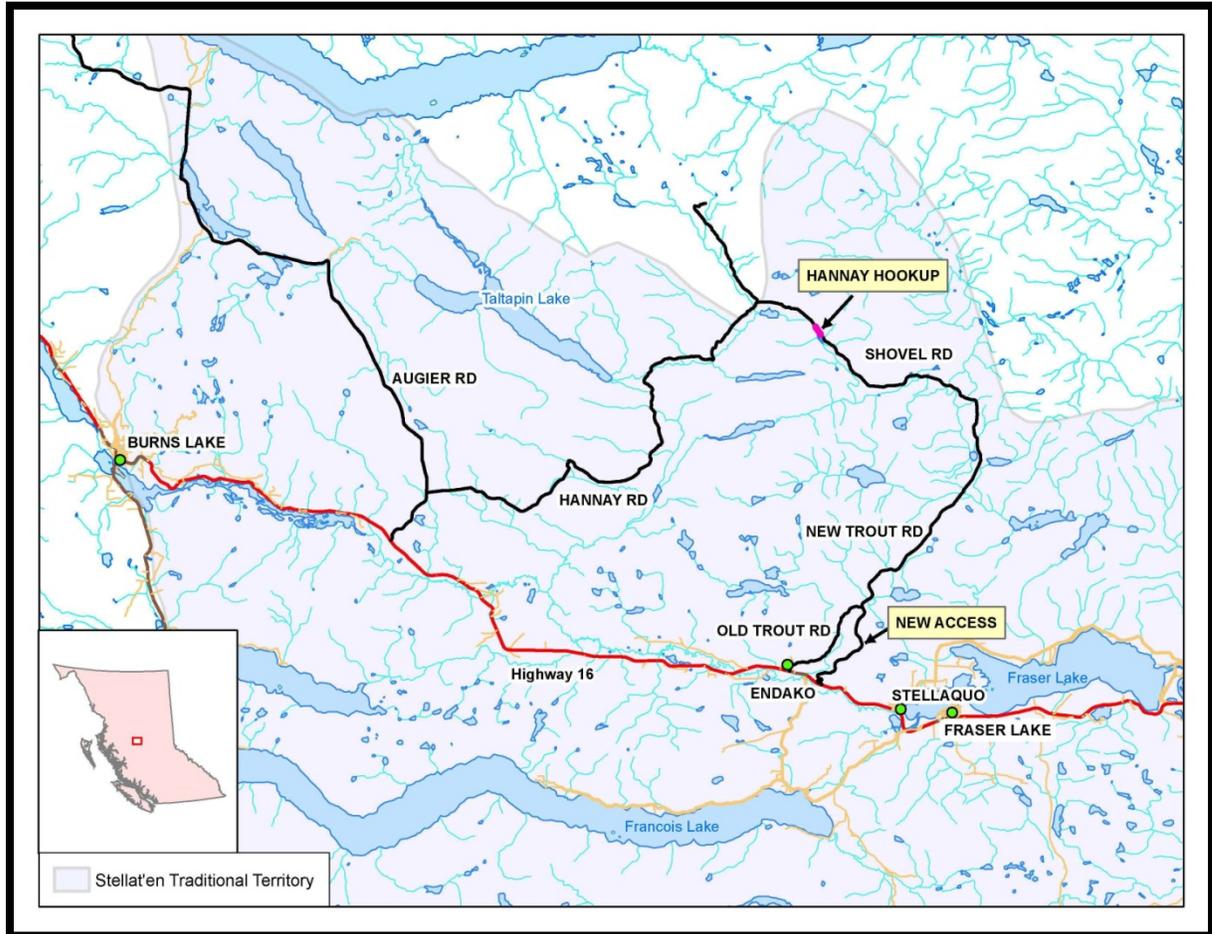
³ *Stelat’en First Nation Forest and Range Agreement, 2005*, section 2.3.

⁴ These volumes and payments were not set out in the Agreement. Their amounts were compiled by MOF staff in 2010 when the Agreement expired and a new agreement was being considered.

⁵ The text and a 1:50 000 scale map on the Hannay Road amendment were sent to the Stelat’en and other First Nations on September 19, 2006 and on the Trout Road amendment on September 25, 2006.

⁶ The letters to licenced users specified “Hook(ing) up the Hannay Road with the Shovel Creek Road”.

Map showing Hannay Rd and Trout Rd Upgrades



The licensee also sent the amendments to the forests ministry for use in consultation with affected First Nations. At that point, the forests ministry realized there had been no overview map distributed to show the proposed development in relation to both the Nadina and Vanderhoof Forest Districts, and, as the objective for connecting the two road networks was unclear, it asked the licensee to send out a second referral letter regarding the Hannay Road amendment, with text and overview maps. The licensee did so in January 2007. The Stella' en immediately responded to both the licensee and the forests ministry, demanding accommodation of Stella' en title and rights as well as compensation for impact to both their traditional use of the land and on their economic opportunities.⁷ The Stella' en referred to “a multitude of significant impacts” which would result from the road upgrade project and asked for immediate meaningful consultation. A month later, the Stella' en informed both the forests ministry and the licensee that they would strongly oppose both the proposed Hannay Road and Trout Road upgrades until an agreement with the licensee resolved Stella' en concerns.

⁷ A registered letter dated January 24, 2007 and copied to the Stella' en legal counsel, was the first indication that the Stella' en understood that the road upgrade could have significant impacts on their interests.

For the next four years, the licensee and the Stellat'en met on a dozen occasions and communicated both in writing and by telephone about the issue. The forests ministry and the Stellat'en also met on a half-dozen occasions, supplemented by letters and telephone discussions.

The Stellat'en concerns were:

- The Trout Road passed through the heart of the traditional territory and would interfere with traditional and social livelihoods of the Stellat'en, obstructing the landscape, reducing traditional foods and increasing environmental disturbance;
- Increased logging truck traffic and speed would restrict Stellat'en food gathering and hunting;
- Fish streams would be altered;
- Hunter and poacher traffic would increase, depressing moose populations that the Stellat'en relied upon; and
- Other resource sectors were likely to use the road in future, exacerbating impacts.

The Stellat'en also maintained for four years that consultation was inadequate and repeatedly requested person-to-person consultation. As well, they wanted compensation for the additional impacts from the upgraded road, asking that:

- the licensee pay the Stellat'en a toll of \$3 per cubic metre for all wood harvested along the road right-of-way plus a \$0.75 per cubic metre toll for all the volume that would come through the road;
- the licensee provide opportunities for Stellat'en youth to get apprenticeships, or otherwise gain experience in forestry operations;
- the licensee contribute to construction of a forestry training centre in Stellako Village; and
- government pay a toll on all timber volume hauled on the upgraded road and increase the timber volume made available to the Stellat'en.

The licensee considered, but ultimately rejected, those proposals, maintaining that revenue sharing was up to government, not licensees, and that union agreements prevented preferential apprenticing. However, the licensee did consider the forestry training request by proposing to hire a Stellat'en person as a temporary summer student. In kind, the forests ministry also refused the Stellat'en request – to provide compensation – pointing out that the Forest and Range Agreement already provided both money and timber to the Stellat'en specifically to accommodate infringement by forestry activities.

The licensee, the forests ministry and the Stellat'en planned a joint field visit to collect information for a report to be used as a basis for a community response to the Trout Road upgrade project. However, the Stellat'en proposed to bill the licensee for six days of field work and the licensee balked at that, saying that only a one-day visit was necessary. Ultimately, the field trip never occurred.

In addition, the Stellat'en carried out a traditional ecological knowledge study to identify fish and wildlife habitats, food and medicinal plants, trails and campsites along the Trout

Road, including assessment of past and present Stellat'en resource uses in the area. However, it ultimately chose to not provide that information to the licensee or the forests ministry.⁸

Some efforts were made by the licensee and the forests ministry to deal with the additional hunting pressure anticipated along the upgraded road. The licensee initially proposed to deactivate part of the lower Hannay Road; however, this was strongly opposed by local residents, guide-outfitters, trappers and other forest licensees, so the licensee decided not to deactivate the road until it was no longer necessary for harvesting operations.

The forests ministry also met with the Ministry of Environment (MOE) and requested a survey to estimate the moose population, plus harvest information for the area affected by the Trout Road upgrade. MOE had no population estimate, but secondary indicators of moose population, as derived from hunter success ratios, were steady, leading the environment ministry to conclude that there had been no appreciable change in moose population size in the recent past. Other indicators of moose population structure (ratios of bulls to cows to calves) were also considered to be satisfactory, and hunting regulations had not been changed in the area for almost thirty years.

MOE did acknowledge, however, that in the shorter term, numbers might be somewhat reduced from previous years; but it assumed that any decrease was likely due to two successive harsh winters rather than hunting, so moose populations were expected to recover. Stating that it had no budget for a moose inventory, and no indication that such an inventory should be a priority, MOE concluded that, based on available information, it had no concern about moose in the area but, if a problem did develop in future, it would deal with it then.

After summarizing the moose population information from MOE, the forests ministry district manager reviewed the consultation and history of the road upgrade and connection project and noted that, although the Stellat'en had been invited to discuss wildlife concerns at regional wildlife committee meetings in Prince George, they had not attended. In a July 2010 letter to the Stellat'en, she noted that the area had long been accessible by road, but acknowledged that the upgrade was expected to triple truck traffic. The district manager summarized accommodation measures to date – adjusting road location, the licensee's commitment to contract a fisheries biologist to address fisheries concerns and the licensee's promise to avoid timber harvesting until after berry picking seasons. She expressed concern about information that had been promised by the Stellat'en but not provided and concluded that she would decide approval or rejection of a final road permit shortly; the permit was approved soon thereafter.

The Stellat'en continued to oppose the road upgrade, but eventually the licensee decided to delay no longer. In mid-2011, it had completed clearing of the right-of-way and started sub-grade construction when the Stellat'en submitted their complaint to the Forest Practices

⁸ The Stellat'en refused to share the results with the licensee unless the licensee agreed to fund door-to-door consultation. MOF was not provided with a copy because there was a possibility of future court action.

Board. At present, the sub-grade is completed on all but the last 3.5 kilometres just before the road meets Highway 16. Construction of the sub-grade on this last piece of the road, and surfacing of the road, will be completed in the summer of 2012.

Discussion

The Board investigated two issues:

1. adequacy of forests ministry and licensee consultation with the Stelat'en about the road upgrading; and
2. adequacy of government information concerning impacts of a major haul road on wildlife.

Adequacy of consultation

It is government's responsibility to consult with First Nations whose aboriginal interests may be affected by government-authorized land use activities. The intent of such consultation in the forestry context is to protect aboriginal interests from irreversible harm from forest practices while treaty negotiations are in progress. Meaningful consultation involves sincere efforts to communicate. It has been described by the BC Supreme Court as consultation where the parties make genuine efforts to understand each others' positions and attempt to address them, with the ultimate goal of reconciliation.⁹ Meaningful consultation involves open communication about concerns and issues, with some prospect of resolution of issues, although genuine efforts to consult will not necessarily resolve issues. The Board's focus is not on the outcome, but on the process of consultation and accommodation. There is no duty to agree; rather, the commitment is to make good faith efforts to understand each other's concerns and for government to try to address them.

The Board used seven criteria to assess the adequacy of consultation in the circumstances of this complaint:¹⁰

1. Was the consultation in good faith?
2. Was information shared with the Stelat'en in a manner that respected Stelat'en capacity to process such information?
3. Did government make reasonable efforts, considering the anticipated degree of infringement of Stelat'en interests, to fully inform itself of the possible effects of the road upgrade on the Stelat'en?
4. Did the Stelat'en express reasonable concerns and interests, and did government receive input from the Stelat'en with the intention of addressing those concerns and a willingness to make changes based on that input?

⁹ See *Wii'litswx v. British Columbia*, 2008 BCSC 1139, paragraphs 145 and 178.

¹⁰ The criteria were adapted from Statt, G. 2008. *Consultation, Cooperative Management and the Reconciliation of Rights*. Chapter 10 in *Seeing Beyond The Trees: The Social Dimensions of Aboriginal Forest Management*, David C. Natcher, ed. Captus Press, Concord Ontario, at 193, 194.

5. Did the Stellat'en unreasonably extend the consultation process?
6. Did government provide the Stellat'en with a separate consultation process from that of stakeholders?
7. Did government supply more detailed information to the Stellat'en than to other stakeholders to ensure clarity?

1. Was the consultation in good faith?

Yes. The Board's investigation confirmed a steady flow of information between the licensee, the forests ministry and the Stellat'en, through meetings, e-mail and telephone from 2007 through 2011. All three parties made genuine efforts to understand, and did understand, each others' positions. The Board interprets those positions as:

- The licensee wanted to upgrade and connect forest roads to reduce hauling costs as soon as possible, given the need to salvage dead pines before their quality deteriorated significantly.
- The forests ministry was supportive of the licensee, but wanted to ensure that the Stellat'en were adequately consulted and that potential impacts of the road upgrade were either minimized or accommodated, relying on the terms of the Forest and Range Agreement.
- The Stellat'en wanted to secure economic benefits from the licensee's road upgrade and be adequately compensated for infringement of its traditional activities on its traditional territory.

The forests ministry rejected payment of compensation in the form of a toll on transported timber. Instead, it relied on the Forest and Range Agreement that the Stellat'en and the government signed in 2005¹¹ for provision for accommodation for potential infringement. The purpose of that agreement was specifically to provide economic benefits to the Stellat'en for infringement from forest development activities. Accommodation was implemented in two forms:

1. direct award of a forestry tenure for 150 000 cubic metres of wood each year for five years, all of which could be harvested at any time. (During the agreement period, the Stellat'en requested more volume and the forests ministry directly awarded them another 375 000 cubic metres), and

The Stellat'en and government are currently finalizing a new *Forest Consultation and Revenue Sharing Agreement* (FCRSA). Although similar to the previous *Forest and Range Agreement*, the new agreement will not include an award of timber volume; that is the subject of a separate tenure agreement. Instead, the FCRSA will share revenue from the forest. However, that revenue is likely to decline as timber supply shrinks due to past allowable annual harvest uplifts implemented to recover beetle-killed pine, and as the remaining dead pine loses its salvage value.

To address this, the FCSRA will increase the capacity of the Stellat'en to participate in consultation, and will provide up to \$35,000 per year from the revenue received specifically for consultation initiatives.

¹¹ That agreement was in effect until October 2010, so throughout the consultation period for the Trout/Hannay road upgrade.

2. revenue-sharing in the form of lump sum payments of \$190 970 per year for five years.

The Board found that, notwithstanding the forest ministry's and the licensee's refusal to pay compensation, all three participants consulted in good faith.

2. Was information shared in a manner that respected the capacity of the Stelat'en to process such information?

Yes. The Forest and Range Agreement set out a consultation process that the Stelat'en and the forests ministry had previously agreed would fulfill government's duty to consult. The Stelat'en agreed to fully participate in reviewing all forest plans, presumably anticipating that they would have the capacity to participate fully. Apparently they did not, as the Stelat'en regularly asked for more time to process information on the road upgrade and failed to respond to requests for specific information and interests about the area affected by the road.¹² In some instances, the Stelat'en made efforts to respond, but the consultation record indicates that they lacked the resources necessary to review the information provided by government and the licensee. For example, the Stelat'en made repeated requests for maps and documents that had already been received, and they misunderstood government commitments, such as MOE's statements around conducting a moose inventory. The Board interprets this as reflecting a limited capacity of the Stelat'en to respond.

The Board considers the consultation process set out in the agreement to be general guidance on what both participants expected in terms of information sharing and capacity, and flexibility was applied when the forests ministry did not insist on strict adherence to the time limits set out in the agreement. Both forest districts communicated with the Stelat'en through meetings, e-mail and telephone throughout the four-year period, extending the consultation period significantly beyond what was set out in the agreement.

3. Did government make reasonable efforts to inform itself of the possible effects of the road upgrade on Stelat'en interests?

Partly. The Stelat'en asked the forests ministry to undertake a thorough study of wildlife populations; a thorough reconnaissance of berry patches; an inventory of water and fish populations; and, a study of medicinal plants, with the studies to involve not only surveys but traditional knowledge of the Stelat'en. However, MOE decided not to carry out a moose inventory, which made it difficult to assess the possible effects of the road upgrade on moose (that sub-issue is discussed further below). Also, the forests ministry didn't carry out such studies, though it encouraged the Stelat'en to bring forward specific aboriginal interests within the project area and repeatedly offered to review the road upgrade information it sent to them. As well, it planned a joint field visit with the Stelat'en to collect

¹² This departure from the provisions in the *Forest and Range Agreement* may have been due to changes in the Stelat'en government. The cause was not explored by the Board, which accepted that the Stelat'en did not, after all, appear to be able to fully participate as planned.

information, although that field trip never occurred. Overall, the Stelat'en provided limited specific information on the locations or nature of their interests and government collected no new information on resources that might be affected by the road upgrade. Basically, government relied on the Stelat'en to provide whatever information it had.

4. Did government receive input from the Stelat'en with the intentions of addressing concerns and, based on that input, make changes?

Yes. The Stelat'en provided an accounting of its general concerns and interests, but it did not provide specifics. The input that was received was accepted with the intention of addressing the concerns and making feasible changes.

The Stelat'en brought forth many compensation ideas to the licensee—summer employment; an apprenticeship; continuing to pay a premium for wood purchased from the Stelat'en; paying a toll for all volume hauled along the upgraded road; encouraging government to conduct a moose inventory; doing person-to-person consultation and constructing a trades training centre in the Stelat'en community—however, after consideration, every compensation suggestion was rejected by the licensee as early as September 2007. On the other hand, the licensee did make operational changes based on Stelat'en input, such as adjusting road location to avoid cultural heritage features, offering to address fisheries concerns and being willing to avoid timber harvesting until after berry picking seasons. Given that there was already existing access, and given that government had the primary obligation to consult with First Nations, the Board considers that, on balance, the licensee's consultation was adequate. It informed the Stelat'en of proposed forest practices and made some operational efforts to mitigate impacts on Stelat'en resources in the traditional territory.

With regard to government, the Board found that the forests ministry did intend to address Stelat'en concerns, but it received little usable information. The Stelat'en decided to withhold information garnered from traditional use studies. Doing so created a situation where information could not be taken into account in the forest ministry's decision-making processes. Ultimately, government decided to approve the road permit based on the information it received from Stelat'en, and also on the licensee's actions to change the road location and change timing of operations.

5. Did the Stelat'en unreasonably extend the process?

No. The Stelat'en did extend the consultation process to four years, which should have been ample time to review information about the road upgrade. However, this extension appears to have been due to a lack of staff and resources to prioritize issues related to the road upgrade. The Board accepts that extension of the process may have been reasonable in the local circumstances.

6. Were the Stellat'en granted a consultation process separate from that of others?

Yes, the Stellat'en had a separate consultation process from others, and that consultation process was greatly extended.¹³

7. Did government supply detailed information to the Stellat'en?

Partly. The forests ministry referred the two separate FDP amendments to the Stellat'en but it was initially not clear that the end result would be to create a major haul road. However, that problem was soon rectified when they ensured that a second letter, with text and overview maps, was sent to the Stellat'en in January 2007. Thereafter, the forests ministry offered to help the Stellat'en review the information, reminding them of its requests for preservation and recognition of aboriginal interests within the amendment areas. Through repeated discussions over a four-year period, the forests ministry supplied information to the Stellat'en.

However, while government supplied all of the information it had available, that information was not complete. There was no coordinated plan for the overall project, such as a Total Chance or an access management plan. Instead, the project was presented to the Stellat'en as two separate amendments to two FDPs in two adjacent forest districts, and thereafter as a series of road permit applications. By the time one gets to the stage of road permit approvals, it becomes awkward to deal with broad-scale issues such as potential infringement of a road network on aboriginal rights in traditional territories. However, licensees are not required to provide an access overview to government under FRPA. If the forests ministry cannot obtain such information, it cannot consult on it with First Nations.

Overall, the Board considered that the consultation was adequate in the circumstances. The road had existed for some time, although its upgrading would triple industrial traffic. Government did not collect additional resource information to fully inform itself of the possible effects of the road upgrade on the Stellat'en, but given that the effects would be changed impacts, and not new ones, reliance on existing information was reasonable.

Adequacy of information concerning impacts of the road on wildlife

This issue was of particular importance to the Stellat'en, so the Board considered it as a separate and distinct issue even though it is related to the broader issue of whether government, in this case MOE, made efforts to fully inform itself of the possible effects of the road upgrade on the Stellat'en.

The Stellat'en's main concern was how moose would be affected by the road upgrade, as maintaining moose numbers is important to their sustenance use of that species. They were also concerned about protection for some local moose that had white rather than typical

¹³ The public and holders of other licenses on Crown land were allowed two months to review and comment. The consultation process for the Stellat'en encompassed four years, with consultation on one portion of the road extended for 16 months.

dark hair, and, expecting that the upgraded road increase use by both legal hunters and poachers, they asked government to collect baseline moose population information so actual impacts could be assessed once the road upgrade was complete.

MOE had no population estimate; however, secondary indicators of moose population, as derived from hunter success ratios and moose population ratios, were steady, leading them to conclude there had been no appreciable change in moose population size for some time. MOE accepted that moose numbers might be somewhat reduced from previous years, but considered the reduction to be due to two successive harsh winters rather than to hunting. They maintained that they had no budget for a moose inventory, and no indication that such an inventory should be made a priority for a limited budget.¹⁴

In regard to protection of the white moose observed from time to time, there has for some years been a “Notice to Hunters” included in the BC Hunting and Trapping Regulations Synopsis¹⁵ used by hunters:

“A few white moose have been noticed in (management unit) 7-13. Hunters are requested not to shoot a white moose due to their uniqueness and viewing value to all people who enjoy wildlife.”

Although voluntary, MOE considers this notice adequate to protect the white moose in the Stelat’en traditional area, and so concluded that it did not need any additional information to fully inform itself of the possible effects of the road upgrade on moose. Moose populations in the traditional territory had for years been accessible to hunters, and no sustained increase in the number of hunters was anticipated, so MOE proposed that any incremental increase in hunting pressure would be regulated when, and if, a problem developed.

The Board found no basis to disagree with MOE’s interpretation about wildlife resources in the Stelat’en traditional territory. Although the information was scant, indirect and imprecise, the Board found that it was adequate to assess the probable impacts of the upgraded road on moose.

Conclusions

1. Government consultation with the Stelat’en, beginning in late 2006 was meaningful and adequate, especially considering the terms of a Forest and Range Agreement signed in 2005, the longstanding access of forest roads into the traditional territory of the Stelat’en and the long consultation period. However, the necessarily piecemeal process tended to obscure the scope of significant access modification.

¹⁴ The efforts in 2010 to encourage government funding to survey moose populations in the area were somewhat successful, because MOE did receive funding for a moose inventory (over a very large area which includes the Stelat’en traditional territory) which was carried out in early 2012.

¹⁵ Government of BC, 2011. *2010-2012 Hunting & Trapping Regulations Synopsis* at 73.

2. Licensee consultation with the Stellat'en was adequate in regard to operational matters, but was truncated on the issue of compensation, which the licensee left to government.
3. Consultation in this case was considerably extended to accommodate limited capacity of the Stellat'en to respond. Government's view was that the Stellat'en's consultation capacity would be enhanced through the Forest and Range Agreement, but government collected no new information to help assess the potential impacts of the road upgrade on the Stellat'en.
4. MOE information concerning impacts of a major haul road on wildlife was sparse and general, but adequate given other wildlife inventory priorities and the existing public access in the Stellat'en traditional territory.
5. A new consultation and sharing agreement is likely to help enhance the consultation capacity of the Stellat'en in future, but the \$35 000 per year earmarked specifically for such consultation is unlikely to be adequate, given the large amount of material sent out by several government agencies to the Stellat'en.
6. Overall, consultation was adequate and meaningful, even though it failed to resolve the issues.
 - a. All participants consulted in good faith.
 - b. Information was shared in accordance with the Stellat'en's capacity, notwithstanding what was agreed in the Forest and Range Agreement, with the licensee with the forests ministry making significant and repeated efforts to engage the Stellat'en early in the process and over several years.
 - c. Government made limited but appropriate efforts to fully inform itself of potential impacts of the project, but stopped short of carrying out surveys to generate new information, instead relying on existing information, plus information that the Stellat'en were able to provide.
 - d. The Stellat'en made efforts to provide input on reasonable concerns and interests, but appear to have been constrained by a limited capacity to do so. Input that was received was used to address concerns and make feasible operational changes.
 - e. The consultation was considerably extended by the Stellat'en, but that was reasonable given their limited capacity to respond.
 - f. The Stellat'en were consulted separately from other interested persons and companies.
 - g. Government supplied full information to the Stellat'en, but it was only as detailed as government could obtain. Under current legislation, licensees are required to provide few details of planned operations to them, so government had only limited information to give.

In light of the pre-existing road access, existing wildlife information and the non-specific nature of Stellat'en concerns, the Board concluded that government and licensee consultation with the Stellat'en about the road upgrading was adequate. The Board also concluded that the information government had concerning impacts of a major haul road on wildlife was adequate to approve the road upgrade.

APPENDIX

Consultation Chronology

*SFN = Stelat'en First Nation; FLS = Fraser Lake Sawmill;
MOF = Ministry of Forests; MOE = Ministry of Environment*

September 2005 – FLS considers options for a shorter, faster haul route, including connecting roads in its new operating area to existing roads in its Vanderhoof area.

October 3, 2005 – SFN and MOF sign a five-year *Forest and Range Agreement*.

July 12, 2006 – FLS sends forest development plan to public, registered Crown land licensees and First Nations, including SFN.

July 20, 2006 – FLS advertises amendments to the forest development plan to upgrade the Hannay Road in local newspapers and sends letters to potentially-affected trappers, guide-outfitters and First Nations, including SFN. FLS also sends the amendments to MOF for government consultation with affected First Nations.

September 5, 2006 – FLS advertises amendments to a forest development plan to upgrade the Trout Road in local newspapers and sends letters to potentially-affected trappers, guide-outfitters and First Nations, including SFN. FLS also sends the amendments to MOF for government consultation with affected First Nations.

September 5, 2006 – FLS submits FDP Amendment #43 to re-align and upgrade some 40 kilometres of the Trout Road in the Vanderhoof Forest District.

September 19, 2006 – FLS submits FDP Amendment #25 to re-align, upgrade and construct the Hannay Road in the Nadina Forest District.

September 20, 2006 – FLS re-advertises amendments to a forest development plan to upgrade the Hannay Road in local newspapers, including a reference to hooking up the Hannay and Shovel Creek Roads and sends letters to potentially-affected trappers, guide-outfitters and First Nations, including SFN. FLS also sends the amendments to MOF for government consultation with affected First Nations.

September 25, 2006 – MOF sends letter to SFN advising of Hannay and Trout Road amendments, with maps, including that the roads are to be connected. MOF staff are available to review the information. SFN encouraged to bring forward aboriginal interests within the amendment areas.

October 20, 2006 – MOF begins First Nations consultation on FLS' forest development plan.

October 24, 2006 – MOF sends reminder of September 25 letter to SFN, asking for comments by December 4.

October 27, 2006 – MOF sends reminder of October 20 letter to SFN.

November 20, 2006 – MOF sends reminder of letter on consultation about amendment #25 to SFN, asking for comments.

November 22, 2006 – SFN sends letter to MOF advising that they are concerned about significant infringement of their interests, expressing concerns about the limitations of consultation to date around forest stewardship plans. SFN is willing to participate in further consultation, but staff have other responsibilities and cannot do the detailed preparation and follow-up work; recommend (MOF) hiring consultants.

December 1, 2006 – MOF and FLS meet to discuss Hannay Road amendment. MOF concerned that there is no overview map showing the connection to Trout Road. Should be re-referred with clarification.

December 4, 2006 – FLS re-submits amendment for Trout Road upgrade, with connection to Hannay Road deleted.

December 14, 2006 – MOF approves amendment #43 for Trout Road upgrade.

January 12, 2007 – SFN council sends registered letter to FLS insisting upon “complete and meaningful consultation” in regard to the planned realignment and widening of the Trout Road.

January 24, 2007 – FLS’s forestry supervisor meets with SFN councillors who request person-to-person consultation, a toll for timber taken on the right-of-way and education opportunities.

January 24, 2007 – SFN council sends registered letter to MOF advising of a multitude of significant impacts from the Trout Road upgrade and asking for immediate meaningful consultation in regard to the planned realignment and widening of the Trout Road.

January 24, 2007 – FLS sends a second referral letter to SFN clarifying that the Hannay Road and Trout Road upgrades will connect and allow wood to be hauled from both operating areas to Highway 16.

February 2, 2007 – FLS and SFN meet and discuss compensation options – forestry training, revenue sharing and road closures.

February 2007 – SFN discussed FLS issues with MOF. MOF noted that monetary accommodation for infringement of SFN aboriginal interests was done by government under a Forest and Range Agreement, not on a project-by-project basis.

February 12, 2007 – SFN try to appeal the approval of the Trout Road amendment to the regional executive director of MOF.

February 13, 2007 – SFN writes to FLS strongly opposing both the proposed Hannay Road and Trout Road upgrades until an agreement with FLS resolves significant concerns.

February 14, 2007 – FLS writes to SFN to solicit applications for a forestry summer student position.

February 2007 – MOF meet with SFN to discuss options for SFN to object to road upgrade – appeal to minister, or complaint to Forest Practices Board.

February 19, 2007 – MOF calls to SFN to request that SFN contact MOF to discuss any further comments or concerns.

February 20, 2007 – SFN meet with FLS and MOF requesting more notice given its limited capacity to respond and requesting more direct consultation.

February 22, 2007 – MOF calls to SFN to request that SFN contact MOF to discuss any further comments or concerns.

March 5, 2007 – SFN councillor asks FLS to agree to pay a \$3/m³ fee for all wood harvested on the right-of-way itself, plus a \$0.75/m³ toll for all the volume that would come through the road. FLS refuses.

March 27, 2007 – SFN asks minister to suspend Trout Road approval to allow the Stellat'en community more time to review and identify potential impacts of the upgrade.

March 2007 – MOF considering purchase of private land to more safely access Highway 16.

April 24, 2007 – Minister writes SFN to advise that he has no authority to intervene, as required legislative conditions are not met.

May 2007 – FLS decides to continue development of the connector road under the new law (FRPA), and withdraws forest development plan amendment application.

June 2007 – SFN start traditional ecological knowledge study looking at fish and wildlife habitats, food and medicinal plants, trails and campsites along the Trout Road and reviewing both past and present Stellat'en resource uses in the area.

June 5, 2007 – FLS meets with SFN. Discuss fisheries habitat impacts, regulation of moose hunting pressure and employment prospects.

June 26, 2007 – SFN writes to minister advising that SFN has a crew working along the road right-of-way examining wildlife and fish habitats, food plants, medicinal plants, trails, campsites and other resources, plus past and present uses of the area. Hope to complete the work by end of August, but stamina of elders might delay that.

July 4, 2007 – MOF writes to SFN to advise that referral periods have expired with no further formal responses from SFN; FLS's forest stewardship plan to be approved around July 23.

July 20, 2007 – FLS re-sends Hannay Road upgrade proposal to First Nations (including SFN) and licence holders (trappers, guide-outfitters) to clarify that connection to Trout Road will be part of the project.

July 2007 – FLS proposes deactivation of part of the lower Hannay Road. Strongly opposed by local residents and abandoned.

August 1, 2007 – FLS runs notice in local newspapers to clarify that connection to Trout Road will be part of the Hannay Road upgrade project.

September 11, 2007 – FLS and SFN meet (new chief), but no resolution on compensation issues of forestry training, a training centre on reserve land, door-to-door consultation.

September 13, 2007 – SFN telephones FLS that it refuses to share its traditional ecological knowledge study results unless FLS provides compensation as discussed previously. FLS refuses to pay compensation.

October 1, 2007 – SFN writes to FLS responding to July 20 re-sending of Hannay Road upgrade. SFN opposed so long as FLS is unwilling to provide compensation.

October 10, 2007 – FLS writes to SFN to confirm refusal to offer forestry training, a training centre or extended door-to-door consultation as requested.

October 11, 2007 – FLS meets with MOF to discuss Hannay Road upgrade.

October 12, 2007 – FLS sends referral information to MOF for use in First Nations consultation; asks for confirmation that adequate consultation has been carried out.

October 12, 2007 – FLS writes to MOE and confirms that it will not deactivate part of the Hannay Road due to public opposition.

October 25, 2007 – FLS writes to MOF requesting approval in principle for Hannay Road upgrade.

October 26, 2007 – SFN writes to FLS confirming that government is responsible for justification of infringement of aboriginal interests and for compensation. Expresses concern that consultation to date has been inadequate and suggests the SFN and FLS could work together to resolve matters.

November 9, 2007 – FLS phones SFN to advise that no road upgrade work will occur in the immediate future.

November 21, 2007 – FLS meets with SFN; discuss sale of timber to FLS, traditional use study, recent court decisions on aboriginal interests.

January 30, 2008 – FLS writes to SFN to advise of proposed harvesting and road building plans for 2008/09. Major road upgrading along Trout Road highlighted.

March 7, 2008 – FLS writes to SFN to advise that logging of the upgraded road right-of-way is to begin by the end of the month.

December 19, 2008 – MOF writes to SFN to advise of planned 3.5 km re-routing of Trout Road to provide safer access to Highway 16. Decision anticipated after February 25, 2009.

January 15, 2009 – MOF sends reminder of December 19 letter to SFN, asking for comments by February 25.

January 26, 2009 – SFN writes to MOF to request a meeting on the planned re-routing of Trout Road.

February 17, 2009 – MOF sends reminder of December 19 letter to SFN, again asking for comments by February 25.

May 25, 2009 – MOF writes to SFN to note that SFN concerns caused MOF to delay approval of the 3.5 km re-routing of Trout Road until June 2. SFN concerns to date are on hunting, gathering, fishing and trapping interests, impacts of accelerated timber harvesting and lack of economic benefit to SFN from such increased harvesting.

June 11, 2009 – SFN lawyer writes to MOF advising that additional consultation is required on the 3.5 km re-routing proposal for Trout Road.

June 30, 2009 – MOF meets with SFN regarding timber volumes available to SFN.

July 17, 2009 – MOF and MOE meet to discuss potential wildlife concerns – effect of road upgrade on hunting pressure on moose. Moose population estimates steady; no change in hunting regulation for 27 years. Population structure (ratios) fine.

July 29, 2009 – MOF responds to SFN lawyer’s letter of June 11. MOF is still consulting on the short re-routing.

October 26, 2009 – MOF and MOE meet with SFN to discuss stable moose population and need for additional wildlife (moose) inventory work in SFN traditional territory. No funding available.

February 11, 2010 – MOF meets with MOE to discuss for additional wildlife (moose) inventory work in SFN traditional territory. No funding available.

March 2010 – FLS meets with SFN to discuss compensation options and moose hunting restrictions.

April 6, 2010 – FLS meets again with SFN to discuss compensation options and moose hunting restrictions.

April 13, 2010 – FLS writes to MOE to request that MOE deal with SFN concerns about need for moose hunting restrictions with road upgrade.

May 1, 2010 – SFN writes MOF asking that permit to upgrade the Trout Road be delayed to allow compilation of cultural and traditional activities in the area. SFN awaiting promised information on impacts on wildlife (moose). SFN willing to defend its aboriginal rights through the courts if necessary.

May 11, 2010 – FLS phones SFN to advise that road permit application for Trout Road will be submitted to MOF in two weeks.

June 29, 2010 – MOF meet with SFN to discuss MOE view of limited potential impacts of road upgrade on wildlife. Road permit application has been received.

July 2010 – FLS and SFN plan joint field trip to collect information for a community response to the Trout Road upgrade. Dispute regarding expense; trip cancelled.

July 8, 2010 – MOF district manager writes to SFN with summary of consultation on the road upgrade and MOF and FLS accommodation measures to date. Intention to approve road permit within a week.

July 9, 2010 – SFN writes to MOF advising that the Trout Road upgrade will obstruct traditional and social livelihoods of SFN members, obstructing the landscape, reducing traditional foods and increasing environmental disturbance. Hunter and poacher traffic will be increased. Logging truck traffic will restrict SFN food gathering and hunting. Other resource sectors are likely to use the road in future. Fish streams will be altered. SFN wants a field visit, limited access for hunters. Compensation is impossible, so SFN requests mitigative measures, including a toll on all timber volume hauled on the upgraded road and an increase in volume provided to SFN.

July 12, 2010 – SFN, MOF and FLS plan an environmental field visit July 15-31. Disagreement about duration and expense of the trip. Trip never occurred.

July 20, 2010 – MOF writes to SFN to advise that the last road permit for the road upgrade is approved; rationale enclosed. In response to the July 9 proposals, the planned field trip was cancelled by SFN. MOE is responsible for restricting hunters and enforcing against poachers. MOF has no information of future additional road users. The 2005 Forest and Range Agreement already provides money and timber for SFN.

September 30, 2010 – SFN reiterate opposition to the construction; demand that all construction activities on the Trout Road cease as of October 8, 2010.

October 5, 2010 – FLS writes to SFN with refusal to address accommodation of aboriginal rights or title, saying that is government's responsibility. Unwilling to delay construction any longer. Discussion of potential partnerships in terms of awarding logging, planting and waste burning contracts to SFN.

November 4, 2010 – FLS meets with SFN to discuss potential partnerships in terms of awarding logging, planting and waste burning contracts to SFN.

January 13, 2011 – FLS writes to SFN to advise that contract awards will not be automatic; SFN must have necessary credentials re: WorkSafe BC, occupational safety.

March 8, 2011 – FLS meets with SFN to discuss log purchase. SFN remains opposed to the Trout Road upgrade.

March 15, 2011 – SFN calls FLS to ask for reforestation contracts and a toll for timber hauled on the Trout Road. FLS refuses both.

March 2011 – FLS completes clearing of the road right-of-way and starts subgrade construction.

June 2011 – SFN submits complaint to Forest Practices Board.



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