



**Forest
Practices
Board**

Planned Timber Harvesting at Two Recreation Sites near Rock Creek, BC

Complaint Investigation #16054

FPB/IRC/213

May 2018

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Introduction

The Complaint

On July 14, 2016, a retired logger from Grand Forks, BC, and a professional forester from Midway, BC (the complainant), submitted a joint complaint to the Forest Practices Board (the Board). The complainants were concerned about three proposed cutblocks at two recreation sites north of Rock Creek, BC—Williamson Lake and Thone Lake. BC Timber Sales (BCTS) was responsible for one cutblock at each recreation site and the Osoyoos Indian Band Development Corporation (OIBDC) was responsible for one cutblock at the Williamson Lake recreation site.

The complainants asserted that boundaries of the proposed cutblocks were located too close to the campsites and lakes, which they said posed an unacceptable risk to the following:

- the recreational experience of users;
- public safety due to windthrow;
- sensitive riparian ecosystems; and
- water levels of the lake and streams.

The complainants were also concerned about the way in which public consultation was carried out by Recreation Sites and Trails BC (RSTBC),¹ BCTS and OIBDC.

The complainants said recreation should be the primary management objective in recreation sites, that government should only allow timber harvesting under special circumstances, and that RSTBC should establish a policy prohibiting timber harvesting in all recreation sites province-wide.

In order to address the complaint, the Board investigated the following:

1. Did the planned harvesting comply with the *Forest and Range Practices Act* (FRPA) and adequately manage the risks of concern to the complainants?
2. Was the recreation officer's authorization of harvesting in the recreation sites reasonable?
3. Was the public consultation appropriate?

This report focuses on the activities of BCTS and RSTBC. The preliminary investigation found that OIBDC's planning for the Williamson Lake cutblock complied with FRPA, consultation was appropriate, and the complainants' concerns were addressed promptly. Therefore, this part of the complaint was not investigated further.

¹ RSTBC is an operational program delivered through the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.

Background

The Williamson Lake and Thone Lake recreation sites are located on the east side of the Christian Valley in southeastern British Columbia (Figure 1). Thone Lake is classified as a moderate to low use site with two-wheel-drive access. It has 14 campsites on the west and northwest sides of the lake (Figure 2). Williamson Lake is classified as a low use site with rough four-wheel-drive access and two active campsites—one maintained and a second non-sanctioned site (Figure 3).

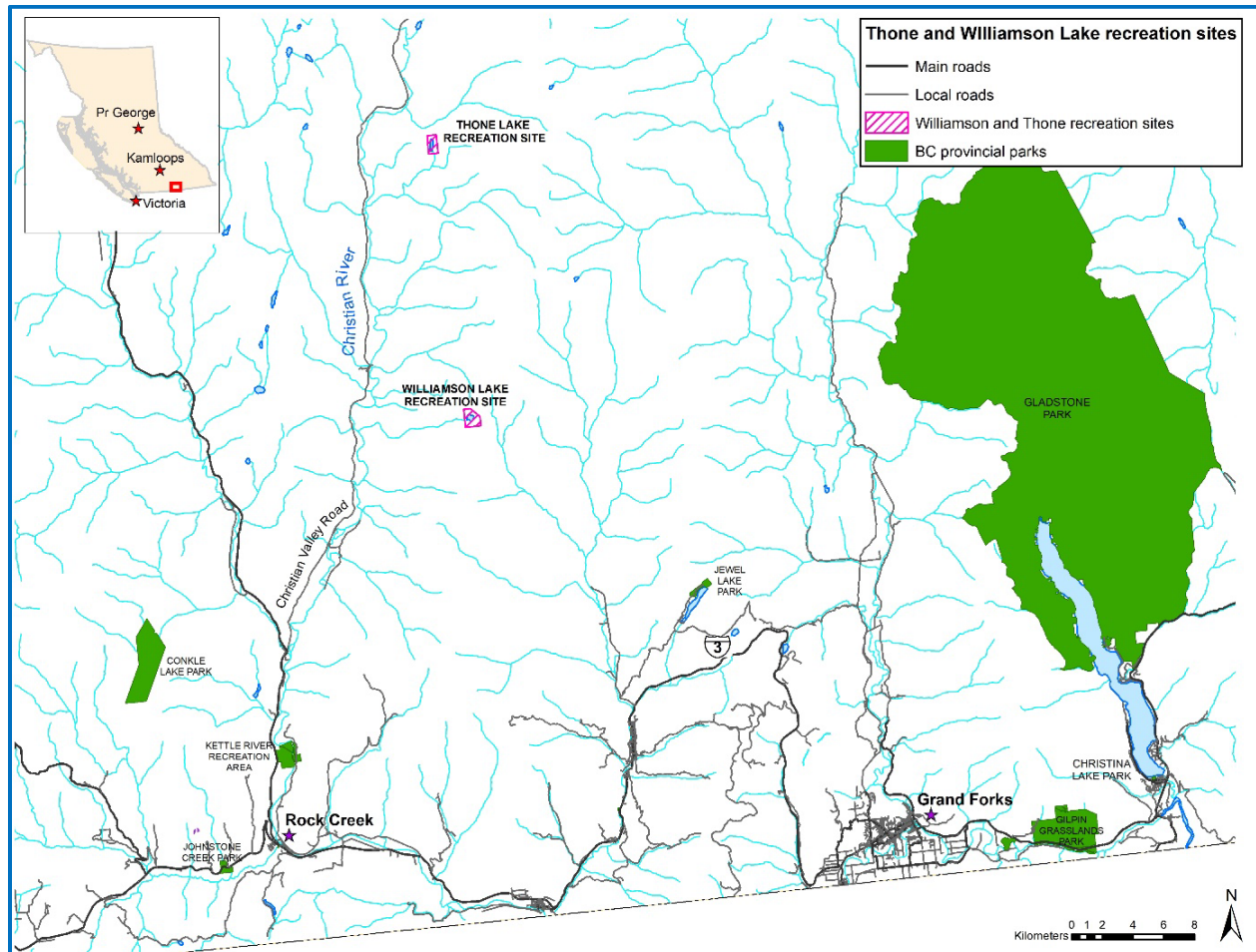


Figure 1. Overview map showing locations of the two recreation sites.

Although the complainants want no harvesting in recreation sites, government has always anticipated that some type of timber harvesting would occur in recreation sites. For example, both lakes are in the area of the 1997 Kootenay/Boundary Land Use Plan Implementation Strategy,² which says logging within 200 metres of any campsite site could be discernible, but not clearly evident from the campsite. BCTS planned to harvest adjacent to and within both recreation sites because aerial overview surveys showed beetle-attacked pine trees in the vicinity.

² The Kootenay Boundary Land Use Plan Implementation Strategy was approved and adopted by Cabinet, but its recreation provisions were never approved as a higher level plan.

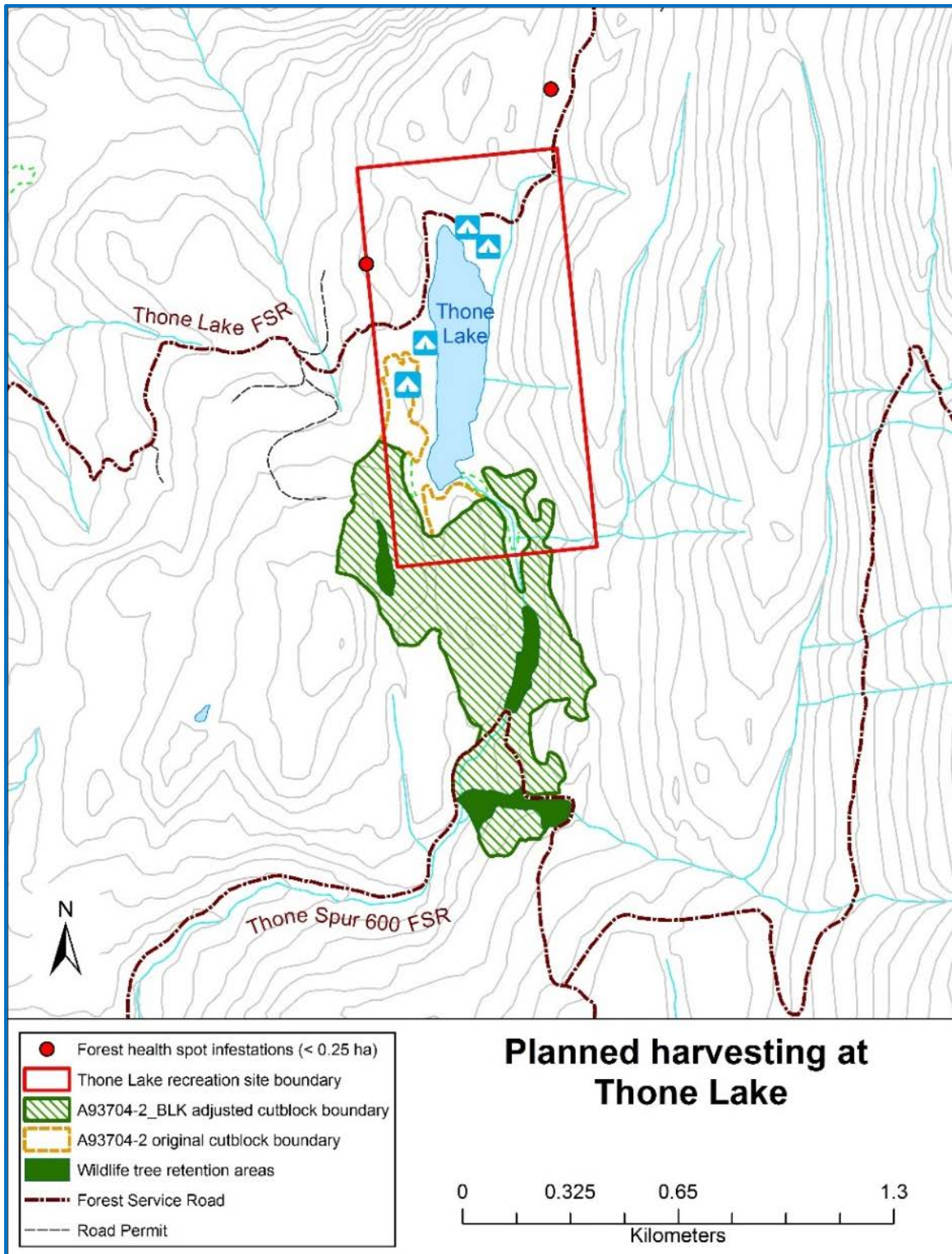


Figure 2. Planned harvest at Thone Lake by BCTS.

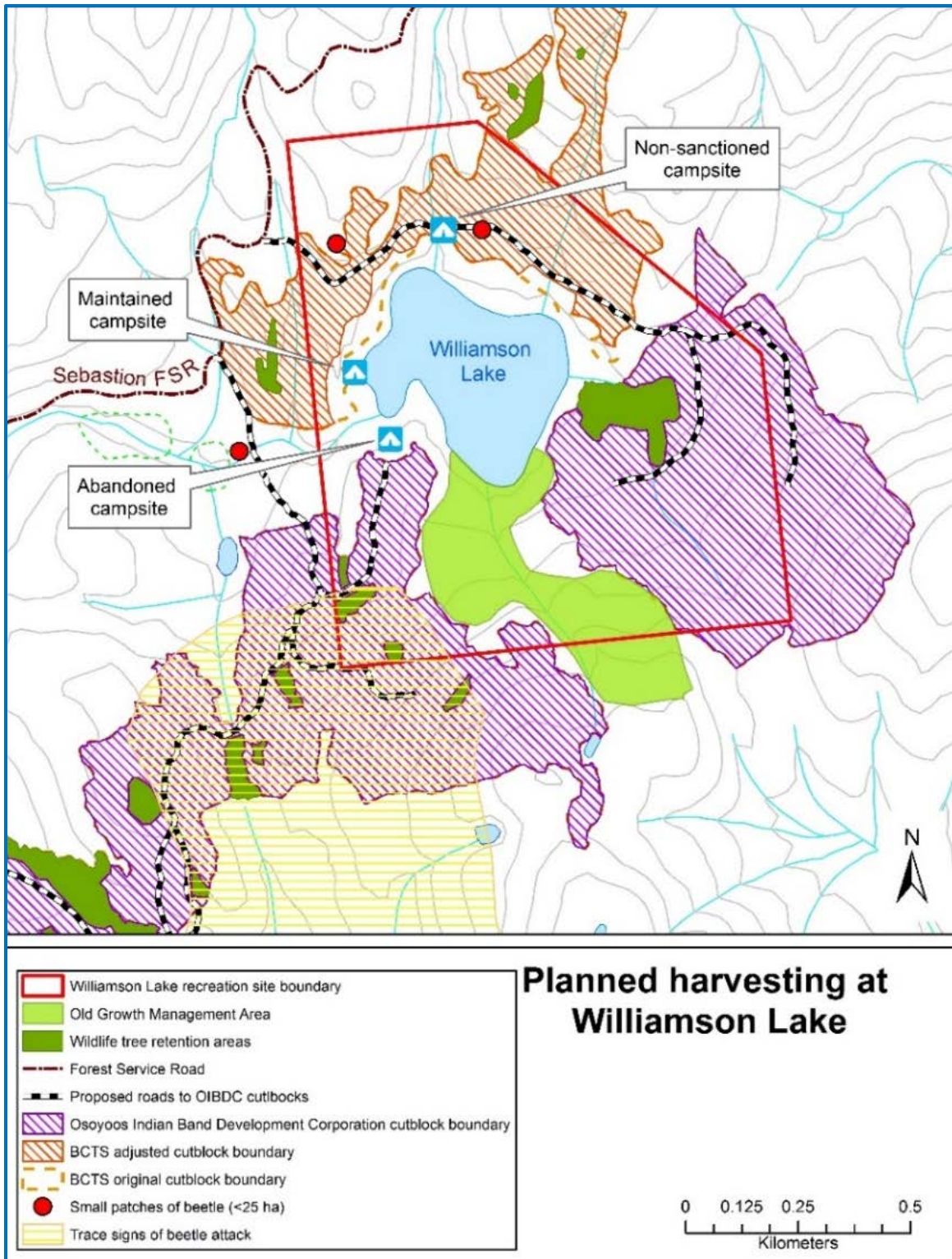


Figure 3. Planned harvest at Williamson Lake by OIBDC and BCTS.

Industrial activity, such as timber harvesting and road building, in a recreation site requires authorization from a recreation officer. BCTS asked for and received formal authorization from the recreation officer for both cutblocks on December 1, 2015. BCTS then referred its annual operating plan,³ which included these two blocks, to its referral group of municipal, provincial and First Nations government agencies, an environmental organization, water licensees, a commercial tourism operator, range tenure holders, trappers, guide outfitters and selected private landowners for review and comment between December 2015 and February 2016.

The Regional District of Kootenay Boundary (RDKB) reviewed BCTS's operating plan and said that "there should be absolutely no logging in the Thone Lake Recreational Area and no new road construction within 500 metres of this area." BCTS replied to other comments but not this one.

One of the complainants, a member of the RDKB public forestry advisory committee, learned of the proposed logging at Thone Lake when he reviewed BCTS's operating plan in February 2016. In an e-mail dated February 14, 2016, on his own behalf, he asked the recreation officer not to allow logging in the Thone Lake recreation site. The recreation officer replied by e-mail that he supported the harvesting, and had confidence in the forest professionals who had planned the cutblocks. He said the complainant could take his concerns to the Association of British Columbia Forest Professionals.

The second complainant found boundary ribbons at Williamson Lake in April 2016, and contacted the recreation officer to ask him to stop the logging. The response was similar to that received by the first complainant.

Both complainants then contacted BCTS. BCTS organized field trips to the recreation sites in July 2016. The complainants were dissatisfied with the outcome of the trips. They said they did not think BCTS listened to their concerns, and they submitted a joint complaint to the Board later that month.

BCTS voluntarily stayed the harvest of the cutblocks pending completion of this investigation.

Legal Requirements

BCTS puts timber sales up for auction and enters into agreements with successful bidders.

Requirements that would apply to the successful bidder include section 51 of the *Forest Planning and Practices Regulation* (FPPR), which prohibits cutting, modifying or removing trees in a riparian reserve zone; section 16 of the *Forest Recreation Regulation*, which requires authorization from a recreation officer to use a recreation site for industrial activities, including timber harvesting and road building; and section 39 of the FPPR, which says natural drainage patterns must be maintained.

A requirement that applies directly to BCTS is section 21 of FRPA, which requires that the holder of a forest stewardship plan (FSP) ensure the intended results specified in the plan are achieved and the strategies described in the plan are carried out.

³ BCTS operating plan is a document that lists all BCTS planned cutblocks, constraints on the cutblocks and comments received to date about the development.

In 1998,⁴ the Ministry of Forests district manager established the following recreation objective⁵ in legal orders that apply to both sites:

To manage [Williamson/ Thone] Lake recreation site for a lakeside, natural roaded recreation experience. The campsite will be maintained, the lake shoreline and natural vegetation will be conserved. Opportunities for camping, picnicking and car-top boat launching and swimming will be available at the site.

The BC government's Data Catalogue identifies seven recreational opportunity spectrum classes in BC.ⁱ In the term "natural roaded," roaded means there is a road to the recreation site, and natural means activities that shape the landscape by humans are not readily apparent. The next class in the spectrum is "road modified," which is described as "highly modified areas generally dominated by resource extraction activities." If the harvesting moves the area to this class, it would be inconsistent with the recreation objective.

The preambles to the 1998 legal orders say that the objectives do not take precedence over or regulate forestry activities.⁶ Since 1995, forest practices have been regulated by legislation. When government established the order in 1998, the applicable legislation required the district manager to be satisfied that the forest resources were adequately managed and conserved before approving the forest activities. The objectives informed licensees of what government expected so licensees could develop timber appropriately. Government brought the recreation objectives into FRPA. Under FRPA, district managers do not approve harvesting. Rather, section 21 of FRPA requires the holder of a FSP to ensure that the intended results specified in the plan are achieved and the strategies described in the plan are carried out. BCTS's FSP requires BCTS to meet government's objective for recreation in a recreation site.

The Investigation

Did the planned harvesting comply with the *Forest and Range Practices Act* (FRPA) and adequately manage the risks of concern to the complainants?

The investigation evaluated the concerns of the complainants in relation to the planned harvesting, as of December 1, 2015. That is when BCTS asked for and received authorization under section 16 of the *Forest Recreation Regulation* to harvest in the recreation sites. BCTS had established the cutblock boundaries in the field by then.⁷

Recreation Experience of the User

FRPA section 21 requires that the holder of an FSP ensure that the intended results specified in the plan are achieved. BCTS's FSP requires that harvesting be consistent with the recreation objective when harvesting in a recreation site. Board staff assessed what the cutblocks would look like from the

⁴ Under the *Forest Practices Code of British Columbia Act*.

⁵ Recreation Site Objectives for Williamson and Thone Lakes are the same.

⁶ The order says that the objective only pertains to the recreation site, and makes further points to clarify issues to avoid conflicts with respect to adjacency between recreation sites and extractive resource development.

⁷ BCTS changed the cutblock boundaries after the Board's first field trip in August 2016 and sent the changed maps to the complainants in October 2016.

campsites, and found that rather than meeting the “natural roaded” objective, they would meet the next category of “roaded modified” as they would appear as unnatural highly modified areas dominated by resource extraction activities. As a result, if the cutblocks were harvested they would not meet the FSP requirement.

Public Safety Due to Windthrow

There is no FRPA requirement concerning public safety from windthrow so there is no issue with compliance. However, opening up a forest causes increased wind load on trees at the opening/forest boundary, which increases the risk of individual trees blowing down for up to two tree lengths into the forest. At both lakes, BCTS’s established cutblock boundaries were within two tree lengths of facilities at the recreation sites. So if harvested, the risk of windthrow hitting recreation facilities used by the public would increase.

Sensitive Riparian Ecosystems

BCTS had misclassified the outlet of Thone Lake as a wetland where a small length of the cutblock boundary was on the lakeshore. Under FRPA, Thone Lake requires a 10-metre riparian reserve. If the cutblock was harvested up to that lakeshore boundary, it would not be in compliance with FPPR section 51 along that section. However, the non-compliance would be negligible compared to the overall length of the riparian management zone for the cutblock, so there was little increase in the risk to riparian resources.

For sensitive riparian ecosystems at Williamson Lake, the Board found no compliance issues or risk to riparian resources from the planned development.

The Water Levels of the Lake and Streams

One complainant was concerned that clearcutting around wetlands and small lakes would dry them up. Section 39 of FPPR requires that agreement holders maintain natural drainage patterns. Board staff saw no issues with BCTS’s plans that would alter natural drainage patterns, and no evidence that harvesting would dry up either lake or any of the streams.

Finding

As established by BCTS and authorized by the recreation officer, the initial proposed BCTS cutblocks would not be consistent with the recreation objective, and therefore would not meet the FSP requirement. The planned harvesting also increased the risk to public safety due to windthrow. Since the complaint was filed, BCTS has modified the cutblock boundaries to fully comply with FRPA and minimize the risk to public safety from windthrow.

Was the recreation officer’s authorization of harvesting in the recreation sites reasonable?

The proposed boundaries for the BCTS cutblock at Thone Lake overlapped with the recreation site. (see “original proposed boundaries” in *Figure 2*.) BCTS sent the proposed boundaries and the recreation objective for Thone Lake to the recreation officer in July 2015 and asked for his thoughts. The recreation officer said he saw no issues, noting that RSTBC tries not to inhibit logging adjacent to

recreation sites or trails and that the recreation site had light to moderate use. He said BCTS should keep buffers and visuals in mind at the camping areas.

In September 2015, BCTS identified the development opportunity at Williamson Lake and added it to its timber sale development plans. BCTS showed the proposed block boundaries to the recreation officer, reiterated the recreation objective and again asked for his thoughts. The recreation officer said BCTS should consider and maintain the integrity of the site and the experience of the user. During the investigation, he told the Board he wanted to see how BCTS was going to consider the legal recreation objective. BCTS requested a field trip to review any concerns before establishing cutblock boundaries; the recreation officer said he does not do field visits with licensees, but would support what BCTS concluded. Based on this response, BCTS laid out the Williamson Lake cutblock.

The recreation officer authorized the harvesting for both recreation sites on December 1, 2015. A decision to authorize timber harvesting and road construction in a recreation site is a discretionary decision. The standard the Board uses in evaluating discretionary decisions is: was the decision consistent with sound forest planning and practices, did it achieve the intent of the legislation, and was it based on an adequate assessment of available information?

To be consistent with sound forest planning and practices, the planned harvest needs to be consistent with government objectives. As described above, these cutblocks were not.

Furthermore, the legislation not only intended, but *required* the recreation officer to make the decision. Appendix 7 of the *Ministry of Forests, Lands, Natural Resource Operations and Rural Development Recreation Manual* also gives an indication of the intent of the legislation. It demonstrates that section 16 of the *Forest Recreation Regulation* was established to aid ministry staff in administering other uses on recreation sites that may impede the ability of the general public to enjoy recreational opportunities. Its procedures require the recreation officer to evaluate whether the activity will meet the recreation objective.

The recreation officer told the Board he relies on a licensee's forest professionals to consider the recreation objectives and balance all considerations (forest health, visuals, recreation, etc.). For example, at Williamson Lake, although he encouraged BCTS to consider the user experience at the recreation site in its planning, he said he would support whatever BCTS concluded. Therefore, he did not evaluate the likelihood of the harvest proposal meeting the government objective and he left the decision to the forest professional designing the cutblock. As a result, the authorization did not meet the intent of the legislation.

When making these decisions, the recreation officer says he considered that harvesting could include upgraded access and facilities, the level of public use and the current recreation values. These are relevant considerations, but two pieces of information also relevant to the decision are the meaning of the government objective and the level of public concern for harvesting at the recreation sites.

During the investigation, the recreation officer said that he did not know the exact meaning of government's recreation objective for these sites.⁸

⁸ The Board was able to find and interpret documents that were available when the recreation objective was established in order to determine the meaning of the recreation objective.

RSTBC expects licensees to identify and resolve concerns with harvest plans by referring them to stakeholders. The recreation officer did not advise the licensees about this expectation or suggest who should review the plans. RSTBC asserts that licensees operating in the current environment should be reasonably aware of this expectation and able to identify stakeholders. A decision under section 16 of the *Forest Recreation Regulation* is a statutory decision. RSTBC needs to let both recreation officers and licensees know this expectation, and the recreation officer needs to evaluate how the licensee dealt with this relevant information.

The recreation officer made the decision without checking whether the licensees had sent out referrals to relevant parties, what comments were received, or how any concerns had been resolved. After the approval decision had been made, BCTS sent the plans to its referral group, but did not consult with public users of the sites. Both complainants made comments to the licensees and to the recreation officer and the RDKB asked BCTS to not log at Thone Lake. When the complainants contacted the recreation officer, he dismissed their concerns.

Finding

The recreation officer's authorization was not reasonable because it:

- was not consistent with sound forest planning, as the planned harvest did not meet the recreation objective;
- did not meet the intent of the legislation since the recreation officer did not make the decision; and
- did not consider relevant information such as the meaning of the government objective and public concern for the recreation sites.

Was the public consultation appropriate?

For public consultation to be conducted appropriately, the board views two principles as being especially important. First, the consultation should occur early in the planning process. Second, it should attempt to be responsive to any concerns raised.ⁱⁱ It is the Board's view that effective consultation requires tailoring consultation techniques to specific circumstances.

Under FRPA, public review and comment is only legally required for FSPs, but FSPs do not contain enough detail to be suitable for public review at the cutblock or recreation site level. To its credit, BCTS does more than what is legally required. BCTS identifies all proposed and existing roads and cutblocks in its business area in an operating plan, and refers this plan to a group of agencies and people. However, BCTS did not tailor the referral for these recreation sites to inform and seek comments from the people who use the recreation sites, such as campers and anglers. By the time BCTS referred the plan for comments, it had already established both cutblocks in the field and had received the recreation officer's authorization to harvest. On March 2, 2016, the RDKB sent comments about the operating plan asking BCTS not to log near Thone Lake, but BCTS did not respond to the request.

The retired logger found boundary ribbons at Williamson Lake and made enquires that put him in contact with the professional forester who was part of the complaint. When the retired logger first contacted the Board, staff encouraged both complainants to continue consultation with BCTS. They did, and BCTS held field trips at both recreation sites and listened to the concerns. However, the

complainants said BCTS did not address their concerns, and they described the consultation as disingenuous, which led to their complaint to the Board. BCTS says it did listen to the complainants' concerns and updated them regularly.

Shortly after receiving the complaint, the Board held a field trip that included BCTS and the complainants. Board staff observed that BCTS listened to the complainants' concerns, but did not commit to making any changes. BCTS also disputed the need for any changes and said it would discuss with its contractor whether the changes were operationally feasible.

Two months after the field trip, BCTS sent final maps to the complainants, which showed that it had made changes to the cutblocks.

Since the investigation, BCTS has been advertising its operating plans in newspapers and posting them on its public website.

Finding

BCTS's public consultation was not appropriate. To be appropriate, consultation needs to happen early in the planning process. In this case, the cutblocks had already been planned and laid out by BCTS and approved by RSTBC. BCTS did not appear to be responsive to the complainants and BCTS did not respond to RDKB's comments. BCTS conducted detailed consultation with the complainants and addressed their concerns with the cutblocks after the Board became involved. However, the complainants remain dissatisfied with the way they were treated by BCTS.

Conclusions

The complainants reviewed planned harvesting at Thone and Williamson Lakes and were concerned that the cutblocks were too close to the lakes and would ruin the recreational experience of campers, increase the windthrow risk to the public, harm sensitive riparian ecosystems and dry up the streams and lakes.

The investigation examined the parties' compliance with the legislation, the recreation officer's decision, and the appropriateness of public consultation efforts by answering the following three questions.

Did the planned harvest comply with the *Forest and Range Practices Act (FRPA)* and adequately manage the risks of concern to the complainants?

The initial BCTS planned cutblocks, as authorized by the recreation officer, would not appear natural from the campsites at either lake so would not have met the FSP requirement to be consistent with the recreation objective. The initial cutblocks would not adequately manage the risk to the recreation resource or public safety from windthrow. During the investigation, BCTS amended the cutblocks so now, if harvested, in the Board's opinion, the cutblocks would comply with FRPA and adequately manage recreation and public safety from windthrow.

Was the recreation officer's authorization of harvesting in the recreation site reasonable?

BCTS's planned harvesting did not meet the recreation objective, so it was not consistent with sound forest planning. The legislation intended that the recreation officer evaluate the harvest proposal and make a decision, but the officer deferred the decision to forest professionals hired by BCTS. The recreation officer did not understand the recreation objective or appreciate the level of public concern for the recreation sites so the decision was not based on an adequate assessment of information. The recreation officer's authorization was not reasonable.

Was the public consultation appropriate?

BCTS's consultation was not appropriate. BCTS's public consultation happened too late in the harvest development process. Once the complainants contacted the Board and BCTS, BCTS conducted field trips to both lakes, but BCTS did not appear to be responsive to the complainants concerns and was not able to foster confidence in its management of the recreation sites.

ENDNOTES

- i <https://catalogue.data.gov.bc.ca/dataset/recreational-opportunity-spectrum-inventory>
- ii Adapted from Board Bulletin 3 <https://www.bcfpb.ca/wp-content/uploads/2016/04/003-Volume-3-Information-Bulletin.pdf>



**Forest
Practices
Board**

PO Box 9905 Stn Prov Govt

Victoria, BC V8X 9R1 Canada

Tel. 250.213.4700 | Fax 250.213.4725 | Toll Free 1.800.994.5899

For more information on the Board, please visit our website at: www.bcfpb.ca