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BC FORESTS 2003

AN APPRAISAL OF GOVERNMENT POLICIES

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Executive Summary

The BC Liberal government is half-way through its mandate. It has introduced a huge number of proposals, plans, discussion papers, legislation, amendments to the legislation, and even amendments to the amendments on forestry in its two years of holding office.

However, the most important item in the Liberal agenda has not yet entered the public realm. Until we can see the new regulations that will replace the Forest Practices Code, we cannot make a full appraisal of the total program.

We submit this report as a review of the changes to date and their implications.

The material is organized in chronological order under these major headings:

- Background
- New Institutional Framework
- Policy Developments
- Legislation

This covers most of the planning and discussion papers, proposals, and legislation from the Pearse Report of 2001 through to the Acts passed into law by May 2003. This executive summary touches on the major concepts and legislation.

Overview

Overall the agenda involves zoning half of all land in the province for industrial use; a dismantling of the Crown environmental regulatory system; intensification of industrial influence on legislation; and claw-back of 20% of the annual allowable cut (AAC) under tenure to large companies, with compensation. The timber obtained by the claw-back will be the basis for a timber market and harvesting rights for First Nations, small companies, communities, and woodlots. The government plans to reduce the proportion of forest land under renewable tenures by 50% over the course of several years.

Tenure provisions are relaxed, and companies will be able to transfer licences without government agreement, and to consolidate, subdivide, and transfer AACs via tenures. Professional foresters and others in Crown ministries whose task has been to regulate, evaluate, and monitor tenures for environmental values are being replaced by employees in private companies. The Forest Land Reserve Act has been rescinded, and no new integrated resource management areas will be established. The appurtenancy clause has been removed from tenure requirements.

The new system is designed to please investors. It will provide them with more certainty about harvesting rights. They will gain flexibility in logging processes and management of tenures. Since virtually all forest land was under tenure, the only way that a timber market could be established was via claw-backs, and compensation for potential reduction of harvests was unavoidable. The establishment of a timber market should provide information on market value of trees and thus create a baseline for stumpage on Crown timber. Some First Nations might welcome opportunities, though the conditions imply a trade-off against land claims and the strategy could be divisive for the Aboriginal population. The existing Small Business Forest Enterprise Program has been replaced with a BC Timber Sales Program, and the promise of more small-scale tenures and other contract options might benefit some communities and small business groups.

The benefits to investors and companies are gained at the cost of forest ecology. Very little land outside the industrial zone will be conserved as protected forests, and the *de facto* zoning provisions will bar the public from improving conservation of ecosystems or allowing for integrated forest management as an option. Because companies will be able to transfer AACs and consolidate their holdings, government control of cutting levels will become impossible. Essentially, when one region is denuded, the remaining AAC could simply be transferred to another one. Deregulation will remove the capacity of government ministries to monitor and enforce environmentally sound management procedures. Companies will be expected to manage Crown forests themselves. Certification organizations may become important participants in the process: a healthy addition if, but only if, they are genuinely independent of the tenure-holders and rigorous in their standards.

Overall the legislation is designed for the benefit of the forest industry and the provisions are about anticipated economic benefits from increased forest revenues. Environmental concerns are mentioned, but nothing in the legislation so far indicates any serious commitment to ecosystem conservation. The short term may provide economic benefits, but eventually the failure to sustain the forest will become a failure to sustain the economy dependent on it.

Major provisions

Institutional remodelling

The Ministry of Forests (MOF) has been reduced, and many of its inventory and planning functions have been transferred to a new Ministry of Sustainable Resource Management (MSRM). The MSRM will be responsible for the “higher-level planning” activities, including “resource-based” plans, and the “working forest” proposals. The Ministry of Environment, Lands and Parks (MELP) has been reorganized as the Ministry of Water, Land and Air Protection (MWLAP).

“Results-based code”

The agenda is to introduce a new approach to forests and forestry, and to describe this in a new set of euphemisms. The “results-based code” is one of the euphemisms, used to describe a process whereby forestry companies become responsible for their own environmental protection activities. The more prescriptive Forest Practices Code (“the Code”) will be discarded (much of it is already gone).

Lay-offs of professionals in Crown ministries

Numerous professionals and others in government employment whose tasks included environmental protection, monitoring and evaluating company logging practices, and related tasks either have been laid off already or are being transferred to other sectors. Professional staff in the private sector will take over many of their tasks, and some work will be done in what the government calls “partnerships” between professionals employed in the private and the public sectors. Decisions about the work, including the still-to-be published regulations, will be made by companies alone or in “partnership” with government.

The “working forest”

The “working forest” is another euphemism to mean the takeover of 48% of the provincial land base (45 million hectares) for industry, including oil and gas, mining, and tourism as well as forestry. Zoning means, quite simply, that the designated Crown land is reserved for industry, and environmentalists have no claims to any of it. The 23 million hectare timber-harvesting land base already under tenure for forestry is included in the new zone. Previously, forest industry spokesmen and some of their faculty champions at UBC promoted the idea of zoning, though none were so audacious as to claim half of the total land base and almost all of the Crown forest land. Only 8 million hectares remains in Crown forest protected areas, and land use plans for integrated resource management have been discarded.

“Accommodation agreements” with First Nations

Special legislation has been enacted which proposes to offer First Nations industrial contracts on condition that they comply with specific terms of treaty negotiations while the contracts are in force. First Nations who enter into “accommodation agreements” will receive a share of forest revenues and a share of the redistributed AAC.

“Certainty”

Certainty is the keyword throughout government papers. The stated objective is to ensure that investors have absolute security about the forest they propose to log. Their investment will be protected by a number of acts, including the zone designation, removal of the prescriptive regulatory code, off-loading of environmental protection requirements to the companies, proposed agreements with First Nations, guarantees on the sanctity of private property rights, and proposed expansion of AACs.

Expansion of AAC

The government hopes to increase provincial revenue from the AAC through a corresponding increase of the existing provincial AAC. How this is to be accomplished is not evident. Any expansion of AACs under current conditions in the forest would necessarily involve faster eradication of remaining natural forests, since most second-growth forests are far from mature and reforestation would not result in available fibre for a long time (30-50 years for deciduous species, 60-80 years or more for conifers). At this moment there are no miracle trees similar to eucalyptus that can be grown at high speed rates in this northern climate.

Claw-back on existing tenures

The government proposes to “redistribute” 20% of the AAC from renewable tenures, equivalent to about 8.3 million cubic metres (m³) of wood. This will take the form of claw-backs from existing large tenures. This is for purposes of gaining timber to establish a timber market, with some potential for redistribution to small companies, First Nations, and new investors.

Compensation

Companies that are obliged to relinquish a proportion of their AAC under tenure will be compensated. In the first year of the program, the compensation will be “not more than \$200 million out of consolidated revenue.” How much will be given in subsequent years is not stated. The money will be administered mainly by the private sector. The trustee for the Land-Base Investment Program is PricewaterhouseCoopers LLP. The Federation of British Columbia Woodlot Associations will manage the Small Tenures Program and Forintek Canada Corp. will administer the Research, Product Development, and International Marketing Programs.

Another trust fund in the amount of \$75 million will go to IWA workers and contractors whose employment is terminated or otherwise affected by the redistribution arrangement.

The “transition fund” will be managed and administered by representatives of labour, licensees, contractors, and government.

Changes in form of licences

Many changes have been introduced, of which the provisions for consolidation and subdivision of licences are particularly important. Companies that have a dwindling supply of timber in one area may effectively redistribute their total AAC allotment to another area without any loss in overall AAC.

Another important change is that licences, permits, and other kinds of agreements for logging on Crown land may be transferred without ministerial consent.

Timber and log markets

Legislation has been introduced to establish the legal authority for a new BC Timber Sales Organization and to rescind existing legislation for the Small Business Forest Enterprise Program. The Timber Sales Organization will market standing timber.

Log markets are to be established. The government has asserted that no change in export limitations will be introduced. The price of logs will be a major factor in determining a “market-based” pricing formula to calculate stumpage.

Appurtenancy clause

The long-standing requirement that tenure-holders direct logs to specific mills in the region of their licences has been cancelled.

Cancellation of Forest Land Reserve Act

The authority to designate Crown lands as Forest Land Reserve was repealed in November 2002, and more recent legislation has repealed the designation as applied to private managed forest land, private land in tree farm licences (TFLs), and Crown land designated as “integrated resource management areas” by the previous government following land use community decisions.

Background

Brief history

The forests and the forest industry were both in crisis long before the most recent election. Any provincial government coming into power in BC in 2001 would have had to make tough decisions. The decisions would have involved some trade-offs between the wishes of the forest industry, the wishes of First Nations, and the wishes of environmental groups, and whatever path was taken would have had profound consequences for the ecology, society, and economy of the province for a long time to come.

The crisis included:¹

- a dramatically overcut natural forest base, especially all along the coast,
- extreme ecological damage in many regions,
- second-growth forests that are a half-century away from commercial maturity,
- a coastal industry with old mills that are not capable of utilizing second-growth (smaller-diameter) timber, and designed to mass-produce dimensional lumber and pulp,
- an industry throughout the province that has massive overcapacity for the remaining forest resource, as well as overcapacity for existing markets for its dimensional lumber and pulp,
- an inflexible tenure system that had already allocated most forest land, leaving nothing for establishment of timber markets or new entrants (including First Nations and businesses with non-timber services and products),
- a lack of alternative markets for existing products, and a lack of diversified products for alternative markets, and
- First Nations land claims that cover a good part of the forested region.

¹ The history and situation up to 1999 are described in detail in *Falldown: Forest Policy in British Columbia*, by M. Patricia Marchak, Scott L. Aycock, and Deborah M. Herbert. Vancouver: Ecotrust Canada and the David Suzuki Foundation, 1999.

Legislators of the 1940s and 1950s claimed that second-growth forests would be planted wherever old-growth (natural) forests were cut so that the forest industry would always have a supply of wood. They also claimed that large, integrated companies would provide stable employment in permanent communities. They apparently thought of forests as timber estates; other approaches to forests were not even considered. The new Forest Act of 1979 still shared these assumptions, and logging continued through the 1980s on the same basis.

The coastal region was especially devastated and the 1995 Clayoquot Sound Scientific Panel recommended massive reductions in the cut for a region that had the same ecological conditions as most of the rest of the south and central coasts.² Wise stewardship would have led to a major reduction in the cut along the entire coast – perhaps even a moratorium on logging until such time as new forests had time to take root and replenish the land.

Many companies that had benefited from large-scale tenures because they had built or promised to build mills did not upgrade or remodel their mills to utilize second-growth timber. They were not obliged to do so, even when the basic premise of this entire system was that “sustained yield” would be implemented by seeding of second-growth trees to supplant old growth. Governments throughout the 20th century failed to fund reforestation, assuming that the natural forest would never end or that nature would do the reforestation for them. In short, from the beginning the “sustained yield” premise was empty of meaning. Critics of the Forest Practices Code (“the Code”) neglect to mention that companies should have shifted to second growth, especially at the coast, long ago.

The New Democratic Party (NDP) government in the 1990s introduced the Code, a first attempt by any government to introduce across-the-board environmental practices into forest management. They also began to put pressure on companies to reforest areas they had denuded. Companies claimed that enforcement of the prescriptive requirements of the Code and demands from government for both reforestation and higher stumpage were increasing the cost of logging beyond a reasonable level. Environmentalists claimed that the requirements were insufficient for ecosystem conservation, and that enforcement was not rigorous. Despite both claims, logging volume in natural forests continued an upward trend until the mid-1990s.

However, several new conditions hit the industry during the 1990s. The “meltdown” of the Asian economy decreased demand for both lumber and pulp. American softwood lumber companies continued to escalate their border war against Canadian imports. The depletion of timber resources in accessible areas obliged the companies that chose to stay

² Scientific Panel for Sustainable Forest Practices in Clayoquot Sound. 1995. *Sustainable Ecosystem Management in Clayoquot Sound: Planning and Practices*. Report 5. Victoria, BC: Cortex Consultants.

in BC to spend more on logging rugged terrain farther from their mills. Some mills operated on imported wood from other provinces and from other countries because of the deficiency in their own area.

The Pearse Report (2001)

The incoming Liberal government invited forest economist Peter Pearse to write a new report on coastal forestry. Pearse was the author of a one-man Royal Commission in 1976, and his recommendations were the basis for the Forest Act in 1979 promulgated by the Social Credit government.

Pearse acknowledged that the coastal industry could not be sustained with its present overcapacity. He also agreed that the timber supply would continue to decrease until second-growth plantations were fully operational.³

However, he then argued that the chief reason for the plight of coastal forest companies was the uncompetitive cost of logs. This, in turn, was caused by the increase in “vast areas” set aside for “protection as parkland, wilderness and various types of reserve” together with “performance-impeding regulation,” “controls on the rate of harvesting,” “utilization standards set by government,” “controls on forest practices,” as specified in the Code, confusing and poorly administered stumpage, and tenure arrangements that allocate rights to timber.

Pearse recommended the removal of these impediments to profits. A viable log market must be established, including removal of export restrictions that are “a major irritant in lumber trade relations with the United States.” Decisions about timber harvests, currently “based primarily on biological and technical principles relating to stocks of timber and growth rates ... with only secondary consideration of the values involved” should be revised.

This reasoning is evident throughout all of the subsequent government presentations. The determination to meet the demands of the American lumber companies (as reflected in the Softwood Lumber Agreement and subsequent barriers to American markets) determines the need for log markets and for abandonment of export restrictions on raw logs. Following this logic, American companies should be able to bid on standing timber and obtain raw logs for their American mills. An impediment is the strong attachment that the BC population has to its ownership of forests.

³ We reached the same conclusions and provided evidence in Marchak, Aycock, and Herbert: *Falldown*, 1999.

The existing Forest Act already ensured that decisions about tenures and annual allowable cuts (AACs) would be based on economic and political considerations with minimal concern for the biological needs of the forest. The proposed changes would intensify the dedication to economic interests above ecological concerns.

Pearse observed that most coastal mills were set up for cutting old-growth forests, not second-growth timber. He advocated a decline in the number of these mills, but no decrease in the cut to be redistributed among the survivors. Meanwhile, he encouraged the government to create means (funding) to improve the efficiency and technological upgrades of the surviving mills. He did not question the failure of mill owners to upgrade their own mills and to develop capacities for milling second-growth timber. He identified the cause of problems as government restrictions on logging and markets.

Pearse showed no inclination to take some responsibility for the policies he advocated in his 1976 Report and in later papers that contributed to the substantial overcut since then. The 2001 analysis was curiously blind to the basic cause – overcutting – while blaming policies that were designed to contribute to saving what was left of the natural forest. He saw that mill overcapacity was a problem – yet failed to see that the mills were established because governments and industry leaders kept expanding their demands on the forest despite the decline in timber supply.

BC Liberal platform

Promises to change forestry practices and the tenure system were included in the Liberal Party brochure “A New Era for British Columbia.”⁴ These were touted as means of providing “working families” with job security, investors with greater certainty, and companies with improved management and planning prospects. They also promised protection of private property rights from treaty settlements.

- **Establish a “working forest” land base.**
- **Replace the Forest Practices Code with a “results-based code.”**
- Apply 1% of all direct forest revenues, not including “super stumpage,” to global marketing of BC’s forest practices and products.
- Create a market-based stumpage system that “reflects global market realities and local harvesting costs.”
- **Either fix or scrap Forest Renewal BC.**
- Invest in research to promote forest stewardship.
- **Cut the forestry regulatory burden by one-third within three years, without compromising environmental standards.**

⁴ BC Liberal Party. 2001. *A New Era for British Columbia: A Vision for Hope & Prosperity for the next decade and beyond*. [online] www.bcliberals.com (2003/05/05). 32 pp.

- **Protect private property rights in treaty negotiations.**
- Work to expedite interim measures agreements with First Nations, to provide greater certainty during treaty talks.
- **Increase the AAC over time** through scientific forest management, proper planning, and incentives to promote enhanced silviculture.
- Eliminate “waterbedding.”
- **Scrap the “HCL” silviculture hiring hall policy that discriminates against silviculture workers.**

Promise to increase the AAC (May 2002)

The AAC currently exceeds the MOF estimate of the sustainable long-term harvest level (LTHL) by an average of 22% throughout the provincial timber supply areas (TSAs), and by just under 10% in tree farm licences (TFLs). This practice of excess harvest has initiated an extended period of reduced fibre supply while the next rotation of timber becomes merchantable, euphemistically dubbed “falldown” in the industry. We have called this excess harvest “overcut.”

A 1999 analysis of AACs found that in certain regions of the province, the overcut levels on TSAs were much higher than the provincial average.⁵ These included all coastal regions (harvesting 80-100% above the LTHL); the Revelstoke, Nass, and Bulkley TSAs (all well above 100% over the LTHL); and the Lillooet, Invermere, Golden, and Robson Valley TSAs (all 60-100% above the LTHL). TFLs were generally less extreme in their overcut, but some companies had AACs on some of their TFLs substantially in excess of the sustainable level. For example, International Forest Products had an overcut level of 55.41%; Federated Co-operatives had an overcut level of 82.93%; and Evans Forest Products had an overcut level of 106.56%.⁶

Second growth in managed TSAs has been taken into account in MOF’s estimation of LTHLs. In many areas no planting was done before a federal-provincial agreement to begin a major reforestation project in 1985. The trees planted since then will not reach commercial maturity until the middle of the 21st century. What is being cut now and for the foreseeable future in many regions is natural old-growth forest.

Liberal promises to increase the AAC (as stated in “A New Era of Sustainable Forestry”) are irresponsible, and industry participants as well as environmentalists must be aware of the inevitable consequences of an increase were it to actually occur. The last remaining old-growth natural coniferous forests would be decimated. Parks, wilderness, and protected areas would be invaded and logged. Indeed, Pearse remarks that parkland,

⁵ Marchak, Aycock, and Herbert: *Falldown*, 1999.

⁶ These data are shown in detail for all TSAs and TFLs in Marchak, Aycock, and Herbert: *Falldown*, 1999.

wilderness, and reserves are a cause of the crisis, opening the door for a rethinking of policies on protected areas at the coast.

Possibly the government plans to replace coniferous forests with deciduous species that have a faster rate of growth, or anticipates afforestation of areas currently outside the forested region altogether (but now included in the “working forest”). But even if this were the plan, these trees would not reach merchantable girths and lengths in less than three or four decades.

Replacement of the coniferous forest would fundamentally alter the landscape of BC. Such a proposal has not been made public, and we broach it reluctantly since it seems to be the only possible way besides logging every remaining tree in the province that an increase in AAC could be accomplished within the lifetime of this government (or even in this century).

The Liberal government claims that the AAC has already been increased refer to “beetle uplift”: recent increases in AAC in the interior and northern regions of the province attributed to the unprecedented mountain pine beetle outbreak. However, this is a dangerous premise: these AAC increases have been approved only as a “surgical” response to a forest health epidemic of catastrophic proportions. This accelerated, species-targeted harvest is designed to minimize impacts on the forest resource, and will not be sustainable over the longer term once the outbreak is under control.

The changes recently introduced by the government respond primarily to the industry. This is consistent with the Pearse Report. It follows his reasoning that the problems of the industry are mainly economic, and that many are caused by the Code, restrictions on the export of raw logs, and other regulations and requirements that made timber too expensive for the companies to compete in international markets.

New Institutional Framework

Subsequent to their election in 2001, the Liberal government revamped the existing institutional framework of government ministries responsible for management of forests.

Changes to government ministries

The Ministry of Forests (MOF) and BC Forest Service (BCFS) remain unchanged in name, but vital responsibilities have been transferred.

The Ministry of Environment, Lands and Parks (MELP) was reorganized and replaced with the Ministry of Water, Land and Air Protection (MWLAP). **MWLAP continues to monitor environmental aspects in forest management such as fisheries, wildlife, and habitat.**

A new **Ministry of Sustainable Resource Management (MSRM)** was created to **house responsibilities for inventories and “higher-level planning” responsibilities for all natural resources (i.e., timber, mining, oil and gas, etc.) within a single ministry. This move concentrates strategic planning and development of natural resources in MSRM, leaving MOF and MWLAP with operational planning and compliance and enforcement activities (but these are to be shared with staff of private-sector forestry companies).**

This new institutional framework is a major change. Proposals such as the “sustainable resource management planning” and the “working forest” are both MSRM initiatives, and MSRM now provides the chief management context and direction for both forest and non-forest resource and environmental policies.

Cuts to ministry staff

Early in 2002, MOF closed three regional and 29 district offices, reducing the capacity of the ministry to evaluate, measure, or monitor tenures. The budget for compliance and enforcement was cut by about 14%. Spending on resource management and environmental programs overall was cut by about 40%. The government has indicated that approximately 30% of staff would be cut over a three-year period. The actual staff cuts are difficult to ascertain because some personnel are being transferred to other programs and ministries.

Cuts will also be made to the number of MWLAP personnel engaged in monitoring and evaluation of conformity with requirements under the Forest Practices Code (“the Code”).

Deregulation

As part of new institutional framework design, and in addition to the staff cuts described above, the government is also aggressively pursuing policies to reduce their administrative burden and the cost to industry of compliance with environmental codes.

Changes at MOF driven by industry-oriented promises include what the government calls a strategic shift from “process-based and micro-management” to “results-based and professional/company accountability.”⁷ This amounts to minimizing the regulatory cost and burden on government by downloading responsibilities on to the industry and professionals.

Compliance and enforcement

Many of the regulatory changes to MOF, MWLAP, and MSRM were completed by December 2002. In the same process, much of the regulatory burden on industry was lifted for what the government saw as a transition period between application of the Code and the regulations yet to be introduced.

The changes so far include removal of 565 existing regulations under MOF legislation, 387 under MSRM legislation, and 5,079 under MWLAP legislation.

The BCFS will continue to deal with unchanged compliance and enforcement requirements under the Forest Act, the Forest Practices Code of BC Act, and the Range Act. However, some services within the MOF compliance and enforcement program will

⁷ From MOF 2002/03–2004/05 Service Plan Summary.

be delivered differently to support the “results-based code” and fully protect provincial revenue under the new tenure and timber-pricing regimes.

Further regulatory reforms are underway in MOF and significant changes are still to come as current prescriptive requirements are replaced with the “results-based code,” scheduled to be fully implemented by 2005.

Forest certification

The Liberal government has generally endorsed voluntary forest certification as complementary to the proposed “results-based code,” recognizing that third-party auditing of BC forest practices is important to buyers and consumers in the international marketplace. However, its plan to support certification initiatives via the BCFS and “work to develop an internationally accepted standard for ‘eco-labelling’ of BC forest marketing of BC forest products”⁸ focuses more on the general compatibility of forest certification with the government’s marketing campaign than specific environmental standards or support for a particular certification scheme.⁹

Independent certification of forest management was designed to address a growing number of consumers who do not trust governmental regulation of forest management to maintain environmental standards within a given jurisdiction, and the government cannot become directly involved without compromising the third-party nature of forest certification that appeals to many consumers, and risking possible complications under World Trade Organization (WTO) agreements.

A desire to support independent certification of BC forest management and products may have been a motivating factor for several of the new Liberal forest policy initiatives. For example, many certification schemes will certify only area-based forest management – a major stumbling block for the many licensees with volume-based tenures in BC.

Both the “defined forest area management” (MOF) and the “working forest” (MSRM) proposals (see below for details) set area targets for harvest volumes and planning, essentially creating a legislative “bridge” allowing licensees in volume-based tenures to cut a designated timber supply area (TSA). The ability to subdivide and transfer forest licences (see “Legislation”) may also mean that licensees will be able to sell or otherwise

⁸ Government of BC. 2002. Ministry of Forests 2002/03–2004/05 Service Plan Summary. 8 pp. [online]

⁹ The three major forest certification systems in Canada include the Canadian Standards Association (CSA), the Sustainable Forests Initiative (SFI), and the Forest Stewardship Council (FSC). The CSA and SFI offer broadly applicable standards for forest certification, while the FSC offers generic standards for interim forest certification until local FSC Regional Standards have been developed (under the direction of the FSC International Principles and Criteria) and accredited by FSC-International. Both FSC and CSA also have broadly applicable standards for “stump-to-mill” chain-of-custody certification of forest product processing operations.

dispose of “problem” portions of licences where certification requirements might be more difficult to meet.

The Minister of Forests, Hon. M. de Jong, has also justified deregulation with references to certification: “There may have been a time when heavy government oversight was seen as essential to protect forest values and public interests. Today, audits and certification initiatives are solid proof that industry has the knowledge and the incentive to do its job properly.”¹⁰ However, such a statement should only be applied to those companies that pursue and pass certification audits successfully.

This approach also transfers the onus and costs of auditing and monitoring from government to the forest companies. However, even if an increase in third-party auditing occurs, it cannot be expected to offset cuts to relevant ministry staff and programs (such as MOF compliance and enforcement), as forest management certification is a strictly voluntary procedure. The costs of forest certification also remain a significant determining factor for companies.

¹⁰ De Jong, M., and J. Murray. May 2002. Open letter in: Government of British Columbia. *A Results-Based Forest and Range Practices Regime for British Columbia: Discussion paper for public review and comment*. [online] www.for.gov.bc.ca/code/ (2003/04/25). 60 pp.

Policy Developments

In line with its “New Era” statements, current plans and policies of the Liberal government address three key themes: certainty in decision-making, shared stewardship, and accountability and responsiveness.

According to the government, “increased certainty is a key aspect to investment that generates sustainable economic growth.” The certainty is expected to be created along with long-term tenures and consultation with First Nations. Shared stewardship is linked to giving industry, First Nations, non-governmental organizations, and communities specific responsibilities, and shifting to “results-based regulations,” “market-based incentives,” and cooperative management planning. Accountability is to be assured by establishing clear standards.¹¹ The government argues that monitoring and enforcement will be built into the shared responsibilities, but the regulations that would ensure this result are not yet in place.

“Results-based code” (May-June 2002)

The government promised to establish a “workable, ‘results-based code’ with tough penalties for non-compliance.” The meaning of this, according to the government paper, is: “government sets objectives and desired outcomes, and forest companies propose results or strategies that reflect these. The companies are then accountable for the results through a rigorous government compliance and enforcement regime.” The nature of this rigorous regime, as defined in regulation, has not yet been made public.

¹¹ From “Sustainability Principles update,” MSRM (2003b), January 22, 2003; http://srmwww.gov.bc.ca/clrg/psirb/sustainability/sustainability_principles.pdf

Strategic land and resource management planning (SRM)

The stated objective of “sustainable resource management planning” under the Ministry of Sustainable Resource Management (MSRM) is to consolidate land use plans. These plans will be drawn up over the next several years.

The original focus of land use management planning (i.e., land and resource management plans) on biodiversity is pushed aside, while “other economic development and environmental values, such as tourism, settlement, and water resources, are an increasing priority.” The planning process is supposed to rest on sustainability principles, which are available only in a draft format at this time.

The government boasts that “sustainable resource management planning” will be relying on the “expertise of partners in industry.” The partners are not named in the document (see “Introduction” to our review for their names).

Hoberg hearings and report (May-June 2002)

Professor George Hoberg, appointed to hear briefs from invited stakeholders to the discussion papers on proposed policy¹² published prior to May 2002, had two months to complete the consultation process. He recommended a review of proposed regimes for environmental values and the maintenance of existing environmental standards; collaboration with the expert community to develop an effectiveness, evaluation, and monitoring framework for all “results-based code” values, and a public report on results of evaluations.

He also suggested that a scientific review of the biodiversity guidelines and rules and rules for riparian protection be done prior to the introduction of the new code. He recommended that the 6% timber supply impact cap be reconsidered, as it is an arbitrary level with no scientific support. (This cap was introduced by the previous New Democratic Party [NDP] government, putting an upper limit on the impacts on timber supply that might be experienced by licence-holders with the introduction of the Forest Practices Code [“the Code”].)

¹² The three papers were: “Results-Based Code,” “Sustainable Resource Management Planning,” and “Sustainability Principles for Resource Management.” The report and recommendations may be examined in Hoberg, G. 2002. *Finding the Right Balance: Report of Stakeholder Consultations on a Results-Based Forest and Range Practices Regime for British Columbia*. online at: faculty.forestry.ubc.ca/rbc/RightBalanceFinal.pdf (2003/05/05).

The selected groups who had the opportunity to submit briefs to Hoberg during the consultation process emphasized creating clearly measurable objectives for comprehensive landscape plans. They also emphasized the need for “results” to include all resource values, not simply the value of timber, and for results to be specified in legislation. Many noted that there were no stated baseline levels against which to measure performance, few biodiversity objectives were mentioned, and most environmental values were neglected.

Briefs noted that there was no prohibition against harmful results to habitat, streams and hydrosiparian ecosystems, water quality and quantity, watersheds, and other environmental features.

The elimination of stand-level planning (from the existing Code) was critical in reducing accountability and agency oversight.

Some reviewers recommended that forest licensees should have a demonstrated record in sustainable management of public resources before being granted a licence under the results-based approach. Licensees should be held accountable and the “results-based code” should clarify the liability provisions and the level of accountability. The government should ensure that its decision-making powers are paramount over industrial preferences regarding results, and that government remains accountable for consequences.

Many pointed out that the proposed “results-based code” was vague and unenforceable. Public oversight was not provided for. Enforcement was promised, but simultaneously professional staff at the Ministry of Forests (MOF) was severely reduced. The only authority the government had was to approve a single comprehensive plan, with “results” left to the interpretations and discretion of companies.

Several groups called for dramatic reduction in the rate of cut to allow species and habitat trends to recover, and recommended that clearcuts be stopped immediately.

Dissatisfaction with the consultation process on the “results-based code” discussion paper was the major point of agreement for all participating First Nations groups.

Subsequent to the completion of the Hoberg Report, the government set up a consultation process on their draft sustainability principles to share information with representatives from other North American jurisdictions, forest practitioners,¹³ and the corporate sector. It proposed to hold policy forums with representatives from major universities, and to work with government agencies to develop guidelines for sustainable resource management. Stakeholder involvement in definition of the sustainability principles,

¹³ Technicians and technologists who are not legally designated as professional foresters.

which will drive the activities and policy of the MSRM, has been limited to letters soliciting feedback and meetings with groups “identified as having interest in the discussion.”¹⁴

Over the medium term, MSRM is developing a series of short papers to provide a better understanding of the province’s approach to sustainable resource management, and planning to develop a sustainable resource management indicators program in collaboration with other ministries and the “BC Progress Board.”¹⁵

The “working forest” proposal (introduced January 2003)

Five major policies were introduced in the “working forest” discussion paper in January 2003. These incorporate many of the earlier proposals in policy-oriented format.

- **There will be zones,¹⁶ with the larger share (45 million hectares out of 75 million hectares or 48%) being allocated to the forest industry or mining, oil and gas, or other industries.**

The remainder of BC land consists of parks and protected areas already in place (8 million hectares), protected non-forest land (4 million hectares), private land in diverse classifications (8 million hectares), non-forest land (32 million hectares, or 34%), and federal land (under 1 million hectares). The “working forest” will thus greatly exceed the 23 million hectares currently under forest tenures as the timber-harvesting land base.

Apparently there will be some overlapping uses (tenures) between forestry and subsurface resource use (i.e., mining), and land that is unsuitable for any kind of forestry will presumably be used by other industries. Boundaries of zones have not yet been drawn up.

¹⁴ Letters were sent to approximately 75 stakeholders across the resources sector, including First Nations, NGOs, industry, and the academic community, and approximately 20 face-to-face meetings were held with these and additional groups who were identified as having interest in the discussions (MSRM 2003).

¹⁵ MSRM 2003b.

¹⁶ The word “zones” is not used in the paper, but the concept is identical to the term as used in Clark S. Binkley, 1997, “A Cross Road in the Forest: The Path to a Sustainable Forest Sector in BC,” *BC Studies*, No. 113:39-61; and also 1997, “Preserving Nature through Intensive Plantation Forestry: The Case for Forest Land Allocations with Illustrations from British Columbia,” *The Forestry Chronicle*, Vol. 73, No. 5 (September/October).

- **Government will work with industry to maintain a data warehouse on land capability and suitability to support decisions, and will conduct monitoring in partnership with the private sector.** The government refers to this as “shared stewardship” and claims that “voluntary planning initiatives will contribute to certainty.” It promises: “Industry will play a key role in further land-base investments for sustainable forestry and, possibly, increased timber supply.”
- **Industry will be assured of certainty in its use of forests;** such sources of uncertainty as environmental assessments of remaining resources, new regulations regarding forestry, and outstanding land claims will be eliminated by partnerships with industry, monitoring by industry, and settlement of claims. The paper does not name its partners, but the major partners have been identified as the largest forestry companies in the province. New partners are being sought as well.
- **The “working forest” designation will replace the “provincial forest”** designation. The reason given for this change is to focus on the specific goals for the Crown forest land base and to extend the land base by some 2 million hectares currently classified as Agricultural Land Reserve. More particularly, the government identifies the change as facilitating legal land use practices and allocations, i.e., as preventing land use conflicts that might otherwise end up in court. Applications to convert land to private agricultural uses will be determined on “the basis of the highest and best use,” by the Minister of Sustainable Resource Management.
- **The 1994 Forest Land Reserve Act will be rescinded.** This Act referred to all private managed forest land, private land in tree farm licences (923,000 hectares), Crown land designated as “integrated resource management areas” in the Vancouver Island, Cariboo-Chilcotin, and Kootenay-Boundary land use regions (estimated at 15 million hectares), with a provision for additions contingent on further land-use planning. The authority to designate Crown lands as Forest Land Reserve was repealed in amendments to the Forest Land Reserve Act (November 1, 2002) and the Forest Land Reserve designation applied to private managed forest land is slated for repeal in 2003.

As this text demonstrates, the “New Era” campaign promises are gradually becoming focused as policies. The concern with new industry investment and economic opportunities, as discussed by Pearse in the initial paper, are now firmly embedded in policy developments.

Of particular note is the strong fear of uncertainty expressed in these papers. The emphasis on certainty responds to industry demands for legal protection and release from competing interests for forestry, tourism, environmental concerns, and other interests and activities.

Certainty is expected to be delivered by turning the larger part of the “working forest” into a zone for timber extraction, explicitly delimiting landscape-level conservation practices for biodiversity and wildlife, and settling Aboriginal land claims.

The MSRM is supposed to eliminate conflicts between diverse resource sectors so that investors can be absolutely certain before they climb into partnerships with this government.

But there is nothing in these papers to suggest that government planners have given thought to how certainty can be guaranteed if there is ecosystem damage, climate change, or even tragic consequences from overcutting.

Regulations that would implement sustainability policies are not yet enunciated, so it is not possible for readers to examine them in terms of just such issues as ecosystem damage and determination of annual allowable cut (AAC) levels.

When the government placed a discussion paper on the Web and invited comments on the “working forest” policy in January 2003, the public had so little information that few were even aware of the Web site. The deadline for comment was extended to the end of April 2003. Posted comments were overwhelmingly negative. Of 104 responses posted between April 25 and May 2, every single one was negative. Some of the respondents submitted detailed objections to the proposal, and many expressed deep anger with what they saw as the giveaway of BC public forests to logging companies.

The Vancouver media have paid scant attention to happenings in the legislature. However, some attention was given to the objections of the mining industry when it claimed that the “working forest” proposal gives most of the land to forestry, and mining could end up being left out. The Mining Association of British Columbia claims it needs unimpeded access to land for exploration, and the proposed change in forestry land status would threaten access.

Part of the reason for media lack of interest is that the opposition (NDP) consists of only two people. Even so, Joy MacPhail has mounted a spirited and well-informed critique in the legislature. With no funds for research (the Liberal government refused to recognize the NDP as the official opposition), she has pushed the government to reveal information it had not publicly acknowledged on its own.

During a debate on estimates for the MSRM under which most of these changes are occurring, MacPhail asked the Minister of Sustainable Resource Management, Hon. Stan Hagen, who were the partners. She finally elicited the names of the province’s largest forestry companies: Canfor, Weldwood, Weyerhaeuser, Slocan Forest Products, and Lignum. MacPhail responded: “Is the minister suggesting that land use decisions he

claims are 100 percent science-based, that the information for making these decisions comes from the very companies who benefit from those decisions? Can the minister spell ‘conflict’?”¹⁷

In 2001, MSRM gave \$60 million to forestry companies for inventory collection. This came out of the Forest Investment Account, and according to Minister Hagen, the information obtained this way is used in land use plans under his ministry and forest stewardship plans under MOF. The professional biologists and other professionals in the private sector are expected to work together with their counterparts in government.

Without baseline evaluations and government regulations, the proposal to work with industry provides no guarantee that government will take responsibility or be accountable for the results. The proposed partnership with industry, whereby the forest industry will, in effect, determine the rules, evaluate its own performance, and monitor its own activities is a form of privatization. It is privatization without compensation to the public that owns the forest yet will apparently have very little representation in its management once this legislation is passed. Companies with tenures, rather than MOF, will set up the land use database, determine which land should be logged, and monitor their own actions.

First Nations in forest policy

The Liberal government has initiated a series of forest policy changes that are relevant to First Nations in BC, most of which focus upon increasing levels of participation by First Nations in the forest industry. The Pearse Report provides limited comment on First Nations, simply discussing the general need for “increased security” (i.e., treaty settlement) regarding impacts on business forest management.

Although legal obligations for meaningful consultation with First Nations are noted, government papers are primarily concerned with economic development. Specific amendments to legislation have been introduced in the Forest (First Nations Development) Amendment Act 2002, and elsewhere, where the modus operandi appears to be of offers of small-scale cutting rights under non-renewable licences with conditions attached, and the conditions are unilaterally crafted by government.

¹⁷ This and the following paragraph are based on the Web site:
<http://www.legis.gov.bc.ca/hansard/37th4th/h30410a-blues.htm>. Debates so reported are not guaranteed to be correct until so certified in the final Hansard record.

The First Nations community has expressed general dissatisfaction with the levels of consultation around forest policy development, most particularly with the “results-based code” and the “working forest,” claiming that the government has fallen short of its legal and fiduciary obligations and may face challenges if things proceed apace. The potential impacts of the proposed legislation on the treaty negotiation and settlement process across BC may include constitutional challenges and abandonment of negotiations while contractual arrangements are in force for small-scale logging or other forestry-related economic activities.

Legislation

Between November 2002 and May 2003, the government introduced legislative changes. These begin the process of putting into law the policies previously introduced. Summaries of Acts are indented and shown with bullets at the left-hand side. Our commentaries are not indented.

BC Forest and Range Practices Act (November 2002)

- **The new Act requires a tenure holder to prepare one forest stewardship plan which must be consistent with environmental objectives set by government (when they become available).** The Minister of Forests must approve this, and the timber-holder can then proceed with a five-year tenure, expandable to 10 years.

The nature of the plan at present is sketchy – it must indicate the timber to be harvested, road construction plans, and a map. There are numerous exemption options should the Minister decide there is a public health problem or any condition that might reduce the value of the timber. This could mean market swings, since the meaning of value is not given. Other reasons for exemption include insect infestations or tree diseases.

- **Previous Forest Practices Code (“the Code”) requirements, including stand management prescriptions, five-year silviculture plans, and access management plans have been repealed. Requirements of requisite approval by the ministry of road layout and design plans are deleted.**

This provides tenure-holders with a high degree of latitude in how they manage their logging operations. The obligations are minimal, and government supervision, monitoring, and evaluation are almost entirely absent. The Minister insists, when challenged in the legislature, that company professionals will ensure that environmental

standards are maintained. But previous ministries have also insisted that companies would maintain high standards, yet a badly damaged and overcut forest was the consequence. The prescriptive Code may have been heavy-handed, but it was the first attempt to introduce environmental care into logging operations.

- Penalties are stated for prohibition of unauthorized timber harvesting (an amount not exceeding \$1,000,000 or imprisonment of not more than three years, in addition to the equivalent stumpage value for the wood had it been legally harvested). The same penalty will be imposed for a forest practice that damages the environment – unless the wrongdoer was acting in accordance with MOF provisions or could not be expected to know that the damage would occur. There is room for ministerial discretion in determining liability. Penalties for tree spiking (up to \$500,000 or not more than two years imprisonment) and various other misdeeds are embedded in the Act, as they were in the previous Act.
- Another addition to the Act states that due diligence, mistake of fact, and officially induced error are defences to a prosecution. And a modified provision states that a person is liable for an economic gain that results, directly or indirectly, from the person’s act or omission contrary to the Act or regulation unless this occurred under due diligence, mistake of fact, or officially induced error.
- **The Minister may order the disestablishment of an interpretive forest site, a recreation site, or a recreation trail, and under the section on “recreation” there are no stated objectives for management.**

This item suggests that existing alternative uses of the forest are going to be prevented. That is consistent with the general emphasis on making enhanced forestry zones in the “working forest” timber estates with no access for non-timber uses.

- A new section of the Act requires the Minister to publish an annual report on enforcement activities, and to keep and make available to the public a performance record for tenure holders.

What will be required in these reports is not stated, so whether they will bring about accountability and transparency is yet to be determined. However, the requirement for a report and openness to public examination are welcome developments.

- The Act specifies the need for consultation with First Nations, and obliges licensees to provide Aboriginal communities with information on operating plans and amendments to these. In situations where new information becomes available

and there may be a potential for an unjustifiable infringement of an Aboriginal right, including title, the Act provides the Minister with the ability to intervene.”¹⁸

- First Nations may identify interests, rights, and aspirations through landscape-level planning processes but “agreements to establish access to resources will be determined through tenuring or the treaty process.”¹⁹

Forest (First Nations Development) Amendment Act (May 2002)

- This Act is intended to direct awards to First Nations for small-scale economic opportunities under various licences, including community forests and woodlots. These may facilitate treaty negotiations but are not limited to them. Awards that facilitate treaty-related measures, interim measures, or economic measures must include a statement that as a condition, the First Nation must comply with the agreement. Failure to do so will result in suspension of the award. The Minister (or deputized officer) may invite a First Nation to apply for a licence with or without advertisement.

For First Nations that have rejected the treaty settlement process while retaining their land claims, small awards may be viewed as useful economic aids. For many First Nations involved in the formal treaty negotiations process these might be viewed with some skepticism.

Chief Stewart Phillip, President of the Union of BC Indian Chiefs, expressed the skeptical perspective: “... the government is desperately attempting to convince investors that BC, by virtue of its progressive Aboriginal policy, is in a position to offer a safe and stable investment climate. In reality, the government continues to pursue a policy of offering marginal economic opportunities to First Nation communities. In short, all the government is really offering are bigger table scraps.” Chief Phillip also argues that the stipulation in the agreement means that First Nations must not assert their Aboriginal rights “on the ground” or “in the courts” while funding is provided. “We ask you,” said the chief, “is that economic opportunity or economic coercion?”²⁰

¹⁸ MOF. 2002. *Forest and Range Practices Act*. [online] www.for.gov.bc.ca/code.faq.htm (2003/04/28).

¹⁹ MSRM. 2002. *Sustainable Resource Management Planning: A Landscape-level Strategy for Resource Development*. [online] www.gov.bc.ca/srm/ (2003/04/25). 25 pp.

²⁰ UBCIC reaction to the Throne Speech, February 12, 2003. Press release.

The discretion open to the Minister maintains these awards within the political, rather than the normal bureaucratic, arena. This might benefit groups willing to accept the terms and be detrimental to those that reject them. It is not clear in the terms of the Act whether, as some Aboriginal leaders and critics suggest, the acceptance of monetary benefits from licences implies restrictions on treaty negotiations. Is the government awarding timber in place of compensation?

Bills designed to implement the “working forest” plan

Legislation to implement the “results-based code” and the “working forest” proposals was introduced between March and the end of the session in May 2003. This did not arrive in a single coherent set of laws; rather, it came in parts: some as revisions of the Forest Act, some in other bills. Much of the language used by the Minister of Forests, Hon. M. de Jong, is identical to phrases used by Peter Pearse, and this coincidental phrasing continues through all of de Jong’s speeches to the legislature. Following are the major bills.

Forest Revitalization Act (Bill 28, March 2003)

This Act provides the legal arrangement for the claw-back of long-term tenures.

- Concentrating on how to “get the most value from the timber we harvest,” the Minister notes that when most of the annual allowable cut (AAC) is allocated to long-term tenures, access is restricted for new investors and entrepreneurs. So this Act will “redistribute” 20% of the AAC held in renewable tenures, equivalent to 8.3 million m³ of wood. Tenure-holders may keep their first 200,000 m³ annually, so smaller operators will not face the most extreme impacts. He says his long-term objective is to reduce the area of timber area under long-term tenure to about 60%.
- In addition to the claw-back, the government says it will encourage companies to renovate and update old mills. Some companies, especially at the coast, will be encouraged to close mills.
- The government is authorized to pay “not more than \$200 million out of consolidated revenue” for compensation in the initial year. (How much will be allocated for compensation in subsequent years is not indicated.) The BC Forestry Revitalization Trust is established to “mitigate adverse financial impacts suffered” by licensees as a consequence of the claw-back. A Deed of Trust has been established.

- In addition, the government proposes to establish a \$75 million trust to be managed and administered by “representatives from labour, licensees, logging contractors and government.” This one-time “transition fund” of \$75 million includes a \$47 million component for IWA workers, a \$23 million component for contractors, and \$5 million for administration personnel who are impacted by the changes in the form of lost jobs when mills are phased out or upgraded, or when the appurtenancy clause is dropped and communities have no employer. The component allocated to the IWA is for pension bridging, but the IWA claims that it will require at least \$150 million to protect workers from the impact of the downsizing.²¹
- For First Nations, the bill offers \$100 million to be allocated for revenue sharing over the next three years. “A portion of the AAC that is reallocated from existing tenures will be targeted to First Nations who enter into accommodation agreements with the province. These agreements may be negotiated where there are unresolved Aboriginal rights and titles issues, as an interim step towards a comprehensive treaty or other form of settlement; they will be pursued where forestry activities on Crown land could affect First Nations’ interests. Ultimately, about 8% of the total provincial annual AAC will be made available for such arrangements. As well, the province will develop mechanisms to share a portion of forest revenues with First Nations who wish to enter into these accommodation agreements.”²²

As noted in the comments by Chief Phillip (above), there is, here as in the earlier bill, a potential for compromising treaty negotiations with First Nations. Groups will have to weigh the opportunities for short-term economic gains against longer-term treaty settlement goals.

It is not clear whether applications for First Nations licences will be restricted to those who have identified the region of the proposed licence as part of their traditional territory, and the impact this may have on treaty negotiations in areas of overlapping claims.

There is no public information on how many First Nations have been or will be invited to apply. It appears that there has been only one direct award to date (Kinbasket: 30,000 m³), but several awards or negotiations regarding possible awards were announced at the end of the legislative session in May 2003. Whether awards under this legislation will be what the government calls Interim Measures Agreements (IMAs), as part of a package toward treaty settlements, is not clear. Direct awards do not stipulate any public or First Nations review period. This could lead to complications in areas where land claims overlap and have not been resolved.

²¹ As noted by Joy MacPhail, Hansard, March 27, 2003.

²² MSRM 2002.

Specifically allocating a set volume of the provincial AAC for First Nations communities to access and manage is a positive step forward. However, the redistribution of harvest volume is not great. For licences in community forests and woodlots, the licences are non-replaceable, and limited to a maximum term of four years and an AAC between 500 and 2,500 m³.

The reduction in Crown land under tenure is one of the demands made by American lumber companies who claim that the BC system constitutes a subsidy to tenure-holders. The removal of encumbrances on tenure-holders, including appurtenances, AAC allocations, and limits on raw log exports are all targets for American lumber interests who claim that these are limitations to free trade.

So it comes to this: excess land was leased in tenures in past times. Under existing laws, these cannot be clawed back without compensation, even if the land in question is not accessible or for other reasons is not economical to log. Now the companies will be compensated for land they did not purchase, but a legal argument would undoubtedly be advanced that they would have reasonable expectation of benefits for harvesting rights already granted, and would thus merit compensation.

However, there is no legal argument in favour of the way this is to be done: representatives from the major companies are going to sit on the board that determines the allocation of compensation funds (as stipulated in the Forest Investment Account [FIA], discussed below and passed subsequent to this Act in April 2003).

Forest (Revitalization) Amendment Act (Bill 29, May 2003)

This confusing title gives little indication to the reader that the bill is actually about numerous changes to the Forest Act (as last amended in 1996).

Consolidation and subdivision of licences

- **Licences of all kinds may be consolidated and subdivided more easily than in the past. Consolidation or subdivision could occur by reduction in AAC from one licence area to be compensated by an equal volume allowance in a second area. The AAC of all licences involved must stay the same.**
- Agreements (now including licences, permits, or other forms) are **transferable without ministerial consent**. Payment arrangements for money owed to the government are negotiable.
- The disposition of a tree farm licence (TFL), forest licence (FL), or pulpwood agreement (PA) **“will not unduly restrict competition in the standing timber markets, log markets or chip markets.”**

- Transfers are exempt from certain requirements previously in force.
- Community forest agreements are not transferable except in “prescribed circumstances to a person who meets prescribed criteria” (these are not identified in the Act).
- A Minister may cancel an agreement if the holder, a corporation, amalgamates with another corporation and under some other circumstances.
- Private land may be disposed of with the Minister’s prior written consent if the land or interest is “subject to a tree farm licence or to a woodlot licence.”
- **Extension of timber sale licences (TSLs) and cutting permits (CPs) may be granted for a one-year period under specific circumstances.**

Cut control

- The “**volume of timber harvested**” will include the volume of timber cut, estimated to be wasted or damaged or under road permits, and damaged or destroyed without authorization.
- A licence-holder may terminate either the first cut control period or any subsequent cut control period by written notice, and if this occurs, a new cut control period of five years begins in the calendar year following the termination.
- **Holders of major licences “must ensure that the volume of timber harvested during its cut control period does not exceed 110% of the sum of the allowable annual cuts for that period.”**
- **Holders of short-term licences “must ensure that the volume of timber harvested during a cut control period is not more than 120% of the sum of the allowable annual cuts.”**
- There will be **no carry-forward of unharvested volume.**
- **Exceptions on cut controls are possible** where Crown land is “at risk because of wind, fire, insect or disease.”
- There will be penalties for exceeding cut control limits, in addition to stumpage payable.
- Retroactive approval may be granted under certain circumstances.
- **As soon as the legislation passes, the appurtenancy and processing requirements are cancelled.** There will be transitional regulations, which may be made retroactive to up to five years.

These changes are critical to the economic plan put forward by the government. Major licensees will gain considerable flexibility, and government will abandon much of its stewardship role over Crown forests. The ability to consolidate diverse licences and still retain the same AAC overall means that a company could increase timber cutting allowances in a favoured area, thus rendering the “scientific” basis for calculation of the AAC inoperable.

Removal of the appurtenancy clause may be sad news to communities that have in the past depended on a steady supply of wood to a local mill. However, that clause was increasingly difficult to sustain when the local mills did not have the equipment to process either second growth or the remaining species and dimensions of wood logged in the region. So far there has been no discussion paper or legislation regarding the problems these communities now face. What is left of the regional forest will no longer benefit them, and most have no alternative employment opportunities.

Forest Revitalization Amendment Act (No. 2) (Bill No. 45, May 2003)

This bill proposes further changes to the Forest Act, the Forest and Range Practices Act, and the Forest Practices Act, as well as the Mineral Tenure Act and the Oil and Gas Commission Act. Many of the changes are for purposes of making all the legislation consistent with the overall purposes of the government, specifically to reduce the burden of requirements imposed on licensees, to create zones, to increase the amount of land available for logging, and to transfer much of the responsibility for environmental protection to the companies.

Forest Investment Account (established April 2003)

In April 2003, the provincial government set up the Forest Investment Account (FIA), with funding approved by the legislature in the initial amount of \$69,813 million. Most of this fund is for compensation to licensees amounting to \$59,750 million. Funds will also be created to fund backlog reforestation of areas denuded before 1987, and other reclamation and restorative work. Funding will also be made available for marketing BC forest products and promoting secondary manufacturing.

- The Deputy Minister of Forests will chair a Forest Investment Council to review and make recommendations on all FIA programs. The Council will include deputy ministers in MSRM and MWLAP, plus three licensee representatives, and one representative from the forest research and technology sector. There are no representatives from the general public or from environmental organizations.

- Staff in MOF “will be responsible for establishing FIA objectives and standards,” and having done that, will have “no further direct role in setting activity priorities, approving projects, verifying fieldwork, or certifying project completion.”
- “Administration of most FIA activities will be provided by private-sector firms rather than by government staff. PricewaterhouseCoopers LLP will provide day-to-day administration for the Land-Base Investment Program, the Federation of British Columbia Woodlot Associations will manage the Small Tenures Program, and Forintek Canada Corp. will do the same for the Research, Product Development, and International Marketing Programs.”

Joy MacPhail, the only New Democratic Party (NDP) MLA during the debates in March 2003, noted that the companies who will benefit from the compensation are also major contributors to Liberal government election campaigns. She listed these companies and their donations.²³ She also noted that while Skeena Cellulose has still not opened a mill in Prince Rupert, where there is, in her estimation, a 55% unemployment rate, the company has been permitted to export an increased volume of raw logs from its tenures.

Forest Statutes Amendment Act, 2003 (Timber Sales Organization) (Bill 27, May 2003)

- **This legislation establishes the legal authority for a new BC Timber Sales Organization, and rescinds previous legislation creating the Small Business Forestry Enterprise Program. The Timber Sales Organization will market standing timber.**

Much of this Act depends on definitions of forestry products (when is a telephone pole a telephone pole? is one of the questions) and regulations that are not yet published. This is particularly problematic in the section dealing with raw log exports. Although the Minister repeatedly claims in this and earlier debates that the export ceiling will not be lifted or increased, his responses to particular questions regarding exports are frequently ambiguous. The definition of “raw logs” is not in the Act: it will, says the Minister, be in the regulations – which were still not available when this Act passed through third reading.

²³ Canadian Forest Products: \$255,793; Weldwood: \$251, 811; West Fraser: \$204,290; International Forest Products: \$2101,686; Macmillan Bloedel (before it was taken over by Weyerhaeuser: \$197,767; Weyerhaeuser after the takeover: \$188,236; TimberWest: \$126,000; Riverside: \$113,890; Skeena Cellulose: \$71,750.

MacPhail pointed out that a log market is “a key component in ensuring access for value-added manufacturers and in ensuring a flow of wood supply to mills.”²⁴ She observes that the statute has no requirements to “ensure that log markets are transparent and at arm’s length from tenure holders; that bartering logs is prohibited; and that packages put up for sale are accessible.” Surrogate bidding is not precluded, thus opening up the possibility for large companies to obtain wood through several sources. Licensees are obliged to report volume of timber, but not species.

As pointed out by West Coast Environmental Law, this statute contains no parameters relating to the nature of the markets in timber sales, the specific objectives, or the mechanisms to avoid manipulation.

Forest Statutes Amendment Act (No. 2) (Bill 44, May 2003)

- This Act repeals or consequentially amends sections of the Forest Act, the Forest Practices Code, the Forestry Revitalization Act, and the Range Act. These are largely housekeeping changes to bring consistency to the bundle of legislation.

Foresters Act [Amendments] (Bill 5, 2003, and Bill 78, 2002)

The Liberal government advised the Association of BC Professional Foresters (ABCPF)²⁵ that professional reliance was one of the keys to the success of a “results-based code,” and asked to bring forward amendments consistent with that view. The resource professions (including foresters, biologists, agrologists, engineers, and geoscientists) asked MOF to include a professional reliance component in the Forest and Range Practices Act training initiative.²⁶ Amendments to the Foresters Act in 2002 and 2003, together with amendments to the Agrologists Act, 2003 and a new College of Applied Biologists Act, 2003 provided the framework.

Professional accountability is increasingly demanded across the board, so there is no reason to object to its requirement for foresters and allied professional employees in either the public or private sectors. However, this requirement has been put through without reference to the regulations that are not yet available. The “results-based code” was many times criticized for its vagueness and imprecision.²⁷ It would be unfair to expect professionals to take responsibility for a code that is less than specific, clear, and rigorous.

²⁴ Hansard, April 29, 2003.

²⁵ The term “professional reliance” is the government’s phrase, referring to reliance on professionals (rather than reliability of same) to take personal responsibility for forest sustenance.

²⁶ As noted in *Forum*, May/June 2003, p. 10.

²⁷ Hoberg, G. 2002. *Finding the Right Balance: Report of Stakeholder Consultations on a Results-Based Forest and Range Practices Regime for British Columbia*. [online] faculty.forestry.ubc.ca/rbc/RightBalanceFinal.pdf (2003/05/05).

Conclusion

It is unlikely that any government, however dedicated to free market beliefs it might be, would risk the wrath of the population of BC by privatizing the forest. Public ownership has long been the one feature of forests that has widespread support in the province.

In fact, forestry companies have generally shied away from land privatization for the reason that they would have to pay both for the land and for replanting and silviculture. In the 1990s, the free ride on replanting came to an end as BC governments began putting responsibility for regeneration on the companies. The Forest Practices Code (“the Code”) also obliged companies to practise a new level of environmental care than had been the case in earlier times. But even with these more onerous demands, outright purchase of forest land was not viewed by most companies as a solution to the acknowledged problems in forestry.

This government has attempted a somewhat different approach: privatize the regulatory procedures instead of the land. The companies will now employ professionals (perhaps those same professionals who have been laid off by government) to oversee environmental protection, and then the same professionals will meet with continuing government employees to determine whether the protections are appropriate and successful.

Until the government publishes the new regulations, however, these professionals will not know how to evaluate environmental programs that companies endorse. Meanwhile, the companies that provide certification will be on contract, and if there is an environmental disaster, it will be the professionals employed by companies and government who must accept responsibility.

Meanwhile some companies are asking for more. In a major speech on forest policy reform, Paul J. McElligott, President and CEO of TimberWest Corp., compared BC to

North Korea because of what he perceived as its centralized planning and control.²⁸ TimberWest has gained control of most of the private forest land in the province and is challenging a federal policy of restricting log exports from BC from private land.²⁹ McElligott is also challenging the whole system of public land ownership, and he wants market-based forces driving timber prices, stumpage revenues, and harvesting fees.

The nub here is log markets. The bottom line for American softwood lumber producers has always been their lack of access to BC logs. Their frigid response to the attempts by this government to develop a more market-based forest economy signals their determination to continue the border war until they obtain access to the wood itself. If TimberWest succeeds in its court battle on private land log exports, the pressure will increase dramatically to remove the restrictions on log exports from public land.

There is an irony here: log exports from federal and state lands in the United States are prohibited.

The provincial government has chosen to claw back some land from the large tenured companies so that it can create a timber market, establish possible “accommodations” with First Nations, and supplant the Small Business Forest Enterprise Program by encouraging woodlots and other small operations.

Compensation is probably an unavoidable condition for claw-back of timber on tenured land,³⁰ or at least for roads and mills constructed on tenured land in expectation of profits from logging. Whether the level of compensation is excessive or skimpy is beyond the questions we address here – no doubt there will be critics at both ends of that scale. Our concern is rather with whether the privatization of regulatory services is a reasonable trade-off for the claw-back of 20% of tenures that were far too generous in the first place.

There is nothing in these proposals or the legislation that begins to acknowledge that forests are ecosystems, that regulations are not merely ways of prettying up the landscape: they need to be situated in the ecosystem framework if they are intended to actually conserve a living forest. It is the ecosystems that need to be conserved, and volume-based tenures in particular, but tree farm licences (TFLs) as well, are not built around ecosystem principles.

²⁸ Event summary: “Forest policy reform: The status quo isn’t working,” speech by Paul J. McElligott, April 4, 2003, Sheraton Vancouver Wall Centre Hotel, online.

²⁹ With the agreement of the Social Credit government of W.A.C. Bennett in BC, the federal government took responsibility for the log export restriction from private lands. The reason for this seems to be lost to history. As far as we can determine, the export restriction on Crown land is maintained by the provincial government.

³⁰ See arguments by Richard Schwindt. 1992. *Report of the Commission of Inquiry into Compensation for the Taking of Resource Interests*. Victoria, BC; and Gregory J. McDade. 1993. *Report on Compensation Issues Concerning Protected Areas*. Draft discussion paper. March. These are summarized in Marchak, Aycok, and Herbert: *Falldown*, 1999.

Indeed, that is the basic problem in the whole market orientation.³¹ Market-based principles generally ignore the environment and the consequences on the environment. Mentioning environment in speeches and at the same time giving the logging companies the right to decide what environmental protections are, how they should be practised, and how they might be monitored and evaluated – these are not methods for sustaining ecosystems.

The government responds to such criticisms as it did to the only opposition in the legislature, by saying in mock shock: are you daring to impugn the professional standards of the foresters and others employed in the private sector? The response to that spurious question is: they are employed by logging companies, and they cannot establish an arms-length relationship to what their own employer is doing. They could not possibly say, for example, as the Clayoquot Sound Scientific Panel said in 1995, that logging in a region should be reduced by 62% in order to allow the ecosystem to recover from excessive logging in the past.

We expect government to protect the public interest in natural resources. We expect government to act as the steward of the ecosystems that provide private companies and their employees with an income. We recognize that even companies with good intentions are in business to earn profits, and it is unrealistic to expect them to become the stewards of our public lands and forests.

But we do not wish to end on such a note. We recognize that any government that inherited the mess BC forests were already in before their election was going to have to make tough choices. There was no forest land available for establishing a timber sale market. There was no forest land available for meeting First Nations demands. There was no forest land available for small business enterprises, and for new investors and new initiatives. So we applaud this government's attempt to claw back some land from the long-term tenures for these developments. And we believe that compensation for claw-backs was probably unavoidable; we will not quibble about the price, and it isn't the main issue here.

The main issue is the forest itself, its capacity for renewal, and the difference between treating it as merely a timber estate versus treating it as a living entity from which generations well into the future may benefit not only economically but also socially, culturally, aesthetically, and spiritually. Even those who understand only the economic value of forests would demand more protection if they recognized that without it, the profits would soon disappear.

³¹ George Soros (head of the Soros Fund Management and a multimillionaire who knows markets better than most) called it “market fundamentalism” in his book *Open Society: Reforming Global Capitalism*. New York: Public Affairs, 2000.