

Chief Forester Order

Respecting an AAC Determination for Tree Farm Licence 33

Section 8 (3.1) of the *Forest Act* stipulates in part that

If ... the chief forester considers that the allowable annual cut ... is not likely to be changed significantly with a new determination ... the chief forester ... by written order may postpone the next [allowable annual cut] determination ... to a date that is up to 10 years after the date of the relevant last determination, and ... must give written reasons for the postponement".

In accordance with Section 23(3) of the *Interpretation Act*, the deputy chief forester is expressly authorised to carry out the functions of the chief forester, which include those required under Section 8 of the *Forest Act*. I, the deputy chief forester, have considered the factors described below and order the postponement of the allowable annual cut (AAC) determination for the reasons noted in this document.

In considering whether to postpone the next allowable annual cut (AAC) determination for Tree Farm Licence No. 33 (TFL 33), held by Federated Co-operatives Limited (the licensee):

- I have reviewed each of the factors considered in the most recent relevant AAC determination, made on December 21, 2000. That determination set the AAC at 21,000 cubic metres, effective December 21, 2000. Based on the current five-year term and the licensee's request for a two-year postponement, the AAC would be re-determined before December 21, 2007.
- I am aware that since the last AAC determination the Okanagan Shuswap Land and Resource Management Plan (OSLRMP) was approved in February 2001, but no higher-level-plan order has been enacted for the OSLRMP area.
 - According to Proposed MP No. 9 for TFL 33 (which I extended pending completion of First Nations consultation) the licensee is operating in accordance with the OSLRMP. Okanagan Shuswap Forest District (OSFD) staff confirms this contention.
 - In the analysis prepared for the last determination the licensee included an "LRMP Alternative Base Option" (LRMP Option). For this option the initial harvest level of 22,500 cubic metres per year could be maintained for ten years followed by a reduction to 20,250 cubic metres per year for the next ten years. The forecast then declined to a mid-term harvest level of 18,100 cubic metres per year.
 - The assumptions in the LRMP Option are largely consistent with current OSLRMP strategies. One notable exception is the assumption for the management of caribou. In the LRMP Option the licensee assumed that caribou winter range would be managed using forest cover requirements to maintain older stands on areas with slopes less than 75 percent. According to the new caribou guidelines, caribou will be managed through strategic location of old growth management areas (OGMAs). Therefore no additional forest cover constraints beyond OGMAs are currently deemed necessary for the maintenance of caribou habitat.

- Using the LRMP Option as the baseline option, the licensee provided a sensitivity analysis that tested the effect on timber supply of not applying the forest cover constraints for caribou. In this sensitivity analysis the initial harvest level attained in the LRMP Option could be maintained for three decades before the forecast declined by 15 percent to a mid-term level of 19,100 cubic metres per year.
- I am aware that in the last determination visual resource management was one of the overriding concerns and uncertainties for timber supply. In view of this uncertainty and to aid in the last AAC determination, the chief forester requested a supplemental analysis from the licensee.
 - For this analysis a level of allowable disturbance in visually sensitive areas was assumed that is five percent higher than the upper end of the range for each Visual Quality Objective (VQO) provided in the provincial guidelines. This assumption was based on a review of available visual impact assessment data and therefore provided a satisfactory reflection of current performance on TFL 33. It was also in line with disturbance levels recommended for the protection of scenic resources expected to arise from the LRMP process once finalized.
 - For the first decade of this harvest forecast, a harvest level of 20,950 cubic metres per year was projected. After the first decade, in the year 2008, timber supply was projected to decline by 13.8 percent to a long-term level of 18,050 cubic metres per year.
 - In the chief forester's view, this forecast provided a better assessment of available timber supply on TFL 33 under then-current management than did the base case provided in the timber supply analysis originally prepared to support the determination.
 - In the LRMP Option the licensee modelled a level of allowable disturbance in visually sensitive areas that is slightly higher than assumed in the supplemental analysis described above. These disturbance levels reflect the higher end of the range of allowable alteration provided in the OSLRMP.
 - I am aware that the licensee will soon be completing an integrated visual design project for TFL 33. I expect this information will be incorporated into the timber supply analysis for the next AAC determination and that as a result, a more reliable estimate of timber supply on TFL 33 will be available for the decision maker's consideration.
 - I further note that the local requirements for visual resource management have not impeded the licensee in attaining its AAC. The licensee has harvested its AAC and has met its cut control target for the 2000 to 2004 cut control period.
- I have investigated whether any significant new information exists concerning each factor specified in Section 8 of the Act. I am aware that:
 - The information used in the analysis for the 2000 determination was and still is, for the most part, based on the most current science. As a consequence, I expect little improvement of timber supply is possible as a result of improving science-based analysis components (e.g. inventory, growth and yield).

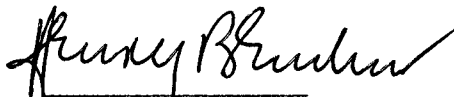
- The licensee recently conducted a localized site index study that indicates that site productivity on TFL 33 is significantly higher than previously estimated. Application of these estimates in a future timber supply analysis will increase the long-term harvest level relative to the levels projected in the last analysis. It may also improve mid-term timber supply.
- No significant changes in the operable land base are anticipated resulting from the new terrain stability mapping that was completed in 2002.
- The area identified as deer winter range and grizzly bear habitat, and the management strategies for these areas, have changed slightly since 2000. None of these changes are significant to timber supply for the TFL.
- I am aware of the Province's legal obligation stemming from court decisions to consult First Nations on proposed decisions concerning various forest management matters. I have reviewed the information obtained through the First Nations consultation process undertaken by the Ministry of Forests and Range (MoFR) with the First Nations whose asserted traditional territories cover all or part of the area covered by TFL 33. The First Nations consulted were: the Spallumcheen Indian Band, the Neskonlith Indian Band, the Little Shuswap Indian Band, and the Adams Lake Indian Band.
 - This consultation process was initiated with a letter sent by the MoFR to each of the First Nations listed above, providing them with information regarding the postponement of the AAC determination being considered and asking them for information relative to the scope and nature of their aboriginal interests, and how postponing the AAC determination may affect these interests. MoFR staff offered to meet with the First Nations to discuss information about their interests and how it might be incorporated in this process. A second letter was sent by MoFR staff to remind the First Nations that this decision was pending.
 - Copies of the letters sent to each of these First Nations were sent to the Shuswap Nation Tribal Council, the regional affiliation of Indian Bands to which the First Nations contacted belong.
 - The Shuswap Nation Tribal Council responded to the MoFR's request for information. It noted that the consultation framework, land use referral policy and administrative system is inadequate to deal with its land and resource interests, and did not meet the fiduciary obligations of B.C. It noted that, as a result, it does not agree with the contemplated development activity.
 - The Spallumcheen Indian Band also provided input to this proposed decision. It noted that the Province has notice of a strong prima facie case of its aboriginal title. It asked that the Province enter into a joint land-use planning process with the Spallumcheen Indian Band. Further, it asked that the Province enter into good faith negotiations with the Band and focus on reaching agreement(s) to accommodate its title, based upon principles of sharing and respect. Finally it noted that the referral will interfere with its aboriginal title and possibly with site specific concerns. However, the Spallumcheen Indian Band asserts it has no funding targeted to address referrals, and therefore it is not in a position to address any interests other than aboriginal title.

- In considering the input from the Shuswap Nation Tribal Council, I note that the Province is examining such broad issues under the New Relationship initiative. The postponement of the AAC determination does not constitute development activity on TFL 33, nor will it result in greater or lesser harvesting activity over the next five-year period than presently authorized on the TFL. It does constitute acknowledgement that the AAC would not be changed significantly with a new determination at this time given the changes in information since the previous determination.
 - I am aware that the Spallumcheen Indian Band is in discussion with the MoFR regarding a proposed agreement to address forestry decisions made within the First Nation's asserted traditional territory during the term of the agreement.
 - The input provided by both the Shuswap Nation Tribal Council and the Spallumcheen Indian Band regarding this decision does not include site-specific information about aboriginal interests pertaining to TFL 33.
 - In reviewing input, I look for site-specific issues or concerns that would affect the timber supply of the management unit, in this case TFL 33, specifically in the short term, such that the criterion set out in section 8 (3.1) of the *Forest Act* allowing for the postponement of the AAC determination can not be met.
 - I have reviewed the information provided to me by the Okanagan Shuswap Forest District that it obtained through its consultations with First Nations about this AAC determination postponement request and I have reviewed the Traditional Use Study maps available for the area within and adjacent to TFL 33. I am aware that several archaeological sites have been identified along the lakeshore below TFL 33. I am also aware that one area has been identified as a source for berries, one as a sacred area, and two where rock paintings exist. I note that the majority of these areas are within the provincial marine parks and private land along the lakeshore and are not in TFL 33. The sites within the TFL cover little area and will be addressed in operational planning.
 - MoFR staff are not aware of any other currently available information concerning aboriginal interests that may affect short-term timber supply on TFL 33.
 - I am satisfied that the currently available information concerning aboriginal interests on TFL 33 would not affect short-term timber supply on the TFL, and no change to the AAC is necessary at this time on that account.
 - As noted below, if circumstances change or information regarding aboriginal interests becomes known that, in my judgement, would warrant a change to the AAC for the TFL, then I am prepared to rescind this order and initiate a process that will lead to an AAC determination under Section 8 of the *Forest Act* at an earlier date than the deadline specified below.
- I remain guided by the economic and social objectives of the Crown as expressed in the Minister's letter dated July 28, 1994. The Minister wrote "any decreases in allowable annual cut at this time should be no larger than are necessary to avoid compromising long-run sustainability". As mentioned above, a decline in timber supply is projected after the first decade, or the year 2008 in the most recent timber supply analysis.

Having reviewed the factors considered in the last AAC determination and the currently available information, I have determined that the AAC for TFL 33 is not likely to be changed significantly with a new determination made according to the existing schedule. Of particular significance in this decision is the licensee's assertion and the OSFD staff's concurrence that the licensee is managing in accordance with the OSLRMP coupled with the change in management guidelines for Caribou. As I described earlier, the short-term harvest level of 22,500 cubic metres per year in the harvest forecast provided by the licensee that reflects these management regimes, could be maintained for three decades. This must be tempered by the uncertainty that still exists around the management of visually sensitive areas on TFL 33. Nevertheless, on balance I am satisfied that the current AAC of 21,000 cubic metres would not change with a new determination.

Under authority of Section 8(3.1) of the *Forest Act*, I hereby postpone the next AAC determination for TFL 33 until no later than December 21, 2010, being 10 years after the effective date of the last AAC determination. This postponement will allow ample time for the licensee to incorporate the information from its integrated visual design project in the timber supply analysis that will form the basis for the next determination.

I am authorized to rescind this order under Section 8(3.2) of the *Forest Act* if I conclude that circumstances on the TFL that influence timber supply have changed significantly during the interim. Therefore, when the licensee completes its visual design project I ask that it report the results to me so I can consider if rescinding this order on that account is warranted. I will also rescind this order if any new issues arise concerning First Nations that may impact timber supply.



Henry Benskin
Deputy Chief Forester

16 Dec. 2005.

Date

