



**Forest
Practices
Board**

District Managers' Authority Over Forest Operations

Special Report

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Introduction

District managers for the Ministry of Forests, Lands and Natural Resource Operations (FLNR) are the government decision-makers who are “closest to the ground.” These are the government officials who review and approve resource development on public land.

In recent years, the Forest Practices Board has seen situations arise where forestry development was putting local environmental and community values at risk, yet district managers could do little to affect the development and protect the public interest. The Board has also encountered situations where conflicts between resource-users could have been avoided if district managers had the authority to intervene to ensure operations would meet local management objectives and respect tenured interests.

These situations have led the Board to conclude that there is a need for district managers to have authority over operational decision-making by giving them conditional discretion over the issuance of cutting permits and road permits. This discretion, which district managers currently do not have, would only be used in specific and limited circumstances. It would strengthen the district manager’s role in safeguarding the public interest when dealing with matters such as logging on steep slopes, cumulative effects management, visual quality, conservation of species at risk or conflicts between tenure holders.

In an increasingly complex economic and ecological operating environment, district managers will need this authority in the future to ensure that decisions consider landscape-level conditions, including cumulative effects.

This special report is intended to draw attention to an important issue identified by the Board, to encourage discussion and to suggest a possible solution. The report is based on previously published Board reports, supplemented by interviews with district managers.

Background

British Columbia’s forest practices legislation—the *Forest and Range Practices Act* (FRPA)—is designed to give forest licensees flexibility to manage, within a framework of government objectives and results-based practice requirements. Government has established objectives for a variety of forest values such as ungulate winter range and old growth. These objectives place restrictions on logging in certain locations, but licensees are free to operate elsewhere, as long as they comply with FRPA and the *Forest Planning and Practices Regulation*. It is licensees and their professionals who make the final decisions about how to balance resource values and minimize risks.¹

If a problem occurs, government officials are restricted to dealing with it after the fact, yet situations can arise at the operational level where it is essential to be able to prevent problems before they occur, rather than respond after they have occurred. An ability for government officials to intervene in some circumstances is consistent with results-based legislation, which cannot be expected to anticipate every contingency at an operational level.

The only planning document that requires approval by government officials is the forest stewardship plan. Yet these plans only set the legal parameters for practices broadly over vast areas. They do not

contain specific information about what licensees are planning to do. Within the current legislative framework, normally the first opportunity for government officials to see what and where logging and road-building are proposed is when licensees apply for a cutting permit or road permit. However, government officials have very limited authority to intervene at this stage to protect the public interest.

Forest licences and tree farm licences make it clear that, as long as certain simple administrative requirements have been met, district managers have no discretion to refuse to issue a cutting permit or road permit, even if they have significant concerns about the proposed activity.¹

In the Board's experience, the current system works reasonably well, most of the time. Licensees and their professionals, for the most part, are diligent when planning activities. District managers are often able to establish expectations and act as facilitators. In the course of preparing this report, we spoke with several district managers who confirmed this.

Nonetheless, there are situations where district managers need legal authority to back up their efforts. In the Board's observation, many members of the public are surprised to learn that district managers do not already have this authority. Wholesale change is not needed but incremental improvement is. This is part of full implementation of FRPA and will be increasingly necessary in the future.

Discussion

The Board has encountered numerous situations that illustrate the need for district managers to be able to intervene. These include situations of:

- significant risk to public health or safety;
- significant risk to forest resources or values – this includes situations where there is a lack of coordination of activities among licensees operating on the same ground; and
- conflict between forest licensees and non-forestry tenured users, such as guide outfitters, ranchers and tourism operators.

Illustrations From Previous Board Work

In [*Haida Gwaii Visual Quality Objectives*](#), for example, the Board investigated a complaint concerning visual quality and logging on Haida Gwaii. Even though FLNR staff and a municipality raised concerns about the likely visual impact of planned logging on Haida Gwaii, the licensee would not discuss its visual impact assessment and insisted on getting its cutting permit. The district manager had no choice but to issue the permit. The logging went ahead and the Board found that it did not meet the legally-required visual quality objective, contrary to FRPA. In spite of the valid concerns raised before harvesting took place, the district manager was required to issue the cutting permit as submitted. If he had the authority to delay issuing the permit, pending clarification of the concerns, it is likely that the problem could have been resolved through discussion among professionals.

¹ Administrative requirements include submission of appraisal information and a map. Where the district manager has concerns about the impact on aboriginal rights, the manager may impose conditions or refuse to issue a cutting permit.

In [Meadow Creek Cedar Ltd. Forest Practices and Government Enforcement](#), a licensee decided not to implement plans, prescriptions and recommendations made by its professional foresters and professional engineers. This resulted in unsound forest practices that put forest resources at unnecessary risk. The Board report noted that the government is a trustee of public lands and needs to take action when harm (environmental or otherwise) may occur. Failure to do so undermines public confidence in FRPA. Again, if the district manager had the authority to withhold cutting permits or road permits, many of the problems might have been avoided. In acknowledging the government response to the Board's recommendations, the Board Chair stated the following:

. . . the Board is concerned that legislation and government policy does not afford a district manager sufficient ability to proactively address situations where an imminent risk to the environment or a forest resource is apparent . . . government, as the trustee of public lands, needs to assess forest practices and be prepared to take action when harm to the environment or a forest resource is likely to occur, rather than as a reaction to an event.

Other examples from previous Board work are set out below. In these examples, if the district manager had been able to intervene, it is likely that public confidence would have been enhanced, risk to public safety or the environment would have been scrutinized by a government official, agreed plans or guidelines would have been followed, chief forester guidance would have been followed, or disputes between tenured users of Crown land could have been resolved more fairly.

- [Timber Harvesting and Potential Impacts to the Duhamel Creek Alluvial Fan](#) – At Duhamel Creek, residents were concerned about the *potential for a catastrophic landslide* due to proposed logging. Although the Board concluded that the licensee had carried out appropriate assessments, the inability of the district manager to intervene weakened public confidence in the process at the time.
- [Laird Creek Landslide](#) – At Laird Creek, residents were concerned about a proposal by the BCTS program to *log on steep slopes with a history of landslides*. A few years after the logging and road-building took place, a landslide occurred, disrupting the residents' drinking water supply for a week. The slide was caused by a change in subsurface drainage caused by road construction, combined with an unusually high snowpack and a rapid spring snowmelt. The Board report noted that, even with sound technical practices, risks taken by one resource user can harm another. Giving district managers the ability to intervene in cases of this nature would help to ensure that the public interest is being adequately addressed.
- [Hydrologic Assessments Completed in the Tranquille Community Watershed](#) – *Risks to public safety, private property and infrastructure* were identified in a 2009 watershed risk analysis, making it important to assess the cumulative risks of proposed logging activities. Yet, as of May, 2013, the effects of proposed development were considered in isolation by each of several forest licensees operating in the drainage.ⁱⁱ Giving district managers the ability to be proactive and refuse a cutting permit or road permit would help to facilitate coordinated effort among licensees.

- [Logging and Lakeshore Management near Vanderhoof](#) – A lack of process for dealing with conflict between a forest licensee and a group of wilderness resort businesses concerning logging in lakeshore management areas led to an erosion of trust. The Board report noted that:

FRPA gives considerable advantage to forest licensees which, unless there is generous goodwill, could lead to decisions unfavourable to the interests of other businesses. No legislation can avoid such inequity unless it is also set up to deal with conflict between the bona fide users of Crown land operating on the same landscape. FRPA contains no such mechanism.
- [Goshawk Foraging Habitat on Haida Gwaii](#) – There was *no mechanism to protect a newly-discovered northern goshawk nest* on Haida Gwaii, when a licensee applied for a cutting permit that would impact foraging habitat near the nest.ⁱⁱⁱ
- [Davidson Creek Access Management](#) – There was *no mechanism to implement an access management plan*^{iv} when a licensed guide outfitter was concerned that a forest licensee was not seasonally-blocking motorized access to a road system. The guide outfitter feared losing a key business opportunity guiding hunters by horse in a non-motorized area. If the district manager had authority to refuse a cutting permit or road permit in such situations, negotiated access management plans could be given their intended effect.
- [Aspen Logging - Grazing Conflict in the Dawson Creek TSA](#) – There was *no mechanism to implement guidelines* when logging of aspen in the Dawson Creek area led to reduced opportunities for cattle grazing, due to dense regeneration. As with the previous example, if the district manager had authority to refuse a cutting permit or road permit in such situations, negotiated guidelines could be given their intended effect.
- [Timber Harvesting in Beetle-Affected Areas: Is it meeting government's expectations?](#) – There was *no mechanism to enforce the chief forester's partition of the allowable annual cut*, limiting the amount of non-pine harvest. Individual licensees acted independently and their combined actions resulted in overcutting of non-pine, further threatening the future timber supply. Where there is a lack of coordination among licensees that could compromise government objectives, district managers need the authority to refuse a cutting permit or road permit.
- [Biodiversity Conservation during Salvage Logging in the Central Interior of BC](#) – In areas of large-scale salvage of timber damaged by mountain pine beetle, *there was no response to the chief forester's landscape-level guidance* to conduct cooperative planning for biodiversity and the desired 'conservation uplift' was not achieved. As with the previous example, where there is a lack of coordination among licensees that could compromise government objectives, district managers need the authority to refuse a cutting permit or road permit.
- [Salvage Logging and Water Flows at Cooper Creek](#) – A complaint investigation about salvage logging upstream from a ranch, found that *a lack of coordination between forest licensees* increased the likelihood of flooding on the ranch.
- [Pine Beetle Salvage Logging and Water Flows near Williams Lake, BC; Logging and Winter Streamflow in Twinflower Creek](#) – Two reports about the cumulative effects of salvage logging, climate change and mountain pine beetle highlighted the Board's concern about

cumulative effects. The Board noted again the *inequity in the decision making authority of one tenure holder over another* and said that a system of objectives and regulation coupled with respectful, mediated solution-seeking would be more equitable for the people involved, and more effective for stewardship of the many tenured interests that the province has vested on the landscape.

One way to provide such a mediation mechanism would be through district managers, who would need the authority to refuse cutting permits or road permits. Mediation would only be applied in certain circumstances and must be time limited.

- [Eagle Creek Pine Salvage](#) – The impact of mine tailings and salvage harvesting left *downstream water users at risk*, but no single government agency was responsible for managing the combined effect.

These examples, in the Board's view, illustrate the need for improvements in the policy and regulatory framework.

Looking to the Future

It is important to look forward, as well, to the increasingly challenging environment for natural resource officials. As noted in the FLNR Service Plan (February 2015), the Ministry operates in a complex economic and ecological operating environment. The Service Plan notes the challenges of multiple interests and overlapping demands, along with the influence of factors such as habitat fragmentation, invasive species, climate change, wildfires, floods, landslides and debris flows, droughts, and pest outbreaks. Solidifying the integrated delivery of natural resource management through the one-land manager model and designing new approaches and tools to better manage the cumulative effects of multiple activities are identified as key ministry priorities.

One of the Ministry's strategies to achieve sustainable natural resource management through effective policy, legislation and external relationships is to:

Improve the ability to make durable decisions on the land base that consider landscape-level conditions, climate change, and cumulative effects on key environmental, social and economic values, including historic and archaeologically significant places.

In the Board's view, this can only be achieved by giving conditional discretion to district managers, as representatives of the public interest, to actually make decisions.

Possible Solutions

As the landowner (subject to First Nations interests) and the representative of the public interest in the management of Crown forest land, government needs to reserve to itself, in FRPA, the right to act when necessary to protect the public interest. In the Board's view, there is a gap in implementation of FRPA in that this has not yet been achieved. Of course, government officials will need to exercise caution and the authority to intervene should only be exercised under certain conditions and in clear cases where there is a pressing public interest.

It is the Board's view that district managers need the authority to delay issuing—or refuse to issue—a cutting permit or road permit, where necessary. This authority would be triggered if the district manager believes:

- there is clearly significant risk to public health or safety;
- there is clearly significant risk to forest resources or values;
- there is likely to be a contravention of legislation; or
- the interests of another tenure holder have not been adequately addressed (if that tenure holder requests district manager intervention).

The necessary authority could possibly be granted under existing legislation, as discussed below, and should be seen as part of full implementation of the results-based legislative framework.

The Board recognizes the challenge of ensuring that district managers are only called on to invoke this authority in cases where it is truly needed. It should be possible, through regulation and policy, to make sure this is the case. The greatest benefit of such authority would be in strengthening the ability of district managers to actively facilitate discussion, cooperation and solutions to potential problems during the planning phase, before permits are issued.

BC Timber Sales (BCTS) Program

Consideration should also be given to providing district managers with authority in relation to the BCTS program, the operations of which give rise to similar concerns. Nineteen per cent of the provincial allowable annual cut is allocated to the BCTS program. In this program, harvesting is done under timber sale licences issued by timber sales managers. BCTS and its licensees do not need to obtain cutting permits in order to harvest timber, so the solution suggested above would not work for the BCTS program. However, it should be possible to put in place a policy framework to allow the district manager to intervene if needed, without the necessity of legislation.

Implementing Section 81.1 of the *Forest Act*

Section 81.1 of the *Forest Act* requires district managers to refuse to issue a cutting permit or road permit if the minister determines that the issuance “would compromise government objectives as specified by regulation.” There is currently no regulation implementing section 81.1.^v A regulation could be introduced authorizing district managers to be proactive in the circumstances listed above. The regulation could, for example, specify that government objectives, for the purpose of the *Forest Act* section 81.1, include avoiding significant risk to public health or safety, avoiding significant risk to forest resources or values, preventing contravention of legislation and achieving fair resolution of disputes between tenure holders.

The Board is not suggesting a change in the routine process of issuing permits. Rather, the suggestion is that the district manager would have authority to intervene where necessary. The circumstances where this authority would be exercised should be defined in a general sense in regulations and guided by policy.

FRPA Section 77

In addition, it would be desirable to expand the reach of intervention orders under FRPA section 77 and the *Administrative Orders and Remedies Regulation*, section 6. Section 77 authorizes, the minister,² subject to regulation, to order a person to stop an activity that the minister believes will result in a contravention of forest legislation and will or probably will cause a catastrophic impact on public health or safety, an adverse impact on the environment or a failure to achieve a free growing stand.

Section 77 currently has only limited usefulness for the purposes of this report because it only applies if activities “will” contravene legislation, and “will or probably will” cause a “catastrophic impact” on public health or safety. Consideration should be given to amending section 77 to remove the requirement for the minister to believe that the act or omission “will result in a contravention.” After all, if the minister believes something will probably cause a catastrophic impact on public health or safety, the minister should be able to take preventive action.

Amending Licence Documents

Finally, the obligation of district managers to issue cutting permits if certain administrative requirements have been met is set out in licence documents. One way to provide greater discretion to district managers would be to amend licence documents to provide for such discretion.

Conclusion

Sometimes there is a public interest that only government can address. District managers are the public’s representatives on the ground. They are aware of issues that individual licensees may not be aware of and they can look “down the road” to emerging issues that may not yet be impacting the land.

In the view of the Forest Practices Board, improvement is needed in the policy and legislative framework to reduce risk to public safety and important resource values and to improve public confidence in forest management on Crown land. The Board recommends giving conditional discretion to district managers to act in the public interest. District managers will need this authority in future to help them manage in an increasingly complex environment.

The benefits of doing so include:

- reduced risks to public health and safety;
- increased public confidence in forest management;
- a level playing field for licensees operating on Crown land;
- better management of cumulative effects; and
- reduced economic costs resulting from landslides, excessive sedimentation and overharvesting.

² This authority has been delegated to district managers and regional executive directors.

The Board believes the best option would be to introduce a regulation to implement *Forest Act* section 81.1. As long as this proposed district manager authority is used judiciously and within parameters that can be established by policy, it would not increase industry costs or red tape. The mere existence of this authority would help district managers to facilitate resolutions to issues without the necessity of invoking the authority. This proposal is consistent with a results based regime in which professional reliance plays a significant role, in that it recognizes that there are many situations where results have not been defined or where professional reliance does not adequately address the situation.

Recommendation

In accordance with section 131(3) of the *Forest and Range Practices Act*, the Board recommends that government introduce a regulation to implement *Forest Act* section 81.1. The regulation should authorize district managers to refuse a cutting permit or road permit if the minister determines that any of the following applies:

- there is clearly significant risk to public health or safety;
- there is clearly significant risk to forest resources or values;
- there is likely to be a contravention of legislation; or
- the interests of another tenure holder have not been adequately addressed (if that tenure holder requests district manager intervention).

In accordance with section 132 of FRPA, the Board requests a response to this recommendation by March 31, 2016.

Endnotes

ⁱ [Professional Reliance in BC Forests: Is it really the issue?](#) and [Balancing Risk Across Resource Values in Forest Operations](#)

ⁱⁱ Analysis prepared for the Board during the community watershed investigation. More recently, the Board has been advised that information on potential risk is being used as background information for a Stewardship Pilot Project and will help inform landscape-level strategies for the pilot area.

ⁱⁱⁱ <https://www.bcfpb.ca/sites/default/files/pdfs/IRC143-Subsequent-Issues.pdf>

^{iv} See also Toba Inlet <<https://www.bcfpb.ca/reports-publications/reports/toba-inlet-complaint-111005/>>

^v In addition, *Forest Act* section 81 provides authority, to the extent provided in regulations, for district managers to refuse to issue a cutting permit if the licensee has failed to comply with a requirement of the *Forest Act* or FRPA under a previous cutting permit or road permit. However, there is no regulation to implement this.



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