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Special Report by Patrick Brown

'Working Forest' legislation goes forward despite 97% opposition

Despite public consultation in which 97% of 2,700 respondents opposed the provincial government's 'Working Forest' discussion paper, the government appears set to go ahead with Bill N° 46, the enabling legislation.

Bill N° 46 would permit the cabinet, and the Minister of Sustainable Economic Development, to use Crown land to make any kind of deal they like with the private sector. The Forest Land Reserve will be 'phased out', and the 'Provincial Forest' designation replaced.

However, the legislation now covers not only the 45 million hectares of Crown land originally referred to as 'Working Forest', but also another 32 million hectares now defined as 'Working Landscape'.

The Bill enables cabinet to define the 'Working Forest' and requires cabinet action to remove any land from its designated area. It is set up as a series of simple amendments to the *Land Act*, which covers the disposition of all Crown lands.

Forest Industry Certainty

In an attempt to provide 'land use certainty' for the timber industry, the government plans to define the 'Working Forest' through what might be described as a massive province-wide zoning bylaw, with limited 'permitted uses.'

It's as if all the remaining land in your community was zoned industrial and you had to prove a need to get it rezoned to anything else. There will be 'strict administrative provisions to minimize potential shifts to other uses', according to the discussion paper.

End of Stakeholder Processes

This top-down approach to designating land use contrasts (and conflicts) with the 'bottom-up' approach of negotiating regional Land and Resource Management Plans (LRMPs) that has been pursued over the last ten years. The LRMP process has involved a wide range of stakeholders and has taken a lot of time and effort, both professional and volunteer, to successfully identify, in some detail, potential land uses for many areas of BC, including parks and protected areas. The government says it expects to wrap up the LRMP process by June 2004.

The LRMP process has not been without its problems. As

Minister of Sustainable Resource Management Stan Hagen says, 'provincial interests' and 'local views' can be 'as diverse as night and day.' Clearly, the government now feels that 'provincial interests' trump 'local views'.

The Land Arithmetic of BC

BC covers 95 million hectares. Of this, 12 million hectares is now designated for parks and protected areas. Five million hectares is privately owned; the federal government owns 1 million hectares, leaving 77 million hectares of Crown land. Of this, 45 million hectares is expected to be included in the Working Forest; this is almost double the 'Timber Harvesting Land Base' of 23 million hectares—Crown land already covered by existing agreements with the timber industry. The remaining 32 million hectares, obviously not suitable for timber growing, is termed the 'Working Landscape', and is also open for economic exploitation under the new *Land Act* amendments.

The Discussion Paper

The original idea of an area of land specifically and permanently allocated for timber extraction was described in the January discussion paper. (The idea was also floated, briefly and unsuccessfully, by the previous government.) The concept is that Crown land is, before anything else, an economic asset belonging to the provincial government, who should use it as a tool for economic development. The government clearly heard from the forest industry that uncertainty about its future land base was an impediment to investment. The forest industry wanted increased 'security'.

The forest industry's tenure is presently described in agreements for 34 Tree Farm Licenses, 37 Timber Supply Areas, 800 Woodlot licenses, and 7 Community Forest Pilot Agreements.

Section 23 of the *Land Act* says that Crown land may not be sold for forestry. Period. But over the past few years, legal precedents have been clearly established which, while not exactly giving 'title' for these Crown lands to the forest companies, entitle them to financial compensation if land is removed from their allocations.

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'Open for Business'

'Working Forest' may have been a confusing title, said Minister Hagen in a speech in Prince George on August 13. 'I want to know when we are missing the mark so that we can become clearer in our communications.' So it's now called the 'Working Landscape—Working Forest Initiative.' He made the purpose of the new legislation clear. 'Once we have defined the protected areas, the rest of the province is open for business.'

Hagen's speech amounted to an update on the January discussion paper. It was not privatization of Crown lands, he emphasized. But the Initiative now includes the other 32 million hectares of Crown land that isn't suitable for forestry.

Responses a Catalogue of Suspicions

As noted above, 97% of the 2,700 written responses to the discussion paper were negative. The report on the responses, written by environmental consultant Daryl Brown of Victoria, makes it clear that either the discussion paper was not well understood, and that those who responded didn't trust the government's motives; or possibly that they understood the motivation only too well. It's interesting reading.

A summary of the comments is a stunning catalogue of suspicions about the government's real agenda.

First, and most common, is the perception that the Working Forest Initiative ('Working Forest I') is a way of transferring increased property rights to forest companies. Despite the clause in the *Land Act* that prohibits the sale of Crown land for forestry purposes, the acknowledged objective, of 'greater certainty,' together with the fact that the exact legal mechanisms by which this is to be accomplished are not spelled out, has led to some apprehension (or as Minister Hagen would say, confusion). Government proposals to privatize BC Ferries, parts of BC Hydro, and the Coquihalla highway, without actually giving up title, have led to a new appreciation of the sort of deals that can give the private sector a share of ownership of public assets. Key details are not made public, with the excuse of 'commercial confidentiality.'

De Facto Privatization?

Many respondents to the discussion paper felt that the 'Working Forest' scheme would create a government liability to pay compensation to the forest industry if Crown land is ever removed from the 'Working Forest', and that this would put an end to the dedication of further protected areas. Some feared that existing protected areas might be sacrificed to compensate the forest industry for any losses from the 'Working Forest'—known as a 'no-net-loss' arrangement.

Certainty for Some, Uncertainty for Others

The discussion paper argued strongly for increased legal certainty for the forest industry. Not surprisingly, the reaction was that this would create greater uncertainty for everyone else. Mining, tourism, agriculture, oil & gas, trapping and outdoor recreation interests, and First Nations all felt that the

purpose of the 'Working Forest I' was to put forestry first, and them second or last. Many felt that domination of Crown lands by the forest companies would lead to damage of other values like drinking water, biodiversity, fish, wildlife, etc.

Sustainability and Diversity

Another announced objective of the 'Working Forest I' was a long-term increase in the Annual Allowable Cut (AAC) from the forests. Since evidence suggests that the cut has been beyond the sustainable for many years, this led some to wonder if the doubling of the 'Working Forest' (on paper) would lead to even faster logging of the existing forest.

Another frequent complaint was that the permanent designation of much of the Crown land for forestry would make it impossible for many communities to diversify their economies in the future.

First Nations who responded expressed the suspicion that the 'Working Forest' designation would make it more difficult to negotiate land claim settlements despite frequent references in the discussion paper to settling these disputes. Since many feel that unsettled land claims are the major cause of uncertainty, this would appear to be an area where the proposal 'missed the mark.'

Sidelining the Forests Ministry

Finally, the power to make long term agreements with forestry companies would be transferred from the Minister of Forests to the Minister of Sustainable Resource Management (MSRM, or the 'Misery Minister'), and in major issues, the cabinet. This is the essence of the 'enabling legislation', Bill N°46. The exact reasons for sidelining the Forests Ministry are unclear.

However byzantine the procedures of the Ministry of Forests may appear, at least they are well established, grounded in law, and recognize the public interest. Despite systematic weakening by this government, they still emphasize environmental responsibility.

This transfer would appear to make it possible for the government to negotiate any kind of deal with any proposer, without legislative oversight. Since many felt that the existing regime already gave forestry companies considerable 'certainty', they question what kind of deal could improve this without giving the companies effective ownership of Working Forest lands.

None So Deaf as Those Who Will Not Hear

Much of the criticism of the 'Working Forest' discussion paper centered on what it didn't say rather than what it did. On August 13, Minister Hagen asked to be advised when the government was 'missing the mark in its communications.' If he has read the public comment report, he has, in fact, been advised.

Bill N°46

This is a remarkably short bill, given the massive shift in

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government policy it represents. It is set out as amendments to the *Land Act*.

Essentially, it gives cabinet the power to designate areas of Crown land for certain uses (including, but not limited to, forestry), for 'implementing a plan for a specified use', or for 'specified economic development opportunities'.

Cabinet 'may establish objectives for designations' and 'must specify officials having discretion under the *Act*' to issue approvals, licenses, permits, leases, or other authorizations.

It is careful to specify that proposed objectives or amendments must be made publicly available for review and comment, except that there is an escape clause—if the Minister says that the order is 'urgently required' to protect a 'resource value' and states that opinion in the order, public comment can

be bypassed.

It doesn't say anything about the government actually considering the public's comments. (Has the Minister read the report on public responses to the 'Working Forest' discussion paper?)

Conclusion

Crown land (whether forested or not) has historically been held in trust for the people of the province. But now it will no longer be subject to strict, legislated (and relatively transparent) procedures on its disposition, but will be free for one minister and the cabinet to make deals with. Seventy-seven million hectares of Crown land could fall victim to this government's failure to distinguish its corporate interests from the public interest. ✍

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