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## **BC Forestry Revitalization Trust**

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### **Report of the Trustee as of September 30, 2008**

#### **General**

In March 2003 the province of British Columbia established the BC Forestry Revitalization Trust (BCFRT) and funded it with \$75,000,000. The mandate of the BCFRT was to provide mitigation to forest workers and replaceable contractors that are negatively impacted by timber reallocations resulting from the Forestry Revitalization Act (FRA).

In April 2004 the province appointed Eric van Soeren as Trustee. Shortly after that he appointed a seven member Advisory Board, as required by the Trust Deed. That Board developed draft Forest Worker Mitigation Guidelines and Contractor Mitigation Guidelines.

Utilizing the best estimates of industry, seniority estimates obtained from the IWA pension plan, seniority estimates obtained from contractor industry associations, and the proposed guidelines, the Trustee determined that the BCFRT likely required approximately \$50,000,000 more than what was available in the BCFRT accounts, plus what the BCFRT was likely to earn in interest while holding mitigation funds in trust.

The Trustee and the Advisory Board approached the province and received a commitment for the additional funds, so the BCFRT Advisory Board finalized the Contractor Mitigation Guidelines and the Forest Worker Mitigation Guidelines. The Guidelines, as well as extensive supporting documentation, are posted on the BCFRT website.

#### **Roll over of the BCFRT**

The original BCFRT was slated to terminate effective March 31, 2008. However, for a variety of reasons, including those mentioned above, it was not possible to mitigate all the eligible beneficiaries of the BCFRT by that time. Further, estimates at that time suggested that even once all the existing beneficiaries receive mitigation, there would still be funds left in the BCFRT. Therefore, it was agreed by the Trustee, the Province and the Advisory Board members that the BCFRT should be extended, the group of potential beneficiaries be expanded, and the Trustee be given limited discretion to deem that individuals who would not otherwise be eligible beneficiaries of the BCFRT be included. The Minister of Forests and Range and the Trustee signed a new Declaration of Trust, and all assets and obligations of the BCFRT were assumed by the new BCFRT II. A copy of the Declaration of Trust that created the BCFRT II will be posted on the BCFRT website at [www.bcfrt.com](http://www.bcfrt.com). The new trust is essentially a roll over of the original BCFRT, but with slightly expanded beneficiaries and no fixed termination date. It also allows for mitigation to be made available to workers and contractors that might be negatively affected by future land use decisions.

## **Account Balances as at September 30, 2008**

### **Account Balances**

|  |                     |
|--|---------------------|
| Administration Account                                 | \$4,569,042         |
| Contractor Mitigation Account                          | \$8,362,290         |
| Forest Worker Mitigation Account                       | \$6,400,614         |
| Funds held in reserve by Ministry of Forests and Range | <u>\$10,000,000</u> |
| <b>Total market value of BCFRT accounts</b>            | <b>\$29,331,946</b> |

### **Distributions to Beneficiaries to date**

|   |                      |
|---|----------------------|
| Contractor Mitigation                           | \$63,613,019         |
| Forest Worker Mitigation                        | <u>\$40,999,420</u>  |
| <b>Total Distributions to Beneficiaries</b>     | <b>\$104,612,439</b> |
| <b>Total available funds plus distributions</b> | <b>\$133,994,385</b> |

### **Administration Account**

When the BCFRT was created, \$5,000,000 was allocated to administration. To date, most of the administration expenses of the BCFRT have been covered by the interest earned on the Administration Account balance, so the initial principal has been reduced by approximately \$430,000. A significant portion of the Administration Account will be able to be transferred to one of the Mitigation Accounts at a later date, and on an as needed basis.

### **Contractor Mitigation Account**

The principle used for contractor mitigation is that contractors who lost their replaceable contracts as a result of Forestry Revitalization Act (FRA) restructuring received mitigation that approximates what the contract might reasonably have been worth at the time it was reduced or eliminated. This was usually based on a per cubic metre value, but contracts that were based on some other measure were treated accordingly. A detailed description of the calculation that was used is contained in the Contractor Mitigation Guidelines.

As of September 30, 2008, Forestry Revitalization Proposals (FRPs) have been presented for 99.9% of the reallocated volume in the Province. The last date for submitting a FRP was July 31, 2006, so the replaceable contracts of the licensee that did not submit a FRP were subject to proportionate reduction. The Coastal FRP submitted by Teal Jones was rejected by its contractors, as was a revised FRP. The court decision is being appealed, and council for Teal Jones suggests it may be a year or more before the issue is resolved. This necessitated an extension of the mandate of the BCFRT, so that the workers and contractors that are ultimately negatively impacted by the Teal Jones AAC reduction can receive appropriate mitigation. The issue has recently been complicated by the fact that the main opponent to the Teal Jones FRA was Hayes Forest Services, and it is under Companies Creditors Arrangement Act protection.

Also as of September 30, 2008, \$63,616,019 had been paid in contractor mitigation related to 287 affected contracts. Discussions are underway with other replaceable contractors whose contracts have been or may be reduced or eliminated. Up to 50 more contractor mitigation payments should be made during 2008 and 2009.

Several coastal contractors and a group of interior contractors felt that the Contractor Mitigation Guidelines do not fairly compensate them for the value of their lost contracts. The Advisory Board has reviewed all but one of the claims that had been made. The view of the Advisory Board to date is that only one contractor has been able to substantiate its claim that the formula or the cap used in the Contractor Mitigation Guidelines is not appropriate. The only exception was a heli-logging contract that had a per cubic metre rate substantially higher than the rate paid for conventional logging. That contractor was mitigated using a rate above the cap. The BC Ombudsman's office has also reviewed the claim of the interior contractors and found it to be without merit. All of those contractors have now accepted mitigation as determined by the Contractor Mitigation Guidelines.

There were two cases where replaceable hauling contractors were able to demonstrate that in their area, recent arms length purchases and sales of hauling contracts had been at a rate slightly higher than what the mitigation formula generated. In those two cases, slightly higher compensation payments were made than would have been made based strictly on the formula. However, this increased payment was contemplated in the Contractor Mitigation Guidelines. One remaining Coastal Contractor believes it should receive larger mitigation payments than the formula and cap will allow. A business valuer has been retained to review its claim. The report has been received, and the claim will be considered at the Advisory Board meeting scheduled for October 24, 2008.

As of September 30, 2008, contractor compensation payments, plus revised estimates based on applications to that date, appear to be approximately 12.8%, or \$8.2 million, above the originally projected amounts. This is partially because a higher than projected proportion of replaceable contractors appear to be leaving the industry, partially because there will be some cost to the BCFRT related to stranded assets, and partially because redundant equipment payments are turning out to be higher than projected. Also, two licensees were able to get Ministerial Exemptions to allow them to eliminate more replaceable contractors than the original cap on replaceable contract eliminations would have allowed. These extra contractor costs will be balanced because it is now clear that employee severances will be lower than originally projected. In order to cover the higher than expected contractor mitigation cost, \$20,000,000 was moved from the Forest Worker Mitigation Account to the Contractor Mitigation Account. Based on current estimates, there are sufficient funds in the Contractor Mitigation Account to cover all outstanding expected contractor mitigation costs.

### **Forest Worker Mitigation Account**

The principle being used for forest worker mitigation is that workers who are severed by a Licensee or Replaceable Contractor because of FRA restructuring will receive severance from their ex-employer, and that severance will be funded by the BCFRT. The Advisory

Board felt it was fair that all workers who lose their jobs as a result of FRA restructuring be treated the same. Because the Steelworkers' (previously IWA) contract mandates that employees affected by a permanent logging camp closure receive severance of 10 regular day's pay per year of service, plus 10/12<sup>ths</sup> of a regular day's pay per completed month of service, that standard was used. The detailed calculation and discussion appears in the Forest Worker Mitigation Guidelines, and can be found on the BCFRT website.

As of September 30, 2008, the BCFRT had provided funding for the severance of 811 workers, for a total cost to the BCFRT of \$40,999,920. The average severance per employee to date is significantly higher than originally projected (\$50,555) as opposed to an estimate of \$39,828). The average is high because a disproportionate amount of the severed workers worked for licensees on the coast, and they tended to be crews with above average seniority. Also, it is now clear that the total number of employees to be severed, especially in the interior, will be lower than projected. A surplus of at least \$20,000,000 was originally expected in the Employee Mitigation Account to deal with employee severance according to the Guidelines. This was moved to the Contractor Mitigation Account to cover the shortfall in that Account. It is now apparent that there will be an additional 5 to 5.7 million dollars more in the Employee Mitigation account than will be required. These funds will be made available at the discretion of the Advisory Board to provide mitigation for other forest workers and contractors that have been or will be negatively impacted by provincial government land use decisions

### **Looking Ahead**

The fourth quarter of 2008 will likely include the following activity:

1. Contractor Mitigation payments will continue to be made to replaceable contractors who lost some or all of their contracts as a result of those FRPs.
2. Severance payments will continue to be made to forest workers for some of the above licensees, and some of their replaceable contractors.
3. The BCFRT Trustee will continue to meet with licensee and contractor industry associations and organized labour, as well as with individual licensees, contractors, worker groups and their advisors on an as needed basis, to ensure that the mitigation process progresses as smoothly, quickly and efficiently as possible.
4. The Trustee will meet with the Advisory Board to discuss how best to use the increased flexibility afforded in providing mitigation to workers and contractors that are affected by government land use decisions that have negative impacts on harvesting opportunities.

Eric van Soeren  
Trustee