

Affidavit #2 of JEFFREY TERNAN
Sworn this 16th day of July, 2007

NO. S074556
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTERN FOREST PRODUCTS INC.

PLAINTIFF

AND:

HANS PENNER, RON NEILSON, GERMAINE WILSON, KEN DALGLEISH,
MICHAEL SIDAL and PERSONS UNKNOWN

DEFENDANTS

AFFIDAVIT #2 OF JEFFREY TERNAN

I, JEFFREY TERNAN, Registered Professional Forester, of 201 - 7373 Duncan Street, in the City of Powell River, in the Province of British Columbia, MAKE OATH AND SAY AS

FOLLOWS:

1. I am the Contract Manager, Stillwater Forest Operations with the Plaintiff, Western Forest Products Inc. ("Western"), and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief and where so stated, I verily believe them to be true.
2. I make this Affidavit in support of Western's application for an injunction to prevent blockaders from interfering with Western's attempts to construct roads and conduct timber harvesting in and around the area known as the Chapman Creek Community Watershed (the "Watershed").

3. I have read the body of the Affidavit of Hans Penner sworn on July 13, 2007 (the "Penner Affidavit") and I have read a few of the attached Exhibits. I make this Affidavit in response.

I. THE HISTORY OF TL T0707 (THE "TIMBER LICENCE")

4. The Timber Licence is a replacement licence, and replaced four old temporary tenures (TLs 4294, 4297, 4298 and 4300). Now shown to me and marked as Exhibit "A" to this my Affidavit is a true copy of a letter dated November 24, 1981 from the Regional Manager to MacMillan Bloedel, Western's predecessor in holding the Timber Licence.
5. I am advised by Kerry McGourlick, Chief Forester of Western, and verily believe it to be true that he has conducted a preliminary review of Western's PIMS system, which is a computer system in which a record of Western's tenures is maintained. Mr. McGourlick further advised me that the system indicates that TLs 4294, 4297, 4298 and 4300 were originally issued in or about 1912.

U. CHAPMAN CREEK COMMUNITY WATERSHED

6. I am advised by Brian Kukulies, of the Ministry of Forests and Range ("MoFR"), and verily believe it to be true that the Timber Licence area is located within a provincial forest, and falls within the jurisdiction of the MoFR. Now shown to me and marked as Exhibit "B" to this my Affidavit is a true copy of a map from a MoFR website illustrating Chapman Creek area within the provincial forest.

DEALINGS WITH THE SUNSHINE COAST REGIONAL DISTRICT

7. Now shown to me and marked as Exhibit "C" to this my Affidavit is a true copy of an article in the Vancouver Sun of July 4, 2007. The article contains a statement by Ed Steeves, chair of the SCRD. The article states:

Steeves said the regional district has few options to prevent Western from logging now that the independent report has shown little to low risk to the water supply.

"To apply for an injunction you have to have a reason Why you think there would be a risk and consequently we don't have that reason scientifically."

8. Now shown to me and marked as Exhibit "D" to this my Affidavit is a true copy of a letter to the editor published in the Sunshine Coast.

IV APPROVAL PROCESS IN THE WATERSHED

9. On or about July 13, 2007, I spoke with Mr. Kukulies regarding the approval process for issuing cutting permits to Western. Now shown to me and marked as Exhibit "E" to this my Affidavit is a true copy of the checklists sent to me by Mr. Kukulies. Mr. Kukulies advised me and I verily believe it to be true that the checklists were used by the MoFR in deciding to issue Cutting Permit B to Western.

V. RESPONSES TO PENNER AFFIDAVIT

10. In response to paragraph 3 of the Penner Affidavit, the pictures at Exhibit "B" do not represent finished roads as a number of the pictures show roads still under construction. Once the roads are completed, there will be ditch-lines established for appropriate drainage. In addition, Western has and will be undertaking further soil erosion precautions, such as grass-seeding the ditch-lines and installing hay bales/silt fences where appropriate.
11. In response to paragraphs 7 and 8 of the Penner Affidavit, the road instruction map attached as Exhibits "E" and "F" only depicts the number of culverts that are anticipated to be built; however, during construction the number, size and location of culverts can change depending on the actual conditions encountered on the ground. Also, Western's records indicate a number of the "missing" culverts identified in the Penner Affidavit were actually installed during construction last summer although not in the exact locations set out in the road instruction map.
12. Also, the culverts depicted in the pictures in Exhibit "F" are located past the blockade area and as such the road construction has not been completed and finally inspected. At the time of the final inspection, the culverts would be inspected and repaired to the extent necessary. Following harvesting, this part of the road and those culverts will be removed immediately and well before the water flows increase. In any event, the amount of water that could be expected from these drainages, even in heavy times, would easily be handled by these culverts in their present state.

13. In further response to paragraph 8 of the Penner Affidavit and Blocks WC-021 and WC-

023, Triton Was referring to the terrain stability reports prepared by Baumann Engineering that were included in my earlier affidavit which state:

Blocks 23 and 24 is located on the plateau area, far removed from any steep slopes Slopes overall are very gentle, and there is no evidence of any previous failures or signs of surface water flow that would cause surface erosion. (p. 247)

The other areas in this proposed harvesting plan (areas 23, 23? and 28) are all located in the upper flat, plateau area where there are no terrain stability or surface erosion issues. No special measures are therefore needed to fall timber in these areas. (p. 248)

With regard to area WC-021, it should be noted that this proposed opening was also traversed and no areas of steep ground capable of producing mass wastage events of any consequence were noted, The hazard and consequence associated with timber extraction would therefore be very low. (p. 250)

14. In response to paragraph 9 of the Penner Affidavit, my role is to plan the road construction and harvesting activities and to engage contractors to do so. Based on my experience, the road construction will occur in the following order and take approximately two months to complete:
 - a. the finishing of the construction of the remaining 100 metres on E-100 plus the minor road finishing will take approximately one week to complete.
 - b. the construction of the 1,572 meters for WC-023 will take approximately one month; and
 - c. the 1,421 metres of upgrading for WC-043 will take several weeks.
15. A further concern is fire season which typically results in either shut downs or slow downs due to reduced working hours.
16. Following the road construction for WC-023, Western still has to complete the timber harvesting which will take approximately another two months to harvest WC-023. Accordingly, due to the time lost to date, Western will be forced to complete the harvesting of WC-023 in late October, rather than early September as originally planned. In addition, further delay will also result in not being able to harvest in the drier weather,

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17. In this area of the Watershed, snow typically begins falling in mid-October. The snow arrives fairly early because of the high elevations. Once the snow falls, Western will be unable to complete its timber harvesting because the roads become too slippery for the

logging trucks. The roads do not become safe again until May or June of the following year. As such, Western is already at great risk of not being able to complete the work this year and before the Timber Licence expires in April, 2008.

18. As a result, to ensure that Western can complete its activities before the snow falls in October, Western must begin its activities now. Western cannot afford to wait any longer. Any further delay will further jeopardise Western's ability to complete its activities before the snow arrives and expose Western to the significant harm described in my earlier affidavit.
19. In response to paragraphs 10 and 11 of the Penner Affidavit, I note that Mr. Richmond's background is a registered professional forester as am I. Even though I do not personally agree with the conclusions of Mr. Richmond in Exhibit "H", I would defer in any event to a qualified person who specializes in hydrology. We normally retain such a qualified person for water quantity and quality advice. Mr. Richmond further states that he saw no research directed at retained water availability. To the contrary, in this case, Western retained EBA Engineering to provide such advice as part of the update to the Coast Watershed Assessment Procedure. EBA's reports are contained at Exhibits "L" (p. 180) and "M" (p. 198) of my earlier affidavit where EBA concluded:

.development proposed by WFP is considered to have a low likelihood of hydrologic impact and a low to moderate potential to affect water quality and downstream aquatic resources associated with potential sediment delivery.

20. In order to reduce any risks associated with sediment delivery, as mentioned Western has grass-seeded the ditch lines and installed hay bales/silt fences where appropriate. Western is also using rock ballast for all the roads in the Watershed rather than simply using the native material, as the native materials may result in more soil erosion.

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21. As an added level of environmental protection, Western has retained an environmental monitor to oversee the road building and timber harvesting activities in the Watershed and to ensure that the work is completed in accordance with the regulations and approved plans.

SWORN BEFORE ME at the City of

Powell River, in the Province of British
Columbia, this 16th day of July, 2007.
A Comiissioner for taking affidavits for
British Columbia

JEFFREY TERNAN

ROBERT O. VILLANI
BARRIST~ E~ SOUCITOR

4448A MARINE AVENUE
FOWELL- RIVER BC. VBA 21(2)

Witnessed as to Execution Only
No Legal Advice Sought or Given