



Province of
British Columbia

Forest Appeals Commission

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APPEAL NOS. 2004-FA-043(a), 2004-FA-044(a) 2004-FA-045(a), 2004-FA-046(a)

In the matter of an appeal under section 146 of the *Forest Act*, R.S.B.C. 1996, c. 157.

BETWEEN: Western Forest Products Ltd. **APPELLANT**

AND: Government of British Columbia **RESPONDENT**

BEFORE: A Panel of the Forest Appeals Commission
Alan Andison, Chair

DATE: Conducted by way of written submissions
concluding on November 26, 2004

APPEARING: For the Appellant: Jeffrey B. Waatainen, Counsel
Terry Anderson
For the Respondent: Leanne D. Johnson, Counsel

APPEALS

Western Forest Products Limited ("Western") appealed four stumpage advisory notices ("SANs") that were issued on June 10, 2004, by Stephen J. Edwards, Regional Appraisal Coordinator (the "Regional Appraisal Coordinator"), Coast Forest Region, Ministry of Forests (the "Ministry"), for four cutting permits issued under Tree Farm Licence 25 and Timber Licence T0412, which are held by Western.

This appeal is heard pursuant to section 146 of the *Forest Act*. The powers of the Commission on an appeal are set out in section 149(2) of the *Forest Act*:

149 (2) On an appeal, the commission may

- (a) confirm, vary or rescind the determination, order or decision, or
- (b) refer the matter back to the person who made the initial determination, order or decision, with or without directions.

Western appeals the SANs on the grounds that the Regional Appraisal Coordinator failed to apply the policies and procedures set out in the Coast Appraisal Manual (the "CAM") when he re-appraised the stumpage rates for the four cutting permits ("CPs"). Specifically, Western submits that the Regional Appraisal Coordinator

erred by failing to account for adjusted road maintenance costs when he calculated the re-appraised stumpage rates.

Western requests that the Commission refer the matter back to the Regional Appraisal Coordinator with directions to re-appraise the stumpage rates for the CPs by using updated road maintenance costs for 2004 and applying the CAM that came into effect on February 29, 2004.

BACKGROUND

A stumpage appraisal is the process by which a Ministry employee determines the amount (the stumpage rate) that a licensee must pay to the Government for harvesting Crown timber. Section 105(c) of the *Forest Act* states that stumpage rates must be determined in accordance with the policies and procedures approved for the forest region by the Minister of Forests. In this case, the applicable policies and procedures are in the CAM. The CAM is periodically amended and revised.

Stumpage rates are based on estimates of timber values and average operating costs in an area, and not on a licensee's actual costs. The appraisal system attempts to reflect the average costs of efficient loggers operating in a particular area, with a view to encouraging efficient logging consistent with good forest practices. A higher estimate of average costs in a stumpage appraisal will produce a lower stumpage rate.

These appeals involve a dispute concerning cost estimates for road maintenance and deactivation associated with certain cutblocks. Generally, road maintenance and deactivation costs are taken into account in stumpage determinations for cutting permit areas where roads are used for hauling timber from the cutting permit area. The cutblocks in issue are within the areas covered by CPs 505, 506, and 570 under Tree Farm Licence 25, and CP D under Timber Licence T0412. All of the CPs are located in the North Island – Central Coast Forest District, Coastal Forest Region. All of the CPs in issue have some cutblocks where trucks use roads to transport logs, and some cutblocks where logs are transported using helicopters.

Before February 29, 2004, stumpage rates for the four CPs were determined using the Comparative Value Pricing System ("CVPS").

The Ministry originally authorized Western to harvest under CP 505 in 1997, and under CPs 506, 570, and D in 1999. When Western initially applied for authorization to harvest under the CPs, it submitted Coast Appraisal Data Sheets ("CADS") for each CP to the Ministry. On those CADS, Western marked a "Yes" box to indicate that routine road maintenance and deactivation was required harvesting under the CPs. The CADS also indicated that the CPs would be harvested using both conventional truck haul logging (where road maintenance and deactivation costs are applicable) and helicopter water-drop logging where no roads were maintained (a helicopter is used to pick up the harvested timber from the cutblock and then drop the timber in a nearby waterbody). In the resulting stumpage

determinations, the Ministry approved the full routine road maintenance and deactivation cost estimates for each CP.

In 2002, the Ministry re-appraised the stumpage rates for the CPs. Western again submitted CADS that were marked "Yes" to indicate that routine road maintenance and deactivation was required for the CPs. However, the re-appraisal CADS forms differed from the previous CADS forms in that Western also specified a value (in dollars per cubic metre of timber) called a "Transportation and Road Maintenance Additive" for each CP. That value was intended to represent an "adjusted" or pro-rated road maintenance and deactivation cost estimate for each CP, to account for the fact that some cutblocks had road maintenance costs associated with truck haul logging, while others did not have such costs because they were harvested using helicopter water-drop logging. The "adjusted" road maintenance and deactivation cost estimates were submitted because the Ministry had changed its methodology for estimating costs, in order to account for the blending of harvesting methods within cutting permit areas.

The resulting stumpage re-appraisals were issued in November 2002 and January 2003. The summary of data and calculations attached to each stumpage determination indicates that the Ministry had applied a "No" rather than a "Yes" with regard to routine road maintenance and deactivation for the CPs. In addition, the "Transportation and Road Maintenance Additive" (i.e. the adjusted road maintenance value) that Western had submitted in the CADS for each CP was listed in each data summary beside the sub-heading "Specified Operation" under the heading "Log transportation." The sub-heading "Road maintenance" had a blank space beside it. Thus, the Ministry accepted the numeric value that Western had submitted for the "Transportation and Road Maintenance Additive", but the Ministry accounted for it as a "Specified Operation" cost estimate rather than a "Road maintenance" cost estimate in the reappraisals. Western did not object to the stumpage re-appraisals.

On January 16, 2004, the Premier of British Columbia announced that a new system for determining stumpage rates in the Coast Region would take effect on February 29, 2004. That new system, called the Market Pricing System ("MPS"), replaced the CVPS. The central concept underlying the MPS is that auctions of standing timber are used to establish the market value of the timber. Those market values are used, along with certain cost estimates, to determine market stumpage rates. The Ministry developed the MPS, and the process for converting from the CVPS system to the MPS, in consultation with representatives of the coastal forest industry, including the Coast Forest & Lumber Association, and the Truck Loggers Association.

In addition, the Ministry, in consultation with the Coast Appraisal Advisory Committee, developed a new CAM, which came into effect on February 29, 2004 (the "2004 CAM"). The 2004 CAM sets out the policies and procedures to be used in the Coast Region for determining stumpage using the MPS. Before the 2004 CAM came into effect, a version of the CAM that came into effect in 2002 (the "2002 CAM"), as amended, was in effect. The 2002 CAM was based on the CVPS

system, but included a number of amendments that were intended to begin the transition to the MPS.

On February 19, 2004, Bill Howard, Director of the Ministry's Revenue Branch, issued a letter (the "Director's Letter") to the Coast Appraisal Advisory Committee and various representatives of the coastal forest industry, regarding the procedures for implementing the MPS. In part, the Director's Letter states:

Starting on February 29, CVP adjustable rate cutting authorities will be converted to MPS.

By March 5, 2004, each licensee must submit to the revenue section in the Coast Forest Region a list of the licensee's cutting authorities that will be converted to MPS...

For each of those cutting authorities that have been properly listed, a completed "MPS Conversion Appraisal Data Submission" (attached) must be received by the revenue section... by... April 30, 2004.

This is the only data required for the MPS conversion. All other data is on file and will be used as is, without change. The specified operations that will be included in the cutting authorities that are being converted from CVP to MPS are those in the *Coast Appraisal Manual* on February 29, 2004, using the formulas and values contained in the manual.

[underlining added]

A form titled "MPS Conversion Appraisal Data Submission" was attached to the Director's letter. That form contains spaces for licensees to fill in data that the Ministry would use, in conjunction with data on file, to convert CVPS stumpage rates to MPS stumpage rates. It should be noted that the form does not include a space for adjusted road maintenance and deactivation cost estimates. The tenure obligation adjustment value used in the MPS calculations is intended to take into account licensees' road maintenance costs.

Also on February 19, 2004, the Ministry issued Amendment No. 8 to the 2002 CAM, which added paragraph 4 to section 1.7, as follows:

1.7 Stumpage Adjustments (CVP)

...

4. Where the cutting authority area of a cutting authority has been appraised using the Comparative Value Pricing System and the cutting authority on February 28, 2004, has stumpage rates that must be adjusted quarterly, the stumpage rates for that cutting authority shall on and after that date be fixed at the rates that are in effect on that date for the term of that cutting authority and all extensions of the term of that cutting authority.

On February 26, 2004, the Minister of Forests issued a letter (the "Minister's Directive") directing the Regional Manager of the Coast Forest Region to reappraise certain cutting authorities as part of the conversion to the MPS. The Minister's Letter states, in part, as follows:

Through this memorandum, I direct you to reappraise each cutting authority area that meets the qualifying criteria using the procedures described below.

1. Subject to 2., below, a cutting authority area may be reappraised where the holder of a cutting authority requests the reappraisal of that cutting authority area and the stumpage rates of that cutting authority:
 - a. had been calculated in the last appraisal or reappraisal prior to February 28, 2004, using the Comparative Value Pricing System;
 - b. had been readjusted quarterly prior to February 28, 2004; and
 - c. had been fixed on February 28, 2004.

...

3. The data from the MPS conversion appraisal data submission will be used with the data from the most recent appraisal or reappraisal in effect on February 28, 2004, to complete the MPS conversion appraisal.
4. Where a cutting authority area is reappraised under this directive, the procedures in Sections 3.2(2) through 3.2(10) of the February 29, 2004, *Coast Appraisal Manual* shall apply.

The four CPs in issue met the Minister's criteria for reappraisal under the MPS, and Western provided MPS Conversion Appraisal Data Submissions for each CP to the Coast Forest Region.

On June 10, 2004, the Regional Appraisal Coordinator issued the SANs that are the subject of these appeals. The SANs have an effective date of February 29, 2004. In each SAN, the value for road maintenance under the tenure obligation adjustment is listed as zero. In other words, the cost estimates for adjusted road maintenance and deactivation that had been identified as "Specified Operations" in the data summaries for the previous reappraisals were not taken into account in the conversion reappraisals.

On June 22 and 23, 2004, Western sent objection letters to the Coast Forest Region. Western submitted that there was an error in the conversion reappraisals because the tenure obligation adjustments did not account for the adjusted road maintenance costs that had been recognized in the previous reappraisals.

The Regional Appraisal Coordinator denied Western's objections.

On August 17, 2004, Western appealed the SANs to the Commission.

ISSUES

1. Whether the stumpage rates in effect on February 28, 2004, or the data used to determine those stumpage rates are "fixed" for the purposes of the conversion reappraisals.
2. Which data should be used to determine the stumpage rates for the MPS conversion reappraisals?

RELEVANT LEGISLATION

The following sections of the *Forest Act* are relevant to these appeals:

Stumpage rate determined

- 105** (1) Subject to the regulations made under subsections (6) and (7), if stumpage is payable to the government under an agreement entered into under this Act or under section 103 (3), the rates of stumpage must be determined, redetermined and varied
- (a) by an employee of the ministry, identified in the policies and procedures referred to in paragraph (c),
 - (b) at the times specified by the minister, and
 - (c) in accordance with the policies and procedures approved for the forest region by the minister.

Determinations that may be appealed

- 146** (2) An appeal may be made to the Forest Appeals Commission from a determination, order or decision of
- (a) the chief forester, under section 60(2), 68, 70(1), 77(1)(a) or 112(1),
 - (b) the chief forester, by way of a determination, under section 66(4)(b) or (5)(b), of the area of Crown land described in that section, and
 - (c) a determination of an employee of the ministry under section 105(1).
- ...
- (6) For the purpose of subsection (1), a redetermination or variation of stumpage rates under section 105(1) is considered to be a determination.

DISCUSSION AND ANALYSIS

1. **Whether the stumpage rates in effect on February 28, 2004, or the data used to determine those stumpage rates are "fixed" for the purposes of the conversion reappraisals.**

Western submits that the CVPS stumpage rates in effect on February 28, 2004 were "fixed" by Amendment No. 8 of the 2002 CAM, pending the reappraisal of stumpage using the MPS, but the data used to determine the CVPS stumpage rates were not fixed by Amendment No. 8. Western submits that the Regional Appraisal Coordinator misinterpreted Amendment No. 8 by assuming that the data were fixed as of February 28, 2004. Western submits, therefore, that he erred in determining the MPS stumpage rates for the conversion reappraisals, and that he should recalculate the MPS stumpage rates effective February 29, 2004, using updated road maintenance values for 2004.

The Government submits that Western's interpretation of Amendment No. 8 is incorrect. The Government acknowledges that section 1.7 of the 2002 CAM, as amended by Amendment No. 8, uses the word "rates" and not "data". However, the Government argues that Amendment No. 8 would be rendered ineffective unless both the CVPS stumpage rates and the data were fixed by the amendment. The Government notes that the data listed in the SANs that were in effect on February 28, 2004, is the data on which the CVPS stumpage rates were based. The Government submits that the data in those SANs is the data that is fixed by Amendment No. 8.

In addition, the Government submits that its interpretation of Amendment No. 8 is consistent with the Minister's Direction, which states that data from the MPS Conversion Appraisal Data Submissions "will be used with the data from the most recent appraisal or reappraisal in effect on February 28, 2004" to calculate the MPS conversion stumpage rates.

In reply, Western submits that Amendment No. 8 has nothing to do with the data used to determine a CVPS stumpage rate, or with what data the Ministry should have used in the MPS conversion reappraisals. Western submits that the plain language in Amendment No. 8 and the Minister's Directive indicates an intention to ensure that CVPS stumpage rates that are adjusted quarterly become fixed once the MPS comes into effect. Western submits that the Minister's intention was that there would be no more quarterly adjustments after February 28, 2004. Western maintains that the amendment can achieve that purpose regardless of the data underlying the CVPS stumpage rates.

The Commission finds that both Amendment No. 8 and the Minister's Directive expressly state that the Minister intended for the CVPS stumpage rates to be fixed as of February 28, 2004. Neither Amendment No. 8 nor the Minister's Directive expressly state that the data used to determine the CVPS stumpage rates were to be "fixed" as of February 28, 2004. However, the Commission finds that the question of whether the word "fixed" was expressly used in relation to the word "data" is not determinative of the question of what data were to be used in the MPS conversion reappraisals, because the Minister's Directive clearly states, in paragraph 3, that the sources of data for the MPS conversion reappraisals would be: (1) the data from the most recent appraisal or reappraisal in effect on February 28, 2004; and (2) the data from the MPS Conversion Appraisal Data Submissions.

The Commission finds that it is logical that the Minister would use the word "fixed" in relation to stumpage rates that were previously adjusted quarterly, because

fixing those rates at a specific value pending the issuance the MPS conversion reappraisals notified licensees of the date on which quarterly adjusting rates based on the CVPS would cease to be adjusted. Fixing the date also allowed time for the Coast Forest Region to complete the numerous MPS conversion reappraisals that had to be done for qualifying cutting authorities, without having to worry about further quarterly adjustments under the CVPS.

The Commission notes that the Director's Letter, which is not binding but is relevant as a statement of Ministry policy, is consistent with the Commission's interpretation of the Minister's Directive regarding the two sources of data. In particular, the Director's Letter states that the only new data required for the MPS conversion reappraisals is that provided in the MPS Conversion Appraisal Data Submissions, and "All other data is on file and will be used as is, without change."

However, the Commission finds that these conclusions are not determinative of which data should be used to determine the MPS stumpage rates for Western's CPs. To decide that issue, the Commission must consider the proper interpretation of the 2004 CAM, and the appropriate use or interpretation of the data in the SANs that were in effect on February 28, 2004.

2. Which data should be used to determine the stumpage rates for the MPS conversion reappraisals?

The parties agree that the 2004 CAM applies to the MPS conversion reappraisals in this case, but they disagree regarding whether certain sections of the 2004 CAM that deal with road maintenance costs apply to the reappraisals. In addition, the parties disagree regarding the proper use or interpretation of the data in the SANs that were in effect on February 28, 2004.

Western submits that the MPS conversion reappraisals should have accounted for road maintenance costs because the 2004 CAM clearly accounts for such costs in the calculation of the tenure obligation adjustment, and the Ministry previously allowed road maintenance costs when it determined the CVPS stumpage rates for the CPs. Western submits that the CADS it submitted for the reappraisals that were in effect on February 28, 2004 included road maintenance and deactivation cost estimates. Western maintains that, although the Ministry accounted for those road maintenance costs as a "Specified Operation" under "Log Transportation" in the reappraisal SANs that were in effect on February 28, 2004, the road maintenance cost data was "on file" with the Ministry, and was used by the Ministry in those reappraisals.

Western submits that, based on timber volume, 89 to 97 percent of the harvesting in the CPs involves truck hauling and requires road maintenance. Western argues that the Ministry should reappraise the CPs using road maintenance values based on a volume-weighted proportion of the cost allowance set out in section 5.4(4) of the 2004 CAM, which is \$2.60/m³ for cutting authorities located in the North Island - Central Coast Forest District. Western submits that the volume-weighted road maintenance values are \$2.54/m³ for CP 505, \$2.34/m³ for CP 506, and \$2.40/m³ for CP 570 and CP D.

Specifically, Western notes that section 5.1 of the 2004 CAM identifies "road maintenance costs" as a cost that may be included to calculate the tenure obligation adjustment in a reappraisal. That section states as follows:

5.1 Tenure Obligation Adjustment

1. Except where a cutting authority area is the area authorized for harvest under a timber sale licence entered into under section 20 of the *Act* and subject to subsection 2 of this section, the kinds of costs that may be used in the calculation [sic] of a tenure obligation adjustment in the appraisal or reappraisal of a cutting authority area are:

...

- c. the road maintenance costs,

[underlining added]

In addition, Western submits that section 5.4 of the 2004 CAM specifies road maintenance cost criteria and values, as follows:

5.4 Road Maintenance Cost

...

2. A road maintenance cost may only be included in the calculation of a tenure obligation adjustment for those parts of a cutting authority area where the logs will be transported over a road by truck.

...

4. Where the cutting authority area is located in the Queen Charlotte, North Coast or North Island - Central Coast Forest District, the road maintenance cost is \$2.61/m³.

The Government submits that the relevant data for use in the MPS conversion reappraisals is: (1) that found in the MPS Conversion Appraisal Data Submission sheets that Western provided to the Ministry; and, (2) the reappraisal SANs in effect on February 28, 2004 (i.e. the SANs issued in November 2002 and January 2003). With regard to those SANs, the Government submits that the data summaries in the SANs indicate a zero value for "Road Maintenance". The Government argues, therefore, the Regional Appraisal Coordinator correctly used a zero value for road maintenance in the MPS conversion reappraisals. The Government maintains that it is the data listed in the SANs, and not the data submitted by Western in the CADS, which form the basis for the stumpage rates set out in the MPS conversion reappraisals.

In addition, the Government notes that "Specified Operations" was a data element requested in the MPS Conversion Appraisal Data Submission. The Government

maintains that the MPS Conversion Appraisal Data Submission sheet lists each of the individual specified operations that are listed in section 4.4 of the 2004 CAM. The Government notes that section 4.4 of the 2004 CAM does not list a specified operation for "Log Transportation," which is the heading in the previous SANs under which the Ministry listed the cost estimates that Western claimed (in its CADs) as adjusted road maintenance costs. In addition, the Government argues that the data supplied by Western in the MPS Conversion Appraisal Data Submission forms replaced the "Specified Operations" data that were used to determine the stumpage rates in the previous SANs.

The Government submits that the sections of the 2004 CAM which address road maintenance are irrelevant to the MPS conversion reappraisals, because the only relevant data for the MPS conversion reappraisals is the data from the previous SANs, and those SANs listed a value of zero for road maintenance. In addition, the Government submits that section 3.2 of the 2004 CAM is not intended to "re-open" the data on which stumpage rates under the CVPS were based in order to correct errors. The Government submits that the CVPS rates, and the data on which they were based, were fixed by Amendment No. 8. Moreover, the Government submits that there was no "error" in assigning a zero value to road maintenance in the previous SANs, because the value was changed to zero for an appropriate reason and Western did not challenge that change at the time.

In reply, Western submits that the 2004 CAM and the Minister's Directive do not support the Government's assertion that the SANs issued in November 2002 and January 2003 were the source of all other data used in the MPS conversion reappraisals, or that those sections of the 2004 CAM which relate to road maintenance do not apply to MPS conversion reappraisals.

Specifically, regarding the proper application of the 2004 CAM, Western submits that the Government's submission confuse the role of the policies, procedures, and equations set out in the CAM versus the role of the data to which the CAM applies. In particular, Western argues that section 5.4 of the 2004 CAM is not data. Rather, section 5.4 is part of the MPS appraisal process, and Western submits that the Ministry cannot complete a proper reappraisal without applying all parts of the process that represent the MPS.

Western also submits that the Minister's Directive states that the data from the MPS Conversion Data Submissions will be used with the "data" from the most recent appraisal or reappraisal, and not the "stumpage advisory notices" from the most recent appraisal or reappraisal, to complete the MPS conversion reappraisals. In this regard, Western submits that completing the MPS conversion reappraisals required many types of data which were not in either the MPS Conversion Data Submissions or the previous SANs, such as data about the slope of the cutting authority, the proportions of conventional and helicopter yarding under the cutting authority, hauling distances for the cutting authority, or data indicating whether routine road maintenance was required. Western submits that the fact that the MPS conversion reappraisal used such data is indicated in the MPS reappraisal SANs.

For example, Western notes that the MPS reappraisal SAN for CP 505 indicates a slope contribution of "-5.89", yet the data required to calculate that contribution is not found in the previous SAN or the MPS Conversion Data Submission. Western maintains that the data was found in the CADS that Western submitted for determining the previous SANs, and the value attributed to slope in the MPS reappraisal SAN was calculated by applying the procedures and equations in the 2004 CAM. Western argues that, if other values used in determining the MPS reappraisals were derived by applying the 2004 CAM to data from the CADS, then there is no reason why the same cannot be done regarding road maintenance.

Western submits that the data required for determining road maintenance costs under the MPS are: (1) whether road maintenance is required; and (2) the portion of timber that is harvested under the cutting authority that will require road maintenance. Western maintains that such data are not available in the previous SANs, but rather, in the "cutblock blending" table in the CADS that were submitted by Western.

With regard to the Government's assertion that there is no "Specified Operation" called "Log Transportation" under the 2004 CAM, Western argues that the value assigned to "Log Transportation" in the previous SANs was not actually a specified operation. Rather, under the 2002 CAM, "Log Transportation" was a phase of harvesting that may be affected by various specified operations. Western notes that section 4.4.4 of the 2002 CAM did not provide for a "Log Transportation" specified operation, and section 4.1.1 of the 2002 CAM did not authorize a specified operation for road maintenance. Rather, the 2002 CAM provided for a routine road maintenance and deactivation allowance under section 4.5.3. Western submits, therefore, that the value assigned to "Specified Operations" under "Log Transportation" in the previous SANs is properly characterized as a volume weighted road maintenance allowance. Thus, Western submits that the Government's characterization of the road maintenance allowance as a "Specified Operation" in the previous SANs masks what is really going on, and portrays the allowance as something other than what it really is.

The Commission notes that the Minister's Directive clearly states that "Where a cutting authority is reappraised under this directive, the procedures in Section 3.2(2) through 3.2(10) of the February 29, 2004, *Coast Appraisal Manual* shall apply." There is no dispute that the 2004 CAM applies to the MPS conversion reappraisals in this case. Sections 5.1 and 5.4 of the 2004 CAM clearly direct the Regional Appraisal Coordinator to take into account road maintenance costs when calculating the tenure obligation adjustment for MPS stumpage rates if there are parts of a cutting authority area where the logs will be transported over a road by truck.

The Government does not dispute the fact that parts of the areas covered by Western's CPs are areas where the logs will be transported over a road by truck. Rather, the Government asserts that a zero value was properly assigned to road maintenance in this case because the previous SANs contained a zero value beside "Routine maintenance". The Commission finds that acceptance of the Government's argument would lead to a result that is incorrect, because it is

inconsistent with sections 5.1 and 5.4 of the 2004 CAM and it fails to acknowledge the undisputed fact that most of the harvested area within Western's CPs involve road maintenance.

The Commission finds that the Minister's Directive clearly indicates that the data from the MPS Conversion Data Submissions will be used with the "data" from the most recent appraisal or reappraisal, and not the "stumpage advisory notices" from the most recent appraisal or reappraisal, to complete the MPS conversion reappraisals. In addition, the Commission accepts Western's submission that completing the MPS conversion reappraisals required the use of many types of data that were not found in either the MPS Conversion Data Submissions or the previous SANs. As noted by Western, the MPS reappraisal SANs include values for elements such as slope, which were not found in either the previous SANs or the MPS Conversion Data Submissions. The Commission agrees with Western that, if the Regional Appraisal Coordinator could obtain other data from the CADS that were on file with the Ministry, then he could also have obtained the road maintenance data from the CADS that were on file with the Ministry.

In addition, the Commission disagrees with the Government that the stumpage rates in the SANs which were issued in November 2002 and January 2003 were actually based on a road maintenance value of zero. While the road maintenance value submitted by Western in its CADS was effectively relabeled by the Ministry as a "specified operation" under "log transportation", it is clear that the intention in those SANs was to include an adjusted or pro-rated road maintenance value to account for the fact that some, but not all, of the cutblocks in the CPs required road maintenance. The Commission finds that completely disregarding Western's road maintenance costs for the purposes of the MPS conversion reappraisals would be just as unfair to Western as it was to the Crown when full road maintenance costs were allowed in the SANs issued in 1997 and 1999.

For all of these reasons, the Commission finds that the Regional Appraisal Coordinator erred when he used a zero value for road maintenance in determining the MPS conversion reappraisals for the CPs. The Commission finds that the stumpage rates in effect on February 28, 2004, for the CPs did take into account pro-rated road maintenance costs, even if the SANs called those costs something else. The Commission finds that the MPS conversion reappraisals for the CPs should take into account road maintenance costs, in accordance with section 5.4 of the 2004 CAM. The Commission further finds that the data required to calculate those road maintenance costs is on file with the Ministry, in the CADS that Western submitted for the SANs in effect on February 28, 2004.

DECISION

In making this decision, this Panel of the Forest Appeals Commission has carefully considered all of the material before it, whether or not specifically reiterated here.

For the reasons set out above, the Commission refers the matter back to the Regional Appraisal Coordinator and directs him to reappraise the stumpage rates for the CPs in order to account for road maintenance costs, by applying the

provisions of the 2004 CAM to the data in the CADS that Western submitted for the SANs in effect on February 28, 2004.

Accordingly, the appeals are allowed.

Alan Andison, Chair
Forest Appeals Commission

December 31, 2004