

Private Managed Forestry and Governance in the Cowichan Watershed

This is a proposal for volunteer research looking at governance challenges of privately managed forest land in the Cowichan watershed. Below, I briefly review the role of the Cowichan Watershed Board (CWB, the Board) in governance of the lower Cowichan watershed, and the governance challenge posed by private forestry in the upper watershed. I briefly outline a phased research plan intended to produce a background report by November 2019. I highlight potential benefits of the research, both to me as a PhD student and to the CWB as it embraces a new governance challenge.

The journey of the Cowichan Watershed Board (CWB, the Board) is a remarkable story of successful governance. The Board engages the public directly with the Lower River Cleanup and the Water Conservation Challenge.¹ It collaborates with governments on initiatives like the Cowichan Bay Vessel Operation Restriction Regulation (that protects critical eel grass habitat) and the CWB proposal to pilot water sustainability planning under the *Water Sustainability Act*. It develops partnerships on water quality sampling and environmental farm planning programs. It provides a “whole of watershed” governance vision that is key to mobilizing support, including financial support such as for coastal restoration funding. These governance activities focus mainly on the lower watershed, below Cowichan Lake, and the rebound in spawning chinook numbers, from 500 in 2005 to 10,000 in 2017, is a testament to their success.

Up to now the Board has paid less attention to the other half of the watershed, the catchment area that feeds Cowichan Lake and Cowichan River.² The CWB 2016 forest hydrology workshop highlighted the issue of an upstream landscape that is largely within the legislative domain of the *Private Managed Forest Land Act* (the Act) where forest practice accountabilities differ from those on Crown land.³ Forestry practices regulated by the Act have potential to impact the hydrology, ecology, and water quality within the watershed, and are an emerging focus for the Board.

The *Private Managed Forest Land Act* sets broad objectives for protecting soil productivity, drinking water, fish habitat, critical wildlife habitat and reforestation. It establishes the Private Managed Forest Land Council (the Council), tasked “to encourage forest management practices on private managed forest land, taking into account the social, environmental and economic benefits of those practices”.⁴ The Act, however, specifically excludes the obligation to consider cumulative effects and does not address the impact of private forestry in relation to whole watersheds.⁵

The Council is a “quasi-judicial administrative tribunal that operates independently from the government”.⁶ It may pass resolutions and bylaws and conduct its own compliance and enforcement

¹ See *Timeline: Inception and Development of the Cowichan Watershed Board* at <http://cowichanwatershedboard.ca/content/timeline-cowichan-watershed-board>.

² From conversation with Tom Rutherford, Lydia Hwitsum, Jill Thompson and David Anderson, 14 November, 2018.

³ The *Private Managed Forest Land Act* of British Columbia, viewed online at: http://www.bclaws.ca/civix/document/id/complete/statreg/03080_01#section8.

⁴ *Ibid.*

⁵ *Supra* note 3.

⁶ Letter from the Managed Forest Council to Minister of Environment and Climate Change, viewed at: <https://engage.gov.bc.ca/app/uploads/sites/272/2018/01/Managed-Forest-Council.pdf>.

activities.⁷ It exercises powers delegated by the province surpassing local government authority. The council has two members appointed by land owners, two appointed by the province, and a chair person agreed by the landowners and province. The structure of the Council gives private foresters significant influence over land use decisions affecting watersheds. Local communities are not always satisfied with the Council's effectiveness in meeting its own objectives or in considering other community values.⁸

Virtually the entire Cowichan watershed catchment falls within the privately-held lands of the E&N railway concession where forestry operations are managed under the Act.⁹ This is of great concern to both the Cowichan Valley Regional District (CVRD), whose authority it restricts, and to Cowichan Tribes, whose un-ceded territory it impacts. The challenge that the CWB faces is how to influence forestry conducted under the Act to ensure it complies with the whole-of-watershed vision and objectives established for the watershed. The first step in that process is to understand the origins and history of private forestry on the E&N concession, how and why it differs from forestry on Crown land, and how, or whether, private forestry practices align with the governance vision and objectives of the CWB and of its founding partners, the CVRD, and Cowichan Tribes.¹⁰ I offer a portion of my research time over the next year, in a voluntary capacity, to begin addressing these knowledge gaps.

I am a PhD student at the University of Victoria with an interest in how the province can make space for Indigenous legal principles in watershed governance. I have a background in community-based source water protection planning and oral history research in Saskatchewan, and in co-governance of water resources in Nunavut. I am working under the supervision of Dr. Deborah Curran, who you will recognize as a well-respected scholar with a long history of engagement with the Cowichan Water Board. Deborah recommends a phased research approach for this challenge, which I outline below.

In phase 1, I will scope the material resources and information available for a forest management and governance review. I anticipate this phase running to March of 2019. If the technical advisory committee of the CWB is amenable, I would like to meet with them in this period. I would also like to meet with watershed governance contacts from the CVRD and with an advisory group with Cowichan Tribes. In phase 2, from April through June of 2019, I will begin to review and analyze the material gathered. I will consult with Cowichan Watershed Board staff, Cowichan Valley Regional District and Cowichan Tribes contacts in this period, before finalizing my analytical approach. Phase 3 will run through September and October of 2019, when I will write up a summary of findings. Throughout the research project, I aim to coordinate my work as much as possible with a research initiative out of York University that is looking at the evolution of private forestry, in a legal context, on the E&N lands.

Understanding the connection between private forestry regulation and watershed governance may be an essential step for the Cowichan Watershed Board as it prepares to take watershed governance to a new level under the *Water Sustainability Act*. It would also be a useful exercise for me in pursuing my PhD research interests. I am pleased to offer some assistance in beginning to meet the challenge.

⁷ *Supra* note 3.

⁸ Even though the Council has the ability to issue stop-work orders, it was the province that intervened to issue a stop-work order for proposed logging on PMFL at Sandy Hook in January 2018. See:

<https://www.coastreporter.net/news/local-news/logging-halted-on-private-land-in-sandy-hook-1.23155198>.

⁹ Source Brian Thom cited in the Cowichan Land Trust publication at: <http://www.cowichanlandtrust.ca/wp-content/uploads/2016/11/Cowichan-Green-Map-Back.pdf>.

¹⁰ These knowledge gaps were identified in the conversation described in note 2.