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## **BC Forestry Revitalization Trust**

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### **Report of the Trustee as of March 31, 2018**

#### **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 were 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 at [www.bcftr.com](http://www.bcftr.com).

As of the end of 2011 all the workers and contractors had received the mitigation for which they were eligible based on the contractor and worker mitigation guidelines. However, there were outstanding issues with respect to income taxes assessed to contractors that had received mitigation payments from the BCFRT.

#### **Contractor Income Tax Liability**

For several years there was uncertainty about the liability for income taxes payable on mitigation amounts received by replaceable contractors from the BCFRT. The position of the four logging contractor associations in BC was that the amounts should have been received tax free, either because they were a windfall payment, or because they were amounts received from a personal trust. Others took the position that the amounts received as a result of the loss of some or all of a replaceable contract should be treated as a capital gain. The Canada Revenue Agency (CRA) took the position that all such amounts were to be taxed as income.

The BCFRT, the Loggers for Fair Taxation, the Minister of Forests, Lands and Natural Resource Operations, and the Premier of BC worked on this problem for approximately four years. As a result, the Province of BC and the Advisory Board of the BCFRT agreed to increase the contractor mitigation payments received by replaceable contractors by an amount equal to the income taxes actually paid or payable on the amounts previously disbursed. In order to facilitate that payment, the three previous BCFRT accounts were rolled into one new Contractor Mitigation Account early in 2012.

During the last quarter of 2011 letters were sent out to all contractors that received Contractor Mitigation funds from the BCFRT. They were invited to apply for extra mitigation in the event that they had paid or been assessed and not yet paid taxes on the amount(s) received. 202 contractors (approximately 76%) responded. Of those, 8 declined to proceed because they had no taxable income in the year(s) they received BCFRT Contractor mitigation amounts. The other 24% are deemed to have accepted the payments as received. In most cases it is likely they were not taxable in the year of receipt of those funds, and would therefore not have received a refund in any case.

Another part of the tax mitigation arrangement called for Federal and Provincial Orders in Council to deem income tax refund amounts received from the BCFRT to be tax free, and to deem that there will be a remission of interest and penalties on previously unpaid taxes related to the original contractor mitigation amounts. The required provincial Order in Council was filed on November 7, 2012. The required matching Federal Order in Council was filed on January 16, 2013. As a result, the BCFRT was able to start making disbursements in the first quarter of 2013.

To date the Canada Revenue Agency (CRA) has processed and made determinations of the incremental income tax impact of the receipt of Contractor Mitigation Funds for all 193 of the contractors that responded, wanted to proceed with a determination of their eligibility for a refund, and provided all the required information. Two of the contractors that received determination letters dispute the amount of incremental tax the CRA has determined they paid as a result of mitigation amounts received from the BCFRT. The CRA is reviewing those files.

#### **Account Balances as at March 31, 2018**

<b>2011 Contractor Mitigation Account</b>	<b>\$366,778</b>
<b>Distributions to Beneficiaries to date</b>	
Contractor Mitigation	\$70,748,591
Contractor Income Tax Refunds	\$7,653,585
Forest Worker Mitigation	\$43,079,279
Transferred to the Coast Sustainability Trust	<u>\$2,767,714</u>
<b>Total Distributions to Beneficiaries</b>	<b>\$124,249,169</b>
<b>Total available funds plus distributions</b>	<b>\$124,615,947</b>

A breakdown of the activity in the 2011 Contractor Tax Mitigation account to March 31, 2018 follows:

267	contractors received contractor mitigation payments
65	contractors did not reply to my tax refund letter
8	contractors replied but did not want to proceed
194	refund determination requests were sent to CRA
193	CRA determinations received and forwarded to Contractors
1	not reviewed by CRA because contractor dropped request
1	Contractor chose not to accept a refund
131	contractors will not receive tax refunds
136	contractors will receive tax refunds
134	Tax refund payments made to date
2	Tax refund payments still to be made
\$7,653,585	Tax refunds or taxes paid to date

### **Adequacy of Funds**

The final cost of making contractors whole for income taxes assessed and paid or assessed and still not paid on the contractor mitigation amounts they received is still not known. The best estimate at this time is between \$8.7 and \$9.0 million. The agreement with the province is that all existing funds in the BCFRT accounts were to be applied to compensate the contractors for taxes paid or payable. Once the BCFRT funds were depleted, the province would replenish the BCFRT as required to meet the additional obligations to the contractors and the administration costs of the Trust. The first instalment of \$750,000 was received in 2014. A second installment of \$750,000 was received on May 30, 2016. The best estimate at this time is that the province will be asked to provide a further \$680,000 to \$990,000 to the BCFRT to allow it to meet this obligation.

### **Looking Ahead**

The second quarter of 2018 will likely include the following activity:

1. The Trustee will continue to work with the CRA on the final outstanding contractors to determine the amount of the tax refund or payment of taxes on their behalf that will have to be paid by the BCFRT.
2. Where agreement is achieved, the trustee will enter into funding agreements with the relevant contractors and either pay them directly or, at their direction, pay the amount owing directly to the CRA or some combination of the above.
3. The Trustee will request incremental funds from the province to allow the payment of the remaining claims on the BCFRT.

Eric van Soeren, Trustee