

Brown, Ian J FLNR:EX

From: Bromley, Monte <Monte.Bromley@dfo-mpo.gc.ca>
Sent: Saturday, July 28, 2012 6:23 PM
To: Brown, Ian J FLNR:EX; Don.Lawrence@dfo-mpo.gc.ca
Cc: Zunti, Barry; Hudema, Ronnie
Subject: SUMMARY OF INVESTIGATION AND EXPLANATION FOR CROWN CHARGE APPROVAL
Attachments: Regina vs McBride Community Forest Corporation Summary of Investigation and Explanation.pdf

Don and Ian,

Here is the report I plan to send to DOJ on Tuesday July 31. Let me know if you recommend any changes before I send it off. Thanks for your work!

<<Regina vs McBride Community Forest Corporation Summary of Investigation and Explanation.pdf>>
Monte

Regina vs McBride Community Forest Corporation

**Investigative Summary and Explanation
For Charge Approval**



Sec. 35(1) Fisheries Act

DVS File #2012-01035

DFO Aware Date: April 5, 2012

File Coordinator: Monte Bromley
Contact: monte.bromley@dfo-mpo.gc.ca

PURPOSE: Charge Approval Request to Crown Council

This Investigation Summary and Explanation was prepared by the Investigative Team:

Monte Bromley; Primary Investigator
Don Lawrence; Habitat Biologist and Expert Witness
Ian Brown; Supervisor, Ministry of Forests, Lands, and Natural Resource Operations.

For the purpose of obtaining charge approval from Crown Counsel regarding a Sec. 35(1) Fisheries Act Habitat Violation.

Investigation Summary and Explanation

Background:

On April 5th, 2012 Fisheries and Oceans Canada (DFO) received a complaint of riparian tree removal as a result of logging activities by the McBride Community Forest Corporation (MCFC) which took place adjacent to the Fraser River West of McBride, BC. A joint investigation by DFO and by the Ministry of Forests, Lands, and Natural Resource Operations (MFLNRO) was initiated and it was determined by the Investigation Team that the logging activities of the MCFC in Licence KIH, Cutting Permit 993, Block number 9 (McKale) constituted a significant HADD (harmful alteration, disruption or destruction of fish habitat).

Block 9 is a large logging block that has a gross area of approx. 175.4 hectares and is situated immediately adjacent to the Fraser River. Also, within the block, there is the McKale River and a wetland area with at least 4 defined drainage streams that flow into the Fraser River. An estimated 353 mature trees (base diameter greater than 30 cm) were harvested within 30 meters of the high water mark along the Fraser River of a path approx. 1.5 km in length. Moreover, four small streams flow seasonally out of a wetland area within the block through the 30 meter riparian area of the Fraser River. These four unnamed streams were also directly impacted from the logging activities by MCFC. The Fraser River, the McKale River, and the four unnamed streams within Block 9 are all considered high value fish habitat and all these systems (except for one of the unnamed streams) have documented salmonid presence.

Possible Defences:

DFO contacted the MCFC and informed them of the current DFO investigation against their corporation. The MCFC was cooperative with DFO, however they have claimed two possible defences. First, a possible due diligence defence was stated, that in their opinion, the logging operations on Block 9 were within compliance of the Forest Range and Practices Act (or FRPA, which is the main provincial legislation framework for forest harvest regulations) and therefore should not be in violation of the Fisheries Act. Secondly, MCFC stated another possible defence that may be considered as an officially induced error as the MCFC claimed that the provincial and federal authorities have "approved" their stewardship plan and that the MCFC has conducted their harvest activities in Block 9 according to their approved plan.

Government Action and Responses to Possible Defences:

On July 4th, 2012 an Investigative Team meeting was held and It was agreed by DFO and the MFLNRO that DFO should take the lead in this investigation and therefore DFO is requesting charge approval against the MCFC for a Sec 35(1) Fisheries Act offence. If Crown agree to grant Sec 35(1) charge approval then

DFO will take action to continue with the completion of the entire file including the report to Crown Counsel and disclosure package. The MFLNRO will then not proceed with any provincial charges that are related to fish habitat and will be available to testify for the crown as required.

Because of the possible defences and the requirement to prove that the MCFC has caused a significant HADD in this case, DFO and the MFLNRO have compiled this Investigation Summary and Explanation that discredits the possible due diligence and officially induced error defences of the MCFC and concisely states the significant impacts to fish habitat in Block 9.

Thus, this report has two main parts:

Part I: A Preliminary Impact Statement Expert Witness Report prepared by Don Lawrence.

Part II: A brief primer explanation of the Provincial Legislation and its context to the MCFC legal obligations prepared by Ian Brown.

The information of these two sources provide sufficient evidence that the works conducted by the MCFC in Block 9 constitute a significant HADD against the Fisheries Act and are not excused in any way by the Forest Range and Practices Act, or any other provincial legislation.

Part I:

Preliminary Impact Assessment
McBride Community Forest
Community Forest Agreement K1H, Cutting Permit 993,
Block 9, McKale Creek
Don Lawrence, Habitat Biologist, DFO Williams Lake

Introduction:

In late May 2012, I was asked by Monte Bromley (Fishery Officer, Clearwater) to attend a site at the mouth of McKale Creek (near McBride). He asked me to assess potential impacts to fish and fish habitat from logging that had occurred the previous winter. Monte had received a complaint from a member of the McBride community. We attended the site on May 22, 2012 and June 15, 2012. On July 4, 2012, a conference call was held with a number of DFO Habitat and C&P staff and Ian Brown of FLNRO to discuss the findings and determine "next

steps". My task (resulting from this call) was to write a brief (preliminary) report on the site condition and potential impacts to the fisheries resource.

On-Site Inspections:

May 22, 2012:

We arrived on site at approximately 1330. The weather was cloudy with intermittent sun.

A hand held Garmin GPS was used to mark waypoints (Figure 1), a Bushnell range finder was used to estimate distances, and a Canon 35mm SLR camera was used to take photos.

The truck was parked on a landing at waypoint McKale Ck Blk 1 (Figure 1) and we walked west through logging slash to the Fraser River (Mck fra ri 1). We then walked upstream to waypoint Mck Fra Ri 2 where the block boundary moved away from the Fraser River and up onto a ridge. A sub-sample of stump diameters were measured while walking upstream. At Mck Fra Ri 2 (figure 1), we turned north and walked the boundary of the block along the bank of the Fraser River to the north west corner on the south side of the mouth of McKale Creek. Monte walked along the Fraser River bank and I walked approximately 30 meters into the block (estimating distance with the range finder). As we walked this route, we counted the stumps of recently harvested trees. At the north west corner of the block (waypoint Mck Fra Bk End) we walked the riparian boundary up McKale Creek for approximately 400 meters to observe the riparian reserve. At this point, (approximately 1700 hrs), we walked back to the truck.

Observations:

The portion of CP 993 Block 9 south of McKale Creek was logged twice in recent times. Google Earth imagery date shows the first logging before 2005. The old stumps are probably 10 years plus (photo 1). The second pass occurred this last winter (photo 2).

Extensive harvesting of timber occurred within 30 meters of the Fraser River bank for approximately 1.5 km lineal distance (West boundary of Blk 9). Smaller sized coniferous (spruce, Douglas fir, Balsam fir), larger sized deciduous (birch, aspen, cottonwood) and the brush layer (willow, alder, etc) were left. This resulted in patches cleared to the bank and patches of some standing riparian vegetation (photos 3, 4, 5). The trees were harvested with a feller buncher that stayed 10 meters away from the river bank but reached to the bank to remove trees (photo 6). No flagging was observed marking this 10 meter "machine free" zone. Some larger spruce leaning over the Fraser River were left, some were felled on to the ice and removed (photos 7, 8). The largest spruce trees were

targeted. Eight trees were measured at stump height, with an average diameter of 63.6 cm. (photo 9). A total of 353 stumps were counted within 30 meters of the Fraser River Bank. It is estimated that 95% were spruce. No bark beetle evidence was observed in any of the stumps.

Harvesting occurred over 3 small ephemeral streams toward the north west corner of Block 9 (Waypoints Mck Fra Trib 1, Mck Fr Trib 2, Mck Fra Trib 3). At this time of year, all streams had good flows and access for fish. The streams are low gradient, less than a meter wide, with fine sediment or organic substrate. The streams drain high watertable type wetlands with (most likely) a high contribution of groundwater. They have clear defined channels for the last 30 to 40 meters to the Fraser River. No flagging was observed marking these channels and logging debris (branches) were observed in all (photos 9, 10, 11, 12). Tributary 2, had a skid bridge of birch logs installed in the channel (photo 13). No attempt had been made to remove the logging debris or skid bridge from these streams.

The Fraser River at this location is approximately 119 meters wide (as measured with a range finder).

The lower reach of McKale Creek (south side), appeared to be left with a healthy riparian. This riparian area was flagged with orange ribbon. Although no logging occurred next to the stream channel, the riparian appeared to be less than the 30 meters prescribed in the site plan. This however was not measured.

June 15, 2012-07-27

Monte and I returned to CP 993 Block 9 to inspect the harvested area on the north side of McKale Creek. We walked the lower portion of McKale Creek to the mouth (waypoint McKale W 1).

We also returned to the portion of CP993 Block 9 on the south side of McKale Creek to re-inspect the tributaries.

Observations:

On the north side of McKale Creek, we found no issues other than old riparian clearing for forestry and agriculture (photo 14). The riparian on the north side of McKale Creek appeared adequate. The Fraser River was bank full but not in flood (photo 15).

On the south side of McKale Creek (waypoint Mck Fra Trib 2) the tributaries had not been cleaned and newly planted trees were observed in the slash (photo 16). A large number of salmonid fry (probably Chinook salmon) were observed in the mouth of tributary 2. The number was estimated to be 30 plus but the logging debris made counting and photography difficult (photos 17, 18). No fry were

observed up in tributary 1 or 2. On the walk out, skid trails were found to be inundated with water. No attempt had been made to re-establish the natural channels (photos 19, 20, 21).

Conclusions:

There are two distinct and significant impacts to fish and fish habitat as a result of the harvesting of that portion of CP 993 Block 9 that is located south of the mouth of McKale Creek. One is the extensive harvest of large diameter conifer trees adjacent to the Fraser River. The other is the disturbance to the small ephemeral streams resulting from tree removal, skidding activity and the deposit of logging debris.

The removal of the remaining large mature coniferous over 1.5 km of Fraser River stream bank will have a significant impact on the future productivity of this site for fish and has the potential to reduce streambank stability. Some of the benefits of these trees to fish are as follows:

- The extensive root systems help hold the stream banks that in this site consist of fine textured soil. They also create "undercut" banks which are good rearing habitat.
- The tall stature of these trees allow organics (needles, small branches) to be deposited in the river to feed aquatic insects (fish food).
- The tall stature of these trees contribute large quantities of terrestrial insects (fish food) to the river.
- When these trees do eventually fall in the river, they create habitat complexity and cover for fish at the site (as trees attached to the shore) and in downstream habitats (when they drift free and form log jams).

The disturbance of the small ephemeral streams will result in the following:

- The logging debris and skid bridge will cause a blockage to fry migrating into these streams to escape mainstem high water flows (with high suspended sediment). The observation of fry at the mouth of tributary 2 indicates that juvenile fish are attempting to migrate into these streams but are blocked by logging debris fines.
- The blockages will also remove the opportunity for fry to use these systems for rearing until they reach a size and strength to migrate to larger tributaries.
- The removal of cover (trees and shrubs during harvest) will cause these streams to warm sooner in the summer. When stream temperatures exceed 18⁰ C, rearing opportunities become limited. There is a plan to recheck these streams in late August to observe flows, temperature, and fish use.
- The removal of cover will result in a loss of terrestrial insect drop (fish food) into these streams and therefore limit rearing densities.

Although there probably will be debate about the legality of the pre-harvest prescription for the block under the provincial *Forest and Range Practices Act* and the company Forest Stewardship Plan, it is my observation that consideration and protection of the fisheries resource was not a priority (or maybe the expertise) of the prescribing forester. This may have resulted from a desire to harvest the large (and valuable) trees or a lack of knowledge about the presence of the small tributary streams and the value of riparian on a large river. A prescription with consideration for the fisheries resource and the *Fisheries Act*, would have included a minimum 30 meter total reserve along the Fraser River. It would have also recognized the value of the small tributary streams by clearly marking them (so they can be seen while winter logging), by locating skid trails away from them, and by cleaning in-channel debris in the spring. In cases where forest harvesting occurs adjacent to fish habitat, the opinion of a Biologist in the pre-harvest prescription would be useful.

Photo Attachments:

- Image 1: Google Image overview Block 9 by Don Lawrence.
- Photos 1-21 Block 9 On-sites May 22, 2012 and June 15, 2012 by Don Lawrence.



Google earth

Eye alt 2.61 km

Image © 2012 Province of British Columbia
© 2012 Google

Mck Fraz Ri 2

53° 28' 51.2" N 120° 19' 9.15" W elev 712 m

imagery Date 12/31/2005 2006

5/5/2013

Mckale W 1

Mckale W 1

Mck Fra Bk End

Mck Fra Trib 3

Mck Fra Trib 2

Mck Fra Trib 1

Mck Fraz rl 1

Mckale Ck Bk 1



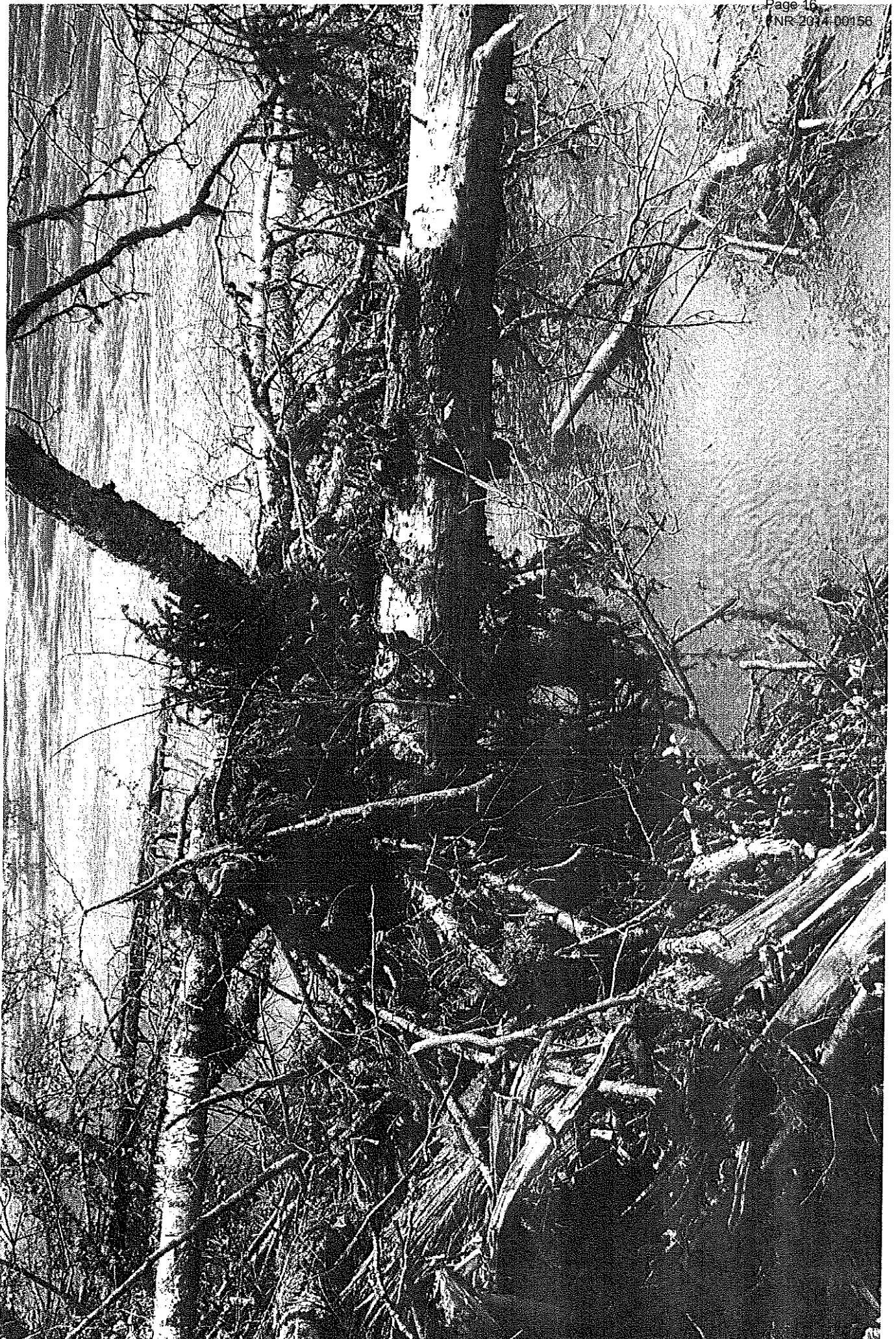


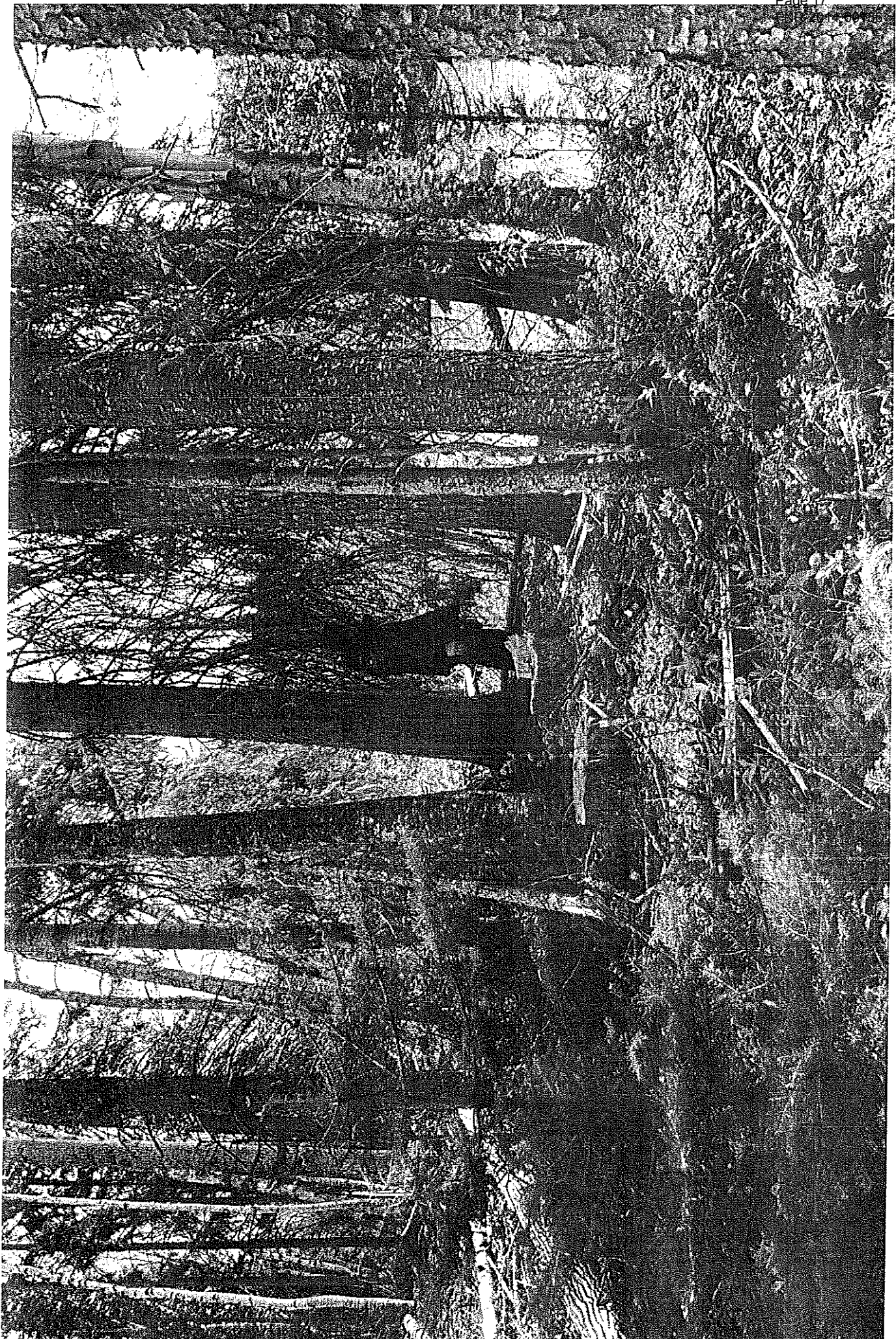


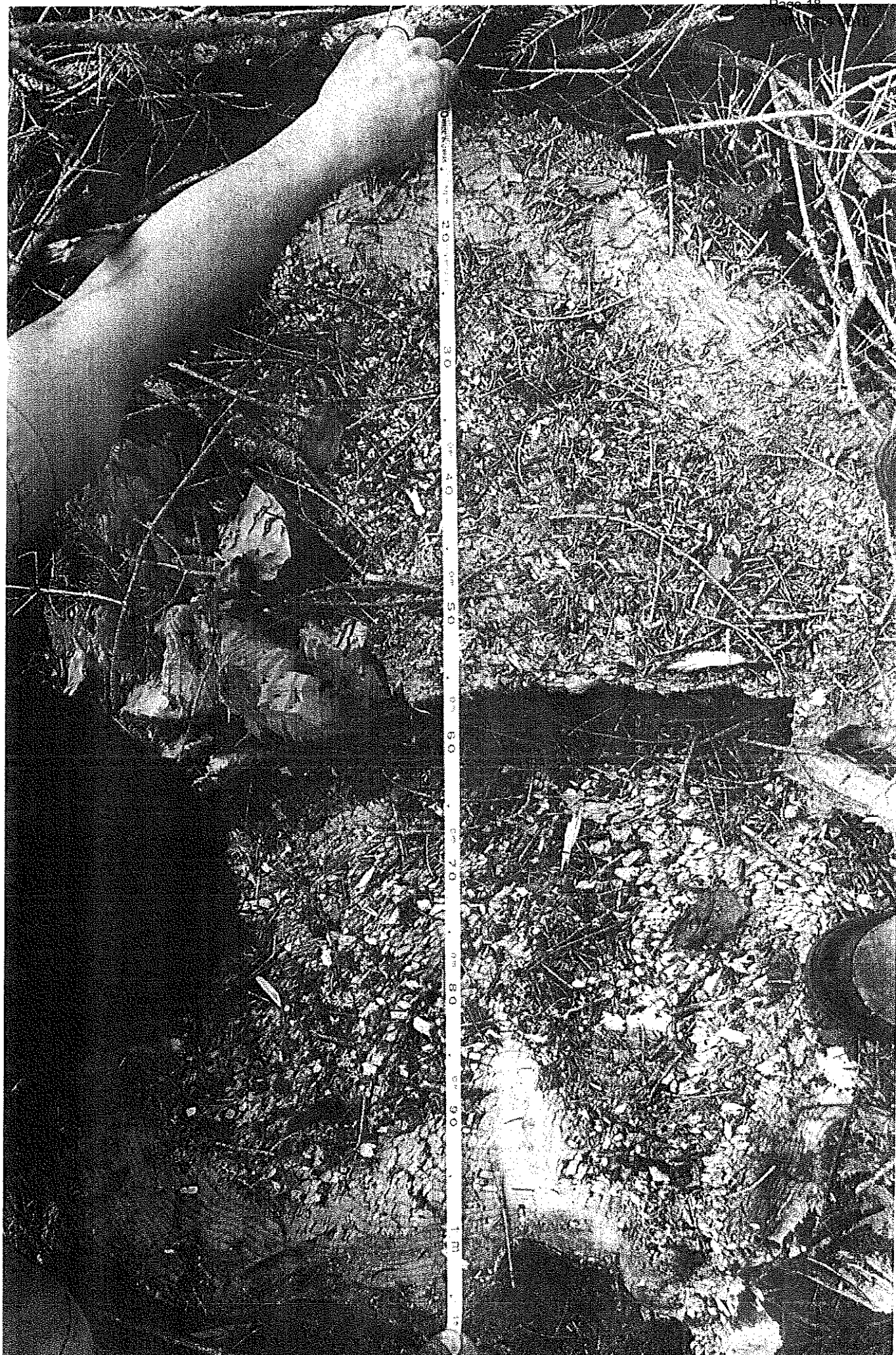












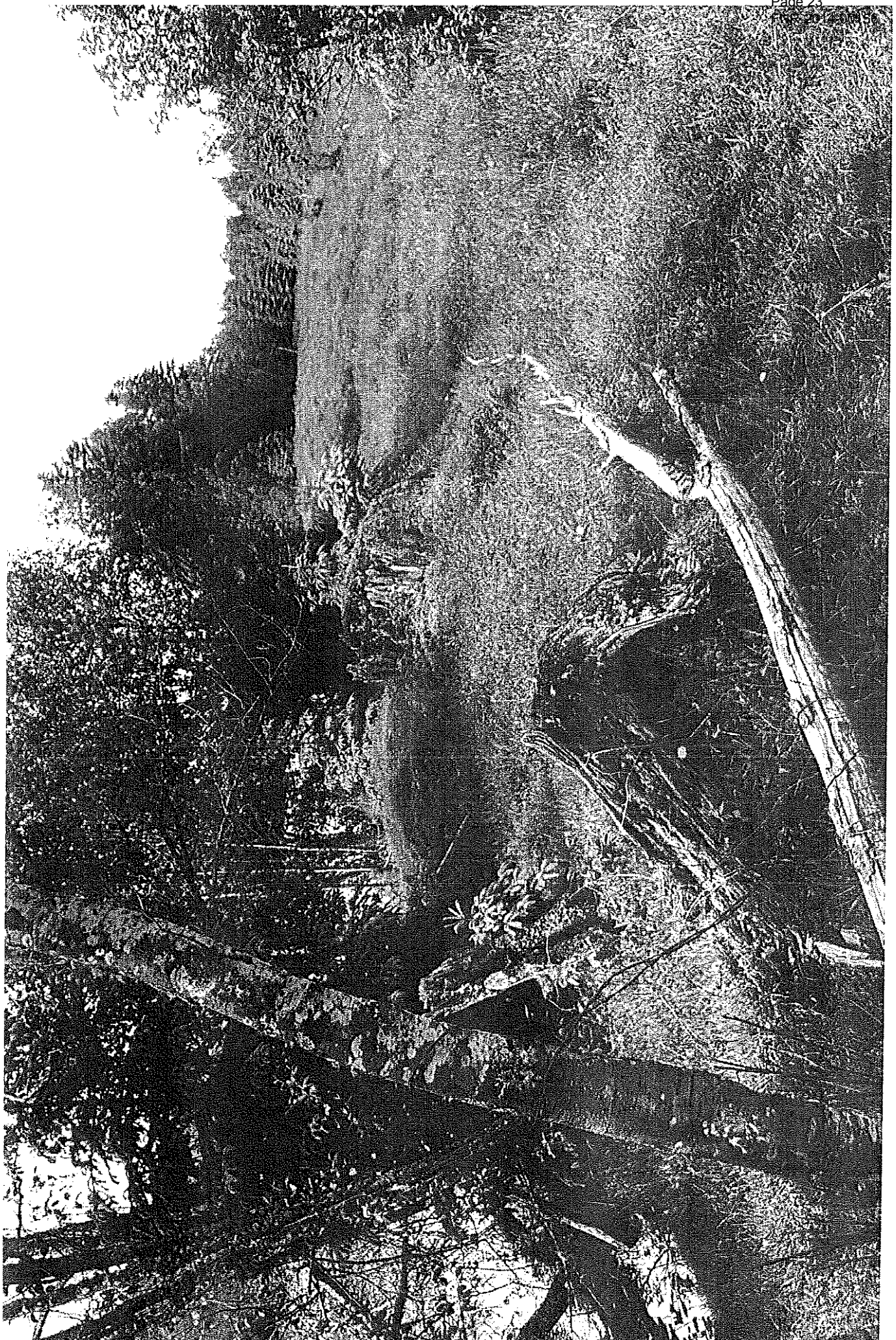


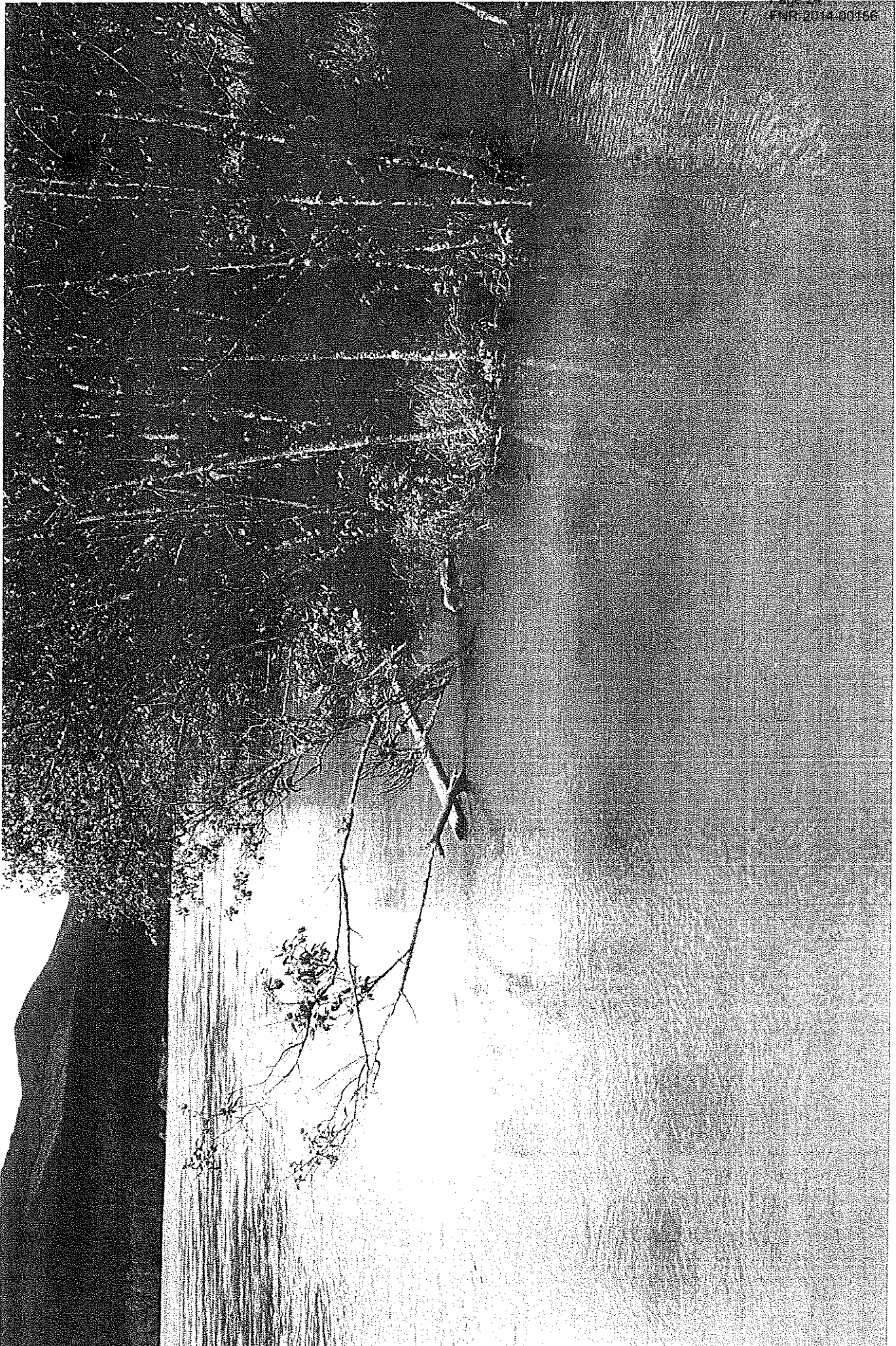




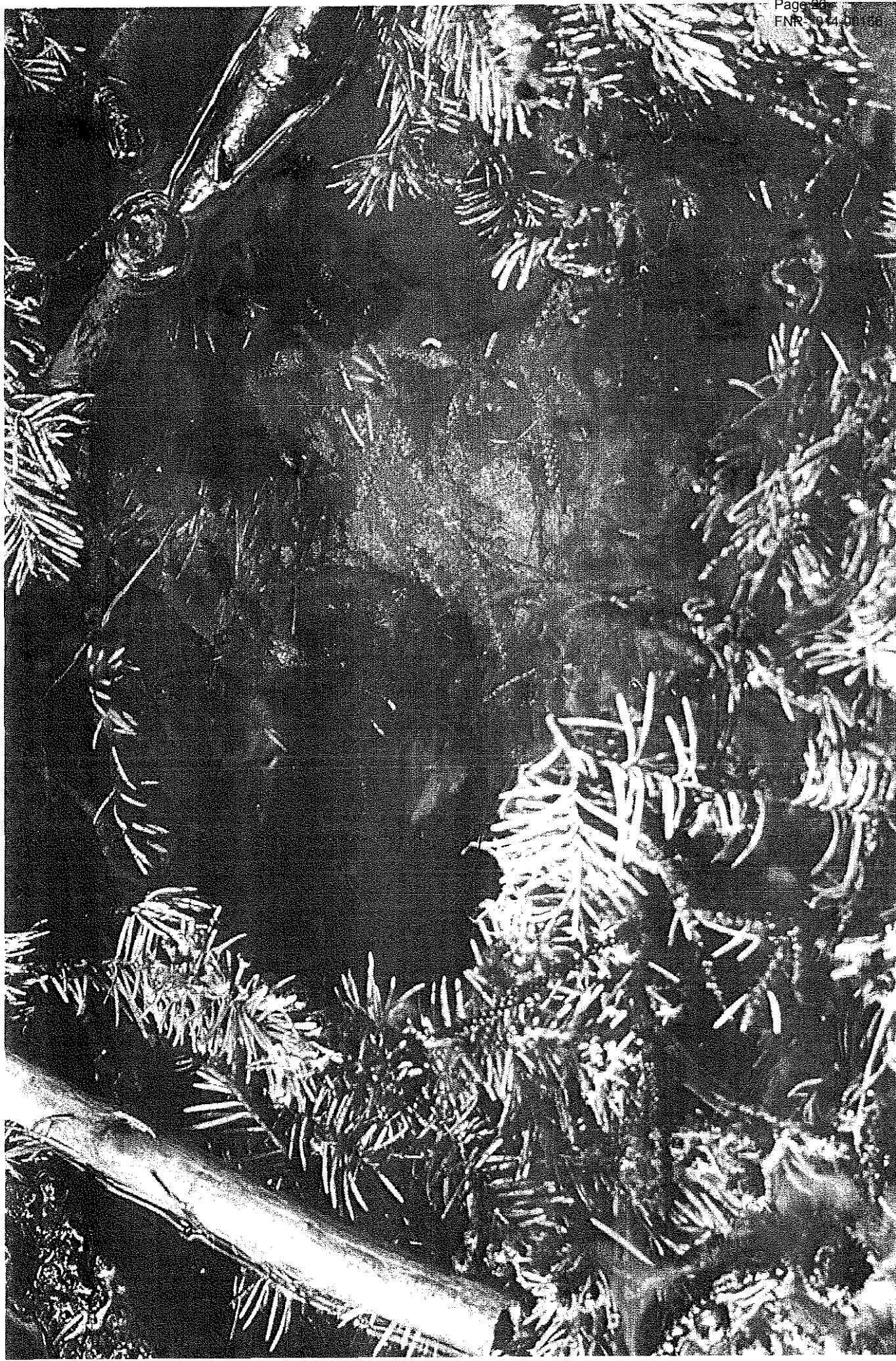


Skid Bridge



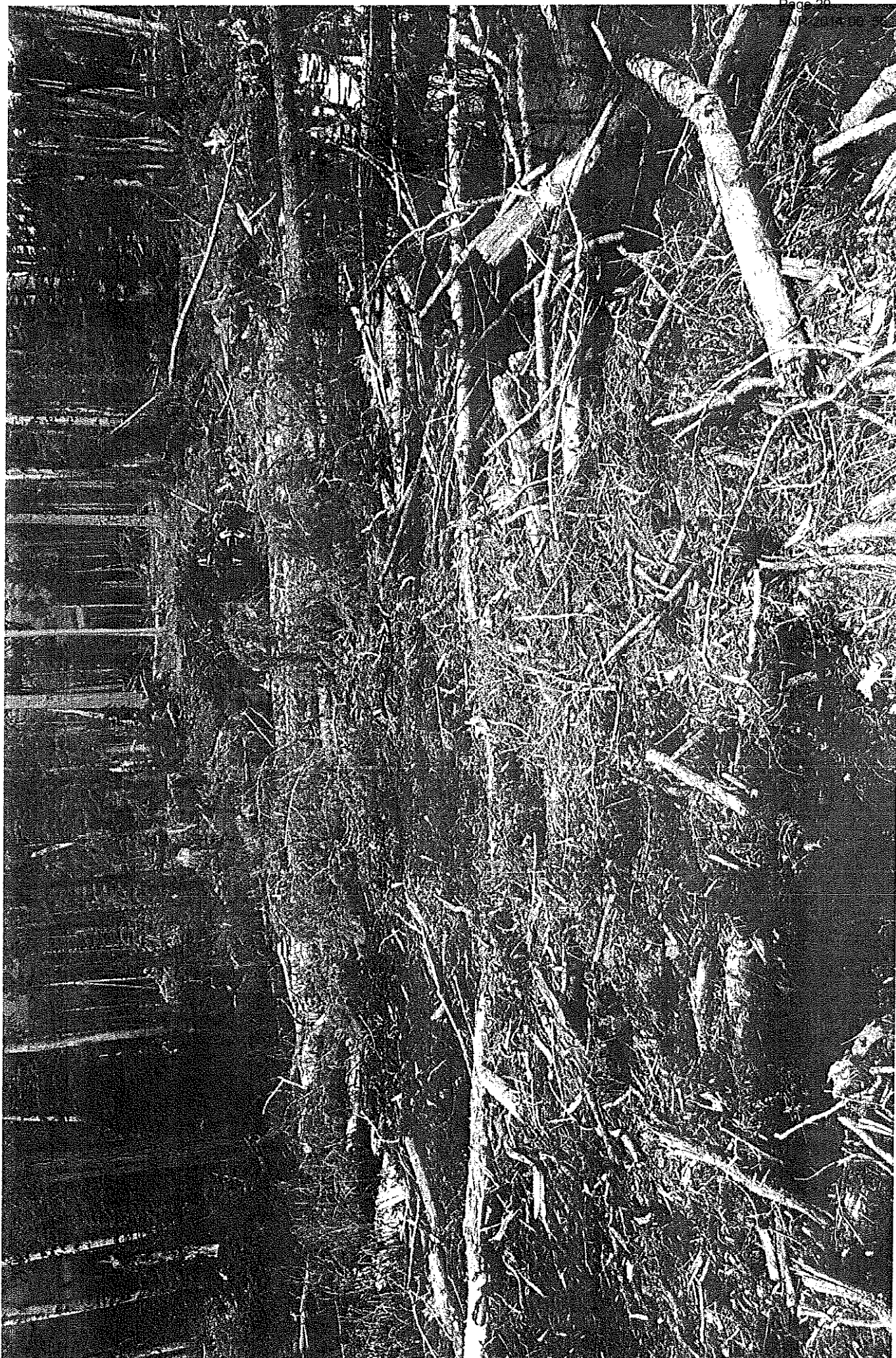


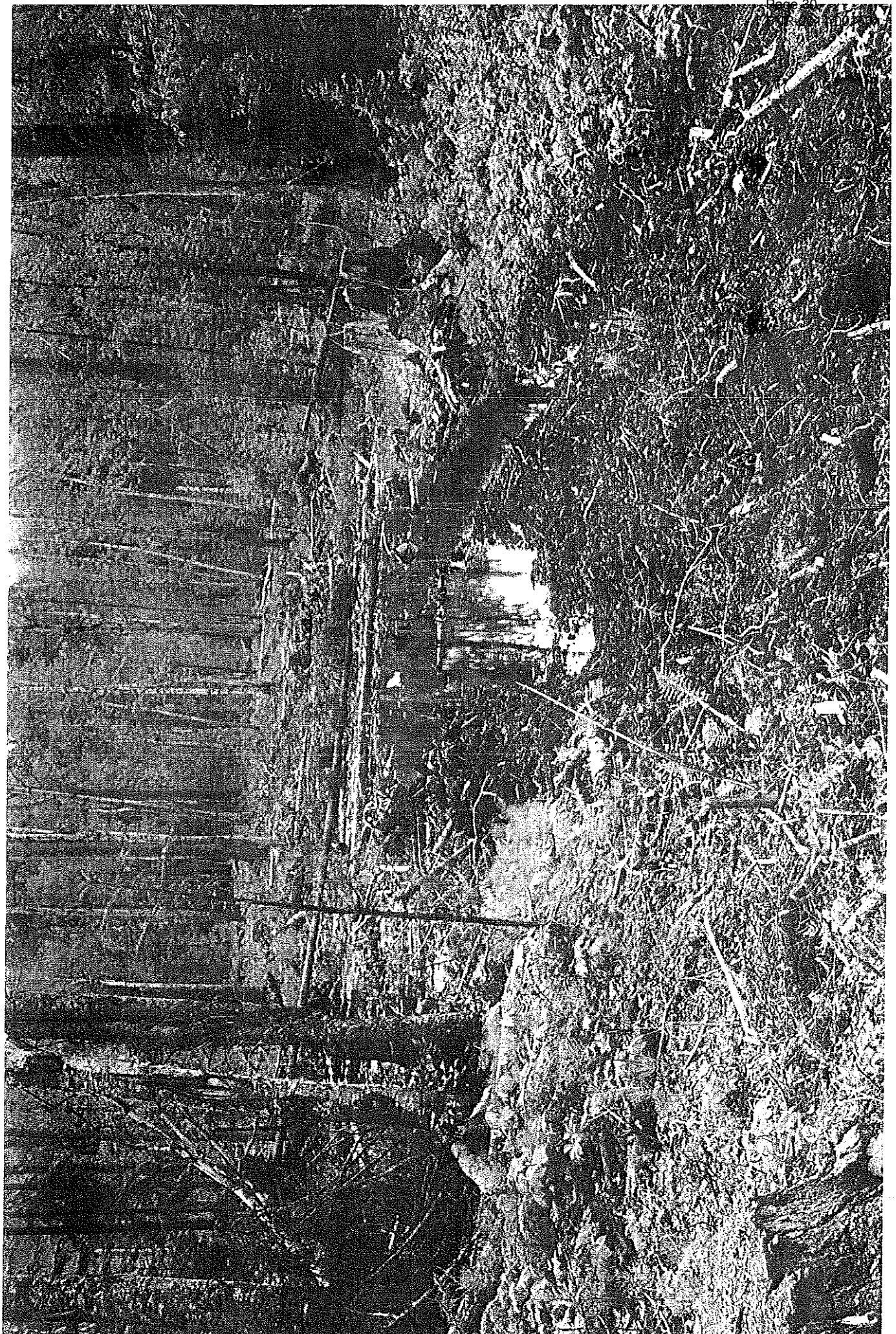












Part II:

July 19, 2012

To: Monte Bromley,

From: Ian Brown, Natural Resource Officer

Re: **Provincial Resource Legislation**

Executive Summary

An approved Forest Stewardship Plan (FSP), an issued Cutting Permit (CP), a self created Site Plan (SP) does imply implicitly or explicitly that a licensee is in compliance with provincial or federal legislation for their primary forest activities. In addition, these documents do not form any manner of approval for any activities that are contrary to any legislation.

Alleged Issue

The McBride Community Forest has allegedly damaged fish habitat within Community Forest K1H Cutting Permit 993 Block 9 along the Fraser River.

Applicable Legislation

The primary regulation that applies to riparian resource values within the FRPA framework is the Forest Planning and Practices Regulation (FPPR) sections 47 to 58 (see attached). Specifically the riparian area legislation covers:

- Section 47-49: Stream, wetland and lake riparian classes respectively.
- Section 50: Restrictions in a riparian management area.
- Section 51: Restrictions in a riparian reserve zone.
- Section 52: Restrictions in a riparian management zone.
- Section 53: Temperature sensitive streams.
- Section 54: Fan destabilization.
- Section 55: Stream crossings.
- Section 56: Fish Passage.
- Section 57: Protection of fish and fish habitat.
- Section 58: Use of livestock in riparian areas.

FRPA Planning Regime

FRPA requires, in general, requires agreement holders (including Community Forests) to prepare two (2) planning documents in order to conduct harvest operations and road construction. The main (and only enforceable) plan is the Forest Stewardship Plan. The secondary document prepared at a site level is the Site Plan (SP).

An FSP is defined as;

"A Forest Stewardship Plan (FSP) is a map-based, landscape-level plan of potential forest development activities that are intended to take place on the area described in the plan, over a period of up to five or, if extended, up to 10 years. A Forest Stewardship Plan (FSP) is the only operational plan for timber harvesting and related activities that agreement-holders (i.e., licensees, BCTS) must prepare and obtain government approval on, and it must be approved before the government can issue associated harvest authorities (e.g., cutting permits, road permits) to the agreement-holder.

As a government approved document, the FSP provides a vehicle for government to hold agreement-holders accountable for their choices on how they will harvest timber and build roads. It also provides a vehicle for agreement-holders to solicit and consider the expectations of the public and other stakeholders (e.g., First Nations) for their use of Crown land and resources."

[Administration Guide to Forest Stewardship Plans Volume 1: Preparation and Approval of an FSP – Pg 4]

The FSP does not require specific block location at the time of approval. Instead the planning unit that is used is the Forest Development Unit (FDU) which is defined within the FPPR as

"forest development unit" means an area identified in a forest stewardship plan
(a) where forest development may occur during the term of the plan, and
(b) within which, during the term of the plan, timber to be harvested or roads to be constructed are entirely located;

Therefore at the time of approval the delegated decision maker (DDM) who approves the plan is not approving specific operations in specific locations. The DDM is approving how primary forest activities will be planned and conducted to ensure appropriate resources value management during primary forest activities.

Within an FSP a licensee can opt to follow the certain sections of the regulations as written or propose an alternative that would be assessed for consistency with the objective [for riparian values it is sections 47(4) to (6), 48(3) to (5), 49(2) and (3), 50(1), 51(1) or (3), 52(2) and 53]. In the case of McBride Community Forest they decided to adhere to the legislation as written. Therefore by deciding to follow the legislation as written the licensee is still responsible for adhering to the protection of fish habitat (Section 57 FPPR) as described within the FPPR. The FSP does not have to specifically describe **how** the licensee will achieve their obligation but only **what** they must achieve.

The Site plan is a document that is prepared by a Forest Professional that shows how results and strategies, in the approved FSP, apply to the site. There is a legal requirement to prepare a site plan for all cutblocks and roads prior to the commencement of operations. In addition there are legal content requirements [Sections 10 & 11 FRPA – attached] for the site plan. But the actual commitments within the site plan are not enforceable unless they are within the FSP (as the only enforceable operational plan that is connected to a contravention within the FRPA legislation). The site plan is not submitted to the government and therefore it is not approved by the government.

Cutting Permits

Cutting permits (CP) are issued for specific harvest areas and are considered the 'harvest authority' to allow the harvest and removal of Crown timber. A CP 'will be' is issued if the District Manager is satisfied that:

- there is an FSP in place;
- cruise and appraisal data is in place;
- the CP is in a form and manner that is acceptable;
- the CP area is within the FSP area;
- the activities and operations under the CP are consistent with the license agreement, forestry legislation, higher level plans, management and operational plans.

The issuance decision is completed before any operations are conducted and therefore cannot predict or consider what actual operations may occur. The DM assumes that all management will be consistent with the FSP.

Compliance and Enforcement

Compliance and Enforcement (C&E) staff with the Ministry of Forest, Lands and Natural Resource Operations (FLNRO) had not conducted an inspection on K1H CP 993 Block 9 until a complaint had been brought forth by a member of the public. Therefore there is no confirmation of compliance with the legislation in relation to the primary forest operations on this block prior to the complaint being issued.

In regards to the inspections conducted by FLNRO C&E staff in 2012 the following has been noted:

- Retention along McKale Creek is allegedly not following provincial legislation (specifically Section 51 of the FPPR).
- The retention over the drainages DFO has concerns with appear to meet retention requirements for the FPPR but if they are considered fish habitat may be in contravention of Section 57 of the FPPR.

Enclosure(s):

Attachment(s):

pc:

Stream riparian classes

47 (1) In this section, "**active flood plain**" means the level area with alluvial soils, adjacent to streams, that is flooded by stream water on a periodic basis and is at the same elevation as areas showing evidence of

- (a) flood channels free of terrestrial vegetation,
- (b) rafted debris or fluvial sediments, recently deposited on the surface of the forest floor or suspended on trees or vegetation, or
- (c) recent scarring of trees by material moved by flood waters.

(2) A stream that is a fish stream or is located in a community watershed has the following riparian class:

- (a) S1A, if the stream averages, over a one km length, either a stream width or an active flood plain width of 100 m or greater;
- (b) S1B, if the stream width is greater than 20 m but the stream does not have a riparian class of S1A;
- (c) S2, if the stream width is not less than 5 m but not more than 20 m;
- (d) S3, if the stream width is not less than 1.5 m but is less than 5 m;
- (e) S4, if the stream width is less than 1.5 m.

(3) A stream that is not a fish stream and is located outside of a community watershed has the following riparian class:

- (a) S5, if the stream width is greater than 3 m;
- (b) S6, if the stream width is 3 m or less.

(4) Subject to subsections (5) and (6), for each riparian class of stream, the minimum riparian management area width, riparian reserve zone width and riparian management zone width, on each side of the stream, are as follows:

Riparian Class	Riparian Management Area (metres)	Riparian Reserve Zone (metres)	Riparian Management Zone (metres)
S1-A	100	0	100
S1-B	70	50	20
S2	50	30	20
S3	40	20	20
S4	30	0	30
S5	30	0	30
S6	20	0	20

(5) If the width of the active flood plain of a stream exceeds the specified width for the riparian management zone, the width of the riparian management zone extends to the outer edge of the active flood plain.

(6) The minister may specify a riparian reserve zone for a stream with a riparian class of S1-A if the minister considers that a riparian reserve zone is required.

(7) The riparian reserve zone for a stream begins at the edge of the stream channel bank and extends to the width described in subsection (4) or (6).

(8) The riparian management zone for a stream begins at

- (a) the outer edge of the riparian reserve zone, or
- (b) if there is no riparian reserve zone, the edge of the stream channel bank,

and extends to the width described in subsection (4) or (5).
[am. B.C. Reg. 580/2004, s. 36.]

Wetland riparian classes

48 (1) Wetlands have the following riparian classes:

- (a) W1, if the wetland is greater than 5 ha in size;
- (b) W2, if the wetland is not less than 1 ha and not more than 5 ha in size and is in one of the following biogeoclimatic zones or subzones:
 - (i) Ponderosa Pine;

- (ii) Bunch Grass;
- (iii) Interior Douglas-fir, very dry hot, very dry warm or very dry mild;
- (iv) Coastal Douglas-fir;
- (v) Coastal Western Hemlock, very dry maritime, dry maritime or dry sub-maritime;
- (c) W3, if the wetland is not less than 1 ha and not more than 5 ha in size and is in a biogeoclimatic zone or subzone other than one referred to in paragraph (b);
- (d) W4, if the wetland is
 - (i) not less than 0.25 ha and less than 1 ha in size and is in a biogeoclimatic zone or subzone referred to in paragraph (b) (i), (ii) or (iii), or
 - (ii) not less than 0.5 ha and less than 1 ha in size and is in a biogeoclimatic zone or subzone referred to in paragraph (b) (iv) or (v).

(2) Despite subsection (1), an area is to be treated as a single wetland with a riparian class of W5 if

- (a) the area contains
 - (i) two or more W1 wetlands located within 100 m of each other,
 - (ii) a W1 wetland and one or more non-W1 wetlands, all of which are within 80 m of each other, or
 - (iii) two or more non-W1 wetlands located within 60 m of each other, and
- (b) the combined size of the wetlands, excluding the upland areas, is 5 ha or larger.

(3) Subject to subsections (4) and (5), for each riparian class of wetland, the minimum riparian management area width, riparian reserve zone width and riparian management zone width for the wetland are as follows:

Riparian Class	Riparian Management Area (metres)	Riparian Reserve Zone (metres)	Riparian Management Zone (metres)
W1	50	10	40
W2	30	10	20
W3	30	0	30
W4	30	0	30
W5	50	10	40

(4) No riparian reserve zone or riparian management zone extends onto any enclosed upland areas in a W1 wetland if the wetland is

- (a) located in a boreal, subboreal or hyper-maritime climate, and
- (b) greater than 1 000 ha in size.

(5) If the minister considers it necessary for a riparian reserve zone or riparian management zone to extend onto an enclosed upland area, the minister may require either or both of the following:

- (a) a riparian reserve zone of a width of 10 m or less;
- (b) a riparian management zone of a width of 40 m or less.

(6) The riparian reserve zone for a wetland begins at the edge of the wetland and extends to the width described in subsection (3) or (5).

- (7) The riparian management zone for a wetland begins at
 (a) the outer edge of the riparian reserve zone, or
 (b) if there is no riparian reserve zone, the edge of the wetland,
 and extends to the width described in subsection (3) or (5).
 [am. B.C. Regs. 580/2004, s. 37; 62/2005, s. 7.]

Lake riparian classes

49 (1) Lakes have the following riparian classes:

- (a) L1-A, if the lake is 1 000 ha or greater in size;
 (b) L1-B, if
 (i) the lake is greater than 5 ha but less than 1 000 ha in size, or
 (ii) the minister designates the lake as L1-B;
 (c) L2, if the lake is not less than 1 ha and not more than 5 ha in size and is located in a biogeoclimatic zones or subzone that is
 (i) Ponderosa Pine,
 (ii) Bunch Grass,
 (iii) Interior Douglas-fir, very dry hot, very dry warm or very dry mild,
 (iv) Coastal Douglas-fir, or
 (v) Coastal Western Hemlock, very dry maritime, dry maritime or dry sub-maritime;
 (d) L3, if the lake is not less than 1 ha and not more than 5 ha in size and is in a biogeoclimatic zone or subzone other than one referred to in paragraph (c);
 (e) L4, if the lake is
 (i) not less than 0.25 ha and not more than 1 ha in size and is in a biogeoclimatic zone or subzone referred to in paragraph (c) (i), (ii) or (iii), or
 (ii) not less than 0.5 ha and not more than 1 ha in size and is in a biogeoclimatic zone or subzone referred to in paragraph (c) (iv) or (v).

(2) Subject to subsection (3), for each riparian class of lake, the minimum riparian management area width, riparian reserve zone width and riparian management zone width are as follows:

Riparian Class	Riparian Management Area (metres)	Riparian Reserve Zone (metres)	Riparian Management Zone (metres)
L1-A	0	0	0
L1-B	10	10	0
L2	30	10	20
L3	30	0	30
L4	30	0	30

(3) If the minister considers it necessary, the minister may specify a riparian management area and a riparian reserve zone for a lake with a riparian class of L1-A.

(4) The riparian reserve zone for a lake begins at the edge of the lake and extends to the width described in subsection (2) or (3).

(5) The riparian management zone for a lake begins at
 (a) the outer edge of the riparian reserve zone, or

- (b) if there is no riparian reserve zone, the edge of the lake, and extends to the width described in subsection (2) or (3).
[am. B.C. Regs. 580/2004, s. 38; 62/2005, s. 8.]

Restrictions in a riparian management area

- 50 (1) A person must not construct a road in a riparian management area, unless one of the following applies:
 - (a) locating the road outside the riparian management area would create a higher risk of sediment delivery to the stream, wetland or lake to which the riparian management area applies;
 - (b) there is no other practicable option for locating the road;
 - (c) the road is required as part of a stream crossing.
- (2) If a road is constructed within a riparian management area, a person must not carry out road maintenance activities beyond the clearing width of the road, except as necessary to maintain a stream crossing.
- (3) A person who is authorized in respect of a road must not remove gravel or other fill from within a riparian management area in the process of constructing, maintaining or deactivating a road, unless
 - (a) the gravel or fill is within a road prism,
 - (b) the gravel or fill is at a stream crossing, or
 - (c) there is no other practicable option.[am. B.C. Reg. 62/2005, s. 9.]

Restrictions in a riparian reserve zone

- 51 (1) An agreement holder must not cut, modify or remove trees in a riparian reserve zone, except for the following purposes:
 - (a) felling or modifying a tree that is a safety hazard, if there is no other practicable option for addressing the safety hazard;
 - (b) topping or pruning a tree that is not wind firm;
 - (c) constructing a stream crossing;
 - (d) creating a corridor for full suspension yarding;
 - (e) creating guyline tiebacks;
 - (f) carrying out a sanitation treatment;
 - (g) felling or modifying a tree that has been windthrown or has been damaged by fire, insects, disease or other causes, if the felling or modifying will not have a material adverse impact on the riparian reserve zone;
 - (h) felling or modifying a tree under an occupant licence to cut, master licence to cut or free use permit issued in respect of an area that is subject to a licence, permit, or other form of tenure issued under the *Land Act*, *Coal Act*, *Geothermal Resources Act*, *Mines Act*, *Mineral Tenure Act*, *Mining Right of Way Act*, *Ministry of Lands, Parks and Housing Act* or *Petroleum and Natural Gas Act*, if the felling or modification is for a purpose expressly authorized under that licence, permit or tenure;
 - (i) felling or modifying a tree for the purpose of establishing or maintaining an interpretive forest site, recreation site, recreation facility or recreation trail.
- (2) An agreement holder who fells, tops, prunes or modifies a tree under subsection (1) may remove the tree only if the removal will not have a material adverse effect on the riparian reserve zone.
- (3) An agreement holder must not carry out the following silviculture treatments in a riparian reserve zone:
 - (a) grazing or broadcast herbicide applications for the purpose of brushing;

- (b) mechanized site preparation or broadcast burning for the purpose of site preparation;
 - (c) spacing or thinning.
- [am. B.C. Regs. 62/2005, s. 10; 151/2007, s. 2 (c); 269/2010, s. 7.]

Restrictions in a riparian management zone

- 52 (1) A holder of a minor tenure who fells trees in a cutblock within a riparian management zone of a class described in Column 1 must ensure that
- (a) the percentage of the total basal area within the riparian management zone specified in Column 2 is left as standing trees, and
 - (b) the standing trees are reasonably representative of the physical structure of the riparian management zone, as it was before harvesting:

Column 1 Riparian Class	Column 2
	Basal Area to be Retained Within Riparian Management Zone (%)
S1-A or S1-B stream	≥20
S2 stream	≥20
S3 stream	≥20
S4 stream	≥10
S5 stream	≥10
S6 stream	Not applicable
All classes of wetlands or lakes	≥10

- (2) An authorized person who cuts, modifies or removes trees in a riparian management zone for an S4, S5 or S6 stream that has trees that contribute significantly to the maintenance of stream bank or channel stability must retain enough trees adjacent to the stream to maintain the stream bank or channel stability, if the stream

- (a) is a direct tributary to an S1, S2 or S3 stream,
- (b) flows directly into the ocean, at a point near to or where one or more of the following is located:
 - (i) a herring spawning area;
 - (ii) a shellfish bed;
 - (iii) a saltwater marsh area;
 - (iv) an aquaculture site;
 - (v) a juvenile salmonid rearing area or an adult salmon holding area, or
- (c) flows directly into the ocean at a point near to the location of an area referred to in paragraph (b) and failure to maintain stream bank or channel stability will have a material adverse impact on that area.

[am. B.C. Reg. 580/2004, s. 39.]

Temperature sensitive streams

- 53 An authorized person who fells, modifies or removes trees in a riparian management area adjacent to a temperature sensitive stream, or a stream that is a direct tributary to a temperature sensitive stream, must retain either or both of the following in an amount sufficient to prevent the temperature of the temperature sensitive stream from increasing to an extent that would have a material adverse impact on fish:

- (a) streamside trees whose crowns provide shade to the stream;
- (b) understory vegetation that provides shade to the stream.

[en. B.C. Reg. 580/2004, s. 40.]

Fan destabilization

- 54 An authorized person who carries out a primary forest activity on the Coast must ensure that the primary forest activity does not cause fan destabilization that has a material adverse effect in relation to one or more of the subjects listed in section 149 (1) of the Act.

[en. B.C. Reg. 580/2004, s. 40.]

Stream crossings

- 55 (1) An authorized person who builds a stream crossing as part of a road, a temporary access structure or permanent access structure must locate, build and use the crossing in a manner that
- (a) protects the stream channel and stream bank immediately above and below the stream crossing, and
 - (b) mitigates disturbance to the stream channel and stream bank at the crossing.

(2) An authorized person who builds a stream crossing as part of a temporary access structure must remove the crossing when it is no longer required by the person.

[en. B.C. Reg. 580/2004, s. 40; am. B.C. Reg. 102/2005, s. 2.]

Fish passage

- 56 (1) An authorized person who carries out a primary forest activity must ensure that the primary forest activity does not have a material adverse effect on fish passage in a fish stream.

(2) An authorized person who maintains a fish stream crossing built after June 15, 1995, must ensure that the crossing does not have a material adverse effect on fish passage.

(3) Despite subsections (1) and (2), an authorized person may temporarily allow a material adverse effect on fish passage to construct, maintain or deactivate a road, including a stream crossing, if

- (a) fish are not migrating or spawning, and
- (b) the source of the material adverse effect is removed immediately on completion of the construction, maintenance or deactivation.

[en. B.C. Reg. 580/2004, s. 40.]

Protection of fish and fish habitat

- 57 An authorized person who carries out a primary forest activity must conduct the primary forest activity at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat.

[en. B.C. Reg. 580/2004, s. 40.]

Use of livestock in riparian areas

- 58 An agreement holder who uses livestock for site preparation or brush control for the purpose of carrying out a silviculture treatment must not

- (a) construct a livestock corral
 - (i) in a riparian management area,
 - (ii) on an area that drains directly into a fish stream or a fish-bearing wetland or lake, or
 - (iii) on an area in a community watershed that drains directly into a potable water source, or
- (b) use the livestock in a riparian management area that is in a community watershed.

[en. B.C. Reg. 580/2004, s. 40.]

Site plans for cutblocks and roads

- 10 (1) Except in prescribed circumstances, the holder of a forest stewardship plan must prepare a site plan in accordance with prescribed requirements for any
- (a) cutblock before the start of timber harvesting on the cutblock, and
 - (b) road before the start of timber harvesting related to the road's construction.
- (2) A site plan must
- (a) identify the approximate locations of cutblocks and roads,
 - (b) be consistent with the forest stewardship plan, this Act and the regulations, and
 - (c) identify how the intended results or strategies described in the forest stewardship plan apply to the site.
- (3) A site plan may apply to one or more cutblocks and roads whether within the area of one or more forest stewardship plans.

Site plan available to public

- 11 A holder of a site plan must make it publicly available on request at any reasonable time at the hol

Conclusion

In conclusion, DFO maintains that the McBride Community Forest Corporation has caused a significant HADD contrary to section 35(1) of the Fisheries Act in Block 9 of K1H993 and in the opinion of Don Lawrence in Part I he states that "*...consideration and protection of the fisheries resource was not a priority (or maybe the expertise) of the prescribing forester*". The report by Ian Brown in Part II of this document further explains that although the MCFC were in general compliance with the tree retention requirements within the FRPA, they may not be in compliance with fish habitat provisions of the Forest Planning and Practices Regulations (FPPR). Ian Brown further explains in his report that though the government requires Forest Stewardship Plans, Site Plans, and cutting permits by the Licencee, the government in this case, is not responsible nor ever did approve of any works by the Licencee (MCFC) that would be contrary to the habitat provisions of the FPPR and thus the information provided in Parts I & II of this document discredit potential due diligence or officially induced error defences by the MCFC.

Therefore, it is the request of DFO and the MFLNRO that the Crown grant charge approval for charges under Sec 35(1) of the Fisheries Act against the MCFC.

Sincerely,

Monte
Bromley

Digitally signed by Monte Bromley
DN: cn=Monte Bromley, o=DFO,
ou=DFO,
email=monte.bromley@dfo-mpo-
gc.ca, c=CA
Date: 2012.07.28 17:10:23 -07'00'

Monte Bromley
Fishery Officer, Clearwater Field Office.

Date

August 13, 2012 13:45h

Clare Vincent from Forest Practices Board called me to discuss the full scale compliance audit occurring on Caledon and McBride Community Forests. During the conversations I passed along the following information:

- We have 5 active investigations at this time with the McBride campfire involving CMAA riparian issues and a landslide. I stated I would provide an email with some high level information so that we don't inappropriately cross any boundaries.
- We have not had it reported (complaint given) issues on the Caledon campfire and we have encountered on the McBride campfire but would be interested if issues were found.
- Our dealing with McBride campfire has been professional but information flow does not appear to be as good as we hoped (specifically unsure if they wish to be interviewed).
- In response to question regarding other closed investigations I stated there were other incidents but no determinations were brought forward but was unaware of details as we only took the district over in 2010.
- I stated we had heard one case regarding reporting but were awaiting a decision.
- When asked if there was anyone else the Board should talk to I suggested Phil Marsh (CMAA)

Date

(the Munger brothers)

Not Responsive

Brown, Ian J FLNR:EX

From: Vincent, Clare FPB:EX
Sent: Thursday, September 13, 2012 7:14 PM
To: Brown, Ian J FLNR:EX
Cc: Banham, Dave FLNR:EX; Mosher, Chris FPB:EX
Subject: Re: FPB Audit in your area

Thanks for this, Ian, and for our phone conversation this afternoon.
Regards,
Clare Vincent

From: Brown, Ian J FLNR:EX
Sent: Thursday, September 13, 2012 02:30 PM
To: Vincent, Clare FPB:EX
Cc: Banham, Dave FLNR:EX
Subject: RE: FPB Audit in your area

Clare, as per our phone conversation (13:45h September 13th, 2012) here is the general information regarding the investigations that are currently ongoing related to the McBride Community Forest operations:

- s.15
- CP 993 Block 5: alleged OGMA logging.
- CP 991 Block 24: alleged OGMA logging and alleged riparian issues.
- s.15
- s.15
- s.15

We are still reviewing operations at this time and there may be further issues.

Ian Brown
Compliance & Enforcement Supervisor

From: Vincent, Clare FPB:EX
Sent: Thursday, September 13, 2012 1:28 PM
To: Brown, Ian J FLNR:EX
Cc: Banham, Dave FLNR:EX
Subject: RE: FPB Audit in your area

I'll call you in a few minutes, it that's all right. Next option is Wednesday 19th between 8-9 am.

Clare Vincent, R.P.F., M.Sc.
Manager, Audits and Investigations
Forest Practices Board
phone: 250.213.4721
cell: 250.213.3561

From: Brown, Ian J FLNR:EX
Sent: September-13-12 12:55 PM
To: Vincent, Clare FPB:EX

From: Mosher, Chris FPB:EX
Sent: Monday, August 27, 2012 1:55 PM
To: Huybers, John FLNR:EX; Banham, Dave FLNR:EX
Cc: Vincent, Clare FPB:EX
Subject: Re: FPB Audit in your area

Hello John and Dave,

The attachment is to give you a heads up that the Board will be conducting an audit of two community forest licences within the Prince George district – McBride Community Forest Corporation and the Valemount Community Forest Company Ltd., with the field work beginning on September 24, 2012.

The audit team, led by Clare Vincent, may be calling on your office for some information assistance relating to this audit.

Please call if you have any questions.

Thanks,

Christopher R. Mosher, CA, EP(EMSLA)

Director, Audits

Forest Practices Board

1675 Douglas Street, Victoria, BC

Phone: 250-213-4703 Fax: 250-213-4725

Toll Free: 1-800-994-5899

Email: Chris.Mosher@gov.bc.ca

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