

November 2, 2009

9308 106 Ave
Fort St John BC
V1J 2N4

Mr. Fred Banham
Chief Administrative Officer
Peace River Regional District
Box 810
Dawson Creek BC V1G 4H8

Re: Removal of land from Moberly Lake Provincial Park

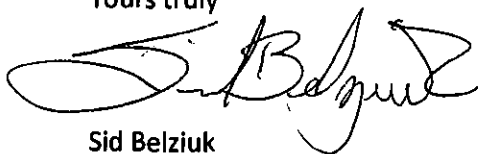
Thank you for an opportunity to make a presentation to the Regional District Board on November 12, 2009. The purpose of my appearance is to request a letter of support from the Regional District to remove a very small portion of land from Moberly Lake Provincial Park. This is one of the requirements stipulated by BC Parks in a very long process.

I have attached some background material on this matter which will explain the reason why I am appearing before the Board. Along with myself will be Andy Ackerman, Myriad Consulting Inc., 11720-89 A St, Fort St John BC, V1J 6R6.

If you require any further information, please contact myself at 250-785-8544 or Andy Ackerman at 250-787-8457.

Thank you.

Yours truly

A handwritten signature in black ink, appearing to read "Sid Belziuk". The signature is stylized with a large, sweeping initial "S" and a long, horizontal flourish extending to the left.

Sid Belziuk

Nov 12 2009

Presentation to Peace River Regional District- November 12, 2009

A Proposal to Remove Land from Moberly Lake Provincial Park

Background

In 1958, eight lots were granted title by the Province of British Columbia to a number of individuals. Included in this allocation was Lot 2010 which was allocated to Roy Burmaster. In 1980, this lot was transferred to Stuart and Mary Chantree. In 2006, the lot was transferred to Sid and Marla Belziuk, the current owners .

In 1981, BC Hydro signed a covenant with the Chantrees for a statutory right of way through their land for the purpose of providing power to the lot. This covenant was transferred with the sale to the Belziuk's in 2006.

When the original lots were established, there was an old road that passed through seven of the eight lots but not including Lot 2010. However, it was very close to Lot 2010. Access for 2010 was through a neighborly agreement with the owners of Lots 2011 and 2011 and this agreement remains in effect as of the writing of this proposal. It was this old road that provided access for the individuals owning the lots.

On May 31, 1966, Moberly Lake Park received its designation. The only exclusion mentioned in the description of the Park boundaries was a 30 metre right of way for the South Moberly Road No. 30, a section 4 Highway Act road. There was no mention of the old road in the description of the Park so this meant that the portions of the old road that ran through the lots became the property of the lot owners. In discussion with one of the original lot owners (Mr. Bob Trail), there was no consultation with them when the Park was proposed and they learned of the creation of the Park when access to the old road was blocked by a pile of gravel by BC Parks immediately adjacent to where the now campground road entrance exists.

Over the subsequent years, owners of Lots 1938 (two adjoining lots combined), 2007, 2008 and 2009 have built small road accesses to the now main road to an eastern exit point adjoining Lot 2012. It was thought that access from Lots 1938, 2007, 2008 and 2009 to the main road might be legal as the highway right of way would be close enough from their lots to include their access roads. Mr. Belziuk measured the distances from these lots to the highway and found them to exceed the 30 metre right of way. For instance, the distance from Lot 2010 to the main highway is 356 feet or 90 metres. This is the furthest point of access from the end of the lots to

the main highway. In most cases, it is a very short distance from the end of the right of way to the edge of the lots.

The original land grants included a clause that stipulated that the Crown “assumes no obligation whatsoever to provide access to said land”. BC Parks has interpreted that to state that the Crown is under no obligation to grant access. But an interpretation of this clause by a former employee of BC Lands was that this meant that the Crown did not have to build or construct access to the lot. It did not mean that the government would not allow access, only that they would not build it. Of additional interest in Mr. Belziuk’s case was that the original documents only had the initial of the government employee and not Mr. Burmaster against this particular clause. This particular clause was not carried over to subsequent transfer or title documents and is not present on Mr. Belziuk’s title document.

In 2007, Sid Belziuk, having concern that the access agreement with his neighbors was not supported by a legal easement through their properties and by construction on their properties of new roads and buildings that might block future access to him, considered how he could create an access for himself. He obtained a map from a local surveyor and showed it to Area Supervisor of Parks who was very surprised to find that park land existed at the point of possible construction of an access to Mr. Belziuk’s property. Parks staff suggested that Mr. Belziuk apply for a Park Use Permit for his road. Mr. Belziuk chose to ask permission from BC Hydro to use their right of way through the park land for his new road and received permission from Hydro to do so. He then had some preliminary discussions with a local contractor that included showing the contractor where the Hydro right of way was and the property pin on the east side. There was no instruction to build any road but an agreement was made to meet later on site to finalize the arrangements. Subsequent to that meeting, the contractor independently cleared an access outside the Hydro right of way without permission from Mr. Belziuk. At the same time, the lot owner of 2009, upset with this intrusion, complained to Mr. Belziuk that the new access was through Provincial Park. Mr. Belziuk subsequently went to BC Parks staff to notify them of what happened. They were surprised to learn that the park boundary included the land adjacent to the lots. BC Parks issued Mr. Belziuk a ticket for \$115 and ordered him to restore the road to its original condition. Mr. Belziuk, believing that it was the right thing to do, paid the ticket and restored the road.

Further discussions with BC Parks resulted in them conducting a survey in 2009 of the Park boundary adjacent to the lots. Information provided by BC Parks to Mr. Belziuk indicated that all of the access roads from the lots except on the east side of Lot 2012 were in trespass of the Park. This included the original old road leading from the west side of Block A of Lot 1938 which ends immediately next to the campground access road. So Mr. Belziuk’s dilemma has spread to most of the other lot owners. Of further interest is that BC Hydro constructed a hydro line and right of way to Lot 2010 in 1981 without permission from BC Parks and nothing was done about that.

Current Situation

BC Parks has advised that the only permanent solutions to this situation for Mr. Belziuk are for him to either accept that he cannot have access through Crown land to his lot or have park status removed from the adjacent Crown land. Discussions with the Integrated Land Management Bureau has indicated that once the land is removed from park status, there would be no issues with having a legal status put over the land required for a road to Lot 2010. This would have to happen as well to those lots who currently have access to the main highway through park land.

Mr. Belziuk also researched the possibility of having a permit issued under the Park Act. The Act stipulates that a permit cannot be issued in a Park of 2023 ha or less and this applies to Moberly Lake Provincial Park. So there appears to be no other option but to propose removing the land adjacent to the lots so that legal access can be created.

Consultation was also conducted with the other lot owners. They were contacted personally by Myriad Consulting and they have agreed that this is a situation that needs resolving. Such things as property values could be impacted if future buyers are made aware that current access is in trespass of the park.

Meeting BC Parks Requirements

Mr. Belziuk has been told by BC Parks that there are a number of requirements that need to be fulfilled before they would consider removing the land from park status, namely:

1. Explore alternate options to provide reasonable access to the property and in particular, look at obtaining an agreement with the Lot owners of 2011 and 2012 that would create a legal easement for Mr. Belizuk through their properties. Although this temporary arrangement has been working, one of the lot owners has started to develop their lot and in particular is building a permanent structure that may cause the use of the roadway onto Mr. Belziuk's lot to be cut off. As well, any type of easement agreement would restrict the use of both lots and perhaps impact on possible re-sale value.
2. Conduct an environment impact of removing the land from the park. This is to include a high level review of the forest types that would be impacted by the proposed disturbance, the probability of affecting any species at risk, and the total area (ha) affected by the disturbance. This is to also include any proposals for mitigating identified adverse environmental effects. BC Parks conducted inventory of all forest types, species, etc. previous to 2007 and it is felt that Mr. Belziuk should not be required to duplicate this work which was conducted with taxpayer money. As well, the area that we are talking about is so small that it would be a waste of money to have to conduct such a survey. For the most part, the access roads have already been in place for many years.

This also includes the BC Hydro right of way to Mr. Belziuk's property and the road that was temporarily constructed in 2007.

3. Consult with local communities including a record of discussions with the Districts of Chetwynd and Hudson's Hope and the PRRD including evidence of their official views on the proposed boundary change. This is to take place on November 12, 2009 at the PRRD board at which the Mayors or Councilors of Chetwynd and Hudson's Hope will be in attendance. As well, the other Directors of the PRRD or alternates will be in attendance.
4. Need to include information respecting the economic or other benefits of this proposal to the Province and to show that a boundary change would be in the public interest. The primary economic benefit to the province would be the saving of any further government time and energy on this proposal. To date, there has been considerable money spent on wages and a legal survey to deal with this issue. As well, it has cost Mr. Belziuk considerable time and money on this issue. The other economic benefit would be to the landowners whose property values would be protected with the removal of the park land around their access roads and points. It would also provide the property owners of Lots 2011 and 2012 with another access option if the access through the east end of Lot 2012 was ever cut off.

Options

In discussions with government staff (ILMB, MOE, MOT), there were some options discussed that may assist with this matter, namely:

1. Pursue the Common Law principle of right of access. The premise of this principle is that if a trail or road that is used by individuals for a number of years (seven was mentioned), then access must be allowed for those individuals regardless if it is on private or crown land.
2. That the area highlighted on the attached map is removed from the Park and that it reverts back to Crown Land. Mr. Belziuk and the other lot owners could then apply to ILMB for road right of ways.
3. The same for option 2 except the land reverting back to the Crown would become a Crown reserve with allowance for road right of ways only for the lot owners. This would protect the area within the reserve except that area that is needed for the road right of ways.

Proposal

Option 1 above was explored and no government agency could find this Common Law principle anywhere. The staff from MOT informed us those in situations where access was cut off by a private individual that civil action may occur.

Options 2 & 3 are both feasible. Option 3 provides comfort for those lot owners (particularly of Lot 2009) that the land adjacent to their lots would remain forested except for the road allowance.

It is therefore requested that:

1. The Ministry of Environment pursue option 2 or 3 above so that all affected lot owners included Mr. Belziuk enjoy access to their land without penalty.
2. That the government would do all the consultation required for this proposal because there was no consultation with the original lot owners when the Park was created.

To support this proposal, there are two precedent court cases:

1. Rock Resources Incorporated vs. the Province of British Columbia, Court of Appeal, 2003. The company lost access to its mineral claims on land that had not previously been a provincial Park. Compensation was ordered for the company.
2. Society of the Friends of Strathcona Park vs. British Columbia (1999). In this case, consultation with affected parties over a decision on a Park Use Permit did not occur and the court ruled in the favor of the Friends.

There is also the principle of Natural Justice. The fact that there was no consultation with the original lot owners when the Park was proposed put all of the lot owners in a precarious situation and left them with no legal access to their properties. In the case of Mr. Belziuk, his investment of \$165,000 is in jeopardy and the legal documents attached to the purchase of the property did not indicate any issue with access.

As further support, the other lot owners have been contacted and support the removal of the recommended park land for conversion to crown land. This proposal also has support from ILMB and MOT. Mr. Belziuk has been told that once the land is converted back to Crown Land, ILMB would be happy to process an application for a road right of way to his lot.

Conclusion

The principle of fairness should also prevail in this application. The original and subsequent lot owners were not told that a park was to be placed on the land adjacent to them and were not given the opportunity to put access guarantees in place. This is the basic cause of this situation and it is requested that the Minister of Environment put a process in place to exclude the land in question from Moberly Lake Provincial Park.

Supporting documents

1. Title documents dating back to original land grant.
2. Original and subsequent legal documents between BC Hydro and owners of Lot 2010
3. Map showing proposed removal of land from the Park.
4. Digitized pictures of access roads from lots to main highway.
5. Picture of activity on Lot 2011 that may cut off access to Lot 2010
6. Copies of some correspondence dealing with the history of this file.
7. List of current lot owners
8. Time Lines

Contacts:

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Moberley Lake

D-1

EAST MOBERLEY LAKE (R. NO. 189)



BC FOREST RESERVE (0227009)

L.557

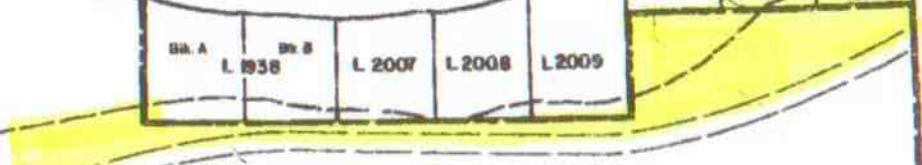
BL. A L. 1938 BL. B L. 2007 L. 2008 L. 2009

L. 2010 L. 2011 L. 2012

TO CHEWYND

OLD ROAD

SOUTH MOBERLEY LAKE ROAD
(Road survey to be completed 1986)



PEACE RIVER LAND DISTRICT



Nov 12 2009

PROVINCE OF BRITISH COLUMBIA - MINISTRY OF LANDS, FOREST AND HOUSING - PARKS BRANCH - VICTORIA, B.C.			
DATE	PREPARED BY	REVISION	MOBERLEY LAKE PROVINCIAL PARK
JAN 27	AST		
FILE NO. E-4-E-20	ISSUE BY	DATE	0181
REG. NO. 20 P/15	CHANGED BY	DATE	827

Sheet No. 250-4-1