

First Nations Agreements That Work

By Ian McNeill

Photo: Huu-ay-aht First Nations



Signed in 2017, the *Reconciliation Protocol Agreement* (RPA) between the Huu-ay-aht First Nations (HFN) and Western Forest Products serves as a good example of how the forest industry and First Nations can work together to create win-win relationships.

“We now have as good a relationship with Western [Forest Products], as any First Nation has with any forestry company in BC,” says Huu-ay-aht Chief Councillor Robert Dennis. “We’re really glad to have them working in our territory.”

“The agreement represents our efforts to build a stronger future by working together,” echoed Shannon Janzen, Western Forest Product’s chief forester and vice president.

The agreement called for the sale and purchase of three properties, including Western’s dry land sort at Sarita Bay on Vancouver Island for \$3 million. It also involves a long-term lease back of the dry land sort to Western, an agreement to harvest 200,000 cubic metres of timber from Huu-ay-aht lands, and an employment and training protocol that

Dennis hopes will transform his community and nation.

“Although the obvious rationale for proceeding with the agreement were the economic benefits and certainty it conferred on both parties, it is also illustrative of a way in which First Nations can peacefully and productively assert control over their traditional territories and build stronger communities,” says Dennis.

The HFN is a self-governing, modern treaty Nation whose lands are located in the Barclay Sound region on the west coast of Vancouver Island at the entrance to the Port Alberni inlet. Despite the fact that the HFN boasts a population of nearly 800, only about 120 members actually live within the traditional territories, which overlaps part of TFL 44, a 232,000-hectare tenure held by Western Forest Products. Not only has the band been wanting to encourage more of its people to remain on the land, it wants to encourage members of the diaspora to move back home. However, without opportunity, that was unlikely. As well, the band had misgivings about the way for-

estry operations were being conducted on its land with particular concerns about the impact on salmon streams.

“The challenge then became how to achieve this in an area in which a major licensee was the tenure holder. There were two ways to go,” says Dennis. One solution was to “assert title” and fight for it. This would have inevitably led to confrontation and—if past is prologue—expensive legal battles that would not have laid the groundwork for a mutually beneficial working relationship built on trust and respect. “We decided it was better to work with them than against them, and that has resulted in a really good business arrangement that we’re both satisfied with.”

He adds that, “the agreement will now help rather than hinder the band in achieving its goals.” In addition to sitting as equals at the table, its employment and training protocols are expected to generate 36 new jobs in the near term. Additionally, salmon-stream remediation projects are already bearing fruit. “Many streams had been impacted by

past and current logging practices, so we've been working to mitigate some of these effects, and efforts so far have been encouraging given the salmon are surviving after spawning." Profits from the enterprise will allow the band to invest in housing, a key factor when it comes to encouraging band members to return. "It's all been very encouraging and I really take my hat off to Western for stepping up to the plate."

Both sides view the agreement as a first step in an evolving relationship, one that will inevitably produce enhanced benefits and perhaps future agreements. "It's only a first step," says Dennis. "What we need to do now is create business certainty for both parties. We need Western to conduct their business in a good way, and we will be doing everything we can to create a good business atmosphere in return."

"The Agreement provides a framework for the parties to further explore our mutually beneficial, long-term relationship with respect to Western's Alberni Valley operations, Huu-ay-aht's Treaty Lands and forest tenures, and other forestry interests in the Alberni Valley," adds Janzen.

Matt Wealick, a TLA director and chair of the association's Aboriginal Committee says the agreement was a smart move by both parties. "It's a good way for a company like Western to make their tenure and their ability to harvest more stable, which is a good thing for the industry as a whole," he says. "It's exactly the kind of relationship I was looking for when I was managing for the Ch-ihl-kway-uhk."

Mutually beneficial agreements like the RPA are likely to become more common as an increasing number of First Nations seek to gain more control over their traditional lands and the way business is conducted on them, and to do so in a way that is constructive and profitable rather than divisive and expensive. In a sense, he says, Western is "seeing the writing on the wall" and being pro-active. "Despite the fact that companies like Western have large tenures, First Nations can argue that they were gifted without their consent, which gives them good leverage when it comes to possibly taking that tenure back. Western knows that, so they're saying, 'guess what, I'll come up with a good deal for you.'"

So, does the RPA represent a template for industry and First Nations going forward?

In terms of seeking a good-faith, mutually beneficial relationship that is respectful to Native values on the land the answer is an unqualified yes. However, says Dave Martin of A&A Trading, which has been working with First Nations going back to the Bill 28 days when timber was transferred from the majors and reallocated to First Nations via the *BC Forest Revitalization Act* of 2003, there is no one-size-fits-all solution. When the government gives tenure to a First Nation it is built around their territory, but every forest is not created equal. "All have different cost structures, different value structures and different quality structures depending on whether they have second- or old growth," Martin notes. In addition, each First Nation has different aspirations, not just for the proceeds, but the opportunities these tenures create. "Some say look after the business and keep us informed, while others have at least some capacity and want to build on that."

Procedurally, Martin says the goal of companies like A&A is not to "take over" First Nations' tenures but to identify the best opportunities and serve as advisors and managers. It often starts with the company presenting the First Nation with a five-year plan. "We analyze their feedback on the plan and are then able to present them with an assessed value." The keys to success in the relationship include transparency, constant communication, and building and maintaining trust. "You have to listen. They want to understand more than they want to be told what to do. They have a long history in their territory and there are things they want to make sure are considered and implemented."

Dallas Smith, president of the Nanwakolas Business Council, says First Nations are on the lookout for partners that understand what a First Nation's ultimate goals are and are willing to work with them towards achieving them. They are also looking at building capacity at all levels. "Ten years ago, utilizing capacity meant a few flagging jobs or setting chokers, but now we're getting involved in things like planning, marketing, and government relations; it's a work in progress." He adds many First Nations aren't always looking for the big score with a major licensee. "The big guys hold all the tenure but often it's the small guys that are willing to

be more flexible," he says. "They've been doing the same thing for a long time, which is trying to get access to fibre and making the most use of it."

Wealick adds that a good opportunity exists for First Nations and the contract logging community in partnering up and looking at areas the majors are not using. "I believe Western has about a million cubic metres of undercut within their tenures on Vancouver Island," says Wealick. "Truck Logger members have capacity and the ability to manage forests, so why not partner with First Nations that have leverage and work to take back some of that undercut volume." Doing so, he says, would serve as evidence that First Nations and contract loggers can work to manage tenures as well as anyone.

TLA President Mike Richardson is optimistic about the prospect of the Association's members working with First Nations. "We're always looking for First Nation participation and they have a lot of the volume that they didn't have before; the big thing is getting them up to speed."

He adds that the biggest thing about working successfully with First Nations is developing the ability to listen. "Too often forest companies have come in, do all their logging and leave. That's not what a lot of First Nations want. They want to build their capacity, and every First Nation is different when it comes to what they need, but it has to be a win-win."

"You don't have to come and bail us out," says Chief Councillor Dennis. "We can meet you halfway, and that is essentially the definition of reconciliation to me."▲