

Pines, politics and property rights

The Changing Face of Forestry in the 21st Century

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Property rights without value are like a ship without a rudder, unmanaged. Liability without property rights is like a rudder without a ship; a nonsense!

Forest owners' relationship with Government may be at historical low. Superficially, government and forest owners are in dispute over who should benefit from the carbon absorption of trees.

More fundamentally, the argument relates to the assumption by foresters and all citizens of being treated equally before the law, the principle that new laws and regulators shouldn't apply retrospectively and the premise that there needs to be value in forestry for people to invest in it.

Government, on behalf of all New Zealanders, has determined that climate change and the increased emissions of gases from use of fossil fuel is a problem. Government has consequentially determined that it needs to prepare the New Zealand economy for a smooth transition to a carbon constrained future. So far, so logical.

With due respect to the dozens of officials and hundreds of thousands of pounds of jet fuel employed in its development, the policy promulgated to "deliver reduced emissions and motivate transition" hasn't and won't!

The heart is willing but the flesh is weak

The difficulty with current policy direction could be summed up in the adage: the heart is willing but the flesh is weak.

A higher price for fuel and electricity is, to use the jargon, "socially regressive". Poorer people driving inefficient older cars down clogged motorways to lower paying jobs get hurt. This may be considered undesirable under an MMP-based electoral system. For whatever reason, there is little interest in increasing the price of fuel and electricity, and many economically tortile reasons can be generated why this shouldn't happen.

New Zealand manufacturers compete without protection with foreign producers operating in countries without Kyoto obligations. It is economically suicidal and environmentally senseless for a New Zealand manufacturer of cement to pay a carbon tax if consumers simply shift to buying cheaper imported cement. The Negotiated Greenhouse Agreements (NGAs) scheme was a logical, if selective, attempt to shield politically savvy sections of New Zealand industry from illogical trade distortion.

The precursor to the Kyoto Protocol, The Framework Convention on Climate Change, recognises that well managed forests are a greenhouse neutral means of producing goods and services. Increases in the area of forest represent a "sink" for atmospheric gases. Mid-1990s increases in New Zealand's plantation estate meant the country was a net absorber at the time Kyoto policy was conceived. Superficially, we could avoid increases in the price of fuel

and shield our manufacturers on the assumption that the area of forests would continue to grow.

The problem is the foresters have stopped planting. There are many reasons for the fall in planting, not least the drop in value for wood and wood products arising through global deforestation.

You don't have to look far to find motivation to deforest. Regulatory inequity at regional and local level between different types of land use is one reason. Forestry frequently involves the land owner in costly obligations under the Resource Management Act (RMA). Using the same land for farming avoids those costs.

A recent significant manifestation of this inequity is Environment Waikato's (EW) proposed regulation of nitrate pollution from agriculture.

A central tenet of the RMA is the obligation on resource users to avoid, remedy or mitigate the adverse effects of their activities on the environment, in essence "polluter pays". Section 15 of the RMA does not permit the discharge of a contaminant unless expressly permitted in a Plan, something the Waikato Regional Plan doesn't do.

Agricultural nitrate (principally urine) is a significant pollutant of New Zealand's lakes and rivers. Atmospheric emissions of NOX derived from nitrate are a potent greenhouse gas, as is the energy intensive manufacture of nitrate fertiliser from natural gas, and methane from ruminant digestion.

So how does EW propose to regulate nitrate? By preventing foresters from converting to any other land use!

To regulate land owners growing cows in accordance with the RMA would apparently unduly constrain their return on investment and is therefore considered unreasonable. Regulation of land owners growing trees is apparently reasonable.

The Ministry of Agriculture and Farming supports EW's approach. Government has generously allocated \$81.5 million to assist farmers with the costs of any adjustment they may have to make to prevent pollution.

Contrast the regulatory benevolence shown to farmers with Government's proposed approach to deforestation of forest planted before 1990.

Anyone establishing a farm in the past can be forgiven for not worrying about nitrate. It wasn't regulated. No-one planting a forest before Kyoto can have had any inkling that they were limiting their land use options for all time and irrespective of returns from forestry. Telling a dairy farmer to destock or reduce fertiliser use affects his or her property value. Government's retrospective cap on deforestation and a carbon emission liability on those breaching the cap amounts to a retrospective, uncompensated theft of the value of conversion, about \$5000 per hectare on current prices.

The cap on deforestation represents a massive statutory-

enforced cross subsidy from the greenhouse neutral forest industry to car drivers and those fossil intensive industries with which it competes such as steel, concrete and aluminium.

If fossil fuel dependent sectors of the economy had stable or reducing emissions, then New Zealand's national emission would be in balance and deforestation would be of little concern. If deforestation represents an environmental crime, it is no worse and arguably better than the activity of coal miners and the thermal electricity producers they support.

*"Therefore, prepare thee to cut off the flesh.
Shed thou no blood;
Nor cut thou less nor more but a pound of flesh."*

A third consideration exercising the minds of foresters and motivating deforestation is uncertainty. The Government has bestowed upon itself a free carried interest in its citizens' trees. The usual procedure by which the Crown establishes control over private property is set out in the Public Works Act (PWA). The asset being acquired is valued as though the public interest did not exist and compensation is paid, leaving the individual in (approximately) no worse position. Of equal significance, the PWA requires that the right being acquired is documented, including the respective rights and responsibility of Crown and landowners.

The contrast between the PWA and the Government's implementation of its climate change policy couldn't be greater. Forest owners have faced a series of policy proclamations portending liability. The statutory detail has yet to be developed leaving a legal vacuum. Will the land owner or the tree owner be liable, where these two entities are separate? What is the tree owner's culpability if evicted by the land owner? Will the 10% "cap" offered by Government be pro-rated across all deforestation or be imposed in full on the first hectare over 10%? Will Maori land be exempt, recognising Maoris' undisturbed possession of forests within the Treaty of Waitangi? Will the Crown accept liability for deforestation of Crown Forest Licence (CFL) land, or will all CFL land be devalued, with consequential reduction in CFL rentals?

A generalised obligation to limit deforestation to 10% is as problematic for the industry and Government as a "pound of flesh" was for Shylock in Shakespeare's Merchant of Venice. Unlike the Merchant of Venice, forest owners were never party to a contractual obligation related to stored carbon, however poorly drafted.

Which is a tortured way of introducing my final point, do foresters own the carbon in their trees? The Government would have us believe not. Their contention is that the value in carbon credits has arisen through Government ratification of the Kyoto Protocol.

The Kyoto Protocol may affect the financial value attributable to stored carbon. It does not alter the ownership of that carbon. Government's negotiation of butter quota and trade access does not give it ownership of a farmer's

cow or a manufacturer's dishwasher. Legal recognition of a disembodied kidney does not translate into the moral authority to seize one from an unwilling donor, irrespective of the net national benefit from doing so.

A test of whether proposed deforestation liability is a "taking" is whether the Government's actions would be illegal if attempted by a private individual. The proposed policy clearly satisfies this test!

Someone approaching a farmer and saying "I will only let you shear your sheep or milk your cow if you make a payment to a person of my choosing" is engaging in extortion. Extortion is illegal.

What of the future?

If there is anything positive for forestry in Kyoto, it has yet to materialise. The one glimmer of hope in all the debate is that Government and individuals are recognising some of the values of forests that have traditionally been taken for granted.

Forests do store carbon. Wood fibre is solar powered, naturally renewable, recyclable and ultimately biodegradable. It is one means of meeting society's needs for goods and services sustainably.

It is worth reflecting that the first gold nugget ever found was probably thrown away, an impediment to the first hominids search for valuable stones.

Society, and even the Government, may eventually come to value the carbon in trees as the 21st century's black gold. The question is whether foresters will be paid to harvest it or be mugged by those wishing to steal past production for themselves!

What do Foresters want?

1. Equal treatment before the law. If climate change emissions are a problem warranting regulation, then all those emitting should be regulated in proportion to their contribution to the problem.
2. Equal treatment before the Law. If the Resource Management Act requires foresters to avoid, remedy or mitigate the adverse effects of their activities, it must also require farmers to do the same. If agricultural nitrate is an issue, it is an issue for all landowners equally.
3. Equal treatment before the law. If the public interest requires that land be taken for a road or school, the private landowner is fairly compensated. If the public interest requires that carbon be taken to achieve Kyoto compliance, private landowners should be compensated.