

Tuesday, November 27, 2007

John Doyle, Auditor General
Errol Price, Acting Auditor General
8 Bastion Square
Victoria, BC V8V 1X4

**RE: Supplement Submissions on Financial Issues Related to the Auditor General's
Investigation of Private Land Deletions from TFLs**

Dear Sirs:

Dogwood Initiative is providing additional financial information related to Western Forest Products' (WFP's) debt structure, political donations, and trading activity that raise important questions about the Minister of Forests and Range Rich Coleman's 2007 decision to delete all of WFP's private lands from three tree farm licenses (TFLs) on Vancouver Island, which we argue to be contrary to the public interest.

We also believe that the public's concerns regarding TFL deletions are not limited to those recently granted to WFP; these same concerns and suspicions, including the perception that large political donations might influence TFL deletion decisions, warrant a broadening of the Auditor General's investigation to include all six deletions (Table 1) going back to 2004 to determine whether the public interest was protected.

The information herein is intended to supplement that provided in an earlier request filed on Oct 19th 2007 by the Environmental Law Clinic.

I. Western Forest Products – deletion of 28,000 Ha in 2006 from TFLs 9,16, and 25

(a) *The debt of Western Forest Products is not as it seems*

- All of WFP's current long-term debt is owed to Brookfield Asset Management (BAM), which owned ~ 70% of WFP at the time of the TFL deletion. Therefore, a majority of WFP's current debt is actually BAM owing itself money.¹

¹ In 2004 WFP issued \$221 million in 15% Bonds (due in 2009) to Tricap Management Ltd., a wholly owned subsidiary of Brookfield Asset Management (BAM). These bonds represented all of WFP's long-term debt. In March 2006 this debt was re-financed as two term loans issued by BAM (\$US loan @ floating one-month US LIBOR + 3%; \$CA loan @ floating CA prime rate + 5.25%).

It had been decided that to remain competitive, WFP should acquire Cascadia Forest Products, also owned by BAM. But WFP did not have any money, so in May 2006, they raised money by issuing 178 million new shares – Tricap (i.e. BAM) bought 77% of them, resulting in a new Western Forest Products that was ~ 70% owned by BAM. In other words, BAM financed a purchase of itself (WFP's purchase of Cascadia) by becoming a majority owner of WFP, and therefore of a debt to itself (WFP's two term loans to BAM) [based on information in WFP's 2006 Audited Financial Statement and in the relevant WFP Business Acquisition Report - form 51-102F4].

- At the time of the deletion, WFP's debt had been paid down to ~ \$189 million with proceeds from their softwood lumber tariff rebate.²

WFP CEO Reynold Hert stated at the time of the deletion that "the prime driver and the prime reason why we've been looking at doing this is the company has a high debt level and we still have a very high interest rate on that debt."³ Minister of Forests and Range Rich Coleman added to Mr. Hert's logic by saying that "if [the deletion] helps WFP...and the stabilization of it economically, then it's a good thing..."; Minister Coleman was presuming a need on the part of WFP to pay down its long-term debt in order to remain viable as a company and employer in BC's forest sector, and using this to justify his decision.⁴

However, the Ministry of Forests and Range has released no documentation outlining how WFP would be rendered non-viable as a company and employer without this particular gift that is slated to pay down its debt, the majority of which is paper-debt in the form of BAM owing itself money.

Nor did the Minister seek any guarantee of employment retention; in fact, there will likely be an immediate loss of employment at the Jordan River dry-land sort, which is included in the conditional sale to Ender Ilkay Developments.

It is hoped that the Auditor General's investigation will reveal the documented reasoning by which the Ministry of Forests and Range justified the TFL deletion as implemented.⁵

If the reasoning is inadequate, it is hoped that the Auditor General will recommend changes to the decision-making process regarding TFL deletions to ensure greater transparency and accountability in the future.

(b) Western Forest Products has made large donations to the BC Liberal Party

- Between 1996 and 2006 Western Forest Products donated over \$100,000 to the BC Liberal Party (Table 1); nearly half of this (\$44,000) was donated during the most recent election campaign (2005).

The Environmental Law Clinic of Victoria's request for an investigation outlined how WFP's TFL deletion was granted with little apparent regard for the broader public interest. It seems that the only demonstrable beneficiaries of the deletion are WFP, who are freed of certain logging restrictions on the released land and will make tens of millions of dollars of profit by selling choice real estate, and the developer(s) who purchase the lands.⁶

Although Dogwood Initiative cannot prove a direct connection between large donations from WFP and biased government decision-making in their favour, that perception exists.

It is hoped that an investigation by the Auditor General will uncover if large donations by WFP contributed to the seemingly biased decision making that led to the TFL deletion in question.

² WFP's 2007 Annual General Meeting presentation available on their website.

³ Taken from an article by Jeff Rud and Lindsay Kines that appeared in the Feb 1st 2007 edition of the Victoria Times Colonist: "*B.C. frees up huge tract of land for debt-ridden forest company*"

⁴ Taken from same source as in Note 4.

⁵ The provincial NDP have received the results of a FOI related to this documentation, but substantive portions of the records were withheld.

⁶ WFP estimates that its 'non-core assets', including large portions of private land (real-estate) released from its TFLs, are worth \$150-180 million [WFP Press Release Oct 24th 2007: *Western Forest Products comments on media reports that it has sold certain southern Vancouver Island private lands*].

(c) Large purchase of Western Forest Products shares immediately prior to official announcement of TFL deletion announcement raises suspicion of insider trading

On January 25th 2007 Western Forest Products (WFP) received a letter from Forests and Range Minister Rich Coleman announcing that their requested land deletions would be granted.⁷ On January 31st 2007 the decision became public in the form of a government bulletin and WFP media release.

Two weeks earlier, on January 12th, a massive purchase of WFP shares by Harbert Management Corporation (HMC) resulted in a one-day trade volume of over 1.6 million shares (Figure 2).⁸ The number of shares traded in this one day was over four times greater than that normally traded in a month.⁹

Five additional, smaller one-day spikes in the trading of WFP shares occurred on the 11th, 22nd, 23rd, 29th and 30th of January (Figure 2). Dogwood Initiative is not aware of who purchased or sold shares on these days. Overall, the number of shares traded in January 2007 was nearly six and half times greater than normal.¹⁰

The abnormally high volume of purchased shares, the potential that a major purchaser was a corporate insider, and the fact that the shares were acquired so near to the announcement raises suspicions about insider knowledge.¹¹

Western Forest Products should not have been aware of the Minister's decision prior to the January 25th letter, although presumably key staff within WFP and within the Ministry of Forests had some advanced knowledge from the discussions leading up to the Minister's decision.

It is hoped that an investigation by the Auditor General will reveal whether government officials in the Ministry of Forests and Range leaked confirmation of the Minister's decision to WFP or others prior to the January 25th letter, and whether people associated with WFP, the Ministry of Forests, or other branches of the BC government were 'tipped' about the Minister's decision to delete TFL lands in advance.

II. TimberWest and Teal Jones Forest Ltd. – deletion of 2,600 Ha from TFL 46 in 2004

- TimberWest Forest Company originally owned the 2,600 Ha of private land within TFL 46. The company donated nearly \$300,000 to the BC Liberals between 1996 and 2006 (Table 1); nearly \$58,000 was donated during the most recent election campaign (2005).

⁷ Appendix B in Environmental Law Clinic request.

⁸ Buyer identified in a CHEK News piece by Philip Campbell that aired in November 2007.

⁹ Based on a 2006 monthly average calculated from trade volume data available on Google Finance.

¹⁰ 'Normal' referring to the 2006 monthly average calculated as in note 9.

¹¹ Harbert Management Corporation would classify as a WFP insider if they owned greater than 10% of the company's shares immediately prior to the January 12th transaction. Dogwood Initiative is not aware of precisely how many shares of WFP HMC owned at the time of the TFL deletion – however, an August 2004 SEC General Statement of Beneficial Ownership revealed that HMC, through Harbert Capital Partners Master Fund I Ltd., owned 30.8% of WFP. At the time of WFP's May 2006 share offering, HMC had the option to retain its 30.8% ownership by purchasing 55.1 million new shares; however, they apparently declined to purchase this amount, as Tricap (BAM) was reported to have purchased 138.2 million of the available 178.8 million shares, meaning that Harbert and other shareholders only picked up 40.6 million new shares (~ 22% of the company). This is consistent with media reports that HMC owned ~20% of WFP at the time of the deletion [information derived from WFP's 2006 Audited Financial Report and SEC info online].

- Teal Jones donated over \$32,000 to the BC Liberals between 2002 and 2006 (Table 1); over \$20,000 was donated during the 2005 election campaign.

On May 6th 2004 TimberWest sold the public land portion of its Southern Vancouver Island operation (i.e. TFL 46) to Teal Jones Forest Ltd for \$17.9 million.¹² Presumably, the sale also included the 2,600 Ha of private land within TFL 46, as Teal Jones was named on a legal instrument dated July 19th 2004, less than three months later, in which the government deleted those 2,600 Ha from the TFL.¹³

Dogwood Initiative is not aware of any aspect of this deletion that demonstrably served the public interest.

The only apparent beneficiaries of this deletion are Teal Jones and TimberWest.¹⁴

As with the WFP deletion, there is a suspicious correlation between large donations to the BC Liberals from TimberWest, and seemingly biased government decision-making in their favour.

Dogwood Initiative requests that the Auditor General's investigation include this deletion to determine more precisely the circumstances of its implementation, including whether large donations by TimberWest influenced the deletion decision, and the degree to which the deletion served the public interest.

III Weyerhaeuser – deletion of 87,700 Ha from TFLs 44 and 39 in 2004

- Weyerhaeuser donated over \$500,000 to the BC Liberal Party between 1996 and 2006 (Table 1); the company donated \$78,000 to the Liberals during the most recent election campaign (2005).

In 2004, the Ministry of Forests and Range decided to delete all of Weyerhaeuser's private land (87,700 Ha) from TFLs 44 and 39, including previously excluded environmentally sensitive areas, without seeking compensation; the decision was made despite nearly-unanimous public opposition to private land deletions, and despite internal government documents that urged the pursuit of compensation.¹⁵

After being granted the deletion, Weyerhaeuser turned around and sold the land to Brookfield Asset Management (BAM - at the time it was called Brascan). In essence, the government's decision translated into a ~ \$247 million gift to Weyerhaeuser.¹⁶ The decision

¹² TimberWest's 2005 Audited Financial Statement.

¹³ Record of sale in TimberWest's 2004 annual report. The deletion record is instrument #25 for TFL 46 – <http://www.for.gov.bc.ca/dmswww/tfl/TFL-46/Instruments/TFL-46-Inst-25-July-19-2004.pdf>

¹⁴ It is unlikely that it would only take the Ministry of Forests and Range 2^{1/2} months to complete its due diligence on this particular deletion (e.g. having received a request for the deletion by Teal Jones on May 6th, the sale date, and then granting it on July 19th). Nor is it likely that either company would have finalized the sale without some indication from the Ministry of Forests on whether Teal Jones would be able to remove its newly acquired private land from the TFL. Therefore, it is likely that the government had corresponded with one or the other company before the sale date of May 6th on the topic of the deletion. Any indication by the government that it would grant the deletion would have benefited both companies (increasing the sale price for TimberWest, and providing certainty for Teal Jones).

¹⁵ Refer to pp. 4-5 of the Environmental Law Clinic's request for an investigation for a more detailed account.

¹⁶ On Feb 18th 2005, soon after Weyerhaeuser was granted the deletions totaling 87,700 Ha, they bundled them into a sale that included another 170,000 Ha of their coastal operations to what is now Brookfield Asset Management; the timber, timberlands, and 'goodwill' of the transaction totaled

translated into a substantial gift to BAM in that it could more intensively log the lands in question.¹⁷

BAM likely would not have purchased Weyerhaeuser's coastal operations if the Ministry of Forests had not granted the deletion.¹⁸

The only apparent beneficiaries of this deletion are Weyerhaeuser and BAM. As with other TFL deletions, there is a suspicious correlation between large donations made by Weyerhaeuser, and seemingly biased government decision-making in their favour.

Dogwood Initiative requests that the Auditor General's investigation include this deletion to determine whether large donations by Weyerhaeuser influenced the deletion decision, and the degree to which the deletion served the public interest.

IV. Pope and Talbot – up to 4,500 Ha pending deletion from TFL 23

- Pope and Talbot donated over \$100,000 to the BC Liberal Party between 1996 and 2006; over half of that (\$52,500) was donated during the most recent election campaign (2005).

On Feb. 26th 2007, Minister Coleman released ~ 65 Ha of Pope and Talbot's private land from TFL 23.¹⁹ Pope and Talbot currently has an application in front of the Ministry of Forests and Range to remove an additional 4,500 Ha from the same TFL. In fact, they have already listed the land for sale.²⁰

It stands to reason that Pope and Talbot would not list TFL land for sale unless it had some indication from the Ministry of Forests that its TFL deletion request would be granted.

We request that the Auditor General's investigation include the Feb 26th Pope and Talbot deletion, and the possibility that the Ministry of Forests and Range indicated to Pope and Talbot that its current deletion request would be granted.

\$727million. The deletion lands made up 34% of the transaction by Ha, therefore a value equivalent to 34% of the transaction total of \$727 million (\$247 million) was used to estimate how much the deletion decision by the government was worth to Weyerhaeuser [based on information in Weyerhaeuser's 2004 Audited Financial Statement]. Regardless of exact numbers, much of the purchase price paid to Weyerhaeuser by Brascan directly resulted from the government's decision. The private lands are now logged by Island Timberlands, a limited partnership set up by BAM – the public lands are logged by Western Forest Products, who acquired the TFLs in their purchase of Cascadia (a subsidiary of BAM).

¹⁷ In evidence submitted during the BC Supreme Court lawsuit filed by the Hupacasath First Nation over the TFL 44 deletion, Brascan (BAM) estimated that it could make \$25-30 more per cubic meter of timber on the deleted lands than it could have if the lands remained within TFL 44.

¹⁸ Additional evidence provided by Brascan (BAM) during the Hupacasath lawsuit stated that: "The removal of the privately owned lands from TFL 44 was a critical consideration in [BAM's] decision to proceed with the transaction... The value of the [BAM] purchase from Weyerhaeuser would be seriously impacted [if the judge quashed the deletion]."

¹⁹ This was revealed by the provincial NDP during question period on Nov 6th.

²⁰ According to documents filed by the financially troubled company under the Companies' Creditors Arrangement Act in Ontario Superior Court (court proceedings have now moved to BC). The documents indicate that the company has already agreed to the sale of one package of private land still within TFL 23, and has already negotiated two additional sales that are waiting to be signed [information derived from an article by Jeff Rudd that appeared in the Nov 7th edition of the Victoria Times Colonist]. Ender Ilkay, the developer involved in the WFP sale of land near Sooke and Jordan River, has expressed interest in Pope and Talbot's lands.

We also hope that the Auditor General will investigate the role of large donations made by Pope and Talbot to the BC Liberal Party in the ongoing TFL deletion decision-making process.

V. West Fraser Timber Co. – deletion of 47 Ha from TFL 41 in 2004

- West Fraser donated over \$600,000 to the BC Liberal Party between 1996 and 2006 (Table 1); nearly 1/3rd of this (~ \$200,000) was donated during the most recent election campaign (2005).

Given the evidence presented with regards to other TFL deletions, it stands to reason that this specific deletion might not have adequately served the public interest.

We request that the Auditor General's investigation include this deletion to examine whether it served the public interest, and whether West Fraser's large political donations influenced the decision-making process that led to this deletion.

VI. Rice Properties – deletion of 1,200 Ha from TFL 48 in 2004

We also request that the Auditor General's investigation include the circumstances surrounding the Rice Properties deletion, and a determination of whether it served the public interest.

VII. SUMMARY

- Overall, BC's forestry companies have donated \$6.5 million to the provincial Liberals over the past ten years.²¹
- The five forestry companies that have been granted recent TFL deletions have donated ~\$1.7 million to the BC Liberals between 1996 and 2006 (Table 1).

We believe that the financial information provided in this submission (as well as the information provided by the Environmental Law Clinic at University of Victoria on our behalf) raises serious questions about Minister Coleman's decision to delete WFP's TFL lands, as well as the other deletions approved by previous Ministers over the past few years. The suspicious pattern of political donations, combined with the absence of documented rationale outlining how any of these TFL deletions protected the public interest warrants an expanded investigation by the Auditor General.

We therefore request that the Auditor General's office include in its investigation a review of all TFL deletions going back to 2004, including the possibility that large political donations from the benefiting companies influenced decision-making in their favor.

If, during the course of the investigation, the Auditor General uncovers evidence that large political donations unduly influence TFL deletion decisions, we hope that the Auditor General will make recommendations to reform the campaign finance system to eliminate this potential for bias.

²¹ BC NDP Caucus research.

Sincerely,

A handwritten signature in black ink, appearing to be 'Eric Swanson', written on a white background. A thin red vertical line is positioned to the right of the signature.

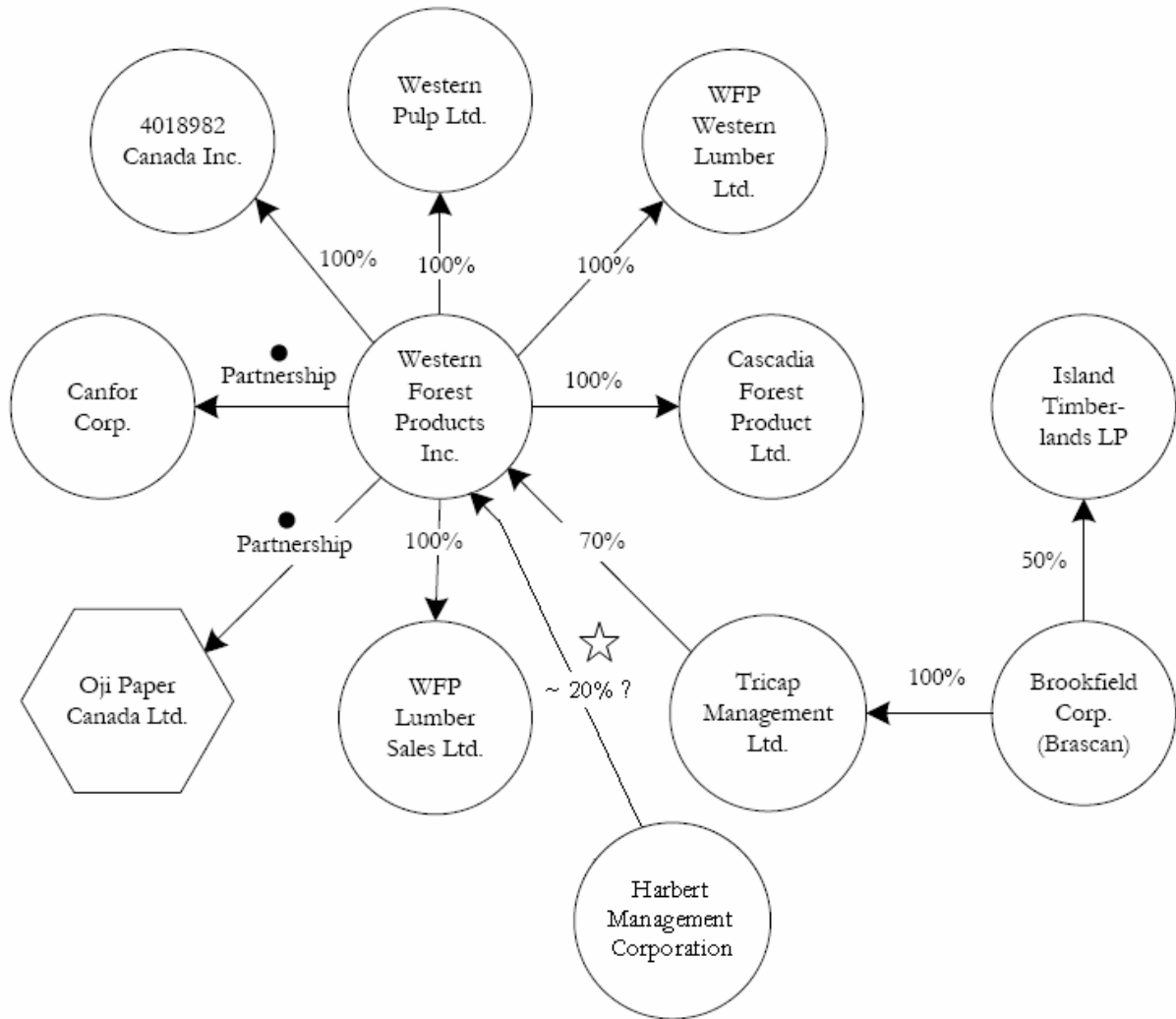
Eric Swanson
Dogwood Initiative

A handwritten signature in blue ink, appearing to be 'Will Horter', written on a light gray background.

Will Horter
Dogwood Initiative

TABLES AND FIGURES

Figure 1: Ownership and inter-corporate linkages of Western Forest Products (created by the *Economics and Trade Branch of the Ministry of Forests, 2006*; modified to show relationship between Harbert Management Corporation and WFP)



● On March 17, 2006, WFP executed a 40 year fibre supply agreement with the Partnership.

☆ See note 11.

Table 1: Summary of donations to BC Liberals by beneficiaries of TFL deletions

TFL Deletion Summary					
Company	Total land deleted from TFLs (in approximate Hectares)	Tree Farm License(s) in question	Total donation to Liberals (1996-2006)	Donations to Lib. during 2005 election campaign*	Location of Deletions
Weyerhaeuser	87,700 (2004)	TFL 44 and 39	\$540,499	\$78,040	Near Port Alberni on Vancouver Island and on Haida Gwaii
TimberWest/ Teal Jones**	2,600 (2004)	TFL 46	\$288,924 \$32,270**	\$57,728 \$20,640**	Near Port Renfrew on Vancouver Island
Western Forest Products	28,000 (2007)	TFL 6, 9, 25	\$103,247	\$43,990	Near Sooke and Jordan River on Southern Vancouver Island, and on Northern Vancouver Island
West Fraser	47 (2004)	TFL 41	\$620,900	\$195,740	Near Terrace
Pope & Talbot	65 Ha granted (2007), 4,500 Ha pending	TFL 23	\$112,750	\$52,500	In the Kootenays, along Upper and Lower Arrow Lakes and Kettle River
Rice Properties	1,200 (2004)	TFL 48	?	?	Near Dawson Creek

*Includes identified donations by senior officers and boards of directors.

**TimberWest was a major beneficiary of this deletion, and this company's 1996-2006 donations are included in the table; however, Teal Jones Forest Ltd. was the direct recipient of the deletion; the \$32,270 is a total representing the period between 2002 and 2006.

Additional Notes

2005 and 2006 donation information is taken from Elections BC's online contributions database; donation information going back to 1996 is taken from Dogwood Initiative's records.

Weyerhaeuser's donations totals include those of MacMillan Bloedel, whose assets they now own.

Figure 2: Western Forest Products trading spikes, January 2007

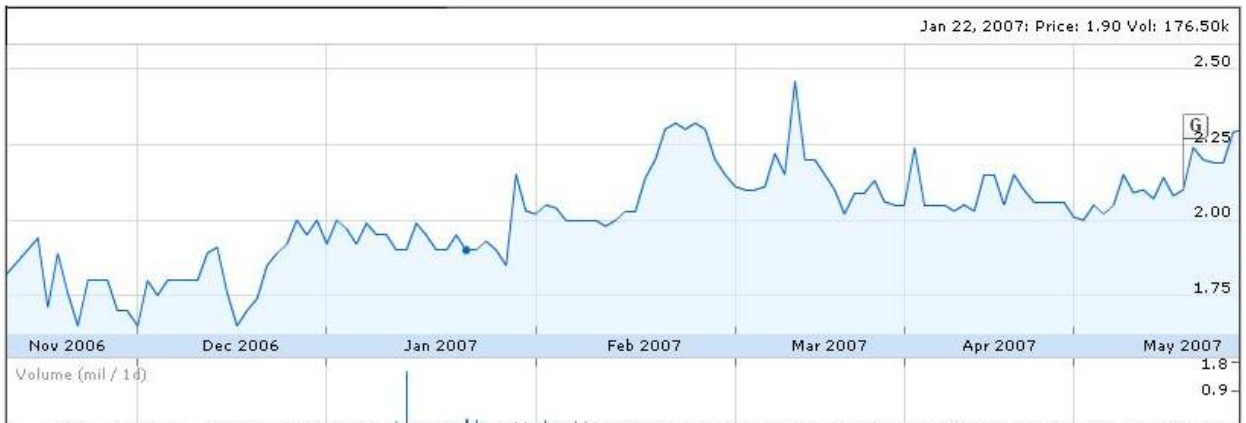
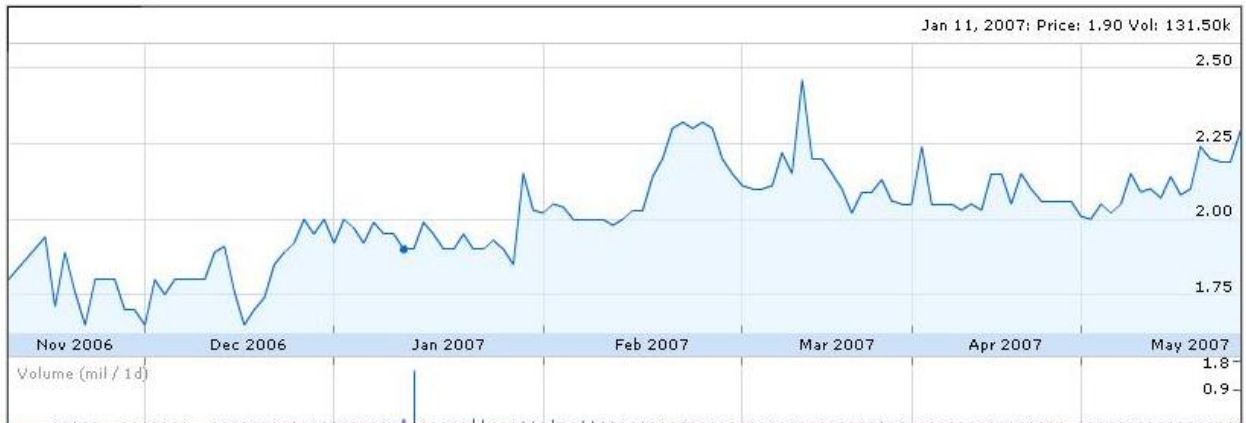


Figure 2 Continued

