

From: Crowe, Michael
Sent: Tuesday, October 6, 2009 11:54 AM
To: Hwang, Jason <Jason.Hwang@dfo-mpo.gc.ca>; Reid, Bruce (Pacific) <Bruce.Reid@dfo-mpo.gc.ca>; Gotch, Steve <Steve.Gotch@dfo-mpo.gc.ca>
Cc: Guerin, Jeff <Jeff.Guerin@dfo-mpo.gc.ca>
Subject: FW: Water Act Notifications

I believe you already know the problems we are having with the large amount of foreshore disturbance we have occurring on Shuswap Lake, and how it is entirely counter to all our efforts to promote protection, restoration and sustainability of Shuswap lake through the SLIPP process, its various initiatives and task groups, and our regular HM program. We are having a chronic problem with a substantial regulatory gap. A while ago, Water Stewardship Division stopped issuing Approvals for retaining walls, and started issuing Notifications, which have far less authority than an approval. The local Water Manager has been recently told by Victoria that anything that is above the HWM (1:2 year flood) does not even require a notification. In areas of the Province in which there is RAR, there is another provincial regulatory tool to capture, review and refer these projects, however, in the Shuswap and other portions of the province which do not have RAR, there will be no Provincial regulatory tool manage and control walls, or other upland activities.

We have consulted with John Clark who has consulted with a Provincial colleague. I have also consulted with Andy Witt. We have also undertaken a review of a series of Environmental Appeal Board decisions regarding the interpretation and application of the WA Section 9 term, "in and around water". It appears to everyone, that the Water Act authorises WSD to review and approve works above the HWM.

Our attempts to get cooperation by local MoE WSD staff has not been successful, and they are now getting direction by Victoria to do less.

I would like to request that Region address this issue with senior WSD and ESD managers in Victoria. Either the management application of the WA has to be changed, or RAR has to be applied. This also brings up another issue. Recent clarification by Andy determines that the RAR applies above the 1:5 year flood level, while, the WA applies below the 1:2 level. This leaves a provincial environmental regulatory gap that in the instance of Shuswap Lake is 40 cm vertically, but many metres horizontally.

We still have the FA to use, however, in many circumstances, sites have been historically degraded, and therefore, there is not a strong FA case. In other circumstances, we rely on the provincial referral system to identify proposed development activities.

We are facing a problem of ongoing deregulation, when everything we know of the problems facing Shuswap and other lakes, is that there is a need to improve management and direction.

Michael C

-----Original Message-----

From: Guerin, Jeff
Sent: Monday, October 05, 2009 11:16 AM
To: Collins, Chantal; Hwang, Jason; Crowe, Michael
Cc: Clark, John
Subject: RE: Water Act Notifications

John Clark and I have discussed this recently, and I have also rooted through all of the Environmental Appeal Board rulings (available on the web) regarding determinations related to the legal definition/interpretation of terms such as "changes in and about a stream" and "stream channel". While I am not a legal type, it appears to me that the province is not wanting to interpret their own regulation in keeping with past EAB rulings. When I started to press a Min. of Attorney General lawyer on this point, I was advised that they did not provide opinion to anyone outside of their own ministries. A lawyer named Livia Meret, who John indicated is their in-house expert on the Water Act, could be approached regarding interpretation issues. When I mentioned this issue to a local WSD staff member, I was advised that the province doesn't have time for "cases" (my word/quotes) that are not sure winners (i.e. sure wins by the Crown, if appealed). The issues related to works slightly above the HWM or natural boundary being dealt with as notifications or not being reviewed at all by the province, has potential for causing many problems for us within riparian areas/fish sensitive habitats.

DFO-171700

\\svbcv\anfp01\Cohen-Comm\Personal Folders\OHEB\Jas
on Hwang\April 26 email disclosure\Cohen - HWANGJ
2009\Area Issues\Habitat\Kamloops\

CAN085929_0001

From: Collins, Chantal
Sent: October 5, 2009 10:55 AM
To: Hwang, Jason; Crowe, Michael; Guerin, Jeff
Subject: Water Act Notifications

At the referral meeting this morning we discussed the progress on the Wiens briefing note. Mark mentioned that during his discussions with Valerie on Friday (Oct 2) she was concerned that Water Stewardship issued a notification for the project since the wall was above the HWM and therefore out of their jurisdiction. If no notification was issued for changes in and about a stream then no terms and conditions could have been attached by a MOE habitat officer.

I indicated to Darren Bennett and Mark Phillpotts that we are definitely interested on how Valerie decides to proceed with the briefing note (submitted tomorrow) as it will have impacts on our agency as well.