

Submission to the Cohen Commission

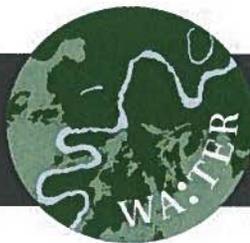
Public Hearing
Kamloops, BC
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WA:TER (Wetland Alliance: The Ecological Response)

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Wetland Alliance:
The Ecological Response

Protecting salmon habitat on the Salmon River Delta, Salmon Arm, BC

On a summer's night in 1905, one of the first fisheries officers in the Shuswap region of South-central British Columbia went searching for a great salmon run. (He) went past the output of the famed Adams River... And continued down Shuswap Lake until he reached a long inlet called Salmon Arm. At the head of the inlet... He found the mouth of a small stream that has been named, simply enough, Salmon.

"In the grey of early morning I was aroused by a commotion, and found the river full of sockeye running upstream. I put in an oar and felt that the River was half fish. The increasing light soon showed that it was red from bank to bank."

The Run of the River
Mark Hume
New Star Books, 1992.

In 1913, this magnificent run of early sockeye was destroyed by rockslides caused by railway construction in the Fraser Canyon at Hell's Gate. Overfishing also contributed to this loss, as did the farmers in the Salmon River Valley who pitch-forked sockeye out of the river onto their fields for fertilizer.

In 1952, just 25 sockeye salmon were counted in the Salmon River. They were the first return of this iconic fish in nearly 40 years.

Prior to this, and for the next four decades, farmers and ranchers in the Salmon River Valley unwittingly destroyed fish habitat by cutting down trees right to the water's edge, and allowing cattle to wander freely into the river to drink, their feces polluting the watercourse while their hooves tore up the river banks, smothering clean gravel with soil and silt.

This sad picture of habitat degradation began to turn around in 1991. In that year, the Salmon River Watershed Roundtable was formed under the direction of esteemed Neskonalith elder Dr. Mary Thomas, and guided by Dorothy Argent, Councillor for the town of Salmon Arm. Over the next two decades, this consensus-based, all-inclusive, volunteer-driven nonprofit organization engaged in a process of spectacular riparian restoration. Funded by federal and provincial governments, thousands of hours of labour by hundreds of volunteers resulted in the planting of willow shoots, the replacement of gravel, and the stabilization of crumbling riverbanks. Today, 70% of degraded sites along the course of the Salmon River have been restored to the point where they can supply spawning grounds for salmon. A quarter of the cost of this work has been borne by landowners themselves. What has happened as a result of all this hard work and expenditure of energy and money?

This year, to date, 635 chinook, 289 sockeye, and 205 coho salmon have made their way to the mouth of the Salmon River, past the counting gate of long-time resident Gene Puetz, to spawn along the upper reaches of watercourse. The river is coming alive again, once more a magnet to the BC's magical salmon

But then an entirely contrary process – one all too common – began a decade ago in Salmon Arm.

After five years of discussion, mostly out of the public eye, featuring unusually concerted efforts by the City, seven properties in the Salmon River delta, comprising just over 60 acres of land, were removed from the ALR in 2005. Very shortly thereafter these properties were purchased jointly by Calloway REIT and Salmon Arm Shopping Centres Ltd for \$15 million. Both companies are intimately connected to SmartCentres, a large development company based in Vaughan, Ontario, which has constructed just under 200 "open format" (i.e. a parking lot with buildings scattered on it) shopping centres in Canada -- mostly in Ontario, and mostly anchored by a Walmart, with whom SmartCentres has an intimate business relationship.

For the next 3 years, SmartCentres elaborated plans to build a 400,000 sq. ft. open format and large format retail ("big box") shopping centre on these properties. These plans emerged suddenly and forcefully into the public arena when, in the fall of 2008, SmartCentres sought, and obtained, endorsement from City Council to change the City's Official Community Plan (OCP) and zoning bylaws to permit their application to go ahead. However, after an ensuing five days of mandatory and highly charged public hearings, their application was narrowly defeated.

The following spring (2009) SmartCentres announced that it was coming forward with a second development proposal, almost identical to the first, apart from a modest reduction along the eastern margin of the footprint, necessitated by changes in federal fisheries regulations. At that point, a group of citizens -- most of whom have a scientific or professional background -- came together and formed WA:TER -- Wetland Alliance: The Ecological Response. Our purpose was to draw up a detailed profile of the Salmon River delta with the SmartCentres' property embedded in it, using the most comprehensive science available, and informed as well by the rich heritage of traditional (First Nations) knowledge. In this process, strong collaboration with the Switzmalph Cultural Society is a prominent ongoing feature. Our common goal? To protect the Salmon River Delta, its wetlands and prime fish habitat -- and other valuable natural features -- from destruction.

As a result of highly detailed analysis by WA:TER, including several commissioned scientific studies, the Ministry of Environment -- in a move rare for that body -- acknowledged that WA:TER's scientific evidence painted a radically different picture of the delta from that presented by SmartCentres' environmental consultant, the large engineering firm Stantec. Where Stantec had said the floodplain wasn't active, and fish habitat was miniscule, WA:TER showed the exact opposite: the floodplain is extraordinarily rich and dynamic with respect to water movement, and the northern 2/3 of the SmartCentres property is almost all salmon habitat, used regularly by salmonids during the spring flood.

In March, 2010, SmartCentres came back with a 3rd proposal, this time reduced from 400,000 to about 290,000 sq ft of retail space, and from 38 to 22 acres of total footprint, which went before Council June 28th. Their proposal still included fish habitat -- in fact, just under 5 acres of the richest and most productive salmon feeding grounds on the entire floodplain, an intricate network of old river channels near the southwest corner of their property. SmartCentres' excuse for doing so -- which so far the Ministry of Environment has accepted -- is that there was already fill deposited on this area when the developer bought the property. We have proven that this fill was deposited -- illegally, it now turns out -- only in the last decade. According to the Fisheries Act, this constitutes damage to fish habitat, and must be removed.

Nevertheless, after 4 more nights of public hearings, the Salmon Arm City Council, in early

July, voted 5-2 in favour of SmartCentres' request for a change in the City's OCP and zoning bylaws, thus pushing the developer over the first and most important hurdle leading towards constructing its shopping centre in the floodplain.

In the two months since then, WA:TER has gathered more evidence in support of its position, continued to inform the public of its new data, and lodged a detailed complaint with the Ombudsperson's Office, supported strongly by the Switzmalph Cultural Society. Repeated entreaties to both the federal and provincial regulatory bodies having jurisdiction over fish habitat have so far produced little response – but they are ongoing.

Since it was first formed, WA:TER has worked closely with the Neskonlith Indian Band, whose territory and people will be forcefully and negatively impacted, in multiple ways, by this development. The voice of the NIB, strongly opposed to the construction of this shopping center in the center of the Salmon River Delta, has been routinely ignored throughout the last five years -- even though the Canadian constitution mandates that it must be heeded and respected.

On a more positive note, the Switzmalph Cultural Society is now working, in conjunction with WA:TER, on a plan to carry out an assessment of the natural values of the Salmon River Delta from an aboriginal perspective. This study, for which funding is currently being sought through the Fraser Salmon and Watersheds Program (FSWP), represents a critical step in moving towards the creation of the Mary Thomas Heritage Sanctuary, an overall vision of restoration and ecological and economic development for the entire Salmon River Delta.

Several important lessons have been learned in the course of events over the last five years.

The first lesson has been that protection for fish habitat in BC is deeply flawed, because no level of government is empowered to take direct responsibility for it. It proceeds in the following circular fashion.

Fisheries and Oceans Canada, the federal ministry responsible for administering the Fisheries Act, takes a fundamentally passive role towards habitat protection. Thanks to repeated reductions in staff, it has neither the mandate nor the capacity to actively engage in habitat protection. Furthermore, within the boundaries of this province, it defers almost entirely to the regulatory personnel of the provincial Ministry of Environment. These latter, in their turn, use a regulatory framework called the Riparian Areas Regulation, a lengthy document which outlines and confirms many of the principles established in the Fisheries Act, but lacks any means of formal enforcement. The establishment of formal rules governing the protection of fish habitat is left almost entirely in the hands of municipal authorities, who are encouraged – but not compelled – to enact bylaws which formally restrict development in areas of known fish habitat, and to include penalties for transgressing these rules.

In the case of the City of Salmon Arm, no such bylaws have been enacted. Municipal staff and elected representatives have repeatedly taken the position, in written materials and in verbal presentations, that they rely on the provincial and federal governments to protect fish habitat, while ignoring the explicit position, on the part of these other levels of government, that they are prepared to do no such thing.

The net outcome of this regulatory merry-go-round has been that all levels of government have resolutely disclaimed final responsibility for protection of fish habitat, while under their very noses, this critical part of the province's ecological heritage is being routinely destroyed.

The second lesson learned has to do with understanding a fatal flaw at the center of the provincial government's relationship to development proponents.

When a developer proposes to build in, or otherwise infringe upon, an area considered to be fish habitat, the Ministry of Environment requires that a report be prepared by consultants hired by the developer. The purpose of the report is to demonstrate clearly that no "Habitat Alteration, Disruption or Destruction" (HADD, an acronym employed in the federal Fisheries Act and repeated in the provincial Riparian Areas Regulation) will take place as a result of the proposed development. These consultants, called Qualified Environmental Professionals (QEP), are paid by the developer, and the report is forwarded to the Ministry of Environment for acceptance, before development can begin.

This process appears to offer some sort of meaningful protection for the biological values of sites that could constitute salmon habitat. But in reality, it does not.

The reason it does not is found in an approach called the "professional reliance model". Under this system, the professional expertise and impartiality of the developer's QEP consultants are presumed to be flawless and inherently reliable. Consequently, the reports prepared by all QEP's are considered *a priori* to be entirely adequate. Therefore no detailed scrutiny of them is required. When they are submitted to the staff of the Ministry of Environment, they are not examined in detail, but simply checked over to make sure that an appropriate methodology has been employed, and that all declarations of professional responsibility have been included.

In the case of the Delta of the Salmon River, the QEP's hired by the proponent SmartCentres completed their report, and it was received and accepted by the Ministry of Environment on September 11, 2009. Fisheries and Oceans Canada abstained from formal participation in the review of this report, and acceptance by the provincial jurisdictional body was taken by the municipal government to mean that development could proceed precisely as outlined in the QEP report.

Unfortunately, this report was deeply flawed. It contained fundamental errors of fact, grossly inaccurate observations and clear-cut mistakes, all of which combined to sanction potentially massive destruction of salmon habitat. These errors, inaccuracies and mistakes were not challenged at any level of government, because each (as noted above) deferred to the others.

It was only because of the persistent efforts of the volunteer, non-profit group WA:TER that these flaws were brought to light and delineated. Only after they had been repeatedly presented to all levels of government did the Ministry of Environment finally, on December 1, 2009, compel the developer to seek a more expert opinion. This "second opinion" confirmed that fundamental mistakes had been made by the developer's QEP's, as stated by WA:TER. In the spring of 2010, SmartCentres reluctantly delivered a new QEP report, in which 16 acres or 42% of the area previously claimed for development was acknowledged as fish habitat, and set aside. Unfortunately, as noted earlier, the footprint of the proposed development still includes 4.8 acres of prime fish habitat. Permission to destroy this valuable habitat has been granted to the developer by the Ministry of Environment because a

previous property owner had illegally deposited fill in the former river channels on this part of the property.

The third lesson learned over the last five years has been that there is no meaningful or reliable recourse if governments at any level do not affirm the science underlying fisheries' management and approve commercial or other kinds of development. Appeals to all levels of government, no matter how scientifically sound, can be and have been ignored without explanation. Even the Office of the Ombudsperson, mandated to ensure fairness in the dealings between public bodies and citizens of the province, appears to have no firm commitment to give support to the latter when there is a significant disagreement with the former.

In summary, it is the experience of our group, WA:TER, that the protection of fish habitat in the province of British Columbia is grossly inadequate. All levels of government appear to be ready to default on their formal commitment to such protection. They do so through a frustratingly circuitous pattern of passing responsibility to and from one another in a disturbingly Kafka-esque manner, as well as a reliance on the manifestly inadequate "professional reliance model".

Recommendations:

- 1) That **habitat restoration and protection** be recognized as a key to securing the future of Fraser sockeye, and all other salmon species throughout BC, equal in importance to **strict enforcement of sustainable harvesting levels**.
- 2) That **the "professional reliance model" be abandoned** as part of government policy, and replaced by independent, arms-length reviews of all development proposals.
- 3) That some level of government (probably municipal and/or provincial, supported by federal) **assume formal responsibility for restoration and protection of fish habitat** – the "salmon forest" referred to by David Suzuki – with **meaningful penalties** for breaches of these requirements.
- 4) That communities and regional authorities throughout BC take responsibility for habitat protection by adopting **approaches similar to the community-centred, consensus-based process** exemplified by the Salmon River Watershed Roundtable.
- 5) That instead of balancing development against habitat protection, the latter be made the **explicitly dominant priority**; development projects are eminently movable, but habitat is fixed in three dimensions by pre-existing landforms.
- 6) That it be recognized that the Fraser sockeye **is** certainly sustainable – **if realistic management practices are not simply discussed, but actually undertaken**.

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