



January 5, 2018

Privatization of BC's Riparian Areas Regulation through the Professional Reliance Model, failure to protect valuable fish habitat on the Salmon River delta, in the City of Salmon Arm

Introduction

This covering document introduces our larger submission for the on-going review of BC's NRS Professional Reliance Model. It outlines the work of a concerned local citizens' group ([WA:TER](#)) and its initiative to do what the local government of Salmon Arm, BC was obviously not doing between 2008 and 2011: pursuing their new Riparian Areas Regulation (RAR) responsibilities, specifically in relation to a large proposed shopping centre development on the Salmon River delta. The City of Salmon Arm (CSA) was in fact actively promoting the development, and was repeatedly resistant, at that time, to input from citizens who questioned the shopping centre's location. Given the [terms of reference](#) of the current NDP Government's [review of BC's NRS Professional Reliance Model](#), the attached documentation focuses on WA:TER's experiences with the far-reaching ramifications of the PRM, beginning in late 2008 and continuing for three years, through to late 2011.

Gordon Campbell's PRM experiment

The BC government under Gordon Campbell began off-loading important responsibilities in the early 2000s. This involved reducing employees involved with environmental stewardship and other monitoring activities, and the associated costs, and transferring these costs to the private sector. Until the last 3-4 years, the CSA failed to take up this responsibility to protect important environmental assets, including fish habitat, wetlands and floodplains within its jurisdiction. A series of local foreshore developments in Salmon Arm in the first decade of this century demonstrated the local government's pro-development perspective and lack of protection of wetlands, fish habitat and water quality.

City of Salmon Arm ignores RAR responsibilities off-loaded by Gordon Campbell Government

One example in the last decade was a proposed large shopping centre development on the Salmon River delta. The applicable fisheries regulations should have clearly shown that this shopping centre proposal was inappropriate. At the proposed location there was/is regular flooding from the Salmon River and Shuswap Lake. But all this was ignored in the CSA's approval decision.

During public consultation over this shopping centre development in late 2008 the CSA showed no interest in, or understanding of, widely appreciated scientific arguments for the protection of wetlands, floodplain forest, and agricultural land within its jurisdiction. Likewise local government refused to take up their new responsibility to oversee the implementation of the RAR, which was previously managed by provincial government staff.

Local citizens' group attempts to enforce RAR

As a result, a public interest group (WA:TER - Wetland Alliance: The Ecological Response) was formed. WA:TER aimed to use science and traditional knowledge to protect the ecological values of the proposed development lands on the delta. Unlike the local government and the developer, WA:TER also established a respectful consultation process with representatives of the Neskonlith Indian Band, who were rightfully concerned about

the potential impacts of a large shopping centre directly adjacent to their territory. The importance of this last point was clear from the Supreme Court of Canada (SCC) decision of Dec. 1, 2017, with respect to the failure of consultation by the Yukon Government with First Nations over the protection of pristine areas of the Peel watershed. The [SCC verdict agreed with the area's First Nations](#) that consultation had indeed been insufficient.

WA:TER's volunteers and their local supporters commissioned a series of independent and impartial reports, studies, and public presentations. They were quite clearly the only people in Salmon Arm "monitoring for compliance and effectiveness" of the Results Based Professional Reliance Model promoted by Gordon Campbell's government.

Two successive professional and statistically valid opinion polls during the next three years, commissioned by WA:TER and carried out by Oracle Poll, demonstrated that a majority of Salmon Arm residents did not want this development at the expense of sensitive ecosystems. The city, however, accepted the assessment of the Qualified Environmental Professionals (QEPs) commissioned and paid for by this international shopping centre developer, [SmartCentres](#).

PRM allows SmartCentres to run RAR interference

In sharp contrast to the work of local citizens, SmartCentres, their engineers and hired QEPs did everything in their power, over the course of more than three years, to obscure environmental issues and subvert local scientific and citizen-driven opposition.

Initially, they grossly underestimated the full extent of readily definable fish habitat on the subject property, until they were compelled to alter their assessment by the Ministry of Environment, which in its turn was induced to take this step because of the detail, comprehensiveness and accuracy of WA:TER's data.

SmartCentres also withheld critical information; they had commissioned two detailed elevation surveys of their property, but refused to share the data with the public, commenting on their need to retain a competitive advantage. They also denied three separate requests from WA:TER for access to their property, to collect additional (substitute) survey data.

At one point, SmartCentres sent detailed river cross-sectional elevation drawings to the City staff - inexperienced in their interpretation - but reversed the orientation of all of the river cross-sections; effectively making it appear that there were no substantial flood channels or fish habitat on the development property along the east side of the Salmon River.

The developer also avoided full disclosure of the Salmon River's vigorous spring outflows and early summer back-flooding from Shuswap Lake, which both individually and together inundate a channel network cutting through the middle of their intended development site with surface-connected flood waters (fish habitat). Had there been any incentive to encourage the sharing of information through the PRM, SmartCentres' existing survey data would have indicated the full extent of fish habitat under the Riparian Areas Regulation (RAR) as early as late 2008.

A separate issue of flooding emerged in 2010. Internationally respected hazardous floodplain engineers and scientists repeatedly advised the City of Salmon Arm to initiate a comprehensive floodplain hazard assessment, in order to mitigate liabilities for Salmon Arm taxpayers and the Neskonalith Indian Band. The Mayor and Council of the CSA at that time ignored this advice, with their shopping centre approvals completed just in advance of the November, 2011 BC municipal elections.

PRM amounts to deregulation gift for private sector

The absolutely critical underlying issue in this and similar cases is that the Professional Reliance Model (PRM) is wide open to abuse. The RAR, designed to protect fish habitat, like many other sets of regulations which are supposedly enforceable, relies on the PRM for its effectiveness. There is something seriously wrong when assessments consistently underestimate land to set aside to protect fish habitat.

There are two central flaws in the PRM.

The first is that the QEP commissioned by a developer is expected to submit an impact assessment which is completely impartial, based solely on professional opinion, and independent of the developer's aims. But it is very obvious, both in the area of environmental impact assessment, as well as documented evidence from examination of similar situations with respect to bias induced by the pharmaceutical industry (<http://www.ncbi.nlm.nih.gov/pubmed/9420342>), that a professional whose assessment conflicts with the aims of the developer through a negative impact assessment, will - almost certainly - not get a repeat commission from this, and possibly any other, developer. Consequently, the PRM routinely generates a bias towards a favourable assessment, regardless of the real facts of the case.

The second major flaw in the PRM is that there is documented evidence, from the Salmon Arm situation, that no real 'quality control' of the assessment is required. The relevant professional association (CAB - College. of Applied Biology) in the Salmon Arm case was presented with evidence showing that the QEP's assessment was incorrect. Rather than examining the quality of the QEP's work, the CAB simply gave the QEP's the opportunity to reply as they wished, and took no further action. This represents an abject failure to exercise their formal mandate.

WA:TER detects reluctant professional association oversight

It is important to re-emphasize that QEP's who do not fulfill their client's desired objectives can potentially find themselves under-employed or even unemployed, and are vulnerable to finding restrictions placed on their future work by disgruntled employers. Certainly, in the absence of objective 'quality control' through local, provincial and federal enforcement of laws and regulations, professional associations such as the CAB have an obligation to step forward and ensure that any assessment by their members stands up to rigorous scrutiny. Failure to do this indicates that the existence of such associations is irrelevant to the public good.

WA:TER helps achieve significant, but incomplete RAR enforcement

In the Salmon Arm case, the scientific evidence supplied by a volunteer public group convinced the BC Ministry of Environment that a large part of the SmartCentres property was indeed fish habitat, requiring SmartCentres to dramatically reduce their development footprint on the site. The incorrect assessment commissioned by SmartCentres was discarded entirely as a result of voluntary public efforts and involvement, something that was possible only because public, independent expertise was available in this locale.

It is worth noting that a rough estimate of WA:TER's volunteer time and expenses for research and public information/education initiatives, from early 2009 through 2011, using standard reimbursement protocols, is close to \$500,000.

Ombudsperson's Office review of systemic problems with the PRM and RAR enforcement

WA:TER delivered a number of detailed complaints to the Ombudsperson's Office on July 8, 2010; some of which were directly relevant to the current review of BC's NRS Professional Reliance Model. WA:TER worked hard for the Ombudsperson's Office, responding to numerous requests for additional documentation over the course of many months.

In their March, 2014 public report "[STRIKING A BALANCE: The Challenges of using a Professional Reliance Model in Environmental Protection – British Columbia’s Riparian Areas Regulation](#)" the authors acknowledged WA:TER’s (Wetland Alliance: The Ecological Response) help under “Environmental Organizations” on page 24 of their 2014 Public Report No. 50. They also included a summary of the process that took place in Salmon Arm on page 95 of their report, as follows:

Case Summary

A group of concerned citizens contacted our office with a complaint about the process followed by the ministry in approving a RAR assessment report. The report determined the streamside protection and enhancement area (SPEA) applicable to a proposed large commercial development. At the time, it was ministry practice to approve assessment reports before allowing local governments to proceed with the development permit process. The ministry identified problems with the assessment report and required the QEP to amend and re-submit the report three times. While the fourth version of the assessment report was, in the ministry’s opinion, correct on paper, the ministry did not visit the proposed development site before approving the report.

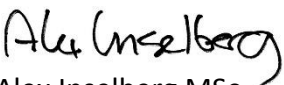
The citizens were concerned about the impact of the proposed development on important salmon habitat. They obtained and reviewed a copy of the assessment report from their local government, and questioned whether the QEP had correctly followed the RAR’s assessment methods. Some of the citizens had training in biology, which increased their ability to understand and respond to the report. The citizens contacted the ministry with their concerns, and, as a result, the ministry, for the first time in the history of the RAR, hired an outside consultant to review the QEP’s work. The ministry ultimately required the QEP to submit a fifth assessment report. This resulted in a reduction of the area available for the development from more than 24 hectares to approximately 6.5 hectares.


We believe our remarks, and the above extract from the Ombudsperson’s review, reveal in stark detail why the Professional Reliance Model, which the Riparian Areas Regulation, a major piece of enabling regulation in BC, explicitly relies on, is fundamentally flawed and needs a significant overhaul that will inject both rigour and oversight into its execution.

At the very least, we believe that a firewall needs to be put in place between proponents of development, from construction projects to extractive industry activities, and the professionals who assess such projects and activities, so that the undue influence now exerted over professional opinions is either sharply mitigated or completely negated.

Thank you for your consideration of this submission. We are looking forward to a progressive and comprehensive improvement in project assessment and management in BC as a result of your work.

Sincerely,


Alex Inselberg MSc
Consulting in Vegetation Science
& Soils (since 1984)


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