

December 3, 2020

Daniel Cheater
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Sent via email: council@pittmeadows.ca
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Pitt Meadows City Council
12007 Harris Rd
Pitt Meadows, BC, V3Y 2B5

Department of Fisheries and Oceans
200 - 401 Burrard Street
Vancouver, BC, V6C 3S4

Attention: Pitt Meadows City Council

Re: Approval of Non-Fish-Friendly Flood Infrastructure

On behalf of Watershed Watch Salmon Society (“Watershed Watch”), we write in regards to the decision of the Pitt Meadows City Council (the “Council”) on February 25, 2020, to apply for funding for an upgrade to the Kennedy Pump Station, and subsequent press release about this decision on March 5, 2020 (the “Press Release”).

After reviewing the applicable statutes and regulations, Watershed Watch is of the belief that:

- The Council’s assertion that fish-friendly pump stations would violate the law is a misapprehension of the prohibitions under the federal *Aquatic Invasive Species Regulations*, SOR/2015-121 [the *Regulations*], and in fact a fish-friendly pump station was recently approved by Council; and
- Non-fish-friendly pumps may be in violation of the prohibition against harm to fish under s. 34(1) of the *Fisheries Act*, RSC 1985, c F-14 [the *Fisheries Act*], assuming the requisite approvals from federal authorities are not in place.

Along with these findings, we write to ask for further information about current permits or licences allowing harm to fish under s. 34.4(1) of the *Fisheries Act*. On the basis that a non-fish-friendly upgrade would be in violation of the *Fisheries Act*, and a fish-friendly replacement would not be in violation of the *Regulations*, we ask that the Council instead seek funding for a fish-friendly replacement to the Kennedy Pump Station.

1. Fish-friendly pump stations do not violate the *Regulations*

On February 25, 2020, the Council voted to seek funding for a non-fish-friendly upgrade to the Kennedy Pump Station.¹ During the council meeting it was admitted non-native species would be killed, but the replacement was nonetheless approved as there had been a recent overrun in cost for a fish-friendly pump station in Pitt Polder. It was noted that fish-friendly pumps would be “twice the cost”. It was also briefly noted that the *Regulations* would prohibit the moving or transporting of invasive species within the waterways.

Following community concern about potential harm to fish, the municipality of Pitt Meadows issued the Press Release on March 5, 2020, stating their belief that fish-friendly pumps would violate the prohibition against transporting invasive species under the *Regulations* by allowing these fish to access the Fraser River:²

Fish-friendly pumps are not requirements of these grant applications, but they were carefully considered and staff have consulted with the Ministry of Environment and the Department of Fisheries and Oceans. If fish-friendly pumps were used at Fenton and Kennedy, it would violate the *Aquatic Invasive Species Regulation* and spread invasive species into the Pitt River and affect native and salmonid species. For this reason and the others outlined at the Council Meeting on February 25, 2020, both projects include non-fish-friendly pumps.

Watershed Watch submits that this interpretation is a misapprehension of the *Regulations*.

First, the prohibitions under the *Regulations* include importation, possession, transportation, release, and introduction of invasive species.³ Of these prohibitions, only transportation could arguably be applicable (should a fish-friendly pump allow passage of invasive species), though this interpretation would be a stretch.

Invasive fish species are also already widespread within the Katzie Slough, the Alouette River, Widgeon Slough, Pitt Addington Marsh and other waterways in and around Pitt Meadows. Attached as an appendix to this letter is a memo prepared by Mike Pearson, PhD, RPBio, a fish biologist that has been working in the lower Fraser for the past 24 years.⁴ During this period he has found invasive species present in virtually all waterbodies of the Fraser River. These include Pumpkinseed (*Lepomis gibbosus*), Largemouth Bass (*Micropterus salmoides*) and Brown Bullhead (*Ameiurus nebulosus*), as well as Black Crappie (*Pomoxis nigromaculatus*) and Dojo Loach (*Misgurnus anguillicaudatus*) in the lower Alouette River.

The approval of a fish-friendly pump replacement will not permit the transportation of these invasive species, given that their spread throughout the area has already occurred. Instead, a non-

¹ Video of the Council’s decision on February 25, 2020 is available online: <https://www.pittmeadows.ca/city-hall/council/council-meetings>. The vote and reasons behind it begin at 43 minutes.

² City of Pitt Meadows, “Clarification regarding Fenton and Kennedy Road pump replacements” (5 March 2020), online: <https://www.pittmeadows.ca/our-community/news/record/clarification-regarding-fenton-and-kennedy-road-pump-replacements>.

³ *Aquatic Invasive Species Regulations*, SOR/2015-121 [the *Regulations*] at ss 6-10.

⁴ Mike Pearson, “Memorandum Re: Invasive Fish Species in the Alouette River to Watershed Watch Salmon Society” (3 September 2020), attached as Appendix A.

fish-friendly replacement will cause harm to both invasive and non-invasive species within the waterway.

Secondly, a fish-friendly pump station was recently approved by the Council without regard to the prohibitions in the *Regulations*. The Council submitted a grant application for the fish-friendly Pitt Polder pump station in 2016, which was approved in early 2017. As discussed in the council meeting on February 25, 2020, this project ran over budget and has taken longer than expected to complete. When the Council made the decision not to approve a fish-friendly replacement for the Kennedy Pump Station, these budgetary and time considerations were the primary reason for not approving a fish-friendly alternative.

The Council's current opinion that a fish-friendly pump station would violate the prohibitions under the *Regulations* appears to have been developed after the decision was made. While the prohibitions under the *Regulations* were mentioned in the council meeting, the decision appears to have been primarily made for budgetary reasons, with the renewed emphasis on the *Regulations* only coming after significant community concern. Additionally, the Pitt Polder replacement was approved despite the alleged infringement of the prohibitions under the *Regulations*.

It is Watershed Watch's submission that fish-friendly pump stations would not violate the prohibition of transportation of invasive species, as there is no precedent or jurisprudence to suggest that such an interpretation of this prohibition is applicable in these circumstances.

2. A non-fish-friendly pump station replacement may violate the *Fisheries Act*

Additionally, the decision to approve a non-fish-friendly replacement to the Kennedy Pump Station may be in violation of the prohibition against harm to fish under the federal *Fisheries Act*.

The federal *Fisheries Act* includes general prohibitions on harm to both fish and fish habitat, through sections 34-35. Section 34.4(1) provides that "No person shall carry on any work, undertaking or activity, other than fishing, that results in the death of fish."⁵ This general prohibition is subject to exceptions, such as activities that have been authorized by the Department of Fisheries and Oceans or authorizations through Ministerial regulation.

Non-fish-friendly flood control infrastructure has regularly caused harm to many fish in the area. On February 1, 2020, there was a kill of fish at the McKechnie Pump Station in Pitt Meadows, after a large number of fish were caught in the station's debris screen.⁶ These fish include Pikeminnow and Peamouth Chub.

Prior to the approval for the non-fish-friendly pump station replacement to the Kennedy Pump Station, approval under the federal *Fisheries Act* are required. Without federal approval to cause harm to fish, a non-fish-friendly replacement would likely violate the prohibition against harm to fish under s. 34.4(1) of the *Fisheries Act*.

⁵ *Fisheries Act, RSC 1985, c F-14*, at s. 34.4(1).

⁶ See articles about this kill online: <https://www.mapleridgenews.com/opinion/along-the-fraser-more-needs-to-be-done-to-protect-all-fish/>; <https://www.mapleridgenews.com/news/dead-fish-hauled-to-dump-bothers-environmentalist/>.

On this basis, Watershed Watch has submitted a request to the municipality of Pitt Meadows for further information on current permits or licences for flood infrastructure in the area allowing harm to fish under the *Fisheries Act*. Given the findings in this letter, we ask that the Council cease efforts to approve funding for a non-fish-friendly upgrade to the Kennedy Pump Station, and instead seek funding for a fish-friendly replacement.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Daniel Cheater', with a stylized flourish at the end.

Daniel Cheater
Barrister & Solicitor



MEMORANDUM

September 3, 2020

To: Watershed Watch Salmon Society
Attn: Lina Aziz

From: Mike Pearson PhD, RPBio

RE: Invasive Fish Species in the Alouette River

In my work as a consulting fish biologist I have set more than 15,000 traps at hundreds of locations across the Fraser Valley over the past 24 years. Since 2012 I have repeatedly sampled Katzie Slough, the Alouette River, Widgeon Slough, Pitt Addington Marsh and other waterways in Pitt Meadows.

Based on this experience, I know that invasive fish are found in virtually all waterbodies in the Fraser Valley. Pumpkinseed (*Lepomis gibbosus*), Largemouth Bass (*Micropterus salmoides*) and Brown Bullhead (*Ameiurus nebulosus*) are in the great majority of Fraser tributaries. The lower Alouette River contains substantial populations of all these species in addition to Black Crappie (*Pomoxis nigromaculatus*) and Dojo Loach (*Misgurnus anguillicaudatus*).

Dojo Loach were first found in the Alouette River in the mid 2000's and now are common throughout. Until approximately 2012 there were not reported from any other tributaries of the Fraser River. Since 2015 we have found them at Pitt Addington Marsh and the Coquitlam River at Colony Farm suggesting that they are starting to spread outward from the Alouette River.

In most cases these species are found with indigenous species that prefer warm water. These include Northern Pikeminnow, Peamouth Chub, Redside Shiner and Brassy Minnow, all of which are common in Pitt Meadows waterways.

Should you have questions or required more detailed data, please feel free to contact me.

