

WEST CREEK AWARENESS GROUP
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B.C. Institute of Agrologists
Attention J. P. Ellison CEA / Registrar

June 9, 2023

Complaint against Ian Whyte P. Ag ,

Regarding the Envirowest reports and submissions to the Township of Langley and EPP Consultants regarding beaver dam removal and knowingly using an expired DFO Permit and BC MELP Permit in 2017 and 2022 within the Compensatory lands within the West Creek headwaters wetland and tributaries and Nathan Creek. **These actions are contrary to the PUBLIC INTEREST.**

PROFESSIONAL GOVERNANCE ACT

<https://professionalgovernancebc.ca/about/professional-governance-act/>

"conduct unbecoming a registrant" means conduct of a registrant that

- (a) brings the regulatory body or its registrants into disrepute,
- (b) undermines the standards, methods or principles that are the foundation of the profession, or
- (c) undermines the principle of holding paramount the safety, health and welfare of the public, including the protection of the environment and the promotion of health and safety in the workplace in the manner that reflects the stewardship of a given profession by each regulatory body.

"professional misconduct" means misconduct by a registrant as a professional, relating to the performance of duties while engaged in a regulated practice, including a failure to comply with, or a breach of, this Act, the regulations or the bylaws;

General duty and responsibilities of regulatory bodies

22 (1) It is the general duty of a regulatory body at all times to

- (a) serve and protect the public interest with respect to the exercise of a profession, professional governance and the conduct of registrants in the registrants' regulated practice, and
- (b) exercise its powers and discharge its responsibilities in the public interest.

Part 6 — Protection of the Public Interest With Respect to Professional Governance and Conduct

Division 1 — Standards of Conduct and Competence

Definition and application

56 (1) In this Part, "registrant" includes a former registrant.

(2) In the case of a former registrant, the application of this Part is limited to the period of time when the former registrant was acting as a registrant.

Standards of conduct and competence

57 (1) Subject to subsections (2) and (3), the council of each regulatory body must make bylaws establishing the following:

- (a) standards of professional and ethical conduct for registrants, which standards may be different for different categories or subcategories of registrants;
- (b) standards of competence for registrants, which standards may be different for different categories or subcategories of registrants or different areas of practices;
- (c) aspects of practice that a registrant either may or must not
 - (i) delegate to a non-registrant to provide or perform, or
 - (ii) authorize a non-registrant to provide or perform under the supervision of a registrant;
- (d) a program to assist registrants in dealing with professional or ethical issues;
- (e) continuing education programs or requirements for qualified continuing education for individual registrants, which programs or requirements may be different for different specializations;
- (f) continuing education programs or requirements that support reconciliation with Indigenous peoples in British Columbia;
- (g) continuing education programs to be provided by registrants that are firms.

Agrologist Regulation

[https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/10_2021/search/CIVIX_DOCUMENT_ROOT_STEM:\(Residential%20Tenancy%20Act\)%20AND%20CIVIX_DOCUMENT_ANCESTORS:statreg?3673](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/10_2021/search/CIVIX_DOCUMENT_ROOT_STEM:(Residential%20Tenancy%20Act)%20AND%20CIVIX_DOCUMENT_ANCESTORS:statreg?3673)

Scope of Practice <https://www.bcia.com/about-us/bcia-agrologists/practice-areas>

Water Resources, Planning, and Management

I.9.1 Definition: The practice of providing services and advice: *"using scientific principles, knowledge, and expertise to inform the governance, planning, and management of water in respect of the public interest."*

I.9.2 Rationale: The conservation and sustainable management of water resources is essential to the public good. The utility of land is directly related to the quantity and quality of water available to it. Drought conditions can be problematic for forests and rangelands, increasing the occurrence of wildfires.

Too little or too much water limits crops' ability to grow. Water of poor quality can also render land unusable for crop production. For example, water high in soluble salts can, if used to irrigate crops, result in the salinization of soils, with detrimental effects on vegetation, including food crops. Depending on how water might be chemically or biologically contaminated, its use also might result in situations that risk human, livestock, and wildlife health and/or adversely affect crops and vegetation.

To inform the planning, assessment, and management of water resources to ensure the public interest is respected, Agrologists have a combination of knowledge and expertise in

- Soil science;
- Landscape ecology;
- Crop science and production systems;
- Hydrology and hydrogeology;
- Watershed management;
- Water and environmental chemistry;
- Land use planning

Any activities under this practice area that are performed concerning ecosystems that are affected by sustain or have the potential to sustain the cultivation or production of aquatic or terrestrial plants or animals (and are not forested lands within the jurisdiction of the reserved practice of forestry) are within the reserved practice of agrology.

Protection and Management of Environmental Resources

J.10.1 Definition: The practice of providing services and advice: *using scientific principles, knowledge, and expertise to protect and sustainably manage environmental resources in respect of the public interest.*

J.10.2 Rationale: The protection and sustainable management of environmental resources, including soil, water, air (vapour), and biological resources, is essential to the natural environment and the public interest. Failure to mitigate contamination of these precious resources can result in high costs, including adverse effects on the health and

safety of humans, livestock, wildlife, and natural ecosystems, rendering resources unproductive. Contaminants and adverse impacts on these resources can be physical, chemical, or biological. They can be the result of either human activity or natural phenomena.

Protection and prevention of adverse impacts on these resources are ideal. Recognizing and assessing impacts is paramount when they have occurred. Remediating their impacts provides the opportunity for these resources to be productive. Monitoring environmental resources provide the opportunity to identify when they are adversely impacted and to ensure their state advances toward compliance with desired outcomes.

Working within the definitions of regulated and reserve practice outlined earlier in this document, seven major work activities can classify this practice area:

1. Assessing the state of environmental resources;
2. Prevention and protection of environmental resources;
3. Remediation of contaminated or adversely impacted environmental resources;
4. Monitoring the state of environmental resources;
5. Reviewing and developing recommendations for waste discharges from municipal, commercial and industrial sites;
6. Authorizing waste discharges subject to provincial regulatory policy;
7. Conducting audits, ensuring compliance, and certifying processes and facilities.

Grounds for Complaint Against Ian Whyte P. Ag

I Feb 01, 2023 Beaver Dam Removal outside of the least risk window and during a drought Due to being misinformed regarding the presence of salmon by Envirowest EBB removed beaver dams on Feb 1 2023 outside of the Least Risk Window which put wild coho smolts at risk according to Dr. Marvin Rosenau
<https://westcreekawareness.files.wordpress.com/2023/05/township-of-langley-foi-23-026-pgs.-1-208.pdf>

Excerpt

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Sent: Wednesday, February 01, 2023 3:02 PM To: Roeland Zwaag <rzwaag@tol.ca> Subject: [EXTERNAL] Fwd: Natural Resource Violation Report 202271 To whom it may concern: The section referring to 'Nature of the Violation' has a few errors. I am aware that although Beedie owns the land, it is in fact the TOL doing the work. Also the taking down of the dams has occurred in the past (not annually), affecting both the Coho salmon smolt cycle and migratory bird nesting sites but this time the extensive damage done is going to have a much greater impact. The timing of this activity raises questions

Page 147 TOWNSHIP OF LANGLEY foi 20-026

VDATE: October 7, 2020 TO: Matt Brigden, Township of Langley FROM: Geoff Smart, EBB Environmental RE: BEAVER ASSESSMENT AND IMPACT MITIGATION RECOMMENDATIONS

For the breaching or removal of beaver dams, the ICOP allows for the removal of a beaver dam where the impoundment of water may cause imminent threat of damage to nearby infrastructure, or is obstructing fish passage. **DFO's ICOP outlines measures and best practices that must be implemented for the protection of fish and fish habitat and require that notification of works⁴ be submitted to the regional office no less than 10 days before the initiation of works.** For B.C., notifications can be submitted via email to the Triage and Planning Unit, ReferralsPacific@dfo-mpo.gc.ca.

Ministry of Forests, Lands, Natural Resource Operations and Rural Development The management of beaver dams and the maintenance of culverts are regulated under both the Wildlife Act and the Water Sustainability Act. Section 9 of the Wildlife Act prohibits any actions that disturb, molests, or destroys a beaver lodge or dam unless the activity is undertaken by a licensed trapper, undertaken to provide irrigation or drainage under lawful authority for the protection of property, or authorized by permit (Wildlife Act, Section 9 (2)). The removal of a beaver dam under the Water Sustainability Act is regulated under Section 39 (1)(u) of the Water Sustainability Regulation and requires a Change Notification to be submitted 45-days before undertaking the dam removal. For routine maintenance of a beaver dam, communications with the province indicate that a formal Change Notification under the Water Sustainability Act is

TOWNSHIP OF LANGLEY PAGE 6 OF 11 GLOUCESTER STORMWATER DETENTION POND BEAVER ASSESSMENT AND IMPACT MITIGATION RECOMMENDATIONS OCTOBER 2020 Timing Generally, all instream works are to be completed during the appropriate timing windows to minimize the impacts on fish and beavers. Within the south coast region, the approved timing window for fish is between July 15 and September 15; for beaver dam removal, the timing window is between April 15 and September 15.

With respect to the above timing windows, it is noted that recent fish inventories by Dillon Consulting Ltd. (2012) and Envirowest Environmental Consultants Ltd. (2018) have not document the occurrence of salmonids (i.e., coho salmon) within the stormwater detention pond

GOLF COURSE LANDS AT GLOUCESTER, LANGLEY, BC
PROPOSED OCP AMENDMENT, REZONING AND
DETENTION POND EXPANSION Oct. 18, 2022
<https://wordpress.com/post/west-creek-awareness.ca/8>

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Ministry of Environment (now Ministry of Forests; MoF). Environmental agencies became increasingly active, and in 2000 DFO issued a habitat authorization (File 99HPAC-PA2-000-000217) in accordance with the Fisheries Act, and MoF issued a Water Approval (File A2004880) in accordance with the Water Act (WA), now the WSA. Extensions of the DFO Authorization and WA Notifications allowed works to continue though the mid 2010s

DFO Permit 99HPAC-PA2-000-000217

<https://westcreekawareness.files.wordpress.com/2022/10/a-2017-01193-dq-final-1.pdf>

16. GLOUCESTER shall ensure that the compensatory habitat is functioning as intended for the lifetime of Gloucester Industrial Estates. If at any time GLOUCESTER becomes aware that the compensatory habitat is not functioning as intended GLOUCESTER shall carry out any works which are necessary to enable the compensatory habitat to function as designed. If GLOUCESTER transfers its interest in Gloucester Industrial Estates, and the transferee assumes the obligations in Paragraph 12 in a form satisfactory to DFO, GLOUCESTER shall thereafter be relieved of these obligations.
17. GLOUCESTER will provide a restrictive covenant in favour of BC Environment pursuant to s. 215 of the *Land Title Act*, to ensure the compensatory habitat is left undisturbed in perpetuity. The restrictive covenant will be attached as Schedule "C". GLOUCESTER confirms it shall leave the compensatory habitat undisturbed. After the compensatory habitat is functioning as intended, GLOUCESTER shall not carry on any work or undertaking that will adversely disturb or impact the compensatory habitat, and will take all reasonable steps to ensure that the compensatory habitat is not disturbed by others, so long as GLOUCESTER is associated with Gloucester Industrial Estates.

II WORK IN OR ABOUT A WATERCOURSE OUTSIDE OF LEAST RISK WINDOW AND WITHOUT FISHERIES ACT OR WATER SUSTAINABILITY ACT PERMITS

- a. November 2017 – 2 years after the DFO Permit expired relocated 100 meters of RED LISTED West Creek INTO A CEMENT TUNNEL
<https://westcreekawareness.files.wordpress.com/2023/02/tol-2017-12-04-council-memo-re-beedie-incl-attachments-4.pdf>
- b. August 2022 infilled riparian area of West Creek at 48th Avenue and 275 Street 7 years after the Permits had expired
- c. January 2023 used an expired DFO Letter of Advice
https://westcreekawareness.files.wordpress.com/2022/11/scan_20220824-1.pdf which did not include RED LISTED Nathan Creek to Township of Langley to support infill of riparian area at 27500 Block 60th Avenue Township of Langley which is part of the COMPENSATORY LANDS that are to be LEFT UNDESTURBED IN PUPETUITY

OVERHEAD VIEW OF WEST CREEK HEADWATER WETLAND AND COMPENSATORY HABITAT <https://www.youtube.com/watch?v=fHjJrxP86cU>

PREVIOUS INTERVENTIONS IN THE PUBLIC INTEREST

Letters from Romilly Cananaugh P. Eng regarding riparian setback regulations

to EV Logistics <https://westcreekawareness.files.wordpress.com/2023/04/ev-logistics-letter-2022.03.161.pdf>

to TOL <https://westcreekawareness.files.wordpress.com/2022/07/cavanaugh-letter-mar-2021-riparian-area-on-274th-street.pdf>

Mike Pearson RP Bio letter <https://westcreekawareness.files.wordpress.com/2022/07/pearson-ecological-re-west-creek.pdf>

HISTORY

Letter from Ian Whyte P. Ag to Township of Langley November 30, 2017

“In allowing the enclosure of this stream in a storm sewer, the DFO Authorization acknowledged that fish habitat could be (and subsequently has been) eliminated from the property and that DFO would no longer have any interest in the property as habitat. The DFO Authorization ensured that replacement habitat would be (and subsequently has been) constructed elsewhere within the business park. Once the stream was diverted into the storm sewer, and a RoW was registered over the sewer corridor, all authority over this section of the drainage system transferred to the Township of Langley. Storm sewers are not considered to be fish habitat (even in cases where fish migrate through them) and setbacks do not apply. Senior environmental agencies have no role in the modification of storm sewers within their RoWs, including realignment of sewers in modified RoWs. Approvals are required from these agencies only when proposed works affect the inlets and outlets (i.e. where they connect to open streams); such works are not proposed by the development permit application”

Order by Ministry of Forests Lands and Natural Resources

In 2018 Forest Lands and Natural Resources of Township of Langley and Ian Whyte of Envirowest to obtain a permit for future work in or about West Creek

<https://westcreekawareness.files.wordpress.com/2022/07/relocation-of-a-stream-in-gloucester-industrial-park1.pdf>

BC Courts

<https://www.canlii.org/en/bc/bcpc/doc/2010/2010bcpc274/2010bcpc274.html#related>

Supreme Court of British Columbia
2015-01-07

<https://www.canlii.org/en/bc/bcpc/doc/2013/2013bcpc309/2013bcpc309.html>.

[16] On behalf of the Defendants, Mr. Ian Whyte, the Senior Project Manager of Envirowest Consultants Inc., was called to give evidence, and was also qualified to give opinion evidence in the field of fish habitat restoration and enhancement and watershed management. According to a report prepared by Mr. Whyte, the transfer of management of the riparian area of Windebank Creek from the Corporate Defendant to the Conservancy was not done entirely for charitable reasons, but as a condition of the issuance of a development permit for the commercial site.

[17] Mr. Whyte provided an opinion on the restoration plan put forward by the Conservancy. Part of the difficulty with Mr. Whyte’s opinion is that he maintains that the Defendants did not harmfully alter, disrupt or destroy the fish habitat at Windebank Creek, a conclusion that is contrary to the findings of this court. Much of his opinion is a repetition of the evidence that he gave at trial which was rejected. One area of his evidence which was not discussed at trial concerns the notion of restoration. As he points out in his report, the term “restoration” suggests a return to some previous condition. It is his position that the site restoration plan proposed by his company which formed the basis of the payment of

\$32,200 to the Conservancy was one which met the approval of the District of Mission. Specifically, it provided for the planting of vegetation which would control erosion and protect Windebank Creek's water quality. The trees proposed in that plan were selected so as to control the growth of Himalayan blackberries and other invasive plant growth. Mr. Whyte is also of the opinion that a three year maintenance period is required because that is what comports with the District of Mission's requirements.

[18] In his report, Dr. Pearson was critical of the Envirowest plan for a number of reasons. Dr. Pearson is of the opinion that the Envirowest plan will not control the growth of the harmful blackberry species. He is also of the opinion that the plant density proposed by the Envirowest plan is too low, that the species of trees it proposes be planted is not diverse enough to promote proper insect and fish food sources or to resist invasive plant species, and that the maintenance period of three years is too short to allow native plants to establish.

[19] Where the evidence of Dr. Pearson is in conflict with the evidence of Mr. Whyte, the evidence of the former should be preferred. Much of Mr. Whyte's recommendations are concerned with meeting the approval of the District of Mission for commercial development, as opposed to any concern over the long term viability of the fish habitat at Windebank Creek. Conversely, each of Dr. Pearson's recommendations is based on environmental concerns that directly relate to the health of the fish habitat which was found to be harmfully altered by the Defendants. Mr. Whyte's position that no harmful alteration of the fish habitat has occurred adversely colours his opinions on what proper site restoration should look like and accordingly, I find the opinion of Dr. Pearson to be the more objective of the two.

Appeal to Supreme Court of BC

<https://www.canlii.org/en/bc/bcsc/doc/2015/2015bcsc1334/2015bcsc1334.html>

(c) The Crown proved beyond a reasonable doubt that the appellants interfered with the fish habitat in a way that had impaired the value or the usefulness of the habitat for one or more of the purposes described in the definition of fish habitat in s. 34(1) of the Fisheries Act. Harm was created by the "cutting down of a number of trees, the removal of shade from the creek and the currying of adjacent vegetation" thereby altering the fish habitat to a "degree that was more than trivial or minimal."

(d) The potential and likely results of the appellants' works included alterations in the natural stream temperature regime, reduced large woody debris and its food and nutrient contributions, and decreased soil and bank stability, all of which majorly impact fish and fish habitat.

(e) The harm to Windebank Creek was "not insignificant" and "will take years to remedy."

(f) Of the two experts who testified at the sentencing hearing on the extent of restoration and on which would constitute an appropriate restoration plan, the judge preferred the opinion of Dr. Pearson called by the

Crown to that of Mr. Ian Whyte called by the appellants, having found the former more objective.

(g) The appellants' conduct showed a high degree of recklessness.