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November 20, 2019

Dave Clarke
Executive Director, Forest Practices Board
PO Box 9905 Stn Prov Gov't
Victoria, BC
V8W 9R1

Dear Dave,

On behalf of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD), please accept this letter as Government's response to the Forest Practices Board's (the Board) recommendation outlined in *Road Deactivation and Impacts to Fish Habitat near Kelowna (June 2019)*.

Recommendation to government: *Government should prepare guidance for CEB staff on how to interpret and apply section 46 (1)(b) of FRPA, regarding unforeseen weather conditions leading to damage to the environment.*

Response to recommendation: Compliance and Enforcement Branch (CEB) has prepared a procedural guidance document for all CEB staff. This guidance was circulated to CEB staff in October 2019, and is posted on the CEB internal website as an operational bulletin.

The procedural guidance covers the following elements:

1. Evidence gathering. The guidance addresses the types of evidence required to support a conclusion that events leading to environmental damage were or were not reasonably foreseeable. Supporting evidence includes weather reports, a summary of what the person did to avoid damaging the environment, and the timeframe of planned forest activities leading up to the weather event.
2. Weather variability. The guidance discusses how to discern predictable seasonal extremes from unforeseen weather conditions. For example, seasonal extremes are usually predictable based on data collected year over year. However, unforeseen weather events can occur. Therefore, supporting information from the tenure holder is needed to conclude that the weather event causing damage to the environment was not reasonably foreseen.
3. The effect of climate change. The guidance discusses the influence of climate change-induced extreme weather on the environment, and reasonable expectations of tenure holders in taking those risks into account when planning forest activities so that they do not damage the environment. For example, average annual precipitation is expected to increase, resulting in increased frequency and intensity of heavy precipitation¹. Increased precipitation will change the volume and timing of stream flows, increase sediment delivery to streams, and increase soil erosion². These changes are relevant to mitigating damage to the environment. In order to avoid damage to the environment, the person must reduce the vulnerability of road structures by

¹ Government of BC (2019). *Impacts of Climate Change*. Retrieved from <https://www2.gov.bc.ca/gov/content/environment/climate-change/adaptation/impacts>

² Association of BC Forest Professionals (May 2, 2019). *Professional Practice Guidelines: Watershed Assessment and Management of Hydrologic and Geomorphic Risk in the Forest Sector*.

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designing features that can withstand weather of greater intensity that, at the same time, will not adversely affect fish habitat and other important forest resources.

Conducting a risk analysis as per professional Watershed Assessment Guidelines (ABCFP, APEGBC) will help guide the design of access structures that can withstand damage the environment after experiencing unforeseeable weather events, while maintaining the integrity of important values such as fish habitat.

Consulting specialists are available to provide assessments that describe the current risk that extreme weather and its recurrence intervals may inflict on the tenure holder's tenure. This is another method to help prevent damage to the environment by way of unforeseen, extreme weather events.

Thank you for the opportunity to respond to the Board's recommendation to clarify the intent and application of FRPA section 46(1)(b) regarding unforeseen weather conditions for CEB staff. We believe the above-summarized guidance will strengthen the CEB's efforts to enforce FRPA's provisions to protect the environment.

If the Board has any questions about this guidance or would like to receive a copy of it, please contact Brad Faucet, Deputy Director of Operations, CEB.

Yours truly,

A handwritten signature in black ink, appearing to read "Brad Faucet", with a long horizontal flourish extending to the right.

Brad Faucett
Director, Compliance and Enforcement Branch
Ministry of Forests, Lands and Natural Resource Operations and Rural Development

CC: Deputy Director Operations, Compliance and Enforcement Branch



Forest Practices Board

File: 97250-20/17050

December 12, 2019

VIA EMAIL

Brad Faucett, Deputy Director Operations
Compliance and Enforcement Branch
Ministry of Forests, Lands, Natural Resource
Operations, and Rural Development
2501 14th Avenue
Vernon, BC V1T 8Z1

Dear Brad Faucett:

Re: Response to the Board's recommendation
Complaint Investigation #17050,
Road Deactivation and Impacts to Fish Habitat near Kelowna, FPB/IRC/222, June 2019

Thank you for your letter of November 20, 2019, responding to our recommendation in this report. The Board recommended Government should prepare guidance for Compliance and Enforcement Branch staff on how to interpret and apply section 46 (1)(b) of FRPA, regarding unforeseen weather conditions leading to damage to the environment.

You have responded with an operational bulletin that meets the intent of our recommendation. The bulletin covers information that will be useful to Natural Resources Officers as they conduct investigations.

Thank you for your timely and effective response to the Board's recommendation. We now consider this file closed.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Kriese', with a horizontal line extending to the right.

Kevin Kriese
Chair, Forest Practices Board