

Putting teeth into CEAA Screening Assessments: The experience of Les Amis de la Rivière Kipawa with the screening process for Dam Refurbishment on the Kipawa River

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The purpose of this paper is to describe the experience of Les amis de la Rivière Kipawa (LARK) with the new improved environmental assessment process that was developed as a result of the government's recent review. Because of its relevance to river preservation issues, we want to compare and contrast the objectives of the process with the reality experienced in the case of the Environmental Assessment of the refurbishment of the water control dam at Laniel, Quebec.

Background

In March 2001 the Minister of the Environment reported to Parliament on his Review of the **Canadian Environmental Assessment Act** (CEAA). Changes were introduced to improve it because it was perceived that **Environmental Assessments** (EA) lacked sufficient quality, predictability, and timeliness thereby undermining public confidence in their authoritative decisions.

He said that the strongest indictment against EA's done to that point was that they did not meaningfully engage Public participation *thereby threatening the trust and involvement of Canadians in the EA process*.¹

In making this report, Mr. Anderson also said that it was important that the EA process should:

- 1. Ensure Canadians have the information they need*
- 2. better incorporate aboriginal perspectives*
- 3. provide expanded opportunities for Canadians to participate*

The Dam at Laniel

The dam at Laniel in Northeastern Québec, was privately built on Lake Kipawa at the point where the lake empties into the Kipawa River, its only natural outlet. It was used in the timber industry to control the flow of logs to Lake Temiskaming. The dam was later assumed by the Federal Government and, in 1911, was upgraded to its current structure. The dam is designed primarily for water level control on the Ottawa River, and secondarily for water level control on Lake Kipawa.

The dam consists of two gates controlled by a manually operated overhead lift for stop logs. It was scheduled for refurbishment in 2006 owing to degradation of its structure. There was also seepage from beneath the substrate of its adjacent embankments. Officials perceived it was inadequate to withstand the effects of a once in 10,000 year flood event among other things.

Due to triggers in the CEAA, an environmental assessment was planned for the project, commencing in 2005. A screening self assessment was chosen, the least onerous of three possible types of environmental assessment. The lead coordinator was to be Public Works Goods and Services Canada (PWGSC) the owner of the dam and project proponent. Transport Canada, the Ministry of the Environment, and department of Fisheries and Oceans were also to participate.³ The EA was completed in February 2006 allowing various approvals and decisions which depended on its findings. These were subsequently made and announced.

On the basis of the fact that the spillway had been navigated safely for decades, Les Amis de la

rivière Kipawa (LARK) filed an application for judicial review in the Federal court of Canada requesting the court quash the resulting environmental assessment which approved decisions of Transport Canada (TC) and PWGSC authorizing the destruction of the dam at the headwaters of the Kipawa in Laniel, Quebec. The flood control dam on the Kipawa, was built to preserve navigation, top to bottom - a rare feature. Running a 10 meter flood control dam is not a common practice or event in Canada but the Laniel dam is different, it is a safe class III or intermediate advanced rapid, which is straight forward to run and ends in a pool.

The practical effect of the EA is a new dam which eliminates navigation of the Kipawa River at the sluice by recreational whitewater enthusiasts, traditionally a public right. PWGSC claims that the use of the sluice was never permitted and, as mitigation, has built a portage trail concluding that the new dam causes no significant environmental effect. Screening officials at first said that navigation was illegal. When that argument failed they claimed that it was unsafe and, when that argument failed, they claimed that the loss of a navigable sluice was insignificant. LARK contends that impinging navigation is a significant adverse environmental effect.

The Purposes of the Canadian Environmental Assessment Act

To put this into perspective we now review the purposes of the CEAA. ²

Five main purposes of the CEAA are: **(emphasis added)**

- a) to ensure that the environmental effects of projects **receive careful consideration** before responsible authorities take actions in connection with them
- b) to encourage responsible authorities to take actions that **promote sustainable development** and thereby achieve or maintain a healthy environment and healthy economy
- c) to ensure that responsible authorities carry out their responsibilities in a coordinated manner with a view to **eliminating unnecessary duplication** in the environmental assessment process
- d) to ensure that projects that are to be carried out in Canada or on federal lands **do not cause significant adverse environmental effects** outside the jurisdictions in which the projects are carried out
- e) to ensure that there is an opportunity for **public participation** in the environmental assessment process. (Section 4 of the CEAA)

Screening Environmental Assessments

In Canada, routine environmental screenings are conducted internally by government agencies while assessments of large projects are done publicly by an independent panel, at the same level of government, on the basis of an impact statement prepared by the proponent. The huge majority of screenings (over 95%) and assessments are done internally. Assessments are also done in collaboration with other governments in different jurisdictions, as in Alberta, where the Ministry of the Environment forms partnerships with other provinces, territories or the federal government when conducting assessments. ⁴

As mentioned, Screening EA's are internal self assessments, which are the least onerous compared to Comprehensive studies or Independent review panels which are warranted by public concern.

Triggers for EA's are the requirement for licenses and approvals by various government agencies contained in:

- Law list regulations
- Inclusion list regulations
- Comprehensive Study list Regulations
- Exclusion List regulations
- Regulations respecting the Coordination by Federal Authorities of environmental assessment Procedures and Requirements
- Projects Outside Canada Environmental Assessment Regulations
- Canada Port Authorities Environmental Assessment Regulations
- Federal Authorities Regulations

From Jan 1995 to Jan 2000 there were 6,000 EA's per year, of which 99% were screenings.⁵

Importance to the Canadian Heritage River System and Canadians

The importance of consistent, certain, high quality environmental assessments which have the participation and trust of Canadians should be apparent to all.

Anderson said, "... I fully expect improvements will continue ...*Effective environmental assessment can help us avoid damaging our natural heritage...The improvements ... help assure a more sustainable future.*"⁶

Whitewater rivers are being dammed at an increasing pace. The loss of the world class rapid created by the chute on the Kipawa River, despite decades of safe and legal navigation, is significant given that reasonable accommodation was feasible. The cost to recreate such a resource by artificial means would cost millions, relative to the modest cost of project modification. Unnecessary loss of navigation can and should be avoided if the CEAA recognizes Canada's river paddling heritage.

Conflicts

Where a delicate balance exists between different or opposing interests, the environmental assessment process has but one logical conclusion: Somebody, or some group, will be dissatisfied with the findings of the EA.

In the higher level comprehensive studies there is the possibility of mediation. With the independent review panel there is the possibility of independent review. In the case of the much more prevalent screenings, the only recourse is to the courts for judicial or administrative review.

The judicial review of an administrative decision is a formal legal process in which a judge reviews the facts and arguments of the public (almost always the plaintiff) that is the party dissatisfied with the findings of the EA and or the decisions or approvals resulting from it.

The review is based on arguments that the processes lacked procedural fairness, or that decisions were capriciously made without regard to the evidence gained through a fair procedure. In matters of opinion, however, the judicial opinion will never substitute itself for the administrative opinion. In effect, it is not illegal to make a wrong decision, but it is illegal to make a wrong decision wrongly.

There is agreement, that the EA process is participative. Given the facts presented, would a reasonable person, who knows all the facts in the situation, have a reasonable cause to believe that the decision maker made an unbiased decision based on those facts?

Did the EA take into account any extraneous considerations not made public? Did it properly weigh submissions with a view to considering whether they could be accommodated within the larger framework of the decisions stemming from the EA?

During the screening process, the various representations must be duly considered, otherwise the process is a sham.

Anderson said that the strongest indictment against EA's was that they *did not meaningfully engage public participation thereby threatening the trust and involvement of Canadians in the EA process.*¹ What purpose is served if the EA provides a forum for presenting views without the necessary reciprocity to consider those views when making its decisions?

This is echoed in Mr. Anderson's review.

From Goal 3: More Meaningful Public Participation

*"All interested persons ... have a fair opportunity to contribute and to see how their contributions have been used. Proponents and government decisions makers are provided with better information about possible environmental effects and can better address public concerns"*⁸.

This is the position of the Federal Ministry of the Environment as reiterated on their website:

*"Your participation in the federal environmental assessment process ensures an open, balanced process and strengthens the quality and credibility of environmental assessments. Also, your local and traditional knowledge about a project's physical site can help to identify and address potential environmental effects at an early stage of the environmental assessment process"*¹¹.

In the event of conflict, the delicate balance existing between different or opposing interests is upset; there exists a sense of bias: a sense that after all is said and done, a decision was made before the submissions were presented and regardless of what the public submitted, the decision was made, never to be altered or reversed.

Once the EA fails to produce a report, as in the case of the Laniel refurbishment project, which references the consultations and the role of submissions in the final decision, its findings are moot. Such a report would have to be published and available to the participants, if not to the general public at large. The EA report would have to summarize the submissions, making comments, drawing conclusions, and stating reasons why such submissions were not accommodated. On the other hand, its absence will be an indicator that the duty to consult was not carried out in good faith and without bias.

Another indicator of good faith and lack of bias may be whether or not the decision making process appeared transparent. This means that unhindered, or at the very least, reasonable access to the different documents and submissions in the EA registry is available to the public. Without such access, the public (or the plaintiff to be) has no way to consider the issues that were being weighed in the process or understand the larger framework within which their submissions were made.

The Judicial Review of the Laniel Dam Refurbishment

Once the decision of the Environmental Assessment was published, Les Amis de la Rivière Kipawa filed for a judicial review. This was no surprise. Les Amis had already announced its intention to do so in its initial correspondence with the Minister of Fisheries and Oceans in January 2005 and subsequently to the Minister of Transport with regards to the required approvals under the Navigable Waters Protection Act.

The grounds for the review were numerous.

Selection of the Type of Environmental Assessment

The selection of the screening assessment for the refurbishment of the Dam at Laniel, may have seemed reasonable, and perhaps the decision to do the screening entirely in French may also have seemed reasonable. The main stakeholders were almost entirely unilingual English. Lack of reasonable provision to accommodate them during the assessment was problematic. There was evidence that some of their submissions were not read. If language was an issue perhaps there was a need for a bilingual EA.

Clearly the dam was also instrumental in the plan to divert the Kipawa from its natural streambed and facilitate Quebec Hydro's Tabaret river diversion project. Post EA, the Canadian government announced its intention to transfer the refurbished Laniel dam to Quebec. In retrospect, a comprehensive environmental assessment was in order because of the quantity of water that would be diverted. Upon inspection of the EA registry, the transfer of the dam to Hydro Quebec for its Tabaret project was known and referenced in the Laniel Dam operating manual. Now that the intention to transfer the dam has been announced, conveniently after the EA, it is not hard to view the transfer of the refurbished dam as a transfer of cash to Quebec. This fact has attracted very little media attention.

Departments involved were working together

Mr. Anderson, in his review of the EA cited inconsistency and uncertainty caused by the involvement of many government agencies and departments. In the case of the Laniel Dam Refurbishment there was no doubt that the departments were working in concert but this cooperation was problematic.

Inquires about the project were always referred to the project administrator, Robert Laporte, who refused to answer correspondence with Les Amis. During the one public input session in Laniel, the project administrator and primary contact incorrectly told representatives of the plaintiff that navigation of the dam sluice was illegal by provisions of the Quebec Dam Safety Act and Canadian Dam Association Guidelines (see appendix 6, item 13). When asked to clarify, he responded that navigation was prohibited.

The project administrator was also the same individual originally charged with preparing the project feasibility report. Because he was so heavily invested personally in his original estimates, an absence of bias cannot be presumed.

Given that a project administrator was selected to coordinate activities between federal departments, there is no doubt that those departments worked in concert. It was learned that the dam that was being refurbished was never approved under the Navigable Waters Protection Act (NWPA). It was the dam itself, and not the running of it, which was illegal and any buoys, signage or restriction to whitewater navigation was illegal. This fact was systematically withheld from Les Amis as the "greening the environment team" worked methodically to have the old and illegal dam as built in 1911, scheduled for the refurbishment that was approved during the course of the environmental assessment.

Due process

Before the EA was completed, the contract was awarded by the Minister of Transport, Mr. Lapierre. It was the same Minister of Transport that was to receive the Environmental Assessment and make his decision based on the contents of the EA, essentially putting the cart before the horse. This breach of process was done citing unsubstantiated impending disaster, and threats to public safety. The Supreme Court has ruled that risk must be based on probable danger rather than possible yet improbable danger.

During the Environmental Assessment, the plaintiff filed (under the freedom of information act) for the date and terms and conditions associated with the approval of the refurbishment of the Lanier Dam under the NWPA by the Minister of Transport. Prior to the release of the EA, the Minister of Transport's Chief of Staff responded by saying that no decision had been reached.... on the new dam, which was less than helpful considering that a decision had been made on the old dam.

Anderson in his report to parliament cited a major concern in the CEEA,

“that Difficulty is created for the public in accessing information through public registries.”
7.

To summarize: The owners of the dam planned for a routine screening, unaware of the special circumstances at work, and were either unable or unwilling to make the necessary accommodations to address the submissions they were getting. They were unable to respond to the evidence that did not fit their paradigm and original assumptions no matter what information was brought to their attention. The specific case simply did not fit into their understanding of the “class”. They expected only feedback from local and French users but the most vocal opposition was from English users from Ontario. They failed to consider that the project was instrumental in a much larger river diversion project which qualified it for a different class of assessment, fixating on the smaller wedge issue of dam refurbishment.

The project correctly assigned the coordinator but the coordinator demonstrated bias towards his original plan without modification, favoring the development of a trail without considering other alternatives. He did not serve to adequately address public concerns in his oversight of the screening assessment or show any interest in mediating the concerns voiced by Les Amis.

Mr. Anderson repeatedly indicated in his review of the CEEA that the act was to promote greater use of mediation and dispute resolution. Despite numerous requests for meetings with the Ministry Representatives of Transport, PWGSC, and Environment no mediation was provided. In a meeting with the Minister of the Environment in Chelsea, Quebec, Mr. Stephan Dion remained unmoved and unwilling to assist Les Amis in their efforts to ensure a fair and thorough EA.

Rather than a process that fairly and objectively dealt with stakeholder concerns, exceptions arose. What happened instead was:

At first the officials said that navigation of the sluice was illegal. (See appendix 6, items 12 and 13) It was shown to them that navigation was in fact legal, much like passing under a bridge. It later became known that the dam itself was illegal. Navigation was legal, not only because the dam was illegal but because the NWPA protected navigation rights which had existed through past practice of long standing.

Behind the scenes, outside the realm of public participation, project authorities proceeded to try to make navigation illegal, while moving on to say that navigation of the sluice was unsafe. Years of navigating the structure demonstrated that the sluice was safe for the general public and whitewater recreational enthusiast, including commercial rafting companies.

Behind the scenes, outside the realm of public participation, project authorities tried to establish that it was unsafe to navigate the sluice at the dam, trumping up an engineering report of dangers while continuing on with changes to navigable status when in fact navigable status had already been identified through an internal fact finding.

Finally, the project officials proclaimed that the loss of navigation was insignificant and could easily be solved by a trail (Appendix 6 Item 12).

Not only does one want an audience but they want that audience to be ‘moved’ by both facts and

emotional appeal. Les Amis believes that the public audience mechanism broke down. Once this was identified as an issue, there was still no obligation for mediation to be granted. This is a fault in the system. So, who grants rights to be heard and what does it take to be heard? As stated by David Anderson, this finally becomes a matter for the court and largely a matter of fact and opinion for the court to decide.

Les Amis says that it is significant that a world class sluice has been safely navigated for over 40 years. It is significant that it has been the kick off for a 21 year old recreational river rally attracting participants from around the world. It is significant that it is the bookend for a growing commercial rafting industry, and of sufficient interest to induce recreational boaters to drive six hours to Laniel, Quebec from Toronto, Montreal, and Ottawa. It is most significant that no other world class sluices of this type are being recreated anywhere and if they were they would cost millions of dollars. Les Amis strongly believes that it is significant and in the public interest to preserve the experience.

In this case, a strongly held minority view was presented, well documented, and supported by factual evidence. Mitigation was possible and feasible but rather than striking a balance between disparate views these options were ignored. In the end, a group of government authorities decided a trail was a sufficient solution despite the fact that it flew in the face of all the main objections. This sort of decision making does not serve the public interest as described by Maxwell et al, below.

The Public Good versus Special Interest

David Anderson believed that it was in the public interest to improve the Environmental Assessment Process to build trust and faith in the government authority's decision making.

Public Interest is served through five approaches:¹⁰

1. *A fair, inclusive and transparent decision making process - **Process***
2. *A reasonably significant majority of the public's opinion prevails - **Opinion***
3. *Compromise with various positions is observed -**Interests***
4. *It addresses the many common pragmatic interests such as security and clean environment – **the common good***
5. *It represents shared values or a collective idea of what is reasonable and ethical. – **Values***¹⁰.

Who really benefits from the decision of the Environmental Assessment? Was the decision purely in the interest of the public good? A primary criticism of "special interest groups", especially environmentalists, is that they are apparently never satisfied with compromise or settling for anything less than achieving their own objectives.

By this description: PWGSC operated for the benefit of whom? We have cause to speculate:

Quebec Hydro?

Yes! The way is paved for their Tabaret diversion. Hydro Quebec is the engine of economic growth in Quebec paying billions of dollars a year in dividends to the provincial government.

PWGSC Planners and Operators?

Yes! They can expedite their project without modification. The navigation issue proved extremely inconvenient to the project timelines such that the contract for the project was actually announced by the Minister of Transport prior to the formal completion of the environmental assessment. The proponents did not want anything to get in the way of their transfer of the dam to Quebec. Were

separatist interests at work?

PWGSC Lawyers?

Yes! Always risk averse, they don't have to deal with special circumstances of navigability at the new dam.

Les Amis and recreational paddlers?

No! The issue is accessibility to a world class sluice for all Canadians in perpetuity. If a sluice like the one in question can be capriciously destroyed, no rapid in Canada is safe. Also, no rapid of this quality is being recreated anywhere in Canada. Its significance is both historical, and recreational. Les Amis seeks recognition and protection of a rare and unique navigation experience in Canada, found in the Province of Quebec. The spillway kicks off the traditional river paddling trip which includes running 16 other named rapids in a pristine wilderness setting which draws paddlers from around the world. Loss of the sluice is not reversible. Its loss is significant, and there is nothing like it in Canada. It needs to be preserved for present and future generations.

There is some need to address the liability issue. A portage trail might result in greater good if it avoids multi-million dollar law suits caused by someone drowning while running the dam. Perhaps if people were banned from running any other rapid recreationally, a greater good would be served? In some jurisdictions, like California with its rugged coastline replete with crashing surf, dangerous currents, rocks and waves, public access is facilitated. The state law reflects this. No one may sue for damages who voluntarily undertakes an activity.

With the debate now on, Les Amis, through its actions, may be in a position to preserve a significant paddling experience that has existed since confederation. The fight is important not just for the Kipawa but for all Canadian Rivers that we navigate today. The right to navigate recreational whitewater should not be capriciously cast aside at a bureaucratic whim by those who consider it valueless, or have no appreciation for its inherent value nor the traditions and the spirit of whitewater recreation and its commercial opportunities in Canada.

The broader implications of a ruling are in the public interest as it would provide Federal Court recognition of navigation rights associated with recreational paddling and an opinion on the meaning of Public Consultation and how it is applied by federal government departments.

Legal Challenges in the EA process

The Review of the CEAA by Anderson noted particularly the need to make the EA process fair. It also noted *the need* to use the courts to decide when the interests seem to be at loggerheads.

What is a significant environmental effect? When a proponent says it is and a member or group of the public says it is not: the next step is a respondent and plaintiff in court. The one additional issue then becomes facilitating the court challenge, giving time lines, dates, critical decision points and most importantly of all, participant funding.

There existed in Canada a Court Challenges program for Minority and Women's rights, recently cancelled. It can be argued that when operating for the public good, public sponsorship of legal challenges is required. Les Amis directly asked the Ministry of the Environment for assistance and none was forthcoming. A non profit group like LARK should not have to resort to bake sales and silent auctions for the public good while a project proponent with paid staff, and legal counsel paid by the government acts with impunity towards their own interests rather than the public good.

Further, judicial review, as a challenge of government policy, procedure or directive does not qualify for charitable activity status isolating it from many benevolent charities. NGO groups acting independently of the CHRS (**Canadian Heritage River System**) may not easily fund a challenge to questionable decisions such as those made in this case. Often no one is aware within the CEAA time limits or, if aware, they do not possess the resources to debate the merits of any given project.

Conclusion:

- (1) LARK feels it was not properly heard,
- (2) language and communication issues explain part of the problem or the animosities that developed,
- (3) the people running the EA didn't value the recreational resource provided by the sluice,
- (4) other agendas dominated the outcome, and
- (5) denial of the rights raised by stakeholders represented by LARK allowed this group's concerns to be dismissed.

On paper at least, the consultation process appears satisfactory, but in reality, it is very difficult for the general public to participate in Environmental Assessments.

1. At the rule making stage, there is a lack of stakeholder balance. The sheer weight of industry representation relative to public representation indicates that public interests take second place to industry interests. Individuals tend to be marginalized or labeled as fringe viewpoints.
2. Most environmental, public health, or community-oriented groups are hindered from participation and disadvantaged due to the resources, technical expertise, and legal advice required. At the individual permit level, public notices usually go unnoticed because the majority of the public does not read the legal notice section of the local newspaper or the parliamentary gazette. In the case of Les Amis, their particular interest was well known, they could have, at the very least, been placed on a mailing list for concerned parties.

The use of technical language alienates the public and does not address public concerns, which are primarily related to the environment or public health.

3. Background and supporting material pertaining to permit applications is often difficult to identify and obtain even though federal court judges have ruled they must be accessible.
4. Public engagement at the individual permit level does little to affect the outcome. A legal challenge is the only option available to the public and interest groups. Because of the time and expense involved, legal challenges generally are not feasible, and are used only in cases where the environmental and public health concerns are very significant.

A number of the problems have been identified in the public involvement process and these would be exacerbated by government staff cutbacks. For example, a bridge was constructed across the Kipawa by TEMBEC without a proper EA. With a greatly reduced staff, there is less time to assist the public to find, identify, and obtain the information necessary to determine if the public has an interest in a permitting issue.

LARK is the first NGO to come forward, having mobilized in time, to launch a judicial review which may change the direction of a government project already in progress. Had they done nothing, all would be lost, if successful, the sluice will be preserved for all Canadian Paddlers in a state that has existed for almost 100 years.

It is not illegal to be wrong, and failures in process may simply result in a repeat of a faulty EA process by obsessed project proponents.

References

1. *Strengthening Environmental Assessment for Canadians*: Report of the Minister of the Environment to the Parliament of Canada on the Review of the Canadian Environmental Assessment Act. March 2001. David Anderson Page (v)
2. *ibid*, page 3
3. Facts of the Respondent and Plaintiff, LES AMIS DE LA RIVIÈRE KIPAWA, 1162209036 Quebec Inc. and The Attorney General of Canada. For the Plaintiff: Paragraphs 9 and 10. For the Respondent: paragraph 10.
4. *Review of Governance Models in Environmental Management*, Executive Resource Group, December 21, 2000 Stratos Inc. as cited in http://www.ene.gov.on.ca/envision/ergreport/downloads/report_paper3.htm
5. *Strengthening Environmental Assessment for Canadians*: , op cit, page 4
6. *Strengthening Environmental Assessment for Canadians*, op cit, page (iii)
7. *Strengthening Environmental Assessment for Canadians*, op cit, page 10
8. *Strengthening Environmental Assessment for Canadians*, op cit, page 22
9. Leslie A Pal and Judith Maxwell as cited on the GOC website
Assessing the Public Interest in the 21st Century: A Framework, a Paper prepared for the External Advisory Group on Smart Regulation (Gaetan Lussier, chair) Dec. 2003
10. as cited on the CEEA website: http://www.ceaa-acee.gc.ca/011/index_e.htm

Appendices Appendix One

Time Line

Feb 4, 2004

Environmental Assessment Commencement Notice, PWGS approached TC with the intention of carrying out the project. TC discovers existing works had never been approved in virtue of the NWPA

March 11, 2005

LARK letter sent to Minister of Fisheries and Oceans: redirected to MOT.

April 6, 2005

Les Amis supplies its "History of Navigation" and "Request for Navigability" requesting that Navigability of existing dam and refurbished dam at Laniel be maintained.

September 28, 2005

Laniel DAM is tendered on MERX - PW-\$\$\$FG-258-28098

October 7, 2005

The document entitled "Environmental Assessment Report" is available on request. On CEAA website

October 19, 2005

Transport Canada added to list of responsible authorities

"Sometime in Oct 2005"

Approval issued by Transport Canada for existing dam. **NOT IN REGISTRY**

November 2, 2005

Les Amis representative visits CEAA registry Office: Documents withheld. Substantiative documents on liability withheld. Identified Tecslut document with engineers opinion

November 7, 2005

Minister of Transport announces awarding of contract

December 12, 2005

Karine Cousineau, Quebec Lieutenant, writes Les AMIS
"Please be assured that Transport Canada has not yet issued the approval under the NWPA for the proposed Laniel Dam project. Once the department receives proof of the publications from the proponent, it will review the comments received before making a decision on the project. I should note that the proponent is expected to publish its proposal in the Canada Gazette, Part I,

in the near future.”

December 2005,

PWGSC gives a preliminary notice of registration of plans and request for approvals for existing dam

January 19, 2006

Les Amis members refused meeting with MOT members in Quebec City. C. Belisle writes: “*M. Jones write to me by email that they can’t meet me and that he can’t do nothing for me, the meeting is cancel and M. Jones give me links of the Water Navigable Protection act*”

February 1, 2006 02 01

Tim McGrath, PWGSC advises Les AMIS of PWGSC Operational Decision not to allow kayaks to navigate the sluice at Laniel Dam.

February 9, 2006

PWGSC CEEA approval is given: notice of Decision February 9, 2006 -- Fisheries and Oceans Canada, Public Works and Government Services Canada and Transport Canada have completed the screening of the Laniel Dam Rehabilitation and on February 9, 2006 determined to take the following course of action. The authority may exercise any power or perform any duty or function with respect to the project because, after having considered the screening report and comments from the public, the authority is of the opinion that the project is not likely to cause significant adverse environmental effects.

As detailed in the environmental assessment report, mitigation measures have been required for the project to address:

February 22, 2006

Ursula Rupert PWGSC advises Les AMIS “ in Mr. McGrath's letter to you on February 2, 2006 it remains that As the owner and operator of the dam, we are responsible to ensure the safety of the public. There can be no doubt that passage through the sluice presents a risk of injury, or even death, and loss of property. If we were to permit this activity, it could result in a serious accident and, therefore, it cannot be allowed.”

From the Federal Factum filed with the Federal Court

” first, the public right to navigation on the River, though it is not denied, does not extend to navigation through the Laniel dam as this dam and its upstream boom have always constituted de facto restrictions to navigation through the dam. These restrictions were **FORMALLY approved** by Transport Canada in a decision rendered under subsection 6(4) of the NWPA, thereby **formally prohibiting** navigation at the dam’s location. This decision under the NWPA preceded the EA decision under the CEEA and was never challenged.”

8. “The applicants numerous contentions concerning the lack of procedural fairness throughout the environmental screening process... they are without merit”

Appendix Two

Excerpts from the CEAA website:

NOTICE OF COMMENCEMENT

of an environmental assessment, Laniel Dam Rehabilitation, Laniel, Barrage de (QC)

February 4, 2004

Public Works and Government Services Canada and Fisheries and Oceans Canada will conduct a screening commencing on January 30, 2004 of the project: Laniel Dam Rehabilitation. Rehabilitation of the existing spillway and replacement of the adjacent earth embankment. Under section 5 of the Canadian Environmental Assessment Act, an EA is required for this project because Public Works and Government Services Canada is the proponent for the project and Fisheries and Oceans Canada may issue a permit or license under subsection 35(2) of the Fisheries Act. Public Works and Government Services Canada will act as the Federal Environmental Assessment Coordinator for this environmental assessment.

October 19, 2005 (Update)

Public Works and Government Services Canada, Fisheries and Oceans Canada and Transport Canada will conduct a screening commencing on January 30, 2004 of the project: Laniel Dam Rehabilitation. Under section 5 of the Canadian Environmental Assessment Act, an EA is required for this project because Public Works and Government Services Canada is the proponent for the project; Fisheries and Oceans Canada may issue a permit or license under subsection 35(2) of the Fisheries Act and Transport Canada may issue an approval under subsection 6(4) of the Navigable Waters Protection Act and may issue an approval under paragraph 5(1)(a) of the Navigable Waters Protection Act.

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refer to CEAR reference number 04-01-940

Appendix Three

Abstract

The 5th Canadian River Heritage Conference
c/o Rivers West
202 – One Forks Market Road
Winnipeg, Manitoba R3C 4L9
Phone 1-204-945-7733 or
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Title Page

Title of the presentation: Putting teeth into CEAA Screening Assessments: Les Amis de la Rivière Kipawa experience with the screening process for Dam Refurbishment on the Kipawa River

Topical Area: Management of rivers through new models, strategies, or tools and the legal and institutional issues that may arise. Managing rivers with special considerations such as flooding, transportation, recreation or conservation.

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Biographical Sketch:

Peter Karwacki is an avid whitewater kayaker out of Northern Ontario. He started paddling the Kipawa in 1985. One of its rapids, "Pete's Dragon" is named after him. Supported by the paddling community and the Northern Ontario Liquid Adventures Club he presented his first paper to ENERGEX 2002 in Kracow, Poland. That paper was published in the European Journal of Applied Energy. You can find his entire resume on his website at: <http://www3.sympatico.ca/kayaky/peter.htm> He has paddled the both the Colorado and the Ganges and is currently working to create a NGO river preservation network in Canada.

Presentations can be:

- a case study paper on a particular river related topic and mostly descriptive;
- an analysis/synthesis paper that is mainly theoretical or policy-oriented; or

- an opinion paper that is based on research or personal experience.

Conference registration fees and all other expenses in attending the conference are the presenter's responsibilities.

Share your challenges and successes with the delegates at Current Perspective by submitting an abstract for presentation.

Management of rivers through new models, strategies, or tools and the legal and institutional issues that may arise. Managing rivers with special considerations such as flooding, transportation, recreation or conservation.

Full presentations as PDF files must be submitted on or before June 1, 2007 for inclusion in the conference proceedings.

Full presentation text may also be submitted and should not exceed 4 pages.

Text should be double-spaced.

Margins should be set at 1 inch from the bottom and sides of the page and 1.25 inches from the top.

Font should be Times New Roman, regular style and 12-point size.

Both MS Word and WordPerfect formats will be accepted.

A disk copy or a digital email copy will be accepted.

Appendix Four

The Case Reference

Federal Court Case No: T-452-06

LES AMIS DE LA RIVIÈRE KIPAWA, incorporated as 1162209036 QUEBEC INC.

Plaintiff and THE ATTORNEY GENERAL OF CANADA and THE MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA, THE MINISTER OF FISHERIES AND OCEANS, THE MINISTER OF TRANSPORT, and DAVID S. LAFLAMME CONSTRUCTION INC. **Defendant**

This case involves a federal court application by Les Amis de la Rivière Kipawa for judicial review of a decision by Transport Canada (TC) and Public Works and Government Services Canada (PWGSC) to eliminate historic navigation rights on the Kipawa River at the location of the Laniel flood control dam in Laniel Quebec.

Background

Members of the white water paddling community, recreational and commercial, have been paddling the Kipawa River since 1968, including the chute through the sluiceway of the Laniel flood control dam. This chute is a Class III rapid that is capable of being run at all levels above 63 cms. referencing Environment Canada (EC) flow data.

In 2005 PWGSC announced plans to rebuild this 100-year-old dam at Laniel. At a public consultation session in March of 2005, Les Amis expressed support for the effort to replace this aging structure. At this session PWGSC informed Les Amis that they had never approved navigation of this chute through the dam, that this navigation was illegal, and that it cannot, under any circumstances, happen in the future.

Les Amis asked for the relevant laws that PWGSC believed made navigation illegal and assured PWGSC that if in fact navigation was illegal Les Amis would abide by the law and discontinue navigation. PWGSC never provided any legal references for their claim that navigation is illegal. Subsequent research by Les Amis determined that navigation has been completely legal and such that navigation rights on the river, including the chute through the dam, are protected by the Navigable Waters Protection Act (NWP). Documents produced through our legal case show that TC confirmed and supported this conclusion.

TC and PWGSC then embarked on a notorious Environmental Screening Assessment to render historic navigation at this site retroactively illegal through section 6.4 of the NWP, while hiding this effort from Les Amis. <http://www.kipawariver.ca/eng/threats.html>

-TC and PWGSC did not conduct adequate public consultation on their combined decision to eliminate historic navigation rights at Laniel, rather officials hid valuable process and registry information from Les Amis related to their decision to eliminate navigation rights

The existing structure of the Laniel Dam, built in 1910, never had approval under the NWP, and was therefore an unauthorized structure on a navigable waterway – PWGSC never had any authority to deny navigation

Historically, from 1911 to the early 1970s, the Kipawa River, including the sluiceway of the Laniel Dam, was used for timber transportation, which constitutes navigation under the NWP

By issuing a permit under section 6(4) of the Navigable Waters Protection Act to PWGSC, authorizing them to restrict navigation at Laniel, TC has retroactively rendered 40 years of

navigation history by white water paddlers, and the past practice of timber transportation illegal

All documents filed with the federal court on this case are available on both the French and English sides of the Les Amis web site:

<http://www.kipawariver.ca/eng/threats>

<http://www.kipawariver.ca/fre/threats>

Financial Burden

Les Amis is a volunteer organization registered as a not-for-profit corporation in the Province of Quebec. Initial estimates provided in December of 2005 by environmental lawyers set the cost of this application for judicial review at \$50,000 to \$150,000.

Support from the Legal Community

In February of 2006, Les Amis obtained a commitment from an Ottawa lawyer, Robert Monti, to take on this case. Mr. Monti had the support of his law firm, Jewitt-Morrison in this effort. Mr. Monti has since moved from JW to Nelligan-O'Brien-Payne, another Ottawa law firm. NOP has also agreed to support Mr. Monti's efforts on this case.

The Federal Court Application Process

Application filed in Federal Court for a judicial review of the TC and PWGSC action to deny historic navigation rights

Federal government filed seven volumes related to the case with the federal court

Affidavit of James Coffey submitted as an expert in whitewater navigation and safety

Affidavit of Doug Skeggs, on behalf of Les Amis de la Rivière Kipawa

Federal government Response includes:

Kim Turnbull, environmental officer PWGSC, Richard Jones, navigable waters officer TC

Yvon Morin, manager PWGSC

Examinations of Affidavits:

Immediately following completion of examinations their transcripts are filed with the Federal Court

Filing of factum by Les Amis and Department of Justice

Federal Court hearing of the case

Federal Court ruling on the case

The Outcome Les Amis are Seeking

Les Amis asks the Federal Court to order Transport Canada to protect the navigation rights of recreational whitewater paddlers as they are required to do by law under the Navigable Waters Protection Act.

Appendix 5

LARK RESPONDES TO DAM TRANSFER ANNOUNCEMENT

NEWS RELEASE

Les Amis de la Rivière Kipawa

www.kipawa.river.ca

For immediate release:
August 28, 2006

FEDERAL DAM TRANSFER WILL LEAD TO RIVER DIVERSION

VILLE MARIE, QUEBEC – A Quebec river advocacy group says the federal government's plan to transfer ownership of a dam in northwest Quebec to the provincial government will pave the way for Hydro-Quebec to completely divert a 16-km section of the Kipawa River for power production.

"Hydro-Quebec has been trying to divert this river for power production for several years," said Christian Belisle, president of the non-profit group Les Amis de la Rivière Kipawa. "Once the ownership of this dam changes hands, they will pounce on it – and that is bad news for the Kipawa River and the Temiscamingue region."

The Honourable Michael M Fortier, Minister of Public Works and Government Services, announced August 24, 2006, the decision of the Government of Canada to transfer the management of three dams, located in the Temiscamingue region, to the Government of Quebec. One of those dams controls the outflow from Lake Kipawa into the Kipawa River at Laniel, Quebec.

"The Kipawa is an incredibly beautiful and historic old waterway," Belisle said today, responding to the federal government's news release announcing the proposed transfer of the dams to Quebec. "And now, with this transfer, it is one step closer to being gone forever. When does this stop? When do we stop destroying our rivers for the sake of cheap power – and it's not even power for our own use, it is power for export to the United States."

Hydro-Quebec in 1998 announced plans to completely divert the Laniel-to-Lake-Temincaming section of the Kipawa River to feed its proposed new 130 MW Tabaret generating station.

Belisle also says the federal government is handing the province of Quebec a nice Christmas gift by agreeing to spend \$13 million to rebuild the Laniel Dam before signing over the ownership.

-30-

Contact en Français:

FRANÇOIS DIEBOLT, 433A rue Bedard - Lasalle, Quebec - H8R 3A8

fdiebol@yahoo.ca Tel.:(514) 761-3385

Contact in English:

Peter Karwacki, 1620 Trenholm Lane, Ottawa, Ontario, K4A 4B6

kayaky@hotmail.com 6137381338x3229

Minister Fortier Confirms the Intention of the Government of Canada to Transfer Three Dams to the Government of Quebec

CCNMatthews; 8/24/2006

The Honourable Michael M Fortier, Minister of Public Works and Government Services, today announced the decision of the Government of Canada to transfer the management of three dams, located in the Temiscamingue region, to the Government of Quebec. Negotiations between the Government of Canada and the Government of Quebec are expected to be finalized by the end of 2006.

"This transfer will allow the Government of Quebec to obtain an asset well-suited to its mandate to manage its own energy and natural resources, while allowing the federal government to focus on our federal priorities," said Minister Fortier, adding, "this is a concrete demonstration of the vision of federalism of the new Government of Canada".

The transfer of these dams is consistent with federal government policy to divest of assets that are not supportive of federal programs. Once the transfer takes place, the province will assume full responsibility for the operation, maintenance and improvements of the three dams.

The transfer of the Kipawa and Des Quinze Dams, along with the agreement to transfer Laniel, may take place in 2007. The Government has agreed to delay the actual transfer of the Laniel Dam to take place only when its reconstruction has been completed. The contract was awarded in November 2005 and the work is underway.

The transfer will include the reconstruction of the Laniel Dam, and a financial compensation from the Government of Canada. This compensation will represent the actual value of the capital costs to repair and operate the dams for a period of 20 years, which will allow the Government of Quebec to continue to operate, maintain and upgrade the three dams.

The three dams were all constructed by the Government of Canada between 1912 and 1914 to control water levels on the Ottawa River.

Ce texte est également disponible en français.

BACKGROUND

TRANSFER OF THE LANIEL, KIPAWA AND DES QUINZE DAMS TO THE GOVERNMENT OF QUEBEC

The Government of Canada has confirmed the intention to transfer three dams in Temiscamingue to the Government of Quebec. The transfers of the Kipawa and Des Quinze dams will take place in early 2007, after the Government of Quebec has concluded its approval process. This transfer will include a financial compensation from the Government of Canada to allow the Government of Quebec to continue maintenance and upgrades of the dams. The federal government will complete a reconstruction project at Laniel Dam, currently underway, before the transfer of this dam takes place.

The federal government built the three dams in the early part of the twentieth century, to control the water level of the Ottawa River. They are all landmarks in their local communities and have benefited the local community and attracted tourists.

The Laniel Dam is located across the Kipawa River at the outlet of Kipawa Lake, in the town of Laniel, Quebec. It is a concrete gravity dam with two gates, approximately 31 metres in length. This dam was constructed between 1910 and 1912. Major repairs were undertaken on the deck, piers and abutments in 1988, 1993 and 1996. A contract was announced in November 2005 to rebuild the dam, for health and safety reasons. The contract was awarded to David S. Laflamme Construction Inc., and the work will likely be completed in 2008. The federal Government has

agreed to ensure that this work is completed before the dam is transferred to the Government of Quebec.

The Kipawa Dam is across Gordon Creek at the outlet of Kipawa Lake in the town of Kipawa, Quebec. It is a concrete gravity dam with bottom gates and is about 10 meters long. This dam was built between 1910 and 1912. The roadway deck was rebuilt in 1993 and 1994. It has been regularly inspected, maintained and is in good condition.

The Des Quinze Dam is across the Ottawa River at the outlet of Quinze Lake, in the village of Angliers, Quebec. It is a concrete gravity dam complete with 19 gates measuring approximately 143 metres long. There is also a long dike on the north-west side and a secondary dike to the east. This dam was constructed between 1911 and 1914. It was later reconstructed in 1939 and 1940, just downstream of the old dam. The roadway deck was widened in 1990 and part of the operating deck was rebuilt. The remaining part of the operating deck was rebuilt in 1996 and 1997, leaving it in good condition.

All of these transfers will provide the Province a valuable natural resource that will benefit the people of Quebec.

SOURCE: Public Works and Government Services Canada

Office of Minister Fortier
Jean-Luc Benoit
Director of Communications
(819) 997-5421
Public Works and Government Services Canada
Media Relations
(819) 956-2315

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Press Release for contract (translated by bable fish)

A contract of 13 406 560 \$ for the rebuilding of the Laniel stopping OTTAWA, November 7, 2005 - The honourable Jean-C. Lapierre, Minister for Transport and political lieutenant for Quebec, in the name of honourable Scott Brison, public Minister for Labour and governmental Services, announced today the attribution of a granted contract of 13 406 560 \$, following an invitation to tender, with the company David S. Laflamme Construction Inc for the rebuilding of the Laniel Dam, which is located at Laniel (Quebec). Work, which aims at replacing the concrete crest gate and the riprap dam of the stopping, will end in autumn 2007. "By replacing the stopping, the government of Canada ensures the best possible investment for the Canadian taxpayers, declared the Lapierre minister. Public works and governmental Services Canada (TPSGC) took time to examine all the options well, and it held of vast consultations before beginning work of replacement of the stopping. The project will be carried out with a view to the environment and according to the principle of durability. One will collaborate with the community to ensure the good course of the process of repair "the Laniel stopping was established in 1911 by the federal ministry of Public works to allow navigation on the river of Outaouais and the energy production. The stopping controls the discharge of river of Outaouais starting from the Kipawa Reservoir located in Témiscamingue, in Quebec. Even if Public works and governmental Services Canada (TPSGC) ensured the servicing of the dam, the Ministry carries out the rebuilding of the Laniel stopping to ensure the safety of the neighbouring communities. Before allotting this contract, TPSGC held of the meetings of consultation targeted with members of the community, groups of leisures, First Nations and general public to take care that the concerns of those are taken into account. The Ministry also carried out an environmental evaluation to avoid the effects on the

habitat of fish and the abrasion in the sector of work of rebuilding. **TPSGC will work with the surrounding municipalities and Hydro-Quebec** to take care that measurements necessary to the protection of the people and the goods located at the neighbourhoods of the Kipawa Reservoir, the Gordon brook and the town of Témiscaming are taken during and after the building work. For more information on the projects of markets of the government of Canada, consult www.merx.com, the electronic service of invitations to tender of Canada.

Appendix Six

Targeted Public Consultation Q&A

	 <p>QCM50051 □ Public Consultation Jacques Whitford □ Laniel Dam Rehabilitation</p>	<p>May 10, 2005 Page 23 © Jacques Whitford, 2005</p>
12	<p>Comment and concern of a representative of Les Amis de la Rivière Kipawa</p> <ul style="list-style-type: none"> • Kayakers have been passing through the Laniel Dam sluice for at least 40 years, and the festival is in its 19th year. The kayakers want to know why watercraft, such as kayaks, are prohibited from passing through a sluice. The representative asked whether this activity is prohibited by any act or regulation. 	<p>Proponent</p> <ul style="list-style-type: none"> • The passage of watercraft such as kayaks through a spillway is prohibited for safety reasons. • The possibility of building a trail downstream from the dam for the kayak festival is being examined and discussed. • Authorization has never been requested, and PWGSC has never authorized watercraft to pass through the dam sluice. In addition, authorization will not be granted in the future, since it involves too many risks in terms of legal liability.
13	<p>Question from Les Amis de la Rivière Kipawa</p> <ul style="list-style-type: none"> • Why are kayakers prohibited from passing through the floodgates of the dam? 	<p>Proponent</p> <ul style="list-style-type: none"> • For safety reasons, the application of the Canadian Dam Association guidelines on security and the Quebec <i>Dam Safety Act</i> prohibit watercraft from passing through a spillway.
14	<p>Question from Les Amis de la Rivière Kipawa</p> <ul style="list-style-type: none"> • Why has PWGSC agreed to help snowmobilers and ATV operators cross the dam, while kayakers are prohibited from accessing the sluices? 	<p>Proponent</p> <ul style="list-style-type: none"> • For safety reasons, users are prohibited from passing through the sluices of a dam. It can be safe to cross a dam that is built to be crossed, but it is dangerous to pass through a sluice, and PWGSC does not want to be held responsible for this type of activity.

<p>15</p>	<p>Comment from a representative of Les Amis de la Rivière Kipawa</p> <ul style="list-style-type: none"> • According to the representative's knowledge of the <i>Navigable Waters Protection Act</i>, it is prohibited to build an infrastructure (dam, sluice, etc.) that could restrict the navigability of a waterway. The dam sluice can be considered to be a navigable waterway. 	<p>Proponent</p> <ul style="list-style-type: none"> • It should be noted that PWGSC requires a permit from the Canadian Coast Guard before it may rehabilitate the dam. A permit issued by DFO is also required with respect to the fish habitats. • During the kayak festival, if the hydrological conditions permit, PWGSC will continue to accommodate the kayakers who navigate the waters downstream from the dam (in the Kipawa River) by increasing, if possible, the volume of water that flows through the dam. This will ensure that a certain level of water in the river is maintained and that kayakers can descend the Kipawa River with ease.
<p>17</p>	<p>Proponent</p> <ul style="list-style-type: none"> • How would tourism in the area be affected if kayakers could no longer pass through the sluices of the Laniel Dam? 	<p>Representatives of Les Amis de la Rivière Kipawa</p> <ul style="list-style-type: none"> • It is very exciting to be able to pass through the sluices of a dam. This activity is one of the biggest attractions of the festival. • Kayakers understand the danger involved but say that they know the river, the dangerous sections and the associated risks. The kayakers feel that the conditions at the Laniel Dam (e.g. the angle of descent, the depth of the water) are safe. There have been no accidents associated with this activity since the festival began. The kayakers believe that it is more dangerous to walk on the rocks than to pass through the sluices with a kayak.
<p>18</p>	<p>Comment from a representative of FQCKEV</p> <ul style="list-style-type: none"> • The representative requested that 	<p>Proponent</p> <ul style="list-style-type: none"> • Now that PWGSC has been informed for the first time by the kayakers that some

	<p>PWGSC and DFO examine whether the dam could be recognized as a navigable waterway, since kayakers have been passing through the dam for 40 years. The kayakers want to collaborate with the government and the Municipality of Laniel, as they have done in recent years.</p>	<p>kayakers pass through the spillway, PWGSC feels obligated for legal reasons to ensure that the regulations and guidelines governing dam security are respected. The government's lawyers will deal with this matter, but the response will not be included in this environmental assessment.</p>
<p>19</p>	<p>Proponent</p> <ul style="list-style-type: none"> • What economic impact does the kayak festival have on the Municipality of Laniel? 	<p>Representative of Les Amis de la Rivière Kipawa</p> <ul style="list-style-type: none"> • The Laniel Dam is one of the 16 rapids on the course. Enthusiasts kayak down the dam then go back up on foot. They enjoy themselves at the foot of the dam. • During a regular season, approximately 320 kayakers come to Laniel to go down the Kipawa River. Approximately 500 people will attend the 2006 kayak festival (20th anniversary). • The municipality did not respond.
<p>20</p>	<p>Concerns of the citizens and kayakers</p> <ul style="list-style-type: none"> • They were concerned about whether the river at the foot of the dam would be accessible and visible to kayakers, canoeists and spectators during construction. <p>Question from the citizens and kayakers</p> <ul style="list-style-type: none"> • Will the river be accessible? 	<p>Chair of the Laniel municipal committee</p> <ul style="list-style-type: none"> • The municipal committee agrees that a trail should be built after the construction is complete. A trail would provide festival spectators, kayakers and sport fishers with access to the river. <p>Proponent</p> <ul style="list-style-type: none"> • Construction is scheduled to begin in October 2005; therefore, it will not affect the 19th annual festival held in June. In 2006, the work site and surrounding area will be inaccessible during construction. This concern will be addressed.

		<ul style="list-style-type: none"> • A trail could be built approximately 200 metres downstream from the dam. For now, this is not included in the Laniel Dam rehabilitation project, but it will be considered. • If a trail were to be built, construction would begin after the rehabilitation of the dam. PWGSC is well aware of the potential impacts.
21	<p>Comment from the Laniel municipal committee</p> <ul style="list-style-type: none"> • Any potential trail would need to provide access to a safe location to launch kayaks. The kayakers could still paddle upstream toward the dam. 	<p>Proponent</p> <ul style="list-style-type: none"> • It should be safe to launch watercraft 200 m downstream from the dam. • However, there is no guarantee that the current conditions at the foot of the dam will be exactly the same once the dam rehabilitation is complete. • Hydrology studies have concluded that the zone extending 200m downstream of the dam would be dangerous and unsafe for fishing, swimming or operating watercraft.
22	<p>Comment from the president of the Fédération québécoise de canoe-kayak d'eau Vive (FQCKEV)</p> <ul style="list-style-type: none"> • The restricted access to the sluice will not only cause a specific problem for the 2006 kayak festival, it will affect dam users (snowmobilers, ATV operators, etc.) all year long. 	<p>Proponent</p> <ul style="list-style-type: none"> • This issue must be explained to the MTQ. Citizens can write letters to support the request to authorize the passage of snowmobiles and ATVs on the Provincial Highway 101 bridge.
24	<p>Comments of Les Amis de la Rivière Kipawa</p> <ul style="list-style-type: none"> • Though the group is dedicated to recreational activities, it is also 	<p>Proponent</p> <ul style="list-style-type: none"> • The results of the fish habitat assessment carried out in August 2004 showed that the temperature at the surface and at the bottom

	<p>concerned about the ecosystem of Lake Kipawa and the Kipawa River. The group asked whether the management of the new infrastructure would have an impact on the river conditions.</p> <ul style="list-style-type: none"> • Les Amis de la Rivière Kipawa is also concerned that the temperature of the lake might go up, which could affect the lake trout. 	<p>of the lake is the same, since the lake was not stratified upstream from the dam. The results also showed that the temperature upstream and downstream from the dam was the same. It is likely that this is not the case all year long.</p> <ul style="list-style-type: none"> • A follow-up fish habitat assessment will be conducted in the spring to determine whether the water upstream from the dam is stratified. • Since the management of the dam will remain the same and the water will pass over the spillway crest most of the time, the hydrological conditions will remain almost the same after construction. • DFO will assess the situation by examining the current environmental assessment. DFO experts will make recommendations and will, as appropriate, issue a permit to destroy, deteriorate or alter the fish habitat.
<p>25</p>	<p>Comment from Les Amis de la Rivière Kipawa</p> <ul style="list-style-type: none"> • The dam operations can cause the conditions to change, whether the water passes over the spillway crest or under a floodgate. 	<p>Proponent</p> <ul style="list-style-type: none"> • The conditions could change, but the dam will be managed in a way to recreate the existing conditions.

Appendix Seven

Freedom of Information Request

2005 12 05

George Steeves,
Access to Information Officer
ph 956-2666, fax 819-994-2119

Dear Mr. Steeves,

Further to your request to me today for clarification:

Please give me the date that PWGSC received approval from the Minister of Transport under section 5(1)a of the Navigable Waters Protection Act for its Laniel Dam Refurbishment contract and any conditions that were attached to that approval.

That contract was awarded by PWGSC, and it was announced by the Minister of Transport on November 7th, it must be approved under 5(1)a, correct?

For your further information:

Peter Karwacki
1620 Trenholm Lane,
Ottawa, Ontario
K4A 4B6

President of Whitewater Ontario
www.whitewaterontario.ca

Vice President of Les Amis de la rivière Kipawa
www.kipawariver.ca