



File: 76800-20/20I/Mission/Complaints/Nuttall Brook

February 7, 2013

**REGISTERED MAIL**

S22

Dear S22

**Re: NOTICE OF NON-COMPLIANCE AND ADVISORY – S22**  
**Mission – culvert improperly constructed and putting a thing into a stream**

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On January 28, 2013, I and Conservation Officer Denny Chretien visited S22. The purpose of my visit was to assess a complaint that sediments had or were entering into Nuttall Brook, and whether the stream crossing was improperly constructed. At the time of my visit, it was raining in the area.

My observations are as follows:

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I obtained mapping from the District of Mission website that shows Nuttall Brook in this area is red-line, Class A, or it is a fish stream.

*Sediment Production from Road and Exposed Slopes Issue*

Nuttall Brook has a natural gravel streambed, including sands. However, I found large sand deposits in the stream and ponds

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I visited the stream crossing upstream  
and did observed sand in the stream, but the water was relatively clear

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Under the Water Act, Section 93(2)(j) it is a general offense to put into a stream any sawdust, timber, tailings, gravel, refuse, carcass or other thing or substance after having been ordered by the engineer or water recorder not to do so.

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In order to rectify the sediment production, the following actions are required:

You are to develop and install measures to control the sediment production on your property from entering Nuttall Brook. Within 25 days, submit to my attention and approval, a sediment control plan (SCP) approved and signed off by a qualified professional.

The SCP is to discuss:

1. Immediate actions to be undertaken;
2. Actions to be undertaken within the next 6 months;
3. Actions to be undertaken within the next 6 to 12 months; and
4. The frequency that the qualified professional would provide me with an update on the progress of the SCP.

*Culvert – Road Embankment Issue*

The use of screened boxes for a stream trash rack is not an accepted design, and would block fish passage up and down the stream. The road embankment needs to be made stable, such that fill does not slip or slough down into the stream and encroach into the culvert inlet or outlet.

Under the *Water Regulation*, Section 44(1)(a)(ii) states in fish bearing waters, the culvert allows fish in the stream to pass up or down stream under all flow conditions, and Section 44(1)(a)(xii) states embankment fill materials do not and will not encroach on culvert inlets and outlets.

In order to rectify the culvert – road embankment issue, the following actions are required:

You are to have the culvert and road embankment assessed by a qualified professional, for providing fish passage under all flow conditions, and stabilizing the embankment as

not to encroach onto the culvert inlet or outlet. Within 25 days, submit to my attention and approval, a culvert plan prepared by this qualified professional.

The culvert plan is to discuss:

5. Immediate actions to be undertaken;
6. Actions to be undertaken within the next 6 months;
7. Actions to be undertaken within the next 6 to 12 months; and
8. The frequency that the qualified professional would provide me with an update on the progress of the culvert plan.

*Sand Deposition Issue*

Given the presence of fish, and the fish values in Nuttall Brook, I have considered that a contribution to the Habitat Conservation Trust Foundation, or to a local stewardship group, or to the local government for the removal of the sand sediments S15  
S15 would be appropriate.

Under the Water Act, Section 88(1)(e), the Engineer under the Water Act can order the restoration or remediation of any changes in and about a stream. The proposed restoration would be the removal of the larger sand deposits found in the stream and ponds S15

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Within 25 days, provide your position on whether you would be preparing a contribution offer for this stream restoration.

Your position is to discuss:

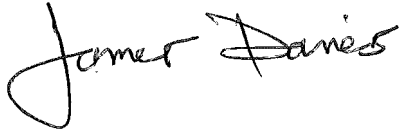
9. The contribution amount;
10. Whether performance security would be provided; and
11. The identification of a stewardship group, local government, or the other party that agrees-in-principal to undertake this stream restoration.

You are advised that failure to comply with *Water Act*, Section 93(2)(j) and other sections, is a general offence under the *Water Act* which may be subject to prosecution or other enforcement action.

Under Section 93 of the *Water Act*, it is a general offence to make a change in and about a stream without lawful authority, or divert and use water without proper authority. Under Section 9 of the *Water Act*, changes in and about a stream (such as installing, maintaining or removing a stream crossing) may only be made in accordance with the *Water Regulation*, an Approval, a Licence, or an Order.

Please do not hesitate to contact me at (604) 586-5637 or email [James.Davies@gov.bc.ca](mailto:James.Davies@gov.bc.ca) if you have any questions in regard to this Advisory.

Yours truly,

A handwritten signature in black ink that reads "James Davies". The signature is written in a cursive style with a large, looping initial "J".

James Davies, P.Eng.  
Designated Engineer under the Water Act

cc: Michael Younie, District of Mission, BC  
Dale Vinnish, District of Mission, BC  
Jennifer Meier, District of Mission, BC  
Fisheries and Oceans Canada, Mission Field Office, A1 - 7266 River Place, Mission,  
BC, V4S 0A2