



Affidavit #1 of Shauna Stewart
Affirmed on July 20, 2016

No. **S-166670**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SIERRA CLUB OF BRITISH COLUMBIA FOUNDATION and JOSETTE WIER

PETITIONERS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
(MINISTRY OF FORESTS, LANDS, AND NATURAL RESOURCE OPERATIONS)

RESPONDENT

AFFIDAVIT

I, Shauna Stewart, of 601-510 Hastings Street, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am a paralegal employed by Gratl & Company, who are counsel of record for the petitioners, and as such I have personal knowledge of the facts and matters hereinafter deposed to, save and except for information imparted to me by other people, in which case I believe the source of the information to be reliable and I believe the information to be true.
2. The following documents are attached as exhibits to this affidavit:
 - a. **Exhibit "A"** is an extract of the Decision Statement issued by the federal Minister of the Environment under section 54 of the *Canadian Environmental Assessment Act, 2012* to the British Columbia Hydro and Power Authority ("BC Hydro") in respect of the Site C Clean Energy Project, available from the Canadian Environmental Assessment Agency public registry.

- b. **Exhibit “B”** is a letter dated May 13, 2016 from BC Hydro to Mr. Chris Addison, Director (Resource Management) within the Ministry of Forests, Lands and Natural Resource Operations, with respect to a request by BC Hydro for permission to undertake amphibian salvage under the *Wildlife Act*.
 - c. **Exhibit “C”** is an email chain involving the aforementioned Mr. Addison, Mr. Jeff Richert (Natural Resource Management Advisor to the Nun wa dee Stewardship Society), and others with respect to BC Hydro’s request for permission to undertake amphibian salvage under the *Wildlife Act*.
3. I affirm this affidavit in support of a judicial review and for no other or improper purpose.

A Commissioner for taking Affidavits for British Columbia

**This Affidavit is Commissioned by Jason Gratl of Gratl & Company, Barristers and Solicitor
601-510 West Hastings Street, Vancouver, B.C. V6B 1L8 Tel: 604-694-1919 Fax: 604-608-1919**

1

Decision Statement
Issued under Section 54 of the *Canadian Environmental Assessment Act, 2012*

to
British Columbia Hydro and Power Authority
c/o Susan Yurkovich
Executive Vice President

333 Dunsmuir
Vancouver, British Columbia
V6B 5R3

for the
Site C Clean Energy Project

This is Exhibit "A" referred to in the affidavit
of Shauna Stewart, sworn before me
on the 29 day of July, 2016.

.....
A commissioner for taking affidavits in
British Columbia

Description of the Designated Project

BC Hydro and Power Authority (the Proponent) proposes to construct and operate a dam and 1,100-megawatt hydroelectric generating station on the Peace River in northeastern British Columbia. The Site C Clean Energy Project (the Designated Project) would be the third in a series of dams on the Peace River in British Columbia. The project components would consist of an earthfill dam 1,050 metres long and 60 metres high, a 1,100-megawatt generating station and associated structures, a 83-kilometre long reservoir, realignment of four sections of Highway 29, and two 77-kilometre transmission lines along an existing transmission line right-of-way connecting Site C to Peace Canyon.

Conduct of the Environmental Assessment

The former Minister of the Environment established a Joint Review Panel for the Site C Clean Energy Project with the Government of British Columbia. The Joint Review Panel commenced its work on August 2, 2013. The Joint Review Panel conducted its review in a manner that met the requirements of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and submitted its report to me in my capacity as Minister of the Environment on May 1, 2014.

Decision on Environmental Effects referred to in subsection 5(1) of CEAA 2012

In accordance with paragraph 52(1)(a) of CEAA 2012, after considering the report of the Review Panel on the Site C Clean Energy Project and the implementation of mitigation measures that I consider appropriate, I determined that the Designated Project is likely to cause significant adverse environmental effects referred to in subsection 5(1) of CEAA 2012.

In accordance with subsection 52(2) of CEAA 2012, I referred to the Governor in Council the matter of whether those significant adverse environmental effects were justified in the circumstances.

In accordance with paragraph 52(4) (a) of CEAA 2012, the Governor in Council decided that the significant adverse environmental effects that the Designated Project is likely to cause are justified in the circumstances.

In accordance with subsection 53(1) of CEAA 2012, I have established the conditions below in relation to the environmental effects referred to in subsection 5(1) of CEAA 2012, with which BC Hydro and Power Authority must comply.

Decision on environmental effects referred to in subsection 5(2) of CEAA 2012

The carrying out of the Designated Project may require the following federal authorities to exercise a power or perform a duty or function conferred on them under an Act of Parliament other than CEAA 2012:

- Fisheries and Oceans Canada may issue an authorization under subsection 35(2)(b) of the *Fisheries Act*; and
- Transport Canada may approve the dam and ancillary works under subsection 6(1) of the *Navigation Protection Act* (NPA) and may permit ancillary works under subsection 9(1) of the NPA.

In accordance with paragraph 52(1)(b) of CEAA 2012, after considering the report of the Review Panel on the Site C Clean Energy Project and the implementation of mitigation measures that I consider appropriate, I determined that the Designated Project is likely to cause significant adverse environmental effects referred to in subsection 5(2) of CEAA 2012.

In accordance with subsection 52(2) of CEAA 2012, I referred to the Governor in Council the matter of whether those significant adverse environmental effects were justified in the circumstances.

In accordance with paragraph 52(4) (a) of CEAA 2012, the Governor in Council decided that the significant adverse environmental effects that the Designated Project is likely to cause are justified in the circumstances.

In accordance with subsection 53(2) of CEAA 2012, I have established the conditions below in relation to the environmental effects referred to in subsection 5(2) of CEAA 2012, with which BC Hydro and Power Authority must comply.

Issuance

This Decision Statement is issued on November 25, 2014 at Ottawa, Ontario by:

<Original signed by>

The Honourable Leona Aglukkaq
Minister of the Environment



BC Hydro, Four Bentall Centre
600-1055 Dunsmuir Street
Vancouver, B.C. V7X 1V5
Email: Bettina.Sander@bchydro.com

May 13, 2016

Mr. Chris Addison
Director, Resource Management
Ministry of Forests, Lands, and Natural Resource Operations
Email: Christopher.Addison@gov.bc.ca

Dear Mr. Addison:

Re: Site C Clean Energy Project – Emergency Amphibian Salvage Permit for South Bank Works

BC Hydro is requesting permission to undertake an emergency amphibian salvage under the *Wildlife Act* on the south bank of the dam site area of the Site C Clean Energy Project (the Project). This objective of this salvage is to avoid accidental amphibian mortality that might otherwise result from the installation of three dikes and the closure of the south bank backchannel, as described below and shown in attached Drawing 1016-C14-07264-1 (General Location Plan) and Drawing 1016-C14-07264-2 (Detail Site Map).

1.0 BACKGROUND

1.1 Regulatory Requirements

Construction and operation of the Project is authorized under Environmental Assessment Certificate E14-02, issued by the Provincial Ministers of Environment and of Forests, Lands and Natural Resource Operations, on October 14, 2014, and by the Decision Statement issued by the Minister of Environment of Canada on November 25, 2014. Both the EAC and Decision Statement set out conditions under which the Project can proceed.

Fisheries Act Authorization 15-HPAC-00170 for isolation of the Peace River South Bank Side Channel was issued to BC Hydro on September 30, 2015. The Authorized works include construction of a road across a channel on the south bank of the Peace River (i.e. South Bank Initial Access Road) and the construction of dikes at the upstream end of the south bank side channel to isolate the channel.

Water Sustainability Act Water Licence C132990, Leave to Commence Construction 1, authorizes the installation of the dikes and closure of the side channel. BC Hydro has requested a Leave to Construct (LTC1A) the dikes and closure channel from the Independent Engineer (IE). This request is currently under review by the IE.

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This is Exhibit "B" referred to in the affidavit
of Shauna Stewart, sworn before me
on the ...20... day of July, 2016.

.....
A commissioner for taking affidavits in
British Columbia



1.2 Rationale for Salvage

BC Hydro will start main civil works under the Water Licence by constructing three dikes across the south bank side channel. This will result in the dewatering of the upstream section of the south bank channel. Dewatering of the channel is required so that an access ramp can be built in the channel for access to the right bank drainage tunnel area. This will allow for construction of the tunnel. This tunnel will be used to monitor ground movement during construction of the RCC buttress, approach channel and dam. Construction of the tunnel is on the critical path so that data can be collected prior to the start of construction of these structures. If the tunnel is not constructed on time and data not collected, the Project risks significant schedule delays – i.e., BC Hydro may not be able to start excavations for the powerhouse on time.

Prior to construction of the dikes, fish must be salvaged in the south bank back channel. BC Hydro holds *Wildlife Act* permit FCP-FJ15-161318 for the salvage of fish. In accordance with the conditions of this permit, BC Hydro has provided a fish salvage plan to FLNRO. This plan has also been reviewed and accepted by the Independent Engineer and Independent Environmental Monitor to meet the requirements of the Water Licence and Leave to Commence Construction 1 for the south bank dikes. BC Hydro's contractor started the fish salvage works on Thursday May 12, 2016.

The channel also provides habitat for amphibians. An amphibian salvage in accordance with the *Wildlife Act* will be required prior to the commencement of works. BC Hydro submitted an application for an amphibian salvage permit to FLNRO in September 2015 for review and issuance. The permit is not expected to be issued until mid to late June 2016. The closure of the channel and the salvage works cannot wait until the permit is issued; as noted, the delay in construction of the dikes puts the main civil works construction schedule at risk. FLNRO has agreed to consider site specific emergency approvals in the interim.

1.3 Salvage Location

Amphibians are proposed to be salvaged from the South Bank Side Channel centered on UTM coordinates 10V, 629228mE, 6229428mN. The section of the side channel proposed for disturbance is a slow-moving, moderately shallow (0.1-2.0 m deep) watercourse of varying width (approximately 10-25 m) and 2 km long. Habitat present at the site includes a mixture of floodplain riparian ecosystems interspersed with isolated pockets of wetlands on the edges of side channel. The area provides suitable amphibian habitat and amphibians have been recorded in this watercourse (see Photos 1 and 2). A salvage of amphibians is planned within suitable habitats to capture and relocate individuals occurring within the proposed footprint area that will be impacted by construction works.

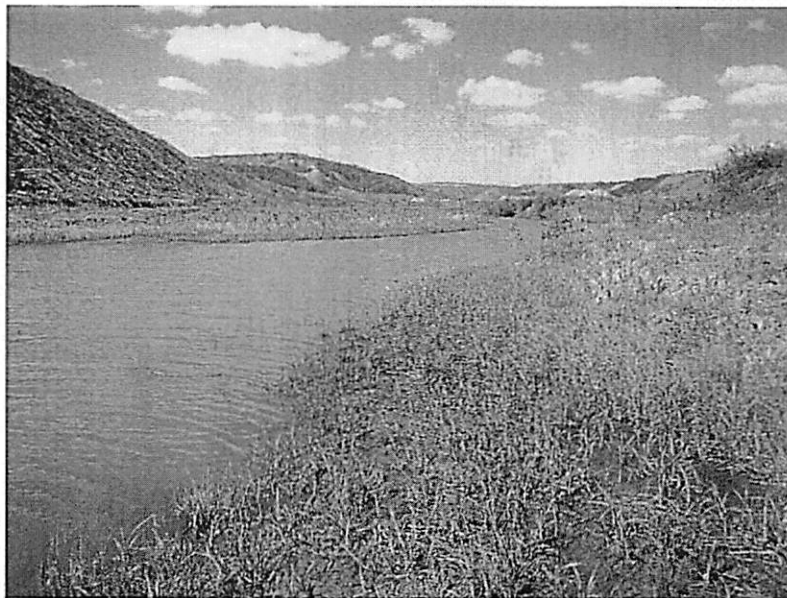


Photo 1: The South Bank Side Channel of the Peace River as viewed facing upstream – portion of proposed salvage location



Photo 2: View of the South Bank Side Channel looking from the left bank towards the right bank (as viewed facing downstream) with a small wetland area and a beaver dam in the background – portion of proposed salvage location

The upland terrestrial habitat within the Project area is within the moist and warm subzone of the Boreal Black and White Spruce zone (BWBSmw1). This climatic subzone is dominated by continental polar and arctic climate, with long cold winters and short growing seasons (DeLong et al. 2011). White spruce (*Picea glauca*), lodgepole pine (*Pinus contorta* var. *latifolia*), subalpine fir (*Abies lasiocarpa* var. *lasiocarpa*), and black spruce (*Picea mariana*) are the major tree species, with trembling aspen (*Populus tremuloides*), black cottonwood (*Populus trichocarpa*), and paper birch (*Betula papyrifera*) found along river valleys. The proposed amphibian salvage location is detailed in Drawing 1016-C14-0726-2 (attached).

2.0 SPECIES EXPECTED TO BE CAPTURED

The following amphibian species have been observed on the site and/or are expected to occur in the proposed salvage area based on baseline data:

- Boreal chorus frog (*Pseudacris maculata*) – Yellow listed (expected to occur)
- Columbia spotted frog (*Rana luteiventris*) – Yellow listed (*Adults observed May 12, 2016*)
- Long-toed salamander (*Ambystoma macrodactylum*) – Yellow listed (expected to occur)
- Wood frog (*Lithobates sylvaticus*) - Yellow listed (*Adults and hatchlings observed May 12, 2016*)
- Western toad (*Anaxyrus boreas*) – Blue Listed, Special Concern COSEWIC, Schedule 1 SARA (*Adults observed May 12, 2016*)

A preliminary field visit to the salvage area on May 12, 2016 found the following:

- 5 Adult western toads
- 2 Adult Columbia spotted frogs
- 13 Adult wood frogs
- 1000+ wood frog hatchlings



Photo 3: Wood frog hatchlings observed within proposed salvage location.

It is expected that if warm temperatures continue over the next few days, egg masses may be observed within the channel. Therefore, it is anticipated that at least 1500 or more amphibians may be salvaged from this area. Suitable amphibian breeding habitat was observed along the majority of the side channel, especially in gently sloped areas with emergent vegetation.

A salvage of amphibian species is proposed within the entire portion of the South Bank Side Channel that will be isolated by Project construction. Salvaging this entire area will reduce the potential for amphibian mortality during ongoing construction. Drawing 1016-C14-07264-2 shows the location of the proposed salvage area, where amphibians were observed during the May 12, 2016 site visit along the side channel, and the proposed release location of salvaged amphibians (green icon).

3.0 METHODS

This section describes the proposed methods for amphibian capture, handling, and relocation. Field crews will implement MoE's *"Interim Hygiene Protocols for Amphibian field staff and researchers"* during amphibian survey, salvage and monitoring. The following methods have been developed based on *"Best Management Practices for Amphibian and Reptile Salvages in British Columbia – draft"* (MFLNRO 2014).

3.1 Timing and Effort

Works are proposed to start May 17, 2016 and continue for approximately 20 days. As currently proposed, this work will coincide with amphibian breeding activities. A pre-salvage site review was conducted on May 12, 2016 and targeted areas for amphibian capture were identified based on where adults and hatchling amphibians were observed (see Drawing 1016-C14-07264-2). Construction is proposed to occur from about May 15-early June, 2016, and therefore all life phases (egg mass, larval, and adult) may be encountered.

Salvages will be conducted in planned work areas approximately 1-2 days before construction work begins. Salvage effort will vary depending on the amphibian life phases encountered during the salvage, the habitat present within the salvage area, and the type of construction work required.

3.2 Capture Methods

Visual encounter surveys and pitfall trapping, where feasible will be implemented to capture individuals during the salvage. The purpose of implementing multiple capture methods is to improve capture rates and efficiency. The type of capture method implemented will depend on the type of habitat within the specific salvage area and the observed or suspected life phases within that salvage area.

The amphibian salvage areas identified in the pre-salvage site review will be isolated using silt fencing prior to the salvage to prevent amphibians outside of the subject area from entering. Isolation fencing will remain in place and will be maintained throughout construction or until it is no longer needed.

3.2.1 Egg masses

Egg masses encountered will be removed along with attached vegetation and substrate. Vegetation and sticks to which egg masses are attached will be cut below the egg mass and removed with the egg mass to avoid damage that could result from separating the two. Egg masses and substrate will be transferred into buckets with water from the natal waterbody for temporary containment. Buckets will be kept in shade and the temperature monitored until the transfer is completed. If the temperature in the bucket increases more than 3°C from the natal water temperature, egg masses will be immediately transferred to the release site.

Egg masses will be relocated to habitat downstream of the salvage area and in the same side channel (Drawing 1016-C14-07264-2 green dot). Care will be taken to place salvaged egg masses in similar habitat (i.e., temperature, depth, and pH) to the natal salvage location.

3.2.2 Tadpole

Tadpoles encountered in the salvage area, in addition to those captured incidentally during the fish salvage, will be captured using passive and active techniques. Crews will actively trap tadpoles using dip nets. Where feasible, the water level within a salvage location will be drawn down using a screened pump to facilitate tadpole captures. Captured tadpoles will be held in buckets with water from their natal habitat. The bucket will be kept in the shade and the water temperature will be monitored. As with egg masses, if the temperature in the temporary containment bucket increases more than 3°C from the natal water temperature, tadpoles will be immediately transferred to a suitable release site. Tadpoles will be released into similar habitat downstream outside of the salvage area (See Section 3.4).

3.2.3 Adult

Suitable habitats within the salvage area will be searched systematically, including in and around decayed logs, in piles of bark, wood, and around vegetation. Crews will remove coarse woody

debris and other cover objects from the salvage locations during salvage operations to facilitate adult encounters and captures.

Adult amphibians will be caught by hand or using a dip net and transferred to buckets containing moist coarse woody debris and other cover material. Standard measurements including species, snout-vent length, and weight will be recorded prior to release. Salvaged individuals will be captured and relocated within the same waterbody complex so that habitat conditions are similar to maximize relocation success, and to reduce the potential transfer of disease and impacts to adjacent amphibian populations (See Section 3.4).

Pitfall traps may be installed along exclusion fencing during the salvage or monitoring periods (See Section 3.5). Pitfall traps may be used in areas where migrating or dispersing individuals are observed to improve capture rates.

The salvage will not be conducted during extreme rains or high winds, as these conditions may affect the detection capability of the survey.

3.3 Method of Handling

Captured amphibians will be handled in accordance with RISC standards (*Inventory Methods for Plethodontid Salamanders*, MoE 1999; *Inventory Methods for Pond-breeding Amphibians and Painted Turtle*, MoE 1998). Attempts will be made to reduce handling time of individuals. Buckets for adults will contain moss and small wood pieces from the wetland substrate to provide moisture prior to relocation. Adult and juvenile amphibians will be kept separately from one another, to reduce intraspecific predation.

Buckets for tadpoles will contain water from natal ponds and pieces of aquatic vegetation for cover. Buckets will be kept in cool, dark locations until arrival at the release site. Water temperature in buckets containing egg masses and tadpoles will be monitored.

It is not expected that the salvage work will result in injury or mortality of captured animals; however, field crews will be prepared to euthanize injured animals if required. Euthanasia methods will follow those published by the Canadian Council on Animal Care in "*Guidelines on: the care and use of wildlife*" (available at <http://www.ccac.ca/Documents/Standards/Guidelines/Wildlife.pdf>).

3.4 Relocation

Amphibians will be released downstream of the salvage area. This is the same wetland / waterbody complex from which they were captured so habitat conditions are similar to maximize relocation success, and the potential transfer of disease and impacts to adjacent amphibian populations is minimized. Given the extent of downstream similar habitat present within the side channel, it is expected that multiple release locations are available and amphibians can be retained in their source wetland / waterbody. The proposed release location is located approximately 360 m downstream from the salvage area (UTM 10V 630781mE, 6228611mN).



Photo 4: Proposed release location downstream from the salvage area.

Upstream habitat in the main Peace River channel does not appear to provide similar habitat (slow water side channel with warmer waters) which is why a downstream release location was selected. Once proposed works are completed, it is expected that groundwater inflow and backwatering up into the side channel will continue to allow for a wetted area that will continue to provide suitable amphibian habitat in the future (Hunter, pers.comm 2016).

3.5 Monitoring

Periodic environmental monitoring of the salvage areas will be conducted during construction activities. The environmental monitor will report on amphibian observations adjacent to the salvaged areas and check isolation fencing for tears or holes. If amphibian migrations or dispersals are observed, additional salvage efforts will be required to direct amphibians away or around isolated areas and equipment. Monitoring will continue through the duration of the construction works.

4.0 PERMITTING REQUIREMENTS

Provincial permits pursuant to the *Wildlife Act* are required when indigenous wildlife will be captured, moved or restrained. As such, a provincial permit will be required to capture and relocate amphibian species within the Project Area prior to construction.



5.0 INVESTIGATOR EXPERIENCE

Principal Investigator

Tanya Seebacher is a registered professional biologist with a strong background in wildlife biology, terrestrial ecology, and watershed management. Tanya has over nine years of consulting experience and a background in forest ecology and ecosystem dynamics. She completed her Master's degree in forest ecology from the University of British Columbia in Vancouver studying western redcedar dieback on the east coast of Vancouver Island. Tanya participated in an extensive amphibian salvage in Kitimat, BC on the LNGC program in 2015. Salvage by pitfall trapping, exclusion fencing and hand capturing was conducted for western toad, rough-skinned newt, and Columbia spotted frog. Tanya also conducted amphibian surveys (Wetlands Institute – Kamloops BC, spring 2010, general amphibian breeding surveys with Golder Associates 2010-present). Tanya has also conducted auditory surveys for great basin spadefoot and western toad presence in the Okanagan. Finally, Tanya has conducted western toad migration surveys in northwestern BC as part of Northwest Transmission Line project. Ms. Seebacher has also taken training on the basics of amphibian sampling methods by the BC Wildlife Federation in the spring of 2010.

Additional personnel with similar experience may participate in the salvage program described above and will operate under the guidance Tanya Seebacher.

6.0 CLOSURE

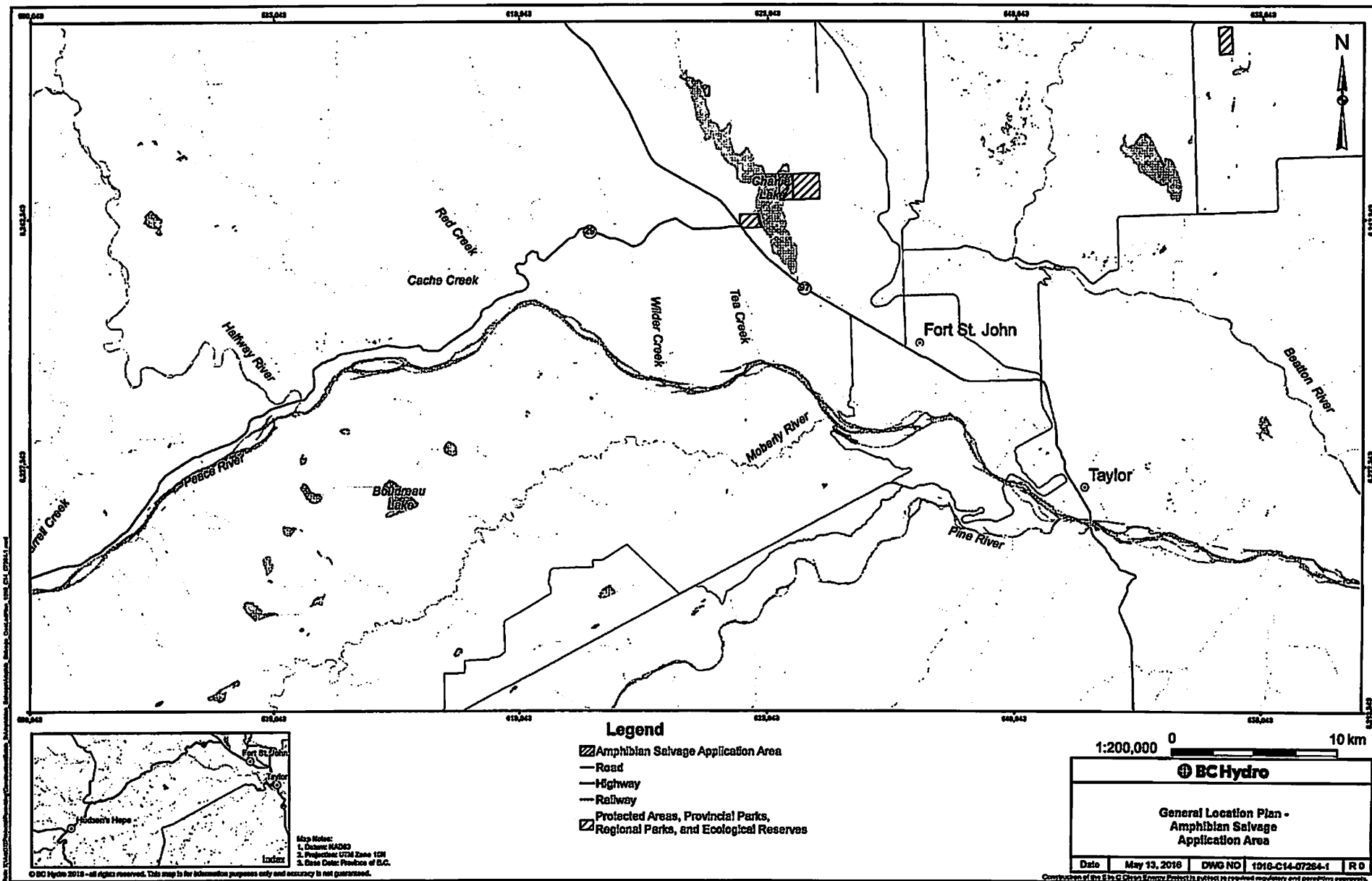
I trust that this submission meets your requirements. Please don't hesitate to contact me at 604-695-5234 if you have any questions or concerns.

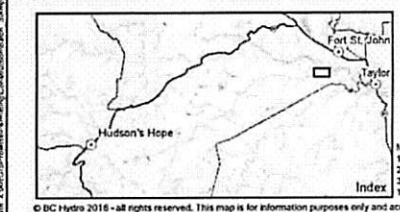
Sincerely,

Bettina Sander
Regulatory Manager
Site C Clean Energy Project
Bettina.Sander@bchydro.com

REFERENCES

- DeLong, C., A. Banner, W. H. MacKenzie, B. J. Rogers, and B. Kaytor. 2011. A field guide to ecosystem identification for the Boreal White and Black Spruce Zone of British Columbia. B.C. Min. For. Range, For. Sci. Prog., Victoria, B.C. Land Manag. Handb. No. 65. Available at: www.for.gov.bc.ca/hfd/pubs/Docs/Lmh/Lmh65.html LNG Canada 2014.
- Hunter, D. 2016. Personal communication – Site C BC Hydro representative (telephone conversation May 13, 2016 with T. Seebacher, Golder Associates Ltd.).
- Ministry of Environment (MoE). 1999. Resource Inventory Standards Committee. 1999. Inventory Methods for Plethodontid Salamanders. Standards for Components of British Columbia's Biodiversity No. 36. Ministry of Environment, Lands and Parks, Resource Inventory Branch. Version 2.0.
- Ministry of Environment (MoE). 1998. Resource Inventory Standards Committee. 1998. Inventory Methods for Pond-breeding Amphibians and Painted Turtle. Standards for Components of British Columbia's Biodiversity No. 37. Ministry of Environment, Lands and Parks, Resource Inventory Branch. Version 2.0.
- Ministry of Forests, Lands, and Natural Resource Operations, 2014. Best Management Practices for Amphibian and Reptile Salvages in British Columbia. Draft Report. December 17, 2014.





Legend

- Dyke
- - Road
- ... Road Toes
- Amphibian Salvage Application Area
- ★ Proposed Release Location
- Hatchlings
- ▼ Western toad adult
- ▼ Wood Frog Adults
- BC Hydro Owned Land (Leased)
- BC Hydro Owned Land
- Crown Land
- Private Land

1:10,000 0 0.125 0.25 0.5 km


BC Hydro			
Detail Site Map - Amphibian Salvage Application Area			
Date	May 13, 2016	DWG NO	1016-C14-07284-2 R 0

File: X:\1016-C14-07284-2\Amphibian Salvage\Map\1016-C14-07284-2.mxd

© BC Hydro 2016 - all rights reserved. This map is for information purposes only and accuracy is not guaranteed.

Construction of the Site C Clean Energy Project is subject to required regulatory and permitting approvals.

This is Exhibit "C" referred to in the affidavit of Shauna Stewart, sworn before me on the ..20... day of July, 2016.



A commissioner for taking affidavits in British Columbia

From: Anthony Ho
To: Anthony Ho
Subject: FW: URGENT: Site C Clean Energy Project - Amphibian Salvage South Bank Back Channel 226024
Date: July 11, 2016 1:07:25 PM

From: Addison, Christopher FLNR:EX [mailto:Christopher.Addison@gov.bc.ca]
Sent: Friday, May 27, 2016 12:18 PM
To: Jeff Richert
Cc: R Willson; 'Nathan Parenteau'; 'Carmen Marshall'; 'Naomi Owens'; 'Laura Murfitt'; 'Teena Demeulemeester'; 'Lana Garbitt'; Council Stager; Council Chipesia; 'chief.ltsakoza@prophetriverfn.ca'; Lands RTsakoza; Lands Assistant; Land Coordinator PRFN; 'james_hickling@aboriginal-law.com'; Clarence Willson; Laura Webb; Dean Do; WMFN Council Assistant; Land Use Manager; J Webb; Forestry Westmo; Hansen, Keith FLNR:EX; Menard, Andrea FLNR:EX; Site C Comments FLNR:EX; Vince, Karrilyn M FLNR:EX; NWDStaff; Hassanpour, Golnoush FLNR:EX
Subject: RE: URGENT: Site C Clean Energy Project - Amphibian Salvage South Bank Back Channel 226024

Hi Jeff. There is no provision in the Wildlife Act for this specifically. Rather it is an administrative law principle that functionally amounts to inducing error. As discussed at the WSB over the years, I've used the same principle in allowing things like beaver dam removals, or exemptions very rarely from section 27(2) to allow hunters to retrieve game meat depending on the situation. Essentially the activity remains citeable, but the proponent would have a defence against a charge in saying that they had permission from the regional manager to conduct an activity that is within my power to authorize. This approach is preferable to the alternatives.

I understand from Hydro that they have T8 members on site during removals and relocations. We have also worked with the contractor and BC Hydro on a marking and monitoring effort for egg masses and juveniles as well as for the few adults.

Chris Addison
 Director of Resource Management, Northeast
 (250) 787-3285

From: Jeff Richert [mailto:JRichert@nunwadee.ca]
Sent: Thursday, May 26, 2016 2:26 PM
To: Addison, Christopher FLNR:EX
Cc: XT:Chief, West Moberly First Nations EAO:IN; 'Nathan Parenteau'; 'Carmen Marshall'; 'Naomi Owens'; 'Laura Murfitt'; 'Teena Demeulemeester'; 'Lana Garbitt'; Council Stager; Council Chipesia; 'chief.ltsakoza@prophetriverfn.ca'; Lands RTsakoza; Lands Assistant; Land Coordinator PRFN; 'james_hickling@aboriginal-law.com'; Clarence Willson; Laura Webb; Dean Do; WMFN Council Assistant; Land Use Manager; J Webb; Forestry Westmo; Hansen, Keith FLNR:EX; Menard, Andrea FLNR:EX; Site C Comments FLNR:EX; Vince, Karrilyn M FLNR:EX; NWDStaff; Hassanpour, Golnoush FLNR:EX; Minister, ABR ABR:EX; Minister, ENV ENV:EX; Minister, FLNR FLNR:EX
Subject: RE: URGENT: Site C Clean Energy Project - Amphibian Salvage South Bank Back Channel 226024

Good afternoon Chris

We would like to request clarification as to what legal authority you had in issuing the

exemptions.

Can you please direct us to the provision(s) in the Wildlife Act or Regulations granting you the authority to provide exemptions without issuing a permit?

Section 19(1) of the Wildlife Act is clear (**emphasis added**):

"19 (1) A regional manager or a person authorized by a regional manager may, to the extent authorized by and in accordance with regulations made by the Lieutenant Governor in Council, by the issue of a permit, authorize a person

(a) to do anything that the person may do only by authority of a permit or that the person is prohibited from doing by this Act or the regulations, or

(b) to omit to do anything that the person is required to do by this Act or the regulations, subject to and in accordance with those conditions, limits and period or periods the regional manager may set out in the permit and, despite anything contained in this Act or the regulations, that person has that authority during the term of the permit."

Section 2 of the Permit Regulation is also clear (**emphasis added**):

"2 A regional manager may issue a permit in accordance with this regulation on the terms and for the period he or she specifies....

(h) authorizing a person to capture wildlife;

(j) authorizing a person to possess live wildlife;

(m) authorizing a person to transport or engage another person to transport live wildlife in British Columbia;"

Please provide us a response to this by tomorrow afternoon as this is an issue that we would like addressed immediately.

Thanks and have a nice afternoon

Jeff Richert
Natural Resource Management Advisor
Nun wa dee

From: Addison, Christopher FLNR:EX [<mailto:Christopher.Addison@gov.bc.ca>]

Sent: Thursday, May 26, 2016 1:01 PM

To: Jeff Richert

Cc: R Willson; 'Nathan Parenteau'; 'Carmen Marshall'; 'Naomi Owens'; 'Laura Murfitt'; 'Teena Demeulemeester'; 'Lana Garbitt'; Council Stager; Council Chipesia;

'chief.tsakoza@prophetriverfn.ca'; Lands RTsakoza; Lands Assistant; Land Coordinator

PRFN; 'james_hickling@aboriginal-law.com'; Clarence Willson; Laura Webb; Dean Do;

WMFN Council Assistant; Land Use Manager; J Webb; Forestry Westmo; Hansen, Keith

FLNR:EX; Menard, Andrea FLNR:EX; Site C Comments FLNR:EX; Vince, Karrilyn M

FLNR:EX; NWDStaff; Hassanpour, Golnoush FLNR:EX

Subject: RE: URGENT: Site C Clean Energy Project - Amphibian Salvage South Bank Back Channel 226024

Good afternoon Jeff,

However, no, I do not believe amphibian salvage work began on the 13th. I issued authority to conduct amphibian salvage last Thursday afternoon. In the time since issuing that authority, ground nesting birds occupied the site and Hydro was unable to commence amphibian salvage until yesterday morning. I have since had several conversations with BC Hydro about communication and my expectations around urgency.

It would be helpful for completeness' sake if I knew where your information came from. Hydro has an existing fish collection permit, for instance, which allows them to move amphibians caught incidentally during fish salvage operations. That may be what you're referring to.

Chris Addison
Director of Resource Management, Northeast
(250) 787-3285

From: Jeff Richert [<mailto:JRichert@nunwadee.ca>]
Sent: Thursday, May 26, 2016 11:22 AM
To: Addison, Christopher FLNR:EX
Cc: XT:Chief, West Moberly First Nations EAO:IN; 'Nathan Parenteau'; 'Carmen Marshall'; 'Naomi Owens'; 'Laura Murfitt'; 'Teena Demeulemeester'; 'Lana Garbitt'; Council Stager; Council Chipesia; 'chief.ltsakoza@prophetriverfn.ca'; Lands RTsakoza; Lands Assistant; Land Coordinator PRFN; 'james_hickling@aboriginal-law.com'; Clarence Willson; Laura Webb; Dean Do; WMFN Council Assistant; Land Use Manager; J Webb; Forestry Westmo; Hansen, Keith FLNR:EX; Menard, Andrea FLNR:EX; Site C Comments FLNR:EX; Vince, Karrilyn M FLNR:EX; Minister, ABR ABR:EX; Minister, ENV ENV:EX; Minister, FLNR FLNR:EX; NWDStaff
Subject: RE: URGENT: Site C Clean Energy Project - Amphibian Salvage South Bank Back Channel 226024

Good morning Chris

We have received information that the proponent initiated the amphibian salvage activities as early as May 13th of this year. If this information is correct, this could mean that such activities took place in advance of any exemption from FLNRO.

In addition to the question below with regards the date/time of issuance of the exemption, can you please confirm exactly when the proponent initiated the salvage activities?

An expeditious response on this matter would be greatly appreciated.

Thanks and have a nice day

Jeff Richert
Natural Resource Management Advisor
Nun wa dee

From: Jeff Richert
Sent: Wednesday, May 25, 2016 11:19 AM
To: 'Hassanpour, Golnoush FLNR:EX'; Jason Lee; Addison, Christopher FLNR:EX
Cc: R Willson; 'Nathan Parenteau'; 'Carmen Marshall'; 'Naomi Owens'; 'Angie Grant'; 'Laura Murfitt'; 'Janell Jackson'; 'Teena Demeulemeester'; 'Lana Garbitt'; Council Stager; Council Chipesia; 'chief.ltsakoza@prophetriverfn.ca'; Lands RTsakoza; Lands Assistant; Land

Coordinator PRFN; 'jrichert@nunwadee.ca'; 'sauger@nunwadee.ca'; Sharon Tsakoza; 'james_hickling@aboriginal-law.com'; 'jxiao@nunwadee.ca'; 'stsakoza@nunwadee.ca'; Clarence Willson; Laura Webb; Dean Do; WMFN Council Assistant; Land Use Manager; J Webb; Forestry Westmo; 'Tim Watson'; Hansen, Keith FLNR:EX; Menard, Andrea FLNR:EX; Site C Comments FLNR:EX; Addison, Christopher FLNR:EX
Subject: RE: URGENT: Site C Clean Energy Project - Amphibian Salvage South Bank Back Channel 226024

Good morning Chris

When exactly was this exemption issued (date/time) and when did the proponent initiate the activity?

Thanks

Jeff Richert
 Natural Resource Management Advisor
 Nun wa dee

From: Hassanpour, Golnoush FLNR:EX [mailto:Golnoush.Hassanpour@gov.bc.ca]
Sent: Wednesday, May 25, 2016 11:05 AM
To: Jason Lee
Cc: R Willson; 'Nathan Parenteau'; 'Carmen Marshall'; 'Naomi Owens'; 'Angie Grant'; 'Laura Murfitt'; 'Janell Jackson'; 'Teena Demeulemeester'; 'Lana Garbitt'; Council Stager; Council Chipesia; 'chief.tsakoza@prophetriverfn.ca'; Lands RTsakoza; Lands Assistant; Land Coordinator PRFN; 'jrichert@nunwadee.ca'; 'sauger@nunwadee.ca'; Sharon Tsakoza; 'james_hickling@aboriginal-law.com'; 'jxiao@nunwadee.ca'; 'stsakoza@nunwadee.ca'; Clarence Willson; Laura Webb; Dean Do; WMFN Council Assistant; Land Use Manager; J Webb; Forestry Westmo; 'Tim Watson'; Hansen, Keith FLNR:EX; Menard, Andrea FLNR:EX; Site C Comments FLNR:EX; Addison, Christopher FLNR:EX
Subject: RE: URGENT: Site C Clean Energy Project - Amphibian Salvage South Bank Back Channel 226024

Good morning Mr. Lee,

This is to inform you that an exemption from offence to capture, possess and transport amphibians has now been authorized by the Regional Manager for the Wildlife Act to the proponent, BC Hydro, until June 20, 2016. The authorization exempts the proponent from offence provisions under Sections 29, 33, and 37 of the Wildlife Act in the South Bank Backchannel of the Peace River as identified by BC Hydro in a letter to the Ministry of Forests, Lands and Natural Resource Operations on May 13, 2016.

The proponent has been encouraged to consider the following:

- Contact T8 to participate in salvage/relocation, but not to postpone salvage initiation until FN representatives are available to assist with the field activity.

- Develop a monitoring regime/program of the relocation location;
- Develop a post-salvage/relocation activity report (eg. how many salvaged, species, life stages, salvage dates, level salvage of effort, mortalities) and submit to the Wildlife Act Regional Manager.

The authority is valid until June 20 and may be superseded by a permit, or extended or revoked at the discretion of the Wildlife Act Regional Manager.

If you have any further questions or concerns, please contact Chris Addison
Christopher.Addison@gov.bc.ca.

Regards,

Golnoush Hassanpour

Advisor, First Nations Relations | Ministry of Forests, Lands and Natural Resource Operations
 370 10003 110 Ave - Fort St. John, BC
 P: (250) 261-2070
 E: Golnoush.Hassanpour@gov.bc.ca

From: Hassanpour, Golnoush FLNR:EX
Sent: Friday, May 13, 2016 5:15 PM
To: 'jlee@nunwadee.ca'
Cc: XT:Chief, West Moberly First Nations EAO:IN; 'Nathan Parenteau'; 'Carmen Marshall'; 'Naomi Owens'; 'Angie Grant'; 'Laura Murfitt'; 'Janell Jackson'; 'Teena Demeulemeester'; 'Lana Garbitt'; 'Councilor Beverly Stager'; 'Councilor Darcy Chipesia'; 'chief.tsakoza@prophetriverfn.ca'; 'Robin Tsakoza'; 'Bruce Muir'; 'Larissa Tsakoza'; 'jrichert@nunwadee.ca'; 'sauger@nunwadee.ca'; 'stsakoza@nunwadee.ca'; 'james_hickling@aboriginal-law.com'; 'jxiao@nunwadee.ca'; 'stsakoza@nunwadee.ca'; 'Clarence Willson'; 'Councilor Laura Webb'; 'Dean Do'; 'WMFN Council Assistant'; 'landusemanager@westmo.org'; 'jwebb@incentre.net'; 'forestry@westmo.org'; 'Tim Watson'; Hansen, Keith FLNR:EX; Menard, Andrea FLNR:EX; Site C Comments FLNR:EX; Addison, Christopher FLNR:EX
Subject: URGENT: Site C Clean Energy Project - Amphibian Salvage South Bank Back Channel 226024
Importance: High

Good afternoon,

Attached is a document I received today from BC Hydro regarding a matter of amphibian salvage on the South Bank backchannel. BC Hydro has requested authority to salvage amphibians in the area of the backchannel that is to be dewatered and move them several hundred meters downstream into similar habitat.

I appreciate that we are currently considering a permit application that would cover this work. However the anticipated engagement timelines for that permit will not allow for work to be undertaken over the coming weeks. As such, I am considering granting BC Hydro authority as requested in advance of a permit decision. While I appreciate that waiting for a Wildlife Act permit decision to initiate the work identified here would have substantial cost and timeline implications to the project as a whole, I am uncertain whether work needs to commence Tuesday May 17 as described in this document. I am currently discussing with Hydro whether

there is a substantive rationale for work beginning Tuesday noting that any delay would be on the order of days rather than weeks.

To that end, I am asking you to consider this document urgently. Please respond directly to me with any relevant information, particularly how authorization of this action might affect exercise of your Treaty 8 rights. I believe this action to be in the interest of wildlife populations and an amelioration of the impacts of the Site C project on these amphibian populations. If there is interest in verbal or in-person discussion of this matter also please let me know.

As before, a summary of the Province's background information on each of the amphibian species can be found here:

<http://www.env.gov.bc.ca/wld/frogwatch/publications/factsheets/frogs/wood.htm>

<http://www.env.gov.bc.ca/wld/frogwatch/publications/factsheets/salamanders/long-toed.htm>

<http://www.env.gov.bc.ca/wld/frogwatch/publications/factsheets/frogs/western-toad.htm>

<http://www.env.gov.bc.ca/wld/frogwatch/publications/factsheets/frogs/columbia-spotted.htm>

<http://www.env.gov.bc.ca/wld/frogwatch/publications/factsheets/frogs/boreal-chorus.htm>



Chris Addison, R.P. Bio
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Resource Operations
Suite 400, 10003 110th Ave | Fort St. John, BC, V1J 6M7 | Phone - 250.787.3285 | Email:
Christopher.Addison@gov.bc.ca

"Be humble for you are made of Earth. Be noble for you are made of stars."

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Carol Linnitt

Managing Editor and Director of Research,

DeSmog Canada

Finalist for **BEST NEWS COVERAGE 2015**, Canadian Online Publishing Awards.

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