

November 15, 2024

VIA EMAIL: huguette.allen@gmail.com

File No.:01021

Huguette Allen and Carla Vierke/BeeSafe
130 Shuswap River Dr.
Lumby BC, V0E 2G6

Dear Huguette and Carla,

RE: Stage 1 Opinion – Intensive Agricultural/Livestock Contamination of Middle Shuswap River

INTRODUCTION

BeeSafe and others are becoming increasingly concerned about the middle Shuswap River, watershed protection, water quality and security, with growing distrust as to whether Provincial action will be taken to prevent and mitigate continuing pollution.

Of central concern are the operations of an intensive feedlot operation that is polluting this water course. A warning from the Province has been issued to KT Ranches and the Carson Group of Companies as a result of local concern and complaints. These operations are currently considered to be out of compliance with Provincial laws and regulations under the *Environmental Management Act* (“EMA”)¹. There are no indications that operations and systems have been put in place to prevent or mitigate the pollution.

These circumstances are raising concerns about environmental, human health impacts and capacity of the Shuswap River, which I understand was considered at one time to be the cleanest river in BC. There are public expectations that the Province would or should be overseeing such capacity issues, however there is growing distrust that the Province has any intention or ability to regulate and protect this water course. As a result, BeeSafe is taking matters into its own hands to educate itself and others about what is at risk and what can be done to protect the middle Shuswap River.

This opinion is intended to provide an initial overview or roadmap of the key considerations and pathways for legal strategic consideration. This document is intended to build knowledge and to support efforts of BeeSafe and its allies in this initiative.

¹*Environmental Management Act*, SBC 2003, c 53

ISSUE

The purpose of this document is to analyze the regulatory considerations and legal options available to prevent further/ongoing contamination of the middle Shuswap River by intensive cattle feedlot operations by KT Ranches and the Carson Group of Companies (“Carson” or “Carson Farm”). The intent of this opinion is to educate your group about the regulatory facets and legal considerations/options that can inform your strategies, including your goal to pursue some form of protected status for the Shuswap River.

SUMMARY RECOMMENDATIONS

For these particular circumstances, considering the regulatory elements at play is key to informing strategic steps for your campaign. Smart strategy can make use of opportunities and inform a plan that can adapt to changing circumstances. This requires project planning, and using the most optimal mix of steps and timing.

It also needs to be recognized that the combination of steps can provide some accelerated action depending on timing and approach, but it’s also a matter that will need to have long term vision and planning, as policy and law are slow and often the last elements to shift.

A number of **Next Steps** are recommended for consideration as part of your campaign’s strategic planning:

1. Consider an assessment of evidence to determine whether to make a formal complaint under the *Right to Farm* legislation, before the BCFIRB. Determine the strategic benefit in relationship to other options and the campaign as a whole.
2. Determine whether to assess evidence for both violations and strategic litigation potential. The environmental legislation may assist with targeting the feedlot operations for strategic benefit to further the basis for protection of the river. This option needs to be considered in conjunction with other strategic options, timing and resources.
3. For strategic benefit, consider the question of whether there is a linkage of the environmental risks and infractions with risks for food safety. It appears that these risks may be treated in isolation. However, if the operations are out of compliance, waste continues to discharge to the environment, without records and steps being taken. Without active Provincial oversight, what does this say about the integrity of the operations for other purposes such as food safety? Consider incorporating these questions into your public concern messaging. Caution: raise concerns about whether there are linkages but do not claim that that this is the case as there is no evidence to confirm this at this time. Ongoing legal advice is strongly recommended for this step.

4. My recommendation is that an FOI request be made to obtain existing government documents that deal with any such technical and scientific assessments for the Shuswap River watershed . This will inform what is lacking and what further science is needed.
5. Consider impact assessment as part of your strategic plan. There may be synergies with experts from higher education facilities or other initiatives that may build your team and build the evidence needed to achieve your goal for protection.
6. Regarding river and watershed protection through impact assessment, First Nations hold a pivotal role in this strategic approach and your campaign. The First Nations are in a special position to activate reform and to drive protective measures. Alliance building is a key recommendation. This is not an easy component of the strategy because the First Nations are grappling with new roles, governance and self determination. They are also facing capacity issues in terms of what can be a priority. *First Nations may also indicate that they are doing their own impact assessment processes or are coordinating with the Province on a government-to-government basis. This may be of strategic assistance. In any event, any impact assessment your campaign can drive or ally with, will be important.*

In conjunction with these next steps, consider the role and strategic benefit of legal options such as regulatory prosecution, judicial review and civil action. For all such avenues sufficiency of evidence will be required.

Finally, consider the role of legal personhood for the Shuswap River as part of your initiative.

BACKGROUND

The following background has been provided by BeeSafe and informs the legal analysis conducted in this opinion.

- BeeSafe and others have been pressing the Province for action in addition to obtaining information and water quality evidence regarding the operations of KT Ranches and the Carson Group of Companies.
- These operations involve an intensive feedlot business located above the Shuswap River, between Cherry and Ferry Creeks. There are indications that culverts are filling up with manure and that this waste is flowing directly into the Shuswap River.
- I understand that there is water quality testing from the Shuswap River that shows very high levels of E.coli. Other polluting substances may be at issue.
- There is some historic water testing information arising from another local organization known as the Cherryville Water Stewards who have been testing the river water 4 times/year since 2008, as a result of concerns arising from another user, Sugar Lake Resort. The concerns were addressed when a septic system was installed. This system is now tested regularly.

- Approximately 4 years ago water analysis was conducted by local(s) which started to show E.Coli and coliform numbers coming in at far above zero for drinking purposes and 200 levels for swimming.
- Approximately 3 years ago, it was noticed that spring freshet and manure laden water was pouring off the hillside below the intensive feedlot, making its way to the Shuswap River. It was also noticed that a culvert/pipe was installed, appearing to hide and maintain the course of effluent flow to the river.
- In the spring of 2024, water testing analysis of the flow leaving the culvert were showing levels of 2420 E.coli and coliform.
- This intensive feedlot holds in the range of 600 cattle at this location, when not out on the range. Inspectors from the Provincial Ministry of Environment (“MoE”) have visited the 160 acre parcel but concerned residents believe that due to ‘right-to-farm’ legislation, nothing can be done to reduce numbers or prevent the pollution from continuing.
- BeeSafe and residents have increasing concerns about water quality and security.
- One of the significant concerns is that there is a lack of enforcement and coordination among Provincial Ministries. The issues with the intensive feedlot operations appear to be bounced among Ministries, including federal authorities such as Fisheries and Environment who appear to be silent on the matter.
- There appears to be little or no oversight, or baseline knowledge of cumulative impacts that would inform land use planning and permitting decisions in this case, or more broadly for this river system.
- As a result of BeeSafe community efforts and complaints lodged with the Province, the Province has recently attended the site in question and has confirmed that the property owner is non-compliant.
- BeeSafe is an informal group of local concerned residents, very active in the community, raising awareness of the issue and building support. BeeSafe has held local meetings and have made good use of media attention. A petition is underway to protect water at source in the Middle Shuswap, with a call to remove intensive livestock operations where manure is produced in excess of the natural absorption of the land.
- BeeSafe is in the process of building relationship(s) with local First Nations, who are indicating shared concerns.

LEGAL AND POLICY ANALYSIS

In considering next steps, the regulatory frameworks have to be considered. For this context it is a matter of assessing the agricultural and the environmental legislation and policy bases. This analysis will show how the frameworks are structured and what to anticipate. As discussed, this analysis largely validates the obstacles that your group has encountered.

At the same time these regulatory frameworks may also indicate pathways of strategic benefit that should be considered for your campaign.

The analysis starts with a basic explanation as to how environmental legislation works which is followed by the assessment of the relevant regulatory frameworks (agriculture and environment) that pertain to the feedlot operations, including the extent to which environmental regulation protects the Shuswap River.

How Environmental Legislation Works

Before delving into the specific circumstances it is important to frame how environmental legislation works. Environmental legislation in Canada and British Columbia is a complex matter. Jurisdiction is spread over all levels of government: federal, provincial, local or municipal and Indigenous governments. This means that no one government or jurisdiction has control or responsibility. This evolution in legislation and jurisdiction arises because of the multifaceted nature of the environment, and the fact that it cannot neatly fit into either of the division of powers between the federal and provincial governments.

Legislatures and Parliament pass laws and develop policies that are largely an integrated matrix that needs to be deciphered to understand where responsibilities and obligations lie for any given context.

Municipal/local governments (e.g. the RDNO) are also empowered by provincial governments and laws to address environmental issues, and will pass and oversee their own bylaws and policy. This integrated approach often belies the difficulty in holding governments accountable and responsible for ensuring protection of human health and the environment.

It is important to understand that there is a method to this division of oversight and a deference that is in play to allow each level of government to best oversee the environmental laws and policy. In theory this makes sense. For example, a local government may be in the best position to deal with the context at hand, whereas other levels may only step in based on considerations of magnitude and impact as appropriate, when their jurisdiction and regulatory action is triggered.

When this interplay does not work well, we see the ‘attitude’ of what appears to be ‘passing the buck’ . In such cases, these regulatory layers may be used to create confusion as to which level of government, or which Ministry (within the Province for example) is responsible, and the politics can create a situation where no one seems to be ‘minding the store’ or taking responsibility. When this happens, it can make the pathway easy for parties to ignore or take advantage of the situation breeding further confusion and pressure that can literally lock up government action and oversight.

In this case, environmental regulation and protection largely takes a back seat to agricultural policy and legislation. There are also significant gaps or lags relating to cumulative impacts and protection of water courses and watersheds as a whole that acutely inform the situation.

Regulatory Frameworks (Agriculture and Environment)

The regulatory frameworks involved in these circumstances combine environmental regulation with agricultural regulations and policy. The following provides an overview of the agriculture industry considerations and realities. It starts with reviewing the policy and then legislation that pertains to this intensive feedlot operation. From this context, the opinion delves into how the environmental regulatory system intersects legal options for your campaign.

Agricultural Policy

The policy base for agriculture is a powerful and entrenched combination of historic economic approaches and some newer elements designed to reflect progress and alignment with current shifting circumstances, such as food security. This is not a nimble adapting policy base, which no doubt gives credence to the feeling that government is unresponsive. Agriculture and the economic policy base is primary – it is a priority industry for British Columbia.²

Key Takeaways:

- Agriculture is a significant economic driver for BC. It is treated similarly to forestry and oil and gas from a policy perspective. This means that the historic, and arguably outdated approach to permitting, is entrenched and protected.
- The focus of the policy is economic preservation and advancement, balanced with health requirements for food security and safety as would be expected. When it comes to environmental issues – e.g. water quality – it is about maintaining water quality to ensure livestock health. Operations and the surrounding environment are not priority within this regulatory framework – soil nutrients and safety for crops and for ingestion by livestock is a focus.
- There are *voluntary* programs relating to regenerative agriculture. For example there is the EFP program – Environmental Farming Program - which aims to better *understand* impacts on the surrounding environment.

² <https://www2.gov.bc.ca/gov/content/industry/agriculture-seafood/food-safety/good-agricultural-practices/8-1-soil-environment-evaluation>

[B.C. Environmental Farm Plan \(EFP\) Program](#)

[Environmental Farm Plan Program - Province of British Columbia \(gov.bc.ca\)](#)

- This regulatory system does not integrate environmental impacts, or cumulative impacts in any meaningful way through legal requirements. There are no checks and balances to ensure that land use management policy and planning is cognizant and proactive in understanding environmental impacts, cumulative impacts in particular.
- The permitting policy is about '*permitting to pollute*'. In order to advance the economics, the policy is based on setting regulation to allow pollution to certain levels. This is also combined with excessive self regulation, leaving it to the agriculture industry to self regulate and set performance measures and requirements.
- Environmental safeguards only truly kick in for the most obvious and egregious circumstances. Enforcement and compliance are focused on a very narrow window of requirements that are not well integrated with changing environmental science. In addition, because of legislative appropriations, the level of funding of enforcement and oversight can shift depending on priorities and optics. This is likely why your group has to eagle eye what is happening on the ground because no one from government really seems to be watching.
- The relevant and existing land use planning tools have fairly loose objectives and few, if any, legal requirements. The system is very malleable to ensure that the economic and self regulation priorities are preserved and maintained. There is talk of environmental protection and objectives but the core of the policy remains focused on the economic priorities and largely self regulation of agriculture, which means that government and regulatory oversight of environmental impacts is absent. The intent is for *collaboration* and solutions but no requirements. The idea is that hopefully conflicting issues/values will just get along.... This is encapsulated in the Okanagan-Shuswap Land & Resource Management Plan³ which reflects the balancing act with the obvious, predictable objectives but no requirements. The document is also almost 25 years old. See also the Regional District of North Okanagan Regional Agricultural Plan (September 2015) which forms part of the policy base for a viable agricultural industry.
- The environmental impact science is far behind and outdated, and the integration of Traditional or Indigenous Knowledge has not occurred. Industry related regulatory frameworks, such as those for Agriculture are in no way keeping step with changing environmental impacts, cumulative impacts in particular. The BC Government has a Cumulative Impacts Framework⁴, however if one considers the recent 'Blueberry' court case in Northeastern BC⁵, it becomes quickly apparent that the substance of this framework is disorganized departmentally, with little in the way of integration and accountability. It is taking far too long to establish impact baselines, projections and thresholds. The Framework therefore suggests oversight but the fact is that there is little information on capacity of watersheds and rivers, such as the Shuswap River, to handle various

³ <https://www2.gov.bc.ca/gov/content/industry/crown-land-water/land-use-planning/regions/thompson-okanagan/okanaganshuswap-lrmp>

⁴ <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/cumulative-effects-framework/regional-assessments/thompson-okanagan>

⁵ *Yahey v. British Columbia*, 2021 BCSC 1287 (CanLII) – see paras relating to cumulative impacts e.g. para 1615

inputs and pressures that are arising. Water security is largely not on the radar regardless of Provincial references to legislation and press releases that suggest otherwise . Ultimately it is difficult, or perhaps even impossible to risk assess or land use plan effectively, when there are such significant unknowns. This means that the policy development starts from what could be argued to be a faulty, inadequate premise which then directly limits or removes any basis or effectiveness of safeguards and thresholds.

Based on this policy and regulatory framework, there is no impacts assessment function that considers scope of project or valued environmental components, or is integrating a baseline of science within which to make informed land use and permitting decisions. Without integrating such assessment, the decisions arguably run blind. The regulatory system will not protect against environmental, human health impacts, or if kicks in, it will be for narrow issues that do not address the interaction of environmental and climate change factors.

This policy approach is troubling. In the case of cumulative impacts, how do we know when a land use or project is tipping the scales too far. We now have combining and cascades uses, with little knowledge of the risk management indicators and requirements, which results in uninformed choices and decisions.

The middle Shuswap River and these circumstances are an indicator of trouble.

Agricultural Legislation

This analysis gives a high-level review of legislation at work for Agriculture and feed lots in particular. These laws reflect the policy base described above. There is little teeth and science backing impacts on the environment, or integration with land use management.

The main agricultural legislation at a federal and provincial level is about food security, health and safety, and fostering the economics for farming. The *Local Government Act*⁶ also provides for agricultural regulatory oversight at the local government level. For the purposes of this opinion, and the relevance to the issue at hand, I will look at the Right to Farm legislation, for both the legislative context for BC but also for the purposes of informing strategic options.

For agriculture, the EMA is used as the default legislation to address environmental issues and enforcement. It's important to remind ourselves that the regulatory system is heavily reliant on self regulation. This seeps into the environmental safeguards under the EMA, which provides for a code that incorporates significant discretion and collaborative/voluntary measures.

⁶ *Local Government Act* [RSBC 2015] CHAPTER 1

*Farm Practices Protection (Right to Farm) Act*⁷

The Provincial legislation of note is the *Right to Farm Act*.

This legislation governs and supports farm businesses, such as the intensive feedlot operation. Take note of section 1:

"normal farm practice" means a practice that is conducted by a farm business in a manner consistent with

(a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and

(b) any standards prescribed by the Lieutenant Governor in Council,

and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

A "normal farm practice" is protected under section 2. This section and this legislation essentially create a regulatory framework that protects farmers provided they meet the "normal farm practice" assessment. If the farm meets this standard of practice, then it can be protected by law from injunctions and civil suits, such as nuisance claims. This legislation reflects the protective measures in place to ensure that the agricultural industry remains economically viable.

However, if the farm is not adhering to this standard, this legislation provides dispute resolution mechanism(s) to deal with complaints. Such complaints are considered and heard, both informally by the Ministry of Agriculture and formally, by the B.C. Farm Industry Review Board (the "BCFIRB"). Of note is that a complaint may be filed with the BCFIRB for resolution and decisions by the BCFIRB may be appealed to the Supreme Court of BC.⁸

This dispute resolution mechanism is referenced for strategic consideration. I will speak further about the EMA and the warning for non-compliance that was issued, however there may be reason to use this dispute resolution mechanism as a potential step to bring attention to the matter. On its face, the EMA warning and report on non-compliance arguably takes this situation outside the definition of a "normal farm practice" and therefore provides a potential basis for complaint, to have the matter heard in this forum.

Next Steps

Consider an assessment of evidence to determine whether to make a formal complaint under the *Right to Farm* legislation, before the BCFIRB. Determine the strategic benefit in relationship to other options and the campaign as a whole.

⁷ *Farm Practices Protection (Right to Farm) Act* [RSBC 1996] CHAPTER 131

⁸ *Ibid.*, sections 3 to 6, 8

Environmental Legislation

For this context the key environmental legislation is the federal *Fisheries Act*⁹ and the provincial EMA.

There is other legislation that may become relevant as evidence is further assessed, and steps are taken. For example, at a provincial level the *Drinking Water Protection Act*¹⁰ and the *Water Sustainability Act*¹¹ may be applicable or of strategic importance. There may also be local bylaws that provide assistance. This opinion will not consider these pieces of legislation in detail at this time.

The legislation, whether federal, provincial or at a local government level, are inherently structured to be read in conjunction with each other without conflict. Also of note in this context is that federal legislation (e.g. *Fisheries Act*), would likely defer to the EMA as primary and lead legislation for compliance and enforcement. That said, this does not mean that the *Fisheries Act* becomes inactive. Environmental legislation is intended to be coordinated and is intended to work together with other levels of legislation and jurisdiction.

Fisheries Act

The *Fisheries Act* focuses on the protection of fish and fish habitat. This legislation and its prohibitions, and prevention of pollution of fish frequented waters, would be applicable to the feedlot operations and discharges of contaminants. Sections 34 and 35 deal with prohibitions against causing the death of fish, by means other than fishing and prohibitions against causing the harmful alteration, disruption or destruction of fish habitat.

The *Fisheries Act* specifically defines both *deleterious substances* and *deposits* to inform the prohibitions. These definitions and prohibitions have to be considered in light of regulations, which allow certain levels of deleterious substances and deposits to be made. These exceptions derive from policy to balance the harm and cost realities. This legislation informs the basis for investigation and prosecution. Further analysis regarding the ‘due diligence defence’ under s.78.6 of the *Fisheries Act* would also be necessary.

*Environmental Management Act and Code of Practice for Agricultural Environmental Management (EMA)*¹²

The *EMA* contains significant enforcement and offence provisions. Responsibility for this legislation falls to the Ministry of Environment and Climate Change Strategy (“MoE”). This is the Province’s main piece of environmental protection and enforcement legislation.

⁹ *Fisheries Act* (R.S.C., 1985, c. F-14)

¹⁰ *Drinking Water Protection Act* [SBC 2001] CHAPTER 9

¹¹ *Water Sustainability Act* [SBC 2014] CHAPTER 15

¹² *Code of Practice for Agricultural Environmental Management*, BC Reg 8/2019

There are interconnections with the local government and federal levels of environmental oversight. Given the policy structure, the EMA serves as the back stop or default for environmental infractions. Of note, is the EMA Code of Practice regulations that integrate the agricultural policy base, discretion and self regulation. This creates a ‘light’ enforcement climate for environmental impacts arising from agricultural operations.

While these environmental laws can be very robust regarding pollution, it often comes down to policy priorities such as the agricultural policy base, and how the different levels government are coordinating, or not, regarding environmental infractions. The legislation intends that the system coordinate according to context, so in an ideal world, the system can be very robust. In reality policy and resources comes into play with respect to coordination, compliance and enforcement.

In this case, the agricultural policy base directly informs how the environmental legislation will be considered. The short answer is that there is significant leeway, discretion and self regulation for agricultural operations, both in the Agricultural policy base and legislation, and within the EMA in terms of compliance and enforcement. Practically speaking, the circumstances have to become particularly egregious and obvious for substantive enforcement measures to be taken.

Furthermore this regulatory framework, in terms of how agriculture and environmental protection are carried out, has the potential to pass over or pay less attention to environmental enforcement unless there is public outcry – i.e. no one is necessarily minding the store unless and until complaints and more obvious violations are at play.

As such, these environmental regulatory frameworks through the *Fisheries Act* and EMA are intended to address specific conduct, exceedances and violations. Specific operators, projects and sites are targeted to address pollution. These regulatory systems may only indirectly inform, and do not in any way address, broader policy fields such as the health, capacity or broad protection of a watershed and river system.

Next Steps

Determine whether to assess evidence for both violations and strategic litigation potential. The environmental legislation may assist with targeting the feedlot operations for strategic benefit to further the basis for protection of the river. This option needs to be considered in conjunction with other strategic options, timing and resources.

How Carson Farm Informs Next Steps and Protection of the Shuswap River

After considering the regulatory frameworks, the analysis moves to how these regulatory frameworks work in relationship to the Carson Farm situation and what legal options and avenues may be of interest for further assessment and integration into your campaign for protection of the Shuswap River.

Carson Farm

Carson Farm demonstrates the excessively permissive and voluntary, self regulation approach to the Right to Farm legislation, which has a primary emphasis on supporting a viable agriculture industry.

Environmental protection is clearly secondary with few checks and balances.

Carson Farm is also an example of what happens when industry is allowed to self regulate – environmental mitigative measures are not demonstratively forming part of the operations. Indeed there may even be defiance in conduct – e.g. piping effluent off property etc.

Enforcement is correspondingly slow to respond -it has largely been up to the public to raise concerns for action to be taken.

Enforcement/Compliance – EMA – Warning Letter July 24, 2024

The MoE evidence demonstrates disturbing information that Carson is out of compliance regarding records for total animals and manure. They have inappropriate or inadequate systems for run off/drainage. There are also concerns (some yet to be determined) relating to burial sites and impacts on water table, run off etc. There are no records.

These indicators put into question whether the feedlot operations are fit for purpose. Put another way, presumably for viable business operations such records would be necessary for reasons beyond environmental. How can this operation be operating without such records? Indicators also suggest that the business may be exhibiting defiant conduct by not operating appropriately and within the law.

I understand that this is not the only feedlot or agricultural operation for this corporate owner– they apparently have a number of like properties for this purpose. System checks and balances for this operation appear to be absent.

The following derives from the warning letter of July 24, 2024. Key MoE evidence is referenced, as well as corresponding sections of the EMA and regulations under the Code of Practice for Agricultural Environmental Management, and MoE's approach to enforcement. The inspection found Carson Farm out of compliance under section 6 of the EMA for discharging waste without authorization.

- **Section 30** – Carson must monitor, assess measures/controls to prevent contaminated runoff, leachate, solids from entering a drinking water source or watercourse. If existing measures are inadequate, then Carson needs to take corrective action before high risk conditions materialize. Inspectors observed a drainage pipe capable of discharge contamination runoff from confined livestock area to a ditch and crossing the property boundary. Carson was deemed out of compliance: Carson is to cease discharging and must monitor operation for high risk conditions, assess existing measures and controls.

Comment: All of these actions are up to Carson to assess, monitor and address. The warning is simply a restating of what Carson is already required to adhere to by law.

- **Section 62** -there should not be any direct access for livestock to a drinking water source or water course. Inspection confirmed no direct access; however a ditch containing runoff released by a drainage pipe from the confined livestock area was within 8 m of prop boundary; no confirmation whether runoff went below water table and/or was entering Shuswap River. Runoff from drainage pipe crossed prop boundary northwest of facility into neighbouring field – accumulated manure etc. not managed to prevent contamination runoff from escaping ; drainage i.e. in the confined livestock area enables runoff; contaminated runoff that escaped was not collected/contained and discharged to land; No confirmation if runoff discharged to a water course. Carson deemed out of compliance and directed to cease discharge, contain and collect contaminated runoff.

Comment: These are simply acknowledgements that they are in violation. These are significant issues, that should be known and understood by Carson, but they operated regardless, waiting to be told that they were off-side the law. There are no indications at this stage that operations should cease. In a case like this, a more effective enforcement approach is to make operations conditional on containment and run off systems being fit for purpose.

- **Section 64(1)** – where there is direct access to a water course (grazing area) minimize trampling and erosion of soil into watercourse and contaminated runoff entering watercourse.

Comment: Compliance was not determined but the MoE official cited that Carson says there are controls. There is no determination if these controls are effective. Consideration should be had to the operation as a whole, the nature of the infractions and whether further requirements/enforcement is needed. The enforcement steps taken are on the very light end of the spectrum, which appears to be out of step of effective enforcement, given the significance and weight of the indicators taken as a whole.

- **Section 65** – As Carson holds more than 5 animal units, records must be kept of the total number of animals and total amount of manure. An animal inventory was provided for 2024 for total animals but no record of total manure volume collected. Out of compliance.
- **Section 74:**
 - 74(1) – Burial pits require certain distances/setbacks, depth etc. Carson confirmed no issues and Inspector confirmed that the pits are not in the 200year floodplain,

Comment: Conclusions reached are based only on what Carson says. There is no current evidence that there is an issue with burial pits, however the nature of the non-compliance and lack of records raises the question as to why Carson is not being required to back up its statements with evidence and a requirement for records disclosure.

- 74(3) -A person who buries mortalities, solid waste or semi-solid waste must make and keep records of all of the following in respect of each burial pit:
 - (a)the location of the pit;
 - (b)the type and amount, expressed in tonnes, of materials buried;

(c)the date the pit is closed, if applicable.

Conclusion – Carson is out of compliance regarding s.74(3) as no records were produced about burial pits.

Comment: This finding means s.74(1) is open to question. The fact that there are no records for burial or manure is significant because it goes to Carson’s credibility and whether the regulations are being met. The totality of the situation indicates that the records and measures/control systems should be thoroughly considered with clear requirements that operations are conditional on measures/controls and adherence to the legal requirements being met. The extent of the enforcement action is that Carson needs to keep records and produce if requested. We are beyond this point, arguably this enforcement approach is reinforcing the conduct and allowing a pathway for continuing violations.

- **Section 79** – Records requirement is out of compliance. There is no manure information. No burial records.

Comment: Record keeping is a significant indicator of the health of an operation. It is not only an issue of compliance but an indicator that their operations are achieving their own business objectives. There are multiple reasons for record keeping that inform the business as well as environmental requirements. The fact that the information is not produceable is a significant flag. Such records are integral to their operations. The enforcement action amounts to just saying that Carson should just keep them. There is no request to produce the records.

The MoE takes an “escalation” approach to enforcement. This approach aligns with the economic priority and self regulation policy base. This means that there may be many steps, and a significant passage of time, before effective conditions are set and prosecution is even considered. The aim is to bring the operations into compliance regardless of the indicators.

Enforcement steps should weigh the evidence and ensure that enforcement steps align with the context. This type of approach for the Carson situation does not address the nature and substance of the non-compliance, nor does it account for defiance or disregard of the law. These should be indicators that escalate enforcement with justification. When indicators reflect compounding risk factors, and what could be considered a willful disregard for the legal requirements, then using measures to *persuade* compliance has a high likelihood to be ineffective. In the mean time contaminated discharge continues unabated.

The danger of this approach to enforcement, in this context, is that it legitimizes the non-compliance and violation(s) of the law.

Food Safety and Environmental Risks

I mentioned earlier in this document that a primary regulatory focus is food safety. However, the question arises whether the level and nature of non-compliance with environmental requirements, may put the operations into question more broadly. From a risk management perspective these risks interface. As such this may be an issue of strategic benefit for your campaign. If the operations are haphazard on the

environmental front, does this raise questions and concern for other aspects of the operations? How is the Province ensuring that the food safety measures are well in hand?

Next Steps

For strategic benefit, consider the question of whether there is a linkage of the environmental risks and infractions with risks for food safety. It appears that these risks may be treated in isolation. However, if the operations are out of compliance, waste continues to discharge to the environment, without records and steps being taken. Without active Provincial oversight, what does this say about the integrity of the operations for other purposes such as food safety? Consider incorporating these questions into your public concern messaging. Caution: raise concerns about whether there are linkages but do not claim that that this is the case as there is no evidence to confirm this at this time. Ongoing legal advice is strongly recommended for this step.

Legal Options

Given the legal and policy analysis, along with the evidence that arises from the MoE warning letter, there are a number of legal avenues that may be appropriate, serve as strategic litigation, or serve strategic benefit:

- Regulatory Prosecution
- Judicial Review
- Civil Causes of Action – e.g. Nuisance
- Right to Farm Legislation – Complaint to the BCFIRB

Note that these options require assessment that sufficient evidence is available to support action. This opinion will not be assessing evidence or the efficacy of these options at this time.

Any option or combination of options should be considered fully for legal and strategic benefit, as well as for cost/benefit. Your campaign should have a strong project plan, with fund raising fully considered, as well as timing considerations, short and long term for optimal benefit. Legal advice should be ongoing.

Regulatory Prosecution

In this case, BeeSafe and other supporters can continue working with inspectors/regulators to gather the necessary evidence, to build a case for regulatory prosecution that the Province or DFO oversees. There may also be the option of bringing a private prosecution for strategic litigation benefit, however I strongly recommend continuing legal advice to consider this further. It is critical that there is no suggestion of

pursuing this avenue (prosecution) as a means to threaten or leverage pressure – such threat(s) or pressure can/will amount to an offence in its own right.

Regarding the basics of a prosecution, before a prosecution can proceed, there needs to be an offence and resulting charge, which is then considered in terms of whether there is a reasonable prospect of success at trial. Consideration of a “reasonable prospect of success” is an additional threshold that is often not easily met given competing considerations by prosecutors. Despite high thresholds such as this one, or evidence considerations such as the ‘defence of due diligence’, should prosecution proceed the offence must be proven beyond a reasonable doubt.

Should there be success then sentencing becomes the critical component. The variety of approaches to sentencing, including creative sentencing options, may include remediation of the harm, preventing future harm and/or promoting deterrence.

A prosecution in this case, would be considered strategic litigation to further the aims of the campaign, leveraging pressure for change and protection. Even if prosecution does not proceed, inspection(s), investigation(s) or an order issued as part of the regulatory enforcement, may nonetheless be considered a strategic “win”.

Judicial Review

In addition to or as an exclusive cause of action, judicial review may present as an option should there be sufficient evidence.

For comparison, prosecution involves addressing a breach or exceedance of what is authorized or required by the legislation (e.g. *Fisheries Act* or EMA prohibitions). Such offences are then prosecuted before the courts and the evidence, process, sentencing and outcomes are distinct.

In a judicial review, the issue is about whether a government official, agency or administrative board has acted or omitted to act in accordance with its statutory decision-making authority, and whether any discretion, legislatively set, has been unreasonably used. Such a cause of action will also look at issues of due process and whether procedural fairness has been met.

For judicial review actions, the remedies are very distinct and deal with ensuring that the government body or administrative decision maker addresses their legislative responsibilities. To this end, the nature of the remedies often include quashing such a decision and sending it back for reconsideration by the decision maker, and providing injunctive relief by either ordering the government decision maker to comply with certain actions, or prevent certain actions from occurring while the decision making is properly addressed.

For this type of action, such decisions may have to be appealed to a statutory body rather than the court. The legislation overseeing such decision making will determine how and when recourse to the courts is available.

This type of action can be of assistance to bring attention to the matter. However, despite the fact it is intended to ‘watch-dog’ state decision making, the system is such that there is typically a high threshold

to meet to overcome an appeal body or court's deference to the discretionary decision making of the government decision maker. There is a deference to allowing those best situated at the front lines to make the decision which is supposed to be linked back to preserving the democratic process, autonomy of the elected officials and the lawmaking they entrust the government decision maker to oversee and process.

That said, if you are collaborating with impacted First Nations this avenue may serve further strategic benefit. Issues of inadequate Crown Consultation in relationship to s. 35 Constitutional rights of First Nations/Indigenous groups can be brought using this form of cause of action against a state decision maker that has failed in its Honour of the Crown obligations. This may arise in cases where permitting is authorized without sufficient FN consultation and involvement regard the potential for detrimental impacts on existing or potential FN rights and title. I will speak further about this when the opinion speaks to legal personhood for the river.

Judicial review can be a costly form of litigation that requires complex legal and technical arguments. The outcome can also backfire by the decision maker becoming even less transparent regarding future dealings. This is not a reason not to litigate if there is sound evidence of unlawful decision making, but it is a practical consideration and reality.

Civil Causes of Action

Civil causes of action typically deal with actions in tort for matters such as nuisance, negligence and misrepresentation. These are private civil lawsuits where loss and damage, duty of care, proximity and causation have to be proven.

Civil causes of action may provide a substantive benefit to redress loss and damage, and it may also provide strategic litigation benefits.

This avenue would require specific legal assessment. This option should be considered long term in scope and of significant financial cost in the shorter term to bring action and to carry the process.

Right to Farm Legislation – Complaint to the BCFIRB

Earlier in this opinion this legislation was considered. For strategic purposes there may be value in considering a complaint to the BCFIRB to bring attention to the matter. The MoE evidence provides a basis to show that Carson Farm is not engaging in "normal farm practices". This option should be considered within the overall strategic planning and further legal assessment is required and recommended.

River and Watershed Protection – The Broader View

Looking more broadly, beyond the Carson Farms situation, the BeeSafe group is interested in protecting the Shuswap River and its watershed. Consider that the legal options above dovetail with these broader issues.

The following options are intended to serve as means to spread awareness, develop the science and evidence needed. This work may yet inform other legal tools of action, depending on the evidence that is compiled.

A good quote:

Policy makers would better serve the public by anticipating the problems of over-exploiting the river than by reacting to the consequences.

This was taken from a post by Michael Kovrig speaking of a report from the International Crisis Group on the Chinese Mekong River Basin– October 7, 2024. The same concept applies here.

River and Watershed Protection – Impact Assessment, including Cumulative Impact Assessment

We know that there has been some effort to consider planning for watershed protection. The RDNO's Watershed Sustainability Plan (2014) is an example of work that has been done. I confirm that we have discussed the importance of impact assessment. This provides important information that can be used for evidence based analysis that can and needs to inform permitting and land use planning.

We can see by the 2014 Plan that it is non-regulatory and provides a very broad base approach that has no legal underpinnings or clout. As discussed, there may be good science here that should be considered.

The need for impact assessment science is key. A key part of your campaign in my view is to bolster the evidence so that it cannot be ignored. This requires support from appropriate experts such as hydrologists, economists etc. that can inform impacts. The reason this information/evidence is important is that it creates a baseline for capacity for the river and the watershed. In other parts of the country there is a focus on developing regional impact assessments. Something similar could/should be considered here. The approach would require obtaining independent expertise, such as experts from higher education facilities. This is really work that the government should be doing but is not.

Obtaining this kind of evidence provides levers for pressure that not only influences the decision makers but it also garners support from like-minded organizations that can expand or bolster your campaign.

In my view, you waiting for government to do the right thing and to obtain the studies necessary may well be futile. The Blueberry case identifies the problems that are not being addressed.

Having this kind of evidence will open doors and will be a critical base to work from. This will necessarily require fund raising efforts although there may be funding synergies that assist if educational institutions are involved.

Next Steps

My recommendation is that an FOI request be made to obtain existing government documents that deal with any such technical and scientific assessments for the Shuswap River watershed . This will inform what is lacking and what further science is needed.

Consider impact assessment as part of your strategic plan. There may be synergies with experts from higher education facilities or other initiatives that may build your team and build the evidence needed to achieve your goal for protection.

Regarding river and watershed protection through impact assessment, First Nations hold a pivotal role in this strategic approach and your campaign. The First Nations are in a special position to activate reform and to drive protective measures. Alliance building is a key recommendation. This is not an easy component of the strategy because the First Nations are grappling with new roles, governance and self determination. They are also facing capacity issues in terms of what can be a priority. *First Nations may also indicate that they are doing their own impact assessment processes or are coordinating with the Province on a government-to-government basis. This may be of strategic assistance. In any event, any impact assessment your campaign can drive or ally with, will be important.*

River - Legal Personhood

Legal personhood is another strategic component that could give sway to a number of key advances for the Shuswap River. This pathway is interconnected with other options discussed and, in my view, should not be considered in isolation. It is a newer concept that is gaining traction as environmental values and protection make strides in law and court cases, as climate change and environmental degradation reflect the intersectionality of factors. It is also becoming more and more apparent how far behind the legislation, policies and practices are

This is an option that has the potential to kickstart the change needed but, as is the case with the aforementioned tools/options, there are considerations and further analysis needed depending on steps chosen. There has to be strategic thought and planning for an option like this to be viable for the Shuswap River. If it can crystallize, it could be a significant tool for protection.

Current Protection

Currently, the legal protections under Provincial legislation typically take the form of protected areas, parks etc. Given the policy platform of the Province, there is a greater likelihood that government will not institute protections on its own accord unless there are obvious events and damage that necessitate a different approach. The government position is much more likely to align itself with industry and the economic factors. We know that the permit to pollute approach is well entrenched.

This means that other options, such as granting legal personhood to a river, gains traction for consideration.

Novel - Legal Personhood for Environmental Purposes

Legal personhood remains a novel option that has not been tested by Canadian courts as a mechanism to environmentally protect water courses. There are initiatives underway in Quebec¹³, for example, but it is largely unknown whether this approach will entrench itself in Canadian jurisdictions until we know more about how courts will consider these actions for protection.

International Examples and Distinctions

Internationally there are examples, such as in Colombia and Ecuador¹⁴, that have legalized personhood for rivers and environmental valued components, however it is important to recognize that these jurisdictions have clear constitutional status for environmental protection. Canada's constitution does not have the same types of provisions that explicitly include such environmental protections.

Canadian Context and the Shuswap River

In a Canadian context, creating legal personhood for a river is going to be complex and uncertain. Legal personhood could be created through legislation or some form of judicial declaration. It can also be achieved through Constitutional change. These avenues can be very time consuming and chancy as to whether they materialize.

Alternatively, there may be approaches that can strategically set a stage for legal personhood, to effectively test the waters. In my view this involves testing and combining certain elements to frame the personhood argument and protection.

In the case of the Shuswap River, this could involve the passing of resolutions that call for/instate the legal personhood of the river. This would practically mean having the RDNO and/or a FN passing resolutions to this effect. This could pave a way for such parties to take action on behalf of the river, for its protection where violations or pollution is compromising the capacity of the river. This would be one step.

In isolation, however, such resolutions will not be able to overcome the Provincial laws or regulations that grant rights to permit holders and/or industries based on the policy base already discussed. That said, there are other factors to consider strategically and for legal effect.

¹³ <https://globalnews.ca/news/8230677/river-quebec-legal-person/>

<https://canadiangeographic.ca/articles/i-am-mutehekau-shipu-a-rivers-journey-to-personhood-in-eastern-quebec/>

¹⁴ <https://canadiangeographic.ca/articles/i-am-mutehekau-shipu-a-rivers-journey-to-personhood-in-eastern-quebec/>

<https://therevelator.org/te-awa-tupua>

act/?utm_source=rev&utm_medium=email&utm_campaign=rev332&emci=19a6e4f7-635a-ef11-991a-6045bddbfc4b&emdi=5c123dab-0e5b-ef11-991a-6045bddbfc4b&ceid=2240850

*Indigenous Rights and First Nation Involvement*¹⁵

One factor in the Canadian context is to consider legal personhood within the context of Indigenous rights and self government. On the one hand, a FN may pass its own laws, beyond a Band resolution, that would then have legal credence in its own right. Such steps would need to be reconciled with Provincial laws for example. This is new legal territory and how this would impact a river's protection is an open question.

Another consideration or pathway of protection may be through the constitutional rights of Indigenous peoples under s.35 of the Constitution and requirements of Honour of the Crown. Most simply, legal personhood would be considered in combination with these s.35 protections. This pathway would target the issuances of permits/authorizations or decisions being made that may detrimentally impact the river in its association with potential or existing Indigenous rights or title. Sufficient consultation and measures (in the form of mitigation or protection) may be required. A form of legal personhood may arise from this approach.

The combination of methods to effect legal personhood of the Shuswap River remains an option, but one that is complex and will require further analysis, depending on how BeeSafe proceeds, and whether FN alliances can be achieved. This is a work in progress but certain actions made in combination as discussed in this opinion, may have potential for successful outcomes in terms of protecting the Shuswap River.

Seeking legal personhood of the river (i.e. the process and journey of pursuit of this option) provides a number of opportunities to bring attention to the matter which can provide political and policy leverage. This journey interacts with the other stated tools and options. This option, as with the other options is a dedicated endeavor requiring the right team of campaigners, experts and alliances.

Recommendations and Next Steps

This analysis and review provides information and analysis of the legal and regulatory realities at play regarding Carson Farm and the degradation of the Shuswap River. The analysis also indicates a number of tools or pathways for consideration. Some could be considered in isolation but my recommendation is that the various tools are considered as part of your overall strategic planning in terms of timelines, resources and how such options may factor in most effectively. This analysis is a starting point and road map to consider next steps.

The following Next Steps are recommended:

¹⁵ Ambers, Andrew, *The River's Legal Personhood: A Branch Growing on Canada's Multi-Juridical Living Tree* The Arbutus Review – 2022 – Vol. 13, No. 1 – <https://doi.org/10.18357/tar131202220790>

1. Consider an assessment of evidence to determine whether to make a formal complaint under the *Right to Farm* legislation, before the BCFIRB. Determine the strategic benefit in relationship to other options and the campaign as a whole.
2. Determine whether to assess evidence for both violations and strategic litigation potential. The environmental legislation may assist with targeting the feedlot operations for strategic benefit to further the basis for protection of the river. This option needs to be considered in conjunction with other strategic options, timing and resources.
3. For strategic benefit, consider the question of whether there is a linkage of the environmental risks and infractions with risks for food safety. It appears that these risks may be treated in isolation. However, if the operations are out of compliance, waste continues to discharge to the environment, without records and steps being taken. Without active Provincial oversight, what does this say about the integrity of the operations for other purposes such as food safety? Consider incorporating these questions into your public concern messaging. Caution: raise concerns about whether there are linkages but do not claim that that this is the case as there is no evidence to confirm this at this time. Ongoing legal advice is strongly recommended for this step.
4. My recommendation is that an FOI request be made to obtain existing government documents that deal with any such technical and scientific assessments for the Shuswap River watershed . This will inform what is lacking and what further science is needed.
5. Consider impact assessment as part of your strategic plan. There may be synergies with experts from higher education facilities or other initiatives that may build your team and build the evidence needed to achieve your goal for protection.
6. Regarding river and watershed protection through impact assessment, First Nations hold a pivotal role in this strategic approach and your campaign. The First Nations are in a special position to activate reform and to drive protective measures. Alliance building is a key recommendation. This is not an easy component of the strategy because the First Nations are grappling with new roles, governance and self determination. They are also facing capacity issues in terms of what can be a priority. *First Nations may also indicate that they are doing their own impact assessment processes or are coordinating with the Province on a government-to-government basis. This may be of strategic assistance. In any event, any impact assessment your campaign can drive or ally with, will be important.*

In conjunction with these next steps, consider the role and strategic benefit of legal options such as regulatory prosecution, judicial review and civil action. For all such avenues sufficiency of evidence will be required.

Finally, consider the role of legal personhood for the Shuswap River as part of your initiative.

I trust that this opinion provides guidance to BeeSafe and I wish you well in your campaign.

Sincerely,



A handwritten signature in black ink, appearing to read 'Carla R. Conkin', is written over a faint, light blue grid background. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Carla R. Conkin, LL.B.

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