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GCCMS #: 2023-001-01414
EKME #: N/A

To: Minister Murray Date:

Title: KODY BLOIS, M.P., KINGS-HANTS

From: Wendy Williams A/RD Aquatic Ecosystems July 27, 2023

Via: Doug Wentzell, RDG, Maritimes Region July 28, 2023

Additional approvals:
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- **Niall O’Dea, SADM, Strategic Policy** **Date approved**
- **Caroline Quinn, Chief of Staff, Deputy Minister’s Office** **Date approved**

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For Minister’s Office Use:

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Signature: _____

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- ***Do not list individuals, directorates, sub-units/secretariats.***

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DATE AND DEADLINES / DATE ET ÉCHÉANCE

DUE DATE TO MINO / ÉCHÉANCE AU CM : (mm-dd-yyyy / mm-jj-aaaa)	2023-08-08	DATE RECEIVED IN MCU / DATE DE RÉCEPTION À L'UCM : (mm-dd-yyyy / mm-jj-aaaa)	2023-07-10
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COMMENTS / APPROACH – COMMENTAIRES / APPROCHE

APPROVALS / APPROBATIONS

Level / Niveau	Name, Title and Sector / Nom, titre et secteur	Date Due to Lead / Échéance à la direction responsable	Date Approved / Date d'approbation	Input used in draft? Yes/No La contribution a-t-elle été utilisée dans le projet ? Oui/Non
Director / Directeur(trice)	Mark McLean, A/Director		July 21, 2023	
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ADM / RDG / DC / CO / AC SMA / DGR / SA / BC / CA	Doug Wentzell, RDG Maritimes Region	Revisions	July 24, 2023 October 18, 2023	July 28, 2023
Indigenous Affairs / Affaires autochtones				
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OTHER CONSULTATIONS / AUTRES CONSULTATIONS

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b.c.c. / Cci – (Name, Department / Nom, ministère)	c.c. – (Name, email address, contact info / Nom, courriel, coordonnées)
•	<ul style="list-style-type: none"> Hon. Dominic LeBlanc, < jga.minister-ministre.aig@pco-bcp.gc.ca > Hon. Sean Fraser, < IRCC.Minister-Ministre.IRCC@cic.gc.ca > Mr. Mike Kelloway, < Mike.Kelloway@parl.gc.ca >
ATTACHMENTS TO RESPONSE / PIÈCES JOINTES À LA RÉPONSE	
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s.19(1)

Mr. Kody Blois, M.P.
Kings-Hants

Dear Mr. Blois:

Thank you for your correspondence of July 5, 2023, addressed to my predecessor, the Honourable Joyce Murray, regarding the new aboiteau structure on the Avon River. I regret the delay in responding.

First, let me convey on behalf of Fisheries and Oceans Canada (DFO) that our thoughts are with everyone in Nova Scotia who has been affected by the recent storm. The communities of Hants and Windsor were particularly impacted and we mourn the loss of life associated with the floods.

DFO is working closely with the Nova Scotia Department of Public Works on the review of the design and operations of the proposed aboiteau structure. The Department appreciates the importance the twinning project contributes to public safety and has been working diligently to review the information provided by the province to ensure the project can proceed as soon as possible while meeting the regulatory requirements.

DFO is responsible for meeting the Government of Canada priorities and its Departmental mandate commitments, which include protecting Canada's three oceans and waterways, ensuring they remain healthy for future generations, and providing economic opportunities to Canadians and coastal communities. DFO priorities also include fostering relationships with Indigenous partners, including the Mi'kmaq of Nova Scotia.

Under this mandate, a Ministerial Order (MO) was issued to improve fish passage on the Avon River while a more permanent solution could be found. Since the issuance of the MO in 2021, DFO has worked closely with the Province, the Mi'kmaq of Nova Scotia, the Municipality and stakeholders to address many of the concerns of the broader community including issues around water supplies, dust and recreation use.

DFO acknowledged prior to the implementation of the MO that there would be some changes to the freshwater system. However, this freshwater system was artificially created when the Avon River Causeway was built, and the biodiversity and productivity of these natural tidal systems far exceeds those of artificial reservoirs.

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Since issuing the MO, DFO officials have observed improvements in fish passage including large numbers of Gaspereau and other migratory species in the river. Indigenous partners through the Mi'kmaq Conservation Group continue to conduct monitoring of the system and several adjacent rivers noting substantial increases in fish passage for several species, including ecologically and culturally-important species such as Atlantic Tomcod.

As you have correctly noted in your correspondence, my Department is waiting for the results of a modeling study for the Avon River aboiteau, which is currently underway by the Province of Nova Scotia. Once it is completed and provided to DFO, the Department will review the information. The Province has advised us to expect that information from them later this summer. Following receipt of the new information, DFO will evaluate all of the scenarios put forward by the province and will continue the Indigenous consultation. I can assure you that DFO officials will be working as quickly as possible to review the information the Province provides.

DFO does not direct proponents on how to conduct works. Instead, DFO's role is to ensure compliance with the *Fisheries Act* and *Species at Risk Act*. This includes ensuring free passage of fish, the protection of fish and fish habitat, and considering Indigenous knowledge in decision-making. DFO officials have been providing expert advice through the *Fisheries Act* application process. However, the Province's decision to propose a new complex gate system and fishways, in order to maintain water levels above the gates, resulted in the need for DFO to conduct an extensive review to determine impacts to fish and fish habitat, including aquatic *Species at Risk*. This review indicated that the proposed fishways would provide very limited passage of only a few fish species known to use the Avon system. This information was provided to the Provincial officials working on this project.

DFO is not opposed to maintaining an artificial lake. However, the enormous tides of the Bay of Fundy, laden with natural sediment, make designing a system to meet the fish passage requirements under the *Fisheries Act* and impound water upstream, an extremely difficult task and not known to be used anywhere else in the world. DFO officials have indicated to Provincial representatives that a more simplistic gate operating scenario, which mimics the natural tidal flow in the estuary above the gates while still providing flood control, could be used to address fish passage requirements under the *Fisheries Act*. However, this information has not been raised outside of these meetings in order to allow the Province to consider options to partner on consultation with the Mi'kmaq of Nova Scotia and communicate with stakeholders.

As the responsible Minister, in addition to those factors outlined in your letter, I must also consider any adverse effects that my decisions may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act*, 1982. DFO has committed, in consultation with the Mi'kmaq, that any changes to the MO and the new structure will be required to meet the requirements for fish passage.

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It is also important to note that the *Fisheries Act* requires the Minister to consider Indigenous Knowledge when provided. The Mi'kmaq have signaled that they are interested in undertaking a Mi'kmaq Knowledge Study as part of the assessment process. DFO anticipates this will form part of the consultation and must be factored into the timeline for assessment of the structure.

I trust this update on DFO's review of the new proposed tidal gate structure design and operation is helpful. My Department can provide additional information on the review process if needed. If this is of interest, please have your office contact Mr. Doug Wentzell, Regional Director General, Maritimes Region by email at < Doug.Wentzell@dfo-mpo.gc.ca >. Thank you for writing.

Yours sincerely,

The Honourable Diane Lebouthillier, P.C., M.P.

c.c.: The Honourable Dominic LeBlanc, P.C., M.P.
Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs
The Honourable Sean Fraser, P.C., M.P.
Minister of Housing, Infrastructure and Communities
Mr. Mike Kelloway, M.P.
Parliamentary Secretary to Minister of Fisheries and Oceans and the Canadian Coast Guard
Cape Breton–Canso



KODY BLOIS, M.P.
KINGS-HANTS

Hon. Joyce Murray
200 Kent St.
Ottawa, Ontario
K1A 0E6

July 5, 2023

Delivered Electronically:

Dear Minister Murray,

I am writing in relation to the ongoing situation in Windsor, Nova Scotia at the Avon River. This is an issue that has persisted for well over three years and the decision making by DFO has had significant consequences for the communities I represent. The issue is nuanced, but essentially involves both the permitting required for the Province of Nova Scotia to build a new gate structure in front of Highway 101, to twin the highway with joint funding from our government, and the existing Ministerial Order (“MO”) which began in the spring of 2020.

I have taken issue with the way in which our government has implemented the MO at the Windsor Causeway. I have repeatedly flagged my concern that the current construction of the MO does not reflect the concerns being raised by the broader community. I continue to encourage you and DFO to explore ways to return more water consistently to Lake Pisiquid by allowing the impounding of fresh water on outgoing tides.

The crux of my correspondence today is in relation to resolving the issue and providing a clear pathway to twin the highway and address a significant public safety concern on a portion of highway that has claimed the lives of far too many.

I appreciate it is the province of Nova Scotia’s responsibility to provide a gate structure that adequately meets the provisions of the *Fisheries Act*. As Minister, you have significant discretion under the Act to weigh the various perspectives that are being brought forward. As a result of my briefing with your officials I understand the following to be true:

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Telephone (Kings–Hants): +1 (902) 542-4010 • Telephone (Ottawa): +1 (613) 995-8231
Email: kody.blois@parl.gc.ca

- While the Province was seeking approval for a gate structure that would allow for a “freshwater lake” DFO civil servants indicated in correspondence on March 5, 2021, that a freshwater lake scenario was unlikely to be approved under the Fisheries Act.
- In April 2022, the Province submitted an alternative plan with an upgraded gate structure that would allow for an operational scenario of a “brackish lake” where there would be dedicated fishways and an ability to move fish species through the gate while impounding freshwater on outgoing tides.
- Since April 2022, there have been meetings between DFO, the NS Department of Public Works and Indigenous stakeholders on the proposed structure. On October 5, 2022, DFO sent a letter to the NS Department of Public Works indicating that the application was incomplete/inadequate until such time that the province could provide additional modelling. The province has maintained their current proposal can pass fish under a “brackish lake” operating scenario.
- The province is expected to provide the final modelling needed to allow for a decision on the proposed gate structure sometime this summer. Therefore, a decision by you as Minister should be forthcoming shortly thereafter.

Minister, as part of your decision you will be required to weigh the factors required under Section 34.1 of the *Fisheries Act*. While there are prescribed considerations, the legislation leaves open “*any other factor that the Minister considers relevant*”. I am asking you to consider the concerns and viewpoints of the overwhelming majority of residents in the local area who want to see a “return of the lake” by impounding of freshwater on outgoing tides. As I have done previously, I will highlight the factors that are driving that perspective.

The future of the Avon Valley under increased pressure from climate change

Minister, I know that you are aware of the threat that climate change presents around the world, especially here in Canada. Nova Scotians have witnessed to three major impacts to our province in the past year. Atmospheric rains that caused significant washout in Cape Breton,

Hurricane Fiona, the worst hurricane on record to hit our region, and most recently the worst wildfires our province has ever experienced.

In the many conversations I have had, my constituents are aware of the importance of preserving freshwater for communal benefit in a world that will be increasingly warmer, drier, and where water will become more scarce. The “brackish lake” scenario balances the very crucial need to protect fish species, biodiversity, Indigenous rights, and at the same time protect a vital freshwater resource that matters for the wellbeing of the communities I represent, including addressing fires in the Municipality.

The historical agreement to develop the Avon River Marshlands

When the Avon River Causeway was being built, an agreement was signed in 1968 between the Government of Canada and the Province of Nova Scotia that stated a dam and causeway would be built across the Avon River to “reclaim and develop marshlands”. In the ensuing 50 years, significant farming and residential development has occurred, it has been an important development for the entire Municipality.

The communities within West Hants continue to grow, as it is a desirable place to call home, close to the Annapolis Valley and within an hour of Halifax. Given the historical context of the agreement between the Provincial and Federal Government to manage the Avon River in a way for communal benefit, I believe it is incumbent before a final decision is made for DFO to engage the local marsh bodies and the Municipality of West Hants on data pertaining to available freshwater and whether the “brackish lake” scenario would be seen as important for the future development of the community.

Impact on Agriculture Producers

The upper Avon Valley is home to some of the most productive soils in Nova Scotia. There is a significant agriculture industry that exists in the local area, that has relied on the availability of freshwater to irrigate crops and provide water for livestock. Both the existing MO, and a decision to not impound freshwater at the causeway result in an outcome where there is significantly less freshwater in the Avon River that can be used to support our food security in

our region. Given the significantly drier weather we are experiencing in Nova Scotia, freshwater preservation and utilization should play an important role in your consideration.

Freshwater Species

Since the introduction of the Causeway in the 1970s there has been a variety of freshwater species that have thrived under the existing conditions. The current MO appears to have had a significant impact on these species. There was significant loss of fish and freshwater mussels reported to DFO in 2020 and 2021. Anecdotal reports from constituents who have fished the area for years lament the fact that there is a significant decline and loss of fish species that once existed.

Impact on Residents

For the last 50 years residents owning property along the Avon River have been accustomed to having water in the river channel that is adjacent to their properties. The current MO and the proposed “two-hour tidal inflow” will not significantly return water to the area. This is resulting in lower property valuation and a loss of enjoyment of the river in the upper Avon Valley.

Downtown impact and perspective on businesses

The business community in the downtown of Windsor has expressed concerns about the loss of water in Lake Pisiqid. There are restaurants and bars along the area which used to consistently contain water. The impacts last summer included dust storms in the residential and business quarter of the downtown area. The area is simply viewed by many as unattractive and unappealing.

Waterfront redevelopment and recreation

There were considerable recreational opportunities under the previous conditions of the Avon River/Lake Pisiqid, including a community Canoe Club and residents would paddle and utilize the watercourse available. The Municipality of West Hants is asking both levels of government for a redevelopment of the waterfront area in downtown Windsor. Currently there is very little water in Windsor, and thought should be given to the idea of how establishing a brackish lake

could enhance the waterfront while allowing for the return of recreational opportunities that have been lost since the adoption of the MO.

Factors to be considered under the Act

Section 34.1(1) (a-g) outlines the various provisions that must be considered when making a decision. I want to draw your attention to subparagraph (a) (c) and (f).

- ***(a) the contribution to the productivity of relevant fisheries by the fish or fish habitat that is likely to be affected;***

When examining the context of the Avon River it is important to recognize the size of the commercial fishery is very small. While I appreciate that the river serves as a tributary to the Minas Basin, except for gaspereau, there is no commercially viable species. I have no evidence from DFO that landings have increased because of the measures undertaken to date.

- ***(c) whether there are measures and standards***
 - ***(i) to avoid the death of fish or to mitigate the extent of their death or offset their death, or***
 - ***(ii) to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat;***

The Province of Nova Scotia maintains that its current proposal for a brackish lake meets the requirements under the *Fisheries Act*. They have an independent third-party fish expert who has attested that his belief is the structure meets the requirements under the Act. There are dedicated elements within the design structure specifically meant to address a variety of fish species to pass in a much higher volume year-round.

If required, as a condition of the approval of the new structure, you could require the Province to undertake spawning efforts and rehabilitation in partnership with Indigenous stakeholders in the adjacent Kennetcook, St. Croix and Cogmagun Rivers to mitigate any impacts that cannot be avoided.

- *the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with other works, undertakings or activities that have been or are being carried on, on fish and fish habitat;*

The cumulative effect of carrying on the work is beneficial to improving fish species in and around the Avon River. The new gate structure will provide additional operability elements and dedicated fish ways. The project is to twin a dangerous portion of Highway 101 which has claimed the lives of too many. The new gate structure is also crucially important to provide flood protection for the communities of Windsor and Falmouth. The overall benefit of this project both improves fish passage and supports other very important public policy objectives.

- *(f) whether any measures and standards to offset the harmful alteration, disruption or destruction of fish habitat give priority to the restoration of degraded fish habitat;*

In speaking with officials from DFO, it was explained that the most crucial period in the calendar year is late February to early May when a number of species that are designated as not strong swimmers need to spawn upstream. My suggestion is that a Ministerial Order could be issued during this period to open the gates on incoming tide and reduce the impounding of freshwater (thereby lowering the Lake) and allowing for increased fish passage above and beyond the mechanisms designed in the new structure. This would allow a return of water to Lake Pisiquid for most of the year, but also address any concerns DFO staff may have in relation to the efficacy of the proposed structure.

Minister, I am asking that the proposed gate structure be approved as quickly as possible once the final modelling is received to allow for twinning of Highway 101 to be finished. I am fully convinced that the best way forward for the communities I represent is the brackish lake scenario. Too often the conversation locally has boiled down to a binary choice of protecting fish passage and respecting Indigenous rights, or the “return of the lake” by impounding freshwater in the river. Respectfully, it doesn’t have to be an either-or situation, the final outcome can satisfy both priorities and I am counting on your leadership to ensure we protect the many interests at play.

Please consider the elements I have raised as part of your deliberations. Finally, I would ask that you consider pairing the Ministerial Order to align with the final decision made on the operability of the gate structure in the interim period between approval and construction. This will give the community and stakeholders the needed clarity they are seeking.

I appreciate your consideration, and if I can be of any further assistance, please do not hesitate to contact me directly.

Yours Truly,

A handwritten signature in black ink, appearing to read "Kody Blois". The signature is fluid and cursive, with a prominent initial "K".

Kody Blois, M.P. Kings-Hants

Cc:

Rt. Hon. Justin Trudeau, Prime Minister of Canada

Hon. Sean Fraser, Minister of Immigration, Refugees, and Citizenship Canada

Hon. Dominic Leblanc, Minister of Intergovernmental Affairs

Mike Kelloway, M.P. CB-Canso, Parliamentary Secretary to Minister of Fisheries and Oceans

s.19(1)

Minister / Ministre (DFO/MPO)

From: Macisaac, Neil
Sent: Monday, July 10, 2023 12:07 PM
To: Minister / Ministre (DFO/MPO)
Subject: FW: Letter re. Avon River
Attachments: Letter to Minister Murray July 5.pdf

From: Blois, Kody - Personal <[REDACTED]>
Sent: Wednesday, July 5, 2023 1:55 PM
To: Murray, Joyce - Personal <[REDACTED]>
Cc: Macisaac, Neil <Neil.Macisaac@dfo-mpo.gc.ca>; Arsenault, Elizabeth <Elizabeth.Arsenault@dfo-mpo.gc.ca>; Kelloway, Mike - Personal <[REDACTED]> Hamm, Michael (Blois, Kody - MP) <michael.hamm.207@parl.gc.ca>
Subject: Letter re. Avon River

Dear Joyce,

I hope summer is treating you well. I know the province is expected to return its modelling information on the new aboiteau structure application sometime this summer, please see attached a letter from me outlining what I ask you to take into consideration when making your final decision on the approval and operational scenario for the new aboiteau.

I am happy to have a further conversation to provide any context or insight locally on the dynamics at play as we get to the point a decision could be made in the fall.

I am CC'ing your team accordingly so they can keep the letter on file.

Best Regards,

Kody Blois, M.P.

Member of Parliament for Kings-Hants

(613) 995-8231 (Parliamentary Office)

(902) 542-4010 (Constituency Office)

[REDACTED]
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