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Litigation Related to Failed Stream Restoration Projects – IT'S CLOSER THAN YOU THINK

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Failed Stream Restoration Projects



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Failed Stream Restoration Projects



Ontario

- Failures are occurring all the time
- TRCA work that Ryan Ness did
- R&M is rebuilding some projects a second time
- Owners have been very tolerant of failures
- 2-year warrantee = post-construction monitoring
- As long as the project survives 2 years, then the contractor and/or designer are off the hook
- DFO does not have the manpower to enforce permit conditions

Change Is Coming

- Extreme events make it more likely that projects will fail
- Fisheries Act is being rewritten
- DFO is moving towards longer monitoring periods and better enforcement
- Increasing chance that failures will be identified
- DFO is considering 3rd Party Banking
- More accountability after warrantee expires

U.S.

- 5 – 7 years of post-construction monitoring
- Thorough enforcement of permits
- Owners are holding designers/contractors accountable
- LITIGATION !!

Pitt County, NC

- Restoration of 1 km of former agricultural drain
- Culvert under a farm road at the upstream end of project
- Recommended replacement but owner declined
- 270-year storm event

Pitt County, NC



Pitt County, NC



Pitt County, NC



Pitt County, NC



Pitt County, NC

- Owner wanted Stantec to pay for repairs claiming there was an error in the design
- Indicated that they would take us to court
- We were able to cite the discussion about the culvert replacement
- Owner paid for repairs

Jacksonville, NC

- Road crossing in the middle of a 1.5 km stream restoration project which flooded during storm events
- Stantec did the hydrology – increased the size and number of pipes under the road
- No headwalls in the original design – no headwalls in the new design
- 270-year storm event

Jacksonville, NC



Jacksonville, NC



Jacksonville, NC



Jacksonville, NC

- Owner claimed the design was deficient and wanted Stantec to pay for repairs
- Stantec admitted that we had not discussed headwalls
- Stantec cited the 270-year storm event
- Owner ultimately agreed to pay for the damages

Take Home Message

- Stantec avoided litigation on both of these projects through effective documentation
- However, owners have successfully sued designers and contractors
- If it is happening in the US it will happen in Canada

What Do We Do?

- Good PM skills (document)
- Need for a discussion between owner and designer about balancing risk and cost
- What is the design standard for stream restoration projects?
- The industry needs to consider this question!!

Summary

- Failures will occur
- Owners and designers need to agree on expectations/design standards
- Owners need to be prepared to pay for better designs
- Designers need to up their game

Questions?

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