



1028 Parsons Road  
Edmonton, AB  
T6X 0J4

December 20, 2018

*Our file*    *Notre référence*  
17-HCAA-01705

Laura Pacholski  
Environmental Advisor Fisheries and Aquatics  
Dominion Diamond Ekati ULC  
Calgary, AB  
T2P 1T1

Dear Ms. Pacholski,

**Subject: Fish Ladder, Stream Ac35, Ekati, Wekweètì**

The Fisheries Protection Program of Fisheries and Oceans Canada (DFO-FPP) received Dominion Diamond Ekati ULC's (Dominion) As-Built Memo for the Jay Road Watercourse Crossings B0 and Ac35 on December 8, 2017. In this Memo, Dominion notified DFO-FPP of the installation of a fish ladder downstream of the Crossing Ac35, which was not included in the original plans for the watercourse crossing (Request for Review and Letter of Advice dated April 13, 2017, Jay Project, 13-HCAA-CA6-00070).

As a result, DFO-FPP and DFO Conservation and Protection (C&P) conducted a site visit at the Stream Ac35 watercourse crossing on June 14, 2018. DFO-FPP thanks Dominion for hosting a productive site visit. As a follow-up, DFO recommended the following actions or information:

1. Rearrange by hand the placement of rocks at the outlet of the fish ladder to improve the shape of the flow in order to improve the likelihood of fish passage;
2. Address the perched culvert (barrel #3);
3. Verify the unobstructed passage of fish through the Ac35 crossing by monitoring both upstream and downstream of the Ac35 crossing;
4. Provide documentation on the decision that was made to install the fish ladder at Crossing Ac35; and
5. Provide examples/references to documents that Dominion submitted through regulatory processes where the commitment to field fit the culverts of the purpose of fish passage was made.

DFO-FPP acknowledges that Dominion implemented corrective measures in order to improve the likelihood of fish passage in the Ac35 fish ladder and that Dominion submitted the requested information to DFO-FPP over the period of June 15, 2018 to September 20, 2018.

In addition, DFO-FPP reviewed the baseline data from the Jay Project baseline surveys (2014 and 2015) in comparison to the 2018 spring monitoring conducted by Dominion between June 15, 2018 and July 11, 2018. Upon reviewing this information, DFO-FPP was unable to determine if

fish can successfully pass Crossing Ac35 (now composed of both the fish ladder and the culvert). DFO-FPP noted that a juvenile Arctic grayling was observed in the lower pool(s) of the fish ladder, but no fish were observed upstream of Crossing Ac35.

DFO-FPP recommends that Dominion implement a Spring 2019 monitoring program to determine if fish are able to successfully pass Crossing Ac35 (composed of both the fish ladder and culvert crossing). In a meeting between Dominion and DFO that took place on November 21, 2018, DFO-FPP and Dominion discussed potential methods that would facilitate monitoring (e.g. Fyke nets downstream and upstream of Crossing Ac35 or camera recorder) to verify the ability of Crossing Ac35 to pass fish.

DFO-FPP would like to inform Dominion that the installation of the Ac35 fish ladder has been documented and forms a portion of your compliance history with the *Fisheries Act*.

Please note, this letter does not preclude any legal action that any other regulatory agency may take with respect to this matter, nor does it release you from any responsibilities or approvals that may be required under other federal, provincial, territorial or municipal legislation.

In the future, if you are considering any works, undertakings or activities in or around water that may cause serious harm to fish or impact aquatic species at risk, it is important that you visit our website at [www.dfo-mpo.gc.ca/habitat](http://www.dfo-mpo.gc.ca/habitat) and undertake a Self-Assessment to determine if your proposed project requires DFO-FPP review and possibly authorization pursuant to the fish and fish habitat protection provisions of the *Fisheries Act* and the *Species at Risk Act*.

For future reference, the *Fisheries Act* also requires that any person who causes or has control of the work, undertaking or activity that results in an occurrence provide notification and take immediate actions to address the situation, specifically:

**Fishways:**

- Section 20 of the *Fisheries Act* which includes the prohibition against the obstruction of the free passage of fish

**Duty to Notify:**

- Section 38(4) of the *Fisheries Act* which requires the notification of an inspector, a fishery officer or an authority of an occurrence that has resulted in serious harm to fish (impacts to fish and fish habitat);
  - To report serious harm to fish, please contact the DFO file assessor or call 1-855-852-8320
- Section 38(5) of the *Fisheries Act* which requires the notification an inspector, a fishery officer or an authority of a deposit of a deleterious substance into water frequented by fish with detriment to fish habitat or fish (spills);
  - To report a spill please call the National Environmental Emergency Centre 1-866-283-2333

**Duty to take Corrective Measures**

- Section 38(6) of the *Fisheries Act* which requires a person to take all reasonable measures to prevent the occurrence or to counteract, mitigate or remedy any adverse

effects that result from the occurrence or might reasonably be expected to result from it.

DFO-FPP looks forward to continuing to work with Dominion on the Ekati file.

If you have any questions, please contact François Larouche at (867) 669-4935 or by email at [Francois.Larouche@dfo-mpo.gc.ca](mailto:Francois.Larouche@dfo-mpo.gc.ca).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Janowicz', with a stylized flourish at the end.

Marek Janowicz  
Senior Fisheries Biologist  
Fisheries and Oceans Canada

Copy list:

Jess Taylor, DFO-FPP  
Christian Marcoux, DFO-C&P  
Amanda Leaker, DFO-C&P  
Meghan Schnurr, Wek'èezhii Land and Water Board  
Anneli Jokela, Wek'èezhii Land and Water Board