

**IN THE MATTER OF THE ENGINEERS AND GEOSCIENTISTS ACT
R.S.B.C. 1996, CHAPTER 116 as amended**

and

IN THE MATTER OF PETER SCHOBER, P.ENG.

File No. T15-028

NOTICE OF INQUIRY

TO: Peter Schober, P.Eng.
c/o Mackay Boyar
620-375 Water Street
Vancouver, BC V6B 5C6
Attn: Andi Mackay

TAKE NOTICE that a Panel of the Discipline Committee of the Association of Professional Engineers and Geoscientists of the Province of British Columbia (the "Association"), doing business as Engineers and Geoscientists BC, will meet at 4010 Regent Street, in the City of Burnaby, in the Province of British Columbia on August 17 - 21, 2020, at the hour of 9:30 a.m. for the purpose of taking evidence or otherwise causing an inquiry to be made with respect to the allegations herein pursuant to the *Engineers and Geoscientists Act*, R.S.B.C. 1996, Chapter 116 (the "Act").

AND TAKE NOTICE that the allegations against you are that:

1. The background facts are as follows:
 - a. during the period from February 11, 2010 to August 4, 2011, you were a director, shareholder, and the president of Renewable Power Corporation ("RPC");
 - b. during the period from February 11, 2010 to August 4, 2011, RPC was a 65% shareholder of Tyson Creek Hydro Corporation ("TCHC"), of which you were also a director;
 - c. during the period from February 11, 2010 to August 4, 2011, you were motivated to ensure that the Tyson Creek Hydroelectric Project (the "Project"), operated by TCHC, was profitable by virtue of being a shareholder of RPC;
 - d. the British Columbia Ministry of Environment (the "MOE") issued a Conditional Water Licence (the "Water Licence") to TCHC on

December 21, 2007 (amended September 12, 2008) to operate the Project in the vicinity of Tyson Lake in British Columbia;

- e. on or about January 22, 2010, the MOE granted TCHC leave to commence operation of the Project (“Leave”);
- f. it was a condition of the Water Licence and Leave that the Project be operated in compliance with the Project’s Operating Parameters and Procedures Report (“OPPR”), which stipulated that the maximum drawdown of Tyson Lake for power generation use was 10 metres;
- g. achieving a drawdown of Tyson Lake greater than 10 metres would improve TCHC’s potential for profit;
- h. you knew or ought to have known that drawdowns of Tyson Lake of more than 10 metres could have had an effect on fish or other wildlife habitats, including downstream of the Project in the Tzoonie River, and you knew that the MOE had expressed concern about the Project’s impacts on fish, wildlife, and the environment;
- i. on or about February 17, 2010, British Columbia Ministry of Forests and Range staff detected a significant discharge of sediment-laden water from the Project facility into Tyson Creek, and then into the Tzoonie River (the “Sedimentation Incident”);
- j. the Sedimentation Incident was related to the erosion of the Tyson Lake delta as a result of the drawdown of Tyson Lake as part of the Project’s operation;
- k. following the Sedimentation Incident, on or about February 19, 2010, the MOE requested TCHC undertake several actions, including carrying out ongoing monitoring and providing records and data to the MOE, including in relation to Tyson Lake water levels;
- l. on or about April 23, 2010, the MOE issued an Order pursuant to the *Water Act*, R.S.B.C. 1979 c. 429 which required TCHC to cease all diversion of water through the Project facility, undertake ongoing monitoring, and provide an Environmental Impact Assessment report;
- m. on or about May 26, 2010, the MOE allowed the Project to recommence operations using drawdowns of water within the natural range of Tyson Lake water levels, in part relying on a Recommencement Plan submitted by TCHC, and required lake levels to be recorded and submitted to the MOE and Federal Department of Fisheries and Oceans (the “DFO”);

- n. on or about October 19, 2010, the MOE allowed the Project to operate with additional drawdowns of 5 metres following, *inter alia*, receipt of a report by Westrek Geotechnical Services Ltd. regarding the implications of a 5 metre drawdown submitted by TCHC; and
 - o. on or about July 10, 2014, TCHC notified the Ministry of Forests, Lands and Natural Resource Operations that you had manipulated records of the lake level reporting data in an attempt to hide the fact that the lake levels were out of compliance.
2. You demonstrated unprofessional conduct and negligence:
- a. on or about February 11, 2010, prior to the Sedimentation Incident, when you manually changed the data recording device installed at the Project site, known as the Human Machine Interface (the "HMI"), so that it inaccurately recorded lake levels as being approximately 6.4 metres higher than the true lake levels, the effect of which was that you concealed that lake levels were frequently drawn down more than 10 metres to elevations that were not permissible under the OPPR or Water Licence;
 - b. by failing to correct the HMI, or ensure it was corrected by others, at any time after you manually altered it;
 - c. when, following the Sedimentation Incident, rather than correcting the HMI, you submitted, or allowed others to submit, water level data to the MOE and/or the DFO on the following dates, knowing that the water level data were false:
 - i. March 1, 2010;
 - ii. May 21, 2010;
 - iii. June 2, 2010;
 - iv. June 4, 2010;
 - v. June 7, 2010;
 - vi. June 8, 2010;
 - vii. June 9, 2010;
 - viii. June 10, 2010;
 - ix. June 11, 2010;
 - x. June 24, 2010;
 - xi. June 29, 2010;
 - xii. July 1, 2010;
 - xiii. July 3, 2010;
 - xiv. July 6, 2010;
 - xv. July 9, 2010;
 - xvi. September 7, 2010;
 - xvii. October 26, 2010;

- xviii. November 10, 2010;
- xix. November 19, 2010;
- xx. January 4, 2011;
- xxi. May 3, 2011;
- xxii. June 3, 2011;
- xxiii. July 4, 2011;
- xxiv. August 3, 2011; and
- xxv. August 4, 2011

(collectively, the “Data Submissions”);

- d. in the alternative to paragraph 2(c), from March 1, 2010 to August 4, 2011 when you made, or allowed others to make, the Data Submissions when the Data Submissions were incorrect; and
 - e. from February 11, 2010 to July 10, 2014 by failing to notify the MOE and the DFO of your conduct as set out in the above paragraphs 2(a)-2(d).
3. The conduct set out above at paragraph 2 is contrary to the preamble and Principles 1 and 7 of the Association’s Code of Ethics, which provide:

Members and licensees shall act at all times with fairness, courtesy and good faith to their associates, employers, employees and clients, and with fidelity to the public needs. They shall uphold the values of truth, honesty and trustworthiness and safeguard human life and welfare and the environment. In keeping with these basic tenets, members and licensees shall:

1) Hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace; [and]

...

7) Conduct themselves with fairness, courtesy and good faith towards clients, colleagues and others, give credit where it is due and accept, as well as give, honest and fair professional comment[.]

4. Your conduct set out above at paragraph 2 prioritized your motive of maximizing profits for TCHC over the health of the natural environment and the public interest, which is contrary to the provisions of the Association’s Code of Ethics as set out above at paragraph 3.

AND FURTHER TAKE NOTICE that you, Peter Schober, P.Eng., have the right, at your own expense, to be represented by counsel at the inquiry by the Panel of the Discipline Committee and you or your counsel shall have the full right to cross-examine all witnesses called and to call evidence in defence and reply in answer to the allegation.

AND FURTHER TAKE NOTICE that in the event of your non-attendance at the inquiry, the Panel of the Discipline Committee may, upon proof of service of this Notice of Hearing upon you, proceed with the taking of evidence or otherwise ascertaining the facts concerning the allegation, despite your absence, and may make its findings on the facts and its decision without further notice to you.

DATED this 19th day of September, 2019.

The Discipline Committee of the Association

<original signed by>

Per: Paul Adams, P.Eng., FEC
Chair, Discipline Committee