Les Amis de la Rivière Kipawa
c/o Peter Karwacki, vice-president, 1620 Trenholm Lane, Ottawa, Ontario K4A 4B6

June 12, 2007

Michael Fortier
Minister of Public Works and Government Services Canada
Parliament Hill
Ottawa, Ontario

Re: Kipawa River Rally Cancelled

Dear Minister Fortier:

It is with deep regret and sadness that I inform you that, because of the actions and attitudes of your staff at Public Works and Government Services Canada, the executive of Les Amis de la Rivière Kipawa have cancelled the 21-year-old Kipawa River Rally at Laniel Quebec for 2007.

You are probably aware of our on-going legal case, in which we are asking the Federal Court for a judicial review of decisions taken by PWGSC and Transport Canada in 2005 and 2006. This case is related to the failure of PWGSC and TC to recognize and protect historic navigation rights on the Kipawa River.

It was our desire and hope, that we could as responsible and reasonable Canadian citizens, ask the federal court to rule on these serious issues in light of the complete failure of PWGSC and TC to engage in meaningful consultation with the paddling community on the very serious impact of the Laniel Dam reconstruction project on our navigation activity, without fear of retributive or punitive action by your staff.

Unfortunately, although we have tried desperately over a 27 month period to demonstrate our reasonableness and willingness to work co-operatively with your staff, they have absolutely refused to work with us and have continued to take aggressive, retributive and punitive actions against us that have now resulted in the cancellation of the second oldest white water festival in Eastern North America.

Please understand that Les Amis de la Rivière Kipawa is a volunteer organization, registered as a not-for-profit corporation in the Province of Quebec. We have no staff. We have been hosting the Kipawa River Rally as a recreational white water festival since 1987. Through our festival, over the years we have attracted thousands and thousands of people to the Témiscamingue region, bringing small but none-the-less significant economic benefit to the area.

It is written directly into our constitution that all funds we raise during the annual white water festival must go back to efforts that benefit the Kipawa River. In the year 2000, Les Amis partnered with the Municipality of Laniel and others on a project to construct a seven-km pedestrian trail along the banks of the Kipawa River. The contribution of the paddling community to that project was in the range of $35,000 and we have continued to support that trail by providing maintenance grants to the municipality.

In 2006, the Wolf Lake Algonquin First Nation recognized the potential for a partnership with Les Amis and established a companion event, Paddle-Fest in the Town of Temiscaming over the same weekend as our festival.

We believe the benefits we bring to the Témiscamingue region are real and significant. Festivals such as our river rally celebrate and capitalize on the natural values of the region. This is eco-tourism.

It distresses us immensely to see all of our work, all of our volunteer effort over 21 years now dismantled and destroyed by the actions of your staff.

The list of actions taken by your staff over the past 27 months that have contributed to the loss of this community festival is long. We have asked the federal court to review much of it, related to navigation rights and your obligation to conduct meaningful consultation on clearly significant environment impacts.

Given the current situation, we feel obligated to outline the events that led us here, and to list some of the actions of your staff to help you understand the helpless situation we find ourselves in:

- For 18 years, your staff were very co-operative and helpful in making every effort, through the water management regime for the Laniel Dam, to ensure that a water release would be available for our festival weekend each year.

- In 2005 that all changed, when PWGSC announced the reconstruction project for the Laniel Dam.

- At a public consultation meeting in Laniel in March of 2005, to which Les Amis was invited as a legitimate stakeholder, the project manager advised us that he had just become aware that we had been navigating the chute through the Laniel Dam and that this was illegal and we would not be permitted to do this in the future.

- We asked for a legal reference so that we could research the legality of our activity. Les Amis made it very clear at that time and several times later verbally and in writing, that as an organization we would not and could not be engaged in or encourage others to engage in any illegal activity. We essentially and explicitly advised your staff that if they could point to their specific legal authority to deny navigation, we would cease the activity.

- Les Amis was informed that navigation of the chute through the dam is illegal under the Canadian Dam Association Guidelines and the Quebec Dam Safety Act.

- We researched these claims and found them both to be false, and promptly advised PWGSC of this. We could find no legal reference anywhere that specifically made our navigation activities illegal.

- Ironically PWGSC staff including staff in the Minister's office, continue to use this vacuous and completely baseless rationale for the overbearing infringement on our navigation rights. Both the CDA guidelines and the QDSA are still being referenced today as supporting PWGSC's arbitrary actions on your national information phone line. This is completely unacceptable. Your staff are knowingly and purposefully misleading the public.

- In April of 2005 we asked Transport Canada to provide a ruling on whether or not our navigation activities were recognized and protected under the Navigable Waters Protection Act. To support this request we produced a navigation history report documenting our long history of safe and incident-free navigation of the chute through the Laniel Dam going as far back as 1968, and regularly since then. We never received a direct response to this request for a ruling on our navigation rights.

- However, though documents released in our application for judicial review we discovered that Transport Canada advised PWGSC in June of 2005 that our claims of navigation rights on the Kipawa River were valid and that our navigation rights under the NWPA include the chute through the Laniel Dam. We believe this was received by your staff, not as a new revelation that should be acted on appropriately and legally, but as a piece of extremely ***Inconvenient Truth***.

- Did PWGSC or TC staff contact us to inform us of this important interpretation, or to begin a conversation about how to proceed, or to work with us on an assessment of the obvious impact of their project on our clearly legal activity, or to consult with us on possible mitigations–unfortunately not.

- In the week following this moment of ***Inconvenient Truth*** several things happened:

    - The Mayor of Laniel was informed by your staff that addressing our navigation rights on the dam reconstruction project would delay the work for five years or more or could even result in the cancellation of the project.
    - A letter from the municipality of Laniel then showed up on the Environment Assessment file for the project, critical of our navigation

activity and claiming that denying navigation rights would have no impact on our festival.
  - In the same week, similar letters arrived from the regional municipality of Témiscamingue and the regional economic development society for Témiscamingue.
  - In the same week, a letter arrived from the engineer working on the dam project, stamped with his professional seal, stating that the chute through the Laniel Dam is not navigable. We subsequently learned through documents released in our legal case, that this engineer's research into the navigability of the chute involved a conversation with his son and his son's friend.
  - In the same week, which was about two weeks prior to our annual festival, PWGSC opened the Laniel Dam and released a large amount of water, drawing the level of Kipawa Lake down. This allowed your staff to provide a seriously reduced water release for our festival, a level which they believed would make the chute through the Laniel Dam un-navigable.

- The impact of the seriously reduced water level on our festival was both immediate and long-term. The reduced water level actually made the rapids in river more dangerous for participants that weekend. Fortunately there were no serious injuries. Ironically, it did not make the chute through the Laniel Dam more dangerous. As clearly shown in a report filed by a Transport Canada official who made a covert visit to the 2005 festival, virtually all rally participants navigated the chute through the dam, and there were no safety issues or incidents.

- The long-term impact of the arbitrary and ill-advised action of your staff in purposefully and severely reducing the water release for our festival in 2005, without any consultation with us or discussion of impacts, was that attendance at our 20th anniversary festival in 2006 was significantly reduced. We relate this directly to the reduction in the quality of the experience in 2005 caused by your staff.

- Our application for judicial review was well underway by the time of the 2006 festival. In fact we were provided with a letter by the legal counsel representing PWGSC in the months leading up to the event, which stated that historic practices would be respected. Our interpretation of this was that navigation rights at Laniel would be respected until the court had an opportunity to rule on the questions we have raised in our legal case. This reasonable interpretation and expectation turned out to be in error.

- On arrival at our 2006 festival we discovered that a snow fence had been suspended across the top of the waterway leading to the chute through the Laniel Dam.

- We discovered that a new trail had been constructed that was intended to "mitigate" our loss of navigation rights.

- We discovered that a shuttle service had been arranged, also apparently intended to “mitigate” our loss of navigation rights.

- None of these arbitrary actions taken by your staff involved any consultation with us. In fact documents produced through our legal case show that information on these “mitigations” was purposefully withheld from us by your staff.

- As a result, the shuttle service supposedly put in place by your staff was invisible and not readily available, the trail intended to be used by participants in our festival was badly conceived and constructed. In fact the complete failure of your staff to consult with us on these actions, directly resulted in an injury to a participant in our festival, and severe inconvenience for everyone.

- Your staff also, with no consultation with our organizers, closed the Laniel Dam a day early during the four-day 2006 festival leaving us with no water. A commercial rafting company operating on the river during the 2006 festival had to cancel a trip planned for that day and refund their clients.

- Our 2006 20th anniversary festival was supposed to be a feel-good event, that would allow us to come together as a paddling community to celebrate our relationship with this beautiful river over many years. Because of the arbitrary and punitive actions of your staff, it turned into a stressful, poorly attended feel-bad event. At one point the police were called by your staff. This left us and our volunteer organizers absolutely flabbergasted and distressed. This is simply not the way you treat volunteers who are trying to host a community festival.

Since the 2005 festival, our legal case has progressed. As a grass-roots organization with no experience in launching this kind of a legal action, it has been very difficult. We found ourselves, as Canadian citizens, faced with the almost insurmountable task of finding ways to fund a $100,000 legal actiont. I’m sure you can understand the frustration we feel in having to take this action in the first place, and the difficulty we have faced in funding it. It would not have been possible without the overwhelmingly generous support of our legal counsel and two prominent Ottawa law firms.

Nevertheless, our application for judicial review will be heard in Federal Court in October. We truly hope this will give us and you some clarity on this situation and lead to a more co-operative relationship in the future.

In fact we hoped that would happen this year as we prepared for our 2007 festival.

We contacted your staff in writing and by phone this spring to suggest and promote a co-operative approach and have been waiting for a reply to questions we posed and suggestions we offered for working together.

While we waited for those answers, we discovered that your staff had published an advertisement in newspapers in the Témiscamingue region advising people that the poorly conceived and completely ineffective shuttle service offered in 2006 would again be offered again in 2007.

To our amazement and dismay, we also noted that this advertisement stated that access to the entire top section of the Kipawa River would be denied to festival participants in 2007.

We were never directly informed of this. We are completely unable to guess the reason behind it. The Kipawa River has three sections, the top, the middle and the lower. Denying access to the river in Laniel in effect removes the entire top section of the river from our festival. Without any consultation and without any apparent reason, your staff appeared to be removing one-third of the river from our festival.

Obviously this is not acceptable situation. In subsequent conversations with your staff, we discovered that PWGSC was retreating from this position and scrambling to publish a correction to these newspaper ads. But the damage was done.

We were then informed by one of the commercial rafting companies operating during the festival, that modifications made to the trail at Laniel, intended to be a portage trail to mitigate our loss of navigation rights, have made it unusable for carrying rafts, creating a serious logistical problem.

We wish we could understand why your staff, time and time again, continue to make arbitrary, uninformed and incompetent decisions that impact our activities, when a simply talking to us, consulting with us, would clearly provide them with details that would allow them to make better choices.

We cannot, as a not-for-profit, volunteer organization, continue to invest our time and our resources in hosting a community festival while your staff are taking every action possible to undermine our efforts.

We are forced to believe that these actions by your staff are not only incompetent, but are completely intentional and purposefully punitive, in retribution for our audacity as Canadian citizens, first of all in politely making a claim for our navigation rights and then in asking the federal court to rule on that claim and to review the legality of the actions of your staff in response to it.

Navigation is a common law right in Canada. It is a birth right. It is part of our Canadian heritage linking back to the time when our rivers were our highways. The importance of that right is recognized and enshrined in the Navigable Waters Protection Act.

We believe that Canadians will not accept that right being arbitrarily disregarded, denied, removed or otherwise infringed on by public servants without proper assessment of impact, meaningful consultation and due process.

It is with deep regret that we inform you that no action on your part at this time will save our 2007 festival. We cannot revive it. Our only hope is that we can draw your reasonable attention to the despicable actions of your staff in failing to address the concerns of our organization and our desire to continue to host our community festival to everyone's benefit.

Peter Karwacki
Vice-President