



Environmental Protection Operations Directorate
Prairie & Northern Region
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MVEIRB File: EA1617-01

December 15, 2017

via email to: stoogood@reviewboard.ca

Simon Toogood
Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
Box 938, 5102-50th Ave
Yellowknife, NT X1A 2N7

Dear Mr. Toogood:

RE: EA1617-01 – Government of the Northwest Territories, Department of Infrastructure – Tłıchǵ All Season Road – Closing Comments

Environment and Climate Change Canada (ECCC) is pleased to provide our closing comments to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for the Government of the Northwest Territories (the Proponent) proposed Tłıchǵ All Season Road (the Project) EA1617-01.

To date, ECCC has participated in all phases of the Environmental Assessment (EA) of the proposed Project in order to provide specialist advice, information and recommendations to the MVEIRB. ECCC will not be issuing permits or authorizations associated with the proposed Project at this time.

In the ECCC Technical Report of October 11, 2017 (PR#218), ECCC provided recommendations on the following issues:

- 4.1.1 Acid Rock Drainage and Metal Leaching
- 4.1.2 Erosion and Sediment Control
- 4.1.3 InField Water Analysis Monitoring Plan
- 4.2.1 Avian Species at Risk – Impact Assessment
- 4.2.2 Avian Species at Risk – Mitigation and Monitoring at Quarries and Borrow Sources
- 4.2.3 Avian Species at Risk and Migratory Birds – Mitigation and Monitoring in the Updated Draft Wildlife Management and Monitoring Plan
- 4.2.4 Boreal Caribou – Assessment, Mitigation and Monitoring

ECCC is satisfied that the Proponent's commitments regarding Issues 4.1.1 (Acid Rock Drainage), 4.1.2 (Erosion and Sediment Control), 4.1.3 (In-Field Water Analysis Monitoring Plan) and believes that these issues can be sufficiently addressed during the Water Licence regulatory phase. ECCC has no outstanding recommendations for issue 4.2.4 (Boreal Caribou – Assessment, Mitigation and Monitoring). However, ECCC does have outstanding recommendations for Issues 4.2.1 (Avian Species at Risk – Impact Assessment), 4.2.2 (Avian Species at Risk – Mitigation and Monitoring at Quarries and Borrow Sources) and 4.2.3 (Avian Species at Risk and Migratory Birds – Mitigation and Monitoring in the Updated Draft Wildlife Management and Monitoring Plan) and has provided a summary below.

Issue 4.2.1 - Avian Species at Risk – Impact Assessment

ECCC is concerned that avian species at risk could be impacted by the Project through habitat loss, habitat alteration, habitat fragmentation, disturbance and mortality. Subsection 79(2) of the *Species at Risk Act* (SARA) states that during an assessment of a project, the adverse effects of the project on listed wildlife species and their critical habitat must be identified by the Responsible Authority (MVEIRB), that measures are taken to avoid or lessen those effects, and that the effects need to be monitored.

The suitable habitat indices established by the Proponent do not provide ECCC with sufficient confidence in the assessment conclusions regarding impacts to avian species at risk (see ECCC IR#9, PR#169). In the absence of surrogate data to improve certainty in the assessment, the alternate approach is to collect baseline data. Baseline data would be instrumental when assessing impacts of the Project given the permanent and irreversible nature of effects and the noted knowledge gaps in the presence, abundance and habitat associations for avian species at risk. Baseline data could also be used to ensure measures are taken to avoid or lessen any potential effects to avian species at risk.

The Proponent has not committed to the following recommendation and this recommendation remains outstanding:

- 4.2.1-1** ECCC recommends that in the absence of surrogate data, the Proponent complete baseline monitoring of avian species at risk prior to Project construction to inform and add sufficient confidence to the avian species at risk impact assessment.

Issue 4.2.2 - Avian Species at Risk – Mitigation and Monitoring at Quarries and Borrow Sources

ECCC is concerned about potential disruptive activities to avian species at risk at quarries and borrow sources. Bank Swallow, Common Nighthawk and other migratory bird species are known to nest on stockpiles, overburden and on flat cleared areas that contain gravel. In the Wildlife Management and Monitoring Plan (WMMP), the Proponent referenced the ECCC brochure “Bank Swallows in Sandpits and Quarries” but did not provide a clear indication of how this guidance, or portions of it, would specifically be implemented for this Project.

ECCC advised that adequate prevention and monitoring were necessary at these sites as birds can initiate nests within days at inactive sites or during quiet periods at active sites within the nesting season. ECCC also recommended mitigation measures during the pre-development site planning phase and following colonization should this occur, which considered the high likelihood that Bank Swallows would return to a nesting site in subsequent years. The recent listing of Bank Swallow to Schedule 1 of SARA in November 2017 further strengthens ECCC’s advice. The prohibitions against the destruction of individuals and residences for Bank Swallows, as defined under SARA, apply everywhere (i.e. federal and non-federal lands). Colonized stockpiles may be identified as critical habitat if they are required for the survival and recovery of the species. This will be assessed by ECCC in the Recovery Strategy to determine if sufficient natural habitat is available. When anthropogenic structures are identified as critical habitat, there will be an emphasis on the use of stewardship, mitigation and other measures (e.g., provide an alternative nesting site) to conserve these habitats and minimize impacts on landowners and land managers. ECCC advises MVEIRB to consider these principles in their determination of whether measures are required for this Project for Bank Swallow should colonization of stockpiles at quarries and borrow sources occur. The collection of baseline, as discussed in Issue 4.2.1, could also provide information on the availability of sufficient natural habitat.

The Proponent has not committed to the following recommendations and these recommendations remain outstanding:

- 4.2.2-1** To determine the presence of avian species at risk, ECCC recommends that the Proponent perform avian species at risk nest monitoring at quarry and borrow sources immediately prior to commencing any disruptive activities during the general nesting period.

- 4.2.2-4** ECCC recommends during the pre-development site planning that the Proponent consider creating suitable habitat in inactive areas away from activities with vertical faces of at least 70 degrees prior to the breeding season.

- 4.2.2-5 ECCC recommends that if a recently-used quarry stockpile or borrow source needs to be excavated after it has been colonized and the birds have left, then the Proponent compensate by providing an alternative site that can support nesting in the following year.

Issue 4.2.3 - Avian Species at Risk and Migratory Birds – Mitigation and Monitoring in the Updated Draft Wildlife Management and Monitoring Plan

ECCC acknowledges and supports the Proponent's intent to avoid clearing activities during the general nesting period for migratory birds and to use qualified biologists for pre-clearing surveys. However, few details are provided about pre-clearing surveys in the Updated Draft WMMP. ECCC maintains that these details and annual reporting are required in the WMMP as vegetation management along the right-of-way will be required throughout the operations phase.

ECCC noted the need to revise the wording in the Updated Draft WMMP for the protection of migratory birds, their nests and eggs. Buffer zones should be determined by a setback distance appropriate to the species and take into consideration the intensity of the disturbance and the surrounding habitat. Only after assessing the effectiveness of the buffer through monitoring should disruptive activities continue. The mitigation measures used to manage bird nesting on infrastructure should be put in place prior to the arrival of birds in the spring.

The Updated Draft WMMP should also clearly and consistently indicate that the Proponent should contact or engage ECCC directly to discuss any concerns regarding avian species at risk and migratory birds, including the reporting of all instances of nesting, incidents and/or mortality. In this way, ECCC can provide timely advice and discuss additional mitigation measures required for the protection of migratory birds and avian species at risk falling under our mandate.

The Proponent stated that a revised version of the WMMP will be prepared for the permitting process, and suggestions from ECCC will be considered (PR#239). Since the finalization of this document has been deferred, ECCC is left with some uncertainty because it is unclear if or how all wildlife recommendations proposed by ECCC will be addressed.

The Proponent has not committed to the following recommendations and these recommendations remain outstanding:

- 4.2.3-1 In the event that clearing or disturbance cannot be scheduled outside of the nesting season, ECCC recommends that the Proponent use non-intrusive search methods to conduct an area search for evidence of nesting, prior to the commencement of clearing. Results from all pre-clearing surveys should be reported in the annual wildlife monitoring report.

- 4.2.3-2 ECCC recommends that the Proponent halt all disruptive activities in an area if migratory bird nests containing eggs or young are discovered. An appropriate buffer zone (i.e., setback distance) should be determined in consultation with ECCC and observed until the young have naturally and permanently left the vicinity of the nest. Buffer zones should be appropriate for the species and take into consideration the intensity of the disturbance and the surrounding habitat. Buffer zones should also be adjusted after assessing their effectiveness.
- 4.2.3-3 ECCC recommends that the Proponent update the WMMP to clarify that ECCC be included in the reporting of all instances of migratory bird and avian species at risk nesting, incidents and/or mortality and that ECCC be consulted regarding any additional mitigation measures and advice for migratory birds and avian species at risk (ec.eenordrpntno-eanorthpnrnw.ec@canada.ca).
- 4.2.3-4 ECCC recommends that the Proponent incorporate all of the above recommendations in the next revision of the WMMP.

ECCC's specialist advice is provided based on our mandate pursuant to the *Canadian Environmental Protection Act 1999*, the pollution prevention provisions of the *Fisheries Act*, the *Migratory Birds Convention Act* and the *Species at Risk Act*. Should you require further information, Please contact Bradley Summerfield at (867)669-4707 or Bradley.Summerfield@canada.ca.

Sincerely,



Susanne Forbrich
Regional Director

cc: Bradley Summerfield, Senior Environmental Assessment Coordinator
Georgina Williston, Head, Environmental Assessment North (NT and NU)