

July 19, 2018

JoAnne Deneron, Chair
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Via Email
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Re: Consult to Modify – EA1617-01: Tłı̄chǫ All Season Road (TASR)

Ms. Deneron:

On June 22, 2018 the Government of the Northwest Territories (GNWT) Minister of Lands initiated a consult to modify process for measures 6-1, 6-2 and 6-3 on the Mackenzie Valley Environmental Impact Review Board's (MVEIRB) *Report of Environmental Assessment (EA) and Reasons for Decision* for the Tłı̄chǫ All Season Road (the Report of EA). Also on June 22, 2018, the Tłı̄chǫ Government initiated a consult to modify process on measures 8-1, 9-1 and 9-2 on the Report of EA. On June 27, 2018, the MVEIRB invited parties to the Tłı̄chǫ All Season Road EA to provide comments on the GNWT and Tłı̄chǫ Government proposed modifications.

The Wek'èezhì Renewable Resources Board (WRRB) is responsible for wildlife, plants, forests and protected areas in Wek'èezhì. The Board makes decisions and recommendations on an ecosystemic basis using Tłı̄chǫ Knowledge, science and expert opinion, as per Chapter 12 of the Tłı̄chǫ Agreement. As one of its duties as a management authority, the Board provides recommendations on wildlife and wildlife habitat, including fish, during environmental assessment processes. The WRRB has participated as an official party throughout the Tłı̄chǫ All Season Road Project (the Project) EA, most recently during its closing argument submission in December 2017.

As explained in the MVEIRB's June 27 *Notice of Proceeding – consult to modify notice*, a final decision maker may modify MVEIRB recommended measures in order to increase effectiveness while preserving the Review Board's intent. It does not involve a reconsideration of the Review Board's decision or intent, and is not a rejection of the Review Board's measures.

The WRRB provides the following comments on the GNWT's proposed modifications:

Measure 6-1, Part 1: Implementation of the *Recovery Strategy for the Boreal Caribou in the NWT*, and required range plans, for boreal caribou affected by the Project

The first proposed change elaborates on the requirement for a t̓dzı (boreal caribou) range plan in the area, changing the “North Slave region” to the “North Slave portion of the NT1 range.” The WRRB has no concerns with this clarification.

The second GNWT proposed modification changes the requirement from completing a t̓dzı range plan in the North Slave region before the Project is open for public use, to completing and submitting a t̓dzı range plan to the WRRB for review a minimum of 90 days before the Project is open for public use. This change adds focus to the WRRB’s receipt of a finalized range plan, which originally stated only that the range plan would be finalized. This new timing would give the WRRB 90 days from the day of submission to hold a Board meeting to review and comment on the final plan prior to the TASR being open for public use. While this is a short period of time, as the WRRB will be involved in the development of the range plan, 90 days will be sufficient for the Board to review the final plan.

The third change in Measure 6-1, Part 1 includes removal of the optional goal of achieving the National Recovery Strategy recommended threshold for critical habitat, and instead requiring the goal of a threshold proposed by the GNWT-ENR. The WRRB understands this change is included for clarity, as some portions of the NT1 range are already above or near the National Recovery Strategy recommended threshold, which would make the original goal of this section unfeasible. The GNWT in their explanation of proposed modifications has stated that the overall NT1 range will be managed to achieve the National Recovery Strategy recommended threshold for critical habitat, but each individual portion may not. The GNWT also added a reference that Environment and Climate Change Canada (ECCC) and applicable Indigenous groups, including the WRRB, would be engaged and consulted while selecting the proposed habitat disturbance threshold in the North Slave portion of the NT1 range. By rephrasing the measure to select a threshold proposed by the GNWT-ENR, the Developer has ensured the Review Board’s goal and intent of range plan implementation is maintained, while increasing clarity. The WRRB has no concerns with the modification to the third paragraph in Measure 6-1, Part 1.

Measure 6-1, Part 2: Information and adaptive management requirements

The first change in this section which concerns the WRRB is the removal of the requirement for abundance monitoring for t̓dzı in either the *Recovery Strategy for the Boreal Caribou in the NWT* or a range plan. In its *Proposed Modifications to Measures for the T̓ıch̓q̓ All-Season Road Project* letter, the Developer states that abundance monitoring was removed in their proposal as they are not currently monitoring t̓dzı abundance. The Developer does not elaborate more on the removal of abundance.

The WRRB is extremely concerned that abundance monitoring was removed in the proposed modifications, and requests abundance monitoring remain in the final Review Board measures. The fact that abundance monitoring is not currently occurring is not appropriate rationale for not collecting this data now that it is required. Abundance monitoring was originally requested by the MVEIRB as one of several actions required to protect t̓dzı by understanding and mitigating

Project-specific impacts, as well as the Project's contribution to cumulative impacts. Without abundance information, the WRRB does not have confidence in the Developer's ability to fulfill the adaptive management requirements of Measure 6-1, Part 2. The Board is also concerned that the removal of abundance monitoring in this measure also impacts the feasibility of two other measures with proposed modifications. The Developer's request to modify Measure 6-2 includes a new requirement of determining sustainable harvest prior to the road opening. Without abundance information, the WRRB is concerned this new goal is unachievable. The Board also believes that without abundance data, determining appropriate habitat offsets requested in the proposed changes to Measure 6-3 will also be unachievable.

Overall, the WRRB does not support the removal of abundance monitoring in the proposed modifications, and believes that this change does not preserve the Review Board's original intent and decision for this measure, and Measures 6-2 and 6-3.

Measure 6-2: Temporary no-hunting corridor for boreal caribou (t̄d̄z̄l̄)

The original measure stated that as there are to be significant adverse impacts from the project on t̄d̄z̄l̄, the GNWT-ENR would establish a temporary no-hunting corridor along the project route prior to the road being opened to the public, which would be submitted to the WRRB as management proposal. This temporary no-hunting corridor would be in place at least until sustainable harvest levels for the North Slave region are determined. The proposed modification removes the establishment of a no-hunting corridor, and instead requests that before the road is opened, sustainable harvest levels for t̄d̄z̄l̄ be determined. If current harvest or harvest after the road is opened is determined to go beyond sustainable levels, the proposed modifications states that the GNWT-ENR and T̄l̄ch̄q̄ Government will submit a management proposal to the WRRB to keep harvest levels within sustainable levels. This management proposal may or may not include a no-hunting corridor.

In its *Proposed Modifications to Measures for the T̄l̄ch̄q̄ All-Season Road Project* letter, the GNWT states that the original Measure 6-2 does not allow the WRRB to review and make a determination on the management proposal (the temporary no hunting corridor), and that they are of the strong opinion that the co-management process be respected. The WRRB agrees that the co-management process is foundational to wildlife management in the NWT; however, the Board does not agree that Measure 6-2 as originally worded disrespects that. The MVEIRB came to its Measure 6-2 through the thorough environmental assessment process, which the WRRB has been a party to since the Preliminary Screening. The WRRB also made the recommendation in its closing arguments that increased non-indigenous harvest due to the Project would result in significant adverse impacts. Finally, the original wording of Measure 6-2 instructs the GNWT-ENR to submit a management proposal for the no-hunting corridor to the WRRB under section 12.5.1 of the T̄l̄ch̄q̄ Agreement, which the WRRB believes is an appropriate use of wildlife co-management in the Northwest Territories.

The GNWT highlights in its *Proposed Modifications to Measures for the T̄l̄ch̄q̄ All-Season Road Project* letter that they intend to work with co-management boards first to define sustainable harvest levels, and then only later implement management actions if necessary. The WRRB agrees with the GNWT's process of defining sustainable harvest levels, however the Board also

supports the MVEIRB in Measure 6-2, where the original wording has the defining and monitoring of sustainable harvest occurring after the no-hunting corridor is established and used as a tool to remove the no-hunting corridor when appropriate.

The WRRB is also concerned that determining sustainable harvest levels for ṫdzı in the region will not be attainable within the timeline of the modified measure. The GNWT is proposing that sustainable harvest levels only be determined prior to the road being opened. After the road is opened to the public, harvest levels would continue to be monitored and if they increase beyond sustainable levels, a management action would then be submitted to the WRRB for “timely” implementation. This amendment to the measure moves the no-hunting corridor from immediate implementation to several years in the future, if at all. This removes an otherwise direct protective measure determined necessary by the Review Board and replaces it with uncertainty and delay.

The WRRB believes that these edits have drastically changed the scope of work and the original intent of the measure. In its Report of EA, one of the Review Board’s determinations was that the Project is likely to result in significant adverse impacts to ṫdzı from increased non-Indigenous hunting pressures. As such, a temporary no-hunting corridor is required. By proposing that this measure be altered to only determine sustainable harvest levels, and potentially implement management actions if future research favours it, the Developer is altering the intent and outcome of Measure 6-2 and is also altering the determination by the Review Board that increasing hunting pressures are a likely impact from the Project. The WRRB does not support the proposed changes to Measure 6-2.

Measure 6-3: Habitat offset and restoration plan

The Board would like to clarify that the 2500 m figure presented at the Public Hearing was in reference to indirect habitat loss on either side of the road. This is a total buffer zone of 5000 m representing indirect habitat loss by the Project. Separately, the Board believes a habitat offset plan should be required by the Developer. The Board has not in this EA process defined a buffer zone for the habitat offset area, but believes 5000 m of indirect habitat loss from the Project should be factored into the habitat offset plan. The Board does not require that the buffer zone for the habitat offset plan be 5000 m, but that 5000 m be used in the calculation of the habitat offset plan buffer zone.

The first modification to Measure 6-3 includes the removal of the minimum 2500 m buffer on either side of the Project, which was the basis of the offset plan. The proposed modifications add that the specific habitat offset area will be determined within the future habitat offset plan itself. The Board believes the 500 m distance by which ṫdzı avoid the road (indirect disturbance) suggested by the GNWT underestimates the Project’s effects. The WRRB maintains that a habitat offset plan is necessary, and that a minimum area should be established in Measure 6-3 to add certainty that habitat will be offset as a result of the habitat lost due to the Project.

The WRRB follows the GNWT’s stated belief that offsetting is the third tier of mitigation, after avoiding or minimizing effects. The WRRB supports its involvement in preparing the offsetting plan, as described in Measure 6-3.

The GNWT has also completely removed the timeline for submission of the draft habitat offset and restoration plan from a minimum of 90 days prior to the commencement of construction. The rationale stated by the Developer in their *Proposed Modifications to Measures for the Tłıchq All-Season Road Project* letter is that it will be submitted sometime before construction starts and “in all likelihood” implemented prior to the opening of the road for public use. The WRRB understands this is a draft plan, however, the Board does require a minimum amount of time to review the draft plan before construction commences. The GNWT should not presume the plan will be satisfactory before they begin permanently altering habitat, and should allow appropriate time for review by the WRRB under section 12.5.1 Review of Proposed Wildlife Management Actions of the Tłıchq Agreement. 90 Days would be sufficient for the Board to review this draft plan.

The WRRB provides the following comments on the Tłıchq Government proposed modifications:

Measure 8-1: Integrated Fisheries Management Plan

The first proposed modification is changing the requirement of an “Integrated Fisheries Management Plan” to a “Fisheries Management Plan (FMP).” This change was requested as an Integrated Fisheries Management Plan is currently a Fisheries and Oceans Canada (DFO) tool with more significant requirements, including a full stock assessment, than the requirements required by the MVEIRB in the Report of EA. The Tłıchq Government is not requesting to change the baseline work, mitigation or monitoring required in the measure. They are requesting to change the name of the plan used to avoid confusing tools used, to allow the measure to more concisely adhere to Measure 8-1 as originally intended. The WRRB has no concerns with this change, as long as all monitoring, mitigation and management goals required under the original measure be maintained.

The Tłıchq Government has also proposed a modification to wording that originally required the Tłıchq Government and DFO to engage other affected Indigenous groups, which the Tłıchq Government has stated is the role of DFO. The WRRB understands this change is meant to increase clarity of the measure and not change the intent. The WRRB suggests the wording be altered to reflect that the Tłıchq Government will not be engaging other Indigenous groups, but that it still is clear on who will be engaging each group.

Additionally, in the final edit, the Tłıchq Government has proposed removing text stating that work for the FMP will be completed by DFO and the Tłıchq Government. The Tłıchq Government does not elaborate on why both DFO and Tłıchq Government were removed from this sentence, or why the sentence was changed to the passive tense. The WRRB suggests that if this sentence is to be reworded, it should remain clear who will be completing the work.

The WRRB looks forward to commenting on the Review Board's final response to the Developer, and thanks the Review Board for conducting a transparent and timely environmental assessment. If you have any questions, please contact our office at (867) 873-5740 or jpellissey@wrrb.ca.

Sincerely,

A handwritten signature in black ink that reads "S. Matthews". The signature is written in a cursive style with a long horizontal stroke at the end.

Steven Matthews
Interim Chair

Cc Tammy Steinwand-Deschambeault, Director
Department of Culture & Lands Protection, Tłıchǫ Government

Jessica Hum, Manager
Department of Culture & Lands Protection, Tłıchǫ Government

Michael Conway, Superintendent
Infrastructure, GNWT