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**Re: Proposed Changes to the Tłjchq All-Season Road Project Report of Environmental Assessment**

The responsible Ministers have proposed alternative language for a number of measures in the Tłjchq All Season Road (TASR) Environmental Assessment (EA). The Yellowknives Dene have reviewed the alternative language of these proposed Measures and have noted a number of improvements can be made for clarity and efficacy.

**Part 1: Compromising YKDFN's ability to successfully harvest**

As currently proposed, the language of these Measures equates to a degrading of the accommodations provided to the YKDFN concerns. These concerns were made to the Board and the Ministers, regarding YKDFN's constitutional rights. The developer has predicted an increase in hunting and harvesting pressures as a consequence of the road and the Board found that "the developer did not persuade the Review Board that adverse impacts from increased hunting are unlikely".

Given the Board's findings that:

- Reject the project's impact assessment,
- Criticize the project for a failure to gather appropriate information to allow parties to evaluate the effects to their interests,
- Criticize the project's reliance on the Caribou Recovery Strategy when they're already aware that key conservation principles within that cannot be met in this area,
- Note that the probability that the boreal caribou population is already declining,
- Recognize that the GNWT's has failed or moved very slowly to address past recommendations and suggestions to fill information gaps,
- GNWT has previous missed deadlines for action,

It is deeply concerning that the Ministers are attempting to dilute the accommodations to our concerns. When YKDFN read the report of Environmental Assessment, we believe that any consult to modify effort should be pursuing stronger mitigations/accommodations as the Minister(s) seeks to fulfill their duty.

This project, particularly if these diluted Measures are adopted, will continue to reduce the effectiveness of this area to provide country food for our people. The Ministers should be considering, not just that this road will result in the species moving westward and further from our people, but also the cumulative effect given the status of Barren Ground Caribou. With hardship and reduced food security already, applying weak mitigations will result in our people having one less food resource to rely on. The Crown – GNWT and Canada - has sought reconciliation with First Nations and to build a better future together. Taking the food from an already bare table is not our idea of working together.

## **Part 2: Specific Comments on the Proposed Changes**

YKDFN respects the intent of this process, modifying the Measures to improve them, not to reject the rationale or the finding of the Board. Understanding this, we have provided our view of the proposed changes along with the rationale for rejection of a change as well as any minor proposed change to improve clarity.

### Measure 6-1, Part 1

- Paragraph 2: If the language of this Measure is to be reconsidered, we believe that the date of submission should be clarified. While all parties seem to agree that action is required prior to the project being opened, YKDFN fail to understand why the preparation of a range plan should be linked to the construction of TASR. The linkage between the two matters is *the minimum* that is reasonable.

*“The Review Board has been provided no evidence that plans are being advanced at a steady and appropriate pace” (p131)*

Given the Board’s finding that the preparation of range plans has been slow, the introduction of a fixed date for the submission of the plan will help to ensure that the GNWT works effectively to introduce the mitigations that all parties spoke in favour of, and the developer placed so much reliance on.

GNWT’s track record is not reassuring on this matter. As the Review Board notes, the “GNWT has missed deadlines” in the Boreal Caribou Recovery Strategy. In the Gahcho Kue Environmental Impact Review (EIR), the one Measure the EIR Panel put to GNWT and INAC remains unfulfilled (to ‘develop and implement’ a cumulative effects framework, with appropriate reporting). This remains unfulfilled. Few Measures of the Giant Mine EA have been completed to date. Review of almost 20 years of MVEIRB Environmental Assessment Suggestions show the government almost universally ignoring them – most relevantly that of the NICO EA which suggested that GNWT should begin “developing and implementing range management plans and a comprehensive monitoring program that will track boreal caribou population indicators and landscape activities across the boreal caribou range in the Northwest Territories”. Had GNWT addressed the findings of the Review Board and acted to fill this gap, we would be much better positioned to assess and mitigate impacts than we currently find ourselves.

With the current wording, YKDFN have less faith that the GNWT will fulfill this measure in a way that mitigates the concerns YKDFN have previously raised. Effective habitat management is critical for our people to be able to successfully harvest.

If the Measure is to be altered, YKDFN believes a submission date of the draft plan be added to provide greater certainty to the GNWT actions. This greater certainty will compel

the GNWT to move diligently to action this Measure, increasing the likelihood that mitigations can be employed to preserve potential harvesting opportunities. Given the length of this project development already, the current workplan, and the need to develop a comprehensive and inclusive plan, we believe that 3 years is reasonable.

YKDFN suggested wording is:

FROM (GNWT revised wording):

GNWT-ENR will complete and submit a range plan for the North Slave portion of the NT1 range to the WRRB for review under section 12.5.1 of the Tłıchǰ Agreement a minimum of 90 days before the Project is opened for public use

TO:

GNWT-ENR will complete and submit a range plan for the North Slave portion of the NT1 range to the WRRB for review under section 12.5.1 of the Tłıchǰ Agreement no longer than 3 years from the issuance of the final Report of Environmental Assessment OR a minimum of 90 days before the Project is opened for public use, whichever occurs first.

- Paragraph 3: YKDFN accepts that the GNWT change removing the National Recovery Strategy Threshold. It is understood that this value cannot be met and that GNWT cannot control the fire regime. However, the mitigation to the effect can be improved within the Measure by providing minor details – seeking to preserve what exists while recognizing the principal limitation.

YKDFN suggested wording is:

FROM (GNWT revised wording):

"[...] to manage, to the greatest extent possible, the amount of undisturbed habitat[...]"

TO

...to the greatest extent possible, preserve the current (2018) amount of undisturbed habitat, recognizing that the GNWT cannot fully control forest fire occurrence or severity.

#### Measure 6-1, Part 2

- Bullet 1: YKDFN does not agree with the deletion of the need to monitor the Boreal Caribou abundance. It is inconsistent with the overall findings of the Board, but it also ignores the principal concern of the YKDFN. Tracking population trends and abundance are complementary. Population size is one of the three considerations for identification of critical habitats and, more importantly to YKDFN's interest, it is important for determining harvest levels. The project provides no benefit to YKDFN if hunting compromises the self-sustaining nature of the one of the last large mammals that can be harvested.

Bullet 7: We recommend the modification to include the requirement to have a timeline within the approach and an overall completion date for the complete range or the timelines provided in by the Boreal Caribou Recovery Plan.

YKDFN suggested wording is:

FROM (GNWT revised wording):

“[...] an approach to setting and, to the greatest extent possible, managing habitat disturbance thresholds for each range planning region [...]”

TO:

[...] setting habitat disturbance thresholds for each region by 2023, followed by managing habitat disturbance, to the greatest extent possible, for each range planning region [...]

#### Measure 6-2

- YKDFN strongly reject any modifications to this Measure. The Review Board cannot arrive at a finding of significant effects and then hand-off the responsibility to mitigate those effects to another institution of public government who has their own process, composition, and guiding principles, with the outcome of that institution’s process uncertain.

The MVEIRB cannot fetter the WRRB’s discretion, which introduces the possibility that the mitigations addressing the impacts identified by MVEIRB would not be in place. In turn, MVEIRB would not be complying with the key passages in the Mackenzie Valley Resources Management Act, including the MVEIRB’s Guiding Principles (MVRMA s.115) and legislative requirements (MVRMA s.128(1)(ii)).

- Secondly, YKDFN feel that this is a matter that should be considered outside of a particular Board process. Harvest pressures as a consequence of industrial or infrastructure (particularly roads) development are routinely a topic for EA evaluation. To potentially remove the ability of MVEIRB to evaluate these matters, analyze the evidence, make findings and propose mitigations is contrary to the public good and the very purpose behind the establishment of the Review Board and the integrated system of land and water management. YKDFN acknowledge that there is an unresolved jurisdictional/relationship issue between Boards established through modern land claims (potentially including the Akaitcho Dene First Nation’s future *Tech’adi Board*) and those established by the MVRMA.

#### Measure 6-3

- YKDFN are uncomfortable with the lack of clarity with this commitment. As previously noted, in the past, the Government has received direction from this Board to complete important mitigations which have not been fulfilled. However, we recognize the GNWT’s interest to have greater flexibility to use a smaller buffer to determine the offset when it is reasonable and backed by solid science and traditional knowledge.

However, the GNWT’s suggested wording will remove the obligation until they then can arrive at a point where they will choose what it will be. This is insufficient to the significance of the findings. Effectively putting a default offsetting distance of zero is not likely to compel GNWT to pursue effective research – this is a distance that is very useful for the proponent (themselves). Given that to date, the “developer has set out no mitigation plans which demonstrated that it can effectively manage the potential effects of the Project on boreal caribou (t̄q̄dzi).” YKDFN encourages the Review Board to ensure that mitigations remain in place, rather than to potentially misplace faith in the GNWT’s ability to fulfill an undefined duty in the future.

- Rather, YKDFN suggest that a better approach is to set the default offset at 2500m, but provide flexibility to allow the Government to undertake appropriate research and studies to demonstrate why the default needs to be adjusted (potentially to a smaller area of effect). Thus, if the GNWT fails to implement the necessary plans and research, the fallback is that there is mitigation in place rather than nothing.

YKDFN strongly believes that this is an appropriate course that meets everyone's interests – the GNWT has greater flexibility and our members have assurance that this mitigation will be implemented.

YKDFN suggested wording is:

FROM (GNWT revised wording):

The developer, with the involvement of GNWT-ENR, will prepare and implement a habitat offset plan. This plan will describe how the required habitat offset area will be determined and how it will be achieved.

TO:

The developer, with the involvement of GNWT-ENR, will prepare and implement a habitat offset plan. This plan will be based on a minimum buffered distance of 2500m on each side of the right of way, unless GNWT can provide clear evidence demonstrating that the buffer can be modified from the precautionary levels.

**Conclusion:**

The Yellowknives Dene have expressed their deep concern regarding boreal caribou and the likelihood that harvesting efforts are impacted as a consequence of this development. The proposed alterations reduce certainty, continue information gaps, and limit the strength of mitigation.

The Review Board has found that TASR is likely to be the cause of significant adverse impacts. We believe that minor changes can be made to provide greater clarity in the language and grant flexibility in their implementation, but YKDFN strongly recommends that the Review Board keeps the intent of these Measures intact – to ensure that mitigations are enacted to address the effects that we are so concerned with. The Measures cannot be modified to a manner that they *may* result in action, otherwise they will, *de facto*, be nothing more than suggestions, providing no real mitigation or accommodation for our concerns.

**Mahsi Cho (Thank-you),**



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Chief Ernest Betsina, Ndilo  
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c. Johanne Black, Director, Land and Environment, Yellowknives Dene First Nation