

April 24, 2019

**EA1415-01**

MV2014F0013; MV2014L8-0006; MV2019L8-0002;  
PC2014F0013; and PC2014L8-0006

Jonathan Tsetso  
Superintendent  
Nahanni National Park Reserve  
Parks Canada  
PO Box 348  
Fort Simpson NT X0E 0N0

Julian Morse  
Regulatory Specialist  
Mackenzie Valley Land and Water Board  
7th Floor, 4922 48th St.  
PO Box 2130  
Yellowknife, NT X1A 2P6

Dear Mr. Tsetso and Mr. Morse:

**Re: Applicability and implementation of Environmental Assessment measures under the  
*Mackenzie Valley Resource Management Act – CanZinc’s Prairie Creek All Season Road***

The Review Board was recently notified of Canadian Zinc Corporation’s (CanZinc) proposed change to the design and construction of the portion of the Prairie Creek All Season Road along lower Sundog Creek in Nahanni National Park (~KP 35.2 to KP 36.4), which would no longer include the originally proposed channel diversion. Due to this proposed design change, CanZinc has indicated that they no longer believe that Measure 9.1 of the Review Board’s Report of Environmental Assessment (EA1415-01) is required ([Link](#)). CanZinc additionally asserts that the proposed modification of the development does not alter the original assessment of impacts to valued ecosystem components considered in the Report of Environmental Assessment. CanZinc suggests that this change is therefore exempt from preliminary screening in accordance with the *Preliminary Screening Requirement Regulations and Exemption List Regulations*.



Parks Canada and the Mackenzie Valley Land and Water Board have asked reviewers to comment on the possible exemption from preliminary screening.

The Review Board believes that a project change after an Environmental Assessment (EA) will require a regulatory authority to consider:

1. the extent and effects of the proposed changes to the project, and
2. how these changes might affect the significance determinations and any resulting measure from the EA approved by responsible Ministers.

***Project changes need to be screened***

If the project is being modified, the regulatory authority must consider whether there are differences between the scope of the development that was assessed and the development which is being proposed. If there are changes that would involve activities that were not previously assessed or that would have impacts that were not considered, then a preliminary screening must be undertaken. The preliminary screening should focus on the effects of activities not previously considered under Part 5 of the *Mackenzie Valley Resource Management Act (MVRMA)*.

In this case, the option now being proposed by the developer for road alignment along lower Sundog Creek was not assessed and, in our view, it needs to be screened by Parks Canada.<sup>1</sup>

***If a project change has implications on the Review Board's significance determination and EA measures approved by Ministers this is not a preliminary screening question***

Based on the Gwich'in, Sahtu, and Tłı̨chǫ agreements<sup>2</sup>, Part 5 of the *MVRMA* establishes the Review Board as the "main instrument" for environmental assessment (EA) and environmental impact review (EIR) in the Mackenzie Valley.<sup>3</sup> Under the legal framework set out by the *MVRMA*, the Review Board

- makes decisions on the significance of impacts and the need for measures;
- sets out measures and follow-up programs in the Board's recommendation to Ministers and final decision-makers; and
- participates in any consult-to-modify processes initiated by a final decision-maker.

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<sup>1</sup> The area in question is in the National Park. The regulatory authority with jurisdiction for screening in the Park is Parks Canada.

<sup>2</sup> Gwich'in Comprehensive Land Claim Agreement, Sahtu Dene and Metis Comprehensive Land Claim Agreement, and the Tłı̨chǫ Land Claims and Self Government Agreement.

<sup>3</sup> This letter refers mostly to "EA", but applies to EIR as well.



There is no provision in the *MVRMA* allowing the Board's significance determination and the resulting EA measures to be changed through a preliminary screening process. Considering the purpose and intent of Part 5 of the *MVRMA* and the roles, responsibilities, and authorities of the Review Board, the Board must lead any review or reconsideration of its significance determinations or the applicability of measures. **To change a measure requires a process led by the Review Board, with a recommendation to and a decision from final decision makers.**

This approach is consistent with recent amendments to the *MVRMA*. These changes which are not yet in force include new responsibilities for the Review Board in relation to issuing, reviewing, and, with ministerial approval, amending development certificates<sup>4</sup>. Although these provisions are not yet in force, they were consulted on, enacted by Parliament, and have received royal assent. The approach we suggest is consistent with the principle that the Review Board should be involved in any review related to EA measures, even after an EA is concluded.

#### ***Regulatory authorities act in conformity with EA decisions***

Subsection 130(5) of the *MVRMA* requires the federal minister and responsible ministers to “carry out” an EA decision made under section 130 and a first nation, local government, regulatory authority or department or agency of the federal or territorial government to “act in conformity” with the decision, to the extent of their respective authorities.

Regulators are responsible for detailed implementation of measures through their regulatory instruments and powers, but there is no authority in the *MVRMA* for a regulator to vary an EA measure approved by Ministers. Measure 9-1 identifies Parks Canada and Fisheries and Oceans Canada (DFO) as being responsible for providing oversight of the detailed implementation of the measure.

If there is a question about applicability of a measure, a regulator should ask the Review Board to provide its views on the matter. The Review Board has serious concerns about any proposal to vary or remove an approved EA measure without the involvement of the Review Board and final decision-makers under Part 5 of the *MVRMA*.

The Board acknowledges that CanZinc's proposal may be an improved design and commends the developer for looking for options that will reduce impacts that could result from the creation of a

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<sup>4</sup> Subsection 142.21 (1) of the *MVRMA* - Amendments Not In Force



separate diversion channel. However, the Review Board is still concerned with any process that includes the varying or removal of a measure of the EA that is not led by the Review Board.

The Board would like to discuss with Parks Canada the next steps on how to proceed with CanZinc's proposal to remove the requirements of Measure 9-1.

If you have any questions regarding this matter, please contact the Review Board's Executive Director, Mark Cliffe-Phillips at [mcliffephillips@reviewboard.ca](mailto:mcliffephillips@reviewboard.ca) or 867-766-7055 to discuss this matter further.

Sincerely,

Joanne Deneron  
Chairperson