



September 18, 2020

Mr. Andy Wheeler
Regulatory Specialist
Mackenzie Valley Land and Water Board
7th Floor – 4922 48th Street
P.O. BOX 2130
YELLOWKNIFE NT X1A 2P6

Dear Mr. Wheeler,

Comments from the Department of Environment and Natural Resources on the Liard East Renewal Application, Type A Land Use Permit and Type B Water Licence (MV2020A0010 and MV2020L1-00067)

The Department of Environment and Natural Resources (ENR), Government of the Northwest Territories has reviewed the reports at reference based on its mandated responsibilities under the *Forest Management Act*, the *Forest Protection Act*, the *Species at Risk (NWT) Act*, the *Waters Act* and the *Wildlife Act* and provides the following comments and recommendations for the consideration of the Mackenzie Valley Land and Water Board (Board).

Topic: Security

Comment:

On March 1, 2019, Paramount Resources Ltd. (Paramount) submitted an updated RECLAIM estimate for the existing authorizations (MV2013A0012/13 and MV2013L1-0002/3) following previous Board direction on January 17, 2019. Subsequently, ENR provide comments and our own estimate on [March 28, 2019](#). ENR notes that the MVLWB has not made a decision on this review or the associated requests for a security estimate review. It is also noted that Paramount has not contacted ENR to engage on the discussion of securities associated for the site.

ENR understands that Paramount has since updated their estimate from 2019 as part of the 2020 renewal application. However, for the 2020 applications, it appears Paramount has continued to use costing estimates from the 2013 application process, resulting in values lower than ENR's 2019 estimate. ENR maintains its

position on the requirement for full coverage of security for actual liabilities and planned activities for the site.

In Paramount's responses to ENR's 2019 security estimate, the proponent rejected ENR's estimate due to perceived inaccurate assumptions made in the estimate. However, the limited details provided at that time, and as part of the current 2020 application, do not provide further details rationalizing these perceived inaccuracies. As additional rationale has not been provided, ENR carries forward the 2019 estimate as the recommended security amount.

Furthermore, Paramount raises the issue of double bonding due to the security held with OROGO. The security held by OROGO is for a different purpose than the requirement for the water licence and land use permit security, and are not considered by ENR as a double bond. The security that OROGO collects is known as "proof of financial responsibility" (PFR) under sections 63 and 64 of the *Oil and Gas Operations Act*. It is for a different purpose than the reclamation-related security that the Ministers of ENR and Lands hold under water licences and land use permits, respectively. OROGO assesses it for each oil and gas activity that is approved by the oil and gas Regulator.

In case of insolvency, GNWT cannot access the OROGO funds, nor does it apply for reclamation of the site outside of the wells and pipelines (e.g., sumps and battery sites). The security OROGO collects can only be paid out to persons suffering "actual loss or damage" from a spill or debris or to the GNWT if it reasonably incurs "costs or expenses taking any action or measure in relation to the spill... or remedial action in relation to debris". The terms "spill" and "debris" are defined in the Act. The purpose of the mechanism is to set up a pot of money from which these losses, damages, costs or expenses can be paid out without having to prove the fault of the operator (which could involve a multi-year court process). The maximum amount that the Regulator can pay out for a given activity is set out in regulations. The amount is collected on a prospective basis – that is, unlike reclamation amounts that are based on the estimated actual costs of restoring lands to their original state, PFR is based on a future hypothetical scenario that may never materialize (like a spill). For this reason, ENR and OROGO does not consider it to be "double bonding", and takes the view that it should not be taken into consideration when the MVLWB is setting reclamation amounts for land and water uses.

Previous applicants have also (Imperial Oil renewal - Type A Licence S13L1-007) unsuccessfully made a similar "double bonding" argument to the LWB's during the application review process. If of interest, note the Board's conclusions on page 15 of its Reasons for Decision (May 2014) with respect to the PFR collected by the NEB.

Recommendations:

1. ENR recommends that the MVLWB and Paramount consider ENR's RECLAIM estimate, submitted March 28, 2019 as part of a previous process for Land

Use Permits MV2013A0012 and MV2013A0013, and Type B Water Licences MV2013L1-0002 and MV2013L1-0003.

2. ENR recommends that the MVLWB provide an update on any outstanding decision related to the 2019 security review decision.
3. ENR recommends Paramount contact OROGO to seek clarity on how that specific security can be used to meet the requirements of the *Oil and Gas Operations Act* (OGOA) and its regulations and any associated OGOA-regulated infrastructure has been properly decommissioned.
4. In future, ENR recommends that Paramount contact ENR prior to submittal of new security estimates or revisions. ENR would be happy to meet with Paramount to discuss the estimates and the assumed scope of work with Paramount to better refine and potentially reduce the security estimate.

Topic: Land Use Permit Condition 90 – Caribou Disturbance

Comment:

The activity occurs during the winter months and the area is used by Boreal Woodland Caribou.

Recommendation:

ENR supports the inclusion of Land Use Permit condition 90, which requires that the Permittee shall not move any equipment or commence any drilling when one or more caribou are within 500 metres.

Topic: Wildlife Management and Monitoring Plan

Comments:

GNWT considers it a best practice for all Proponents to submit a basic (Tier 1) WMMP with their application for authorization. A Tier 1 WMMP should outline how impacts to wildlife and wildlife habitat will be mitigated even if the Minister of ENR does not require a WMMP under section 95 of the *Wildlife Act*. To facilitate this, a template for such a plan is provided on the ENR website at

<https://www.enr.gov.nt.ca/en/services/wildlife-management-and-monitoring-plans>.

Recommendations:

The Proponent is encouraged to develop and submit a basic Tier 1 Wildlife Management and Monitoring Plan (WMMP) to the Wildlife and Fish Division, ENR by e-mail to WMMP@gov.nt.ca. In developing the WMMP, the Proponent is encouraged to follow the WMMP Process and Content Guidelines available on ENR's website at: <https://www.enr.gov.nt.ca/en/services/wildlife-management-and-monitoring-plans>.

Topic: Nesting Birds

Comments:

- The project will potentially involve vegetation clearing.
- The application does not state when vegetation clearing will occur.
- Protection of nests is essential to ensuring reproductive success and survival of both adult birds and their young.
- Critical breeding periods for NWT raptors can start as early as the 1st week of April and last up until 3rd week of September, depending on the species and location.
- Conducting activities involving vegetation clearing, ground disturbance or demolition of buildings and other structures during the nesting season increases the risk of the disturbance or destruction of any type of occupied bird nest. This would be contravening paragraph 51(1)(a) and (b) of the *Wildlife Act*.
- Activities involving vegetation clearing, ground disturbance or demolition of buildings and other structures may also disturb the birds themselves or a nest that is not occupied. Prescribed birds for the purpose of paragraph 51(1)(c) and 52 of the *Wildlife Act* are birds of prey (raptors) as set out in Schedule B of the *Wildlife General Regulations*. However while a raptor nest may not be intentionally destroyed, even if unoccupied, typically on a case-by-case basis the destruction or removal of nests may be authorized where required by General Wildlife Permit.
- While compliance to the *Wildlife Act* and its regulations are required, the Canadian Wildlife Service of Environment and Climate Change Canada is the primary responsible management authority for migratory birds protected under the *Migratory Birds Convention Act, 1994*
(<https://www.canada.ca/en/environment-climate-change/services/migratory-birds-legal-protection/convention-act.html>).
- GNWT is responsible for the management of non-migratory birds including upland game birds like ptarmigan and grouse, and raptors as indicated in the schedules of the *Wildlife General Regulations*.

Recommendations:

- 1) Conduct vegetation clearing and any new ground disturbance outside of the nesting season for birds in the project area.
- 2) Information on critical breeding periods for raptors in the NWT is available at: https://www.enr.gov.nt.ca/sites/enr/files/raptor_species_breeding_periods.pdf
- 3) Follow the Government of Canada's *Guidelines to reduce risk to migratory birds* (available at <https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html>)
- 4) Consult the Government of Canada's *General nesting periods of migratory birds* for current information on general nesting periods of federally protected migratory birds that occur within the NWT
(<https://www.canada.ca/en/environment-climate->

[change/services/avoiding-harm-migratory-birds/general-nesting-periods.html](http://www.lands.gov.nt.ca/en/northern-land-use-guidelines))

- 5) If active nests are encountered during project activities implement protective buffer zones described in applicable the regional land use plan, Table 6 of the Northern Land Use Guidelines – Northwest Territories Seismic Operations (<http://www.lands.gov.nt.ca/en/northern-land-use-guidelines>), or the Government of Canada’s guidance on *Establishing buffer zones and setback distances* for nests (<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html#toc5>).
- 6) If disturbance or destruction of an occupied nest or eggs of a non-migratory bird species (including raptors), or an unoccupied raptor nest, cannot be avoided and all other all mitigation options have been ruled out, Proponents should contact the regional ENR office to determine whether a permit to disturb or destroy the nest/eggs can be obtained.

Topic: Disturbance and harassment of wildlife

Comment(s):

- Wildlife may be encountered during project activities and equipment may cause disturbance.
- Unless authorized by a licence or permit, paragraphs 52(a) and (b) of the *Wildlife Act* prohibit engaging in an activity that is likely to result in significant disturbance to big game or birds of prey, or to unnecessarily chase, fatigue, disturb, torment or otherwise harass any species of game or birds of prey.
- Game species include big game, fur-bearers, and small game as listed in Schedule A of the *Wildlife General Regulations*, and birds of prey are listed in Schedule B.
- As per section 55 of the *Wildlife Act* a person may chase wildlife away from a camp or work site if doing so is necessary to prevent injury or death to a person or damage to property. However sub-section 56(2) also states wildlife may be killed if it is necessary to prevent injury or death to a person, as long as resorting to killing wildlife was not a result of his or her mismanagement.
- Disturbance to wildlife from sources such as noise, light, vibrations, and human presence can result in energetic stress, avoidance of key habitat, loss of reproductive fitness, injury or mortality of wildlife. Activities that may cause sensory disturbance to wildlife include vehicle traffic, stationary machinery, noise from blasting, excavation, crushing, seismic testing, vegetation clearing, and lighting or flaring.

Recommendation(s):

- 1) Consult the draft Land Use Plan that applies to the project area, if any, for further requirements on setback distances and timing windows to minimize disturbance to wildlife.
- 2) Consult the setback distances, flight altitude guidelines and timing windows for wildlife provided in Table 2-5 and Table 2-6 of the Northern Land Use Guidelines: Northwest Territories Seismic Operations (https://www.lands.gov.nt.ca/sites/lands/files/resources/nlug_seismic_2015_english_-_16_sept_2015.pdf), as these are applicable to variety of land use activities.
- 3) Game species and birds of prey shall be given the right of way at all times.
- 4) If big game species are observed within 500 m prior to starting up activities that could lead to sensory disturbance or startling the animal(s), delay starting up until they have moved at least 500 m away from the site of project activities. If they do not leave the area within 15 minutes, they may be gently encouraged to move away from the site. This should involve the slow approach by vehicle towards the animal or making your presence known by calling out and waving your arms to encourage them to move. This should be done from behind a vehicle or piece of equipment to prevent personnel from going too close to the animal. It is possible that females may be unwilling to leave the area if they have a calf hiding nearby. If big game species approach the project within 500 m once activities have already started, monitor and document their behaviour, and suspend activities if there is an imminent threat of injury or mortality to the animal(s).
- 5) An Incident Report should be completed for all wildlife deterrent actions taken and submitted to ENR. Blank incident report forms can be downloaded from the following link:
https://www.enr.gov.nt.ca/sites/enr/files/resources/sample_procedural_manual_and_reporting_templates_june_2019.pdf

Topic: Wildlife attractants and waste management

Comment(s):

- Subject to sub-section 66(1) of the *Wildlife Act* no person shall store food, waste, or other substances in a manner that may attract big game and put people, domestic animals or wildlife in danger.
- Subject to sub-section 65(1) of the *Wildlife Act*, it is illegal to intentionally feed big game or fur-bearers. Schedule A – Part 1 of the *Wildlife General Regulations* sets out the wildlife that are prescribed as big game, and Part 2 sets the wildlife that are prescribed as fur-bearers.

Recommendation(s):

1. The Proponent should utilize food and garbage handling and storage procedures that will minimize the attraction of wildlife.

2. The Proponent should store all food, waste, washed recyclables and debris that may attract wildlife within sealed animal proof containers until final disposal.
3. The Proponent should ensure that sealed animal proof containers are cleaned once emptied to minimize the attraction of wildlife.
4. The Proponent should remove all contaminated waste, waste petroleum products including used oil filters, rags, scrap metal, discarded machinery, parts, drums, barrels, or plastics to an approved waste disposal facility.

Topic: Reporting wildlife sightings

Comment(s):

- Project activities will occur near undisturbed habitat where there is potential for wildlife observations.
- Proponents are encouraged to record wildlife sightings and to submit these records to ENR's Wildlife Management Information System (WMIS). Wildlife sightings data provides useful information for assessing changes in species distribution and the timing and location of different life history events such as migration, denning, nesting, calving, etc.

Recommendation(s):

- 1) Submit information about wildlife sightings (species, date, time, location, number of individuals, sex, behavior, etc.) to ENR's Wildlife Management Information System (WMIS) at WMISTeam@gov.nt.ca. For further information on the WMIS consult: <https://www.enr.gov.nt.ca/en/services/recherche-et-donnees/wildlife-management-information-system>
- 2) Blank wildlife sighting report forms can be downloaded from the following link: https://www.enr.gov.nt.ca/sites/enr/files/resources/sample_procedural_manual_and_reporting_templates_june_2019.pdf

Topic: Reporting Wildlife Defence of Life and Property Kills and Wildlife Emergencies/Incidents

Comment(s):

- Project activities will occur near undisturbed habitat where there is potential for wildlife interactions. Interactions with predators (wolves, bears, wolverines) may require defensive actions from personnel.
- Subject to paragraph 57(a) of the *Wildlife Act*, any big game that is killed to prevent injury or death to a person or damage to property must be reported to ENR as soon as is practicable. Section 7 of the *Wildlife General Regulations* indicates the information that must be included in the report.
- Subject to section 58 of the *Wildlife Act* and sub-section 8(1) of the *Wildlife General Regulations*, any person who accidentally kills or seriously wounds

big game with a motorized vehicle on a highway must report the event to an officer within 24 hours after the incident. Sub-section 8(2) of the *Wildlife General Regulations* indicates the information that must be included in the report.

Recommendation(s):

- 1) Ensure all field personnel have completed a bear safety training course to decrease the risk of attracting bears to work sites and threats to human safety, learn how to respond to bear encounters, and decrease the risk of wildlife mortality resulting from kills in defense of life and property.
- 2) Consult the “Safety in Grizzly Bear and Black Bear Country” brochure, available at https://www.enr.gov.nt.ca/sites/enr/files/resources/safety_in_grizzly_and_black_bear_country_english.pdf
- 3) Report all sightings of bears in and around the project location to your local ENR office. Any defense of life and property kills must be reported to the appropriate ENR office immediately. Please contact the following Regional Office as required:
 - Fort Simpson Wildlife Emergency Line at (867) 695-7433
- 4) Report to an ENR officer as soon as is practicable any wildlife that is killed to prevent injury or death to a person or damage to property.
- 5) Report to an ENR officer any big game that is killed or seriously wounded by a motorized vehicle on a highway within 24 hours after the incident.
- 6) Reports must include at minimum the name of the person who killed or seriously wounded the big game, an explanation of the incident, the time, date and location of the incident, the species or quantity involved, and any other information requested by the wildlife officer.
- 7) Blank incident report forms can be downloaded from the following link: https://www.enr.gov.nt.ca/sites/enr/files/resources/sample_procedural_manual_and_reporting_templates_june_2019.pdf

Topic: Species at Risk

Comment(s):

- This project will occur within the range of Western Toad, Wood Bison, Boreal Caribou, Northern Mountain Caribou, Little Brown Myotis (bat), Northern Myotis (bat).
- Section 76 and 77 of the *Species at Risk (NWT) Act* requires the Minister of Environment and Natural Resources to make a submission to the body responsible for assessing the potential impacts of a proposed development, or for considering a land use Permit or water Licence application, respecting the potential impacts of the proposed development, Permit or Licence application on a NWT-listed or pre-listed species or its habitat. NWT-listed species are those that are on the NWT List of Species at Risk. Pre-listed species are those that have been assessed

by the NWT Species at Risk Committee (SARC) but have not yet been added to the NWT List of Species at Risk.

- The Proponent should be aware that NWT-listed or pre-listed species at risk and their habitat may also be subject to protection under existing sections of the NWT *Wildlife Act*.
- As a best practice, ENR encourages the proponent to consider potential impacts, mitigation measures and monitoring requirements for species at risk listed under the federal *Species at Risk Act*, as well as those designated as at risk by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) that may occur in the project area, and the prohibitions that may apply to these species under federal legislation.
- The project area overlaps with the ranges of the following NWT-listed and/or pre-listed species; information on these species is available at <https://www.nwt-species-at-risk.ca/SpeciesAtRisk> :
 - [Western Toad](#) – Threatened in the NWT
 - [Wood Bison](#) – Threatened in the NWT
 - [Boreal Caribou](#) – Threatened in the NWT
 - [Northern Mountain Caribou](#) – Special Concern in the NWT
 - [Little Brown Myotis \(bat\)](#) – Special Concern in the NWT
 - [Northern Myotis \(bat\)](#) – Special Concern in the NWT

Recommendation(s):

Although the project overlaps with the range(s) of the species listed above, ENR is of the opinion that the nature, scale, location and timing of the proposed project are such that the likelihood of impacts to NWT-listed or pre-listed species listed above can be avoided or minimized if ENR's wildlife recommendations in this letter are implemented as necessary, as well as the application of any wildlife mitigation measures outlined in the Proponent's applications and supporting documents.

Additional Recommendations to the Proponent:

- 1) Make sure that employees and contractors are aware of the species at risk that might occur in the project area. This includes species that are pre-listed or listed under the *Species at Risk (NWT) Act*, species listed under the federal *Species at Risk Act*, and species designated as at risk by COSEWIC.
- 2) Be aware of the prohibitions that may apply to the species that may occur in your area. Check the *Species at Risk (NWT) Act* regulations webpage (<http://www.nwt-species-at-risk.ca/ToolsForDevelopers>) to see if there are any applicable regulations or agreements with land owners that must be followed for NWT-listed or pre-listed species at risk. Contact Environment and Climate Change Canada and Fisheries and Oceans Canada (DFO) for further information about federally-listed species and federal legal requirements.
- 3) If species at risk are encountered during project undertakings, the primary mitigation measure should be avoidance. The Proponent should avoid contact with or disturbance to each species, its habitat and/or its residence.

- 4) Monitoring should be undertaken by the Proponent to determine the effectiveness of mitigation and/or identify where further mitigation is required. As a minimum, monitoring should include recording the locations and dates of any observations of species at risk, behaviour or actions taken by the animals when project activities were encountered, and any actions taken by the Proponent to avoid contact with or disturbance to the species, its habitat, and/or its residence.
- 5) Submit sightings of species at risk and monitoring information to ENR's Wildlife Management Information System (WMIS) at WMISTeam@gov.nt.ca and to other appropriate regulators and organizations with management responsibility for the species. Further information on the WMIS can be found at <https://www.enr.gov.nt.ca/en/services/recherche-et-donnees/wildlife-management-information-system>
- 6) The proponent notes that bears are likely present in the project area. Subject to sub-section 51(2) of the *Wildlife Act*, it is illegal to break into, destroy or damage a den, beaver dam or lodge, muskrat push-up or hibernaculum unless you have an Aboriginal or treaty right or a Permit to do so.

Protection of dens, beaver lodges, muskrat push-ups, and hibernacula is essential to ensuring reproductive success and survival of both adults and young.

There must be a procedure listed if a bear den is disturbed during the work. ENR recommends:

- a) If an active bear den is detected, or suspected, the Proponent should implement and maintain an 800 m exclusion zone until the bear emerges in spring.
- b) If the bear den and exclusion zone would result in the halt of part or the entire program, the Proponent should contact ENR to discuss alternative mitigation options. The location of active bear dens should be kept confidential between the developer and ENR until after emergence in the spring.

Should you have any questions or concerns, please do not hesitate to contact Patrick Clancy, Environmental Regulatory Analyst at (867) 767-9233 Ext: 53096 or email patrick.clancy@gov.nt.ca.

Sincerely,



Laurie McGregor
Environmental Assessment Analyst

