

David Schulze

From: David Schulze
Sent: Sunday, July 28, 2013 8:21 PM
To: GBennett@nalcorenergy.com; Labrador-Island,TransmissionLink [CEAA]
Cc: MarionOrgan@lowerchurchillproject.ca; Marrie, Patrick; Cogle,Betty Ann [CEAA]; Laverdiere,Simon [CEAA]; Mike Atkinson
Subject: Re: Demande de commentaires sur le rapport d'étude approfondie pour le projet de ligne de transport d'énergie entre le Labrador et l'île de Terre-Neuve
Attachments: Lab_caribou_overview_Schmelzer_draft[1].pdf

Mr. Coulter,

Our response follows the relevant portions of Mr. Bennett's email, as cited.

In the introduction of the submission, reference is made to the construction of hydroelectric corridors as an activity likely to result in the destruction of critical habitat. Such a general statement should be tested against project-specific work undertaken in the EA.

This is a general proposition drawn from the federal recovery strategy. If Nalcor has devised a way to build important infrastructure in an area frequented by caribou while leaving its habitat intact, we did not note that innovation in the either the EIS or the CSR.

The province's senior wildlife biologist recently wrote: "Loss or alteration of habitat and construction of linear features such as roads and transmission lines can lead to increased levels of predation, enhanced abundance of species such as moose due to altered forest composition and increased access into the range by hunters." See: Isabelle Schmelzer, "Range use, life history and trends in abundance of forest-dwelling threatened caribou populations in Labrador: An overview; Draft Document," Wildlife Division, Department of Wildlife and Conservation, Government of Newfoundland, September 2012, p. 14 (copy enclosed).

The assertion by counsel for Ekuanitshit that "the Government of Canada's decision on the environmental assessment of the Labrador Island Transmission Link Project is therefore its opportunity for something to be done to reverse the Woodland caribou's decline toward extirpation or extinction" is not supported by fact, particularly in light of the limited interaction of the project with woodland caribou, the decision already taken by Nalcor to route the transmission line along the existing Muskrat Falls access road and Trans Labrador Highway (as presented in the addendum), other mitigation steps proposed by Nalcor, and the existence of other factors (including illegal hunting) that threaten the herd.

The assertion is a legal proposition entirely supported by the CSR: the project's cumulative effects pose a risk to the Woodland caribou and engage federal powers and duties under SARA. Nalcor refers repeatedly to illegal hunting — an activity that would by definition not include Innu exercising their constitutionally-protected rights — but our expert has concluded Aboriginal hunting is not the principal threat to woodland caribou.

In response to Ekuanitshit counsel's concern regarding the need for designation of critical habitat for the caribou in order to consider potential effects on Woodland caribou, Nalcor notes that an assessment of project effects on woodland caribou habitat is provided in the material filed as part of the EA, along with analysis of the project in relation to woodland caribou occupancy. The material presented does not support a conclusion that habitat is a factor limiting the recovery of woodland caribou in Labrador.

This "concern" is also a legal proposition. The identification of critical habitat is a requirement of both federal and provincial endangered species legislation. Moreover, if Nalcor is aware of a means of ensuring the recovery of an endangered species without designating its critical habit that requires for its protection, that innovation is also missing from its EIS.

On page of 4 his letter, counsel for Ekuanitshit has incorrectly stated that the Churchill River between Churchill Falls and Happy Valley Goose Bay represents a significant portion of the project area in Labrador. Actually, the transmission line only follows the existing access road to the Muskrat Falls site for approximately 20 km before following the Trans Labrador highway south towards the coast. The overlap of the transmission line footprint with the Red Wine herd range is minimal.

Our submissions were simply meant to indicate that the geographic boundary of Red Wine Mountain herd critical habitat in the federal recovery strategy draws a large line around the Churchill River valley, indicating the size of the area to be taken into account as containing potentially critical habitat. Given the obvious interrelation between the Muskrat Falls generating station and the transmission lines — each of which would be useless without the other — the issue of cumulative effects is clearly raised, as noted by the Agency in the CSR.

On page 5, counsel makes reference to the 'extirpation of an entire herd as having a significant adverse effect on Aboriginal peoples'. Nalcor notes that the project is not predicted to cause this, and the potential for extirpation exists with or without the Project. Nalcor must again note that illegal hunting is a significant contributor to this potential.

Nalcor's fatalism concerning the survival of the Red Wine Mountains herd is already part of the record. As stated, Innu hunting in exercise of constitutionally-protected rights is by definition not illegal.

In reconciling the conclusion that "the Project is not likely to cause significant adverse environmental effects on the current land use of land and resources for traditional purposes by Aboriginal peoples" against the potential significant cumulative effects on woodland caribou, Nalcor must point out that the current land use of land and resources by Ekuanitshit is not significantly affected by the project, and also that the project has a minimal impact on caribou habitat.

Our most recent submissions merely stated the obvious: extirpation of an entire herd is as severe an effect on Aboriginal interests as can be imagined. The inadequacies of Nalcor's purported study of current land and resource use by the Innu of Ekuanitshit has been the subject of extensive submissions already and does not merit further comment.

Nalcor takes exception to the statement attributed to Nalcor that "transmission lines would have no impact on the viability of the Red Wine Mountain herd since its fate was already sealed...". To the contrary, Nalcor's analysis shows the interaction with the herd's habitat is minimal and the project has minimal impact on primary caribou habitat. Mitigation measures are also proposed to avoid direct impacts from project activities. The statement by Ekuanitshit counsel avoids the issue that other effects, such as illegal hunting, threaten the herd and these threats exist with or without the Project.

Nalcor's position in its Addendum to the EIS was as follows: "In recognition of the present status of RWMH, and that other activities and pressures such as poaching and predation may continue, the overall fate is likely one of continued decline with or without the Project. If these existing (pre-Project) factors remain unchecked, the cumulative environmental effects are predicted to be significant, and not a result of the Project effects. The cumulative effects on the remainder of the Caribou herds in the province are rated as not significant."

Environment Canada's recovery strategy takes the opposite view on the fate of the herd. In its CSR, the Agency disagreed with Nalcor on the significance of cumulative effects. We find Nalcor's equanimity about the Red Wine Mountain herd disquieting, particularly after the Joint Review Panel expressly disagreed with its conclusions on the effects of its proposed generating stations on the same caribou population.

Our submissions do not avoid the issue of illegal hunting but do not concentrate on it, since our expert has concluded that it is not the principal threat to herd survival. For its part, Nalcor cannot deny that project construction will increase hunters' access to herd habitat, but is also fatalistic on this point in the EIS: "an access trail along the ROW to facilitate ongoing inspection and maintenance (similar to existing transmission lines throughout the province) will likely be used as an access route by Aboriginal users at various times of the year. Although Nalcor does not condone or promote the use of its transmission lines for this purpose, it is aware that this activity occurs elsewhere in the province and considers prevention of such activities difficult if not impossible."

It is striking that in its EIS, however, Nalcor preferred to describe Aboriginal hunting not as illegal, but as a positive effect: "such access may have an overall positive effect on some Aboriginal land and resource users, as it will provide

better or new access to currently remote areas, both for general passage (such as snowmobile travel) and to access areas for activities such as hunting and fishing.”

The assertion by counsel for Ekuanitshit that habitat destruction is a primary risk to woodland caribou is not supported by fact.

The risk set out in this assertion is supported by a recent study prepared by the province’s senior wildlife biologist: “Direct or effective loss of habitat as a consequence of landscape change linked to industrial development has been linked to range loss and caribou extirpation throughout North America. Caribou have been shown to avoid roads and seismic lines, transmission corridors forest harvesting and other types of disturbance.” See: Isabelle Schmelzer, “Range use, life history and trends in abundance of forest-dwelling threatened caribou populations in Labrador: An overview“, p. 23.

To the contrary, a comprehensive analysis of the Project's impact on caribou habitat has been completed and effects have been found to be minimal.

Our expert has informed us that she does not share the conclusions of Nalcor’s experts. Their inclination to mischaracterize the scientific literature has already been pointed out in our previous submissions.

David Schulze

On 2013-07-28 6:15 PM, "GBennett@nalcorenergy.com" <GBennett@nalcorenergy.com> wrote:

Mr. Coulter,

We have had a brief opportunity to review the comments provided by counsel for the Innu of Ekuanitshit and have noted some factual points that we feel should be corrected on the record.

In the introduction of the submission, reference is made to the construction of hydroelectric corridors as an activity likely to result in the destruction of critical habitat. Such a general statement should be tested against project-specific work undertaken in the EA.

We would like to draw attention to the habitat analysis presented in the EIS addendum, identifying minimal interaction with woodland caribou. Nalcor's response to IR DEC, Wildlife Division - 3, and in particular Tables 2 and 3 show limited interaction of the Project with ranges for woodland caribou in Labrador.

The assertion by counsel for Ekuanitshit that "the Government of Canada's decision on the environmental assessment of the Labrador Island Transmission Link Project is therefore its opportunity for something to be done to reverse the Woodland caribou's decline toward extirpation or extinction" is not supported by fact, particularly in light of the limited interaction of the project with woodland caribou, the decision already taken by Nalcor to route the transmission line along the existing Muskrat Falls access road and Trans Labrador Highway (as presented in the addendum), other mitigation steps proposed by Nalcor, and the existence of other factors (including illegal hunting) that threaten the herd.

In response to Ekuanitshit counsel's concern regarding the need for designation of critical habitat for the caribou in order to consider potential effects on Woodland caribou, Nalcor notes that an assessment of project effects on woodland caribou habitat is provided in the material filed as part of the EA, along with analysis of the project in relation to woodland caribou occupancy. The material presented does not support a conclusion that habitat is a factor limiting the recovery of woodland caribou in Labrador.

On page 4 of his letter, counsel for Ekuanitshit has incorrectly stated that the Churchill River between Churchill Falls and Happy Valley Goose Bay represents a significant portion of the project area in Labrador. Actually, the transmission line only follows the existing access road to the Muskrat Falls site for approximately 20 km before following the Trans Labrador highway south towards the coast. The overlap of the transmission line footprint with the Red Wine herd range is minimal.

On page 5, counsel makes reference to the 'extirpation of an entire herd as having a significant adverse effect on

Aboriginal peoples'. Nalcor notes that the project is not predicted to cause this, and the potential for extirpation exists with or without the Project. Nalcor must again note that illegal hunting is a significant contributor to this potential.

In reconciling the conclusion that "the Project is not likely to cause significant adverse environmental effects on the current land use of land and resources for traditional purposes by Aboriginal peoples" against the potential significant cumulative effects on woodland caribou, Nalcor must point out that the current land use of land and resources by Ekuanitshit is not significantly affected by the project, and also that the project has a minimal impact on caribou habitat.

Nalcor takes exception to the statement attributed to Nalcor that "transmission lines would have no impact on the viability of the Red Wine Mountain herd since its fate was already sealed...". To the contrary, Nalcor's analysis shows the interaction with the herd's habitat is minimal and the project has minimal impact on primary caribou habitat. Mitigation measures are also proposed to avoid direct impacts from project activities. The statement by Ekuanitshit counsel avoids the issue that other effects, such as illegal hunting, threaten the herd and these threats exist with or without the Project.

The assertion by counsel for Ekuanitshit that habitat destruction is a primary risk to woodland caribou is not supported by fact. To the contrary, a comprehensive analysis of the Project's impact on caribou habitat has been completed and effects have been found to be minimal.

While this issue is addressed in much greater detail in Nalcor's component studies, the EIS, and supplementary documentation including the EIS addendum, we believe that it is important to put these points on the record.

Sincerely,

Gilbert Bennett, P. Eng.
Vice President, Lower Churchill Project
Nalcor Energy

This Email was sent from a Blackberry wireless handheld. The Email, including attachments, is confidential and proprietary. If you are not the intended recipient, any redistribution or copying of this message is prohibited. If you have received this Email in error, please notify us immediately by return Email, and delete this Email message.

From: David Schulze [dschulze@dionneschulze.ca]

Sent: 07/28/2013 11:38 AM AST

To: "Labrador-Island,TransmissionLink [CEAA]" <Labrador-Island.TransmissionLink@ceaa-acee.gc.ca>

Cc: Gilbert Bennett; Marion Organ; "Marrie, Patrick" <pmarrie@gov.nl.ca>; "Cogle,Betty Ann [CEAA]" <Betty.Cogle@ceaa-acee.gc.ca>; "Laverdiere,Simon [CEAA]" <Simon.Laverdiere@ceaa-acee.gc.ca>; <Mike.Atkinson@ceaa-acee.gc.ca>

Subject: Re: Demande de commentaires sur le rapport d'étude approfondie pour le projet de ligne de transport d'énergie entre le Labrador et l'île de Terre-Neuve

DAVID SCHULZE
Avocat / Lawyer

DIONNE SCHULZE
s.e.n.c.

507 Place d'Armes, #1100
Montréal, Québec H2Y 2W8
Téléphone : (514) 842-0748 / 228