



Makwa Sahgaiehcan First Nation

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The Honourable Jonathan Wilkinson

Minister of Environment and Climate Change Canada

200, Sacré-Coeur Blvd, 2nd Floor

Gatineau, Quebec K1A 0H3

Canada

October 16, 2020

Dear Mr. Wilkinson

RE: Request for Designation of Great Sandhills Railway Switching Operation at North West Terminal Project

This letter is sent on behalf of the Makwa Sahgaiehcan First Nation Chief and Council. The Makwa Sahgaiehcan First Nation Chief and Council have the elected authority and responsibility to protect the collective rights and interests of Makwa Sahgaiehcan First Nation as recognized by Treaty 6 and the *Natural Resources Transfer Act, 1930*, and protected by Section 35 of the *Constitution Act, 1982* (hereinafter referred to as "Section 35 Rights").

Makwa Sahgaiehcan First Nation understands that Great Sandhills Railway Ltd. ("GSRL") is proposing to expand the existing North West Terminal (the "Project"). This expansion would include:

- Three loop tracks;
- Two shop tracks;
- a wye track¹; and,
- a repair shop.

This Project proposed by GSRL would increase capacity by allowing Canadian National Railway and Canadian Pacific Railway to enter and depart the terminal on alternative tracks. In addition, the new tracks would allow for 175 train cars to be interchanged at a time and increase capacity on the Edmonton corridor. The estimate Project lifespan is 100 years.

Makwa Sahgaiehcan First Nation was not engaged by GSRL in early engagement activities.² As such, we have not been provided the opportunity to raise our issues and concerns at this time. We were alerted to this Project on our own initiative.

Request:

Makwa Sahgaiehcan First Nation exercises their Section 35 Rights in the vicinity of the proposed project and as such, Makwa Sahgaiehcan First Nation is concerned that this proposed Project will negatively effect our Makwa Sahgaiehcan First Nation's Section 35 Rights and interests.³ As such, Makwa Sahgaiehcan First Nation calls on the Honourable Jonathan Wilkinson, and by extension the Impact Assessment Agency of Canada ("IAAC") to designate this Project under Section 9 of the Impact Assessment Act (S.C. 2019, c. 28, s. 1).

As per Section 9(1) and (2) of the *Impact Assessment Act*:

“(1) The Minister may, on request or on his or her own initiative, by order, designate a physical activity~~that~~ that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.

(2) Before making the order, the Minister may consider adverse impacts that a physical activity may have on the rights of the Indigenous peoples of Canada — including Indigenous women — recognized and affirmed by section 35 of the Constitution Act, 1982 as well as any relevant assessment referred to in section 92, 93 or 95.”

Makwa Sahgaiehcan First Nation finds this Project merits designation under Section 9 due to its location, and the potential impacts the Project and the current North West Terminal (“NWT”) may have on Section 35 Rights and interests, as well as cultural impacts, health and safety impacts, and impacts on gender. The potential for the Project to impact Section 35 Rights has not been properly addressed to date.

Rationale for Request for Designation:

Given that the original NWT came into operation in 1996, well before important legal precedence that have guided the Duty to Consult and Accommodate today⁴, it is assumed that NWT was initially built without proper consideration of impacts to Section 35 Rights. The proponent cannot rely on any past environment or impact assessment process to discharge its current Duty to Consult and Accommodate. The failure of the past environmental review process to assess impacts to Section 35 Rights increases the importance that any new additions to the NWT be given a fulsome review and ensure that an assessment of impacts to Section 35 Rights and interests are complete and meaningful.

Makwa Sahgaiehcan First Nation has already witnessed the impact railway activity has on Makwa Sahgaiehcan First Nation’s Section 35 Rights, the landscape, and the quality and quantity of harvested and sacred resources (including fish, water, wildlife, air, and vegetation). Rail lines create sensory disturbances that disrupt resource migration patterns of harvested resources. Rail lines take up Crown lands under and become permanent disturbances that Makwa Sahgaiehcan First Nation members are legally required to avoid while exercising their Section 35 Rights. Rail lines additionally create contamination of harvested resources and cultural sites in the vicinity making the inaccessible to Makwa Sahgaiehcan First Nation members.

Further, railways pose an inherent risk to Makwa Sahgaiehcan First Nation members who may be required to travel alongside or across uncontrolled areas of the rail line while exercising their Section 35 Rights or accessing important cultural and sacred sites. Makwa Sahgaiehcan First Nation members are at risk both of personal injury, and potential fines and harassment when around rail lines. This leads to avoidance behaviours

that then alienate sections of Makwa Sahgaiehcan First Nation's culturally important lands. In turn this could impede the continued exercise of Section 35 Rights, cultural practices, knowledge and skill transmission, and the language sharing.

These impacts that are already being experienced by Makwa Sahgaiehcan First Nation related to rail lines and associated infrastructure will only be amplified if the Project is approved. Further, the Projects impacts will last over its 100-year lifespan, this would lead to intergenerational impacts.

In order to properly identify and understand the scope and extent of these potential Project-impacts, appropriate impact assessment and engagement activities must be carried out. This cannot occur unless the Project is designated under Section 9 and fulsome capacity is provided by both IAAC and GSRL to potentially impacted Nations including Makwa Sahgaiehcan First Nation.

Designating this Project will increase the level of attention paid to the Project and the existing NWT and the issues, concerns, and impacts the Project will have on Makwa Sahgaiehcan First Nation's Section 35 Rights and interests, and in doing so, facilitate meaningful consultation between Makwa Sahgaiehcan First Nation and GSRL.

Sincerely,

<Original signed by>

Chief 

<Original signed by>

Councillor 

<Original signed by>

Councillor 

<Original signed by>


Councillor