

ATTACHMENT: June 30, 2021

Provincial Advice Record: Designation Request under IAA

Response requested by July 20, 2021

Lake Diefenbaker Irrigation Expansion Projects

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| Department/Agency | Fisheries and Oceans Canada |
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1. Has your department or agency considered whether it has an interest in the Project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action (including provision of financial assistance) that would allow the Project to proceed in whole or in part?

Specify as appropriate.

Fisheries and Oceans Canada (DFO) has determined that we may have a regulatory role with this project. DFO has not yet exercised a power or performed a duty or function in relation to the Project or taken any course of action (including provision of financial assistance) that would allow the Project to proceed in whole or in part.

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2. Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the Project to enable it to proceed?

If yes, specify that power, duty or function and its legislative source.

Yes, it is probable that DFO will need to issue a *Fisheries Act* Authorization related to this project for it to proceed.

A Fisheries Act paragraph 35(2)(b) Authorization will be required if the project is likely to cause the harmful alteration, disruption, or destruction to fish habitat and/or a Fisheries Act paragraph 34.4(2)(b) Authorization if the project is likely to result in the death of fish. The proponent has submitted a Request for Review for DFO.

DFO also review projects for effects to listed aquatic species at risk, any part of their critical habitat or the residences of their individuals in a manner which is prohibited under sections 32, 33 and subsection 58(1) of the Species at Risk Act. It is unlikely that a permit will be required under the Species at Risk Act as there are currently no aquatic Species At Risk mapped for the project area as defined by this designation request (Phase 1 or Phase 2 project areas).

3. If your department or agency will exercise a power or perform a duty or function under any Act of Parliament in relation to the Project, will it involve public and Indigenous consultation?

Specify as appropriate.

Should DFO consider issuing a Fisheries Act s.34.4(2)(b) and/or 35(2)(b) authorization for the project, consultation with Indigenous groups would be undertaken.

4. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects within federal jurisdiction caused by the Project or adverse direct or incidental effects stemming from the Project?

Specify as appropriate.

DFO can provide specialist or expert information or knowledge on assessment of impacts on fish and fish habitat. The Department may provide information to the proponent in order to avoid and mitigate the negative impacts of the proposed works, undertakings or activities. DFO will be able to evaluate the potential implications to our mandate as more details on the proposed project activities become available and are provided to DFO as part of the review process.

5. Has your department or agency had previous contact or involvement with the proponent or other parties in relation to the Project?

Provide an overview of the information or advice exchanged.

Yes. The proponent has reached out to DFO and have submitted a Request for Review under the *Fisheries Act*.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

Specify as appropriate.

DFO has reviewed the available project information. Based on this information, the Project may result in the harmful alteration, disruption or destruction of fish habitat and/or the death of fish. As such, the project may require authorization under the Fisheries Act. If an authorization were to be issued, it would include conditions in relation to the aforementioned effects.

7. Does your department or agency have a program or additional authority that may be relevant and could be considered as a potential solution to concerns expressed about the Project? In particular, the following issues have been raised by the requestor:

- a. Potential effects on Inherent and Treaty Rights in Saskatchewan
- b. Potential impacts to sacred sites and other cultural and heritage-sensitive areas
- c. Potential effects to food and water security including climate change impacts
- d. Potential long-term cumulative impacts of water withdrawals and agrochemical inputs to the Saskatchewan River and the Saskatchewan River Delta that flow into Manitoba
- e. Effects to the following:
 - i. fish and fish habitat
 - ii. migratory birds
 - iii. wildlife and wildlife habitat including federally listed species at risk
 - iv. contaminants from agricultural inputs

If yes, please specify the program or authority.

If a *Fisheries Act* Authorization is required, the authorization process through the Fish and Fish Habitat Protection Program may involve Indigenous consultation. This consultation may include consultation and/or accommodation on potential impacts to Indigenous peoples of Canada. These potential impacts may include current use of lands and resources for traditional purposes, physical and cultural heritage,

and/or any structure site or thing that is of historical, archaeological, paleontological or architectural significance.

When making a decision under the *Fisheries Act*, the Minister shall consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982.

Potential impacts to fish and fish habitat include:

- Death of fish resulting from entrainment at Lake Diefenbaker.
 - Death of fish related to impingement on screens
 - Death of fish resulting from stranding when flows are terminated in the fall in canals from Lake Diefenbaker.
 - Harmful alteration, disruption or destruction of fish habitat when canals are dewatered.
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8. If your department has guidance material that would be helpful to the proponent or the Agency, please include these as attachments or hyperlinks in your response.

Sara Eddy

Name of departmental / agency responder

A/Manager, Regulatory Review

Title of responder

July 22, 2021

Date