

ATTACHMENT: November 8, 2021

Federal Authority Advice Record

Response due by November 29, 2021

Horsefly Regional Emergency Spillway Project – Municipality of Taber

Agency File: 005811

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1. 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?

Transport Canada (TC) may be required to exercise a power or perform a duty or function with respect to the *Canadian Navigable Waters Act* (CNWA) based on the Initial Project description provided.

CNWA approvals may be required for the spillways on Oldman River, Taber Lake and potentially Horsefly Reservoir.

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2. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to the conduct of an impact assessment of the Project?

Transport Canada's Navigation Protection Program (NPP) can provide specialist, expert information, or knowledge with respect to the CNWA and impacts to navigation. The CNWA authorizes and regulates interferences with the public right to navigation. The primary purpose of the CNWA is to regulate works and obstructions that may interfere with navigation in Canada's navigable waters.

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3. (a) Has your department or agency considered 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 that would allow the Project to proceed in whole or in part?

Specify as appropriate.

No, Transport Canada has not yet 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 that would allow the Project to proceed in whole or in part. TC understands that it is prohibited from exercising any power, duty or

function under an Act of Parliament (e.g. granting an approval under the CNWA) that would allow a project to proceed, until any applicable *Impact Assessment Act* (IAA) requirements are met.

(b) Please include a description of consultation activities that would occur with Indigenous groups if your department or agency has to exercise a power or perform a duty or function related to the Project, and how potential impacts to Indigenous groups are addressed by your department or agency.

Should CNWA approvals be required, TC would undertake a review of potential adverse impacts on potential or established Aboriginal or Treaty Rights recognized and affirmed in section 35 of the *Constitution Act, 1982*. TC will participate in any coordinated 'whole of government' Indigenous consultation resulting from the IAA process. In the regulatory phase, TC will use the IAA process, to the extent possible, for the review and approval of applications received for the Project, however further consultation may still be required if the IAA process does not address all issues within TC's mandate. Further consultation and reconciliation discussions could include more detailed information on Transport Canada processes, safety and oversight procedures, as well as accommodation discussions, if deemed necessary.

(c) Please include a description of opportunities for public participation if your department or agency has to exercise a power, or perform a duty or function related to the Project.

The public may provide comments related to navigation, on proposed projects prior to their construction, placement, alteration, rebuilding, removal or decommissioning. The public notice for works requiring an approval or works on non-scheduled waterways, will provide a specific timeframe allowing for the public to comment on the proposed work. Projects opened for comments can be found on the [Common Project Search \(CPS\)](#). A login is not required to access the information on the CPS. If the public wants to provide comments on projects, they will be redirected to the NPP External Submission Site where a login is required to submit any comment.

The public can comment on any of the following:

- an application for approval; or
- a public notice of a work on a non-scheduled waterway (public resolution).

Comments on an application for approval are received and reviewed by the NPP. Although these comments will be taken into account during the analysis of the project, the commenter will only be contacted if clarifications are required.

Comments on a notification of work on a non-scheduled waterway will be received directly by the owner of the proposed work. Once comments are received, the commenter and the owner will have 45 days to resolve the concerns. If the comments and/or concerns are not resolved after this period of time, the commenter may request a decision from the NPP to decide if an application for approval needs to be submitted or not.

For additional information, please consult the [NPP webpage](#) or [contact your regional NPP office](#).

4. Has your department or agency had previous contact or involvement with the proponent or other party in relation to the Project? (for example, enquiry about methodology, guidance, or data; introduction to the project)

Provide an overview of the information or advice exchanged.

Yes, in November 2020, the Aboriginal Consultation and Environmental Services team at Infrastructure Canada (INFC) contacted TC's NPP to inquire whether TC was aware of the proposed project and whether any approvals under the CNWA would be required. At that time, NPP advised INFC that TC had not previously been made aware of the project but that the proponent would need to submit an application to NPP for the spillway on Oldman River and Taber Lake. To date, TC NPP has not received any application related to this project nor has TC had any further correspondence with INFC or the proponent.

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5. Does your department or agency have additional information or knowledge not specified, above?

Specify as appropriate.

No, TC does not have any additional information or knowledge.

6. From the perspective of the mandate and area(s) of expertise of your department or agency:

- I. Indicate whether the description of potential effects presented in the Initial Project Description sufficiently characterizes potential project effects— including direct and incidental effects, and effects within federal jurisdiction. Provide advice on whether these effects may be adverse and whether your regulatory instruments could be used to address these effects.

The Initial Project Description does not provide any description in regards to potential project effects to navigation. However, it is likely that any interference to navigation from the Project could be addressed through Transport Canada's regulatory process and with imposed conditions outlined in the CNWA approval(s) that may be granted for the Project.

- II. Identify any additional potential adverse effects of the Project that are not described in the Initial Project Description and their linkage to effects, effects within federal jurisdiction, and direct and incidental effects

TC is not aware of any additional potential adverse effects.

- III. Indicate any issues that should be addressed in the detailed project description that would inform a full understanding of how the Project's potential effects to areas of federal jurisdiction are effectively being mitigated and managed. Please be as specific as possible and include a description of any anticipated residual and/or potential significant adverse effects.

Detailed project description should include a discussion of potential impacts to navigation.

- IV. Indicate the issues that should be addressed in the impact assessment of the Project, should the Agency determine that an impact assessment is required.

For each issue identified, provide a concise, plain-language summary that is appropriate for inclusion in the Summary of Issues.

With respect to effects to navigation, TC suggests that impact assessment should include:

- **Description of navigable waterways that could be impacted by the project, including 1:2 year water levels;**
 - **Description of ancillary project components that will be constructed in, on, under, over, through or across navigable waterways to support the project;**
 - **Description of potentially affected waterway users and description of consultation with waterway users and Indigenous groups regarding navigational use, issues raised and how issues were addressed; and**
 - **Description of project effects to navigation and navigation safety**
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Jackie Barker

Name of Departmental / Agency Responder

Regional Environmental Advisor, Transport
Canada

Title of Responder

November 29, 2021

Date