



March 17, 2025

**VIA EMAIL:** [ministre-minister@ec.gc.ca](mailto:ministre-minister@ec.gc.ca)

The Honourable Steven Guilbeault  
Minister of Environment and Climate Change  
Ottawa, ON K1A 0A6

Dear Minister Guilbeault,

**RE: Sussex Region Flood Diversion Project – Request for Designation under Section 9 of the Impact Assessment Act**

Please accept this letter from Mi'gmawé'l Tplu'taqnn Incorporated ("MTI") - an organization that represents the rights and interests of eight Mi'gmaq communities in New Brunswick (Amlamgog (Fort Folly) First Nation, Natoaganeg (Eel Ground) First Nation, Oinpegitjoig (Pabineau) First Nation, Esgenoôpetitj (Burnt Church) First Nation, Tjipôgtôtjig (Buctouche) First Nation, L'nui Menikuk (Indian Island) First Nation, Ugpi'ganjig (Eel River Bar) First Nation and Metepenagiag Mi'kmaq Nation) for consultation and accommodation purposes.

Specifically, we are writing to respectfully request that you, Minister, designate the Sussex Regional Flood Diversion Project (the "Project") under subsection 9(1) of the *Impact Assessment Act*. The Project has not begun, it is still in the planning phase.

**Proponent**

The proponent of the proposed Project is the Town of Sussex, New Brunswick (the "Proponent"). The Proponent contact details are:

Town of Sussex  
524 Main Street  
Sussex NB, E4E 3E4  
Attn: Scott M. Hatcher  
Email: [scott.hatcher@sussex.ca](mailto:scott.hatcher@sussex.ca)

**Project Description**

The proposed Project would involve the construction and operation of a new permanent flood control management system, which would include:



- The construction of two diversion channels to divert flood flows away from the downtown into the Kennebecasis River, which flows around Sussex to the southwest. The diversion channels would redirect water from Parsons Brook into Trout Creek and from Trout Creek into the floodplain of the Kennebecasis River;
- Construction of a flood berm around Meadow Crescent subdivision;
- Construction of a two bridge/overpass structures on New Brunswick Route 1 (eastbound and westbound) where the highway intersects with a proposed diversion channel;
- Construction of a culvert or bridge at Leonard Drive where the roadway intersects with a diversion channel;
- Raising the bridge deck elevation of the section of New Brunswick Route 890 that crosses the Kennebecasis River;
- Raising the bridge deck elevation of the covered bridge adjacent to the section of New Brunswick Route 890 that will also be raised; and
- The addition of minor flow control measures on the storm sewer systems in downtown Sussex.<sup>1</sup>

There is no confirmed construction timeline, but in preliminary meetings with the Proponent it was indicated that construction is anticipated to begin in the spring of 2026, which aligns with the Initial Project Description Summary.<sup>2</sup>

The Project area would encompass various parcels of land owned by a combination of private landowners, corporations, the Town of Sussex, and the Province of New Brunswick. No Federal Crown lands are included within the Project area.

The entire Project would be located within the Mi'gmawé'l Tplu'taqnn Title assertion area.

### Project List

The proposed Project is designed in a manner that would exceed the threshold set out in section 60 of the *Physical Activities Regulations* (Project List), which provides for the construction, operation, operation, decommissioning and abandonment of a new structure for the diversion of 10,000,000 m<sup>3</sup>/year or more. The diversion channel that would redirect water from Parsons Brook to Trout Creek would accommodate flows up to 60m<sup>3</sup>/s and the diversion channel from Trout Creek to the Kennebecasis River would accommodate flows up to 220m<sup>3</sup>/s.

Water would be diverted through those two diversion channels only during flood flows. However, just the Trout Creek diversion channel operating at the accommodated flow of

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<sup>1</sup> See Initial Project Description Summary online at: <https://iaac-aeic.gc.ca/050/documents/p89179/160498E.pdf>

<sup>2</sup> *Ibid.*



220m<sup>3</sup>/s for only one week would exceed the threshold of 10,000,000 m<sup>3</sup>/year. As such, MTI's position is that the proposed Project would greatly exceed the threshold set out in section 60 of the Project List and must be subject to a federal impact assessment.

### Regulatory Reviews / Approvals

The *Environmental Impact Assessment Regulation (87-83)* under the New Brunswick *Clean Environment Act* requires undertakings/projects to undergo an environmental impact assessment (EIA) if the undertaking involves the transfer of water between drainage basins that may result in a significant environmental impact. The Proponent has stated that the EIA registration document will likely be submitted to the New Brunswick Department of Environment and Local Government in early 2025. In addition to an EIA Certificate of Determination, the proposed Project would require (non-exhaustive list):

- Licence of Occupation – from NB Department of Resources and Energy Development;
- Watercourse and wetland alteration permit – from New Brunswick Department of Environment and Local Government;
- *Fisheries Act* Authorization – from DFO;
- Highway Occupancy Permit – from New Brunswick Department of Transportation and Infrastructure.

MTI has consistently taken the position that the New Brunswick EIA process is inadequate as it fails to adequately protect the environment and our Mi'gmaq Aboriginal and Treaty Rights; as such, all proposed projects within or that could impact our territory are required to follow the Mi'gmaq Rights Impact Assessment (MRIA) Framework.<sup>3</sup>

### **Potential Adverse Effects**

Given the potential for significant impacts, including adverse effects to areas within federal jurisdiction – fish and fish habitat, migratory birds, and Mi'gmaq Rights - MTI submits that a federal impact assessment is necessary to ensure thorough and meaningful consideration of these issues.

The Project has the potential to cause significant environmental and impacts to Mi'gmaq rights, including:

### Changes to Fish Habitat

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<sup>3</sup> The MRIA Framework was ratified by the Mi'gmaq Chiefs in November 2020.



- The two diversion channels proposed will impact the flow of Trout Creek and Parsons Brook. This will potentially impact the Kennebecasis River and fish habitat.
- The water levels and flow rates have the potential to affect spawning grounds, food sources and fish population.
- Although the intake control structures are not actively controlled, they may still alter water flow and sediment, which can have continued habitat degradation.

#### Operation and Construction Disruption

- Excavation, grading and in-water works will produce sediment disturbance, which has great potential to impact water quality and potentially smother fish eggs and aquatic vegetation.
- Noise and vibration from various construction activities could potentially disrupt fish behaviour and migration patterns.
- Irregular water flow from long-term operation of the diversion system may affect small tributaries and other small habitats in the vicinity.

#### Species of Concern

The Kennebecasis River Watershed hosts several fish species and species at risk, including Atlantic Salmon, American Eel, and Brook Trout.

The Mi'gmaq have a deep cultural connection to the land and waters in the Project area. Several species that are culturally significant to the Mi'gmaq are the Atlantic Salmon and the American Eel. The Project construction has great potential to reduce accessibility to these species for Mi'gmaq.

The Kennebecasis River Watershed also hosts culturally significant birds and wetland species, including Bank Swallows, Barn Swallows, and Black Ash.

Given the potential risks to fish habitat, culturally significant aquatic species and other resources, and the potential to disrupt access to traditional lands and waters, a Mi'gmaq Rights Impact Assessment (MRIA) is also required for the Project.

The Mi'gmaq have a number of decisions from the Supreme Court of Canada and lower Courts that confirm we have proven rights, including rights to hunt, fish and harvest for both food, social and ceremonial purposes and for a moderate livelihood, and the right to harvest wood for domestic use. These Rights stand to be adversely affected by the proposed Project.



The Initial Project Description Summary details various proposed mitigation measures. However, the proposed mitigation measures are premature, as MTI has not yet completed a Mi'gmaq Rights Impact Assessment for the proposed Project. Until that occurs, we cannot adequately assess the impacts to our Mi'gmaq Rights, and without that, it is impossible for the Mi'gmaq or the Proponent to put forward adequate accommodation measures.

### **Requester's Contact Information**

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### **Request for Federal Impact Assessment**

MTI became aware of the Project through provincial environmental impact assessment documentation and discussions with the Proponent. Given the significance of the potential impacts, MTI respectfully requests that the Minister designate this Project under section 9 of the Impact Assessment Act.

We appreciate your consideration of this request and look forward to further engagement on this matter. Please feel free to contact us at your earliest convenience.

Yours in Peace and Friendship,

<Original signed by>

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Erica Ward  
Impact Assessment Coordinator

Cc: MTI Chiefs  
Derek Simon, MTI Legal  
Scott Hatcher, Town of Sussex  
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