

Letter of Comment

February 17, 2016

Submitted via electronic mail

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sur l'environnement et le milieu social – COMEX
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RE: Construction of forest access road in H section West and I

Dear Mr. Boisclair,

The Natural Resources Defense Council (NRDC) wishes to thank the COMEX for the opportunity to provide comments on the proposed construction project of forest access roads H Section West and I. NRDC is a U.S. based environmental group with a long history of advocacy work in Canada. For more than thirty years, we have worked in partnership with Canadian First Nations and environmental organizations to promote sound environmental decision-making and preserve some of the world's most precious and iconic ecosystems. We have worked across Canada, from British Columbia's temperate rainforest to Alberta's tar sands to Manitoba's boreal forest to Québec's James Bay hydroelectric project—an effort carried out in partnership with the Cree nation in the 1980s.

Today we would like to provide our comments on the review of the proposed construction project of roads H Section West and I. Our interest in this project stems from the threat this proposal places on one of Quebec's largest and last remaining intact forest landscapes – a landscape and ecosystem critical to the woodland caribou's survival, not to mention the global battle against the worst impacts of climate change. Further, because the U.S. is one of the largest consumers of forest products sourced from Quebec's forests, we believe that U.S. organizations and consumers have a keen interest in the sustainable development of resources that we consume.

As a general matter, we find that the COMEX has not been provided with sufficient information to make a fully-informed decision on the project. We would like to see the project proponents conduct more advanced and thorough environmental and social studies on the project, given that existing analyses provided to the COMEX were completed nearly six years ago and rely on information that is older still. Moreover, we stand in support of our First Nation partners, and especially the Waswanipi Cree Nation, who have repeatedly expressed their opposition to the deforestation of one of the last intact portions of their ancestral lands.

In a period when Canada is strengthening its position as a climate change leader on the international stage, the proposed construction of Roads H West and I, which could lead to major forest loss within an important carbon sink, is inconsistent with the fight against climate change. Acknowledgment of this threat, not to mention the imminent harm these

roads would have on local caribou herds, represents an opportunity for the Québec government to reiterate its commitment to combatting climate change, preserving threatened species, and protecting valuable intact Boreal forest ecosystems.

I. A new, thorough, and up-to-date Environmental and Social Impact Statement (ESIA) should be required in order to make a fully informed decision on the project.

- A. The ESIA submitted by the proponent in March 2010 cannot serve as a basis for the COMEX's decision.

The project to build roads H West and I was first introduced by Matériaux Blanchet in July 2009. The project was submitted to the Minister of Sustainable Development, Environment and the Fight against Climate Change, which issued a directive ordering a complete environmental and social impact study in October 2009.¹

Matériaux Blanchet hired the environmental services firm EnviroCree Ltd. to prepare the ESIA, which was submitted to the COMEX in March 2010.² The COMEX started reviewing the project in April 2010, with an exchange of questions and answers between the COMEX and the proponent, until October 2010, when the project review was suspended.³

On July 13, 2015, the Agreement to Resolve the Baril-Moses Dispute was signed between the Grand Council of the Crees and the Québec government – an agreement to which the Waswanipi Cree did not consent. On the same day, the Deputy Minister of Québec's Minister of Sustainable Development, Environment and the Fight against Climate Change, Christyne Tremblay, sent a letter to the COMEX asking the Committee to resume review of the access roads construction project.⁴

On October 5, 2015, the COMEX submitted supplemental questions to the proponent requesting clarifications and further information on the project.⁵ The COMEX expressed justified concern that the impact study had not been updated since March 2010.⁶ This is a concern that we share, and we believe that a new environmental and social impact study should be required to be conducted by the proponent.

¹ Direction des Evaluations Environnementales, *Directive pour le projet de construction du chemin forestier "I" et du chemin forestier "H, section ouest" par Matériaux Blanchet inc.* (Oct. 2009), available at <http://comexqc.ca/wp-content/uploads/Directive.pdf> .

² EnviroCri, *Environmental Impact Assessment, Construction of access roads "I" and "H" by Matériaux Blanchet and the beneficiaries of FMU 86-65* (Mar. 2010), available at http://comexqc.ca/wp-content/uploads/2010-04-07-etude-dimpact-compl-te-vf-an_0.pdf .

³ COMEX, *Construction des chemins d'accès forestiers "H section Ouest" et « I » par Matériaux Blanchet inc., Questions supplémentaires* (Oct. 5, 2015), available at http://comexqc.ca/wp-content/uploads/2015-10-05_Chemins-forestiers-H-et-I_CT_Questions.pdf .

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2, « Analyses et Enjeux ».

Indeed, the project has undergone substantial change since it was first introduced in 2009; the proponents have changed, the route and length of the roads were modified, baseline environmental conditions have changed, and social and economic conditions have changed.⁷ These numerous changes are likely to have resulted in new and different environmental impacts, the scope of which must be examined in a new analysis that does not rely on an out-of-date document and supplemental submissions to final decisions and recommendations on these proposed projects. Additionally, the consultations with stakeholders that occurred five to six years ago are now outdated, and there should be a new assessment of the social impacts of the project.

The extent of the changes made to the project and the important lapse of time since the 2010 ESIA warrant a new study that will ensure that the COMEX can make a fully informed decision on the project.

B. The new materials submitted by the proponent are insufficient.

Although we acknowledge and welcome the efforts made by the proponents in submitting new materials in their answers to the COMEX's October 2015 supplemental questions, these materials lack precision and completeness, and they are insufficient to constitute the basis of a decision to authorize construction of roads H Section West and I.

First, no preliminary field surveys have been carried out to date.⁸ The project proponents argue that they have not conducted any fieldwork on the roads because of the difficulty of accessing the densely wooded areas the roads would go through.⁹ While we recognize that impediment, it cannot justify a total absence of preliminary field surveys.

In their "Action Plan," the promoters propose to carry out field surveys gradually, as the construction progresses.¹⁰ This approach can and should be used during construction; however, when it comes to the authorization of the project as a whole, a meaningful number of field surveys must be conducted in order to properly assess the affected environment and evaluate the project's impacts prior to work actually beginning on the projects, as the proponents appear to be proposing. Authorizing the project in the absence of preliminary field surveys – not to mention the proponent's survey-as-they-build approach – would amount to granting unchecked permissions to proceed with little consideration for the actual environmental impacts that will result from construction.

Second, in a number of answers to the COMEX's questions, the promoters presume that they do not need to carry out thorough assessments until after authorization is secured. For

⁷ EnviroCri, *Answers to Questions & Comments, Environmental and Social Impact Assessment (ESIA) – Construction of "west section H" and "I" forest access roads by Matériaux Blanchet inc. and the beneficiaries of the integration zone 106, see e.g. Precisions on road specifications p. 3 and QC-3 p. 6 (Dec. 3, 2015), available at http://comexqc.ca/wp-content/uploads/2015-12-03_Answers-QC-Materiaux-Blanchet_FV.pdf [hereinafter "ESIA"]].*

⁸ ESIA p. 4.

⁹ *Id.*

¹⁰ *Id.*

instance QC-5 states that “[s]ince the field surveys have not yet occurred, rivers that are fish habitats are not known with precision. It is therefore difficult to indicate the type of structure for each crossing at this point in time.” QC-6 states that “[n]o field surveys were done to characterize the material of potential borrow pits. . . . [N]o potential borrow pit is yet retained.” QC-16 states that “[s]ince no studies have been done in the field, the promoters are not able to provide a characterization of the receiving environment of the watercourse crossings at this time.” This enumeration of questions without answers goes on and results in an overall lack of clarity in the proponent’s application, not to mention creating an impossible task for the COMEX to complete its duty to carry out a thorough consideration of these proposals’ environmental threats.¹¹

Additionally, in QC-17, we can see that the promoter is relying on consultations with impacted communities dating back to January 20, 2010. While consultations with tallymen have been held since October 2010, there is no comprehensive report on those consultations, and the promoter’s conclusion in QC-23 – “In short, numerous consultations have been performed and several trappers are pleased with the projected roads” – denotes a lack of understanding of the importance of the issue to the Waswanipi community as a whole.

The lack of precision of the new materials submitted by the promoter fails to answer the concerns expressed by the COMEX regarding a number of environmental and social impacts flowing from these proposed projects. These vague answers cannot replace the essential role played by a full, up-to-date ESIA, and we therefore once again urge the COMEX to require a new assessment of the environmental and social impacts of the project.

II. The irreversible environmental impacts of the project far outweigh its economic benefits.

The area south of the Broadback River where the project proponents wish to build roads H West and I is one of the last intact forest landscapes in Québec. This pristine forest supports a rich ecosystem of flora and fauna that will not survive road-building in the area, not to mention the eventual forestry activity such roads are anticipated to facilitate.

The intact forest surrounding the Broadback River is critical habitat for the endangered woodland caribou. The proponent’s own data show that woodland caribou are present in the area impacted by the project.¹² Map QC-11a indicates that although woodland caribou frequent areas north and east of the road project in higher concentration, they are found in the area directly impacted by the roads, and telemetry points were collected on the direct path of road I. It is also important to understand that, as the promoters noted, the telemetry points correspond to adult female caribou equipped with a GPS collars, hence when one point is seen on the map, it can suggest the presence of more than a single individual.¹³

¹¹ No precise information is submitted by the promoter regarding impacts on aquatic wildlife and habitat (QC-31), nor bald eagle nesting sites (QC-29), nor habitat types in watercourse crossings approaches (QC-25).

¹² ESIA p. 13.

¹³ ESIA p. 12.

Additionally, map QC-12a shows the probability of occurrence of woodland caribou based on quality of habitat.¹⁴ This map is based on a study conducted by woodland caribou expert Tyler Rudolph for the Ministère des Ressources naturelles et de la Faune du Québec and the Grand Council of the Crees (Eeyou Istchee) in 2012.¹⁵ In this authoritative study, Rudolph highlights the critical status of the woodland caribou, and the disastrous impacts that road-building would have on the species:

“The importance of road networks in determining space use and demographic dynamics of woodland caribou cannot be understated (St-Laurent *et al.* 2012). Not only do roads contribute enormously to landscape fragmentation and habitat loss by accommodating industrial resource development, they also facilitate improved access to previously unexploited habitats for both animal and human predators (James & Stuart-Smith 2000). Expansion of road networks may therefore profoundly compromise the viability of woodland caribou populations, as the recruitment-disturbance relationship demonstrates.”¹⁶

As shown on map QC-12a, roads H West and I would cut into the heart of increasingly sparse and already constricted woodland caribou habitat.¹⁷ This proposed construction project is expected to drive woodland caribou out of an area where the available data shows they have thrived. This goes against the protection and recovery goals set by the Québec government in the 2013-2023 Woodland Caribou Recovery Plan.¹⁸

We would also like to draw your attention to the proximity of the proposed roads to several biological refuges, as seen on map QC-6b.¹⁹ Biological refuges are small forest areas kept off limits from forestry activities with the aim of providing permanent protection to species in the area.²⁰ Their creation answers the international concern around the increasing scarcity of old growth forests that support vulnerable and disappearing ecosystems.²¹ As stated in the ESIA, “[t]hey are created to retain mature or superannuated forests representative of the forest heritage and to maintain biodiversity. They are dispersing centers for species with

¹⁴ ESIA, p. 14.

¹⁵ Rudolph, T.D., Drapeau, P., St-Laurent, M-H. and Imbeau, L., *Status of Woodland Caribou (Rangifer tarandus caribou) in the James Bay Region of Northern Québec*, Scientific report presented to the Ministère des Ressources naturelles et de la Faune du Québec and the Grand Council of the Crees (Eeyou Istchee), 72 pp. (2012), available at http://www.gcc.ca/pdf/Final-Rapport-Status-of-Woodland-Caribou-James-Bay_Eeyou-Istchee.pdf.

¹⁶ *Id.* at 40.

¹⁷ ESIA p. 14.

¹⁸ Équipe de rétablissement du caribou forestier du Québec (2013). *Plan de rétablissement du caribou forestier (Rangifer tarandus caribou) au Québec – 2013-2023*, produit pour le compte du ministère du Développement durable, de l'Environnement, de la Faune et des Parcs du Québec, Faune Québec, 110 pp., available at <http://www.mffp.gouv.qc.ca/publications/faune/especes/Plan-retablissement2013-2023.pdf>.

¹⁹ ESIA p. 9.

²⁰ Ministère des Forêts, de la Faune et des Parcs, *Les refuges biologiques: des forêts mûres ou surannées représentatives du patrimoine forestier du Québec*, <http://www.mffp.gouv.qc.ca/forets/amenagement/amenagement-objectifs-refuges.jsp>

²¹ *Id.*

small vital ranges associated to old forests, and serve as dispersion relays for species with large vital ranges. Thus, they would promote ecological connectivity between protected areas of large size.”²²

The project proponents correctly state that there is no buffer zone around a biological refuge that would prevent the construction of a road.²³ However, building a road so close to several biological refuges will inevitably have negative impacts on the refuges and the species they shelter because of dust, nearby circulation of vehicles, increased noise, vibrations, and the added stresses caused by this variety of impacts. Further, once the roads are built and logging begins in the area, species may be prevented from moving between biological refuges, thus hampering the desired ecological connectivity envisioned when the refuges were created.

Under the renewed Plan Nord, Québec has pledged to dedicate 50% of the area covered by the Plan Nord to non-industrial purposes, protection of the environment, and the safeguarding of biodiversity by 2035.²⁴ Plan Nord set a goal of a total of 20% of protected areas in the area covered by the Plan Nord by 2020, of which at least 12% will comprise boreal forest north of the 49th parallel.²⁵ The Broadback forest is a perfect candidate for protection under Plan Nord, and this is an opportunity for the Québec government to move a step closer to its objectives. Authorizing the construction of roads H West and I would be inconsistent with the goals that Québec has set for itself.

III. The project lacks social acceptability among the local community.

The COMEX is tasked with reviewing not only environmental but also social impacts of a given project within its jurisdiction. Roads H West and I would cross five Cree traplines and step into the heart of the last remaining intact traditional lands of the Cree First Nation of Waswanipi.²⁶ This community has been very vocal about their opposition to this proposed construction project, and the lack of support among the impacted community must be identified by the COMEX as a severe impediment to the project’s authorization.²⁷

First, the review of the project was resumed despite Waswanipi’s opposition to the July 2015 agreement. In this agreement, the Grand Council of the Crees agreed not to oppose the environmental review of several road-building projects on Cree lands; however, the Waswanipi protested the agreement, which was entered into without their consent.²⁸ The

²² ESIA, QC-34, p. 29.

²³ *Id.*

²⁴ Société du Plan Nord, Québec Government, *The Plan Nord toward 2035, 2015-2020 Action Plan*, http://plannord.gouv.qc.ca/wp-content/uploads/2015/04/Synthese_PN_EN.pdf .

²⁵ *Id.*

²⁶ ESIA p. 3.

²⁷ See Chief Marcel Happyjack, *Statement on COMEX public hearing, Waswanipi, January 19, 2016, available at* <http://www.waswanipi.com/en/chief-message> .

²⁸ Waswanipi Press Release, *Agreement to Resolve Baril Moses Dispute: Cree Nation of Waswanipi Calls for Protection of its Last Intact Forests*, July 13, 2015, *available at*

Québec government was well aware of Waswanipi's disagreement with the terms of the July 2015 agreement, and a letter was annexed to the agreement stating the intention of the government to engage in "meaningful discussions with the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government and Waswanipi regarding options for protective measures in this area."²⁹

Those negotiations are currently ongoing, and a rushed decision on roads H West and I risks compromising them. Making any decision on the authorization of the project before a satisfactory resolution is found for all stakeholders undermines the validity of the COMEX's process and any conclusions or recommendations that the committee may make. We urge the COMEX to acknowledge that reaching a decision on these proposed projects should not occur so long as the conflict between the Waswanipi and the Québec government is not resolved. Therefore, we urge the COMEX to suspend the review process until resolution is achieved.

As a First Nation, the Crees of Waswanipi have aboriginal rights guaranteed by the Canadian constitution and international law. They also have treaty rights under the James Bay and Northern Québec Agreement. This regulatory framework ensures that the Cree of Waswanipi have the right to participate in decision-making processes on issues impacting them. This right to free, prior and informed consent has been recognized in the past by the COMEX.³⁰

Specifically, during the environmental and social review of the Matoush Uranium project in 2011, the COMEX concluded that it could only authorize the project if its proponent obtained sufficient social acceptability: "The proponent must obtain the Cree's consent, through the Mistissini Band Council, with regard to the project's social acceptability, and must enter into a written agreement to that effect."³¹ The project was eventually rejected by the Québec government due to lack of social acceptability.³²

The present situation places the COMEX in a similarly difficult position: the Cree community directly affected by the project has expressed significant opposition and, therefore, the proposal for construction of roads H West and I does not have the appropriate level of social acceptability among members of the Waswanipi community to move forward. For this reason, we urge the COMEX to reject the project, or at the very least to suspend its review

<http://www.waswanipi.com/en/component/content/article/4-news/454-press-release-agreement-to-resolve-baril-moses-dispute-cree-nation-of-waswanipi-calls-for-protection-of-its-last-intact-forests> .

²⁹ Agreement to Resolve the Baril-Moses Forestry Dispute between the Cree Nation of Eeyou Istchee and the Gouvernement du Québec, July 13, 2015, Schedule C, Joint Letter between Premier Ministre Philippe Couillard and Grand Chief Dr. Matthew Coon Come, *available at* <https://www.autochtones.gouv.qc.ca/actualites/2015/documents/entente-cris/entente-baril-moses-en.pdf> .

³⁰ COMEX, *Environmental Review Report for the Matoush Uranium Exploration Project* (July 2011), *available at* http://www.gcc.ca/pdf/COMEX-Matoush-report_ENG.PDF .

³¹ *Id.* at 31.

³² Council of the Cree Nation of Mistissini, *No Uranium Development without our Consent*, Brief presented to Bureau d'Audiences Publiques sur l'Environnement for the public consultation on uranium industry issues in Québec (Oct. 24, 2014), p. 7, *available at* <http://www.bape.gouv.qc.ca/sections/mandats/uranium-enjeux/documents/MEM25.pdf> .

until a satisfactory agreement is reached between the Waswanipi, the project proponents, and the Québec government.

IV. The construction of roads H and I is inconsistent with Québec's climate change commitments.

Canada joined the international community in Paris to reach an ambitious agreement to fight climate change.³³ This agreement renews Canada's commitment to do its part in the fight against global warming, and strengthens the Government of Canada's position as an international leader ready to work with its provincial and territorial governments to take action on climate change.³⁴ Since long before the Paris Agreement, Québec has positioned itself as a leader in the fight against climate change, implementing climate action plans and an ambitious Cap-and-Trade System for greenhouse gas emissions.³⁵ Today, Québec has an opportunity to take an important step on climate by protecting its remaining intact forests.

The boreal forest provides First Nations, Québeckers, and all Canadians with an exceptionally important natural resource that is of global importance. Not only is it the seasonal home to nearly all North American migratory birds, it provides the remaining habitat for iconic species such as woodland caribou. On a global scale, the Canadian boreal forest is also an important carbon sink. While the amount of carbon stored in the boreal remains has yet to be quantified with precision – many studies suggest that the boreal holds more carbon than the equatorial rain forest – scientists agree that the boreal forest contains vast amounts of carbon and constitutes a powerful tool in fighting climate change.³⁶

The construction of forestry roads in the Broadback would signal the end of this pristine and invaluable forest. Indeed, the construction of roads H West and I is a project that cannot be looked at separately from its purpose and the larger goal in building forest access roads that will facilitate the removal of large amounts of timber from the area. This project is the first step in the industrial exploitation of the wilderness surrounding the Broadback River³⁷ and would create serious dissonance with Québec's climate policies and leadership.

In light of the irreversible environmental impacts of the projects and its long-term implications regarding climate change, we urge the COMEX to recommend that authorization for the construction of roads H West and I be denied.

³³ Canada's Action on Climate Change, Government of Canada, *The Paris Agreement*, <http://www.climatechange.gc.ca/default.asp?lang=En&n=24700154-1> .

³⁴ Canada's Action on Climate Change, Government of Canada, *Canada's Way Forward on Climate Change*, <http://www.climatechange.gc.ca/default.asp?lang=En&n=72F16A84-1> .

³⁵ Ministère du Développement durable, de l'Environnement et de la Lutte contre les Changements Climatiques, Gouvernement du Québec, *Québec: A Leader in the Fight against Climate Change*, <http://www.mddelcc.gouv.qc.ca/changementsclimatiques/index-en.htm> .

³⁶ Carlson, M., Wells, J., Roberts, D., *The Carbon the World Forgot: Conserving the Capacity of Canada's Boreal Forest Region to Mitigate and Adapt to Climate Change*, Boreal Songbird Initiative and Canadian Boreal Initiative, 33 pp. (2009), available at <http://www.borealbirds.org/sites/default/files/pubs/report-full.pdf> .

³⁷ ESIA p. 5.

V. Conclusion

Building the proposed roads H West and I would have substantial impacts on one of the last remaining intact forests in Québec. The project's proponents have not analyzed its environmental and the social impacts with sufficient depth.

In the absence of adequate environmental information and in light of the clear lack of social acceptability facing the proposal, we respectfully ask the COMEX to deny authorization of the project, a decision consistent with Québec's own biodiversity conservation and climate change policies.

Sincerely,



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