



Environmental Protection Operations
5204 - 50th Avenue, Suite 301
Yellowknife, NT X1A 1E2
Fax: 867-873-8185

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Our File 4703 001 075

Phyllis Beaulieu
Manager of Licensing
Nunavut Water Board
P.O. Box 119
Gjoa Haven, NU X0B 1J0

licensing@nunavutwaterboard.org

Attention: Phyllis Beaulieu

Re: NWB 2BE-KIY - Kiyuk Lake Project - Newmont Canada Ltd.

EPO's contribution to your request for specialist advice is based on the mandated responsibilities for the enforcement of **Section 36(3)** of the *Fisheries Act*, the *Canadian Environmental Protection Act* (CEPA), the *Migratory Birds Convention Act* (MBCA) *Regulations* and the *Species at Risk Act* (SARA). Based on the information provided, EC believes that the above noted project has the potential to affect fish pursuant to the *Fisheries Act*, migratory birds pursuant to the *Migratory Birds Convention Act* and wildlife pursuant to the *Species at Risk Act*.

Environment Canada supports the mitigation measures outlined in the above noted application proposed by Newmont Canada Ltd. for their, Kiyuk Lake Project, and would like to add the following comments and recommendations.

Comments and Recommendations

- The proponent shall insure that any chemicals, fuel or wastes associated with the proposed project do not enter waters frequented by fish. It is a requirement of Section 36(3) of the *Fisheries Act* that all effluent discharged into water frequented by fish, be non-deleterious.
- The proponent should be aware that any spill of fuel or hazardous materials, adjacent to or into a water body, regardless **of quantity**, should be, reported immediately to the NWT/NU 24-hour Spill Line, (867) 920-8130.
- In the proponents Spill Contingency Plan, the Environment Canada contact number, **(867) 975 - 4639**, should be changed to the Environment Canada 24 hour on call Duty Officer at: **(867) 766 - 3737**.
- Spill contingency plans should also include the locations of disposal sites which are approved to accept wastes and the proponent should have a means of proper storage prior to disposal.
- All sumps, spill basins and fuel caches should be located in such a manner that their contents do not enter any water body and they are to backfilled and re-contoured to match the surrounding landscape when they are no longer required.
- All fuel caches should be, inspected and documented on a regular basis.
- Regardless of the type of drilling conducted, the following conditions will apply:
 - * Drilling wastes from land-based drilling should be disposed of in a sump such that they do not enter any body of water.
 - * For lake-based winter drilling the proponent may refer to the Interim Guidelines for On-Ice drilling. Return water released to the lake must be non-toxic. Return water release must not result in an increase in total suspended solids in the waters of the lake that exceeds Canadian Council of Ministers of the Environment (CCME) Guidelines for the Protection of Freshwater Aquatic Life (i.e. 10 mg/L for lakes with background levels under 100 mg/L, or 10% for

those above 100 mg/L).

- * Drilling additives or mud shall not be used in connection with holes drilled through lake ice unless they are re-circulated, contained such that they do not enter the water, or are demonstrated to be non-toxic.

The Canadian Wildlife Service (CWS) of Environment Canada has reviewed the above-mentioned submission and makes the following comments and recommendations pursuant to the *Migratory Birds Convention Act* (the *Act*) and *Migratory Birds Regulations* (the *Regulations*), and the *Species at Risk Act* (SARA).

1. Section 6 (a) of the *Migratory Birds Regulations* states that no one shall disturb or destroy the nests or eggs of migratory birds. Therefore, Environment Canada recommends that all activities in which there is a risk of disturbing or destroying nests or eggs be conducted outside the migratory bird breeding season, which extends from approximately May 15 to July 31. These dates are approximate, and if active nests (i.e. nests containing eggs or young) are encountered outside of these dates the proponent should avoid the area until nesting is complete (i.e. the young have left the vicinity of the nest).
2. For activities permitted to occur during the breeding season, Environment Canada recommends that the proponent confirm there are no active nests (i.e. nests containing eggs or young) in the vicinity of their operations before activities commence. If active nests of migratory birds are discovered, the proponent should halt all activities in the nesting area until nesting is completed (i.e. the young have left the vicinity of the nest).
3. In order to reduce disturbance to nesting, moulting, and migrating birds, Environment Canada recommends that aircraft used in conducting project activities maintain a flight altitude of at least 610 m during horizontal (point to point) flight unless safety or cloud ceiling do not permit. Environment Canada also recommends that aircraft maintain a vertical distance of 1000 m and minimum horizontal distance of 1500 m from any observed concentrations (flocks / groups) of birds.
4. Environment Canada recommends that camp waste be made inaccessible to wildlife at all times. Camp waste can attract predators of migratory birds (e.g., foxes and ravens) to an area if not disposed of properly.
5. Section 5.1 of the *Migratory Birds Convention Act* prohibits persons from depositing substances harmful to migratory birds in waters or areas frequented by migratory birds or in a place from which the substance may enter such waters or such an area.
6. All mitigation measures identified by the proponent, and the additional measures suggested herein, should be strictly adhered to in conducting project activities. This will require awareness on the part of the proponents' representatives (including contractors) conducting operations in the field. Environment Canada recommends that all field operations staff be made aware of the proponents' commitments to these mitigation measures and provided with appropriate advice / training on how to implement these measures.
7. Implementation of these measures may help to reduce or eliminate some effects of the project on migratory birds, but will not necessarily ensure that the proponent remains in compliance with the *Migratory Birds Convention Act* (the *Act*) and *Migratory Birds Regulations* (the *Regulations*). The proponent must ensure they remain in compliance with the *Act* and *Regulations* during all phases and in all undertakings related to the project.
8. The following comments are pursuant to the *Species at Risk Act* (SARA), which came into full effect on June 1, 2004. Section 79 (2) of SARA, states that during an assessment of effects of a project, the adverse effects of the project on listed wildlife species and its critical habitat must be identified, that measures are taken to avoid or lessen those effects, and that the effects need to be monitored. This section applies to all species listed on Schedule 1 of SARA. However, as a matter of best practice, Environment Canada suggests that species on other Schedules of SARA and under consideration for listing on SARA, including those designated as at risk by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), be considered during an environmental assessment in a similar manner.

Species at Risk that may be encountered	COSEWIC Designation	Schedule of SARA	Government Organization with Primary Management Responsibility ¹
Short-eared Owl	Special Concern	Schedule 3	Government of Nunavut
Peregrine Falcon	Special Concern	Schedule 3	Government of Nunavut

(subspecies tundrius)			
Grizzly Bear	Special Concern	Pending	Government of Nunavut
Wolverine (Western Population)	Special Concern	Pending	Government of Nunavut
Rusty Blackbird	Special Concern	Pending	Government of Nunavut

¹ Environment Canada has a national role to play in the conservation and recovery of Species at Risk in Canada, as well as responsibility for management of birds described in the *Migratory Birds Convention Act* (MBCA). Day-to-day management of terrestrial species not covered in the MBCA is the responsibility of the Territorial Government. Thus, for species within their responsibility, the Territorial Government is best suited to provide detailed advice and information on potential adverse effects, mitigation measures, and monitoring.

Impacts could be disturbance and attraction to operations.

Environment Canada, CWS, also recommends the following:

- Species at Risk that could be encountered or affected by the project should be identified and any potential adverse effects of the project to the species, its habitat, and/or its residence noted. All direct, indirect, and cumulative effects should be considered. Refer to species status reports and other information on the Species at Risk registry at www.sararegistry.gc.ca for information on specific species.
- If Species at Risk are encountered or affected, the primary mitigation measure should be avoidance. The proponent should avoid contact with or disturbance to each species, its habitat, and/or its residence.
- Monitoring should be undertaken by the proponent to determine the effectiveness of mitigation and/or identify where further mitigation is required. As a minimum, this monitoring should include recording the locations and dates of any observations of Species at Risk, behaviour, or actions taken by the animals when project activities were encountered, and any actions taken by the proponent to avoid contact or disturbance to the species, its habitat, and/or its residence. This information should be submitted to the appropriate regulators and organizations with management responsibility for that species, as requested.
- For species under the responsibility of the Territorial Government, the Territorial Government should be consulted to identify other appropriate mitigation and/or monitoring measures to minimize effects to these species from the project.
- Mitigation and monitoring measures must be taken in a way that is consistent with applicable recovery strategies and action/management plans.

EPO should be notified of changes in the proposed or permitted activities associated with this application.

Please do not hesitate to contact me at (867) 669-4744 or ron.bujold@ec.gc.ca with any questions or comments.

Yours truly,

Ron Bujold
Environmental Assessment Technician

cc: Carey Ogilvie (Head, Assessment & Monitoring, EPO)
Mike Fournier (Northern Environmental Assessment Coordinator, A&M, EPO)
Myra Robertson (Environmental Assessment Coordinator, CWS)