

September 11, 2009

Honourable Stan Struthers
Minister of Conservation
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Ms. Tracy Braun
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Dear Minister Struthers and Ms. Braun;

**Re: Appeal of Licence No. 2896 Issued to Tolko Industries Ltd. for the Dickstone South Road
(Public Registry File #3094.70)**

As per Section 27(1) of Manitoba's Environment Act, please consider this letter a formal appeal of the decision to issue Licence No. 2896 to Tolko Industries Ltd., dated August 12, 2009, for the Dickstone South Road.

We would first like to call attention to our initial comments on the proposal for Tolko's Dickstone South road. As noted in our May 14, 2008 letter, "The proposal raises some significant questions and concerns that are not answered in the material submitted as part of the proposed license alteration". We continue to assert that most of our comments have not been addressed by either the proponent, the Environmental Assessment and Licensing Branch summary report or the licence conditions. (For instance, the proponent has not explained why all-season access is required for this forestry road when most forest access roads are seasonal.) A few points raised in our May 14, 2008 letter are particularly relevant to this appeal and will be reiterated as part of the reasons for appeal outlined below.

Parks as Areas to Manage for the Public Good

As Crown lands, Manitoba's parks belong to Manitobans and are managed by the government for the public good. The question of how this proposed development will benefit Manitobans is very pertinent. As the purpose of Tolko's Dickstone South Road is to transport fibre resources that will be harvested

outside the park, it seems clear that this road will primarily benefit Tolko Industries Ltd., a private company.

The question of who benefits from the Dickstone South road carries all the more weight in light of the fact that both the original December 1984 *Grass River Park Management Plan* and the 1997 *System Plan for Manitoba's Provincial Parks* articulate the primary purpose of the park as being related to maintaining ecological structure and function. Commercial interests are clearly subordinated to the primary purpose (see below for more detailed discussion and references to the primary purposes of Grass River Provincial Park). A road is in direct contradiction to objectives to promote ecological integrity.

It is also important to acknowledge here that although the 2009 *Forest Amendment Act* is not about roads or park purposes and its clauses do not preclude roads in parks, the amendment banning logging in provincial parks functions appears to promote ecological integrity. Roads, and in particular roads that are only for the benefit of a private company, are not in keeping with this principle/value or the stated intent of the 2009 *Forest Amendment Act*. We continue to maintain that logging activity under this Act should include logging roads.

The flip side of the question of 'who benefits?' must be consideration of the potential benefits to Manitobans if the area remains closed to logging and available for woodland caribou, or indeed if the area were to become formally protected. (The network of protected areas in the natural region where Grass River Provincial Park is situated is far from complete). We are sure this issue was not considered as part of the licensing decision.

Need/Justification for Routing the Dickstone South Road Through Grass River Provincial Park

The Dickstone South road does not have to be routed through Grass River Provincial Park, not to mention through areas of the park closed to logging (and now will be closed in perpetuity, given new amendments to the *Forest Act* to prohibit logging in parks).

The proponent presented several different options and cost was obviously a primary factor in selecting the final route. As licenced, Tolko's proposed all-weather road will bisect areas of intact boreal forest that have and will continue to be closed to logging. However, the Director of Environmental Assessment and Licensing Branch also had the option of rejecting Tolko's preferred route and requiring the proponent to make use of an alternate route that avoids Grass River Provincial Park. Such a decision would be justified by the fact that the area is zoned to encourage and support intact forest areas and as noted above, the 2009 *Forest Amendment Act* now further reinforce this principle. Such a decision would far also better reflect the public's interest.

Many of the reasons for the rejection of an all weather road through southern Forest Management Units of the Tolko licence area apply to this proposal also – thereby providing the Director a precedent in

responding to this proposal when it first arrived. Also, the previous detailed, two-year long process, which resulted in a rejection of Tolko's request for a permanent all weather road contains applicable species, technical and scientific information relevant to this decision. We recommend the Director provide the Minister with basis for the decision to reject the earlier Tolko request for a permanent all weather road. The woodland caribou information in itself is essential to apply to this current decision. Clearly these steps were not taken before the licence was issued to Tolko. That omission is also grounds for appeal of the licence.

Perhaps the policy and procedures manual regarding provincial parks under the current Act is explicit about this kind of sequence in decisions for requests for roads in provincial parks. Perhaps the policy and procedures manual for the *Environment Act* also directs how such a precedent (previous rejection of Tolko all weather road request) affects this proposal under the Act. The lack of public access to policy and procedural standards for both Acts greatly reduces the viability of both Acts and their regulations, while greatly risking the legality of decisions being taken. We assume the policy and procedures manual for the *Environment Act* is explicit about the relevance of the Manitoba laws pertaining to the location for any proposal under the Act, especially the relationship between two or more Acts – and how, for instance, The *Parks Act* is to be taken into account.

Because this road is being constructed primarily to benefit a private company and has not been shown to be in the public interest, and because there is no essential reason (other than for the economic advantage of Tolko Industries Ltd.) that this road must be routed through Grass River Provincial Park, Manitoba Wildlands asserts that the decision to issue a licence for the South Dickstone Road is in error and must be cancelled.

Parks and Natural Areas Branch Objection to Tolko's Dickstone South Road

We are also greatly concerned that this licensing decision has ignored the concerns and outright rejection of Tolko's proposed Dickstone South road by the Parks and Natural Areas Branch,

The Branch opposes the Dickstone South All-weather Road Project in Grass River Provincial Park as proposed. The Branch prefers a road option that avoids crossing the park.

(Tolko Industries Ltd. Dickstone South Road Summary Report

<http://www.gov.mb.ca/conservation/eal/archive/2009/summaries/3094-7.pdf>)

Parks Branch's objection to the project centres on the fact that the proposed development is not in keeping with the primary purposes of the park, as articulated in both the December 1984 *Grass River Park Management Plan* and the 1997 *System Plan for Manitoba's Provincial Parks*.

The December 1984 *Grass River Park Management Plan* indicates that one of the primary purposes of Grass River Provincial Park is to "maintain the representative flora and fauna of the Precambrian

Shield and Manitoba Lowlands”. The December 1984 plan also states the park will “accommodate commercial use of resources where this does not lessen future recreational use or unduly compromise the Park’s primary purposes”.

As the Parks Branch points out, the 1984 plan must be considered in light of the passage of new Parks Act and the creation of a new park system plan in 1997. With reference to Grass River Provincial Park the document, *A System Plan for Manitoba’s Provincial Parks* states that the purpose of the park is “to preserve areas that are representative of the Churchill River Upland portion of the Precambrian Boreal Forest Natural Region, and the Mid-Boreal portion of the Manitoba Lowlands Natural Region; and accommodate a diversity of recreational opportunities and resource uses.”

However, what is key here is how this purpose is to be achieved; commercial resource uses are NOT allowed to compromise other park purposes (*A System Plan for Manitoba’s Provincial Parks*):

To achieve this, the park will:

- *Preserve woodland caribou habitat and the high water quality of the Grass River;*
- *Promote canoeing, camping and fishing opportunities, and permit related services and facilities;*
- *Promote public appreciation and education of the cultural and natural history of the Grass River; and*
- *Accommodate commercial resource uses such as forestry and mining, where such activities do not compromise the other park purposes.*

In summary, although both the 1984 management plan and the 1997 system plan acknowledge the possibility of a road, as the Parks and Natural Areas Branch noted in their 2008 comments, “in both documents approval of the road proposal is subject to the requirements of meeting the primary objectives for the park”.

We would like to add that a road will fragment this area and affect the preservation of areas within Grass River Provincial Park that are representative of the Churchill River Upland portion of the Precambrian Boreal Forest Natural Region, and the Mid-Boreal portion of the Manitoba Lowlands Natural Region. This clearly goes against one of the primary purposes of Grass River Provincial Park. It also contradicts the government’s policy with regard to protecting and representing the lands and waters in each natural region. References above are to the Manitoba government’s system for identification and classification of natural regions.

Further, the 1984 Management Plan does not in fact, as the proponent claims, make allowance for a road to access timber, ***north of the park***, but rather the road was envisioned to allow access to timber ***within the park***. The passage of the Forest Amendment Act in 2009 prohibiting logging in parks makes the 1984 Management Plan road allowance for a road irrelevant.

The decision to issue a licence for the South Dickstone Road clearly is at odds with the primary purposes of the Grass River Provincial Park and for this reason, the licence should be cancelled.

Caribou

In their 2008 comments, Parks and Natural Areas Branch also cites issues related to caribou management as forming significant aspect of their objection to the Dickstone South road. We agree with and support these assertions and submit that the licence does not adequately address the concerns raised.

To begin, the December 1984 *Grass River Park Management Plan* indicates that one of the primary purposes of Grass River Provincial Park is to “protect and preserve significant woodland caribou herds”. Since the 1984 plan, woodland caribou have been listed as ‘Threatened’ under both the federal *Species at Risk Act* (June 2003) and under the *Manitoba Endangered Species Act* (June 2006). According to *Manitoba’s Conservation and Recovery Strategy for Boreal Woodland Caribou*, the Naosap Woodland Caribou herd, a herd that is considered to be at high risk by Manitoba Conservation, uses Grass River Provincial Park and the surrounding area as habitat (both calving and wintering). Finally, despite four years having elapsed since the release of the 2005 Conservation and Recovery Strategy for Boreal Woodland Caribou, no Recovery Action Plan is in place for the Naosap Herd (or any woodland caribou herd in Manitoba).

The Dickstone South road proposal is not in keeping with the Government of Manitoba’s commitment to woodland caribou recovery and simply put, it would be bad policy to allow a road in this area when no Recovery Action Plan is in place for the Naosap Herd.

Please also see our comments above regarding which Act takes precedence when provisions of other Acts or laws of Manitoba are applicable to the location for a proposal under the *Environment Act*. The *Manitoba Endangered Species Act* is also applicable in this instance. Again, which Act or Acts take precedence? And how does the *Environment Act* fulfill the requirements of other Acts when a licence is issued? Which Acts can legally be ignored in issuing this licence? Obviously a further question pertains – on what basis can the public policy of the Manitoba government be ignored or contradicted by the issuing of a licence for industrial activity?

The *Summary Report* (<http://www.gov.mb.ca/conservation/eal/archive/2009/summaries/3094-7.pdf>) comments regarding woodland caribou (see pg. 28-30) do not alleviate concerns raised by Parks Branch and in fact support their concerns. For instance, the Wildlife and Ecosystem Protection Branch comments on page 29 include the admission that cumulative effects of all the linear features in the region on woodland caribou are unknown.

Review of our May 2008 comments will also show that gating this road simply will not keep human predators out of the caribou wintering and calving areas.

The weak licence requirement to “participate in monitoring and research activities relating to woodland caribou in proximity to the Development within Grass River Provincial Park in cooperation with Manitoba Conservation” does not adequately address the concerns raised by the Parks and Natural Areas Branch and in peer-reviewed literature (regarding cumulative effects of corridors and fragmentation) and do not reflect a precautionary approach, which is warranted by the comments from the Wildlife and Ecosystem Protection Branch. For these reasons, the licence for the Dickstone South road should be cancelled.

Dickstone South Road as Licence Alteration Associated with Tolko’s 1997-2009 Forest Management Plan

We still object to this Licence being pursued as an alteration to Tolko’s *Environment Act* Licence No. 2302 E R in association with the 1997-2009 Forest Management Plan. As this road was never envisioned to be constructed and operating during the timeframe of the FMP, this road should be part of the next FMP review and licensing process. That precedent also exists – significant new roads, especially all weather roads, have consistently been part of the proposal filed by a forestry company when new Forest Management Plans, EIS, etc. are filed for review, and licensing process.

Finally, permanent all weather roads inside Forest Licence Areas in Manitoba inevitably involve, at the least provincial funds for construction, and sometimes also federal funds are applied to construction of said road. Manitoba Wildlands objects formally to the lack of information as to public funds use for this road.

Thank you for your consideration of our appeal.

Yours truly,

ORIGINAL SIGNED BY

Gaile Whelan Enns
Director, Manitoba Wildlands

cc
Aaron Berg, Manitoba Justice