

E1-18885



Re: question re Pt MacKenzie RR extension clearing schedule

Maureen\_deZeeuw to: Brian Lindamood

05/01/2012 09:27 PM

Cc: benjamin.n.soiseth, David.Navecky, "Barbara Hotchkin",  
"Jeffrey.Schively@hdrinc.com", doug.limpinsel, lacroix.matthew

1 attachment



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Dear Brian,

I appreciate the response to my concerns that arose from the April 17 phone call I received from a potential project contractor. I am sorry to hear that these timing issues have arisen with construction. While we understand that issues such as these do arise unexpectedly in Alaska's short construction season, we recommend that you notify the relevant resource agencies immediately once the issue does arise (especially with such a "well-scoped" project), so that the best possible coordination and wildlife resource protections can be achieved.

At this point, in the case of this particular construction segment, I have the following to offer and ask:

- It would still be helpful to have some specific details, such as amount of acreage potentially affected (the entire ROW width of all of Segment 6?).
- For my clarification, if I'm understanding correctly Brian, is the plan to have the contractor(s) 1) notify you 14 days in advance of the clearing, whenever it may occur; 2) complete all in/near water work that could directly impact fish, and all land clearing between the dates of July 16 - 29, 2012; and 3) barring their inability to complete the work in that period, they are to begin prior to July 16 but still finish prior to July 30, contact USFWS, and also arrange for nest surveys to be conducted?
- Has any coordination with ADFG regarding this particular timing conflict been attempted?
- We appreciate the attempt at addressing the protection of migratory birds by adding contractual details regarding nest surveys, and would not attempt to dissuade you from conducting them since it appears it may be too late to plan other methods of protection. Without knowing more details about this project issue, I reiterate, however, that our standard recommendation is "avoidance timing," rather than surveys. This is because the latter are generally expensive and ineffective, and unlikely to "buy" a project developer much since no permit is available to move nests and it is impractical to work around the many nests that will be, detected or not, present. An experienced biologist or technician who might be approached for such work will recognize that in the average shrubby or otherwise well-vegetated Alaskan lowland acreage such as occurs in the Houston-to-Point MacKenzie area, the majority of active landbird nests are unlikely to be located with a few days of surveys such as you describe.
- We agree that it is appropriate for the winning contractor to contact us ASAP if they believe clearing must occur during May 1 - July 15 (or if they have any other questions or

concerns regarding migratory birds). We appreciate being informed of such activities in advance just in case we are able to assist with improved plans.

Thank you,  
Maureen

Maureen de Zeeuw  
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Maureen-

Thank you bringing this issue to my attention. It appears that there is some confusion surrounding our construction activities for the Port MacKenzie Rail Extension (PMRE) project. The project has been broken into segments to match funding availability. The first segment construction contract was awarded in January of this year, and I believe all of the clearing has been completed on that portion of the project

(the first 4-5 miles north of Port MacKenzie). There is a second bid opening (for Segment 6), currently scheduled for May 7th, that has been generating a lot of discussion among local contractors, but please keep in mind that we have not yet awarded that bid. I can assure you that when the bids are awarded, all work will be completed in accordance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

While it has been ARRC's intent to avoid tree clearing between May 1 and July 15, conflicting regulatory requirements are beginning to cause schedule conflicts for Segment 6. Because of the short summer construction season, ARRC cannot say for certain that all tree clearing activities will completely avoid the May 1 to July 15 time-frame. In this particular case, there is some grading work associated with a large culvert replacement that must be completed prior to July 30th to comply with Alaska Department of Fish and Game's proposed permit requirements. The work is limited to the ARRC right-of-way in an area which generally has grasses and wetland vegetation. However, access to the area is very difficult, and the successful contractor will have to do some additional site improvements to even access the work location. Without a specific work plan from the contractor (again, the bid has not been awarded yet), it is impossible for us to define what those site improvements are at this time. Accordingly, ARRC has added the following contractual language to the construction bid for the contractor to adhere to:

"The Contractor is responsible for avoiding losses under the Migratory Bird Treaty Act. The Contractor may consult with the U.S Fish and Wildlife Service (USFWS) and request a variance on conducting Clearing and Grubbing activities between May 1 and July 15. The ARRC will require a copy of the stipulations and documentation of the requirements of an issued variance from the USFWS. The Contractor will be responsible for appropriate actions to take if a nest is discovered during construction."

If the contractor cannot acquire a variance from your office based on its proposed schedule or clearing methods, ARRC would conduct a thorough nest survey of the area, and we would consult with your office regarding that survey. In general, a team of qualified biologists would walk the area and make a good faith effort to locate active nests. The expected survey method would be to walk adjacent 10 to 15-foot wide transects; working from one end of the survey area to the other and covering it completely. The biologists would stop frequently to scan trees, shrubs, and ground cover vegetation for nests and evidence of nests (e.g., droppings, egg shells). The biologists would also listen for distress calls indicating possible nests nearby.

If active nests are found, the surrounding area would be marked with flagging and ARRC would discuss options with the contractor for avoiding impacts. If impacts cannot be avoided, then ARRC would contact U.S. Fish and Wildlife Service to discuss possible mitigation options. We recognize that many species intentionally hide their nests and it is difficult to guarantee that our biologists would find every nest.

The actual date for clearing activities is not set; the contractor would inform ARRC a minimum of 14 days in advance of any clearing. The

nest survey would occur within five days in front of any clearing activities; a necessary step to minimize the risk of new nest building after the survey is completed.

ARRC will continue to work with the contractors and set bid dates to try and avoid the bird nesting window; however, as the funding schedule for the project is largely unknown, an exact construction schedule cannot be set and certain project activities may interfere with the bird nesting window. ARRC recognizes this and is ready take the necessary precautions to avoid impacts to nesting birds. All of this is consistent with the Surface Transportation Board's decision approving the project, and specifically with Mitigation Measure 35, which states that "if clearing is required during nesting season," ARRC "shall conduct a nest survey and consult with USFWS, prior to clearing, to identify additional appropriate compliance measures."

Please contact me if you have any further concerns.

Regards-

Brian Lindamood