



la Convention
de la Baie-James
et du Nord québécois

Comité consultatif
pour l'environnement
de la Baie-James

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MINUTES OF THE 55TH MEETING
OF THE JAMES BAY
ADVISORY COMMITTEE ON THE ENVIRONMENT
ADOPTED

DATE : November 8, 1990

LOCATION : Institut national de recherche
scientifique
2635 Hochelaga, 6th floor
Sainte-Foy, Québec

PRESENT : Hubert Marcotte, Chairman Canada
Jean-Guy Charest, Canada
Louis-Edmond Hamelin, Canada
Marie Lessard, Québec
Alain Soucy, Québec
Robert Daigneault, Québec
Gilles Frisque, Québec
Alan Penn, CRA
Paul Wilkinson, CRA
Willie Iserhoff, CRA
Hervé Chatagnier, Secretary

ABSENT : James Bobbish, CRA
Bernard Labonté, HFTCC
Yvan Vigneault, Canada

PARTICIPANTS:
(Item 2) David Cliche, Environment Canada
Carol Martin, FEARO

OBSERVER : Pierre Marchand, Fisheries and Oceans
Canada



1. PRELIMINARIES AND ADOPTION OF THE AGENDA

The Chairman called the meeting to order at 9:15 a.m. The following agenda was proposed by Louis-Edmond Hamelin, seconded by Alain Soucy and adopted unanimously.

1. Preliminaries and adoption of the agenda
2. Great Whale project assessment procedure: Committee letters of November 2
3. Land use plan: status
4. Bill to establish a federal environmental review process (C-78)
5. Date and location of next meeting

2. GREAT WHALE PROJECT ASSESSMENT PROCEDURE: COMMITTEE LETTERS OF NOVEMBER 2

The Chairman explained the circumstances which led the Committee to write to the two environment ministers on November 2, 1990 concerning environmental assessment of the Great Whale hydroelectric project. Since several recent newspaper articles might lead one to believe that important decisions had been taken or were pending, Paul Wilkinson recommended, in a memo addressed to the Secretary on October 29, 1990, that the Committee meet immediately to decide whether to intervene in this issue. Telephone consultation of committee members led to the decision to write to Pierre Paradis and Robert-René de Cotret, provincial and federal environment ministers respectively, to stress that each meet with the Committee on November 8 to inform it of their governments' intentions regarding assessment of the Great Whale project.

On November 5, 1990, Carol Martin of FEARO wrote to the Committee Chairman stating that the Hon. Robert-René de Cotret could not meet with the Committee on November 8 to bring it up to date on what was happening in regard to this issue.

As far as the request to Québec's minister, Pierre Paradis, is concerned, the Secretary tabled a letter from Jean Piette, Director of Intergovernmental Relations, MENVIQ, dated November 6, 1990. The Secretary also informed the Committee that a telephone conversation with one of the minister's political attachés revealed that Mr. Paradis would be available to meet with the Committee the week of November 12. The Secretary was asked to let the Minister's Office that the Committee would be available to meet with the Minister on November 13.

2.1 Presentation by David Cliche, Environment Canada and Carol Martin, FEARO

The Chairman welcomed Mr. Cliche and Mr. Martin and introduced the Committee members. Mr. Martin explained that there were no substantial developments in the Great Whale file since the Committee had written to him on July 23, 1990. In this letter, the Committee had expressed concern about a federal-provincial draft agreement for the assessment of the Great Whale project. Mr. Cliche and Mr. Martin brought the Committee up to date on the current status of the draft agreement and addressed the concerns raised in the Committee's letter of July 23. The following points were presented to the Committee.

2.1.1 Agreement in principle on joint public review of the complex

The Committee was informed that the Québec government's Cabinet had still not ratified the agreement in principle concluded in June on joint public review of the complex. The Government of Canada was worried about Québec's delay in endorsing this agreement. This agreement does not cover the assessment of the Great Whale project's access and lodging infrastructures.

2.1.2 Splitting the complex's access infrastructures for the project's environmental assessment

Canada recognizes Québec's jurisdiction over the project and its right to split project components for the purposes of environmental assessment as specified in the JBNQA. However, Canada feels that it would have been preferable to assess the project as a whole.

2.1.3 Initial assessment of the project's access and lodging infrastructures

Canada maintains that it has jurisdiction over the access infrastructures under several statutes, including the Fisheries Act. Therefore, Canada has decided that FEARP applies to access infrastructures. Under FEARP, an initial assessment is being prepared by Fisheries and Oceans Canada and Transport Canada and should get under way soon. This initial assessment will enable the ministers of fisheries and oceans and transport to decide whether the infrastructure portion of the project can be carried out as proposed or whether the Canadian environment minister needs to submit it to public review. If the initial assessment concludes that the project will have minor or manageable impact, no public review will be carried out.

Canada's representatives indicated that the initial assessment would be performed based on data currently available, including impact studies from the early 1980s. The role of FEARO at this stage is to advise the two departments concerned. The initial assessment should be completed during the first few months of 1991. The results will be forwarded to the proponent and made public.

2.1.4 Application of the federal regime of
Section 22 of the James Bay and
Northern Quebec Agreement

In February 1990, early in the Committee's consultation process, the Committee was informed by Canadian representatives that the federal regime of Section 22 of the JBNQA would apply to the project and would be included in the draft agreement on the joint public assessment of the Great Whale complex. The Committee was subsequently told that Justice Canada had determined that this regime did not apply to the project, and that therefore the regime would not be applied. The issue is currently before the federal courts in the context of legal proceedings instituted by the Crees.

2.1.5 Committee concerns over the draft
agreement on joint Quebec-Canada
assessment

Canadian representatives gave details on the concerns raised by the Committee in its letters of July 23 and November 2 on the draft agreement on joint public review of the complex.

The agreement in principle provides for a single chairman of the review boards working together on the public review of the complex. In response to the Committee's fears that this would be too physically and intellectually demanding for one person, Canadian representatives replied that it would be possible to find someone able to take up the challenge.

In its letter of July 23, the Committee expressed its concern over the limited number (3) of commissioners which will make up the Commission under FEARP.

According to Canadian representatives, this number is sufficient since the Commission will work with the Kativik Environmental Quality Commission (KEAC) and the Provincial Review Committee (COMEX). However, if the agreement in principle is not ratified and Canada must implement FEARP alone, the federal Commission would be expanded and the Crees and Inuit would be consulted regarding the selection of members.

The Committee felt that any joint agreement should be endorsed by the Native parties concerned as well as both levels of government since it is a process that does not fall under the rules stipulated in the JBNQA. Canadian representatives felt that the agreement in principle does not make provision for amalgamating the federal and provincial procedures of Section 22 of the JBNQA but rather for an association of FEARP and the two provincial procedures indicated in sections 22 and 23. Consequently, Canada does not intend to have the agreement endorsed by the Native parties. The Committee will, however, be consulted on the content of the agreement.

In its letter of July 23, the Committee stated that the joint agreement must specifically mention the institutional arrangements for overseeing and monitoring activities related to the project. In response, the Committee was told that this aspect has no place in the agreement but that the commissions should make recommendations on it. In this context, the federal Commission will be mandated to make recommendations concerning the project's environmental follow-up.

As regards the question of secretarial services and a common strategy for the translation of these documents and interpretation services, Canadian representatives explained that very

preliminary discussion on this subject had already occurred between the three secretaries. The commissions' secretariats would continue to operate individually but their secretaries would coordinate their work and draw up common strategies in various areas. The Committee would be consulted when discussions were more advanced.

Three types of financing will be needed to finance the joint review. First, financing would be required for logistic and professional support of the federal Commission's activities. Second, a research fund will be available to the federal Commission allowing it to hire its own experts. Third, a public participation fund will be available. It is as yet unknown whether the Quebec government foresees these same types of financing for COMEX and the KEQC.

In its letter of July 23, the Committee indicated that one of the dangers of the agreement in principle as it currently stands is that the contribution of the Native parties to the review and to the joint assessment of the impacts might be lessened. Canadian representatives reminded the Committee that the agreement did not affect COMEX's powers. Moreover, the fact that the review would be public would give the Crees the opportunity for greater participation in the process.

During a question period Canadian representatives raised the following points:

- There would be no initial assessment of the complex in keeping with FEARP requirements given that the decision to hold public hearings had already been made and given that sufficient work had already been done by COMEV and the KEQC. This being the case, the

work already done by these committees could be used by the Commission to draw up its impact study guidelines.

- Passage of federal bill C-78 should not affect the contents of the agreement in principle since the bill will not be passed in the near future.
- No initiative has been taken by the federal government to apply FEARP to other major hydroelectric projects in the James Bay territory.
- The Committee will be consulted regularly on the Great Whale project's assessment through its secretary.

In closing, the Committee expressed its concern that the re-emergence of constitutional differences between Ottawa and Quebec and the quest for administrative perfection are two points that will likely hinder a serious review of the impacts of the Great Whale project.

The Chairman thanked the Canadian representatives and told them that the Committee would submit its recommendations concerning the Great Whale complex assessment as soon as it had the opportunity to meet with representatives of the Quebec government.

3. LAND USE PLAN

The sub-committee responsible for studying the proposed land use plan for public lands in the southern James Bay region informed the members that they had not been able to meet to prepare a draft recommendation. The sub-committee was asked to submit a draft recommendation to members within two weeks to allow the Committee to make its comments and adopt it before year-end. Members will recall that the proposed land use plan had been drawn up by MER. It defines

sites and territorial units and their ultimate use. During the Committee's 54th meeting, Alan Penn had tabled a document containing possible recommendations and a sub-committee composed of Alan Penn and Marie Lessard was mandated to prepare recommendations using this document.

4. BILL TO ESTABLISH A FEDERAL ENVIRONMENTAL REVIEW PROCESS (C-78)

The secretary informed the Committee that it had been invited by the special committee for the preliminary study of Bill C-78 to present a brief during the public hearings on this topic in Ottawa. The only dates available for presenting this brief were November 19 and 20. Since the members of the sub-committee responsible for preparing a brief (Paul Wilkinson, Jean-Guy Charest and Robert Daigneault) were not available on these dates, Alan Penn, Gilles Frisque and Louis-Edmond Hamelin were mandated to present the brief in Ottawa on November 20. Paul Wilkinson informed the Committee that the brief was being prepared and that the English version would be submitted to the Committee within a matter of days. The members will recall that the draft bill makes provision for various reforms of the FEARP.

5. DATE AND LOCATION OF NEXT MEETING

The Committee intended to meet with the Québec Minister of the Environment on November 13 to discuss the Great Whale project assessment procedure. The members agreed to meet again on December 4 at a location to be determined at a later date.

HERVÉ CHATAGNIER
Secretary