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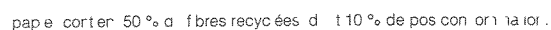
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DATE: November 6-7, 1996

LOCATION: Ministère de l'Environnement et de la Faune
675, boul. René-Lévesque Est, Québec
Édifce Marie-Guyart, 6^e étage

PRESENT: Yves Désilets, Canada, Vice-Chairman
Robert Daigneault, Québec, Chairman
Louise Filion, Québec
Susanne Hilton, CRA
Ginette Lajoie, CRA
Jacques Lefebvre, Québec
Pierre Paulhus, Canada
Diom Roméo Saganash, CRA
Denis Bernatchez, Secretary

ABSENT: Denis Vandal, HFTCC
Diane Morneau, Canada
Willie Iserhoff, CRA



GUEST

PARTICIPANTS: David Cliche, Minister, MEF
Hardy Manhas, Political Advisor to the Minister
Benoît Taillon, Vice-Chairman, COMEV
Philip Awashish, Member, COMEV, COMEX
Brian Craik, Member, COMEV, COMEX
Hervé Chatagnier, Secretary, COMEV
Gaston Moisan, Chairman, COMEX
Paul Lacoste, Chairman, COFEX-South
Claudette Journault, President, BAPE
Serge Goriatchkine, BAPE

1. CALL TO ORDER AND ADOPTION OF THE AGENDA

The Chairman welcomed the members, particularly Louise Filion, the newly appointed Québec representative, and called the 94th meeting of the JBACE to order.

The following agenda was adopted.

1. Call to order and adoption of the agenda
2. Adoption of the minutes of the 93rd meeting
3. Business related to the 93rd meeting
4. Draft JBACE-MEF administrative agreement
5. Forestry issues
6. Meeting with COMEX, COMEV and COFEX-South chairmen
7. Meeting with the Minister of the Environment and Wildlife
8. Review of Section 22
9. Administrative agreement on mining
10. Points of information
 - 10.1 BAPE generic hearings on waste management in Québec
11. Tabling of documents
12. Varia
 - 12.1 Meeting with BAPE president
 - 12.2 Endangered Species Protection Act
 - 12.3 1997-1998 budget
 - 12.4 Municipality of James Bay resolution
13. Date and location of next meeting

2. ADOPTION OF THE MINUTES OF THE 93RD MEETING

The minutes of the 93rd meeting were adopted with minor changes.

3. **BUSINESS RELATED TO THE 93RD MEETING**

The follow-up discussion on the 93rd meeting began with the memo of September 13, 1996.

Robert Daigneault told the members that he had met with the director general of the Municipality of James Bay (MJB) on his way back from Eastmain. The MJB is willing to provide the JBACE with any information it has on the territory, particularly in relation to solid waste and the BAPE public hearings.

The Committee will write to Diane Gaudet, Deputy Minister of MEF, to inform her of the importance of confidentiality in relation to JBACE correspondence.

4. **DRAFT JBACE-MEF ADMINISTRATIVE AGREEMENT**

The Subcommittee tabled the draft brief and administrative agreement it had prepared. The members consulted the documents and made the necessary changes.

It was agreed to submit the revised brief and administrative agreement directly to the Minister at the following day's meeting (November 7).

5. **FORESTRY ISSUES**

The Chairman of the Forestry Subcommittee filled the members in on the Subcommittee's October 31, 1996 meeting. The members discussed the ad hoc mandate given by the JBACE, and two working groups were formed. The first, composed of Robert Beaulieu (CRA) and MRN representatives, was mandated to review the Subcommittee's activities and the documents produced since the MRN began participating.

The second, composed of Robert Beaulieu (CRA), Réhaume Courtois (MEF), the JBACE Secretary and a MEF resource person to be appointed at a later date, was mandated to define the study criteria for forest management plans.

The Subcommittee is to hold its next meeting on January 15-16, 1997. The JBACE agreed that the MRN representatives on the Forestry Subcommittee would be guest participants and resource persons, and not actual members. Furthermore, the JBACE has no objections to the forestry industry's appointing representatives from the Association des industriels forestiers du Québec (AIFQ), the Association des manufacturiers de bois de sciage du

Québec (AMBSQ) or the Association of Canadian Pulp and Paper Producers (ACPPP). However, forestry companies will not be invited to participate until the situation has been analyzed and the forest management plan study criteria defined.

The Subcommittee tabled some of the summary maps it had prepared so that members could see the extent of logging and number of forest fires affecting the territory.

A CRA representative informed the members that the MRN has apparently started allocating TSFMAs in the Northern Québec forest reserve. Fire control measures have been significantly reduced in the North and it is important that the JBACE take action.

The following resolution was therefore adopted:

JBACE RESOLUTION 96-11-07-01 on the allocation of timber supply and forest management agreements (TSFMA) in the Northern Québec forest reserve

- Whereas** the JBACE has learned that the Ministère des Ressources naturelles (MRN) has allocated TSFMAs in the Northern Québec forest reserve;
- Whereas** forest companies are lobbying the Ministère des Ressources naturelles (MRN) to award them timber supply and forest management agreements (TSFMA) in Northern Québec;
- Whereas** the JBACE is of the opinion that the MRN does not have sufficient information to appreciate the effects of logging and other disturbances (such as fire) and, consequently, to award TSFMAs in the forest reserve;
- Whereas** the forest reserve is located on the edge of the commercial forest and this area has been particularly damaged by forest fires due to the specific conditions prevailing in this territory, notably drought;
- Whereas** the MRN has no fire control or forest protection policy for this territory;
- Whereas** regeneration of the forest reserve is extremely slow given the latitude at which it is located;

- Whereas** the impact of logging in the James Bay territory has not yet been assessed and the JBACE is concerned about its potential effects within the region, particularly on the Crees' traditional way of life;
- Whereas** any hasty allocation of timber in the forest reserve, under the above conditions, would be a major breach of the sustainable development principle and one that the JBACE has no choice but to denounce;

After being duly moved and seconded, it is hereby resolved to:

- **ask the MRN to allow the JBACE to consult the information files on which the MRN based its analysis and subsequent decision to award TSFMAs;**
- **ask the MRN to declare a moratorium on logging in the forest reserve;**
- **ask the MRN what steps it intends to take to control fires and protect forests in the forest reserve.**

In accordance with section 145 of the EQA, copies of the above resolution will be sent to the governments of Québec and Canada, the CRA, the Cree village corporations, the Bands, the Regional Zone Council and the municipalities for their attention, information and appropriate action.

6. MEETING WITH COMEX, COMEV AND COFEX-SOUTH CHAIRMEN

1- Evaluating Committee (COMEV)

COMEV was represented by its Vice-Chairman, Benoît Taillon, members Philip Awashish (CRA) and Brian Craik (CRA) and Secretary Hervé Chatagnier.

The JBACE Chairman welcomed those present and explained that the JBACE's mandate is to review and oversee the administration and management of the environmental and social protection regime, while COMEV's is to oversee the procedure's application.

The JBACE seeks closer ties with the Northern committees and, to this end, had invited the chairmen to today's meeting to discuss their experience in

applying the procedure, their needs in terms of direction from the JBACE, the support provided by the JBACE secretariat, and their views on this type of meeting.

Mr. Taillon started out by informing the JBACE that COMEV had not met specifically to identify problems with its operations. While everyone agrees that the procedure established by Section 22 is unwieldy, it is still workable. COMEV relies on its members' goodwill and involvement to function properly. They have always been able to reach a consensus, even on difficult issues. Mr. Taillon pointed out that the Chairman plays a crucial role in keeping the committee together.

COMEV would like to maintain its autonomy and has never felt the need to obtain direction from the JBACE. Of all the bodies established by the JBNQA, Mr. Taillon feels that COMEV is one of the most effective. Any delays in treating files occur between the Administrator and the COMEV secretary. COMEV decisions have been modified on several occasions by outside authorities.

In closing, Mr. Taillon pointed out that the member parties approach issues differently, from both a technical and political perspective. The "game" is becoming increasingly political, something that was not foreseen by the regime. He feels that the members should act in the capacity of experts and resource persons and not as spokespersons for the parties they represent.

Philip Awashish said he felt the regime has done little to protect the Crees' hunting and fishing rights since it was established 20 years ago. He further felt that the procedure established by Section 22 must be seen in conjunction with Section 24, since the two are connected. The procedure needs to be reviewed from time to time to avoid becoming ossified. COMEV has neither the human nor the financial resources to fulfil its mandate.

According to Brian Craik, the regime provided for partnership. Although it is Québec's responsibility to ensure that partnership reigns, COMEV has been unable to obtain the expertise needed to study files properly.

Substantial resources are required to study forest management plans and given that neither COMEV nor the JBACE has these resources, they have to go elsewhere for them. There is no control over logging.

Mr. Craik believes there should be a meeting with the JBACE every six months.

Mr. Chatagnier feels that COMEV has no reason to envy other environmental assessment bodies. There is consensus on almost all issues, and in addition to having lived in the North, the members boast considerable expertise on both the situation in the North and the environmental and social protection regime. When COMEV has resorted to outside assistance, the results have often been less than desired.

The above comments were followed by a brief discussion between COMEV representatives and JBACE members. The members agreed it would be worth meeting once a year to continue the collaboration and discuss the functioning of the environmental and social protection regime established by the JBNQA. The JBACE will send COMEV a copy of its brief on forestry development as subject to the environmental impact assessment and review procedure.

2- Review Committee (COMEX)

The JBACE Chairman welcomed Gaston Moisan, Chairman of COMEX, Brian Craik (CRA) and Philip Awashish (CRA). The JBACE wanted to discuss the following issues:

- project follow-up;
- analysis of impact statement compliance and quality;
- COMEV/COMEX relations;
- consultation of Cree communities.

Mr. Moisan informed the JBACE that COMEX has not been asked to review any projects for the past six months.

With regard to project follow-up, Mr. Moisan admits that this has been a problem for a long time. COMEX makes its recommendations on project follow-up to MEF, and MEF assures COMEX that its regional office does the requested follow-up. Mr. Moisan has his doubts.

COMEX has made the occasional field trip to Northern Québec. Where hydroelectric development projects are concerned, Hydro-Québec submits progress reports to COMEX on request. In terms of forestry development, hunting and other activities, Mr. Moisan is unable to confirm whether or not MEF ensures project follow-up. According to Mr. Moisan, this follow-up is extremely important, since problems cannot be corrected without an understanding of their nature.

Mr. Moisan went on to say that projects are reviewed by highly qualified individuals. The Cree members sometimes call on outside experts to substantiate their opinions. In seven years, a vote has had to be taken only

once. Projects are discussed openly, and members are able to reach a consensus.

Furthermore, Mr. Moisan believes that the schedules to the JBNQA are outdated and need to be revised. For example, forestry development is not automatically subject to assessment and review, whereas the Cree representatives feel it can have a major impact.

On another level, Mr. Moisan said he had no opinion on the question of merging the Northern committees. On the other hand, he is not anxious for the federal government to continue participating on the Committee, since COMEX often reviews projects that fall exclusively under provincial jurisdiction.

On the matter of the JBNQA review, Mr. Moisan stated that he participated in negotiations at the Secrétariat aux affaires autochtones (SAA) for 10 years and nothing concrete ever came of them. He does not feel this is a good time to start negotiating the JBNQA.

Brian Craik said that the JBNQA provides for the protection of the Crees' way of life and their involvement in the territory's development. However, forestry development in particular has a considerable impact on the Cree lifestyle, but the Northern committees have no influence over the matter. This does not mean, though, that COMEX does not function, since most of the time the parties come to an agreement.

In response to a question by a Cree-appointed member regarding language, Mr. Moisan said that language was not a problem in his opinion. Where necessary, project summaries are made available in English for the benefit of the Crees. In the past, proponents have taken it upon themselves to translate documents into English but the poor quality has only led to greater confusion. Mr. Awashish mentioned that few Crees speak French.

With regard to voting rights, the guest participants representing the Cree party said they felt that the current 3/2 ratio in favour of Québec should be changed to allow the CRA to appoint the same number of members as Québec, if not more. Mr. Moisan informed the JBACE that in order to change COMEX voting rights, the JBNQA would have to be amended. He noted that the most heated discussions among COMEX members are about forestry issues.

3- COFEX-South

The JBACE Chairman welcomed Paul Lacoste, Chairman of COFEX-South. The JBACE primarily wanted to discuss the Waswanipi (Nabakatuk) sawmill

project and the functioning of the environmental and social protection procedure.

Mr. Lacoste feels that the system functions well. With the Great Whale project, for instance, although several committees were involved, decisions were unanimous, apart from occasional reservations on the part of certain parties. As far as COFEX-South is concerned, the situation was simpler with the Waswanipi sawmill project because COMEX was not involved.

Problems are bound to arise in the review of certain projects because technical, scientific and political issues are not always clear-cut.

With the sawmill project, problems of jurisdiction arose and the decision of the federal court in Eastmain was used to settle the matter. According to the attorneys for the Canadian Environmental Assessment Agency, COFEX-South had no jurisdiction over forestry operations in the context of the proposed sawmill.

Some participants expressed the opinion that, in referring the issue to COFEX-South, the Local Environment Administrator thought it was federal jurisdiction, whereas by invoking the Eastmain decision, the federal government ruled that the project comes under provincial jurisdiction since forestry is a provincial responsibility.

Philip Awashish believes COFEX-South has a problem with Cree party representativeness. Since the committee is composed of three federal and two Cree representatives and since the chairman is appointed by the federal government, the Cree party is powerless to change a decision. The problem with the above project was in COFEX-South's refusal to review the proposed sawmill, which is located on Category I lands.

Mr. Awashish said that the federal government is shirking its responsibilities and refusing to protect the Crees' rights.

Mr. Lacoste had asked for a legal opinion from the attorneys of the Canadian Environmental Assessment Agency. Instead of going to his superior, the Federal Administrator (Michel Dorais), he decided to go to the Agency's attorneys because they could give a legitimate legal opinion. The federal appeals court concluded that a project cannot be under two jurisdictions at the same time (in this case, federal and Québec).

The JBACE Chairman informed Mr. Lacoste that the JBACE could have issued an opinion on the matter, or on other projects involving a similar situation.

According to Mr. Lacoste, COFEX-South has had little or no connection with the JBACE. He was unaware that the JBACE could settle this kind of problem. The JBACE was established as a consultative body and, in any case, the matter would have required an official legal opinion.

The JBACE Chairman thanked Mr. Lacoste for attending the meeting.

7. MEETING WITH THE MINISTER OF THE ENVIRONMENT AND WILDLIFE

The Chairman welcomed David Cliche, Minister of the Environment and Wildlife, and thanked him for agreeing to come and discuss the issues mentioned in the letter of invitation. This is the first time an environment minister has met with the JBACE since the signing of the JBNQA. The Minister was accompanied by his political advisor, Hardy Manhas.

The Chairman gave the Minister a copy of the brief and draft administrative agreement prepared by the JBACE and informed him that the Committee's position was that of an administrative unit of MEF which operates on a shoestring budget. As an advisory body to responsible governments, the JBACE should enjoy a status that reflects the importance of its functions.

The Chairman brought up the question of rotating chairmanship, which poses a problem in terms of ensuring follow-up on the major issues dealt with by the Committee. In this respect, it is important that the JBACE be able to count on a strong secretariat.

The draft administrative agreement tabled by MEF in 1995 would only perpetuate a situation that the JBACE has desperately been trying to change. It is for this reason that the Committee decided to table its own draft administrative agreement at today's meeting.

The Minister said he felt that the JBACE's claims that it does not have the resources needed to do its job are legitimate. However, he added that the tough economic situation facing the government could make it difficult to find additional funding for the JBACE. The Minister feels that the Northern committees, including the JBACE, have not assumed their rightful place and that the lack of resources is certainly one of the reasons. MEF's budget has been cut and will be cut again in order to meet the government's zero deficit goal.

Several members pointed out the difficulties the Committee has in studying and commenting on forest management plans. The burden of studying the

plans is on the CRA, which lacks the necessary resources. It was suggested that part of the JBACE's budget could come out of the dues paid to the MRN by TSFMA holders.

The Minister said he found both the user-pay (forestry companies) principle and the idea of obtaining funding from the MRN on this basis interesting and is willing to broach the matter with his MRN colleague. He will support the JBACE's request.

The Minister also said he was open to discussing Section 22 of the JBNQA and the Northern committee's operations at the government level. Since there seems to be a lull in development work in the James Bay territory, the committees responsible for the regime's application could probably be combined.

A Cree representative mentioned that the obligations under the JBNQA are constitutional in nature by virtue of section 35 of the Constitution Act and that, if the government does not have the means to finance the JBACE so it can comply with the JBNQA, it must open the Agreement and renegotiate Section 22. Under the JBNQA, the government cannot determine the JBACE's budget unilaterally.

The Minister said he felt that the government fulfils its obligations, many of which are not specific in terms of deadline or quantity.

The Minister also said he felt there are too many committees for the North and that this is a perfect time to review the situation. He has begun discussing harmonization of the assessment and review procedure with his federal counterpart. He would like to see a single procedure applied by a single committee.

The Minister is prepared to review Section 22. He asked the JBACE to provide him with a list of points for discussion. He promised to study the situation and get back to the JBACE.

The JBACE Chairman mentioned a few aspects of Section 22 that could be discussed, including:

- the guiding principles cannot be touched and should serve as the basis for the kind of review the JBACE would like to see carried out;
- harmonization of sections 22 and 24;
- updating of procedures, their form, schedules, content of directives;
- consultation of the Crees;
- lack of a body that covers the entire territory;

- adjustment of regulations to reflect the realities of the North;
- support to be given local administrators.

The Chairman said the JBACE would write the Minister on this matter.

A Canadian government representative would like to see the JBACE secretariat fall under the Minister's Office until an agreement to this effect is signed.

The Chairman thanked the Minister and his political attaché for coming.

8. REVIEW OF SECTION 22

The members discussed some of the points to be submitted to the Minister (see item 7). The directions to be taken by the JBACE in this respect will be discussed at a later date.

9. ADMINISTRATIVE AGREEMENT ON MINING

MEF and the MRN have signed an administrative agreement on mining. At the time he was deputy minister of MEF, Jean Pronovost wrote to the JBACE informing it that the agreement would not affect the environmental and social protection regime established by the JBNQA.

Despite this reassurance, certain members doubt that the regime will not be affected and would like the JBACE Secretary to meet with the person responsible for enforcing the agreement at the MRN to discuss its implications for the regime.

At the same time, the Secretary could verify whether the Mining Act is being revised and, if so, if the JBACE will be consulted.

10. POINTS OF INFORMATION

10.1 BAPE generic hearings on waste management in Québec

Discussion of this item was postponed.

11. TABLING OF DOCUMENTS

The Secretary tabled the documents received since the last meeting:

- Minutes from the 1995-1996 meetings of the Hunting, Fishing and Trapping Coordinating Committee;
- "Énergie au service du Québec, une perspective de développement durable", energy policy, MRN, 108 pages plus 20-page summary.

12. VARIA

12.1 Meeting with BAPE president

BAPE President Claudette Journault and Project Coordinator Serge Goriatchkine tabled the most recent version of the joint BAPE-JBACE report on the part of the generic hearings held in the James Bay territory. The members read it and proposed changes.

The BAPE will incorporate the proposed changes and then submit the revised document to the JBACE for final approval. The JBACE members are invited to submit their comments to the JBACE Secretary, who will transmit them to the BAPE.

The BAPE and JBACE representatives said they were pleased with the collaborative relationship established between the two bodies and hope that it will continue.

12.2 Endangered Species Protection Act

A Cree representative pointed out that the JBACE was invited to the Environment Canada briefing on the above Act too late to attend.

The members agreed to write to Environment Canada to make sure the proposals contained in the JBACE's brief were taken into consideration.

12.3 1997-1998 budget

The JBACE must prepare its 1997-1998 budget proposal.

12.4 Municipality of James Bay resolution

A copy of the MJB's resolution regarding the Oujé-Bougoumou in-trench disposal site will be sent to the members for consultation.

13. DATE AND LOCATION OF NEXT MEETING

The next meeting will be held in Hull on January 29-30, 1997. The Committee hopes to meet with the federal environment minister at this time. Alternative dates are February 4-5.

A conference call will be held to determine the main issues to be addressed with the minister.



DENIS BERNATCHEZ

Secretary

97-02-04