



la Convention
de la Baie-James
et du Nord québécois

Comité consultatif
pour l'environnement
de la Baie-James

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Siège social :
Mistissin

Secrétariat et correspondance générale :

Comité consultatif pour l'environnement de la Baie James
Direction régionale du Nord-du-Québec
150, boul René-Lévesque Est, 8^e étage
Boîte 97
Québec (Québec) G1R 4Y1
Téléphone : (418) 528 7354
Télécopieur : (418) 646 0266

**MINUTES OF THE 115TH MEETING
OF THE JAMES BAY ADVISORY COMMITTEE
ON THE ENVIRONMENT**

(ADOPTED)

DATE: February 15, 2000

LOCATION: Cree Regional Administration
277 Duke St.
Montréal, Québec

PRESENT: Yves Désilets, Canada
Carole Garceau, Québec
Susanne Hilton, CRA
Ginette Lajoie, CRA, Vice-Chairperson
Claude Langlois, Canada,
Jacques Lefebvre, Québec
Pierre Moses, Québec
Jacques Robert, Canada
Diom Romeo Saganash, CRA, Chairperson (afternoon)
Harm Sloterdijk, Canada

Denis Bernatchez, Secretary

ABSENT: Willie Iserhoff, CRA



1. CALL TO ORDER AND ADOPTION OF THE AGENDA

Since the Chairperson was available only in the afternoon, the Vice-Chairperson welcomed the members are called the 115th meeting of the JBACE to order.

1. Call to order and adoption of the agenda
2. Adoption of the minutes of the 112th, 113th and 114th meetings of the JBACE
3. Business arising from previous meetings
4. Public consultation on water management
5. Draft legislation amending *Environment Quality Act* and other legislative provisions governing waste management
6. Croteau ruling
7. New forest management plans received
8. New forest system
9. Northern Ecosystems Initiative (NEI)
10. Participation in the five-year review of the CEAA
11. Varia: January 20, 2000 letter from the Chairperson of the JBACE to Minister Brassard
12. Date and location of next meeting

2. ADOPTION OF THE MINUTES OF THE 112TH, 113TH AND 114TH MEETINGS OF THE JBACE

The minutes of the 112th meeting were adopted as tabled. The minutes of the 113th and 114th meetings were adopted after amendment.

3. BUSINESS ARISING FROM PREVIOUS MEETINGS

Before beginning discussions on the items on the agenda, the Secretary asked the Vice-Chairperson to give an update on the meeting convened by the Chairperson on January 27, 2000. The Vice-Chairperson reminded those present that a meeting had been convened for January 27, 2000. Two members appointed by the CRA, three members appointed by Canada and the JBACE Secretary attended. Since there was no quorum, there was no meeting on January 27.

The members appointed by Québec indicated that they had initially been available to meet on January 27. However, since the date had been changed at the request of the members appointed by Canada, they made other professional commitments for January 27. Consequently, when the Chairperson decided to convene a meeting with 12 hours' notice, they were no longer available since they had been told that the

meeting had been rescheduled for February 15, as confirmed by the Secretary in an e-mail to JBACE members.

A member appointed by Canada confirmed that he had spoken with the Chairperson on January 20 to ask him to postpone the January 27 meeting. After the members were consulted by the JBACE Secretary, the Chairperson agreed that the meeting would be held on February 15. He pointed out that initially all members were available for the meeting to be held on January 27 but that, after the request from the members appointed by Canada, the date was officially changed to February 15.

The members appointed by Canada and Québec pointed out that the fact that the January 27 meeting was convened with 12 hours' notice did not respect the JBACE rules of procedure. A member appointed by Canada mentioned the different e-mail messages sent by the JBACE Secretary indicating that the meeting was to be held on February 15 and that the January 27 meeting had been cancelled by the Chairperson himself, at the request of the members appointed by Canada.

Following this discussion, the follow-up to the 112th and 113th meetings was carried out based on the memos of September 29 and November 11, 1999.

- a) Revision of the criteria and indicators (C&I) document: The C&I working group never met after the workshop. The members of the JBACE agreed to reactivate this file and to have the working group meet in Québec City on March 14, 2000 in the offices of the Canadian Forestry Service. The exact location would be forwarded later on by Jacques Robert. The members of the working group are: Carole Garceau, Susanne Hilton, Jacques Lefebvre, Jacques Robert and Denis Bernatchez. Based on the document "A proposal for the first approximation of criteria and indicators of sustainable forest management for Eeyou Istchee", the working group will define its work plan and submit a schedule to the JBACE at the next meeting.
- b) Report on the criteria and indicators workshop: Since the report on the September 21 and 22, 1999 workshop prepared by Jamal Kazi, was not satisfactory for transmittal to the MRN, the members forwarded their comments to the JBACE Secretary for the preparation of a new document. A new report and draft letter were prepared for the Chairperson's signature. The Chairperson had asked the Secretary that these documents not be sent to the Minister of the MRN. The members asked that these documents be sent back to them so that they could determine whether they should be sent to the MRN as is.

Since letters of thanks have already been sent to the participants, there is currently no rush where this file is concerned. In the letter to the Minister, the JBACE could stress

its intention to improve the approach taken to date and indicate its interest in maintaining ties with the forestry industry.

A member appointed by Québec pointed out that given the context of the legal proceedings in which the workshop took place, the poor outcome and lack of participation on the part of the industry and representatives of Cree communities were to be expected.

4. PUBLIC CONSULTATIONS ON WATER MANAGEMENT

On January 17, 2000 René Beaudet, BAPE project coordinator, submitted the preliminary version of Section 4.2 of the BAPE report, which dealt with the James Bay and Nunavik Native communities. The BAPE asked the JBACE to forward its comments before the end of January 2000.

On reading the report, certain members noted that the BAPE had raised most of the technical problems (drinking water, wastewater) that had been mentioned in the hearings in the communities. Problems of a more general such as the active participation of the Crees in water management or more political nature, such as the climate of trust between the government and the Crees were raised in the briefs but scarcely touched on in the preliminary version of the report. Water management in the Territory must be seen holistically and not compartmentally, as is currently the case.

The members noted a number of shortcomings in the report's recommendations. They agreed on the importance of rapidly informing the BAPE of the various aspects of the issues and of the key recommendations that the JBACE would like to see in the joint report. The JBACE members of the NIBI Commission will hold a conference call on this subject on February 18. The participants (Ginette Lajoie, Jacques Lefebvre, Romeo Saganash and Harm Sloterdijk) were invited to submit their comments on the most important points to be incorporated into the BAPE report. The JBACE must soon send a short document to the BAPE for the joint report and take the time required to prepare its own report.

Many members felt it important that the JBACE write its own report on water management. The Secretary pointed out that he has made arrangements to ensure that the balance of the \$47 500 subsidy granted the JBACE for the water management file is available after March 31, 2000, notably for hiring our own analyst.

A member appointed by Canada had already given some thought to the mandate to assign the analyst eventually to be hired. He will forward a preliminary version of his specifications to the JBACE members of the NIBI Commission. The specifications will then have to be approved by the JBACE at its next meeting. Given the JBACE's

modest budget for this file, some members believe it is unthinkable that the JBACE analyst could visit the Cree communities in the Territory. A member appointed by the CRA mentioned that the issue of river diversion should be dealt with in a separate report, since more effective information-sharing on the points in question could affect the communities' water and the issue of environmental monitoring.

5. **DRAFT LEGISLATION AMENDING THE ENVIRONMENT QUALITY ACT AND OTHER LEGISLATIVE PROVISIONS GOVERNING WASTE MANAGEMENT**

Last fall, the Secretary had prepared a draft brief on the above-mentioned. However, since the National Assembly passed the draft legislation before the JBACE's brief was sent to the Minister of the Environment, the Secretary felt that the JBACE could review its brief in a different context and transmit its main recommendations to the Minister. The members agreed with this suggestion and asked that an amended brief be sent to them for comment. Once adopted by the JBACE, the brief could be sent to the Minister of the Environment of Québec.

6. **CROTEAU RULING**

Superior Court of Québec judge Jean-Jacques Croteau handed down his ruling in the motion for orders to safeguard the rights of applicants in the Mario Lord affair on December 20, 1999. Since that time, the government has appealed the ruling and the Grand Council of the Crees has appealed the appeal.

The members appointed by Québec and Canada see no point in discussing this ruling at a JBACE meeting. Several members have also rejected the idea of asking for a legal opinion on the Croteau ruling from an independent attorney.

7. **NEW FOREST MANAGEMENT PLANS RECEIVED**

Given the legal situation in which the JBACE finds itself indirectly involved and given the \$100 000 subsidy the MRN granted to support the JBACE in the analysis and for commenting on the forest management plans (FMP) submitted for consultation, we must now decide what to do with the FMPs received. Some members feel that we cannot ignore the ruling, while others believe that we need not take it into consideration since it is being appealed and since the ruling does not prohibit the JBACE from commenting on the FMPs.

A member appointed by the CRA pointed out that, as Justice Croteau indicates, the FMPs to be commented on under subsection 22.3.34 of the JBNQA should be the

government's. However, the FMPs currently in hand are those of TSFMA holders. To this, a member appointed by Québec answered that these are not the first FMPs the JBACE has received and, since the ruling is being appealed, we cannot presume to know that the court will decide that they are to be subject to environmental impact assessment and review. A member appointed by Canada also felt that Justice Croteau never told the JBACE not to look at the FMPs. He continued, saying that the JBACE should first comment on the five-year FMPs, referring to the general FMPs associated with them. He did not feel that we need worry about the 90-day deadline too much. This timeframe is unrealistic and does not reflect the complexity of commenting on the FMPs. The JBACE must do a serious analysis and forward it to the MRN.

The members appointed by Québec and Canada are well aware that the FMPs, as currently prepared, deal with timber harvesting only and that this observation would very probably be one of the conclusions drawn by the members after studying the plans. It is not impossible that the JBACE itself might conclude that, on the whole, to meet the requirements of the JBNQA and protect the Crees' rights, the FMPs should be subject to environmental impact assessment and review. However, this is not yet the case. The FMPs must be studied first and the MRN subsidy used.

A member named by the CRA believes that the JBACE needs adequate maps that show the state of the forest on the Territory and a land use plan in order to proceed.

A member appointed by Québec believes that if the JBACE analyzes the FMPs and notes a high level of ambiguity, it need simply indicate this in its comments and conclude that the government is asking the impossible. FMP shortcomings could be documented with regard to the JBNQA. However, we would never have perfect FMPs containing all of the information needed to comment on them appropriately.

A draft of project specifications have been prepared for a call for tenders for a consultant or research agency. These specifications would also enable the missing information on the FMPs to be obtained from the CRA, the MENV, the MRN, etc. A consulting firm can easily get together specialists from various disciplines to create a team that meets the JBACE's needs.

A member appointed by the CRA wondered whether the members should study the FMPs under subsection 22.3.34 or based on the JBACE's more global mandate. In this regard, he tabled a draft resolution for discussion. The members took the time to read the draft and discussed it. The following ideas were expressed:

- (Québec) the FMPs were sent under subsection 22.3.34 of the JBNQA and must be analyzed under this section;
- (CRA) the resolution attempts to reconcile the Croteau ruling, analysis of the FMPs and an opinion issued based on the JBACE's mandate;

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- (Canada) several sections of the draft resolution were amended so as to enable discussions to proceed;
 - (Québec) the JBACE does not need a resolution to comment on the FMPs. It is mandated to do so under subsection 22.3.34;
 - (CRA) the first draft resolution (December 8, 1999) was designed to have the FMPs subject to environmental impact assessment and review. This new resolution includes analysis of the FMPs;
 - (CRA) if the JBACE commented on the FMPs without a resolution, it would be interpreted by Québec as if the entire system was functioning properly;
 - (Canada) if this resolution were adopted, it would provide a framework for the JBACE and allow it to get on with things. Eliminating subsection 22.3.34 would not, in any way, eliminate the JBACE's capacity for analysis;
 - (Québec) if subsection 22.3.34 were eliminated, we would also have to eliminate references to other sections of the JBNQA since, otherwise, it would be tantamount to indirectly taking a position on subsection 22.3.34, in the sense proposed by Justice Croteau. We cannot do this since the ruling is being appealed. There is also a risk of attorneys interpreting the resolution as they please;
 - (Canada) eliminating subsection 22.3.34 certifies the Cree Party's view that we acknowledge that we do not receive only the FMPs drafted by the government, but also those of the forestry industry;
 - (Québec) considering that forestry is a field of provincial jurisdiction, Québec appointed members are of the opinion that Canada appointed members should not vote on the resolution as mentioned at article 22.3.4 of the JBNQA. For this reason, the validity of the resolution is contested.

The final text, on which most members agreed, is as follows:

Resolution No. 2000-02-15-01 of the James Bay Advisory Committee on the Environment (JBACE) on studying general forest management plans and five-year forest management plans

WHEREAS the JBACE is a body composed of members appointed by the Cree Regional Authority, Canada and Québec and is established to review and oversee the administration and management of the environmental and social protection regime established by and in accordance with the provisions of Section 22 of the James Bay and Northern Québec Agreement (JBNQA);

WHEREAS the JBACE is a consultative body to the responsible governments and, as such, shall be the preferential and official forum for the responsible governments in the Territory concerning their involvement in the formulation of laws and regulations relating to the environmental and social protection regime and, as such, shall oversee the administration

and management of the regime through the free exchange of its members' respective views, concerns and information;

WHEREAS subsection 22.3.25 of the JBNQA states that the JBACE shall, with justification, recommend to the responsible governments draft legislation, regulations and other appropriate measures related to the environmental and social protection regime for enactment or action by the appropriate authority;

WHEREAS the JBNQA more specifically provides that the Crees shall have harvesting rights throughout the Territory, even in areas where there are forestry activities; that the Cree trapline system exists and shall be maintained; that the hunting, fishing and trapping rights are enacted with respect to environmental and social protection by and in accordance with Section 22 of the JBNQA;

WHEREAS the governments must give due consideration to the guiding principles of the environmental and social protection regime, which include, for development activity affecting the Territory, the protection of the Crees' hunting, fishing and trapping rights, the protection of the Cree people, their society, communities and economy, the protection of wildlife resources, the physical and biological environment and ecosystems and the minimizing of undesirable environmental and social impacts of development on the Crees and Cree communities;

WHEREAS the JBACE has expressed numerous concerns and made substantive recommendations related to forestry activities under its mandate, among others by preparing various briefs and letters to the Minister of the MRN, requesting meetings and advising his Department of the necessity of developing and implementing a separate forest system for Eeyou Istchee;

WHEREAS the recommendations of the JBACE include, among other things, the need for an effective, meaningful consultation procedure; a review of the state of the forest in order to analyze the forest management plans; addition of more conservation areas; priority for the Crees' harvesting rights; the implementation of criteria and indicators to ensure sustainable forest management; respect and maintenance of the traditional Cree land tenure system; the direct involvement of the Cree and their meaningful participation in the decision-making process for the allocation of forest resources and their subsequent management; that the Crees should benefit from both the direct and indirect economic spinoffs of forestry operations; the development of a Cree land management plan and Cree control over access to the Territory;

- WHEREAS** pursuant to the guiding principles of Section 22 of the JBNQA, the JBACE has stated that to implement sustainable forest management requires the application of at least four (4) basic and essential criteria, namely: the protection of the physical and biophysical environment (including biodiversity and ecosystem productivity); the protection of Native people, society, communities and their economy; the special status and special involvement of the Cree people in forest management; and the protection of the hunting, fishing and trapping rights and other rights, guarantees and interests established in favour of the Crees;
- WHEREAS** the Crees have instituted court proceedings against the governments of Canada and Québec and numerous forestry companies, in the *Mario Lord* affair - C.S. 500-05-043203-981;
- WHEREAS** the JBACE cannot presume to know the outcome of these court proceedings;
- WHEREAS** the JBACE has, to date, received 11 general forest management plans and 16 five-year forest management plans;

IT IS HEREBY RESOLVED:

- THAT** the JBACE shall abstain from taking a stand on whether or not subsection 22.3.34 of the JBNQA applies, until a final ruling on the court proceedings;
- THAT** the JBACE, in accordance with subsections 22.3.1, 22.3.24, 22.3.25 and 22.3.28 of the JBNQA, shall review the long-term (25 yrs) and medium-term (5 yrs) forest management plans, including the management strategies proposed, prepared by TSFMA holders and transmitted to the JBACE by the MRN;
- THAT** the JBACE shall use the financial resources (\$100 000) made available to it by the MRN to conduct this analysis and to prepare a document to be transmitted to the government of Québec, the government of Canada and the Cree governments. If need be, the JBACE shall request additional funds from the MRN;
- THAT** the JBACE shall inform the MRN of the timeframe it considers appropriate for analyzing the plans and their environmental and social impacts, given the substantial amount of data and documents submitted to the JBACE to date;

THAT the analysis shall include consultation of the Cree communities and the trappers whose traplines are affected by these plans;

THAT the results of this analysis shall be integrated into the forest system review process currently under way.

Moved by: Ginette Lajoie

Seconded by: Jacques Robert

It was requested that the resolution be voted on. The members appointed by Québec asked to withdraw for a few minutes to discuss the position they should adopt.

When they returned, the Chairperson asked that the members vote on the draft resolution.

The following voted in favour of the resolution:

Yves Désilets, Canada
Susanne Hilton, CRA
Ginette Lajoie, CRA,
Claude Langlois, Canada,
Jacques Robert, Canada
Diom Romeo Saganash, CRA,
Harm Sloterdijk, Canada (proxy)
Willie Iserhoff, CRA (proxy)
Violet Pachanos, HFTCC (proxy)

The following voted against the resolution:

Carole Garceau, Québec
Jacques Lefebvre, Québec
Pierre Moses, Québec

The resolution was adopted by a majority vote.

The members are encouraged to submit their comments on the specifications as soon as possible.

Despite the resolution, the members appointed by Québec are prepared to work on studying the FMPs since doing so falls within the JBACE's mandate.

Discussion of the other items on the agenda was carried over to the next JBACE meeting.

12. DATE AND LOCATION OF NEXT MEETING

The next JBACE meeting will be held in Oujé-Bougoumou on April 6, 2000.



DENIS BERNATCHEZ
Secretary

00-04-07

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