



## MINUTES OF THE 201<sup>st</sup> MEETING OF THE JAMES BAY ADVISORY COMMITTEE ON THE ENVIRONMENT

**(ADOPTED)**

- DATE:** April 26, 2017
- PLACE:** Conference room, Cree Nation Government office, Montréal
- PRESENT:** Andy Baribeau, Cree Nation Government (CNG)  
Manon Cyr, Québec (by phone)  
Annie Déziel, Canada  
Kenneth Gilpin, ex-officio member, Hunting, Fishing and Trapping Coordinating Committee (HFTCC)  
Caroline Girard, Canada  
Pascale Labbé, Québec, Chairperson  
Ginette Lajoie, CNG  
Chantal Otter Tétreault, CNG (by phone)  
Melissa Saganash, CNG  
Mélanie Veilleux-Nolin, Québec  
Marc Jetten, Executive Secretary  
Graeme Morin, Environmental Analyst
- ABSENT:** Jean Picard, Canada, Vice-Chairperson  
François Provost, Québec  
Jean-Yves Savaria, Canada
- GUESTS:**
- For Item 5 (by phone):** Anna Kessler, policy analyst, special advisory group on Indigenous affairs, Canadian Environmental Assessment Agency
- For Item 9, from the Niskamoon Corporation:**
- Marc Dunn, Director of Environment  
Robbie Tapiatic, Director of Remedial Works  
Réal Courcelles, director
- For Item 12 (by phone):** Jean-Pierre Laniel, Director of Biodiversity Expertise, Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC)

### **1. CHAIRMANSHIP AND AGENDA**

As it is the Cree party's turn to appoint a chairperson for fiscal year 2017-2018, the members designated Melissa Saganash to chair the meeting. On motion by Ginette Lajoie, seconded by Annie Déziel, the agenda was adopted as amended.

## **2. ADOPTION OF THE MINUTES OF THE 200TH MEETING (FEBRUARY 7 AND 8, 2017)**

On motion by Pascale Labbé, seconded by Annie Déziel, the minutes of the meeting held in Chisasibi on February 7 and 8, 2017, were adopted as amended.

## **3. PRIORITIES FOR 2015-2017**

- a. *Strategic environmental assessment and Bill 102 amending the Environment Quality Act to modernize the authorization scheme*

The National Assembly of Québec passed Bill 102 amending the *Environment Quality Act* to modernize the authorization scheme; however, the text of the new Act is not yet available to the public. A member explained that the MDDELCC will be making regulations under the Act relating to, among other things, strategic environmental assessment (SEA), the authorization scheme and the public project registry. The JBACE will write to the MDDELCC requesting that it be consulted on the proposed regulations and that its recommendations in relation to Bill 102 be taken into account. The JBACE subcommittee on SEA will resume its work.

- b. *Review of tactical plans for integrated forest management ('PAFIT', in French)*

The JBACE subcommittee on forestry will examine the criteria and indicators to be developed using the parameters defined in February for the review of PAFITs. The JBACE will write to the Minister of Forests, Wildlife and Parks to ensure that forest planning is coordinated with the development of its recovery strategy for the long-term survival of woodland caribou.

- c. *Strategic planning*

Since the Strategic Plan 2013-2018 expires in a year, the JBACE will create a subcommittee to revise the plan for the subsequent period. In the meantime, the secretary will prepare an assessment of the plan's implementation.

## **4. RECOMMENDATIONS REGARDING THE REVIEW OF SCHEDULES 1 AND 2 TO SECTION 22**

In 2008, the JBACE made recommendations for updating the list of projects automatically subject to and exempt from impact assessment (schedules 1 and 2 to Section 22). The Committee continued its work in 2013, making recommendations on whether or not to submit mineral exploration projects to impact assessment. Although the signatory parties to Section 22 held discussions on the matter, schedules 1 and 2 have not been amended. The JBACE will write to the signatory parties to find out where things are at in this regard.

## **5. PRESENTATION BY ANNIE DÉZIEL (CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY) ON THE REPORT OF THE EXPERT PANEL FOR THE REVIEW OF FEDERAL ENVIRONMENTAL ASSESSMENT PROCESSES**

Ms. Déziel outlined the Expert Panel's report and the anticipated follow-up (see Appendix 1 for a summary). The JBACE will inform the federal Minister of Environment and Climate Change that it wants to continue being involved in the review of federal environmental assessment processes. In addition, the JBACE will stress the importance of ensuring consistency with the Section 22 provisions and respecting the bodies established by the same section.

## **6. MFFP CONSULTATION POLICY ON SUSTAINABLE FOREST MANAGEMENT**

The secretary went over the draft letter of reply to the invitation to comment on the MFFP's new consultation policy. The members made changes to make sure that the Cree-Québec agreement on harmonization of the adapted forestry regime and the Québec forest regime is taken into account. The JBACE will also suggest that the Hunting, Fishing and Trapping Advisory Committee be consulted given the impact of forest management activities on wildlife habitats.

## **7. MINISTÈRE DE L'ÉNERGIE ET DES RESSOURCES NATURELLES (MERN) GUIDELINES IN THE AREA OF SOCIAL ACCEPTABILITY**

The members made changes to the draft letter on MERN's social acceptability guidelines. Given the size of the territory covered by the JBNQA and the amount of energy and natural resources it supplies, the members feel that the guidelines should contain a separate section dealing specifically with social acceptability in the context of Eeyou Istchee James Bay.

## **8. RELATIONS WITH THE EVALUATING COMMITTEE (COMEV) AND THE ENVIRONMENTAL AND SOCIAL IMPACT REVIEW COMMITTEE (COMEX)**

The chairpersons of COMEV, COMEX and the JBACE agreed to hold a statutory meeting once a year to discuss issues of common interest. For example, the new *Environment Quality Act* provides that projects subject to the environmental assessment procedure in southern Québec undergo a 'climate test'. The committees could hold a workshop to determine whether the same thing could apply to the Section 22 assessment and review procedure. A member stressed the importance of inviting the Federal Review Panel to the workshop (COFEX-South).

## **9. PRESENTATION BY MARC DUNN OF THE NISKAMOON CORPORATION ON THE COASTAL HABITAT STUDY PROGRAM**

Marc Dunn explained the aims of a three-year study on habitats along the coast of James Bay, in particular eelgrass beds (see Appendix 2 for a summary).

## **10. WORK OF THE SUBCOMMITTEE ON LAND USE PLANNING**

At the end of March, the JBACE advised the Eeyou Istchee James Bay Regional Government (EIJBRG) regarding its participation in the preparation of the public land use plan ('PATP', in French) for Category III lands in Eeyou Istchee James Bay. The subcommittee on land use planning also wants to formulate recommendations to the EIJBRG regarding the preparation of a regional plan for integrated land and resource development ('PRDIRT', in French). The analyst has begun reviewing the contextual elements to be considered. A member thinks it is important to consider the resources required not only to prepare the PRDIRT, but also to implement it. The subcommittee will meet to discuss the matter.

## **11. ADMINISTRATION**

### ***a. Organizational diagnosis***

The Administrative Committee and the members interviewed for the diagnosis will read over the consultants' report. A special meeting will be held so that the report's conclusions can be discussed among all the members.

**b. JBACE chairman for fiscal year 2017-2018**

It is the Cree Nation Government's turn to appoint the JBACE chairperson and vice-chairperson for fiscal year 2017-2018. A resolution to that effect will be sent to the secretariat soon.

**12. PRESENTATION BY JEAN-PIERRE LANIEL OF THE MDDELCC ON BILL 132, AN ACT RESPECTING THE CONSERVATION OF WETLANDS AND BODIES OF WATER**

Mr. Laniel outlined Bill 132, *An Act respecting conservation of wetlands and bodies of water*, tabled by the Québec government (see Appendix 3 for a summary).

Given the importance of wetlands and bodies of water in Eeyou Istchee James Bay, among other things as habitat for migratory birds, the JBACE will submit comments to the parliamentary committee tasked with examining the bill.

**13. NEXT MEETING**

The JBACE will hold its next meeting on June 28 and 29, 2017, in Québec City.



Marc Jetten  
Executive Secretary  
July 10, 2017

**APPENDIX 1: PRESENTATION FROM ANNIE DÉZIEL OF THE CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY REGARDING THE REPORT OF THE EXPERT PANEL FOR THE REVIEW OF ENVIRONMENTAL ASSESSMENT PROCESSES**

The objective is to present the recommendations of the Expert Panel included in their report “Building Common Ground: A New Vision for Impact Assessment in Canada”, submitted to the Minister of Environment and Climate Change Canada in March 2017 and released on April 5, 2017.

The Canadian Environmental Assessment Agency and the Government of Canada don't have a position on the report at this time. They are listening and planning their analysis. It is not known yet what form the environmental assessment review will take – it could be policy, regulatory, or legislative change. All options are open at this time. During the summer months, the government will review and refine these options to have recommendations for potential legislative, regulatory or policy changes next fall. There will be further engagement opportunities during the summer and early fall. The Agency will keep the JBACE informed.

The Expert Panel report contains forty eight recommendations regrouped in eleven topics:

- Sustainability
- Cooperation among jurisdictions
- Indigenous considerations
- Public participation
- Incorporating evidence
- Governance
- What gets an IA
- Project impact assessment
- Monitoring, compliance and enforcement
- Regional impact assessment
- Strategic impact assessment
- Climate change and impact assessment

The recommendations were briefly presented, with varied emphasis depending on their relative interest for the JBACE.

With regards to cooperation among jurisdictions, the Panel recommends that “co-operation be the primary mechanism for coordination”. Substitution should be available, but on the condition that the highest standard of impact assessment would apply. Little details were offered on how substitution may happen concretely. In response to a question, it was clarified that the Panel does support the principle of one project – one assessment.

The Panel recommends that federal interests be used in determining which development projects should be the object of an impact assessment. And in the Panel's view, the definition of federal interests should be broader than the current definition under section 5 of the Canadian Environmental Assessment Act, 2012 (CEAA 2012). Among others, the definition should include Indigenous People and lands, greenhouse gas emissions of national significance, watershed or airshed effects crossing provincial or national boundaries, and navigation and shipping.

The Panel also recommends adding a planning phase upstream to the current start of the environmental assessment process. This step would happen quite early and require proponents to enter into the process before having a highly detailed proposal. All interested parties would be involved in this step where the impact assessment will be planned, including the development of consultation and engagement plans. The Panel

clarifies that this step will require more resources than today. On a related topic, a member of the JBACE asked if some actions can be started even more upstream than the planning phase suggested by the Panel. Something, for example, to ensure that proponents meet early with communities in order to get a better understanding of the social, cultural and environmental contexts and specificities; inform the communities and get their input, etc.

The Panel recommends that Indigenous People be included in decision-making at all stages of the impact assessment process, in accordance with their own laws and customs. Another recommendation is to establish a "Decision Phase" where the Impact Assessment Authority "would seek Indigenous consent and issue a public decision statement on whether the project contributes positively to the sustainability of Canada's development". In response to a question regarding the notion of "free, prior and informed consent" (FPIC) of the United Nations Declaration on the Rights of Indigenous Peoples, it was clarified that the government of Canada recently lifted its reservations on the Declaration. A Canada member further clarified that the government of Canada is currently developing its understanding of the FPIC concept.

Indigenous knowledge should be integrated into all phases of the impact assessment according to the Panel, and this should be done "in collaboration with, and with the permission and oversight of, Indigenous Groups". The Panel also recommends that the legislation should confirm the Indigenous ownership of Indigenous knowledge and include provisions to protect it. A JBACE member raised that "integrating" Indigenous knowledge is not sufficient, the way it is provided is also important and should be considered.

Collaboration and the participation of all interested parties is crucial for the Panel and it recommends that "all phases of project Impact Assessment be conducted through a multi-party, in-person engagement process". The Panel also recommends having a three-tiered impact assessment process, with strategic and regional impact assessments being added upstream to project assessments. In the Panel's vision, regional impact assessments should be required in regions where "cumulative impacts may occur or already exist on federal lands or marine areas, or where there are potential consequential cumulative impacts to matters of federal interest". A JBACE member asked if impacts to Forest Caribou, as a listed species at risk under the Species at Risk Act (SARA) and a matter of federal interest, could be a trigger for regional assessment. It was clarified that the Panel does include SARA listed species as federal interest, and does say that cumulative effects to matters of federal interest could merit a Regional impact assessment.

## **APPENDIX 2: PRESENTATION BY MARC DUNN OF THE NISKAMOON CORPORATION ON THE COASTAL HABITAT STUDY PROGRAM**

Marc Dunn explained that the Niskamoon Corporation, an organization jointly established by the Cree Nation Government and Hydro-Québec, initiated a coastal habitat study program to address the concerns about a decline in certain habitats, including eelgrass beds, along the coast of James Bay. The issue was discussed, in particular, at a special meeting of the Grand Council of the Crees held in Chisasibi in fall 2015. The study has three components: eelgrass beds, the hydraulic regime of rivers and the physical oceanography of coastal habitats.

The three-year study covers coastal habitats of James Bay as well as terrestrial habitats up to 5 km upstream of river mouths. It should be possible to examine several factors, including climate change, development projects, marine currents and the specific features of each river in the study area.

The eelgrass decline in the 1990s coincided with the commissioning of Phase II of the La Grande hydroelectric complex, when there was an increase in fresh water input in the bay. However, it is still difficult to establish a causal link, because all habitats up to Rupert Bay to the south bear witness to the decline. According to Mr. Dunn, even the smaller rivers, which have a proportionately larger sediment input than wider ones, need to be

studied. Changes have also occurred in waterfowl migration flyways: migratory birds tend to travel more inland than along the coast and to fly at higher altitude.

According to Mr. Dunn, eelgrass beds tend to re-establish themselves, albeit very slowly and unevenly, depending on the area. These environmental changes affect Cree traditional hunting practices as well as transmission of ecological knowledge to younger generations. Before implementing a re-establishment program, stressors have to be clearly identified, which is why the proposed study is important. The study could reveal the ecological significance of aquatic plants other than eelgrass.

The research team, headed by Frederick Short of the University of New Hampshire and Paul di Giorgio of UQAM, will begin by looking at previous studies so as to avoid asking the same land users, particularly Cree trappers, the same questions. As needed, other interviews will be conducted to supplement Cree ecological knowledge. The team will also work in collaboration with a research consortium that includes UQAR and the University of Manitoba, who have expertise in the area of marine currents.

The three study components will be coordinated by a steering committee whose members include Cree users of the James Bay coast. Still to be done are finding the remaining funding, selecting the person responsible for collecting Cree knowledge, and completing data on wildfowl populations.

Robbie Tapiatic said that the eelgrass decline has to be put into perspective. Three-quarters of the traplines belonging to the community of Chisasibi are located inland, so eelgrass beds are not an issue for the majority of land users.

A member pointed out the changes in waterfowl populations. Snow geese used to be abundant in the area, but now the dominant species is clearly the Canada Goose. According to Robbie Tapiatic, migratory birds have always been found inland, but they were rarely hunted by the Crees because there was no road network enabling quick access to lakes and rivers. In addition, the loads of furs being carried to the trading post made it harder to carry a supply of wild meat. A member suggested that Cree knowledge of eelgrass beds as fish habitat also be documented.

### **APPENDIX 3: PRESENTATION BY JEAN-PIERRE LANIEL ON BILL 132, AN ACT RESPECTING THE CONSERVATION OF WETLANDS AND BODIES OF WATER**

Jean-Pierre Laniel, director of biodiversity expertise at the MDDELCC, outlined Bill 132, *An Act respecting the conservation of wetlands and bodies of water*.

Wetlands and bodies of water consist of a rich diversity of ecosystems that perform various ecological functions, including regulating the water cycle and storing carbon. These environments are under significant threat in southern Québec, where 80% of wetlands have been lost through urban sprawl and industrial and agricultural projects. Mr. Laniel said that the main objective of the bill is to safeguard wetlands in southern Québec, but that it also applies to the entire territory of Québec.

The two principal elements of the guiding vision of the bill are the principle of “no net loss” and the fight against climate change. Bill 132 has three thrusts: conservation of wetlands and bodies of water, sustainable use of their resources, and environmental authorization of projects or activities resulting in a loss of wetlands or bodies of water.

The bill is a complement to the bill amending the *Environment Quality Act* (EQA) to modernize the authorization scheme passed by the National Assembly on March 23, 2017. The type of authorization required would be

determined according to the degree of environmental risk (high-low-negligible). High-risk projects would be subject to authorization under the EQA, whereas low-risk projects would require only a statement of compliance. Certain activities that present a negligible risk would be exempt from environmental authorization.

To enable better conservation of wetlands and bodies of water, Bill 132 amends the *Act to affirm the collective nature of water resources and provide for increased water resource protection* to require metropolitan communities and regional county municipalities to develop and implement a regional wetlands and bodies of water plan for their entire territory, except land in the domain of the State. The plans must identify the wetlands and bodies of water of the territory concerned, those that are of special conservation interest and those that could be potentially restored or created, as well as include an action plan containing a list of the interventions proposed and a timeline for carrying them out.

In addition, Bill 132 would empower the Minister of Sustainable Development, the Environment and the Fight Against Climate Change to designate wetlands and bodies of water with rare or remarkable features as protected areas under the *Natural Heritage Conservation Act*. Designation as a protected area would be articulated through an authorization scheme that prohibits certain activities that harm the integrity of the area and allows authorization of activities that are acceptable in that regard.

For activities or projects that involve a high risk or the loss of wetland or a body of water, the Québec government wants to apply the principle of “no net loss.” Proponents of projects that could adversely affect wetlands or bodies of waters must strive to avoid impacts on those environments. Where it is not possible to avoid adverse effects, proponents must ensure the sustainable use of the wetland or body of water or else apply mitigation measures. Lastly, where the destruction of a wetland or body of water is inevitable, the proponent must make a financial contribution to a fund that will be used to restore wetlands and bodies of water based on the value of the environment lost and the anticipated restoration cost. This means that a proponent in Northern Québec may have to pay financial compensation for a wetland loss. A regulation would set out the preferred approach in this regard. To ensure that compensation is effective from the moment the bill is passed, Schedule 1 of the bill sets out a method for calculating a financial contribution during the transitional period.

According to Mr. Laniel, one of the anticipated effects is to create a deterrent effect so that proponents make an effort to find ways to avoid or mitigate impacts. In addition, the MDDELCC will create a public register of financial compensation paid, restoration work and designated protected areas.

A member said that the JBACE should promote a preventive approach to ensure that wetlands in the North do not suffer the same fate as those in southern Québec. The JBACE will write to the Committee on Transportation and the Environment to express its interest in participating in the special consultations on Bill 132 that are to begin in mid-May.