



## **MINUTES OF THE 165th MEETING OF THE JAMES BAY ADVISORY COMMITTEE ON THE ENVIRONMENT**

*(Adopted)*

**DATE:** September 28 and 29, 2010

**PLACE:** Meeting room at the Cree-Naskapi Commission, Ottawa

**PRESENT:** Serge Alain, Québec  
Josée Brazeau, Québec, Vice-Chairperson  
Annie Déziel, Canada  
Denyse Gouin, Québec (Sept. 29)  
Ginette Lajoie, Cree Regional Authority (CRA)  
Maryse Lemire, Canada, Chairperson  
Chantal Otter Tétreault, CRA  
Jean Picard, Canada  
Norman Wapachee, CRA  
  
Jessica Labrecque, Environmental Analyst  
Marc Jetten, Executive Secretary

**ABSENT:** Ashley Iserhoff, CRA  
Louis Lesage, ex-officio member, HFTCC  
Pierre Moses, Québec

**Guest for Item 3:**

Matthew Coon Come, Grand Chief, Grand Council of the Crees

**Guests for Item 11:**

Elaine Feldman, President, Canadian Environmental Assessment Agency (the Agency) and Federal Administrator of Section 22  
Thao Pham, Vice-President, Operations, the Agency  
Yves Leboeuf, Vice-President, Policy Development, the Agency

## **Call to order and adoption of the agenda**

The Chairperson welcomed the members. On motion by Ginette Lajoie, seconded by Jean Picard, the agenda was adopted as amended.

### **1. ADOPTION OF THE MINUTES OF THE 164TH MEETING (JUNE 17, 2010)**

On motion by Josée Brazeau, seconded by Chantal Otter Tétreault, the minutes of the 164th meeting of the JBACE were adopted as amended.

### **2. ADMINISTRATION**

#### ***a. Competition for the analyst position***

The selection committee chose 12 candidates to take the written exam. Based on the exam results, 4 candidates will be interviewed on October 5, 2010.

#### ***b. New minister and deputy minister of the Ministère du Développement durable, de l'Environnement et des Parcs***

Pierre Arcand has been appointed Minister of Sustainable Development, Environment and Parks (MDDEP). The JBACE will ask to meet with the new minister to discuss various issues, including the Northern Plan and modernization of Section 22 of the JBNQA.

The JBACE also wishes to meet with the newly appointed deputy minister of the MDDEP, Diane Jean, to follow up on the matters raised with her predecessor, Madeleine Paulin, on June 17, 2010.

#### ***c. Review of the administrative agreement with MDDEP***

The JBACE will draft and propose a new administrative agreement. The Committee hopes to initiate discussions with all of the parties concerned with implementation of Section 22 (Canada, Québec and CRA).

The new agreement should provide for a significant increase in the JBACE's funding to enable the Committee to fully discharge its mandate. Also, since the JBACE exercises no administrative supervision over the Evaluating Committee (COMEV), no sum to pay the costs of COMEV's secretariat would be deducted from the funding granted to the JBACE.

*d. Review process for letters*

As agreed, each party must designate one of its members to review draft letters. That member may consult the other members from his or her party as needed. The designated member of each party is responsible for incorporating the comments of the other members of that party. This review process was agreed to at the 163rd JBACE meeting (April 2010) for the purpose of ensuring letters are drafted in a more efficient and timely manner.

**3. MEETING WITH MATTHEW COON COME, GRAND CHIEF OF THE GRAND COUNCIL OF THE CREES (EYYOU ISTCHEE) AND CHAIRPERSON OF THE CREE REGIONAL AUTHORITY**

*Northern Plan (Plan Nord)*

Grand Chief Coon Come began by addressing the matter of the Northern Plan, underlining that the Cree people are the main occupants of the James Bay territory and, as such, want to be party to the Northern Plan. It falls to the government to respect the JBNQA and the bodies and land regime it established, which means, in particular, taking Cree family traplines into account. The Grand Chief emphasized the need, when defining the areas to be withdrawn from industrial development under the Northern Plan, to consider the impact of past industrial development, such as forestry and hydroelectricity, on the Territory.

Furthermore, the Grand Chief endorses the JBACE's call for a strategic environmental assessment of the Northern Plan: given the multi-sector developments (energy, mining, forestry, recreational tourism, etc.) envisaged in the plan, an independent assessment of environmental and social considerations will be needed.

*Forest development*

In spring 2010, the Québec government passed the bill reforming Québec's forest regime. Among other things, the new statute favours an ecosystem-based approach to forest development. According to the Grand Chief, this approach is unacceptable if it calls into question the gains under the Agreement Concerning a New Relationship Between le Gouvernement du Québec and the Crees of Québec (ANRQC) and the Cree way of life.

Also, the new forest regime makes the Ministère des Ressources naturelles et de la Faune (MRNF) responsible for preparing forest development plans. Since 1986, this responsibility had fallen to forest companies and the working relations developed

between the company representatives and Cree trappers have been generally constructive. As far as trappers are concerned, these relations will have to be rebuilt under the new forest regime.

In addition, the Grand Chief endorses the JBACE's opinion calling for a suspension of the review of planned forest roads due to feared impacts on woodland caribou habitat: Mr. Coon Come thinks it is vital that planned forest roads not be reviewed until data on the critical habitat of this threatened species have been received.

### ***Bill amending the Mining Act***

The Chairperson went over the recommendations made by the JBACE during the consultation on Bill 79. The Grand Chief thinks the JBACE's proposal to create a register of mining activities and environmental monitoring programs that's easy for the public to consult is worth examining. It's important that the Crees be informed of mineral exploration and other activities conducted on their land.

The JBACE also recommended that proponents of mining projects consult Cree communities and tallymen during the planning process, i.e. before the project is submitted to the Section 22 impact assessment and review procedure. Mr. Coon Come said that this recommendation is in line with the mining policy established by the Grand Council of the Crees. He mentioned that mining companies were the first ones to negotiate impact and benefit agreements (IBAs) with First Nations in Canada.

### ***Cree governance***

Mr. Coon Come wanted to address the issue of regional governance under Bill 40, which was passed in 2001 and confers regional powers on James Bay Municipality. According to the Grand Chief, Bill 40 limits the Crees' powers to Category I lands only, which is unacceptable. The Grand Council of the Crees recently made a new proposal on regional governance grounded in the rights recognized in the JBNQA and ANRQC. It's waiting for the Québec government to respond.

### ***Modernization of the Section 22 regime***

The JBACE members explained the work they've done to modernize the Section 22 assessment and review procedure. The Grand Chief said he's waiting for Canada and Québec to make their positions known before responding to the JBACE's recommendations for updating schedules 1 and 2 (lists of development projects subject to and exempt from impact assessment). He supports the steps taken by the JBACE to develop public consultation guidelines for the assessment and review procedure.

### ***JBACE funding***

The JBACE members explained their request for an increase in the annual funding allocated to the Committee to enable it to fully discharge its mandate. Mr. Coon Come said that the Grand Council of the Crees is in favour of increasing the Committee's annual funding, but the other funding bodies, i.e. Canada and Québec, must do the same for it to happen.

#### **4. PRESENTATION BY RICHARD SAUNDERS, CHAIRPERSON OF THE CREE-NASKAPI COMMISSION**

Mr. Saunders explained the Commission's mandate and the issues it's dealt with over the last few years. The *Cree-Naskapi (of Québec) Act*, which replaces the *Indian Act* for these two nations, established the Cree-Naskapi Commission to monitor implementation of the JBNQA, the Northeastern Quebec Agreement (NEQA) and the *Cree-Naskapi (of Québec) Act*.

The Cree-Naskapi Commission's report on the overall progress and status respecting the implementation of the JBNQA, the NEQA and the *Cree-Naskapi Act* is tabled in the House of Commons and Senate every two years. It is referred to the standing committees. If the committees so request, the Department of Indian Affairs responds to the Commission's recommendations. In recent years, the Commission has placed greater emphasis on following up on its recommendations with the minister. Over time, this has led to more productive relations.

The Commission holds consultations with every Cree and Naskapi community when preparing its biannual reports. The Commission members attach special importance to these consultations, which is why they follow up with the communities in order to validate the comments gathered.

The Commission's recommendations usually deal with decisions made by the Government of Canada or the Cree or Naskapi First Nation (local governments). However, the CRA will most likely be on the Commission's agenda more now that its regional powers have been broadened under a recent amendment to the *Cree-Naskapi (of Québec) Act*.<sup>1</sup>

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<sup>1</sup> The amendment was made pursuant to the Agreement Concerning a New Relationship Between the Government of Canada and the Crees of Eeyou Istchee (2008).

## **5. FILE UPDATE**

### ***a. Public consultation guidelines steering committee***

A member of the steering committee reported on the progress in developing public consultation guidelines. The steering committee's recommendations will be aimed at improving the public consultation process. Some could be implemented rapidly; others may require amendments to Section 22 of the JBNQA.

The JBACE members think that the steering committee must work quickly given the major consultations to be held during the coming year (Matoush project, Otish Mountains road). The JBACE will write to the deputy minister of the MDDEP to ask her to clarify the status of MDDEP representatives, who tend to distance themselves from the steering committee's objectives.

The JBACE will also write to the Bureau d'audiences publiques sur l'environnement (BAPE) to ask that it give a presentation to the steering committee on the specific challenges of holding consultations in remote regions and Aboriginal communities. In addition, the steering committee hopes to collect more information on the public consultation process in other northern regions where Aboriginal communities must be consulted, such as Nunavut and the Mackenzie Valley.

### ***b. MRNF inspection of mine sites posing a risk***

The JBACE will contact the MRNF to request a copy of the inspection report on mine sites posing a risk. The secretary will also try to get a copy of the report *Screening Level Ecological Risk Assessment* prepared by the steering committee for studies of mine sites in the Oujé-Bougoumou region. The steering committee is composed of representatives from the MRNF, MDDEP, CRA and Oujé-Bougoumou. The JBACE intends to help disseminate these reports through its website.

The MRNF called for tenders to study the impact on fish habitat of the tailings dike failure at the Opemiska mine.

## **6. NORTHERN PLAN**

### ***a. Work of the sustainable development focus group***

The secretary attended the September 1st meeting of the sustainable development consultation table (Groupe de concertation sur le développement durable) as an observer. The table members are preparing a backgrounder to serve as a baseline for the sustainable development section of the five-year plan within the Northern Plan (expected in November 2010).

***b. Presentation on strategic environmental assessment given to the transportation working group***

A member reported on the presentation on strategic environmental assessment (SEA) of the Northern Plan she gave to the transportation working group (and access to the territory). The JBACE's proposal received mitigated support. Some of the working group members supported it; others asked questions without saying if they supported it or not, while others had reservations about the approach or think the actions already taken or planned will achieve a similar objective. The co-chairs of the working group are of the opinion that it's not up to their group to conduct an environmental assessment or even to call on any other authority involved in the development of the Northern Plan to conduct one.

***c. 50% of the territory withdrawn from industrial development***

The MDDEP plans on presenting a bill, this December, on the area under the Northern Plan that will be withdrawn from industrial development (50% of the area covered by the plan). A pre-consultation document should be submitted to the Northern Plan partners in the near future. If it is to play its role as advisory body to the government in a meaningful manner, the JBACE must be consulted early in the drafting of the bill. The Committee will write to the Minister of the MDDEP to that effect.

**7. REVIEW OF GENERAL FOREST MANAGEMENT PLANS (GFMPs)**

***a. MRNF response to funding request***

The associate deputy minister of Forêt Québec (MRNF) replied negatively to the JBACE's request for designated funding to review GFMPs and amendments thereto. According to the MRNF, Québec's share of funding for the JBACE comes from the MDDEP.

The Committee will reply to the associate deputy minister's letter, reminding him that the MRNF already created a precedent in 1999 when it gave the JBACE a sum of money for the specific purpose of reviewing GFMPs. Moreover, the provision of funding for that purpose should not fall solely to the MDDEP, because forest management activities on Cree traplines have social as well as environmental impacts.

*b. Incorporation of JBACE environmental and social protection criteria*

The JBACE asked that its environmental and social protection criteria be incorporated into GFMPs in the early stages of their preparation. In his reply, the associate deputy minister of Forêt Québec said that the MRNF would begin by initiating discussions with the CRA on the implementation of the new forest regime. The JBACE will have to remind the MRNF that the planned discussions with the CRA do not waive the department's obligation to consult the JBACE on the implementation of the new forest regime; moreover, incorporation of environmental and social protection criteria into forest management plans remains a major step toward ensuring sustainable forest management.

The JBACE wants to examine the possibility of working more closely with the Cree-Québec Forestry Board (CQFB) during the review of the new series of forest management plans to be approved in 2013. Since both bodies have a mandate to study GFMPs, we could develop greater complementarity between our activities by working together more. The chairperson of the JBACE will write to her counterpart of the CQFB with regard to this matter.

*c. Tools required for the review of GFMPs and their approval by the MRNF*

In light of the difficulties raised by the JBACE during the review of the amended GFMP for management unit 26-64, the director general for the Nord-du-Québec region (MRNF) proposed a meeting to discuss the GFMP review and approval process as well as the JBACE's needs in this regard. In the Committee's opinion, these are matters to be taken up with officials from the Forêt Québec's central office, although the regional director general may take part in the discussions.

The JBACE Chairperson will contact the deputy minister of the MRNF to reiterate the importance for the department to designate a contact person from each sector (Forests, Mines, Wildlife and Territory) for the JBACE's purposes.

## **8. JBACE RELATIONS WITH ENVIRONMENTAL GROUPS**

The JBACE occasionally has the opportunity to interact with environmental groups and share its views on issues such as the Northern Plan, the mining reform and protected areas. As the JBACE is a statutory body established by the JBNQA, the members hope to clarify the nature of its relations with environmental groups. Representatives from groups involved in northern issues will be invited to an information meeting to explain the JBACE's mandate and role.



## **9. JBACE RELATIONS WITH THE MEDIA**

A journalist called the secretariat requesting details on the JBACE opinion calling for a suspension of the review of planned forest roads owing to their potential impact on woodland caribou. However, the rules of their respective departments do not allow the members designated by the JBACE to speak on its behalf to talk to the media.

The JBACE will write to the authorities at the departments concerned to inform them that its rules of internal management stipulate that the chairperson or any other person designated by the Advisory Committee may communicate with members of the public on behalf of the Advisory Committee.

## **10. JBACE PARTICIPATION IN THE CURRENT REVIEW OF THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT (CEAA)**

The JBACE will notify the House of Commons Standing Committee on Environment and Sustainable Development that it wishes to make an oral submission during the review of the CEAA. The members will hold a conference call soon to discuss the focuses of the Committee's brief.

## **11. MEETING WITH ELAINE FELDMAN, FEDERAL ADMINISTRATOR OF THE SECTION 22 ASSESSMENT AND REVIEW PROCEDURE (MS. FELDMAN IS ACCOMPAGNIED BY AGENCY VICE-PRESIDENTS THAO PHAM AND YVES LEBOEUF)**

The members explained the JBACE's mandate and the work being carried out to examine policies, laws and regulations and modernize the Section 22 assessment and review procedure. The JBACE stressed the need for a flexible public consultation procedure adapted to Cree communities and the scale of the development project.

The JBACE's recommendations for updating schedules 1 and 2 (lists of development projects) were made in light of technological changes and the existing regulatory framework. Given that the recommendations were submitted to the parties in 2008, the JBACE expects to receive a response from the Government of Canada soon.

With regard to the *Canadian Environmental Assessment Act (CEAA)*, Yves Leboeuf explained that it is currently being reviewed by a parliamentary committee, which will eventually report back to Parliament with recommendations for legislative changes. The government will then review the committee's recommendations and decide whether or not to propose any legislative amendments. There will be

opportunities throughout this process for the JBACE to share its views with the parliamentary committee and Agency regarding options for legislative improvements.

The members explained the JBACE's budget status and asked Ms. Feldman, as president of the Agency, to plan for an increase in the annual funding allocated to the Committee. Ms. Feldman said that discussions are foreseen to look at the amount of the JBACE's annual grant over the coming years.

Ms. Feldman hopes to create more sustained working relations with the JBACE. She suggested meeting with the Committee periodically rather than waiting for a legislative matter to arise, such as the review of the CEAA. The members were in favour of this suggestion.

## **12. PROTECTION OF WOODLAND CARIBOU HABITAT**

The provincial administrator, Madeleine Paulin, responded to the JBACE's opinion regarding woodland caribou by saying that if it has the necessary information the Provincial Review Committee (COMEX) would be able to discharge its mandate. The JBACE will thus write to COMEX to ask if the necessary information, in particular the maps of critical habitat for woodland caribou, is available. The JBACE will also write to the provincial administrator again to reiterate its position that the review of planned forest roads should be postponed.

Since woodland caribou has been listed as threatened under the *Species at Risk Act* since 2003, the JBACE will ask the Minister of the Environment of Canada why no recovery strategy has been approved yet. Lastly, the Committee will write to the federal authorities responsible for application of the CEAA to two planned forest roads to draw their attention to this issue.

## **13. PROPOSED EXCEPTIONAL GEOLOGICAL SITE IN JAMES BAY**

The MRNF's Nord-du-Québec regional office submitted a proposal to the Grand Council of the Crees (GCC) for designating a feather fen near Waskaganish as an exceptional geological site. The fen is located on Category I land and the GCC has only 45 days to make its comments known. The JBACE will write to the MRNF regional office to inform it of the public consultation process for such projects, in particular in relation to the Cree First Nation of Waskaganish. The JBACE should have been consulted on this proposal as well, especially considering its manifest interest in protected areas in the James Bay territory.

**14. NEXT MEETING**

The next JBACE meeting will be held on December 2, 2010, in Montréal.

A handwritten signature in black ink, appearing to read "Marc Jetten". The signature is fluid and cursive, with a large loop at the end.

**Marc Jetten  
Executive Secretary  
December 7, 2010**