



MINUTES OF THE 167th MEETING OF THE JAMES BAY ADVISORY COMMITTEE ON THE ENVIRONMENT

(Adopted)

DATE: February 23, 2011

PLACE: Cree Regional Authority offices, Montréal

PRESENT: Josée Brazeau, Québec, Vice-Chairperson
Annie Déziel, Canada
Denyse Gouin, Québec
Ashley Iserhoff, Cree Regional Authority (CRA)
Ginette Lajoie, (CRA)
Maryse Lemire, Canada, Chairperson
Chantal Otter Tétreault, CRA
Jean Picard, Canada
Norman Wapachee, CRA

Marc Jetten, Executive Secretary
Graeme Morin, Environmental Analyst

ABSENT: Louis Lesage, ex-officio member, HFTCC
Pierre Moses, Québec

Guest for Item 7:

Aurora Hernandez, mining engineer, Cree Regional Authority

Guests for Item 8:

Philippe Éthier, James Bay Implementation Office, Indian and Northern Affairs Canada (INAC)
Thessa Girard-Bourgoin, Implementation Branch, INAC

1. ADOPTION OF THE AGENDA

On motion by Jean Picard, seconded by Denyse Gouin, the agenda was adopted as amended.

2. ADOPTION OF THE MINUTES OF THE 166TH MEETING (DEC. 2, 2010)

On motion by Chantal Otter Tétreault, seconded by Josée Brazeau, the minutes of the 166th meeting of the JBACE were adopted as amended.

3. FEEDBACK ON THE ADOPTED 164TH MEETING MINUTES (JUNE 17, 2010)

The members went over the request from the deputy minister of sustainable development, environment and parks (MDDEP) regarding amendments to Item 8 in the minutes of the 164th meeting, which is a summary of the meeting with a delegation from the MDDEP. The minutes were not prepared jointly. Moreover, the MDDEP had requested changes in the follow-up chart prepared by the JBACE before the adoption of the minutes. Adopted minutes may not be amended, but the members agreed to adopt an addendum to the meeting minutes clarifying the MDDEP position on five items:

8c) JBACE funding

Ms. Paulin pointed out that the Québec government asked the departments to make cuts to various budget items, including grants. The MDDEP chose not to cut funding for the northern committees, but nor will it be able to increase their funding in the short term.

8d) Mandate to oversee the assessment and review procedure

Jacques Dupont, Assistant Deputy Minister of Environmental Assessment (MDDEP), will look into how COMEV and COMEX could provide the information in a timely manner.

8e) Impact of forest roads on woodland caribou habitat

The deputy minister pointed out that the review of planned forest roads was the subject of an out-of-court settlement with the Crees and that the department has an obligation to conduct an environmental assessment of those road projects. Under the JBNQA, COMEV and COMEX are responsible for reviewing these projects, ensuring that all the information is available, deciding on the advisability of authorizing the projects or not, and making a recommendation to the Administrator.

8i) Public consultation guidelines

The MDDEP is working jointly with the JBACE. Ms. Paulin said it was important not to make the public consultation process unwieldy.

8j) Northern Plan

The MDDEP is willing to assist any department or public body that wants to conduct a strategic environmental assessment (SEA) of one of its projects, the same as it's doing for hydrocarbon development in the gulf and estuary of the St. Lawrence River. However, it does not order an SEA to be conducted; rather, the proponent is free to conduct one or not.

4. ADMINISTRATION

a. Resolution regarding the salary review of the shared secretariat officer

The Chairperson presented the proposal agreed upon during the teleconference between the administrative committees of the Hunting, Fishing and Trapping Coordinating Committee and the JBACE.

JBACE resolution 2011-02-23-01 regarding the salary review of the secretariat officer:

- WHEREAS the administrative committees of the Hunting, Fishing and Trapping Coordinating Committee (HFTCC) and the JBACE held a joint meeting to formulate a proposal regarding the terms for the salary paid to the secretariat officer who divides her time between the two committees;
- WHEREAS the arrangements agreed upon would apply for the next two fiscal years, i.e. until March 31, 2013;
- WHEREAS the secretariat officer is currently at the top of her pay scale;
- WHEREAS the secretariat officer's salary is determined by mutual agreement between the HFTCC and the JBACE, which each contribute 50% of the remuneration costs associated with the secretariat officer position;

On motion by Ashley Iserhoff, seconded by Annie Déziel:

It is hereby unanimously resolved to adjust the secretariat officer's salary to reflect the Statistics Canada consumer price index (CPI) for the 2011-2012 and 2012-2013 fiscal years;

If there is a salary change for the two base positions within the Québec public service during that period and the change provides for increases greater than the CPI, those increases will apply to the salary of the secretariat officer, subject to approval by the JBACE.

b. Follow-up to the January 11, 2011 meeting on the JBACE's budget requests

The JBACE's Administrative Committee clearly described the JBACE's budget situation and emphasized the need to increase its annual funding by \$80 000. The federal and Québec government representatives stressed the current budgetary restrictions, but said they were willing to consider the JBACE's requests.

5. FILE UPDATE

a. Meeting with the chairperson of the Cree-Québec Forestry Board

The chairperson, the executive director and the analyst of the Cree-Québec Forestry Board (CQFB) met with a delegation from the JBACE to explore opportunities to work together given that both bodies have similar concerns with regard to several forestry issues. The CQFB and JBACE representatives agreed that the two bodies would send each other copies of their correspondence relating to forest management plans to keep each other abreast of consultations conducted by the Ministère des Ressources naturelles et de la Faune (MRNF).

b. Sustainable forest management strategy

The JBACE sent its comments to the MRNF on February 2, 2011. As regards the proposed ecosystem-based approach to forest management, the Committee stressed the lack of baseline data on the James Bay forest. For now, the MRNF regional office has supplied two documents that partially address this matter. The secretary will follow up with the MRNF to make sure all baseline documents are disseminated; otherwise, adoption of ecosystem-based management, which applies

practices to maintain managed forests as close as possible to the structure and composition of natural forests, may be problematic.

c. Meeting with the chief of staff of the minister of the MDDEP

A member from each party was designated to represent the JBACE at the meeting scheduled for March 16, 2011, in Québec City. The secretary will check to make sure that the meeting with the chief of staff is in preparation for a meeting with Sustainable Development, Environment and Parks Minister Pierre Arcand.

d. Public consultation subcommittee

The JBACE analyst sent the subcommittee members a draft progress report and is waiting on their comments. The analyst is also working on a document comparing the public consultation procedures in four Canadian jurisdictions that involve Aboriginal communities.

e. Planned seminar on the 35-year history of implementation of Section 22 of the JBNQA

The JBACE subcommittee has finished working on the content of the seminar. The analyst will see if other organizations are interested in helping organize the event.

f. Consultation document on the area of the Northern Plan (50%) withdrawn from industrial development

The members agreed to make another attempt to obtain a copy of the consultation document from the MDDEP. The JBACE will emphasize its role as an advisory body to the governments concerning the environmental and social protection regime. If the MDDEP refuses, the members think it is important to develop land use guidelines for the area covered by the Northern Plan. A subcommittee was struck for that purpose.

6. DRAFT BRIEF FOR THE CONSULTATIONS ON THE REVIEW OF THE CANADIAN ENVIRONMENTAL ASSESSMENT ACT (CEAA)

The analyst presented a draft brief, which all of the members of the CEAA review subcommittee had commented on. The members agreed that the brief must begin by setting out the guiding principles of Section 22 of the JBNQA, in particular the mechanism for Cree involvement and the protection of their rights.

The JBACE would then recommend that projects be submitted to a single environmental assessment procedure. Where the CEAA and Section 22 procedures are triggered simultaneously, the referral mechanism would result in application of the Section 22 procedure only. A mechanism ensuring linkage between the Evaluating Committee (COMEV) or Review Committee (COMEX) and the federal authority under the CEAA must be put in place so that the federal authority can make a decision based on COMEV's or COMEX's recommendation.

Lastly, the JBACE would remind the authorities that where a project falls under both provincial and federal jurisdiction, Section 22 provides that COMEX and the federal Review Panel (COFEX-South) may be combined.

7. PRESENTATION BY AURORA HERNANDEZ, MINING ENGINEER FOR THE CRA, ON FOLLOW-UP STUDIES IN THE AREA IMPACTED BY THE TAILINGS DIKE FAILURE AT THE OPEMISKA MINE SITE

Ms. Hernandez began by providing a background on the dike failure. The Opemiska mine shut down in 1991, leaving behind a large tailings pond. In summer 2008, following heavy rains, the south dike of the pond broke, spilling 1 million m³ of water and 50 000 m³ of fine tailings into the basin of Slam Creek. Approximately ninety percent (90%) of the tailings were carried as far as Obatogamau River, of which Slam Creek is a tributary.

In the days following the spill, the MRNF and MDDEP worked hard to limit the impacts of the dike failure on human health and the environment. Moreover, sampling stations were set up to test water quality at different spots in the spill area. The MRNF also undertook remedial work to remove as much tailings as possible from Slam Creek and its banks while redeveloping the tailings pond through drainage and revegetation.

Follow-up study conducted by the Cree Regional Authority (CRA)

After residents of Waswanipi expressed concerns about the tailings' impact on their hunting practices, the CRA decided to conduct its own study. The preliminary results show traces of tailings up to 180 km downstream of the Opemiska mine site, i.e. well outside the area studied by the MRNF. Aurora Hernandez explained that since there are no other mines in the Waswanipi River basin, the tailings have to have come from the Opemiska mine site.

Ms. Hernandez thinks the water tests should measure more parameters than the 8 required by mining directive 019. For example, the CRA measured 49 parameters, including manganese and naphthalene, both of which were detected at several

sites. Moreover, Ms. Hernandez thinks that the follow-up studies should cover impacts on fish and fish habitat, sediments and invertebrates in benthos. The CRA thus deems the MRNF's study specifications for fish habitat monitoring to be wanting. The MRNF is open to revising its specifications in this regard.

Ms. Hernandez said that the residents of Waswanipi called for a comprehensive study on the impacts on fish and fur-bearing animals, two staples of the Cree's traditional diet. In reply to a question, Ms. Hernandez said that the Cree Board of Health and Social Services sampled fish in the spill area and deemed it fit to eat. However, Mr. Hernandez thinks that a larger number of samples need to be tested to obtain conclusive results on fish populations affected by the spill.

JBACE feedback

The JBACE will write to the MRNF again stressing the importance of disseminating information directly to the residents of Waswanipi. Also, the JBACE endorses the CRA's position regarding the need to expand the study area for follow-up purposes. Follow-up studies must include parameters that take Cree land use into account, in particular use for drinking water, fishing and trapping.

8. PRESENTATION BY PHILIPPE ÉTHIER (INAC) ON THE EYYOU MARINE REGION AGREEMENT

Philippe Éthier of Indian and Northern Affairs Canada's Implementation Office explained the content of the Eeyou Marine Region Land Claims Agreement (EMRLCA) signed between the Government of Canada and the Grand Council of the Crees. The agreement covers the offshore islands of James Bay and Hudson Bay, a surface area of 1 650 km². Although these islands fall under the jurisdiction of the Territory of Nunavut, the Crees have always used them for their hunting, fishing and trapping activities. The vast majority of Cree people approved the EMRLCA via a referendum held in March 2010. However, the agreement has not yet been sanctioned by Parliament.

Mr. Éthier said from the outset that he would not be able to explain the agreement's repercussions on the JBNQA environmental and social protection regime. The Implementation Office will be able to address these questions once INAC's Negotiations Branch has transferred responsibility for the agreement.

Among other things, the agreement establishes the Eeyou Marine Region Planning Commission, the Eeyou Marine Region Wildlife Board and the Eeyou Marine Region Impact Review Board. The members of these bodies will be appointed equally by the Government of Canada and the Grand Council of the Crees. However, the federal party must include at least one representative of Nunavut.

According to Mr. Éthier, the impact review board must automatically coordinate its actions with the JBNQA bodies that play a similar role.

The JBACE members agreed to contact INAC again when implementation of the agreement is further along. Where a development project will have terrestrial as well as marine impacts, overlapping of the EMRLCA and the JBNQA will have to be addressed, as such projects would be subject to both the procedure of the Eeyou Marine Region Impact Review Board and the Section 22 (JBNQA) impact assessment and review procedure.

9. REVIEW OF PLANNED FOREST ROADS GIVEN THEIR IMPACT ON WOODLAND CARIBOU

At the JBACE's request, the MRNF supplied 11 reports and articles on woodland caribou. The MRNF cited economic impacts as the reason for not providing the vast majority of the information requested by the JBACE. The members agreed to appeal the MRNF's decision before the Commission d'accès à l'information. The JBACE will argue that it needs these data to adequately fulfil its mandate to oversee the administration of Section 22. Moreover, one of the Committee's roles is to transmit data received from the governments to the Cree communities.

At the same time, the JBACE will reiterate its request to obtain woodland caribou data from the MRNF regional office.

10. OTHER BUSINESS

a. Chisesaakahiikan protected area proposal

The secretary received a copy of the proposal adopted by the Cree Nation of Nemaska to set aside the territory known as Chisesaakahiikan (Evans Lake area) as a protected area. Seeing as how the JBACE recently wrote to the MDDEP encouraging the department to give greater consideration to protected areas proposed by Cree communities, the members agreed to endorse the proposal and pass a resolution to that effect.

JBACE resolution No. 2011-02-23-02 concerning the setting aside of the Chisesaakahiikan territory (Lake Evans area) as a protected area:

WHEREAS the James Bay and Northern Québec Agreement provides that the JBACE act as a consultative body to governments regarding measures affecting the social and environmental protection regime as well as land use (para. 22.3.24 and 22.3.28);

WHEREAS the JBACE supports implementation, in the James Bay territory, of protected areas, subject, however, to compliance with the provisions of Sections 22 and 24 of the James Bay and Northern Québec Agreement, in particular with respect to terms and conditions pertaining to Cree participation and rights to harvest;

WHEREAS the Cree Nation of Nemaska has submitted a proposal to set aside the territory referred to as Chisesaakahiikan as a protected area, which proposal is presented in the document *The Chisesaakahiikan Protected Area Proposal: An Chisesaakahiikan e wiikanaawehitakanuuch anita waaska ehchii*;

WHEREAS the JBACE has asked the ministère du Développement durable, de l'Environnement et des Parcs to emphasize protected area proposals developed by the Cree communities;¹

WHEREAS the JBACE has stressed that the cultural value of sites must be taken into consideration on the same basis as their ecological value in the James Bay territory and that the site of the former village of Nemaska is in the Chisesaakahiikan territory;²

WHEREAS the creation of a protected area in the Chisesaakahiikan territory would promote protection of woodland caribou habitats, given that the species is designated "vulnerable" under Québec's *Act respecting threatened or vulnerable species* and "threatened" under Canada's *Species at Risk Act*; and

WHEREAS the JBACE's endorsement of the Chisesaakahiikan protected area proposal is without prejudice to the other protected area proposals made by the Cree communities.

On motion by Chantal Otter Tétreault, seconded by Jean Picard:

It is unanimously resolved to ask the Minister of Sustainable Development, Environment and Parks to set aside without delay the Chisesaakahiikan territory as a protected area (Lake Evans area) as defined in the proposal of the Cree Nation of Nemaska; the setting aside of this territory would take place pursuant to section 27 of the *Natural Heritage Conservation Act*.

¹ Letter from Maryse Lemire, Chairperson of the JBACE, to Line Beauchamp, Minister of Sustainable Development, Environment and Parks, May 7, 2010.

² Idem.

11. NEXT MEETINGS

The JBACE will hold its next meeting on April 14, 2011, in Québec City. The following meeting will be held on June 1 and 2, in Oujé-Bougoumou.



Marc Jetten
Executive Secretary
May 3, 2011