

21 December, 2009

All Parties in WRRB Bathurst Caribou Proceeding

Resolution of Legal Issues Identified by Parties in Bathurst Caribou Joint Proposal Hearing

The Wek'èezhii Renewable Resources Board (WRRB or the "Board") instructed parties to the captioned proceeding to submit to the Board any legal issues which needed to be addressed before this matter could proceed to a hearing by December 18, 2009. These issues were to be submitted in writing. The WRRB's policy is not to treat e-mails as formal submissions and consequently such submissions are not placed on the registry for Board proceedings. However, in this case, we have accepted and will deal with all legal issues identified for the Board, including those sent by e-mail.

The Board will not make such an exception again. Parties are advised that if they want to communicate with the Board on the record in this proceeding that they **need to make any submissions, comments or correspondence in writing in letter format as an attachment to an email.**

The legal issues raised in response to the Board's request are listed are attached to this letter.

The process for securing a ruling from the Board on an interlocutory matter is set out in rules 23 to 27 of the Board's *Interim Rules of Procedure*. The Board notes that several of the issues attached are questions for either the NWT or Tłıchǫ Governments. The Board is not in a position to answer for those governments. Likewise, some of the "issues" raised could be addressed as questions in the hearing of this matter in February. However, if parties wish to proceed to a ruling on their issues, the proper approach is as follows:

1. Send the Board a written submission in letter format outlining any issue you want to proceed with **by January 11, 2010**. Do not lump the issues together. Make a separate submission for each issue or issues for which a ruling is required.
2. All submissions must explain the nature of the legal issue(s) set out therein. It must identify the remedy requested (what you want the Board to do about the problem) and it must cite any legal authority for the remedy (tell the Board what legal authority supports the granting of the remedy you have requested). Be succinct and clear.

.../2

3. These submissions will be placed on registry when received.
4. Any party opposing a submission for a remedy must reply by **January 18, 2010**. Replies should be in writing, cite the submission to which it is addressed and explain why the requested remedy may not be either needed or appropriate. Legal authorities, if any, must be cited.
5. The Board will rule in writing on these issues by the end of January.

We repeat that some of the “issues” or questions on the attached documents appear to be outside the scope of this proceeding or not for the Board to answer. If submissions are made in respect of such matters they may be dismissed for that reason. Parties are encouraged to refocus on the purpose for this proceeding and the scope of the WRRB’s authorities before investing time in making submissions on legal issues.

Finally, there have been questions about how the Board can rule on these matters at this point in the proceeding. It is, in the Board’s view, essential that any legal issues which might affect the hearing process and the nature of the matters to be considered by the Board be addressed before the hearing and while adjustments to the process (if warranted) can still be made. The Board has only set aside three hearing days for this matter. It is complex and there are many intervenors. The Board wishes to avoid dealing with interlocutory matters at the outset of the hearing.

Parties wishing to proceed to a ruling should proceed accordingly and on the timetable set out.

Yours truly,



J. Grant Pryzyk
Interim Chair

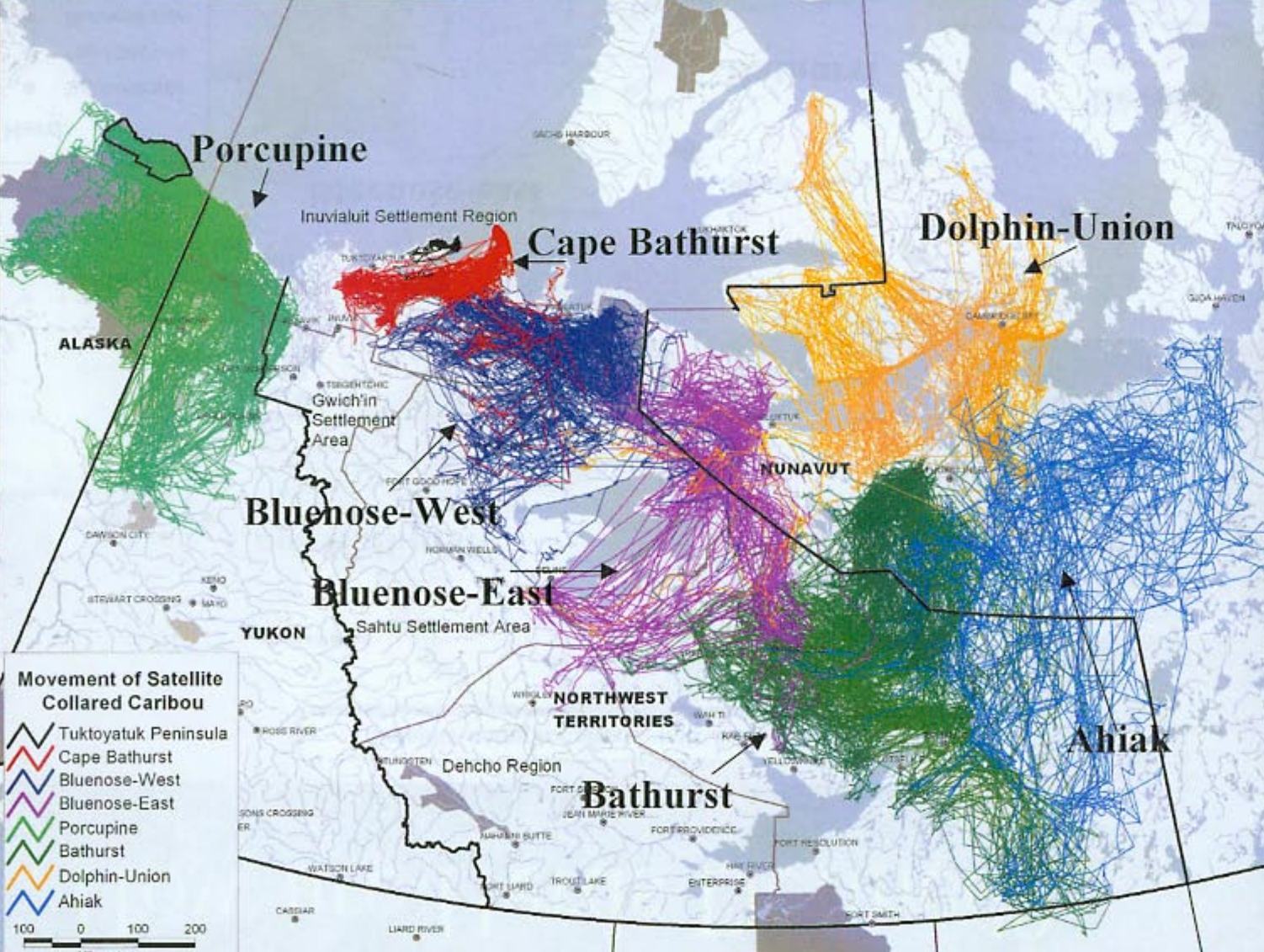
Attachments.

From: [Grant Pryznyk](#)
To: ["Dori Miller"](#)
Subject: FW: Legal Questions
Date: December 21, 2009 12:22:48 PM
Attachments: [pastedGraphic.pdf](#)
[ATT00333.txt](#)

From: john@shoshonewilderness.com [<mailto:john@shoshonewilderness.com>]
Sent: December 18, 2009 2:50 PM
To: Grant Pryznyk
Cc: John Donihee
Subject: Legal Questions

The actions of the ENR minister yesterday, closing down all hunting in an area of about the size of Nova Scotia, is the second time within three years that an ENR minister circumvented the WRRB process and invoked a major wildlife decision unilaterally.

1. Assuming there is no new data to support the use of the emergency clause, will the WRRB go to court to maintain its right to manage wildlife in Wek'heezhi, or does it intend to permanently cede that right to the GNWT?
2. At least according to the press releases, the government closed down the above referenced area in order to protect the caribou on their wintering grounds. Attached is an ENR map (one of dozens), showing the traditional Bathurst Wintering Grounds. Will the WRRB go to court to explain to ENR exactly where the Bathurst wintering ground is, so that the entire wintering area is protected? (From all appearances, the area closed seems to deliberately avoid the Akaitcho region, currently involved in land claims negotiations. Certainly, ENR and the WRRB do not intend to manage migratory species based on land claim settlements.)
3. Apparently, some area of the NWT is being opened up to unlimited Woods Bison hunting. If this area is in Wek'heezhi, will the WRRB go to court to prevent this hunt? I am not aware of any data showing that the bison herd anywhere in the NWT can now sustain unlimited harvest.



Karen McMaster BA LLB MBA
PO Box 1988
Yellowknife, NT
X1A 2P5

December 11, 2009

Wek'eezhii Renewable Resources Board
Yellowknife Office
102A 4504-49th Avenue
Yellowknife, NT
X1A 1A7

Attention: Mr. Grant Pryzyk, Interim Chair

Dear Sirs,

Re Joint Caribou Proposal: Legal Issues Deadline

I am writing regarding the legal issues deadline for the caribou hearings.

As you know, there was no deadline for legal issues in the original schedule for this hearing which was distributed November 20, 2009. The first deadline for legal issues of December 11, 2009 was created November 24, 2009, well after the hearing process was commenced and interveners were identified. The deadline was further amended to December 18, 2009 when the overall schedule for the hearing was revised on December 4, 2009. December 18, 2009 is now also the current deadline for proponent responses to intervenor and independent consultant requests.

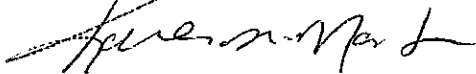
I believe a deadline for legal issues is inappropriate as legal issues are relevant up to and including the actual hearing. The law and due process-which is a legal issue- do not just stop on a date but depend upon information presented and processes that take place before and during a hearing. As well, specific legal issues cannot be reviewed and identified until the public has a complete understanding of what the proponents are putting forth in support of their proposal. Moreover, the new date was not in keeping with the extensions to the overall process. Perhaps most importantly, some issues are matters of law and some are matters of fact, and they can be difficult, if not impossible, to distinguish in advance of a hearing. This distinction is sometimes an issue that is decided by the higher courts if it is not appropriately dealt with by administrative tribunals.

The Board, Tlicho First Nation and GNWT have legal counsel available on an ongoing basis. The Board's decisions are not due until more than 3 weeks after the hearing, allowing ample time to address issues that may arise, and with the benefit of all information produced during the hearing.

I have raised legal concerns as part of my intervener information requests and through email and will bring any other issues forward in due course as the hearing unfolds.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen McMaster', written in a cursive style.

Karen McMaster BA, LLB, MBA

From: [Grant Pryznyk](#)
To: ["Dori Miller"](#)
Subject: FW: legal issues
Date: December 21, 2009 12:22:51 PM

From: karen.mcmaster@attglobal.net
To: gpryznyk@wrrb.ca,
Cc:
Subject: legal issues
Date: Fri, December 18, 2009, 21:37:00

Grant,

Further to my other emails and my letter I handed to you in person, I confirm that there a number of legal issues that will be raised during the hearing, including but not limited to,

- 1) jurisdictional issues
- 2) interpretation of land claims
- 3) constitutional issues and human rights issues
- 4) conflict of interest
- 5) due process/natural justice
- 6) consultation.

Thank you.
Regards,

Karen McMaster

NORTH SLAVE MÉTIS ALLIANCE

PO Box 2301 Yellowknife, NT X1A 2P7



December 18th, 2009

Grant Pryznyk, Interim Chair
Wek'èezhii Renewable Resources Board
Suite 102A, 4504 49th Avenue.
Yellowknife, NT. X1A 1A7
Tel: (867)873-5740
Fax: (867)873-5743
Email: gpryznyk@wrrb.ca

Re: Legal Issues raised by the North Slave Métis Alliance (NSMA)

The North Slave Métis People assert Aboriginal and Treaty rights to harvest caribou throughout the North Slave Region and beyond. Traditional Métis use of caribou includes but is not limited to use for food, clothing, materials, dog food, commercial trade, and commercial hunting. These existing rights are recognized and affirmed by section 35 of the Canadian Constitution Act.

The North Slave Métis Alliance wishes to ensure that the WRRB considers the following legal issues when considering any caribou management measures that might infringe our Aboriginal and Treaty rights.

- 1) Aboriginal harvesting of game for food cannot be restricted unless that game is declared to be game in danger of becoming extinct (S.18.(3) NWT Act. R.S.C. 1985)
 - a) Have caribou been declared in danger of becoming extinct?
 - b) Has the Crown acted illegally in announcing restriction on Aboriginal harvesting?
- 2) Constitutional rights, including constitutionally protected Aboriginal Rights and Treaty Rights cannot be infringed without proper and adequate justification. (R. v. Sparrow, [1990] 1 S.C.R. 1075)
 - a) Has the Crown justified infringement of the North Slave Métis Aboriginal and Treaty Rights to harvest wildlife for traditional purposes?
 - i) Is there a valid conservation concern? (risk of extinction as above?)
 - ii) Has the existing policy of priority allocation been taken seriously?
 - iii) Have all other conservation options been considered?
 - iv) Has there been adequate Crown Consultation?
 - v) Is this proposal the least infringement possible to effect the desired result?
 - vi) Is fair and adequate compensation made available?
- 3) Infringement of Aboriginal and Treaty Rights, including rights asserted but as yet unrecognized, cannot be justified unless there has been adequate Crown Consultation and efforts to Accommodate. (Haida Nation v. British Columbia (Minister of Forests), [2004] 3 S.C.R. 511, 2004 SCC 73)


Ph: (867) 873-NSMA (6762)

Fax: (867) 669-7442

Email: general@nsma.net

- a) Has the Crown adequately consulted the North Slave Métis?
 - i) Has the Crown provided adequate information?
 - ii) Has the Crown provided adequate time and opportunity for the North Slave Métis to formulate their views?
 - iii) Has the Crown made an honorable effort to accommodate North Slave Métis rights?
- 4) The Crown has a fiduciary duty to manage wildlife in the long term best interests of the Aboriginal People who depend on the wildlife for their continued cultural existence. The terms of Treaty 11 guaranteed that nothing would be allowed to interfere with traditional harvesting, including competition from white people. (Fumealeau, 1944. As Long as This Land Shall Last) (Guerin v. The Queen, [1984] 2 S.C.R. 335)
 - a) Has the Crown fulfilled its fiduciary duty to manage caribou in the best interests of the North Slave Métis?
 - b) Has the Crown breached the terms of Treaty 11 with regard to the protection of the right of the North Slave Métis to continue to live their traditional lifestyle without interference or competition from "white people (sic)"?
- 5) Under section 12.1.6, of the Tlicho Agreement, the Parties and the Wek'èezhii Renewable Resources Board must take steps to acquire and use traditional knowledge as well as other types of scientific information and expert opinion when exercising their wildlife management powers.
 - a) Has the Tlicho Government taken steps to acquire and use Métis traditional knowledge?
 - b) Has the Crown taken steps to acquire and use Métis traditional knowledge?
 - c) Has the WRRB taken steps to acquire and use Métis traditional knowledge?
- 6) The WRRB defines First Nation as "the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene First Nation of the North Slave, South Slave or Dehcho region of the Northwest Territories." The MVRMA defines First Nation as "the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Deh Cho region of the Mackenzie Valley."
 - a) Why has the WRRB left the Métis organizations out of their definition of First Nation, and how does this affect the rights of the Métis to just and equitable treatment by the WRRB?
- 7) Under the Tlicho Agreement, section 12.7.1, when the Wek'èezhii Renewable Resources Board makes an allocation of a total allowable harvest level, it must allocate (a) a sufficient portion (ii) for any other Aboriginal people to exercise its rights to harvest wildlife in Wek'èezhii;
 - a) How does the WRRB, or the Crown, intend to do this without consulting with the North Slave Métis People?

Sincerely,



Sheryl Grieve

Environment and Resource Manager

Phone: (867) 873-6762 extension # 22 (note corrected extension number)

Email: enviromgr@nsma.net or lands@nsma.net

NORTH SLAVE METIS ALLIANCE

PO Box 2301 Yellowknife, NT X1A 2P7

**Facsimile Transmittal**

To: WRRB Fax: 873-5743
From: NSMA Date: Dec 18/09
Re: Legal Issues Pages: 2 + cover
CC:

☐ Urgent☐ For Review☐ Please Comment☐ Please Reply☐ Please Recycle**COMMENTS:**

I will also send by email.
My correct contact info is
with my signature -
Sheryl

THIS MESSAGE WAS MEANT FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL.

If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone (867) 873-6762.

Thank you.

Ph: (867) 873-6762

Fax: (867) 669-7442

EMail: general@nsma.net

From: [Grant Pryznyk](#)
To: ["Dori Miller"](#)
Subject: FW: WRRB Office Hours December 23, 2009-January 1, 2010
Date: December 21, 2009 12:23:58 PM

From: Martin Knutson [mailto:mknutson@matrixhelicopters.com]
Sent: December 18, 2009 3:53 PM
To: Grant Pryznyk
Subject: Re: WRRB Office Hours December 23, 2009-January 1, 2010

Grant:

The NWT Wildlife Federation may be seeking legal council and reserves the right to raise any legal issues during the hearing.

Martin Knutson
President
NWT Wildlife Federation

Martin Knutson
Matrix Aviation Solutions Inc.
Matrix Helicopter Solutions Inc.
mknutson@matrixhelicopters.com

From: [Boyd Warner](#)
To: ["Dori Miller"](#)
Subject: RE: Legal issues relating to the Joint Proposal on Caribou Management Actions in Wek'eezhii
Date: December 17, 2009 10:49:29 AM

To Whom It May Concern:

Please see below for legal question that I have for the WRRB Board.

- 1) ENR has based all their recommendations and management actions off the Bathurst Caribou Management Plan. This document is a unsigned and thus unusable management tool. While many groups and stakeholders were at the table for discussions (outfitters were never allowed to participate in it) to my knowledge **NONE** of the representatives organizations have ever signed off or agree with it. It would be like claiming a unsigned Land Claim Agreement is a valid agreement.
- 2) Outfitters and Residents are issued tags for "Barrenground Caribou" and harvest bulls only. ENR has provided maps in the past that clearly shows that there are animals from at least 3 herds that winter in the N Slave, there is no valid information on the location or to which group the **bulls** we harvest come from, you cannot base where the bulls are based on where the cows are (except perhaps during the rut, and we do not hunt during the rut). Our resident and Outfitter tags to not specify a individual herd.
- 3) While ENR did inform Outfitters that they may be suggesting the reduction or eliminations of tags, **they did not do any Consultations, they just told us what they were going to do.** I believe the word Consultation has a different definition. Therefore ENR has not met its obligations prior to implementing a proposed management plan.
- 4) If the WRRB makes a ruling, is it then that body that would be held accountable in the future for losses / claims by groups or individuals if any of those groups were successful in proving that the Caribou are not in the crisis we are told they are in?
- 5) ENR is not following the recommendations of the ARC review as they said the would. Especially in the area of "transparency" and treating the Caribou Herds as a Meta - population.
- 6) ENR has failed to adequately inform (the Tlicho, other First Nation groups, Residents and the Outfitters) of all the Caribou that live and use the North Slave and Management Unit R.
ENR has also failed to propose a Management Plan for all the Caribou in the North Slave (management unit R). It is impossible to manage one groups among 3 (or more).

Thank you for you time and consideration of these issues.

Sincerely,

Boyd Warner
President

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