

NORTH SLAVE MÉTIS ALLIANCE

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December 18th, 2009

Grant Pryznyk, Interim Chair
 Wek'èczhii Renewable Resources Board
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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)

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- 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

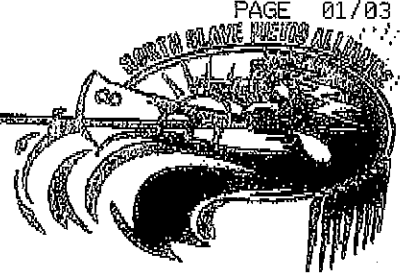
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Facsimile Transmittal

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

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