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December 15, 2020

Sean Joseph
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Subject: MV2020W0002_ Response to Dec 10 IR Response from ENR and Lands Dept

Dear Mr. Joseph

On behalf of the Jean Marie River First Nation, we submit our comments below to the Dec 10 response that your office received in reply to your Information Response, from the Dept of Lands and ENR.

Yours truly,

Stanley Sanguet,
Chief, Jean Marie River First Nation.

MV2020W0002: JMRFN response to the Information Request (IR) Response submission from GNWT, dated Dec 10, 2020:

GENERAL RESPONSE to Dec 10, 2020 IR to MVLWB:

Although JMRFN is pleased that the proposed Dec 10 IR Response made some significant improvements, some Terms and concepts remain inconsistent with previous LUP Woods Operations, and the intent of the Regulatory requirements of ENR and its AOP process.

JMRFN is concerned about the apparent “de-regulation” of ENR’s forestry Regulatory requirements and its the AOP process, that is being presented in the Terms of LUP Woods Operation generally, and this IR Response document specifically; in order to suit the Lands Dept narrow, inconsistent, and unjustified application of their rules.

The IR Response continues to present and justify additional Terms that were never heretofore present in LUP’s Woods Operations. The LUP Terms and the IR Response seem to be indicating that all previously issued LUP Wood Operations were not managed properly and that environmental degradation occurred (note, no reclamation or degradation has ever been documented).

At this time, JMRFN refers to the Bill 46 Public Lands Act (August 2019). It will replace the existing Lands Act and Regulations in the future. Of specific note is its guiding “principles” contained in “Section 3 Purpose”; especially the highlighted subsections in “**bold**” print:

- 3.** The purpose of this Act is to provide a framework for the administration of public land in the Northwest Territories, in accordance with the following principles:
- (a) administration of public land should be **efficient and effective**;
 - (b) administration of public land should be **done in a responsible manner on behalf of the people** of the Northwest Territories;
 - (c) administration of public land should **take into account**, where appropriate, the interests and concerns of stakeholders, **I n d i g e n o u s g o v e r n m e n t s a n d o r g a n i z a t i o n s**, municipalities and affected governments;
 - (d) administration of public land should **reflect balanced decision-making** with respect to the grant or disposition of public land;
 - (e) administration of public land should provide for regular and transparent disclosure of information to the public;
 - (f) administration of public land should **encourage responsible stewardship** of public land.

The MVLWB, the IR Response team (particularly the Lands Dept), are all encouraged to be guided by the Section 3 Purpose; especially the principle that includes “balanced decision making”.

The response from ENR (Oct 23, P Clancy) is in general conformance with Sec 3 of the Public Lands Act, and it contained 3 general Recommendations to the MVLWB. These still remain to be fulfilled to resolve the remaining issues that JMRFN has with the Dec 10 IR response, and Terms 47 and 48 (that although they are outside the Scope of this response, need to be deleted).

“1) ENR recommends that the Board consider the JMRFN TCL, which reflects and enforces ENR policy under the SOP Manual, and harmonize the timber harvesting framework with the LUP.

2) ENR is available to provide further information to support decision to harmonize the TCL and LUP.

3) ENR further recommends that a review for consistency between the JMRFN LUP is compared against other forestry based LUPs.”

In the spirit of the new Public Lands Act, and ENR’s 3 Recommendations, JMRFN recommends using “Interagency Cooperation Forest Management Activities Agreement of Understanding (1991)” (Agreement) to achieve the Recommendation #1 above (See Appendix A). It was an Agreement between the former Federal District Manager and the former ENR Renewable Resources Asst Superintendent, both of the Ft Smith area (now the South Slave). This Agreement was intended to encourage collaboration between the parties; in order to resolve and clarify their respective mandates, and operating procedures for use on Woods Operations. The Agreement was acknowledged for use in 2006 by the MVLWB, and this Agreement is still in effect in the South Slave. It is noteworthy that its intent was applied to W2006W0003, issued by the Wek’èezhii LWB.

MV2020W0002 is within the Dehcho Region, but for consistency within the NWT, the intent of the Agreement is equally applicable. Although the MVLWB may have lost track of this Agreement when issuing MV2020W0002, the MVLWB may apply the intent of the Agreement anywhere within its jurisdiction, and to JMRFN’s Amendment request.

DETAILED RESPONSES

Term 4: Recommended on Dec 10:

To ensure consistency with ENR’s TCL-005332, which enforces the SOP Manual and the proponent’s future AOP, it is recommended that the condition states:

The permittee shall not remove vegetation or operate heavy equipment within 100 meters of the ordinary high watermark of any watercourse outside of harvest block boundaries. Inside the harvest boundary the Permittee shall locate all lines, trails, and rights-of-way to be constructed parallel to any watercourse a minimum of:

- a) Lakes larger than 16ha; 100m buffer.*
- b) Lakes 1ha to 16ha area: 30 m buffer.*
- c) Ponds less than 1ha in area: 10m buffer.*
- d) Large permanent rivers: 100m buffer.*
- e) Medium permanent rivers: 60 m buffer.*
- f) Small permanent rivers and streams: 10m buffer.*

- Although Term 4 recognizes ENR’s water course classification, the recommendation remains inconsistent with the SOP manual, and it **is not acceptable in its current form.**

As stated in the Amendment of Sept 22; amend to “Term 5 LUP MV2015W0018”, or default to the AOP.

- Term 4 is contradictory to Term 34; although they are essentially the same. Term 34 does not differentiate between in or out of harvesting areas.
- The issue is regarding 100 m buffers of watercourses for areas outside of harvesting boundaries:
 - The LUP Watercourse definition is very generic, and includes swamps and small creeks. These are typically used as harvesting boundaries and the roads are commonly < 100 m from them.
 - Term 4 states that, if a road is built to ENR’s SOP specifications inside the harvesting boundary, it must be re-aligned to be 100 m from the same “watercourse”, when it passes outside the boundary.
 - Roads between harvesting areas are often located within strips of land <100 m wide between watercourses, and they commonly cross swamps in the winter (to avoid building roads through wooded areas). Term 4 will not allow this, which is not consistent with ENR’s SOP, and its own LUP Term to minimize disturbance.
 - This is not a consistent management practice with ENR’s “Waterbody Descriptions and Classification” and its management practices, that have been successfully used in the NWT since the early 1990’s (per IR Response, Term 34 discussion).

Terms 5 and 6: JMRFN concurs to delete, as the Amendment requested.

Term 34: Dec 10 IR Response version:

The Permittee shall setback the removal of vegetation and operation of heavy equipment from any Watercourse as follows:

- a) Lakes larger than 16ha; 100m buffer.*
- b) Lakes 1ha to 16ha area: 30 m buffer.*
- c) Ponds less than 1ha in area: 10m buffer.*
- d) Large permanent rivers: 100m buffer.*
- e) Medium permanent rivers: 60 m buffer.*
- f) Small permanent rivers and streams: 10m buffer.*

- JMRFN concurs with the recommended wording consistency with ENR’s SOP.
- This supports JMRFN’s position regarding the inconsistency of Term 4.
- Term 34 applies to all lands, both within and without harvesting boundaries, and contradicts Term 4.

Term 49: Security Deposit. Dec 10:

Recommendation: The GNWT recommends that the MVLWB set the security for this land use permit at \$9,137.50.

- Although this calculation has been reduced, JMRFN does not accept a Security Deposit is justified. **Delete.**

- This term does not exist in any small scale LUP Woods Operation, it only exists in the two large scale, landscape level LUPs that have a Forest Management Agreement 25-year tenure to harvest 90,000-125,000 m³ annually, complete with camps, significant road systems, and fuel storage.
- Obtaining a Security Deposit is another extra cost to the already high delivered wood costs to the sawmill.
- ENR has historically waived a Performance Deposit (Sec 38, Forest Management Regulations) on its small scale Woods Operations.
- The history of past small scale LUP Woods Operations has showed no environmental damage, and they were not required to post a Security Deposit. These actions support the conclusion by the MVLWB that there is “no adverse environmental effect”, and gives the Board the confidence to waive the Security Deposit.

Term 65:

“The Permittee shall clear by hand all trees and brush a minimum distance of 100 metres from the top edge of all stream banks and top edge of slopes.”

It is recommended that the condition be changed from a minimum distance of 100 meters to 10 meters, or as consistent with the SOP Manual and the AOP, which relies on waterbody size criteria to determine protective buffer measures. Waterbody classifications used in

- As stated in JMRFN’s Amendment, Term 65 does not exist in any Woods Operation LUP. It is both unclear and unacceptable in its current form. **Delete.**
- **What is the intent of this Term??** It is not clear what purpose it serves that is different from Term 34??
- **What is the definition of “clearing by hand all trees”??** If there are merchantable sized trees felled within these areas, how is a human going to remove them?
- Term 65 application is stated as “...or as consistent with the SOP Manual and the AOP”. So which is it, 10 m or per the SOP? This is all very unclear and appears to be redundant with Term 34.
- Insp McCowan (Nov 23): “The Inspector notes that 10 meters is a sufficient distance to prevent heavy equipment from disturbing creek banks during access road construction.” The Inspector is of the opinion that this Term 65 is regarding road construction only, and there is no mention of harvesting boundaries or “hand clearing”.
- There was no discussion provided in the IR response about the concerns of “from the top edge of slopes” in the Amendment:
 - **What is the definition of “the top edge of slopes”?** Is it the “top edge of the ordinary high water mark” as defined in the SOP (below for reference)?

II. Buffers are measured as the slope distance from the top of the ordinary high water mark on either side of a waterbody.

Ordinary High Water Mark: The top edge of the unvegetated channel of a water body.

Terms 66, 67, 68. 69. Agree with Dec 10 IR Response versions.

Term #70.

- **Disagree.** Amend as requested Sept 22.
- The Engagement Plan and AOP consultation includes the deactivation procedures for any roads. The Band may want some roads left open for their future firewood access, their Aboriginal entitled hunting opportunities, or trapline opportunities into new areas heretofore inaccessible
- **This Term need to be amended** to be consistent with Term 75, the Engagement Plan. It requires the AOP to be consulted with the JMRFN Band, and not to be strictly applied to them by the LUP. This would be consistent with Public Lands Act "Purpose".

SUMMARY

1. JMRFN supports the application of the Public Lands Act principles, the achievement of ENR's Recommendation #1, and asks the MVLWB follow the intent and concept of the Interagency Cooperation Forest Management Activities Agreement of Understanding (1991) in issuing LUP Woods Operations.
2. JMRFN agrees with the IR Response recommendations regarding Terms 5, 6, 34, 66-69.
3. JMRFN disagrees with IR Response of Term 4 requiring a 100 m setback of roads from all watercourses outside harvesting areas. It is inconsistent with ENR's SOP within harvesting areas, past LUP's, Term 34, and is not practical in the NWT with its unnumerable swamps and watercourses. Delete.
4. JMRFN continues to disagree with Term 49 requiring a Security Deposit. This Term is not in any previous small scale LUP's for Woods Operations. Delete.
5. JMRFN disagrees with Term 65. This Term is not in any previous LUP's. It requires a reply to JMRFN regarding questions about definitions and the intent of this Term. How is this Term different from Term 34?? Delete.
6. JMRFN disagrees with Term 70. Amend it to be consistent with Term 75.
7. Although outside of the scope of this response to the Dec 10 IR response, JMRFN wants to ensure the MVLWB has not lost sight of their request to delete Terms 47 and 48.

APPENDIX A

From: Ervin Allen
To: adrian@mvlwb.com
Date: 4/11/2006 9:45:22 AM
Subject: 1991 Interagency Co-operation Forest Management Activities Agreement of Understanding

Hi Adrian,

Further to our phone conversation a few minutes ago, I will fax over a copy of this internal agreement, which we are still using as a guideline (for the most part) in the South Mackenzie today.

Hope it's of some help to you. I'll use a copy of this e-mail as a cover page.

Erv

CC: Dahl, Kenneth

Wek'èezhil Land
& Water Board

File _____

APR 11 2006

Application # W2006W0003
Copied To AP1106

**INTERAGENCY COOPERATION
FOREST MANAGEMENT ACTIVITIES
AGREEMENT OF UNDERSTANDING**

Background:

The Territorial Land Use Regulations made under the Territorial Lands Act requires the possession of a permit to carry out a land use operation, (with classes of permits specified in Sections 8 and 9) "Territorial Lands".

The Territorial Lands Act states that no person shall cut timber without a permit. The transfer agreement and orders-in-council delegate the authority to enact regulations for the management of forests to the GNWT.

The GNWT has enacted legislation under the Forest Management Act and issued the Forest Management Regulations covering authorities to carry out forest harvesting in the N.W.T.

Overlap:

The land use regulations cover the clearing of roads, trails, rights-of-way and other clearings, and environmental protection matters related to those activities.

The forest management regulations enable the government to authorize the harvest of forests, and to carry out activities such as clearing of roads, landings, trails, etc. for that purpose, subject to protection, and other matters.

Having authorized the harvest of the forest by delegation, Canada would appear to have transferred concerns related to the ecological balance of the area insofar as the forest is concerned. The GNWT through its reference to reforestation, restoration, etc. is concerned with the forest ecology, in a narrow sense. The GNWT through its mandate of wildlife management, is also concerned with faunal habitat, and resource harvester interaction, and the ecological considerations involved.

The area that Canada is most directly concerned with are, erosion control, protection of waterbodies and watersheds, and waste management other than as relates to forest fire hazard reduction.

The following is an Agreement of Understanding in reference to the Land Use/Timber inspections to be conducted on timber cutting operations. This Agreement of Understanding is between the Fort Smith Area of the Department of Renewable Resources, Government of the Northwest Territories and the Fort Smith District of Northern Affairs Program, Indian and Northern Affairs Canada, Government of Canada.

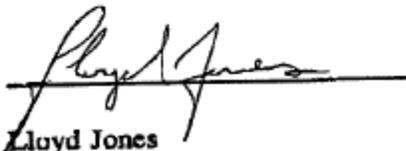
1. Northern Affairs Land Use Inspectors will continue to be responsible for land use permit inspections to ensure compliance with the Land Use Permit conditions.
2. GNWT Forest Management Officers will be responsible for conducting inspections under the timber cutting permit/licence to ensure compliance with utilization standards and brush disposal conditions.
3. Copies of Land Use Permits and Timber Cutting Licences will be exchanged between agencies through the respective Assistant Area Superintendent and District Manager.
4. Land Use Inspectors will inspect and monitor the main access and haul roads, taking the lead role in the inspection of main access and haul roads.
5. Forest Management Officers will inspect and monitor timber cutting areas and take the lead role in the inspection of cutting areas.
6. Dual inspections will be conducted by Forest Management Officers and Land Use Inspectors on millsites, campsites and landings.
 - Forest Management Officers will inspect to ensure timber utilization standards and brush disposal requirements are maintained as per the Timber Cutting Licence.
 - Land Use Inspectors will inspect to ensure environmental conditions such as removal of waste material (excluding brush and wood waste), fuel containment, backfilling sumps, sewage and garbage disposal and erosion requirements are maintained as per the Land Use Permit conditions.
7. The Forest Management Officers will carry out normal inspections of activities in the cutting area. Their inspections will include observation of areas of concern under the Land Use Permit. Where deficiencies are noted outside the forest permit conditions, the officer will advise the Land Use Inspectors of the deficiencies, for the further action of land use, if necessary.

8. Consultation between the officers shall be conducted before orders or directions are given in areas of overlap, to avoid apparent conflicts and confusion between the Agencies.
9. Land Use Permit concerns will be addressed with the operator by a Land Use Inspector.
10. Timber Cutting Licence concerns will be addressed with the operator by a Forest Management Officer.
11. Forest Management Officers and Land Use Inspectors will exchange inspection reports on a regular basis through their respective Assistant Area Superintendent and District Manager.

This agreement is fostered in co-operation with the objective of reducing duplication of regulatory requirements on the operators and to clarify the understanding of the regulatory responsibilities of the Forest Management Officers and Land Use Inspectors in their respective Agencies.

Date: November 30, 1991

Date: November 19, 1991



Lloyd Jones
Assistant Area Superintendent
Fort Smith Area
Dept. of Renewable Resources
Government of N.W.T.



Odiel Vandenberghe
District Manager
Fort Smith District
Northern Affairs Program
Indian & Northern Affairs Canada