



Tłegóhłı
Public Listening

**Climate Change
& Wildfire**



SRRB Ruling on Fort Good Hope Renewable Resources Council April 12 Motion

Introduction

[1] This ruling addresses the Fort Good Hope Renewable Resources Council (FGH-RRC) motion to remove certain submissions by the Government of the Northwest Territories Environment and Climate Change (GNWT-ECC) from the record.

[2] The Sahtú Renewable Resources Board (SRRB or Board) denies Fort Good Hope's motion. Its reasons follow.

Background

[3] The SRRB held the in-person portion of the Tłegóhłı (Norman Wells) 2024 Public Listening Session on Caribou Conservation, Climate Change and Wildfires (PLS 3) as a form of public hearing under its *Rules for Hearings*¹ between February 20-22, 2024.

[4] The SRRB set, and gave notice, of the March 11, 2024, deadline for final arguments and responses to Round 3 Information Requests (IR 3). FGH-RRC submitted responses to IR 3 on March 7 and submissions about Ts'udé Niljné Tuyeta (TNT) on March 11. After receiving requests from parties, the Board extended this deadline to March 18, 2024.

[5] On March 19, 2024, one day after the March 18 deadline, GNWT-ECC requested an extension of the deadline to March 22, 2024, which was granted. The SRRB issued a notice on March 19, 2024, indicating they had granted a deadline extension to GNWT-ECC.²

[6] GNWT-ECC filed its Final Arguments and responses to IR 3 on March 22, 2024 (the GNWT-ECC March 22 Submissions). This submission was accepted and posted to the registry on March 23, 2024.

[7] Norman Wells Renewable Resources Council (NWRRC) filed their responses to IR 3 on March 26, 2024. NWRRC did not request an extension to the March 18 deadline.

¹ *ʔehzo Gotʔinę Gotsʔé Nakedı (Sahtú Renewable Resources Board) Rules for Hearings*, October 15, 2019, edition. (*Rules for Hearings, or Rules*). Excerpts of the *Rules* are included at Appendix 1.

² The notice was posted online in the registry for PLS 3 but was inadvertently incorrectly filed in the "correspondence" folder instead of the "notices" folder. The notice was not circulated to parties by email.

The Board accepted the NWRRC submission, which was received after the March 22 deadline.

[8] On March 28, 2024, the SRRB issued a notice indicating it was planning to close the record. The notice provided reasons for accepting late submissions from GNWT-ECC and NWRRC.³

[9] On March 29, 2024, FGH-RRC requested that the SRRB defer closing the record to allow it adequate time to prepare and file a formal objection to the SRRB's decision to accept the GNWT-ECC March 22 Submissions. On April 3, 2024, the SRRB gave notice it was deferring closure of the record to allow FGH-RRC time to submit any objection or motion by April 12. The April 3 notice explained the second extension notice was posted to the registry in the "correspondence" folder by mistake.

Fort Good Hope's Objection

[10] On April 12, 2024, FGH-RRC objected to the decision to accept GNWT-ECC's March 22 Submissions and requested remedial action (the FGH-RRC Motion). FGH-RRC argued that the Board's decision "starkly violates" the principles of procedural fairness, transparency, and equitable treatment mandated by the *Rules*.

[11] In its motion, FGH-RRC requested remedies to remove the entirety of GNWT-ECC's March 22 Submissions from the record, or in the alternative, to remove the paragraphs of GNWT-ECC's March 22 Submissions that respond to two information requests from the SRRB to GNWT-ECC about "*IPCA's and the SRRB's authority (re: Tuyeta)*".

[12] The FGH-RRC Motion did not address the SRRB decision to accept NWRRC's late submissions or explain the difference between NWRRC and the GNWT-ECC submissions for the purposes of their objection.

Responses from other parties

[13] On April 15, 2024, the SRRB provided notice of the FGH-RRC motion and invited parties to respond. The SRRB received one response, from GNWT-ECC. No other parties made submissions on the motion.

[14] On April 26, 2024, GNWT-ECC responded to the FGH-RRC Motion. GNWT-ECC argued its final submission was on time in accordance with extensions granted by the SRRB, that it would not be procedurally fair to retroactively revoke those extensions, that it should not be prejudiced by the SRRB's error posting notice of the second extension in the wrong folder on the registry, that the GNWT-ECC March 22 Submission did not take

³ "The SRRB found that the extension requested by ECC was not lengthy, and the submissions from ECC and NWRRC contain information that is important for the determination of PLS 3. The SRRB also considered that accepting these submissions would not be harmful or prejudicial to other registered parties." *Closure of Record, Acceptance of Late Submissions, and Next Steps*, Tłegóhı̄ 2024 Public Listening Session Notice to Parties and the Public dated March 28, 2024, page 1.

into account any of the written closing arguments submitted by other parties, and that there was no unfairness or prejudice arising from the deadline extension.

Issues

[15] The issues are:

- a. Whether the Board's decision to grant a second extension breached the duty of procedural fairness; and
- b. If there was a breach of procedural fairness, what is the appropriate remedy.

Analysis

[16] FGH-RRC bases its objection on the *Rules*, which they say implicitly endorse principles of transparency and fairness, and the requirements of procedural fairness to provide notice of a second extension. The grounds for the objection can be summarized as follows:

- a. The SRRB's selective communication about the second extension disadvantaged parties who complied with the publicly stated deadline;
- b. The SRRB's procedural flexibility under Rule 3.6 was not exercised transparently or fairly; and
- c. The GNWT-ECC's March 22 Submissions were harmful and prejudicial to other parties, allowed GNWT-ECC additional time, and included new information other parties did not have the opportunity to rebut.

The Rules

[17] In accordance with the *Rules*, the Board determines the issues it will consider in a hearing like PLS 3.⁴ The *Rules* explain how the Board issues an Information Request (IR),⁵ that a party who receives an IR is expected to respond in the time specified by the Board,⁶ and that responses to an IR are circulated to other parties.⁷ The Board may also seek additional information at any time while the record is open from any party.⁸

[18] The Board, as an administrative decision-maker, is the master of its own procedure. The Board must act fairly, but this is not a judicial proceeding. The Board emphasizes "flexibility and informality" in its proceedings.⁹ The Board is not bound by the strict rules

⁴ Rule 12.2

⁵ Rule 11.1

⁶ Rule 11.3

⁷ Rule 11.4

⁸ Rule 12.16

⁹ Rule 3.4

of evidence and may accept information that would not normally be admissible.¹⁰ The Board has the right to vary its *Rules* at any time.¹¹ With respect to motions, the Board can make procedural decisions as required,¹² including in response to written motions like the FGH-RRC Motion here.¹³

The SRRB acted transparently

[19] FGH-RRC concludes that the SRRB's error posting notice of the second extension breached fairness, departed from equitable treatment, and conflicts with basic tenets of administrative fairness. FGH-RRC has not explained how the extension of the deadline amounted to an actual breach of the duty of fairness owed to FGH-RRC or to other parties in the circumstances, except that parties did not have an opportunity to respond to so-called "new" information. The FGH-RRC Motion refers to disadvantaging parties who adhered to the deadline, the potential jeopardizing of rights and interests of all parties, and the necessity for corrective measures to restore procedural fairness.

[20] The Board recognizes notice of the second extension could have occurred differently. The SRRB acknowledged it made an error when it posted the notice of the extension to the wrong folder on the registry and could have circulated the notice of the second extension by email, even though it is not required. The Board considers this procedural irregularity did not fundamentally affect procedural fairness, did not breach the duty of fairness owed to any party, or did not leave unresolved any possible detrimental effects that were addressed by the SRRB's subsequent explanation.¹⁴ Parties had the opportunity to provide submissions on the FGH-RRC motion and could have addressed the second extension. No other parties made submissions or expressed support FGH-RRC's motion, except GNWT-ECC, who opposed the motion.

[21] FGH-RRC argues, correctly, that the SRRB must exercise its discretion to vary the *Rules* in a transparent and fair manner. Procedural fairness does not require "procedural perfection."¹⁵ If the posting error and second extension did lack transparency, the SRRB's subsequent explanation and reasons for accepting the submissions by giving public notice acknowledged the mistake and demonstrated transparency about the SRRB's decision-making.¹⁶

[22] The Board issued IR 3 under the *Rules*.¹⁷ Despite Rule 11.3, the Board has been flexible about granting extensions to deadlines in recognition of parties' many priorities

¹⁰ Rule 12.1

¹¹ Rule 3.8

¹² Rule 15.1

¹³ Rule 15.2

¹⁴ SRRB, *Deferring Closure of the Record*, Tłegóhłı 2024 Public Listening Session Notice to Parties and the Public dated April 3, 2024, page 2.

¹⁵ *Knight v. Indian Head School Division No. 19*, [1990] 1 SCR 653, at p 685.

¹⁶ *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at paragraph 92.

¹⁷ Rule 11.1

and sometimes limited resources throughout PLS 3.¹⁸ The Board granted several extensions to the deadline for IR 1 and the deadline for IR 3.¹⁹ Norman Wells Renewable Resources Council submitted its IR 3 responses late on March 26, and no party, including FGH-RRC, objected to the Board accepting these submissions.

[23] FGH-RRC did not request an extension or provide supplementary submissions when either extension to the March 11 deadline was granted.²⁰ FGH-RRC did not request additional time to provide additional submissions, either as a remedy in their motion or as a separate request. Instead, FGH-RRC chose to make a motion to strike GNWT-ECC's submissions and requested specific remedies. These remedies did not include a remedy allowing FGH-RRC to make further submissions addressing the GNWT-ECC March 22 Submissions.

FGH-RRC does not have a right to reply to GNWT-ECC's submission

[24] FGH-RRC argues that GNWT-ECC's March 22 Submissions includes new information to which they should have an opportunity to respond. The FGH-RRC Motion did not indicate which information is new or was otherwise raised for the first time.

[25] While the right to be heard includes the right to respond to other parties' information (sometimes called a "reply"). The right to reply is not automatic or all-encompassing. A *right* to reply arises where a party is responding to evidence or argument that was raised for the first time in another party's responding submissions, where the party could not have reasonably anticipated the other party's submissions when making their submissions and therefore, did not have the opportunity to address them.²¹ In this case, the question of whether there is a right to reply considers only whether there is "new" information in the GNWT-ECC March 22 Submissions.

[26] The parties to the TNT Establishment Agreement are the GNWT-ECC and FGH-RRC. In this case, FGH-RRC made submissions on its interpretation of the TNT Establishment Agreement during the in-person portion of PLS 3 and in its submissions filed on March 11. Before the in-person portion of PLS 3, FGH-RRC did not raise the TNT

¹⁸ The SRRB has the authority to modify or vary its *Rules*. See *SRRB Rules for Hearings*, Rules 3.4, 3.6, and 3.8.

¹⁹ SRRB, *IR Deadline Extension*, Tłegóhłı 2024 Public Listening Session Notice to Parties and the Public, dated December 6, 2023; SRRB, *IR Deadline Extension for ECCC*, Tłegóhłı 2024 Public Listening Session Notice to Parties and the Public, dated January 12, 2024; SRRB, *Second IR Deadline Extension for ECCC*, Tłegóhłı 2024 Public Listening Session Notice to Parties and the Public, dated January 26, 2024; SRRB, *Deadline Extension IR #3 Responses and Final Submissions*, Tłegóhłı 2024 Public Listening Session Notice to Parties and the Public, dated March 11, 2024. FGH-RRC received notice of extension to the March 11 deadline and did not comment, make further submissions, or recognize this extension would mean the GNWT-ECC final submissions and IR responses to be submitted after FGH-RRC submitted their final submissions and IR responses - without an opportunity to respond to the GNWT-ECC submission.

²⁰ Although the FGH-RRC motion calls for all parties to be given a fair opportunity to respond to new information and submissions (paragraph 21), they did not include this in their requested remedies. The Board notes the hearing record is still open and the Board will not accept information for consideration after the record is closed without a motion. See Rule 18.2.

²¹ *R v Krause* [1986] 2 SCR 466. While this is a criminal law case, this principle has been followed in civil cases and by administrative decision makers. (See, for example, *CCCTE v Ontario (Environment and Climate Change)* 2017 CanLII 27411 (ON ERT)).

Establishment Agreement, respond to Information Requests in IR 1 or IR 2, or make any other submissions on the record about the TNT Establishment Agreement. The GNWT-ECC, legitimately, may not have anticipated the TNT Establishment Agreement being raised by FGH-RRC during the in-person portion of PLS 3. GNWT-ECC did not make submissions during the in-person portion of PLS 3 about the TNT Establishment Agreement.

[27] The SRRB specifically invited submissions on this point from GNWT-ECC after the in-person portion of the PLS 3 via IR 3, in part to give GNWT-ECC an opportunity to respond according to the duty of fairness and in part because they are a party to the TNT Establishment Agreement. Information related to the implementation of the TNT Establishment Agreement is not an issue being decided in PLS 3.²² GNWT-ECC's March 22 Submissions do not breach FGH-RRC's participatory rights as a party in PLS 3.

[28] There is no information in the GNWT-ECC's March 22 Submissions that raises new evidence or argument about the TNT Establishment Agreement that FGH-RRC did not already make submissions about during PLS 3. Even if the GNWT-ECC had additional time to respond to argument,²³ where the GNWT-ECC March 22 Submissions refer to submissions from FGH-RRC, the GNWT-ECC March 22 Submissions indicate *support* for positions taken by FGH-RRC. Reference in the GNWT-ECC March 22 Submissions to FGH-RRC submissions made after the in-person portion of PLS 3 may not strictly conform to perfect procedure, but they do not contain new information to which FGH-RRC has a right to respond, rebut or address.²⁴ Nor does it cause FGH-RRC prejudice. There should be no expectation for any party of a right to respond to submissions that accompanied final arguments after the in-person portion of the PLS.²⁵

The Duty of Fairness owed to FGH-RRC

[29] The requirements of procedural fairness depend on the circumstances and have to be considered in light of the relevant factors in each situation.²⁶ In this situation, considering the legal test for the duty of fairness, the content of the duty of fairness is low. The Board's decision to grant a second extension did not affect FGH-RRC's procedural rights nor did FGH-RRC have a legitimate expectation of a right to reply to another party's final submissions. In light of this, there is no breach that warrants remedy. The Board set a deadline for responding to IR 3 and to provide final submissions. Despite the deadline, nothing in the Board's *Rules* prevented the Board from granting an extension or accepting

²² The issues for PLS 3 were identified in the first notice for PLS 3. See SRRB, *Notice*, Tłegóhłı 2024 Public Listening Session Notice to Parties and the Public, dated September 11, 2023.

²³ FGH-RRC Motion, paragraph 12

²⁴ The FGH-RRC claim the GNWT-ECC March 22 responses under the heading "*IPCA's and the SRRB's authority (re: Tuyeta)*" responded in part to material within the FGH-RRC's submission (FGH-RRC motion, paragraph 13). Those responses from the GNWT-ECC address information requests issued by the Board.

²⁵ If there were actually new information that was raised for the first time and a party could not have reasonably anticipated the other party's submissions when making their submissions, this analysis would be different. However, that is not the case here.

²⁶ *Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817, at paragraphs 21–27.

the GNWT-ECC and NWRRC submission. It is common practice with the Public Listening Session series for the Board to be accommodating with requests for extensions.

[30] While the omission to circulate the notice of second extension, the posting error on the registry and the Board's exercise of procedural discretion to grant a second extension allowed parties more time to provide their submissions, these actions did not breach procedural fairness. A strict adherence to a deadline causing refusal to accept the submissions, especially when the SRRB has extended deadlines throughout the PLS for other parties, might have been unfair to GNWT-ECC and NWRRC. Strict deadlines would not have been aligned the SRRB's stated approach to the Public Listening Session series, which is to accommodate "the full range of evidence presented."²⁷

The proposed remedies would be inappropriate

[31] The GNWT-ECC are the only other party to the TNT Establishment Agreement with the Kasho Got'ıne Foundation. Their submissions are relevant and important to have on the record. FGH-RRC made submissions on TNT, but GNWT-ECC did not until the March 22 Submissions. It would not be appropriate to deny them the opportunity to respond by removing their submissions from the record. The GNWT-ECC March 22 Submissions contain information from the GNWT-ECC about more than just TNT, engaging their legislative role directly related to the issues of PLS 3, which would be inappropriate to remove from the record. The Board reminds parties this motion is being considered in a public listening process that consciously departs from a typical tribunal hearing.

[32] Importantly, if the Board were to remove some or all of the GNWT-ECC March 22 Submissions for being late, as the GNWT-ECC submission on the FGH-RRC motion state, it would amount to a breach of procedural fairness and cause prejudice to parties that relied on the Board's authority to grant the extension. Removing some or all of the GNWT-ECC March 22 Submissions from the record would not remedy the fact FGH-RRC did not see the notice of the second extension on the registry. The Board also has to consider what granting any remedy removing submissions from the record would mean for the NWRRC March 26 submission. The Board was influenced by the potential impact to NWRRC when it considered the FGH-RRC Motion and potential remedies.

[33] If there were a breach of the procedural fairness owed to FGH-RRC, which is not the case here, the breach would not be remedied by removing some or all of the GNWT-ECC March 22 Submissions from the record, particularly without accounting for the consequences for NWRRC March 26 submissions remaining on the record. Such remedies would not be reasonable or appropriate corrective measures "imperative to restoring procedural fairness within the PLS process" as FGH-RRC claims,²⁸ by breaching procedural fairness for other parties. Having found no breach of procedural fairness owed to FGH-RRC in the circumstances, and in light of the potential negative

²⁷ *Sahtú Ragòʔa (Hunting Law) and Approaches to Wildlife Harvesting, Colville 2020 Public Listening (Hearing) Session Reports and Reasons for Decision*, (November 2020), pages 93-94.

²⁸ FGH-RRC Motion, paragraph 19

consequences to other parties arising from the requested remedies, under Rule 15.1, the Board therefore declines to grant either of the FGH-RRC remedies.

Conclusion

[34] The SRRB declines to grant FGH-RRC's motion to strike any or all of the GNWT-ECC March 22 Submissions.

[35] The Board regrets any confusion the posting error may have caused and reminds parties the posting error was an inadvertent mistake. The SRRB takes its responsibilities seriously, including the administration of hearing procedures like posting documents to the registry. The Board is aware the timing and administration of certain communications here, specifically notice of the second extension to IR 3, caused unnecessary reflections on the SRRB's commitment to fairness and transparency. In reflecting on its practice of flexibility with deadlines, the Board takes this opportunity to invite parties do their best to meet deadlines and act without delay when seeking extensions if required. The Board may provide additional direction on deadlines and considering late submissions in the future to avoid this kind of situation.

Ordered on May 24, 2024.



Donna Schear, Acting Chair

On behalf of the Board presiding over PLS 3: Camilla Rabisca, Judy Tutcho, Samuel Haché, and Gordon Hamre

Appendix 1
Excerpts from SRRB Rules for Hearings

[...]

“Hearing” includes a hearing of management proposal, the hearing of a Motion, a written Hearing, an electronic Hearing, a Joint Hearing, Public Listening Sessions, or any other proceeding which the Board deems to be a hearing, and all the procedures related to a Hearing from the time when the Board issues a Notice of Hearing until the time when the Board issues a decision on the subject matter of the Hearing.

[...]

“Motion” means a written or oral request, including any supplementary materials supporting the request, made by a Party to the Board, for a ruling or an order in a Hearing and includes a Motion made by the Board.

[...]

“Information Request” means a written request for information or particulars directed to a Party in a Hearing.

[...]

“Registry” means the online registry maintained by the Board.

[...]

Rule 1.4

The Board may, pursuant to Section 13.8.21(a) of the Agreement, hold a Hearing where the Board is satisfied that such a Hearing is desirable.

[...]

Rule 3.3

The Board shall give these Rules such fair, large and liberal construction as best ensures just, expeditious and fair consideration of issues arising under these Rules and consistency with the principles of natural justice and procedural fairness.

[...]

Rule 3.4

To the extent consistent with its duty of procedural fairness, the Board will emphasize flexibility and informality in the conduct of its Hearings.

[...]

Rule 3.5

Where any procedural matter is not provided for in these Rules, the Board may at any time give directions governing the procedure to supplement these Rules that it considers necessary for the fair determination of an issue.

[...]

Rule 3.6

On its own initiative or at the written or oral request of an individual, body or agency participating in a Board process under these Rules, the Board may dispense with, vary or supplement any part of these Rules that it considers necessary for a fair determination of an issue by way of a direction on procedure.

[...]

Rule 3.8

The Board may amend or vary these Rules at any time

[...]

Rule 4.1

The Board may conduct any Hearings that it considers to be desirable for the purpose of carrying out any of its functions.

[...]

Rule 11.1

The Board may issue an Information Request to any Party at any stage of a Hearing, from the time of a Notice of Hearing pursuant to Rule 5 to the Closure of the Record pursuant to Rule 18.

[...]

Rule 11.3

A Party that receives an Information Request during a Hearing shall respond within the time specified by the Board.

[...]

Rule 11.4

The response of a Party to an Information Request shall be submitted to the Board and circulated to the other Parties in the Hearing.

[...]

Rule 12.1

In conducting its business, the Board is not bound by the strict rules of evidence and may accept information that would not normally be admissible under the strict rules of evidence, including hearsay.

[...]

Rule 12.2

The Board may decide which issues it will consider at a Hearing and notify the Parties of such decision. The Board, in its discretion, may decline to consider submissions or evidence that are not relevant to the issues being considered by the Board at a Hearing.

[...]

Rule 12.16

The Board may, at any time during a Hearing from the time of a Notice of Hearing pursuant to Rule 5 to the Closure of the Record pursuant to Rule 18, require additional information from any Party that the Board considers necessary to permit a full and satisfactory understanding of an issue in a Hearing.

[...]

Rule 15.1

The Board may make any procedural decisions required for the conduct of a Hearing.

[...]

Rule 15.2

Any issue requiring a ruling or decision that arises in the course of a Hearing shall be brought to the Board's attention by way of a written Motion.

[...]

Rule 18.2

The Board will not accept information and evidence for consideration after the record for a Hearing has been closed, unless a Motion to reopen the record has been made and approved by the Board.

Appendix 2
Fort Good Hope Motion

K'áhshó Got'ine
P.O. Box 19
Fort Good Hope
N.T. X0E 0H0

April 9, 2024

?ehdzo Got'ine Gots'é Nákedí
Sahtú Renewable Resources Board
P.O. Box 134
Tulít'a, NT Canada
X0E 0K0

Delivered via email to info@srrb.nt.ca

Dear SRRB:

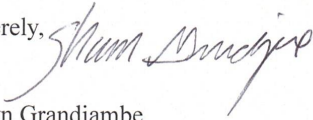
**RE: OBJECTION AND REQUEST FOR REMEDIAL ACTION DUE TO PROCEDURAL
IRREGULARITIES – TĚGÓHLĪ 2024 PUBLIC LISTENING SESSIONS (PLS)**

On behalf of the Fort Good Hope Renewable Resources Council (FGH RRC), I am writing to provide our formal objection in accordance with the SRRB *Rules of Hearings* (the “Rules”) based on a breach of procedural fairness. Please see the enclosed Formal Objection and Request for Remedial Action Regarding Procedural Irregularities.

The initial deadline for final arguments and responses to Round 3 Information Requests was March 11, 2024. The SRRB received a request from some registered parties for a deadline extension, which was granted on March 18. This process was done fairly and properly, and public notice was given to all parties. The Government of Northwest Territories (GNWT) did not meet the March 18 deadline. Despite this failure, the SRRB decided to grant further opportunities for submissions from GNWT by extending the deadline to March 22, 2024. The SRRB failed to communicate this deadline to the other parties. This is a clear breach of procedural fairness.

Parties to the TĚgóhĪ 2024 PLS relied on the SRRB’s communicated deadlines, including the extended deadline of March 18, 2024, for planning their submissions. The acceptance of submissions after this date is prejudicial to those parties who arranged their affairs based on the SRRB’s stated deadlines. All parties had the right to rely on the March 11 public notice as the official declaration of deadlines.

Any submission received after the official March 18 public deadline must be removed from the record in order to comply with the administrative principle of procedural fairness. We look forward to SRRB resolving this matter promptly so that we may continue to work together in a manner that respects fairness and the rights of all parties in this process.

Sincerely, 

Shawn Grandjambe
Board Member
FORT GOOD HOPE RENEWABLE RESOURCES COUNCIL

Cc:

President Bonny Kakfwi, Fort Good Hope Renewable Resources Council
bonnie_kakfwi@live.com

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President Aurora McNeely, Fort Good Hope Metis Nation Local #54 Land Corporation
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President Edwin Erutse, Yamoga Land Corporation
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Darcy Edgi, Chair, K'ahso Got'ine Foundation
info@kg-f.ca

Encls: Motion, TLEGQHJ 2024 Public Listening Session

TŁEGÓHLI 2024 PUBLIC LISTENING SESSION

B E T W E E N:

FORT GOOD HOPE RENEWABLE RESOURCES COUNCIL

Participant

-and-

SAHTÚ RENEWABLE RESOURCES BOARD

Board

**FORMAL OBJECTION AND REQUEST FOR REMEDIAL ACTION
REGARDING PROCEDURAL IRREGULARITIES**

(Rule 15 of the Sahtú Renewable Resources Board Rules for Hearings)

1. The Fort Good Hope Renewable Resources Council (“**FGH-RRC**”), in conjunction with the Fort Good Hope Panel, hereby objects to the procedural irregularities manifest in the Sahtú Renewable Resources Board (“**SRRB**”) management of the deadline extensions for final arguments and responses to Round 3 Information Requests (“**IR**”) related to the Tłegóhli 2024 Public Listening Sessions (“**PLS**”).
2. Our objection is grounded in the principles of procedural fairness, transparency, and equitable treatment as mandated by the SRRB Rules for Hearings (the “**Rules**”), specifically Rule 15 and Rule 3.6 concerning the Board's discretion in procedural matters. The undisclosed second extension granted, coupled with the absence of timely and equal communication to all participating parties, starkly violates these principles. This selective dissemination of critical procedural information not only contravenes the spirit of transparency but also gives rise to a tangible imbalance in the participatory rights afforded to the parties involved. Such procedural irregularities, significantly undermine the integrity of the PLS, disadvantaging parties that adhered to the initially communicated deadlines and relied upon the SRRB's commitment to a fair and transparent hearing process.

RELEVANT FACTS

3. The SRRB held the Tiegóhłı PLS on the topic of Climate Change and Wildfire between February 20-22, 2024.
4. The SRRB set a deadline of March 11, 2024, for all parties to submit IR responses and final submissions.
5. On March 11, 2024, the SRRB granted a deadline extension to March 18, 2024 to the Government of the Northwest Territories (“GNWT”) Environment and Climate Change (“ECC”) and the Norman Wells Renewable Resources Council (“NWRRC”). All parties were notified of this extension.
6. On March 19, 2024, GNWT-ECC requested and was granted a second extension until March 22, 2024. This critical piece of information was not disclosed to other parties. It was not properly reflected on the SRRB registry until after the acceptance of the late submission was published. SRRB advised in a Notice to Parties posted on April 3 that they erroneously posted this on the SRRB registry in the “correspondence” folder on March 19, 2024.
7. The SRRB received the final argument and response from the GNWT-ECC on March 22, 2024. The SRRB received the final argument and response from the NWRRC on March 26, 2024.
8. The late submission from the GNWT-ECC was published on the SRRB registry on March 23, 2024. The late submission from the NWRRC was published on the registry on March 27, 2024. The SRRB posted a public notice on March 28, 2024 referencing their acceptance of the late submissions. This public notice also included the decision to close the record on April 5, 2024.

GROUNDS FOR OBJECTION

9. ***Lack of Equitable Treatment.*** The selective communication concerning the second deadline extension granted to GNWT-ECC and failure to provide notice to all participants illustrates a departure from the equitable treatment of all parties, as required by procedural fairness, minimum standards of natural justice and the principles embedded in the Rules.

10. ***Undisclosed Second Extension.*** The GNWT-ECC missed the March 18 deadline. They submitted a second extension request after they missed the first extension deadline of March 18. SRRB never shared the second extension granted to GNWT-ECC with all parties. This act of selective disclosure and the subsequent publication decision directly undermines the procedural integrity and fairness of the PLS.

11. ***Questions Raised about Procedural Fairness.*** The SRRB’s decision disadvantaged other parties who complied with the publicly stated deadline and raises questions about procedural fairness and equality of treatment amongst the parties.

12. ***Prejudicial Late Submission.*** The late submissions allowed by GNWT-ECC were harmful and prejudicial to the other registered parties. It granted GNWT-ECC additional time to respond to arguments. This additional time did not include the opportunity for the other parties to rebut or address any new information presented in the late submission.

13. The late submission by GNWT-ECC responded in part to material within FGH-RRC’s submission. Specifically, this content was the responses under the heading “*IPCAs and the SRRB’s authority (re: Tuyeta)*” on page 5 of the GNWT-ECC submission.

14. ***Breach of Rules for Transparency and Fairness:*** We base our objection on the Rules and requirements of procedural fairness. The Rules implicitly endorse principles of transparency and fairness, which have been violated. Moreover, Rule 3.6, while allowing for procedural flexibility, mandates such discretion to be exercised transparently and fairly – a standard not met in this instance.

REMEDIES SOUGHT

15. **Removal of GNWT-ECC March 23, 2024 Submission from the Record.** To uphold the principles of fairness and transparency, we request the removal of the GNWT-ECC's late submission from the record.
16. If not granted the full removal of the March 23 submission, we request to have the GNWT-ECC response to our legitimately filed March 11 submission removed from the record.
 - That content is found on page 5 of the GNWT-ECC submission under the heading “*IPCAs and the SRRB’s authority (re: Tuyeta)*”.
 - This content includes the responses to questions 1 and 2, namely:
 - i. “*What is the GNWT-ECC’s position regarding the SRRB’s role with respect to the Ts’ude Niljine Tuyeta draft Management Plan as set out in the Ts’ude Niljine Tuyeta Establishment Agreement?*”
 - ii. “*Can you update the SRRB on the implementation of section 8.6 and 8.8 of the Ts’ude Niljine Tuyeta Establishment Agreement?*”
17. The above-noted specific sections directly responding to FGH-RRC’s timely submission should be removed to mitigate the prejudice incurred.

REASONS FOR GRANTING DECISION

18. **Violation of Procedural Fairness and Natural Justice.** The SRRB’s procedural actions have breached foundational principles of procedural fairness and natural justice, with the potential of jeopardizing the rights and interests of all other parties participating in the PLS, including the K'asho Got'ine.
19. **Necessity for Corrective Measures.** Immediate action to strike the late submissions is imperative to restoring procedural fairness within the PLS process.

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20. The SRRB failed to inform other parties of the subsequent filing extension. No notice was provided to other parties regarding the second extension request by GNWT. This lack of transparency and communication to all involved parties compromises and undermines the procedural fairness of the PLS hearings.
21. All parties involved in this process must be given a fair opportunity to respond to new information and submissions. This did not happen with the lack of notice or timely publication of the second deadline extension to March 22, 2024.
22. The lack of notice of the second deadline extension disadvantages the other involved parties who adhered to the published deadlines and relied on procedural fairness.
23. ***The SRRB incorrectly relies on Rule 3.6 of the Rules.*** This provision allows the SRRB to vary the *Rules*, but only when the SRRB “considers it necessary for a fair determination of an issue by way of a direction on procedure.”¹
24. The lack of universal notice directly conflicts with the basic tenets of administrative fairness, necessitating corrective action. Such failure to notify all parties or to share basic information equally between all parties to the process, cannot be considered “necessary for a fair determination” of IR submissions because it directly contradicts the principles of basic administrative fairness.
25. The integrity of the PLS and the confidence of the Sahtú communities in the SRRB's processes hinge on adherence to the highest standards of fairness and transparency. This instance of procedural irregularity calls for urgent and immediate remedial action to restore faith in the SRRB's commitment to these principles.

¹ *SRRB Rules for Hearings*, Rule 3.6, 2024-October-23.

RULES

26. Rule 3.6 of the *Rules*:

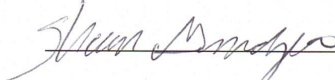
“On its own initiative or at the written or oral request of an individual, body or agency participating in a Board process under these Rules, the Board may dispense with, vary or supplement any part of these Rules that it considers necessary for a fair determination of an issue by way of a direction on procedure.”²

27. Fort Good Hope Renewable Resources Council relies on 15.2 and 15.4 of the *Rules*, and such further and other Rules and authorities as counsel may provide.

We trust the Board will consider this objection with the gravity it merits and act to rectify the procedural breaches identified herein.

Submitted by: Fort Good Hope Renewable Resources Council and the Fort Good Hope Panel, a Party to the Tłegóhłı 2024 Public Listening Session.

April 9, 2024



Shawn Grandjambe
Board Member
Fort Good Hope Renewable Resources Council

<Shawn.paul.grandjambe001@gmail.com>

TO: **Sahtú Renewable Resources Board**
info@srrb.nt.ca

² SRRB Rules for Hearings, Rule 3.6, 2024-October-23.

Appendix 3 GNWT-ECC Response



April 26, 2024

Catarina Owen
A/Executive Director
Sahtu Renewable Resources Board
eas@srrb.nt.ca

Dear Catarina Owen:

Notice of Motion and Opportunity to Respond

Thank you for the opportunity to respond to the motion put forward by the Fort Good Hope Renewable Resource Council, as noted in your correspondence on April 15, 2024.

Please accept the attachment as the Department of Environment and Climate Change's (ECC) response to the motion. ECC staff look forward to working with the Sahtu Renewable Resources Board and Sahtu communities on issues of shared interest.

Sincerely,

A handwritten signature in blue ink that reads "Erin Kelly". The signature is fluid and cursive.

Erin Kelly, Ph.D.
Deputy Minister
Environment and Climate Change

Attachment

c. Dr. Brett Elkin
Assistant Deputy Minister, Wildlife and Forest Management
Environment and Climate Change

Heather Sayine-Crawford
Director, Wildlife Management
Environment and Climate Change

Gila Somers
A/Director, Conservation and Sustainable Livelihoods
Environment and Climate Change

Jeff Walker
Superintendent, Sahtu Region
Environment and Climate Change

Attachment

The Government of the Northwest Territories (GNWT) Department of Environment and Climate Change (ECC) leads the GNWT's participation and submissions to the Sahtu Renewable Resources Board's (SRRB) Public Listening Sessions.

ECC's final submission and response to the third round of Information Requests (IRs) for the Tłegóhh 2024 Tłets'éhkwę Godí - Public Listening Session was transmitted to the SRRB on March 22, 2024. While the initial deadline for submissions was set at March 11, 2024, ECC requested and received two extensions to that deadline. ECC's position is that it would not be procedurally fair for the SRRB to retroactively revoke those extensions. ECC's final submission was submitted on time, in accordance with those extensions. With regard to the second extension granted to ECC by the SRRB not being disclosed appropriately to all parties, ECC notes that this was a posting error, with the notification being inadvertently posted on the registry in the "correspondence" folder. ECC should not be prejudiced by this posting error.

The decisions to be made by the SRRB will benefit from having all relevant submissions before it. The submission and responses to the IRs provide important information for the SRRB to consider and did not note or take into account any of the written closing arguments submitted by other parties to the Tłegóhh 2024 Tłets'éhkwę Godí - Public Listening Session. Therefore, there was no unfairness or prejudice to the FGHRRC or any other party resulting from the deadline extension for ECC.

For the reasons set out above, ECC is of the view that no remedy sought in the FGHRRC's Motion should be granted, and the Motion should be dismissed.

Finally, ECC does wish to clarify in relation to the response in ECC's submission on page 5 under the heading "*IPCA's and the SRRB's authority (re: Tuyeta)*" that as ECC's view is that the SRRB's involvement in reviewing the draft management plan should be in relation to renewable resources, the SRRB should therefore not assess aspects of the draft management plan that address matters unrelated to renewable resources. ECC is happy to discuss the review and approval of management plans under the *Protected Areas Act*.