



October 28, 2014

Mr. Jim Noble
Executive Director
Nunavut Wildlife Management Board
Box 1379
Iqaluit, NU
X0A 0H0

Dear Mr. Noble:

Re: NTI request for Board Directions for pre-hearing disclosure, Southampton Island Caribou Proceeding

I am writing in response to the Government of Nunavut's (GN's) letter to the Board dated October 10, 2014 and GN legal counsel's October 17, 2014 email to you regarding disclosure of new documents identified by the GN.

At the outset, Nunavut Tunngavik Incorporated (NTI) wishes to acknowledge and respond to the most time-sensitive proposals made in the GN's correspondence, as follows:

1. The GN suggests that the current time for filing an NTI reply to the GN's August 29 written submission be set aside until NTI has had a reasonable time to review the GN's new documents. NTI concurs with this suggestion, which NTI understood had the support of counsel to the GN, NTI and the Board in their October 2 teleconference. The attachment to this letter addresses the issue of a revised time for NTI's reply.
2. The GN assures the Board that the GN is preparing to provide NTI with an initial package of copies from the new documents, on an "urgent" basis. Once the GN provides copies to NTI, the GN suggests that NTI have two weeks to review them and that counsel then discuss next steps. NTI understands that this initial package would be a complete set of copies of those new documents that are arguably relevant for the year 2007, and for one or more additional years of the Harvest Study. The attachment to this letter addresses when the GN should provide NTI and the other hearing parties copies of the new documents. In NTI's view it is not necessary that copies of all documents provided to other parties be provided to the Board; rather, the GN and NTI should be responsible to file with the Board only copies of documents that each party intends to rely on in presenting its case. NTI would be pleased to have its counsel take part in a further discussion of next steps within the timeframe proposed in this letter and attachment.

NTI requests that the Board provide Directions to the GN and other hearing parties as to when and how the GN's new documents will be disclosed in this proceeding. NTI also requests that the Board issue complete Directions to all parties as to the steps to be taken before the Board announces a date for the resumption of the public hearing that was adjourned in December, 2013.

A draft of the complete Board Directions that NTI requests, including proposed timelines, is attached. NTI recognizes that the Board will have to set all timelines in question based on the best information available to the Board: the tentative dates bracketed in the attached draft reflect NTI's view of what appears reasonable and fair in the circumstances of which NTI is currently aware. By copy of this letter, NTI invites the GN to inform NTI and the Board of the GN's views regarding NTI's requested Board Directions by November 04. NTI asks that the Board issue its Directions as soon as possible after November 04.

NTI also recognizes that the Board may find it prudent to issue the necessary Directions in stages, as disclosure of the new documents gets underway. If so, NTI requests that the Board consider issuing NTI's requested Directions #1-#2 (best efforts to agree on facts not in dispute) and #4 (disclosure of new documents for 2007) first.

Please note that, although NTI's requested Directions do not address conduct of the hearing, the attached draft assumes that witnesses will be sworn when reporting at the hearing on any facts in dispute or likely to be in dispute; that such witnesses are subject to cross-examination, and that the Board is prepared to exercise its *Inquiries Act* powers to compel attendance of witnesses and production of documents, on application, if the need arises.

NTI's requested Board Directions are informed by the following considerations:

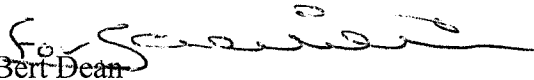
- Many new documents appear to have been identified by the GN as relevant to the Basic Needs Level (BNL) issue.
- New documents aside, in NTI's submission the GN has not yet provided adequate disclosure to NTI and the other hearing parties of the facts and evidence on which the GN intends to rely at the public hearing in support of the GN's position on the BNL issue. (For example, the GN has not informed NTI why it considers the harvesters of the caribou in question to have been employees of the company that compensated them).
- No facts have been shown clearly to be in dispute as yet regarding the BNL issue. It therefore appears premature to assume that there will be any, or at least many, facts in dispute at the resumed public hearing.
- The legal conclusions that the GN and NTI draw from the facts asserted to date on the record are widely divergent, so that the main dispute at present appears to concern argument about what legal requirements apply to this BNL determination and how that law applies to the facts.
- The Board normally limits its public hearings to three days in duration.
- If early and full disclosure is made by the parties, including real efforts to identify the material facts that are not in dispute, three days appears to be sufficient time to complete this resumed hearing.
- If adequate disclosure is not made well in advance of the resumed hearing, the new documentation that has been identified and the disclosure difficulties already encountered would suggest that more than three days in hearing time likely would be necessary, without any assurance that further adjournments to afford a party procedural fairness likely can be avoided.
- The GN and NTI owe it to the NWMB, which is, after all, mandated and funded to make decisions about wildlife management rather than the scope of Inuit rights, to make the factual determinations that they seek of the Board as simple as possible at the hearing stage.

- Considering that the GN's new documents were located in early September and disclosure to the other parties has not yet commenced, NTI proposes that the Board's directions aim to enable the Board to resume the public hearing in May-June of 2015, rather than February-March as previously planned.

NTI's requested Directions also reflect several best practices followed by tribunals in other jurisdictions.

NTI looks forward to receiving the GN's views on the NTI's requested Board Directions, and the Board's reply. NTI remains confident that, with timely direction from the Board, the contentious matter of the correct Basic Needs Level for Southampton Island caribou can receive a fair and effective Board hearing that results in a considered Board decision.

Sincerely,



Bert Dean

Acting Director of Wildlife

CC Steven Pinksen, Assistant Deputy Minister, Dept of Environment, GN
Kivalliq Wildlife Board
Kivalliq HTOs

NTI requested Board Directions re pre-hearing disclosure, Southampton Island Caribou Basic Needs Level (BNL)

Facts not in dispute between the GN and NTI

1. The GN and NTI are requested to make their best efforts to identify all facts that are not in dispute between these parties and on which either party will ask the Board to rely in determining the BNL, for filing with the Board in a joint statement.
2. In particular, if the GN or NTI provide to the other party a list of facts to be considered not in dispute, the other party is requested to respond in writing promptly and fully, and to meet and confer by telephone if this could assist in reaching agreement.
3. If agreement is reached, the joint statement of undisputed facts is to be filed with the Board [on or before February 1, 2015].

Document copies, lists, explanations, and Statement

4. The GN is to provide NTI with true digital copies and a list of all arguably relevant new documents pertaining to the year 2007 for which privilege is not claimed, [by November 7, 2014.] (In these Directions, “new documents” refers to the new documents identified by the GN in its October 14 2014 letter to the NWMB.)
5. The GN is to provide NTI with true digital copies and a list of all arguably relevant new documents pertaining to the following further sample years for which privilege is not claimed, [by November 15, 2014]: 1994, 1995, and 2000, subject to Direction #6 below.
6. If the GN becomes aware at any time of any reason why the new documents for a sample year referred to in Direction #5 might not be representative of the new documents available in the BNL periods for Southampton Island caribou, the GN is to bring the reason to NTI’s immediate attention, give NTI the choice of any substitute year’s documents, and provide true digital copies to NTI as soon as possible.
7. Commencing on November 20, 2014, the GN is to provide NTI with a digital copy of any or all new document(s) that NTI requests for which privilege is not claimed, within two days of NTI’s request.
8. By December 1, 2014, the GN is to
 - a) provide NTI with a list of all the arguably relevant new documents for which privilege is not claimed; and
 - b) provide NTI and file with the Board
 - i) a list of all documents on which the GN intends to rely in this proceeding, and true copies of all such documents not yet filed with the Board, together with

- ii) a brief written explanation how, in the context of written argument already filed or added at this time, each document supports the GN's position regarding the BNL.
 - c) file a Statement of Documents with the Board confirming that it has complied with each of the Board's Directions pertaining to documents, and when it did so.
9. By January 15, 2014, NTI is to provide the GN and file with the Board
- a) a list, and true copies, of any document not already filed with the Board by the GN on which NTI intends to rely in this proceeding, together with
 - b) a brief written explanation how, in the context of written argument already filed or added at this time, each document supports NTI's position regarding the BNL.
10. Where the GN is directed above to provide a list of documents for which privilege is not claimed, the list is to be accompanied by a description of the nature of each document for which privilege is claimed and the reason for claiming privilege.
11. The Board's permission will be needed in order for the GN or NTI to introduce any document at or before the resumed public hearing that has not been identified in its document list, filed by way of copy, and explained.

Witness lists, statements, and fact-specific directions

12. By December 1, 2014, the GN is to provide NTI and file with the Board a list of all witnesses the GN intends to call, and a list of the key facts that the GN relies on each witness to report to the Board ("witness statements"). If the witness is not reporting personal knowledge, the source of the witness' information is to be identified in the statement. "Key" facts includes all the facts to be reported by this witness that the Board would need to rely on in order to accept the party's position respecting BNL calculation.
13. In particular, if the GN intends to call any witness to report that Inuit hunters providing caribou to the abattoir harvested on a company's behalf and not as Inuit under the NLCA, the witness statement is to list all relevant facts that such a witness will be relied on to report. Any party may request that the Board give similar Directions regarding any other witness statement.
14. By January 15, 2015, NTI is to provide the GN and file with the Board a list of all witnesses NTI intends to call, and a witness statement for each NTI witness. The content of these witness statements is subject to the same requirements as in Direction #12.
15. The Board's permission will be needed in order for the GN or NTI to call any witness or report orally any fact at the public hearing that has not been identified in its witness list or witness statements, respectively.

Ongoing disclosure

16. The GN and NTI are to provide full disclosure promptly to each other of any fact that either party intends to report to the Board, any document that it intends to introduce, and any witness that it intends to call, at all times throughout this proceeding.

Further written argument concerning facts and law

17. NTI may file its written reply to the GN's August 29 submission and the GN's new filed documents and explanations by February 15, 2015.
18. The other parties may file their written reply to NTI's reply by March 31, 2015.