

***Disclaimer**

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Requested changes documented in these notes do not mean that the Board will make these changes. Some requests are beyond the Board's mandate or jurisdiction to address. The Board must consider all comments and requests and balance the interests of multiple parties. The Board will revise the Plan as it deems appropriate to achieve the right balance.

SLUPB-SLWB Staff Meeting Summary Notes

Wednesday, October 28, 2009, 9 am – 12 pm

SLWB Office, Fort Good Hope

Participants:

SLWB:

George Govier, Executive Director
Joan Gordie, Regulatory Director
Rhianna Leighton, Land Technician

SLUPB:

Bob Overvold, Board member
Heidi Wiebe, Plan Development Lead
Edna Tobac, Executive Director
Ida Mak, Communications Coordinator/Planner

Discussion Topics & Notes

Introductions:

George opened the meeting and welcomed the SLUPB staff and Board member. Heidi outlined the purpose and topics for the meeting. Bob introduced himself and explained his role in the meeting. While staff are responsible for carrying out the day to day work required in the planning process, a Board member generally accompanies the staff to observe and report on discussions first hand, and monitor the work being done.

1. SLWB Comments on Draft 2 Sahtu Land Use Plan

a. George's comments:

i. Definitions, authorizations: Discussion of relevant sections referenced

George:

- Don't contradict the use of "authorizations" as defined and used in MVRMA and MVLUR, all sections provided for reference.
- S. 90(d) – allows the SLWB to authorize deviations to their licence.
- Other authorizations they see – DFO, GNWT Transportation for access to winter road, etc. If it doesn't involve a land use permit or water licence though, they are not involved. Talk to Howard Townsend for a complete list of authorizations as they see everything.

ii. Definitions, 4th bullet: Suggest definition of land use include those not requiring a permit, licence or authorization, including "below threshold activities"

Any prelim screenings that are below threshold, the SLWB will do the prelim screening for (even where a land use permit or water licence isn't required – i.e. for other authorizations). The land use plan should still apply to these other authorizations.

iii. Authority of SLUPB to "compel" SLWB

George: L&W Boards are having working groups on issue of security. SLWB has never asked for security because INAC is the one who holds it and has the authority to decide how it is used, not the SLWB. INAC can require it if they want. INAC contributes to SLWB comments but have never required it. Applicants also post security with the NEB. Staff calculate the amount of security every time but the Board has always made the decision to not request it. The amounts are too small. The SLWB questioned when the security has ever been used.

b. Joan's comments:

i. Consultation: Discussion of SLWB processes & requirements

Joan: The SLWB looks for evidence of a public meeting, on topic, timely, and they provide guidance on what to bring – only works for those with a land use permit or water licence.

These requirements do not apply to mineral exploration activities so the Plan's terms are still required for those as a catch all; L&W Boards are doing a discussion paper on consultation protocols to the MVLWB in the next 3 to 6 months. For SLWB protocols, see direction provided in LUP and WL guidelines docs, and see MVLWB public consultation guidelines. The SLWB looks at whether or not good efforts were made on consultations. They may not have been successful (i.e. if community refuses to meet), but if a reasonable effort was made, they are deemed to meet those requirements.

2. Planning Issues in Preliminary Screening & EA

a. Potential Duplication with existing regulatory requirements

i. CR 4 - Species at Risk

S. 79 in SARA – critical habitat has not yet been defined so SLWB does not yet deal with it. They identify status, but have no information to identify no-go zones. EC says it's up to ENR to enforce. There are differences in designations – SARA vs GNWT designation.

ii. CRs 6 and 7 - Protection of Traditional Use /Burial Sites

- MVLURs/Archaeological Sites Regulations – 150 m setback from any historical/archaeological site or artefact
- PWNHC – comments on applications
- SLWB Suggestion: Keep the terms in the plan as that gives them direction and supports the terms and conditions they impose. It also provides similar direction for other authorizations that don't require a land use permit or water licence.

iii. CRs 8-11 – General Environmental Considerations

- Joan will provide their master list of LUP conditions, and a comparative list of water licence terms. The SLWB does create some specific terms to tailor terms to the project; e.g. don't use water from Stewart Lake water but can use outflow.
- The Plan reinforces standard SLWB practices so it's good to have these types of terms.
- Don't use "best practices" or other variations because what does that mean? Who decides?

iv. CRs 12– Need understanding of current requirements regarding deposit of waste into water/environment

“Waste” and “deposit of waste” are defined in NWT Waters Act and can be deposited to land or water. SLWB wouldn’t change “Environment” to “water”. Waste is treated and the applicant must demonstrate that waste is going somewhere. The SLUPB might need to define a scale of activity at which we want to ensure that waste is treated. We shouldn’t compel a 2-man exploration team, but what about a 15-man camp? A 50-man camp is the trigger for a WL.

v. CR 15 – Wildlife

The term reinforces SLWB work and catches other authorizations. It needs to be related to the scale of the project.

The need for monitoring comes from Access agreements negotiated with the Districts, but SLWB conditions require that the monitor report to SRRB or inspector.

vi. CR 16 – Confirm setbacks – current terms

- Large game animals have 500 m setback in SLWB terms and conditions, and there are over flight requirements for birds as well.
- DFO submits letters of advice on avoidance of spawning areas that should be helpful.
- Check SARA – there is 3 km setback for a raptor in one of the federal management plans.
- Anne Gunn is doing work on caribou around Ekati – recommending a 20 km avoidance of the mine by caribou – contact Anne.

vii. CR 18 – Research and Monitoring

- The SLWB requires sump monitoring, and works on an aquatics effect monitoring program with Imperial.
- The Proponent has to provide SLWB with a baseline for soil, water, wildlife and they have to monitor for 5 years after the project is complete (mandatory) – this is a minimum requirement on certain licences for sumps and oil and gas projects.
- The SLWB has no issues with that term.

viii. CR 19 – Reclamation (discuss requirements and issues with waste management practices)

- Some developments propose a landfill site for project. Sumps are a standard practice. Some are now volunteering to truck drilling fluid out but it's voluntary. Maybe this is better as a recommendation. The requirement to not bury waste could apply to communities.
- CCME site remediation guidelines – Have different tiers for remediating contaminating sites which apply depending on remediation purpose – industrial, commercial, residential. Maybe have the term speak instead to community involvement in setting the reclamation goal.

ix. Lac Belot

SLWB has applied a similar term to Stewart Lake but allowed the proponent to take from the outflow which was easily accessible given the project location so it didn't present a hardship for the developer. They relied on comments from DFO, Environment Canada, and ENR, not just TK. The SLWB suggested we go and get feedback on this term from those bodies to see if evidence supports the claims about rapid drawdown.

b. Review of SLWB Conditions

Joan to provide Master list of Terms and Conditions for land use permits, and comparison of terms used for water licences. She will also provide the Selwyn terms and conditions for mineral exploration (SLWB spent a lot of time on those).

c. Guidance to SLUPB on appropriate planning issues and terms

- Need the plan to focus on managing the cumulative effects of use. Near little Chicago, have registered a 0.5^oC increase in permafrost temperature. See discussion under Husky example.
- The Plan can look at water monitoring in general and implementing a cumulative impact monitoring program. Enforcement is another big issue – lack of funding and capacity to monitor. Also when they do find things, it depends on Justice's willingness to pursue the issue through the courts.

- Talk to Glen Guthrie about the “Cabin Program – Canadian Aquatic Biomonitoring Network” (Bosworth Creek project). The direction is to provide baseline for entire Sahtu area. It looks at stream health based on biological factors – e.g. benthic invertebrates.

d. Project Examples:

i. Husky, Summit Creek Drilling Project

The SLWB included a term to not take water from Stewart Lake but to take it only from the outflow. DFO has a Winter Water Withdrawal Protocol that says you can take 10% of under-ice volume of water from a lake and 5% of instantaneous flow of a watercourse. She suggested that we maybe change the Lac Belot term to an action to study the volume and water withdrawal capacity. This could be a cumulative effects issue. One applicant taking 10% might be ok, but 3 companies taking 10% is 30% and that can be a problem. Joan has started tracking multiple source withdrawals in some areas for her own purposes but this isn't being managed Sahtu wide.

ii. Hunter Bay Resources, Mineral Exploration, Edailla

MVEIRB called it up to EA 60 days after SLWB gave out permits. They never finished EA because Hunter Bay asked for and received approval for “discontinuance” – they finished their work early and asked that the permits be terminated so there was no longer an application to do an EA with and it was dropped. This was a timing and communication issue.

iii. Selwyn Resources, Mineral Exploration, Howard's Pass

- The application started in March/07. In June/07 it went to EA, which lasted 2 years and was completed in July/09. In Oct/09 the permit was issued. The Minister of INAC failed to notify the SLWB that the Minister had approved the EA. The Minister didn't feel this was required because there were no changes made. The issue is a lack of communication between the components of the integrated resource management system.
- The SLWB also took time to create the “latest and greatest” terms for mineral exploration projects for this project so suggested we look at these ones especially.

- These are pre-existing claims and leases within the land withdrawal slated for the National Park. They looked at this issue in their Preliminary Screening Report.

3. Plan Implementation Issues

a. Concerns: Duplication, Technical capacity, Timing

Heidi explained some of the concerns that planning partners had raised with respect to duplication of processes between the SLUPB and SLWB, the possibility of the SLUPB not having the technical capacity or quorum down the road to determine conformity as has happened in the past; the addition of further time delays in the regulatory processes. George suggested we consider the motives of those raising these concerns.

b. Options/Considerations for Integration:

i. SLWB vs SLUPB

Heidi suggested that we had two options regarding conformity determinations: either the SLUPB does them as a result of SLWB Referral (current process); or the SLWB does them concurrent with preliminary screening. George is adamant that the SLUPB do the CDs and that no one try to usurp that authority from our Board.

ii. Before or during application review

Heidi relayed concerns from planning partners that the CD process should happen prior to the referral process during preliminary screening. In the Gwich'in, they start the process during the completeness check. For straight forward applications, they complete it during the same 10 day period; while they use the longer 42 day period available for more complex applications or where exceptions are required. In Nunavut, Heidi has heard that they are looking at developing a separate application process for the Conformity Determination process that is administered by NPC and completed before an application goes to NIRB. A similar process could be done here. George said that they are open to these alternatives.

iii. New information requirements to determine conformity (e.g. GIS files)

Heidi suggested that it is likely that we would need the SLWB to add additional information requirements to their completeness check so that the applications contain information the SLUPB requires to do a conformity determination. For example, the SLUPB will require digital GIS files to determine which zone it is in. Joan said that the collection of GIS files is a key item being discussed amongst the land and water boards right now. George said they would be open to future discussions of our needs.

The SLUPB staff and Board member thanked the SLWB staff for their time and input.