

June 14, 2023

Mr. Jackie Jacobson, Chairman
Standing Committee on Economic Development and Environment
Northwest Territories Legislative Assembly
Yellowknife, NWT
Email: jackie_jacobson@ntassembly.ca

Via Email
jackie_jacobson@ntassembly.ca

Re: Forest Act (Bill 74)

Dear Mr. Jacobson:

The Wek'èezhì Renewable Resources Board (“WRRB” or “Board”) is a co-management institution established by section 12.1.2 of the Tłı̨chǫ Agreement (“the Agreement”). The Board has authorities under Chapters 12 (Wildlife), 13 (Trees and Forest Management), 14 (Plants), and 16 (Protected Areas) of the Agreement. The Board exercises its roles and responsibilities as part of the modern Treaty framework agreed to by the Tłı̨chǫ and Northwest Territories governments. Canadian courts have been clear in stating that the text of modern treaties must be interpreted generously in order to achieve the objectives of the Treaty as a whole.¹ The Agreement sets out an important role for the WRRB in forest management.

Bill 74, the proposed new Forest Act, advanced by the Department of Environment and Climate Change (“ECC”), Government of the Northwest Territories (“GNWT”) affects WRRB authorities and would result in ECC officials and processes interacting with the Board and its roles and responsibilities not just in relation to forestry but in relation to the management of forest ecosystems.

The Board has broad procedural and substantive decision-making powers in relation to these matters, as well as the authority to recommend renewable resource management actions to governments² on its own motion. The WRRB must exercise its conservation authorities on an ecosystem level.³ The Agreement and the *Wildlife Act*⁴ both require that the WRRB exercise its authorities in accordance with the precautionary principle. The duties and responsibilities assigned to the Board by the Agreement are central to good renewable resource management in Wek'èezhì.

The WRRB has reviewed Bill 74 and this letter provides comments and recommendations to the Standing Committee on Economic Development and Environment (“Committee”).

Overall, the WRRB acknowledges that Bill 74 has done a good job in reflecting the co-management framework set-out in the Tłı̨chǫ Agreement. However, there are still sections in which the WRRB’s roles are not properly reflected. In its letter dated February 21, 2023, ECC indicated that the Technical Working Group “*worked to ensure that the appropriate language regarding land,*

¹ First Nation of Nacho Nyak Dun v. Yukon, 2 S.C.R. 576 paragraphs 36-38.

² This would be to Parties to the Tłı̨chǫ Agreement: Canada, GNWT, or the Tłı̨chǫ Government.

³ See s.12.1.5 of the Agreement.

⁴ Agreement paragraph 12.1.5(c) and *Wildlife Act*, S.N.W.T. 2013, c.30 see paragraph 2(e).

resources and self-government agreements, recognition of co-management boards and language regarding Aboriginal and treaty rights are reflected accurately within the Bill". The Board appreciates this sentiment but suggests that its roles could be better and more accurately reflected throughout Bill 74.

Specifically, in its letter to ECC dated December 15, 2022, the WRRB outlined its concerns about Parts four, five, and six of the *Draft Forest Act*. The Board is concerned that these provisions set out in Bill 74 may not be reconciled with the Board's authorities and the discretion provided by ss. 13.3.1 or 14.3.1 of the Tłıchq Agreement (See Appendix below).

The WRRB identified additional concerns with Parts four and five of the *Draft Forest Act*. In response, ECC indicated that it is committed to working with Renewable Resources Boards during the regulation drafting process. This commitment is appreciated, but it ignores the fact that regulations must be consistent with their governing legislation. The Board requested a meeting with ECC to discuss development of specific regulations to ensure consistency; however, this request was denied. Our detailed comments, in the following Appendix, are provided to request that your Committee recommend changes to the Bill.

The WRRB looks forward to working with ECC once the Bill is enacted. To give full effect to the co-management process set out in the Agreement, ECC must ensure that the WRRB is involved in the policy and regulation development process. This is the approach required by law and the only one which will fully reflect the NWT's modern framework for cooperative and coordinated management over forests and plants.

The WRRB thanks the Committee for the opportunity to make this submission.

Sincerely,



Joseph Judas
Chair

Cc Katie Weaver, Clerk
Standing Committee for Economic Development and Environment, GNWT

Hon. Shane Thompson, Minister
Environment and Climate Change, GNWT

Jayleen Robertson, Assistant Deputy Minister, Policy & Strategic Planning
Environment and Climate Change, GNWT

Grand Chief Jackson Lafferty
Tłıchq Government

Zabey Nevitt, Senior Advisor, Sustainability and Resource Management
Tłıchǫ Government

Michael Birlea, Manager, Culture and Lands Protection
Tłıchǫ Government

Robert Charlie-Tetlichı, Chair
Gwich'in Renewable Resources Board

Donna Schear, Acting Chair
Sahtú Renewable Resources Board

John Donihee, Counsel
Wek'èezhıı Renewable Resources Board

Appendix

ECC identified that the following comments could be addressed during the regulation drafting process:

- Part 4 could make it clearer that government activities such as road building, infrastructure development and maintenance etc. are also covered by and must comply with Part 4 of the Act, not just “industrial activities”.
- The Board should be able to indicate, as it does through ss. 12.5.1 which actions authorized by licence or permit need not be sent to the Board for review. Having all the permits and licences issued under ss. 48(2) subject to WRRB is an administrative burden and likely not necessary.

ECC stated that the following comments did not need to be addressed as the WRRBs roles and responsibilities are defined by the Tłıchǵ Agreement:

- Part 5 of the Bill appears to be inconsistent with Chapters 13 and 14 of the Tłıchǵ Agreement. It also seems inconsistent with the authorities granted to the WRRB to manage its own processes and the current Rule for Management Proposals will have to be revised to include Board responses to forest management and forestry operations. More particularly, forest (and plant) management plans and policies are subject to sections 13.4.2 and 14.4.2 at least in respect of consultation with the WRRB.
- Subsection 55(3) allows for cancellation of a permit or licence merely on the Forest Superintendent believing on “reasonable grounds” that a contravention of the Act or regulations has occurred. This allows for punishment without due process which could be a violation of Charter rights.
- Section 62 of the Bill is not consistent with sections 13.3.1 and 14.3.1 of the Tłıchǵ Agreement. The WRRB should not have to appeal a decision to issue a permit or licence made by the Forest Superintendent. At least in respect of commercial uses of plants or trees, the WRRB’s decision about wildlife impacts of such a licence or permit comes first.
- The WRRB can and should, after making a decision under 13.3.1 or 14.3.1 that a permit or licence will not have significant adverse effects of forests or plants which make up wildlife habitat, be able to recommend terms and conditions for the permit or licence to the Forest Superintendent. This would need to happen before the Forest Management Superintendent issues the authorization.