



Environmental Appeal Board

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DECISION NO. EAB-WIL-21-A012(c)

In the matter of an appeal under the *Wildlife Act*, RSBC 1996, c. 488

BETWEEN:	James (Jim) Munroe	APPELLANT
AND:	Deputy Regional Manager, Recreational Fisheries & Wildlife Program	RESPONDENT
AND:	Keyohwhudachun (Chief) Petra A’Huille	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board David Bird, Vice-Chair	
APPEARING:	For the Appellant: Courtenay Jacklin, Counsel Christopher Devlin, Counsel	
	For the Respondent: Sonja Sun, Counsel	

PRELIMINARY DECISION RE: APPLICATION TO PARTICIPATE

BACKGROUND

[1] This is a preliminary decision addressing whether to add Mr. Richard Prince, Sr. (the “Applicant”) as a party to this appeal. It is also open to me to determine whether to grant limited participation status to the Applicant. The appeal, filed by Mr. Munroe (the “Appellant”), is of a November 2, 2021 decision by Leslie McKinley, Deputy Regional Manager of Recreational Fisheries & Wildlife Programs with the Ministry of Forests’ Omineca Region (the “Decision”). The Decision denies a request by the Appellant to transfer part ownership in a trapline that had been owned by the late Chief Sally Sam A’Huille (“Chief Sally”) and the Applicant

[2] The Appellant’s application for partial transfer of the trapline was made in his role as executor of the estate of Chief Sally. The Appellant applied to transfer Chief Sally’s estate interest in trapline¹ TR0725T008 (the “Trapline interest”) to her daughter Keyohwhudachun (Chief) Petra A’Huille (“Chief Petra”).

[3] The Environmental Appeal Board (the “Board”) wrote a letter on April 21, 2022, notifying Chief Petra and the Applicant that it had received an appeal of the Decision from the Appellant. The Board invited Chief Petra and the Applicant to participate in the appeal as Third Parties, with rights to participate in pre-hearing teleconferences, make arguments on the issues before the Board, submit evidence,

¹ A “trapline” is defined in the *Act* to mean an area for which registration is granted to one or more licensed trappers for the trapping of fur bearing animals.

including expert evidence, and respond fully to evidence provided by the other parties in the appeal. Ms. A'Huille and Mr. Prince were given until May 2, 2022, to advise the Board whether they wished to be added as a Third Party. The letter outlined:

If no response is received by the May 2, 2022 deadline, the Board will assume you do not wish to participate in the appeal and will not include you on any further correspondence relating to this appeal. If you decide not to participate in the appeal, you can still see the outcome of the appeal if/when a final decision is issued to the parties and posted to the Board's website (www.bceab.ca).

[4] Under section 94(1) of the *Environmental Management Act* (the "EMA"), the Board has the discretion to invite any person to be heard in an appeal either by application or on the Board's own initiative.

[5] Chief Petra replied before May 2, 2022, and was added as a Third Party.

[6] The Board did not receive a reply from the Applicant by the May 2, 2022, deadline. There was no communication from the Applicant until November 22, 2022, when an individual phoned on the Applicant's behalf, to inquire whether a decision had been made on the appeal. On November 23, 2022, the Board received a letter from the Applicant indicating he read the Board's April 21, 2022 letter but he "[did] not understand the point of it. I would have preferred a hard copy sent by mail, as I just recently found this document in my email."

[7] The Applicant states in his November 23, 2022 letter that, although the May 2, 2022 deadline to respond to the request to participate as a Third Party has past, he "would have been willing to respond but was not aware of this until recently."

DISCUSSION AND ANALYSIS

[8] I understand the Applicant's November 23, 2022 letter to indicate he wishes to participate in this appeal. However, he did not specify how he would like to participate nor did he provide any evidence about how he may be impacted by the appeal.

[9] In my recent decision on this appeal, *James (Jim) Munroe v Deputy Regional Manager, Recreational Fisheries & Wildlife Program*, Decision No. EAB-WIL-21-A012(b), dated November 3, 2022 ("*Munroe (b)*") regarding the application by the British Columbia Trappers Association (the "BCTA") to participate in the appeal, I noted at paragraph [3] that the Applicant "has an interest in this trapline but is not a party to this appeal."

[10] The *Munroe (b)* decision outlined the relevant framework regarding the differences between parties to an appeal and Participants to an appeal. Beginning at paragraph 10 in *Munroe (b)* provides:

[10] Starting at page 18 the Manual explains that appeals always have at least two parties: an appellant and a respondent. The Manual states the Board can add other parties to an appeal under certain circumstances who may be directly affected by the decision and the

Board may also invite other persons to participate even if not directly affected but they may have a specific interest or involvement in the subject matter of the appeal.

[11] This discretion is provided for under section 94(1)(a) of the *EMA* which says the Board can invite any person to be heard in the appeal, either at the Board's own initiative or as a result of an application. The Board can also limit the extent a person is allowed to participate in an appeal to address concerns related to the potential for the appeal process to cost more and take more time which may be prejudicial to the parties.

[12] The role of a participant under section 94(1)(a) of the *EMA* is distinct from the role of an intervener for appeals under the *Mines Act*. Under the *Mines Act* a person must meet the test set out under section 33 of the *ATA* in an application to intervene in the appeal. Section 93.1(1)(d)(iii) specifically provides that section 33 of the *ATA* does not apply to appeals to the Board, except for under the *Mines Act*.

[13] As required by the Manual, the BCTA applied to be added as a participant under Rules 9(2) and 6 . At page 19 of the Manual, the Board may consider the following when deciding whether to add a person as either a party or a participant to an appeal:

- the degree to which the person may be impacted or affected by the Board's decision on the appeal;
- whether the person is likely to make a relevant contribution to the Board's understanding of the issues in the appeal;
- the timeliness of the application;
- the prejudice, if any, to the other parties;
- whether the interests of the person can be adequately represented by another party and/or will be duplicative or repetitive;
- the person's desired level of participation in the appeal;
- whether allowing the person's participation in the appeal will delay or unduly lengthen the proceedings; and
- any other factors that are relevant in the circumstances.

[11] At paragraph 16 in *Munroe (b)*, I identified the test the Board consistently applies when considering whether a person has a valid interest in participating in an appeal as:

[16] As referenced in the submissions to the Board on this application, the Board has consistently applied a test when considering an application for participation status as outlined in para [30] in *Chief Richard Harry in his own right and on behalf of the Xwemalhwu First Nation v Assistant Water Manager and Bear River Contracting and the Environmental Law Centre*, Decision No. 2011-WAT-005(b) and 006(b), dated October 27, 2011 [*Chief Harry*]:

[30] In *Houston Forest Products Co. et al. v. Assistant Regional Manager*, (Decision No. 99WAS-06(b), 08(b), and 11-13(b), January 21, 2000), the

Board considered an application for participant status by the British Columbia Lung Association in an appeal of three air emission permits. In that case, the Board adopted the following test in considering an application for participant status:

1. Whether the applicant had a valid interest in participating, and
2. Whether the applicant can be of assistance in the proceedings.

[12] I am satisfied that the Applicant has a valid interest in participating in this appeal. As outlined above, the Applicant has an interest in the trapline at issue and may be directly impacted by the outcome. It was for these reasons the Board offered the Applicant the opportunity to be added as a Third Party.

[13] I am satisfied that the Applicant can be of some assistance to the Board in making its final decision in this appeal by providing relevant information related to the use of the trapline and how he came to co-own the trapline.

[14] Having concluded that the Applicant has both a valid interest in participating and may be of assistance to the Board in making its final decision on the appeal, I turn to the question of whether I ought to grant the Applicant Third Party status or a more limited type of participation.

[15] Since the Applicant failed to respond to the Board's offer to be added to the appeal as a Third Party, I infer that he is applying for Third Party status and he therefore bears the onus of demonstrating that he should be added as a Party to the appeal.

[16] The Applicant's November 23, 2022 letter to the Board does provide any reasons why he should be added to the appeal as a Third Party. His letter suggests, but does not state, that he read the April 21, 2022 letter from the Board but he did not understand that it was offering him the right to participate as a Third Party and, consequently, he did not reply.

[17] Since the Applicant has not presented reasons why he should be added to the appeal as a Third Party at this late stage in the appeal process, despite previously being invited to join the appeal as a Third Party, I have considered the factors set out in section 5.0 of the Board's Practice and Procedure Manual (the "Board's Manual") at page 19 to guide me in deciding this question.

The Degree to Which the Person May be Impacted or Affected by the Board's Decision on the Appeal

[18] I find that the Applicant may be impacted or affected by the Board's decision on the merits of this appeal. This factor weighs in favour adding the Applicant as a Third Party.

Whether the Person is Likely to Make a Relevant Contribution to the Board's Understanding of the Issues in the Appeal

[19] I find it is likely that the Applicant can make a relevant contribution to the Board's understanding of the issues under appeal. He can provide relevant information regarding how he holds some share of the existing trapline, provide

information as to how the trap line was previously co-managed, and provide a position regarding whether the Director's decision was correct.

[20] However, I find this factor neither weighs in favour nor against granting the Applicant full party status in the appeal, as the Applicant can make a relevant contribution to the Board if granted limited Participant status rather than Third Party status. I am satisfied the Applicant can still contribute to the proceeding with limited Participant status.

The Timeliness of the Application

[21] I find that the Applicant received the Board's April 21, 2022 letter inviting him to join the appeal as a Third Party by email. He failed to reply to the Board's request to notify it by May 2, 2022 and did not follow up with the Board until approximately six months later on November 22, 2022. An individual contacted the Board on Tuesday, November 22, 2022, on behalf of the Applicant, stating that the Applicant saw the Board's letter in April 2022; however, he did not respond because he believed the May 2nd, 2022 deadline was a deadline set for the Board to provide a response.

[22] I have concerns about the reliability of the conflicting information provided by the person(s) calling on behalf of the Applicant and the information the Applicant subsequently presents in his November 23, 2022 letter, despite being provided just one day apart. His conflicting evidence regarding when and whether he received the Board's letter and his statement about not understanding the deadline set out in the letter do not explain why he is following up with the Board approximately six months later.

[23] I find that this factor weighs significantly against granting the Applicant Third Party status.

The Prejudice, If Any, to the Other Parties

[24] Following my analysis above, I find the Parties and the Board will be prejudiced by the Applicant's late request to be a party in the appeal. In the months since the Board invited the Applicant to be a Third Party, multiple preliminary matters have been decided, disclosure of documents has occurred, and the appeal is ready to be set down for a hearing on the merits.

[25] If I grant the Applicant full party status, there could be significant delays as a result because he would be entitled to full disclosure to prepare his case, or he could give notice that he will rely on an expert opinion, or he may raise preliminary issues after the parties and the Board have navigated most or all pre-hearing issues.

[26] However, as the Board has recently added BCTA to the appeal as a Participant, and as the hearing on the merits of the appeal has not yet been set, there is still an opportunity to add the Applicant to the appeal, whether as a Third Party or in some limited form of participation without significantly disrupting the the appeal.

[27] Therefore, I find this factor does not weigh in favour or against adding the Applicant as a Participant to the appeal, but weighs significantly against adding the Applicant as a Third Party.

The Person's Desired Level of Participation in the Appeal

[28] The Applicant's November 23, 2022 letter does not clarify whether he seeks to participate in the appeal or whether he is just clarifying why he didn't respond to the Board's April 21, 2022 letter.

[29] Although the Applicant provided no information about his desired participation, his indication that he would have replied suggests he wants some level of participation in the appeal.

[30] I find this factor does not weigh in favour of adding the Applicant as a Third Party to the appeal. However, as noted above, since the Board recently added BCTA to the appeal as a Participant and the hearing for this appeal has not yet been set, there is the opportunity for the Applicant to participate with limits. This factor weighs in favour of granting the Applicant limited Participant status.

Any Other Factors that are Relevant in the Circumstances

[31] I find there are no additional factors in the circumstances which are relevant to my analysis.

Balancing of the Factors for and Against Adding the Applicant as a Third Party

[32] I find that in these circumstances it is relevant that I weigh the impact of the Applicant's delayed inquiry into the status of the appeal and his implied request to participate as a Third Party against the prejudice to the Board and the parties to the appeal.

[33] In consideration of the factors above, I find that I should not add the Applicant as a Third Party with all the associated rights that includes. I find that granting the Applicant Third Party status will result in increased costs, delays to the process and prejudice to the Board and the other parties.

[34] However, because I also have the discretion to consider whether to grant the Applicant limited Participant status in the appeal, I find that my analysis of the factors above support granting the Applicant limited Participant status in the appeal.

[35] I find that the Applicant can assist the Board in making its decision on this appeal despite not holding Third Party status. I also find that the potential impact on the Applicant of the outcome of the appeal weighs in favour of granting the Applicant limited Participant status. Therefore, I have decided to exercise my discretion, and the authority granted to me under section 94(1)(a) of the *EMA*, to add the Applicant to the appeal with limited Participant status to minimize any negative impacts to the appeal process and prejudice to the parties.

[36] Therefore, I allow the Applicant limited Participant status in this appeal. He may observe pre-hearing teleconferences and make a written submission to the

Board on the issues under appeal. However, he is not entitled to the right to present evidence, cross examine witnesses or experts or to tender his own witnesses or experts.

[37] As with all decisions of the Board, this decision has no retroactive effect and only applies as of the date of this decision. The Applicant is not entitled to respond to the earlier preliminary applications already addressed by the Board.

[38] Because the method of hearing has not yet been determined, the specifics and details of the Applicant's participation will be confirmed at a later stage, based on how the Board decides it will hear this appeal. However, the Applicant will be given the opportunity to provide a statement, whether orally or in writing, when the appeal has been set down for a hearing. The Applicant will also be copied on all appeal-related correspondence and submissions, and invited to observe (but not participate in) pre-hearing teleconferences to stay informed as to the status of the appeal.

DECISION

[39] For the reasons provided above, I find that the Applicant's application to participate in the appeal is granted, subject to the limitations set out above.

[40] I note that under Board Rule 9 the other parties and participant in the appeal have the right to make an application to remove the Applicant as a Participant to this appeal.

"David Bird"

David Bird, Vice Chair
Environmental Appeal Board

December 21, 2022