

## RESOLUTION OF FIRST NATIONS FORUM

YELLOWKNIFE, N.W.T.

MARCH 21, 1994



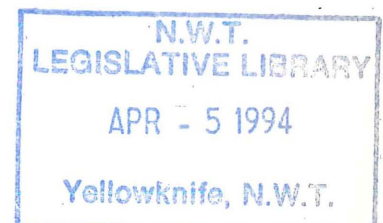
### *WITHOUT CONSULTATION*

*Whereas* a number of First Nation leaders and representatives for First Nation organizations and First Nation Governments have met in a forum at Yellowknife, N.W.T., on March 21, 1994, to discuss the Mackenzie River Basin Committee's (M.R.B.C.) process of interaction with the several aboriginal organizations which have attended meetings of the M.R.B.C., and the draft Mackenzie River Basin Transboundary Waters Master Agreement; and

*Whereas* the First Nation leaders and representatives find the process of discussions undertaken by the M.R.B.C. to be incommensurate, and not meeting the standards of procedural fairness that are required of the Crown when dealing with First Nation Governments as a fiduciary to First Nations; and

*Whereas* the existing water management regimes established by the several Provincial and Territorial Governments do not adequately address the rights and interests of First Nation peoples, the proposed Master Agreement and Bilateral Agreements do not adequately address the rights and interests of First Nation peoples, and the Federal Crown has not acted to protect the rights and interests of First Nation peoples vis-à-vis these existing Provincial water management regimes; and

*Whereas* the First Nation leaders and representatives find that the proposed draft Master Agreement is not comprehensive, in that it does not allow for the active involvement of First Nation Governments in management of the Basin, for First Nation Governments to sign the Master Agreement as parties in their own right, and for incorporation of clauses within the Master Agreement which will protect First Nation interests;



***Now Therefore:***

***Be it resolved*** that the First Nations Forum advises the M.R.B.C. that it will be a breach of the Crown's fiduciary duty, to protect First Nation interests, for the Crown to execute the proposed draft Master Agreement; and

***Be it resolved further*** that the First Nations Forum requests that the M.R.B.C. advise the several Federal, Provincial, and Territorial Government Ministers that it will be necessary for their Governments to enter into negotiations with First Nation Governments regarding development of a Mackenzie River Basin Transboundary Waters Master Agreement; and

***Be it also resolved*** that the First Nations Forum advise that the Crown must enter into these negotiations in the role of fiduciary to First Nation Governments, and must conduct the negotiations under rules of procedural fairness that will uphold the honour of the Crown; and

***Be it further resolved*** that the purposes of the negotiations between the Crown and First Nation Governments shall be the identification of First Nation rights and interests related to water, and for reaching agreement as to the development of specific clauses which shall be included in the proposed Master and Bilateral Agreements for the purpose of empowering First Nation Governments and to participate as parties to these Agreements and to exercise First Nation rights of governance over water management within the Basin.

# ADDENDUM TO RESOLUTION OF FIRST NATIONS FORUM

## A. Government to Government Relationships

1. There are at least three distinct classes of First Nation-Crown relationships involved in the consideration of the Mackenzie River Basin Transboundary water agreements. These include:
  - relationships between the Crown and First Nation Governments having rights and interests unaffected by Treaty,
  - relationships between the Crown and First Nation Governments which have entered into numbered Treaties (i.e., Treaty #'s 6, 8, 10, and 11), and
  - relationships between the Crown and First Nation Governments which have entered in "Modern" Treaties.
2. The Provincial Crowns involved in the negotiations over the draft Master Agreement have different relationships with First Nation Governments dependent upon how administration over natural resources was vested in the Provincial Crown.
3. Territorial Governments involved in the negotiations over the draft Master Agreement currently have no jurisdiction over this resource.
4. The Federal Crown has no effective legal vehicle to compel the Provincial Crowns to administer natural resource use in the interests of First Nation peoples. The Federal-Provincial relationship does not allow for the exercise of fiduciary duty by the Crown toward First Nation Governments.

## B. First Nation Governments

1. The several First Nation Governments, having **inherent** powers of Self-Government, have organized into a number of First Nations organizations and approached these meetings with the Mackenzie River Basin Committee with different mandates, perspectives, and objectives. These mandates, perspectives, and objectives have been developed within the respective contexts of the Government to Government relationships previously described.
2. The First Nation organizations which are participating in this forum have identified three areas of shared understanding with regard to the process used by the Crown to establish a dialogue with us about the Master Agreement. The three areas include:
  - i. the current process is incomplete and does not meet standards of procedural fairness required of the Crown as our fiduciary;
  - ii. the proposed draft Master Agreement is not comprehensive enough to address the range of First Nation objectives identified in this forum; and
  - iii. there is a need for negotiation between the Crown and First Nation Governments regarding development of an agreement which is comprehensive enough to address this range of First Nation objectives.

### **C. Purpose/Intent of the Resolution**

The resolution presented to the Mackenzie River Basin Committee reflects this shared understanding.

The resolution presented to the Mackenzie River Basin Committee is without prejudice to those perspectives and objectives presented by individual First Nation organizations or First Nation Governments.

Each First Nation organization represented at this meeting, and each First Nation Government has the exclusive prerogative to conduct its affairs related to the proposed Master Agreement as that organization or First Nation Government so chooses.

Some of the First Nation organizations present here are concerned about the need for development of either an Agreement or an Interim Agreement that will allow them participation in a Basin monitoring process that is effective for identifying, scoping, and correcting water management abuses that impact on First Nation peoples.

Other First Nation organizations are concerned that the current draft Agreement has no means of enforcement other than by existing Crown enforcement agencies.

First Nation organizations are concerned that the current draft Agreement does not rest on clearly defined relationships between the Crown and First Nation Governments, regarding water entitlements and First Nation management prerogatives that are contained in "modern" treaties or land claim settlements.

Those First Nations who are not signatory to Treaty or land claim settlement are concerned that the current draft Agreement does not provide for clear relationships between their rights of Self Governance and control over water resources and the Crown's intent to develop a transboundary water management regime that will affect their interests.

These concerns, and others will have to be identified through a process of government to government negotiation, within the context of a fiduciary obligation of the Crown to act in the best interest of the First Nation peoples.

Since the MRBC does not have a mandate to undertake these negotiations, the first step in this process will have to be establishment of a Crown-First Nation negotiation process, and the elaboration of clear mandates under which all respective parties will proceed.

Each First Nation organization represented at this forum will undertake pre-negotiation discussions with those First Nation Governments and peoples which form its constituency or polity.

The purpose of these negotiations will be to identify how that organization should proceed, and what mandate the First Nation Government or peoples will provide to the organization.

## Attendees

### MACKENZIE RIVER BASIN COMMITTEE WORKSHOP/FIRST NATIONS FORUM

MARCH 21, 1994

John Dantouze	Vice-Chief, Prince Albert Grand Council, Sask.
Chief Adolphus Mercredi	Fond du Lac, Saskatchewan
Chief Alfred Tsannie	Hatchet Lake, First Nation, Saskatchewan
Jimmy Laban	Black Lake, First Nation, Saskatchewan
Paul Hugarth	Hatchet Lake, Saskatchewan
Pierre Fern	Fond du Lac, Saskatchewan
Billy Sandy Point	Black Lake, Saskatchewan
Allan Adam	Prince Albert Grand Council, Sask.
Herb Norwegian	Deh Cho Tribal Council, NWT
Michael Thom	Fort Providence Dene Band Council, NWT
Victor Marie	Salt River, 195, NWT
Bill Erasmus	Dene Nation, NWT
Barney Masuzumi	Dene Nation, NWT
Tony Mercredi	Grand Council of Treaty 8
Jim Webb	Grand Council of Treaty 8
William Carpenter	Metis Nation - NWT
Everett Kakfwi	Sahtu Tribal Council, NWT
David Krutko	Gwich'in Tribal Council, NWT
Richard M. Binder	Inuvialuit Game Council, NWT
Dietmar Tramm	Council of Yukon Indians, Yukon
Stephen J. Mills	Vuntut Gwitchin First Nation, Old Crow, Yukon
Ronald Johnson	Dawson First Nation, Yukon
David Dickson	Liard First Nation, Yukon
Johnny Ladue	Ross River Dena Council, Yukon
David Trudeau	United Native Nation, B.C.
Jim Boucher	Grand Council Treaty 8, First Nation, Ft. McKay, AB.
Ron Boucher	Deninu K'ue First Nation, Fort Resolution, NT
Chief Bernadette Unka	Deninu K'ue First Nation, Fort Resolution, NT
Roger Senecal	Grand Council of Treaty 8, First Nations
George Desjarlais	Grand Council of Treaty 8, West Moberly, B.C.
John F. Marcel	Chipewyan First Nation, AB
Danny MacDonald	Fort Smith (NRBS)
Rita Mary Marten	Mikisew Cree First Nations, Fort Chipewyan, AB
Lawrence Vermillion	Mikisew Cree First Nations, Fort Chipewyan, AB
Peter Fraser	Chairman, Fort Smith
Harriet Paul	CBC - Yellowknife

MRBC:

Chris Cuddy  
Robert McLeod  
Alan Parkinson  
Wayne Dybvig  
Bev Burns  
Jack Farrell  
Bruce MacLock

DIAND, Ottawa  
Renewable Resources, GNWT  
Renewable Resources, Yukon  
Saskatchewan Water  
Environment Canada  
British Columbia Environmental Lands and Parks  
Alberta Environmental Protection

MRBC Task Force:

David Sherstone  
Andy Lamb  
Kelly Robertson  
David Milburn  
Tom Cottrell

Regional Manager, Water Resources, DIAND, Yukon  
Alberta Environmental Protection  
Renewable Resources, GNWT  
DIAND, Ottawa  
Alberta Intergovernmental Affairs