

NORTH SLAVE MÉTIS ALLIANCE

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Via Email

Dear Mr. Cliffe-Phillips:

**Re: EA 1617-01 -- Proposed Tlicho All-season Road
Responses to Mackenzie Valley Review Board Information Requests**

The North Slave Métis Alliance (NSMA) appreciates the opportunity to provide written responses to the Mackenzie Valley Environmental Impact Review Board (the Review Board) in answer to its information requests dated October 28, 2016 (the Information Requests).

The Information Requests

In the Information Requests, the Review Board seeks information from NSMA to help describe and evaluate the potential adverse impacts to NSMA members' Aboriginal well-being and way of life that may occur as a result of the proposed Tlicho All-season Road per the Review Board's mandate under section 115(1)(c) of the *Mackenzie Valley Resource Management Act*. The Review Board's letter dated October 28, 2016 states that it is asking these information requests at this time because it believes NSMA's response will be useful to the proponent, the Government of the Northwest Territories Department of Transportation (GNWT-DOT), in understanding the potential impacts to Aboriginal harvesters and traditional land users from the proposed Tlicho All-season Road.

Information Request:

Please describe and evaluate potential direct or indirect impacts and mitigation to traditional use and way of life from the proposed all-season road.

NSMA members are Métis people of the Great Slave Lake area of the Northwest Territories (NWT) with asserted Aboriginal harvesting rights recognized and affirmed under section 35(1) of the *Constitution Act*, 1982. The Minister of Aboriginal Affairs and Northern Development Canada, as it was then known (the Minister), and the Supreme Court of the NWT, have both acknowledged that NSMA members have a good *prima facie* claim to the Aboriginal right to hunt on their traditional territories in the region to the north of Great Slave Lake, NWT.

As construction of the proposed Tlicho All-season Road is contemplated in the region where both the Minister and the Supreme Court of the NWT recognize that NSMA members exercise their Aboriginal rights as Métis, this written response begins with a summary of the evidence reviewed and accepted by the Supreme Court of the NWT for its judgment regarding NSMA members' Aboriginal rights in *Enge v. Mandeville*, 2013 NWTSC 33 (*Enge v. Mandeville*).

To aid the Review Board, this letter encloses a copy of the materials that were before the Supreme Court of the NWT for *Enge v. Mandeville* and a copy of the court's judgment.¹ We also attach further evidence, gathered by NSMA since the decision in *Enge v. Mandeville*, supporting NSMA members' Aboriginal rights as Métis in the region north of Great Slave Lake, including:

1. A letter dated August 16, 2013 from the Minister to NSMA in which the Minister wrote that "Canada acknowledges that the North Slave Métis Alliance has a good *prima facie* claim to the Aboriginal right to hunt caribou on their traditional lands, and are entitled to an appropriate measure of consultation when that asserted right may potentially be adversely affected by the Crown's action."
2. A letter dated February 10, 2014 from NSMA to representatives of both the government of Canada (Canada) and the GNWT, enclosing a research report by Gwynneth C.D. Jones titled "Historic Métis Populations North of Great Slave Lake" (the "Jones' 2014 Report"). The Jones' 2014 Report builds on an earlier report which Ms. Jones prepared for Canada's Department of Justice, titled "Historical Profile of the Great Slave Lake Area's Mixed European-Indian Ancestry Community" (the Jones Report). The Jones Report was a key document relied on by the Supreme Court of the Northwest Territories in *Enge v. Mandeville*.

¹ This includes: Affidavits #1, #2 and #3 of William Enge (NSMA President); Affidavits of Lawrence Mercredi, Wayne Mercredi and Edward Jones (NSMA hunters and NSMA members); Affidavits of Charles McGee, Marc Stevenson and Patricia McCormack (Attaching expert reports regarding the Métis of the Great Slave Lake area) and the Memorandum of Judgment for *Enge v. Mandeville*, 2013 NWTSC 33.

3. Correspondence dated February 5, 2015, March 5, 2015, and September 30, 2016 between NSMA and the GNWT regarding allocations of caribou provided by the GNWT to NSMA in the region north of Great Slave Lake. These allocations allowed NSMA members to exercise their Aboriginal right as Métis to hunt in the region north of Great Slave Lake for the last three harvesting seasons (i.e. 2014-2015, 2015-2016 and 2016-2017)

These materials should not be seen as defining the limits of NSMA members' rights. NSMA continues to gather information respecting its members' Aboriginal rights as Métis.

NSMA members' section 35(1) Aboriginal rights as Métis

To date, the GNWT has not finished its preliminary assessment of NSMA members' Aboriginal rights as Métis. NSMA hopes that the following summary of information will help the GNWT-DOT understand NSMA members' Aboriginal harvesting and land use rights that may be affected by the proposed All-season Road.

The Supreme Court of the NWT found that Métis hunt, fish and trap, both historically and in recent years, in the region north of Great Slave Lake.² The court found that the significant amount of evidence provided by NSMA to the court met the requirements for section 35(1) of the *Constitution Act*, 1982 and the framework for analyzing Métis rights provided by the Supreme Court of Canada in *R. v. Powley*. The court accepted that a historical rights-bearing Métis community developed in the relevant timeframe, that the Aboriginal right to hunt is integral to the distinctive culture of the Métis of the Great Slave Lake area and that there is continuity from historical times to the present day.³

A Historic Rights-Bearing Métis Community developed in the Relevant Time Frame

The Supreme Court of the NWT confirmed that “the Métis were highly mobile and travelled over a wide area in the vicinity of Great Slave Lake” and that “there was a historic, rights-bearing Métis community with shared customs, traditions and a collective identity which developed following European contact with the local Aboriginal populations” but prior to the effective establishment of control by the Crown in the Great Slave Lake area.⁴

The first seeds of the Métis community in the Great Slave Lake area were planted before the explorations of Alexander MacKenzie and the Northwest Company of fur traders in the 1790s. *Coureur du bois*, woodsmen aligned with the population of New France and working with the Company of the Sioux (or “La Compagnie des Sioux”),

² *Enge v. Mandeville*, para 191 and 192

³ In *Enge v. Mandeville*, the court lists the “Powley Test” for analyzing section 35(1) Métis rights. *Enge v. Mandeville*, para 183

⁴ *Enge v. Mandeville*, paras 201 and 218

came to the area in search of furs in the 1700s, and stayed.⁵ At the time, French colonizers openly encouraged intermarriage with Aboriginal (Indian) women as a way of building population and establishing alliances. When the government of New France closed its western posts in 1760, these *coureur du bois* stayed behind.⁶

Archeological work, conducted in 2001, confirmed the early presence of the Métis. The Stevenson Report concluded that an “old fort” site at Old Fort Rae on the north side of Great Slave Lake, NWT, was most likely the remains of a Métis community, occupied by at least two and possibly three families, all before any system of organized trade in the North Arm of the Great Slave Lake.⁷ The archeological report concluded that:

...the most reasonable conclusion, that can be drawn about Old Fort Rae’s “old fort” ... is that it is either, 1) a pre-1780 occupation of early Métis associated with the Company of the Sioux; or 2) a late 1780s/early 1790s occupation of Métis associated with the heyday of the NWC (Northwest Company) trading activity on the North Arm.⁸

By the early 1800s the “halfbreed” community was distinct from other indigenous groups and easily identified by outsiders, largely because of their occupation and employment patterns. They were “prized as fur-trade employees for their language ability, skills in living on the land, and influence in the Indian population.”⁹ The Jones report stated:

By 1818, an identifiable cadre of mixed-ancestry individuals affiliated with the North West Company, familiar with the country and well-connected with the local Indian population, had emerged in the Great Slave Lake region.¹⁰

The mixed-ancestry population emerged as a cohort of children or teenagers by the turn of the nineteenth century. This group appeared in the historical records as vigorous young adults by 1820, prominent in the operations of the fur trade in

⁵ Gwynneth Jones’ report for Canada’s Department of Justice, titled “Historical Profile of the Great Slave Lake Area’s Mixed European-Indian Ancestry Community” (in Affidavit #1 of Charles McGee, Exhibit H) (the “Jones Report”) at 9, 129; Christopher Hanks paper for Heritage Canada (1999) (in Affidavit #1 of William Enge, Exhibit S (the “Hanks Paper”) at 380 – 381. See also: Kerry Abel, *Drum songs: glimpses of Dene history* (Montreal & Kingston: McGill-Queen’s University Press, 2005) at 76; Marina Devine, “The First Northern Métis : An overview of the historical context for the emergence of the earliest Métis in Canada’s North”, *Picking Up the Threads: Métis History in the Mackenzie Basin* (Métis Heritage Association of the Northwest Territories and Parks Canada-Canadian Heritage, 1998) at 5 – 27, specifically at 5, 15 – 17, 23; Richard Slobodin, “Subarctic Métis”, *Handbook of North American Indians*, Vol. 6, Subarctic (Smithsonian Institution, Washington 1981) at 361, 363 – 364; Marc Stevenson et al, “Strong Like Two People: North Slave Métis History”, in *Métis Legacy: A Métis Historiography and Annotated Bibliography* (Winnipeg; Pemmican Publications Inc., 2001) at 136.

⁶ Jones Report at 5 - 9, 129; Hanks Paper at 380 – 381; Patricia McCormack, “Research Report: The Ethnogenesis of the Northern Métis of the Great Slave Lake area (2011) (in Affidavit #1 of Patricia McCormack, Exhibit “B”) (the “McCormack Report”) at 15 – 16.

⁷ Marc Stevenson, “Old Fort Rae’s “Old Fort” An Early Métis Settlement on Great Slave Lake: Preliminary Excavations” (2001) (at Affidavit #1 of Marc Stevenson, Exhibit “B” (the “Stevenson Report”) at 35.

⁸ Stevenson Report at 35.

⁹ Jones Report at 128.

¹⁰ Jones Report at 33.

the area, especially within the North West Company. These “Northwest Company Halfbreeds” were quite apparent as a group to outside observers. Census records from the late nineteenth century show that **the Great Slave Lake mixed-ancestry population was overwhelmingly locally-born, with few mixed-ancestry people born outside the region.** Some of these people were identified by observers as “Indians” or Europeans, but **the use of the term “Métis” or “halfbreed” to distinguish mixed-ancestry individuals or populations persisted throughout the nineteenth and early twentieth century.**¹¹ [emphasis added]

When the fur trade companies merged, the mixed-ancestry population “successfully made the transition to living independently, with various degrees of involvement in the fur trade”¹². Mixed-ancestry people worked as small traders and producers, as well as workmen, boatmen, interpreters and emissaries to the Indians:

This type of employment fit well with the skills many mixed-ancestry people had learned in winter travel and summer water navigation, and was also particularly suited to the characteristics of this population generally. Unlike most Europeans, **mixed-ancestry people had the knowledge, connections and willingness to be able to support themselves on the land in the intervening periods between summer and sporadic winter employment.** They did not wish to leave the country, because they had grown up and had family connections there. While some Indian people also became involved in wage employment, **mixed-ancestry people had deeper roots in the employment culture.**¹³ [emphasis added]

By 1900, the interconnectedness of the mixed-ancestry families in the Great Slave Lake area was “striking”. The intermarriage patterns were “significant” since they were “expressions of collective direction and perception” of the mixed ancestry population at that time.¹⁴ (further work by Jones emphasizes this)

Francois Beaulieu II – one of the “founding fathers” of the Great Slave Lake area Métis¹⁵ – was already living with his family in the Great Slave Lake area when the European fur trade first arrived and took up residency in the area.¹⁶ Beaulieu lived and worked over a large region, covering Big Island (near Fort Providence), Great Bear Lake, Lac La Martre, Fort Resolution and Fort Chipewyan.¹⁷ Beaulieu was familiar with the older, traditional route to Great Bear Lake which crossed the east arm of Great

¹¹ Jones Report at 125. See also: Kerry Abel, *Drum songs: glimpses of Dene history* (Montreal & Kingston: McGill-Queen's University Press, 2005) at 85 - 86

¹² Jones Report at 71

¹³ Jones Report at 128 – 129. See also: Kerry Abel, *Drum songs: glimpses of Dene history* (Montreal & Kingston: McGill-Queen's University Press, 2005) at 98 – 102.

¹⁴ Jones Report at 103

¹⁵ Hanks Paper at /2, 380; McCormack Report at 16 – 17.

¹⁶ Jones Report at 9, 21-22, 57 -62, 60, 79, specifically at 12; Hanks Paper at 385, 388 – 397; McCormack Report at 16 - 17

¹⁷ Jones Report at 102, 129 - 130

Slave Lake and continued north through Lac La Martre, or up the Marian and Camsell Rivers, to Great Bear Lake: he suggested Franklin use the route for his Arctic expeditions, even drawing a charcoal map on the floor at one point to explain the route's, and the region's, virtues.¹⁸

Le Camarade de Mandeville was another important man in Métis history.¹⁹ Camarade de Mandeville was reported to have "considerable information" on and "extensive knowledge of the country to the northward and eastward of Great Slave Lake". For George Back's Arctic expedition from 1833 – 1835, Mandeville drew a sketch of this "north-eastern country" and Back reports that the lakes *en route* had been "frequently visited" by "many of their number", and "they knew every winding of them"²⁰. In the 1820s, he was also noted as knowing the territory between Great Slave Lake and Great Bear Lake²¹.

Beaulieu and Mandeville are just two examples of the regional nature of the Métis communities in the Great Slave Lake area. The Jones Report observed that the very nature of the Great Slave Lake area "with its emphasis on subsistence wildlife harvesting and the fur trade, discouraged the accumulation of large numbers of people in settlement"²². Employment and scrip records show mixed-ancestry families moved frequently around Great Slave Lake and into Fort Simpson, Fort Chipewyan and up to Great Bear Lake. Marriage records show the families intermarried over these distant locations, bolstering the regional nature of the community. Mixed-ancestry families who traded at Fort Resolution and Fort Chipewyan "typically" struck off to hunt caribou in the "barren lands" on the east side of Great Slave Lake or north to Great Bear Lake.²³ The Jones Report found:

Eighteenth- and nineteenth-century geographic co-location of mixed-ancestry families should probably therefore be thought of in those broad terms, rather than focusing on one settlement or neighbourhood.²⁴

Jones reached the following conclusions about the ethnogenesis of the Métis of Great Slave Lake:

It is clear from the documents that outsiders recognized a "half-breed" group, of varying characteristics, in the Great Slave Lake population from at least the second decade of the nineteenth century. Some were "living the lives of Indians", some were "credible citizens and tradesmen". Some were Catholic, others Protestant, many spoke different languages, others spoke only Chipewyan.

¹⁸ Hanks Paper at 384 – 385, 390 - 391

¹⁹ McCormack Report at 16 - 19

²⁰ Jones Report at 67

²¹ Jones Report at 50

²² Jones Report at 125.

²³ Jones Report at 125-126, 129 - 130

²⁴ Jones Report at 126

These manifestations may all be included in mixed-ancestry identity.²⁵

....

By the turn of the twentieth century, many mixed-ancestry people were living truly mixed lives like the group at Smith's Landing, "hunting, fishing and trapping during the winter, and in summer...employed" in transportation or other wage activities. Bishop Breynat referred to these people as living "an Indian life, although they may have houses at the Fort". Indian Agent Bourget asked that some mixed-ancestry people be taken into Treaty and allowed Indian benefits, "because the man is partly working, but the jobs are kept only for short periods as a rule and the man reverts to his trapping life in most cases". Inspector of Indian Agencies Christianson noted they seemed worse off than the Indians, possibly because "they have been allowed to get a foot-hold in the Fort instead of going out and rustling for themselves as the Indians do". Although some Indian people shared this life, they were less likely to be involved in the wage economy, and Europeans were not usually involved in harvesting activities except for sport or for short-term economic gain. Again, the marriage and baptismal records speak to a group who constructed connections across geographic, occupational and ethnic lines, and this may be the most convincing evidence of self-perception of common identity.²⁶

The McCormack Report similarly concluded that there is an obvious and distinct ethnogenesis of a Métis community in the Great Slave Lake area. McCormack reviewed documentary evidence from the 18th and 19th centuries and academic literature regarding the Métis of the Great Slave Lake area, including the Jones Report and the Hanks Paper, and found that the evidence "indicates clearly that a distinct Métis social community independently developed in the Northwest Territories." The first generation of "Indian"- "outsider" marriages began before the European fur trade reached the area: it was the children of these marriages who became "the first generation of a developing Métis population"²⁷. This Métis identity was strengthened throughout the 19th century when these same people:

...all of whom were highly experienced in successful living in the Great Slave Lake area, were hired as guides, interpreters, and hunters. Their knowledge of the land and their connections to Dene bands made them critical to a successful fur trade. They became a core part of the northern fur trade labor force and mediators between the traders and their Dene relatives. Quite literally, "Métis society in the Mackenzie region was born from the fur trade".²⁸

The McCormack report gathered the distinctive features that set the Métis apart from their Dene or Cree neighbors or relatives, including that the Métis worked in river work

²⁵ Jones Report at 129

²⁶ Jones Report at 127

²⁷ McCormack Report at 5 - 6

²⁸ McCormack Report at 20

and winter transport for traders, or were traders themselves, and that their work for traders was “characterized by the wide range of their occupations”. The Métis worked in the fur trade sector, not primarily as subsistence production or commodity production (production for exchange), but as wage labour, and if they did not work directly for a fur company, they still emphasized the production of furs. Highly influential Métis, such as Francois Beaulieu II, played key leadership roles by acting as “go-betweens” between the Europeans and the Aboriginal peoples. Because the work required long distance travel for the men, it developed strong roles for women and broad networks of friends and families over large areas and the Métis community passed on to their children distinctive patterns of “Métis-ness” as opposed to “Indian-ness”.²⁹ McCormack also found that the community covered the entire Great Slave Lake area, extended south to Fort Chipewyan and down the Mackenzie River.³⁰

The Aboriginal right to hunt is integral to the distinctive culture of the Métis of the Great Slave Lake area

“Deep ancestral connections to the local landscape” are part of what it is to be Métis.³¹ Indeed, the Métis of the Great Slave Lake area owe their very existence to the quality of the hunting in and around Great Slave Lake. The *coureur du bois* came to the area in search of furs in the mid 18th century, and stayed.³² By 1800, Métis peoples hunted for and provisioned the forts and the fur trade industry, while supplying their own communities with harvests from the area. The usual food supply was meat (fresh or dried) and fish (caught fresh daily and also kept dried and frozen).³³

Both men and women were important in the hunting and preparation of wild meat and in the operations of the fur trade³⁴. Women could carry and haul equipment and meat and pitch tents. Women helped by dressing moose and deer hide and making clothing and moccasins, extracting sinews from large game and preparing them to be used in snares, snowshoes, clothing and equipment, collecting vegetable products such as spruce gum, tree roots and berries, making and repairing fishnets, and making, setting and emptying snares for small game.³⁵

As a measure of how important hunting was to peoples living in the Great Slave Lake area at the time, surviving 1891 census records classify almost everyone at Fort Resolution and Fort Providence as a “Hunter”.³⁶

The Jones Report listed mixed-ancestry people hunting caribou and buffalo, trapping fur-bearers, fishing, trading, cutting firewood and working in the forts: “They travelled on

²⁹ McCormack Report at 26 - 39

³⁰ McCormack Report at 5

³¹ Jones Report at 129

³² Jones Report at 5-9; McCormack Report at 15 – 16; Hanks Paper at 380-381

³³ Jones Report at 21

³⁴ McCormack Report at 15

³⁵ Jones Report at 21 – 22, 39, 86

³⁶ Jones Report at 79

foot, by dog-team, and on the waterways connecting all the posts, and out on the land to meet fur hunters. They carried mail, transported supplies and furs and guided strangers.”³⁷

As the fur trade shifted and companies merged, the Métis population was a population defined by hunting. They lived by “fishing, hunting and trapping”: they lived off the land in the winters and then shifted to work around the forts in the summers.³⁸ They “moved seasonally from trading post to hunting grounds to fishing places.”³⁹ Later, after Treaties arrived in the NWT, the Métis were displaced from their labor positions as traders, trappers, prospectors or miners and would rely even more on hunting and trapping the “resources of the bush”.⁴⁰

From the beginning of the Métis ethnogenesis in the Great Slave Lake area, caribou were an integral part of the Métis hunting practices. Archeological work on the “old fort” area at Old Fort Rae on the north side of Great Slave Lake revealed that a Métis community lived there in the late 1700s, hunting caribou and working with caribou meat, as evidenced by:

- a. a hearth pit containing a mixture of “red and white ash and calcined bones, most of which were broken caribou long bones and fish vertebrae”. It also contained a ground stone knife blade, most likely used to break open caribou long bones for marrow, “a common practice amongst the Métis in the region today.”⁴¹
- b. a bone grease manufacturing area, for processing bone grease or tallow for candles: “The latter apparently has always been a common activity for Métis women at Old Fort Rae.”⁴²
- c. “faunal elements” of which many of the identifiable elements were broken and smashed bones including “caribou long bone fragments”.⁴³
- d. a worked piece of antler, which “North Slave Métis elder, Ernie Camsell ... quite confidently identified ... as a handle for an awl or draw knife; such artifacts were commonly used by Métis men. Mr. Camsell also identified the carved bone artifact...as an awl or needle used to make snowshoes, though such artifacts may also have served double duty in the expedient removal of marrow from caribou long bones.”⁴⁴

In the early 1800s, caribou were a significant enough part of traditional hunting that Indians and Métis named an area the “Carribou Country”. By 1822, an “identifiable

³⁷ Jones report at 130

³⁸ Jones Report at 63 – 64 95-96; 106, 110

³⁹ Jones Report at 97

⁴⁰ McCormack Report at 50 - 51

⁴¹ Stevenson Report at 19

⁴² Stevenson Report at 19

⁴³ Stevenson Report at 19 - 21

⁴⁴ Stevenson Report at 27

cadre of mixed-ancestry individuals” were “prominent in the operations of the fur trade” and were known to hunt in the “Cariboo Lands” on the “the swarms of Cariboux which inhabit that Country”.⁴⁵ In 1825 – 1826, a Chief Factor writing about the distinctions between Fort Resolution on Great Slave Lake and Fort Chipewyan to the south notes the importance of caribou to the Indians and half breeds of Fort Resolution. The Chief Factor wrote that the “Indians” there were:

... only a few days march or Paddle from those trails, where Rein deer are at certain season to be found in abundance, and which often cause a longing to Chipewyans; partly owing to its supplying them with food and Clothing, which they cannot always resist gratifying...⁴⁶

As mentioned several times earlier, Francois Beaulieu II is widely considered a “founding father” of the Métis of the Great Slave Lake area, and the historical records are full of references to Beaulieu’s prowess at hunting and provisioning the trading posts with furs and meat, notably caribou meat. He was a lead hunter for exploration parties in the Great Slave Lake area and his men hunted caribou north of Great Slave Lake, including around Lac La Martre and as far north as Great Bear Lake. He was considered the best hunter on Captain John Franklin’s explorations in 1824 – 1826 providing a supply of dried meat, rein-deer tongues, and fat. Beaulieu’s ability to find and report on the caribou’s movements earned him the important role of hunting for a post. He maintained a post at Lac La Martre from 1817 into the 1830s.⁴⁷

Other half-breeds, notably Le Camarade de Mandeville and “La Prise”, also hunted with their own groups or communities on the Northeast side of Great Slave Lake. La Prise travelled with George Back on an Arctic expedition from 1833 – 1835, guiding him to the Northeast tip of Great Slave Lake and hunting for the expedition along the way. In the same time period, Le Camarade brought two sledges of dried meat to Fort Reliance, which at the time was dangerously low on food.⁴⁸

With Beaulieu II hunting over areas that ranged from Great Bear Lake, down to Lac La Martre and Fort Resolution and further south, the Jones Report also noted the general habit of “mixed-ancestry” was to move over a large region to follow and hunt the caribou:

Indian and mixed-ancestry people who traded at Fort Resolution and Fort Chipewyan typically struck off to the “barren lands” to the east of Great Slave Lake to hunt caribou in the fall. Caribou were also hunted north of Great Bear Lake.⁴⁹

Between 1830 and 1890, Fort Rae – on the north side of Great Slave Lake - was

⁴⁵ Jones Report at 25, 33, 46, 48, 125

⁴⁶ Jones Report at 49

⁴⁷ Jones Report at 9, 12, 21-22, 57 -62, specifically at 60, 79; Hanks Paper at “/2” , 380, 385, 388 – 397; McCormack Report at 16 - 17

⁴⁸ Jones Report at 67-68, 70; McCormack Report at 16 - 19

⁴⁹ Jones Report at 129-130

described as “an important provision post, shipping large quantities of meat and pemmican from the caribou herds to other posts”. In records from Fort Rae, Beaulieu was “given much more credit for both furs and meat than any of the other “Indians””.⁵⁰ Indeed, caribou meat and provisioning from Old Fort Rae was important enough to be described as the “fuel on which the fur trade ran”.⁵¹

Notwithstanding the small trickle of Europeans making their way to the Great Slave Lake area during the nineteenth century, by 1897 records show that many things remained constant from previous years including “... the search for fur and caribou, dog team travel, the Beaulieus hunting along the Slave River ...”⁵² The first patrol of North West Mounted Police in January 1897 describes a population reliant on hunting with some known by the predominant food they ate as the “Cariboo Eaters”. The high number of caribou is a defining characteristic of this “land of plenty”:

...The Indians inhabiting the country along the Great Slave River from Smith’s Landing to Fort Resolution are Chippewyans, Cariboo Eaters and Yellow Knives...There is also a small band of Slavies, a few Crees and some half-breeds, chiefly composed of the Beaulieu family.... Through the winter the population [of Fort Resolution] consists of only about 108 souls, in the summer like at Chippeweyan, it increases to 600 or 700. This may be called the land of plenty as regards meat and fish, the cariboo being very numerous this year, the lake trout are of great size, very plentiful and of fine flavour. I met a number of Indians here, Dogribs, Yellowknives and Slavies who came in to trade their furs and get their outfit to enable them to go to the Barren Grounds after musk ox...⁵³

A chronicle of everyday life at Fort Smith reported on the activities of the mixed-ancestry population in that area during the early part of the twentieth century. The activities are “very similar to those undertaken by mixed-ancestry people around fur trade posts a hundred years earlier” and included:

[I]n April of 1910, Joseph Mercredi arrived “avec les animaux de la HBC”.

Willie Brown (mixed ancestry son of Magnus Brown, an HBC trader) brought in a hundred dried fish for the dogs.

In November 1914, the mission received moose meat from Isidore Mercredi and Maurice Ruel, among others,..

By mid- December, “les gens du Fort Smith partent à la chasses aux caribous aux environs de Smith Landing”.⁵⁴

⁵⁰ Jones Report at 79

⁵¹ NSMA Report, “Can’t Live Without Work: North Slave Métis Alliance Environmental, Social, Economic and Cultural Concerns” (2001) (in Affidavit #2 of William Enge, Exhibit “A”) (the “Can’t Live Report”) at 25

⁵² Jones Report at 96

⁵³ Jones Report at 96-97

⁵⁴ Jones Report at 107

At the turn of the century, even the Dominion government recognized that the Métis relied on being able to hunt and fish for food all year round. Thus, the 1917 *Act Respecting Game in the Northwest Territories of Canada* exempted “half-breeds” from hunting restrictions and the game preserves established in 1923 - one of which covered land along the north shore of Great Slave Lake up to Great Bear Lake - were set up, in part, for people of mixed ancestry since without preserves there was “grave danger of these natives being reduced to want and starvation”.⁵⁵

The Supreme Court of the Northwest Territories was satisfied that there is evidence that hunting is an integral part of Métis culture and a defining element of the Métis’ special relationship with the land.⁵⁶

There is Continuity between the Historic Practise of these Aboriginal rights and NSMA members’ Aboriginal rights in the present day

This letter reviews material from three NSMA members that was put before the Supreme Court of the Northwest Territories. Edward Jones, Wayne Mercredi and Lawrence Mercredi are representative of the NSMA membership.⁵⁷

In a real way, Edward Jones bridges the gap between the historical Métis community (prior to the effective establishment of control by the Crown in the Great Slave Lake area) and the modern Métis community. He was born in 1932. Mr. Jones’ father, Eduoard Jones, was a trapper prior to 1930, and then traded furs. The Jones family moved constantly between homes at trading posts at Fort Resolution on the south side of the lake, Snowdrift on the northeast arm of the lake and Yellowknife, both on Joliffe and Latham Islands. “We were always on the move.” Once his family settled in Yellowknife, he grew up going to family gatherings and celebrations on Latham Island. He remembers Latham Island being a Métis community: “There were 31 families on Latham Island alone. I would say about 99 percent of them were Métis.” He says that:

At the gatherings there would be family and friends. We would have lots of Métis gatherings in the summers. The gatherings would be at someone’s house and the house would be full of people. People would play fiddle music and there would be dancing. I always enjoyed fiddle music and I still do today.⁵⁸

Jones wore a red sash at the gatherings. He remembers that his mother made him slippers with fancy beadwork, moccasins, mukluks and parkas out of caribou, since

⁵⁵ Jones Report at 109, 114

⁵⁶ Enge v. Mandeville, para 223.

⁵⁷ Should the Review Board require similar information about other NSMA members, NSMA would be happy to provide that information, upon request.

⁵⁸ Affidavit #1 of Edward Jones, para. 48. Also note: The Jones Report mentions that on John Richardson’s expedition north past Great Bear Lake in 1848 – 1850 a night of entertainment included a man playing the fiddle for dances: “with that aptness which the half-breeds show to learn anything that comes under their observation, [he] had made his own fiddle and taught himself to play upon it.” Jones Report at 69

caribou was easier to get than moose. His mother made him “gloves with a rabbit lining” and his grandmother worked with porcupine quills: “she would dye them and all this fancy stuff and I was really really proud of them.”⁵⁹

Edward Jones remembers that growing up as Métis he never blended in. Mr. Jones says that the Indians called him a “suntanned white man”⁶⁰:

Growing up, I was never really comfortable with the white kids because I felt more like an Indian than a white, but the Indians didn’t look at us the same. I think of myself more as Métis because since growing up I realized that we are different, Indians and Métis, especially in our beliefs. I don’t wholly grasp or believe the way the Indian believes. They have legends that I don’t believe in and so on, so you know I am different from the full-blooded Indian. Maybe I don’t believe because of my conversations with my father about different subjects; maybe that was it, I don’t know, but I feel I’m an Aboriginal and yet apart.⁶¹

Edward Jones also visually links the contemporary rights-bearing Métis community to the historical Métis community. Five pictures, attached to Mr. Jones’ affidavit, show:

- a. Mr. Jones’ father with four white trappers at Snowdrift on the North East side of Great Slave lake in 1935⁶² (year approximate);
- b. Mr. Jones’ father’s trading post on Latham Island in 1937⁶³ (year approximate); and
- c. Edward Jones standing in front of where his father’s original trading post on Latham Island was located. There are three different pictures of this area, all taken in 2011. The first of the three photos⁶⁴ is taken from the same vantage point as the 1937 photograph of Mr. Jones’ father’s trading post and shows Mr. Jones standing in the foreground very near to where a bush plane was floating at dock in the 1937 photo.

Wayne Mercredi remembers being taught Métis culture by his family. He was taught how to make snowshoes, dry and skin animals and identify plants and berries and their uses. His family wore traditional Métis clothing. He tells us that “We would wear mukluks, beadings, knitted toques, scarves, socks, mitts and some coats made from hides. These clothes were made and handed-down. As I grew older I learnt how the clothes we wore, the red sash and the beadwork, were different from the First Nations.”

Wayne Mercredi grew up eating caribou meat more than any other meat since “dry

⁵⁹ Affidavit #1 of Edward Jones, paras. 46 – 56.

⁶⁰ Affidavit #1 of Edward Jones, para. 4

⁶¹ Affidavit #1 of Edward Jones, para. 7

⁶² Affidavit #1 of Edward Jones, Exhibit “K”

⁶³ Affidavit #1 of Edward Jones, para. 24, Exhibit “L”

⁶⁴ Affidavit #1 of Edward Jones, para. 25, Exhibit “M”

caribou is better than dry moose. Caribou was more prevalent on the dinner table than moose was growing up.” His aunts and uncles taught him to hunt. It was “part of everyday life”. Hunting with his brothers as a younger man, they would bring back four caribou a year and share the meat amongst immediate family as well as aunts, uncles and friends.

NSMA men wear the Métis sash and attend Métis cultural celebrations including an annual Métis “fish fry” and a “bison cook” in Yellowknife. Many trace their ancestry directly back to Francois Beaulieu II, a figure regarded by many Métis in the NWT as their “founding father.” The NSMA provided detailed information regarding the genealogy of William Enge to Canada in June 2011 in the Genealogy Binder. As illustrated in the “Vertical Pedigree Chart for William Alfred (Bill) Enge”, Mr. Enge’s genealogy traces directly back to Francois Beaulieu II.⁶⁵ Edward Jones⁶⁶, Wayne Mercredi⁶⁷ and Lawrence Mercredi⁶⁸ also trace their ancestry directly to Francois Beaulieu II. Mr. Enge, Mr. Jones, Mr. Wayne Mercredi and Mr. Lawrence Mercredi have all been members of the NSMA since 1996.

Wayne Mercredi, Lawrence Mercredi and William Enge share common ancestry from Pierre (Pierisse) Mercredi (born Dec. 13, 1862) back to Francois Beaulieu II.⁶⁹ The men therefore share a common ancestor: Marie Laferté (nee Beaulieu), born Dec. 19, 1850. A declaration dated February 28, 1894, of Marie Laferte, wife of Alexis Beaulieu concerning her “claim to participate in any grant to Half-Breeds living in the North=West Territories” records the dates of the births and deaths of her children as: “Isabelle born in Fort Resolution in 1879, died in Fort Rae aged 1 year one died at birth nine years ago he was... he was born and died at Fort Rae + Maria Rosa born at Fort Rae 7 year ago died... 1893”.

The Supreme Court of the Northwest Territories reviewed the evidence of Lawrence Mercredi, Wayne Mercredi and Edward Jones as well as NSMA’s report titled “Can’t Live Without Work” and found continuity between historic Métis rights and the contemporary Métis rights of NSMA members.⁷⁰

With all of the above in mind, the Supreme Court of the NWT concluded that NSMA members have a good claim to the Aboriginal right to hunt in their traditional territories in the region north of Great Slave Lake.⁷¹

Potential direct and indirect impacts and mitigation to traditional use and way of life

⁶⁵ Affidavit #1 of William Enge, Exhibit “I”

⁶⁶ Affidavit #1 of Edward Jones, paras. 10 – 18, Exhibits “C” – “J”.

⁶⁷ Affidavit #1 of Wayne Mercredi, Exhibit “C”

⁶⁸ Affidavit #1 of Lawrence Mercredi, Exhibit “D”

⁶⁹ Affidavit #1 of William Enge, Exhibit “I”; Affidavit #1 of Wayne Mercredi, Exhibit “C”; Affidavit #1 of Lawrence Mercredi, Exhibit “D”

⁷⁰ *Enge v. Mandeville*, paras 224 – 226

⁷¹ *Enge v. Mandeville*, para 236

All three NSMA hunters report using the area along the proposed route of All-season Road for hunting and other traditional purposes.⁷² The three hunters typify the pursuit of traditional activities practiced by NSMA members in the bush.⁷³ Elder Edward Jones' father taught him to live and survive off the land. Mr. Jones grew up eating pemmican – pounded meat and fish with caribou fat and sugar and wild meat. In Fort Resolution, he says, there were a lot of moose, but “[in] the Yellowknife area, it is mostly caribou.”⁷⁴ Wayne Mercredi has hunted from Gordon Lake to the east arm, down the north arm around Old Fort Island up Old Lac La Martre road and in the Old Fort Rae area.⁷⁵ Lawrence Mercredi hunts in many different locations and believes his hunting rights are mobile. He has hunted and fished between Great Slave Lake and Great Bear Lake.⁷⁶

The NSMA Hunters all emphasize that hunting has been and continues to be very important to their way of life, and that caribou is their preferred animal to hunt and an important food source. Edward Jones remembers his grandmother using the fat of caribou to make pemmican: he remembers how she would pound the meat with fat and sugar, even though sugar is a “white man food”. He remembers that they ate moose meat too, but that there were mostly caribou in the Yellowknife area and that caribou were important for both meat and clothes. Mr. Jones remembers how his mother made parkas out of caribou hides:

My mother also used to make us parkas. We used to call them “parkee”. My mom would make them out of caribou hides, not so much moose because caribou was easier to get. So we had caribou parkees to wear.⁷⁷

Lawrence Mercredi's father taught him to hunt caribou and Lawrence, in turn, taught his own son. Mr. Mercredi has hunted most of his life and still hunts every year. He hunts moose, but caribou is his animal of choice. He always takes the opportunity to harvest caribou.⁷⁸

Wayne Mercredi remembers that caribou was the staple food in his family: “we ate more caribou than anything else growing up... Dry meat was a big thing to eat when I was a child and caribou is the best dry meat. Dry caribou is better than dry moose. Caribou was more prevalent on the dinner table than moose was growing up.” Mr. Mercredi remembers hunting with his brothers and getting two to four caribou a year. Four caribou a year would supply ten family members. He remembers they would share

⁷² Affidavit of Lawrence Mercredi, paras 22-35 and Exhibit “H”

⁷³ Affidavit #1 of William Enge, Exhibit “D” at 67; Affidavit #1 of Wayne Mercredi at paras 2, 3 and 29, Exhibits “A” and “B”; paras. 23 – 25, Exhibit “G”; Affidavit #1 of Lawrence Mercredi at paras 2 and 3, Exhibits “A” and “B”; para 22, Exhibit “H”; Affidavit #1 of Edward Jones at paras 2 and 3, Exhibits “A” and “B”; para 28, Exhibit “N”

⁷⁴ Affidavit #1 of Edward Jones at paras. 57-59, 61

⁷⁵ Affidavit #1 of Wayne Mercredi at paras. 24 and 25

⁷⁶ Affidavit #1 of Lawrence Mercredi at para. 29 -33

⁷⁷ Affidavit #1 of Edward Jones at paras. 56, 57, 63, 64, 67

⁷⁸ Affidavit #1 of Lawrence Mercredi at para. 24, 51-55

the meat amongst their immediate family, as well as aunts and uncles. No one would take more than they could use.⁷⁹

NSMA's report titled "Can't Live Without Work, North Slave Métis Alliance Environmental, Social, Economic and Cultural Concerns" provides that for most Métis people who harvest wildlife in the area north of Great Slave Lake pursuant to their traditional practices, caribou remains the principal item in their diet:

... Like the caribou is just like our money. We cook it. We eat it. We use the hide for clothing. The meat for food. Everything... (Anon.)⁸⁰

...

A great majority of respondents (86%) said that a decline in caribou health and numbers (as well as other animals) would negatively affect their connections to the land and to each other (sharing patterns) as well as their cultural values and traditions. Alice Lafferty predicts the impact that a decline in caribou numbers or health would have on North Slave Métis elders, while Adrian D'hont observes that a loss of caribou would have cultural and other implications:

We won't have no food. I don't know if we gonna have food to eat. Some people, they don't eat from store. Still some old timer[s], they got their own caribou meat. They got their own moose meat, rabbit, chicken from the bush. I don't think they eat from the store, but they buy tea, lard, something like that from the store, but I don't see them buying meat. They got their own meat, I guess. ...At Snowdrift I heard them talking on the radio.... they said, "If the white people ...be honest to us, maybe they can work their people, but if they want to kill our food, ...what we going to eat? We going to die right there," they said. "We going to have no food to eat." "They have to take it easy to work in there," they said. "They have to poison nothing. We going to talk to them before they start those things, long time ago, last year." "If there's too much poison they put around," they said, "they're going to kill all our animals, our food." "What we gonna have to eat?" they said. "And us too," he said, "Maybe they gonna poison us the last day," he was saying. (Alice Lafferty)

It's [caribou] irreplaceable. I mean there's the economic side. That's highly important. There's everything else that goes along with it, eh. I guess it's sort of like...when the Plains people lost the buffalo. There were strategies, military, the buffalo didn't live long. ...If the caribou are gone? ...Maybe the mines will end up drawing people away in this case, and then caribou becomes unimportant. Making money and doing your own thing in the store...I mean economically it's probably fine, but there's that whole other

⁷⁹ Affidavit #1 of Wayne Mercredi at para. 43-47

⁸⁰ Affidavit #2 of William Enge, Exhibit "A", Can't Live Report at 24

side to a person. I don't think there's anything that could compensate in this case. (Adrian D'hont)⁸¹

With its actions and decisions, the GNWT has implicitly recognized NSMA and its members' Aboriginal rights as Métis to hunt north of Great Slave Lake. The GNWT has provided NSMA and its members with an equitable allocation of the limited Aboriginal harvest of the Bluenose East caribou herd for the 2014-2015, 2015-2016 and 2016-2017 harvest seasons.⁸² As a result, NSMA members exercised their Aboriginal rights as Métis to hunt north of Great Slave Lake, bringing back 23 Bluenose East caribou for NSMA members to enjoy. Further, while there is no longer any harvest of the Bathurst caribou herd permitted, the GNWT has informed NSMA that if and when the Bathurst caribou herd sufficiently recovers to allow for a limited Aboriginal harvest on that herd, the GNWT is committed to providing NSMA with an equitable allocation of harvesting tags, akin to the allocation of tags for the Bluenose East herd. The GNWT and NSMA regularly engage in section 35(1) consultation respecting decisions contemplated by the GNWT that may adversely affect NSMA members' Aboriginal rights as Métis, including consultation regarding all aspects of the management of caribou herds and other wildlife in the NWT, the NWT Wildlife Act, Transboundary Water Agreements and the Northwest Territory Métis Nation Agreement in Principle. NSMA also sits on a number of committees dedicated to managing and preserving the health of caribou affected by the proposed Tlicho All-season Road.

Conclusion

The material summarized in this letter convinced the Supreme Court of the NWT that NSMA members have a good claim to the right to hunt in the region to the north of Great Slave Lake, something integral to NSMA members' traditional use and way of life. Since the court's decision and acknowledgement from Canada, further research and the actions of the GNWT have confirmed the court's judgement.⁸³

NSMA remains concerned that the proposed Tlicho All-season Road will have significant adverse effects on the environment, particularly with respect to the cumulative effects on caribou. Given that the Bluenose East caribou herd is now NSMA members' primary source of caribou bush meat, any projects that affect that herd directly impact NSMA members' traditional use and way of life in the region north of Great Slave Lake. For this reason, NSMA hopes and expects that all Crown representatives will respect the need to preserve NSMA members' traditional hunting practices, particularly the hunting of caribou.

⁸¹ Affidavit #2 of William Enge, Exhibit "A", Can't Live Report at 42

⁸² See enclosed correspondence between the GNWT to NSMA dated February 5, 2015, March 5, 2015, September 16, 2015, December 7, 2015, December 21, 2015 and September 30, 2016

⁸³ See enclosed documents.

Information Request:

Please list potential aboriginal fisheries in waterbodies along the road route, as well as Lac La Martre. Evaluate, describe potential for changes and provide suggestions for mitigation measures.

NSMA members have a good claim to the Aboriginal right to fish in the region north of Great Slave Lake. The Supreme Court of the NWT found that Métis hunt, fish and trap, both historically and in recent years, in the region north of Great Slave Lake.⁸⁴ All three NSMA hunters report harvesting along proposed route of All-season Road, and report fishing and harvesting in and around Lac La Martre.⁸⁵ Indeed, Lac La Martre is of considerable interest to Métis history in the region north of Great Slave Lake. Jones 2014 Report describes many examples of Métis harvesting and fishing in and around Lac La Martre⁸⁶ and NSMA members report successful fishing – both for themselves and to feed their dog teams when out on the land - in and around Lac La Martre and in the region north of Great Slave Lake:

We fished all in there, all in there and through there, down to Lac La Martre. We followed the river down. I think we went as far as here I think. Then by dog team, we fished along the river eh 'til we come out here and then we left it. Cause the river was shallow and then we had deep nets. And the river was shallow, we were catching fish alright but it was getting late too, it was getting about in April I think it was.

NSMA members report that fishing is a fundamental part of their Aboriginal well-being and way of life.

The proposed All-season Road contemplates 16 new water crossings, four of which are major crossings. The road would considerably increase access to these water routes, and to Lac La Martre. NSMA looks forward to discussing mitigation measures that will improve the management of these fisheries. We are certain that with meaningful discussion, the parties could find mutually satisfactory methods to ensure the maintenance of Aboriginal fisheries.

Information Request:

Please provide the location of heritage resources and culturally important sites in the project area that are likely to be directly or indirectly affected by the Project.

As defined under the *Mackenzie Valley Resource Management Act*, heritage resources include “archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.” An archaeological impact assessment (“AiA”) of the proposed Tlicho All-season Road

⁸⁴ *Enge v. Mandeville*, para 191 and 192

⁸⁵ Affidavit of Lawrence Mercredi, paras 22-35 and Exhibit “H”, Affidavit of Wayne Mercredi, paras. 21-33 and Exhibit “H”; Affidavit of Edward Jones, Exhibit “N”

⁸⁶ For example, see Jones’ 2014 Report at 7,19, 29-32 and 43.

corridor was conducted in 2014. We were disappointed to find the AiA only references the importance of First Nation and Inuit perspectives.

The Métis of the Great Slave Lake area have their ethnogenesis in the interplay between Aboriginal and European communities. The ethnic footprint left on Métis archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance is unique from that left by their Indian counterparts. NSMA is also very concerned that unique sites, artifacts or objects of historical Métis ethnic heritage may be overlooked in archaeological assessments - such as in this AiA - if an archaeological study that considers the ethnic footprint left by Métis is not undertaken. For example, it was not until NSMA commissioned the 2001 report by Professor Marc Stevenson that it was confirmed that a Métis community had existed in the North Slave region of the NWT in the late 1700s which regularly hunted and relied on caribou. The historical evidence suggest the Métis also settled in and around both Old Fort Rae and Lac La Martre and would have traversed the area along the proposed All-season Road.

NSMA is very concerned that the 2014 AiA was undertaken without any consultation with NSMA, and that it makes no reference to Métis ethnicity and heritage. NSMA hopes further Archeological work will be undertaken in consultation with NSMA so that NSMA's traditional way of life and history will be preserved for the generations to come.

Conclusion

NSMA is keen to engage regarding the proposed Tlicho All-season Road as this initiative has so many potential impacts on our members' section 35(1) Aboriginal rights as Métis. NSMA hopes this response will help the Review Board to meet its mandate under the *Mackenzie Valley Resource Management Act* and looks forward to discussions with the Crown and the Proponent GNWT-DOT regarding the impacts on NSMA members' Aboriginal rights in the region to the north of Great Slave Lake.

Sincerely,



Shin Shiga
NSMA Regulatory Analyst

cc: **Ryan Fequet**, Executive Director, Wek'èezhii Land and Water Board
Email: rfequet@wlwb.ca

Enclosures

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