

SAHTU RENEWABLE RESOURCES BOARD

Public Listening: Sahtú Ragóᑦa and Approaches to Wildlife Harvesting

CLOSING SUBMISSION

Colville Lake Renewable Resources Council

Ayoni Keh Land Corporation

Behdzi Ahda" First Nation

(collectively, "Dehlá Got'íne")

PART 1 – OVERVIEW AND ACTIONS REQUESTED OF THE SRRB

1. The Dehlá Got'íne have submitted a community ʔədə (caribou) conservation plan the ("Dehlá Got'íne ʔədə Plan") for approval by the Sahtu Renewable Resources Board ("SRRB").
2. The Dehlá Got'íne ʔədə Plan is intended to ensure that the local harvest of ʔədə in the Dehlá Got'íne traditional territory by participants is managed to maintain or enhance the population of ʔədə in a manner that respect's the harvesting and wildlife management customs and practices of participants while the recognizing and encouraging the Dene way of life.
3. The Dehlá Got'íne ʔədə Plan contains mechanisms that encourage and promote local involvement in conservation, harvesting studies, research and wildlife management that will meaningfully contribute to the conservation and management of ʔədə in accordance with the Sahtu Dene and Metis Comprehensive Land Claim Agreement ("SDMCLCA").
4. The Dehlá Got'íne ʔədə Plan will gather important information about ʔədə that will be shared with the Government of the Northwest Territories, Department of Environment

and Natural Resources (“ENR”) and the SRRB in accordance with section 13.9.6 of the SDMCLCA.

5. The SRRB has authority under 13.8.23 (a)(i) of the SDMCLCA to “(a) establish policies and propose regulations in respect of: (i) the harvesting of wildlife by any person, including any class of persons” and (c) “to approve plans for the management and protection of particular wildlife populations.”
6. The SRRB may decide under 13.5.2 to remove a Total Allowable Harvest (“TAH”).
7. The SRRB may exercise powers under 13.4.19 (b) to require participants to obtain permits or licenses for the purpose of regulating harvesting.
8. In accordance with the above provisions of the SDMCLCA and in furtherance of the SRRB’s purpose as the main instrument of wildlife management in the Sahtu settlement area, the Dehlá Got’ıne are requesting the SRRB to:
 - (a) confirm that community conservation plans continue to provide the best conservation outcomes, and remain the preferred mechanism for managing the harvesting of wildlife in the Sahtu region;
 - (b) approve the Dehlá Got’ıne ʔədə Plan proposed by the Dehlá Got’ıne as a community conservation plan;
 - (c) decide that a Total Allowable Harvest (“TAH”) of ʔədə is not required in the Sahtu;
 - (d) require participants to obtain an authorization from the Colville RRC in order to harvest ʔədə in the Dehlá Got’ıne area as a mechanism for regulating harvesting by participants in accordance with the Dehlá Got’ıne ʔədə Plan; and
 - (e) recommend that the Minister of ENR amend the *Big Game Hunting Regulations* to remove the requirement for participants to obtain a tag to harvest ʔədə in Zone S/BC/01.

PART 2 – SUPPORT FOR THE DEHLÁ GOT’JNE ʔƏDƏ PLAN

A. DEHLÁ GOT’JNE RIGHTS AND RESPONSIBILITIES

9. The traditional name for the Dene of the Sahtu community of Colville lake is the “Dehlá Got’jne”, which means “the most northerly people of the Dene”.
10. Colville Lake is the most isolated community in the Sahtu and the cost of living is high. Store bought groceries are expensive and store bough meat is not affordable on a weekly basis. Even when they are, the preference for people in Colville Lake is traditional food such as ʔədə and fish.
11. The Dehlá Got’jne harvest ʔədə throughout their traditional territory, and have a constitutionally-protected right to right to do so in accordance with 13.4.1 of the SDMCLCA. Harvesting ʔədə is integral to the cultural and survival of Dehlá Got’jne, but it is much more than a right. It is a sacred responsibility that is subject to ts’jduweh ʔeʔá (ancient laws) that must be fulfilled for the Dehlá Got’jne and the ʔədə to maintain their relationship.
12. Dehlá Got’jne oral history teaches that the ʔədə were placed on Dehlá Got’jne traditional territory by the Creator. The Creator gave the Dehlá Got’jne the gift of the ʔədə for the Dehlá Got’jne to take in accordance with ts’jduweh ʔeʔá, and it is through observing those ancient laws that the Dehlá Got’jne have maintained a sustainable and respectful relationship with ʔədə since time immemorial.
13. Dehlá Got’jne ts’jduweh ʔeʔá teaches that it is the Dehlá Got’jne responsibility to take care of the ʔədə, and it is the responsibility of the ʔədə to take care of Dehlá Got’jne.
14. One of the Dehlá Got’jne understandings with ʔədə is that if the Dehlá Got’jne abandon their responsibilities with the ʔədə and stop harvesting ʔədə, then the Dehlá Got’jne will lose the gift of the ʔədə, as the ʔədə will disappear.

B. DEHLÁ GOT'JNE ʔADƏ PLAN MEETS THE REQUIREMENTS OF THE SDMCLCA

15. The Dehlá Got'jne ʔadə Plan is built on the recognition of Sahtu Dene and Metis wildlife harvesting rights set out in the land claim, including the right to participate in decision-making concerning wildlife harvesting and management.
16. The Dehlá Got'jne ʔadə Plan reflects Dene harvesting and wildlife management customs, while providing a basis for collaboration between the Dehlá Got'jne, ENR, SRRB, and other wildlife managers and harvesters in other regions.
17. The Dehlá Got'jne propose to manage the harvest in their area in accordance with the ʔadə Plan in a manner consistent with legislation and the policies of the Board by requiring participants to obtain an authorization from the Colville Renewable Resource Council that will set out rules and directions on how to harvest ʔade in the Colville Lake area, and require participants to report their harvests and observations of ʔadə to the Colville RRC.
18. The Dehlá Got'jne ʔadə Plan is intended to 1) revitalize Dehlá Got'jne ts'jduweh ʔeʔá, and cultural traditions as they relate to wildlife management, 2) formalize our existing community-based wildlife management approaches in recognition of our right to meaningfully participate in the management and conservation of ʔadə; 3) engage participants in monitoring and assessing the local harvest of ʔadə within the Dehlá Got'jne traditional territory, 4) gather and utilize Dehlá Got'jne traditional knowledge about ʔadə and their habitat, and other parts of the ecosystem, using local knowledge, and appropriate science; 5) educate Dehlá Got'jne youth about the old ways and the new ways, and to involve them in the management and conservation of ʔadə; and 6) to share knowledge and involve the community, in discussions and decisions about ʔadə conservation.

19. The Dehlá Got'jne ʔədə Plan is supported by the evidence, findings and decisions of the SRRB in respect of the Déljne's *Belare wile Gots'é ʔekwé* plan in the 2016 SRRB Bluenose East Hearings that traditional Dene structures for managing wildlife continue to be as or more effective in meeting conservation needs than a Total Allowable Harvest ("TAH").¹
20. It is submitted that the Dehlá Got'jne ʔədə Plan conforms to the requirements of the SRRB for a community conservation plan, and should be approved by the SRRB in accordance with 13.8.23 (a)(i) and (c) of the SDMCLCA.

C. LOCAL MANAGEMENT IS MORE EFFECTIVE AND APPROPRIATE THAN A TAH

21. The Colville RRC is also proposing to manage the local exercise of participant's harvesting rights in accordance with section 13.9.4 (b) of the SDMCLCA. It is proposing to do so in order to ensure that Dehlá Got'jne ʔədə Plan is being followed, and to assess whether the Plan is meeting its objectives. The authorization mechanism proposed by the Colville RRC is an alternative to, and not a proxy for, the imposition of a TAH by the SRRB and the implementation of a tag system by ENR.
22. The SRRB accepted in the 2016 Bluenose East Hearings that a TAH under the section 13.5.2 of the SDMCLCA is a mechanism of last resort that can only be applied where:
 - (a) there is a conservation issue that must be addressed;
 - (b) a TAH is required for conservation; and
 - (c) the TAH is only applied only to the extent that is necessary to achieve conservation.
23. The Dehlá Got'jne submit that these requirements have not been met in respect of ʔədə, and requests the SRRB to formally remove the TAH on ʔədə in the Sahtu region.
24. The Dehlá Got'jne rely on the evidence and decisions of the SRRB in the 2016 Bluenose East Hearings, as well as the evidence presented in this Public Listening to establish that a conservation issue sufficient to establish a TAH does not exist; that other mechanisms

¹ 2016 SRRB Bluenose East Hearing Decisions 24-28.

including the Dehlá Got'ıne ʔədə Plan and proposed RRC authorizations are available and are likely to be more effective in achieving conservation; and that a TAH cannot therefore be justified in the present circumstances.

25. The requirement to show that a TAH must be “necessary” for conservation imposes an obligation on ENR and others advocating for a TAH to demonstrate on the basis of evidence that the Dehlá Got'ıne ʔədə Plan and the proposed harvesting authorization mechanism proposed by the Colville RRC will be ineffective.
26. The SRRB has heard evidence in the 2016 hearings and in the 2019-2020 Public Listening that community conservation plans based on Dene law are likely to be more effective in addressing conservation concerns than a TAH. The SRRB has also heard evidence on other mechanisms that are likely to be beneficial to ʔədə, including potential predator reduction and greater respect for the calving grounds, that do not require imposition of restrictions on the quantity of harvest by participants.
27. As will be discussed in greater detail below, the imposition of a TAH is the only limitation on the harvesting rights of participants in Chapter 13 of the SDMCLCA that must meet the high standards of justification of necessity and minimal intrusion. The SDMCLCA recognizes the very serious impact that a TAH has on the constitutionally-protected hunting rights of the participants, and accordingly sets a very high test for it to be employed. A TAH is a measure of last resort, and must not be imposed or continued as a matter of convenience for the regulator.
28. We further note that the Government of the Northwest Territories has committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples (the “Declaration”). That Declaration affirms the central importance of protecting Indigenous peoples’ access to their land and resources. Article 20, for example, speaks to the right of Indigenous peoples to be secure in the enjoyment of their own means of subsistence. Article 25 recognizes the right of Indigenous peoples to maintain and strengthen their distinctive spiritual relationship with lands and resources that they have traditionally used.

29. The GNWT's recent decision to implement the UN Declaration underscores the importance of exercising great caution and care in imposing regulations that severely restrict the rights of Indigenous peoples to continue to harvest ʔədə and other resources that they heavily depend upon for their cultural and economic well-being.

PART 3 THE AUTHORIZATION OF LOCAL HARVESTING BY AN RRC IS A LIMITATION THAT MAY BE PRESCRIBED IN ACCORDANCE WITH S. 13.4.1 OF THE SDMCLCA

30. The Colville RRC has proposed a requirement for all participants who wish to exercise their harvesting rights within the Colville Lake area to obtain an authorization from the Colville RRC.
31. The Colville RRC requested the GNWT to respond to this proposal during the Public Listening by advising of any steps that the GNWT would need to take to recognize the authority of the Colville RRC to do so. The GNWT responded in writing to this request on January 29, 2020 stating that “the Colville Lake Renewable Resources Council (Colville RRC) cannot legally be authorized to issue authorizations to participants from other Sahtú communities to harvest Bluenose-West caribou.”²
32. The GNWT's response to the Colville RRC proposal to require authorizations for participants to harvest in the Colville Lake area reflects an incomplete understanding of the roles of the RRCs within the wildlife management regime established under SDMCLCA.
33. In the following sections, the Colville RRC has provided a detailed response to each of the reasons put forward by the GNWT in their support of its position so that that GNWT may more fully reconsider our proposal in light of the full suite of mechanisms for wildlife conservation and management that are expressly provided under Chapter 13 of the SDMCLCA.

² GNWT, *Environment and Natural Resources Undertakings, Sahtú Ragóʔa and Approaches to Wildlife Harvesting/Colville Lake Public Listening, January 29, 2020*

A. GNWT CONFUSES “LIMITATIONS WHICH MAY BE PRESCRIBED IN ACCORDANCE WITH THIS AGREEMENT” UNDER 13.4.1 WITH RESTRICTIONS ON THE QUANTITY OF HARVESTING BY PARTICIPANTS UNDER PART 13.5.

34. The GNWT acknowledges that the “limitations which may be prescribed in accordance with this agreement” on participant harvesting rights pursuant to 13.4.1 are not completely codified by the process for the imposition of a limit on the quantity of harvest by participants through a Total Allowable Harvest under 13.5. The GNWT then proceeds to consider Colville Lake’s proposed authorization as a “restriction on the quantity of harvest.”
35. In treating the Colville proposal as a restriction on the quantity of harvest, the GNWT is not giving fair consideration to the measure that the Colville RRC has actually proposed. The Colville RRC proposal is to require all participants who wish to exercise their harvesting rights within the Colville Lake area to obtain an authorization from the Colville RRC. The proposed authorization sets out conditions on how the harvest is to be carried out, and obligations to report on the harvest, but it does not impose a total limit on the quantity of caribou that may be harvested by participants.
36. As detailed in our draft *Dehlá Got’ıne ts’ıduweh ʔade ʔeʔá*, the conditions that Colville RRC proposes to include in the authorization are consistent with harvesting and wildlife customs and practices of the participants. Colville RRC is not proposing to limit the quantity of the harvest, and has consistently opposed the imposition of a TAH and the use of tags, and does not intend the authorization to be a proxy for such measures.
37. Accordingly, it can be distinguished from a TAH imposed under s. 13.5.2, or the limits on the quantity of caribou that was proposed in Délıne’s *Belare wıle Gots’é ʔekwé* plan.
38. The GNWT acknowledges “that 13.8.23(a)(i) gives the Sahtú Renewable Resources Board (SRRB) the ability, subject to the Minister of Environment and Natural Resources’ (ENR) acceptance, to restrict harvest by participants in other ways, provided that the restriction is not regarding quantity to be harvested.”
39. We note that this is not actually what 13.8.23(i) says. The text does not speak to *restrictions* on the quantity of harvest. The powers provided for in Part 13.5, and as we

have noted, are subject to stringent justifications. In contrast, 13.9.23(i) speaks to the broad purpose of the Board, and grants powers to the Board to establish policies and propose regulations in respect to the harvesting of wildlife:

13.8.23 In furtherance of its purpose as the main instrument of wildlife management in the settlement area, the Board shall have the power to: (a) establish policies and propose regulations in respect of: (i) the harvesting of wildlife by any person, including any class of persons;

40. Policies and regulations in respect to the harvesting of wildlife are not *de facto* restrictions on the quantity of harvest, as there are a wide variety of mechanisms that can be used to regulate how, where and when harvesting occurs without restricting the total quantity that may be harvested.
41. GNWT appears to take the position that an RRC cannot impose any harvesting restrictions on participants. We disagree with that position.
42. The GNWT did not provide a response to Colville's question about what further steps may be required in order for the GNWT to recognize the authorizations issued by Colville RRC to visiting participant hunters, but it did offer views on what it considers necessary to recognize "limitations prescribed in accordance with the chapter" on the exercise of 13.4.1 harvesting rights by participants. As set out below, the GNWT's approach to considering how such limitations may be lawfully prescribed under the Chapter is incorrect.

B. GNWT STATES THAT JUSTIFICATIONS ARE REQUIRED FOR "LIMITATIONS PRESCRIBED IN ACCORDANCE WITH THE CHAPTER" ON THE 13.4.1 HARVESTING RIGHTS OF PARTICIPANTS

43. Even if we assume for the sake of argument that an authorization is a limitation on the exercise of harvesting rights by participants, the GNWT's analysis of how limitations may be prescribed in accordance with the Chapter is incorrect. In accordance with modern treaty interpretation principles, the Chapter must be read as a whole, understood in terms of all of its provisions, and applied in such a way as to advance reconciliation. As stated by the Supreme Court of Canada: "Paying close attention to the terms of a

modern treaty means interpreting the provision at issue in light of the treaty text as a whole and the treaty's objectives."³ The GNWT has not done this.

44. Beginning with the objectives set out in the Chapter, 13.1.1 (d) states that an objective of the treaty is to "respect the harvesting and wildlife management customs and practices of the participants."
45. The GNWT's response to the Colville proposal failed to give fair consideration to Colville's proposal for requiring authorizations as a conservation measure that is more respectful and consistent with the harvesting and wildlife customs and practices of the participants (all of which is in evidence in this Public Listening).
46. The GNWT's misunderstanding of our proposal as a measure to restrict the quantity of harvest by participants, and failure to consider it in the light of the treaty's objectives, is further compounded by a mischaracterization of 13.4.1. The GNWT has re-stated 13.4.1 by adding words do not in fact appear in the text: "To meet the intended objective of the harvesting restriction, for example conservation, public safety or public health, the restriction must limit harvesting to the minimum extent necessary (as per section 13.4.1 for the SDMCLCA)."
47. We note that 13.4.1 in fact reads quite differently. It expressly makes the exercise of rights subject to *limitations prescribed in accordance with this agreement*. Nowhere in 13.4.1 does it state that all such limitations must be "to the minimum extent necessary."

C. GNWT STATES THAT "ENR MUST BE SATISFIED THAT THERE ARE NO LEGAL ISSUES WITH THE PROPOSED DELEGATION"

48. There are two significant errors in the GNWT's analysis of how participant harvesting rights may be made subject to "limitations prescribed in accordance with this agreement" in accordance with 13.4.1.
49. In our review of the Chapter, we find that justifications for limitations are only expressly required in respect to the imposition of a TAH by the Board under 13.5.1. The words "if required" and "only to the extent necessary" in 13.5.2 make that clear. However, words

³ *First Nation of Nacho Nyak Dun v. Yukon* [2017] 2 SCR 576 at para 36-39.

to similar effect do not appear in 13.4.1, or indeed, are used in relation to other limitations in the Chapter that the Board or the RRCs are otherwise empowered to establish as mechanisms for wildlife conservation and management.

50. The first error, as indicated above, is that the GNWT has assumed that any limitations must be justified in relation to a specific objective and affect harvesting only to the minimum extent necessary in order to be lawful.
51. The second error is that GNWT is considering an exercise of power by the RRC to be a delegation from either the Board or the Minister.
52. Colville RRC acknowledges that decisions by the SRRB pursuant are subject to the Minister of Environment and Natural Resources' (ENR) acceptance under 13.8.25. Given that the Minister has the power to accept or approve decisions of the Board, the GNWT's concerns may flow in part from the need to ensure that the Minister's decision to accept or approve a decision by the Board is lawful, and does not result in an infringement by the Crown of participant's 13.4.1 harvesting rights.
53. Colville RRC accepts that this is a correct objective, but submits that the GNWT has not properly considered the law with respect to the approach to the interpretation of modern treaties in how it is approaching 13.4.1.
54. Under the approach to the interpretation of modern treaties that has been set out by the Supreme Court of Canada, deference to the text of a treaty is warranted, but must be considered in light of the treaty text as a whole and the treaty's objectives. Interpretations are always subject to such constitutional limitations such as the "honour of the Crown", and must advance reconciliation between the parties.⁴
55. Further, when considering whether a Crown action might give rise to the infringement of treaty rights, the correct approach is to first consider whether the treaty right is subject to an inherent limit—in which case no infringement can be said to occur—before determining whether there is an infringement and whether that infringement

⁴ *Nacho Nyak Dun, ibid*, at paras 36-39

can be justified. This analysis was set out by the Supreme Court of Canada in *R. v Badger*, and proceeds in three stages.

56. First, it is necessary to determine the source of the treaty rights, which in this instance is the text of the SDMCLCA.
57. Second, the source of the treaty right (in our case, the provisions of the SDMCLCA) must be examined to determine if there are *limitations that are inherent* in how that right is expressed. If the provisions are sufficiently clear in light of the treaty text as a whole and the treaty's objectives that there is an inherent limit on the right, that is the end of the analysis and such inherent limitations apply to that right.
58. Finally, and only in cases where the proposed Crown action might result in a limitation of the right that is *not otherwise inherent to the right*, further justification is required in accordance with the justification analysis and minimal infringement requirements set out in *R. v. Sparrow*.⁵
59. In this instance, the GNWT is incorrectly applying the infringement analysis set out in *Badger* to limitations that are already inherent in how the 13.4.1 rights are framed in the SDMCLCA.
60. As we have noted above, the GNWT's reading of 13.4.1 is both incomplete and incorrect. A plain reading of the scope of the treaty right to harvest set out in 13.4.1 makes it clear that participant harvesting is inherently subject to the limitations which may be prescribed in accordance with this agreement. Chapter 13 sets out a wide range of provisions and powers for the management and regulation of participant harvesting. Requirements introduced by the Board or established by an RRC that are properly enacted in accordance with the Chapter are inherent limitations on the 13.4.1 right.
61. Except for the justifications required for the imposition of a TAH under 13.5.2, nowhere in the Chapter does the regulation of harvesting by participants by the Board or by an RRC in accordance with a specific provision or power under the Chapter require further justification of the "intended objective of the harvesting restriction, for example

⁵ 1990 CanLII 104 (SCC)

conservation, public safety or public health”, nor are such powers made subject to the requirement that they must “must limit harvesting to the minimum extent necessary” as the GNWT claims they must.

62. Requirements introduced by the SRRB or established by an RRC that are properly enacted in accordance with the Chapter cannot be said to infringe on the 13.4.1 right, as they are *limitations which may be prescribed in accordance with this agreement*, and they do not require further justification as per the *Sparrow* analysis.

D. THERE IS NO “PROPOSED DELEGATION”

63. Requirements introduced by the SRRB or established by an RRC in accordance with powers granted under the Chapter or elsewhere in the SDMCLCA cannot be said to have been delegated, as they flow from the Treaty.

64. We note that among the powers granted to the Board under the Chapter is 13.4.19 (b), which empowers the SRRB to require participants to obtain authorizations *for the purpose of regulating harvesting*:

The Board may require participants to obtain permits or licences for the purpose of regulating harvesting, but participants shall not be required to pay any fee or tax for any non-commercial permit or licence.

65. The treaty clearly empowers the SRRB to require participants to obtain permits or licences. Such a requirement, provided that it is properly enacted in accordance with the Chapter, is accordingly an inherent limitation that may be placed on the exercise of the 13.4.1 right to harvest. No further justification is required.
66. The GNWT appears to be considering the powers of the SRRB and the RRCs under the Chapter to be delegated authorities.
67. Such a framing of the powers of the Board and the RRCs as delegated authorities is not supported by a reading of the provisions of the SDMCLCA and the Chapter itself. As noted by the Supreme Court, a modern treaty “is intended to renew the relationship between Indigenous peoples and the Crown to one of equal partnership”.⁶ Where

⁶ *Nacho Nyak Dun*, *ibid* para 33.

powers are granted to a body pursuant to a treaty, it cannot be said that they are delegated powers. Such powers flow from the treaty, and are constitutionally protected by s. 35 of the *Constitution Act, 1982*.

68. While subject to such limits as are set out in the treaty, the SRRB and the RRCs are separate and distinct institutions established pursuant to the SDMCLCA. The SDMCLCA grants each of the SRRB and the RRCs, powers described and delimited in the Chapter and elsewhere in the Agreement. Such powers are not subject to being altered or withdrawn merely through the exercise of authority by Canada or the GNWT.⁷
69. Further, nothing in the Chapter supports the GNWT's contention that an RRC's powers under 13.9.4 are delegated powers.
70. 13.9.4(d), which enables an RRC to accept and exercise powers given to it "under this agreement", is but one of a list of powers that a RRC may exercise. It must be read together with 13.9.4(b), which grants an RRC the power "to manage, in a manner consistent with legislation and the policies of the Board, the local exercise of participants' harvesting rights including the methods, seasons and location of harvest."
71. The above language, considered in the light of the purpose of the Chapter and the treaty as a whole, makes it clear that the RRC is not a delegate of either the GNWT or the Board, but rather is a separate, constitutionally empowered entity with powers that are, like those of many similarly empowered bodies, subject to a jurisdictional boundary and to a conflict rule. Such jurisdictional boundaries and conflict rules apply, as a matter of law, to confine the scope of the RRC's powers within the bounds set by legislation and Board policy.⁸ This does not make the RRC a delegate in respect to those powers.
72. We note that the powers set out for RRCs in 13.9.4 are distinct from authority which may be delegated to the RRC under 13.9.5. The language in 13.9.5 is clear that "government and the Board" may "jointly delegate authority" to the RRCs. This clause enables government and the board to delegate to the RRC. In the case where the

⁷ Per 3.1.26 of the SDMCLCA, amendments to the SDMCLCA require agreement of Canada, the GNWT and the Sahtu. See also *AG BC/AG Canada & Nisga'a Nation et al*, 2000 BCSC 1123 (CanLII)

⁸ *Canada Minister of Immigration v Vavilov*, 2019 SCC 65 at para 63-64.

authorities of government and the Board are delegated to the RRC, the RRC would be a delegate of government and the Board in the exercise of what are otherwise government or Board authorities. This is an important distinction. The same cannot be said for powers granted to the RRC under 13.9.4 by the treaty.

D. GNWT STATES THAT 13.9.4(B) OF THE SDMCLCA DOES NOT GIVE THE CLRRRC THE ABILITY TO ISSUE AUTHORIZATIONS TO PARTICIPANTS FROM OTHER SAHTU COMMUNITIES TO HARVEST

73. The GNWT contends that because the SDMCLCA does not specify an area for which each RRC is responsible, the reference to “local” in 13.9.4(b) of the SDMCLCA cannot mean a specific area, only the participants of that Sahtu community. This is a novel and unsupported interpretation of the SDMCLCA. It is not only inconsistent with a plain reading of the treaty, but demonstrates a striking lack of understanding of how participants have always traditionally identified and organized themselves in relation to specific territories within the Sahtu settlement area. The associations between Sahtu communities, got’jnes and traditional territories within the settlement area must inform the interpretation of the SDMCLCA.
74. Further, the plain reading of the text of the SDMCLCA does not support the GNWT’s contention that “local” in 13.9.4(b) cannot mean a specific area. The GNWT submits that 13.9.1 supports this contention, but this is not what 13.9.1 says. “There shall be a Renewable Resources Council in each Sahtu community to encourage and promote local involvement in conservation, harvesting studies, research and wildlife management in the community.”
75. 13.9.1 requires that an RRC be established in each Sahtu community. “Sahtu community” is a defined term in the SDMCLCA, and means the “community of participants in Fort Good Hope, Colville Lake, Fort Norman, Déline or Norman Wells”.
76. Modern settlements like Colville Lake or Fort Good Hope were established relatively recently. Prior to settlement, the Dehlá Got’jne and other Sahtu peoples were nomadic, but were strongly associated with certain areas. Each got’jne was tied to particular territories, and maintained responsibilities for how it was used and managed. Members of other got’jne respected those areas, and there are ts’jduweh ʔeʔá (original laws and protocols) for seeking permission for the use of such areas from the responsible group.

77. This system is not fully reflected in the text of the SDMCLCA, but it is largely reflected in how the settlement area as a whole has been divided into districts by the participants. The K'ahsho Got'jne and Dehlá Got'jne now reside in Fort Good Hope and Colville Lake and the K'asho District of the settlement areas. The Shita Got'jne and the K'áálq Got'jne people now reside in the community of Tulit'a and the Tulita District. The Sahtúot'ine are based in Déljñę and the Déljñę District. The districts roughly correspond to the areas used by specific got'jne. We note that the districts are also not defined in SDMCLCA, and remain subject to review and revision, but are the basis on which the participants have organized themselves to exercise ownership and management responsibilities for settlement lands, as well as other powers and responsibilities under the SDMCLCA, including for wildlife management by the RRCs.
78. 13.9.1 does not contain any language that expressly limits the scope of an RRC's powers to only participants from a specific Sahtu community, nor does it exhaustively describe the powers of an RRC.
79. 13.9.1 cannot be read as the GNWT intends, as any implied limitation of the RRC's powers as being applicable only to participants from a particular Sahtu community would directly conflict with the broad scope of powers given to the RRCs in 13.9.4, which include (b) "the power to manage, in a manner consistent with legislation and the policies of the Board, the local exercise of participants' harvesting rights including the methods, seasons and location of harvest"; (c) the power to "establish and amending group trapping areas", and (d) "other powers given to RRCs under this agreement".
80. None of these powers can be said to be confined solely to local participants – they must also be understood to apply to specific areas. Had the limitation that the GNWT suggests been intended, 13.9.4 would have been drafted to clearly limit the powers set out in (a) – (e) to "participants from that Sahtu community". It is not drafted in that manner.
81. Further, when 13.9.1 and 13.9.4 are considered in relation to the SDMCLCA as a whole, the close association between the RRCs and specific areas are made clear. There are numerous other provisions of the SDMCLCA that grant powers or responsibilities to the

RRCs that are applicable to specific areas or species of wildlife, and are not limited to participants from a specific Sahtu community:

- 13.4.6 – 13.4.8 An RRC may permit a person who is not a participant to harvest on 13.4.3 and 13.4.4 lands, and to establish terms and conditions respecting species, location, methods, quantities, seasons and duration of harvest.
- 13.4.13 requires government or the holder of an interest in land who proposes restricting rights of access for participants to give notice to the RRC for that area.
- 13.5 requires consultations with the appropriate or affected RRCs with respect to any total allowable harvests;
- 13.7.1 and 13.7.7 requires the consent of the affected RRC before permitting commercial harvesting of wildlife or commercial propagation, cultivation or husbandry of a species of wildlife;
- 14.1.7 requires the consent of the affected RRC before permitting commercial harvesting of timber or commercial propagation, cultivation or husbandry of a species of wildlife;
- 16.3.2 requires the appointment of members of the appropriate RRC to a National Park Management Committee;
- 16.5.6 states that any allocation of the harvesting rights of the participants among individual harvesters in a National Park shall be the responsibility of the appropriate RRC.
- 17.2.4 states that any allocation of the harvesting rights of the participants among individual harvesters in a Protected Area shall be the responsibility of the appropriate RRC.

82. As the above listing makes clear, the GNWT's contention that the word "local" must be interpreted to mean only "participants from a Sahtu community" cannot be sustained when considered in light of the powers and responsibilities granted to RRCs in relation to specific wildlife species and specific areas throughout the Chapter and the treaty as a whole.

83. Accordingly, applying the modern principles of treaty interpretation to the above discussion, the scope of a RRC's power under 13.9.4(b) to "manage, in a manner consistent with legislation and the policies of the Board, the local exercise of participants' harvesting rights including the methods, seasons and location of harvest" must be understood as being applicable to the area that a particular Sahtu community or *got'jne* has traditionally been responsible for managing.

PART 4 – CONCLUSIONS AND ACTIONS REQUESTED OF THE SRRB

A. DETERMINATIONS AS TO THE ROLES AND POWERS OF THE RRCs

84. Colville submits that the scope of a RRC's power under 13.9.4(b) to "manage, in a manner consistent with legislation and the policies of the Board, the local exercise of participants' harvesting rights including the methods, seasons and location of harvest" must be clearly understood as being applicable to the area that a particular Sahtu community or *got'jne* has traditionally been responsible for managing.
85. Accordingly, the Colville RRC has powers pursuant to 13.9.4(b) of the SDMCLCA to "manage the local exercise of participants' harvesting rights including the methods, seasons and location of harvest management".
86. The "local exercise" in which the Colville RRC can lawfully exercise its powers to manage participant's harvesting rights is not limited to participants residing in Colville Lake, but to participants harvesting in the traditional territory of the Dehlá Got'jne.
87. Colville RRC can exercise its power to manage the local exercise of participants' harvesting rights pursuant to 13.9.4(b) in "a manner consistent with legislation and the policies of the Board".
88. As the objectives of the SDMCLCA and the *Wildlife Act* are both directed to achieving a coordinated, collaborative and integrated approach to conservation and management, the Dehlá Got'jne submit that:
- (a) a decision by the Board to require participants to obtain an authorization (a form of permit or license) from the Colville RRC for the purpose of regulating

harvesting in the traditional territory of the Dehlá Got'jne may be made validly pursuant to 13.4.19(b) and be approved by the Minister under 13.8.25;

- (b) the GNWT can amend its own legislation (the *Big Game Hunting Regulations*) to remove the requirement for participants to obtain a tag to harvest caribou in Zone S/BC/01; and
- (c) the Colville RRC, in a manner consistent with legislation and the policies of the Board, can issue authorizations in accordance with 13.9.4(b) to participants for the purpose of managing the local exercise of harvesting rights within the traditional territory of the Dehlá Got'jne.

89. Colville appreciates the Board has taken the time to hold the Public Listening.

90. In accordance with the above provisions of the SDMCLCA and in furtherance of the SRRB's purpose as the main instrument of wildlife management in the Sahtu settlement area, the the Dehlá Got'jne are requesting the SRRB to:

- (a) confirm that community conservation plans continue to provide the best conservation outcomes, and remain the preferred mechanism for managing the harvesting of wildlife in the Sahtu region;
- (b) approve the Dehlá Got'jne ʔədə Plan proposed by the Dehlá Got'jne as a community conservation plan;
- (c) decide that a Total Allowable Harvest ("TAH") of ʔədə is not required in the Sahtu;
- (d) require participants to obtain an authorization from the Colville RRC in order to harvest ʔədə in the Dehlá Got'jne area as a mechanism for regulating harvesting by participants in accordance with the Dehlá Got'jne ʔədə Plan; and
- (e) recommend that the Minister of ENR amend the *Big Game Hunting Regulations* to remove the requirement for participants to obtain a tag to harvest ʔədə in Zone S/BC/01.

SUBMITTED February 12, 2020 to the Sahtu Renewable Resources Board

COLVILLE LAKE RENEWABLE RESOURCES COUNCIL

AYONI KEH LAND CORPORATION

BEHDZI AHDA" FIRST NATION

A handwritten signature in black ink, appearing to read 'W. Kochon', written over a horizontal line.

Chief Wilbert Kochon

**President
Colville RRC**