



SRRB Procedural Order for the Protection of
Confidential Information

(Made under Rule 12.23 of the SRRB Rules for Hearings)



Introduction and Overview

[1] This is a Procedural Order concerning the protection of Confidential Information. Between April 25-29, 2022, the SRRB convened the Délįnę 2021 Virtual Public Listening Session Tįch'ádıı hé Gots'edı (Living with Wildlife) – Predators and Competitors (the “Délįnę 2021 PLS”) as a form of public hearing under its Rules for Hearings (October 23, 2019 version).

[2] On June 27, 2022, legal counsel for the Colville Renewable Resources Council, the Ayoni Keh Land Corporation and the Behdzi Ahda” First Nation (together, the “Dehlà Got'įnę”) brought a motion (the “Colville Motion”) to request protection for confidential Traditional Knowledge information under the SRRB’s Rules for Hearings (in particular referring to: Rule 3.6 Board authority to vary rules; Rules 12.21-23 on confidential treatment; and Rules 15.2, 15.4, and 15.5 on motion filing procedure). Relevant excerpts from the SRRB Rules for Hearings are attached to this Ruling (Appendix 1).

[3] Rules 12.21 - 12.23 of the SRRB’s Rules for Hearings allow parties to request confidential treatment of confidential, proprietary or sensitive information (including Traditional Knowledge) in a hearing. These rules contemplate that the motion for confidentiality will be made before the confidential information is disclosed.

[4] The Motion seeks to protect confidential Traditional Knowledge information under the SRRB’s Rules for Hearings Sections 12.21 and 12.22. The information was provided during the Délįnę 2021 PLS by an Elder as part of the Fort Good Hope witness panel. The Motion explains that the Elder shared Traditional Knowledge about a geographical feature of the landscape of Dehlà Got'įnę traditional territory. The Motion explains the information is sacred and a family member of the Elder who resides on the traditional territory of Dehlà Got'įnę requests the information be treated as confidential. Dehlà Got'įnę agrees.

[5] The Colville Motion states that during the Délįnę 2021 PLS, the Traditional Knowledge was inadvertently disclosed and shared. The Colville Motion states the information must be kept private and explains there are specific protocols for sharing confidential Traditional Knowledge (at paragraph 6). The Colville Motion outlines the circumstances by which confidential Traditional Knowledge that belongs to both Fort Good Hope members and Dehlà Got'įnę was shared by a Food Good Hope member (at paragraphs 19 and 21).

[6] The Colville Motion requests confidential treatment of specific limited portions of oral evidence given by the Elder sitting on the Fort Good Hope witness panel during the Délįnę 2021 PLS. The Colville Motion seeks to protect the confidential information on the record by redacting the confidential Traditional Knowledge from the Délįnę 2021 PLS transcript (including electronic copies). The SRRB prepared audio and visual recordings of the Délįnę 2021 PLS, which it also considered as potentially subject to the relief requested in the Colville Motion.

Preliminary Matter

[7] The Colville Motion also sought to limit service of the Colville Motion to Fort Good Hope Renewable Resources Council. The SRRB considered this request to limit service as a preliminary matter. The Colville Motion sought to vary Rule 15.5, which requires motions to be served on all parties, in order to avoid drawing attention to the information and increasing the likelihood of its disclosure (at paragraphs 27-29). The Colville Motion requested the SRRB use its powers under Rule 3.6 to vary Rule 15.5.

[8] The SRRB Rules regarding the protection of confidential information address Traditional Knowledge (Rule 12) and Motions (Rule 15). Rule 15.5 requires that motions be filed in writing with copies served on parties. Rule 3.6 permits the SRRB to vary its Rules if the SRRB considers it necessary to do so for a fair determination of an issue. The SRRB considered whether it had reason to vary its Rules to restrict hearing parties' opportunity to make submissions on the Colville Motion.

[9] The SRRB decided it would not vary its rules, which direct that parties get notice and the opportunity to respond as a matter of procedural fairness. The SRRB has a consistent practice of providing notice to parties. The SRRB recognized the importance of procedural fairness for all parties, and weighed that against the risks presented in the Colville Motion at paragraphs 27-29. The SRRB determined the possibility of further harm arising from inviting party submissions was remote and could be mitigated by sharing a version of the Colville Motion with personal identifying information of the witness redacted.

Notice to Parties and Opportunity to Respond

[10] In line with its decision on the preliminary matter, on August 11, 2022, the SRRB gave notice and invited submissions from all parties on the Colville Motion. The SRRB provided a version of the Colville Motion, with redactions. That version of the Colville Motion is attached to this ruling (Appendix 2). The deadline for submissions was August 25, 2022.

[11] The SRRB specifically and particularly invited and sought to consider account for submissions from Fort Good Hope because the Colville Motion requests confidential treatment for evidence submitted by a member of the Fort Good Hope Renewable Resources Committee witness panel, the Traditional Knowledge also belongs to members of Fort Good Hope, and Fort Good Hope has a direct interest in the treatment of its evidence by the SRRB.

[12] On August 25, 2022, legal counsel for Food Good Hope Renewable Resources Council wrote the SRRB to provide their consent to the Colville Motion and support the remedies sought by the Motion.

[13] No other submissions were received.

Ruling on Motion and Reasons

[14] The SRRB recognizes and affirms the importance of receiving Traditional Knowledge evidence as important to the fulfillment of its mandate. The SRRB acknowledges the culturally significant role Elders have in the retention and sharing of Traditional Knowledge. This includes Traditional Knowledge that may be sacred or subject to specific protocols for sharing.

[15] The SRRB assessed the risk of irreparable harm to the Deha Got'İne from disclosure of the information. The SRRB determined the risk of irreparable harm is real and substantial. The SRRB considered the release of the Déİne 2021 PLS transcript (including electronic copies,

audio and visual recordings) without protecting the confidential information identified by the Colville Motion poses a serious threat to the interests of Dehlà Got'jñę. The SRRB recognizes that, in the circumstances, the Dehla Got'jñę have no alternative to protect the information other than a confidentiality motion. The SRRB was influenced by the consent from Fort Good Hope for the motion and its relief, and took into account the absence of any party submission opposing the motion.

[16] The SRRB weighed the negative and positive effects of the relief requested. The SRRB concluded the positive impact to the public interest in supporting effective co-management proceedings in these circumstances outweighs the negative effect of confidential treatment to the public interest in open proceedings.

[17] The SRRB decided that redacting the information would:

- a) not materially diminish the evidentiary value from the confidential Traditional Knowledge evidence of the Elder in question to the issues in the Déljñę 2021 PLS; and
- b) would not materially impede other parties' opportunities to make complete submissions at this stage of the Déljñę 2021 PLS, given that final written submissions have already been received.

Orders

Therefore, pursuant to Rule 12.23 of the SRRB's Rules for Hearings, the SRRB makes the following orders:

1. The SRRB approves the request to protect certain confidential information about a geographical feature of the landscape of Dehlà Got'İnë traditional territory shared by an Elder sitting on the Fort Good Hope witness panel during the Délİnë 2021 PLS, and this information shall be granted confidential treatment.
2. The Délİnë 2021 PLS transcript, as well as audio and video recordings of the Délİnë 2021 PLS, available on the public registry shall be modified to strike the confidential information of a graphical feature of the landscape of Dehlà Got'İnë traditional territory from public versions of the transcript, audio and video recordings in all languages in which they may be available.
3. The specific sentences or phrases to be treated confidentially shall be confirmed and redacted from the public record by the SRRB following consultation with Colville Lake and Fort Good Hope hearing parties, or their legal counsel.

Ordered on 10/31/2022 [DATE].



Camilla Tutcho
Camilla Tutcho, Acting Chair

on behalf of the Board: Samuel Hache, Faye D'Eon-Eggertson

Appendix 1
Excerpts from SRRB Rules for Hearings



Déline 2021
Public Listening
T'ich'ádii hé Gots'edii
Living with Wildlife



...

2.1 In these Rules:

“Document” includes any record or information in written, photographic, electronic or other form.

“Elder” means a member of a Sahtú community or a Sahtú Organization recognized as such in accordance with Sahtú culture, customs and traditions.

“Hearing” includes a hearing of a management proposal, the hearing of a Motion, a written Hearing, an electronic Hearing, a Joint Hearing, Public Listening Sessions, or any other proceeding which the Board deems to be a hearing, and all the procedures related to a Hearing from the time when the Board issues a Notice of Hearing until the time when the Board issues a decision on the subject matter of the Hearing.

“Motion” means a written or oral request, including any supplementary materials supporting the request, made by a Party to the Board, for a ruling or an order in a Hearing and includes a Motion made by the Board.

“Party” means a person, organization or a department of government referred to in Rule 8.1 that is participating in a Hearing.

“Public Listening Sessions” means two or more public events which together have been deemed by the Board to be a Hearing.

“Traditional Knowledge” means knowledge and values, which have been acquired through experience, observation, from the land or from spiritual teachings, and handed down from one generation to another.

...

3.3 The Board shall give these Rules such fair, large and liberal construction as best ensures just, expeditious and fair consideration of issues arising under these Rules and consistency with the principles of natural justice and procedural fairness.

3.4 To the extent consistent with its duty of procedural fairness, the Board will emphasize flexibility and informality in the conduct of its Hearings.

3.5 Where any procedural matter is not provided for in these Rules, the Board may at any time give directions governing the procedure to supplement these Rules that it considers necessary for the fair determination of an issue.

3.6 On its own initiative or at the written or oral request of an individual, body or agency participating in a Board process under these Rules, the Board may dispense with, vary or supplement any part of these Rules that it considers necessary for a fair determination of an issue by way of a direction on procedure.

3.7 On its own initiative or at the written or oral request of an individual, body or agency participating in a Board process under these Rules, the board may dispense with, vary or supplement any part of these Rules that it considers necessary or desirable to respect and incorporate Sahtú cultural values, knowledge, customs and traditions into Hearings by way of a direction on procedure.

3.8 The Board may amend or vary these Rules at any time.

...

4.9 The Board, in its discretion, may hold a Hearing comprised of two or more Public Listening Sessions over a period of time exceeding six months in order to encourage increased participation of the Renewable Resources Councils, Participants and the public in the Hearing

...

5.0 Notice of Hearings

5.1 For the purpose of providing Notice of a Hearing, the Board shall:

- (a) provide written notice to the Applicant, all Sahtú Organizations, relevant government departments and any relevant wildlife management authorities;
- (b) post a Notice of a Hearing on the Registry; and
- (c) publish the Notice of a Hearing in one or more media sources, which may include newspapers, radio, internet-based media, community posters, social media and any other media which the Board in its discretion may choose to use.

5.2 Notice of a Hearing will be given at least 45 days before the Hearing date.

5.3 All Parties intending to participate in a Hearing shall notify the Board of their intentions within the time period specified in the Notice of a Hearing.

5.4 A Notice of a Hearing shall contain:

- (a) a summary of the purpose of the Hearing;
 - (b) identification of the issues which the Board proposes to address at the Hearing;
 - (c) instructions for accessing any materials relating to the Hearing on the Registry;
 - (d) an invitation for interested persons to participate in the Hearing and provide submissions regarding the subject matter of the Hearing and how it may affect them;
 - (e) a schedule showing the time limits for filing and serving any written materials for the Hearing; and
 - (f) any other information and procedural requirements that the Board considers necessary.
- 5.5 The Board may, in its discretion and consistent with Rules 4.6 and 4.7, provide a Notice of a Hearing through the use of workshops in affected Sahtú communities.

...

10.1 A Party intending to rely on a Document or evidence in a Hearing, including a public Hearing, shall file the Document within the time specified by the Board. The Board shall post the Document or evidence on its public registry and notify the Parties to the Hearing.

...

12.2 The Board may decide which issues it will consider at a Hearing and notify the Parties of such decision. The Board, in its discretion, may decline to consider submissions or evidence that are not relevant to the issues being considered by the Board at a Hearing.

12.3 The Board may request written or oral recorded submissions from Parties be filed with the Board and delivered to the other Parties within the time period established by the Board.

...

12.11 A Party advancing a position to the Board shall bear the burden of introducing sufficient evidence to support its position.

...

12.18 The Board will encourage the provision of and will consider information provided by Elders and Traditional Knowledge, including oral history and local knowledge, submitted during a Hearing.

12.19 The Board may make arrangements to secure information from or hear the testimony of an Elder or the holder of Traditional Knowledge at any time during a Hearing.

12.20 The Board may modify the Rules to accommodate customary protocols with respect to sharing of Traditional Knowledge.

12.21 Any Party seeking to protect confidential, proprietary or sensitive information (including Traditional Knowledge) in a Hearing may make a Motion requesting such information be protected.

12.22 A Motion to protect confidential, proprietary or sensitive information should include the following information, as applicable:

- (a) A brief description, in general and non-confidential terms, of the nature of the information which the Party seeks to protect;
- (b) A description of the privacy or confidentiality issues associated with the information which the Party seeks to protect;
- (c) The reason why the Party is asking that the information be protected, including any specific harm that could result if the information is not protected; and
- (d) An indication of whether the Party seeks to protect all or only part of any specific document or oral submission.

12.23 Where the Board approves the request to protect such information, the Board will issue a decision setting out the arrangements for receiving the evidence and outlining how the evidence is to be treated on the public record including whether and how it will be posted to the public registry or included in proceeding transcripts and any other terms appropriate in the circumstances.

...

15.2 Any issue requiring a ruling or decision that arises in the course of a Hearing shall be brought to the Board's attention by way of a written Motion.

...

15.4 A Motion shall include a clear, concise statement of the relevant facts, the details of the ruling or decision being sought and the reasons why the ruling or decision should be granted.

15.5 All Motions in writing shall be filed with the Board and copies served on all the Parties.

APPENDIX 2 -

Version of the Colville Motion circulated by the SRRB on August 11, 2022

SAHTU RENEWABLE RESOURCES BOARD

("SRRB" or "Board")

Deline 2021 Virtual Public Listening: Tłch'ádıı hé Gots'edi (Living with Wildlife) – Predators and Competitors

("Deline PLS 2021")

MOTION TO PROTECT CONFIDENTIAL TRADITIONAL KNOWLEDGE

Colville Lake Renewable Resources Council
Ayoni Keh Land Corporation
Behdzi Ahda" First Nation

(collectively, "Dehlá Got'ıne")

Overview

1. On April 25-29, 2022, the SRRB conducted the Déłıne PLS 2021, to address the topic of Tłch'ádıı hé Gots'edi (Living with Wildlife) – Predators and Competitors.
2. The Dehlá Got'ıne bring a motion to request that confidential, proprietary, and sensitive Traditional Knowledge, shared in the Déłıne PLS 2021, be protected pursuant to Rule 12.21, 12.22 12.23, 15.2, 15.4, and 15.5 of the Rules for Hearings for the SRRB, dated October 23, 2019 (the "Rules").
3. ██████████ an Elder, representing Fort Good Hope, shared Traditional Knowledge about a geographical feature of the landscape of Dehlá Got'ıne traditional territory.
4. The Traditional Knowledge is sacred and belongs to ██████████ family and the Dehlá Got'ıne. ██████████ came to this information through ██████████ ancestors and their connection with the landscape of Dehlá Got'ıne traditional territory.
5. ██████████ who is a member of the Dehlá Got'ıne, resides on the traditional territory of the Dehlá Got'ıne, ██████████ has stated that he wishes that this Traditional Knowledge should remain confidential and the Dehlá Got'ıne are in agreement.
6. The confidential Traditional Knowledge is sacred to ██████████ family and the Dehlá Got'ıne and should not have been shared. The sacredness of the Traditional Knowledge is diminished if it is widely shared in a public setting and therefore must be kept private and confidential. The confidential Traditional Knowledge has been in ██████████ family for generations and the Dehlá Got'ıne since time immemorial. There are specific protocols for

sharing this confidential Traditional Knowledge, and it was not appropriate to do so in a public hearing/ listening session.

7. Dehlá Got'jne seeks to protect the confidential Traditional Knowledge by striking a few sentences of the Deline PLS 2021 written record, and audio recordings of the Deline PLS 221 be managed in such a way as to protect the confidential Traditional Knowledge.

Decision Sought

8. The Dehlá Got'jne seek the following:
 - a. That parties to be served with motion materials be limited to Fort Good Hope RRC;
 - b. That the confidential Traditional Knowledge be removed from any items posted to the public registry;
 - c. Any copies of documents (including electronic copies) within SRRB's possession containing the confidential Traditional Knowledge be destroyed and replaced with copies in which the confidential Traditional Knowledge has been redacted;
 - d. In the alternative to (b), that any copies of documents (including electronic copies) within SRRB's possession containing the confidential Traditional Knowledge be placed in sealed envelopes, marked "CONFIDENTIAL", and placed in secure storage.

Reasons why the Decision should be Granted

9. The *Sahtu Dene Metis Comprehensive Land Claim Agreement* (the "Treaty"), at 13.8.18, empowers the SRRB to "make rules respecting the procedure for making applications, representations and complaints to it, including the conduct of hearings before it, and generally respecting the conduct of any business before it. The Board has done so by enacting the Rules.
10. Rule 2.1 defines "Elder" as meaning "a member of a Sahtu community or Sahtu Organizations recognized as such in accordance with Sahtu culture, customs and traditions.
11. Rule 2.1 also defines "Traditional Knowledge" as meaning "knowledge and values, which have been acquired through experience, observation, from the land or spiritual teachings, and handed down from one generations to the another."
12. Rules 12.21, 12.22, 12.23 provide as follows:
 - 12.21 Any Party seeking to protect confidential, proprietary or sensitive information (including Traditional Knowledge) in a Hearing may make a Motion requesting such information be protected.

12.22 A Motion to protect confidential, proprietary or sensitive information should include the following information, as applicable:

(a) A brief description, in general and non-confidential terms, of the nature of the information which the Party seeks to protect;

(b) A description of the privacy or confidentiality issues associated with the information which the Party seeks to protect;

(c) The reason why the Party is asking that the information be protected, including any specific harm that could result if the information is not protected; and

(d) An indication of whether the Party seeks to protect all or only part of any specific document or oral submission.

12.23 Where the Board approves the request to protect such information, the Board will issue a decision setting out the arrangements for receiving the evidence and outlining how the evidence is to be treated on the public record including whether and how it will be posted to the public registry or included in proceeding transcripts and any other terms appropriate in the circumstances.

13. As the relevant sections of Rule 12 require a motion to be brought, the following parts of Rule 15 are pertinent:

15.2 Any issue requiring a ruling or decision that arises in the course of a Hearing shall be brought to the Board's attention by way of a written Motion.

[...]

15.4 A Motion shall include a clear, concise statement of the relevant facts, the details of the ruling or decision being sought and the reasons why the ruling or decision should be granted.

15.5 All Motions in writing shall be filed with the Board and copies served on all the Parties.

14. The Rules provide for flexibility for how the SRRB is to apply them. Rule 3.6 states:

3.6 On its own initiative or at the written or oral request of an individual, body or agency participating in a Board process under these Rules, the Board may dispense with, vary or supplement any part of these Rules that it considers necessary for a fair determination of an issue by way of a direction on procedure.

15. Section 3.1 Rules also set out the principles that will guide how the Rules will be interpreted and applied. Specifically, the Objectives set out in sections 1.1.1 and 13.1.1 of the Treaty are to guide the Board. The relevant portions of these Objectives include:

1.1.1

[...]

(c) to recognize and encourage the way of life of the Sahtu Dene and Metis which is based on the cultural and economic relationship between them and the land;

[...]

(f) to provide the Sahtu Dene and Metis with wildlife harvesting rights and the right to participate in decision making concerning wildlife harvesting and management;

[...]

(g) to provide the Sahtu Dene and Metis the right to participate in decision making concerning the use, management and conservation of land, water and resources;

13.1.1

[...]

(d) to respect the harvesting and wildlife management customs and practices of the participants and provide for their ongoing needs for wildlife;¹

Protecting the Confidential Traditional Knowledge

16. The objectives of the Treaty and the establishment of the SRRB is to provide for co-management over wildlife in the Sahtu Settlement Area, so that Indigenous communities in the Sahtu, such as the Dehlá Got'jne, can fully participate in decision-making about wildlife, in a way that is consistent with their culture and their relationship with the animals and the land.

17. As such, the SRRB must be a forum where participants, especially Elders, feel comfortable sharing Traditional Knowledge.

¹ Treaty, 1.1.1 and 13.1.1.

18. In cases of inadvertent disclosure of confidential Traditional Knowledge, the SRRB must be able to act nimbly to reduce the harm of such disclosure.
19. The SRRB must also remain cognizant of the family linkages between neighbouring communities, such as Dehlá Got'jne and Fort Good Hope. Due to these linkages, it may be the case that Fort Good Hope members are in possession of Traditional Knowledge that also belongs to Dehlá Got'jne.
20. That being the case, it is important for the SRRB to be attentive to situations when one community is seeking protection for its information when it has been disclosed by a member of a different community.
21. In our case, the confidential Traditional Knowledge was disclosed by a member of Fort Good Hope, who had this information by virtue of ■■■ familial relationship with Dehlá Got'jne.
22. Pursuant to Rules 12.21 and 12.22, Dehlá Got'jne therefore requests that this information be redacted from any items posted to the public registry.
23. Moreover, to reduce the risk of inadvertent disclosure in the future, Dehlá Got'jne requests that any copies of documents (including electronic and audio copies) within SRRB's possession containing the confidential Traditional Knowledge be destroyed and replaced with copies in which the confidential Traditional Knowledge has been redacted.
24. In the alternative to the relief sought in paragraph 23, Dehlá Got'jne requests that any copies of documents (including electronic copies) within SRRB's possession containing the confidential Traditional Knowledge be placed in sealed envelopes, marked "CONFIDENTIAL", and placed in secure storage.

Limiting Number Of Parties Who Participate In Motion

25. We recognize that Rule 15.5 provides that motion materials should be served on all parties in the proceeding.
26. However, considering the subject matter of the motion, we ask that the Board use its powers under Rule 3.6 to vary on Rule 15.5, to permit service only to Fort Good Hope Renewable Resource Council ("FGH RRC") as it is "necessary for a fair determination" of this motion.
27. Dehlá Got'jne are sensitive to the fact that information that should have been kept confidential was shared in an open hearing. Serving all the parties in the Deline PLS 2021 would only draw attention to the confidential Traditional Knowledge and increase the likelihood of disclosure.

28. Moreover, the Traditional Knowledge sought to be protected is not central to the matter before the Board, and is of tangential relevance to any of the issues before it. Striking the confidential Traditional Knowledge from the record cannot be realistically expected to prejudice any party.

29. The only party with a direct interest in the determination of this matter is FGH RRC, since it was a Fort Good Hope member who shared this knowledge.

30. As such, we request that the Board permit the motion materials to be served only upon FGH RRC and no other party.

SUBMITTED June 27, 2022 to the Sahtu Renewable Resources Board by Ms. Jennifer Duncan, Legal Counsel to Dehlá Got'ıne and Mr. Larry Innes, OKT Law, Legal Counsel to Dehlá Got'ıne.

