

# **BCWF Native Affairs Committee Report - 2011**

## **Some Background**

For the past couple of years I have been the Native Affairs representative for Region 1. After last year's BCWF convention when Rod Wiebe took on the president's job, I agreed to take on the position of chair of the Native Affairs Committee.

In the past, I served on the Vancouver Island Regional Advisory Committee. It was a committee made up of representatives from key social and economic sectors in this region where First Nations treaty negotiations were occurring. A RAC was supposed to be advising both provincial and federal negotiators about issues in the region which should be taken into consideration in treaty negotiations. Although we worked diligently at doing this I often felt, along with other committee members, that our voices were not being heard. I spent five years working on this committee when we had a change of government and the Province chose to disband the RACs and cut off any public input. Even though I often thought that the governments (provincial and federal) were only paying lip service to the process, at least we had a place to voice our concerns.

At the present time the BC government is in negotiations with 47 First Nations groups. There are still many Aboriginal groups that have so far not agreed to be a part of the process. In fact, approximately 40% of BC's First Nations do not recognize Provincial or Federal authority over their traditional territory.

The Ministry of Aboriginal Relations and Reconciliation website promises that each new treaty will bring "greater prosperity" for all British Columbians. Treaties are supposed to bring more "certainty" over right to lands and resources. One of the Treaty Principles listed on the Ministry website states that "hunting, fishing and recreational opportunities on Crown land should be ensured for all British Columbians" We need to make our voices heard to ensure that this actually happens. If Crown land becomes treaty settlement land it is "fee simple" or private land. The hunting, fishing and recreational opportunities are lost forever.

## **Klappan Blockade**

In the fall of 2009 blockades in the Klappan area of Region 6 impacted legal resident hunters and many other British Columbians. Members were upset that the rights of the legal hunters

were not upheld and at the loss of legal public access to Crown land. President Rod Wiebe and the Native Affairs Committee sent letters of protest to the Ministry of Environment, DFO and the RCMP. The lack of support from either the RCMP or the Province was extremely frustrating.

BCWF looked at legal options but was advised that costs would be prohibitive even if we won because FN's would certainly have appealed to higher courts. Although we don't have a process to talk to First Nations directly, it remains an option. In these sorts of situations it might be helpful to engage in a dialogue with First Nations to try to resolve the issues ourselves. This would mean some serious relationship building between the parties. Although we are urged to do this, government appears either unwilling or incapable of facilitating stakeholder/FN dialogue.

Before the summer hunting season, Rod Wiebe and I with the help of other BCWF members put together an article for the Outdoor Edge giving advice to members on what to do if one encountered a First Nations Blockade. Another blockade happened at Stookes Landing Boat Launch in Northern BC before the article was even printed. This situation was diffused quite quickly, but only after a promise by the Ministry of Environment of the possibility of a Collaborative Wildlife Management Agreement.

There is an uncomfortable trend toward appeasement to settle these protests quickly.

However, in the case of the Stookes Landing incident the comment of Minister George Abbot at our convention in Prince George to uphold the public right to access crown lands may have resonated through several ministers. Regardless, it appears First Nations are seeing that blockades get quick action. The actual Klappan Blockade worked out well for First Nations members in Region 6. Changes that significantly affected resident hunters were made to the 2010-2011 Hunting Season Regulations as a direct result.

In October the members of Prince Rupert Rod and Gun Club voiced their concerns loudly and clearly by making the following motions to the Skeena Hunters Advisory Board. All the motions were passed unanimously.

Motion # 1 That the bull moose season in MUS 6-17 to 6-19

6-21 to 6-29 be change from Aug. 20 to Oct. 31

to Aug. 20 to Nov. 7

Motion # 2 That the bull moose season in the Klappan be changed

From Sept. 15 to Oct. 15 to Sept. 8 to Oct. 22(see map F26A)

Motion # 3 Remove the 400m rut closure on highway 37 from the junction  
of highway 37 and Hwy 37A to the Yukon boarder.

Motion # 4 Remove the 400m rut closure on Teslin Lake south of the  
North end of Shaman Island.

Also, the BCWF has made formal argument for all those regulation changes brought in 2010 be revised to pre-blockade status. Other BCWF members from around the province have made similar requests.

### **Updated Procedures for Meeting Legal Obligations When Consulting First Nations**

The Provincial government set out new guidelines in May of 2010 for provincial offices working in areas that might have an impact on First Nations Land Claims and working relationships with First Nations, The government must keep on top of ongoing court decisions. These procedures reflect case law up until April 2010.

The new procedures don't replace or supersede ongoing relationships with First Nations or existing treaties that the Province might have with First Nations. They just add another layer of complexity and create more paperwork for officials to work through. These guidelines must influence the way the police and government official's deal with first nation's protests and blockades.

### **2010 AGM Resolutions**

At the 2010 AGM/Convention, a resolution was passed to request **“that the Province provide for meaningful third party consultation early in the process so well structured and equitable agreements can be negotiated for the benefit of all parties.”** This would give the BC Wildlife Federation membership and the public the chance to voice concerns about public access early on in the First Nations Treaty process As well it would allow informed input from resident hunters, fishermen and outdoor enthusiasts.

During the year, the BCWF office, President Rod Wiebe set up numerous meetings with the various Ministry officials, as well as personally meeting with the politicians and government staff in charge of setting up the Collaborative Wildlife Management Agreements. We have been

actively pursuing opportunities to provide third party consultation. As issues came up letters were sent out and more contacts made.

I checked out the Ministry of Aboriginal Relations and Reconciliation website to see what it had to say on consultation. Under frequent questions it says” British Columbia's role in treaty negotiations is to: (last point) “ensure that all interested parties have the opportunity to be consulted “. Later it talks about consultation, but it is a little unclear who is being included in the consultation.

At the end of the section it says” in addition, the Ministry engages in discussions on specific issues with particular groups, local government representatives and First Nations not in the treaty process.” Is engaging in discussions the same as third party consultation? I guess it depends on your interpretation. So far it hasn't worked for our members.

### **Discussions with Government**

In November we had a meeting with Deputy Minister of Natural Resources **Doug Konkin**, Jodi Shimkus, Assistant Deputy Minister and Tom Ethier, Director of Fish and Wildlife in Victoria. The main message brought forth from this meeting was that if there are Treaty Negotiations or Wildlife Management Agreements being worked on in one of our regions, we should encourage local BCWF club/Region representatives to be contacts rather than those from BCWF itself. Ministry staff will raise the issue of having BCWF involved with first nations as they work through the process. First Nations would be encouraged to work with us. However, Treaty Negotiations will not be a tripartite process. We can have a role, but First Nations would have to agree first. It is a government to government process and the Provincial government speaks for us and represents our interests.

Once the parties are into the “formal stage” of an agreement, government would be willing to share the “language” of the proposed agreement with BCWF. However it is still preferred that only a local BCWF representative is the contact. Government was not at all interested in hearing from BCWF executive or members who are not directly affected. As BCWF members hunt and fish and enjoy the outdoors in all regions I would argue that we are all affected. BCWF and the Native Affairs Committee will continue to protest this situation.

At this same meeting we were told that there is a plan to formalize wildlife management with First Nations in the Tahltan area. The Ministry has set out some items to work on, such as a game check/survey mechanism where resident hunters and first Nations report through

compulsory inspection. This would give game managers useful data. A similar system could be set up with the Kwadacha FN.

Collaborative Wildlife Agreements were brought up. In November everything seemed to be in limbo partly because the Ministries were in the middle of being shuffled around and staffing was uncertain. .

It was mentioned that perhaps government might look at involving BCWF in a Collaborative Wildlife Agreement process. The suggestion was that we should work at information sharing with the Ministry and they would let BCWF know what is going on. We can at least ask about this again in the future.

One of the Ministry officials stated that they regularly consult with BCWF and the Guide Outfitters when changes are being made to wildlife management. As this appears to come at the end of the discussions with First Nations, he understands it may be frustrating to the BCWF members. It was suggested that BCWF be more proactive. If government can't engage us in the treaty process, then we should send our points of view on issues to government well ahead of time. If the Ministry has the information they might be able to bring the ideas forward to the table.

Rod Wiebe, BCWF President, stated that this was a good idea, but he feels that government has a responsibility to bring us together with First Nations as mutual stakeholders on fish and wildlife issues. The government to government model does not bring us together. It was mentioned that our members in the north and the rest of the province are getting frustrated.

Rod Wiebe said that he has seen a trend over the past few years where decisions that impact our members are made and our input is not sought. The resident hunters seem to lose out. The BCWF Wildlife Committee asks that resident hunters get the 8 weeks of hunting back that has been lost in Region 6. Government has addressed the concerns of the Tahltan re the discrepancy in animal inventory numbers by creating a method to compile an accurate account of resident and First Nations hunter harvest. Why can't we have the 8 weeks back?

We were told that the Ministry is working on it. They cannot do anything now until the Collaborative Wildlife Management Agreement is in place. They have to err on the side of sustainability for First Nations use. At the present they are under fiscal pressure. There isn't enough money to fund the studies that produce the needed data.

It was mentioned that by making changes as a result of discussions with the Tahltan, government has created more certainty for the resident hunter. There might have been zero resident access otherwise. Whitetail has been opened up and the Ministry stayed the line with the Kwadacha. Tom Ethier, Director of Fish and Wildlife, stated that hunter recruitment and retention are taken seriously in the Ministry. It is talked about in their offices every day.

### **Vancouver Island Regional Wildlife Management Society (VIRWMS)**

In October Rod Wiebe was contacted about the possibility of reactivating the Vancouver Island Regional Wildlife Management Society (VIRWMS). Evidently the Society is still technically alive, although not active. Rod Wiebe is still a director on the Society but he felt that he should pass this position on to either a Region 1 Native Affairs person or to the BCWF Native Affairs Chair if the Society does become active. It appears that the Maa-Nulth is keen to try to gain BCWF support for recognition of First Nations protocols.

To form a Regional Wildlife Management Advisory Group it takes more than one First Nations group. With only the Maa-Nulth willing to participate, this might not be a go. Rod suggested that perhaps we don't need to reopen VIRWMS. We could just set up meetings with Region 1 Executives and the Maa-Nulth to discuss the protocols and the possibility of BCWF Regional support. It is encouraging if BCWF can make useful contact with First Nations in Region One.

### **Grant Narrows Park located at Pitt Lake**

In December, I received an email providing me with information that one of Metro Vancouver's smallest Parks, Grant Narrows (only 11 hectares) located at Pitt Lake, has been lost to provincial control. The park is made up of four smaller parcels of land. Two parcels were leased to Metro Vancouver by the province. The leases expired as of December 31, 2010 and the province refused to renew them, stating that there are "outstanding land claims in the area by Katzie First Nation". Metro Vancouver is officially out of the picture. The province is in charge and has already had discussions with the Katzi Nation on possible park management strategy.

Former Environment Minister Penner did not promise that provincial or municipal parks would not end up part of first nations land claims. He was quoted in the Vancouver Sun as saying, "our goal in any negotiations is to maintain the land, ecological and recreational values that have resulted in a decision to designate a parcel of land as a park, conservancy or other form of protected area in the first place." In other words he is saying that even if the park is under first nation jurisdiction it will still be a park and operated and maintained as a park. I guess time will tell.

In the case of Grant Narrows, it is the main boat launch and gateway to private cabins on Pitt Lakes, to some of the best fishing areas in the Lower Mainland, to the West Side of Golden Ears Provincial Park as well as Pinecone Burke Provincial Park and Widgeon Slough. It is very strategically located. The province says that changes will not affect public facilities or boat access. The future impact of native land claims on parks and recreational areas throughout the province is of great concern to all of our members.

### **Sentencing in the Morris Case**

We did have exciting news for conservation in December 2010, coming out of the Cowichan Valley. Five First Nations people who were found guilty in 2006 of hunting and killing eight endangered Roosevelt Elk near Lake Cowichan on Vancouver Island in February 2002, have lost their court challenge. Sentencing was set to proceed January 10, 2010.

Convictions were held up in 2006, until Judge Brian Mackenzie listened to Aboriginal and Treaty arguments. The Crown disallowed these arguments on the grounds that conservation needs come before any other rights. The elk that were killed were part of a conservation effort and the population was considered endangered at the time of the kill. Even if there were treaty rights to hunt, these rights would not allow the extinction of the resource. One Crown witness, 87 year old Angus Smith, a Cowichan First Nations member, testified that "to properly use the resource you ensure that it does not disappear."

On sentencing day the courtroom was packed. Wilderness Watch members, members of the Chemainus, Ladysmith and Valley Fish and Game Clubs, Rod Wiebe, BCWF President and numerous Conservation Officers came to hear the proceedings.

The four people convicted will not serve jail time, even though it was requested by the crown council. Instead there was a mixture of probations, fines and prohibitions under creative

sentencing provisions. Somehow this did not seem quite enough considering much of the elk meat was left unused in the bush. However, after over 2,000 hours of court time, the precedent has been set and the message has gone out that “conservation does come first”, even before first nations needs. The Conservation Officers seemed to think the judgment will make their work easier.

### **Barter and trade of wildlife**

There has been a change in provincial government policy that allows aboriginals to barter and trade wildlife cross border similar to terms of the Nisga’a agreement. This would be under a provincial permitting process. BCWF members have some concern that government does not have sufficient compliance and monitoring structures in place to prevent law breaking around this trade. There could be serious impacts on fish and wildlife resources as a result BCWF had no input into this decision. Once more we were notified after the fact, without the opportunity for consultation or possible input.

## **Region 8 and the Okanagan Nation Alliance**

On a brighter note, I spoke with Rick Simpson, who co chairs the Region 8 fisheries committee with Dr. Rick Wicket. He had encouraging news from the Okanagan. It seems that Region 8 has a different relationship with First Nations on fisheries issues, than some of the other BCWF regions. He told me that they work closely with the Okanagan Nation Alliance (ONA) and their fisheries department to do enhancement and restoration work in their area. With huge lay offs in the former Ministry of Environment, the region was left with very few provincial people doing on the ground fish work and no money to pay for the projects

The ONA has skilled staff members and fish technologists who are experienced and have access to funding that is vitally needed. They have ended up being the only people with troops in the streams.

Rick’s local club is the steward of Vernon Creek. The Duck Lake Reserve is right in the middle of it. A decision was made to approach the first nation band and see if a partnership might work. From this they have developed a long term working relationship with the band and Program Manager/Senior Fisheries Biologist with the Okanagan Nation Alliance Fisheries Department,

Howie Wright. The ONA has the resources and the expertise to help the volunteers. The clubs, the Region and first nations are working together for the good of the resource. I think that this is an encouraging model that could be looked at in more Regions.

### **Keith Lowes Report – William, Ahousaht and Lax Kw'aalams Appeals**

Our BCWF legal representative, Keith Lowes reported that the Williams and Ahousaht appeals were heard by the B.C. Court of Appeal in November and December respectively. BCWF was granted leave to intervene in the Lax Kw'aalams appeal to the Supreme Court of Canada along with B.C. Seafood Alliance on December 15, 2010. This appeal doesn't take place until February 17, 2011. Keith's report explains the status of the appeals in some detail a copy has been included with the Native Affairs Report for all to read through. It is worthwhile having Keith Lowes working with us on these appeals. Whatever the outcome think they will have a significant impact on how things are done in the province in the future.

An interesting turn of events in the SCC appeal of Lax Kw'aalams was the participation of the Province of British Columbia as interveners. This occurred after the original inclusion of a claim to aboriginal rights remaining. The Province has also been granted intervener status in Ahousaht. This is new and is possibly encouraging in that our Province is finally taking an interest in the impact of aboriginal rights on its citizens. Recently, it was reported that the Lax Kw'aalams appeal has been recorded and was broadcast on public television. The counsel for the Province of BC, Patrick Foy, was very effective and pointed in his presentation reminding the SCC that they were not searching to lay "blame" but to scrutinize the past declarations for error in law. Keith Lowes attended also to represent the interests of the members of the BCWF and their partners in the Fisheries Legal Access Program.

### **BCWF Native Affairs Committee**

I would like to reflect for a moment on the status of the Native Affairs Committee. Currently we do not have representation from all the Regions. I would encourage every Region President to work on finding a Region Native Affairs person. The committee needs to be active and informed.

If you have any information on Treaty negotiations or agreements in your area or any issue pertaining to Native Affairs, please pass it on to me or the committee member in your region. Information is strength and it gives us a springboard for future action.

In closing, I would like to thank past Native Affairs Chair, Rod Wiebe (now BCWF President), for all his help and coaching since I took on this job. I appreciate that he is a very busy man. However, he realizes the importance of this committee and continues to keep on top of the issues as they arise.

We all must understand that the future of hunting and fishing for our children and grandchildren is at stake.

Respectfully submitted by,  
Virginia Persson  
Chair, BCWF Native Affairs Committee