



Media Release

December 2, 2014

A Victory for the Peel Watershed

Earlier today Mr. Justice Ron Veale of the Supreme Court of Yukon announced his decision in *The First Nation of Nacho Nyak Dun et. al. v The Government of Yukon*, the lawsuit concerning the Peel Watershed launched by the First Nation of Nacho Nyak Dun, Tr'ondëk Hwëch'in, Canadian Parks and Wilderness Society Yukon Chapter (CPAWS Yukon) and the Yukon Conservation Society (YCS).

In his reasons for judgment, Justice Veale agreed with the plaintiffs that Yukon Government violated the land use planning process laid out in the Umbrella Final Agreement (UFA) with respect to the Peel Watershed Land Use Plan. The planning process will now return to the stage where Yukon Government ran it off the rails – the final round of consultation with First Nations and the public. The court order constrains Yukon Government to the modifications they previously proposed but the question of the amount of land protected and the question of access are off limits.

Upon hearing today's news Chief Ed Champion of the First Nation of Nacho Nyak Dun said, "We are very happy to see the courts honour and uphold the integrity of the Umbrella Final Agreement and Yukon First Nation agreements. We want to thank Justice Veale for all of his hard work and the thought and time he put into this decision."

"We're thrilled with the decision," says CPAWS Yukon Executive Director Gill Cracknell, "This is not just a victory for the plaintiffs, but for everyone who has given generously of their time, money, and voices to see the Peel Watershed protected."

The plaintiffs launched the legal proceedings on January 27, 2014, alleging that Yukon Government broke with the land use planning process laid out in the UFA, and incorporated in all the First Nations Final Agreements in Yukon. The plaintiffs sought to have the process set out in the UFA upheld and to see the planning through to a conclusion that would protect more than 54,000 square kilometres of wilderness in northern Yukon's Peel River Watershed from mining and other industrial development. The week of July 7 – 10th renowned lawyer Thomas R. Berger argued the landmark constitutional case in Yukon Supreme Court in front of a packed house. The case was then continued on October 24th to accommodate a deeper discussion focused on remedy.

Christina Macdonald, Executive Director of the Yukon Conservation Society, explained, "This is not just a victory for the Peel, but for land use planning across the Territory."

Chief Roberta Joseph of the Tr'ondëk Hwëch'in added, "The Peel River Watershed is as sacred to our people as it was to our ancestors, and through this decision today we have ensured it will remain so for our grandchildren."

The details of a community celebration to honour this historic victory will be announced by the plaintiffs in the near future.

Statement prepared by Thomas Berger, Q.C. re Reasons for Judgement –The First Nation of Nacho Nyak Dun et al. v. Government of Yukon:

This is a remarkable judgment. The land use planning process in the Umbrella Final Agreement signed by Canada, Yukon First Nations and the Yukon Government in 1993, and entrenched in the Constitution has been vindicated.

The collaborative process for long-term land use planning provided for in the UFA is unique in that it does not allow the Yukon Government to exercise complete authority over land use planning. Instead, it enables First Nations and Yukoners to play an important part in land use planning.

The decade-long land use planning process for the Peel Watershed began with the work of the Peel Watershed Planning Commission. In 2009, the Commission recommended that 80% of the Peel Watershed (over 68,000 square kilometres in extent, situate in the traditional territories of the First Nation of Nacho Nyak Dun, the Tr'ondëk Hwëch'in, the Vuntut Gwitchin, and the Tetlit Gwich'in) be protected, with 20% open to industrial development. This balance was struck by the Commission after years of study and consultation with all parties and with Yukoners.

The Government of Yukon had an opportunity when the Recommended Plan came out, to consider its position. In 2011, the Yukon Government advised that it did not dispute the main recommendations of the Recommended Plan. As the Court has found, the Yukon Government offered "criticism", but did not identify any specific changes to the Commission's detailed Recommended Plan. The Court has found that these were too "vague and general" and that the Commission was justified in determining that these should not be treated as proposed modifications.

Nevertheless, at the 11th hour, the Yukon Government sought to cast aside the Commission's plan, and substitute their own Government Plan, which left the matter of the amount of protected land almost wholly in their discretion.

As the Judge said at para. 216 "the Government of Yukon usurped the Commission's role in the planning process and introduced new substantive proposed modifications that were neither consulted on [at the appropriate stage] nor put to the Commission for consideration." The Judge went on "the process the Government has chosen, after seven years of collaboration, was a profound and marked departure from its previous approach."

The Judge said at para. 221, these "statements of preference for more balance and access were too vague and general, and failed to give detail sufficient for the Commission to address them."

In the result, the balance struck by the Commission, after consultation with the First Nations and Yukoners, has been upheld. The Court has directed that the final consultation with First Nations and Yukoners – which the Court has found was not fairly conducted by the Yukon Government – must be held again, but has also held that the Yukon Government does not have any authority at this final stage to derail the proceedings again.

The Umbrella Final Agreement provides for a unique, community-based, collaborative land use planning process. The vindication of this process is a great victory for the First Nations, the environmental organizations, and all Yukoners. In the end, one of the world's last great wilderness areas will be protected.

-30-

Media Contact:

Amber Church, 867-335-4884, achurch@cpawsyukon.org