

KEVIN O'REILLY - MLA FRAME LAKE
Water Management and Monitoring
Committee of the Whole—2019-2020 Operating Budget Review
Department of Environment and Natural Resources – March 10, 2020

MR. O'REILLY: Thanks, Madam Chair. I guess I would like to ask the Minister: there was a lot promised in the last Assembly about completing all the transboundary water agreements, but I don't think anything was actually signed. Can someone confirm that for me?

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. For further detail, I will ask, with your permission, the deputy minister to answer that question. Thank you.

CHAIRPERSON (Ms. Semmler): Deputy Minister.

MS. KELLY: Thank you, Madam Chair. We have a signed agreement with Alberta, a signed agreement with British Columbia. We have an intentions document that is ready to go out for consultation in the coming weeks with the Yukon, updating our 2002 agreement. We are still in discussions with Saskatchewan. Nunavut has alerted us to the fact that they would like to finish their water stewardship strategy and, then, begin engaging in discussions about a transboundary water management agreement. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Deputy Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. That is good information to have, but I don't think it really answered my question, which was: what was accomplished in the last Assembly with regard to these agreements? I am just going to leave that. We had a lot of discussion in the House and outside of the House about the Teck Resources project. The Minister had indicated that the transboundary water agreement with Alberta was going to protect us in some way. Could the Minister actually give us an explanation as to how that agreement will protect us from upstream development in the future? Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. For that detail, I will, with your permission, ask the deputy minister to provide that information. Thank you.

CHAIRPERSON (Ms. Semmler): Deputy Minister, Ms. Kelly.

MS. KELLY: Thank you, Madam Chair. Under the Mackenzie River transboundary waters master agreement, there is agreement among all Mackenzie River basin board jurisdictions to work together to maintain aquatic ecosystem health; manage water use sustainably for present

and future generations; respect the rights of each jurisdiction to manage water in its own use; provide early consultation and notification; and resolve issues cooperatively and harmoniously.

In our transboundary agreement with Alberta, we have used the water stewardship strategy that was developed collectively with Indigenous governments as our interests, and we have an agreement that includes a bilateral management committee that facilitates joint implementation of the agreement that classifies transboundary waters, establishes learning plans, and sets monitors and assesses the meeting of transboundary objectives. It also shares information and provides notification and consultation.

Our agreements include water quality and quantity objectives and monitoring and triggers for quality, quantity, and biology, as well, and learning about ground water, as well as including traditional knowledge in decision-making and classifying water bodies. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Deputy Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. Yes. I have read the agreements, as well. I understand that there is some information sharing, monitoring, and so on that is required, early notice of, perhaps, activities that might be happening upstream. What is actually in there to prevent changes to water quality and water quantity in a way that is going to adversely affect residents and the environment in the Northwest Territories? Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. At this point in time, I will ask the deputy minister to answer that question in detail. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you. Deputy Minister, Ms. Kelly.

MS. KELLY: Thank you, Madam Chair. We have access to upstream monitoring data, which allows us to have an early warning system of change. We can track changes in water quality coming from Alberta towards the Northwest Territories border. We also have the risk informed management approach where water bodies are classified based on risk. At the lower levels of risk, like a level 2, we have learning plans in place. As you move up to level 3, you set objectives. Level 4 is, if an objective is not met, the upstream jurisdiction does what they need to do to return the water quality, water quantity, or biology back to below the objective. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Deputy Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. That is helpful, but I am still trying to understand. Are there some teeth to these agreements in that our government could dispute or ask an upstream developer, the upstream government, to stop or cease putting something into the water that is

going to adversely affect us? Is that sort of authority found in the transboundary water agreements? Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. Again, for that detail, I will have to ask the deputy minister to provide the information. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Minister. Deputy Minister, Ms. Kelly.

MS. KELLY: Thank you, Madam Chair. The bilateral management committee is a venue for us to bring forward concerns. The agreement does not stop us from pursuing legal means. One of the important pieces of the master agreement is that each party to the agreement maintains the right to manage the use of water resources within their own jurisdiction, provided that they maintain the ecological integrity of shared waters.

In this case, if there was a development in Alberta that we were concerned about, we would use the bilateral management committee. If we could not agree at the bilateral management committee level, we would use the dispute resolution mechanism that is built into the transboundary agreement. If that still didn't get us where we needed to be, we are able to use legal means as necessary. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Deputy Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. Yes. I understand all of that. I believe in transboundary water agreements, just in case anybody's wondering. I do think that there is some value in having them. I just question whether this is really going to protect our waters in ways in which we need. With Teck Resources, GNWT did not intervene in the environmental assessment of that project. Can I have some explanation as to why our government did not intervene? Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. We are talking some corporate history here. Again, I am going to ask the deputy minister to answer this question. Thank you.

CHAIRPERSON (Ms. Semmler): Deputy Minister, Ms. Kelly.

MS. KELLY: Thank you, Madam Chair. In the case of Teck Resources, the proposed Teck Frontier mine did not predict any impacts to water beyond the Peace-Athabasca Delta from the project. The EA panel did not find the potential significant adverse effects to water quality, quantity, or fish or fish habitat. We have the mechanisms through the bilateral management committee to engage in discussions and ensure that we have adequate monitoring of quality and quantity, that we are getting the data from Alberta coming towards the border so that we

have an early warning system of change. That is the reason that we didn't participate in the environmental assessment process. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Deputy Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. I appreciate the words of the deputy minister. She jumped straight to the conclusions of the joint review panel. I'm not sure I share all of the findings, or agree with them all, but I still don't understand why our government didn't take the opportunity to intervene in that proceeding. Given the interests of Indigenous governments, downstream water users, I'm still trying to understand why our government wouldn't use that process to intervene and express our interests. I don't think I've had an explanation, so I'll ask again: why didn't we intervene? Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. For that detail, I'll have to ask the deputy minister. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Deputy Minister Kelly?

MS. KELLY: Thank you, Madam Chair. At the time, we were negotiating a transboundary water management agreement with Alberta that included the provisions that I have described so far for the bilateral management committee; notification or early warning system and additional monitoring, including at the border. We made the decision not to intervene, because we have that avenue for discussion with Alberta. In other cases, where we don't have a transboundary agreement with the jurisdiction, like [inaudible], we have intervened in those proceedings. Thank you, Madam Chair.

[...]

MR. O'REILLY: Thanks, Madam Chair. On page 73, there is a reduction in contract services for 2020-2021, and it's quite a drop from the previous years. Can I have an explanation? Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister.

HON. SHANE THOMPSON: Thank you, Madam Chair. For detail, I'll actually ask the deputy minister, with your permission, to answer that question. Thank you.

CHAIRPERSON (Ms. Semmler): Deputy Minister, Ms. Kelly.

MS. KELLY: Thank you, Madam Chair. In previous years, this contract services pays for analytical testing that cannot be done by Taiga Labs and needs to be contracted out, so that's

why we have some elevated numbers in previous years. It's also responsible for some of the equipment maintenance, which is why it's higher in previous years. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Deputy Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. I'd like to move on to a different matter. As I understand it, the land and water boards set financial security through the water licencing, but recently, our government has refused to accept security put forward that includes both land and water. I'd like an explanation as to why and what the fix is. Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. For that detail, I'll ask assistant deputy minister Richea. Thank you.

CHAIRPERSON (Ms. Semmler): Thank you. Mr. Richea.

MR. RICHEA: Thank you, Madam Chair. Under the Mackenzie Valley Resource Management Act and under the Waters Act, which is territorial, it is the authority of the land and/or water boards of the territory to set security and water licences and land use permits. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. With all due respect, that's exactly what I said. My time is getting gobbled up here, Madam Chair. I'd like an answer as to why the Minister will not accept financial security that is put forward by water licence holders that includes land and water. Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. To answer that question, I'll ask the deputy minister. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Minister. Deputy Minister Kelly.

MS. KELLY: Thank you, Madam Chair. Related to the specific example the Member has brought forward, the board set a split security for land and water in the reasons for decision. All of the security was then put into the water licence and none in the land use permit. The federal government delegated the authority for land-related liabilities to the Minister of Lands because of the Lands Act. It is under the Minister of Lands, and water liabilities to the Minister of Environment and Natural Resources because the Waters Act is under the Minister of Environment and Natural Resources. The Minister of ENR cannot legally accept security on behalf of Lands. As such, ENR could accept only the water-related security. The company is

pursuing an amendment to their land use permit to address this security issue. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Deputy Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. I understand that this is a recent development. We've had devolution for almost five, six years now, and this is the first time this has happened where the Minister has refused to accept financial security. While the amount here is not a big one, a large amount, I'm worried about what this means for the future, and whether the Minister is going to continue to refuse security that includes land and water amounts. How do we even decide what's land and water? Is a tailings dam, is it land or water-related? This is not very helpful, and I want to know what the fix is, because this is going to increasingly put our government at financial risk, and I haven't heard what the fix is yet. Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. To get into that detail, I'll ask the deputy minister to answer that question. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Deputy Minister, Ms. Kelly.

MS. KELLY: Thank you, Madam Chair. The department has to abide by what it has put forward and the reasons for decision. We will certainly encourage the board to make sure that what is in the reasons for decision is reflected in the land use permit and in the water licence. If that had been the case, this would not have been an issue, so we will work with the land and water boards and encourage them to ensure that what is reflected in the reasons for decision is put into the land use permit and water licence, and then, this will not be an issue. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Deputy Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. I think this is going to be a longer conversation than my remaining four minutes. Does the reclaim model that the department actually pays to have developed and updated, does it include a way of calculating, or making separate calculations for land and water-related securities? I don't think it does, but I'd like to get that confirmed. Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member. Minister of ENR.

HON. SHANE THOMPSON: I can answer this one. Yes. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Minister. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. The model does allow for separate calculations of land-versus water-related securities, and is that done on some sort of rule of thumb of 60/40 split, or is this defensible, legally, in some other way, a court of law, or do we need to clarify our legislation in some way? Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. To get the full detail on this, I'll ask the acting assistant deputy minister. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Mr. Richea.

MR. RICHEA: Thank you, Madam Chair. The reclaim model as used to calculate security does split land- and water-related liabilities. Over the years of doing estimates, approximately 60/40 split between land and water has been the average, but it's site-specific and it's component-specific, depending on the reclamation plan. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. I appreciate the response, and that was my understanding of it, as well. It's done through, sort of, rules of thumb rather than any system that's based in legislation or regulation, and I think that's a problem. The land and water boards, they always come up with a combined estimate of land- and water-related security, and I guess, in this case, the one we're discussing, they didn't split it between the land use permit versus the water licence, but I think that's certainly not a science, and it's an art, and we need to fix this.

Basically, the only fix I've heard is that ENR is going to talk, in future submissions, will tell the board that they need to make a split between land and water, and that the securities need to be split that way. Is that the only solution that we have? Thanks, Madam Chair.

CHAIRPERSON (Ms. Semmler): Thank you, Member for Frame Lake. Minister of ENR.

HON. SHANE THOMPSON: Thank you, Madam Chair. First, I think I'll ask the assistant deputy minister to clarify what he said, and to answer the second part with your permission. Thank you, Madam Chair.

CHAIRPERSON (Ms. Semmler): All right, Mr. Richea.

MR. RICHEA: Thank you, Madam Chair. To clarify, on average, it's about a 60/40 split between land and water, but it is very site-specific and component-specific. For example, some activities during reclamation under the liability would be 100 percent land. Other activities could be 100 percent water. On average, it's 60/40, but it's not a rule of thumb. It could be different depending on circumstances. When we prepare security estimates and provide that to the board for its consideration, and setting the amount in land use permit and water licence, we do provide a

land and water split. We work with the companies on the security estimates, and we work with the company on that land and water split.

CHAIRPERSON (Ms. Semmler): Thank you. Member for Frame Lake.

MR. O'REILLY: Thanks, Madam Chair. I guess, with my 15 seconds left, this is a real problem, and it needs to get fixed. I haven't even touched the issue of prevention, which our government hasn't done a very good job on, and I don't blame any of the individuals at the table for this, but we need to get our act together if we're going to try to demonstrate responsible resource development in the future. Thanks, Madam Chair. That's all I have.

CHAIRPERSON (Ms. Semmler): Thank you. Minister of ENR. Did you want to respond?

HON. SHANE THOMPSON: Thank you, Madam Chair. The Member is very passionate about this, and we're willing to work with him. It may not be what he wants to hear at the end of the day, but we're willing to work with him moving forward. Thank you, Madam Chair.