



Province of  
British Columbia

# Environmental Appeal Board

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## **DECISION NOS. 2005-WIL-020(a) and 2005-WIL-026(a)**

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c.488.

<b>BETWEEN:</b>	David Wiens	<b>APPELLANT</b>
<b>AND:</b>	Regional Fish And Wildlife Manager	<b>RESPONDENT</b>
<b>AND:</b>	Clifford Andrews, Jeff Browne	<b>THIRD PARTIES</b>
<b>AND:</b>	British Columbia Wildlife Federation	<b>APPLICANT</b>
<b>BEFORE:</b>	A Panel of the Environmental Appeal Board Alan Andison, Chair	
<b>DATE:</b>	Conducted by way of written submissions concluding on November 14, 2005	
<b>APPEARING:</b>	For the Appellant: Dale Drown For the Respondent Joseph G. McBride, Counsel For the Third Parties: H. Bruce Kaun, Counsel For the Applicant: Rod Wiebe	

### **APPLICATION FOR PARTICIPANT STATUS**

This is an application by the British Columbia Wildlife Federation (the "BCWF"), for participant status in two appeals filed by David Wiens (the "Appellant").

The BCWF seeks participant status in order to make submissions regarding the interests of British Columbia licensed transporters, as well as resident hunters.

This application was conducted by way of written submissions.

### **BACKGROUND**

The Appellant appealed the issuance of two separate Transporter Licences to Clifford Andrews and Jeff Browne (the "Transporter Licences") by the Regional Manager Fish and Wildlife, Peace Region of the Ministry of Environment (the "Regional Manager"). The Transporter Licences allow Mr. Andrews and Mr. Browne to transport resident hunters to, from or between locations for the purpose of conducting hunting activities including areas that are licensed to the Appellant. The Appellant holds a Guide Outfitters Licence and Certificate, which allows him to guide non-resident hunters within his guiding territory. Guide outfitters may also engage

in the activities that are conducted by transporters. The Appellant submits that the issuance of the Transporter Licences to Mr. Andrews and Mr. Browne to conduct their transporting activities within a portion of the Appellant's certified guide outfitter territory will adversely affect his rights under his Guide Outfitter Certificate and Licence.

On October 18, 2005, the BCWF applied to intervene in the appeal. The BCWF represents the interests of resident hunters in British Columbia. The BCWF submits that it was involved in the decision-making process regarding the licensing of transporters in the Peace Region, and therefore, its involvement ought to be continued through the appeal. The purpose of this process was to come to an arrangement that was mutually acceptable to all stakeholders; namely, the BCWF, the Guide Outfitters Association of British Columbia, the Ministry of the Environment, and the Transporters.

The BCWF seeks to participate in the appeal in order to represent the interests of resident hunters in areas that are licensed to guide outfitters. Further, it requests the opportunity to ask relevant questions of the other parties, although it does not intend to lead evidence in the proceedings.

All parties were given the opportunity to file written submissions on this application. Mr. Andrews and Mr. Browne did not object to the application. The Regional Manager took no "firm" position with respect to the application. The Appellant objected to the BCWF being granted any form of standing at the hearing.

## ISSUES

The Appellant submits that section 101.1 of the *Wildlife Act*, RSBC 1996 c. 488, specifically provides a right of appeal to a person affected by a decision of a regional manager as described in section 101(1) of that *Act*. However, this provision does not allow "other parties with societal or political interests to intervene so as to challenge a licence holder's legitimate right to exercise his appeal". However, the Board notes that subsection 94(1)(a) of the *Environmental Management Act* allows the Board to invite any person to "participate" in an appeal. Granting participant status may be done at the Board's initiative or as a result of a request from an applicant.

Section 4.2 of the Board's procedure manual states:

In deciding whether to add a person as a participant in an appeal, and what level of participation to grant, the Board will consider the timeliness of the application, the prejudice, if any, to the other parties, whether the applicant has sufficient interest in the proceeding, whether the interest of the applicant can be adequately represented by another party, the applicant's desired level of participation, whether allowing the application will delay or unduly lengthen the proceedings, and any other factors that are relevant in the circumstances.

In *Houston Forest Products Co. et al v. Assistant Regional Manager*, (Appeal No. 99WAS-06(b), 08(b), and 11-13(b), January 21, 2000), (unreported)), the Board considered an application for participant status by the British Columbia Lung

Association in the appeal of three air emission permits. In that case, the Board adopted the following test in considering an application for participant status:

- Whether the applicant had a valid interest in participating, and
- Whether the applicant can be of assistance in the proceeding.

The Board then held that if it decided that the applicant was permitted to participate, the extent of that participation would be determined by the Board.

This Panel finds that test to be equally applicable to the present application. Therefore, the Panel has framed the issues before it as follows:

1. Whether the BCWF has a valid interest in participating; and,
2. Whether the BCWF can be of assistance in the proceeding.

If the Panel decides that the BCWF should be permitted to participate, the Panel will decide:

3. To what extent should the BCWF be allowed to participate.

## **RELEVANT LEGISLATION**

The following subsection of the *Environmental Management Act*, SBC 2003 c. 53 ("EMA"), applies to the Environmental Appeal Board (the "Board"), and is relevant to this application:

### **Parties and witnesses**

**94** (1) In an appeal, the appeal board or panel

(a) may hear the evidence of any person, including a person the appeal board or a panel invites to appear before it ...

## **DISCUSSION AND ANALYSIS**

### **1. Whether the BCWF has a valid interest in participating.**

The BCWF submits that the appeal "has implications that go beyond the commercial world and could significantly affect all resident hunters", not just those who are members of the BCWF.

The Appellant submits that he does not seek a cancellation of the Transporter Licences. Rather, he seeks to have the boundaries of those licences varied, so as to reflect historical use. He further submits that it is pure "speculation and conjecture" to suggest that a decision stemming from the appeals may have "significant impact on the (hunting) opportunities" for the BCWF's members and resident hunters generally.

The Panel finds that wildlife is a limited resource, and decisions such as the issuance of transporter licences may affect those individuals that have an interest in that resource. Further, the Panel finds that even if the Appellant only seeks to vary the boundaries of the Transporter Licences, members of the BCWF, as well as other resident hunters may be affected by the outcome of the appeal. The Panel finds

that the BCWF, as a representative of a significant number of resident hunters in British Columbia that have an interest in the outcome of the appeal, has a valid interest in the question of whether or not the transporting area assigned to Mr. Andrews and Mr. Browne can overlap the guiding area assigned to the Appellant and whether those individuals will have access to that area.

Therefore, the Panel finds that the BCWF meets the first stage of the test.

## **2. Whether the BCWF will be of assistance in this proceeding.**

When considering whether an applicant for intervenor status will be of assistance in a proceeding, the Board notes that the considerations used by the Forest Appeals Commission in *Pope & Talbot v. Government of British Columbia*, (Appeal No. 2005-FOR-004, September 29, 2005) (unreported)) are pertinent to this application. In that case the Commission considered the uniqueness of the applicant's expertise in the area, whether the applicant's participation would unnecessarily delay the appeal, and whether the applicant's evidence or arguments would repeat or duplicate evidence or arguments presented by the other parties. The Panel adopts those considerations.

The BCWF's submissions on this issue are summarized as follows:

- It will deliver a statement outlining the effects that the appeal decision will have on resident hunters;
- It will adhere to the appeal process, and it will not interfere with the proceedings;
- It will ensure that its members answer all relevant questions in a truthful manner;
- It does not expect to provide evidence; and
- It was involved in the decision-making process from which the Transporter Licences resulted.

The Appellant submits that the BCWF's involvement in the appeal "will only lengthen the proceedings and not add any new relevant or meaningful information that would not already be planned for introduction" by any of the parties. He further submits that Messrs. Andrews and Browne will adequately represent the interests of all resident hunters in British Columbia.

The Panel finds that the BCWF uniquely represents the affected interests of resident hunters in these appeals. In addition, the Panel is not satisfied that Mr. Brown or Mr. Andrews generally represent the interests of resident hunters. Rather, they have individual economic interests in this appeal that are different from the specific interests of resident hunters.

The Panel finds that the BCWF will provide the resident hunters' perspective in this transporter/guide outfitter licensing conflict. The BCWF's perspective is different from the other parties' perspective and may be of assistance to the Board in adjudicating these appeals. Further, the Panel finds that the BCWF's participation in a limited manner will not result in unnecessary delay of the proceedings.

In the circumstances, the Board grants the BCWF participant status in these appeals.

**3. To what extent should the BCWF be allowed to participate.**

The BCWF advises that it wishes to participate as outlined above. Additionally, the BCWF seeks permission to question the parties.

With the exception of the BCWF's request to question the parties, the Panel is satisfied that the BCWF's participation will not result in unnecessary delay or duplication provided that its participation is limited to submissions in relation to the impact that the appeal decision may have on resident hunters.

**DECISION**

In making the decision, the Panel has considered all of the evidence before it, whether or not specifically reiterated here.

For the reasons stated above, the Panel grants the BCWF's application for participant status. Pursuant to subsection 94(1) of *EMA*, the BCWF may take part in the appeal as follows:

- Provide a copy of its Statement of Points to the parties and the Board on or before November 29, 2005.
- Present an oral argument at the close of the hearing, not to exceed a time limit of 30 minutes.
- The order to present closing arguments will be as follows:
  - Appellant
  - Participant (BCWF)
  - Respondent
  - Third parties
  - Appellant (rebuttal)
- The BCWF will not be given an opportunity to call their own witnesses, or to cross-examine witnesses.

"Alan Andison"

Alan Andison, Chair  
Environmental Appeal Board

November 18, 2005