

OCT 21 1988

Government of N.W.T.
Yellowknife, N.W.T.**Statement on third-party interests in the Dene/Metis claim agreement-in-principle**

Now that the Dene/Metis comprehensive land claim agreement-in-principle has been signed, a final agreement may be as close as two years away. Two years is not a long time, so is natural that some non-participants might now be feeling uncertain about how the settlement will affect their lives, how it will affect their future and how it will affect their children.

These are valid concerns. While it has never been the intention of the Dene/Metis to deny or ride roughshod over the rights of others, in attempting to protect their rights through the claim settlement, there have been instances in which third parties have been unavoidably affected. Fortunately, in almost every instance in which interests have overlapped, the negotiators have managed to find a balance.

Let me outline for you the ways in which the interests of third parties have been protected in the agreement-in-principle. Since the intent of the agreement has been to delineate the rights of the Dene/Metis, the protection of third party interests arises out of the accordance of rights to the Dene/Metis. It is necessary in most instances, therefore, to first explain the Dene/Metis right and then describe how third party interests are safeguarded.

Wildlife

One of the most contentious areas in the claim negotiations has been wildlife harvesting. Many non-participant hunters and fishers feel threatened by the rights accorded the Dene/Metis in the wildlife harvesting and management agreement. They are worried that after the claim settlement they will be denied opportunities to harvest wildlife. However, one of the explicitly stated objectives of the wildlife agreement is to deal fairly and equitably with non-participants who hunt, trap, fish or conduct commercial wildlife activities in the settlement area.

While the Dene/Metis have the right to harvest all species in the settlement area (subject to limitations), the agreement states that this right will not preclude harvesting by non-participants. There may be special moose harvesting areas established in which the Dene/Metis will have exclusive rights to hunt moose, but non-participants will be allowed to hunt moose in these special areas during a season in the fall of the year.

The Dene/Metis will have the exclusive right to harvest furbearers but non-participants will be able to continue to hunt wolves and coyotes. If a non-participant wishes to trap furbearers on land other than Dene/Metis land, he may seek permission from a local Dene/Metis wildlife council. If the council refuses the non-participant permission, he may appeal the council's decision to the Wildlife Management Board.



The Dene/Metis will have access to all lands in the settlement area for the purpose of harvesting wildlife. However, third parties are protected by restrictions applied to this right. Generally speaking, the right does not apply to lands which are owned in fee simple or which are subject to an agreement for sale or to a surface lease. The right will apply to fee simple or lease holdings larger than 320 acres granted outside municipal boundaries after the date of settlement legislation but the agreement recognizes that some uses of land by third parties may not be compatible with harvesting by the Dene/Metis. In that case, the third party may impose restrictions on such harvesting (these restrictions may be subject to arbitration). In those instances when Dene/Metis do harvest wildlife on land held by a third party, they must do so under certain conditions set out in the agreement. There shall be no significant damage to the lands and, if there is, the user shall be responsible for the damage. Also, there must be no mischief committed on the lands and there must be no avoidable interference with the occupier's use and peaceable enjoyment of the lands.

In allocating the total allowable harvests of wildlife species, the Wildlife Management Board has to give priority to Dene/Metis needs. However, the agreement states that the board must allocate a portion of the total allowable harvest in excess of Dene/Metis needs to resident non-participants in the case of sheep, moose and barren-ground caribou. In the case of transplanted, free-roaming wood bison and muskoxen, the board must allocate a portion of the harvest to resident non-participants, regardless of any Dene/Metis needs level. When it comes to migratory birds, non-participants will always have an opportunity to hunt them (numbers permitting, of course).

When allocating any harvest quota over and above the Dene/Metis needs, the board must consider the requirements of non-participants who rely on wildlife for food, the demand for hunting and sport fishing by resident non-participants, commercial demand and demand by lodges and outfitters.

Dene/Metis organizations will have a right of first refusal to a new licence for the operation of commercial guiding, outfitting, sport hunting, sport fishing and naturalist activities provided that the board reserves a portion of licences for guiding and outfitting for barren-ground caribou for resident non-participants. The Dene/Metis will also have a right of first refusal to take up existing licences which are being relinquished or to buy existing commercial wildlife enterprises which are being sold. But this is conditional on the sale price being at fair market value and won't apply to sales or transfers to persons holding rights or options to purchase at the time of the final agreement or to sales or transfers to members of the holder's immediate family.

On a more general level, while the Dene/Metis will have the exclusive right to harvest wildlife on their land and some preferential rights to harvest wildlife elsewhere, such rights are not unlimited. They are subject to legislation on conservation, public health and public safety. Moreover, the agreement explicitly states that government retains the ultimate jurisdiction for the management of wildlife and wildlife habitat.

The agreement establishes a Wildlife Management Board on which the Dene/Metis will occupy 50 percent of the seats. However, all members must be appointed by government and the decisions of the board are subject to approval of the responsible minister. Ministerial override and the ultimate jurisdiction for wildlife being vested in government will help to ensure that the interests of third parties are always taken into account.

And finally, nothing will deny third parties the ability to kill wildlife for survival in cases of emergency.

Trees and Plants

The provisions on forestry give the Dene/Metis the right to harvest trees throughout the settlement area for certain specified purposes. However, the right is subject to legislation on forest management, land management, public health, public safety and protection of the environment. Furthermore, the right does not apply on lands held in fee simple, subject to an agreement for sale or a surface lease. Nor does it apply on Crown lands where it would conflict with an activity authorized by government, by a timber licence or a land use permit, for instance. People who want a new licence for the commercial harvesting of trees will have to seek the consent of the local Dene/Metis council if wildlife harvesting would be significantly affected but, if permission is withheld, the commercial operator may ask the responsible management board to review the decision and overturn it. And nothing in the agreement shall preclude non-participants from harvesting trees on land other than Dene/Metis land.

The Dene/Metis rights to harvest plants are similar to those in respect of trees and similar restrictions apply, that is, no harvesting on fee simple or leased lands or where it would conflict with an authorized use, etc. And, again, it is stated that nothing precludes non-participants from gathering plants on land other than Dene/Metis land.

Land

The agreement-in-principle provides the Dene/Metis with fee simple title to 70,000 sq. mi. of land in the settlement area. This will be the largest land holding in North America. And, because it will be made up of large parcels, some of which will be near communities,

it will have the potential to present some problems to non-participants.

People who are worried about not being able to travel through the country as easily as they can do now can breathe more easily, however. There will be a 100 foot public right of access over Dene/Metis lands next to navigable rivers and lakes. The navigable waters on Dene/Metis lands and the rights of access to the land adjacent may be used by any person for travel by water or ice for recreation. Members of the public will also be able to fish in navigable waters on Dene/Metis lands and use the 100 foot right of access to hunt migratory birds and to fish.

Members of the public will be able to cross Dene/Metis lands to exercise a right, interest or privilege on adjacent lands. They can do this for such reasons to get to and from their place of work or to or from a place of recreation. And any non-participant who has a legal interest on Dene/Metis lands at the time of land withdrawal, such as a cabin, will have a right of access to allow the continued use of that interest.

Third parties who hold, at the time of land withdrawal, a land use permit or other right of access to or across lands which become Dene/Metis lands shall retain their rights. Third parties who need access across Dene/Metis lands for commercial purposes have the right of access without Dene/Metis permission if the access is of a casual or insignificant nature or if the route used is recognized and was used for access prior to settlement legislation. Third parties who reasonably require access across Dene/Metis lands for commercial purposes but are denied access by the Dene/Metis may obtain access through an order of the Surface Rights Board. And third parties who have a right to explore, develop, produce or transport non-renewable resources under or on Dene/Metis lands and who are denied access by the Dene/Metis may also obtain access through an order of the Surface Rights Board.

Close to Yellowknife, there has been worry on the part of some cottage lot lease-holders in the Ingraham Trail area that the lots they now occupy will be selected by the Dene/Metis, precluding their ever being able to obtain title to the land. Some may also have been worried that a new landlord would mean exorbitant increases in their lease fees. However, the agreement provides that there shall be no selection by the Dene/Metis of cottage lots or land with other third party interests without the consent of the leaseholders or the holders of the interest.

Water

Although we are blessed with an abundance of it here in the NWT, water is still a precious resource to participants and non-participants

alike. The agreement provides that the Dene/Metis will have exclusive right to use water on or flowing through Dene/Metis lands (when the water is on their land). However, Dene/Metis use of water is subject to legislation on water use and government retains the right to protect and manage water for public purposes including protection of community water supplies, wildlife research, navigation, firefighting and flood control. What's more, Dene/Metis use of water shall not interfere with or take away from public rights of navigation, emergency use of water, public access to fish and hunt migratory birds or the use of the 100 foot public right of access on Dene/Metis lands. And non-participants who have a right or interest on Dene/Metis lands which requires the use of water shall have the right to use the water.

The agreement also provides protection to third parties downstream from Dene/Metis lands. It states that the Dene/Metis shall not use water so as to substantially alter the quality, quantity and rate of flow of waters which flow through or next to their lands. In addition, the agreement expressly states that nothing in it shall derogate from the ability of any person to use waters for domestic purposes.

Land selection

I understand that some non-participants with land holdings have been nervous about the prospect of land selection by the Dene/Metis. They are concerned that their property might be selected out from underneath them. However, non-participants are secure from having their private lands selected. Within the boundaries of Yellowknife and all other municipalities, land which is privately owned in fee simple or land subject to an agreement for sale may not be selected by the Dene/Metis without the consent of the owner. It is not stated in the agreement, but it is the intention of the government not to allow selection by the Dene/Metis of fee simple holdings outside municipalities either.

Sand and Gravel

Sand and gravel can be scarce commodities here in the north. But third parties don't have to worry about doing without because the only local supplies happen to be situated on Dene/Metis land. The agreement states that the Dene/Metis shall provide supplies of and access to sand, gravel, clay and other similar construction materials in instances when no alternative source of supply is available in the surrounding area. And, if any terms and conditions of supply and access imposed by the Dene/Metis are unacceptable to the third party, he may refer the matter to the Land and Water Management Board for arbitration.

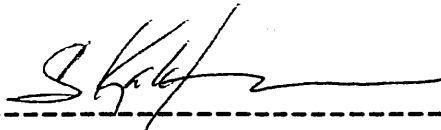
Dispute resolution

Anticipating that the terms of the agreement could give rise to disputes in the future between the Dene/Metis and government or third parties, the negotiators have established several dispute resolution mechanisms. As already mentioned, in some instances, third parties will have recourse to a management board when they feel their interests are being prejudiced. In other instances, they will be able to take their case to an arbitration board specifically set up to settle disputes arising out of the claim settlement. Unlike the arbitration process established by the COPE settlement, which can only be initiated by the federal government, industry or the Inuvialuit, arbitration proceedings in the Dene/Metis settlement area can be put into motion by third parties or the GNWT. This more accessible arbitration procedure should go a long way to assist in the protection of third party interests.

A Surface Rights Board will also be set up to have jurisdiction over surface entry and access for holders of surface or subsurface rights. The board will be able to resolve disputes when holders of surface or subsurface commercial interests are not able to reach agreement with the owner of the surface. The board will be able to grant right of entry orders whether or not any compensation has been agreed to so the access of third party interest holders will not be delayed.

Conclusion

This list of safeguards is not exhaustive. Not all the details of the agreement-in-principle have been finalized by negotiators. The process of ironing out all the wrinkles in the text will likely continue up to the signing of the final agreement. And the signing of the AIP has not closed the door on third party interests. Now that the agreement is a public document, third parties have an opportunity to look it over and determine whether or not their interests have been adequately protected. Negotiations will soon begin again and continue until the final agreement is reached and the proper balance is struck between the rights and interests of the Dene/Metis and the other residents of the settlement area.



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and Constitutional Development.