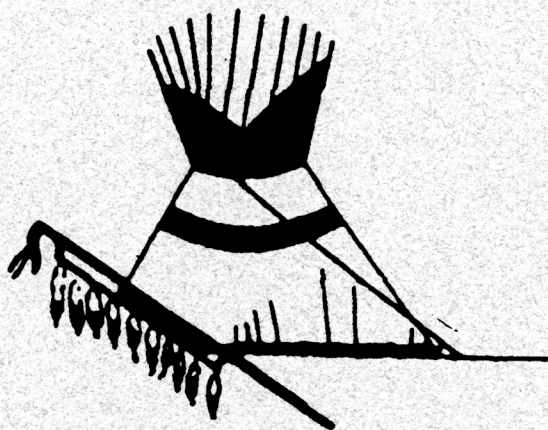




HIGHLIGHTS



SAHTU DENE AND METIS COMPREHENSIVE LAND CLAIM AGREEMENT

E78
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C668
c.1

Published under the authority of the
Honourable Ronald A. Irwin, P.C., M.P.,
Minister of Indian Affairs and
Northern Development
Ottawa, 1993.

QS-5315-020-EE-A1
Catalogue No. R32-146/1993-1E
ISBN 0-662-21511-7

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Cette publication peut aussi être obtenue
en français sous le titre :

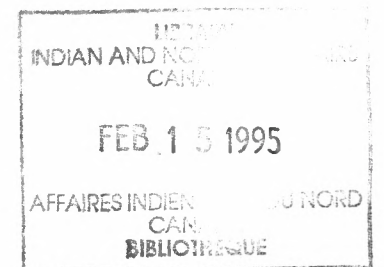
Points Saillants – Entente sur la revendication
territoriale globale des Dénés et des Métis du Sahtu

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c.1

THE SAHTU DENE AND METIS COMPREHENSIVE LAND CLAIM AGREEMENT

HIGHLIGHTS

1994



This pamphlet is published for the purposes of public information only. It is intended as a guide for persons who wish to gain an overview of how the Sahtu agreement might affect their activities.

It is not held forth as an accurate legal statement or a policy statement.

Persons who seek a detailed knowledge of the agreement should consult the agreement.

BACKGROUND

In July 1993, the Sahtu Dene and Metis voted to approve the Sahtu Dene and Metis comprehensive land claim agreement; 85 percent of the Dene who voted approved, as did 99 percent of the Metis.

After being approved by the territorial and federal governments, the agreement was signed on September 6, 1993, in Fort Norman. Legislation (known as settlement legislation) will be presented to Parliament as soon as possible to enact the agreement. If approved by Parliament, the agreement will come into effect and will have constitutional protection as a modern day treaty.

Lands identified for probable selection by the Sahtu Dene and Metis have been withdrawn to permit a 60-day period of review and consultation and so that new interests cannot be created before the lands become Sahtu lands. Interests existing before the withdrawal will be protected and people can continue to use the lands as before until the settlement legislation makes them Sahtu lands.

The Sahtu settlement area, or Sahtu region, is the area where the benefits and terms of the agreement apply. The boundaries of the settlement area are described in the agreement and are shown on the attached map. It covers 280,238 square kilometres (approximately 108,200 square miles), including Great Bear Lake. The five communities in the region are Colville Lake, Fort Good Hope, Fort Norman, Déline (formerly Fort Franklin) and Norman Wells.

Eligible Dene and Metis living in the settlement area or outside it may enroll as participants as soon as an Enrolment Board is established after settlement legislation. To be eligible, they must be Canadian citizens and Sahtu Dene or Sahtu Metis as defined in the agreement.

An aboriginal person who is not Sahtu Dene or Metis but lives in the settlement area and is a Canadian citizen may also be eligible to be enrolled after the settlement is in effect, through a "community acceptance" procedure which will be decided by the Sahtu Dene and Metis.

THE AGREEMENT

Some of the main elements of the agreement are:

- ° The Sahtu Dene and Metis will receive title to 41,437 square kilometres (approximately 16,000 square miles) of land, of which 1,813 square kilometres (approximately 700 square miles) will include the subsurface resources. Sahtu lands will be privately-owned lands, not reserves under the *Indian Act*.
- ° The Sahtu Dene and Metis will receive a financial payment of \$75 million (1990\$) over a 15-year period as well as a share of the resource royalties which government receives each year from the Mackenzie Valley (that part of the Northwest Territories south of the Inuvialuit Settlement Region and west of the Nunavut Settlement Area).
- ° The agreement confirms the right of the Sahtu Dene and Metis to hunt and fish throughout the settlement area; it also gives them the exclusive right to trap throughout the settlement area.

- The agreement guarantees the participation of the Sahtu Dene and Metis in:
 - management of renewable resources within the settlement area;
 - land use planning within the settlement area;
 - environmental impact assessment and review within the Mackenzie Valley; and
 - regulation of land and water use within the settlement area.

Their participation will be through membership on public government boards and through consultation.

Federal, territorial and municipal laws will apply to the Sahtu Dene and Metis and their land. However, if there is any conflict between those laws and the agreement, the agreement will apply.

SAHTU TITLE

SAHTU LAND

When the agreement becomes law, the Sahtu Dene and Metis will become the owners of 39,624 square kilometres (approximately 15,300 square miles) of land which does not include the subsurface resources, and 1,813 square kilometres (approximately 700 square miles) which does include the subsurface resources. "Subsurface resources" means the mines and minerals which exist in, upon or under the land. The Sahtu Dene and Metis will own their land collectively.

There will be two categories of Sahtu land: "settlement land", which is outside municipal boundaries; and "Sahtu municipal land" which is within municipal boundaries. Certain special conditions will attach to settlement land to ensure that it is never lost to the Sahtu Dene and Metis: it may never be sold, or mortgaged, or seized under court order; it will enjoy special tax treatment; and if any of the land is expropriated, government guarantees that it will be replaced, so that the initial amount of settlement land is never reduced.

SPECIFIED SUBSTANCES

Sahtu Dene and Metis will own the "specified substances" on their settlement land. Specified substances means carving stone, clay, construction stone, diatomaceous earth, earth, flint, gravel, gypsum, limestone, marble, marl, ochre, peat, sand, shale, slate, sodium chloride, soil and volcanic ash.

EFFECT OF SAHTU TITLE ON EXISTING INTERESTS IN LAND

Land title will be transferred to the Sahtu Dene and Metis on the date that settlement legislation comes into effect. Any rights, titles and interests that already exist on that date in the land which is transferred will be protected. That is, those rights, titles or interests will continue according to their existing terms and conditions – they may be renewed, or replaced, or the length of their term may be extended as if the interest were still on Crown land.

If in the future the existing terms and conditions must be amended significantly, then the amendments will be considered as new rights and the agreement of the Sahtu Dene and Metis will be necessary. If agreement is not achieved, the matter may be referred to the Surface Rights Board for determination (see page 9 for a description of the Surface Rights Board).

SAHTU MUNICIPAL LAND

Sahtu municipal land will be like other privately-owned municipal land in that it may be sold or mortgaged. But if Sahtu municipal land is sold or granted to an individual, it will no longer be "Sahtu land", that is, the provisions of the agreement will no longer apply to it.

While Sahtu municipal land which is developed will be taxable, undeveloped Sahtu municipal land will be exempt from real property taxation.

Local governments may expropriate Sahtu municipal land; such expropriation must be approved by the Cabinet of the Government of Canada or the Executive Council of the Government of the Northwest Territories.

If local governments do not wish to expropriate they may acquire Sahtu municipal lands for public purposes through a unique "negotiation" process which is detailed in the agreement. If negotiation is used, and if the Sahtu Tribal Council and a local government cannot agree on acquiring Sahtu municipal land, they may refer the matter to arbitration (see Dispute Resolution, page 7).

For fifteen years after the date of settlement legislation, Canada will pay, on behalf of the Sahtu Dene and Metis, real property taxes levied on Sahtu municipal land which was previously reserved in the name of the Indian Affairs Branch for Indian housing, or agreed replacement for such land.

ACCESS TO OR ACROSS SAHTU LAND

ACCESS TO OR ACROSS SAHTU LAND BY MEMBERS OF THE PUBLIC

Because parcels of settlement lands are so large, there are provisions to allow access to the land in specified circumstances, despite its private character, by persons who are not Sahtu Dene or Metis.

Members of the public may cross settlement land (and water overlying such land) in order to exercise a right, interest or privilege on Crown land which is adjacent to Sahtu land. Where practical, such crossings must be by routes designated by the local Sahtu organization. If there are no designated routes, a person may still cross settlement land to get to adjacent Crown land but must give notice to the local Sahtu organization, if it is practical to give notice.

Members of the public may use portages and the waterfront on settlement land when travelling on navigable rivers and associated navigable waters, but usually may not hunt or fish there. Certain areas within settlement lands have been identified where the public may hunt migratory game birds and fish in navigable waters; these areas are described within the agreement.

Access to settlement land will always be subject to the conditions that no significant damage be done to the land, or mischief committed on it; and that there be no interference with Sahtu Dene and Metis use and enjoyment of their land.

ACCESS TO OR ACROSS SAHTU LAND BY COMMERCIAL OPERATORS

Again, because parcels of settlement land are so large, there are special provisions allowing commercial operators to use or operate on settlement lands despite their private character.

Existing rights to use or operate on lands which become Sahtu lands continue.

Commercial operators may cross settlement land (and the waters overlying such land) without the consent of the Sahtu Dene and Metis and without charge provided that the crossing is of a casual or insignificant nature and prior notice is given to the Sahtu Dene and Metis, or if the access is by a recognized route used on a regular basis.

Commercial operators requiring to cross Sahtu land (and water overlying such land) in other circumstances – i.e. where it is not a casual or insignificant access, or is on a new route – must reach agreement with the Sahtu Dene and Metis on the terms and conditions. If no agreement is reached, the matter may be referred to the Surface Rights Board. If, in the judgement of the Surface Rights Board, the crossing right is reasonably required, the Board will issue an order settling the dispute.

DEVELOPMENT OF SUBSURFACE RESOURCES

DEVELOPMENT OF SUBSURFACE RESOURCES OWNED BY THE SAHTU DENE AND METIS

Subject to existing mineral interests, if there were any, the Sahtu Dene and Metis will decide whether and how to explore and develop any subsurface resources they own.

DEVELOPMENT OF SUBSURFACE RESOURCES OWNED BY THE CROWN

Where the Crown retains ownership of subsurface resources (under settlement land or under Crown land), government will continue to manage these resources and make them available for development according to legislation and government policies.

Any person who has, or obtains, the right to explore, develop, produce or transport Crown resources under or on Sahtu land will have a right of access to settlement land and waters overlying settlement land for these purposes. The mineral-interest holder must negotiate the terms and conditions of access with the Sahtu Dene and Metis. Failing agreement between the mineral-interest holder and the land owner, the matter may be referred to the Surface Rights Board for resolution.

A prospector with a right to explore for minerals and locate claims who does not require a land use permit or a water licence will have the right of access to settlement land provided he or she gives advance notice to the local designated Sahtu organization indicating by reference to a map sheet (1:50,000 scale) the general area of activity. If the exploration activity requires a land use permit or a water licence, the prospector has a right of access but

must reach agreement with the local Sahtu organization on the terms and conditions. Failing agreement, the matter may be referred to the Surface Rights Board for resolution.

ACCESS TO SAND AND GRAVEL ON SAHTU LAND

If there is no reasonable alternative supply of sand and gravel (or other like construction material) in the surrounding area, the Sahtu Dene and Metis must permit access to sand and gravel on their land. The Sahtu Dene and Metis will be entitled to a fair and reasonable payment for their sand and gravel. If there is a dispute about the availability or the cost of Sahtu Dene and Metis sand and gravel, the matter will be referred to the Land and Water Board for resolution (see page 8 for description of the Land and Water board).

SPECIFIED SUBSTANCES

To avoid potential conflict between the right of the Sahtu Dene and Metis to "specified substances" on their land and the right a mineral-interest holder may have to work the mineral interest, the Sahtu Dene and Metis right will be subject to that of the mineral-interest holder. However, the mineral-interest holder must exercise this interest so as to minimize interference with the right of the Sahtu Dene and Metis to work the specified substances.

COMMERCIAL TRAVEL ON NAVIGABLE WATERS WITHIN SAHTU LAND

Commercial operators have the right to travel on navigable rivers and associated navigable waters which overlie Sahtu land; they may also use the portages and waterfront land associated with these waterbodies. But when travelling on water which overlies Sahtu land they must use the most direct route and minimize their use of Sahtu portages and waterfront land.

Their use of the portages and waterfront land on settlement land will be subject to the conditions that: prior notice must be given to a designated Sahtu organization; no permanent or seasonal camp or structure may be established; no change or damage may be caused to the land; and no commercial activity may be conducted on the land.

SUBSURFACE RESOURCE ACTIVITY AND CONSULTATION WITH THE SAHTU DENE AND METIS

Before any oil and gas exploration, development, or production activities take place in the settlement area, government must notify the Sahtu Tribal Council to provide it with an opportunity to present its views on the matter; and an operator proposing such activities must consult with the Sahtu Dene and Metis on such issues as environmental impact, impact on wildlife harvesting, and Sahtu Dene and Metis employment opportunities. Such consultations are not intended to result in any obligations in addition to those required by legislation.

Similar consultations will be required prior to the development or production of minerals other than oil and gas, and prior to the exploration for such minerals where the exploration requires land use permits or water licences.

WILDLIFE HARVESTING

WILDLIFE HARVESTING RIGHTS OF THE SAHTU DENE AND METIS

The Dene have hunting, fishing and trapping rights guaranteed in Treaty 11. An important part of the agreement is that these treaty rights are given up in the areas defined in the agreement, and are replaced by the rights spelt out in the agreement. These are summarized below:

Subject to certain harvesting rights which exist on land which becomes Sahtu land (such as the right of an outfitter to take clients to hunt within the outfitter's area of operation), the Sahtu Dene and Metis will have the exclusive right to harvest wildlife on Sahtu land. The Sahtu Dene and Metis may permit other people to harvest on their land subject to general legislation on harvesting.

The Sahtu Dene and Metis will have the exclusive right in the entire settlement area to harvest fur bearers, except that persons who are not Sahtu Dene or Metis may hunt, but not trap, wolves and coyotes. A local Renewable Resources Council may, on application, allow people other than the Sahtu Dene or Metis to harvest fur bearers. If an applicant for such permission is dissatisfied with the decision of the local Renewable Resources Council, he or she may refer the decision to the Renewable Resources Board for review and decision. In this matter, the decision of the Board will be final.

To protect harvesting by the Sahtu Dene and Metis in some of their traditional harvesting areas which are not on settlement lands, some "special harvesting areas" have been designated. The Sahtu Dene and Metis will have the exclusive right to harvest in such areas, with the exception that other persons may harvest moose there during a period in the fall of the year. The Sahtu Dene and Metis may permit other people to harvest in these harvesting areas.

If, for conservation reasons, harvesting quotas must be set on certain wildlife species or populations or in certain areas, the harvesting needs of the Sahtu Dene and Metis will have first priority. The Renewable Resources Board may allocate any harvest in excess of the needs of the Sahtu Dene and Metis among other users.

Licences for commercial activities related to wildlife and other similar rights which exist at the date of settlement legislation, and are applicable to land that becomes Sahtu land, will continue to exist. Other than such grandfathered rights, the Sahtu Dene and Metis alone will be licensed to conduct any commercial wildlife activities on their land.

Apart from grandfathered rights, only the Sahtu Dene and Metis will be licensed to fish commercially in waters overlying Sahtu land. In other waters in the settlement area, the Sahtu Dene and Metis will have the right to take up half of all new (not-renewed or not re-issued) commercial fish licences which may become available.

Anywhere within the settlement area the Sahtu Dene and Metis will have the first opportunity to obtain new licences for commercial opportunities in wildlife harvesting, guiding and outfitting, naturalist activities, and keeping and breeding species of wildlife native to the settlement area. If the holder of a licence for commercial guiding, outfitting or naturalist activities which is in force at the date of settlement legislation wants to sell the business, he or she must first offer it to the Sahtu Tribal Council. Fair market value for the business is guaranteed by a procedure outlined in the agreement.

A person who holds a valid General Hunting Licence at the date of settlement legislation may continue to harvest in accordance with the terms and conditions of the licence.

The Sahtu Dene and Metis do not have the right to harvest on private land within municipal boundaries or on small holdings (less than 130 hectares, or approximately 321 acres) of private or leased land outside municipal boundaries but they do have the right to harvest on Crown land and on large private rural holdings anywhere in the settlement region. If wildlife harvesting by the Sahtu Dene and Metis is incompatible with an authorized use of land, the parties may agree, or arbitration may determine, that harvesting by the Sahtu Dene and Metis should be restricted.

RENEWABLE RESOURCES COUNCILS

A Renewable Resources Council will be established by each Sahtu community to manage the local exercise of the harvesting rights of the Sahtu Dene and Metis.

A NEW WILDLIFE MANAGEMENT BOARD

A Renewable Resources Board will be established by government as the main instrument of wildlife management in the settlement area. This Board will have the power to establish policies and propose regulations for all aspects of wildlife harvesting and commercial activities relating to wildlife. The Board will also determine whether commercial harvesting is allowed in a particular area for a particular species and may prescribe terms and conditions for such harvesting. The Minister responsible for the Board will be able to review decisions of the Board.

Three of the Board's six members will be nominated by the Sahtu Dene and Metis and three by government. The chairperson will be nominated by the six members.

WILDLIFE HARVESTING COMPENSATION

If the Sahtu Dene and Metis suffer loss or damage to their property or equipment used in wildlife harvesting, or loss of income from wildlife harvesting caused by someone's commercial activity, the person who undertook the commercial activity will be liable to compensate the Sahtu Dene and Metis for such loss or damage. If the commercial operator and the affected Sahtu Dene or Metis do not agree on compensation, the matter may be referred to the arbitration panel.

Legislation may provide for limits of liability and burden of proof on claimants.

DISPUTE RESOLUTION

An arbitration panel will be established so that disputes relating to the agreement can be settled without going to court.

USE OF WATER

Any person engaging in commercial activity on settlement land which requires the use of water will have the right to use water, subject to the provisions of the agreement and legislation.

The Sahtu Dene and Metis will have the right to have waters which are on, flowing through or adjacent to their land remain substantially unaltered as to quality, quantity or rate of flow.

The Land and Water Board may issue a water licence authorizing a use of water which will substantially alter the quality, quantity or flow of water through or adjacent to settlement land. However, it can only do so if it determines that there is no reasonable alternative to this use. In these circumstances, the licence holder must compensate the Sahtu Tribal Council for the loss or damage likely to be caused. Where the parties are unable to agree, the Land and Water Board will determine compensation.

NEW BOARDS FOR THE PLANNING AND REGULATION OF LAND AND WATER USE

At present, all development proposals in the Northwest Territories are subject to a process of environmental impact assessment and review, and to a process whereby all uses of land and water are regulated through licences, permits or other authorizations. The creation of new boards through the agreement is a restructuring of these processes.

Two boards will be established, within two years of the date of settlement legislation, as institutions of public government:

- a **Land Use Planning Board**, for the settlement area, which will prepare a land use plan providing for the conservation, development and utilization of land, resources and waters. When the plan is approved, those authorities with jurisdiction to grant licences, permits, leases or other interests relating to the use of land or water must do so in accordance with the plan;
- a **Land and Water Board**, for the settlement area, which will regulate all land and water use, including uses on Sahtu land. This board will issue permits, licences or other authorizations, with terms and conditions, for all uses of land and water, including those necessary for the exercise of subsurface rights.

Once established, the Land and Water Board will assume the functions of the Northwest Territories Water Board within the settlement area. If a new land and water board is established with jurisdiction over an area in the Mackenzie Valley which is larger than the settlement area and which includes the settlement area, the Land and Water Board will become a panel of the new board.

The Sahtu Dene and Metis will nominate 50 percent of the membership, not including the chairperson, on the Land Use Planning Board and the Land and Water Board.

An **Environmental Impact Review Board** for the Mackenzie Valley, not including the Inuvialuit Settlement Region, is being established by legislation to implement the provisions of the Gwich'in agreement, which became law on December 22, 1993. The Review Board will assess and, if necessary, review the impact of development proposals, including those for Sahtu land.

The Review Board may recommend that terms and conditions be attached to mitigate adverse impact and public concern. Where the Board determines that adverse impact or public concern would be significant, a public review must be held. Joint reviews may be held with the Canadian Environmental Assessment Agency.

All terms and conditions accepted by the Minister who is responsible for the Environmental Impact Review Board will be incorporated into the permits, licences or other authorizations issued by the Land and Water Board and certain other regulatory authorities.

The Sahtu Dene and Metis will nominate members of the Review Board and its panels as set out in detail in the agreement.

The decisions of these boards will be subject to review by the appropriate Minister.

SURFACE RIGHTS BOARD

A Surface Rights Board is being established by legislation to implement the provisions of the Gwich'in agreement.

The Board will have jurisdiction in the western Northwest Territories to resolve disputes which may arise over the terms, conditions, or compensation for access where the surface owner or occupier is unable to reach agreement with a surface or subsurface rights holder regarding the use of the surface.

The board will have the authority to issue and review entry orders, set entry fees, and determine compensation for the use of or damage to land.

Decisions of the board will not be subject to review by Ministers. Members of the board must be residents of the Northwest Territories; when dealing with Sahtu land, one member must be a resident of the settlement area. The board cannot refuse to grant a right-of-entry order where an applicant has a right of entry to private land. Neither will the board be able to attach terms and conditions which are inconsistent with terms and conditions approved pursuant to the environmental assessment and review and the land and water regulation processes.

In determining compensation, the board will consider damage to the land, loss of use, nuisance, noise and inconvenience, and such other factors provided for in the legislation. The board must also consider the cultural or special value of the land to the Sahtu Dene and Metis and the effect of the development on wildlife harvesting by the Sahtu Dene and Metis.

This "surface rights" approach to settling surface-subsurface disputes is already in use elsewhere in Canada.

Copies of this pamphlet or the Sahtu Agreement may be obtained at:

Communications Branch
Department of Indian Affairs and
Northern Development
19th Floor
Ottawa, Ontario
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Other information about the agreement may be obtained from:

Nancy Kenyon
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Sahtu Claim
Comprehensive Claims Branch
Department of Indian Affairs and
Northern Development
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MAP OF SETTLEMENT AREA

