

**THE BOUNDARY AND OVERLAP
NEGOTIATIONS
OF THE TUNGAVIK FEDERATION OF NUNAVUT
AND THE DENE/METIS NEGOTIATIONS SECRETARIAT**

THE PRESENT POSITION OF THE PARTIES

**Report of the Fact-Finder appointed
by the Minister of Indian Affairs and
Northern Development - The Hon. T. Siddon**

Magnus Gunther

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Gunther Consulting

508 Gilmour Street
Ottawa, Ontario
K1R 5L4

NOV 26 1990

Mr. Ian Potter
Director General
Comprehensive Claims
Department of Indian and Northern Affairs
10 Wellington Street
OTTAWA, Ontario
K1A 0H4

Dear Mr. Potter:

TFN-Dene/Metis Boundary

I want to make a small clarification to the report I submitted to the Honourable Tom Siddon on the Dene/Metis-TFN boundary dispute.

On page 21, the first paragraph is a little obscure and needs clarification. The final sentence in that paragraph may wrongly suggest that the Dene/Metis want to exclude all trapping in both areas of overlap use. What they are proposing is the exclusion of trapping rights by the other party in its area of overlapping use. They are not suggesting the end of all trapping in the two areas of overlapping use.

The sentence might be more clearly read:

"The Dene/Metis want to define harvesting rights in the area of overlap to exclude trapping by the other party, that is, by the Inuit in their overlap zone and by the Dene/Metis in their overlap zone."

Yours truly,



Magnus Gunther
Minister's Fact-Finder

Preface

Comprehensive Native Land Claims in the Northwest Territories involve three organizations, two of whom have a joint Negotiating Secretariat. The Dene Nation and Metis Association of the Northwest Territories are represented by the Dene/Metis Negotiating Secretariat while the Tungavik Federation of Nunavut (TFN) represent the Inuit of the Central and Eastern Arctic.

The comprehensive land claims process has been hindered by the inability of the two parties to agree to a single line boundary which would identify the limits of each party's settlement regime and associated overlap boundaries for areas commonly used. The federal government position is that land selection will not proceed in areas under dispute. The unresolved boundary dispute will also prevent the implementation of self-government in the Northwest Territories through the creation of two new territories.

Negotiations between the Dene/Metis and the TFN on the boundary issue have continued at various times since 1984 but only came to a possible final settlement once, in 1986, when the chief negotiators for the two parties signed an agreement which was however, not subsequently ratified by the Dene Nation and the Metis Association.

On June 18, 1990, the Minister of Indian Affairs and Northern Development, The Hon. Tom Siddon, noted in a letter to both parties that since they did not seem able, despite considerable effort, to finalise an agreement, they should consider binding arbitration to achieve a timely decision. This proposal was not acceptable to both claimants. While the TFN were willing to accept binding arbitration, the Dene/Metis rejected it on the grounds that they had not been authorised by their respective assemblies to resolve the matter by any means other than negotiation. They proposed instead that the parties resume negotiations, possibly with the assistance of a mediator appointed by the Minister. The Minister then decided that there was a need for an "immediate clarification" of the areas of agreement and disagreement between the parties and that a fact-finder would be appointed to do this.

I was appointed fact-finder on August 1, 1990. My terms of reference were that I was to meet separately or jointly with the parties to:

1. Identify on a map the areas of agreement and disagreement between the parties on a single line boundary which would determine the limits of the claim settlement areas of the two parties.

2. Identify on a map areas of agreement and disagreement on the extent of any proposed joint-use zones on either side of the proposed single line boundary.

3. Provide any further information relevant to the dispute which the parties felt should be reported with respect to these issues.

This report accompanies the maps and listings of coordinates which I received from the TFN and the Dene/Metis secretariats when I met with them during August 1990 as well as material which was sent later. The maps set out the latest or final positions of the parties with respect to a single line boundary and possible areas of overlap use. A copy of the map which has these latest or final positions of the parties follows on page 3.

I have submitted, with this report to the Minister, three sets of maps of different sizes as well as a compilation of 28 documents and correspondence pertinent to the dispute. Both the TFN and the Dene/Metis secretariat have received copies of the same materials. I have also submitted a new document not seen previously, prepared by the Dene/Metis on land use in the Thelon Game Sanctuary which was given to me. The Dene/Metis secretariat have sent a set of trail and other maps supplementing this document and these will be submitted to the Minister when they are received. The TFN submitted 21 map overlays outlining trails, hunting patterns etc for the following EMR 1:250,000 maps; Eskimo Point, Kazan River, Nuelton Lake, Dubawnt Lake, Upper Back River, Coppermine and Camsell River. These overlays were returned to the TFN where they are available for further perusal.

M. Gunther
Professor
October 18, 1990.

130°

125°

120°

115°

110°

105°

100°

95°

DENE-METIS BOUNDARY SUBMISSION (August, 1990)

LEGEND

(provided by DENE/METIS; symbols only altered by Fact Finder)

———— Dene/Metis Land use extent.

———— Dene/Metis/TFN Boundary (September 7, 1989).

LEGEND

(provided by Fact Finder)

●●●●● Part of May 1986 single line boundary

TFN BOUNDARY SUBMISSION (August, 1990)

LEGEND

(provided by TFN; symbols only altered by Fact Finder)

———— Maximum extent of Dene/Metis land use as recorded and mapped by the Dene/Metis in negotiations with TFN from 1984 to 1986 (source unknown).

———— Maximum extent of Inuit land use based on the report of the Inuit Land Use and Occupancy Project of 1976 and additional field work and mapping by Rick Rieve of the University of Manitoba on behalf of TFN from 1985 - 1987.

●●●●● Boundary to separate the Dene/Metis and Inuit land claim settlement areas agreed to by land claim negotiators in May 1986.

———— TFN's "final offer" on the land claim boundary submitted to the Dene/Metis in October 1989.



TFN concession since boundary agreement of May 1986.



Approximate additional area to Inuit land use.

Note: Overlapping land use is confined to the zone between the Inuvialuit Settlement Region and the southwestern portion of the Thelon Game Sanctuary. No overlapping land use is found south of the Thelon Game Sanctuary.

LEGEND

(provided by Fact Finder)

○ ○ ○ ○ ○ Thelon Game Sanctuary

125°

120°

115°

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100°

Introduction

The report is organised into three sections. The first sets out a brief chronology of events particularly relating to the number of informal and formal meetings the parties have held in their attempts to bring the issue to a close. The second section supplements this historical review by briefly considering what happened with respect to the May 9, 1986 Agreement which was signed by the negotiators but not ratified by the constituents of one of the parties, since it provides a useful context for understanding the initial and ongoing positions of the two parties. The third part of the report considers each of the main issues which still divide the two claimants, attempts to summarise their views on these and states where they stand on them now.

Chronology of Dene/Metis and TFN Negotiations
on Boundary Lines between their Aboriginal Claims
Settlements

1980

- The Northwest Territorial Council endorsed division of the Northwest Territories in principle and voted to conduct a territory-wide plebiscite on the issue.

February 1982

- A committee of members of the Council (popularly known as the Legislative Assembly) and the leadership of the Dene Nation, the Metis Association of the Northwest Territories, the Inuit Tapirisat of Canada and the Committee on Original People's Entitlement met to form the Constitutional Alliance. The Alliance agreed to develop common positions, facilitate public participation and initiate proposals for the political development of the Territory.

April 1982

- The plebiscite resulted in a yes vote to divide (a turnout of 52.9% with 56.5% of those in favour).

November 1982

- The Hon. John Munro, Minister of Indian Affairs and Northern Development indicated federal government approval for division, provided, inter alia, that northerners first reached agreement among themselves and with the federal government; on the boundary line between the two proposed territories; on division of powers and on comprehensive land claims.

December 3, 1984

- The TFN and the Dene Nation and Metis Association of the N.W.T. signed a Memorandum of Understanding setting out the basic principles which would guide their negotiations.

May 9, 1986

- Numerous meetings were held in various locations throughout 1985 and these led to a boundary and overlap agreement that was initialed by both parties on this date and is known as the Overlap Agreement between the Dene/Metis and the Tungavik Federation of Nunavut.

March 19, 1987

- After further consultation with their communities the Agreement was rejected by the Dene Chiefs and the Metis Board.

March 31, 1987

- Further negotiations took place between the two parties in an attempt to meet a deadline set by the Legislative Assembly but no agreement was reached. A new single line boundary proposed by the Dene/Metis in February 1987 was not accepted by the TFN, which offered alternate changes to the 1986 boundary. (Map 1).
(Map 1).

April to December 1987

- "Several" informal and formal meetings failed to re-start the negotiation process.

January 27-28 1988

- Formal negotiations resumed with executive, negotiator and community representatives present.

February 24-26 1988

- Continuation of formal negotiations failed to produce agreement.

July 14, 1988

- Informal meeting of negotiators failed to get negotiations resumed.

January 20, 1989

- Formal negotiation session with executive, negotiator and community representatives present. Meeting was unable to reach agreement.

January 23, 1989

- Dene/Metis negotiators met with TFN Board to discuss possible steps to conclude negotiations. No agreement was reached and the TFN called for an end to negotiations proposing binding arbitration instead.

June 9, 1989

- TFN requested the Minister of Indian Affairs and Northern Development to either endorse the May 9, 1986 single line boundary proposal or ensure resolution of the dispute through binding arbitration.

August 31, 1989

- Informal discussions between some members of the two negotiation secretariats led to an agreement to reopen negotiations.

September 7-8, 1989

- Formal negotiation session.

In the words of the Dene/Metis, "Negotiations came very close to resolution, with movement from earlier positions on both sides. Negotiations closed with the expressed need to obtain further direction from the communities affected by Contwoyto Lake. Only the Contwoyto Lake area of the single line boundary and overlap management provisions remained contentious". (Chronology of Events prepared by the Dene/Metis Negotiation Secretariat).

However, a letter from the TFN of September 28, 1989 in response to the proposed Dene/Metis draft agreement, based on the September 7-8 discussions between the two parties stated, "The TFN Executive Committee has reviewed your paper and is unable to accept it. The differences between us are so substantial that we do not think further negotiating sessions are in order until you revise your position".

October 11-13, 1989

- The Dene/Metis Joint Leadership passed a resolution mandating their executives and negotiators to conclude a final boundary line based on their interpretation of what had been agreed to during the September 7-8 negotiations.

October 17, 1989

- TFN made a "final offer" on the outstanding issues.

November 2, 1989

- An informal meeting between the negotiators renewed attempts to find solutions to the outstanding issues.

November 28, 1989

- The Dene/Metis and TFN met with federal chief negotiators, D. Osborn and T. Malloy in an attempt to clarify the remaining issues.

December 5, 1989

- Dene/Metis executive representatives met with the TFN Board to discuss the continuing points of conflict.

March 17, 1990

- Dene/Metis and TFN negotiators meeting.

In the words of the Dene/Metis Chronology of Events, "Both parties indicated that arbitration might be the only way to resolve the outstanding issues but the Dene/Metis wanted to try the community visits approach first", that is attempt to have the local communities resolve the outstanding issues between themselves.

March to May, 1990

- Various attempts were made by correspondence to arrange community visits to resolve local issues but failed to obtain agreement of the Inuit communities involved.

May 25, 1990

-Resumption of formal negotiations between a large delegation of Dene/Metis representatives and representatives of the TFN Board. The meeting was unable to reach agreement since the Dene/Metis believed that the purpose of the meeting was to engage in negotiations on issues of substance while the TFN believed it was to deal only with details of the arbitration process.

June-July, 1990

- Correspondence from the Minister of Indian Affairs and Northern Development proposed to assist the parties with binding arbitration if they so wished and the Government of the Northwest Territories offered to act as a mediator for both claims. Arbitration was rejected by the Dene/Metis but accepted by the TFN.

August 1, 1990

- Professor M. Gunther was appointed "Fact-Finder" to report on the most recent or final positions of the parties by the Minister of Indian Affairs and Northern Development.

The 1986 Agreement

As noted earlier, the chief negotiators for the TFN and the Dene/Metis came closest to an agreement in May 1986 but this agreement in principle was then rejected after further consultation by the Dene/Metis negotiators with their communities. The issues which emerged at that time are still at the heart of the differences between the two parties and need to be reviewed in order to understand their present "latest" or "final" offers. The agreement of May 9, 1986 identified both a single line boundary and zones of overlapping land use as well as principles for joint management of renewable resources in the overlap zones. (Although, by and large the two groups use and occupy different parts of the Northwest Territories, land use does overlap in the area from the Inuvialuit settlement area to the Thelon Game Sanctuary).

The TFN has a strong commitment to the 1986 agreement because, as it has stated in various documents, it achieved what both parties had intended and it "remained true" to the terms of the 1984 Memorandum of Understanding. For the TFN, what emerged from the negotiations leading up to the 1986 agreement was the understanding that:

"The boundary, ...should equitably split the area of overlapping land use, so that areas used most intensively and extensively by one party would be in that same party's settlement area. It was also accepted that contemporary and traditional land use within the "living memory" of Inuit and Dene/Metis, according to each party's land use and occupancy studies, would provide the information base to be used by negotiators" (Document 7).

The TFN have stated that they are still committed to defending the May 1986 agreement and to this sense of what the boundary negotiations should achieve but are prepared to show some flexibility on making shifts to these boundaries.

The Dene/Metis have explained their rejection of the 1986 agreement on several grounds. First, the agreement did not, according to the elders of some of the communities, reflect the realities of actual land use especially around Contwoyto Lake and in the Thelon Game Sanctuary and changes to the boundaries in these areas were required to reflect this use. This was partly because the information base the Dene/Metis used during negotiations leading up to the agreement was incomplete. "We have consistently notified TFN since 1985 that the land use information provided then was only 30% complete and we have presented updated information since

that time" (Document 13). The same letter states that the more recent Dene/Metis land information, "clearly indicates that Dene/Metis have used land in the Thelon Game Sanctuary as well as eastward, south of the Sanctuary. This represents actual overlapping land use". whereas the agreement had confined their overlap use to the north and west of the Thelon Game Sanctuary. Second, the Dene/Metis did not wish to accept aboriginal land use based only on the notion of use "within living memory", instead they insisted on the notion of "traditional use" with a different time span attached to it. Third, they stated at the time that the 1986 agreement did not adequately protect land use in the southern Keewatin by Chipewyan Indians resident in Manitoba and Saskatchewan.

My chronology notes that the Dene/Metis negotiations secretariat believes that they came closer to a new agreement with the TFN at a meeting held on September 7-8, 1989, than ever before. They have stated that the only matter separating the two parties was a section of boundary around the Contwoyto Lake area. Other differences were less difficult and could have been settled with somewhat more negotiation. I have also noted in the chronology that the TFN did not perceive the September 7-8 meeting as close to agreement and in a letter of September 28, 1989, they stated to the Dene/Metis that their "differences were so substantial" that further negotiation was not in order.

The next section of the report reviews in greater detail the issues which continue to separate the two claimants despite the efforts made at the September 7-8, and later meetings in 1989 and 1990.

I would like to add that the Memorandum of Understanding agreed to on December 3, 1964 setting out the principles which were to guide the parties in their negotiations does not ever seem to have been repudiated by the Dene/Metis while the TFN state that they are still guided by it. It may, therefore, continue to be of some help to the parties in the future.

Specific Unresolved Issues

This section is based both on discussions held with the two parties in August 1990 and also on documentation they both provided. Since it was not my task, to act as a mediator or arbitrator, I will simply report on the positions of the two parties as clearly and accurately as I can without making any evaluation or judgement.

The unresolved problems can be listed as below. But before doing so, one specific difference between the position of the parties should be taken into account when considering the arguments made. A crucial difference between the TFN and Dene/Metis is that the TFN say they have now made their "final" offer and their stand on these matters is not open to further negotiation. The Dene/Metis on the other hand are not yet willing to close the negotiation process. Some of their proposals are thus still open to negotiation and should thus be taken as "latest" rather than "final" offer positions.

The specific matters that remain contentious are as follows:

- 1) The criterion for determining boundary claims.
- 2) The nature of the data which has been used to establish the claims.
- 3) Whether there should be a single line and overlapping use boundaries or a single line only and the location of these boundaries.
- 4) The Thelon Game Sanctuary.
- 5) Joint Management Proposal
- 6) The Contwyoto Lake area.
- 7) Trapping around Great Bear Lake and the general question of trapping in the overlapping area.
- 8) The claims of the Chipewyan of Saskatchewan and Manitoba.
- 9) Management of the Thelon Game Sanctuary caribou herds.
- 10) Proposals for resolving the issues.

1) The criterion for determining boundary claims

At the core of the difficulties between the claimants are their sharply differing views of the criterion which should determine the geographical extent of the overlap zone and hence the single line boundary line running through it. Both claimants have used

the term "areas of traditional use" when defining their claims but give quite different meaning to the term "traditional".

The TFN accept the term only if it is defined as "land use within living memory" and as documented in reputable land use and occupancy studies.

The Dene/Metis also use the term traditional use but whereas the TFN confine their definition to the experiences (uses by) of people who have been interviewed, that is contemporary land use, the Dene/Metis go further back in history to the experiences (uses by) of parents and grandparents, as recounted from one generation to another, and recalled by living heirs. They also, in our discussions, referred back even further to accounts by explorers etc., who have provided written accounts of land use going well back into the 19th century.

The TFN argue that unless some clear limits are imposed, the process of delving into historical and archaeological records, if carried out by both sides, could carry the parties to "irrelevant" and "unrealistic" claims, for example the Inuit to claim much of Manitoba and the District of Mackenzie. The TFN state that their approach is in line with the federal government's 1986 Land Claim Policy which proposed that lands selected for continuing use should be "traditional terrestrial lands that are currently used and occupied". They also stated that an open-ended definition of the term traditional, which is how they interpret the Dene/Metis approach, makes it extremely difficult to define geographically the overlap area to which they are establishing a claim.

The Dene/Metis reject this approach and definition of the criterion, partly on the grounds that it does not, they say, take account of situations where an area may be temporarily abandoned from use for a long period in order to permit wildlife stock to replenish itself and partly because they understand occupation and possession differently. "Living memory", says the most recent Dene/Metis document, "to the Dene/Metis elders includes lands that the elders' grandparents occupied and possession was handed down orally, as a part of a peoples oral history". (Appendix C).

I have included as Document 26 a four page discussion of these terms by Dr. W. Wonders.

Present Position

The TFN maintain that the criterion of land use selection must be that traditional/contemporary land use be established according to the "living memory" of Inuit and Dene/Metis as established by reputable land use and occupancy studies. (Document 16). Moreover, this criterion should be supplemented by the stipulation that where there is overlapping use, the areas most intensively and extensively utilized by a party should be in that party's settlement area.

The Dene/Metis position is that the term "traditional" use must be given as broad a meaning as is consonant with use going back a number of generations even to people no longer living but whose accounts of use and occupancy are "living" within the present generation.

2) The nature of the data used by the parties to establish their claims.

Another difficult issue is the amount and quality of the information that the claimants have used to establish their claims.

The Dene/Metis acknowledge that they have "consistently notified the TFN since 1985 that the land use information provided then was only 30% complete and we have presented updated information since that time". (Document 13). That data was based on a 30% sample of interviews with hunters from 26 communities carried out from 1972 to 1979. This information was supplemented, they note, by data from the Dene/Metis Mapping Project at the University of Alberta (now disbanded). They do not believe that a sample of 30% is sufficient and have continued to collect relevant data. They emphasised the difficulties they have had because of a lack of finances in producing as much information as they would like. They stated that the maps with new information, which they have shown at various meetings is a sign of their serious intent and should be accepted as evidence of their claims. At a joint meeting in November 1989 they stated that they had new data based on interviews with about 150 people but that this information had not yet been put into reports and most of the data and the overlay maps was still in the communities. (Document 24).

Although I was not able to get copies of maps the Dene/Metis used at earlier meetings, for example in March 1987 and September 1989, I did receive a written report on land usage in the Thelon Game

Sanctuary area, based, in part, on interviews noted earlier, which has not been available previously and is attached to this report as Appendix C. I also asked the Dene/Metis secretariat to let me have any additional maps which they used in the past or which have been produced more recently and which are relevant to the claims they have made. I have been told that there are such maps and that these were being mailed to me. I will add them to this report once they are received.

The TFN note that they base their boundary claim on the three volume Report: Inuit Land Use and Occupancy Project (by Dr. M. Freeman), published in 1976, which based its findings on interviews with Inuit and Inuvialuit hunters. This was supplemented by a study carried out by Dr R. Riewe who, in 1986, updated the earlier study using more interviews and the Northern Land Use Series maps. They also note that none of this information has been challenged as to its accuracy or validity.

The TFN maintain that by contrast the information they have received from the Dene/Metis is incomplete both as to scope and interpretation. They state that the computerized land use trail maps offered by the Dene/Metis in 1985 were incomplete and difficult to interpret as to intensity or importance of land use. Although the Dene/Metis provided maps showing further use patterns at later meetings, the TFN were unwilling to accept these because of what they saw as a lack of documented evidence to support the claims made on the maps. The TFN maintain that their willingness to accept the Dene/Metis position on maximum extent land use in 1986, despite these difficulties with the data base, was a major concession and a sign of good faith.

Present Position

The Dene/Metis position is that while the information base has been slow in coming, there is sufficient evidence to support their claims with respect to the boundary proposals. They point to the document I was given (Appendix C) and the promised maps as evidence of this claim.

The TFN state that they have not received adequate, reputable evidence on the Dene/Metis claims whose data does not match the quality of the studies they have used. They will not accept verbal claims about land use and insist that any map claims which are made must have adequate data sheets to support the assertions being made.

3) Whether there should be a single line and overlapping use boundaries or a single line only and the location of these boundaries.

The location of the single line boundary and overlap zones have not been the only questions at issue. At various times the question of what kind of boundary there should be has also been a point of dispute.

Generally, the focus of discussions between the two claimants since 1984 has been on the need to settle a single line boundary and two lines delimiting the zones of overlapping use north and south of this boundary.

At various times, there has also been discussion about abandoning the 1986 overlap zone proposal in favour of a different approach. This would involve bypassing the issue of the overlap boundary, at least temporarily. Land selection might then be possible and later the overlapping use questions could be settled on an ad hoc basis.

This is now the Dene/Metis preferred position. They propose setting aside the question of overlap boundaries until the single line boundary is established and then dealing with the overlap issues "perhaps" through joint management zones. The boundary agreement would then contain wording to reflect the right of each aboriginal group to continue hunting, trapping, and fishing in traditionally used areas. (As noted below the question of trapping is still contentious as is the meaning of "traditional").

The TFN rejected this offer on March 14, 1990, (Document 19) on the grounds that, as proposed, the new boundary line did not split the zone of land used by both parties equitably and that a zone of overlapping use was "essential" to ensure that harvesting and other rights of both claimants could be geographically defined.

The TFN say that they remain committed to the overlap area agreed to in 1986 with one change. On October 17, 1989, (Document 12) they proposed that an area in the vicinity of Aylmer and McKay lakes be added to their overlapping land use since Inuit land use in this area "is well documented ...and its exclusion to date has been an oversight on our part".

They point out that they also have made concessions on the 1986 single line boundary. On March 31, 1987 they proposed moving the single line boundary east to the Saskatchewan border, then proceeding northward to the southern boundary of the Thelon Game

Sanctuary, then following the boundary of the Game Sanctuary until it reached the junction of the May 9, 1986 line. This added 19,500 square miles to the Dene/Metis claim area. In addition they offered to alter the boundary, further, on October 17, 1989, (Document 12) by conceding approximately 11,000 square miles in the southern portion of the Thelon Game Sanctuary, south to the border between the NWT (Northwest Territories) and the provinces, and 550 square miles immediately to the west of the Game Sanctuary.

Present position

The Dene/Metis latest position is that defining a zone of overlapping use should be abandoned or postponed and that instead negotiations be resumed to establish a single line boundary only, so that land selection can proceed where it is being held up due to a lack of agreement on the boundary. They have also proposed a new single line boundary. (Appendix A for map coordinates and also Map 3). This boundary line bisects the south shore of Contwoyto lake and divides the Thelon Game Sanctuary, approximately in half. Their area of overlapping land use now extends to the north of the 1986 overlap line, takes in most of the Thelon Game Sanctuary and then goes somewhat further east of the Game Sanctuary as well as somewhat east of longitude 102, south of the Game Sanctuary. They have provided a new map line of the zone they now consider their area of overlapping land use. (Map 3). No coordinates were provided for this line.

The TFN state that they are committed to arriving at a single line boundary which would split the area of overlapping use equitably. Their final offer on the single line boundary and the extent of the overlap zones is based on the 1986 line as modified in 1987 (Document 4) and on October, 17, 1989 (Document 12).

4) The Thelon Game Sanctuary

The Thelon Game Sanctuary is, together with the area around Contwoyto Lake, the most contentious issue between the two parties.

The TFN starting point on this is the negotiations leading up to the 1986 agreement. From that starting point they say it was clear, based on the comprehensive Freeman Report, that overlapping land use between the claimants was confined to the area between the Inuvialuit Settlement Region and the Thelon Game Sanctuary and that there was no overlapping land use by the Dene/Metis within the Thelon Game Sanctuary nor was there any south to the NWT border with the prairie provinces. Documents which claimed to show

Dene/Metis land use in the area were "promised but not received" by the TFN. The maximum land use claims made by the Dene/Metis in 1986 did not include land use in the Thelon Game Sanctuary. The TFN state that despite this they are willing to agree to the Dene/Metis having full harvesting rights throughout the Thelon Game Sanctuary.

The TFN also note that their commitment to the 1986 single line boundary was modified in October 1989, as they said, "to make it politically easier" for the Dene/Metis to ratify a boundary "and not because you have made a case based on land use within 'living memory'". (Document No 12). They proposed adjusting the boundary in favour of the Dene/Metis to ensure that a portion of the southern section of the Thelon Game Sanctuary and a section of the Keewatin, south to the boundary with the provinces, as well as a section immediately west of the Game Sanctuary were ceded to the Dene/Metis. An additional justification for this change given by the TFN was that it would ensure that the boundary in and adjacent to the Game Sanctuary was congruent with or beyond the line of the Dene/Metis maximum land use given in 1986.

The Dene/Metis do not accept this interpretation. They have stated that their area of overlapping use goes well into the Thelon Game Sanctuary. This was not made clear in 1986 because hunters who had been interviewed in the 1970's for the Dene/Metis land use studies were unwilling to admit that they had hunted in the Game Sanctuary since it was illegal. Three hunters had been arrested and jailed for a month in 1979 and this had discouraged others from admitting that they too had used the Game Sanctuary. It was only in the later 1980s that these people were persuaded to provide information which showed that such hunting had taken place. In addition, they say, that their new documentary information also confirms extensive Dene/Metis use of the Sanctuary. The South Slave region argue that traditionally they have gone into the Game Sanctuary as far as Beverly Lake, following the Beverly Caribou herd.

Present Position

The TFN maintain that the Thelon Game Sanctuary is not an area of traditional Dene/Metis use and that the concessions they made on October 17, 1989 advancing the single line boundary into the southern portion of the Thelon in favour of the Dene/Metis plus their willingness to allow the latter full access to hunt, fish and trap in the Game Sanctuary is their final offer.

The Dene/Metis state that the Thelon Game Sanctuary is an area of traditional use as they define it and must be shared with the TFN

on a 50/50 basis as to the single line boundary and with a joint management arrangement for the Game Sanctuary as a whole.

5) Joint Management Proposals

One of the possible solutions to the dispute over the Thelon Game Sanctuary and other areas, particularly around Contwoyto Lake, discussed in 1989 was the possibility of creating joint, renewable and non-renewable resource management areas, for example, throughout the entire Game Sanctuary in order to resolve the overlapping interests and make it easier to produce a single line boundary. (Document 10). However, the form of management boards proposed proved unacceptable to the TFN.

The Cooperative Management Boards suggested by the Dene/Metis were to have wide authority over land use planning, land and water use generally, environmental impact reviews and wildlife management in certain areas of the overlap zone. The Boards were to consist of 9 members appointed both by the Governor-in-Council and the Government of the NWT, 3 each from nominees put forward by the Inuit, Dene/Metis and Government. Decisions were to be by majority vote but veto rights were granted to any three members appointed to represent one of the three groups voting together.

The TFN rejected this proposal, believing that government would be unwilling to give aboriginal organizations such a veto right over resource development. The TFN proposal on issues requiring joint management in the overlap zone was to guarantee that where Inuit environmental management bodies made decisions which might affect the Dene/Metis area of overlapping use, the "responsible" Dene/Metis organization affected by such decision would be given representation on that management body, if it so requested. Similar arrangements would be made with respect to wildlife management. (Document 12).

Present Position

The Dene/Metis proposal for a Cooperative Management Board is still on the table and up for negotiation. They have said that differences on this issue could be solved "easily" and on November 28, 1989, (Document 15), indicated that they were willing to accept provisions similar to those proposed by the TFN, if the boundary that they state had been agreed to at the September 7-8, 1989, meeting was accepted by the TFN.

The TFN retain their proposals for representation of the other party on relevant management boards, in areas of "actual" overlapping land use as documented by the two main studies (Freeman and Riewe) that the TFN relies on.

6) The Contwoyto Lake Area.

The dispute between the parties about Contwoyto Lake has been among the most difficult in the course of the negotiations. The issue is bedeviled by the question of intensity and quality of land use patterns.

The TFN say that their documentary evidence (especially the Freeman study) shows that Inuit have used the region far more "extensively" and "intensively" than the Dene/Metis and that while some Inuit families live (occupy) there all year round the Dene/Metis visit the area only occasionally. At one point they maintained that the Dene/Metis claim on traditional land use in the area was mainly designed to put the Lupin Gold Mine on the south shore of the lake in their settlement area in order to get the federal government's royalties from the mine. They are not willing to have further negotiation on shifting the single line boundary north of the 1986 line up to the southern shore of Contwoyto Lake but have no problems with Dene/Metis crossing that line for harvesting (including trapping), as was allowed for in the 1986 agreement on the overlap zone.

The Dene/Metis maintain that Contwoyto Lake was traditionally the place where their people used to meet the Inuit. This was an area of traditional Dene/Metis use. Inuit use is more recent. They do not accept that this is an area of extensive and intensive Inuit use. They state that the Dogrib also travelled beyond Contwoyto Lake to hunt and trap. Since the lake was a main point where the Dene and Inuit met it is fair that the boundary give them access to the southern half of Contwoyto Lake. They deny that they have any interest in the Lupin mine and point out that the access they want to the southern shoreline excludes the mine.

Present Position

The TFN do not accept that the more limited land use in this area by the Dene/Metis justifies moving the single line boundary from its 1986 position to the southern portion of Contwoyto Lake. The lake and the area around it can justifiably be included as an area of overlapping use to which the Dene/Metis can continue to have "free and unfettered access" for hunting, fishing and trapping.

The Dene/Metis maintain that they must have some access to Contwoyto Lake and continue to propose that the single line boundary bisect the southern shore of the lake. (Map 3).

7) Trapping around Great Bear Lake and the general question of trapping in the overlapping areas.

Another of the matters separating the claimants is that of trapping rights in the Sahtu region, particularly with respect to the trapping rights of the Inuit from Coppermine in the area of Great Bear Lake. Related to this question is the proposal made by the Dene/Metis in their February 2, 1990, latest offer (Document 18) to stop all trapping by both parties in their areas of overlapping use. Hunting and other forms of harvesting would still be permitted in these zones.

The matter of trapping rights in the Sahtu region was originally covered under the overlap arrangements of the 1986 agreement which permitted all types of harvesting up to the eastern shore of Great Bear Lake. Subsequently, the Dene/Metis from this region stated that they wished the overlap zone in this area to be deleted and that instead they wanted a single line boundary only with respect to their region. The explanation they give for this position is that theirs was not an area of traditional use by the Inuit from Coppermine. It was only in the 1950s and later with growth in the fur trade (especially for wolves) and with the use of skidoos that the Inuit began to use the areas around the eastern edge of the lake more extensively. I was told that the main concern of the Sahtu was with trapping not with Inuit use of the area for other harvesting purposes.

The TFN expressed "puzzlement" at this proposal since they had not received a clear rationale for it. They point out that up to 20 hunters from Coppermine have hunted wolves on the eastern edge of the lake for a good number of years, make a living out of this and they want to maintain this access. They add that denying trapping rights in an overlap zone runs counter to the 1984

Memorandum of Understanding which undertook to protect the existing rights and interests of each party.

The more recent issue which was raised in the Dene/Metis proposed draft agreement of February 2, 1990 is the question of trapping rights by either party in their overlap zone or if there is to be no overlap zone in areas of traditional use north and south of the single line boundary. The Dene/Metis want to define harvesting rights in the areas of overlap to exclude trapping. They say that this is to prevent exhaustion of resources and to ensure good management of these resources. (Document 18).

The TFN reject this position too, as being contrary to one of the principles of the December 1984 Memorandum of Understanding which stipulated, as mentioned above, that the parties would protect each others rights and interests not the taking away of reciprocal rights. They say that renewable resource protection which they are also committed to can be handled by their proposals for joint management regimes.

Present position

The Dene/Metis will not accept an Inuit overlap zone in the Sahtu region around the Great Bear Lake. They are willing to leave arrangements for Inuit harvesting (excluding trapping) in the area to be made with the local Wildlife Council which would have to be informed and make arrangements for the exercise of these rights. They also propose that no trapping be allowed by either party in areas of overlapping use.

The TFN reject both these proposals as being contrary to basic principles both parties agreed to in 1984, in other words to respect and not diminish reciprocal rights.

8) The claims of the Chipewyan of Saskatchewan and Manitoba.

The Dene/Metis indicated in February 1987, that one reason why they could not ratify the 1986 agreement was that it did not sufficiently protect land use in the southern Keewatin by Chipewyan Indians resident in Manitoba and Saskatchewan. The Dene/Metis maintain that they must protect the interests of these groups and in fact have been asked to do so by them.

One group, the Saskatchewan Athabasca Dene Bands have issued a seven point statement of interest and intent which gives an indication of the issues involved. (Document 23). This May 9, 1990,

statement deals with the "traditional homeland of the Saskatchewan Athabasca Dene Bands north of the 60 parallel". It demands that both Final Settlement Agreements with the Dene/Metis and the TFN: must "recognise and confirm" the existing Treaty Rights and aboriginal interests of these bands; recognise and protect the current exercise of wildlife harvesting and other land use rights north of 60; ensure the equitable participation of the bands on all management boards having jurisdiction within these traditional homelands; homelands which must be excluded from the settlement land selections of the Dene/Metis and TFN. In addition to these four points, the bands demand: that these "traditional homelands" north of 60 be included within the Dene/Metis settlement area; that there be equitable participation in cash settlements and resource royalty provisions of the comprehensive claims agreements to the degree the "homelands" contribute to the generation of these incomes, and lastly, that there be equitable participation by the bands in the economic development provisions of the agreements.

The Athabasca Bands also requested in January 1990, direct involvement in negotiations with the Inuit and the Dene/Metis respecting comprehensive claims in the NWT. The Minister of Indian Affairs and Northern Development replied that the bands would have to negotiate this option directly with the two parties concerned. There are other bands that use the area but these have not, as far as I am aware, stipulated as broad a set of interests in the issues.

The TFN state that the use made of the area south of the Thelon Game Sanctuary by the Chipewyan Indians from Manitoba and Saskatchewan is not relevant to the boundary negotiations. These bands are not and should not be parties to the boundary selection process," directly or indirectly". They note that these bands extinguished aboriginal rights and title in Treaties 10 and 5. Apart from this, they say, the Wonders Report on overlapping land use (carried out for the Minister of Indian Affairs and Northern Development in 1984 by Dr. W. Wonders) showed that this area is a "no-mans land" since neither the Dene/Metis nor the Inuit of the NWT used it within living memory. "It would be unfair and inappropriate" for non-residents of the NWT who are not beneficiaries of the Dene/Metis claim to be parties to the negotiations, they say.

Present Position

The TFN are not willing to include the bands south of the 60th parallel in their negotiations with the Dene/Metis. The TFN are willing to conclude memoranda of understanding with Indian bands from both provinces which use the region in order to protect their rights to continue to hunt, fish and trap (with reciprocal rights for the Inuit in northern Manitoba and Saskatchewan) similar to the MOU signed with the Tadoule Lake Chipewyan Indians on July 11, 1986. They state that they are negotiating a similar memorandum of understanding with the Prince Albert Tribal Council. They have amended their Agreement-in-Principle to provide for such representation by adjacent aboriginal peoples on the Nunavut Wildlife Management Board.

The Dene/Metis have accepted the first four of the Athabasca Dene proposals but have "concerns" about the remaining three points, particularly, those relating to financial provisions. They deny that the Memorandum of Understanding which the TFN signed with the Taduley Lake Band is still in effect.

9) Management of the Thelon Game Sanctuary caribou herds.

The management of the two caribou herds in the Thelon Game Sanctuary has also become a point of contention.

The Dene/Metis have argued that since the South Slave Dogrib are dependent on the Beverly caribou herd in the Game Sanctuary and traditionally migrated with the Caribou until the 1890s when the Dene were decimated by small pox, the calving ground of this herd must be partially on the Dene/Metis side of the single line boundary.

The TFN maintain that the existing structures for managing the caribou herds in the Thelon Game Sanctuary are quite adequate. The intergovernmental agency which regulates these matters has representation on it from all the interested parties and its work has been very good. If new caribou management regimes are needed these can be handled through the proposed Wildlife Councils which will be set up in the respective settlement areas. They also reject the notion of delimiting boundaries on the basis of animal use. The 1984 Memorandum of Understanding and the 1986 federal Land Claim Policy stipulated land use by people as the criterion to use.

Present Position

The Dene/Metis position is that the calving grounds of the Beverly herd must be partially in the Dene/Metis settlement area.

The TFN reject patterns of animal use as the basis for determining the single line boundary and thus they reject the Dene/Metis proposal for extending the boundary on the basis of caribou migration and calving.

10) Proposals for resolving the Issues

The Dene/Metis position is that although the process of negotiating has gone on for a long time, the actual time spent on face to face negotiation has been limited and that the number of days actually spent does not warrant an ending of the process as yet. They maintain that some intensive discussions between the elders of the communities which are at the centre of the differences could resolve the points of dispute. Moreover, they believe that a mutually acceptable single line boundary was almost agreed to at the September 7-8, 1989 meeting (Document 15). The only problem at the time seemed to be a disputed area around Contwoyto Lake and a lack of agreement about a joint management regime for the Thelon Game Sanctuary. They note that later their Joint Leadership ratified these results and mandated the negotiators to conclude the negotiations on these terms. Despite the different interpretation the TFN gave to the results of this meeting they still prefer to keep negotiating given, they say, how close they came in September, 1989, given their willingness to keep trying as shown in various meetings since that time and because they are strongly opposed to having decisions imposed on them by binding arbitration to which they have not agreed (Documents 17, 21 and 22). Aboriginal peoples have to solve their own problems they maintain. Arbitration, if it is used at all, should only be a very last resort.

The TFN state that face to face negotiations "have been exhausted" and will no longer be productive. The September, 1989 meeting did not bring the parties close to agreement as the Dene/Metis maintain (Document 11). This became apparent when the Dene/Metis sent their proposed draft agreement in response to the one tabled by the TFN at that meeting (Documents 9 and 10). They maintain that new negotiations have led to expanded Dene/Metis boundary claims as shown by way the single line boundary and the maximum extent use boundary has been enlarged into Inuit "heartland" since 1986. New negotiations lead to new demands. There is no assurance that "deals" struck with the Dene/Metis secretariat will hold when taken

back to their Joint Leadership and the communities. "We fear the Dene/Metis may 'walk away' from any new deal". (Document 16).

Present Position

The TFN state that the negotiation process is at an impasse and a resolution of the boundary and overlap zones should be made by binding arbitration (Document 20).

The Dene/Metis position is that it is "totally unacceptable" for Ottawa to make decision crucial to the Dene\Metis without their consent by the use of imposed arbitration. Negotiation is still both "feasible and desirable". (Documents 21 and 22).

Conclusion

The points of dispute between the parties are considerable as is obvious from this report. However, the parties are agreed that they wish to see an expeditious conclusion to the negotiations, albeit using different means to do so.

List of attached documents

Appendix A - Dene/Metis Map Coordinates, proposed single line boundary, latest position, August 16, 1990.

Appendix B - TFN Map Coordinates, proposed single line and overlap boundaries, final offer, October 17, 1989.

Appendix C - Latest Dene/Metis land use data, submitted August 16, 1990.

Map 1 - Various boundary lines proposed between 1986 and 1989.

Map 2 - Latest position boundary lines, August 1990.

Map 3 - The regions of the Dene/Metis area.

Document 1 - Memorandum of Understanding, December 3, 1984.

Document 2 - Overlap Agreement between the Dene/Metis and the TFN, May 9, 1986.

Document 3 - Proposed Dene/Metis boundary changes, March 31, 1987.

Document 4 - Proposed TFN boundary changes, March 31, 1987.

Document 5 - TFN offers on Manitoba and Saskatchewan Chipewyan and on management provisions, March 7, 1988.

Document 6 - Dene/Metis concerns about Contwoyto Lake, the Thelon Game Sanctuary and the Chipewyan Dene and Metis, December 8, 1988.

Document 7 - TFN briefing note on where the parties stood, June 9, 1989.

Document 8 - Federal government position on the boundary issues, July 26, 1989.

Document 9 - TFN Draft Agreement, September 7, 1989.

Document 10 - Dene/Metis Draft Agreement, September 20, 1989.

Document 11 - TFN rejection of Dene/Metis response to document 10, September 28, 1989.

Document 12 - TFN "final offer", October 17, 1989.

Document 13 - Dene/Metis response to TFN "final offer", October 25, 1989.

Document 14 - Dene/Metis summary of November 2, 1989 attempt to resolve the problems, November 3, 1989.

Document 15 - Dene/Metis outline of remaining issues, November 28, 1989.

Document 16 - Extracts from TFN "Blue Book", their review and justification for making the "final offer", November 28, 1989.

Document 17 - Dene/Metis latest position, December 5, 1989.

Document 18 - Dene/Metis formal draft agreement and map coordinates reflecting latest position, February 2, 1990.

Document 19 - TFN rejection of Dene/Metis draft agreement, March 19, 1990.

Document 20 - TFN detailed proposals for binding arbitration, March 30, 1990.

Document 21 - Dene/Metis rejection of binding arbitration, June 22, 1990.

Document 22 - Dene/Metis comments on where negotiations stand, June 27, 1990.

Document 23 - Statement of Interest and Intent by Saskatchewan Athabasca Dene Bands, May 9, 1990.

Document 24 - Minutes of TFN and Dene/Metis meeting with government negotiators to discuss status of negotiations, November 28, 1989.

Document 25 - Minutes of Dene/Metis boundary meeting, May 25, 1990.

Document 26 - Letters set out fact-finding task of Prof. M Gunther.

Document 27 - Extract from Wonders report-1984.

Document 28 - Measurements of boundary areas under dispute.