Update on Land Claims and Devolution in the Yukon and the Northwest Territories

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September, 2002
This paper was presented at the 4th Annual Far North Oil and Gas Conference,
September 30 – October 1, 2002

UPDATE ON LAND CLAIMS AND DEVOLUTION

IN THE YUKON AND THE NORTHWEST TERRITORIES

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1. INTRODUCTION

Those who have been following the debate about possible gas pipelines in the North will have noticed the prominence of aboriginal issues in that debate. In some areas of the Yukon and the Northwest Territories, land claims agreements have been settled with the resident aboriginal groups. In other areas, those agreements remain outstanding. In both cases, there are important consequences for oil and gas operators. This paper provides an update on land claims in the Yukon and the Northwest Territories, as well as on devolution of responsibilities from the federal government to the two territorial governments.

2. THE YUKON

2.1. Status of Land Claims

There are fourteen First Nations resident in the Yukon. To date, land claims agreements with eight of those First Nations have been concluded and implemented. These eight are, with the dates their agreements were implemented: the Champagne and Aishihik First Nation (1993); the Teslin Tlingit Council (1993); the Vuntut Gwitchin First Nation (1993); the First Nation of Nacho Nyak Dun (1993); the Little Salmon/Carmacks First Nation (1997); the Selkirk First Nation (1997); the Tr'ondek Hwech'in First Nation (1998); and the Ta'an Kwach'an First

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Nation (2002). All eight of those final agreements have been brought into force under federal and Yukon legislation.[2]

Negotiations with the remaining six Yukon First Nations ended when the federal government's negotiation mandate expired on March 31, 2002. As of that date, negotiators' agreements had been concluded with four of the six remaining Yukon First Nations: Carcross/Tagish First Nation, Kwanlin Dun First Nation, White River First Nation and the Kluane First Nation. Those First Nations, along with the federal and territorial governments, are now working on the text of their final agreements. The deadline for completion of drafting and ratification of those agreements is March 31, 2003.

Negotiations with the two Kaska First Nations in the southeast Yukon, Ross River and Liard, also ended with the expiration of the federal mandate. However, no agreement was reached. The federal and territorial governments made an offer to the Kaska First Nations, but the status of that offer and its acceptability to the Kaska are uncertain at this point.

2.1.1. **The Umbrella Final Agreement**

The principal terms of the land claims agreements with Yukon First Nations are set out in the Umbrella Final Agreement (the "UFA"). Among other things, the UFA includes provisions related to ownership of lands by Yukon First Nations ("Settlement Land") and management of lands and resources in Yukon. Each of the eight final agreements implemented to date includes all of the provisions of the UFA, and eventually the UFA will apply throughout the Yukon when all Yukon First Nation's claims are settled. Until then, the UFA is not binding on the Yukon First Nations that have not concluded land claims agreements.[3]

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[2] *Yukon First Nations Land Claims Settlement Act*, S.C. 1994, c. 34; *An Act approving Yukon Land Claims Final Agreements*, S.Y. 1993, c. 19.

[3] This was the conclusion of the Federal Court of Appeal in respect of the taxation provisions of the UFA: *Carcross/Tagish First Nation v. Canada*, 2001 FCA 231.

2.1.2. **Land**

Under the UFA, the total amount of land to be shared among the fourteen Yukon First Nations is approximately 42,000 square kilometres. This amounts to about nine percent of the Yukon's land area. Three categories of settlement land are provided for in the UFA: Category A Settlement Land (about 26,000 square kilometres of land, including the subsurface rights); Category B Settlement Land (about 16,000 square kilometres of land, excluding subsurface rights); and Fee Simple Settlement Land (small parcels of land owned in fee simple, excluding subsurface rights).

The UFA allocates the 42,000 square kilometres of settlement land among the fourteen Yukon First Nations. The actual land selections are negotiated with individual Yukon First Nations and are set out in each final agreement. All settlement land is to be surveyed as soon as resources will allow. Surveys are to be carried out in accordance with the requirements of the *Canada Lands Surveys Act*.[4] This is important because of the large number of parcels of settlement land that have been selected by Yukon First Nations.[5]

2.1.3. **Access to Settlement Land**

The UFA creates a process for resolving disputes about access to settlement land for resource development and other purposes, through a Surface Rights Board, with half the members of the Board nominated by Yukon First Nations and the other members appointed by government. Formally established under the federal *Yukon Surface Rights Board Act*,[6] the Surface Rights Board has the power to determine whether or not access is reasonably required to settlement land (or to other private land) in order to exercise sub-surface rights, to establish terms and conditions for access, and to determine compensation for disturbance caused by the access. Generally the Board will not order access to Settlement Land where reasonable

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[4] R.S.C. 1985, c. L-6.

[5] For example, the Champagne and Aishihik First Nation's land allocation under the UFA was approximately 2,400 square kilometres. The First Nation's land selections include 51 large and 181 small blocks of land in rural areas along with 30 parcels of land within community boundaries.

[6] S.C. 1994, c. 43.

alternatives exist; companies must try to negotiate access directly with the First Nation before applying to the Board for an access order.

2.1.4. **Land Management Processes**

The UFA also provides for Yukon First Nation participation in resource management and land use decision making processes, including development assessment, land use planning, and water management.

2.1.4.1. ***Development Assessment***

The development assessment chapter of the UFA sets out the standards for a new development assessment process in the Yukon, and obligates government to implement the process by legislation. The process will apply to all developments in the Yukon, including oil and gas developments, and will apply on Settlement Land as well as on Crown land. In August of 2001, the Government of Canada released the draft *Yukon Environmental and Socio-economic Assessment Act*, for public consultation purposes. The text of the draft Act is the result of several years of negotiations between the federal and Yukon governments and Yukon First Nations. It's a complex piece of legislation, running to over 80 pages in length. Some highlights of the draft Act, which follows closely the development assessment chapter of the UFA, include:

- The process will apply to reviews of all projects in the Yukon, with some exceptions. A project list regulation will be developed to list projects that require assessment and projects that are exempt.

- The process contains the usual two steps of screening and review. Depending on the location and the size of the proposed project, screening and review activities may be carried out by one of six regional designated offices throughout the Yukon, or by the Yukon Development Assessment Board. Half the members of the Board will be nominated by Yukon First Nations, and half will be appointed by government.

- Reviews of large projects will be carried out by panels of the Development Assessment Board If a project is located primarily on Settlement Land, two-thirds of the panel members will be nominees of the Yukon First Nations; where the project is located primarily off

Settlement Land, one-third of the members will be nominees of the Yukon First Nations; where the project is located on and off Settlement Land, half the panel members will be nominees of the Yukon First Nations.

- Panels will review project proposals in accordance with the procedures set out in the Act, and will submit recommendations to each government and Yukon First Nation with decision-making control over the project. For example, a project involving development of oil and gas reserves under Category A Settlement Land will likely require the approval of the Yukon First Nation as owner of the oil and gas, and the approval of the Yukon and federal governments for matters within their regulatory jurisdiction. Those governments will have the final approval power over the project, and will issue what is known as a "Decision Document" setting out the terms and conditions of approval of the proposed project. To facilitate timely coordinated decision-making on projects, a "Timelines/Decision Bodies Coordination Regulation" will be passed to establish timelines for completion of post-assessment phases of the process.

- Licences, permits and other authorizations issued by government and Yukon First Nations will have to be consistent with the terms and conditions set out in the Decision Documents. Government and Yukon First Nations can't issue permits for a project until the assessment process has been completed and a decision document issued. Independent regulatory authorities other than the National Energy Board will be obligated to make the terms and conditions of approvals they grant conform to the Decision Documents to the extent practicable. The National Energy Board, however, will only be required to take into account the terms and conditions contained in a Decision Document when it issues licences, permits or other authorizations.

The draft Act has not yet been introduced into Parliament, and it is not clear when that will occur. Once the legislation gets through Parliament, the Act will be brought into force in stages. It's anticipated that the Act will not come into full force until 18 months after enactment by Parliament.

In the meantime, development proposals are to be screened and reviewed under the *Canadian Environmental Assessment Act*[7] ("*CEAA*") and the Yukon *Environment Act*.[8]

2.1.4.2. *Land Use Planning*

The UFA also contains provisions respecting land use planning. Regional land use plans will be prepared over time by Regional Land Use Planning Commissions established for the purpose. Yukon First Nations will have from one-third to two-thirds of the membership on the Planning Commissions, depending on the demographics within the regional planning area.

Plans will be prepared with public involvement, and will be recommended to governments and Yukon First Nations for approval. Each will approve those parts of the plans within their jurisdiction. Once approved, governments and Yukon First Nations will be required to exercise their discretion in granting interests in land or authorizing land uses in conformity with the approved land use plans.

2.1.4.3. *Water Management*

Water management in the Yukon is currently a federal responsibility, carried out by the Yukon Territory Water Board under the *Yukon Waters Act*.[9] The water chapter of the UFA continues the Water Board and imposes additional rules and responsibilities on it. The chapter contains provisions which ensure Yukon First Nations one-third representation on the Water Board, and which protect certain Yukon First Nation uses of water. The water management chapter also provides for compensation for Yukon First Nations and Yukon Indian people in the event that they suffer losses from water uses which affect the quantity, quality or rate of flow of water on settlement land or which affect traditional uses of water off settlement land, and gives the Board the power to resolve disputes between Yukon First Nations and other water users.

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[7] S.C. 1992, c. 37.

[8] S.Y. 1991, c. 5.

[9] S.C. 1992, c. 40.

2.1.5. **Transboundary Land Claims Agreements**

There are other First Nations which have or claim rights in the Yukon, based on their traditional use and occupancy of lands in the Yukon. These include the Inuvialuit on the Yukon North Slope, the Tetlit Gwich'in in the Peel River region of the Yukon, and the Kaska Dene in the southeast Yukon.

2.1.5.1. *The Inuvialuit Final Agreement*

The Inuvialuit Final Agreement (the "IFA") was concluded in 1984.[10] Under the IFA, the Inuvialuit do not have land in the Yukon. However, in recognition of their tradition use of the Yukon North Slope, the IFA provides them with certain hunting and economic rights in that area. The federal government agreed to create a new national park, Ivvavik, on the western half of the Yukon North Slope. The IFA also limits the type of development that may be proposed for the eastern part of the North Slope. Any proposed development, including oil or gas development, is subject to an environmental screening and review process which provides for participation by Inuvialuit, territorial and federal government representatives.

2.1.5.2. *Gwich'in Final Agreement*

Under the Gwich'in Final Agreement, concluded in 1992,[11] the Tetlit Gwich'in from the Northwest Territories hold fee simple title to the surface of about 1,554 square kilometres of land in the Peel River region of northeastern Yukon. Those lands are treated as though they were Category B Settlement Land for most of the purposes of the UFA, including the provisions respecting surface rights, development assessment, water management, and land use planning discussed above.

2.1.5.3. *Kaska Dene Council*

A third transboundary claim in the Yukon is from the Kaska Dene Council, a group of First Nations from northeastern British Columbia. Transboundary negotiations with the Kaska Dene

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[10] Implemented by the *Western Arctic (Inuvialuit) Claims Settlement Act*, S.C. 1984, c. 24.

[11] Brought into force by the *Gwich'in Land Claim Settlement Act*, S.C. 1992, c. 53.

Council are being carried out in conjunction with negotiations with the Liard First Nation and the Ross River Dena Council in the Yukon. Those negotiations appear to be some way from resolution.

2.2. Devolution

Until 1998, the federal government owned and managed most lands and resources in the Yukon. In 1998, responsibility for oil and gas resources was devolved from the federal government to the Yukon government, and preparations are underway for the transfer of responsibility for other lands and resources next April.

2.2.1. Oil and Gas Resources

On November 19, 1998, the *Canada-Yukon Oil and Gas Accord Implementation Act*[12] came into effect and transferred the responsibility for management of oil and gas resources in the Yukon to the Yukon government. The *Canada-Yukon Oil and Gas Accord Implementation Act* amended the *Yukon Act*,[13] to provide the Yukon government with provincial-type legislative powers over oil and gas resources in the Yukon. The Yukon government now has the power to make laws respecting exploration for oil and gas, development, conservation and management of oil and gas, and oil and gas pipelines other than extra-territorial pipelines. The Yukon also has other powers equivalent to those of provinces under section 92A of the *Constitution Act, 1867*, including the power to make laws respecting the export of primary production from oil and gas, and the power to impose direct and indirect taxation, including royalties, on oil and gas production. The federal government transferred administration and control of oil and gas to the Yukon government,[14] giving the Yukon government *de facto* ownership of as well as legislative jurisdiction over oil and gas resources.

The powers granted to the Yukon government apply throughout the Yukon, subject to the terms of land claims and self government agreements, and to certain waters in bays along the Beaufort Sea. In general, however, the Yukon government's oil and gas powers do not extend into the offshore region.

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[12] S.C. 1998, c. 5.

[13] R.S.C. 1985, c. Y-2.

[14] Federal Order in Council PC-1998-2022, effective November 9, 1998.

Under the *Canada-Yukon Oil and Gas Accord Implementation Act*, existing federal oil and gas dispositions remain in effect, but become subject to Yukon oil and gas laws. The duration of and certain rights under those federal dispositions cannot be diminished by Yukon laws. Existing federal dispositions may be cancelled under Yukon oil and gas laws, but only if they could have been cancelled in similar circumstances under the applicable federal legislation. The *Canada-Yukon Oil and Gas Accord Implementation Act* requires the Yukon government to maintain comparable provisions in its oil and gas laws for as long as existing federal dispositions remain in existence.

As a result of these amendments to the *Yukon Act* and the transfer of ownership powers to the Yukon government, the Yukon government now has provincial-type powers and responsibilities for oil and gas resources in the Yukon. The Yukon Legislative Assembly used these powers to enact the Yukon *Oil and Gas Act*,[15] which now governs oil and gas exploration, development and management in the Yukon.

2.2.2. **Other Lands and Resources**

At the moment, provincial-type legislative and administrative responsibilities for minerals, water, forestry and land management remain with the federal government. Canada and the Yukon government reached agreement in October, 2001, on the transfer of responsibilities for land, water, forestry and mineral resources to the Yukon government[16] and are now working toward an April 1, 2003, target date for the transfer.

On that date, responsibility for management of lands, water and mineral resources will be transferred to the Yukon government. In anticipation of the transfer, a new *Yukon Act*,[17] the federal legislation which defines the powers of the Yukon government, was passed in March, 2002, to confer the necessary powers on the Yukon government. The Yukon government intends to enact legislation to mirror existing federal legislation, to continue the same regime as currently provided under the existing federal legislation. In May, 2002, the Yukon government introduced five bills in the Yukon Legislative Assembly which, when passed, will provide for continuation of the existing

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[15] S.Y. 1997, c. 16.

[16] *Yukon Northern Affairs Program Devolution Transfer Agreement*, October 29, 2001.

[17] S.C. 2002, c. 7.

federal regime when the transfer of responsibility occurs next year.[18] Changes to that regime may subsequently be made by the government in future years.

Some provincial-type responsibilities will remain with Canada. For example, the Yukon Surface Rights Board and land surveying in the Yukon will continue to be administered by Canada under federal legislation. In addition, as noted above the proposed federal *Yukon Environmental and Socio-economic Assessment Act* will apply to all project assessments in the Yukon. However, most other provincial-type resource management responsibilities will become subject to Yukon legislative and administrative control.

It is anticipated that most federal employees who administer the existing federal land, water and mineral programs will become Yukon government employees when the transfer of legislative responsibilities occurs.

For oil and gas companies in the Yukon, this means that, until devolution occurs, oil and gas resources will be managed by the Yukon government under the *Oil and Gas Act*, while rights to lands, waters and other resources will continue to be controlled by the federal government under federal legislation. Immediately after devolution, oil and gas companies should find that they are dealing with essentially the same regulatory regime, administered by many of the same people.

3. THE NORTHWEST TERRITORIES

3.1. Land Claims

As in the Yukon, claims in the northern half of the Northwest Territories have been settled, while the outstanding claims are located in the southern Northwest Territories.

3.1.1. The Inuvialuit Final Agreement

The Inuvialuit claim was the first to be settled in the Northwest Territories, with the conclusion of the Inuvialuit Final Agreement (the "IFA") in 1984.[19] The Inuvialuit Settlement Region contains approximately 435,000 square kilometres in the Mackenzie Delta and the Beaufort

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[18] The five bills are the *Environmental Assessment Act* (Bill 66), the *Placer Mining Act* (Bill 67), the *Quartz Mining Act* (Bill 68), the *Territorial Lands (Yukon) Act* (Bill 69), and the *Waters Act* (Bill 70).

[19] Under the *Western Arctic (Inuvialuit) Claims Settlement Act*, S.C. 1984, c. 24.

Sea region of the Northwest Territories. Under the IFA, the Inuvialuit were granted fee simple title to 35,000 square miles of land. Of that, 5,000 square miles of land include title to all oil and gas and other minerals.

The IFA also establishes an environmental impact screening and review process to which all major developments in the Inuvialuit settlement region are subject. An Environmental Impact Screening Committee and an Environmental Impact Review Board are established to carry out the screening and review functions. The IFA provides for guaranteed representation of Inuvialuit on both those bodies.

The IFA provides for access by resource developers to Inuvialuit settlement lands subject to the negotiation of a participation agreement with the Inuvialuit and subject to the payment of fair compensation to the Inuvialuit for exercise of the access rights and any damage caused to the Inuvialuit lands. The IFA also contains provisions guaranteeing Inuvialuit participation in any land use planning process established for the Beaufort Sea region or which may affect the Inuvialuit settlement region.

3.1.2. **The Gwich'in Comprehensive Land Claim Agreement**

The next land claims agreement to be settled in the Northwest Territories was with the Gwich'in in the area immediately south of the Inuvialuit settlement region. Their final agreement (the "Gwich'in Agreement") came into effect in 1992.[20] Under the Gwich'in Agreement, the Gwich'in hold fee simple title to approximately 16,264 square kilometres of land in the Northwest Territories. Of that land, approximately 4,300 square kilometres includes the subsurface mineral rights. In addition, as previously mentioned, the Gwich'in also hold surface title to approximately 1,554 square kilometres of land in the Yukon. Generally, the lands will not be surveyed unless required to avoid or resolve conflicts with another title or interest holder or unless the government otherwise determines it necessary. The Gwich'in agreement contains provisions requiring government to implement a comprehensive land and water regulation regime covering land use planning, environmental impact assessment and review, and regulation of land and water use. Those

[20] Under the *Gwich'in Land Claim Settlement Act, supra.*

provisions have been implemented pursuant to the *Mackenzie Valley Resource Management Act*[21] in 1998.

Under section 21.1 of the Gwich'in Agreement, any oil and gas company proposing to explore for or produce or conduct an activity related to the development of oil and gas on Crown land or on Gwich'in lands in the region must consult with the Gwich'in on matters including environmental impacts, impacts on wildlife harvesting, location of camps, and business and employment opportunities for Gwich'in. In addition, before opening up lands in the Gwich'in settlement area for oil and gas exploration, government must consult with the Gwich'in on matters related to the exploration, including benefits plans and terms and conditions to be attached to authorizations.

3.1.3. **The Sahtu Dene and Metis Comprehensive Land Claim Agreement**

The third comprehensive claim to be settled in the Northwest Territories was the Sahtu Dene and Metis Agreement (the "Sahtu Agreement"). The Sahtu settlement area covers a large region to the south of the Inuvialuit Settlement Region and the east of the Gwich'in settlement area. Under the Sahtu Agreement, which came into effect in 1994,[22] the Sahtu own in fee simple surface title to 41,437 square kilometres of land. The Sahtu own the mineral rights to 1,813 square kilometres of that land.

Many of the provisions of the Sahtu Agreement are the same as the provisions in the Gwich'in Agreement. This includes in particular the provisions respecting land and water regulation and surface rights, dispute resolution. As with the Gwich'in Agreement, the Government of Canada has implemented environmental impact assessment and land and water regulation related provisions of the Sahtu Agreement through the *Mackenzie Valley Resource Management Act.*

The Sahtu Agreement also contains consultation obligations applicable to oil and gas exploration and development similar to those described above in the Gwich'in Agreement.

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[21] S.C. 1998, c. 25.

[22] Under the *Sahtu Dene and Metis Land Claim Settlement Act*, S.C. 1994, c. 27.

3.1.4. **Southern NWT**

In the remaining southern portions of the Northwest Territories, land claims negotiations are continuing and have not yet resulted in final agreements, but two significant milestones can be reported, with the initialling of the Tli'cho Final Agreement and the signing of the Salt River Treaty Land Entitlement Agreement.

3.1.4.1. *Tli'cho Final Agreement*

In September, 2002, the Tli'cho Final Agreement was initialled by the negotiators for the Dogrib Treaty 11 Council, the Government of the Northwest Territories and the Government of Canada. If ratified by the parties, the Tli'cho Agreement will be a land claims agreement for the Tli'cho First Nation (formerly known as the Dogrib First Nation). The Tli'cho Agreement would vest in the Tli'cho Government, on behalf of the Tli'cho First Nation, title to a single block of settlement land, approximately 39,000 square kilometres in size, including both surface and subsurface rights. In addition, the Tli'cho Government would receive approximately $90 million in financial compensation, along with guaranteed harvesting rights in their traditional territory in the North Slave Region.

The *Mackenzie Valley Resource Management Act* regime would apply throughout the region. A Wek'eezhii Land and Water Board will be established as a regional panel of the Mackenzie Valley Land and Water Board to regulate land and water use in the region. In addition, consultation obligations like those set out in the Gwich'in Agreement and Sahtu Agreement will also apply to oil and gas exploration and development activities in the Tli'cho traditional territory.

The region to which the Tli'cho Agreement would apply is still contentious, and overlap issues with other First Nations have not been fully resolved.

3.1.4.2. *Deh Cho First Nations Framework Agreement and Interim Measures Agreement*

In May, 2001, the Deh Cho First Nations signed a framework agreement and an interim measures agreement with the governments of Canada and the Northwest Territories. The framework agreement is intended to establish the basis for negotiation of an agreement in principle

and eventually a final agreement for the Deh Cho First Nations. The topics for negotiations include land, resources, harvesting rights and governance in the Deh Cho region.

The interim measures agreement provides for Deh Cho involvement in resource management decision-making in their traditional territory, pending negotiation of a final agreement for the Deh Cho First Nations. The Deh Cho will be able to participate in the Mackenzie Valley Environmental Impact Review Board's work and government has agreed to establish a Deh Cho panel of the Mackenzie Valley Land and Water Board. In addition, the interim measures agreement requires consultation with the Deh Cho First Nations on certain land and resource activities in their region, and provides for negotiation of impact benefit agreements.

It is anticipated that the negotiation of an agreement in principle for the Deh Cho First Nations could take up to five years, and that negotiation of a final agreement another two years beyond that. This means that the interim measures agreement will be in place for several years and companies active in the region will want to be familiar with its requirements.

3.1.4.3. *The Akaitcho Dene First Nations Framework Agreement and Interim Measures Agreement*

In July, 2000, the Akaitcho Dene First Nations signed a framework agreement with the governments of Canada and the Northwest Territories, setting out the process for negotiation of an agreement-in-principle and defining the issues that the parties will address in the negotiations. The Akaitcho Dene First Nations are signatories to Treaty 8, negotiated in 1900. As many of those provisions of the Treaty were never implemented for the Akaitcho First Nations, they are negotiating a land claims agreement to clarify their rights in their traditional territory. The parties are now negotiating an agreement-in-principle.

In June, 2001, the Akaitcho Dene First Nations signed an interim measures agreement with the governments of Canada and the Northwest Territories. That agreement provides for the involvement of the Akaitcho Dene First Nations in the review of applications for various licences, permits and dispositions of land.

3.1.4.4. *South Slave Metis Interim Measures Agreement*

In June, 2002, the South Slave Metis signed an interim measures agreement with the governments of Canada and the Northwest Territories. Like the other interim measures agreements, the South Slave Metis agreement provides for involvement in resource management decision making, pending negotiation of a final agreement. A formalized pre-screening process will be established where the South Slave Metis will review applications for various licences, permits, and dispositions of land in the geographic area covered by the agreement. The precise nature of the pre-screening process for each type of application will be outlined in schedules that will be developed over the next few months.

3.1.4.5. *Salt River First Nation*

The Salt River First Nation is also a signatory to Treaty 8. However, instead of negotiating a new land claims agreement as the Akaitcho Dene are doing, the Salt River First Nation elected to rely on its rights under Treaty 8 to resolve its treaty land entitlement. In June, 2002 the Salt River First Nation signed its Treaty Land Entitlement Agreement. This Agreement implements commitments made in Treaty 8. Under the Agreement, the Salt River First Nation receives over $83 million and ownership of reserve land on sites in and around Fort Smith and Wood Buffalo National Park.

3.2. **Self-Government in the Northwest Territories**

In addition to land claims or treaty land entitlement claims, the various aboriginal groups of the Northwest Territories have also asserted claims to self-government.

The Tli'cho Agreement, if ratified, will be the first land claims agreement in the North to include self-government provisions. Under the Tli'cho Agreement's self-government provisions, a Tli'cho Government will be able to make laws over a wide range of areas, primarily over Tli'cho lands and Tli'cho citizens. Key services such as health care, education, and other social programs and services will be delivered to all residents in each of the four Tli'cho communities through an Inter-Governmental Service Agreement with the Government of the Northwest Territories.

Since 1993, the Inuvialuit and the Gwich'in have worked together to jointly negotiate regional self-government for the Beaufort-Delta region. In 1996, the parties signed a Self-Government Negotiations Process and Schedule Agreement. In April, 2002, the Gwich'in and Inuvialuit Self-Government Agreement-In-Principle for the Beaufort-Delta region was approved by the Government of Canada. With this approval, the Parties to the negotiations — the Gwich'in, the Inuvialuit and the governments of Canada and the Northwest Territories — began self-government negotiations. Under the proposed self-government model, there would be one public regional government to serve and represent all residents, while guaranteeing representation for Gwich'in and Inuvialuit. Eight public community governments would replace the existing municipal councils, and also provide guaranteed seats for Gwich'in and Inuvialuit. A Gwich'in Government and an Inuvialuit Government would be created at the regional level, with jurisdiction for matters internal and integral to their own cultures, including culture and language, education, out-of-school care, local government operations, training, health care, income support, child and family services and adoption, as well as other matters.

3.3. **Devolution in the Northwest Territories**

With the exception of forestry, which was devolved to the Government of the Northwest Territories over a decade ago, all other Crown lands and resources, including oil and gas resources, in the Northwest Territories continue to be owned by Canada and subject to regulation under federal laws. Oil and gas exploration and development in the Northwest Territories are regulated under federal legislation,[23] as are associated land and water uses.[24]

In light of progress in land claims negotiations, the Government of Canada and the Government of the Northwest Territories, along with NWT aboriginal groups, are now discussing options for devolution on what is called a government-to-government-to-government basis, instead of a bilateral federal-to-territorial government model. The Gwich'in and Sahtu Agreements, along with the Tli'cho Agreement (when it comes into effect), require the Government of the Northwest Territories to involve those First Nations in the development and implementation of any further accords with Canada on oil and gas development in the Northwest Territories.

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[23] The *Canada Petroleum Resources Act*, R.S.C. 1985, c. C-8.5, and the *Canada Oil and Gas Operations Act*, R.S.C. 1985, c. O-7.
[24] Under the *Mackenzie Valley Resource Management Act*, *supra.*

In May, 2001, representatives of the Aboriginal Summit and the governments of the Northwest Territories and Canada endorsed a Memorandum of Intent committing all three parties to move towards formal discussions leading to the transfer of the administration and control of on-shore lands and resources from Canada to the Northwest Territories.

In September, 2002, Canada named David Peterson (the former Liberal premier of Ontario) as the federal government's negotiator in devolution talks. The Aboriginal Summit has named Bob Simpson as their negotiator, while the GNWT has named Dr. How Gerein as their Chief Territorial Negotiator.

4. CONCLUSION

The progress towards settling land claims in the southern Yukon and NWT will increase the level of certainty for companies active in the North. There will be greater clarity about who owns the oil and gas resources, and the obligations that companies must satisfy in order to gain access to and develop those resources. In particular, consultation obligations in areas where land claims agreements are settled will be better defined. In areas of the Yukon and NWT where claims remain outstanding, issues of when consultation obligations are triggered, the scope of those obligations and industry's role in discharging those obligations, will continue to arise.

On the devolution front, it appears in the Yukon that, after several delays, the transfer of land, water and resource management responsibilities from Canada will take place next April 1. This means that many provincial-type responsibilities will now be handled by the Yukon government. In the near future, however, the legal and regulatory regime for resource development in the Yukon will not be substantially different.

In the NWT, there is a greater emphasis now on devolution of responsibilities to the territorial government. If experience in the Yukon is any indicator, it will take several years before the process leads to any program transfers coming into effect.

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