



Northwest Territory Métis Nation

**NEGOTIATION OVERVIEW OF  
NORTHWEST TERRITORY  
MÉTIS NATION  
LAND AND RESOURCES  
AGREEMENT-IN-PRINCIPLE**

*Presentation BY jake heron, chief negotiator  
Darwin hanna, legal counsel  
Dr. Ron Yaworsky, Land advisor  
JUNE / JULY 2012*

For Internal Discussions, Confidential, Privileged, Without Prejudice



# AIP Information Session

- ❖ The purpose of this Community Session is to provide information to Members.
- ❖ The Agreement in Principle (AIP) negotiations are essentially complete.
- ❖ The AIP is being readied for initialing by the Chief Negotiators.
- ❖ After AIP initialing, the AIP will be presented to a NWTMN Assembly for approval.
- ❖ We will review the Information Package:
  - Negotiations Overview
  - Summary of the AIP
  - Land Withdrawal



# Summary of the AIP

- ❖ Continuation of Métis traditional harvesting practices:
  - hunting, trapping, fishing
  - gifting and trading
  - harvesting of plants and trees
  - harvesting is for food and community purposes
  - can gift harvest to people
  - can trade harvested product with other aboriginal people
  - continuation of hunting camps and cabins
  - Métis identification card to be negotiated
- ❖ Consultation for:
  - oil and gas exploration
  - mineral exploration and development
- ❖ Requirement for impact and benefit agreements



# Summary of AiP

- ❖ Capital of \$69.4 Million (2011 Q4) less loan debt
- ❖ Resource Revenue sharing of 0.912% of Mineral Royalties
- ❖ Self-Government and co-management negotiations after AIP
- ❖ Involvement in heritage resources, parks and protected areas
- ❖ Potential for the Final Agreement to be a Land Claim Agreement



# Parties to AIP & Status of the AIP

- ❖ Fort Resolution Métis Council;
- ❖ Fort Smith Métis Council;
- ❖ Hay River Métis Government Council
  - as represented by the NWTMN;
- ❖ the Government of Canada and the GNWT.
- ❖ The AIP forms the principle basis for negotiating the NWTMN Land and Resources Final Agreement.
- ❖ The AIP has been drafted with Final Agreement language modeled from the Tlicho Final Agreement & Sahtu Dene Métis Land Claim Agreement
  - making the Final Agreement negotiations more efficient.
- ❖ During the Final Agreement negotiations, some provisions may be changed.



# Negotiation Team

- ❖ Negotiation of the AIP occurred at monthly Main Table sessions.
- ❖ Board of Directors provided the negotiation mandate to the Negotiation Team.
- ❖ To advance negotiation issues, the Negotiation Team met with officials from government:
  - Premiers, GNWT Ministers and Ministers of Aboriginal Affairs and Northern Development Canada, including Minister John Duncan.
- ❖ The cash, land and mineral royalties amounts set out in the AIP are the full extent of Canada's offer.



# Former Dene Métis Negotiations

- ❖ Participants in the joint Dene and Métis Land Claim negotiations.
- ❖ The Dene/Métis Comprehensive Land Claim Agreement was not approved in 1990.
- ❖ Canada then agreed to negotiate regional claims in the NWT.
- ❖ The mandate of government based upon the precedents set by the Sahtu, Gwich'in and Tlicho land claim agreements.
- ❖ AIP closely resembles many provisions from these agreements.
- ❖ The quantum set out in the AIP are the NWTMN's share of the former Dene/Métis envelope.
- ❖ Canada provided the following response in 2009:

*Negotiations with the NWTMN stem from the failed 1990 Dene/Métis Agreement. All offers made in the NWT (Sahtu, Gwich'in, Tlicho, Dehcho and Acho Dene Koe) have been developed using the same principles as the offer made to the NWTMN, based on the proportional division of the Dene/Métis Agreement.*



# Interim Measures Agreement

- ❖ Interim Measures Agreement (IMA) signed with government (2002).
- ❖ Sets out a process for the pre-screening of development applications in the South Slave.
- ❖ IMA operations and funding will continue until the Final Agreement.
- ❖ Consultation duties regarding developments and land applications will be rolled into:
  - the Final Agreement; and
  - the Implementation Plan will set out funding.



# Agreement Area

- ❖ Agreement Area will outline the geographic extent of:
  - harvesting rights of the Métis;
  - Métis Land selected within Agreement Area (small parcels outside);
  - Duty of consultation and impact and benefit agreements; and
  - Participation in land, water and renewable resource management.
- ❖ Harvesting outside Agreement Area:
  - recognition of Métis Identification Card,
  - General Hunting Licence,
  - accommodation of aboriginal rights by the *Wildlife Act* and *Fisheries Act*,
  - asserted aboriginal rights (e.g. Alberta).
- ❖ Follows the South Slave Region under the Dene/Métis Agreement negotiations,
  - except Agreement Area has been extended from Big Buffalo River to Hay River.
- ❖ Harvesting of fish outside the Agreement Area, but within Great Slave Lake will be through the *Fisheries Act*



# Financial

- ❖ A Capital Transfer payment of over \$69.4 million (2011):
  - To be paid out in accordance with a payment schedule.
- ❖ Amount of Capital Transfer will be increased to account for inflation.
- ❖ Negotiation loan debt deducted:
  - \$22 million, and
  - \$3.4 million from former Dene Métis negotiation process.
- ❖ Options for the investment growth of the Capital Transfer.
- ❖ No decisions have been made regarding expenditure of the funds.
- ❖ The Board of Directors considered other revenue streams:
  - mineral royalty sharing,
  - devolution annual payments,
  - implementation funding,
  - self-government implementation funding.



# Mineral Royalties

- ❖ Canada will pay Mineral Royalties annually:
  - 4.56% of the first \$2 million of mineral royalties (\$91,200); plus
  - 0.912% of any additional mineral royalties.
  
- ❖ No decisions have been made as to how the funds will be managed and expended.
  
- ❖ Funds can be used for capacity, governance, programs and services.



# Self-Government Negotiations

- ❖ Self-Government Framework Agreement negotiated after AIP.
- ❖ Workplan this year provides for developmental work on Self-Government:
  - Workshops and community meetings;
  - Governance structures, models and a NWTMN constitution;
  - Negotiations will be grant funded.
- ❖ NWTMN Constitution will provide for:
  - governing bodies (e.g. NWTMN and Councils);
  - powers, duties, meetings;
  - rights of membership; and
  - Management of Métis Land and funds.
- ❖ NWTMN may have limited self-government law-making authority over:
  - internal matters and Métis Land;
- ❖ Programs and services delivery negotiated after Final Agreement.
- ❖ Potential for the NWTMN to receive a share of taxes collected



# Devolution

- ❖ The GNWT will share with the Aboriginal Parties up to 25% of the GNWT Net Fiscal Benefit from Resource Revenues.
  - GNWT Net Fiscal Benefit is 50% of Resource Revenues from Canada.
  - For example, resource royalties are \$100 million:
  - Federal share: \$50 million
  - GNWT share: \$50 million, shared with:
    - Aboriginal Parties: up to \$12.5 million.
- ❖ Aboriginal Parties will receive up to \$3 million (indexed for inflation) for land, resource and water management with GNWT.
- ❖ Sharing of the annual payments with the Aboriginal Parties to be determined through negotiations.



# Devolution

- ❖ Bilateral agreements under negotiation between the GNWT, Sahtu, Inuvialuit, and the NWTMN:
  - “Northwest Territories Intergovernmental Agreement On Lands And Resources Management”
  - provide a government to government Council to recommend changes to legislative and policy changes to lands and waters management; and
  - “Northwest Territories Resource Revenue Sharing Agreement”.
- ❖ The NWTMN will provide updates on the status of Devolution negotiations as they progress.
- ❖ Only groups that are negotiating Land and Resource Agreements or have Land Claim Agreements are eligible to participate in Devolution.



# Outstanding Issues

## ❖ **\$5 million Economic Development Fund**

- The NWTMN have lobbied for a \$5 million Economic Development Fund
- An Economic Development Fund for the Tlicho was provided after their AIP.

## ❖ **Land in WBNP**

- Former Dene/Métis Comprehensive Land Claim Agreement provided for land selection of 100 square miles within Wood Buffalo National Park.
- The NWTMN has communicated that this is a substantive outstanding issue and will press for resolution of this issue before Final Agreement.

## ❖ **Final Agreement Deemed a Land Claim**

- Canada agreed to the removal of a clause in the AIP that provided that the Final Agreement will not be a land claim agreement.
- Whether the Final Agreement is protected as a Section 35 Land Claims Agreement will be addressed as part of final agreement negotiations.



*Smbaa K'E Dene Band and Nahanni Butte Dene Band v.  
John Duncan et al., February 10, 2012*

- ❖ This case was brought by two Deh Cho Bands to review the decision of Canada not to consult with the 2 Deh Cho First Nations regarding the ADKFN agreement in principle stage of negotiations.
- ❖ The Court found that Canada had a duty to consult at the agreement in principle stage:
  - *“Canada has a legal and constitutional duty to engage in immediate and substantive discussions directly with the SKDB and NBDB with respect to the subjects of the land claim with ADKFN that would affect or potentially affect the asserted Aboriginal and Treaty rights of the SKDS and NBDB”*
- ❖ As the NWTMN is not yet in land selection negotiations, this case is not fully applicable.



# Métis will not play second-fiddle to the Akaitcho

- ❖ The Akaitcho have started a Federal Court case against Canada, and the Fort Smith Métis Council and the Hay River Métis Government Council:
  - declaration that Canada has a duty to consult in respect to the NWTMN negotiation process;
  - declaration that the recognition of aboriginal rights of the NWTMN / Councils will be a violation of the aboriginal and treaty rights of the Akaitcho.
- ❖ Akaitcho never named the Fort Resolution Métis Council as they deemed them Dene Descendants and eligible for the Akaitcho process.
- ❖ Court ordered that the case be managed by a case management judge.
- ❖ Akaitcho have agreed to drop the court case against the two Councils.
- ❖ The NWTMN will be added as an Intervener by consent court order.
- ❖ Canada has agreed to consult with the Akaitcho with respect to the NWTMN negotiation process.
- ❖ The NWTMN is taking steps to have communications with the Akaitcho negotiation team to address concerns.



# Overlap Consultation

- ❖ Canada has begun a consultation process with the Akaitcho Dene regarding whether the NWTMN AIP may affect their asserted aboriginal and Treaty 8 rights.
- ❖ Government will be consulting with other aboriginal groups.
- ❖ Government is obligated to consult with the NWTMN regarding land claim negotiations of other aboriginal groups.
- ❖ As the AIP is not legally binding, the AIP cannot impact the rights of other aboriginal groups.
- ❖ As other aboriginal people can harvest on Métis Land, their right to harvest will not be affected by the Final Agreement.
- ❖ The NWTMN is committed to having overlap discussions with other aboriginal groups to achieve overlap agreements.



# Process the Parties will Undertake to Approve the AIP

## ❖ Internal review process:

- GNWT Cabinet must authorize Steve Voytilla, Chief Negotiator, to initial;
- A Federal Steering Committee will recommend to Federal Cabinet to authorize Christie Morgan, Senior Negotiator, to initial;
- *Board of Directors Resolution* for Jake Heron, Chief Negotiator, to initial.

## ❖ After the AIP is initialed, the parties can **proceed with approval**:

- The NWTMN will hold an Assembly for Delegates to approve the AIP.
- After Assembly Resolution, the Presidents from each of the Métis Councils and the President of the NWTMN will sign the AIP.
- The GNWT Cabinet will approve the AIP:
- Signed by the Minister of Aboriginal Affairs and Intergovernmental Relations.
- The Federal Minister of Aboriginal Affairs and Northern Development will sign the AIP.



# Final Agreement Negotiations

- ❖ After the AIP is approved, the parties will enter into negotiations:
  - NWTMN Land and Resources Final Agreement;
  - Implementation Plan;
  - Self-Government Framework Agreement negotiations; and
  - Compilation of Voters List.
- ❖ The Final Agreement must be ratified by majority vote of all eligible voters (e.g. Métis Members over 18).
  - Example: if there are 2000 Métis Members on the Voters List, 1001 must vote in favour of the Final Agreement.
- ❖ Once ratified by the parties, the benefits will be provided as of the Effective Date (a date after ratification).
- ❖ Implementation of Final Agreement



# Enrollment and Eligibility

- ❖ To be enrolled on the voter's list and enroll, the individual must be:
  - Métis (an aboriginal person of Chipewyan, Cree or Slavey ancestry who resided in, used and occupied any part of the Agreement Area on or before December 31, 1921); or
  - descendent of such a person or adopted.
- ❖ A person cannot be enrolled and be:
  - a Treaty Indian;
  - a Band member; or
  - a land claim beneficiary.
- ❖ Enumeration will occur after AIP
- ❖ Formation of an Enrollment Committee



# Harvesting (wildlife, fish, plants)

- ❖ Right to harvest wildlife, fish and plants for food, social and ceremonial purposes
- ❖ May be limited for conservation
- ❖ Consultation before limitations
- ❖ Right to gift to anyone
- ❖ Right to trade with other aboriginal people
- ❖ Right to establish harvesting camps
- ❖ Representation on board
- ❖ Co-management addressed after AIP



# Tree Harvesting

- ❖ Trees may be harvested for the following personal uses without fee:
  - Firewood;
  - Construction of camps or cabins for personal or community use;
  - Handicrafts;
  - Construction of boats and rafts;
  - Constructing and maintaining houses for Métis members; and
  - Construction and maintaining community structures.



# Métis Land

- ❖ Land ownership by Designated Métis Organizations
  - Determined after AIP
- ❖ Access to Métis Land will be restricted by conditions, restrictions and access agreements
- ❖ Right to use water flowing through Métis Land
- ❖ Métis land will not be expropriated except by agreement
  
- ❖ Métis Community Lands may be sold or mortgaged
- ❖ Real property taxation assistance negotiations after AIP for Métis Community Lands



# National Parks and Protected Areas

- ❖ Harvesting in WBNP and new parks
- ❖ Consultation regarding management plans
- ❖ Representation on park management board
- ❖ Impact and benefit plan for new parks
- ❖ Consultation for new protected areas and negotiation of protected area plan
- ❖ Métis will be involved in managing heritage resources throughout Agreement Area



# Next Steps

- ❖ Government is proceeding with consultations with Aboriginal groups regarding NWTMN AIP
- ❖ Overlap discussions by the NWTMN with other Aboriginal groups
- ❖ Further community information sessions
- ❖ Chief Negotiators of Canada, GNWT and the NWTMN will initial the AIP
- ❖ Assembly of the NWTMN will vote on the AIP