A View into the Sahtu: Land Claims and Resource Development

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ABSTRACT

A View into the Sahtu: Land Claims and Resource Development

Miles Smart

This thesis examines the Sahtu region of the Northwest Territories and the Sahtu Dene and Metis Comprehensive Land Claim Agreement as a unique example of Northern Aboriginal governance. Attention is given to the political developments in Aboriginal/state relations which led to the contemporary relationship between the Sahtu regime, the Government of Canada, and the resource industry. The role of culture and the land are explored which comes together to form the Sahtu deep view. The Sahtu deep view is a pragmatic approach to government relations and resource development which invokes a profound cultural connection to the land and a parallel concern for the far future. The town of Norman Wells in the Sahtu is examined to reveal its unique position as a resource development town and regional hub. Specific examples of an oil exploration play and federal policy in land claim implementation are used as insights into how the Sahtu regime operates and its larger goals.

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Dedication

This thesis is dedicated to the memory of Bruce Moffett and the futures of the littlest Yukon's, Nelly and Monalee.

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Abbreviations and Glossary

AANDC-Aboriginal Affairs and Northern Development Canada. Previously ‘Department of Indian Affairs and Northern Development’ and later ‘Indian and Northern Affairs Canada’.

Beneficiary/Member/Participant-Any eligible person who meets certain requirements to successfully enroll under the SDMCLCA.

Co-Management- A principal of public land claim institutions in which board positions are reserved for each member government. A key feature of the Mackenzie Valley regulatory regime.

DLC- District Land Corporation.

DSO-Designated Sahtu Organization. Beneficiary only land claim institutions.

‘D’evelopment- denotes the multifaceted complex of economic, social, and political change that characterizes Western society, industrialisation, and capitalism (Bone 2009: 2).

EA-Environmental Assessment.

EIR-Environmental Impact Review.

ENR-Department of Environment and Natural Resources. The GNWT department responsible for renewable resource and forestry management.

GNWT-Government of Northwest Territories.

IPG- Institutions of Public Government implemented per the land claim

MVLWB-Mackenzie Valley Land and Water Board

MVRB-Mackenzie Valley Review Board

MVRMA-Mackenzie Valley Resource Management Act

NWLC-Norman Wells Land Corporation

NWT-Northwest Territories

NWTSRB-Northwest Territories Surface Rights Board

Oil and/or Gas Play-A group of oil & gas prospects in the same region under the same geological conditions.

Resource Development: Any non-renewable subsurface resource economic activity. This includes the exploration, development, and production of oil, gas, and minerals.

RRC-Renewable Resources Council. Each Sahtu community has an RRC

SDMCLCA-Sahtu dene and Metis Comprehensive Land Claim Agreement

SLWB-Sahtu Land and Water Board

SLUP-Sahtu Land Use Plan

SLUPB-Sahtu Land Use Plan Board

SMLA-Sahtu Master Land Agreement

SRRB-Sahtu Renewable Resources Board

SSA-Sahtu Settlement Area

SSI-Sahtu Secretariat Incorporated

TDLC- Tulita District Land Corporation

Introduction

My Sahtu Story

In 1997 when I was sixteen years old I was sent to Norman Wells, NWT to spend a summer with my Uncle Bruce, Auntie Evelyn and three little cousins Ashley, Louise and Travis. I say 'sent' because my mother was sending me away from the trouble I might get into back home. I spent the summer working for local airline North-Wright Airways and babysitting my cousins. As a white sixteen year-old in the Sahtu I was completely ignorant of the world of Aboriginal peoples, land claims, resource development or anything else that is part of this thesis. Evelyn and my cousins are Native but the cultural, social, and political differences that I am now keenly aware of simply did not exist for me then; nor for them.

That summer I had three trips out on the land. I went with the whole family to their cabin on Kelly Lake just beyond the Franklin Mountains which stand behind Norman Wells. I drank water right out of the lake and caught fish as fast as I could get a line into the water. I thought I was a natural first time fisherman but subsequent efforts have shown that my supposed skills had nothing to do with it. A toddler can catch fish there.

In the middle of the summer my Uncle Bruce and I flew to Tulita for a canoe trip down the Bear River to the village of Deline on Great Bear Lake where my Aunt Evelyn is from. I remember bald eagles flying overhead as we maneuvered the river and took on rapids. Bruce cooked raisin bannock for breakfast at our camp on the riverbed. The following day as we made our way onto one arm of the largest lake in Canada, Bruce pointed out the abandoned and graffitied Radium Gilbert tugboat which Evelyn's father Isadore Yukon captained for many years. We visited Evelyn's brother John and then flew back to Norman Wells.

I kept on taking pictures during that summer, especially when out on the land. I was too young to fully recognize it but I knew that I was somewhere special. Though my time spent in the Sahtu has been brief, the power of the land can impress itself on you in short order. If you are open to it. Some of those pictures I took for my mom, curious about the house and town her brother lived in way up north. Some I took to impress my teenage friends back home, like a severed caribou head. Some I took for my little cousins, always the willing subjects. Some I

took for my Uncle, '…take a picture of that old truck Miles, it's history….' But one picture I took just for me and I have always keep it close by.

Those first two trips were memorable events which can only happen in the North. But it was my last trip onto the land that summer which remains the most enduring experience for me. Bruce and I flew across the Mackenzie River into the edge of the Mackenzie Mountains for a week long caribou hunt. We landed in Jawbone Lake and after two days of tracking caribou (or rather, not tracking) Bruce suggested we make our way up out of the canyon we were following. We started climbing a steep rise filled thick with small trees and ankle-deep mossy vegetation. As we neared the top, the trees disappeared and we came onto a large plateau. We made our way across to a hilly range. I went up one of those little hills to take a photograph. From that vantage point I could see on the other side of a small valley yet another plateau. It was then when the scale of the Sahtu landscape really hit me. It seems to go on forever and what stands out to a southerner is not just what is there before you; it is what is not there. No buildings, no roads, no fences, and even no people. That spectacular landscape is more than something nice to look at as it takes on a visceral dimension. It is a very liberating yet humbling experience. All those pictures of fields without fences show a world very different than the one I come from. That particular photograph is certainly not the prettiest ever taken but whenever I look at it I am taken back to that place and moment.

Bruce shot a caribou and we brought the meat back to Evelyn. Before I knew it I was back home in my regular suburban life. Over a decade later I had the opportunity to tag along on a winter hunt with some hunters. We left Norman Wells along the winter road, stopped in Fort Good Hope, and carried on to Colville Lake. On borrowed ski-doo's we made our way across the lake where the hunters where able to track and shoot eight caribou. I am happy to say that I have seen each of the Sahtu communities, not something many southerners can claim.

This research project was largely motivated by my personal desire to get back to the Sahtu and reconnect with Evelyn and my cousins after Bruce unexpectedly passed away in 2002. Over the course of this longer journey my conception of the land has changed drastically. As a naïve teenager I had fantasies of running away to the bush and the incredible freedom found there. After delving into the history of Sahtu relations with government and industry and the

ongoing expression of Sahtu self-determination, I have come to terms with my own history and what I represent to the Sahtu. In learning about the many historical and ongoing colonial intrusions into the Sahtu a cloud of impropriety appears over the most fundamental motivation and reasoning in showing up in the Sahtu and asking questions. There were many interesting and compelling tangents related to this and other dynamics of life in the Sahtu which I could have followed. Ultimately they were not relevant to the Sahtu land claim and do not belong in this thesis.

The focus of this thesis is not about that special power of the land but it is important the reader to know that it is there. For the people of the Sahtu this goes without saying though they do say it, over and over. The land itself is the common denominator in the complex relationships that feature in land claims. It is the conflicting ideologies about the land that lie at the heart of land claims and the power of the land can get lost in an analysis thereof. In the explicitly regulated relationship between the Sahtu regime, government, and industry the land is converted into a series of legal definitions, geographic coordinates and jurisdictions. This is everything that the land truly is not. Those who call the land home know this. The land and a former way of life looms very large in the Sahtu. Timewise it is just a generation behind; spatially it is right outside the front door. A changing way of life and threats to the integrity of the land are a presence just

as strongly felt.

Figure 1 Mackenzie Mountains. Photo by author.

Thesis Overview and Chapter Summaries.

This thesis is concerned with the emerging political terrain of northern Aboriginal governance in Canada. Legal and constitutional gains of the last forty years have created a new political environment between the Canadian state and Aboriginal groups across the country. Though generally off the radar of most Canadians 'down south', this is most novel and prevalent in the Canadian north. The rise of northern Aboriginal governance was coupled with the expansion of the Canadian state into these northern regions. A central feature of these political changes are comprehensive land claim and self-government agreements (land claims) and the ongoing implementation thereof. Focusing on the Sahtu region of NWT and using the town of Norman Wells in the Tulita District of the Sahtu as a point of departure, I trace the history of government relations and resource development leading to the current state of affairs. The case of Norman Wells, its role in the history of the Sahtu, and its uniqueness as a Sahtu community is examined. I delve into the Sahtu Dene and Metis Comprehensive Land Claim Agreement

(SDMCLCA) itself and provide a summary of the Designated Sahtu Organizations (DSO's) and Institutions of Public Government (IPG's) which put it into action. Taken as a whole, these organizations form the Sahtu *regime* through which communities exercise authority and power, especially in the management of land and resources. In a more specific analysis I give an account of how the land claim is put to work in the context of an unfolding oil play in the Sahtu. Though I argue that the Sahtu has moved from an era of having little say in resource development and government relations to one in which they have considerable power, they continue to face challenges to this power from the government of Canada. The Sahtu cultural perspective is one in which ancient histories are invoked, pragmatism is practiced today, and concern for the far future comes together to inform how they interact with the Canadian state and resource development. I label this perspective the Sahtu *deep view*.

Research Framework

The purely theoretical contributions of this research are limited. This thesis does not employ the indigenous/settler framework which is increasingly common in works by Aboriginal and non-Aboriginal academics alike. I have opted for a more grounded and local approach to the research and writing. My goal here is to present things in a way that would 'make sense' to people in the Sahtu. Though the indigenous/settler dynamic in its everyday expression is present in the Sahtu it is not uniformly so. The stark contrast between indigenous and settler becomes an artificial construction when the reality is so muddled and grey. The word 'indigenous' was not uttered a single time to me during hours of interviews and more casual interactions. The theoretical dichotomy between that which is 'indigenous' and that which is 'settler' is problematic when communities, families, and individuals betray such an analytical distinction. This is especially true in a place like Norman Wells. Where would a Dene child adopted into a white family fit into this? How would a Sahtu elder who has proudly worked decades for an oil company feel about an outside academic discussing their life in such terms? Thus I have tried to write responsibly in maintaining a social distance in discussing the Sahtu. This is especially so when dealing with sensitive and internal issues.

This thesis operates in part as a piece of public anthropology aiming to make accessible a complex agreement which exists on the periphery of the national Canadian experience yet is at

the vanguard of political developments in Canada. Land claims as 'modern treaties' are both substantive and symbolic agreements between the state and local Aboriginal groups. They represent, from both Aboriginal and state perspectives, a pragmatic integration of Aboriginal self-determination within Canadian governance and economy. There are four basic agents at play in a land claim with attached motivations, goals and histories; Aboriginal signatories, government (federal and territorial/provincial), industry (predominantly non-renewable resource) and the land itself. This thesis traces Sahtu self-determination through this complex set of relations with a focus on resource development. Though land claims across Canada share common characteristics they are best understood as being individually distinctive. This is due to the unique history, political style, and identity of each land claim group. The processual nature of implementing agreements as they establish and/or reshape local institutions means that different land claims will take different shapes. This is especially true of the Sahtu, both in how the different Sahtu communities see themselves and in how the Sahtu Dene and Metis Comprehensive Land Claim Agreement (SDMCLCA) was organized. The SDMCLCA, like others, has become the central organizing feature of the Sahtu for the past twenty years. As one Sahtu leader put it "*Every single thing we do is related to the claim*" (Wohlberg 2013, Sept.2).

The anthropological elements of this thesis are found in both fieldwork methods and writing approach. Standard ethnographic techniques of open ended interviews and observation help to add some of the textures of life in the Sahtu to the thesis. These ethnographic snippets of stories and observations are a means to fill in the picture of the Sahtu. The reflexivity of the research and writing is limited to 'My Sahtu Story' in the introduction. As technically worded documents, a surface reading of land claims overlooks the identities, ideologies, and motivations which factor into them. It is this which lies at the core of land claims and indeed Canada's relationship with Aboriginal peoples. The contribution of anthropology to larger debates and knowledge in general has been criticized due the tendency to present complicated conclusions. This thesis does follow a method of inquiry and analysis which wades into the blurred realities of culture and politics in the colonial world.

The larger contribution of this thesis is to examine a specific land claim in greater detail. There is currently a limited but increasing amount of literature that discusses certain elements of land claim and self-government agreements. Some have focused on particular land claim

institutions such as renewable resource co-management bodies (Nadasdy 2003), on the negotiation environment (Irlbacher-Fox 2009), and the comparative analysis of negotiation outcomes (Alcantara 2013). Being nationally instituted, government policy can be approached and analyzed in more definitive terms but the response to policy is best understood as specific and unique to each Aboriginal group. Though there are general similarities and conditions across Aboriginal groups, Canada's relationship with them is diffuse in nature. There is not one relationship but hundreds. The larger project of Aboriginal groups, as I demonstrate with the Sahtu example, is to bring power and authority back to the regional and community level where it has been weakened or lost through Canadian colonialism. This thesis seeks to recognize and analyze the particularities and uniqueness of this project in the Sahtu.

The research questions in this thesis ask 'how did the Sahtu get to where it is today?' What is the state of the Sahtu land claim now, twenty years after its signing? How can 'the deal' be characterized? What role is the land claim playing in the larger project of Dene/Metis self-determination? How is the land claim being used in managing resource development? In general, my findings characterize the land claim as the best deal that could be reached at the time. The negotiation and early implementation of the land claim represents a significant accomplishment. Ongoing implementation is a formidable task which arguably overshadows the original challenge and success of settling the land claim. A settled land claim is not an end but just the beginning of what is a continuously unfolding project. I briefly use the example of the Deline self-government project to show how the land claim provisions are fully exercised in the larger effort towards self-determination. In my discussion of the oil play currently unfolding in the Sahtu, DSO's and IPG's are shown to do what they were intended to do, that is to put a strong measure of power and control into Sahtu communities. A finding that runs throughout this thesis is that the Sahtu exhibits an ambivalence when it comes to government relations and resource development. This does not imply a lack of conviction but that there is a fundamental conflict at play which must be navigated. Decisions are made very pragmatically while forces of self-determination and deep concern for the well-being of the land contend with equally strong desires to maintain good institutional relationships as well as provide local economic opportunity for the Sahtu. Related themes in this research, those of cultural tenacity and the transiency of government and industry, inform the Sahtu *deep view*. Tenacity is analogous to the resilience/resurgence themes in Aboriginal discourse where, contrary to assimilationist and

colonial expectations, Aboriginal peoples did not fade away into disappearance. They are in fact gaining ground. Transiency is related to the Sahtu experience of outside forces, be they government, economic or industrial, as passing challenges to their land and way of life.

Chapter One summarizes the different perspectives on how to think about the Canadian North with a focus on the territories. The North and wilderness are central aspects to the national story of Canada and the Canadian identity. I contrast the dominant national themes of the North as frontier and periphery to the southern core with the North as homeland for Aboriginal peoples. I conclude with the concepts of tenacity and transiency as they apply to the Sahtu deep view.

Chapter Two briefly outlines the Sahtu and its communities. I summarize the early Sahtu history of relations with the government, namely the experience of Treaty 11. Though this I trace the place of Norman Wells in the Sahtu. I conclude with a description of Norman Wells today as the business town, hub, and melting pot of the Sahtu.

Chapter Three summarizes the history of Aboriginal/state relations within NWT with focus given to the development of federal comprehensive land claims policy. This chapter concludes with the beginning of negotiations of the Sahtu land claim in the early 1990's.

Chapter Four details the Sahtu land claim, its negotiation, structure and bodies. I focus on the Sahtu political ideal and the objectives of the land claim. I conclude with a description of the Norman Wells Land Corporation and return to the role of Norman Wells as the economic center of the Sahtu.

Chapter Five examines two key issues currently facing the Sahtu regime. The first is an oil play which presents both opportunities and challenges. The second is a recent move by the federal government to do away with a key land claim institution and the Sahtu opposition to it.

In the **Conclusion** I draw to a close my analysis of the Sahtu deep view.

Project Overview/Research Methods

The fieldwork portion of this research took place over five weeks in November and December 2012. The bulk of this time was spent in Norman Wells with some additional time in Yellowknife. In February 2013 I attended a Land Claim Agreement Coalition conference in

Ottawa and conducted another interview there. Some interviews were conducted after the fieldwork period over the phone. These phone interviews with people I did not necessarily meet in person were no less insightful. In all about a dozen individuals were interviewed. Wherever possible I have tried to include something from each interview. Not all the interviews deal explicitly with the central topic of this research but they do contribute something worthwhile nonetheless. In limited instances I have maintained confidentiality of interviewee identity and certain responses. Interviewees who are explicitly quoted are introduced below. Others receive mention in the acknowledgments page. I have also obscured my own observations to mitigate against any potential disrespect or offense and to manage more sensitive topics. There were individuals I tried to interview and for a variety of reasons I was unable to. I do draw upon my earlier visits to Norman Wells and the Sahtu.

Archival and historical research used various sources; articles, research documents, books, court proceedings, government documents, etc. A very important research resource which is both archival and ethnographic is the public registry of the Sahtu Land & Water Board which holds all documents related to land and water regulation, especially of resource development projects. It provides an invaluable insight into the local relationship with resource development.

Interviewees

George Cleary: George is from Deline and has worked as a heavy equipment operator, teacher, principal, AANDC director of Indian and Inuit services, Chief of the Deline First Nation, Vice-President in the Dene Nation Executive, and President of the Sahtu Tribal Council which is the body that negotiated the SDMCLCA.

David Osborn: David was the Chief Federal Negotiator for the SDMCLCA. He was also negotiator of the abandoned Dene/Metis land claim of 1990, Gwich'in land claim and the Nisga'a land claim. He is originally from Saskatchewan, where he earned his law degree. He lives in Ottawa.

Cece Hodgson-McCauley: Cece is the President of the Norman Wells Land Corporation. Originally from Tulita, Cece spent many years in Inuvik where she

was Chief of the Inuvik Dene Band. She is also a columnist for News/North Newspaper.

Roger Odgaard: Born in Norman Wells, Roger was President of the Norman Wells Land Corporation from 2006 to 2012. He also served as President of the Norman Wells Land Corporation's predecessor, Metis Local #69, in the 1980's and again during the negotiation of the SDMCLCA.

Rick Hardy: Rick was born and raised in Tulita. He became President of the Metis Association of the Northwest Territories in the 1970's. He earned his law degree in the 1980's and practises in Aboriginal law.

Norman Yakeleya: Norman has been the Sahtu member of the Northwest Territories Legislative Assembly since 2003. He was Sahtu Tribal Council's chief negotiator for the SDMCLCA. He previously worked as Tulita Dene Band Councillor and Chief, wildlife officer, and drug and alcohol counselor. Norman has dedicated many years to addressing the legacy of residential schools and was executive director of the Grolier Hall Healing Circle.

Ethel Blondin-Andrew: Ethel is chairperson of the Sahtu Secretariat Inc. Before this she was Member of Parliament for the Western Arctic riding for eighteen years being the first Aboriginal woman elected to parliament. She is Mountain Dene and lives in Norman Wells with her husband Leon Andrew.

(Paul) Ren Xiang Tan: Paul is the Executive Director of the Norman Wells Land Corporation. He is originally from the Ottawa region.

Edward Hodgson: Edward was born on the north shore of Great Bear Lake and has spent the majority of his life in Norman Wells where he had a long career at Esso/Imperial.

Ruby McDonald: Ruby grew up in Tulita and has lived mostly in Norman Wells since 1980. She served as Implementation Coordinator of the SDMCLCA in the 1990's as well as chairperson of the Sahtu Secretariat Inc.

Dione McGuinness: Dione is Stakeholder Engagement Coordinator for ConocoPhillips Canada in their exploration activities in the Sahtu. She lives in Alberta.

Chapter One: The North

Chapter Overview

Defining what the 'Canadian North' is takes into consideration several variables covering both the physical and human environment. The concept of the 'North' has shifted historically along with its place in the Canadian identity, economy and government policy (Hamelin 1979, Abel & Coates 2001). Elements of the North, and indeed Aboriginal cultures, figure into Canadian symbolism and national identity. The territorial North is dealt with in this chapter, covering its shared general characteristics, changing relationship with the federal government, and the role of land claims. I show how the North is perhaps the most distinct region in Canada yet exists on the periphery of mainstream Canadian politics and economy. The North is also the sight of the last stages of political development in Canada. This political development is unique in Canada through the role land claims play in it. In Chapter Three I deal more specifically with NWT political development and the place of regional Dene/Metis politics.

The characterization of the North as marginal or peripheral is predicated on its relationship to the Canadian south. From down south, the North takes on the role of the last frontier along geographic, economic, political, and symbolic lines. A south-centric perspective overlooks the North as the homeland it is to many Aboriginal groups. The ubiquitous nature of Development[1] (extensively speaking) for Aboriginal groups across Canada and its presentation as *fait accompli* is challenged in the Sahtu. At some times this is subtle and at others, explicit. The day to day relationship between Canada and the Sahtu polity is managed pragmatically with an ideal of cooperation and partnership at the heart of its vision. But there exists an element of Sahtu culture which turns the core-periphery model on its head. Instead of an ever encroaching colonial situation, the immense changes of the last century or so are characterized as a passing phase to be endured, a transient presence. In recursive fashion, the North as periphery and hinterland to the southern core becomes the tenacious and enduring entity that it is to those who call it home. For them it is the center of everything.

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[1] I use Development with a capital 'D' to denote the multifaceted complex of economic, social, and political change that characterizes Western society, industrialisation, and capitalism (Bone 2009: 2). Otherwise in later chapters development refers to specific subjects, most often resource development.

Canadian Northerness, Symbolism, and Contradiction

As a vast country Canada is marked by inevitable regionalisations which reflect diverse geography, waves of historical settlement, and economy amongst other factors. Most Canadians identify symbolically with a strong measure of northerness. The immense Canadian Subarctic belt stretching from the Yukon to Newfoundland and its unsettled lands filled with forests, innumerable waters, and long winters forms the emotional heartland of the Canadian identity (Wonders 1970:477). That region occupies a special place in the Canadian imagination, one of frontier adventure, wealth, and even foreboding (Francis 1997: 152, Abel & Coates 2001:7-8, Grace 2001:4).

Canadians are fond of their backyard wilderness, lake side cabins, and canoe trips. Though Canadians are an assuredly urbanized people, it is the "alternate penetration of the wilderness and return to civilization" which forms the basis of the Canadian identity[2]. To a significant degree, ideas about Aboriginality are conflated with conceptions of the wilderness, both of which are found in the historical narrative about the development of the Canadian nation and its people (Francis 197: 9-14). The conspicuous placement of Aboriginal artworks in national and international venues draws upon (or appropriates) this history[3]. There are innumerable instances of the Canadian wilderness and Aboriginal culture in Canadian artworks (Grace 2001). The popular image of Pierre Trudeau, who as prime minister presided over the shift into the modern treaty era, enjoying a contemplative canoe trip in his buckskin jacket is a striking example of the emblematic use of wilderness and Aboriginal imagery in Canadian symbolism (Francis 1997:144-5). With the expansion of settlement through the late 19th and early 20th century those wilderness areas and the myth and lore attached to them have been pushed northward. Today, with the settlement or domestication of southern Canada, it is in the North where we locate ideas of the Canadian wilderness. If Canada is a frontier nation subsuming wilderness, the North is the last (but perpetually existent) frontier.

There is a distinction to be made between mainstream northerness and *the* North. Surviving winter storms is a fact of life in Toronto or Montreal but life in the North is very

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[2] Quote from W.L. Morton (1972) *The Canadian Identity* found in Daniel Francis (1997) *National Dreams: Myth, Memory, and Canadian History*.

[3] For example the inuksuk emblem of the 2010 Vancouver Olympics or the "Spirit of Haida Gwaii" statue by B.C. artist Bill Reid in the Canadian embassy in Washington, D.C. and on the Canadian $20 bill.

different than that in the South. The geographical symbolism or 'mappism' in the Canadian national identity is met by the general ignorance about life in the North (Coates & Morrison 1989: 170). This occurs despite the North being more present nationally than ever before.

The key factors in Hamelin's (1979) northerness index includes climate, geography, population, transportation infrastructure and living costs, amongst others. These indicators of northerness or nordicity demonstrate that the North as a region is perhaps the most distinct in Canada. Many 'norths' come into view in employing the nordicity index: Extreme North (Arctic archipelago), Far North (upper regions of Yukon, NWT, Quebec, most of Nunavut and northern portions of Saskatchewan and Manitoba), Middle North (middle and lower regions of Yukon, NWT, Northern halves of the provinces), and the Near North (a strip across the provinces) which leaves the southernmost portions of the provinces as the un-northern portion of the country (Hamelin 1979: 71-74, Bone 2009: 14). The human factors of nordicity measure population density, economic activity, and accessibility (Hamelin 1979:20-21). For example, if a community has a small population, is only accessible by plane, has little local economic activity and a high-cost of living it is decidedly northern. This definition of nordicity is therefore a dynamic one in which a community can lose a measure of nordicity if say, an all-weather road was built, the population swelled or the local economy expanded and diversified. This is a largely comparative assessment of the North, defining it through its relation to southern Canada.. This marks a schism in how the North is appraised, a south-centric view from the core with urbanized settlement as the model.

The south-centric perspective of the North is unavoidable as the majority of Canadians live closer to the U.S. border than the middle latitudes of the provinces. Thus two Canada's are presented, the heavily settled South and the vast and unsettled North. This exposes an obvious power dynamic between the core of Canadian society and the North. The North represents a less than marginal segment of the population (under one half of one percent[4]) with a corresponding heft or influence, a reality well known by all northerners. As Ethel, an MP for nearly twenty years plainly puts it "*there's more votes there than there is in the Sahtu or in Deh Cho. Those votes are not as big as the ones in Calgary or Toronto or Edmonton*". The game of federal politics does not favour the territories. This coupled with typically short lived non-renewable

[4] Combined population of Yukon, NWT, and Nunavut (107 265) is 0.32% of the national population of 33 476 688, Census 2011, Statistics Canada.

resource projects as the central economic activity often leaves the North at the mercy of outside forces.

The Territorial North

For the purposes of this research, the North is defined as the territorial North (Yukon, NWT, and Nunavut). Though the territories share many 'northern' characteristics with the northern regions of the provinces, it is the distinctive qualities of the territories which have shaped northern land claims. Aboriginal/state relations in the North differ markedly from down south due to the lack of settlement and the relative strength in numbers. Whereas Aboriginals peoples represent 3.75% of the national population, in the territories that number rises to 52.8% (Statistics Canada: 2006 Census). This dynamic of the North is arguably the key factor in the negotiation and signing of land claims, a process that is harder to accomplish in heavily settled areas where provincial governments and non-Aboriginals complicate matters.

The once expansive North-West Territories was first divided into the western provinces and then the three territories. Those early colonial maneuvers occurred with no consideration of the Aboriginal inhabitants, a case of imperial cartography from afar. Each territory has its' own particularities which impact the contemporary setting in which Aboriginal politics play out. The territorial North runs a comparative spectrum in many ways from west to east. The Yukon is the most settled by Euro-Canadians, with Aboriginals making up approximately one quarter of the population. In Nunavut, Inuit represent over two-thirds of the population. This leaves the NWT sitting in the middle with about a 50/50 split between Aboriginal and non-Aboriginal residents (Statistics Canada: 2006 Census). These population numbers follow the historical settlement of the territories in which the Yukon was settled first following the Klondike gold-rush and Nunavut last and least, mostly through the arrival of government bureaucracy (Schacter 2004:14-24).

The Yukon and NWT only began gaining political powers and jurisdiction in the last thirty to forty years with Nunavut officially coming in existence in 1999. They were formerly administered by Ottawa from Ottawa, a thoroughly undemocratic situation. Even Jean Chretien, minster responsible for northern development in the late 1960's and early 1970's, described himself as the "last emperor in North America" presiding over the vast colonial realm (Martin 1995: 210). Elected legislatures arrived in the late 1970's and the process of devolving

jurisdictions and authorities continues. The principle behind these political developments is to transition the territories into provinces. The one difference is that the confederated provinces hold a sovereign authority in their own right derived from the constitution. The territories have no such autonomy as their 'authority' is granted by the federal government. Though Aboriginal people partake in public government, it is in their regional land claims and self-government where they put the most faith. The Dene/Metis of NWT originally pushed for a Nunavut style land claim where they would have territorial self-government. This, for reasons I summarize in Chapter Three, did not come to fruition, leaving three political spheres in NWT; the GNWT, land claims, and the lingering federal government.

For the territories, public government has been developed with a decidedly Northern and Aboriginal character. This is truer in NWT and Nunavut where the Aboriginal demographic is larger. The splitting off of Nunavut gave the Inuit more representation in their new legislature and rebalanced demographics in NWT to where non-Aboriginals have more political voice. A distinction found in NWT and Nunavut is the lack of political parties where legislatures embrace a consensus style of government with members choosing their leader. There is both criticism and praise for this model.

The pace of change in the territories has been rapid with major political reconfigurations still unfolding (Kulchyski 2005:8-9). The most recent significant event being the NWT devolution agreement over the transfer of authority and responsibility of lands and resources to the GNWT. One might think that these are incredible gains for Aboriginal people where they are a majority demographic but there is a good deal of scepticism and apathy about both the federal and territorial government, as there is for any citizenry. In NWT there is a constant push for the decentralization of government and services. For Aboriginal people this is a reflection of how they organized themselves before contact and is the basic goal of land claim and self-government agreements. Regions and communities hold a disdain for the centralized bureaucracy in Yellowknife just as they did when it was in Ottawa.

Some go even further and criticize the bureaucrats themselves as pulling all the strings behind elected officials. There is a quietly uttered opinion that southern experts with university degrees impress and intimidate less educated Aboriginal leaders. There is also a good amount of head shaking at the inflated bureaucracy and waste in Yellowknife. I have heard stories of well-

paid government employees, though earnest and aware of the problem, literally having nothing to do all day.

Homeland

In rethinking Canada's 'North' a persistent schism presents itself. The national interpretation overlooks the only true claim to northerness, that of the indigenous people of the arctic and sub-arctic (Abel & Coates 2001:8). 'Northerness' is not quite the right word for it is not 'North' but simply 'home'. The North appears to an outsider as an unending wilderness with tiny settlements here and there. Wilderness implies a lack of human activity and occupation. This image overlooks the myriad myths, stories and traditional uses that mark the land. A traditional trail map of the Sahtu shows these so called 'wilderness' areas to be filled thick with hunting, trapping, and travelling trails in use longer than any one individual can remember. Though they may be less travelled today, that cultural connection to that past is not lost. The 'vastness', 'isolation' or 'periphery' characterizations are focused on the North in relation to the 'south', 'civilization' or 'core'. These relational ideas are a product of the last 50 to 100 years, which stands in contrast to the weight of Dene/Metis culture.

While the Sahtu is physically remote and politically marginal, it has never been isolated from the effects of globalization. From the early fur trade through mid-century uranium mining to the contemporary oil and gas play, international demands and pressures are felt in even the most remote communities (Schacter et al. 2004). But the absence of large settlement and the relatively recent arrival of colonial government has meant that living on the land remained a viable way of life until fairly recently. The last generation of people born in the bush and raised in camps are now in their sixties. The caribou are there, the waters clean, and the people love the land as much as ever.

Elders remember the arrival of government in the Sahtu. These are individuals who have witnessed the largest degree of change to life in the Sahtu. Raised on traplines and now sitting in boardrooms, they have a unique perspective on government. Cece Hodgson-McCauley told me what it was like to witness its arrival;

I'll tell you right from the beginning. We had no government and no vote in the Northwest Territories until 1960. The only government was in Ottawa. Then a bunch of them came up, they made the trip along the north to look around. They had meetings in each town and

people said "government-what's government?" So I attended their meeting and this Indian asks his Chief 'what's a goerment?', couldn't even say government. The Chief thought for a minute and he said 'I think he's next to God'. Because they were telling us what they're going to do for us, bring us a government, educate us and make life better for us and save us, you know, from our poor life (laughs). Anyway, that's how we started.

I was up in Inuvik in '58, I went up there to run a business. And that's the time the government was just researching, looking around, and they looked to build a new town and they found a place where Inuvik is. So they surveyed and they started building the town. That's when they boggled our eyes with the money spent. Barges and barges coming down the Mackenzie. They had to tie on the river, they couldn't unload all together, there were too many boats and barges. Huge! From nothing to too much.

In her weekly column for NWT News/North, Cece pulls no punches in her criticisms of the 'constipated white elephant', the federal and territorial governments. Aged ninety-two and active as ever, she speaks her mind and rustles feathers more than most. After our interview she reminisced about spending spring camp in the bush with her husband and Isadore Yukon, my Aunt Evelyn's late father. She asked me to send my cousins over to see if she could help with finding work or training. You will not find someone who praises the potential benefits of Development in the North more than Cece. At the same time she recalls the benefits of living on the land where people are happy and healthy.

The arrival of government and Development in the North is an unfinished affair. The memory of life before is very strong in Sahtu communities. The tenacity of Aboriginal cultures in contrast to the transiency of the colonial project in the North contradicts the prevailing popular view that Aboriginal people must change and adapt to the new situation. It is true that they have embraced adaptation but it can be seen as more of a temporary strategy than a final destination. The reconciliation or integration of the Sahtu polity within Canada is a necessary process which lies at the heart of land claims. It is important however to not blindly accept the state and Development as the most enduring force in the colonial relationship.

Land claims and Aboriginal accommodations of Development should not only be seen as making the best of a bad situation. This omits the particular perspective carried by Aboriginal communities. It is the deep view and tenacity of both people and land coupled with the transiency of the state and Development that fills in the assessment of the situation. The common theme of community concerns is the integrity of the land and the well-being of future

generations. Taking a deep view is simply an extension of these concerns. Ethel articulated this view to me in the context of Sahtu oil and gas exploration and the Dene view;

> *"Their first concern is their people and their land. All the other stuff is window dressing. Watching the oil and gas play is like watching a train come into a station, it doesn't sit there for a hundred years. It loads up and it goes. All of a sudden it's gone. There you are standing on the docking station and the train's gone. What's next?"*

There is patience in how the Sahtu approaches now in the context of the past and the future. In her book Finding Dahshaa (2009) northerner Stephanie Irlbacher-Fox delves into the topic of self-government and Aboriginal policy in Deline. The quote below expresses the patience of the Sahtu deep view;

> *"Canada comes up with new programs and policies for Native people all the time. Self-government is one of those. It's like Canada is on this journey, where bit by bit they are able to understand rights of People [Dene]; they are just at the beginning stage. And sure, we will sit with them and take those programs, that's for our People. What they haven't understood yet is that we are Dene, and nothing will change that….It has always been like that. It will be true a thousand years from now too. We are Dene, and that will never change."*-Raymond Taniton, Deline (Irlbacher-Fox 2009:1).

A constant in the words of those who take on the political circumstances of their communities is what kind of future their children will live in. This charge is matched by the concern for the land and traditions. An outsider can never really know what Sahtu culture and the land means for the Sahtu people. We have glimpses which demonstrate a determination so deep it deals in 'thousands of years'. In the face of threats to the integrity of the land we learn that the physical landscape *is* the cultural landscape. And if Sahtu culture and people are marked by a tenacity then the land itself is equally tenacious. Out in Sahtu territory, beyond the limits of urban settlements and where the spectre of development is at its most distant, the land makes its own presence known. The transient nature of the southern interests and the boom and bust resource economy ties into this unwavering being. Development will come and then it will go. "Down south", as people put it, where settlement is ubiquitous and Aboriginal lands are confined to tiny reserve parcels, the colonial project takes on an air of finality. The timelessness of the land and its ability to support people for thousands of years carries a heavy presence in the Sahtu. For example, one can find in community statements prioritization of land over money. No one

would deny the importance of making money in the modern economy but there is an element of Sahtu culture which sees it as a transient factor in their lives[5];

'*Eventually all the lands south of us will be ruined. They raise domestic animals to survive. We don't need to do that, we survive on wild meat and fish. We don't need money to survive. All we need is our land and our wildlife.*'-Deline.

'*The land is more important than money to us so we need to protect it*.'-Colville Lake.

'*People will return to the land, especially if money loses its value, or runs out. This is what happened during the Depression years. Money comes and goes, but the land never goes away.*'-Fort Good Hope.

'*I would like to see my grandchildren and great-grandchildren and great-great-great-grandchildren to use the land the same way my grandma and grandpa did'*-Tulita

'*The land has been used to provide food for thousands of years, and it should be maintained as a source of food'*.-Norman Wells.

'*If we contaminate the land, we contaminate ourselves. It's like a heart beating. If the land dies, so do we perish.*'-Tulita.

The comments above are not from the early days of colonialism, they are from 1999. Participants were asked for a 100 hundred year vision of themselves and the land and they expressed the most prevalent theme in Sahtu culture. It is assumed that Development will inevitably blanket the world, that even the most isolated and remote landscapes and people will be subsumed. Kulchyski (2005:16-17)) employs the term 'totalizing' to describe the unrelenting machinery of the state and Development. If the state and Development are by nature totalizing, the Sahtu is correspondingly tenacious.

[5] Building a Vision for the Land: Report on Community Interviews, July-October 1999. Sahtu Land Use Planning Board.

Chapter Two – The Sahtu and Norman Wells

The Sahtu

The Sahtu sits in the middle of the NWT, one of six regions which cover the territory. It derives its name from the North Slavey[6] word for Great Bear Lake ('*Sah*'-Bear and '*Tu'*-water). The six regions of the NWT generally correspond with specific cultural identities which are now reflected in comprehensive land claim agreements. However, the clear borders of a land claim settlement area conceal the myriad social connections between regions. Many individuals can and do identify with different regions and can in fact enroll under different land claims (one at a time). There are certainly core identities for the Inuvialuit, Gwich'in, Sahtu, Tlicho, Deh Cho and Akaitcho regions which land claims recognize. But there are many smaller groupings, historical connections and ongoing links between and within these regions which can be overlooked through a surface reading of a land claim. A key aspect I discuss later is how the SDMCLCA handles this diversity within the Sahtu.

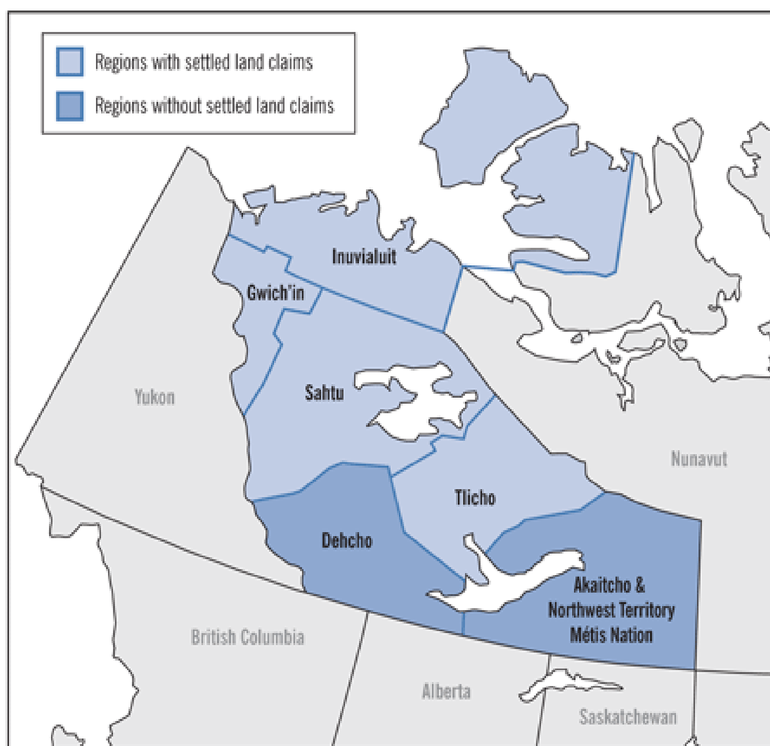

Figure 2 NWT land claim map. Courtesy of Office of the Auditor General of Canada.

The Sahtu's boundaries are formally defined through the SDMCLCA with an area of 280 238 square kilometres, which includes Great Bear Lake, itself over 31 000 square kilometres. However, these numbers do little to convey the grandeur of the landscapes of the Sahtu. Among the more dominant landscape features are the Mackenzie Mountains and the Deh Cho (Mackenzie River) which

[6] There are eleven official languages in the NWT, the most in any jurisdiction in Canada. Aside from English and French, there is Chipewyan, Cree, Tłı̨chǫ, Gwich'in, North Slavey, South Slavey, Inuktitut, Inuvialuktun and Inuinnaqtun. Within these there are local dialects (Official Languages Act , SNu, 2008 c10).

passes through the Sahtu. Flowing north from Great Slave Lake towards the Arctic Ocean, the Mackenzie River warms the climate of the Mackenzie Valley and allows the treeline to extend further north than it otherwise would (Sahtu Atlas 2005: 43). Using the Mackenzie as the point of orientation means that travellers go 'down north' with the current, a reversal of the typical southern sense of direction. The Mackenzie is the natural highway of the Northwest Territories and is of special cultural and spiritual significance for Dene and Metis people. The fifteen ecoregions of the Sahtu include immense mountain ranges, vast wetlands and thickly forested bush (Sahtu Atlas 2005: 39-42). The land and innumerable waterways are home to many animals and fish which provide sustenance to the people of the Sahtu.

The Sahtu is also a GNWT administrative region with its own health, social services, and educational authorities. At the same time, residents have to travel to hospitals in Yellowknife or Edmonton for more serious health services. There are high schools in the Sahtu and post-secondary training courses provided by Aurora College, a territory-wide institution. Students pursuing university educations must move to the South[7]. The Sahtu has a population of 2334 people across its five communities with Norman Wells being the largest (around 727) and Colville Lake the smallest (142) (2011 Census: Statistics Canada). Non-Aboriginals number around 500, most of whom live in Norman Wells. The Sahtu is a fairly isolated region, with road access limited to the winter road in the coldest months when ski-doo travel is also an option. There is air-service to each community by local airline North-Wright Airways and Norman Wells has a larger airport with daily jet service linking it to Edmonton, Yellowknife and Inuvik. Otherwise, transportation and travel follow the customary route along the Mackenzie River and Great Bear River, which drains Great Bear Lake into the Mackenzie.

Fort Good Hope, Colville Lake, Tulita, and Deline all trace their settlement history through the fur trade. Fort Good Hope was the first trading post in the region, established by the North West Company in 1805 (Sahtu Atlas 2005: 19). The reach of the fur trade had penetrated the region a number of years earlier (Stager 2003: 131-133). Missionaries followed the fur trade into the Sahtu and a syncretism of Dene traditions with Christianity is seen in spiritual practices today. The Royal Canadian Mounted Police established outposts and patrols across the North by

[7] There is a new land and indigenous based educational institution, Dechinta University, off Great Slave Lake which offers courses, some of which are university accredited.

the end of World War I (RCMP 2002). Until the Native settling around trade posts in the mid-20th Century, the only full time residents of these posts were traders, missionaries and RCMP. The fur economy hit its peak in 1920 and underwent a decline culminating in the global anti-fur movement of the 1980's (Fumoleau 1975: 163, 527). Today trapping and the fur trade is centrally organized through the GNWT and those who choose to trap receive financial support as the economics are no longer viable to meet modern needs. .

Figure 2 Sahtu and communities. Courtesy of the Office of the Auditor General of Canada.

The post-war era was a time of much social and economic change for people across the NWT which precipitated the political changes of the following decades. Trading posts became permanent villages as schools, health and social services were established (Stabler et al. 1990:1). It was in the 1960's when the first students graduated high school (Abel 1993: 238-39). Some would go on to university in the south and to play an important role in the Dene and Metis political mobilization of the 1970's. Their critical understanding of the Native relationship with Canada coupled with a strong connection to the land and the words of Elders continue to shape politics in the NWT.

There are countless local histories and stories connected to people and land in the Sahtu and regions beyond. I refer to a few of them in this research, where appropriate. There are four main Dene groups in the Sahtu; K'asho Got'ine (living now in Fort Good Hope and Colville Lake), Shita Got'ine and K'aalo Got'ine (living in Tulita) and Sahtu Got'ine (Deline). Tulita or

‘*where the waters meet’* and Deline or ‘*where the water flows*’ were formerly called Fort Norman and Fort Franklin before officially adopting Slavey names in the 1990’s. Each community has a Slavey name; Fort Good Hope/Radilih Koe or ‘*home at the rapids’*, Colville Lake/K’ahbamitue or ‘*ptarmigan net lake’* (Sahtu Atlas 2005: 17-26). The importance of watersheds and travel are clear in these place names, an insight pointed out to me by Roger Odgaard “*…they basically go up river, go hunting in different areas up river and come back down…so you can see all the land bases and community jurisdictions are basically based on watersheds and hunting areas*.” Fittingly, the most important liquid to Norman Wells informs its Slavey name, Le Gohlini, which means ‘*where the oil is*’.

There are kinship and friendship ties across the communities and any effort to generalize local identity or affiliation would encounter much complexity. It is perhaps more appropriate to refer to the Sahtu ***regions*** than the singular Sahtu region. There are smaller tribal and kin groupings connected to specific areas, traditional territories, and seasonal camps. Many people in Deline and Tulita have connections to the neighbouring Tlicho region. My Aunt Evelyn’s own family history is traced to the Yukon (hence the family name) and two brothers that came to the Sahtu in the 1800’s. Metis identified people, living mostly in Tulita, Fort Good Hope, and Norman Wells, add to this cultural heterogeneity. The Metis in the NWT are their own group (and sub-groups) and are different than the nationally well-known Red River Metis (Slobodin 1966: 12-13). It should be noted that there is a difference between the Metis/Indian relationship in the provinces and that of the Mackenzie Valley where their lives and identities are much more intertwined (Chambers 1995: 49-50). A unique part of the SDMCLCA amongst all land claims is that it recognizes and formally manages this diversity. The Metis distinction was a question I brought up with some interviewees and I found that it is at the same time both a delicate and irrelevant issue. Delicate enough that the Metis, with a distinct identity and history, were given specific institutions in the land claim. And irrelevant enough that it is not an issue for the business of the land claim today. That said, I take my lead from the spirit of cooperation between the two groups and use the collective identity ‘Sahtu’.

In the following section I briefly summarize the history of state relations in the Sahtu focusing on the historical Treaty 11. Norman Wells, though a key factor in Treaty 11, remains largely out of purview in this summary owing to its position outside the Sahtu Aboriginal

experience. I conclude this chapter with a summary of the history of Norman Wells and its place today in the Sahtu. In Chapter Four I discuss the Aboriginal dynamic of Norman Wells through the land claim.

Treaty 11

Formal relations between the Sahtu and the federal government officially began with the signing of Treaty 11 (1921). Norman Wells figures largely into this event as an oil discovery there in 1920 by Imperial Oil Ltd. motivated the federal government to obtain the legal pretense to claim the lands and resources across the NWT (Fumoleau 2004: 191-98). Treaty 11 was the last numbered treaty and differed from established federal policy in which Indian groups were moved onto reserves so that agricultural settlement and the national railroad could make their way westward across the country. Settlement in the southern sense was not, and still is not, the impetus for maintaining official relations with northern Aboriginal groups. As I show later, the drive to negotiate comprehensive land claims in the NWT was also the result of resource development projects. As the adage goes, the more things change the more they stay the same and so it is that the petroleum industry continues to play a heavy hand in Aboriginal/state relations in the Sahtu.

As further discussed in Chapter Three, the legality and validity of Treaty 11 would be successfully challenged in court which forced the federal government and treaty groups to maintain a delicate position. Both recognize the symbolic importance of the treaty, the government's' failings with regards to adhering to treaty obligations, and agreed to work towards negotiating a new agreement in the form of a comprehensive land claim agreements. This is reflected in the settled land claims of Treaty 11 regions where constitutional Aboriginal and treaty rights are affirmed while the preamble also reads; "*WHEREAS the Dene and Metis of the Sahtu region and Canada have unresolved differences with respect to the interpretation of aboriginal and treaty rights*" (SDMCLCA 1993). The importance of Treaty 11 and Treaty 8, which includes a southern portion of the NWT, varies from region to region. Today there are important cultural histories connected to the signing of the treaty and the celebrated leaders who negotiated them on behalf of their people. Treaties affirm the 'nation' status of Aboriginal groups within Canadian law, a fact embraced by treaty groups and eventually, with reluctance, the Canadian legal system and government policy. But there is also a strong measure of

resentment and a blunt understanding over what the treaties were really about as stated by Tlicho Dene Elder James Wah-Shee, "*The Treaty was signed when it was discovered that our land was more valuable than our friendship*." (Fumoleau 2004:200). This state of affairs persists today. The pride people took in negotiating terms for the treaty was faced with the eventual understanding that, in effect, the government misrepresented their terms and reneged or avoided their obligations (Coates & Morrison 1986: 2-3, Fumoleau 2004: 301-2).

In the summer of 1921, the treaty making party travelled from Fort Providence on Great Slave Lake to Fort McPherson in the Mackenzie Delta, making nine stops. In total, 1,934 individuals took treaty including groups from the Sahtu region. The treaty was signed at Fort Norman/Tulita by Great Bear Lakers and Mountain Dene and at Fort Good Hope by the K'asho Got'ine (Fumoleau 2004: 229-35). In subsequent years, more Indians and 'half breeds' or Metis took treaty by request or at the encouragement of regional government officials (Fumoleau 2004: 365-67). This could have been the result of them being away at the original treaty signings, initial refusal, or motivated by the tough economic times in the 1920's and 1930's. However, many Metis opted for the governments' offer of scrip payment despite the governments' encouragement to take treaty (Fumoleau 2004: 50). These Metis were wary of taking on 'status', the southern reserve experience, and the restrictions it placed on their rights. These limitations included a loss of the right to own private land, the right to vote, and the right to drink alcohol (Hardy 1980: 21). The stance scrip-Metis took regarding the treaty would carry on into the political posturings of the 1970's and 1980's and the so-called 'Dene-Metis wars' (Chambers 1995: 49, 87-8). This stance reflects the ideological perspective of the Metis which is more entrepreneurial and accepting of modern economic pursuits (Chambers 1995:49).

The Legacy of Treaty 11

Before the prospects of oil development in the North, Ottawa maintained a policy of not seeking treaty and held the position that Indians should be left alone until their lands became of national significance (Coates & Morrison 1986: 39). Prior to treaty making, the federal government had paid some attention to Native people in the North. Mission schools and hospitals received subsidies, RCMP began enforcing laws, and Indian Agents began reporting back to Ottawa (Coates & Morrison 1986: 39). It was through these proxies that

recommendations for a treaty in the Mackenzie Valley began by their earnest sympathies for Native concerns (Fumoleau 2004: 164-71). These Native concerns included intrusions by white trappers and welfare support in times of hardship.

The federal negotiator of Treaty 11, Henry Conroy, was not instructed to negotiate the treaty with the people of the Mackenzie Valley so much as to convince them to accept it, at times using unscrupulous methods (Coates & Morrison 1986: 39, Kulchyski 2005: 124-26). As with previous numbered treaties, the legitimacy of the treaties is called into question over the discrepancy between oral promises to Native signatories and the text of treaties themselves. What was not clearly explained to Natives at the time was the central purpose of the treaty for the government: the extinguishment of Aboriginal title to the land. Accounts from the Mackenzie Valley show that they were told to take treaty and receive the benefits (school, welfare, healthcare and an annual payment of $5) with no restrictions on their right of movement, hunting, and trapping. This money and help for nothing was met with justifiable scepticism though these concerns were overcome by Conroy with help from a trusted Catholic Bishop, Gabriel Breynat (Fumoleau 2004: 231-35). This was partly aided by the lack of pressure to move them onto reserves, a term that they would never have accepted in any case.

Disenchantment over the treaty would grow in subsequent decades. Concern over the intrusions of white trappers were not adequately dealt with by the government. This economic threat coupled with downturns in the fur market and the ravages of periodic epidemics and inadequate healthcare added to the growing resentment. The introduction of game laws and preserves, though not intended to curtail Native subsistence, added to frustrations when the people were not properly consulted. There were even some boycotts of Indian agent visits. In this period there were some very hard times, including a severe epidemic in 1928 which killed as much as one sixth of the population across the Mackenzie Valley (Dene Nation 1984: 20). The loss of lives, including leaders and elders, would no doubt have been a traumatic communal experience (Dene Nation 1984: 17). Distinguished Dene storyteller and author George Blondin[8] wrote about the great loss of knowledge and medicine power during this period commenting that "We have never been the same" (Blondin 1997: 66). Many decades later, the residential school

[8] George Blondin died in 2008 at the age of 87. He grew up around Great Bear Lake and Deline and later settled in the Tlicho region.

experience would similarly corrupt the social wellbeing of individuals, families, and communities. The trauma and effects of residential schools left an enduring toxic legacy which has carried on into the lives of subsequent generations.

In 1959 a commission (Nelson Commission) was undertaken to investigate the unfulfilled obligations of Treaties 8 and 11 which centered on the issue of reserves which were included in the original treaty text but never implemented. This was motivated in large part by the 'Road to Resources Program' initiated by Prime Minister John Diefenbaker in 1957 (Coates & Morrison 1986: 36). The Nelson Commission travelled across the NWT explaining that treaty people were owed land by the government which offered some combination of land, mineral rights, and cash (Abel 2005: 241-2). The commission aroused the same scepticism that occurred during Treaty 11 (Dene Nation: 18-19). It also recognized that there were two very different interpretations of the treaty and that, in fact, the Natives had been lied to in 1921 (Nelson Commission 1959: 7-10). The recommendations of the commission foreshadowed what would happen over a decade later, namely renegotiating a new treaty on more equitable terms. The government ignored the report of the commission and the issue laid dormant until the Dene challenged the government in court in 1973. At this time the Aboriginal people of the NWT, and indeed across Canada, used the courts and political activism to force the federal government into the modern era of treaty making in Canada. Despite resentment over the illegitimacies of the treaty, the 'spirit and intent' of the treaty is still important for Native signatories. The ideals of spirit and intent carry on today in comprehensive land claims and their implementation though the same challenges are faced. These challenges center on compelling the government to embrace the spirit and intent and not just the narrowest legal and minimal funding obligations. A specific example of this is covered in Chapter Five with the issue of land & water regulatory boards in the Mackenzie Valley.

‘where the oil is’

Norman Wells is the town that oil built. The more cynical understanding of Treaty 11 also shows that it is the oil that built Treaty 11. That oil strike in 1920 helped frame the North as a resource treasure trove for the benefit of Canada (Dickerson 1992: 29). Treasures mostly for the benefit of southern Canada. The first outside knowledge of oil in the Sahtu came from the very first European expedition down the Mackenzie River when Alexander Mackenzie was told by Dene guides of oil seepages in 1793 (Clark & Innis 1970: 36, Sahtu Atlas 2004: 25). Mackenzie was looking for the north-west passage to the pacific and the irony of the river being given his name in failure is well noted. The first committed efforts to drill began in 1919 by Imperial Oil[9] and when a 70 foot gusher was hit it was the most northerly oil well in the world (Bone & Mahnic 1984: 53-4; Page 1981: 17). The isolation of the site left production on hold until a market developed ten years later. That market was Port Radium, a uranium mine on the eastern shoe of Great Bear Lake which went into production in 1933. Other industrial activities along the Mackenzie and burgeoning air services also received their oil from the small refinery in Norman Wells. The uranium mine would become a dark saga in the Sahtu and particularly for Deline. This topic is too large and sensitive to adequately discuss here but I do return to it in the conclusion through its relation to the Dene prophecy practice.

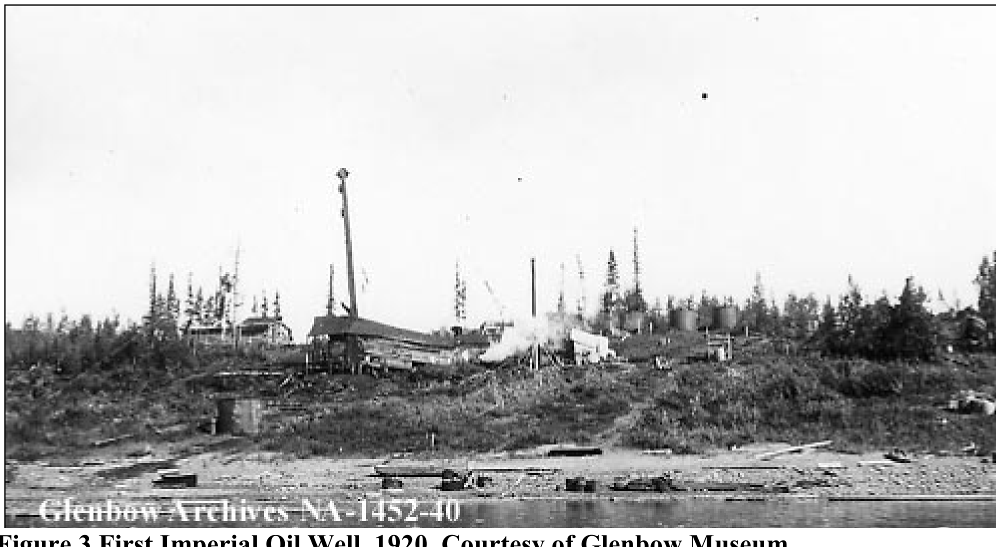

Figure 3 First Imperial Oil Well, 1920. Courtesy of Glenbow Museum.

Forces outside of the Sahtu also contributed to one of the largest, and most brief, industrial endeavours in the Sahtu. The Japanese threat along the pacific theater during World War II compelled the US Army to build a pipeline and road from Norman Wells to the Yukon

[9] ‘Imperial Oil’ is also known ‘Esso Imperial Oil’.

and transport the oil onwards along the new Alaskan highway. The CANOL (Canadian Oil) project began in 1942 and was scraped almost as soon as it was completed when the Japanese threat was suppressed in 1944. The colossal costs of the project made it economically prohibitive with a cost of $1000 per barrel adjusting for inflation (Page 1981: 20). Some 2,000 American soldiers came to the NWT for the massive undertaking (Dene Nation 1984: 18). For all the might of the US Army, it was in fact a Mountain Dene, Fred Andrew, who guided the survey crew through the very rough terrain towards the Yukon. The story about Fred says that he was quite impressed by the work of the army (McGinnis n.d.). Norman Wells Elder Edward Hodgson and a long-time employee for Imperial told me a story of one fellow who was less than impressed, "*I had a cousin on there and he said that he didn't stay very long with them because when they were pulling a pipeline across the river this one guy got cut right in half. Cable busted and just cut him right in half. So he quit the next day, wouldn't take that.*" Today the NWT portion of the pipeline and road is a heritage trail which still shows some scars and scattered debris.

Norman Wells Proven Area Agreement

When it became clear that the Canol pipeline would be abandoned, the federal government took a keen interest in the future of the enterprise. Wanting to ensure that the expanded facility remained viable as part of the future development of the north as well as affirming Canadian sovereignty, the government became a one third investment partner in the operation in 1944. The brief intrusion of the US Army with its imperious tendencies had stoked real fears in Ottawa that they could lose the North to the U.S. (Page 1981:20). The Norman Wells Proven Area Agreement (NWPAA) left all management and operations responsibilities with Imperial while the government would simply receive a cheque every year as one third partner. On top of this the government would receive a royalty on Imperials' two thirds of production. This agreement is still in place today. It has been contentious at times as the government considers their share a business venture and not a royalty. That has been challenged because the government invested nothing to receive their share. This is important because federal royalties are shared with Sahtu under the SDMCLCA and are to be devolved to the GNWT in 2014. The NWPAA is today a relic of a colonial period which completely marginalized Native groups. The legal veneer of Treaty 11 paid no attention to the subsurface

land rights of the Dene and Metis. The first time subsurface and mineral rights were ever discussed was during the 1959 Nelson Commission. After the Dene and Metis political mobilization of the 1970's and comprehensive land claims such wealth would not be pulled from their lands and under their noses so easily again. Profits for Imperial and the federal government from Norman Wells is measured in billions of dollars. These profits greatly expanding after an expansion project in the 1980's discussed below (Page 1981: 25, Quenneville 2012: 32).

Production at Norman Wells grew slowly over the years. Some locals would work for Imperial and NTCL (Northern Transportation Company Limited) along the Great Bear Lake and Mackenzie River route. For all the wrangling over resource development in the North, it has provided a good livelihood for some. Edward Hodgson who has sat on the NWLC board for many years is grateful to Imperial for providing work for his mother and himself when his family suffered the loss of his father in a hunting accident. There are other Dene and Metis from the region and beyond who have had good careers with the company.

As a preamble to the current oil play in the Sahtu discussed in Chapter Five, I was told by a few individuals that Imperial has used horizontal hydraulic fracturing drilling over the years to no alarm. This was before it became controversial and the more dramatic moniker 'fracking' became a household name. It was previously and more benignly called 'perforating' or 'enhanced recovery techniques' (Page 1981: 22). Today the exploratory fracking under way has people across the NWT, and indeed Canada, raising serious concerns over the potential environmental consequences.

Norman Wells Oilfield Expansion and Pipeline Project 1981-1985

The region saw another boom of activity when Imperial and Interprovincial Pipelines[10] undertook a major expansion project at the cost of $1.4 billion in 1981 (Bone & Mahnic 1984: 7). Motivated by climbing oil prices in the 1970's, the project included drilling new wells, the construction of new facilities and six artificial islands the Mackenzie River and a pipeline to Zama, Alberta and southern markets. Imperial built five camps to house all the workers. The islands were necessary as the oil field sits primarily under the Mackenzie River. Oil and gas development and pipelines were a very hot issue at the time. Thomas Berger, chair of the

[10] Now known as Enbridge Pipelines Inc..

Mackenzie Valley Pipeline Inquiry[11], had tabled his report which called for a delay of any pipelines until land claims were settled only three years earlier. The federal government effectively dismissed the recommendations of the Berger Report in approving the project on recommendation by the National Energy Board and an environmental assessment and review process. The review process was criticized for being rushed and not addressing Native concerns in a substantive way (Page 1981: 28). This angered Dene and Metis who had gained a major moral victory with the Berger Report in their push for a land claim. For various reasons, discussed in Chapter Three, land claim negotiations coming out of the late 1970's and into the early 1980's were stalled.

Though the government demonstrated its power by allowing the project to proceed despite Native demands to settle land claims first, they did embrace a new model for Native consultation with a two year project delay to address these concerns (Page 1981: 30). Funding was made available for various initiatives to address social impacts as well as employment opportunities and economic benefits (Gorman 1987: 10). Imperial offered a partnership in a drilling and service rig, Shehtah Drilling Ltd., which is now wholly owned by the Denendeh Development Corporation, itself owned by the Dene Tribal Councils. Denendeh Development Corporation was jointly established by Dene Tribal Councils and Metis Association for such economic partnerships. Other efforts were made to source contractors and labour locally. I have heard informally that Interprovincial Pipelines offered a partnership stake but it was rejected by the Dene Nation, perhaps because it had been so vehemently opposed to the Mackenzie Valley Pipeline just a few years prior. There is some lingering criticism that they missed an excellent economic opportunity. That money could have been a major resource in land claim negotiation during the 1980's as the Dene and Metis were often caught waiting on federal funds. At first the Dene and Metis were cautiously optimistic over the special measures offered by the government but were ultimately left disappointed (Rees 1986: 144). Specific Dene and Metis proposals for community development programs became mired in bureaucratic and funding delays (Gorman 1987: 11, Wilson 1992: 33). The Dene Nation boycotted the official opening of the project when it was completed (Fumoleau 2004: 528).

[11] The Mackenzie Valley Pipeline was (and still is) a proposed pipeline for oil & gas from the Mackenzie Delta and Arctic Coast region down to Alberta.

Norman Wells Today

The scope and demands of the expansion project necessitated government action to accommodate the influx of people. The legacy of this is that Norman Wells became more of a community after the height of activity. The growing municipality received help from Imperial and the territorial and federal governments in expanding services, infrastructure, responsibilities and community planning including residential subdivisions (Bone 1984: 58). Today there are parks, a community centre, and a swimming pool. You can even get authentic Chinese food in town. Norman Wells is also the site of one of only two agricultural businesses in the entire NWT. Long-time resident Doug Whiteman grows potatoes and sells them across the region. In 2014, construction on a new health and social-services centre and long-term care 18-bed facility began. This is welcomed news for the Sahtu which previously had to send elders requiring 24 hour care to Yellowknife. There is also a hope that the centre with some available staff housing will attract a full-time doctor to town.

Norman Wells offers employment and economic activity for people across the Sahtu, even if only temporary or seasonal. Being able to find some work is an important resource for people from the other communities. The employment rate in Norman Wells is 80% but in the other communities it is half that (NWT Bureau of Statistics). Different government services and agencies have set up their regional offices in Norman Wells. Many smaller and local businesses were established as a result of the economic activity during the expansion project but had to endure the bust after things quieted down. Roger Odgaard, born and raised in Norman Wells, recalls the roughneck days of Norman Wells leading into the boom of the 1980's;

…in 1983, there was five thousand people in Norman Wells. Most of them were living in camp, those five huge camps there. Yeah, jeez, it was crazy. It used to be, it really used to be crazy. Lot of drinking in the seventies, real hardcore in the seventies. Finally in the eighties, when liquor licensed establishments and the big boom kicked in, three bars kicked into Norman Wells, there was strippers, prostitution, cocaine, you name it. The whole nine yards came with it and when they finished building the field they basically moved the big contractors out and scaled right down and everybody left.

And on how things have changed since;

…it's a beautiful town, it's an awesome place to live, there's no real prejudice in Norman Wells, everybody's raising their children together.

Figure 4 Mackenzie River with Imperial emissions in background. Photo by author.

Norman Wells, like the other Sahtu communities, sits amongst an incredible landscape. For southerner people, like my uncle, one of two things can happen when they arrive in such a place. They can feel isolated from 'civilization' down south and bored with such a small town or they are enthralled by what lies right at the edge of town and feel at home with the sense of community such a small town can endear.

Though it is still considered a white town there is a growing Native presence as people from the Sahtu region settle in Norman Wells, making it a kind of melting-pot and community apart within the Sahtu. When I first approached Cece McCauley for an interview she told me that for anything Aboriginal I should go to the other settlements instead and that Norman Wells was 'just a business town'. I explained that I wanted to look into resource development and that Norman Wells, with its' history and future, lies at the heart of this in the Sahtu. She agreed to talk with me. The younger generation of Dene and Metis call Norman Wells home even though their parents and grandparents are typically from the other communities. There will always be a certain amount of transient workers who come and go but there are also many permanent southern transplants who really love what life in Norman Wells and the Sahtu has to offer. There are mixed families and adoptions of children from the other communities. There are respected resident Native Elders like Cece and her brother Edward Hodgson, who shares his stories at community events and has a NWLC-owned building named after him. Edward Oudzi,

originally from Colville Lake, settled in town and takes students from the school out on the land to share his traditional knowledge. The first time I met Edward he came wobbling into the Yukon house and I thought to myself "oh no, this guy has been drinking all day". He gave a sly wink, straightened himself up, and calmly sat down for some tea. The joke was on me.

Norman Wells faces a few issues as a community and municipality. The question of toxic contamination at the town dump and older dump sites has raised some concerns. I spoke with former mayor Dudley Johnson who takes the issue seriously and is troubled by the lack of action by government in identifying and cleaning up the hazard. Imperial and other companies operated for many decades with virtually no environmental oversight and today no one really knows how much of what is where. These historical practices contribute to a significant level of suspicion and mistrust of resource companies by the Sahtu people. Imperial still plays a major role in the community, not only as an employer but also as the supplier of natural gas to the utilidor system which supports the core of businesses and residences[12]. That gas supply is about to run out as the oil field is nearing its end and a hot issue for community politics has been the transition to an alternative supply and system which is a costly endeavour. The oil supply is projected to run dry in ten years after nearly a century of production.

Figure 5 Esso/Imperial facilities, Norman Wells. Courtesy of Alasdair Veitch.

Today Imperial has to operate under much different environmental regulations created by the SDMCLCA and other national regulations. A recent application to the SLWB to extend their water license for ten years faced serious scrutiny. The problem was not with the use of water itself but Imperials larger environmental impact and

[12] Natural gas is retrieved as a by-product of the oil wells. It is also used to fuel the electrical generator for the town.

closure plans[13]. Imperial challenged SLWB's jurisdiction and review of the application as having overreached in expanding the scope of the water licence application. These review questions would apply to any other development project but Imperial is arguing that they operate under different rules through the NWPAA which remains under federal jurisdiction. Both the federal and territorial governments supported the SLWB and Imperial has conceded to their review demands.

People living down river from Norman Wells have long been worried about contamination of their drinking water and Sahtu MLA Norman Yakeleya has called for a full environmental assessment to get all the facts (Northern Journal February 11, 2014). A response from the Chairperson of SSI on behalf of the seven land corporations testifies to the sentiment of locals; "*For too long, the Norman Wells operations have operated without any local review or assessment of proposed environmental affects or any accountability to the Sahtu and local residents. Our concerns and views have been typically disregarded. This is unacceptable."*[14]As does a letter from the Tulita District and Corporation; "*…I write to express our deep concern about the 1940's approach that IORL is taking in 2014.*[15]" From these comments it is clear that resentment has built up over the past seventy years and the Sahtu people are no longer powerless to do anything. The fact that billions of dollars have come out of Norman Wells into the pockets of government and one the worlds' largest multinational corporations does not help Imperial's image. Part of Sahtu concerns is also attributable to a recent CBC Report which found that the Norman Wells facilities had the highest number of reported 'incidents' in Canada from 2006 to 2012 at over seventy (Petrovich 2013, October 30). The most notable of these being two accidental releases of contaminated water into the Mackenzie River. Pipelines fall under the jurisdiction of the National Energy Board (NEB). Imperial does have a good track record of reporting incidents to both the NEB and SLWB and has paid substantial fines related to the water spills. Another serious concern is the state of a network of underground pipelines which have

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[13] A new part of resource development regulation in Canada is requiring 'reclamation costing and security' which means ensuring a company has a detailed estimate of the costs of closing down operations as well as the financial means in the form of a security deposit. The North and government have historically had bad experiences when it comes to reclamation. The most prominent example is the Giant Mine which operated in Yellowknife for decades and closed in 2004 was 'legally' abandoned by the last owner leaving the government responsible for clean-up costs estimated at $1 billion to say nothing of the threat of a quarter million tons of arsenic contaminating ground and water.

[14] SSI submission on board jurisdiction to SLWB (April 14, 2014).

[15] Tulita District Land Corporation submission to SLWB (April 19, 2014).

been found to be corroded and leaking. The National Energy Board rebuffed Imperials initial plans to manage the problem as being inadequate.

Conclusion

Until relatively recently, to speak of Norman Wells was to refer to Imperial Oil. They were one and the same. If other sources of economic activity are not found the town will shrink when Imperial rolls back operations considerably in the next ten years. A lot of hope is put in the unfolding Canol oil play across the river and towards Tulita. Norman Wells is the natural staging site and hub for activity. The majority of people are supportive for the economic spin-offs it brings to town. The 2008 global economic crisis was felt in Norman Wells as investment dried up, quieting exploration activities with a rippling effect throughout the local economy. Production of the potential finds is uncertain and would not happen for at least ten years. But even temporary exploration activity is a major boost to the local economy. The exploration companies will spend hundreds of millions of dollars in the next few years. With the SDMCLCA in place, Dene and Metis leaders hope that their people will reap substantial benefits.

Chapter Three-The Making of Modern Aboriginal/State Relations

Chapter Overview

Though Aboriginal/state relations are best understood through the experiences of particular groups there are shared historical elements and contemporary similarities. The Native refutation and mobilization against assimilationist policies, important legal and constitutional gains, and new federal policies are the hallmarks of an important historical shift which began forty years ago. These changes marked a new unity in the national Aboriginal experience and voice. Today national organizations like the Assembly of First Nations, Inuit Tapiriit Kanatami, and the Land Claim Agreement Coalition unify geographically distant and culturally diverse groups so that they may address common issues, such as the federal relationship, with a stronger voice. What is more complicated is localizing that federal relationship within an Aboriginal polity. Each politically aligned Aboriginal region has a particular identity, history, and political manner. Within regions, such as the Sahtu, there can be another layer of distinctive individual community identities, histories and politics. Each Aboriginal community in Canada views their historical and future relationship with Canada differently than others. Though land claim and self-government agreements share basic similarities and goals, a result of federal policies which restrict negotiation subject matters and conditions, each is unique. The uniqueness of each agreement is found in the ways Aboriginal groups used negotiations to meet their interests and how they put agreements to work through implementation. In Chapter Four I address the negotiation and structure of the Sahtu land claim.

Treaties in Canada can be divided into three eras; peace & friendship treaties up to confederation in 1876, numbered treaties from confederation until the early 20th century, and the modern treaty era. The historical treaty making era ended in 1921 with the signing of Treaty 11 in NWT. In the intervening decades, before the advent of a strong Aboriginal political voice and modern treaties, the 'Indian issue' was largely forgotten by the state. The numbered treaties were sought as colonial settlement moved west. With Indian groups displaced onto reserves, they no longer represented a barrier to the expansion of Canada. The vast northern regions and their Indian, Metis, and Inuit populations were so distant that they remained out of purview until the 1960's at which time they began to make claims to land and rights, often in the context of impending resource development. Fulfillment of treaty obligations and administration of the

Indian Act was a necessary duty and the legacy of colonial expansion. The Indian Act continues to trouble the government and status Indians alike. It is at once both a tool of state power and a protector of Indian rights. For groups across Canada, land claims and/or self-government agreements represent an alternative to living under the Indian Act and the restrictions it places on a First Nation. They can negotiate specific rights and jurisdictions where previously there was an outdated relationship of tutelage.

In the first section of this chapter I summarize the shift in Aboriginal policy that began in the late 1960's with the federal governments' so-called White Paper (1969) on Indian policy. At the same time Aboriginal legal rights were just beginning to be defined in the courts compelling the government to address its fiduciary responsibilities to Aboriginal groups which I cover in the middle section in addressing legal and constitutional gains. This brought Canada to the contemporary setting which marks the arrival, or acknowledgement, of Canada's third solitude in policy and public discourse. The negotiation and implementation of comprehensive land claim and self-government agreements further marks the appearance of a new third order of government in Canada, the Aboriginal order. The establishment of the Aboriginal order is now a central aspect of Northern governance. From the halls of territorial legislatures to a single community renewable resource council, the Aboriginal prerogative is in action. This summary inevitably generalizes a relationship and history that differs across the country. The 1970's shift is one aspect of the Aboriginal/state relationship that can be attributed to Canada as a whole by focusing on the major federal policy changes and precedent setting court cases.

The last section of this chapter focuses on the Dene/Metis political mobilization of the same period and where it has brought Aboriginal politics in the NWT. The original vision for politically unifying the Dene and Metis of the NWT would be replaced by a regionalized Aboriginal political scene. A key aspect of the 1970's mobilization was a major resource development project, the proposed Mackenzie Valley Pipeline and a commission of inquiry undertaken to study its social and environmental impacts, the Berger Inquiry. The Berger Inquiry became a rallying point for Dene/Metis in the NWT and played a large role in the rise of the Dene Nation and Metis Association. The days of Dene Nation and Metis Association also highlighted conflicting views on the issue of development and what shape Aboriginal governance should take in NWT. Though the pipeline was never built and the Dene Nation and

Metis Association unity fell apart, the period as a whole left an indelible mark on the political landscape. Resource development projects from then on would have to engage Aboriginal stakeholders to gain acceptance through Access and Benefit Agreements[16], a routine feature of any proposed project today. The involvement of Aboriginal groups in the Norman Wells pipeline was among the first such examples of this. The most important legacy of this twenty year period for the whole NWT is that Aboriginal groups would now wield considerable substantive and symbolic power vis-à-vis government and industry. Land claims are the center piece of this new power relationship. I conclude with a brief discussion of Deline self-government, an example of where the last forty years of political mobilization has brought to this community. Their approach to government policy, an inherently colonizing force, is strategically patient as they use what they can now while they work and wait for a better relationship in the future.

The White Paper

The political arrival of Pierre Trudeau, Native activism and legal challenges were the impetuses for creating a new relationship between Aboriginal peoples and Canada. However, the beginnings of modern Aboriginal policy was as much a result of the personal aspirations, political maneuverings and dysfunction of policy makers as it was Aboriginal lobbying and well-thought out ideas (Weaver 1981). It is worth examining the Trudeau years and particularly those with Jean Chrétien as Minister of Indian Affairs and Northern Development (1968-1974, the longest serving minister) to get at the thinking of policy makers. The years between Trudeau's debut as Prime Minister and the 1973 adoption of a comprehensive claims policy would come to be seen as an about turn in Aboriginal policy. This shift culminated in the constitutional entrenchment of Aboriginal rights and the first recognition of the inherent right to Aboriginal self-government at the end of Trudeau's tenure in the mid-1980s. By 1995, the government under now Prime Minister Chrétien officially adopted a self-government policy which spurred an expansion of comprehensive land claim and self-government negotiations[17].

[16] Also known as 'impact and benefit' agreements. Whatever their title, they generally serve the same purpose.

[17] There are seventy-two negotiating tables as of 2013, AANDC. (http://www.aadnc-aandc.gc.ca/eng/1346782327802/1346782485058, accessed July 12, 2013).

The harsh reality of dismal socio-economic conditions in many Native communities compelled the Trudeau government to develop a new policy which would include Native people within Trudeau's 'just society'. It was admitted that Indian policy up to that point had been a major failure. After consultations with Native leaders, Trudeau and Chrétien produced a document on Indian policy[18] in 1969. The intentions appear noble, "The Government believes that its policies must lead to the full, free and non-discriminatory participation of the Indian people in Canadian society" (Statement of the Government of Canada on Indian Policy, 1969:5). But behind the language of equality and inclusion was the ongoing state project of assimilation. It was proposed to abolish the Indian Act and end the legal relationship between Indians and Canada with the "…ultimate aim of removing the specific references to Indians from the constitution…" (Statement of the Government of Canada on Indian Policy, 1969:8).

There was an immediate Native backlash against the proposal. The lack of meaningful consultation with Native peoples spoke to the continuing paternalistic attitude of government despite the ostensible goal of doing away with this dynamic. Unilateralism was in fact a stated strategy of Chrétien as he decided discussion would not be constructive and policy should be presented to Indians as *fait accompli* (Martin 1995: 196-7). There is a hypocrisy here as the government did hold year-long consultations, raised Native hopes and even stated in the White Paper that the policy review drew from these "extensive" consultations (Statement of the Government of Canada on Indian Policy, 1969:6). This in turn offended those Indian leaders who took part in discussions, eroding any positive sentiments that may have been created (Weaver 1981: 4-5). As I discuss in Chapter Five, meaningless consultation is still employed as a political strategy by the federal government.

Though not exhibiting the more crude vestiges of colonialism the status quo was clearly strong in the minds of Trudeau and Chrétien. The new policy did not break with the policies of the previous hundred years. It was akin to a final solution of the general policy of assimilation. This was obvious to Native peoples who uniformly rejected the new policy. The most pointed criticism of the White Paper is found in Harold Cardinals aptly titled *The Unjust Society*

[18] Officially called *Statement of the Government of Canada on Indian Policy 1969*, it is often referred to as the 'The White Paper'. While white papers are what any policy document is informally called, using the term here carries warranted racial connotations especially in contrast with the Indian Chiefs of Alberta's 1970 response paper *Citizens Plus*, referred to as 'The Red Paper'.

(1969)[19]. A Cree from Alberta, Cardinals' articulate criticism singled out Trudeau and Chretien for their "thinly disguised programme of extermination through assimilation' (Cardinal 1969: 1). He went on to express the accumulated frustrations of Indian people after a hundred years of assimilationist policies and Indian administration made from faceless bureaucrats in Ottawa who "…would probably not even recognize an Indian if they met one on the street" (Cardinal 1969: 9). He also expressed the common aspirations of Aboriginal people across the country "...as Indian People, we share hopes for a better Canada, a better future and a better deal." (Cardinal 1969: 10). Cardinals' well-written response, four times longer than the White Paper, demonstrated that there was a new generation of Native leaders unafraid to confront the government with political activism and a much more pointed and informed critical language.

The cavalier nature of the new policy and its' ambitious implementation timeline (five years) is perhaps more indicative of the personalities of the two politicians behind it than of anything that could have actually been accomplished. For the North, more was at play than Native rights. New pressures from industry to begin large scale resource development projects in the last frontier of the country meant that the government would have to manage the balance between these two opposing forces. In any case, Trudeau, Chrétien and indeed the Canada as a whole, would admittedly learn an important lesson about the relationship with Aboriginal peoples. This education was the result of strong Native activism and court decisions which affirmed Aboriginal claims and rights (Belanger & Newhouse 2008: 8).

The development of the White Paper could have incorporated the recommendations of the governments' own commissioned inquiries (Nelson Commission 1959, Hawthorn Report 1966-67) or the concerns of the Indian spokespeople they did consult leading up to the White Paper. Those consultations indicated that Indians wanted special rights, especially over treaties and lands, dealt with in an equitable fashion (Weaver 1981:5). Instead, an insular and dysfunctional policy development process, more focused on relieving the federal government of its fiduciary and financial duties to Native peoples than actually listening to them, resulted not only in failure but offense. In her meticulous examination of the whole process, Sally Weaver (1981) highlights the internal failings of INAC as a major cause of the White Paper missteps and

[19] Cardinal was also the principal author for the official response paper from the Indian Association of Alberta, *Citizen's Plus'* (1970), also known as the 'Red Paper'.

that the focus shifted from "…how to solve the Indian problem and more how to solve the policy-making problem" (Weaver 1981: 109 quoted by Chambers 1995: 18).

Things changed quickly in the department after the White Paper debacle. The paternalism of the preceding decades was now met by vigorous Native activism. The department began funding Native groups for community development programs, land claims research and even court cases against the government itself (Martin 1995: 204, 223). This included funding the court case of the James Bay Cree and Inuit of northern Quebec over the James Bay hydroelectric dam project. The rushed negotiations to settle a compromise would result in the first modern comprehensive land claim and a basic model for others to follow.

Legal and Constitutional Gains

From the 1970's on there have been many court decisions across Canada concerning Aboriginal rights. Many of these dealt specifically with natural resource development projects with the net result of some 150 Native wins being that industry and government must properly address Aboriginal claims to land title and consultation rights before allowing projects to proceed (Gallagher 2012: 2). Additionally, the constitutional basis for Aboriginal rights was recognized and officially entrenched in the Constitution in 1982 under Section 35 after Native organizations successfully pressured the government to include it. Section 35 recognizes existing Aboriginal and treaty rights as well as any future land claim agreements for Indian, Inuit, and Metis people. Important court cases have further interpreted and defined the rights inherent under Section 35 including the 'fiduciary' responsibility and duty to consult with Aboriginal groups over matters affecting their rights (Guerin v. The Queen, 1984) and that any such infringements be adequately justified (R. v. Sparrow, 1990). These legal decisions contribute to a field of law which went from non-existence in the 1960's to being a legal discipline in its own right today. The Canadian legal system came to be an instrument of power for Aboriginal groups albeit with certain limits. The judicial system is flexible and can work to both advantage and disadvantage Aboriginal rights. Managing the relationship between government and Aboriginal groups is a matter of policy and practice which the courts do not strictly define. Land claims legally regulate this relationship and help prevent the conflict of litigation. The legal route has been used when government obligations through land claims have

not been properly met[20]. However, judicial admonishment does not foster good relations which is the larger goal for Native groups.

Perhaps the most important legal decision with national implications was the Calder case which was ruled on by the Supreme Court in 1973. First brought before a B.C. court in 1967 by Frank Calder on behalf of the Nisga'a, the plaintiffs actually lost on a technicality but the court did rule that Aboriginal title to land existed where not surrendered by treaty. This implored the government to officially undertake a comprehensive land claims process. This was a new field for a legal system which lacked the necessary knowledge, as well as precedent, with which to handle and decide cases of Aboriginal rights. Thomas Berger was the B.C. lawyer who argued the case and the story of Berger is tied up with the emergence of Native empowerment and the policy shift towards comprehensive land claims. Berger is of particular relevance for the NWT because of the 1974-77 Mackenzie Valley Pipeline Inquiry which he chaired[21].

At a 2013 conference held by the Land Claims Agreement Coalition[22] which also celebrated the 40th anniversary of the Calder decision, I listened to Berger recount the paradigm shift that occurred in the courts because of the Calder case and the role it played in forcing the Trudeau government to drop its' final assimilation plans and accept negotiation of comprehensive land claims;

…I went to law school in the mid 1950's and we never studied aboriginal rights. It never occurred to our teachers or to us that the people whom lived all around us from whom we had taken the country, that they had rights, legal rights, constitutional rights. So judges in those days had never been trained in the field of Aboriginal rights. It was difficult to convince judges and lawyers that the Aboriginal *people had rights based on the indisputable fact that they used and occupied vast areas, if not the whole of this continent, before the Europeans colonized it.*

…just before we went to trial, the Prime Minister of the day, Pierre Trudeau… he was asked in Vancouver about claims to aboriginal title and he said "Well, our answer is no." This is the Prime Minister of Canada speaking, "We can't recognize aboriginal title because no society can

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[20] In the North for example, the Gwich'in Tribal Council, who have a settled claim, began a legal case in 2012 against the GNWT and federal government over the issue of devolution negotiations which they ultimately withdrew when they reached an agreement over their proper consultation in negotiations. In 2006, Nunavut Tunngavik Inc. sued the federal government over its failure to properly implement portions of the land claim. Though they won some initial rulings in the large case, the federal government has chosen to appeal, contributing to a deterioration of relations.

[21] Berger is still active today, most recently representing a coalition of First Nations and conservation groups contesting a land use plan for the Peele River watershed proposed by the Yukon Government.

[22]The Land Claims Agreement Coalition was formed in 2003 to pressure the government into fully implementing their agreements and respecting the spirit and intent of their modern treaties.

be built on historical might-have-beens." So he swept the whole question of aboriginal title in to the dustbin of history.[23]

It was a few months after the Supreme Court ruled on the Calder case that the government stated that they would begin a process of negotiating comprehensive land claims. Prime Minister Trudeau commented that "perhaps you had more legal rights than we thought when we did the White Paper" (Living Treaties: Lasting Agreements, 1985:12). As the 1980's began, Trudeau used new language in speaking of the "special relationship" with Aboriginal groups and the need for "recognition in the Constitution". The conclusions of the committee called by Trudeau to examine self-government also introduced the recommendation that Aboriginal self-governments would form a distinct order of government in Canada (Indian Self-Government in Canada: Report of the Special Committee, 1983:44). Trudeau's 'just society' was beginning to substantively include Aboriginal society. The report, known as the Penner Report, was researched with thorough consultations and the resulting recommendations show it. The gulf between Aboriginal and non-Aboriginal interpretations of treaties, and indeed the entire colonial experience, was laid bare in the committee's report. Aboriginal treaty signatories saw them as affirmations of sovereignty, rights and the formalization of a special relationship. Non-aboriginal signatories saw them as extinguishment of rights, submission to the Crown and gifts of reserve land from the Crown to the Indians (Indian Self-Government in Canada: Report of the Special Committee, 1983:12). The acknowledgement of Aboriginal grievances and ambitions represented a significant step towards reconciliation and Aboriginal self-determination. The right to self-government as an inherent right under Section 35 has not been recognized by any court nor through constitutional amendment but the federal government recognized it as such when it officially adopted its policy on Aboriginal self-government in 1995. This marked the end of the transition period from the proposals of the White Paper in 1969 to what can be firmly called the modern era in Aboriginal/state relations. Today with emerging self-government agreements we can now refer to a government to government relationship. This is legally and legislatively defined through comprehensive agreements but also carries an important symbolic weight.

[23] http://www.landclaimscoalition.ca/assets/3-KeynoteAddress_ThomasBerger.mp3 accessed May 24, 2013.

Dene Nation and Metis Association of NWT

The period between the late 1960's and 1990 was a tumultuous time for Aboriginal politics in NWT. Growing pains during a process of political consolidation, unique in their history, led to a tenuous unity for the purposes of settling a land claim. Land claim negotiations began in the early 1970's but little progress was made until the 1980's and it would take nearly another decade to reach an agreement-in-principle (AIP). The unity would ultimately fall apart right as the AIP was signed. This is attributed to not only the internal conflicts over resource development and the specifics of the land claim agreement but also over the political visions of the different groups. That vision is that local and regional autonomy was the political ideal. This simply reflected how people had always organized themselves. No region was, or is, favourable to centralized bureaucracy and government. The organization that would become the Dene Nation became criticized for its centralized bureaucracy and the proposed land claim institutions which would have made these institutional structures permanent. This would play a contributing role in the regionalization of land claims after an agreement-in-principle was signed, and soon rejected, in 1990.

In the NWT, the wheels of political mobilization were already rolling when the White Paper was released. DIAND had begun funding a regional council of Dene band chiefs in the mid 1960's to promote communication between the department and bands (Abel 2005: 246). It was in 1966 when Indian affairs and northern development were first put together in one department under a cabinet minister and how it has remained since (DIAND n.d.). In 1967 the Dene first saw the actual text of their treaty and their indignation fuelled a new resolve to confront the government over their grievances (Dene Nation 1984: 21-2). The first meeting with all sixteen Dene band chiefs was at a DIAND sponsored meeting in Yellowknife. The government was 'consulting' them over the Indian Act in preparing the White Paper. Later news that the government had spent ten years considering the creation of a national park along the South Nahanni River with no consultation or regard to the issue of Dene and Metis land rights only worsened relations. Grassroots organizing began which included visits from prominent national Aboriginal leaders such as Harold Cardinal and George Manuel (from B.C.), signalling the emergence of pan-Aboriginal activism.

The decision to establish an independent organization for NWT Indians was made in 1969 with the encouragement of DIAND. The Indian Brotherhood of the Northwest Territories (IBNWT) was formed by the sixteen constituent band chiefs to help them organize amongst themselves with a stronger voice. The swift changes to build an organization to effectively deal with the government were a major challenge as there was no administrative infrastructure and little capacity. A young and newly elected chief in Fort Good Hope receiving the entirety of the bands' administration in one plastic grocery bag speaks to the amount of work to be done in what is today called 'capacity building' (Kulchyski 2005: 156). DIAND initially refused to fund the organization if the status Dene included Metis and non-status Indians[24] (Chambers 1995: 22, Dene Nation 1984: 24). The problem of recognizing Metis and non-status was soon resolved. In 1972, the Metis and Non-Status Association of the Northwest Territories was formed (later called Metis Association of NWT) and secured federal funding. By 1974 it was agreed by all parties that any land claim would include Metis and non-status Indians (Hardy 1980: 22). However, the slow negotiation of a claim over the next fifteen or so years proved to be the most divisive period for Dene and Metis who had not had to address their differences in such an important arena until this point. The groups would remain independent but would regularly hold joint general assemblies. After a year of getting organized James Wah-Shee was chosen as president of IBNWT and would serve for five years. Wah-Shee was in his twenties and represented a new leadership cohort that employed a more radical language informed by the civil-rights and anti-colonialism movement. This was partly the influence of young left-leaning community workers who came to the North as part of the Council of Young Canadians, a program funded by the government. It should be noted that these young Dene and Metis, more articulate and educated in English and the white world than their Elders, were initially favoured by DIAND bureaucrats who thought it would make discussions and negotiations run smoother (Hamilton 1994: 130). They would learn that being fluent in English did not weaken the strength of their determination.

With funding, the IBNWT hired advisers and workers from down south to research their claim and build a negotiating position. The influence of the southern researchers, advisers and

[24] It should be noted that a 1927 Indian Act amendment, removed in 1951, actually prohibited *anyone* from providing funding or legal help to an Indian for pursuing a legal claim against the government without permission from the superintendent general (Indian Act Section 141) (Venne, 1981:XX)

support staff was seen in the statements of IBNWT and they received some criticism for this. The clearest example of this is seen in the *Dene Declaration* (1975), which marked the first official use of the term Dene *Nation*. The statement references global struggles against imperialism and colonialism, and the fourth world. The Dene Declaration was not well received by the federal government and was rejected by the Metis Association. It was also received with confusion by the chiefs who did not understand its' language and purpose[25] (Chambers 1995: 64-6). For whatever criticisms the declarations' language received, its core message of self-determination within Canada and the settlement of a land claim was certainly understood and shared by all. In 1980, the Metis Association passed its own, much softer, declaration which reflected their general position: claiming Aboriginal rights while asserting loyalty to Canada.

There were discussions over whether or not the Metis should be included within the IBNWT and whether they were really 'distinct' (Chambers 1995: 75). Rick Hardy, a Metis from Tulita, served as president of Metis Association at the time and recalls taking a few black eyes, figuratively and literally, over their claim to a distinct identity and their general support for resource development. The Metis Association was also suspicious of the influence of southerners on the political and policy direction of IBNWT. It has been alluded that they orchestrated the removal of president Wah-Shee in 1975 because he pushed back against their socialist philosophies (Chambers 1995: 69-70). Despite the differing views over resource development, both groups agreed that a land claim should be settled before any pipeline was built. In 1977, IBNWT president George Erasmus got rid of the southern advisors, citing conflicting goals, including the desire of chiefs to spend more time on the well-being of their communities and less on idealistic battles (Chambers 1995: 98-9, Hamilton 1994: 146). Unity between the Dene and Metis, as well as between Dene bands themselves, would remain a major issue until the regionalization of land claim negotiations in 1990.

There is an unavoidable internal discourse over supporting development versus protecting the integrity of the land which is present today as much as it was during the 1970's. Today, as I show in Chapter Five, the chosen approach is one of balanced development. The balanced development model allows for restrained development with strict oversight and maximum

[25] There is a misconception that the Dene Declaration, often referenced in discussions of the Dene, was unanimously adopted by the IBNWT and Metis Association. It was in fact rejected by the Metis Association and only approved in principle by the IBNWT, as shown by Chambers (1995: 65).

economic benefits for locals while giving more traditional concerns for the land a very strong voice through land claim institutions.

Paulette Caveat

Seeing that their rights were still being ignored and following the model of the Calder case, the IBNWT chose to pursue a legal route in 1973. Francois Paulette, a young chief from Fort Smith, filed a land caveat on behalf of the sixteen chiefs with the Territorial Lands Office. The caveat claimed ownership of the entire Mackenzie Valley. Aboriginal rights and title, as in the Calder case, and the validity of Treaties 8 & 11 were the basis of their claim. The lands office referred the case to the Territorial Supreme Court where it came to Justice William Morrow[26] (Chambers 1995: 25-6).

If Morrow was already open to the plaintiffs arguments the federal lawyers did not help by antagonizing the judge in first arguing that he did not have jurisdiction, then trying to obtain a Federal Court writ prohibiting Morrow from hearing the case, and finally withdrawing during early proceedings to prevent any ruling on Aboriginal rights and title. Justice Morrow was incensed at the governments' strategy and allowed the case to proceed. Morrow referenced the Calder case and adapted the court to the needs of the plaintiffs. This included anthropologists as expert witnesses, oral testimony and history as valid evidence, and having the court spend a number of weeks travelling to affected communities to hear oral testimonies.

Morrow's ruling found that the government had a constitutional responsibility, dating from the Royal Proclamation (1763), to protect the legal rights of Native peoples and obtain surrender of Aboriginal lands through lawful treaty. He further found that there were two interpretations of Treaties 8 & 11 and that the Native oral testimonies demonstrated the questionable validity of the treaties. The verdict was appealed by the crown and in 1977 the Supreme Court of Canada overturned Morrows' ruling on a technicality regarding the filing of a caveat on lands. But, as in the Calder case, his findings regarding Aboriginal rights and title were not questioned. The government expected this and had already accepted to undertake a new comprehensive claims policy after Calder in 1973.

[26] Morrow is also known as the judge who in 1967 challenged the section of the Indian Act which prohibited Indians from drinking alcohol off reserve as a violation of civil rights in R. V. Drybones. The case went to the Supreme Court which agreed with Morrow in 1970.

Berger Inquiry

An important oil and gas discovery in Alaska in the late 1960's coupled with threats to the international supply of oil and rising prices made northern oil development economically viable (Hamilton 1994: 160). This spurred exploration activity along the Arctic coast and plans to build a pipeline to Alberta. The government was encouraging of this kind of activity but knew that they had to address Native concerns over what was regarded as one of the most extensive infrastructure project since the trans-Canada railroad. In 1974, Chretien personally appointed Thomas Berger, who argued the Calder case, to head a commission of inquiry into all aspects of building a pipeline along the Mackenzie Valley.

Chretien's selection of Berger was a curious one as he clearly knew where Berger's sympathies lay. In what would become major misfire for Chrétien, Berger was selected as a westerner popular with Aboriginal leaders and supporters (Swayze 1987: 140). Berger was personally told by Chrétien to *"...find a way to build the pipeline, not stop the pipeline."* (Swayze 1987: 139). Instead he interpreted his mandate as broadly as possible and turned what was intended to be a lip-service inquiry and endorsement of a pipeline into a nationally televised forum for northern Native grievances and assertions of self-determination. Berger knew that mediatising the inquiry would help draw southern Canadians into issues that were otherwise unknown (Chambers 1995: 56).

The IBNWT asked for a delay of hearings to organize and prepare themselves, including funding arrangements, which Berger granted (Chambers 1995: 57). The success of the inquiry is found in the approach of Berger who took the necessary time and substantial resources to allow the people to be heard. In 1975 hearings began with Berger flying the commission from community to community to allow over one thousand witnesses to give their testimonies (Dene Nation 1984: 32). This was a meaningful exercise for people long left excluded from decisions concerning their land and way of life. The IBNWT used the inquiry and media to garner sympathy for a land claim though their heavy involvement meant that they were more focused on the inquiry than negotiations (Chambers 1995: 58).

Testimonies were wide-ranging and expressed feelings for the land, government resentment, and fears of the impact of a pipeline. Young and articulate Dene used pointed words against government and industry with perhaps the most visceral statements coming from Chief

T'Seleie of Fort Good Hope "You are coming to destroy a people that have a history of thirty thousand years. Why? For twenty years of gas? Are you really that insane?"[27] Elders, through translators, talked of their traditions passed on by their ancestors. Many described their use of the land. Some that came out of residential schools spoke of their difficulties in readjusting to life with their families and communities. Nearly thirty years later the serious abuse, trauma and the legacy of residential schools would come to light. There is an important overtone to the concerted focus given to these testimonials during the inquiry; for perhaps the first time these voices were given a valid and legitimate by an official representative of the government. Strident calls for self-determination were not discredited as radical politics just as the quiet pride in simply describing a fish camp or trap line was not dismissed as a romantic anachronism. The worries over the immense changes happening to their way of life and the challenges of the next generation were also heard. The people were grateful that they were finally being listened to and that what they had to say was important.

Berger tabled his report, *Northern Frontier, Northern Homeland*, in 1977. In over 600 pages across two volumes Berger covered the technical, economic, environmental and social implications of the pipeline project. The crux of Berger's findings lay in the expressed views of the Aboriginal witnesses: that there should be no pipeline before a land claim settlement for which he suggested a ten-year moratorium. His title referenced the two basic forces at play in the relationship between Northern resource development and Northern peoples. The state and industry see the North as a resource hinterland to be exploited which is contrasted by the perspective of Northern peoples who express a deep connection to the land and a desire for balanced development.

The report was hailed as a victory by the IBNWT and Metis Association, though there was some conflict between them. The Metis Association was the only Aboriginal group to support the project, a position that was unpopular at the time. However, it was a fairly prescient position as over twenty years later and after the settlement of land claims, there is Aboriginal support for the project in its latest incarnation[28]. The government was generally cool to the

[27] Mackenzie Valley Pipeline Inquiry (1977) Community Transcripts Vol. 18, Page 1777.

[28] The Mackenzie Gas Project was revived in the 2000's when gas prices rose. The project is approved and the consortium of companies behind it include the Aboriginal Pipeline Group representing the regions affected with a 1/3 interest. Just as in the late 1970's, slumping gas prices have but the project on indefinite hold. The estimated

report and was able to distance itself from its findings when the pipeline became a dead issue. Demand and prices for gas had levelled off by the time the report was released and effectively killed the project.

Dene/Metis Negotiations

Land claim negotiations remained stalled in the late 1970's. Some AIP's were tabled by the Dene Nation, Metis Association and the government with little progress. The federal government would halt funding, partly as a pressure tactic to force the Dene Nation and Metis Association to overcome their differences and negotiate together (Chambers 1995:104-6). The Dene Nation was adamant that a land claim should include political discussions such as self-government. The federal government would not entertain such discussions, limiting the negotiation framework to the parameters of the James Bay and Northern Quebec Agreement. The government would offer land, money, and environmental co-management boards. All the while the territorial government was expanding and the federal government insisted that the GNWT be a party to negotiations which the Dene Nation was against. Their vision was to replace the territorial government with a Dene government through the land claim. This idea would never come to fruition. Despite this, the Dene began running candidates for territorial elections as a strategy to gain more influence.

In 1980 the newly elected Liberal government reinstated funding after the Metis agreed to let the Dene Nation negotiate on their behalf so long as Metis rights were enshrined in the land claim (Chamber 1995 119). The impetus for kick starting the negotiations was the Norman Wells expansion project. The government knew that gaining Native support for the project would require some good faith in land claim negotiations. The Dene/Metis disunity was smoothed over but criticisms of the structure of the Dene Nation as being centralized, bureaucratic and hierarchical emerged (Chambers 1995: 126).

In 1981, the government hired Saskatchewan lawyer David Osborn as Chief Federal Negotiator. Osborn was brought in partly because the Dene Nation was frustrated dealing with government bureaucrats. Negotiations remained at a nascent stage. Initially, Osborn spent a large part of his time keeping the Dene Nation unified. By 1984 negotiations were looking better

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construction costs were $16.2 billion as of 2011. The federal government offered $500 million for a socio-economic impact fund for affected Aboriginal communities.

after the more community-focused and conciliatory Stephen Kakfwi of Fort Good Hope was elected president of the Dene Nation. Dene and Metis were no doubt eager to settle after the neighbouring Inuvialuit and Council for Yukon Indians completed their own negotiations and had proceeded to implement their agreements. The Mackenzie Delta region Dene and Metis, or Gwich'in, requested a regional sub-claim be negotiated at a quicker pace. The government deferred the request in part because they wanted to avoid any accusations of using divide-and-conquer tactics and also because the government decided to undertake a review of the comprehensive claims policy. While the policy review was underway, negotiations continued with progress made. In 1986 a package of the agreements so far made was submitted to all involved to get feedback (Chambers 1995: 151-3).

In 1987, Stephen Kakfwi left the Dene Nation and was replaced by Bill Erasmus. A year later the Dene/Metis and federal negotiators initialled an agreement-in-principle. The AIP process of internal review began and divisions within the Dene/Metis again emerged with the Mackenzie Delta and Sahtu in support of the 1988 AIP and the other three regions against it. George Erasmus, then president of the Assembly of First Nations, led those opposing the group. Besides wanting to hold out for a generally better deal, the 'extinguishment' clause and the issue of Treaties 8 & 11were the main points of contention (Chamber 1995: 169).

The extinguishment clause dates back to the old numbered treaties. Though the word itself is not used, it reads that in exchange for the benefits and rights in the agreement, the Dene and Metis 'cede, release and surrender to Her Majesty in Right of Canada all their aboriginal claims, rights, titles and interests, if any…'. The extinguishment clause was criticized in the above mentioned 1986 policy review but the government retained it. When he first took on the Dene/Metis file, Chief Federal Negotiator David Osborn described the term as 'distasteful' (Chambers 1995: 134). Kulchyski highlights the tricky legal wordplay in such a statement which carefully recognizes and terminates rights but with a conditional qualifier as per '…if any…' (Kulchyski 2005: 98-99). The Dene Nation wanted the land claim to retain Aboriginal rights and title, not end them (Chambers 1995: 170-1). The government would replace 'extinguishment' with softer language using the term 'certainty' and 'exhaust' in later land claim agreements.

The careful dance around the Treaties 11 & 8 since the early 1970's would come to a head in the final moments of a Dene/Metis land claim. The government had a policy of only

negotiating comprehensive land claims where treaties were never made. They agreed to negotiate with the Dene/Metis not because the treaties were, as the Paulette Caveat case found, fraudulent, but because they had never implemented the provisions of the treaty, namely setting aside reserve lands. There were members of the federal cabinet who even in the late 1980's wondered why they should not restrict negotiations to the terms of the old treaties (Chambers 1995: 168). Though all treaty Dene held resentments over the unfulfilled promises of the treaties, their interpretation of them as peace and friendship treaties which never gave up land is stronger in particular regions, namely the Deh Cho and Akaitcho (Chambers 1995: 191). That element of the Dene Nation did not want to move beyond the treaties but instead wanted to negotiate an agreement on the basis of the treaties, a position still held. In 2013, Bill Erasmus wrote to the Queen of England on behalf of the Dene Nation opposing the recent NWT Devolution Act as violations of their treaty rights (Northern Journal, Feb.14, 2014). In support of the 1988 AIP, Kakfwi referred to the treaties which "all love to criticize and yet…don't want to let go" (Chambers 1995: 170).

The government refused to reopen the 1988 AIP or include self-government in the negotiations thus putting the ball in the Dene/Metis court (Chambers 1995: 72). The Dene Nation was able to come together to officially sign the AIP under pressure from the Mackenzie Delta and Sahtu who threatened to walk out if it was not signed. The AIP stipulated that a final agreement had to be negotiated and ratified by 1991 (Chambers 1995: 183). The government threatened to end funding and negotiations if the Dene/Metis could not accept the federal position on extinguishment, the treaties, and self-government (Chambers 1995: 186).

The process of land selection and allocation also proved problematic for the Dene and Metis. For the Sahtu, the allocation of land based on population was not popular. The Sahtu land base is very large in comparison to the other regions. The Dene/Metis agreement gave 112 654 square kilometres to the five regions with 15 771 going to the Sahtu (Chambers 1995: 190). They argued, as they did later in the SDMCLCA negotiations, that they should be able to select a larger land quantum. Under the SDMCLCA they received about two and a half times as much[29]. There was also conflict over why which lands should be selected. Some regions wanted to select lands for economic opportunity and others solely for their spiritual and cultural significance.

[29] The Gwich'in and Tlicho also received more land quantum under their respective land claim agreements.

That these kinds of decisions were difficult to reach underlines the seriousness of them. All knew that future generations would have to live with the consequences of these decisions.

The self-government project of the Dene Nation and the creation of a Dene and Metis territory called *Denendeh*, through either a comprehensive land claim or the political development of the GNWT would never come to fruition. The federal government would not encourage a model akin to Nunavut to be followed where there was a significant non-Native population. Nor would they allow a public government to contain any Aboriginal veto in its structure.

In 1990, a final Dene/Metis agreement was initialled but it would never be officially signed. Aside from the issues already present, the recent R. V. Sparrow decision, Elijah Harper's dissention in the Manitoba legislature over the Meech Lake Accord, and the unfolding events in the Oka Crisis strengthened the resolve of those who wanted more from the Dene/Metis land claim (Chambers 1995: 199). During separate assemblies to go over the agreement and move it into the ratification stage, both the Dene Nation and the Metis Association fell apart. The Mackenzie Delta and Sahtu Metis left the Metis assembly when it was clear that there was no support for the final agreement in the other regions (Chambers 1995: 202-4). The Dene Nation voted on a motion to hold fast to the refusal of 'extinguishment' and affirming the treaties which ended the internal discussion. The Mackenzie Delta Dene walked out of the assembly. The Sahtu abstained from the vote and a few months later officially decided as a region to pursue a regional claim (Chambers 1995: 204). The Dene Nation and Metis Association presidents believed the government could be pressured to meet their demands and that regional claims would not be accepted (Chambers 1995: 205-6). They were no doubt shocked when a month later the government accepted the Mackenzie Delta request to settle a regional claim. The government terminated Dene/Metis territory wide negotiations a few months later. The federal government would now deal only with regional organizations.

There were accusations from the Dene Nation that the government was dividing and conquering by allowing regional claims. Chambers (1995), through detailed analysis of both government and Dene Nation/Metis Association records shows that this was not at all the case. The government always wanted a Mackenzie Valley-wide claim. The governments' goal from the beginning was to achieve certainty of land tenure and resource development in the NWT.

Regionalizing land claims would only complicate this process and result in duplicative wildlife, water, and land regulatory boards (Chambers 1995: 207). Creating a streamlined regulatory system in the NWT would be pursued using different means over twenty years later. This important issue is covered in Chapter Five. The negative reaction from settled claim groups against the governments' move to do away with their regional regulatory boards, key aspects of their land claims, may move into the legal sphere. They are unhappy but probably not surprised.

Conclusion

Ultimately there were two reasons that a territory wide Dene/Metis claim would not be settled. The first was the challenge in politically unifying the different regions as well as the Dene and Metis. Their new found solidarity was not enough to overcome the strong regional identities. Secondly and more importantly, as Chambers (1995) points out, the inflexibility of the federal government to meet the demands of the Dene groups over the treaties, Aboriginal title/'extinguishment', and self-government precluded reaching a settlement in a positive climate. Thus the break-up of the Dene Nation and Metis Association is both a failure of federal policy and a reflection of political reality in the NWT. The Mackenzie Delta region signed the Gwich'in Comprehensive land Claim Agreement in 1992, the Sahtu the year after, and the North Slave signed the Tlicho Land Clam and Self-Government Agreement in 2003. The Tlicho were able to include self-government as the federal policy on self-government was in place by that time. The Deh Cho, Akaitcho, and Fort Smith Metis Nation are still working on their claims. One group, the North Slave Metis Alliance, emerged in 1996 and have had their request for a land claim rejected. Their claim overlaps with the Tlicho and Akaitcho regions and most of their members are eligible under neighbouring claims (Wohlberg 2013, April 22). The Dene Nation continues on today as an association of Dene bands and Assembly of First Nations regional member. After the break up, the regions spoke for themselves in terms of political and land claim issues but the Dene Nation continues to play a role in cultural and environmental affairs.

Kulchyski (2005: 97) describes the break-up of the Dene Nation in positive terms, as an '…outgrowth of a deeper political success at community empowerment…". I spoke with George Cleary from Deline who concurs with that assessment. He served as a regional vice-president in the Dene Nation in its' final years and saw that the Dene Nation was getting too centralized and bureaucratic. George expresses the common refrain that the more localized and community

based governance is the better. No one knows how an implemented Dene Nation land claim institution would have operated but George was suspicious that it would become a top heavy body located in Yellowknife leaving the communities and their well-being behind. George is very pragmatic over politics and the needs of his community "We have to deal with people issues, economic development, getting food on the table…" (Quoted in Devine 1992: 18). Recently George has worked as director of intergovernmental relations for Deline in its' final push to reach and ratify a self-government agreement which it did in the winter of 2014. Technically negotiated over eighteen years, Deline self-government is really many more years in the making going back to those concerns about individual communities during the days of the Dene Nation. After the votes were counted and the agreement passed, the town gathered for the news and a celebration with a drum dance and joyful tears. The self-government team received hugs and handshakes as people made their way across the dance circle. As in the settlement of the SDMCLCA, the approval and celebration of Deline self-government is really just a beginning.

Dene and Metis groups across the NWT were always reluctant to endorse the GNWT as their government even more so than the one on Ottawa. The devolution of jurisdiction was hoped to go straight to Aboriginal groups. When implemented, the Deline Got'ine Government will primarily take over many of those GNWT jurisdictions and authorities. Patiently playing within the parameters of federal policy, Deline is now able to begin the process of bringing distant bureaucracy and decision making into their community. Leaders in Deline describe self-government as one tool, currently at hand, to help in a larger project. For Deline, the resumption of a mix of municipal and territorial jurisdictions is a condition for self-determination (Irlbacher-Fox 2009: 104). The loss of power and control within these small and intimately connected communities is more than political, it is directly linked to social suffering, which I briefly address in the concluding chapter.

The self-determination through self-government aspirations of the Dene Nation were not patient enough to wait out federal policy. For all the political transformations of the last forty years there is certainly more on the way for the NWT. Recent devolution of crown jurisdiction over lands and resources brings the NWT closer to provincehood while regional and community Aboriginal governments are likewise expanding and exercising their autonomy. This 'new'

Aboriginal autonomy is the contemporary expression of firmly rooted Dene and Metis cultures, histories and political ideologies. After the splitting off of Nunavut, there have been calls to rename the Northwest Territories with the most likely candidate being *Denendeh*, a term long used by the Dene Nation. As member and leader of the legislative assembly Stephen Kakfwi of Fort Good Hope pushed for a new name as a means of claiming a political identity of their own As a relic of a bygone colonial era, its literal description of a relationship to a faraway colonial administration is a symbolic affront to the aspirations of self-determination so strongly expressed by the Dene Nation. A survey in 1996 found that there was little public support for such a move (NNSL Jan.16, 2002; CBC Jan.11, 2002)[30]. Yet, after the regionalization of land claims and the emergence of regional and community-based Aboriginal governments, it is perhaps fitting that the territory retain its' descriptive name. Not one territory but a group of 'territories'. The regions have appropriately chosen their own names and their growing autonomy will perhaps supersede the need for the NWT to come to terms with its shifting identity.

[30] 'Northwest Territories' was the first choice of the voluntary survey. The runner-up was 'Bob', an indication of how much people care about the idea.

Chapter 4 - SDMCLCA

Chapter Overview

Aside from their symbolic import, land claims address three basic concerns for Aboriginal groups; land, governance, and economic benefits. Though the SDMCLCA did not include self-government it does provide for certain rights and powers which constitute part of the Sahtu regime. The SDMCLCA is the central governing document for the Sahtu as it moves forward through implementation and future self-government agreements. Aboriginal public governance in the Sahtu is taking a decidedly different form than neighbouring regions. The Sahtu regime is not a regional government but an alliance of districts which hold authority and jurisdiction. In some instances power is shared amongst the districts with federal/territorial government and in others it is exclusive. A political ideal, rooted in traditional practice, of bringing power and control as close as possible to each community guided the negotiations and greatly informed the eventual structure of the SDMCLCA. Economic benefits are wide ranging and are meant to work towards the economic self-sufficiency of the Sahtu people. A large financial payment gives Sahtu land corporations a good financial base but figured last in negotiation considerations which centered on the land and the final structure of the land claim.

In this chapter I summarize the negotiations, provisions, and structure of the SDMCLCA. I conclude with the place of Norman Wells in the land claim and a description of the NWLC. I use the NWLC to provide a view into the operations of a land corporation as well as to highlight the uniqueness of the NWLC.

Prelude to Negotiations

The Sahtu had practical reasons for deciding to break away from the Dene Nation in requesting a regional land claim with the federal government. The main internal hurdles of accepting 'extinguishment' of their Aboriginal title and rights and the exclusion of self-government within their land claim proved to not be deal breakers for the region. This does not imply that they were happy about it but that they were ready to take a more pragmatic approach to negotiating their rights. As Chambers (1995) found in the 1990 Dene/Metis claim, government policy is the central limiting factor in the negotiation of Aboriginal rights. Aboriginal parties are compelled to find a tenable balance between principle and politic. The

Dene Nation proved incapable or unwilling to adapt to the policy of the day. The Sahtu chose to be more tactful in negotiating a new set of rights in their relationship with the government.

The twenty years lost to the abandoned 1990 Dene/Metis claim no doubt tested the patience of those eager to reach an agreement. In the NWT there was an inadvertent ripple effect as the Gwich'in (1992), the Sahtu (1993) and the Tlicho[31] (2003) followed the Inuvialuit (1984) in settling claims in geographical succession from the coast towards the southern half of the NWT. In addition to wanting control over land and resources, regional groups wanted economic development opportunities within their own control. Large financial payments and new resource royalties facilitated major business ventures and investments in addition to funding new land claim institutions. It has been noted that the Gwich'in were aware of the benefits their neighbours the Inuvialuit were exercising after settling their claim and wanted the same sooner rather than later (Kulchyski 2005: 95). For example, an Inuvialuit beneficiary saves 65% of regular airfare with airline Canadian North (owned by the Inuvialuit Development Corporation). This makes a real difference where airfares are extremely expensive.[32]

In this thesis I highlight the patience and deep view of the Sahtu in their approach to government relations and industry. But there are moments and issues that do require swift decision making to address immediate concerns. The Aboriginal goal to complete agreements quickly is also motivated by the desire to gain the authorities and jurisdictions, what are substantive institutions of power, to redress the lack of power vis-à-vis the state and industry over their lands and the prospect of development (Alcantara 2013: 4: Asch et al. 1997: 223-4). This should not be construed as 'rushing through' negotiations as serious thought was given to all aspects of the agreement. However, when the integrity of the land is under immediate threat swift action is needed. Norman Yakeleya, chief negotiator for the Sahtu during the last fourteen months of negotiation, recounted as much to me;

"*Things were happening on our lands without our consent, without our knowledge, and we had no real type of jurisdictional leverage or power to stop them or even get them to come and talk to*

[31] The Tlicho initiated negotiations right after the Sahtu but restarted them when the federal self-government policy was adopted in 1995. Negotiations took longer than the Sahtu and Gwich'in due to the inclusion of self-government, overlap/boundary issues with the Deh Cho and Akaitcho, and a longer public comment and feedback process before ratification (Tlicho Government Website, n.d.).

[32] For example it cost twice as much to fly the one hour, non-stop flight from Yellowknife to Norman Wells than it does for the four hour flight from Montreal to Yellowknife.

us. If they did it was only because they thought it was good for their corporate business or government would only because it was good for their relationship with the Aboriginal people." There was a strong desire to not be left on the outside looking in and a land claim was the available means to achieve this. For decades decisions were made by outside forces and development occurred with no input from the Sahtu people. The land claim would put an end to such practices.

Any Aboriginal group negotiating a comprehensive agreement has to reconcile deeply held cultural principles about the land and goals of self-determination with limiting government negotiating policy. This requires adopting the governments discourse over the issues negotiated and the manner undertaken (Alcantara 2013:8-9, Nadasdy 2003: 5). Alcantara (2013) identifies four necessary Aboriginal strategies in completing a land claim; adopting goals compatible with the government; minimizing confrontation; fostering Aboriginal cohesion; and creating a positive government perception of the group. The first three criteria reveal the obvious power dynamic where all the cards are in the governments hands. This does not, as Alcantara finds, imply that there is no strategy or agency on the part of Aboriginal negotiators. An effective negotiating team as well as the leadership style of a given group finds ways to get what they want within the constraints of government policy. It is a process of adaptation. As previously mentioned, the patient Sahtu deep view is adept at seeing beyond the policy and institutions of the day in working towards a better federal relationship and healthy communities. The Sahtu met all these general criteria by conforming as much as was necessary to federal terms as well as not having a history of litigation, or threat thereof, against the government.

Aside from the above mentioned relational conditions necessary in completing an agreement, strong community cohesiveness is necessary. The Sahtu is an interesting example of fostering internal cohesion, an important contributing factor to the break-up of the Dene/Metis agreement of 1990. One interviewee jokingly referred to the Sahtu as the '*middle-east of Denendeh'* in his characterization of the least homogenous Dene and Metis region of the Mackenzie Valley. Another similarly refers to the Sahtu as '*the left over rumps all thrown together'* and even goes as far as to say that there is no Sahtu. The Sahtu region as a political identity is a relatively recent phenomenon born out of historical familial ties and the need to politically organize. These local characterizations show that it is perhaps more apt to refer to the

Sahtu region's'[33]. If managing internal solidarity is an important factor in a successful negotiation, how did the heterogeneous Sahtu accomplish this? As Alcantara (2014) identifies in his two case studies of failed agreements (Kaska Nations in the Yukon and the Labrador Innu), it is not so much about group cohesiveness as it is about effective consultation between negotiators, leadership, and community members at large. Ensuring that elders have informed, and are informed by, the negotiation process is crucial in this. Everyone knows that these agreements carry a finality which will affect their communities for generations. Elders are the informal community authority when it comes to tradition and their input gives this finality a cultural weight.

Sahtu Negotiations

George Cleary was the Sahtu representative in the Dene Nation executive when the 1990 agreement fell apart. Like other members of the Sahtu leadership I spoke with he is a very modest and level-headed individual. Sahtu political consolidation occurred during the Dene Nation days for the purposes of the land claim. For a number of years there existed the Shihta Regional Council under the burgeoning GNWT. It represented the bands, Metis locals, and municipal administrations of the Sahtu. Aside from Norman Wells, municipal councils were effectively Aboriginal bodies. George was approached by the regional leadership to head the negotiating team for a Sahtu claim. He helped form and became the first president of the Sahtu Tribal Council (STC). A year was spent preparing the negotiating team and position while the Sahtu waited for the government to finish with the Gwich'in land claim. Negotiations began in the fall of 1991. The STC represented the seven Sahtu groups, four Dene bands and three Metis locals. Norman Yakeleya credits George's political vision in bringing together the Sahtu to form a unified negotiating front for common issues.

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[33] In a foreword to a new book by long-time Sahtu observer Bern Will Brown, End of Earth People (2014), Norman Yakeleya does just this.

The district and community-based structure of the claim was conceived of to protect the prerogative of each of the three Sahtu districts. It originates with the Fort Good Hope/Colville Lake Group Trapping Area, a land use mapping project done years earlier[34]. The K'ahsho Got'ine have been firmly protective of the entirety of their territory since the first non-native fur trapper intrusions during the early 1900's. They were able to register the group trapping area in the 1950's with the GNWT to protect their exclusive trapping rights. They had been pressured to select smaller more specific areas which ran counter to their intention to retain control over land management and the integrity of the entirety of their territory (SLUP 2013: 14-16). The Fort Good Hope/Colville Lake Group Trapping Area is specifically mentioned in the SDMCLCA (13.9.4) and cannot be altered without the consent of the K'ahsho Got'ine District. The region followed the lead from the Fort Good Hope and Colville Lake communities wanting to retain control over their lands. Other provisions in the agreement are meant to ensure that while decision-making is localized in the districts and communities, any monies received from resource development are shared across the region. The importance of sharing and equality is a well-known and central aspect of Sahtu culture.

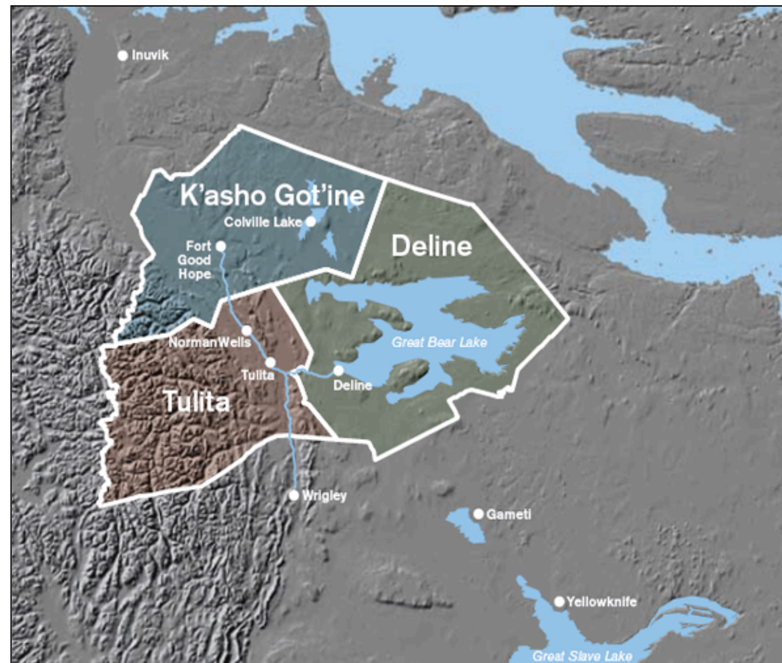


Figure 7 Sahtu District map. Courtesy of Minerals and Petroleum Resources Directorate, AANDC.

An important task for the negotiating team and community leadership was to incorporate the views of Elders into the land claim. Elders who might not write or speak English pass on what cultural practices and traditional knowledge should be remembered by the team negotiating and drafting thick legal documents that are outside of their understanding. The negotiating team was tasked with bridging this divide. An example of this was the handling of the Dene/Metis

[34] Review Comment from Danny Yakeleya to SLWB (2014, April 23).

distinction. Norman impressed upon me the uniqueness of the SDMCLCA for Metis people in the NWT and indeed all Canada. The input from Elders was that the Metis should be equal to the Dene. Reconciling this equality with a strong Metis identity meant creating an 'equal but different' land claim model for the Metis. So the Metis were given their own land corporations making them explicit, and shared, owners of treaty protected lands and rights. On the surface land claim agreements are tripartite arrangements between Aboriginal, federal, and territorial/provincial authorities. The SDMCLCA carries an intra-arrangement between and within the districts. In a way it operates as a treaty amongst themselves.

Just as important as receiving legal title to land is the establishment of co-management institutions which cover the whole settlement area. George Cleary said as much after finishing negotiations "*We want as large a land base as possible and a strong co-managerial regime*" (Windspeaker 1993). The Sahtu leadership wanted control over lands and resources to be as close to the communities as possible. The leadership received this mandate from the communities. With regards to land, the Sahtu was able to increase their total land quantum by over 25,000 square kilometres in comparison to the 1990 Dene/Metis claim[35] (Cleary 1993: 125). The decision to break with the Dene Nation was ultimately a wise one. The establishment of a regional land & water board kept control in the region.

The land claim coordinates between the communities but leaves decision making vested with each of the three districts; Deline, Tulita (Tulita and Norman Wells) and K'asho Got'ine (Fort Good Hope and Colville Lake). Accordingly, self-government negotiations are on a community basis. The decentralized structure of the SDMCLCA not only reflected the reality of the diverse Sahtu but also the political goals of the communities. The experience of government pressures and intrusions of the last century has been one of fragmentation. Decisions made by distant departments and policies have had a disempowering effect on local leadership and community decision making. Multiple authorities within a community furthered this process. The land claim, and more specifically self-government, are seen as instruments to correct historical damage and the future government relationship. Rick Hardy commented on the value of having community based institutions in lieu of a strong central organization such as is the case for the Gwich'in and Tlicho;

[35] Cleary, George in Granular Resource Requirements for Proposed Mackenzie Valley Pipelines: Technical Papers and Workshop Proceedings (1993).

"*…I can certainly see the benefit of being together in one central organization. But at the same time I don't think the communities would develop as quickly as they are if they were all together in one organization. It's just a natural human tendency to say there's the government over there, they're responsible for everything, so let them take care of everything, we don't have to make any decisions. I think going into the districts has made people be more responsible. One of the results of it is you see the Deline self-government agreement. You may not have seen that if people stayed together on a Sahtu wide organization.*"

Based largely on the abandoned 1990 Dene/Metis claim and the recently settled Gwich'in claim, the SDMCLCA deals primarily with land and resource ownership and management. The Sahtu made an initial proposal which called for much more land, compensation and decision making which was firmly rebuffed by the Indian Affairs Minister of the day Tom Siddon. The Sahtu did want to include self-government in their land claim as well as other initiatives but had to accept leaving those to the implementation stage. The federal government officially adopted their self-government policy in 1995 and subsequently began including self-government in comprehensive land claim negotiations. The Sahtu had met a funding limit and so finished negotiations and went ahead with ratification as it was. The issue of self-government was put off with a chapter and appendix covering basic objectives, definitions, principles, matters, and process for negotiation. Included in the brief self-government provision was that each community would negotiate individually to gain jurisdictions and authorities "…exercised as close to the community level as reasonably possible." (SDMCLCA 1993: Vol.1, 16; Appendix B, 4).

An informative window into land claim negotiations is the perspectives federal and territorial/provincial negotiators carry. They are strictly bound by policy directives in their dealings but their experience and views are valuable in getting at not just the agreements but the negotiating environment and larger Aboriginal/state relationship. Irlbacher-Fox (2009) and Alcantara (2013) are recent works which use federal and territorial/provincial negotiators as a vantage point into Aboriginal/state relations. I spoke with the Chief Federal Negotiator of the SDMCLCA, David Osborn, about his experience with the Sahtu as well as other negotiations he was a part of. He sees the issue of resolving and reconciling Canada's relationship with Aboriginal people as a central challenge for the country and land claims as a necessary way forward;

It wasn't as in an ordinary collective bargaining negotiation in a southern commercial context. In that context, everybody can calculate the value of all the various pieces and then you just negotiate to weigh off one against the other and each side determines which one is most important to them…Everything in negotiation with Aboriginal peoples comes back to the land. Either directly or in its stewardship. That's ultimately important to them. The days of government and industry just, you know, blowing a highway through traditional land, should have been over a long time ago but certainly should be over today.

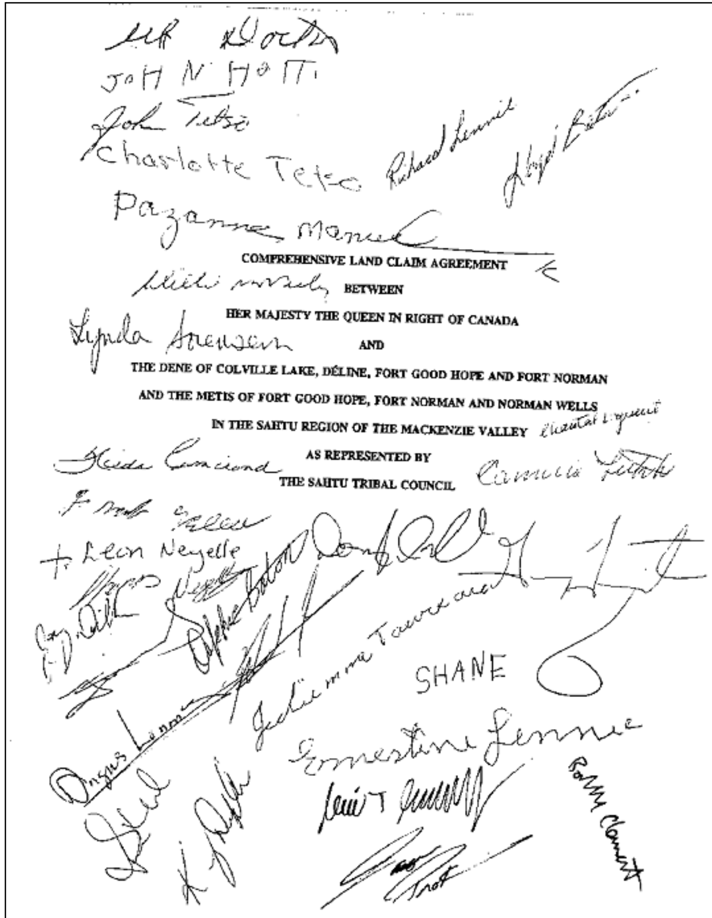
What I had trouble with to some degree, and really always did, is the idea that we could come up with a treaty or a very large complicated and complex document that was going to be far reaching enough. That it was going to solve the relationship, cover all the bases, and that we not be able to come back to it, at least in any short term because other problems are going to arise in history that we couldn't foresee in the '80's and 90's. But that was the type of negotiation where I never felt as though there was a gun to your head to come to an agreement. I mean I would have walked away from an agreement that I thought was unsatisfactory or unfair, personally. They would have gotten somebody else to sign it I suppose. That was the thing that was always in the back of my mind, are we capable of doing this? Not personally but is society ready, can we do a good enough job?

Ratification

Following a last-minute information blitz to answer questions from the communities most Sahtu people rallied behind the agreement. A ratification vote was held in July of 1993 with the status Dene and Metis voting separately. A 75% participation of eligible voters and a 66% yes vote was required to approve the agreement. Of 879 voters 769 said yes, with a participation and approval rate of nearly 90%[36]. The high approval rate was a welcome affirmation that the communities were together and supported their leadership and negotiating team. There were some people who thought the agreement was not good enough and/or wanted to stay with the Dene Nation but they proved to be a minority. Though they were not fully satisfied with how far negotiations went, the Sahtu Tribal Council and the negotiating team decided that the agreement was good enough to go to a vote. Failed ratification votes are not unheard of and would represent a serious setback for all parties[37]. The successful vote is a testament to the work of the negotiating team and Sahtu Tribal Council in negotiating a good enough agreement and effectively consulting with community members. Stephen Kakfwi, a prominent leader from Fort Good Hope and who signed the agreement as GNWT Minister of Intergovernmental and Aboriginal Affairs, helped rally the Sahtu in the last days before the vote though he credits the

[36] Highlights of the Sahtu Dene and Metis Comprehensive Land Claim Agreement (1994:1).
[37] For example, in 2011 the Inuit of Nunavik rejected a negotiated final agreement on self-government.

Elders in uniting the people, “*Whether we voted yes or no, the important thing was to do it together*” (Lambie 1993, July 12).


COMPREHENSIVE LAND CLAIM AGREEMENT

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

AND

THE DENE OF COLVILLE LAKE, DÉLINE, FORT GOOD HOPE AND FORT NORMAN
AND THE METIS OF FORT GOOD HOPE, FORT NORMAN AND NORMAN WELLS
IN THE SAHTU REGION OF THE MACKENZIE VALLEY

AS REPRESENTED BY

THE SAHTU TRIBAL COUNCIL

Figure 8 SDMCLCA title page with signatures.

The SDMCLCA became law when it passed by parliament and came into effect in June of 1994. An impending federal election (eventually called in September of 1993) also factored into the decision to go to ratification. There was a worry that a new government might want to change the agreement and that it was important to get the deal done before then. Before passing parliament, the land selection process began and the implementation plan was put together. Immediately after coming into effect the implementation process commenced beginning with the STC becoming the Sahtu Secretariat Incorporated (SSI) and the establishment of other Designated Sahtu Organizations (DSO’s) and Institutions of Public Government (IPG’s). This entailed incorporating and registering different DSO’s in order for them to fulfill their permitted activities.

The Sahtu Land Claim

The SDMCLCA as it was settled in 1993 deals primarily with land, resource management, and economic benefits. The STC represented the four Dene communities in Deline, Tulita, Fort Good Hope and Tulita as well as the three Metis Locals in Fort Good Hope (Local #54), Norman Wells (Local #59) and Tulita (Local #60). The four Dene communities have bands under the Indian Act stemming from Treaty 11. So Fort Good Hope and Tulita have both Dene bands and Metis Locals. Norman Wells, as I discuss below, is unique in having only

a Metis local which is now the Norman Wells Land Corporation[38]. As 'comprehensive' indicates, the agreement is a very large and technically worded document. The core of the agreement, Volume I, contains twenty nine chapters covering; eligibility, financial payments, resource royalties, economic measures, wildlife management, Sahtu lands, water rights, subsurface resources, heritage resources, land & water regulation, and self-government. The general objectives of the agreement are summarized in the section below. I return to some of them in more depth later.

Volume 2 contains twenty schedules over 466 pages detailing land selection descriptions and specific conditions of access and use for claim participants, the public, economic interests and government. A 190 page implementation plan was made indicating the required activities and responsibilities of federal, territorial and Sahtu bodies to implement the claim. A plain language summary was also produced to allow people to understand the agreement. There are subsequent documents and agreements described below under 'Primary Projects' which were not part of the original SDMCLCA but were to be undertaken.

General Objectives

-To provide for certainty and clarity of rights to ownership and use of land and resources.

The land claim officially recognizes the STC and its seven constituent bodies, what are now the land corporations, as owners of settlement lands. It also forms different DSO's and institutions of public government, recognizing their respective authorities and jurisdictions. There are eighteen principal land claim organizations. There are other working groups and bodies which form and operate under the mandate of the land claim for specific purposes.

The borders of the Sahtu Settlement Area (SSA) were largely defined through the 1990 Dene/Metis negotiations and with neighbouring claim regions (Nunavut, Yukon) with a total area of over 280,000 square kilometres. The Sahtu selected and owns in fee simple 41,437 square kilometres (including 1,813 subsurface), which means their lands are privately, but collectively, owned. Subsurface lands include the surface. These are known as 'Sahtu lands' or 'Settlement lands'. The rest of the land is primarily Crown land or Commissioners' land. Commissioners land is territorial municipal lands and surrounding lands around each

[38] It was previously called the 'Ernie McDonald Land Corporation'.

community. These municipal lands are not included in the SSA and, respecting private and government interests, are held in reserve for future local land corporations and future Aboriginal governments.

The rights to land use and resource management (both renewable and non-renewable) covers the entire SSA which means that even if the Sahtu does not technically own the majority of the SSA, they exercise various rights to use and co-manage the SSA. There are areas not included in selected Sahtu lands which are nonetheless protected from development.

-That some treaty rights are exchanged for the specific rights and benefits included in agreement.

The SDMCLCA does not affect the Aboriginal rights or Indian status of beneficiaries except where specified. Some Indian status benefits, such as health services, are unaffected. Some rights and benefits can be further negotiated under self-government, as is the case in the Deline self-government agreement. Treaty 11 rights to hunt, fish, and trap are exchanged with land claim rights to hunt, fish, and trap. Importantly, the SDMCLCA formally ends any grievances over interpretations of Treaty 11 while affirming its historical and cultural importance. The government is released from the obligation to set aside reserves which was never truly entertained by either party.

-To recognize and encourage the Sahtu way of life based on their traditional relationship with the land.

Harvesting (hunting & trapping) are covered in their own chapter but are included under this general objective. The traditional relationship with the land are recognized and encouraged through different provisions of the agreement as well as the mandates of some DSO's. For example, a land corporation may provide financial assistance for cultural activities on the land.

-To help the Sahtu people participate fully in the economy.

This includes support for education, training, and preferential hiring/contracting from industry and government. For example a land corporation may provide funds for a training program in partnership with government and industry. This ties in with another objective to provide the Sahtu people with special benefits including a financial compensation of $75 million and other economic benefits such as resource royalties. Regarding resource development, the

Sahtu people have seen large operations, like Norman Wells and Port Radium, come into their land, make a lot of money, and then leave with no significant financial benefits to the Sahtu. The SDMCLCA ensures that this practice will end.

-To provide the Sahtu people with hunting, fishing, and trapping rights.

The recognized right to wildlife harvesting dates back to Treaty 11. Harvesting is co-managed through the GNWT Department of Environment and Natural Resources and the Sahtu Renewable Resources Board. Harvesting rights for beneficiaries are shared throughout the SSA. On Sahtu lands harvesting is the exclusive right of beneficiaries. Additionally, there are 'special harvesting areas' on Crown lands with the same exclusive harvesting rights. Trapping is an exclusive beneficiary right across the SSA.

There are three types of hunters in the NWT (non-resident, resident, and Aboriginal) and Aboriginal people do not need a licence for any harvesting[39]. The special rights of Aboriginal harvesters puts their needs above residents and non-residents. For example in 2006 a resident hunting ban on caribou was put in place due to lower herd numbers.

It should be noted that non-beneficiaries can be given special harvesting rights through local community renewable resource councils such as in the case of non-beneficiaries (even non-Aboriginal) with family/community ties to Sahtu beneficiaries. Hunting (caribou, moose, muskox) often require people to travel greater distances and in some cases into neighbouring districts. This is informally managed with a quick call to the local chief for permission to come and take some animals.

- To give the Sahtu people the right to sit on management boards and to make decisions over land, water, and wildlife.

Though various means the Sahtu is consulted on any matters relating to the environment and development. The Sahtu Renewable Resources Board and the Sahtu Land & Water Board are the main institutions which carry out this responsibility.

[39] Across the NWT Aboriginal harvesting take priority but there are instances of the Department of Environment and Natural Resources limiting the hunt through the use of assigned tags. Aboriginal hunters are also subject to other regulations (such as meat wastage). This is usually unpopular with Aboriginal hunters.

- To ensure the Sahtu people have the opportunity to negotiate self-government agreements.

In the context of the land claim, self-government is the end-game for the Sahtu. The institutions implemented through the SDMCLCA as it was settled are meant to be rolled into the purview of a local community government, as in the case of the Deline Got'ine Government which will take over ownership of district lands from the DLC. The Deline self-government agreement includes a provision establishing a land claim beneficiary board to ensure the rights and benefits of beneficiaries are protected in the new Deline Got'ine Government (which serves all members of the community as a public Aboriginal government)[40].

Deline is the only Sahtu district with a single community and land corporation precluding it from a complexity the other two districts encounter. The Tulita and K'asho Got'ine districts face the challenge of creating self-government and land ownership models with multiple land corporations and communities. At one point in the land claim negotiations each community was going to have its own lands but the district model was opted for instead since the land is a shared resource. Tulita, Norman Wells, Fort Good Hope and Colville Lake are all in the early stages of negotiating community based agreements which will incorporate local bodies into one government. For example, the Tulita Yamoria Community Secretariat represents the Tulita Lands and Financial Corporation, Fort Norman Metis Lands and Financial Corporation, the Tulita Dene Band, and the Hamlet of Tulita (municipal) in their negotiations[41]. What model Fort Good Hope and Colville Lake will adopt is yet to be seen. The case of Norman Wells' self-government is discussed further below.

Indian Status and Treaty Rights

The SDMCLCA itself is not associated with the Indian Act and does not affect Indian Status, rights, and benefits. Treaty 11 signatories in the Sahtu still carry Indian status and enjoy benefits but the fact that reserves were never set up means that they do not deal with the various restrictions that the Indian Act oversees regarding reserves. Band councils in the Sahtu largely operate in the same way as southern counterparts. A few people mentioned one problem with the SDMCLCA was that the band councils carried on after the agreement. This is a result of

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[40]Fact Sheet 10 Beneficiaries Board & Organization Diagrams, 2014 Deline Self-Government (www.ourdeline.ca).
[41] Tulita Yamoria Community Secretariat Self-Government Framework Agreement (2005).

self-government not being included in the agreement. Band councils would be integrated into self-government agreements allowing a new governance structure to be built. Such is the case in Deline where all local governance bodies (municipal council, band council, and land corporation) are rolled into one body carrying the authority and jurisdiction of all three.

Eligibility & Beneficiaries

Individuals enrolled under the SDMCLCA are referred to as 'participants', 'beneficiaries' or 'members'. Eligibility in the SDMCLCA is inclusive enough to cover the gamut of community members. Primary criteria to enroll as a beneficiary under the SDMCLCA requires individuals prove they are of Slavey, Hare or Mountain Dene ancestry or used and occupied the settlement area before 1921 (Treaty 11) or are a descendant of such a person. Additionally, someone adopted (or descended from an adoptee) by someone who meets the primary criteria is eligible. Someone who does not meet the above criteria can be enrolled if they are 'accepted by a Sahtu community' and sponsored by a beneficiary.

Individuals need not live in the Sahtu to be beneficiaries. Children adopted by non-beneficiaries are eligible through their biological ancestry. An enrollee must affiliate with a land corporation to receive benefits, even if they live outside of the Sahtu. Typically they will enroll with the land corporation where they are living and can choose to switch land corporations. Tulita and Fort Good Hope each have two land corporations (one Dene and one Metis) and community members join whichever they identify with. In some instances immediate family members are enrolled with different land corporations. A beneficiary may not enroll concurrently with another land claim for which they are also eligible.

The Sahtu Enrollment Board and Office operates through SSI and maintains a registry of enrollees and is managed through a seven member board representing the seven Aboriginal communities. The Enrollment Office completed an ancestral project and uses a database to aid in enrollment assessments. As of 2009 there were nearly 3200 beneficiaries[42]. Over a thousand of these live outside of the Sahtu and can be found in Yellowknife, Alberta, and British Columbia. Many people in the NWT are eligible for multiple land claims and switch when it is appropriate. While in Norman Wells I met a young man from the Inuvialuit region who came to Norman

[42] Annual Report of the Implementation Committee: Sahtu Dene and Metis Comprehensive Land Claim Agreement April 1, 2008-March 31, 2009.

Wells to live with an aunt and find some work, enroll in training courses at Aurora College, and do some hunting. He enrolled with the NWLC and was aided by the executive director in finding work. He was drawn by the available jobs and the good hunting in the area.

Sahtu Lands

Sahtu lands include two types; settlement lands and municipal lands. Sahtu municipal lands are held in fee simple by community land corporations and unlike Sahtu lands outside municipalities they can be sold to anyone as private property. Settlement lands outside of municipal boundaries are held in fee simple by the three district land corporations described below. The 39 624 square kilometres of surface land and 1 813 square kilometres of subsurface lands are private but collectively owned and cannot be sold, mortgaged or used as security. They cannot be subject to legal seizure or writ of any kind. Sahtu settlement lands can only be conveyed to the government in exchange for other lands. That is to say that the total quantum of settlement lands cannot be reduced below 41,437 square kilometres. Designated Sahtu organizations may issue use licenses and occupancy leases on their lands. SSI and district land corporations are authorized to transfer land quantum from one district to another as they see fit.

Though they are regarded as private, the agreement allows for specified public, commercial, and government access across Sahtu lands to reach adjacent Crown land or if travelling along navigable waterways passing through Sahtu lands. Such access must not kept to a minimum, cause no significant damages nor interfere with beneficiary use of Sahtu lands. Notification must be given to a responsible DLC. Any disputes over access and travel across Sahtu lands can be referred to the Northwest Territories Surface Rights Board (NWTSRB) for final decision including the power to charge compensation for any type of loss suffered by a beneficiary. As of yet no dispute has required resolution from the NWTSRB which was only created in 2013. The public is allowed access to navigable waters, waterfront lands, and associated portages on Sahtu lands except where specifically prohibited. These restrictions correspond with beneficiary cabin sites and areas carrying cultural or family significance (such as a gravesite).

Surface lands were selected equally between the three districts (about 13, 000 square kilometres each) for a variety of reasons. Subsurface lands were selected strategically based on

development potential. The majority of these parcels are found in the K'ahsho Got'ine District (about 980 square kilometres). The rest is split roughly among the Tulita and Deline districts.

Lands not selected as settlement lands can still be protected in various ways. There are a number of areas which are marked for special environmental, harvesting, wildlife, and culturally significant protections. The overall effect of these added protections is that the land base and Sahtu control thereof is much larger than only the quantum of Sahtu lands. An important land claim project, the Sahtu Land Use Plan (SLUP), integrates all these land uses and protections into a kind of master plan for the Sahtu. The SLUP is explained in the 'Primary Project' section below.

Financial Payment, Resource Royalties, and Economic Benefits

The Sahtu sought as much money as they could but the land and strong co-management was much more important. The 1990 Dene/Metis agreement was going to distribute regional land quantum on a per-capita basis which the Sahtu objected to. The land base is very large in the Sahtu and they wanted a land claim based on their traditional territory and not their relatively small population. The land claim is not an act of compensation for loss or as George Cleary puts it "*…you're not buying people*." Various sources which summarize the basics of the SDMCLCA, and other agreements, often list the land title, the money, and co-management provisions in that order. Some also refer to the $75 million as 'compensation' though the SDMCLCA itself simply reads 'financial payment' or 'capital transfer'. Though the land claim does use the language of 'settlement' this is in terms of negotiations and not financial compensation. In a southern context where the specific claims process orders financial compensation, the amount of money is clearly important. Land and use has been lost and the only way to redress the grievance is money. Comprehensive land claim agreements include large amounts of money but that is not what they are about, especially when the land and its use are still intact. The negotiation was not about buying off the Sahtu. Danny Gaudet, Chief Negotiator of the Deline self-government agreement, stressed this aspect of the land claim at the time, "*We did not do this for greed. We needed to get control…*" (Bremmer 1993, September 13). There is likely no amount of money that would persuade the Sahtu to relinquish control of their lands and to frame things solely in financial terms is to miss the point of the land claim. David Osborn said this of financial considerations;

There, we were really facing how to resolve a number of issues where nobody had either done those calculations nor were they even capable of doing them. I mean, what was a square mile of land twenty miles west of a particular community in the Sahtu worth? Obviously, the last thing to get negotiated was the money, typically in all these negotiations, because the government is holding that back and trying to figure out what the maximum number would be given the rest of the package. At that point, you kind of get into more hard discussion about what it is that's fair in terms of the money. The government doesn't have enough money to pay Native people for all that it's done to them. Everybody knows that.

The Sahtu set up two major financial instruments through the land claim; the Sahtu Trust and the Sahtu Master Land Agreement (SMLA). Both are overseen by the SSI under the direction of the seven community financial corporations. The Sahtu also had to repay approximately $10 million in negotiation loans to the government. This amount includes their share of loans for the failed Dene/Metis negotiations. The SDMCLCA Implementation Plan specified federal funding amounts for implementation process of the first five years. Different DSO's and IPG's continue to receive specific project and/or core operation funding though there is complaint, not limited to the Sahtu, that they have to continually fight for adequate amounts. The Sahtu Trust received the $75 million paid in installments over fifteen years. The Sahtu Trust is in an investment portfolio with disperses the profits to the seven financial corporations on a per capita basis. The financial and land corporations are described below. The Sahtu Trust was conceived of as a legacy fund to provide profits for future generations. There is no plan to touch the principal which is now nearly double its original amount.

The agreement provides the Sahtu with resource royalties from Crown lands in the entire Mackenzie Valley, as is the case with neighbouring land claim regions. The Sahtu receives 7.5% of the first $2 million and 1.5% of any additional royalties received annually by the federal government. This is a provision carried on from the 1990 Dene/Metis agreement and the older federal policy to deal with the whole of the Mackenzie Valley in terms of resource management. These monies go through the Sahtu Master Land Agreement and to the land corporations. Depending on resource industry profits these yearly numbers can range from $100,000 to nearly $2 million with the Sahtu having collected upwards of $10 million in total (Quenneville 2012, August)[43].

[43] SDMCLCA Annual Report of the Implementation Committee April 1, 2001 to Match 31, 2002.

The royalty regime is set to change however with the recent devolution of resource and land management to the GNWT. The fore mentioned royalties will now come from GNWT. Beginning in 2014, the GNWT now additionally receives 50% of resource royalties (with a cap) and shares up to 25% of that with land claim regions. The GNWT and signed-on groups (Inuvialuit, Gwich'in, Sahtu, Tlicho, NWT Metis Nation, and four community First Nations in unsettled land claim areas) have an intergovernmental resource sharing agreement which divvies the money through a formula based on population and regional cost of living. Depending on resource revenues, the Aboriginal groups will share somewhere around $10-20 million dollars a year. As of the summer of 2014, SSI and board members are still deciding how that additional money will be used.

The SMLA is a good example of the larger challenge in implementing land claim agreements as mentioned by Nadasdy (2003) and Alcantara (2013). Aboriginal groups face the task of merging European-based legal, financial and land conceptions with their own cultural values which are most-often at odds with the former. The SMLA demonstrates the different issues at play in the Sahtu. The decentralized district structure respects the traditional Sahtu groupings and larger goals of self-determination while meeting federal policy requirements. Admittedly, the land claim converts the land into a series of legal definitions, geographic coordinates and jurisdictions, a thoroughly un-Sahtu process. The prospect of resource development and big money coming into the Sahtu required a vehicle to ensure Dene values of sharing and equality were respected. The idea behind the SMLA was to prevent one district from becoming rich and another poor. Subsurface lands were strategically selected for their oil, gas, and mineral potential and any profits are to be redistributed across the three districts. Similarly, financial benefits from the granting of access to Sahtu surface lands (for example an access road to drill an exploratory well on surface owned lands) are to be shared after a certain amount stays in the district. The SMLA had not been properly implemented and a situation arose where districts were not sharing. This changed recently in the summer after my fieldwork when the K'asho Got'ine District presented SSI with a $1 million dollar cheque to affirm the intention of the SMLA. The represents an important extension of traditional sharing practices into the modern resource economy.

The land claim gives the Sahtu people opportunities where they previously had little. The availability of finances has provided new investment, partnership, and business opportunities. They have invested in Aboriginal owned-enterprises and created partnerships with established businesses within and outside the Sahtu. One example of this is Norman Wells based North-Wright Airways which started out in 1986 as a family business and is now 51% owned by the Deline Land Corporation and the Yamoga Land Corporation (shared). North-Wright is an expanding company and these land corporations are partners in this[44]. Majority beneficiary businesses benefit from preferential contracting provisions of the SDMCLCA. This applies to different government agencies (such as winter road construction and maintenance) and resource companies (such as work camp catering).

With regards to proposed resource development projects, companies must negotiate access and benefit agreements with the responsible district land corporation. Benefits agreements apply to the entire settlement area and not just Sahtu lands. They outline special arrangements to ensure beneficiaries are given training and hiring opportunities. They also ensure that beneficiary businesses are given preferential contracting opportunities in development projects. Training and education initiatives can be organized in partnership with other organizations such as Aurora College. If a development proponent needs to cross Sahtu lands to access their project site, they must negotiate an access agreement with the district land corporation. These agreements include fee schedules outlining financial payments for different activities (roads, cutlines, camps, etc.). Agreements may also include a portion of net profits should a project move into the production stage though this stage rarely happens.

The Sahtu district land corporations have established over the years certain standards for the access and benefit agreements which go beyond the strict requirements of the SDMCLCA. Resource companies need the support of the land corporations and are compelled to meet Sahtu expectations. The SDMCLCA does provide for a dispute resolution process for both benefit agreements (government imposed) and access agreements (NWTSRB) though this has never been needed. If a resource company does not play ball with the land corporations and meet their demands they would effectively lose local support. The Sahtu has various means to hinder the viability of a project.

[44] http://www.north-wrightairways.com/aboutus/index.shtml. Accessed April 20, 2014.

Similar to the administration of the SMLA, there have been issues over fairly sharing beneficiary contracting jobs between the districts and sharing access agreement monies. There is a list of official beneficiary businesses but, as one informant told me, owners associated with a particular land corporation negotiating benefits agreement do not necessarily pay attention to the intent of sharing contracting jobs. This does not mean that neighbouring communities do not benefit. During my time in Norman Wells I met folks from all the communities who had found temporary work during the winter exploration season.

Sahtu Regime

The structure of the SDMCLCA integrates the various DSO's and IPG's with prescribed responsibilities and jurisdictions. Collectively, these DSO's, IPG's, and the four Dene bands form the Sahtu regime. DSO's are district, community and beneficiary-only organizations. IPG's have board membership representing SSI, GNWT, and Canada with funding coming from Canada. The SLWB and SLUPB have tripartite board membership while the SRRB has bi-membership between SSI and GNWT. Though co-management bodies are public institutions they operate under a land claim mandate which meets the aforementioned general objectives. That is to say they generally give consideration to the prerogative of land claim members over all others. The SLWB, which regulates resource development, was established in conjunction with the MVRMA (1998) and follow the policies and procedures thereof in addition to those outlined in the land claim. In terms of resource development, all DSO's and IPG's come to play a role through their various mandates which do overlap. The general theme of the Sahtu regime, found in the general objectives of the SDMCLCA, is to balance environmental conservation, Sahtu culture, and economic benefits amidst the ongoing navigation between the traditional land based economy and wage and resource based economy. This economic shift and the changing uses of the land are a central challenge for the Sahtu where the land itself and former way of life looms very large.

Institutions of Public Government

Sahtu Land &Water Board (SLWB)

The SLWB was implemented in conjunction with the MVRMA (1998) which creates an integrated co-managed regulatory regime for the Mackenzie Valley (the entire NWT excluding

the Inuvialuit region). MVRMA is the guiding legislation for the SLWB's operations. The SLWB issued its first licence in 1999[45]. The principal of co-management is to have regulatory decisions made by both government and Aboriginal groups. Though clause 25.1.1 9 (c) of the SDMCLCA states the government (federal or territorial) retains ultimate jurisdiction over land and water regulation, the government does not challenge or over-rule the decisions of the SLWB. SLWB decisions are final and can only be challenged through the courts. As I discuss in Chapter Five, the government is planning on altering land & water boards in the Mackenzie Valley which is meeting strong opposition from land claim groups.

There are six employees including an executive director. SLWB issued licences and permits are inspected and enforced by the single INAC officer in the Sahtu[46]. Any land or water use that (including municipal) that exceeds a minimum criteria must have a permit or licence. This applies to all lands within the SSA. The SLWB deals with highly technical information in its operations with resource development companies. It also deals with community concerns through a review process that allows for DSO's and community members to provide comments on any application under review. An online document registry and review system facilitates public access and review, as is the case for the entire Mackenzie Valley. SLWB offices are located in Fort Good Hope.

Sahtu Renewable Resources Board (SRRB)

The SRRB is a public co-management body governed by a six member board with three nominated by SSI (for each district) and three by GNWT. The members then select a chair. The board is responsible for fulfilling the wildlife harvesting and management provisions of the SDMCLCA. The SRRB undertakes research initiatives in wildlife and harvesting management as well as associated training programs for beneficiaries. The SRRB plays a reviewing role in resource development applications to the SLWB and works with local RRC's to ensure local trappers and hunters are informed. Clause

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[45] SDMCLCA Implementation Report 1999.

[46] Inspection and enforcement are currently being devolved to the new GNWT Department of Lands and the Department of Environment and Resources.

13.3.1 of the SDMCLCA (13.3.1) states that the government retains ultimate jurisdiction over wildlife. Technically speaking, the SSRB plays an advisory role to the GNWT Department of Environment and Natural Resources (Carthew 2007: 34-5). In practice however, SRRB recommendations are unlikely to be challenged by the GNWT (Morgan 2012: 3). The SRRB employs an executive director and staff. They also have special advisors and research associates. The SRRB offices are located in Tulita.

Sahtu Land Use Planning Board (SLUPB)

The SLUPB was tasked with drafting the Sahtu Land Use Plan (SLUP) which was recently completed after many years of work. The SLUP is described in more detail below. The SLUP specifically outlines what land use activities are permitted where, when and under what conditions[47]. Land use plans are provisions of the MVRMA which required each land claim region to create a land use plan[48]. After approval the SLUPB ensures that the plan is adhered to and to consider any proposed changes and exemptions to the plan. SLUPB employs an executive director and staff at its office in Fort Good Hope.

NWT Surface Rights Board (NWTSRB)-The NWTSRB was only legislated into existence in 2013. It is responsible for imposing binding resolutions when a dispute arises between surface land owners and subsurface rights owners. The NWTSRB would impose a binding resolution on both parties. The NWTSRB applies to all types of lands and landowners in the NWT. The NWTSRB is not a co-management body as board members are appointed by the government though specific disputes in a settlement area have to include one board member from that land claim group. Land claim groups already had means to arbitrate disputes over surface access but there has never been needed for the reasons described in the above summary of access and benefit agreements.

[47] SLUP DRAFT 3 Plain Language Summary, August 2010.
[48] The Gwich'in Land Use Plan was adopted in 2003, Tlicho Land Use Plan in 2013

Designated Sahtu Organizations

Sahtu Secretariat Incorporated (SSI)-The Sahtu Tribal Council became the Sahtu Secretariat Incorporated when the land claim came into effect in 1994. The Sahtu Dene Council is a different regional body representing the four Dene First Nation band councils which operate under the Indian Act. The SSI is the coordinating (not governing) body for the seven land corporations. The SSI does not own land (the district land corporations do). Its' primary responsibility was implementing the land claim in setting up all the other DSO's and public bodies. It continues to administer the Sahtu Trust and the Sahtu Master Land Agreement Trust. It now operates as the representative body required for Sahtu wide decisions and consultations. Its' board is comprised of the presidents of the seven land corporations who choose an eight chairperson. SSI further nominates beneficiary representatives for co-management board positions within the Sahtu as well as for other organizations and projects which reserve board representation for the Sahtu or require Sahtu consultation. Recent NWT devolution negotiations or the updating of the NWT Wildlife Act are examples of the SSI exercising its consultation rights. SSI employs an executive director and staff. Its office are located in Deline.

Renewable Resource Councils (RRC's)

Each community has a local RRC which oversees harvesting and wildlife management in their area. RRC's are appointed by land corporations and took over the operations of pre-existing hunter and trapper associations. RRC's are also mandated to encourage traditional pursuits on the land and do so through various projects. For example they may organize and fund an educational camp for youth in the bush or provide a trapper with assistance (ski-doo, gas money, etc.).

In terms of resource development projects, RRC's advance their interests over traditional uses of the land including trapping, hunting and seasonal camps and any conflicts that may arise. When land corporations sign access and benefit agreements with resource companies they can include provisions that the company will hire wildlife and environmental monitors and contract a

required TEK[49] study through RRC's. Technically companies are obliged to follow orders from monitors by virtue of these agreements but there have been some issues with how monitors carry out their work and their ability to relay their activities to involved DSO's and community members (Morgan 2012: 27-8). Nonetheless these monitors are the eyes of the community on work sites. They do represent the conservation ethic of the Sahtu and can wield substantial power extending beyond any specific spill or wildlife disturbance. Ruby McDonald explained the role and importance of this to me "*The oil companies have to listen to them. I mean it's to their benefit to listen, otherwise they could say 'stop it, these guys are doing this repeatedly and then it becomes a political thing'. No industry wants anything political in their environment*."

Land Corporations

There are three districts created under the SDMCLCA, the Deline District, Tulita District, and K'ahsho Got'ine District represented by their respective DLC's. It is the DLC's which own Sahtu lands. As Deline has only one community, the Deline Land Corporation and Deline District Land Corporation are one and the same. The Tulita and K'ahsho Got'ine DLC's are composed of their member community land corporations. When a DLC needs to make a decision (such as negotiating access and benefit agreements) the presidents of its member land corporations form the board of the DLC. Each community land corporation has a sister financial corporation. Notwithstanding their legal separations and permitted activities, district and sister land/financial corporations operate under single administrations. They share offices, board members, and employees with individuals simply putting on a different hat when necessary. The land/financial corporations also have various subsidiary economic development corporations, business ventures, and assets. Land Corporations hold elections for president, vice-president and board directors and this group will be the board for the financial corporation as well. Land corporations are registered as non-profit organizations which administer member rights, oversee land administration, and are allowed to perform permitted activities as listed in the SDMCLCA. These permitted activities are of a social/cultural nature and include Elders assistance, scholarships, training, and the encouragement of traditional activities. Some of these activities operate through RRC's which receive funding from land corporations. Land corporations

[49] Traditional Ecological Knowledge studies typically involve interviewing community members about all culturally significant aspects of the affected area.

receive money from their sister financial corporations which receive land claim monies (Sahtu Trust revenues, resource royalties, access agreements) and must follow strict guidelines about how they can spend/invest as stipulated in the SDMCLCA. They may also receive specific project funding from different sources. It is the land corporations which undertake self-government mandates.

Deline District Land Corporation	**Tulita District Land Corporation**	**K'ahsho Got'ine District Land Corporation**
Deline Land Corporation/Deline Financial Corporation	Norman Wells Land Corporation/Norman Wells Financial Corporation	Yamoga Land Corporation/ Xahweguweh Financial Corporation (Good Hope Dene)
	Tulita Land Corporation/ Tulita Financial Corporation	Fort Good Hope Métis Local #54 Land Corporation/Fort Good Hope Metis Nation Local #54 Financial Corporation
	Fort Norman Metis Land Corporation/Tulita Metis Financial Corporation	Ayoni Keh Land Corporation/ Duhga Financial Corporation (Colville Lake)

Primary Projects

Aside from negotiating self-government agreements, the SDMCLCA mandated important projects to fulfill the general objectives of the agreement. The most important for the management of resource development was the creation of the Sahtu Land Use Plan summarized further below. Other primary projects included a heritage places report and a harvest study. In addition to these land claim mandated projects there are conservation initiatives.

The Sahtu is taking advantage of various means to protect their lands and wildlife while also guarding their harvesting rights. There are numerous conservation projects completed and underway in the Sahtu. Two chapters in the SDMCLCA address procedures for the establishment of National Parks or Protected Areas. Sahoyue-Edacho Grizzly Bear Mountain and Scented Hills were recognized as a National Historic Site by Canada in 1997. It has been protected from development for its cultural significance to the people of Deline and is

cooperatively managed by Deline and Parks Canada. The Tulita District similarly worked to establish the Naats'ihch'oh National Park Reserve in 2012. Naats'inch'oh is located in the mountains in the southern tip of the SSA in the traditional territory of the Mountain Dene. Rick Hardy negotiated the benefits agreement for Naats'inch'oh and sees it as a 'final retreat' where development is prohibited while Sahtu harvesting rights are protected. The K'ahsho Got'ine District is similarly working on conservation initiatives the largest of which is an effort to establish the Ts'ude niline Tu'eyeta National Wildlife Area. It is a 15,000 square kilometre forest and wetland area across from Fort Good Hope.

The first primary project undertaken was on Sahtu heritage places which are recognized under the SDMCLCA as 'Heritage Resources'. The objective of this project was to identify specific sites for special protections. *Rakekee Gok'e Godi: Places we take care of: Report of the Sahtu Heritage Places and Site Joint Working Group* was completed in 2000. The report represented a first step towards protecting culturally significant sites found across Sahtu and Crown lands. Various recommendations were made regarding how these sites could be further protected (e.g. national parks, wildlife areas, special consideration in the SLUP). The report identified forty sites but there are untold more across the Sahtu.

The Sahtu Settlement Harvest Study took place between 1998 and 2005 under the direction of the SRRB. The study was used to establish the minimum harvesting needs of Sahtu beneficiaries and as a reference in resource management. Though in need of updating, the harvest study does provide a certain baseline for harvesting to be used in the consideration of resource development management (SRRB n.d.).

The Sahtu Settlement GIS[50] Project involved producing GIS for resource management in Sahtu to be used by resource management boards (Veitch et al. 1998). In collaboration with the SLUPB and SRRB, the GIS project also published the *Sahtu Atlas: Maps and Stories from the Sahtu Settlement Area in Canada's Northwest Territories* in 2005 as an educational tool for anyone interested in learning about the Sahtu.

Perhaps the most significant land claim project is the SLUP. The SLUP was adopted and put into effect in 2013. The plan incorporates Sahtu cultural and scientific knowledge as the

[50] Geographic Imaging Systems are digital maps and software systems.

outcome of many research projects, collaborations, and community consultations. The SLUP outlines in detail what lands and waters are marked for conservation and special management and which are opened for resource development. This is done through the creation of 'land use zones'. The regulation of development through the SLWB must conform to the plan which identifies specific 'conformity requirements' (nineteen in total) for all land use zones. For resource companies, the SLUP is a guiding document in how projects are designed and managed. A large amount of attention is given to community engagement, consultation and the expansive Sahtu cultural landscape. The SLUP does not apply within municipal boundaries or established National or Historic Site Parks.

The EA Trump Card

Section 25.3.4 of the SDMCLCA gives the SSI the power to refer any development project application to environmental assessment (EA) without justification[51]. The only other groups that have this power are the federal and territorial governments. Municipal governments can demand an EA but they must give valid reasons. This is also the case for the SLWB itself. Other DSO's (such as an RRC) can request an EA but it is only taken into consideration by the SLWB and is not a 'veto' power as such (Morgan 2012: 23). If the Sahtu communities are especially concerned about some sort of development activity, mining for example, they can reach larger consensus through the land corporations and use SSI's EA power to make sure these concerns are met in terms of land and water regulation.

Land and water regulation across the Mackenzie Valley requires development activity (from exploration to production) be subject to a review process under MVRMA[52]. An EA and the more comprehensive EIR are costly and time consuming to resource companies and are generally viewed as a barrier to operations and profitability. An EA can impose certain conditions on approval and an EIR can ultimately rule that a project not proceed. They serve Aboriginal environmental concerns through their comprehensiveness and their slowing-down effect on a project. Industry are more accepting of an EA if a project is going into long term production and they have Aboriginal support. But the management and economics of the

[51] The Gwich'in Tribal Council and the Tlicho Government have the same power.

[52] There are three stages of regulatory assessment (Preliminary Screening, Environmental Assessment, and Environmental Impact Review). Only Preliminary Screening is mandatory.

exploration stage can compel a company to drop the project all together. Such was the case with an example given in Chapter Five.

The EA provision has come to be used as more than an assurance that the environment is protected and related Sahtu concerns are addressed. It is used as a negotiating tactic by land corporations (and other groups in the Mackenzie Valley). Companies know that Aboriginal negotiators can use the threat of an EA to get a better deal in access and benefit agreements and to ensure that they are being taken seriously. This is not necessarily just about economic benefits but also about how the project will be undertaken and how the community is consulted. EA's were never intended to be used in such a way and both industry and government informally criticize the practice. It is a seldom used land claim tool for fear of overly disturbing the delicate relationship between the Sahtu communities, industry, and government. That said, the larger history of resource development and all that the Sahtu people have endured and lost over the decades means that they lose no sleep about using the EA to maximum benefit.

It is impossible to know when it has been used in confidential negotiations but SSI did refer a mining project in the Tulita District to EA in 2007 for a variety of official reasons. Two years later the project received approval subject to the recommendations of the MVRB which included better consultation with the Tulita District[53]. More recently, the Fort Good Hope RRC recommended an EA for an exploration project in the Tulita District. This was not related to an access and benefits agreement as one was not required. They did so because they felt the company was not consulting them enough on activities that could affect them. The company began addressing those concerns and within days the Fort Good Hope RRC withdrew their EA recommendation. In this case, the single recommendation from the Fort Good Hope RRC would not have guaranteed an EA but it was enough to compel the company to consult with them[54].

Disputes

There have been two legal disputes between the government and the Sahtu regarding the SDMCLCA. Surprisingly, the definition of 'royalty' with regards to the NWPA was not clear enough. Beginning in 1997, SSI argued that they were being denied an entitled portion of the

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[53] Report of environmental assessment & reasons for decision EA0708-001: Selwyn Resources Ltd. Mineral Exploration at Howard's Pass (2009, July 6).

[54]Review comments from Fort Good Hope RRC to SLWB (2013, April 22); Additional Review Comments from Fort Good Hope RRC to SLWB (2013, April 26).

money going to the government as part of their 1/3 interest in Imperials' operations (Bankes et al. 2000: 360-362). SSI won a preliminary determination and the case proceeded but was settled out of court in 2002[55]. The definition was retroactively amended to not include the governments' interest as a royalty and the SSI received approximately $9 million with the Gwich'in also receiving a similar amount[56].

There was a second dispute over the federal issuing of mineral prospecting in the Sahtu. Clause 21.4.6 (b) of the SDMCLCA requires that any mineral prospector give prior notice to the designated Sahtu organization. This conflicted with established 'free-entry' mineral staking regulations which favoured prospector confidentiality of operations. In 2008 SSI brought suit against the government over the free-entry system because prospecting licences were being given out without notice or consultation. The dispute was settled out of court to the satisfaction of SSI.

Norman Wells Land Corporation

The NWLC, like Norman Wells itself, is a melting pot. It grew out of the Norman Wells Metis Local #59 which was the first Aboriginal organization in the community. Though it was established by Metis people, it counts many Dene amongst its members. Dene people who have moved to Norman Wells do still belong to their home community band councils and individuals are not compelled to switch land corporations. When the SDMCLCA was being negotiated, there were only sixty-eight members from the Norman Wells community. Today the NWLC has just under three hundred members. Of these around eighty actually live in town. It was formerly called the Ernie McDonald Land Corporation.

[55] Sahtu Secretariat Inc. v. Canada, 1997; Sahtu Secretariat Inc. V. Canada, 1999; Canada v. Sahtu Secretariat Inc., 2002.

[56] SDMCLCA: Annual Report of the Implementation Committee-April 1, 2002 to March 31, 2003.

Figure 16 NWLC logo sign. Photo by author.

As per their land claim mandate the NWLC carries out numerous activities including ombudsman services for beneficiaries, paying for funeral services, underwriting loans, and even buying Christmas turkeys for members in town. The NWLC is the point of contact for resource development consultations with beneficiaries and inter-governmental affairs. The NWLC is a lean operation with only two full-time employees when I visited for this research. It occupies a small and humble pre-fab building at the end of town right before the Imperial property. The NWLC economic development arm is the Norman Wells Claimant Corporation. They have numerous investments and holdings including the Edward G. Hodgson office building with spaces rented out to Aurora College and the GNWT.

Figure 17 Edward G. Hodgson building. Photo by author.

The NWLC is currently negotiating an Agreement-In-Principle after signing a Framework Agreement in 2008[57]. Self-government in Norman Wells will follow a decidedly different model than the rest of the Sahtu. Incorporating jurisdictions and authorities in the other communities, like the Deline Got'ine Government, is facilitated by the majority status of community members. Taking over territorial and municipal jurisdictions and lands is relatively straightforward in a place like

[57] A framework agreement (FWA) is the first stage in self-government negotiations. The next is an agreement in principle (AIP) followed by a final agreement (FA).

Deline where there are many institutions and jurisdictions but essentially one group of people. A future Norman Wells Aboriginal government would exist right next to a municipal government which represents the majority of residents who are non-Aboriginal. A self-government agreement would not take over the Town of Norman Wells and the municipal lands it administers. Nonetheless they would want influence in the Town of Norman Wells so some model of guaranteed representation on town council and local boards (school, housing, etc.) would likely be pursued. There is some concern from those involved in municipal politics that the town has been kept out of the loop regarding self-government negotiations but they were all nonetheless optimistic that things would work out fine. Norman Wells is a small and close-knit town with friendships and family ties across the whole community.

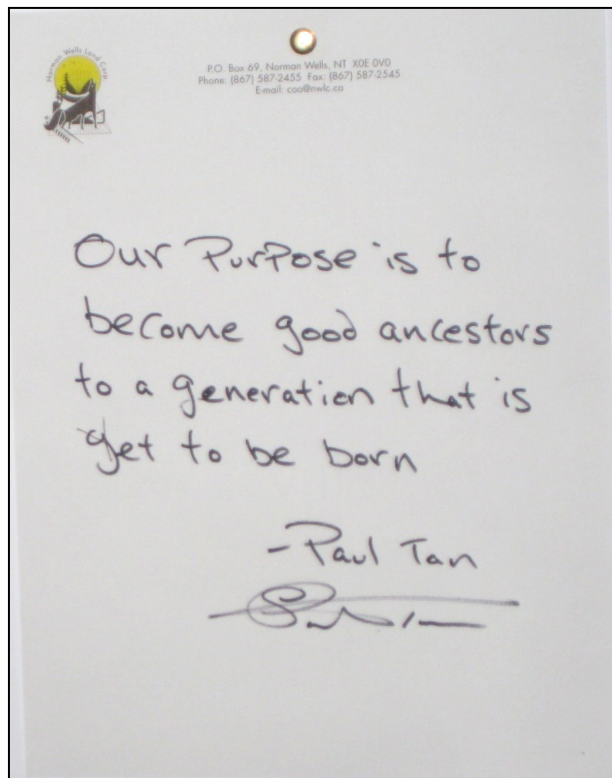
The NWLC owns a selection of Sahtu municipal lands and in 2011 acquired nearly 150 square kilometres of Commissioners' lands surrounding the municipality[58]. This block land transfer (BLT) puts lands that were reserved by the GNWT for municipal expansion into the jurisdiction of a future Norman Wells Aboriginal government. This move was encouraged by the GNWT with some support from the federal government through CanNor[59]. The economic potential of those lands, especially if Norman Wells booms, is very high. A key part of any self-government agreement is securing a funding source (ideally not solely government transfer payments) and the BLT plays into this goal. The rationale for the BLT is to promote the economic self-sufficiency of the NWLC and a future self-government. Roger Odgaard was NWLC president when they were inspired by the Westbank First Nation in British Columbia. The Westbank First Nation profits from leasing their lands in a lucrative real estate market to non-Aboriginal residential and commercial interests. He explained it as "*…definitely for development, for the children. It's not going to be prime for another thirty, forty, fifty years but that's when it's going to be worth more for those kids.*"

[58] Commissioner's lands are the GNWT equivalent of Crown lands which are typically near municipalities and are meant for development (residential, commercial, industrial, etc.).

[59] Canadian Northern Economic Development Agency. NWLC took on the lease loan itself with CanNor paying a portion of the surveying costs. Transferred Commissioner's lands must be surveyed so that they have a plan for development.

Paul

(Paul) Ren Xiang Tan has been the executive director of the NWLC for the last three years. He is from Ottawa and prior to the NWLC worked in financial law in locales such as Toronto, London, and New York. He had little knowledge of the North but had awareness of the general issues Aboriginal communities faced. He was attracted by both the wilderness and the change of scene. Though life in Norman Wells follows a much different pace than that of a big city, working for the NWLC is no less demanding than working for a large legal or financial firm. He works long days in implementing directions from the board. He deals with government ministers and oil companies just as much as does with the personal and immediate needs of individual beneficiaries. "*Even when I run the business, it's not a business. The impact on people's lives can be very high. Here, if I can make or save a thousand dollars that goes into our social mandate*." That said, Paul approaches his job with a necessary distance; "*At the end of the day I am just a foreigner. I recognize that. I'm not planning to be adopted by them or accepted by them. I'm a foreigner, an employee of them.*" But he also impressed on me how he has become inspired by the social mandate of the NWLC and by the Sahtu people themselves. He showed me a hand-written mission statement hanging on his office wall and shared his observations of an important challenge the NWLC and the SDMCLCA itself faces;



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Our Purpose is to
become good ancestors
to a generation that is
yet to be born

-Paul Tan

Figure 18 Paul Tan's NWLC mission statement. Photo by author.

"*I think organizational culture and identity is something that is lacking a bit here in the land corporation. We've only existed for the last fifteen or twenty years. If you look at a person who is twenty years old how seriously are you going to take them? The band system has been here*

for nearly a hundred years. The land corporation, I think, in twenty years from now will have a much stronger presence and a stronger culture.[60]*"*

Conclusion

Norman Wells is an economic development town. Whether it is contracting for Imperial, exploration activities, or transportation there is business and employment opportunity. Many members of the NWLC are involved in such enterprises. Informally, I have heard that the NWLC (indeed the Tulita District Land Corporation) is too business-oriented with some prominent leaders also being contractors for exploration companies leading to some community dissent. For the NWLC this is perhaps inevitable as the community somewhat lacks the 'tradition' characteristic of the other Sahtu communities. Yet that 'pro-business' aspect is not a bad thing. The employment rate in Norman Wells is 80% but in the other communities it is half that (NWT Bureau of Statistics, n.d.). That people from the rest of the Sahtu can find work in Norman Wells, and not out of region, is certainly a good thing.

While I was staying with the Yukons', Mark, a nice young man from the very traditional Colville Lake had moved in with one of my cousins. Mark is a heavy-equipment operator and had secured a job with a local beneficiary-owned business. He was waiting for the ice-road season to begin so he could get to work. The pride and satisfaction he had when he could finally work and make some money was palpable. The land claim gives beneficiary-owned businesses opportunities which in turn gives young people like Mark welcomed employment. Mark's winter of work is a success story in a place where many young people face an uncertain future. My Aunt Evelyn, who is generally suspicious of resource companies, nonetheless encouraged Louise to use the NWLC to get some work at one of the exploration camps across the river. These anecdotes sum up a central challenge for the Sahtu. This is most clear in the last sentence of the NWLC self-government mission statement; "*…creating and developing a land base on which a modern and traditional economy can thrive* (NWLC website n.d.). This is a common goal of many Aboriginal communities but for the Sahtu it is in Norman Wells and the NWLC that it is perhaps most achievable. The land and traditional pursuits are just a ski-doo or boat ride away. Economic and employment opportunity, though at the mercy of the ebb and flow resource economy, is within reach.

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[60] Director of Inter-Governmental Relations for the Gwich'in Tribal Council, Patrick Tomlinson, gave a presentation at a Land Claim Agreement Coalition conference which identified the same issue as a major challenge for self-government negotiations.

Chapter Five – Where the Oil is

Chapter Overview:

This chapter discusses two major interrelated issues currently facing the Sahtu regime. The first is the unfolding Canol shale oil play in the Tulita District. The second is federally legislated MVRMA amendments. Together they are putting the Sahtu regime to the test as they impose their vision of resource development on a potentially large oil play while simultaneaously trying to protect a key land claim IPG under threat from the federal government.

In terms of the Canol play the Sahtu regime has proven to be effective in requiring industry to meet strict guidelines in environmental oversight as well as community consultation. The goals of the Sahtu, aligning with the general objectives of the SDMCLCA, are clear: balancing economic opportunity in the form of resource development with the traditional use and respect of the land. The Sahtu answer to that challenge is slow and careful resource development under the watchful eyes of the Sahtu regime.

Federal amendments to the MVRMA and the imposing of a 'superboard' for regional land and water regulation has been met by universal opposition by all affected Aboriginal groups. The federal government is following a strictly legal interpretation of land claim agreements in furthering a policy that plainly serves the oil and gas industry. This violates the 'spirit and intent' of modern treaties and becomes a larger issue of constitutionally entrenched rights. Shrewd political maneuverings by the government to pass these legislative amendments can only cause deterioration of Aboriginal relations in the Mackenzie Valley.

The main conclusion of both this chapter and the entire thesis is that despite historical disempowerment, and ongoing challenges to their authority, the Sahtu is in control of their region. Through a self-determination project beginning over forty years ago and by way of the SDMCLCA, the Sahtu have asserted their prerogative in their complex relationship with Canada and industry.

The Saudi Arabia of the North

The Canol shale formation is the sedimentary layer lying underneath the Norman Wells oil reservoir. The oil that Imperial has been extracting since the 1920's is a reservoir which is

accessed and extracted using conventional processes. In the Canol shale, the oil is trapped in rock of low-permeability meaning that it cannot be easily released. The Canol shale itself is not a new discovery but it had been deemed an unviable oil source. Estimates on the size of the Canol shale are between two to five billion barrels of oil with a five percent recovery rate through conventional techniques. This represents the majority of known oil reserves in the NWT. New advances in extraction technologies, specifically horizontal high-pressure hydraulic fracturing mean that this type of oil source can now be accessed. This is what happened in the Bakken formation located primarily in North Dakota. The Bakken oil play greatly expanded in the 2000's as new techniques increased the amount of recoverable and marketable oil[61]. It is because of these new techniques that the oil industry is very interested in the Canol formation. The longevity of Imperials operations no doubt motivates an industry looking for the next Norman Wells.

[61] Terminology and information drawn Danylchuk (2013, June); Green (2012, June)

Oil & gas development in the Sahtu follows various regulations and stages which are based in the SDMCLCA, MVRMA, and other national legislation[62]. National regulations are administered by AANDC (licensing, royalties) and the National Energy Board (technical operations) [63]. The first step is a parcel auction which is managed by AANDC's Northern Petroleum Resources division. Prior to this, industry will nominate certain areas they are interested in for exploration. At this point the government notifies the relevant DLC's (SDMCLCA 22.1.2) to receive their views on opening up the lands for exploration. The DLC's can say yes, no, or agree to only certain areas. In some cases, the DLC's themselves can initiate the parcel auction. Technically, the land corporations do not have a veto over opening up lands but, as discussed in the previous chapter, it is very difficult for resource development projects to go ahead without community support at all stages. In 2010 the TDLC agreed to large tracts of land going to auction. They wanted to encourage some development activity to spur economic opportunities in Tulita and Norman Wells[64].

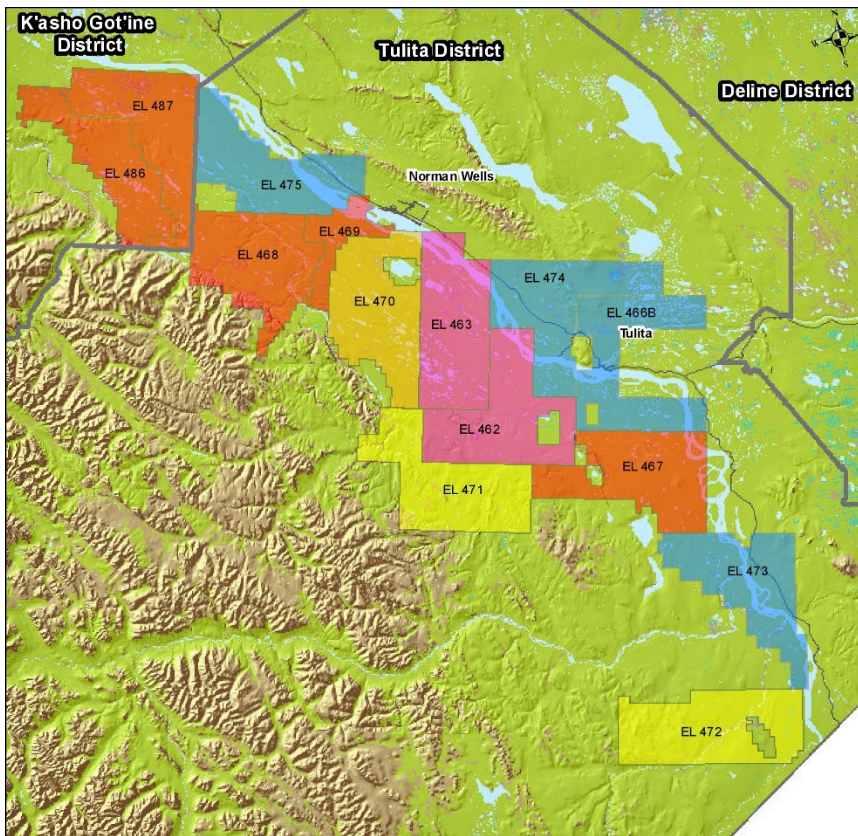

Figure 96 Oil and Gas parcel map. Courtesy of SLWB.

The lands are located mostly on the southern side of the Mackenzie River directly across from Norman Wells and Tulita. The area is some 8200 square kilometres. In 2011 the bidding process ended for eleven neighbouring parcels. A total of $534 million in winning bids by major

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[62] Canadian Oil and Gas Operations Act and Canadian Petroleum Resources Act.

[63] Both of these responsibilities have been transferred to the GNWT which has passed mirror legislation of the governing legislation. Exceptions to this jurisdiction are off-shore oil and gas management and the NWPA.

[64] Review comment from Danny Yakeleya to SLWB (2013, April 24).

oil companies Shell Canada, Imperial Oil, ExxonMobil, Husky Energy, ConocoPhillips and one smaller junior[65] exploration company, MGM Energy Corp., were accepted. Two bordering parcels in the K'ahsho Got'ine District were auctioned the following year pushing the total work bid to $637 million[66]. There had been auctions and exploration activities in years prior but not on the scale of the 2011 bids, both in terms of land area and potential spending. That most of the companies were major players attested to the significance of the Canol play. Needless to say, from Calgary to Yellowknife to the Sahtu, a lot of eyebrows were raised when the auction was over.

The winning 'work bids' submitted by companies are promised-spending amounts of the activities they plan to undertake. The companies are obliged to spend these amounts and perform activities within certain time frames (up to nine years) in order to keep their exploration rights. During the term of their exploration licence, they can declare a 'significant discovery' and apply for a long-term production licence. For a variety of reasons, these exploration projects and the promised-spending amounts do not necessarily happen. The amount of exploration projects that actually move into production are few and far between. All resource development projects are subject to market pressures and corporate strategies outside the influence of the Sahtu. There are also many challenges to exploration work in the Sahtu. Of the most prominent of these is the lack of transportation infrastructure and the short work season limited to the winter months. The land itself is also a challenge not so easily conquered by all the might of modern industry and technology. Early in Canol play, one company attempted to build an all-season access road to their site. Some poor planning and miscalculations lead to the road being a failure with losses measured in the tens of millions. One local observer remarked "They chose to put a road through a swamp – and the swamp wins" (Wohlberg 2013, Sept.30)

To be allowed to perform exploration activities companies have to make applications to the SLWB for land and water use permits. This process is very thorough, following different stages too complicated to fully describe here. The SLWB has established policies and guidelines to work with companies in submitting successful applications. Many of these have been updated

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[65] Junior resource companies are smaller sized and focus on exploration. If they make a significant discovery they will then try to raise capital or seek a buy-out from a larger company.

[66] Parcel auction information taken from AANDC Northern Petroleum Resources website at *http://www.aadnc-aandc.gc.ca/eng/1100100036087/1100100036091*.

and improved in recent years in conjunction with the other land & water boards of the Mackenzie Valley as the result of policy reviews. This was partly the result of a larger initiative originating from the Ottawa to improve the efficiency and consistency of regulation in the NWT. The federal governments' policies in this initiative have led to the amendments of MVRMA which will eliminate the SLWB and roll it into a Mackenzie Valley-wide superboard. This regulatory change is further discussed below.

The SLWB will check a project proposal against the SLUP to ensure that all conformity requirements are addressed. Companies must submit numerous documents including community-engagement plans and records, waste and spill management plans, GIS data, environmental impact and mitigation plans, TEK studies, and detailed project plans (location of camp site, activity scheduling, etc.). During this process there is a back and forth between the company, SLWB staff, Sahtu organizations, and other government departments and agencies. For example, an RRC may write to the SLWB that they have not been properly consulted over a given project compelling the company to do so to the satisfaction concerns. When the SLWB is satisfied and the application is deemed complete it enters a final review and comment stage after which the SLWB will make a final decision. Over thirty federal, territorial, and regional authorities are invited to review an application.

Fcking**

After the Tulita District opened up lands for exploration and started signing access and benefit agreements they began learning that the companies would use high-pressured horizontal hydraulic fracturing to get at the oil, colloquially known as 'fracking'. This triggered both a local and territorial debate about a technique which had never been used in the NWT. Fracking has a very negative public perception, somewhere on par with the Alberta oilsands. There have been media stories and documentaries, mostly in the US, depicting it as a particularly dangerous, dirty, and destructive way to extract oil and natural gas. In 2012, Quebec placed a five-year moratorium on horizontal fracturing over public concerns about the environment. At community consultations in Norman Wells and Tulita, community relations and operations staff have faced a barrage of questions over the process in addition to expected concerns about any disruption to the land.

The basic process of fracturing is nearly as old as the oil industry itself but new advances in horizontal drilling and chemical formulas have made it much more efficient. Horizontal fracking in the Sahtu uses a hybrid well-design which involves drilling a borehole vertically to a certain depth and then turning it horizontally and continuing. A mix of water laced with chemicals and special sand is injected into the borehole under high-pressure. The surrounding rock is cracked open and some of the water mix flows back out. The sand remains in the cracks allowing the oil to be released. The surface disruptions of a fracking operation are generally known and expected. A fracking well-pad is larger and requires more equipment than a conventional well-pad but this is not what is raising the most concern in the Sahtu. Any exploration operation in the Sahtu uses a large amount of water, mainly in road, camp, and well-pad construction where ice serves as foundation material. That fracking would use extra amounts of water to crack open the rock is one consideration in the regulatory process. There are very strict guidelines for how much water a company can draw from local sources. Water use would be limited to the early opening of the well and possible re-fracturing towards the end of its life to increase extraction. Another concern is the strength of well-casings which reach down the top part of the borehole to protect water tables from contaminants rising back up the hole. Should a well-casing fail there could be irreversible damage done.

The most worrying question is the chemicals added to the fracking water and what is done with the waste water. Companies have been asked to disclose the chemicals used but there is a problem in getting full disclosure and monitoring data while protecting proprietary information about their particular formulas. Currently all waste water has to be transported out of the NWT to facilities in Alberta which is not viable for any long term operation. It is expensive and increases the risk of a spill should a truck or barge have an accident somewhere between the Sahtu and down south. To give an idea of the scale of these operations, a single well could require up to 500 truckloads carrying the contaminated water[67]. The cheapest way for companies to handle this water would be to inject it in a deep storage well, as has been practiced in the US. Fracking technology is still advancing and there have been industry ideas to address the water contamination concern such as 'steam cleaning' the waste water to isolate the chemicals. Even if an acceptable management plan is devised for retrieved waste water, the fracking process will always leave some chemicals in the ground. The Sahtu will have to decide

[67] ConocoPhillips Appendix 1 Intro and Proj Desc.pdf. (2014, April). Section 2, Page 24.

if it is acceptable to allow these contaminants to enter the ground where they can never be cleaned up. The case for industry is somewhat helped by the fact that the Canol shale is two kilometres down while ground water tables are only approximately five hundred metres down. That said, there is no way to predict how all those subsurface strata interact, especially after it is horizontally fractured along lengths as much as 1500 metres[67]. Contaminated waters could slowly migrate to surface water bodies. In response to these concerns, companies are employing extensive groundwater monitoring programs and adding 'tracer' chemicals to their respective injection mixes to be able to identify any possible contamination. The Sahtu will push these companies to come up with the most environmentally friendly techniques and comprehensive monitoring programs but will ultimately have to make a very difficult decision in whether or not to allow these chemicals into the environment.

Courting the Sahtu

Of the six companies that won the 2011 parcel bids, only three have made much progress in the first few years of their exploration licences. The early advances of two of them, Husky and ConocoPhillips, and the lack of success of the other, MGM, can be used as an insight into how to do this type of business in the Sahtu. This depends largely on their ability to positively engage the Sahtu communities and meet regulatory expectations. Each of these companies needs to horizontally frack during their explorations and the immediate regulatory goals of these companies is to get these exploratory wells done and assessed without having to conduct an EA. Vertical fracking had already been done by these companies in the early years of their exploration licences but horizontal fracking, for the reasons mentioned above, is a whole other consideration.

When I arrived in Norman Wells in the early winter of 2012 for this research, MGM had just withdrawn their application for the first horizontally fractured well in the NWT. The SLWB, citing significant public concern over adverse effects to the environment, referred the application to an EA[68] (Vela 2013, April 6). During the preliminary screening of the application proponents must provide information describing the potential environmental and socio-economic effects of the project. This information would be derived in part from baseline environmental monitoring data at the site and the results of community consultation meetings. As MGM is a

[68] Referral to Environmental Assessment by SLWB (2012, October 4).

junior company they simply could not afford to spend a year or two conducting an EA when they were unsure of the viability of the whole project should it ever go into production. MGM and the business community bemoaned the EA. But MGM did more than just try to meet the minimum regulatory requirements. As a junior company, they are pressed to get results as quickly and cheaply as possible and then sell their rights or allow a buy-in from a bigger company with the financial resources to commit long-term. It is exactly this commitment that the Sahtu is looking for. Norman Yakeleya explained the missteps of MGM;

…They tried to put fear in people, saying, 'It's either jobs or no jobs. If you go with jobs, you got to really look favourably upon this hydraulic fracturing application… And we said, 'Hold on here. We're the landowners. We have done without oil and gas for a long time. Where else are you gonna do it? I mean, yeah, we like it, but after you're gone, we're still going to be here. Our land is more important than getting your resources to the shareholders' table so they can divvy up the profits.' I think MGM pushed us. They pushed the people. We pushed back and said, 'We're hungry, but we're not that hungry.'[69]

In the year after the MGM referral and application withdrawal, Husky and ConocoPhillips were moving towards completing their applications[70]. As the likelihood of the Husky and ConocoPhillips applications being approved without an EA seemed to grow, some Yellowknife based advocacy groups[71] encouraged a public letter writing campaign to the SLWB to call for an EA. A territory wide petition was submitted to the Legislative Assembly asking the GNWT to automatically refer horizontal fracking applications to EA with the larger goal of preventing fracking operations in the NWT. A similar petition from the Sahtu was also submitted to the Legislative Assembly, ironically tabled by their MLA who is supportive of the Canol play. A small controversy emerged as Sahtu businesses, Tulita District Land Corporations, and individual beneficiaries wrote in support of the companies. They argued that these companies should be allowed to perform exploratory activities to better assess the viability of the Canol play before committing to production. In news media, Facebook groups, and company community consultation meetings, a certain level of internal discord was apparent. That achieving community consensus on such a serious issue would be difficult is not

[69] Quote taken from interview in Up Here Business, June 2013, p.25.

[70] As of the summer of 2014, Husky have postponed operations and withdrew their application while they reworked their project plans. ConocoPhillips has continued with their application but have postponed their project citing a lack of internal funding. It is likely that that the devolution changes and GNWT guidelines for fracking, not yet completed, played into this pause.

[71] Alternatives North, Ecology North, NWT Council of Canadians.

unexpected. The Canol play also acts as lightning rod for a range of issues unrelated to the specifics of the exploration activities that can really only be resolved internally. The letter writing and petition campaign organized by people from outside the Sahtu was another issue however. The TDLC responded with a letter asserting their right and authority to control their economic destiny[72]. Norman Yakeleya, who is most public face of those in the Sahtu who support the Canol play, made a public statement expressing resentment of outside forces interfering with Sahtu affairs;

"*You have people outside the region telling us how to live our lives, and not respecting the people in the Sahtu – not respecting the land claims…the Sahtu people have the ability to create their own economic freedom…We certainly don't poke our nose in other regions*." (Wohlberg, 2014, April 28)

The MGM EA referral was partly due to an inadequate application that did not meet regulatory expectations. In contrast to MGM, ConocoPhillips has submitted an in-depth application (over 1700 pages long) and began numerous environmental monitoring programs to satisfy regulatory requirements. Both ConocoPhillips and Husky are using significant community engagement programs through both specific consultation meetings, site tours, and training sessions related to their projects as well as sponsoring different community activities. For example Husky helped pay for a moose-skin boat project[73] for Tulita and ConocoPhillips helped pay transportation costs for a fall hunt through the NWRRC[74]. The relationship between these energy companies and the Sahtu is very delicate. While most of the Sahtu appreciate the employment and economic opportunities such companies bring there is, and likely always be, a fundamental conflict between them. That any such development project is brief in comparison to the rationale of the Sahtu deep view adds to the challenge such companies face in fostering community support and overcoming that fundamental conflict. Norman gave me one example of the Sahtu keeping these companies in their place;

"*Husky came over last year and flew over our land. They said 'well, that's our land right there'. I sat right next to the Husky president and said 'no, no, no, that's our land, you guys are just using it for a while'. He looked at me and said 'You're right Norman, I apologize'. You even have to remind them.*"

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[72] Tulita District Land Corporation submission to SLWB (2014, April 23).

[73] Moose-skin boats are an important cultural artifact of the Mountain Dene. They were used to travel from the mountains along the Keele River to Tulita up until the 1950's. The last such boat was made in 1981.

[74] ConocoPhillips Appendix 2-A Public Consultation Multi-Well Exploration Program Application - Land Use Permit and Water Licence to SLWB (2014, May 26).

ConocoPhillips is exploring parcel EL470 which lies directly across the Mackenzie River from Norman Wells. Many locals, including a prominent family, have cabins there and regularly hunt and fish in the area. This family engaged ConocoPhillips, initially through the SLWB and directly thereafter, to make their concerns known. ConocoPhillips has had to maintain an ongoing relationship to meet very specific demands such as limiting fly-overs during hunts. They also removed a winter-airstrip on a lake by reworking their permit with the SLWB. In these instances, we can see how the land claim, the SLWB, beneficiaries and industry work together to find the best middle-ground in managing development. I spoke with Dione McGuinness, Aboriginal and Community Engagement Coordinator for ConocoPhillips. She explained the differences between doing this kind of work in Alberta than in the Sahtu;

Figure 17 ConocoPhillips exploratory well on EL 470 parcel. Courtesy of ConocoPhillips.

…with the signing of the land claim, companies are bound to negotiate and sign their benefit agreements with communities prior to engaging communities. The agreement sets out some of the processes we must follow and from the very beginning it's a lot more integrated. There's a lot more back and forth dialogue, there are explicit rights to be considered in our business and how we do things. We have different obligations in regards to employment, training and contracting opportunities for folks up in the Northwest Territories, particularly the Sahtu. It's a much deeper form of engagement that aims not only to make people aware of our activities, but to understand and address concerns, and to maximize opportunities.

I asked Dione about the hard decisions that the Sahtu have to make in managing resource development;

…the leaders, all of them have expressed a lot of concern about the land. They want to make sure things are done responsibly. That's primary. Having said that they definitely want to see a

move from dependence on government and others, to empowerment – to people becoming successful, getting educated, having business, being gainfully employed, and putting money back into their economy. Because that means more programs for kids, more infrastructure, things like parks, and the ability to enjoy recreational activities in the community. It may also mean the development of additional social programs. So leaders are seeing an opportunity and I think many in the community do as well. I believe people who are in positions of leadership have to find a real balance between preserving some of that land and demonstrating benefits to their communities. I think they've tried to strike that balance through the land claim.

That 'dependence on government' that Dione refers to is part of the larger self-determination project of the Sahtu. While immediate contracting and employment opportunities benefit a segment of the community and have a certain spinoff effect, it is the much more significant profits from production that leaders in the Sahtu see as the real gain. Depending on their access and benefit agreements and whether the production happens on Sahtu subsurface lands, they could see their share be in the tens to hundreds of millions of dollars. This collective money would go to the DLC's and would be shared across the Sahtu through the SMLA. This is the key reason that Norman supports the Canol play. He has been the Sahtu MLA for a decade and is keenly aware of the problem of inadequate funding for program and institutions in the Sahtu be they band council, land claim or otherwise. The dependency that has come to characterize the Sahtu since government arrived is his target;

You look at the billions of barrels and the cost of a barrel and you figure out the money, you do the math. Just southwest of Tulita they struck another significant discovery but they can't extract because there's no infrastructure there. And that, Miles, is on Sahtu Dene Metis subsurface lands. Imagine the royalties coming from Tulita. The numbers are in the billions…My vision is we would no longer need the government of the Northwest Territories nickel and diming us. We could actually make a contribution to government. That's my thought here, we don't need the government of Northwest Territories. We don't need them.

So our strong message to the youth is get sober, get educated, and get to know the corporate world. If you're not going to do that, by all means, go into the bush, be a guide, be a hunter, be a trapper, but live out on the land. Make yourself useful one way or the other. Do something other than sitting in the community, idling around, going over to the government office once a month for whatever money you need for you rent, how much for my food, for my clothes and then get a cheque from the government. That's not who we are.

The Spectre of Fort McMurray

After the 2011 parcel grab the Tulita District was caught in a bit of a catch-22. They wanted some exploration and development activity but the size and scope of the parcel bids

stoked fears that it could become a mega-project if all the parcels were actively explored and developed at the same time. Though they have means to slow down activity they have to be very careful to not damage the overall business appeal of the Sahtu. Should industry push for large-scale development of the Canol the Sahtu regime will be pressed to find ways to control the pace and scale of activity. Hanging heavily over heads in the Sahtu is the Alberta oilsands. Allowing environmental impacts on the scale of the oilsands and the effects on involved First Nations is not an option for the Sahtu;

I see the future of the Sahtu as being in resource development, heaven help us it gets as bad as Fort McMurray. We would want to make sure that there's some place where we can go and be in peace. -Rick Hardy (comment related to Naats'ihch'oh National Park Reserve)

It's like Fort McKay and the tar sands. They put themselves in a box because their leadership kept selling their land. Now they don't have enough land to enjoy their traditional pursuits on. They're surrounded by resource development. It's a big worry now. The number one concern for our leadership is how much is enough and how far do you go and how long do you do that on the depletion of resources, on the use of the land, on resource development. Where's the balance? -Ethel Blondin-Andrew

...it is my wish that we do not become another little Alberta. There, it is extremely difficult to see where the interests of oil and gas companies, and the interests of government, begin and end. The interests of our people here in the North and the interests of oil, gas, and mining companies are not the same. You could end up looking at a situation where in 30 years places like Fort Good Hope, where I am from, will still have high unemployment, be heavily socially impacted and all the oil and gas will have been siphoned out. -Stephen Kakfwi (Kakfwi 2013).

All these oil companies are based in Calgary and it is well known that their lobbying efforts are behind the superboard proposal discussed below. The Sahtu is put in the position of trying to build good relationships with these companies and protect the environment all the while fighting to keep industry and the federal government from infringing on essential land claim rights;

…The checks and balances are there to do just that. That's the good thing about them and it really hurts to see the feds getting rid of these little checks and balances that we have and leaving us high and dry. Now the thing with fracking, you got it right on the money buddy, Miles, when you say that it looks like the Sahtu is ready to go to work, it's true…All we're trying to do is use our checks and balances to make sure they do it the most eco-friendly way possible. We don't want to be their little bitches and have them do whatever they want. We're just trying to keep them on their toes you know. That's all we're trying to do and some people might say we're hardliners and we know we can't stop them cold in their tracks. But there are certain ways to do business up here right…they just want to come up here, push the envelope as far as

they can. You know if they get the right atmosphere they could basically do what they want. That's what they're pushing for, you know what I mean?-Roger Odgaard

Regulatory 'Reform'

Changes currently underway to land & water regulation in the Mackenzie Valley have caused a large degree of alarm to all the regional land claim groups. These changes, and responses to them, are still unfolding and will only take shape over the next few years. As such I do not tackle this unresolved issue in depth. However I do discuss the larger issues at play as articulated to me by concerned members of the Sahtu leadership.

Since the 1980's, the federal government has 'devolved' different responsibilities and jurisdictions to the burgeoning GNWT. There have been efforts to devolve authority of Crown lands and resource management over the years but progress had been slow in the complicated political environment of NWT. Negotiations began in earnest in 2000 and after many hurdles a final agreement was reached in 2013 between the federal government, GNWT and a majority of the regional groups, including the SSI. The key elements are new resource revenues (described in Chapter 4), land and resource management powers coming to the GNWT, and the newly formed Intergovernmental Council on Lands and Resource Management to coordinate land claim groups with the GNWT. The GNWT has committed itself to work with the regional Aboriginal governments and their land claim mandates.

Concurrently to the devolution process and following the arrival of the Conservative Party in Ottawa in 2006, the nascent regulatory system in NWT was the subject of policy review. This was in response to ostensible criticisms from industry that regulation in the Mackenzie Valley was unclear and unpredictable which scared away investment. A term bandied about is 'regulatory nightmare'. While this brief summary cannot do justice to the larger and longer political games and ideologies that led to this policy initiative, there are links to right-wing politics, the Calgary-based energy industry, and the current Conservative Party's' sympathies to both. Suffice it to say, those right-wing ideologies never approved of comprehensive land claim agreements or even the symbolic recognition of Aboriginal rights. This particular ideological stance on Aboriginal rights was most clearly articulated in Tom Flanagan's *First Nations: Second Thoughts* (2000). The intellectual arguments or policy suggestions of Flanagan and his ilk are thirty or forty years behind the rest of the country and lack relevancy in the contemporary

relationship between Canada and Aboriginal peoples, especially in the North. While free of the more repugnant and ethnocentric language of Aboriginal rights denial there clearly remains a connection to the MVRMA amendments collectively opposed by the Dene and Metis of the NWT which the Sahtu is well aware of;

Don't forget buddy, I don't know what side of the fence you play with politics, but the conservatives, you know these guys are actually the reformers hiding behind the conservative name right. See what I'm getting at? The reform party who was so hardcore before about everybody having the same rights, everybody having the same education, the same healthcare, no special interest groups whether you're immigrant or Native. These guys are pulling the shit off as we speak behind the conservatives' name.-Roger Odgaard

At heart of the policy focus is the MVRMA. The federal government began consultation meetings with the regional groups as required through their land claim agreements. The meetings were a spectacular failure. At one meeting the Aboriginal groups actually kicked out the federal negotiator because they were so upset about the violations to their consultation rights. Calling the MVRMA the process a 'negotiation' as the government has would be laughable to regional leaders if they were not so unhappy about the situation[75]. MVRMA was originally conceived of as part of the failed Dene/Metis negotiations. When land claims regionalized and agreements provided for regional land & water boards, a clause was included that stated if a land & water board for an area larger than the SSA (Mackenzie Valley) was legislated by government it would become the land & water board for the Sahtu. This is the 'superboard'. It also said that the Sahtu would be consulted with respect to such legislation. There are other amendments to MVRMA but it is primarily the superboard that the Sahtu cannot accept. Though that clause has been sitting in these land claim agreements since 1992, the Gwich'in, Sahtu, and Tlicho had been led to believe that their regional boards would be the chosen institutions. It will certainly complicate ongoing negotiations in the Deh Cho and Akaitcho regions, where they will want no part of the superboard. The MVRMA changes which remains under federal jurisdiction, changes are set to begin in 2015 with an agreed upon review in five years. When I talked with Ethel Blondin-Andrew in early 2013 about the MVRMA changes her frustration with the whole process was palpable;

On MVRMA we had two meetings, one in Norman Wells and one in Yellowknife. In those meetings we had the head of Mining Canada and we also had the head of Association of

[75] John Pollard quote from Up Here Business, August 2012, page 33.

Canadian Petroleum Producers. We talked for three days until we were blue in the face telling them what the impediments are to getting the regulatory system to work, "you need expertise, you need time, you need people to move things along, you need the government to be interactive and to respond and that's the problem".

We talked and those two people sat there through the whole discussion. There were very compelling arguments put and at the end they still had blinders on and they still said "oh, it's a regulatory nightmare, we gotta change it because it's not working". Like, what part of it is not working? I don't understand. I said "look at the three diamond mines, look at all the oil and gas activity, what's not working?" It's the government pandering to industry, that's what it is.

And on the issue of consultation;

Well, they did consult but the way they consult is prescribed in the land claims. It's very detailed in design, function, timeliness, and in terms of resources available and accommodation. And when you dump a load of information on people and you disappear for ten months, that's not consultation. When you're going to make legislative changes and you don't share that with people, we still haven't seen any legislative drafting, so they do that then, for us, that's not acceptable. You turn up again in ten months, you dump another load of information and you walk away. We haven't seen him since.

In the spring of 2014, the Tlicho Government began court proceedings over the MVRMA amendments. The case will likely be based on the issue of consultation and spirit and intent. I asked Rick Hardy, a lawyer with experience in these matters, what his view of the MVRMA amendments was. His answer is in line with Ethel's;

It's a political decision to do it. In the first instance the government, in my view, has the legal right to do what it's proposing to do but politically it's not a particularly smart thing. Just from a practical perspective I don't think it's a particularly smart thing either. What I understand is that industry is not in favour of the superboard. Particularly in the Sahtu the oil and gas industry is, I wouldn't say happy, but are content with the way the Sahtu Land and Water Board conducts itself and makes timely decisions. The system is working.

It is by way of an adroit dance around between land claim clauses, political trickery, and nominal consultation and negotiation that the federal government finds itself in violation of the spirit and intent of the Sahtu, Gwich'in, and Tlicho agreements. For all the substantive and symbolic progress made since the days of the White Paper to the present, the Sahtu still finds itself fighting for their rights with distant suited men occupying Calgary boardrooms and the halls of Ottawa. Ironically, such government moves could in the long term work against resource development which hinges on Sahtu support. Ethel said as much at the Parliamentary Committee hearing held after, though he words fell on deaf ears;

"*If the MVRMA cannot protect the lands and waters of the Sahtu settlement area, the Sahtu will be forced to employ other means to protect its interests and maintain the integrity of the land claim agreement, including litigation. While such measures would likely result in protracted timelines and higher costs, the Sahtu may have no other option.'* (Blondin-Andrew 2014).

Conclusion

The Sahtu regime makes the extra controls and oversight bemoaned by industry a necessity for pursuing resource development in their region. It is not impossible to develop resources in the Sahtu: it is actually welcomed by leadership and the majority of the community. But only on their terms. The question of why industry is critical of the Sahtu process boils down to a veiled ideological position which is very frustrating for Sahtu leaders who want to build good relationships with industry. Companies such as ConocoPhillips and Husky which engage the Sahtu regime on the Sahtu's terms will make inroads, both in community relations and in resource development. Companies such as MGM who push the regime will not. If MVRMA amendments and the superboard do take shape to everyone's worst fears, the lack of local control may push the Sahtu regime to change their stance on resource development. If they cannot have development on their terms, they may choose to reject it outright. At the core of the fight to keep the SLWB is the enduring Sahtu desire to be masters of their own house. This is the clear theme running from the Sahtu decision to negotiate a regional claim through the decentralized district structure to community-based self-government negotiations to resentment of uninvited outside interference in the Canol play and rejection of the superboard.

CONCLUSION

In his book *Like the Sound of a Drum: Aboriginal Cultural Politics in Denendeh and Nunavut* (2005), Peter Kulchyski incorporates Dene and Inuit story telling practices into his research and writing approach with the goal of producing a document that might appeal to the people he writes about in addition to providing a more revealing analysis. While I do not attempt the same, this thesis does tell a certain story – the story of the Sahtu land claim. Some elements are disparate but they nonetheless play a role in filling out what is a complex story. The purpose of detailing the recent history of Sahtu relations with government and resource development is to trace the Sahtu model and vision of self-determination as it contends with colonizing forces. A great reordering of this relationship over the last forty years represents a remarkable journey. Today this relationship operates on various levels be they symbolic, political, economic, or legal. To reveal the Sahtu relationship with government and industry it is necessary to take a closer look at specific sites of interaction, such as the Canol play or regulatory reform. In doing so it becomes possible see self-determination in action across different spaces. But there remains a larger and single Sahtu story with its dominant themes.

On their surface, comprehensive land claim agreements are very technical and legally worded documents which convert the incredible vastness of the land into a series of coordinates, legal descriptions, and jurisdictions. From the Sahtu deep view this is everything the land truly is not. To more accurately understand what the SDMCLCA is about research needs to bridge this divide. Delving into the details of the SDMCLCA and its negotiation serves to understand the uniqueness of the agreement and how it relates to Sahtu culture. Whether in the political ideal of the decentralized district land claim structure, the inclusion of traditional sharing values in the Sahtu Master Land Agreement, or the strict oversight of resource development, we can see how the Sahtu regime has been able to assert itself within the constraints of government policy and the realities of the modern economy. Steadily operating underneath all this is the Sahtu deep view which is never too far out of mind.

It is curious that hunter and gatherer societies are classified as 'nomadic' and agricultural societies as 'sedentary' when in practice it is the opposite that is true, a point made by Hugh Brody in *The Other Side of Eden: Hunters, Farmers, and the Shaping of the World* (2000). On the larger scale of history measured in thousands of years, it has been farmer societies that have

spread outside of their original territories. This is especially true for a settler nation like Canada where the spread of farming immigrants, and the companion industrial economy, pursued an incredible pace. It is in looking at the larger picture, and not any one snapshot in time, that this difference becomes evident (Brody 2000: 7). The Canadian identity, especially in the West and the North, is measured in generations that can be counted on two hands and in many cases on but a few fingers. In contrast, the people of the Sahtu have been in the Sahtu since there was a Sahtu. Through the Sahtu deep view it is possible to turn on its head the received wisdom that colonialism and Development are the more inevitable and permanent force.

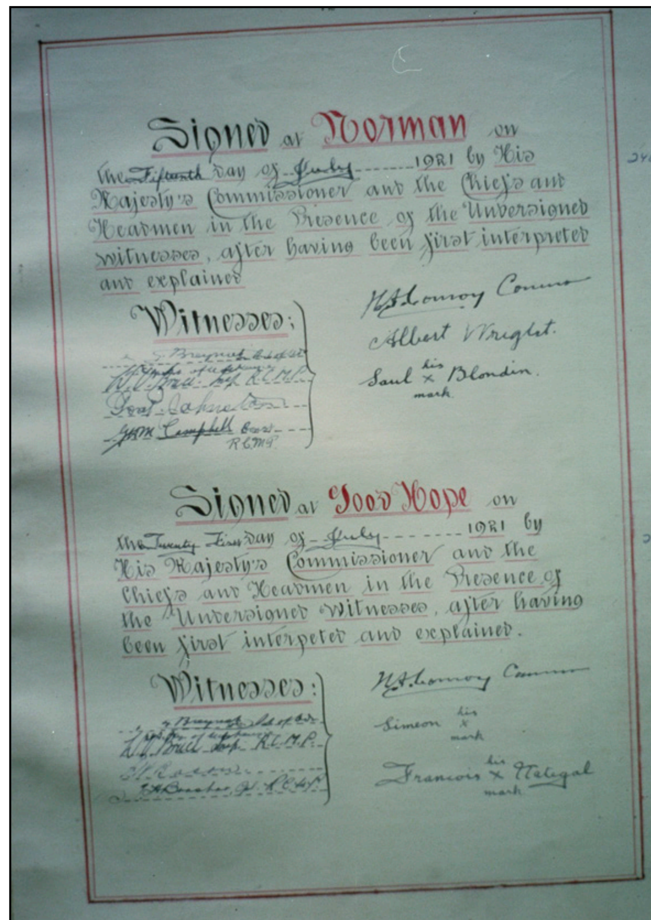
Ethel

In February of 2013 I attended a conference held by the Land Claim Agreement Coalition (LCAC) in Gatineau, Quebec. Titled 'Keeping the Promise: The Path Ahead to Full Modern Treaty Implementation', the conference brought together land claim groups, government employees, and academics to address the challenges in implementing agreements. A special award was given to Thomas Berger recognizing his contribution to the modern era of treaty making. The Aboriginal leaders were compelling in their speeches about how far their people had come in recent decades and their ongoing determination. Early the first day I spotted Ethel Blondin-Andrew across the hall and introduced myself. We were able to sit down for an interview on the last day but it is the speech she gave the night before which I reproduce here.

Ethel took her place at the podium with a copy of the SDMCLCA in one hand and a loose piece of paper in the other. She started humbly enough "*I've got some chicken scratch here, they should have chosen someone more eloquent…*" She began with a story about the determination of Sahtu leadership. In 1921 when the federal treaty making party came to the Sahtu region they stopped at Fort Norman to have the Mountain Dene take treaty. Chief Albert Wright had been there to negotiate the terms but before the document was to be signed he insisted on getting the people hunting and trapping up the Keele River in Mackenzie Mountains which straddle the NWT/Yukon border. He walked nearly a hundred kilometres and along the way left messages written in Slavey syllabics on blazed trees. It would be near impossible to actually find people out on the land but leaving these sign posts every thirty kilometres at conspicuous points allowed for communication. A kind of long distance phone call. The people up in the mountains had previously made clear their desire for a treaty but Chief Albert would only sign the treaty if the

whole community was there. It was this kind of determination and sense of inclusion that held the community together and which still does. She told the audience of recently travelling by helicopter with her husband Leon to the area and finding one of those posts. Still standing. She was telling the audience that her people are like that post, a symbol of unrelenting determination and solidarity.

Ethel moved on to discuss a recent hand game tournament in Deline. Hand games are basically a traditional team gambling event for men but holds a much larger cultural and spiritual significance. I have been told by both Sahtu people and southern observers alike that they are quite exceptional to watch. She explained how the whole community comes alive and is invigorated at hand games. "*The youth, I can see the pride in their eyes as our traditions, passed down from thousands of years, bring them to life. It's very powerful.*" She finished by asserting her people's determination "*we have endured a lot, we have come this far and we are still here! We loved the land then and we still love it! We have been here for thousands of years and we aren't going anywhere*!" Ethel returned to her seat on the stage. She crossed her arms and lifted her bottom lip and chin to make a face which could only be read as saying "You're goddamn right!"



Signed at Norman on the Fifteenth day of July 1921 by His Majesty's Commissioner and the Chiefs and Headmen in the Presence of the Undersigned witnesses, after having been first interpreted and explained

Witnesses: [illegible]

H A Conroy Commr
Albert Wright
Saul his x mark Blondin

Signed at Good Hope on the Twenty first day of July 1921 by His Majesty's Commissioner and the Chiefs and Headmen in the Presence of the Undersigned witnesses, after having been first interpreted and explained.

Witnesses: [illegible]

H A Conroy Commr
Simeon his x mark
Francois his x mark Nategal

Figure 108 Treaty 11 signed at Fort Norman and Fort Good Hope with signature from Chief Albert Wright and 'x' marks from Chiefs Saul Blondin, Simeon T'Seleie, and Francois Nategal. Courtesy of NWT Archives/René Fumoleau fonds/N-1995-002:9690.

Prophecy

As Ethel stated to that conference audience, the Sahtu deep view deals in 'thousands of years'. The decisions made in the present take into consideration the well-being of land and people many generations in the future with a firm footing in an ancient history. I conclude this thesis with one specific example of how profound the Sahtu deep view is but first want to make a brief mention of a facet of Sahtu culture which facilitates planning for the far future.

The knowledge practice of prophecy allows the Sahtu to anticipate events in the future and prepare accordingly. Such intimate cultural practices should of course be left out of the purview of academia and the general public but some individuals I spoke with made passing references to different prophecies and how land claim and self-government agreements were pursued in part to be prepared for these predicted futures. Such is the case of Deline where Elders analyzed prophecies to inform self-government negotiation goals (Irlbacher-Fox 2009: 93-95). A compelling prophecy which has been shared by Deline was made by a medicine man before the arrival of white men and which would happen long after his generation was dead. He told of his vision in which white skinned people dug a big hole in the ground across the lake. Out of the hole they took a material and made it into a big stick which they loaded onto a big bird. They dropped the stick on people who looked like the Dene and they all were burned and died from it (Blondin 1990: 78-9). That place across the lake was Port Radium where many people from Deline worked over the years, mainly in the transportation of ore bags. The uranium mined there made its way to the United States and the Manhattan Project eventually contributing to the nuclear bombing of Japan in World War II. When the people of Deline learned of the veracity of the prophecy decades later they were greatly disturbed by the role they inadvertently played in such death and destruction[76]. In 1998 a delegation from Deline visited Japan to offer their apologies to survivors of the nuclear bombings (Deline Uranium Committee 1998; Blow 1999; Henningson 2006).

[76] Even more disturbing to Deline was exposure to the radioactive material, an epidemic of cancer deaths, and being lied to by the government for decades regarding all this. A study was conducted and report released in 2005 which recognized the severe social and psychological impact that uranium mining had caused to the community though the findings on cancer rates were inconclusive.

Giant Beavers

This very first statement in the SDMCLCA reads "*WHEREAS the Slavery, Hare and Mountain Dene of the Region have traditionally used and occupied lands in the Northwest Territories from time **immemorial***". It is true to say that they have lived in the Sahtu longer than Canada can remember but it is not entirely true for the Sahtu people themselves. They remember very well as evidenced by their oral history. I use the following specific example to underscore the profoundness the Sahtu deep view.

In Dene history there is a revered man of great medicine power, Yamoria, who travelled Dene lands, set forth Dene laws, and put everything in its rightful place (Blondin 1990: 30). At the headwaters of the Deh Cho and Bear River lies Bear Rock Mountain. Tulita is located in view of the mountain across the river. On the side of the mountain are three large red patches. Dene history tells of the origin of these red patches. George Blondin, who passed away in 2008, was an important storyteller who put this story in his book *When the World was New: Stories of the Sahtu Dene* (1990). The following is a shortened version;

Many years ago, before the white men came into this country, a special man named Yamoria travelled our land putting everything into its rightful place. The animals and human beings were separated from each other, and Yamoria also got rid of whatever was harmful to people. In doing this, he set laws for Dene to follow, which we still do to this very day.

In the time when Yamoria came, there were giant beavers living in Sahtu. The beavers were harmful to the Dene, who travelled across the lake by canoe to hunt caribou. The beavers did not like people to cross their lake. They would get as close to their canoes as possible and splash their tales, hoping to tip them over. They often succeeded, and got rid of many people. When Yamoria learned of this, he came to Sahtu and told the people he would chase the beavers away.

Figure 19 Bear Rock Mountain near Tulita. Giant beaver pelts are on the right, covered in snow. Courtesy of Alasdair Veitch.

Near the place we call Tulita, at the confluence of Sahtu De and Deh Cho, the Great River, Yamoria killed two medium beavers and one small one. He stretched and nailed their hides to the south face of Bear Rock Mountain, where you can see

them to this day.

The era this story takes place in is what Western science recognizes as the last retreat of the ice-age glaciers which covered North America. Giant beavers were a species of ice age mega fauna and were about the size of a black bear with incisors up to six inches long. The Dene have other stories of their interactions with giant animals when the world was new (Blondin 1990: 27-9). Giant beaver are thought to have gone extinct approximately ten thousand years ago with the retreat of the last glacial period (Harington 1996). The story of Yamoria and the giant beavers is a compelling indication of just how deep the Sahtu culture and connection to the land runs. Dene culture of course does not need the approval of Western science but the correlation here between the two knowledge traditions offers insight into the incredible longevity of the Sahtu culture. Current scientific understanding estimates that the glaciers retreated in the area around Bear Rock Mountain approximately 10,000 years ago (Dyke 2004: 382). The Dene people of the Sahtu have passed on a story for 10,000 years. When we think of the youth of the Canadian nation and compare it to a history of 10,000 years, it becomes easier to see just how strong Sahtu culture is despite the damage done in the last hundred years. Sahtu culture is as firm as that mountain and as determined as Chief Albert Wright was in 1921.

Concluding Remarks

Reading the story of state relations in the Sahtu necessarily causes a narrowing of the scope of attention. It can surely be reasonably argued that the last hundred years are without precedence in Sahtu history. But the totality of Sahtu history and culture which operates on the largest of human scales allows for a great expansion of perspective. This larger perspective, the Sahtu deep view, is very much in action today as the Sahtu contends with outside forces. In a region where they have to deal with the reality and consequences of existing on the periphery of Canadian society, economy, and politics, there is a clear need for some earnest attention from the core. When I first broached the idea of this research with my Aunt Evelyn in trying to find some ethical footing for poking my nose into the business of the Sahtu, she gave me a very simple answer "*People down there should know about us, it's important*". It is important.

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