

Granular Resource Requirements for Proposed Mackenzie Valley Pipelines:

Technical Papers and Workshop Proceedings

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SECTION 9.

DISCUSSION PANEL "C"

**LAND CLAIMS AND BORROW SUPPLY:
ABORIGINAL PERSPECTIVE**

GWICH'IN LAND CLAIM AND BORROW RESOURCE ISSUES

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To start my presentation, I would like to go back just a little bit to a Dene Nation meeting held in 1990. In the summer of 1990, when the original Dene/Metis comprehensive land claim fell apart, the Gwich'in Region walked away from the Dene Nation meeting adamant they were going to have a land claim one way or the other. To that end, they lobbied the federal government who agreed that they could negotiate a regional claim.

How the original Dene/Metis comprehensive claim impacts each of the regions is quite significant. First of all, let's look at how they divided up the quantum. Under the original Dene/Metis claim, the joint leadership of both Dene and the Metis agreed that they would divide the land quantum according to a per capita basis. When there was a comprehensive claim that covered the entire Mackenzie Valley that was not such an important issue as it is now. The regions agreed that they would share the land quantum. They would probably first select the various areas which were very rich in gas or oil potential. Other regions such as the Lower Slave which had mining potential would then be selected for that reason. But when the Dene/Metis claims fell apart, the government went in for a percentage of the total Dene/Metis quantum.

The Gwich'in had 15% of the population base of the total NWT Dene/Metis. That has, of course, caused problems for many of the regions. The Gwich'in occupy a small region and there was a question whether or not the Gwich'in could select all of the lands within their region. They couldn't because the region was too small--in fact their land selection of 10,000 square miles covers 14% of the entire region. Because they couldn't select all of it, they were allowed an increase in their sub-surface to about 2,500 square miles. And they were also allowed to select lands from the Yukon.

Moving southward down the Mackenzie Valley, we come to the Sahtu Region. They also had around 14% of the population, but it was significantly different in this region because they had the largest area-wise settlement region in the NWT. Their quantum would

only give them about 9% of lands in the region. Their subsurface again was 10,000 square miles.

All of the subsurface areas were to be divided evenly among the five Dene/Metis claim regions. Originally the Gwich'in had intended to allow the Sahtu to select lands within the Sahtu region even though they were entitled to be Gwich'in lands but because of the claim, it didn't matter now that they were no longer together. The Sahtu lobbied the federal government long and hard saying that this only gave them 9% of the region's land area. Most often land claimant groups received about 15% of their region. Therefore, the Sahtu argued that this was going to be a very difficult thing to stop. The federal government has agreed to increase their quantum to 15,000 square miles, but they will still only receive 700 square miles of subsurface entitlement.

The North Slave region is an entirely different kettle of fish again. There are several things that can happen in this region to make its claim different although the 1990 agreement is based on regional claims. The difference here is that the Yellowknife Band which used to be Yellowknife "A" Band actually signed Treaty 8. The rest of the region signed Treaty 11. So they have agreed that they will split their claims negotiations. Now Treaty 8 Bands are seeking land entitlement under specific claims rather than comprehensive claims. That left the balance of the region, excluding Yellowknife, in Treaty 11. So they formed a new tribal council to help to negotiate their land claim. This group should be in negotiations in April of 1993.

There are several problems that have to be settled before then and that is again with admission of quantum. In the North Slave region, we would have received the largest amount of quantum, about 29% of the total. How we are going to divide that now of course is up to the Tribal Council and, as well, what everyone will accept as their percentage of quantum. If it is based on current population figures, they would only have about 2,000 or 3,000 people bringing them back down to the level which the Sahtu population

base was. Presumably, this brought their land quantum down to around 14 or 15%. We don't know how they are going to handle that with Yellowknife and the Yellowknife Band.

So, let's look at the amount of land that was left for quantum impacts on their selection and the reasons for selection. Rather than the regions selecting for a specific economic purpose, they now have to select lands for every purpose. There were some regions that were very strong about selecting for absolute protection over their selected lands, for instance the South Slave region. It appears non-aboriginal people in the region were very adamant that they protect land for historic reasons. That was their deepest concern, I think, was to have absolute protection of their lands and allowing other regions then to pick up land selection for other purposes.

Under the Dene/Metis comprehensive claim, under the individual land quantum, there were provisions for sand and gravel. This, of course, has been changed by the regional claims settlement process. The Gwich'in claim is somewhat different than the Sahtu claim. First, the impact of the Inuvialuit Final Agreement on the Gwich'in region where in 1984 there was a selection known as the "Aklavik Land" selection--700 square miles that was given to the Gwich'in at the time of the Inuvialuit settlement but not included in their quantum. The only source of gravel for the Aklavik community is at Willow Creek and there was provision made, not in the agreement but in the implementation plan, that the GNWT would have access to the sand and gravel, that the federal government would negotiate the cost of it, and that the GNWT would have free access. We have just recently completed those negotiations. I believe the royalty fees are around \$1.83 or \$1.89 m³. We won't pay access fees, we won't pay actual rent or fees, but I believe that they did come to an agreement on the administration fees. Of course, the interesting part of this is the Gwich'in claim has just been enacted into legislation in December. None of the resource management boards are set up yet. There was also an issue whether or not the access that was discussed in the chapter on sand and gravel was in fact access. That impacted on whether or not contractors could have free access that was given under the land chapter because there is no surface rights board or arbitration panel. Luckily we did come to an agreement. At first, it looked like there would have to be an arbitration panel or we would have appeal under current legislation. The other method of dealing with

sand and gravel is under the land selection. In the Gwich'in area we managed to protect two other sites other than the sand and gravel sites for government use. Again this was done in the claim because of the scarcity of sand and gravel sites in the region.

In the Sahtu, it is a somewhat different situation. We are not protecting any areas with specific sites for sand and gravel. Most of this will be done through the land selection process. It's a bit different because we don't know exactly what the requirements will be over the next 20 years. Other than that, the claim only provides for free government access when there are no other sites available and the Sahtu agree that there aren't any alternative gravel sites. We would then have to negotiate with the region and, in the case of the Sahtu, the Sahtu Tribal Council.

We have tightened up, I think the sand and gravel provisions from the Inuvialuit claim. The impact of that agreement was that we realized that there are all these things that we thought we had adjusted for and, actually, we didn't. When it comes to an actual agreement people don't remember what you meant or were not clear about. You have to stand by your negotiations. The Sahtu negotiations are, I think, an improvement over the Gwich'in negotiations.

Comment: Bob Gowan, DIAND

I spoke to Robert Alexie of the Gwich'in yesterday who informed me that they would be unable to attend the workshop. He had a few comments regarding the size of their land quantum. They also referred to the land and water board which will review all applications for sand and gravel use within the Gwich'in region. The Gwich'in also have a 50% participation on the land and water management board once its set up for Crown Lands.

In the case of costs of materials on Gwich'in-Aklavik lands, I was in Edmonton a couple of weeks ago for negotiations. The agreement reached on prices was for a particular problem. It has no effect on further negotiations of access. The royalty portion of it was based on a formula that was used for the amount owing from the Inuvialuit lands since 1984. That fee structure was based on the fee structure used in the Inuvialuit region. It starts at \$0.75 a cu.yd., with an inflation factor based on 1982 cost of living to present. I believe that brings the royalty portion up to \$1.38 a cu.yd. There is a \$0.56 per cu.yd. administration fee

added to that. I believe it's consistent with the Inuvialuit fee schedule as well. There is also a reclamation cost of \$0.50 per cu.yd., so the total fee actually is \$2.50. There still is negotiation of further costs and access to it. In terms of general costs, what

Robert Alexie said was that their standard rate is given but they would evaluate certain public projects or community-based projects where the community receives further economic benefits. In those instances the royalty may be reduced.

Note: The text of this presentation has been transcribed from an audio-tape recording of the workshop presentations. If necessary, we would suggest that the reader verify the accuracy of these comments with the presenter.