

**RESOURCE CO-MANAGEMENT
WORKSHOP: Fostering Integrated
Decision-Making in Resource Management**

February 7-8, 2017

Denis Drolet Community Hall, Norman Wells, NWT

Hosted by the Sahtu Land and Water Board, the Mackenzie Valley Review Board, and the
Government of the Northwest Territories



ACROYNMS

COGOA	<i>Canada Oil and Gas Operations Act</i>
DOL	Department of Lands
EA	Environmental assessment (process)
ENR	Environment and Natural Resources
ESSA	<i>Energy Safety and Security Act</i>
GNWT	Government of the Northwest Territories
ITI	Industry Tourism and Investment
MLA	Member of the Legislative Assembly
MVRMA	<i>Mackenzie Valley Resource Management Act</i>
NEB	National Energy Board
OGOA	<i>Oil and Gas Operations Act</i>
OROGO	Office of the Regulator or Oil and Gas Operations
RRC	Renewable Resource Council
SLUPB	Sahtu Land Use Planning Board
SSI	Sahtu Secretariat Incorporated
SRRB	Sahtu Renewable Resource Board
SLWB	Sahtu Land and Water Board

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Background

The Mackenzie Valley Review Board (Review Board) hosts territorial workshops and conferences to improve the effective implementation of the *Mackenzie Valley Resource Management Act* (MVRMA). Workshops and conferences have mainly targeted practitioners in order to enhance their skills and knowledge of regulatory processes and environmental impact assessment processes. At the 2016 MVRMA workshop, co-hosted by the Review Board, the Land and Water Boards and the Government of the Northwest Territories, it was recommended that regional sessions be held to enable open dialogue about resource management regimes within the context of the unique circumstances of each region.

On February 7-8, 2017, a resource co-management workshop was held in Norman Wells. The workshop was designed and hosted by the Sahtu Land and Water Board (SLWB), the Sahtu Land Use Planning Board (SLUPB), the Review Board, and the Government of the Northwest Territories (GNWT) Department of Lands. The workshop goals and format were formulated from participant feedback at the 2016 MVRMA workshop in consideration of current issues and interests in the Sahtu Region. The organizers are grateful to the Tulita District for hosting the workshop, and the K'asho Got'ine District, particularly the Yamoga Land Corporation's Ne'Rahten Development Ltd., for handling the logistics.

Workshop Goals, Process, and Participants

The goals of the workshop were to:

1. Share knowledge, ideas, and experiences; and
2. Provide an opportunity for open dialogue on existing co-management regimes and processes established under the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* (1994).

Expected outcomes were better understanding and implementation of the resource co-management regime within the context of a legislated regional land claim agreement.

The workshop was structured around panel presentations followed by plenary sessions to raise questions and share information (see attached agenda). The panelists spoke from their experiences rather than as a representative of a particular organization or interest. This facilitated open discussion and candid comments and observations, all of which added to the learnings. All the panelists and participants demonstrated their respect for others by keeping their comments focused and making space for others to participate. The organizers wish to express their gratitude to all who participated for their professionalism and generous contributions to the workshop.

The report is written from notes taken during presentations and discussions; therefore the report is not necessarily verbatim unless quoted. The opinions of the participants in discussions are their own and not necessarily those of the organizers.

The workshop was attended in whole or in part by more than 50 individuals (see attached list of attendees). Participants came from all communities in the Sahtu Region as well as Yellowknife, Ottawa, and Calgary. The workshop was facilitated by **Lois Little**, Lutra Associates Ltd., Yellowknife, who also prepared this summary report. **Lucy Jackson**, Fort Good Hope, provided interpretation and **Kenny Shae**, Fort Good Hope, managed the sound.

Opening Comments

Violet Doolittle, Elder of the Tulita District, offered opening prayer.

Chief Frank Andrew of the Tulita Band Council and former Sahtu Region Grand Chief welcomed participants. He encouraged participants to build on each other's strengths and focus on those elements of the resource management processes that are working.



L-R: George Barnaby, Norman Yakeleya, Danny Yakeleya and Brian Crane.

Spirit and Intent of the Sahtu Dene and Métis Comprehensive Land Claim Agreement Negotiations

A panel of former negotiators was assembled to share thoughts and provide context for the modern day resource management regime that flows from the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* (1994). This was the first time that these negotiators had been together in the same forum since the negotiations. The panelists were: **Danny Yakeleya**,

Brian Crane, Norman Yakeleya, and George Barnaby. Each of the panelists shared his thoughts on what the land claim negotiations sought to achieve.

Danny Yakeleya spoke about the move to regional land claims after the break-down of the Denendeh-wide comprehensive Dene-Métis process in 1990. The Gwich'in were the first to pursue a regional claim. Danny recalled his uncertainty as a young leader in light of the enormity of the negotiation task and the importance of the decisions being made. He remembered the Dene and Métis negotiators always asking themselves and each other whether they were “doing the right thing for the people of the Sahtu.”

The preamble to the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* expresses the spirit and intent of the negotiations very well. The Sahtu claim flowed from Treaty 11 and modernized this relationship. The Agreement gave clarity and certainty to land and resources ownership and rights, which is reflected in large part, in the co-management framework that recognizes the important role of Sahtu people in these structures. Danny said that it is noteworthy that the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* and the subsequent legislation were the first in Canada to recognize the Métis as a distinct people. Previously, the *Gwich'in Comprehensive Land Claim Agreement* (1992) recognized the Dene and descendants of the Dene, rather than both the Dene and Métis. More recently, the federal government recognized Métis as distinct Indigenous people through the 2016 Daniels case. Danny is currently president of the Tulita District Land Corporation.



The four negotiators speaking about the spirit and intent of the Sahtu land claim had everyone's attention.

Brian Crane reminded participants that the Calder case (1973) that reviewed the existence of Indigenous title claimed over lands historically occupied by the Nisga'a people in northwestern British Columbia, set the stage for modern day comprehensive land claim processes. The question of Indigenous title was not settled and the case did lead to the federal government's willingness to negotiate land claims. In 1975, the *James Bay and Northern Quebec Agreement* was the first comprehensive land settlement to be completed. The Federal and Quebec

governments, Hydro-Quebec, Grand Council of the Crees (of Quebec) and Northern Quebec Inuit Association were party to that agreement.

The concept of co-management also pre-dates the Gwich'in and Sahtu land claims. It springs from efforts in the 1970s to have a single environment assessment process as a way of engaging Indigenous nations/citizens. In effect, this was an expression of public government support for co-management. Another example is wildlife and fisheries management that Indigenous peoples have long held must be co-managed. Similar examples of co-management are seen in land and water management systems and land use planning processes that evolved in the 1980s. Through pressure from northerners, co-management structures and rights sharing evolved in spite of Ottawa's reluctance to relinquish management or control of lands and resources.

Even though the comprehensive Dene and Métis land claim process failed in 1990, it did provide a framework for moving forward with regional negotiations. The Sahtu adopted this framework but took a distinctly different approach in order to highlight community interests. Further, for the first time in these types of negotiations, the Sahtu opened them to public involvement and scrutiny. The Sahtu negotiations featured six main co-management principles:

1. Equal representation of Indigenous people on boards.
2. Meaningful participation of Indigenous people in the work of boards.
3. Claim institutions/boards exercising their authority and functions closest to the people (rather than at a central level) to honour the desire for community control and involvement.
4. Board coordination, cooperation, and integration.
5. Public boards acting as a form of self-government.
6. Land and water management be comprehensive- that all land and water uses are managed within the same resource management system without duplication.

It is interesting now to consider whether these principles continue to be honoured, particularly with respect to board cooperation and integration which is the focus of this workshop. It is also interesting to ask ourselves how well the Dene and Métis believe these principles are being respected. Brian works in Ottawa with the Gowlings law firm.

George Barnaby recounted the move toward regional land claims and the longstanding desire among the Sahtu people for self-determination and community control of decisions about activities on traditional lands. Land claim negotiations were never intended to dampen these intents or give these rights away. This was the intent of claims negotiations and generally, communities seem to be happy with the outcomes.

The boards established through the Agreement were meant to work for and make decisions with the people. Essentially, the boards protect the environment. They follow processes that respect community decisions and run smoothly as a result. George isn't aware of any complaints so it seems that the boards are working for the people in the Sahtu.

George stated that the previous federal government’s decision to centralize boards (e.g., create a ‘superboard’) by rolling up the land and water boards was a violation of Dene and Métis rights to participate in decisions. These rights have never been surrendered. “We have the right to participate in everything and that is what we are trying to do.” Centralizing authority was not the intent of the co-management system in the Sahtu. Finally, George referred to ownership of traditional lands. He said that in the negotiations people “got scared into the fee-simple discussion without knowing anything about it.” In his opinion, this notion of land ownership was used against the Dene and Métis. He takes heart knowing that “nothing is written in stone” so changes can be made. George currently serves on the Sahtu Land and Water Board and Sahtu Renewable Resources Board.

Norman Yakeleya said that the spirit and intent of the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* came from the Elders. People in the Sahtu were fed up with how traditional lands and peoples’ rights were being treated by outside governments. At the same time, people were eager to stand-up for their rights and protect the land. The negotiations were mainly “built in the Sahtu by the Sahtu” through unity amongst families based on shared experiences and aspirations.

The negotiations were a team effort with the Dene and Métis coming together with the negotiators who could help reflect such Indigenous concepts as ‘land as a sacred trust’ in the Agreement. But sacrifices had to be made. The concept of districts was a way to honour distinct interests within the Sahtu and the shared commitment of people to “our land, our life.” The front page of the land claim document where people’s signatures are shown, illustrates that the Agreement was endorsed by the people. Norman is a former negotiator and Member of the NWT Legislative Assembly.



Four negotiators together again – L-R: Brian Crane, Danny Yakeleya, Norman Yakeleya, and George Barnaby.

Plenary Discussion

Workshop participants had several questions and comments for the panel.

Paul Dixon asked the panel for their advice for the co-management boards. **Danny Yakeleya** said that the boards are doing well, and are attentive to community and regional needs. He cited a park proposal as an example of the boards respecting community perspectives even though the GNWT was not pleased with the outcome. **George Barnaby** added that the boards are not political bodies. They work to protect the peoples' interests and the terms of the Agreement, and seem to be doing this quite well. In terms of advice, **Danny Yakeleya** and **Brian Crane** spoke of the need for timely board appointments and reconsideration of directors' terms, as both factors can be problematic for board operations. Brian Crane added that both the Déljine Got'ine Government and the Tlicho Governments have the authority to make direct appointments. This may be a power that governments in the Sahtu consider taking on in the future.

Raymond Taniton commented that the Elders always counselled leaders to do what's best for the community because all groups of people do not think the same. This community focus shaped the vision for the Agreement. Differences in the region were a reason for pursuing the concept of districts. Today, Elders are advising more communication and agreement among the boards, and the creation of just one institution in the Déljine District. Implementation of the Agreement will continue to be an ongoing and evolving process. **Norman Yakeleya** agreed that there is still work to do but it should always be done within the original intent of the Agreement. "The intent was that we are and will always be the owners of the land." It is important to teach young people about the Agreement so it should become a mandatory part of the school curriculum.

Walter Bayha commented on the absence of the Dene language in the Agreement. "The only Dene word (in the Agreement) is 'Dene'." This illustrates that land claim documents aren't written by the Dene. He noted that there will always be questions and new learnings and directions but people need to work together, talk to each other, and "ask the land" when the intent becomes unclear. Unfortunately this doesn't always happen at the board level. **George Barnaby** agreed that even some of the most important things aren't written down. Still, community control should always be practiced. He worries that community control is being eroded because governments are still pushing fee simple title. **Norman Yakeleya** said that the Agreement is done and people can be proud that the Sahtu achieved the largest land quantum per capita ever recognized in an Indigenous land claim in Canada. But the Agreement represents only half of the work to be done; governance is the other half. The foundation for self-government is in the Agreement but it is up to the people to interpret this intent both in land claim implementation and self-government negotiations.

Cheryl McLean queried whether the negotiators in reflection, would have retained the distinction between Métis and Dene. **Danny Yakeleya** said that the Sahtu claim reflects the original Dene-Métis claim and is a distinction that is still appropriate today.

Chief Frank Andrew stated that the land claim is real and people need to make it work. But people may not see themselves in the Agreement. “The land claim doesn’t talk about who we are.” He said that 25 years on a lot of people still don’t understand what the Agreement means and there are people, the Mountain people in particular, missing from the claim. He contended that his Treaty rights have been diminished through the Agreement specifically with respect to harvesting and in spite of community/district specific decision making. The “legislation takes my rights away, that’s how I see it... why can’t I cut wood without a permit?” **Danny Yakeleya** explained that harvesting for personal use doesn’t require a permit but commercial harvesting does. Lots of decisions were/are made to protect the integrity of a resource but they are made in consultation with the community. Today, the GNWT is restricting caribou harvest for the purpose of conservation. The Sahtu Renewable Resource Board (SRRB) actively monitors what is happening on the land and was instrumental in the GNWT adopting Déline’s approach to caribou management. Danny agreed that harvesting issues create challenges so there is a need to continue to look at the Agreement and find ways to see the people in it, work collaboratively, and make decisions that serve the peoples’ interests. He added that the Mountain people are included in the Agreement.

Mark Cliffe-Phillips commented that the Agreement is a main reference for his work in environmental assessment. One aspect of the co-management process that has confounded the boards is the matter of ‘public concern’. The Agreement does not provide the certainty needed by the boards to understand what ‘public concern’ means within the context of the land claim.

Brian Crane explained that ‘public concern’ is to a large extent, a perception or an emotional issue rather than a tangible concern that can be analysed in the same way as adverse environmental effects. In terms of the Agreement, ‘public concern’ exists as a safety valve or an opportunity for the public to participate in decisions (e.g., through hearings) which is in keeping with the spirit and intent of the land claim.

Darren Campbell suggested that in negotiation processes issues may not be addressed or be missed for whatever reason. He asked whether implementation processes could address any short-falls that are identified at a later time. **Danny Yakeleya** said that these discussions took place early in negotiations. The Government of Canada advised flexibility in wording so that details could be addressed in the implementation. It continues to be everyone’s responsibility to address elements that are missing or not working in the implementation of the Agreement.



The workshop had many inspiring presenters.

Resource Management in the Sahtu Region Prior to the Comprehensive Land Claim

Three panelists described resource management prior to the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*. The panelists were: **Walter Bayha**, **Raymond Taniton**, and **Richard Kochon**.

Walter Bayha said that land and wildlife protection and harvesting rights have always been key issues in the Sahtu. The protection of Treaty 11 harvesting rights are at the heart of the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*. He reminded participants of the seismic lines throughout the Sahtu that were cut with little or no consultation or enforcement. He recalls the late Pete Fraser always advocating for the people to be consulted on the issuance of land use permits.

Land use and wildlife regulations haven't changed significantly over the decades but people, structures, and processes have. It remains a challenge to get information out to the people and into the Sahtu Land and Water Board (SLWB). The Conoco Phillips fracking application was the first big project for the SLWB. That experience offers lessons about the challenges associated with information sharing and clarity about who has jurisdiction for what. For instance, while the National Energy Board (NEB) had jurisdiction for underground oil and gas reserves at the time, they were absent from the discussion on the fracking application. Walter is with the Déljine Got'ine Government.



L-R: Raymond Taniton, Walter Bayha and Richard Kochon.

Raymond Taniton said that the Elders are the main source of knowledge about the land and Indigenous rights. Déḻne never signed a treaty mainly because there were always differences with the Crown, particularly with respect to land and resources. He remembers when half of Great Bear Lake was managed from Inuvik and half from Yellowknife, a regime that didn't involve the people and didn't make sense. The first time that the government spoke with the people about land and resource rights was in 1969. At that time, Indian Affairs wanted the Elders and leadership to accept an Indian reserve. This notion was rejected by the people but discussions about rights and title continued. Subsequently, the government wanted the people to select headmen so that they could deal only with them rather than the whole community. Over the years, so many institutions formed with so much compartmentalization that "everyone is fighting."

The people of Déḻne want one single organization ("one-stop shop") that serves the beneficiaries of the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*. This is the reason that Déḻne has moved forward on self-government. It will also ensure that decisions come from the community not from some other level of government. He mentioned that Déḻne uses the term 'beneficiary' rather than Dene and Métis because it is important to work together as one people. Finally, he stressed the importance of educating young people about historic and modern day agreements and continuing to work together to implement the Agreement and evolve strong self-governments. Raymond is with the Déḻne Got'ine Government.

Richard Kochon served as chief of Colville Lake for 25 years following a custom election where the Elders selected him for that role. Over that time he saw many changes. He believes that the people are better off today than in the past, especially with respect to living conditions.

In the past, Colville was a sub-band of Fort Good Hope; now it is a separate band. When Richard

became chief, governments and oil companies didn't talk to the people about using the land. As a result so much was taken from the people without any benefit to them. This was frustrating because Colville Lake people depend on the land to live; "it is the foundation of our lives." But things have changed. The community has made it clear that they must be consulted; good communication must be maintained; and industry and local people can work together for mutual benefit and respect for "what the Creator has put out for us in order for us all to have a long life."

While there have been improvements, Colville Lake people don't want to have to buy a license to shoot a caribou or give away their harvesting or land rights. The people want to keep the Dene language strong and honour Dene laws and traditions. "When we don't live this way, we don't have any nourishment in our lives." It is important that improvements be made to communications so that people work together to implement the land claim agreement in a way that benefits the 'First People'. In no case should anyone ever "jump over the First People." Richard is with the Colville Lake Renewable Resource Council.

Plenary Discussion

Walter Bayha commented that it has always been challenging to reflect Dene history and knowledge of the land and water in regulatory systems, and to interpret Dene concepts in legal documents and plans. For example on the matter of caribou conservation planning, Walter's grandfather never said that the caribou were disappearing but rather were unavailable. This is a different approach to conservation. Dene concepts and knowledge should be reflected in conservation and land management plans. Further, laws need to be written in the Dene languages so people are always aware of their identity and relationship to the land. "Inherently we know this but often we overlook the obvious. For example, Dene is not included in the Déljine Got'ine Government as the official language." **Chief Frank Andrew** agreed that Dene laws are not reflected in the Agreement or in its implementation. A disconnect to these traditions may be contributing to a decline in wildlife. **Raymond Taniton** said that traditional knowledge must be documented and reflected in the implementation of modern agreements. Modern agreements are tools that are improved when people work together and respect knowledge and traditions.

Designated Sahtu Organization's Perspective on Land Claim Implementation

Resource management processes and decision making, and organizational challenges and strengths related to the implementation of the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* were discussed by the first panel of the afternoon on Day 1. Panel members were: **Danny Yakeleya**, Tulita District Land Corporation; **Raymond Taniton** and **Danny Gaudet**, Déljine Got'ine Government; and **Edwin Erutse**, K'asho Got'ine District Land Corporation.



L-R: Edwin Erutse, Danny Yakeleya, Raymond Taniton and Danny Gaudet.

Most applications received by designated Sahtu organizations seek access to the land. Processes for dealing with applications vary somewhat among the Districts depending on whether the project concerns all three districts or is district specific. When a district-specific application is received in the Tulita District, the Renewable Resource Council (RRC), the land corporations, and the district corporation are advised of the project proposal. In the K'asho Got'ine District, notice of the application is distributed to a variety of stakeholders. Following the distribution of the notice, a district meeting involving the governments of Colville Lake, Fort Good Hope and the three land corporations may be held to review the application and/or create an opportunity for the leadership to make a decision (e.g., through a vote). In the Déljine District, the land corporation and the First Nation government have been replaced by the Déljine Got'ine Government. Its lands department oversees the administration of applications and the review process. A beneficiary board and the RRC have input into any decisions.

Resource management processes and decision making within the context of the Agreement is complex. It is important to know that 27 community/district organizations were created to implement the Agreement in addition to the Sahtu Secretariat Inc. (SSI). One might question as many have: "what kind of octopus did we create?" SSI has 184 obligations under the Agreement of which 109 have been moved to community/district organizations while 75 remain with SSI. This complex set of institutions and obligations can be difficult for developers and others to navigate. For instance, the Agreement may be clear about activities allowed but developers may not understand that they must work with the community in order to gain access to the land. Further, companies have the right of access to some settlement lands but an access agreement must be negotiated in all cases. Many beneficiaries don't understand this. If a district and a company are unable to agree on the terms of access, the matter can be sent to an arbitration panel. It is expected that a new internet protocol will clarify SSI and district-level authorities and responsibilities.

The network of land claim organizations also can create conflicting duties at the district level particularly with respect to the division of labor when reviewing applications. The new NWT Surface Rights Board will add to these dynamics but it is unclear at this point how or if, it will impact decision making.

Overall, there is a need to strengthen district institutions including governance bodies. For instance, provision 3.1.14 of the Agreement speaks to successors of government. This opens up opportunities for district law-making authority for lands and water. While there is the view that the Agreement might not have gone far enough or built in ways to update various provisions, knowledge of the land claim and full appreciation of the needs and issues in the districts can strengthen implementation and land claim institutions. Integrated approaches, collaboration, and new forms of governance are also ways to realize the spirit and intent of the Agreement.

The Agreement is a powerful tool and community involvement is a basic tenet in its implementation. But capacity is a significant challenge to realizing the potential of the Agreement. Unlike those seeking access to lands, communities have limited budgets and technical expertise to assess applications and participate in decision-making processes including engaging community members. Capacity issues are heightened by the reality that so many of “our young bright people are not in the community.” Further, there is the issue of trust. “We need to get good people that we can trust to get the job done for us.” Capacity issues also extend beyond human resources to include the high cost of operations as well as limited transportation, energy and service infrastructure. Issues impacting community/district organizations are exacerbated by public governments that don’t share the peoples’ vision and don’t invest in the region beyond fulfilling/maintaining basic needs (e.g., airport maintenance for current needs, not future needs/wants).

Plenary Discussion

Paul Dixon commented on the often mentioned silos within public government and asked for advice on ways to foster cooperation within Sahtu organizations. **Danny Gaudet** explained that the Déljine Got’ine Government is discussing how departments can work together to achieve its vision and goals. At the core of this work is a shared vision. But after being silo’d for decades, it is challenging to upend the bureaucracy and work together in a new way. **Danny Yakeleya** concurred. He spoke of the tendencies “to be protective of own little area of jurisdiction” and the walls that are erected to protect these kingdoms. It takes time to recognize common goals and develop a shared vision but it is work that must be done. **Edwin Erutse** agreed that people need to let go of their kingdoms. A shared vision is essential to cooperation and integration but it takes planning and resources. The Master Land Agreement is an example of how the Sahtu districts can and do cooperate to ensure benefits for all beneficiaries and communities. That is, the Districts manage their lands but share the profits so “everybody benefits from what happens on our lands.” **Raymond Taniton** and **Chief Frank Andrew** both recommended ongoing education including more community workshops as ways to promote greater cooperation and break out of the silos or “old thinking.”

Stephen Deschene inquired about learnings that Déljine could share with other communities and advice for public governments to help in the transition to self-government. **Danny Gaudet** spoke about the 18 years of hard work to convince other orders of governments that the community/

district could be self-governing. He said that other orders of government shouldn't be erecting barriers but rather supporting community/district aspirations and initiatives. This requires a change in attitude and policy to recognize and support self-government. "Issues can be more effectively resolved at the community level; people will fix their own issues themselves." In addition at the local level, members need to come together and work for the benefit of the whole community.

Resource Management in a Post-Land Claim Environment

Three people involved in implementation activities shared their experiences and insights of working in a post-claim environment. The panelists were: **Heather Bourassa**, **Dakota Erutse**, and **Jennie Vandermeer**. Panelist experiences ranged from Yamoga Land Corporation, Sahtu Land Use Planning Board (SLUPB) and Environment and Natural Resources (ENR), GNWT.



L-R: Jennie Vandemeer, Dakota Erutse, and Heather Bourassa.

The panelists agreed that more discussion within the region and communities is needed because too many beneficiaries know very little about the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*. For example, the intent and spirit are not in the "pink book" but by having discussions in the communities and workshops like this, understanding can be promoted. Listening to and engaging with community members through work on protected areas, on boards, or discerning potential impacts of development, illuminates the importance of education and understanding of the Agreement. Without a good understanding, it is difficult for beneficiaries to have meaningful input into decisions or respond to complicated, technical documents. Similarly, there is limited understanding of how authorities have changed since the signing of the Canada/NWT devolution agreement, particularly with respect to the greater role of the GNWT in regulatory matters related to traditional, settlement, and Crown lands.

Heavy workloads and conflicting demands often mean that staff and leaders are reactive rather than proactive. As such, it can be challenging to make best use of the tools available (e.g., the land use plan). It can also be demanding and time consuming to bridge gaps between experts and local people to ensure that Traditional Knowledge is reflected in decision making processes. Further, it is not easy to understand the different roles and priorities of the land corporations and link them to the Agreement to know whether the spirit and intent are being fulfilled. Nevertheless, it seems that the spirit and intent of the Agreement are being honoured in the implementation. The spirit of the land claim is very much about relationships and how people work together – “it shouldn’t be a power struggle.” Silos do exist, but people in the Sahtu need to keep reminding themselves about the purpose of the Agreement and that progress is being made on implementing it.

Going forward, the panelists agreed that Sahtu organizations and beneficiaries need to be champions of the Agreement; assert their authority; and clearly establish their place in land and resource management and regulatory processes. Beneficiaries should be doing research and leading processes rather than outsiders continuing to take on these roles.



Presenters at the workshop provided lots of food for thought.

Plenary Discussion

Lucy Jackson identified poor communications and information sharing and silo’d thinking as contributing factors to poverty and other social issues. She worries about the future of the land and the ability of future generations to assert their rights. In **George Barnaby**’s opinion, open discussion of both positive and negative issues is necessary to attain consensus and move forward together.

Mark Cliffe-Phillips queried the panel about their views of younger peoples' knowledge about the various Sahtu boards. He also asked for advice on ways to promote understanding of the boards; work toward the goal of a coordinated and integrated system; and address the capacity deficit. **Dakota Erutse** said that the boards and co-management processes are difficult concepts to communicate. **Heather Bourassa** admitted that there is not a lot of understanding of the differences among the boards. Further, the complexity of the regulatory system is not necessarily interesting to young people. Mentorships and involving youth in meetings are ways to begin to promote the boards' work and improve understanding and engagement. **Jennie Vandermeer** agreed with the opportunities that mentorship offers. She said that there's energy among the youth but guidance from Elders and the people at this workshop are needed. For people not working with the boards, little is known about their work nor may it be of interest to some. There is clearly a need to educate beneficiaries about why the boards exist and why their work is relevant. Education about the boards and their work will improve peoples' ability to meaningfully contribute and participate. Dakota added that it is important to be aware of who is leading education and advocacy work as people need to trust both the message and the messenger. Heather noted that it is both a challenge and an opportunity for small communities where a few people wear many hats, to broaden processes and engagement. **Rhea McDonald** added that this discussion underscores the need to bring the land claim into the formal education system.

Day 1 Wrap-Up

Individuals, who did not have an opportunity to speak over the course of the day, shared main messages and learnings from the panels and plenary discussions. The main themes were:

- *Communication* – more is needed but the message and the medium must recognize and respond appropriately to diverse audiences.
- *Community-based decisions* – this was a distinguishing feature of the Agreement and it remains evident today.
- *Spirit and intent of the Agreement* – more than two decades later, it is admirable and encouraging that the spirit and intent of negotiations continue to guide actions.
- *Collaboration* – we are stronger and everyone benefits when we work together.
- *Youth* - youth must have opportunities to learn more about the Agreement and be involved in resource management processes.
- *Education* – the Agreement should always be mentioned in order to provide the proper context for discussions. Efforts to spread knowledge about the Agreement should be encouraged through mentorships, plain language materials and speaking points, a possible land claim camp, and inclusion of the Agreement in the school curriculum. The latter requires lobbying of the Sahtu education authority.
- *Traditional Knowledge* – efforts must be made to pass knowledge on to the next generation of leaders so they understand the thinking and context that informed the Agreement so they too can honour the spirit and intent of the land claim in its implementation.

- *Capacity* – reinstating previous land claim coordinator positions could help to build capacity and improve coordination and integration. While boards have excellent representation and always work by consensus, the beneficiaries’ representatives are lacking in-house technical expertise/advisors.
- *Monitoring* – monitoring systems need to be strengthened.
- *Legislative gaps* –they need to be identified and addressed.
- *Implementation* – the Agreement is a living document and should be treated as such. It’s a tool to be proud of.

Evening Open House

Several organizations collaborated to host an open house at the Legion Hall. The open house featured displays and resource materials and provided an opportunity for informal discussions. Participating agencies were: the Review Board, SLWB, and GNWT Department of Lands, Office of the Regulator of Oil and Gas Operations (OROGO), GNWT Environment and Natural Resources (ENR), and the Sahtu Land Use Planning Board (SLUPB).

Day 2

The second day of the workshop opened with a prayer led by **Chief Frank Andrew** in memory of the recent passing of a Tulita Elder.

Overview of Resource Co-Management System

Two presenters - **Mark Cliffe-Phillips**, Review Board and **James Fulford**, OROGO - shared with participants Power Point presentations to explain the resource co-management system in the Mackenzie Valley in a post-devolution context. These presentations are attached as appendices.

Mark Cliffe-Phillips explained that land claim legislation is the foundation for regulatory and resource management systems in the Mackenzie Valley. A different co-management system exists in the Inuvialuit Settlement Region. Regulatory and resource co-management systems in the NWT are unique in Canada; they were developed in the north for the north. These systems are based on the principles of integration, coordination, and co-management. The expression of these principles is continuing to evolve and to be better understood by more people.

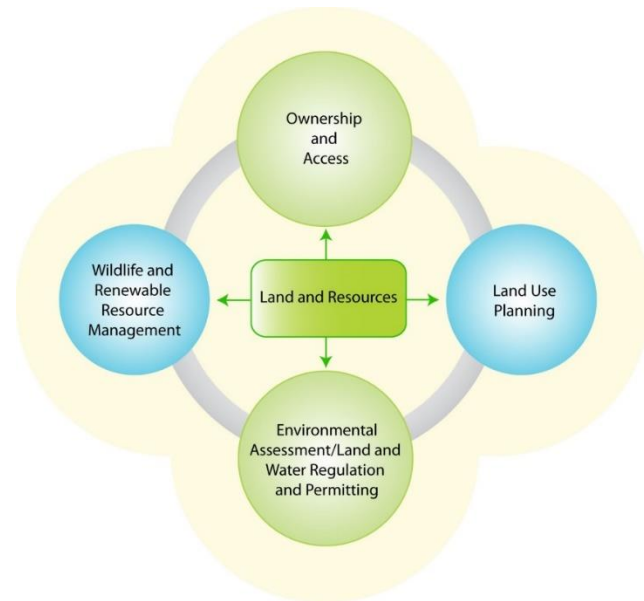
As shown in the diagram, four types of boards are involved in land and resource management. Each board contributes to the functioning of the co-management system. Generally speaking, all boards function to prevent significant adverse impacts to social, economic, and Indigenous rights and the environment. While the resource co-management system in the Sahtu is functioning well, parts of it could be strengthened. When one part of the system isn't functioning well, other elements are affected. For example, if there is uncertainty of land ownership or planned land use and the issue cannot be resolved, the matter may end up being dealt with through the regulatory or permitting process or in an environmental assessment. Currently only 3% of projects completing preliminary screenings are referred to an environmental assessment (EA). Sahtu Secretariat Incorporated (SSI) and any community government directly affected by a project can refer a project to EA.



Mark Cliffe-Phillips presenting at the workshop.

Plenary Discussion

Ruby McDonald asked for clarification about the definition of ‘community’ and the power to refer a project to environmental assessment. **Mark Cliffe-Phillips** explained that SSI, local community governments, and land corporations have the authority to refer a project. Local Renewable Resources Councils (RRCs) do not have this power. **Brian Crane** added that the language in the Agreement and the associated legislation is problematic and may be the source of confusion. Amendments will be required to the legislation to accommodate the Délı̄ne Got’ı̄ne Government. This will be the time to clarify the power of local governments/communities to ensure that the intent of community control in decision-making is respected. **George Barnaby** added that both Dene and non-Dene views of ‘community’ should be considered when



Overview of Land and Resource Management in the NWT from Mark Cliffe-Phillip’s presentation

changes are being made to the legislation. For instance, there could be impacts on traditional lands, to people who use those lands, and on Indigenous governments that are different than what a municipal government might identify as impacts. He added that because there have been few EAs, there hasn't been an opportunity to test or confirm the appropriateness of current definitions.

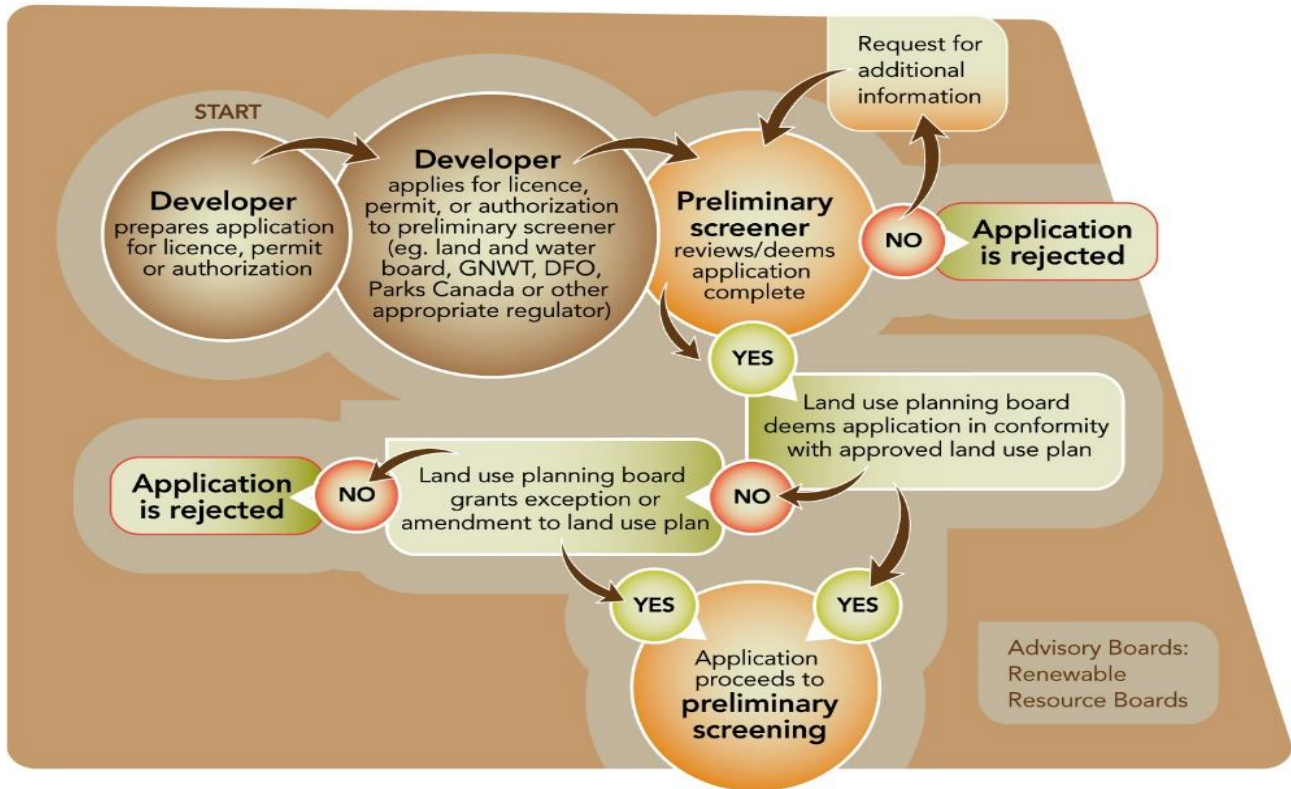
Walter Bayha commented that when referral decisions are made, consideration should be given to the contents of impact benefit and access agreements and the results of environmental audits. He added that perhaps it is time to rethink the role of RRCs and the Sahtu Renewable Resources Board (SRRB) in the referral process, and “bring them into the fold.” Walter also identified the lack of cumulative impacts assessment as a clear weakness of the system. That is, currently only project-specific impacts are considered rather than the cumulative effects of various activities in a particular area or resource. **Mark Cliffe-Phillips** said that a referral for preliminary screening is “a low bar” in terms of a potential test for impacts. Part of the issue here is that regulators are working with antiquated regulations (e.g., land use and water regulations) that predate the MVRMA. In other words, environmental assessment (EA) is a modern, comprehensive, and potentially more robust process but the regulations aren't there to support it. However under Part 5 of the MVRMA if a project is referred to EA, regulators must consider socio-economic issues and cumulative impacts.

Keith Hickling asked for an explanation of the ‘might test’. **Mark Cliffe-Phillips** explained that it refers to public concerns that suggest the possibility of an impact(s). Assessing public concern relies upon the lens applied by the board members, who have been nominated by each of the Aboriginal, territorial and federal governments to make the best decisions possible. Public concern is much more difficult and subjective to assess compared to a more tangible element such as water where a pathways analysis can be undertaken to determine if environmental impacts will occur and if mitigations can be put in place.

George Barnaby reminded participants that access to Indigenous lands requires the approval of land corporations; access is a decision made by the beneficiaries and no one else. Under no circumstances should parties outside the community be granting access to lands. **Mark Cliffe-Phillips** commented that this is an issue raised in areas without legislated land claims. There is a relatively new NWT Surface Rights Board (SRB) that can deal with land ownerships and surface rights disputes. **Lorraine Seale** added that the SRB was created recently even though the requirement for such a body was built into the land claim. If there is interest, discussing the SRB and how it fits into the regulatory regime could be a subject of a future workshop.

James Fulford, OROGO, explained that the agency regulates oil and gas activities on both Crown and settlement lands to ensure human safety and protection of the environment. OROGO is a regulatory authority under Part 5 of the MVRMA. The agency participates in regulatory and EA processes under the MVRMA and has a memorandum of understanding with the MVLWB. OROGO assumed the NEB's jurisdiction for onshore areas as part of the

Application for Licence/Permit/Authorization



Excerpt from Mark Cliffe- Phillips Power Point presentation also attached to this report.

Canada/NWT devolution agreement and is part of the integrated resource management system in the Mackenzie Valley. The agency is governed by the *Oil and Gas Operations Act* (OGOA) and the *Petroleum Resources Act* (PRA). The legislation mirrors the federal *Canada Oil and Gas Operations Act* (COGOA) and *Canada Petroleum Resources Act* (CPRA) that govern the NEB as was required by the devolution agreement. However, parts of the legislation are antiquated. One example is the ‘privilege’ provision related to making information public including inspection reports. This has led OROGO to create a waiver for proponents to relinquish this privilege. OROGO is also working to improve transparency and has established a public registry.

OROGO was initially the responsibility of the Minister of Industry Tourism and Investment (ITI). It is now housed within the GNWT Department of Justice to avoid any perceptions of conflict of interest. OROGO does not promote oil and gas development; this is a responsibility of ITI.

Plenary Discussion

In response to **Keith Hickling**’s question about OROGO’s inspection function, **James Fulford** confirmed that OROGO has an inspection function, unlike the land and water boards. **Paul Dixon** added that since the Canada/NWT devolution agreement the GNWT Departments of

Lands and Environment and Natural Resources now do inspections previously conducted by the federal government. Land and water boards receive monitoring data from these agencies so that compliance checks related to the terms and conditions of land use permits and water licences can be completed.

Danny Yakeleya noted that compared to the level of interaction with a developer at the beginning and during a project “community members don’t see what happens after a project has come and gone or what the regulator is responsible for.” **Mark Cliffe-Phillips** explained that the Review Board has an advisory rather than a follow up role. However, the Review Board has included follow-up/monitoring measures in approvals of recent projects. In the future, development certificates will include provisions allowing regulators to enforce monitoring. **Ken Hansen** said that industry often invests in community monitoring activities that include reporting back to the community but it is unclear whether this is working and provides value for money.

Darren Campbell questioned whether the proprietary nature of information on fracking chemicals is a possible weakness in the regulatory system within the context of different responsibilities for the surface and sub-surface environments. **James Fulford** said that the disclosure of information on fracking chemical is not obligatory but there is the expectation that companies will provide it. Further, the GNWT is working on legislation that may address this issue. **Brian Chambers** added that during fracking activities in the Sahtu, the NEB asked the developers to make information on fracking chemical used available to the public even though there was no requirement to do so. The NEB also worked with the SLWB to regulate those activities. **Anne-Marie Hesse** noted that the NEB retains responsibility for the Norman Wells proven area. As such, the *Canada Oil and Gas Operations Act* (COGOA) and the *Energy Safety and Security Act* (ESSA) transparency requirements are applied which includes voluntary waivers related to information disclosure. In addition, the NEB works with the SLWB to ensure that information is made available on the public registry.

Paul Dixon said that it is important to acknowledge the authority and certainty that comes with development in an area such as the Sahtu that has a settled claim area, evolving self-government processes, clarity of land ownership and access, and co-management boards. This framework benefits everyone involved. Elected officials in the Sahtu make land use decisions and appointed board members make preliminary screening and permitting decisions. The system is integrated and Sahtu beneficiaries have a prominent role in decision making processes. **George Barnaby** agreed. He said that companies do a lot of community engagement work in order that the land corporations can make good decisions about granting access. The boards are not political; they do their work after access is granted. However, the boards do need to work with others and consider legislation/policies to manage the environment. There is also a political aspect through the SSI and others that affects the EA process. In the case of fracking, there was a lot of public concern around the test wells and the potential for impacts. In George’s opinion “fracking is bigger than the pipeline” in terms of potential impacts, so it should be treated with a high level of community consultation and assessment.

Frank Pope inquired about the overlap of NEB and OROGO responsibilities and opportunities for working together. **James Fulford** explained that where the NEB is working, the OROGO is not. There is no overlap unless there is transboundary development. However, the SLWB will always be involved in any resource development in the Sahtu. **Mark Cliffe-Phillips** added that the MVRMA provides for an integrated process. The Review Board produces guidelines for preliminary screening processes that are completed by the SLWB, and there is coordination between the land and water boards and the Review Board during a project review.

Keith Hickling asked about the authority to issue a significant discovery licence and regulate activities above and below surface. **James Fulford** said that the OROGO issues a declaration once a certain threshold has been reached; GNWT ITI's Petroleum Resources Division issues the license. The OROGO issues authorizations for sub-surface operations while the SLWB issues land use permits and water licences.

Engagement Processes

Three panelists spoke about engagement in decision making processes: **Danny Yakeleya**, Tulita District Land Corporation; **Walter Bayha**, Déljine Gotine Government; and **Edwin Erutse**, K'asho Got'ine District Land Corporation.

Danny Yakeleya explained that changes in political leadership at the community level can alter engagement processes due to different perceptions about roles and responsibilities, and/or new priorities. Local elections may require developers to spend time re-establishing relationships in the community. During the industry-community engagement process, there is no involvement with the co-management boards. At the time of an application to the SLWB, the proponent submits documentation demonstrating the extent and outcome of its community engagement processes.

There have been significant changes since the days when band councils had short timeframes to comment on industry applications and very little opportunity to intervene beyond submitting a letter. Today, communities engage in face-to-face meetings and negotiations with industry proponents. It can take as long as two years for land corporations and industry to negotiate impact benefits and access agreements. During these negotiations, many community concerns are addressed which is in part, the intent of these negotiations. However, there are times when public concerns can't be addressed prior to the regulatory process kicking in. This was the case when fracking proposals were put forward in the Tulita District. There was heated debate at the community level which resulted in letters being written to the SLWB. This was an example of early engagement in the co-management process.

Walter Bayha said that processes in the Déljine District are relatively simple and straightforward. "We don't talk about the 'District' but focus on the community and benefits to the people." Benefits to the community tend to drive participation and engagement but

ultimately, the land corporation decides if industry will gain access to the land and resources. The land corporation engages others in making this decision (e.g., RRC, SLUPB) but these processes are independent of the co-management boards. In cases where all districts are involved, SSI makes the decision based on consensus.

Co-management boards tend to make decisions based on the application rather than “going outside for additional information.” There is significant information available to inform decisions but Traditional Knowledge may not always be accurately reflected, considered, and/or even documented given the limited resources available to RRCs. Still, the EA process does a good job. Overall, people “don’t make decisions, the process does.”

Edwin Erutse explained that engagement and decision making processes are relative to the size and scale of a project and community concerns about the potential for impacts. In the K’asho Got’ine District, protocols for decision-making are a way for processes to remain stable during times of local leadership change. Trust in leadership and decision making processes are fundamental as “some people sign on to a project because they trust the leadership.” Leadership is key as leaders have to lead and sell a project if they are to get their community on board. At the same time, community members need to have access to solid information. For example, during the Mackenzie Gas Project, an oil and gas office was set up in the community which helped to improve the flow of information.

In the K’asho Got’ine District, community members always seem to have concerns about the three leaders of the land corporations making the final decision on land access. Another concern that usually arises is ensuring that non-beneficiaries are included in engagement and decision making processes. Still, at the end of the day it is the five organizations within the District– three land corporations and two First Nation Councils – that need to be satisfied with any decisions. To the extent possible, the District also draws on the expertise that exists in the co-management boards to help inform decisions.

Liability and timely access to complete information (e.g., development plans) are important when negotiating with developers. In the case of the private-public fibre optics project with the GNWT and Ledcor, it was problematic that the community was not privy to the GNWT’s agreements with the developer. Specifically, there was concern that liability for clean-up might get transferred to the community. To address some of the liability issues and concerns about impacts, the RRC was retained to monitor the project at the developer’s expense. This situation underscores the need to address the lack of regulation around these types of projects (e.g., Public-Private Partnerships) and recognize that there is always room to improve information sharing among the parties involved in a development.

Plenary Discussion

Paul Dixon commented on the importance of resolving community concerns early in the engagement process and for leadership to have the tools to make decisions. He asked how and

what monitoring information is communicated and who monitors are accountable to. **Danny Yakeleya** said it isn't clear whether the monitor works for the company or the community or both. For example, when RRCs are paid by developers to conduct monitoring, they likely report to both parties. Lack of clarity on monitoring roles and responsibilities underscores the need for a formal discussion or process on this matter. **Walter Bayha** said that it is important for all relevant information to be available upfront rather than after the fact. In terms of monitoring, monitors must bring information to the community and talk to the Elders. However, monitors need the support of leaders, Traditional Knowledge researchers, and language experts as it is challenging to put Traditional Knowledge on paper and communicate it within a non-Dene context.

Norman Yakeleya suggested that there's an opportunity to develop and entrench a Sahtu-specific monitoring and enforcement process within the regulatory system (e.g., Sahtu land use monitors). As an example, he referred to the tribal councils in North Dakota that have tribal officers monitoring fracking operations. Well-trained local monitors and an enforcement process would be invaluable to all parties and "would help us solidify our land claim."

Stephen Deschene agreed that environmental monitoring is a gap in the system. For example, the GNWT Department of Lands has regulatory authority under the MVRMA but communications among all the parties – community, industry and government – is poor. As such, the system doesn't work effectively. There are opportunities for the Department of Lands to work with RRCs to train environmental monitors and for environmental monitors to accompany Department of Lands on inspections. These relationships could enhance monitoring efforts and improve everyone's information and understanding. It is also important to remember that environmental monitors require proper tools so they can gather and report relevant information not only to the regulators but also the company and community. **Jennie Vandermeer** added that nationally, internationally, and in the NWT, guardianship programs are being developed to build community capacity to monitor the land and environment. The SRRB is discussing this as well. GNWT Environment and Natural Resources has funding available for this purpose.

Richard Kochon said that when people work together to protect the land everyone benefits. Any development on the land must benefit everyone. Decisions about activities on traditional lands are not just a leader's responsibility but are shared with community members. Everyone has a responsibility to help leadership make decisions. He added that "this workshop was very good for sharing information" and he expressed hope for more of these workshops in the future.

Raymond Taniton agreed. He suggested that after this workshop the Sahtu leadership should have a follow-up session to plan ways to pass on information to community members and keep the momentum going. "We should develop a blueprint of where we want to go and who will pay for it." **Chief Frank Andrew** concurred. While understanding of the Agreement is improving and districts are making their own decisions, the people aren't necessarily aware of the elements of the land claim or resource management processes. "We need to do more to educate our

community on our land claim. We used to argue a lot because of misunderstandings about the land claim (but) as we learn more we argue less.”

Brian Crane commented on the complexity of board authorities and decision-making. Déljine has endeavoured to simplify and streamline these processes by making the Déljine Got’ine Government a ‘one-stop shop’ for developers, the GNWT, and the community. He noted that the monitoring discussion could be moved forward to evolve a unique northern solution (e.g., professionalization of monitoring services within the communities) to gaps in the integrated resource co-management system. However even if funding is available to train and certify monitors, governments through public policy need to support and promote professional community-based monitoring to industry as a necessary part of a development project going forward. Communities could include professional community-based monitoring as a component of access and impact benefits agreements and assurance could be provided to the community that these “independent watchdogs” would bring information back to them. Lessons could be learned from precedents in other jurisdictions and industries (e.g., food inspectors paid by the food industry to act on the public interest). However if this is to move forward, there needs to be cooperation among all parties - communities, governments, industry, and regulatory boards.

Resource Co-Management System: Report Card

Lorraine Seale, GNWT Department of Lands, explained that the NWT Cumulative Impact Monitoring Program (NWT CIMP) and an environmental audit every five-years are requirements under the *Sahtu Dene and Métis Comprehensive Land Claim Agreement* and the MVRMA. The environmental audit is conducted by an independent auditor and is similar to a report card on the MVRMA system. The most recent environmental audit was completed in 2015. It found that the regulatory system is generally improving and functioning as intended to protect the environment. Some highlights from the audit are shown below.

HIGHLIGHTS FROM THE NWT ENVIRONMENTAL AUDIT, 2015

Improvements include:

- Completion of Sahtu Land Use Plan (SLUP).
- Implementation of the land and water boards’ Engagement and Consultation Policy.
- More proactive GNWT involvement in the Mackenzie Valley environmental regulatory system since devolution as evidenced in:
 - o *Wildlife Act* closes gaps in wildlife management.
 - o Acknowledged responsibility for the management of air quality.
 - o Tackling significant challenges in the management of securities.
 - o Supporting and working towards solutions for land use plans in unsettled areas.

Continued challenges include:

- Clarity on Crown consultations.
- Increasing funding for Indigenous governments/organizations and others to participate in the system.
- Improving integration of socio-economics (especially community wellness) into decision-making.

Both improvements and challenges:

- Focused efforts by many participants in the regulatory process to incorporate traditional knowledge have occurred but there is still room for improvement.
- NWT Cumulative Impact Monitoring Program has focused its attention on the priorities of caribou, water, and fish but more information is needed.

Mark Cliffe-Phillips moderated a five-member panel intended to produce an informal report card of the regulatory system in the Sahtu. Members of the panel were: **Stephen Deschene**, **Keith Hickling**, **Rocky Norwegian**, **Cheryl McLean**, and **Ken Hansen**. The panel members offered several observations based on their past and/or current experiences working with community-based organizations, government, or industry. In terms of general observations, **Stephen Deschene** commented that regulators are often perceived as industry or working with/for industry. This erroneous perception comes from lack of understanding about how the system works. “The GNWT is a regulator and is not in bed with industry.” He and his colleagues are professionals who work with evidence not with emotion. It is important that everyone take their responsibilities seriously and work together. But work is hampered by legislation that has not kept pace with regulatory processes and inadequate resources. As such, it is easy for ‘bottlenecks’ in the system to occur and for government regulators to be challenged to meaningfully provide input into industrial applications. If he could make one change in the system, he would want at least one more tool for regulators to use to ensure compliance. He suggested a monetary penalty system whereby inspectors could issue fines.



L-R: Keith Hickling, Stephen Deschene, Rocky Norwegian, Cheryl McLean (behind Rocky), Ken Hansen and Lorraine Seale.

Keith Hickling spoke about the helpfulness of past land claim coordinator positions. It is unfortunate that these positions no longer exist as they played a key role in facilitating communications, understanding, and involvement. While he appreciates community engagement processes, the regulatory regime could be strengthened with more robust and integrated monitoring systems particularly at the community level, and more inclusion of historic data (e.g., information from the past two or three decades).

Rocky Norwegian said that he wanted to dispel the opinion in the communities that industrial activity is “all bad” when in fact, it offers a variety of local benefits and opportunities. “We need development.” He spoke about the growing incidence of Elder abuse, poverty, and hopelessness in times of no development. Many people are unaware of the difference between the exploration and development phases of a project. He encouraged decision makers not to “kill it (a project) before it gets off the ground...You need to let them go explore and find a good deposit before anyone can start to see benefits.” Rocky said that the Sahtu is renowned by neighbours to the south (e.g., Fort Nelson) and by academics as a well-established region with the proper

mechanisms in place (i.e., a land claim, land use plan, and co-management boards) to ensure that development is done properly. Nevertheless, tools can always be improved whether it is impact benefits and access agreements or regulatory processes. He would like to see more educated local professionals, more reasons to gather and apply Traditional Knowledge, more robust monitoring systems, and more partnerships with government. He emphasized that proper consultation and community engagement are essential as many people aren't well-informed about regulatory or decision making processes or industrial activities.

In the past, **Cheryl McLean** worked as a negotiator of impact benefit agreements for Husky Oil. Community engagement is important but it isn't easy. It's easy to follow the regulations and legislation but without developing personal relationships and respect for the authority within the communities, engagement processes will encounter barriers. In her work, community guidance was invaluable in terms of pointing her in the right direction of who to talk to and how to navigate regulatory structures. In her view, industry worked well with people in the Tulita District to move projects forward and ensure the communities accrued the socio-economic benefits set out in the agreements.

Ken Hansen, previously with Husky and Shell, explained that with good community relationships, industry can do a lot of work in a relatively short timeframe for the mutual benefit of the local people and the company. A 3-D seismic project was a case in point. There was a pre-existing relationship with the community so the project was not onerous for anyone. Ken is of the opinion that some companies may simply not be prepared to do the work with the community and as a result, abandon projects. It is important for companies to understand the community context when engaging on a specific project. The system works if there is community buy-in, and the community and leadership all support development and/or a project. There was support, political will, and a common vision in the Tulita District which made his work successful. Nevertheless, the system is fragile. When there is dissention in the community, the system can shut down. While he appreciates that the land claim and co-management system have created real decision-making power at the community level including controlling the pace and nature of decisions, there are areas that are problematic. The 'might test' or the potential for public concern is one area that has caused a great deal of grief for industry, especially in regions where recognition of rights and title is not legislated. At the present time, the 'might test' increases the vulnerability of the system (e.g., that a project will be sent to EA) and of industrial projects (e.g., exploration projects live and die by their ability to keep the momentum going in order to attract investment). He suggested that the threshold for public concern be rethought.

Preliminary Screening



Excerpt from Mark Cliffe-Phillips Power Point presentation

Plenary Discussion

The plenary discussion following the panel’s report card generally focused on improvements that could be made to the Sahtu resource co-management system. **George Barnaby** said that the system is set up to protect the environment and work for the people rather than for the structures themselves (e.g., boards and land corporations). He said that “sometimes we’re doing a better job at it than at others.” **Keith Hickling** reminded participants that often legislation and regulations are inadequate to support cooperation or integration. A ‘gentleman’s agreement’ with respect to a special fish harvesting area in Délı̄ne is a case in point, and an example of the need to find common ground and solutions amongst ourselves when appropriate legislation doesn’t exist.

Jennie Vandermeer said she is proud that Dene and Métis land and resource rights are recognized but somewhat shocked that the Sahtu co-management system is unique in Canada. While there are flaws, people should take pride in what has been accomplished and continue to work hard to ensure that communities always play a central role in the resource co-management system. **Mark Cliffe-Phillips** added that decisions are improved with community engagement and the whole regulatory system works better as a result.

Raymond Taniton said that Délı̄ne has concerns about liability when people use settlement lands without having negotiated access. Within the context of its law-making authority, the Délı̄ne Got’ine Government will need to develop and enforce policies and laws for these situations. **Darren Campbell** commented that arbitration processes exist to address specific land rights concerns. The NWT Surface Rights Board will enhance these processes in cases where the co-management system doesn’t have a mechanism to resolve these concerns.

Ken Hanson commented that the MVRMA is project rather than resource focused. Still, efforts to expand knowledge about the region’s resources should be encouraged. While exploration is expensive, it does provide valuable information and is a powerful asset for land owners. He suggested that land owners in the Sahtu do more to promote exploration so that they can benefit from the knowledge as well as job and business opportunities.

Process Improvements

Paul Dixon and **Mark Cliffe-Phillips** provided a brief overview of the regulatory process in the Sahtu then invited questions and suggestions for improvements.

Cheryl McLean asked about the timeframe and costs of environmental assessment. **Mark Cliffe-Phillips** explained that legislated timelines now exist for environmental assessment processes – nine months for a process without a public hearing and eighteen months with public hearing although in practice, the process tends to be less than sixteen months. There are some variations as issues are scoped on a project by project basis. Costs are shared by everyone who participates in an environmental assessment. Lack of resources to meaningfully participate is a significant issue, especially for communities and those boards that have fewer resources. Amendments to the MVRMA were introduced in 2014 to allow for cost recovery from the developer.

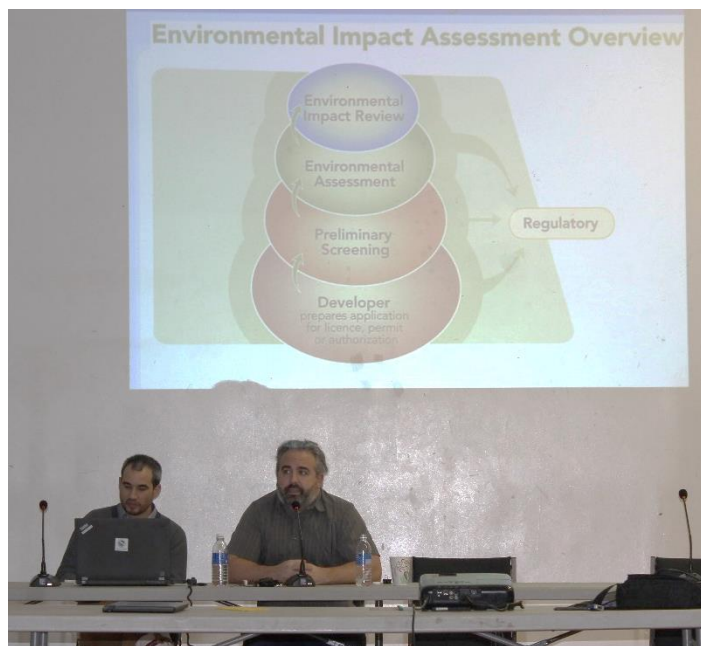
Walter Bayha noted that the appearance or the reality of final decisions resting with a federal or territorial government minister is contrary to the spirit and intent of the land claim. In reality, there is very little room for a minister not to approve the Review Board's recommendation as long as all procedures were followed and no legal errors were made. **Richard Kochon** shares this concern and urged the involvement of representation from communities in decisions. **Mark Cliffe-Phillips** clarified that ministerial decisions are based on the Review Board's recommendations. The Review Board is made up of representatives of the settlement areas, unsettled areas as well as territorial and federal appointees. Most often the Review Board's recommendations are approved. **Lorraine Seale** added that more than one GNWT minister is involved in approving Review Board recommendations. Further, it is very difficult for a minister to overturn a Review Board recommendation although they can make narrow changes. There is also a consultation process whereby communities can review Review Board recommendations to ensure that concerns raised during the process have been addressed.

Walter Bayha also raised concerns about the guidelines for acceptable water standards. It is his view that standards are antiquated and are applied universally without regard for the importance or use of the site in question. For example, why should universal water quality standards that set the bar at a low level be applied to pristine waters such as Great Bear Lake? Water quality standards should vary depending on the importance and use of an area. **Paul Dixon** mentioned that site-specific standards exist in the regulation of mining practices therefore similar opportunities could be explored for other elements of the regulatory system.

Keith Hickling said that all too frequently boards are reactive rather than proactive. He suggested that during this period of low industrial activity, boards need to be proactive on those projects anticipated to occur, namely the Mackenzie Valley highway, clean-up of the Canol Trail, and remediation and clean-up of the Imperial Oil site. The boards could begin now to prepare baseline studies and conduct scoping work. **Mark Cliffe-Phillips** agreed but added that it is challenging to work outside the current developer-driven process. Nevertheless, MVRMA amendments provide for regional strategic assessment studies if the various parties involved are willing to collaborate. These studies may be a way for the boards to prepare for anticipated projects.

In a discussion about the cumulative impacts of the 3D seismic lines, **Stephen Deschene** reported that there seemed to be minimal if any impact on caribou. This was good feedback for **Ken Hanson** who was happy to know that the extra expense put into the ‘wavey seismic lines’ was warranted. Ken also noted that while few projects have gone to EA in the Sahtu, some have been withdrawn due to fear of an EA. This indicates a problem in the system, likely because ‘public concern’ is so intangible and impossible to predict and referral seems arbitrary. He is of the view that a better definition and clarity of the public concern threshold and the ‘might’ test are needed. **Mark Cliffe-Phillips** said that it is not the intention of the ‘might test’ of public concern to trigger an EA or for the process to be a deterrent to development. He suggested that public concern is often related to lack of information which points to a need for stronger guidance to developers. Further, there are ways that the boards can improve the timing and approach while still conducting a robust environmental assessment. **Larry Wallace** added that the quality of applications is also a factor in some projects being withdrawn. In terms of public concern, the SLWB considers those concerns expressed in the Sahtu not those from Yellowknife or anywhere else. Concerns outside the Sahtu with respect to past fracking projects were not considered. **George Barnaby** agreed that there is still work to do on the public concern issue. This might be a matter that all boards could collaboratively address.

Danny Gaudet said that a legacy of contaminated sites is a main motivation behind public concerns. “People don’t want this happening again and this is part of why they oppose development.” He referred to Port Radium as an example. National standards of acceptability were applied to the site without discussions with the community. He is in favour of site-specific or end-use standards and would like to re-evaluate the standards applied in terms of uranium



Mark Cliffe-Phillips and Paul Dixon answer questions about the co-management system.

contamination and safety. While communication around specific industrial issues can be challenging (e.g., the concept of radiation), the more people get engaged with the issues and the process, the better the outcomes. He agrees with Keith Hickling that a lot can be done while there is a downturn in industrial activity including baseline studies, training monitors, developing monitoring plans, and sharing information so people are in a position to make decisions when the time comes to do so. Everyone involved in the regulatory system needs to be proactive and work closely with the communities.

Jennie Vandermeer explained that GNWT Environment and Natural Resources has formed a collaborative forum to develop a regional research strategy. The forum is endeavouring to break down silos, open communication processes, and pool and/or coordinate resources to respond to research priorities. Currently all RRCs except Colville Lake are involved. This may be an avenue for addressing some of the priorities raised in this workshop.



L-R: Richard Kochon, Stacey Menzies, Katy Ades, Stephen Deschene, and Keith Hickling.

Day 2 Wrap-Up

The second day of the workshop focused on the resource co-management system. There was broad agreement that the system is working well but improvements can always be made. Several suggestions were put forward for improving the co-management system and the work of the various boards, including:

- *Monitoring* – processes that inform beneficiaries while a project is happening and after it has come and gone, are needed as is improved understanding of who is responsible for monitoring. A Sahtu-specific monitoring and enforcement process within the regulatory system that has public, Indigenous, and co-management bodies working together, would be very helpful.
- *Public Concern* – confirming the validity of public concerns challenges the co-management boards and create vulnerabilities in the system. There is a need to continue to look for more robust methods to assess public concerns.
- *Defining 'Community'* – there is a need to reflect the diversity of understanding and Dene

and non-Dene perspectives of ‘community’ in referral, consultation, decision-making, and monitoring processes.

- *Antiquated Legislation and Regulations* – a fully functioning, effective, integrated resource management system is stymied by outdated laws and regulations. This situation must be corrected.
- *Traditional Knowledge* – ongoing efforts are needed to accurately document and reflect this knowledge in environmental assessment processes.
- *Site-Specific Standards* – application of universal and perhaps antiquated standards without regard for the importance or use of a specific site is a disservice to the people and environment. Site-specific standards used for the mining industry may be a model that could be examined for other parts of the regulatory system.
- *Proactive vs Reactive* – during this time of low industrial activity, opportunities exist for co-management boards in the Sahtu to prepare for anticipated projects such as the Mackenzie Valley Highway, Canol Trail clean-up, and Imperial Oil remediation.

Closing Comments

All participants had an opportunity to offer final comments and share commitments for going forward. Most participants were appreciative of the information shared and the learning that took place. Several would like to see this type of workshop happen more frequently because there is so much to learn from others’ experiences.

Several participants expressed their thoughts on how well the co-management system and boards are working even though challenges still exist. Others were happy to hear of the success stories and to receive advice for improving the regulatory system and the overall implementation of the *Sahtu Dene and Métis Comprehensive Land Claim Agreement*. Monitoring, education, youth engagement, and people and organizations working together were among the top priorities for improving implementation of the Agreement and the work of the co-management boards.

Kenny Shae commented: “This living document came from Elders; it was made into the land claim. This workshop has been like breaking a trail with various people coming out of their offices - one trail but a whole army using the trail. We need to continue these conversations and learning from each other.”

Violet Doolittle offered the closing prayer.

RESOURCE CO-MANAGEMENT WORKSHOP: Fostering Integrated Decision-Making in Resource Management



Hosted by the Mackenzie Valley Review Board, the Sahtu Land and Water Board, and the Government of the Northwest Territories

February 7-8, 2017

Norman Wells, NT (Denis Drolet Community Hall)

BACKGROUND

With input from Designated Sahtu Organizations, the co-management Boards operating in the Sahtu and the GNWT are hosting a resource management workshop. The goals, delivery methods and regional setting for this workshop were based on feedback from participants of the MVRMA Workshop held January 12-13, 2016 in Yellowknife.

WORKSHOP GOALS

The goals of this workshop are to share knowledge, ideas and experiences and present an opportunity for back and forth dialogue on existing co-management processes established under the Sahtu Dene and Métis Comprehensive Land Claim Agreement.

Agenda

Monday, Feb 6, 2017	
Registration and Networking (optional event) <ul style="list-style-type: none"> An opportunity to pick up your registration package and meet other workshop participants. 	6:00-8:00pm The Legion - lounge
Tuesday, Feb 7, 2017	
ARRIVAL TIME and Registration (coffee and snacks provided)	8:30-8:45am Community Hall
Opening Prayer and Welcome	8:45-9:00 Community Hall
Opening Comments, Goals of the day and Agenda overview <u>Facilitator</u> Lois Little	9:00-9:15am Community Hall
Keynote and Panel Discussion: <ul style="list-style-type: none"> The spirit and intent of the Sahtu Dene and Métis Comprehensive Land Claim Agreement negotiation <u>Key Note Panel Members</u> Norman Yakeleya Danny Yakeleya Brian Crane George Barnaby Regrets: George Cleary David Krutko	9:15-10:45am Community Hall
Health Break	10:45- 11:00am
Panel Discussion: Elders panel – A discussion of resource management before the land claim <u>Elders Panel</u> Walter Bayha Raymond Taniton Richard Kochon	11:00-12:00pm Community Hall
Lunch (on site)	12-1 PM
Panel Discussion: Implementation of the land claim <u>Panel members</u> Danny Yakeleya Edwin Erutse Danny Gaudet Raymond Taniton	1:00-2:00 pm Community Hall

Panel Discussion: Resource Management Today – After the Claim <u>Panel members</u> Heather Bourassa Dakota Erutse Jennie Vandermeer	2:00-3:00pm Community Hall
Health Break	3:00-3:30pm
Plenary – Discussion & Day 1 Wrap up	3:30-4:00pm Community Hall
Tuesday, Feb 7, 2017	
EVENING OPEN HOUSE • The Legion – Hall (refreshments to be provided)	6:00-8:00pm
Wednesday, Feb 8, 2017	
ARRIVAL TIME (coffee and snacks provided)	8:30-8:45am Community Hall
Review of Day 1	8:45 – 9:00am Community Hall
Resource Co-Management Systems: Overview Presentations Mark Cliffe-Phillips James Fulford	9:00-10:00am Community Hall
Break	10:00-10:15am
Engagement Processes Panel Discussion: Major decision-making in the districts • Each district describes how they worked through their processes • Participants will also have an opportunity to ask questions <u>Panel Members</u> Edwin Erutse Danny Yakeleya Walter Bayha	10:15-12:00pm Community Hall
Lunch (on site)	12:00-1:00pm

<p>Panel Discussion: Resource Co-Management System: Report Card</p> <ul style="list-style-type: none"> • How can processes be improved? Challenges and opportunities faced in the districts <p><u>Panel Members</u> Stephen Deschene Keith Hickling Rocky Norwegian Cheryl McLean Ken Hansen</p>	<p>1:00-2:00pm</p> <p>2:00 – 2:30pm Q & A</p>
<p>Break out Groups to discuss process improvements</p> <ul style="list-style-type: none"> • Highlight areas under themes from workshop for further discussion, may include discussion of wildlife management, environmental assessments, land and water management, land use planning, etc. 	<p>2:30-3:45pm</p> <p>Community Hall</p>
<p>Break</p>	<p>3:45-4:00pm</p>
<p>Plenary</p> <ul style="list-style-type: none"> • Discussion & Day 2 Wrap up • Closing Remarks • Closing Prayer 	<p>4:00-4:30pm Community Hall</p>

Workshop Attendees

First	Name	Organization	Community
Alvin	Orlias	Ayoni Keh Land Corporation	Colville Lake
Anne-Marie	Hesse	National Energy Board	Calgary
Arusa	Shafi	Department of Lands	Yellowknife
Brian	Crane	Gowlings - Sahtu Negotiation Team	Ottawa
Brian	Chambers	National Energy Board	Yellowknife
Cheryl	McLean		Calgary
Chris	Rose	Mackenzie Valley Review Board	Yellowknife
Clayton	Lloyd	Government of the Northwest Territories	Yellowknife
Dakota	Erutse	Sahtu Secretariat Inc.	Deline
Danny	Yakeleya	Tulita District Land Corporation	Tulita
Danny	Gaudet	Deline Got'ine Government	Deline
Darren	Campbell	Department of Lands	Yellowknife
David	Menacho	Tulita Land Corporation	Tulita
Donna	Schear	Office of the Regulator of Oil and Gas Operations (OROGO)	Yellowknife
Edwin	Erutse	K'asho Got'ine Lands Corporation	Fort Good Hope
Frank	Andrew	Tulita Dene Band	Tulita
Frank	Pope	ITI/GNWT	Norman Wells
George	Barnaby	Sahtu Land and Water Board	Fort Good Hope
Heather	Bourassa	Yamoga Land Corporation	Fort Good Hope
James	Fulford	Office of the Regulator of Oil and Gas Operations (OROGO)	Yellowknife
James	Caesar	Nerahten Development Ltd	Fort Good Hope
Jennie	Vandermeer	ENR-GNWT	Norman Wells
JoAnne	Deneron	Mackenzie Valley Review Board	Yellowknife
Katherine	Ades	GNWT Department of Lands	Norman Wells
Keith	Hickling		Norman Wells
Ken	Hanson		Calgary
Kurtis	Widow	Tulita Dene Band	Tulita
Lara	Mountain	ENR - CAM	Yellowknife
Larry	Wallace	Sahtu Land & Water Board	Fort Good Hope
Lindsay	Norwegian	Fort Norman Métis Land Corporation	Tulita
Lorraine	Seale	GNWT Lands	Yellowknife
Mark	Cliffe-Phillips	Mackenzie Valley Review Board	Yellowknife
Marlene	Tutcho	Deline Got'ine Government	Deline
Nihltla			Deline
Norman	Yakeleya	Fort Norman Métis Land Corporation	Tulita
Paul	Dixon	Sahtu Land & Water Board	Fort Good Hope
Raymond	Tutcho	Deline Got'ine Government	Deline
Raymond	Taniton	Deline Got'ine Government	Deline
Rhea	McDonald	Norman Wells Renewable Resource Council	Norman Wells
Richard	Kochon	Colville Lake Renewable Resources Council	Colville Lake
Rocky	Norwegian	Hamlet of Tulita	Tulita
Rodger	Boniface	Yamoga Land Corporation	Fort Good Hope
Ruby	McDonald	Norman Wells Renewable Resources Council	Norman Wells
Sally	Horassi	Tulita Dene Band	Tulita
Sarah	Horassi	Tulita Land Corporation	Tulita
Stacey	Menzies	Mackenzie Valley Review Board	Yellowknife
Stephanie	Behrens	ENR	Norman Wells

Stephen
Tina
Valere
Valerie
Violet
Walter
Yvonne

Deschene
Bohnet
Erutse
Gordon
Doolittle
Bayha
Doolittle

Department of Lands
Industry, Tourism and Investment, GNWT

Industry, Tourism and Investment
Sahtu Land & Water Board
Deline Got'ine Government
Mackenzie Valley Review Board

Norman Wells
Yellowknife
Tulita
Yellowknife
Fort Good Hope
Deline
Yellowknife

Overview of the Mackenzie Valley Environmental Assessment Process

Handout provided by Mark Cliffe-Phillips



What is the Review Board?

- A court-like body that assesses proposed projects
- Independent (not government)
- Comes from land claims
- Co-management Board (members are Aboriginal and government nominees)

Settled Land Claims



Unsettled Land Claims



Government



What the Review Board does?

- Conducts **environmental assessments** of proposed projects
- Ensures community participation

What is an Environmental Assessment?

An assessment that considers the possible impacts of a development (such as a mine) to the environment and the people.

Recommendation

The assessment makes a recommendation as to whether the project should go ahead.



If YES, the Review Board may make measures to reduce or avoid significant impacts on the environment and people.

THE ENVIRONMENTAL ASSESSMENT PROCESS

1. Scoping

We hear from you to identify and prioritize the issues. What are your concerns?



2. Terms of Reference

We use the information from scoping to build a *Terms of Reference (ToR)* – questions that the developer needs to answer. The Review Board's final *ToR* considers the *Developer's Proposed ToR*, scoping, and comments on the *Draft ToR*.

3. Developer's Assessment Report and Board Analysis

The developer prepares a report based on the *ToR*. The Developer's Assessment Report is checked for adequacy by the Review Board. Once adequate it is open for review by the public.

4. Public Hearings

Parties and the public can tell the Review Board members what impacts they expect and describe any concerns.



5. Recommendation

The Review Board makes a recommendation about the project based on all of the information. This is explained in the *Report of Environmental Assessment*.



6. Minister's Decision

The recommendation is sent to the minister who makes the final decision.



Land and Resource Management in the Mackenzie Valley

Presentation by Mark Cliffe-Phillips

nwt board forum
Resource Management Information for the NWT



Overview of
Land and Resource Management in the Mackenzie Valley

www.nwtboardforum.com

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Resource Management Information for the NWT

Overview of Land and Resource Management in the NWT


Introduction

- Background
- Jurisdictions of land and resource management
- Principles
- Overview of land and resource management
- Land ownership
- Boards under the MVRMA

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Resource Management Information for the NWT

Overview of Land and Resource Management in the NWT

Background of the regulatory system in the NWT



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Overview of Land and Resource Management in the NWT

Jurisdictions of land management in the NWT


There are two separate jurisdictions of land management in the NWT:

- Inuvialuit Settlement Region
- Mackenzie Valley Region

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Overview of Land and Resource Management in the NWT

Jurisdictions of land management in the NWT



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Resource Management Information for the NWT

Overview of Land and Resource Management in the NWT

Principles of Land and Resource Management

- Integrated and coordinated system
- Based on principles of co-management

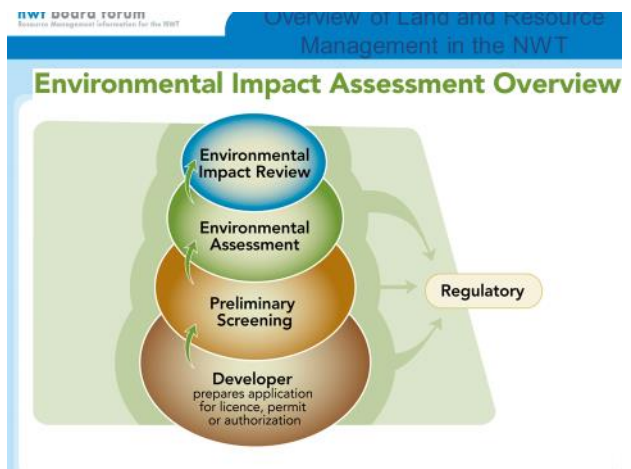


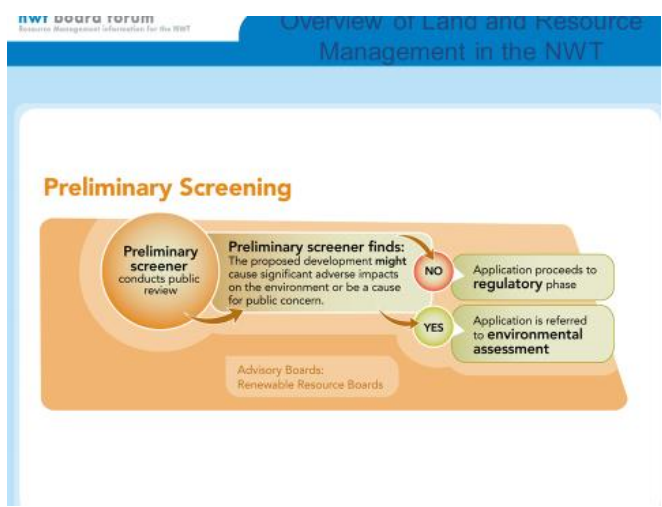
- Overview of Land and Resource Management in the NWT**
- Land Ownership**
- Territorial (Commissioner's and Territorial Land)
 - Federal (Crown Land)
 - Aboriginal
 - Private

- Overview of Land and Resource Management in the NWT**
- MVRMA Boards Overview**
- General functions of the MVRMA boards:**
- Prepare regional land use plans
 - Conduct environmental assessment and environmental impact review processes
 - Issue water licenses and land use permits
 - Ensure protection of the environment from significant adverse impacts of projects and other developments
 - Consider economic, social and cultural well-being of residents, including the recognition of Aboriginal rights

- Overview of Land and Resource Management in the NWT**
- Types of Boards**
- Land and resources in the NWT are managed through four different types of boards:
- Land use planning Boards
 - Environmental assessment Boards
 - Land and water regulation Boards
 - Renewable resource Boards
- Members are nominated and/or appointed by federal, territorial and Aboriginal governments.

- Overview of Land and Resource Management in the NWT**
- Types of Boards**
- Land and resources in the Mackenzie Valley are managed under the MVRMA through three different types of boards:
- Land use planning Boards – SLUPB, GLUPB
 - Environmental assessment Board - MVEIRB
 - Land and water Boards – GLWB, SLWB, WLWB, MVLWB
- As well as Renewable Resource Advisory Boards
- GRRB, SRRB, WRRB
- Members are nominated and/or appointed by federal, territorial and Aboriginal governments.






Overview of Land and Resource Management in the NWT

Additional Information

More information on land and resource management in the NWT can be found on the NWT Board Forum website at: www.nwtboardforum.ca

As well as at:
www.slwb.com
www.reviewboard.ca
www.gnwt.ca

Thanks you!
 Mahsi Cho!



Resource Co-Management Workshop
Norman Wells • February 7, 2017 • orogo.gov.nt.ca

OROGO

NWT OFFICE OF THE REGULATOR OF OIL AND GAS OPERATIONS

BOROPG

BUREAU DE L'ORGANISME DE RÉGLEMENTATION DES OPÉRATIONS PÉTROLIÈRES ET GAZIÈRES DESTN-O

OROGO's Mission

We regulate oil and gas activities
to keep people safe and protect
the environment where we live

OROGO's Mandate and Role

- OROGO was established to support the Regulator of oil and gas operations
- The Regulator regulates oil and gas activities in order to:
 - Ensure human safety
 - Protect the environment
 - Conserve oil and gas resources
- We are governed by:
 - The *Oil and Gas Operations Act* (OGOA)
 - The *Petroleum Resources Act* (PRA)

Who We Are



An Integrated System

- The Regulator is a “regulatory authority” within the meaning of Part V of the MVRMA.
- Operations Authorizations and Development Plans trigger preliminary screening.
- OROGO participates in MVRMA land and water regulatory processes.
- OROGO has an MOU with the MVLWB and is an active member of the NWT Board Forum.

Website References

GNWT Environment and Natural Resources

<http://www.enr.gov.nt.ca/>

GNWT Department of Lands

<http://www.lands.gov.nt.ca/en>

Mackenzie Valley Review Board

<http://www.reviewboard.ca/>

Office of the Regulator of Oil and Gas Operations

<http://www.orogo.gov.nt.ca/>

Sahtu Land Use Planning Board

<https://sahtulanduseplan.org/>

Sahtu Land and Water Board

<https://slwb.com/>

Sahtu Renewable Resources Council

<http://srrb.nt.ca/>

Sahtu Dene and Métis Comprehensive Land Claim

<https://www.aadnc-aandc.gc.ca/eng/1100100031147/1100100031164>