

21 DENE/METIS LANDS

21.1 DENE/METIS TITLE

21.1.1 In this chapter, the following definitions shall apply:

"lands" does not include water;

"minerals" means precious and base metals and other, non-living, naturally occurring substances and includes coal and oil and gas;

"gas" means natural gas and includes all substances, other than oil, that are produced in association with natural gas;

"oil" means crude oil, regardless of gravity, produced at a well head in liquid form and any other hydrocarbons except coal and gas and, without limiting the generality of the foregoing, hydrocarbons that may be extracted or recovered from deposits of oil sand, bitumen, bituminous sand, oil shale or from any other types of deposits on the surface or subsurface;

"specified substances" means carving stone, clay, construction stone, diatomaceous earth, earth, flint, gravel, gypsum, limestone, marble, marl, ochre, peat, sand, shale, slate, sodium chloride, soil and volcanic ash.

21.1.2 The Dene/Metis shall, by virtue of settlement legislation, be vested with title to Dene/Metis settlement lands as follows:

(a) 66,100 square miles of lands in fee simple, reserving therefrom the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands and the right to work the same, subject to existing rights, titles or interest in the lands; and

171189
Sq km

(b) 3,900 square miles of lands in fee simple, including the mines and minerals, whether solid, liquid or gaseous that may be found to exist within, upon or under such lands, 700 square miles of which will be selected pursuant to the Aklavik Lands Agreement, dated May 3, 1989, subject to existing rights, titles or interests in the lands;

390259
Sq km

and such title may be referred to as "Dene/Metis title".

- 21.1.3 Unless otherwise provided in the legal description,
- (a) Dene/Metis title shall include title to the beds of lakes, rivers and other water bodies within Dene/Metis lands, and
 - (b) Dene/Metis title shall not include title to the beds of lakes, rivers and other water bodies where any lake, river or water body forms a boundary of the Dene/Metis lands.
- 21.1.4 Title to Dene/Metis settlement lands shall vest in one or more designated Dene/Metis organizations by virtue of the settlement legislation.
- 21.1.5 Dene/Metis settlement lands may not be conveyed to any person except government in exchange for other lands, or to designated Dene/Metis organizations. This provision shall not be interpreted to prevent the Dene/Metis from granting leases or licences to non-participants to use or occupy Dene/Metis lands.
- 21.1.6. The Dene/Metis will manage and control the use of Dene/Metis lands, subject to the provisions of this agreement.
- 21.1.7 Dene/Metis settlement lands are not subject to seizure or sale under court order, writ of execution or any other process whether judicial or extra judicial.
- 21.1.8 Dene/Metis settlement lands shall not be mortgaged, charged or given as security.
- 21.1.9 No person may acquire, by prescription, an estate or interest in Dene/Metis settlement lands.
- 21.2 SPECIFIED SUBSTANCES
- 21.2.1 Notwithstanding the reservation of mines and minerals from the lands described in 21.1.2(a), and subject to any specific reservation in the grant, Dene/Metis title shall include the right to specified substances and the right to work such substances.
- 21.2.2 Notwithstanding 21.2.1,
- (a) the right of the Dene/Metis to work specified substances is subject to the rights of a person having a mineral interest;


- (b) subject to 30.2.1(d) and (e), no compensation shall be paid to the Dene/Metis in respect of any specified substance incidentally taken, used, damaged or destroyed by a person in the course of exercising mineral rights, and any such specified substance taken, used, damaged or destroyed shall be the property of the person exercising the mineral rights; and
- (c) notwithstanding (b), the property described in (b) of a mineral interest holder in specified substances shall terminate upon termination of the mineral interest.

21.2.3

- (a) The Dene/Metis shall provide supplies of, and access to, sand, gravel, clay and other like construction materials on Dene/Metis lands if, in the opinion of the Land and Water Board, no alternative source of supply is reasonably available in the surrounding area.
- (b) The Dene/Metis are entitled to fair and reasonable compensation for any materials supplied under (a).
- (c) If any person or government, and the Dene/Metis, do not agree on any terms or conditions respecting the supply of, or access to, materials under (a), the person or government seeking the supply or access may refer the matter to the Land and Water Board which shall decide all matters between the parties including the question of priorities between the Dene/Metis and other users. The decision of the Board shall be final and binding on the parties except for judicial review as in the case of an arbitrator's decision under this agreement.
- (d) The Land and Water Board may establish rules and procedures for the carrying out of this provision.

21.3 **LAND SELECTION AND REGISTRATION**

- 21.3.1** Dene/Metis lands shall be selected in accordance with this agreement. A legal description of the lands including the quantum of each parcel is annexed hereto.
- 21.3.2** Dene/Metis land selection shall be made so as to leave communities with sufficient land for public purposes and for private, residential and commercial purposes and to leave sufficient land which is reasonably accessible to communities for public use for recreation and harvesting wildlife.

- 21.3.3 Land selections will be fairly representative of the topography and quality of the lands in each region in the settlement area.
- 21.3.4 The lands selected in respect of any community need not be identical in quantity to the lands selected in respect of other communities.
- 21.3.5 (a) Existing fee simple lands are not available for selection unless the title holder consents.
- (b) Land selection may occur within the Ingraham Trail Area provided that land subject to cottage lot leases shall not be selected without the agreement of the particular cottage lot leaseholder.
- 21.3.6 Dene/Metis lands shall not be selected within 100 feet of the boundary of the settlement area.
- 21.3.7  The Dene/Metis shall select not more than 13,200 square miles of land within zone "A" set out on a map initialled by the Chief Negotiators May 30, 1988 and not more than 20,000 square miles of land within zones "A" and "B" set out on the same map.
- 21.3.8 Canada shall make available to a designated Dene/Metis organization the data and information relating to resources and to existing leases and other alienations on Dene/Metis lands as soon as practicable after settlement legislation.
- 21.3.9 Unless otherwise agreed by the parties, hazardous waste sites identified as such at the time of land selection shall not be vested in the Dene/Metis. Hazardous waste sites are sites which harbour toxic substances, as defined in Part II, section 11, Canadian Environmental Protection Act.
- 21.3.10 Where government undertakes any program respecting the clean up of hazardous waste sites on Crown Lands, such program shall apply to hazardous waste sites existing at the date of settlement legislation on Dene/Metis lands and government shall be responsible for the costs associated with such clean up on Dene/Metis lands.
- 21.3.11 (a) Title to Dene/Metis lands vested pursuant to 21.1.4 shall be registered with the Northwest Territories Land Titles Office. In order to facilitate registration and subsequent recording of transactions, title will be registered in as many discrete parcels as considered necessary by the Registrar of Land Titles.

- (b) Legal descriptions, as specified in 21.4.1, shall be used for the purpose of registering title to Dene/Metis settlement lands.
- (c) Wherever surveys of Dene/Metis lands are required, these surveys shall be registered with the Northwest Territories Lands Titles Office and become the legal description for that portion of the parcel boundary, replacing the initial legal description referred to in (b).

21.4

BOUNDARIES AND SURVEYS

21.4.1

- (a) Legal descriptions including area of each parcel agreed upon in land selection shall be prepared by Canada and approved by the Dene/Metis. Approval of the legal description of parcels will be confirmation that the parties agree the parcels described are the ones selected and the area calculations are satisfactory.
- (b) The document containing the legal description may specify features which the parties agree should be enclosed within or excluded from a parcel of Dene/Metis lands. Where any subsequent legal survey of the land indicates that the legal description failed to include or exclude, as the case may be, the feature intended to be included or excluded, the legal description shall be amended to so include or exclude that feature.
- (c) The boundaries of Dene/Metis lands shall be surveyed only when, in the opinion of government, such surveys are required to avoid or resolve conflicts with other title or interest holders.

21.4.2

- (a) Boundary surveys shall be conducted, and monuments placed, in accordance with the instructions of the Surveyor General and the Canada Lands Survey Act.
- (b) The Government of Canada shall be responsible for the cost of the legal surveys which may be required to define the boundaries of Dene/Metis lands provided that this provision shall not prevent government from levying charges in respect of such surveys on any person abutting Dene/Metis lands.
- (c) The designated Dene/Metis organization shall be responsible for the costs of surveys associated with the leasing and subdivision of Dene/Metis lands.

- (d) The boundaries of Dene/Metis settlement lands shall be described with reference to geographical features and degrees of latitude and longitude as shown on National Topographic Survey Maps at 1:50,000 scale, where available, or at 1:250,000 scale. The boundaries of Dene/Metis municipal lands shall be described with reference to features shown on the maps provided pursuant to 36.4.1 (b) and (d). To the extent possible, the descriptions will refer to existing monumentation.
- (e) The boundaries of Dene/Metis lands may be defined by existing legal surveys and natural and artificial boundaries including offset boundaries and rights-of-way, but shall, to the extent possible, be defined by existing boundary survey traverses or by reference to natural features such as banks of rivers and lakes and well-defined heights of land for determining surveying points, with preference being given to natural boundaries.
- (f) Natural boundaries at any instant correspond to the position of the designated natural feature as it exists at that instant. The position of the natural boundaries changes with the movements of the natural features as long as these movements are gradual and imperceptible from moment to moment. Offset natural boundaries also move according to the natural movement of the natural features.
- (g) Where a natural boundary is a height of land which is subsequently found to be not well defined, the Surveyor General shall have the authority to place a series of monuments, approximating the mean position of the height of land, to be the boundary.
- (h) Maps of the portions of a right-of-way that are used as the boundary of Dene/Metis lands shall be filed with the Regional Surveyor. Those portions of the right-of-way used as a boundary shall be surveyed within four years of the signing of this agreement.

21.5 ADMINISTRATION OF INTERESTS

- 21.5.1** Any royalties or non-refunded rents in respect of Dene/Metis lands accruing to and received by government after the date of this agreement shall be accounted for by government and an equal amount paid to the Dene/Metis as soon as practicable after settlement legislation.

21.5.2 Where lands to which the Dene/Metis receive title pursuant to 21.1.2(b) are subject to a mineral interest existing at the date of settlement legislation:

- (a) government shall continue to administer such interest in accordance with applicable legislation as if the interest were on Crown lands until such time as the interest ceases to exist;
- (b) government shall notify a designated Dene/Metis organization of any change in such interest which affects the Dene/Metis as title-holder;
- (c) any royalties or non-refunded rents accruing to and received by government from the mineral interest holder after the date of settlement legislation shall be accounted for by government and an equal amount paid to the Dene/Metis as soon as practical from time to time;
- (d) amounts received by government pursuant to (c) shall not be calculated as amounts received by government for the purpose of 10.1.2; and
- (e) government shall be under no fiduciary obligation to the Dene/Metis in respect of its administration of mineral interests apart from its obligation to account in (c). In particular, government shall, subject to 10.1.5, set royalties, rents and other charges and make other discretionary decisions on the basis of government's resource management policy.

21.6 INTERIM MEASURES

21.6.1 After the initialling of this agreement and until the passage of settlement legislation, no land shall be sold, leased, licensed or made subject to a land use permit in the settlement area unless at least 30 days notice to the Dene/Metis Negotiations Secretariat is given except for a license, sale, lease or land use permit with respect to lands within the settled areas of municipalities.

21.6.2

No new parks or other protected areas shall be established in the settlement area without the consent of the Dene/Metis Negotiations Secretariat before settlement legislation unless, in the opinion of the Minister, there is a pressing conservation need and after consultation with the Dene/Metis Negotiations Secretariat. However, government may withdraw lands, establish park reserves, and take other preliminary steps leading to such establishment in consultation with the Dene/Metis Negotiations Secretariat.