

Appendix A: NWT CIMP and Audit - Relevant Sections of Land Claim Agreements and MVRMA Part 6

Note: These extracts from land claim agreements and legislation outline the requirements for cumulative impact monitoring and auditing in the Mackenzie Valley. For the full context of these requirements, please refer to the full text of the land claims agreements, their associated implementation plans, and the Mackenzie Valley Resource Management Act.

A.1 Gwich'in Comprehensive Land Claim Agreement (signed and in effect 1992) Chapter 24: Land and Water Regulation

24.1 General

24.1.1 The following principles apply to this chapter:

- a) an integrated system of land and water management should apply to the Mackenzie Valley;
- b) the regulation of land and water in the settlement area and adjacent areas should be co-ordinated; and
- c) government shall retain the ultimate jurisdiction for the regulation of land and water

24.1.4 (a) The legislation implementing the provisions of this chapter shall provide for a method of monitoring the cumulative impact of land and water uses on the environment in the Mackenzie Valley, and for periodic, independent, environmental audits which shall be made public.

(b) If any board or similar body is established by such legislation to carry out the monitoring and audit functions referred to in (a) in the settlement area, the participants shall be entitled to a meaningful role in such board or agency to be set out in legislation, after consultation with the Gwich'in Tribal Council.

(c) If the monitoring or environmental audit functions referred to in (a) are carried out in the settlement area by a department of government, the department shall do so in consultation with the Gwich'in Tribal Council."

A.2 Sahtu Dene and Metis Comprehensive Land Claim Agreement (signed 1993, in effect 1994)

Chapter 25: Land and Water Regulation

25.1 General

25.1 The following principles apply to this chapter:

- a) an integrated system of land and water management should apply to the Mackenzie Valley;
- b) the regulation of land and water in the settlement area and adjacent areas should be co-ordinated; and

- c) government shall retain the ultimate jurisdiction for the regulation of land and water.
- 25.1.4
- (a) The legislation implementing the provisions of this chapter shall provide for a method of monitoring the cumulative impact of land and water uses on the environment in the Mackenzie Valley, and for periodic, independent, environmental audits which shall be made public.
 - (b) If any board or similar body is established by such legislation to carry out the monitoring and audit functions referred to in (a) in the settlement area, the participants shall be entitled to a meaningful role in such board or agency to be set out in legislation, after consultation with the Sahtu Tribal Council.
 - (c) If the monitoring or environmental audit functions referred to in (a) are carried out in the settlement area by a department of government, the department shall do so in consultation with the Sahtu Tribal Council.”

[Same wording as Chapter 24.1.4 of the *Gwich'in Comprehensive Land Claim Agreement*, with the substitution of “Sahtu Tribal Council” for “Gwich'in Tribal Council.”]

A.3 Tłı̄chǫ Agreement: Land Claim and Self-Government Agreement (signed August 2003, in force 2005)

Chapter 22: Land and Water Regulation

22.1 General

- 22.1 The following principles apply to this chapter:
- a) an integrated system of land and water management should apply to the Mackenzie Valley; and
 - b) the regulation of land and water in Wek'èezhii and adjacent areas should be coordinated.
- 22.1.10 The legislation implementing the provisions of this chapter will provide for a method of monitoring the cumulative impact of land and water uses on the environment in the Mackenzie Valley, and for periodic, independent, environmental audits which shall be made public.
- 22.1.11 If any body is established by legislation to carry out the monitoring and audit functions under 22.2.10 in the Mackenzie Valley, the Tłı̄chǫ Government shall be entitled to a meaningful role in such body and such role shall be set out in legislation.
- 22.1.12 If the monitoring and audit functions referred to in 22.2.10 are carried out in Wek'èezhii by a department of government, the department shall do so in consultation with the Tłı̄chǫ Government.

[‘Wek'èezhii’ defines the ‘management area’ of the Tłı̄chǫ Agreement. Further details and a map are available in Chapter 1 of the Tłı̄chǫ Agreement.]

A.4 Mackenzie Valley Resource Management Act (MVRMA): An Act to provide for an integrated system of land and water management in the Mackenzie Valley, to establish certain boards for that purpose and to make consequential amendments to other Acts (proclaimed December 22, 1998)

Definitions, Section 2:

“deposit of waste” means a deposit of waste described in subsection 9(1) of the *Northwest Territories Waters Act*.

i.e.,: 9. (1) Except in accordance with the conditions of a licence or as authorized by regulations made under paragraph 33(1)(n), no person shall, subject to subsection (2), deposit or permit the deposit of waste

(a) in any waters in a water management area; or

(b) in any other place under conditions in which the waste, or any other waste that results from the deposit of that waste, may enter any waters in a water management area.

“environment” means the components of the Earth and includes

(a) land, water and air, including all layers of the atmosphere;

(b) all organic and inorganic matter and living organisms; and

(c) the interacting natural systems that include components referred to in paragraphs (a) and (b).”

“federal Minister” means the Minister of Indian Affairs and Northern Development.

“first nation” means the Gwich'in First Nation, the Sahtu First Nation or bodies representing other Dene or Metis of the North Slave, South Slave or Deh Cho region of the Mackenzie Valley.

“Gwich'in Agreement” means the Comprehensive Land Claim Agreement between Her Majesty the Queen in right of Canada and the Gwich'in as represented by the Gwich'in Tribal Council, signed on April 22, 1992 and approved, given effect and declared valid by the *Gwich'in Land Claim Settlement Act*, as that Agreement is amended from time to time in accordance with its provisions.

“Gwich'in First Nation” means the Gwich'in as represented by the Gwich'in Tribal Council referred to in the Gwich'in Agreement or by any successor to it.

“harvesting,” in relation to wildlife, means hunting, trapping or fishing activities carried on in conformity with a land claim agreement or, in respect of persons and places not subject to a land claim agreement, carried on pursuant to aboriginal or treaty rights.

“heritage resources” means archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.

“land claim agreement” means the Gwich'in Agreement or the Sahtu Agreement.

“local government” means any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community or settlement, whether

incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws.

“Mackenzie Valley” means that part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by the Yukon Territory, on the north by the Inuvialuit Settlement Region, as defined in the Agreement given effect by the *Western Arctic (Inuvialuit) Claims Settlement Act*, and on the east by the Nunavut Settlement Area, as defined in the *Nunavut Land Claims Agreement Act*, but does not include Wood Buffalo National Park.

“Sahtu First Nation” means the Sahtu Dene and Metis as represented by The Sahtu Secretariat Incorporated, a corporation without share capital under Part II of the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970, being the successor, for the purposes of this Act, to the Sahtu Tribal Council referred to in the Sahtu Agreement, or by any successor to that corporation.

“settlement area” means a portion of the Mackenzie Valley to which a land claim agreement applies.

“settlement lands” means lands referred to as settlement lands in a land claim agreement.

“territorial government” means the government of the Northwest Territories.

“territorial Minister”, in relation to any provision of this Act, means the minister of the territorial government designated by instrument of the Executive Council of the Northwest Territories for the purposes of that provision.

Consultation – Section 3

3. Wherever in this Act reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised

- (a) by providing, to the party to be consulted,
 - (i) notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,
 - (ii) a reasonable period for the party to prepare those views, and
 - (iii) an opportunity to present those views to the party having the power or duty to consult; and
- (b) by considering, fully and impartially, any views so presented.

Additional definitions – Part 5, Section 111

“impact on the environment” means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

Part 6 – Environmental Monitoring and Audit

145. The definitions in this section apply in this Part.

“impact on the environment” has the same meaning as in Part 5.

“responsible authority” means the person or body designated by the regulations as the responsible authority or, in the absence of a designation, the federal Minister.

146. The responsible authority shall, subject to the regulations, analyze data collected by it, scientific data, traditional knowledge and other pertinent information for the purpose of monitoring the cumulative impact on the environment of concurrent and sequential uses of land and water and deposits of waste in the Mackenzie Valley.

147. (1) A responsible authority that is a minister of the Crown in right of Canada shall carry out the functions referred to in section 146 in consultation with the first nations.

(2) Where a responsible authority is other than a minister of the Crown in right of Canada, the Gwich'in and Sahtu First Nations are entitled to participate in the functions referred to in section 146 in the manner provided by the regulations.

148. (1) The federal Minister shall have an environmental audit conducted at least once every five years by a person or body that is independent.

(2) The federal Minister shall, after consulting the Gwich'in First Nation, the Sahtu First Nation and the territorial government, fix the terms of reference of an environmental audit, including the key components of the environment to be examined.

(3) An environmental audit shall include

(a) an evaluation of information, including information collected or analyzed under section 146, in order to determine trends in environmental quality, potential contributing factors to changes in the environment and the significance of those trends;

(b) a review of the effectiveness of methods used for carrying out the functions referred to in section 146;

(c) a review of the effectiveness of the regulation of uses of land and water and deposits of waste on the protection of the key components of the environment from significant adverse impact; and

(d) a review of the response to any recommendations of previous environmental audits.

(4) A report of the environmental audit, which may include recommendations, shall be prepared and submitted to the federal Minister, who shall make the report available to the public.

(5) The Gwich'in and Sahtu First Nations are entitled to participate in an environmental audit in the manner provided by the regulations.

149. Subject to any other federal or territorial law, a responsible authority or a person or body who performs an environmental audit may obtain, from any board established by this Act or

from any department or agency of the federal or territorial government, any information in the possession of the board, department or agency that is required for the performance of the functions of the responsible authority or person under this Part.

150. The Governor in Council may, after consultation by the federal Minister with affected first nations and the territorial Minister, make regulations for carrying out the purposes and provisions of this Part and, in particular, regulations

(a) respecting the collection of data and the analysis of data so collected and scientific data, traditional knowledge and other information, for the purposes of section 146;

(b) designating a person or body as the responsible authority for the purposes of this Part; and

(c) respecting the manner of participation of the Gwich'in and Sahtu First Nations in the functions of a responsible authority that is not a minister of the Crown or in an environmental audit.”

Note: As of December 2004, no regulations have been drafted or promulgated under Part 6 of the *MVRMA*.