

# Devolution

## of Lands and Resources in the Northwest Territories

**Devolution is the process of transferring authority from one government to another. Canada, the GNWT and participating Aboriginal governments have spent several years negotiating a new transfer that will ultimately make the Government of the Northwest Territories responsible for public lands and waters in the NWT, as well as the resources associated with them.**

On January 26th, 2011, an Agreement-in-Principle (AiP) was signed by Canada, the GNWT, and the Inuvialuit Regional Corporation. The Northwest Territory Métis Nation signed the AiP on February 9th, 2011. This sets the stage to negotiate a final devolution agreement.

This devolution is about transferring the authority to make decisions about public (Crown) lands in the Northwest Territories to the GNWT. The Government of Canada currently controls and makes decisions about all public lands in the NWT. That includes decisions about developing the resources – like oil, gas and minerals – on NWT public lands. The people of the Northwest Territories do not have a direct say in what happens to these lands and resources. Any royalties companies pay to develop resources on public lands go directly to the federal government.

Public lands are not settlement lands, which are lands that Aboriginal governments have selected as part of a land claim and are owned by Aboriginal governments. In some cases, settlement lands include ownership of the surface of the land and the resources beneath the land (subsurface rights). Devolution will not prevent these lands from being managed in accordance with land claim and self-government agreements. It does not change anything about the way public lands are subject to Aboriginal and treaty rights, and it will not affect the share of royalties that are currently paid under land claim agreements.

Devolution will not reduce the amount of public land available for selection as part of ongoing claims. Existing arrangements protecting land for selection in regions with unsettled claims will continue to apply. The AiP gives the federal government the ability to take back public lands that were part of devolution so they can be transferred to Aboriginal governments as part of settlement agreements.

Land claim agreements are constitutionally protected. In the event of a conflict between a land claim and the devolution AiP, the land claim agreement prevails.



**Northwest  
Territories**

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(click on "Devolution of Lands and  
Resources")

# Common Questions About

## Q: What is devolution?

Devolution transfers administration and control over Crown lands, resources, and rights with respect to water from Canada to the GNWT.

## Q: What would be different after devolution?

There would be two main differences:

- Decisions about the use of public land and resources in the NWT would be made in the NWT, not in Ottawa. There will be approximately 175 new jobs in the NWT to do this work.
- Over the past five years, the GNWT has missed out on approximately \$200 million in resource revenues. With devolution, these resource royalties would stay in the NWT instead of going to Ottawa. The GNWT's funding from Canada would be reduced as a result, but not dollar for dollar. This is called the Net Fiscal Benefit. The GNWT has offered to share some of the Net Fiscal Benefit with Aboriginal governments.

Some things will not change. Aboriginal and treaty rights are constitutionally protected and cannot be affected by the AiP or a final agreement on devolution. The federal government will still have a fiduciary responsibility for Aboriginal people, and Aboriginal governments will continue to have their own relationship with the federal government. The GNWT and the federal government will have an ongoing relationship to deal with the capacity issues to address large-scale resource development and related infrastructure requirements. The GNWT and Aboriginal governments will continue to work together in the best interest of NWT residents.

## Q: Do we really need devolution?

NWT residents should not be treated simply as stakeholders when it comes to initiatives in our own territory. Northern governments should be making the decisions, and should be directly accountable to the residents of the NWT. Land and water use and environmental protection are ongoing concerns and should be managed in the North by Northern governments.

Devolution has been a GNWT priority for the past ten years. We continue to work hard to achieve this goal.

## Q: What is an Agreement-in-Principle (AiP)?

The AiP is a written confirmation that the parties intend to negotiate a final devolution agreement. It outlines the subjects that will be included in a final agreement, the principles and parameters related to the subject matters, and sets out a process and timelines for negotiations. The details of the final agreement still need to be negotiated.

An AiP is not legally binding, is not the final version of the agreement, and does not commit any of the parties to signing a final agreement.

## Q: Why is this happening now?

The people of the NWT are ready to have their governments take charge of the decisions that affect them and their future. After nearly ten years of negotiations, we have an AiP that will guide us toward a final devolution agreement. Signing the AiP keeps the negotiation process moving and releases federal funding for both the GNWT and Aboriginal governments to do the work required for a final agreement.

The federal and territorial chief negotiators have advised that the AiP fulfills the mandates they were given by their governments and is fair and reasonable. They recommended signing of the agreement to all parties.

By delaying devolution, decisions continue to be made by people who are not directly affected by them or accountable to NWT residents. Without devolution, the NWT continues to lose resource royalties to the federal government. That money could be used to fund and enhance programs and services in NWT communities.

## Q: Why sign an AiP when all of the issues haven't been worked out?

An AiP is a written commitment to negotiate. It sets out the issues that still need to be worked out in final negotiations.



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## Q: How long will it take to reach a final agreement?

The AiP sets a goal for a final agreement to be negotiated within one year.

## Q: How does devolution affect land claims?

It doesn't. Land claim agreements are constitutionally protected and cannot be affected by devolution. Devolution does not affect aboriginal rights or Aboriginal governments' authority over settlement lands. Devolution will not give the GNWT authority or control over settlement lands, which will continue to be administered and controlled by the Aboriginal government that owns them. All the revenues generated from settlement lands will continue to be revenues of the Aboriginal government.

Devolution will not affect the amount of land and money offered as part of ongoing land claim negotiations in regions with unsettled claims. These offers are based on a framework for land and money offers that was developed during the comprehensive Dene/Métis claim negotiations that preceded the move to regional claims in the late 1980s. The GNWT will honour all existing federal offers.

## Q: What involvement have Aboriginal governments had?

Since 2001, Aboriginal governments have received almost \$8 million from the GNWT and the Government of Canada to participate as full parties. Aboriginal governments have made their own decisions about the extent of their participation in devolution negotiations and the extent to which they informed their members. The Dehcho First Nations have chosen not to participate in negotiations so far and have not taken funding for participation.

## Q: What resource-sharing agreements are already in place for Aboriginal governments?

All modern Aboriginal Rights Agreements provided ownership of land and subsurface resources to Aboriginal organizations/governments, including the Inuvialuit, Gwich'in, Sahtu and Tłı̄ch̄o.

In addition, the Gwich'in, Sahtu and Tłı̄ch̄o Agreements have specific chapters dealing with resource royalties that provide them with a share of all resource royalties collected on public Crown lands throughout the Mackenzie Valley. The Gwich'in and Sahtu each receive annually:

- 7.5% of the first \$2 million of resource royalties collected, or \$150,000; and
- 1.5% of any additional resource royalties collected.

The Tłı̄ch̄o receive:

- 10.429% of the first \$2 million of mineral royalties collected, or \$208,580; and
- 2.086% of any additional mineral royalties collected.

The Dehcho First Nations Interim Resource Development Agreement also provides for the sharing of resource royalties with the Dehcho First Nations in advance of a Dehcho Final Agreement. In order to support economic development activities in the Dehcho territory, the Dehcho First Nations may access up to 50% of the following amount annually:

- 12.25 % of the first \$2 million of resource royalties received, or \$245,000; and
- 2.45 % of any additional resource royalties received.

The GNWT has offered to share additional resource royalties from Crown land with Aboriginal governments.

## Where can I learn more about devolution?

Additional information about devolution, including a copy of the Agreement-in-Principle, is available at [www.gov.nt.ca](http://www.gov.nt.ca)

# Negotiations Background

The devolution of lands and resources has a long history, this chart starts in 2001, however, it doesn't reference failed attempts in the late 1980's and the mid 1990's. This current initiative was triggered by the 2001 Memorandum of Intent agreed upon by the intergovernmental forum that was made up of the Aboriginal organizations, Canada and the GNWT. Mandates were written and approved and negotiators hired with the first meeting taking place in Sept 2002 in Inuvik.

A Framework agreement was signed in 2004 and Canada made offer to northern governments in late March 2005.



# Useful Definitions

## Devolution

Devolution transfers administration and control over Crown lands, resources, and rights with respect to water from Canada to the GNWT.

## Federal Government

Level of government that deals with decisions and laws that affect the whole country. In Canada, the Government of Canada is the federal government.

## Agreement-in-Principle (AiP)

An AiP is an agreement to work together on a final devolution agreement.

## Public (Crown) Lands

Lands in the NWT that are currently managed and controlled by the Government of Canada. Public lands are defined in the AiP as any land, or interests in land that belongs to Her Majesty in right of Canada, and includes beds of bodies of water, minerals, oil and gas, but does not include lands already transferred to the GNWT as Commissioner's Lands, such as land within community boundaries, or other lands that will be specifically excluded. *Indian Act* reserves and land currently reserved as Indian Affairs Branch Lands will be excluded. Public lands are also known as "Crown Land".

## Settlement Lands

Lands outside of community boundaries that are owned by Aboriginal governments as a result of completing a land claim agreement or a land claim and self-government agreement. Settlement lands may include beds of bodies of water, as well as minerals, oil and gas.

## Land Claim

Agreement that describes who owns the land and the use of its resources.

## Aboriginal Government

A government which represents and serves an Aboriginal people.

## Aboriginal Rights

Rights that some Aboriginal peoples of Canada hold as a result of their ancestors' long-standing land use and occupancy. The rights of certain Aboriginal peoples to hunt, trap and fish on ancestral lands are examples of Aboriginal rights.

# What does this mean?

For many years, people in the NWT have wanted to have more control over the decisions that affect them. The federal government has transferred this control slowly: things like the power to elect MLAs and control over health care, education, airport management, and forestry. The NWT now has most of the same powers held by the provinces and Yukon. But, unlike the provinces and Yukon, the NWT does not have control over public lands and resources. The federal government makes decisions about how public land will be managed and protected. And it collects the royalty payments from resource development.

## Decisions about our land and resources should be made by Northerners.

NWT residents should be the ones who decide what happens to land and resources in the NWT. For many years, these decisions have been made in Ottawa, often based on national priorities instead of what we want or what is in our best interests.

Devolution means that NWT residents will make decisions about how public lands in the NWT are used and how our resources are developed. The GNWT has a *Sustainable Development Policy* that recognizes the need to balance development with respect for our environment. With devolution, we will be able to make sure that development decisions provide economic benefits for our residents while preserving and protecting our environment.

Devolution means that the GNWT and Aboriginal governments would have the opportunity to work together on land use, resource management, and regulatory improvement on settlement and public lands. It is expected that the GNWT will eventually need about 350 additional employees to fulfill the responsibilities that come with devolution. Federal employees working in the NWT who are affected by the transfer of responsibilities will be offered positions with the GNWT and are expected to fill approximately half of the 350 new jobs.

## NWT residents should benefit from the development of NWT resources.

The federal government currently collects all the royalties from resource development on public lands in the NWT. The GNWT doesn't get any of those revenues. Over the past five years, the GNWT has missed out on approximately \$200 million of resource revenues. Devolution means that the GNWT will be able to keep some of the revenues from development on public land – about \$60 million per year, if development stays at current levels.

That's extra money that could be put toward NWT priorities like:

- Investing in our economy
- Providing programs and services for NWT residents
- Developing NWT infrastructure
- Protecting our land

Aboriginal governments are already able to collect resource royalties for development that they allow to take place on their settlement lands where they have subsurface rights. The Gwich'in, Sahtu and Tłı̨chō also already receive a share of the resource royalties that the federal government collects from development on public lands in the Mackenzie Valley as part of their settled claims. The Dehcho First Nations also receive some of these resource revenues from Canada under their Interim Resource Development Agreement. This sharing will continue after devolution.

The devolution AiP includes a commitment to negotiate a further sharing of the revenues the GNWT will receive from developing resources on public lands with Aboriginal governments.

## Negotiating devolution.

An AiP is an agreement to work together on a final devolution agreement. The devolution AiP describes the things that will be negotiated and sets out general principles, but doesn't describe all of the details. The remaining details will take at least another year to work out.

Negotiations have been going on for almost ten years. During that time, Aboriginal governments have received almost \$8 million from the GNWT and Government of Canada to participate as full parties. Some Aboriginal governments chose to participate as full parties, while others chose not to participate or engaged only as observers. In every case, Aboriginal governments themselves determined how involved they wanted to be, but all were invited to the table and funded to be there. The Dehcho First Nations chose not to accept participation funding from the GNWT. Regardless of the past level of involvement, Aboriginal governments can still participate as parties by signing the AiP.

Devolution does not affect land claims or self-government. It does not create a new order of government. The AiP respects Aboriginal and treaty rights, and so will the final devolution agreement.