Wah-shee outlines position on Mackenzie Valley Land Claims

Presented to a conference, "Delta Gas: Now Or Later", sponsored by Canadian Arctic Resources Committee, 1974 by James Wah-shee, then President of the Indian Brotherhood of the Northwest Territories.*

INTRODUCTION

A land settlement—what does it mean?

In recent years considerable public attention has been directed towards the question of land settlement, largely because of the massive "developments" proposed for the north, such as James Bay Hydro Project and the proposed MacKenzie Valley Gas Pipeline. These proposed projects are scheduled to take place in the "last frontier", the homelands of the native people of the north.

In this talk of rolling back the "last frontier" it is often forgotten that there have been last frontiers in the past and as far as the plight of the native people goes, with the discovery of each new frontier has come destruction. The proposed MacKenzie Valley pipeline is often compared to the building of the C.P.R. Look what happened to the Indian people of the south following the building of the railroads in the 19th century! Is history to repeat itself in the North?

Not if the Native people have their way. We are committed and determined that it need not and must not happen, and that it is in the context of a land settlement that it will not happen.

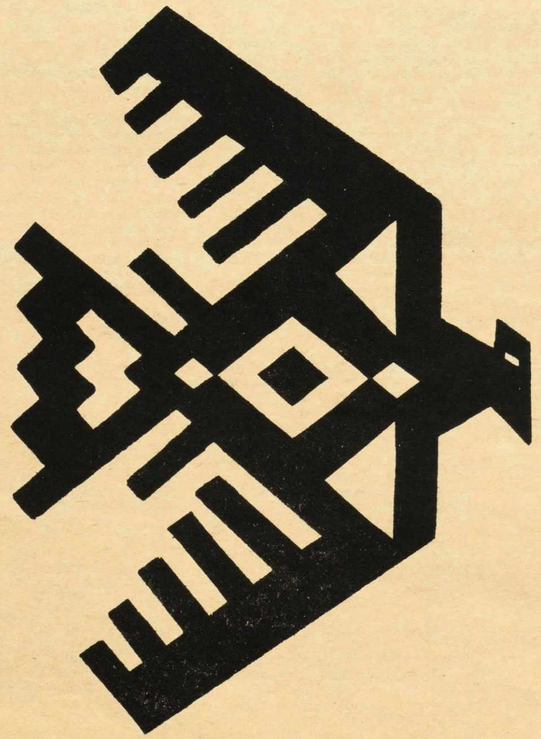
It has become more apparent to us with each news item on land settlement and each discussion with non-natives on this subject that there is a great gap between what the native people think of when they talk of land settlement and what the non-native has in mind. What this paper proposes to do is correct the public misunderstanding by bringing the question of land settlement into historical perspective, correcting some facts and finally, explaining what we, the Indian people, are thinking of when we speak of land settlement.

We, the Indian people of the N.W.T., are seriously looking at a model of land settlement which is unique and exciting. It is something never tried before in North America. As a matter of fact, I have just come from an historic meeting between the Boards of Directors of both the Metis and Non-Status Association of the N.W.T. and Indian Brotherhood of the N.W.T. At this meeting, the two organizations not only agreed to seek a land settlement jointly for all people of Indian descent, but also agreed upon an approach to such a settlement.

I am now making it public, at a time which is somewhat premature, in that it has not gone through the process of formal ratification by our communities, but what it represents is the distillation of the views of our people over the past few years' discussions concerning the question of land settlement. It accords with what the people have in mind. We are making this premature exposure of this model because we are concerned that we do not experience what happened to the Indians of James Bay when the Government made public—against the wishes of the Indians—an offer of $100 million dollars and 2,000 square miles of land. A pitiful token symbolizing government cynicism rather than native rights!

Such a tactic is designed to manipulate an uninformed public on two counts; first, with regard to the form a land settlement should take and; second, with regard to appropriate levels of compensation involved in a settlement, whether these be expressed in terms of land or money. The term "just settlement" has been used very loosely of late. We realize that what is "just" from the government standpoint is, simply, the minimum it can get away with, bearing the Canadian public in mind.

We anticipate and fear that the government may be planning to capitalize on public ignorance by using the same tactics in the case of the N.W.T. With this in mind, I hope to present here useful background facts on this complicated question of land settlement for the benefit of the public. I will also reveal for the first time the exciting new approach to a settlement which the Indian people of the N.W.T. have recently adopted. This information will help the public to put any government offer in its proper context.



HISTORICAL SETTING

There is nothing new about the concept of land settlement. The many treaties made over the years from the earliest days of European colonization of North America are in the form of land settlements. The idea was that the Indian people surrender their aboriginal rights to their traditional lands in exchange for the usual annuity, e.g. $5.00, certain vague and questionable hunting "rights" and reserves of modest proportion, at most, one square mile per family of five. The story of the swindle of Manhattan Island is infamous. As I shall point out later, there is a similar story in relation to Treaties 8 and 11 in the N.W.T.

The question of land settlement in the N.W.T. is also not a recent one. Its history goes back to the nineteenth century, and it has burst into public interest on several occasions only for a brief period and with loyalty to a strict pattern. The current interest in land settlement is different in one important respect—it has been raised at the initiative of the Indian people and not the Government.

The signing of Treaties 8 and 11 which cover much of the traditionally occupied areas of the N.W.T. was clearly initiated by a federal government seeking to extinguish Indian claims in the light of significant resource development potential on Indian lands. Aboriginal Rights, in such a context, were viewed simply as a barrier to be overcome before the land could be opened for exploitation by whites.

Treaty 8 was signed in 1899, three years after the discovery of gold in the Yukon. Treaty 11, further north was signed in 1921, one year after oil was discovered at Norman Wells.

The intent of these treaties had nothing to do with adequate provision for the particular developmental needs of Indian people. Quite the opposite, the intent was genocidal. Since that time, our people have been struggling to stay alive, both physically and culturally, in the face of policies and programs stemming from the same colonial and genocidal approach embodied in the Treaties.

The lesson we have learned from the past 75 years is that any settlement proposed by the government which seeks to extinguish our rights in this same tradition is to be rejected.

It was not until 1959, during the course of the Nelson Commission hearings, that the Indian people became aware of the government interpretation of Treaties 8 and 11. According to the government's written version of these treaties, the Indian people were supposed to have given up their aboriginal rights in return for reserves of one square mile per family of five (the latter have never been created).

This interpretation of the treaties conflicted with the testimony of witnesses and eye-witnesses of the treaties in 1899, and 1921, and with the accepted understanding of all native people that these events were simply peace or friendship agreements and that no land had been surrendered, nor reserves agreed upon.

The matter remained unresolved as the Diefenbaker "Northern Vision" faded into the past.

The Prudhoe Bay oil discovery in Alaska in the late sixties provided the new impetus for northern development culminating in the tremendous pressures being experienced today by the native people of the North. The constitutional guardian of our rights became publicly committed to the building of pipelines and highways on our lands.

While previous governments had shown some interest in extinguishing Indian claims as a first step to resource exploitation, this government showed no such interest at all. The Indian people found themselves in a position of having to press the issue with a government which was prepared to allow encroachment on Indian land and ignore the rights of Indian people altogether.

In 1973, the Indian people of the N.W.T. went to court following an attempt to protect their Aboriginal Rights by filing a Caveat. In September, 1973, Mr. Justice William G. Morrow found that the Indian people had sufficiently established their case to give them the right to file the Caveat.

We went to court because we saw our rights as landowners being ignored. The Native people feel to this day that we own the land, that we never surrendered our land, and that there must be a settlement to our satisfactign before encroachment on our land can be contemplated.

CURRENT SITUATION— WHAT IS INVOLVED

But this time the "Northern Vision" appears to be for real. Contemporary pressures of development have become so intense that an atmosphere of confrontation has been created between the Native people and every group or institution promoting the pace of change in the N.W.T.: Government, industry, and the white population of the N.W.T.

A land settlement at the best of times is a complicated, demanding task. If it is to be done properly, it requires years of preparation and research. But in the N.W.T. today, the pressures of time, resulting from the exploration for oil and gas in the context of the world "energy crisis" and the proposed pipelines, are exerting enormous demands on the Native people. The Government wants to settle. The oil companies want to see a settlement made so that they can go about their business, and the white population wants to see the conflict over with. The Native people, in the meantime, are faced with the formidable task of settling in a just manner and for the benefit of future generations. At the same time, they must accommodate the impatience of others. Others have nothing to lose by a quick, ill-prepared settlement—the native people, everything.

The truth of the matter is that the Native people are not opposed to, so-called, development. They do not see themselves as being unreasonable. They are merely seeking to protect themselves and secure what is rightfully theirs, much as anyone else in the same position would do. The Native people fear the threat of becoming engulfed and destroyed by the forces of "development" as has happened elsewhere. They fear for their land, their culture and their children. It is only in the context of a land settlement that they feel that they can protect themselves.

Government and industry want to move ahead with "development" as do the white people of the N.W.T. Only the native people and their land settlement seem to stand in the way, and a serious confrontation seems inevitable. The Native people want and need time, but neither Government, industry, or the local white population seems prepared to wait.

The Alaskan land settlement stands out to all as a dramatic precedent. It is testimony to a reality noticed by few: times have changed. The swindles of the past are over. Beads and $5.00 a year belong to the days when Indians were exterminated with gifts of blankets infested with small-pox, when the Beothuk were mercilessly slaughtered, and when Indians were viewed either as sub-humans or in the class of infants, without the right to vote or drink.

To put things in perspective, recall how it was not until 1956 that the prohibitions against consumption of alcohol by Indians were relaxed and that up to that time Indians could not vote!

While the Alaskan Settlement marks an exciting new turn in history, let us not assume that it is the end of an evolution or the definitive answer. What it means in simplest terms is that in exchange for surrender of Aboriginal Rights the Alaskans got 1 square mile per person of freehold land, including mineral rights, and $25,000 per person over 20 years. But there are other sides to the Alaskan settlement.

It is enormously complicated. Amongst other things it calls for over 200 corporations. It is also a termination policy. In twenty years the 200 corporations become public and any person or company can buy in. All native rights will be extinguished by year twenty. Finally, the emphasis is on money not land. To us land is all important and money is a much lower priority.

In the N.W.T. today the question of land settlement is being perverted by the pressure to settle quickly. This means that there is little if any emphasis on the essential ingredient that not only must there be a settlement, but it must be one that truly works to the advantage of the Indian people. The sole apparent emphasis in the N.W.T. today appears to be to get it done and over with as soon as possible so as to raise the least possible disadvantge to groups or interests other than the Indian people. The colonial tradition is alive and well in Ottawa.

Clearly something new is called for in the N.W.T. The Alaskan experience has broken an historical chain of events, but it in itself may not serve as an appropriate model and probably cannot serve as a model because of the pressure of time.

We have been asking for one and a half years for funds to do a comprehensive land claims research project, which would look not only at the Alaskan model, but others as well. It appears that at last an agreement will shortly be signed, and we are proceeding with community based research, with the design of involving the communities as intimately as possible. For it is their land claim and, ultimately, it is the people who must make it work.

It is not true that we have been funded large amounts of money to do research—such a contention creates the impression we are dragging our feet. The Government is misleading the Canadian public by making this charge.

We are highly conscious of the pressure of time and of the impatience of others. We want to avoid confrontation, but we also want to be sure that a settlement will work for this and all future generations of the Indian people of the Northwest Territories.

WHAT DO THE INDIAN PEOPLE WANT?

The irony of the whole exercise is that we are being denied the time to fully determine what we want in the way of a settlement. To work out all the details with fullest confidence that nothing has been forgotten is a formidable task.

What we can do, however, is correct the gross misapprehension of land settlement created in the minds of the general public by the Government.

LAND NOT MONEY is the focus of the land settlement. The Indian people are not seeking to sell their land for money no matter how much! We are now the lawful owners of the land and we intend to remain owners of a lot of land. Compensation in the way of money is but incidental.

A land settlement is seen as the only means to self protection and survival in the face of the enormous changes being programmed for the N.W.T. A solid land base is essential for survival as a cultural entity and protection from the devastation which promises to be part of the proposed plan of development for the N.W.T. Such devastation has happened consistently in the past and there is no reason to assume it will not happen here—unless it can (and it must) be avoided in the context of a land settlement.

The general public of Canada has been misinformed and prejudiced against land settlement by misstatements of the minister of Indian Affairs and officials of that Department by reference to figures of $3 to 5 billion dollars. I repeat the issue is land not money.

A land settlement need not be an enormous burden on the Canadian taxpayers. That is not what we are looking for. What we seek is the means to avoid the destruction of ourselves and our people in the economic, social, and political life of the Northwest Territories of the future.

Such a land settlement will benefit not only the Indian people of the Northwest Territories, but all residents of the Northwest Territories. Full participation in the regional economy of the Northwest Territories by the Indian people will mean a

dramatic increase in local control and locally generated expansion. White businessmen are extremely shortsighted if they cannot see the advantage to them of full economic involvement of a large segment of the population who might otherwise be a drain on the regional economy. Surely the native people have the full right to participation and it is to everyone's advantage that they should.

The general public of Canada should also look to land settlement as an exciting challenge. The mistakes of the past must not be repeated in the North. A land settlement is a unique opportunity to bring the Indian people into the economic, social and political mosaic of Canada in a way that could be a source of pride to all Canadians. The Government has failed to grasp this point as their most recent statements indicate. They still seek to extinguish our rights and with them the basis for our own development.

IS THERE A SOLUTION?

Can there be a resolution of the land settlement question without conflict and confrontation?

The Native people are now working on a solution which they feel may avoid the years of conflict and bitterness that might otherwise happen. This model may be the answer. It is, by necessity, novel and unique, one which reacts to the lessons of history and one which responds to the demands of the here and now of the Northwest Territories.

As I said earlier, the settlement made with the Native people of Alaska is the most dramatic that has ever been made in North America. But it is very much in the tradition that has prevailed for centuries in the history of securing Indian land for settlement or economic exploitation by Europeans and North Americans of European extraction. As in the case of the Indian Treaties it is a "once and for all" solution calling for extinguishment of the land rights of the Indian people.

A "once and for all" solution of this kind will not work in the Northwest Territories for a number of reasons, the most important of which being that there simply isn't the time available without avoiding conflict and confrontation. Moreover, it would be highly unjust to force such a solution on the Indian people and deny them the time to avoid the countless mistakes that an ill-prepared solution of this kind would impose on all future generations of Native people. Think of the burden!

Something different is required in the Northwest Territories today. There must be a solution that takes into account the change in philosophy which has taken place in connection with the colonization of lands of indigenous peoples in recent decades. The "once and for all" model is based on a colonial policy centuries old. Times have changed as reflected by the recognition of the land rights of the indigenous peoples through the United Nations.

Is there a solution which can respond to the pressure of time and avoid conflict, one which will also take into account the change in philosophy in connection with the land rights of indigenous people and ensure the preservation of their culture as is their right? Is there a solution which would at the least allow time to mold settlement in accordance with the aspirations of the native people?

We have chosen an approach which is the very opposite of the "once and for all" kind of settlement. Instead of having the Native people surrender their Aboriginal land rights forever, those rights must be formalized by creating an Aboriginal Title which clearly recognizes the ownership of traditional lands by the Native people.

Immediately, conflict is prevented with clear recognition of land ownership, and development can proceed according to terms and conditions agreed upon between the owners of the land—the Native people—and those interested in developing or using those lands.

The advantages flow to everyone. Subject to agreement with the owners of the land, Government, Industry, and local white population will see an end to the conflict created by unresolved land settlement questions and delay due to that fact is avoided.

For Native people, there is time to pursue amongst themselves the complex questions of land settlement. There will be time to determine who is a "native" for the purposes of the settlement and how and through which agencies the settlement will be administered.

The advantage of such a solution is that, unlike the case of the "once and for all" model, time is bought to avoid mistakes and avoid conflict. On-going dialogue and negotiation is made possible in an atmosphere of good-will and co-operation. The continued participation of Native people is ensured by rights and on terms to be negotiated in each case, rather than as at present on terms dictated to our people.

CONCLUSION

The general public has been misinformed on the question of land settlement in the north. What is at issue is land not money.

A land settlement in the Northwest Territories requires a new approach, a break in an historical pattern. A "once and for all" settlement in the tradition of the Treaties and Alaska will not work in the Northwest Territories. What we are seriously considering is not the surrender of our rights "once and for all" but the formalization of our rights and on-going negotiation and dialogue. We are investigating a solution which could be a source of pride to all Canadians and not an expensive tax-burden, for ours is a truly "developmental" model in the widest and most human sense of the word. It allows for the preservation of our people and our culture and secures our participation as equals in the economy and society of Canada.