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November 15, 2005

Dr. Michael Percy, Member
Expert Panel on Equalization and Territorial Formula Financing

C/O Renee St-Jacques, Secretary to the Panel
14th Floor, Room 14052
219 Laurier Avenue West,
Ottawa, ON K1A 0G5

BY FAX: 613 992-3888

**RE : A RECOMMENDATION TO THE EXPERT PANEL ON EQUALIZATION AND
TERRITORIAL FORMULA FINANCING**

The Expert Panel on Equalization and Territorial Formula Financing met in Yellowknife, NWT on August 25, 2005 to discuss a range of issues related to Territorial Formula Financing (TFF). During the discussion of a joint written submission by the three territorial governments, the Chief Negotiator for the NWT Aboriginal Summit raised a number of issues and offered a recommendation in relation to TFF and its treatment of revenue for Aboriginal self-government.

In response to an invitation to provide a written summary of the ideas discussed at the meeting, the NWT Aboriginal Summit hereby submits a recommendation and associated rationale on treatment of resource revenue to be shared by Aboriginal governments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jean Yves Assiniwi", is written over a horizontal line.

Jean Yves Assiniwi, Chief Negotiator
NWT Aboriginal Summit

Cc NWT Aboriginal Summit Leadership



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A RECOMMENDATION TO THE EXPERT PANEL ON EQUALIZATION AND TERRITORIAL FORMULA FINANCING

TERRITORIAL FORMULA FINANCING, ABORIGINAL SELF-GOVERNMENT AND OWN-SOURCE REVENUE

PRESENT SITUATION

The resource revenues received by Aboriginal governments and First Nations are treated as "own source revenue" under their respective self-government arrangements. Own source revenue offsets are established within self government financial arrangements. Within these financial arrangements, offsets are implemented in an incremental and staged basis over a period of time. The offsets take into account the own source capacities of the Aboriginal governments and First Nations.

In some cases, as discussed below, self-government negotiations are ongoing and the financial provisions, including the scope of offsets, have not yet been finalized.

Under their respective land claim agreements, the Tlicho, Gwich'in and Sahtu are provided a certain percentage of the resource royalties that either the federal or territorial governments receive in relation to the production of oil and gas and minerals in, on or under the Mackenzie Valley, including the Norman Wells Proven Area.

Under the Tlicho Agreement, the parties negotiated a financing agreement in relation to the Tlicho government.¹ The financing agreement addresses the definition and treatment of the Tlicho Government's own source revenues. In summary, own source revenue is broadly defined, including oil, gas, and mineral resource royalties.

While the Gwich'in and Sahtu land claim agreements do not set out own source revenue offsets, the Gwich'in Tribal Council and Inuvialuit Regional Corporation and the federal and territorial governments have committed to enter into negotiations "with a view to reaching agreement on own source revenue agreements for the Beaufort-Delta governments" as part of the ongoing self-government negotiations.² Likewise, the Sahtu Dene and Metis of Deline and the federal and territorial governments have committed to negotiate an own source revenue agreement for the Deline First Nation Government.³

Unlike the land claim agreements of the Tlicho, Gwich'in and Sahtu, the payment of resource royalties to the Yukon First Nations is subject to a transfer of the administration and control

¹ Tlicho Agreement, section 7.11.

² Gwich'in and Inuvialuit Self-Government Agreement Agreement-In-Principle for the Beaufort-Delta Region, section 21.4.1.

³ Deline Self-Government Agreement-In-Principle for the Sahtu Dene/Metis of Deline, section 22.3.1.
Initialed on June 16, 2003.



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of the resources to the territorial governments. So until recent transfer of the administration of oil and gas and minerals to the Yukon Government, the self-governing Yukon First Nations did not receive any share of resource royalties.

The Yukon First Nation Final Agreements define "Crown royalty" to mean any amount received by the Yukon Government less "any deductions made by the federal government from federal financial contributions to the Yukon Government by reason of the Yukon Government receiving revenues from a resource."⁴

Under the self-government financial transfer agreements of the Yukon First Nations, the base funding provided to the Yukon First Nations is offset by a percentage of the amount of "eligible" revenue. The eligible revenue offset includes the revenues provided to the Yukon First Nations with respect to the production of oil and gas and minerals. Thus the resource royalties provided to the Yukon First Nations are subject to two offsets - one under the territorial formula financing agreement and the second under the self-government financial transfer agreement.

Revenue flows subject to two separate offsets are obviously problematic. The federal government has acknowledged that there will be an inequity when revenues are subject to two potential offsets. Double offsets do not meet the expectations of any of the governments involved in this issue.

THE NWT ABORIGINAL SUMMIT RECOMMENDATION

The NWT Aboriginal Summit recommends that revenue flowing to an Aboriginal government resulting from an agreement on territorial-Aboriginal resource revenue sharing be exempt from the offset provisions of the Territorial Formula Financing (TFF) agreement. Any resource royalties provided under the terms of such an agreement would be "own source revenue" within the meaning of applicable self-government arrangements.

Otherwise, if the revenue is flowed to the territorial government and, in turn, flowed to Aboriginal governments, a number of concerns are raised. Firstly, the revenues provided to the Aboriginal governments would be subject to two offsets - the offset under the territorial formula financing agreement and any offset established under the applicable self-government agreement. The federal government would be "double-dipping" the resource revenues payable to the Aboriginal governments. As well, if the revenues are flowed through the GNWT, it is likely that there would be adverse consequences for the GNWT under its formula financing agreement.

The implementation of this recommendation would mean that instead of fighting to get a percentage of the net fiscal benefit retained in the North (no more than 20%), Aboriginal governments would negotiate a percentage of all the revenues raised by a territorial government.

⁴ Umbrella Final Agreement, Chapter 23.



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Consider the alternative 'fix': this would involve the need to seek amendments to self-government agreements finalized to date in both the Yukon and the NWT in order to alter the provisions with respect to the treatment of own-source revenues. The NWT Aboriginal Summit solution is a much simpler and equitable approach.

It is also a solution that is in line with recent national developments. Aboriginal governments are sharing in the management and fiscal benefits of land and resources across Canada. This is consistent with the federal policy view that provincial and territorial governments should share management capacity (co-management) and fiscal benefits from lands and resources with Aboriginal governments.

Another extremely important potential advantage of the recommendation relates to self-government financing. When dealing with emerging self-government arrangements, the federal government has attempted to resolve financing issues without seeking new revenue sources. In fact, while the federal self-government policy infers that federal line departments would be responsible to fund self-government implementation to the extent of program transfer under their jurisdiction (including incremental costs), these same line departments have been looking to the Department of Indian and Northern Affairs for funding. It should be noted that while DIAND has program monies to support the negotiations of self-government arrangements, it has not received Cabinet or Treasury Board approval to have a set-aside envelope to finance the implementation of new self-government arrangements. Revenue streams without offsets flowing to Aboriginal governments provide potential to assist in resolving self-government funding issues.

It should be noted that this recommendation was well received by members of the Expert Panel during the Yellowknife meeting and received support from representatives of the Yukon and Nunavut governments who were present at the roundtable.

The Aboriginal Summit hopes that this proposed solution helps the Panel in its deliberations on recommendations to the federal government on matters that will help to establish a fair and equitable territorial funding regime.