

Alberta's Métis Settlements and the Co-management Agreement

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Presented by:
Prof. Wayne Renke
University of Alberta
Edmonton, Alberta

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Wayne Renke, Faculty of Law, University of Alberta
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The many Metis leaders who had fought for nearly a decade to have land set aside for the exclusive benefit of their people had envisaged the Settlements as a means by which the Metis would gain control of their own destiny [T]hrough the constant efforts of the various leaders, the Settlements have gradually taken over increasing control of their own affairs. Their goal is to create self-reliant, secure, and prosperous communities built on the strengths of Land and Culture. However the manner in which this goal is eventually achieved is perhaps more important than the goal itself Outside resources are a necessary part of settlement growth, however it is essential that the application of these resources be controlled and directed by the community through their local government framework.¹

On 16 May 2013, the Alberta Government and the Metis Settlements General Council [MSGC] announced that a new “Co-Management Agreement” had been achieved.² The new agreement amends the original Co-Management Agreement [CMA] set out as Schedule 3 to the *Metis Settlements Act* [MSA].³ The new agreement has been viewed very positively by the MSGC:

“The Metis Settlements General Council is excited about the co-management agreement,” said Randy Hardy, Council President.

“The potential revenues and economic opportunities generated by this agreement are an essential component to the long term sustainability of the Settlements. This signing marks yet another historic day in the continuing partnership between the Government of Alberta and the Metis Settlements.”⁴

“It allows us to get in on the real action, on the business part of the monies – that is where the lion’s share is,” Metis Settlements General Council president Randy Hardy said.

“We can pick and choose our investors (and) partners and we can move at the pace that communities feel comfortable.”⁵

¹ Elmer Ghostkeeper, “Our Land and our Culture is our Future.” *Strategies and Implications of Development on the Metis Settlements of Alberta* (1981), 1 *Canadian Journal of Native Studies* 151 at 151 – 152.

² Alberta Government News Release, “Alberta government and Metis settlements celebrate new development agreement” (16 May 2013), <http://alberta.ca/acn/201305/34183ADF6A37A-9D60-5199-ED9BBA9212F3B584.html>. The original Co-management Agreement has eight Métis Settlements as parties, in addition to the Province and the MSGC. However, s. 602 of the agreement contemplates amendments by the Province and the MSGC: “Subject to sections 601 to 603, the parties agree that this agreement may be otherwise amended by mutual agreement between the Minister and the General Council.” The Province has confirmed that the eight settlements were part of the consensus: Alberta Energy, Information Letter 2013-17, “Public Offering of Crown Petroleum and Natural Gas and Oil Sands Rights on Metis Settlements,” <http://inform.energy.gov.ab.ca/Documents/Published/IL-2013-17.pdf> [IL 2013-17].

³ *Metis Settlements Act*, RSA 2000, c. M-14. Where necessary, I will distinguish between the original and 2013 versions of the CMA as the 2009 CMA and the 2013 CMA respectively. A hard copy of the 2013 CMA is on file with the writer. The terms of the 2013 CMA are outlined in IL 2013-17, *supra* note 2. I have used the spelling “Metis” (no accent) to track quoted usage; otherwise, I have used “Métis”.

⁴ Alberta Government News Release, *supra* note 2.

⁵ Karen Kleiss, “Métis gain greater control over oil and gas on their lands,” *Edmonton Journal*, 16 May 2013, <<http://www.edmontonjournal.com/M%C3%A9tis+gain+greater+control+over+their+lands/8397694/story.html>>.

Very generally, the CMA establishes a framework whereby the MSGC and a Métis Settlement affected by a proposed mineral development can limit operations on Settlement lands and can benefit from and participate in operations on Settlement lands – even though mineral ownership remains vested in the Province.

Is President Hardy's enthusiasm for the 2013 amendments to the CMA justified? In my view, it is. This conclusion will be supported by (A) a brief appraisal of the continuing relevance of oil, gas, and oil sands production to Métis Settlements in Alberta; (B) an examination of the “continuing partnership between the Government of Alberta and the Metis Settlements” that provides the setting for the CMA; (C) an account of the operation of the CMA, as newly amended; and (D) an assessment of the CMA. I hope to show that the CMA contributes to the objective identified by Elmer Ghostkeeper in the quotation that begins this paper – Métis Settlement self-sufficiency built on Land and Culture.

A. THE SETTLEMENTS AND OIL AND GAS

The CMA cannot by itself produce revenues or economic opportunities. Resource revenues presuppose resources.⁶ While the presence of hydrocarbons cannot be predicted on the basis of low-resolution high-level governmental maps, there is good reason to believe that Alberta's Métis Settlements – compared to many other Alberta locations – are situated in locations with respectable resource development prospects.

The MSA recognizes eight Métis Settlements – Buffalo Lake, East Prairie, Elizabeth, Fishing Lake, Gift Lake, Kikino, Paddle Prairie, and Peavine.⁷ The Settlements are located across central and north-west Alberta⁸ - Elizabeth and Fishing Lake, 37 and 93 km south of Cold Lake, respectively;⁹

⁶ The 1990 CMA and the 2013 CMA rely on the definition of “minerals” in the *Mines and Minerals Act*, RSA 2000, c. M-17, s. 1(1)(p)(i): “minerals” means all naturally occurring minerals, and without restricting the generality of the foregoing, includes ... gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, **oil, asphalt, bituminous sands, oil sands, natural gas, coal**, anhydrite, barite, bauxite, bentonite, diatomite, dolomite, epsomite, granite, gypsum, limestone, marble, mica, mirabilite, potash, quartz rock, rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl” [emphasis added]. “Oil sands” are further defined in ss. 1(1)(s) and (d): *ibid.* My focus will be on oil, natural gas, and oil sands.

⁷ MSA, *supra* note 3, ss. 2(1)(a) – (h). See generally Alberta Aboriginal Relations, *Metis Settlements and First Nations in Alberta* (September 2013), http://www.aboriginal.alberta.ca/documents/2013_MetisSettlementProfile.pdf.

⁸ For maps, see MSGC, Communities, <http://www.msgc.ca/communities/default.ksi> and Alberta Aboriginal Relations, <http://www.aboriginal.alberta.ca/930.cfm>.

⁹ Elizabeth Métis Settlement, <http://elizabethms.ca/>; MSGCI, Communities – Fishing Lake Métis Settlement, <http://www.msgc.ca/Communities/Fishing+Lake+Metis+Settlement/Default.ksi>; Fishing Lake Métis Settlement, <http://fishinglakems.ca/index.php/profile>.