Yukon Benefits Agreements: 
Policy Options

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November 2001
Yukon Benefits Agreements: Policy Options

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1.0 Introduction

The resource development landscape in the Yukon has evolved significantly during the last decade to a point where the interests of individuals and communities affected by development projects are now considered in detail before projects begin. For example, where impacts on the natural environment are identified in the course of an environmental assessment, advance efforts are made to mitigate the impacts. Similarly, in situations where economic benefits accompany a development project, efforts are now made to ensure that the benefits of development accrue to local communities and individuals. A mechanism being used more and more often to ensure that local communities do indeed realize economic benefits from development projects is the benefits agreement.

The stage for future resource development in the Yukon has now nearly been reset through a variety of institutional and legislative advances. Among the advances now in place, or soon to be in place, are the devolution of administrative responsibilities for land and resource management from Canada to the Yukon, the completion of eight of fourteen sets of First Nation land claim agreements (with more expected to follow soon) and the transfer of oil and gas authority to the Yukon via amendments to the Yukon Act. A product of the increased prevalence of benefits agreement use accompanied by the near-complete resetting of the resource development stage is pressure on governments to formalize the scope, content and intent of benefits agreements.

An extensive amount of work which describes the various aspects of a range of existing benefits agreements has been completed. However, a Yukon policy framework which could be applied to all resource areas including oil and gas, minerals and forestry, as well as the new transportation infrastructure needed to get the resources to market, has not yet been constructed. A prerequisite to the creation of such a framework is, of course, a thorough discussion of the possible policy options. Accordingly, the purpose of this project is to prepare a policy options paper which will hopefully facilitate and focus such a discussion.

The first requirement for the establishment of a benefits agreements policy framework is general consensus among government policy makers on the rationale for the drafting of a framework. Accordingly, Section 2.0 of the paper looks at the reasons why the Government of Yukon might consider drafting a benefits agreements policy framework. As the creation of a durable benefits agreements policy framework will also require agreement on a set of policy principles, Section 3.0 of the paper presents a proposed set of policy principles. Section 4.0 identifies a range of possible elements which might be specified in a benefits agreements policy framework and Section 5.0 describes four possible forms that a requirement for a benefits agreement might take. The paper wraps up in Section 6.0 with a brief conclusion.
2.0 Framework Rationale

2.1 Statutory Basis for Benefits Agreements

In considering what the appropriate role for government might be in the establishment of benefits agreements an obvious starting point is to identify the statutory bases for the negotiation of such agreements. Three potential avenues for a statutory requirement for a benefits agreement were identified -- resource management legislation, comprehensive land claim agreements and land management legislation. Each are described below.

2.1.1 Resource Management Legislation

Minerals

The statutes which govern the exploration and development of the Yukon’s mineral resources are based upon a system of “free entry”. Free entry systems permits free access to public lands, a right to acquire title (by staking a claim) and a right to develop and mine the minerals discovered. As a result, a person may acquire the legal right to explore, locate and mine for minerals in the Yukon by satisfying a set of statutory pre-conditions.

Under federal law, therefore, the right of access to mineral resources is non-discretionary in the Yukon on the part of the administrators of the mineral resource statutes. If an individual or a corporation satisfies the pre-conditions, a right of access to the resource cannot be denied. Because the negotiation of a benefits agreement is not among the set of right of access pre-conditions, the creation of benefits agreements for minerals projects rely solely upon the goodwill of the parties involved.

Note, however, that certain mining processes may require that permits under associated statutes be secured. For example, mining processes which affect surface water quality may trigger the need for a water license issued under authority of the Yukon Waters Act. The issuance of water licences is primarily at the discretion of the Yukon Territory Water Board. As a result, it is conceivable, though perhaps done at risk of frustrating the intent of the legislation governing access, that the negotiation of a benefits agreement be made a precondition to the issuance of a water license.²

¹ The statutes which govern the exploration and development of the Yukon’s mineral resources are the Yukon Quartz Mining Act (Canada) and the Yukon Placer Mining Act (Canada).
² Making a benefits agreement a condition of an authorization under the Yukon Waters Act could potentially make the authorization susceptible to legal challenge as being ultra vires of the enabling legislation if the legislation is not sufficiently broad in scope to include benefits agreements.
Forestry

In contrast to the free entry system found in the minerals sector, the right of access to forest resources for commercial purposes requires the acquisition of a permit for the cutting and removal of timber from public lands. An individual or a corporation may acquire the legal right to cut and remove timber from public lands only at the discretion of the administrators of the relevant statutes. As with the right of access for minerals, a set of pre-conditions, though decidedly more vague than those for minerals, must be satisfied before access to forestry resources is granted.

The current set of pre-conditions for access to Yukon forest resources on federal lands include a demonstrated knowledge of environmental protection and conservation, experience in the forest industry and a demonstrated capacity to harvest the volume of timber applied for. In addition, the applicant must be in good standing with DIAND in respect of previous timber permits. There is no requirement for the negotiation of a benefits agreement. Similar to the situation for minerals access, the creation of benefits agreements for forestry projects rely solely upon the goodwill of the parties involved.

Oil and Gas

Of the three types of natural resources included in the scope of this paper, only oil and gas is presently the administrative responsibility of the Government of Yukon. The administration of minerals and forestry resources will remain the purview of the federal government until such time as responsibility is devolved to the Government of Yukon which is to take place on April 1, 2003. The transfer of administrative authority for the Yukon’s on-shore oil and gas resources occurred in 1998 with amendments made to the Yukon Act.

Similar to the right of access for forestry resources in the Yukon and in contrast to that of mineral resources, access to oil and gas resources is at the discretion of the resource manager. Such discretion is exercised by first selecting potential areas for development and inviting bids for the right to explore for oil and gas resources within the identified area. Upon disposition of the rights an individual or a corporation holding the disposition may obtain a permit or lease, a pre-condition to oil and gas exploration.

With respect to the completion of a benefits agreement, section 68 of the Yukon Oil and Gas Act, quite clearly requires that such an agreement be completed. In addition, the views of Yukon First Nation(s) on whose land, including traditional territory, the oil and gas activity will be carried on, must be given full and fair consideration. It is

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3 The relevant statute which governs the extraction of forest resources on federal Crown land is the Yukon Timber Regulations (Canada).
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worth noting that while certain pre-conditions must be satisfied before a right of access to oil and gas resources can be granted by the resource manager, the negotiation of a benefits agreement is a separate requirement. In other words, the granting of a right of access is legally separate from the negotiation of a benefits agreement.

The requirements for the negotiation of benefits agreements *vis a vis* current resource management legislation is summarized in the table below:

<table>
<thead>
<tr>
<th>Requirements for Benefits Agreements by Resource Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resource Management Authority (as at Sept/01)</td>
</tr>
<tr>
<td>Mining</td>
</tr>
<tr>
<td>Forestry</td>
</tr>
<tr>
<td>Oil and Gas</td>
</tr>
</tbody>
</table>

2.1.2 Comprehensive Land Claim Agreements

The second potential avenue for a statutory requirement for a benefits agreement is a comprehensive land claim agreement. In the Yukon, a series of comprehensive agreements have been negotiated, or are in the process of being negotiated, under the provisions of the tripartite Umbrella Final Agreement (UFA) which was signed in May 1993 by the Council for Yukon Indians and the governments of Canada and the Yukon. The UFA is the template for the First Nation-specific agreements which include both a Final Agreement and a Self-government Agreement.

The Yukon land claim agreements, similar to governing statutes for minerals and forestry resource management, do not explicitly require the negotiation of benefits agreements as a pre-condition to resource extraction. According to Laurie A. Henderson, author of *Benefits Agreements: Some Legal Issues Considered,* "...there are no provisions in the Final Agreements which require the completion of a benefits agreement before a project commences...".4 Similarly, Tara L. Campbell *et al* in *A Review of the Legal Bases for Impact Benefit Agreements* note that "...the UFA does not specifically speak to impact benefit agreements...".5

The UFA does, however, specify that a First Nation must consent to access across settlement lands where access is considered to be of more than a "casual and insignificant nature".6 While the nature or form of consent is not specified in the

6 Note that the access provisions do not apply to lands categorized as traditional territory.
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UFA, it is possible that consent could be in the form of a benefits agreement. Thus, resource activities which require the establishment of new transportation corridors across settlement lands and which require consent of access by a First Nation could conceivably face a requirement for the negotiation of a benefits agreement. One possible example of such a situation is the export of natural gas by pipeline along a route not currently described in a Final Agreement.

2.1.3 Land Management Legislation

The third potential avenue for a statutory requirement for a benefits agreement is via land management legislation. In contrast to southern jurisdictions, only a small fraction of the total Yukon land base is held (in fee simple or by lease) by individual persons. The vast majority of Yukon land is owned by the federal, territorial and First Nation governments with the Government of Canada owning more than 90 percent of the Yukon land base. As a result, new development, whether primary (i.e., natural resource extraction) or secondary (manufacturing, retail, etc.) faces a significant likelihood of encountering regulation under some form of land management legislation. Note that the creation of new resource transportation infrastructure, whether in the form of a highway, pipeline or railway would also likely face regulation under one (or more) land-related statutes.

The near-comprehensive scale of public ownership of the Yukon land base might suggest that an equally wide range of requirements for the negotiation of benefits agreements is in place under the various pieces of land management legislation. The converse, however, is true with current federal and territorial legislation being silent on measures commonly found in benefits agreements. And as was seen in section 2.1.2 above, the Yukon First Nation Final Agreements are also each essentially silent on a requirement for the negotiation of benefits agreements.

While the devolution package currently awaiting implementation in 2003 does not include the transfer of ownership of federal Crown lands to the Government of Yukon, it does include responsibility for the administration and control of those lands. Accordingly, the drafting of Yukon-specific land administration legislation may provide an opportunity for the integration of benefits agreements and land administration to be considered in more contemporary detail.

In conclusion, the examination of the various legislation, regulations and agreements described in this section shows that, with the exception of the Yukon Oil and Gas Act, the federal and Yukon governments have, to date, exercised a very limited role establishing statutory requirements for the negotiation of benefits agreements in the Yukon.

7 Access to federal Crown land is regulated under the Territorial Lands Act, access to Commissioner's land is regulated under the Yukon Lands Act and access to First Nation settlement land is regulated by the First Nation in question.
2.2 Public Policy Basis for Benefits Agreements

In deciding how to define its role in the negotiation of benefits agreements the Government of Yukon will need to consider the extent of its current and potential involvement in the benefits agreements arena. Such involvement is manifest through a variety of mechanisms and initiatives in the Yukon; six are discussed below.

2.2.1 Existing Legal Requirement

As noted above in section 2.2.1, a requirement for the negotiation of a benefits agreement is an integral part of the Yukon Oil and Gas Act. Because the Government of Yukon has responsibility for administering the Act, it must have some knowledge of the contents of each oil and gas benefits agreement in order to be able to decide if the statutory requirements have been met. In addition, as the authority requiring the agreement, the Government of Yukon will quite possibly be asked to provide advice to the negotiating parties regarding such matters as timing, necessary content, sanctions for delay and not negotiating in good faith, as well as delineating just who should be party to the negotiations.

Oil and gas is currently the only resource area which has a legal requirement for the negotiation of a benefits agreement. However, the devolution of administrative authority for minerals and forest resources may trigger an examination of the requirement for the negotiation of benefits agreements in relation to access to resource other than oil and gas.

2.2.2 Infrastructure Provider

The provision of infrastructure by governments in the Yukon, both at the federal and territorial levels, for the benefit of resource developers has been a common and consistent practice. What has varied is the degree of a particular government’s involvement. An example of a high degree of involvement is the direct supply by the federal government of virtually all infrastructure in the town of Faro in the late 1960s in aid of the Cypress Anvil lead-zinc mine. An example of a lower degree of involvement is the July 2001 signing of a road maintenance agreement by the Government of Yukon and the North American Tungsten Corporation for the enhancement of an existing piece of infrastructure, the Nahanni Range Road.

Presumably, governments have intervened in the supply of infrastructure for the benefit of their constituents. The list of types of resources for which the Government of Yukon has administrative responsibility is about to grow to include minerals and forestry. At the same time as that list grows the profile of constituents will change from one of a national nature to one with a decidedly more territorial flavour. As benefits agreements are a tested method of encouraging benefits to accrue at a more
local level, the Government of Yukon may soon have a greater interest in being involved in the negotiation of benefits agreements.

2.2.3 Complementary Activities

With the prevalence of government in the Yukon, it is likely that some provisions of a given benefits agreement will involve the Government of Yukon as a matter of course. For example, trades-training (i.e., apprenticeship programs) is a provision common to many benefits agreements. As the sole supplier of trades-training in the territory, Yukon College, which is funded by the Government of Yukon, would in all likelihood be involved in the supply of training services no matter to what degree the Government of Yukon was otherwise involved. As a result, a coordination role for the Government of Yukon, through which benefits could be facilitated for all parties, may exist by default.

2.2.4 Information Support

Whether it has explicitly intended to or not the Government of Yukon has already many times in the past been indirectly involved in the negotiation of benefits agreements through the supply of information, for example in the form of data, statistics, maps, etc. As the supplier of information common in form to all benefits agreements, the Government of Yukon is already playing a negotiation support role for the benefit of all parties. By ensuring that the information provided is of high quality and is supplied in a timely manner the Government of Yukon can facilitate the completion of benefits agreements. Conversely, the failure to provide high quality and timely information can make the negotiation of a benefits agreement more complicated and costly for all involved.

2.2.5 Intra-Government Coordination

Notwithstanding the absence of a benefits agreements framework, the Government of Yukon has already been party to several benefits agreements with examples ranging as far back in time as a 1991 Sa Dena Hes Mine agreement. Because one department may negotiate an agreement involving the delivery of programs for which costs are borne by another department or agency, care should be taken to coordinate the involvement of the various branches of the Government of Yukon. Such coordination could be achieved at the policy level via the Policy Review Committee or at the funding level via Management Board. An intra-government coordination measure would also serve to ensure that precedents made within successive agreements are within the parameters of established public policy objectives rather than being of an ad hoc time-is-of-the-essence nature.
2.2.6 Link to Environmental Assessment

Governments can also become involved in the negotiation of benefits agreements via the environmental assessment process. Comprehensive by design, DAP applies to projects which involve not just the federal government but all other governments in the Yukon including self-governing First Nations and municipalities. In addition, DAP is broader in scope than the existing environmental assessment process (as defined by the Canadian Environmental Assessment Act) in that it considers a wider range of socio-economic factors including many commonly found in existing benefits agreements.

The most recent draft DAP legislation does not, however, appear to include a clear link between the consideration of the wide range of socio-economic factors and the required negotiation of benefits agreements. The absence of such a link is perhaps not surprising given that the source document for the creation of DAP, the Umbrella Final Agreement, does not, as previously noted, speak directly to benefits agreements.

3.0 Policy Principles: Starter Set

A set of policy principles will be a key component of the benefits agreements policy framework, the drafting of which this policy options paper is intended to facilitate. It is expected that agreement on the content of the set of policy principles will require a significant amount of discussion. A “starter set” is presented below.

The Yukon benefits agreements framework shall:

P1 Facilitate the establishment of a protocol for the ongoing cooperation between the resource developer and parties affected by the development.

P2 Strive to balance the appropriation of benefits by interests located outside the territory and the accumulation of economic, social, cultural and environmental costs at the local level.

P3 Seek to establish positive economic relationships between resource developers and the various elements of affected communities including businesses, individuals and governments (Yukon, municipal, First Nation).

8 The most recent draft of the DAP legislation was released in August 2001 for public review under the title “Yukon Environmental and Socio-economic Assessment Act”.

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P4 Ensure an orderly cascade of benefits from the project area to the next largest economic base so that the communities most affected by the project receive benefits reasonably commensurate with the costs which tend to accrue closer to the project area.

P5 Endeavor, in the context of genuine progress indicators, to cause positive increases in GPI measures at the local level. 9

P6 Facilitate “value-added” opportunities for local business and individuals.

P7 Seek to ensure, to a reasonable extent, that the benefit stream accruing to the local community spans the entire length of project (from exploration to reclamation/reforestation).

P8 Allow for a gradual and real reduction (amortization) of the government role in the negotiation of benefits agreements as they become more widely used and accepted.

P9 Recognize and be responsive to the existence of incomplete markets for the supply of goods and services in small northern communities through measures such as the unbundling of construction tenders.

P10 Apply to resource development projects of all types (oil and gas, minerals, forestry) as well as new transportation infrastructure projects needed to move resources to market.

4.0 Benefits Agreements Content Options

The achievement of the objectives embodied in the proposed principles outlined in the previous section will require the construction of a comprehensive framework. This section identifies possible key elements in such a policy framework and highlights the range of content options within each element.

4.1 Land Base

As the purpose of a benefits agreement is to ensure that some amount of direct benefits from resource development projects flow to the people who will be most affected by the project, the framework must define the land base to which it will apply. For example, in order to ensure that project benefits accrue to those living closest to the project area the framework will need to identify which “unit of

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9 The Genuine Progress Indicator (GPI) is a measure of economic well-being which broadens the conventional accounting framework to include the economic contributions of the family and community realms, and of the natural habitat, along with conventionally measured economic production.
measure" should be used to define "living closest to the project area". A variety of land base units of measure are in common use and are listed below in order of volume of land, from smallest to largest:

- project area
- community
- settlement land category ‘A’
- settlement land category ‘B’
- traditional territory
- region
- territory (Yukon)
- north of 60°
- national

4.2 Demographic/Organizational Base

Similar to the need to define the land base, the policy framework will also need to define the demographic/organizational base on which it will seek to establish economic relationships. As an understanding of the legal perspective will be of use in discussing issues integral to this element, readers are encouraged to examine Part Six of Henderson's Benefits Agreements: Some Legal Issues Considered which contains a thorough discussion of the human rights aspects of benefits agreements. Persons/organizations which together make up the Yukon demographic base include:

- First Nation beneficiaries
- First Nation members
- Yukoners
- Canadians
- First Nation businesses
- Yukon businesses
- northern businesses
- communities
- First Nation governments
- First Nation tribal councils
- Government of Yukon
- Government of Canada

4.3 Parties to the Agreement

Another element of benefits agreements framework which will require discussion at the policy level concerns the determination of which persons should be party to benefits agreements. While a benefits agreement may be negotiated for the benefit of any or all of the persons/organizations listed under element 4.2 above, it is not reasonable to expect, nor expedient, for all to be party to an agreement. Accordingly,
determinations will need to be made about who should be represented at the table as well as who is representing who. For example, the framework might perhaps include criteria for defining project size, with negotiations for projects of a ‘smaller’ size requiring more limited representation at the table than for projects of a ‘larger’ size.

4.4 Form of Agreement

In order to ensure that project benefits flow to local communities with some degree of certainty, it may be desirable to specify within the framework that a benefits agreement must be of a particular form. Examples abound of agreements which have the appearance of a legally binding contract. However, many provisions of benefits agreements do not lend themselves to legal enforceability but are perhaps better described as being of a "best efforts" nature. In addition, the more rigid the form of agreement the higher the negotiation and transaction costs associated with the agreement. As a result, an agreement which identifies areas of mutual interest and benefit and is grounded in goodwill between the resource developer and those affected by the development may in fact be more durable and efficient than a more litigation-friendly version. Possible forms of agreement include:

- expression of goodwill
- letter of understanding
- memorandum of understanding
- verbal agreement
- written contract
- written contract with monitoring provisions
- written contract with monitoring provisions and sanctions

4.5 Key Provisions

A framework agreement, of whatever form is chosen will, of course, need to speak to the operational terms and conditions of benefits agreements. While as a practical matter each benefits agreement will match the circumstances of each resource development project, some general features will be common to all benefits agreements. Readers interested in more detailed discussion of the various provisions of existing agreements readers are referred to Henderson and Voogd’s Benefits Agreements: A Comparative Analysis (draft) and Part II of Kennett’s A Guide to Impact and Benefit Agreements. Key provisions of existing benefits agreements relate to:

- employment and training
- economic development and business opportunities
- social, cultural and community support
- financial contributions and equity participation (joint ventures)
- protection of the environment and cultural resources
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4.6 Cultural Circumstances

Given the diverse make-up of northern peoples the framework will also need to recognize and provide for more than one type of socio-economic and cultural circumstance. For example while some workers on a particular project may prefer to commute from southern centres on a x-week-in, x-week-out rotation on an annual basis others may prefer to work on a non-rotational schedule on a part-year basis. Cultural circumstance to consider include:

- seasonality of work
- location of work (distance from usual residence)
- traditional pursuits
- subsistence harvesting
- family situations

4.7 Local Labour Force

It is not uncommon for mis-matches between the skill mix of the local labour force and the qualifications and experience required for jobs at capital intensive and technologically sophisticated resource extraction operations. Such mis-matches are not surprising given the sporadic and temporary nature of resource development projects and because individuals with skills in demand by resource developers tend to follow the work rather than waiting for it to come to them. As a result, the benefits agreements framework should recognize that while the local labour force may not be "turn-key" in nature, it can be responsive to the needs of resource developers within a reasonable amount of time.

4.8 Resource Royalty Sharing

In addition to the negotiation of benefits agreements, alternate methods of ensuring that positive benefits from resource development accrue to local communities can also be used. One example is the collection of royalty payments by governments which then use that revenue to provide local social and economic development services.

The Government of Yukon is becoming increasingly responsible for the administration of the Yukon’s natural resources. As occurred with the transfer of authority for oil and gas, the devolution of authority for minerals and forestry resources to the Government of Yukon will also come with access to resource royalty revenues. Chapter 23 of the Final Agreements provides that upon transfer of authority to collect resource royalties, the Government of Yukon is obligated to share those revenues with Yukon First Nations. Thus, it could be argued that the groundwork for ensuring a positive flow of benefits at the community level is already
in place outside of a framework for benefits agreements. With this in mind possible options for consideration include:

- integrate existing resource royalty sharing arrangements with a benefits agreements framework
- substitute enhanced resource royalty sharing arrangements for a benefits agreements framework

4.9 Timing of Agreement Completion

If a benefits agreement requirement is adopted by the Government of Yukon, the issue of exactly where in the pre-production time-line to place the requirement will also need to be addressed. For example, if the requirement for the completion an agreement is placed too early in the project approval process it begs the question of why the negotiating parties would fully invest in the completion of an agreement if not certain the project is be going ahead. In addition, it is possible that early completion of benefits agreements negotiations may prejudice participation in the environmental assessment of a project. Conversely, if the requirement for completion is placed too far towards the back end of the project approval process, bargaining power may be lost by the local community in favour of the resource developer. In summary, the appropriate timing balance may be difficult to capture in general policy terms as it may vary according to the specific project at hand. Possible timing options include:

- pre-condition to resource access (e.g., before exploration activity commences)
- pre-condition to other regulatory approvals (e.g., water licence) which must be in place before production can begin
- timing of requirement in parallel with other regulatory approvals (e.g., Yukon Oil and Gas Act approach)
- after all other permits are in place

4.10 Monitoring and Compliance

In order to ensure that the benefits agreement provisions are executed to the satisfaction of all who are party to an agreement, the policy framework discussion should also address monitoring and enforcement issues. Note that the selection of an approach to monitoring and enforcement will to some extent be driven by the type of requirement specified in the framework. For example, if a legislative requirement is specified then obligations for monitoring and enforcement can also be specified in the legislation. Potential monitoring and compliance options include:
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- implementation timetables
- intermediate targets
- incentive clauses
- moral suasion
- arbitration and mediation
- renegotiation mechanisms
- fines
- security bonding
- compliance reports

5.0 Type of Benefits Agreement Requirement

The benefits agreements policy framework will also need to specify the type of requirement, if any, which the Government of Yukon intends to put in place. Four possible types of requirement for a benefits agreement were identified: comprehensive stand-alone legislation, resource-by-resource legislation, a policy-based approach and the current ad hoc (goodwill) approach.

Under the first possible type, comprehensive stand-alone legislation, proponents of development and transportation projects for all resources (minerals, forestry, oil and gas) would be required to negotiate benefits agreements. The requirement would apply on all lands on which the Government of Yukon has sufficient authority to implement such a requirement. As noted earlier in this paper, a statutory requirement for a benefits agreement in the form of a precondition may conflict with the operation of existing resource management practices, such as in the case of the free staking system used in the administration of mineral resources. Thus, care will need to be taken in the drafting of comprehensive legislation to ensure, to the extent possible, that the operation of the stand-alone legislation is not in conflict with existing approaches to resource management.

The second possible type of requirement identified is to place an obligation for the negotiation of benefits agreements on a resource-by-resource basis within the resource management legislation for each type of resource. Similar to the first possible requirement type, the source of the requirement would be legislative in nature. In contrast, the requirement would not be contained in a separate stand-alone piece of legislation. This is the example illustrated by the Yukon Oil and Gas Act.

The Government of Yukon is poised to take over administrative responsibilities for land and resource management from the federal government in April 2003. The resource management legislation for lands, minerals and forestry will ‘mirror’ the existing federal legislation at the time of transfer. It is the Government of Yukon’s eventual intention, however, to redraft the federal legislation to better fit current
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Yukon circumstances as was done for the Yukon Oil and Gas Act. As a result, opportunities to potentially include requirements for benefits agreements negotiation will also eventually arise.

Under the third possible type of requirement, the negotiation of benefits agreements would be required as a matter of Government of Yukon policy. As was outlined in section 4.0 (Benefits Agreements Content Options) of this paper, a variety of elements could be contained in a policy-based requirement. While the implementation of a policy-based requirement would in practice likely be less complete than with a legislative approach, a policy-based approach might allow greater flexibility in the makeup of individual agreements. As the diverse content of the agreements negotiated to date might suggest, such flexibility is a potential advantage of a policy-based approach.

The fourth and final type of requirement for the negotiation of a benefits agreement is represented by the Government of Yukon's current ad hoc approach. In the absence of responsibility for resource management a firm requirement for benefits agreements negotiation might have been of a lower priority. With the pending transfer of further resource management authority within the next 18 months, however, ad hoc arrangements which may have been expedient for one department or agency in the past may be increasingly less so for another in the future. As a result, the public policy appetite for a more comprehensive approach may be poised to increase.

6.0 Conclusion

A variety of recent and imminent legislative and institutional advances, including the federal devolution of resource management authority and the ongoing completion of First Nation land claims, are combining to reset the stage for future Yukon resource development. A key feature of the reset resource development stage will be the negotiation of benefits agreements. While extensive work has already been done in the area of 'northern' benefits agreements, a Yukon-specific policy framework which could be applied to all resource areas including oil and gas, minerals and forestry has yet to be constructed. The purpose of this options paper has been to attempt to facilitate and focus the discussion required to formulate a Yukon policy framework through a synthesis of the previous work.

The next step in the creation of a benefits agreements framework is to seek a response to the options synthesized here from within policy circles at federal, territorial and First Nation levels of government. In order to advance the project toward the creation of a framework, responses should be recorded in a manner which can be used to secure agreement on a final set of policy principles as well as the
desired elements of the various policy options. A model benefits agreement should then be drafted on the basis of the agreed upon principles and policy elements incorporating the findings and lessons learned contained in the two other papers (Benefits Agreements: A Comparative Analysis and Benefits Agreements: Some Legal Issues Considered) prepared in the course of this project.
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