

**NEGOTIATION BETWEEN MAMUITUN TRIBAL COUNCIL,  
QUÉBEC AND CANADA**

**COMMON APPROACH**

**January 19, 2000**

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Attached letter to Common Approach

JANUARY 19, 2000

**COMMON APPROACH**  
**(Mamuitun)**

**Introduction**

Based on the Innu Nation in Quebec comprising nine (9) First Nations, including those of Betsiamites, Mashteuiatsh and Essipit, which are combined in the Mamuitun Tribal Council, the said Tribal Council on February 14, 1997 submitted a draft Agreement-in-Principle that has been negotiated until February 1999. Although the Parties have reached consensus on various aspects, this formal negotiation process has revealed major differences between each party's positions.

As a result, the Parties decided in March 1999 to begin to explore new scenarios, concepts and principles as part of a new approach referred to as the "Common Approach", in order to resolve their substantial disagreements at the negotiating table rather than refer them to political authorities.

For each party negotiator, the objective of this process was to develop the basic elements of an agreement necessary for the promotion of an harmonious and peaceful co-existence towards the creation of a new generation of treaties.

These discussions have resulted in this document, which, without having any legal effect, is designed to define the main elements to be used as a basis for the drafting of an Agreement-in-Principle that will lead to a Final Agreement concerning the rights of the Innu on the territory of Quebec. It is understood that certain provisions of the Final Agreement will have the status of a treaty and will therefore be protected by section 35 of the *Constitution Act, 1982*.<sup>1</sup>

It is also agreed that, upon drafting the Agreement-in-Principle, account will be taken of consensus arrived at in prior discussions (see in particular CTM-9) to the extent of their consistency with the Common Approach.

The negotiators have agreed to submit this Common Approach document including the attached letter as an integral part of it, to their respective political authorities for them to agree that it be used over the next few months as the basis for drafting an Agreement-in-Principle.

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<sup>1</sup> In this document the expression "the treaty" refers to the provisions of the Final Agreement, which will be protected by section 35 of the *Constitution Act, 1982*.

1. **Title and rights of the Innu on the overall of Nitassinan area**

Upon signing the treaty, Quebec and Canada will recognize to the Innu of Mamuitun title and rights within the meaning of section 35 of the *Constitution Act, 1982* in the area of Nitassinan in Quebec, which title and rights shall be confirmed in the treaty.

The effects of this title and of these rights as well as the terms and conditions governing their exercise will not be the same over the whole Nitassinan area but shall be exercised in the manner set out hereinafter.

The Innu shall continue to enjoy the other rights enjoyed by the people of Canada and Quebec, but they recognize that the rights that they may exercise on the territory of Quebec are those described in this document and defined in the Agreement-in-Principle and subsequently in the Final Agreement.

The rights of the Innu shall be exercised through their own institutions as set out in the Final Agreement.

For the purposes of the agreement with Mamuitun, the territorial boundaries of Nitassinan shall be proposed by Mamuitun in January 1999. However, the Aboriginal title and rights may not be exercised within the territories of local municipalities or on private lands located outside these municipalities except to the extent provided for in the treaty, in accordance with terms and conditions still to be discussed. The status of the territory under the James Bay Agreement and in the Northeast Quebec Agreement as well as the status of the southwestern part, identified as the common part, shall be decided before the Agreement-in-Principle is signed. The boundaries of Nitassinan may be adjusted in order to take into account the claims of the Atikamekw (to the West) and of Uashat Mak Mani-Utenam (to the East).

1.1 **Innu Assi**

The description and the size of Innu Assi, as far as the three communities of Mamuitun referred to in the agreement are concerned, shall be those set out in Appendix 1.1.

On Innu Assi, the Innu of Mamuitun shall have a land title protected by section 35 of the *Constitution Act, 1982*. Quebec shall also agree to waive the rights of the Crown to these lands or, where necessary, to transfer such rights to the Innu.

This title shall provide the Innu of Mamuitun with ownership of land and of renewable and non-renewable resources on Innu Assi and shall confirm their right to use wildlife, water, hydrological and

hydraulic, forestry, plant and mineral resources located on Innu Assi.

The Innu shall exercise legislative jurisdiction over the land, as this shall be determined in the self-government provisions of the Final Agreement.

These lands and resources shall be for the collective benefit of the Innu, for the existing and future generations, and, except in accordance with the provisions set out in the Innu Constitutions, may not be disposed of. The lands, whose title is held by the Innu, shall not be 91(24) lands as referred to in of the *Constitution Act, 1867* except to the extent that they shall remain so in order to give effect to the treaty.

On Innu Assi, access shall be provided for public utilities (roads, transmission lines, gas pipelines and others) as well as navigable waterways in accordance with the terms and conditions agreed upon.

Agreements shall be concluded for habitat conservation as well as for the use of waters flowing through Innu Assi in order to ensure the quality and rate of flow of waters flowing in or out of Innu Assi.

There shall also be an agreement concerning development projects located outside Innu Assi but having an impact on Innu Assi as well as such projects within Innu Assi having an impact outside Innu Assi.

## 1.2 Rights in Nitassinan outside Innu Assi

The Innu shall agree that the effects of the title and their rights as well as the terms and conditions governing their exercise in the overall Nitassinan area outside Innu Assi shall be as follows:

### 1.2.1 Rights to hunt, fish, trap and gather for food, ritual or social purposes

Any rights that are ancillary to the exercise of these rights, including the rights to a shelter and to free mobility, shall be protected by the treaty or by administrative agreements.

The Innu shall exercise these rights in accordance with Innu laws governing the practice of Innu Aitun (as defined in Schedule 1.2.1) in Nitassinan.

These rights shall be subordinate to the requirements of resource and habitat conservation and, as far as migratory birds governed by international agreements are concerned, measures shall be agreed upon with Canada to ensure Innu participation in the management process.

The presence of third parties on the settlement area shall be taken into consideration in accordance with the terms and conditions set out in the treaty.

In order to promote harmonious relations among all the users of the settlement area, the Parties shall reconcile through agreements the exercise of their respective regulation powers for the hunting, fishing, trapping and gathering activities on the Nitassinan area.

These agreements between the Parties shall include a guarantee for the safety of persons and deal with hunting or fishing periods and catch limits for individual species and areas, methods of capture and prohibited practices, recording of catches and other subjects of a similar nature. They shall recognize an Innu priority share on wildlife resources used for livelihood.

#### 1.2.2 Right to share royalties relating to natural resources

The Innu nation as a whole shall receive annually from Quebec an amount equal to 3 per cent of the natural resources royalties designated for sharing in the overall Nitassinan area of all the Innu communities. The First Nations of Mamuitun shall agree between themselves on the terms for the division of their respective portion of these royalties.

The royalties included in the sharing are:

- net forestry royalties
- rental of Crown lands
- hydraulic power: statutory royalty (including an amount equivalent to that royalty for Hydro-Quebec)
- mines: royalties based on volume (surface substances)
- wildlife: leasing of exclusive rights (outfitting operations and others)
- hunting, fishing and trapping permits.

The actual total amount of these royalties is approximately \$200 million (for the overall Nitassinan area).

The right to this share of the royalties with respect to natural resources shall be acknowledged in the treaty.

### 1.2.3 Right to fully participate in the management of natural resources

The principle of full participation by the Innu of Mamuitun in the management of land and of natural resources shall be included in the treaty. The terms and conditions governing this participation shall be the subject of administrative agreements. This participation and related resolution of disputes shall be conducted in accordance with the terms and conditions set out in Schedule 1.2.3.

Canada and Quebec as well as the international community recognize the centuries-old knowledge of the Innu with respect to environmental protection and development of natural and wildlife resources. Consequently, they shall participate in a significant and full manner.

Therefore, measures shall be taken in order to ensure that the Innu can participate at an early stage and in a significant way in the process of planning as it relates to the management of lands and of natural resources, including the preparation of land use plans for Crown lands preceding the development of overall land planning in unorganized areas.

They shall also participate in forest management as well as in the land use process whether for conservation or for other uses such as recreation.

A method shall be developed to ensure that communities affected by forestry or mining operations in the settlement area are informed and allowed to voice their opinion through talks prior to these operations. When necessary, mitigation or compensation measures shall be taken in co-operation with the affected community. An effective method of providing compensation to the concerned communities shall be established to compensate for minor violations that cannot be mitigated or that are not included in the rights recognized in article 1.2.1.

The Innu shall be responsible for the management of commercial trapping in the trapping grounds they are already exploiting and in other territories as agreed with Quebec in accordance with terms and conditions to be determined.

When projects are subject to an impact study, the Innu may participate either in the review of the sectoral directives or in the development of directives or instructions to the proponent, in the analysis for receivability and the environmental analysis. They may

also be represented within the bodies responsible for public hearings and shall be officially consulted on their reports. Finally, the Innu shall be associated with project follow-up as well as with measures required upon abandonment of works or projects.

The same procedure shall apply at the federal level, with the necessary adjustments.

#### 1.2.4 Heritage sites

Quebec shall agree with the Innu of Mamuitun concerning the location and the extent of heritage sites, which shall be entitled to receive protection as such.

Quebec shall come to an agreement with the Innu of Mamuitun on the location and size of heritage sites, for their protection as heritage sites.

Ownership of certain sites of limited size with a great heritage value shall be transferred.

The other sites shall be protected by means of a mutually agreed upon regulation, in particular to stop or to limit the development of recreational uses.

The nature and the location of these sites shall be indicated in Schedule 1.1.

#### 1.2.5 Innu parks

An approximate area of 8,000 km<sup>2</sup> shall be agreed for the creation of four parks. These parks shall be administered exclusively by the Innu of Mamuitun under a permanent trust or a long term lease. In the latter case, this lease shall be renewable in perpetuity. The regulation to be applied shall consider the international definition of parks while taking into account characteristics of Aboriginal management and the international recognition of the specific status of Aboriginal people in these matters. A distinct formula (to be discussed) shall apply to the *parc de Pointe-Taillon* and to the *parc des Monts Groulx*. The location of these parks is indicated in Schedule 1.1.

Furthermore, the Innu shall become managers of the Ashuapmushuan wildlife sanctuary in accordance with a plan and a timetable to be agreed upon. Moreover, efforts will be made to ensure the Innu full participation in the management of the existing

*Lac St-Jean* community wildlife sector and to ensure adequate wildlife protection on an area of approximately 200 km<sup>2</sup> to the west of the *Lac des Coeurs* branch, which would be mainly managed by the Innu if it were part of a community wildlife area or some other similar arrangement.

## **2. Self-government**

Self-government implementation shall be based on the following general principles.

- 2.1 The Innu shall adopt Innu Constitutions in conformity with the provisions of the final agreement.
- 2.2 The final agreement shall, namely, contain provisions on the following:
  1. levels of Innu self-government for the exercise of powers;
  2. territorial or personal application for laws of the Innu self-government;
  3. application of the Charters;
  4. rules that shall be used to resolve conflicts of laws.
- 2.3 Within the limits of the Innu Constitutions and the treaty, the Innu governments shall have legislative power over their territory and their citizens except on topics specifically excluded in the final agreement.
 

These laws shall apply to Innu Assi. Some laws may also apply outside Innu Assi to the extent and in accordance with the terms and conditions provided for in the final agreement.
- 2.4 Innu laws on the exercise by Innu of the rights to hunt, fish, trap and gather shall apply to the Innu on the overall Nitassinan area.
- 2.5 The Constitution of Canada as well as Canada and of Quebec laws of general application shall continue to apply to Nitassinan and to Innu Assi. The parties shall agree in the Agreement-in-Principle and in the Final Agreement on the priority of laws in case of conflict or of inconsistency between an Innu self-government law and a federal or provincial law. It is understood that a law that has priority may render any other law in the area of this priority of no force or effect in whole or in part.

2.6 The parties shall recognize in the final agreement the need to conclude specific agreements for the harmonization of the exercise of their respective legislative powers, in particular in order to promote good relations and to avert tax evasion, unfair competition and the possibility for individuals to circumvent laws normally applicable to them.

2.7 The financial autonomy of Innu governments shall be ensured through administrative agreements for a determined term that, on the basis of the terms and conditions set out in the final agreement, shall namely take into account the following elements:

- (a) programs and services shall be offered at levels reasonably comparable to those prevailing in neighboring communities;
- (b) nothing in the agreement shall effect the ability of the Innu to participate in, or to take advantage of Canada or Quebec programs of general application or Canada or Quebec Aboriginal programs;

1.1.1 the share of royalties coming from Quebec, which shall however not be taken into account in the assessment of autonomous incomes for the calculation of federal transfer payments;

- (d) during a period of time to be determined, an incentive payment shall be made by Quebec related to the annual increase in royalties on natural resources. This payment shall not be taken into account in the assessment of autonomous incomes for the calculation of federal transfer payments;
- (e) the "Endowment" (consisting of capital transfer payments and of the Compensation Fund);

(f) objectives of economic rehabilitation agreed upon by the Parties;

- (g) the establishment of an Innu tax system (the objective being that the economic initiatives shall ensure the creation of a tax base for the promotion of the full financial autonomy of Innu governments). Innu governments shall determine how taxation will be applied taking into account the following elements amongst others :

- 1. the progressive timely application of taxation measures including the progressive replacement of section 87 of the *Indian Act*;
- (ii) the comparability of the Innu fiscal participation in relation to that of other Canadian citizens (the Agreement-in-Principle shall create a reasonable and fair process to ensure that this comparability analysis is carried out on an on-going basis).

### **3. Financial arrangements**

In addition to the sharing of royalties provided for in section 1.2.2, the Innu of Mamuitun shall benefit from the following transfers:

#### **3.1 Capital endowment**

A sum of \$236 million shall be paid to the Innu of Mamuitun in accordance with the terms and conditions to be agreed upon in the Final Agreement.

#### **3.2 Compensation fund**

A fund of \$90 million financed by Quebec shall be used as a compensation for past developments, including those related to hydroelectric developments.

#### **3.3 Unassigned funds**

A fund of \$14.45 million financed by the federal government shall be set apart for purposes to be specified in the Final Agreement.

### **4. Social and economic development**

In order to enable the Innu to receive better benefits from their rights in Nitassinan and on its natural resources, the following measures shall be taken:

#### **4.1 Commercial fishing and hunting**

Conclusion of agreements concerning the marketing of certain animal species from the natural environment or from breeding. The Agreement-in-Principle shall identify all the elements necessary to give full effect to this commitment.

#### **4.2 Outfitting operations**

Quebec shall reach agreement with the Innu of Mamuitun on a plan and a timetable to enable the Innu to acquire for each of the three communities the ownership of two or three outfitting businesses with exclusive rights.

The continuation of these outfitting businesses shall be subject to compliance with the conditions governing their

establishment, including the objectives of customer attendance to be established in the Agreement-in-Principle. However, no rental fee shall be imposed.

#### 4.3 Forestry operations

Volumes of wood agreed upon by the parties and reserved to the Innu governments in accordance with a timetable is mutually agreed upon:

First Nation of Mashteuiatsh:	250,000 cubic metres
First Nation of Betsiamites:	250,000 cubic metres
First Nation of Essipit:	100,000 cubic metres

The volumes of wood shall be of good quality to ensure returns.

These volumes may be extracted in accordance with silvicultural methods to be determined by the Innu, which shall be at least equivalent or superior to Quebec standards.

#### 4.4 Hydroelectric resources

The volume of energy based on power plants of 50 megawatts or less on the settlement area.

The parties agree that it shall be necessary to identify and target the rivers or sites for hydroelectric development which shall be for the exclusive use, if they so decide, of Innu governments. The rivers or sites shall be chosen on the basis of their potential returns.

#### 4.5 Special purposes fund

Quebec and Canada shall promote the creation of a special purposes fund, based on similar funds that exist in the various regions of Quebec, in order to support the economic businesses from Innu communities. Initial participation may come either from the governments or from institutions such as, the *Fonds de solidarité des travailleurs du Québec* [workers solidarity fund], the Fondation de la CSN [the CNTU foundation], the *Fonds de développement Desjardins* [credit unions development fund], and so on. Innu governments participation to the fund shall not exceed one-third of contributions. The total amount in capital could amount to as much as \$30 million, as of the needs. The Agreement-in-Principle shall determine which portion of this amount shall be

deposited in the special purposes fund upon the signing of the final agreement.

#### 4.6 Partnership in public projects

The Innu communities shall have the possibility to invest as owners-shareholders in major economic projects of the government or of Crown corporations in Nitassinan.

#### 4.7 Partnership with private enterprise

Measures shall be taken to promote the conclusion of partnerships on an entirely voluntary basis between the Innu and private companies exploiting the natural resources of Nitassinan.

#### 4.8 Job-creation measures

A program of positive discrimination or of tax credits shall be established in order to give the Innu priority in terms of hiring by companies, and their sub-contractors, exploiting the natural resources of Nitassinan. These measures shall be meant to enable Innu communities to catch up with the social and economic development level of neighboring communities.

Quebec shall make available specific occupational training programs to each Innu community.

### **5. Certainty and treaty**

#### 5.1 Legal certainty

In order to attain the desired degree of legal certainty, the treaty shall contain a clause to the effect that the title and rights defined and confirmed in the treaty constitute the rights of the Innu of Mamuitun on the territory of Quebec that are referred to in section 35 of the *Constitution Act of 1982* and that these rights shall be exercised within the exclusive terms and conditions and land area set out in the treaty.

#### 5.2 Obligations of the Crown

The Agreement-in-Principle shall contain provisions with respect to the obligations of the Crown.

#### 5.3 Amendments

\_\_\_\_\_ The treaty shall be permanent and may not be denied or amended unilaterally by either of the parties. However, it shall be reviewed from time to time in accordance with the terms and conditions set out in the treaty.

The Final Agreement shall not prevent the Innu benefiting from future constitutional amendments or from current or future international agreements for Aboriginal peoples, ratified and implemented in conformity with the Canadian Constitution.

## **SCHEDULE 1.1**

### **MASHTEUIATSH**

#### **Added lands:**

- Lands added behind the reserve to the south (approximately 4 km<sup>2</sup>) IA-2  
*The question of the railway right of way (0.25 km<sup>2</sup>) will be evaluated by the federal government (an exchange is possible).*
- II Mouth of the Mistassini river (6.8 km<sup>2</sup>) IA-3, in accordance with terms and conditions to be defined on the basis of the existing rights
- Lac Ashuapmushuan (134 km<sup>2</sup>) IA-6*
- Lac Onistigan (7 km<sup>2</sup>) IA-7 for heritage purposes if the area is more limited*

#### **Heritage sites on Crown lands:**

- Lac Onistagan (595 km<sup>2</sup>) sp 1*
- Peribonka river and Manouane (2 km<sup>2</sup>) sp2
- Lac Alex (123 km<sup>2</sup>) sp3*
- T *Agreement is possible if an agreement is reached between the Innu and the zone d'exploitation contrôlée [hunting area subject to controls].*
- Lac Tchitogama (0.6 km<sup>2</sup>) sp4*
- Lac Connely (6 km<sup>2</sup>) sp4*
- Mistassibi northeast (16 km<sup>2</sup>) sp6
- Lac des Cygnes (40 km<sup>2</sup>) sp7*
- Lac aux rats (7 km<sup>2</sup>) sp8*
- Lac Élane (15 km<sup>2</sup>) sp10*
- Lac au Foin (79 km<sup>2</sup>) AEP-2*

Parks:

Mouth of the Peribonka river (islands) (1 km<sup>2</sup>) IA-4

T *To be considered together with AEP-4*

*Monts Otish* (2,945 km<sup>2</sup>) AEP-1

T *Exclusion of a small area in the southwest, which will be replaced with land adjoining the park the area of which is the same (125 km<sup>2</sup>)*

*Lac Connely* (72 km<sup>2</sup>) AEP-3

Part of *Pointe Taillon* (24 km<sup>2</sup>) AEP-4

T *Agreement on the subject of Innu management.*

**ESSIPIT**Added lands:

Areas adjoining the reserve (approximately 1.3 km<sup>2</sup>)

T *Agreement is possible with respect to the northern part if an agreement is reached with the municipality and the federal government (concerning the wharf) and concerning the southern part as far as anse Robitaille, although not as far as the road*

Land belonging to the outfitters at *Lac à Jimmy* (24 km<sup>2</sup>) and others

T *Agreement is possible for Innu Assi for the Jimmy outfitters and other land on the shore with an area of 24 km<sup>2</sup> if agreement is reached with a private property owner relating to a total area of 48 km<sup>2</sup>; otherwise, there will be 40 km<sup>2</sup> further north in the outfitters in Essipit for a total of 64 km<sup>2</sup>*

Community wildlife areas:

Majority management by the Innu of part of the wildlife area or some other structure of the same kind on 216 km<sup>2</sup> of land to the west of the arm on *Lac des Coeurs*.

**BETSIAMITES**Added lands:

Between the reserve and the Betsiamites river, 50 km<sup>2</sup> in Raffex Township B2

*Îlets-Jérémie* (0.14 km<sup>2</sup>) for a heritage site under conditions still to be defined on the basis of the existing rights B5

Nisula site on *Lac de la Cassette* (1.05 km<sup>2</sup>) for a heritage site B8

T *Regulations concerning a boundary around the site in order to supplement the heritage protection*

Grave site at the Waymashtagan portage (0.22 km<sup>2</sup>) for a heritage site B9

T *Regulations governing the remainder of the site in order to supplement the heritage protection (2.8 km<sup>2</sup>)*

#### Heritage sites on Crown lands:

In the case of these sites, as a rule 1 kilometre on each side of the banks of bodies of water.

Betsiamites river upstream from the Pipmuacan reservoir – (656 km<sup>2</sup>) B6 and further to the south as far as the river B5 (147 km<sup>2</sup>)

Yellow Hart and Little *Lac Manicouagan* B7 (855 km<sup>2</sup>)

Laval, Mistassini, Godbout, Franquelin and English salmon rivers B10 (652 km<sup>2</sup>)

T Protection to be mutually agreed upon. The regulations could not be amended unilaterally.

#### Parks:

Monts Otish (4,044 km<sup>2</sup> or 3,679 km<sup>2</sup>, depending on the status of the lake) B11

T *The question as to whether Lac Plétipi will be included remains to be decided (outfitters, hydro) but its use for recreational purposes on the basis of an agreement can at the very least be considered.*

Monts Groulx (1,264 km<sup>2</sup>) B12

T *Agreement is possible on a regional park with the regional county municipalities or adjoining the parks of the RCMs. The conditions governing protection in the event that the natural resources are exploited have still to be agreed upon. The final area and location must still be discussed.*

## **SCHEDULE 1.2.1**

### **Innu Aitun:**

The right to practice any traditional or contemporary activity that relates to the national culture, fundamental values and Innu traditional way of life associated with the occupation and use of Nitassinan and the special link they have with the Land. This also includes all the practices, customs and traditions including the hunting, fishing, trapping and gathering activities for livelihood, ritual and social purposes. This integrates all the spiritual, cultural, social and community aspects.

The economic aspects linked to the practice of Innu Aitun are covered by the provisions of paragraph 1.2 “Rights on Nitassinan” and paragraph 4 “Economic development” of the Common Approach.

### Schedule 1.2.3

**Terms and Conditions governing participation by the Innu  
and the resolution of disputes  
relating to the management of the land and  
the natural resources**

**General principles**

Dialogue processes and participation in land and natural resources management must be designed to prevent conflicts and to promote the harmonization of policies.

Differences will be resolved by direct, face-to-face discussions between front-line parties and, where necessary, by discussions within standing sectoral liaison committees.

One of the parties of a sectoral liaison committee may request a technical opinion from an independent third party. However, this opinion shall not be binding on the Parties.

Discussions must follow a defined process and be limited in time.

The exploratory diagrams discussed during negotiations will serve as a basis for the delineation of the necessary processes.

**At the planning stage**

Innu participation to the planning process shall occur as far upstream as possible.

Discussions must occur during the key stages in the process.

Innu participation shall be separate from that of other Parties involved (municipalities, regional bodies, industry, etc.)

2.4 In the event of decisive disagreement, each Party stays with its position. There shall be no compensatory measures.

**At the project stage**

Innu shall participate in the environmental impact studies, where appropriate.

Innu shall benefit from any increase in royalties resulting from the achievement of the project.

Innu may benefit from the social and economic development measures (partnerships, award of contracts, employment priorities).

Where, eventually, after all reasonable efforts to consult and to mitigate damages have been made, there can be no agreement and the government approves a project despite the objections of the Innu, the government or the proponent shall compensate the Innu if there is any infringement of their rights. This compensation shall be determined by mutual agreement or by an independent third party (to be defined).

**ATTACHED LETTER TO COMMON APPROACH**