“The Real Agreement As Orally Agreed To”
The James Bay Treaty-Treaty No. 9

A Presentation by Grand Chief Dr. Stan Louttit
Mushkegowuk Council
"THE REAL AGREEMENT AS ORALLY AGREED TO."

James Bay Treaty – Treaty No. 9

(1929-30 & 1905-06)
THE REAL AGREEMENT AS ORALLY AGREED TO.

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The James Bay Treaty
Treaty No. 9

A Treaty
(Protected by Section 35 of the Constitution of Canada- the supreme law of Canada)

Section 35 provides constitutional protection of the Aboriginal and Treaty rights of Aboriginal peoples in Canada

Involving Canada, Ontario, and the Cree and Ojibway Nations of Northern Ontario

Made in 1905 and 1906
With adhesions made in 1929 and 1930
This presentation and movement to get our Oral Treaty Promises and Agreements recognized is dedicated to:

- To the life and spirit of our brave and intelligent Cree and Ojibwa Treaty Makers;
- Our Elders who courageously carried our Treaty Bundle all their life for us to correct the wrong and achieve the Real Agreement as Orally Agreed to;
- Our children and grandchildren.
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Definition of “Treaty”
“A formal agreement between two or more Nations”

Definition of “Nation”
“A large group of people sharing the same culture, language, or history and in inhabiting a particular state or area.”

Further defined by the Supreme Court of Canada to include the recognition of Oral Promises made during the Treaty Making Process.

- R. v. Marshall
- Mikisew Cree FN v. Canada
- R. v. Badger
- R. v. Morris
- Ermineskin Indian Band and Nation v. Can.

The United Nations (International Law) also recognizes the Oral Promises made during Treaty Making Processes.

Supreme Court of Canada
The Supreme Court of Canada has ruled that Oral Promises made by government representatives at the time a Treaty was made are legally binding, even where these promises are not recorded in the signed Treaty document.
(M. Klippenstein)

“The Oral Promises made when the treaty was agreed to are as much a part of the treaty as the written words.”
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Treaty Making Process:

☞ By Rail and Canoe;
☞ Treaty document prepared well before hand by lawyers/experts;
☞ No translated versions;
☞ Did not leave Treaty document for review;
☞ Did not read it word per word;
☞ Averaged a day in each area.

Crown’s James Bay Treaty signing party at Fort Albany. August 3, 1905

Samuel Stewart (Canada)  
Daniel G MacMartin (Ontario)  
Duncan Campbell Scott (Canada)

Standing: Joseph L. Vanasse (left) and James Parkinson (right) of the Dominion Police Force

Foreground: HBC Chief Trader Thomas Clousten Rae (left) and Dr. A.G. Meindl (right)
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Map of the Government Commissioners’ Travels to Various Treaty 9 Signing Locations

1905 (Blue):
- Osnaburg,
- Fort Hope,
- Marten Falls,
- Fort Albany,
- Moose Factory,
- New Post

1906 (Green):
- Abitibi,
- Matachewan,
- Mattagami,
- Flying Post,
- New Brunswick House,
- Long Lake
- Missanabie Cree
- Chapleau Cree
For the first time, a province was a party to the Treaty making process.

1894 agreement between the Dominion of Canada and the government of the province of Ontario

......“that any future Treaties with the Indians in respect of territory in Ontario to which they have not before the passing of the said statutes surrendered their claim aforesaid shall be deemed to require the concurrence of the government of Ontario.”
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**Purpose of the Treaty – Canada and Ontario**

“securing an extinguishment of the Indian title to lands…..which may be considered to be necessary in view of railway construction, advancing settlement, etc..

**Reserve Land**: sq mile /each family of 5

**Annuities**: $8.00 for the first year, and $4.00 in perpetuity (forever)

**Flag**: 1 flag for each Chief

**Peace and Order**: 

**Education**: only mentioned in Moose Factory “the children would be protected and properly educated.”

**ONTARIO Executive Council Office**

Copy of an Order in Council, approved by the Honourable the Lieutenant Governor, dated the 18th day of June, A.D. 1931
(Source: Page 31, The James Bay Treaty – Treaty No. 9)

…..for the purpose of opening for settlement, immigration, trade, travel, mining and lumbering, and for such other purposes as to His Majesty may seem meet..

……the said treaty to release and surrender also all Indian rights and privileges whatsoever of the said Indians to all or any other lands wherever situated in Ontario, Quebec, Manitoba or the District of Keewatin or in any other portion of the Dominion of Canada.
Purpose of the Treaty – the Omushkegowuk

“Happiness and Prosperity” (Promise Made by Canada and Ontario)

☞ The Crees accepted this promise (Happiness and Prosperity) –along with hunting & fishing, not living on reserves - from the two Crowns

☞ Prosperity for Crees requires a measure of control over their lands and resources and what happens on them, partnership of equals.

☞ The Crowns haven't kept the promises and the communities are not prosperous;
Recent Statements and Positions presented by Ontario

- “the federal government is the Treaty maker.”

- “we are taking a risk (in agreeing to participate in this Treaty Roundtable)”

- We do not consider ourselves a “signatory to”, or a “party to” the treaty

- “Ontario freely admits that it is legally and morally bound by the Treaty, and we have obligations and responsibilities arising from the Treaty which we must adhere to”

- “Ontario believes that the treaty is a land “cession” treaty, and that the taken up clause is valid”

- “Ontario wants to collaborate with Mushkegowuk on treaty implementation”
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The “Taken Up” Clause:
THE “WRITTEN” WORDS OF TREATY 9:
WHAT THE SIGNED DOCUMENT SAYS ABOUT THE
GOVERNMENT “TAKING UP” FIRST NATION LAND
And His Majesty the King hereby agrees with the said
Indians that they shall have the right to pursue their
usual vocations of hunting, trapping and fishing
throughout the tract surrendered as heretofore
described, subject to such regulations as may from time
to time be made by the government of the country,
acting under the authority of His Majesty, and saving
and excepting such tracts as may be required or
taken up from time to time for settlement, mining,
lumbering, trading or other purposes.

Commissioners were not allowed to change any part of
the prepared Treaty document.
(Text of the written Treaty.....the Commissioners were empowered
to offer certain conditions, but were not allowed to alter, add to
them in the event of their not being acceptable to the Indians).

And His Majesty the King hereby agrees with the said Indians that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the government of the country, acting under the authority of His Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

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The Turning Point

Significant New Evidence: The Treaty Commissioners’ Diaries
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Canada and Ontario Treaty Commissioner’s Treaty Making Report / Diaries


After 100 years of being in storage and in the archives, Daniel G. MacMartin’s complete treaty making report / diary (below) was recently discovered and confirms what was said, promised and agreed to during the making of the James Bay Treaty. MacMartin’s treaty making diary is considered to be significant evidence.
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Oral Treaty Promises/Agreements on Hunting and Harvesting Rights At Various Treaty 9 Signing Locations as Described By Treaty Commissioners & Secretary

OSNABURGH  Date: July 12, 1905
Source: Commissioners Official Report, Diaries of Duncan Campbell Scott and Samuel Stewart.

TREATY PROMISE/AGREEMENT:
☞ Missabay…. Feared that if they signed the treaty they would be compelled to reside on the reserve and would be deprived of the fishing and hunting which they enjoyed. On being informed that their fears were groundless, as their present manner of making their livelihood would in now way be interfered with, they gladly agreed to the treaty.
☞ “they were assured that they were not expected to give up their hunting-grounds, that they might hunt and fish throughout all the country”
☞ “informed that they could continue to live as they and their forefathers had done”

FORT HOPE  Date: July 19, 1905
Source: Commissioners Official Report

TREATY PROMISE/AGREEMENT:
☞ “hunting and fishing, in which occupations they were not to be interfered with”
☞ Moonias…. was very skeptical (receiving something for nothing) - after several assurances, Moonias accepted the Treaty

THE “TAKEN UP” CLAUSE  !!!!!!!
And His Majesty the King hereby agrees with the said Indians that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the government of the country, acting under the authority of His Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.
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**MARTEN FALLS**  Date: July 25, 1905
Source:  Diary of Commissioner Daniel MacMartin

TREATY PROMISE/AGREEMENT:
☞ William Whitehead argued for additional land and.....“When it was explained to them that they could hunt and fish as of old and they were not restricted as to territory” ...they gladly accepted the situation ...”

☞ “Again it was put forcibly before them ... that [the reserve] was a home for them that was being provided & not a hunting reserve and that they could hunt wherever they pleased, [upon which] they signified their assent ...”

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**FORT ALBANY (Old Post)**  Date: Aug. 3, 1905
Source:  Commissioner’s Official Report.

TREATY PROMISE/AGREEMENT:
☞ “The explanations that had been given at the other points were repeated here”

(Signatory Andrew Wesley - grandfather of Grand Chief Stan Louttit)

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THE “TAKEN UP” CLAUSE  !!!!!!!!

And His Majesty the King hereby agrees with the said Indians that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the government of the country, acting under the authority of His Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.
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NEW POST  Date: Aug. 21, 1905
Source: Diaries of Daniel MacMartin and Samuel Stewart.

TREATY PROMISE/AGREEMENT:
☞ “As usual, the point on which the Indians desired full information as to the effect the treaty would have on their hunting and fishing rights. On being assured that these would not be taken from them, they expressed much pleasure and their willingness to sign the treaty…”
☞ “[the band] had terms of treaty explained to them ... that they were .. allowed as of yore to hunt and fish where they pleased …
☞ Angus Weenusk replied that they accepted the terms as stated…”

MOOSE FACTORY  Date: Aug. 9, 1905
Source: Diaries of Daniel MacMartin and Samuel Stewart.

TREATY PROMISE/AGREEMENT:
☞ “they could follow their custom of hunting where they pleased”
☞ Fred Mark replied that they ....concurred in all that had been said…”

THE “TAKEN UP” CLAUSE  !!!!!!
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Oral Treaty Promises/Agreements on Hunting and Harvesting Rights 
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Source: Pelham Edgar, magazine article

**TREATY PROMISE/AGREEMENT:**

Ontario ... has conceded the Indians *all the hunting and trading privileges which they have ever possessed.*

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**“WRITTEN” WORDS OF TREATY 9: WHAT THE SIGNED DOCUMENTS SAYS –**

**THE “TAKEN UP” CLAUSE**

And His Majesty the King hereby agrees with the said Indians *that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract* surrendered as heretofore described, subject to such regulations as may from time to time be made by the government of the country, acting under the authority of His Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

No reference or notes on the “Taken Up Clause” mentioned or recorded in any reports or diaries; 

..........**WHY?**
Oral Treaty Promises/Agreements on Hunting and Harvesting Rights
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Signature Page of the James Bay Treaty

The writing reads;

“Signed....after having been first interpreted and explained.”

But, was this Treaty sufficiently interpreted and explained?
Adhesions to Treaty Nine
1929 – 1930

- Trout Lake
- Windigo River
- Fort Severn
- Winisk

...do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada for His Majesty the King and His Successors forever, all our rights, titles and privileges whatsoever in all that tract of land,

...including all islands, islets, and rocks, waters and land covered by water within the said limits,
James Bay Treaty Expert, Advocate and Highly Respected Omushkegowuk Elder – James (Jeemis) Wesley

Speaking at a Treaty Promises Conference, Kashechewan First Nation, Nov. 17, 1987

Jeemis said; “Henry Reuben says he was sitting there and saw them writing the important things. There was someone there that did the writing. So this is what is lost. Maybe one day it will show up. I believe in the Bible. It says in the Bible that the things that were told in darkness will be also told in light. That’s how I understand it. It is very hard. It will be told yet one day”.

Did James (Jeemis) Wesley and Henry Reuben have a vision that one day the Diaries would surface?
"THE REAL AGREEMENT AS ORALLY AGREED TO."
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The Commissioner’s Diaries record many Oral Promises that were made to the First Nations at Treaty time, which were not recorded in the official written Treaty document. The Diaries support the Elders’ understanding that they never gave up their land.
For over a hundred years the government has said that it owns all of Northern Ontario, and can eliminate Native rights at will (or after some “consultation”) in order to develop the land in any way that it wishes. The following pieces of government legislation is proof of the government’s disrespect and dishonor of the Real Agreement as Orally Agreed To:

- Mining Act
- Forestry Act
- Far North Act - Bill 191
- Migratory Birds Act
Duncan Campbell Scott, one of the Commissioners stated... “I want to get rid of the Indian problem. I do not think as a matter of fact, that the country ought to continuously protect a class of people who are able to stand alone......Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department, that is the whole object of this Bill.” speaking on the creation of a Bill to Implement The Indian Residential School System in Canada, 1920.

We have some news for you Canada, we’re still here, Indian, Cree, Omushkego and we will be here Forever!!!
THE OMUSHKEGO RE-AFFIRM AND DECLARE THAT:

OUR INHERENT RIGHTS continue to provide the Omushkego with empowering natural laws to be a Sovereign and Self Governing Nation...

OUR INHERENT RIGHTS predate the JAMES BAY TREATY and the Treaty affirms these rights...

The signing of the JAMES BAY TREATY confirms that the Crown acknowledges that the Omushkego are Sovereign and Self Governing Nation...

For the survival of the Omushkego, the Sacredness and Understanding of the “SPIRIT AND INTENT” OF THE REAL TREATY directs the Omushkego to re-build our Sovereign and Self Governing Nation by re-gaining full control and management of our Homelands and Resources.

A summary of the Treaty Implementation Plan is attached to the copy of the power point presentation.
What Does All This Mean?

☞ We, the Omushkego never surrendered our Homelands. And, government action and resource development on our Homelands REQUIRES FIRST NATION’S CONSENT;
☞ Puts the whole Treaty document in a different context;
☞ Confirms what our Elders have been saying “sharing”;
☞ Better negotiating position;
☞ Legal Challenge;
☞ Negotiations or Litigation;
☞ Engage the Governments;
☞ Need to Educate the Public;
☞ A better life for our children;
☞ An opportunity to “correct the wrong.”
"The Real Agreement As Orally Agreed To."

Meegwetch!

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