

## **DEHCHO PROCESS Negotiating Team Report**

**December, 2016**

### **Summary**

We are happy to report that Agreement in Principles (AiP) negotiations have finally resumed after many delays.

In February, 2016 we hired a new Chief Negotiator to replace Georges Erasmus, who had retired, but that the new negotiator did not work out and the Leadership decided in October to terminate his contract and place the Grand Chief (GC) in the position of Acting Chief Negotiator. The Grand Chief (GC) is assisted by other leaders and our experienced negotiating team.

With our new team in place, main table negotiations finally resumed in November in Ft. Simpson. Our next session will be December 13-15 in West Point and Ft. Providence.

All parties have agreed to a full and frank discussion of lands and resources issues as the primary focus of Agreement in Principles (AiP) negotiations. Dehcho First Nations (DFN) negotiators welcomed this shift in focus because these issues have been effectively pushed off the agenda for several years by both Canada and the Government of the Northwest Territories (GNWT).

In our view, it's important that these upcoming negotiations on lands and resources take place mainly in Dehcho communities, as the Framework Agreement directs, so that Dehcho citizens can observe and participate. In the early years of the Dehcho Process we held meetings mainly in the communities and we made lots of progress during those years. Budget restraints have forced us to hold meetings mainly by teleconference for the past five years, but it was always intended that the crucial lands and resources negotiations would be held in the communities, face-to-face.

At the special leadership meeting Nov. 29 - Dec. 1 in Ft. Simpson, it was decided that the negotiating team will work with our communities to map the lands we intend to retain as Dehcho Ndehe and Community Lands. The Chief Negotiator / Grand Chief will personally lead a small team which will visit all Dehcho communities in early 2017 to hear the view of community members and leaders regarding which lands the Dehcho people should own. Should we focus on selecting lands with high economic development potential while protecting sensitive and sacred areas through land use planning and protected areas? Or do we want to own some conservation lands in addition to lands intended for development? I intend to visit as many Dehcho communities as possible to discuss these issues with you and get a clearer picture of what Dehcho Ndehe will look like.

## **AiP Negotiations**

We continue to follow Assembly resolutions and work towards an Agreement-in-Principle in which Dehcho Community Governments will each own their own Community Lands and the Dehcho Government will own and control the surface and subsurface of Dehcho Ndehe lands, and where the Dehcho Government and Dehcho Community Governments will be the primary governments for residents of the Dehcho.

The draft AiP is nearly complete, but Canada and the Government of the Northwest Territories (GNWT) have taken position on land quantum and resource management which are unacceptable. All 3 parties in the Dehcho Process have agreed to focus our negotiations on the primary issue of how much land the Dehcho Government and Dehcho Community Governments will own and govern its lands. If we reach agreement on this key issue, we will then move on to finish other parts of the Agreement in Principle (AiP).

## **Main Elements of an Agreement-in-Principle**

**In our upcoming sessions we hope to convince Canada to honour its promise to negotiate a stand-alone Dehcho Resource Management Authority (DCRMA), which will be harmonized with the Mackenzie Valley Resource Management Authority regime.** The Dehcho Resource Management Authority (DCRMA) will be responsible for renewable resources and land use planning, as well as non-renewable resources, permitting and environmental assessments. The Agreement in Principle (AiP) would also commit all three governments to land use planning for the entire Dehcho settlement area.

If this model is accepted, Dehcho Ndehe would consist of ownership of at least 50,000<sup>1</sup> sq. km of surface and subsurface lands. In the rest of the Settlement Area, outside Dehcho Ndehe, the Dehcho Government would protect Dehcho interests through joint land use planning and negotiated standards and conditions for approving major industrial developments.

Dehcho First Nations (DFN) resolutions say that the Dehcho Agreement should recognize surface and subsurface land ownership in one large, contiguous block, called Dehcho Ndehe, in addition to Community Lands which would be owned by each individual Dehcho community. In this model, the Dehcho can control development, set our own royalty and collect 100% of royalties from resources under Dehcho Ndehe. The Government of the Northwest Territories (GNWT) is concerned that this model would allow the Dehcho to select all or most of the "open" lands with high economic development potential from minerals and petroleum.

The Government of the Northwest Territories (GNWT) has indicated that they prefer an agreement in which the Dehcho Government would only own the surface of Dehcho Ndehe, but not the subsurface minerals. Instead, the Dehcho would have a **generalized**

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<sup>1</sup> On a strict per capita comparison with Tlcho, the Dehcho land quantum would be 45,500 sq km, but we seek a higher per capita quantum to reflect unique Dehcho conditions.

**interest** in the subsurface resources of the entire Dehcho settlement area. In this model the Dehcho Government would not control development on Dehcho Ndehe, and would not be able to set its own royalty, but it would receive a fixed percentage share of royalties collected by the Government of the Northwest Territories (GNWT) from development anywhere in the settlement area.

The Dehcho Agreement could be based on owning both the surface and subsurface of Dehcho Ndehe, or on owning only the surface of Dehcho Ndehe plus a generalized interest in the rest of the settlement area, as outlined in the draft bilateral agreement with the Government of the Northwest Territories (GNWT). However, the 2014 Assembly mandated Dehcho First Nations (DFN) to pursue a hybrid model, known as the Dehcho Model, which includes some lands in which only the surface is owned, plus some where both surface and subsurface are owned.

All of these models could include a generalized interest in lands outside of Dehcho Ndehe. It should be noted that Canada and the Government of the Northwest Territories (GNWT) are currently open to either the surface/subsurface (Tlichco) model or the pure generalized interest model but have not yet indicated that they are prepared to consider a hybrid such as the Dehcho Model.

### **Other Features of the Dehcho AiP:**

Here are some highlights of the draft Dehcho AiP:

- Ownership and control of **Dehcho Ndehe lands and resources** (the degree of control could vary depending upon whether Dehcho Ndehe includes subsurface, or is surface-only, as contemplated by the draft bilateral deal with Government of the Northwest Territories [GNWT]). In areas where the Dehcho Government owns both the surface and subsurface, it will control development and establish its' own royalty rates.
- In addition to Dehcho Ndehe, each Dehcho Community Government will own **Community Lands**.
- The Dehcho Government will also have a role in managing development in **lands outside of Dehcho Ndehe** through land use planning, a requirement for agreed environmental protection standards, and membership on the Mackenzie Valley Land and Water Board (MVLWB) and Mackenzie Valley Environmental Impact Review Board (MVEIRB).
- A **generalized interest** of at least 5% in all lands, both surface and subsurface, outside of Dehcho Ndehe (this has not yet been agreed to by Canada or the Government of the Northwest Territories [GNWT] and could vary depending upon the outcome of bilateral negotiations with the Government of the Northwest Territories [GNWT]).
- **Treaty 11** would remain in effect and will still be celebrated every year, but the Dehcho Agreement would clarify and build upon it.

- Protection of **harvesting rights throughout the entire Dehcho territory** (not just on Dehcho owned lands) and **exclusive trapping rights** on Dehcho Ndehe.
- Authority to negotiate **harvesting agreements** with neighbouring Dene Governments, to extend harvesting rights throughout the NWT.
- **Land use planning** for the entire Dehcho Settlement Area.
- There will be **2 levels of government**:
  - a) Dehcho Community Governments, each with its' own land base; plus
  - b) the regional Dehcho Government, with representatives from each Dehcho Community
- **Permanent majority of Dene councillors** on community government councils and the regional Dehcho Government. As community populations grow, the Agreement will guarantee that Dehcho Dene always have a majority of councillors.
- Dehcho Community Governments will have **jurisdiction over most local issues**, in addition to owning enough land for 100 years of population growth.
- Complete jurisdiction over the **enrolment** of Dehcho Citizens. All persons who are descended from the Dene who lived in the Dehcho prior to 1921 will be eligible for enrolment as Dehcho Citizens. In addition, Dehcho Communities can decide to enrol other individuals through a process of community acceptance.
- **Taxes** paid by Dehcho residents will be **returned to the Dehcho** Government. Currently, taxes paid by Dehcho residents are collected by the federal government, and some are transferred to the Government of the Northwest Territories (GNWT). The Dehcho Agreement will ensure that taxes paid by Dehcho residents are returned to the Dehcho Government to pay for government services in the Dehcho.
- The ability to have a fully independent **Dehcho education system**. The Dehcho Government will have the choice of establishing a fully independent school system, or using the curriculum of the Government of the Northwest Territories (GNWT).
- control over **traditional medicine** - the Dehcho Government will have primary jurisdiction for the regulation of traditional healers and traditional medicine
- **Harvesters will be protected** by measures which guarantee that they will be quickly compensated if their harvesting areas are damaged by developments anywhere in the Dehcho. There will also be a **Traditional Activities Advocate** to assist harvesters in protecting their rights and interests
- Jurisdiction to establish a **Dehcho justice system** for the enforcement of Dehcho laws
- Jurisdiction over **culture and language** - the Dehcho Government will have jurisdiction to enact laws for the protection and promotion of Dene languages

- jurisdiction over **marriage, adoption and child welfare** services
- jurisdiction over **social housing and income assistance**
- Control over the sale of **liquor and intoxicants**. Dehcho communities will have control over the sale of alcohol and other legal intoxicants, and could receive significant revenue.
- jurisdiction over **wills and estates**

The Dehcho Agreement in Principles (AiP) will not be legally binding but it will set the stage for concluding a legally binding Dehcho Agreement.