

DEHCHO NEWSLETTER

December 15, 2011



Canada cut another \$1 million from DFN's negotiations funding this fiscal year. It wants DFN to borrow money to complete negotiations for the Agreement in Principle



Negotiations Change

Photo by: Patrick Scott

No more travel for negotiation team Video and teleconference only now

Although some exciting progress has been made in negotiating a Dehcho Agreement in Principle, relations with Canada and the GNWT are getting tougher.

With another budget cut of \$1 million for a third year in a row, DFN has tried to find ways to carry on its business within the limits of its funding. As a result, all the leadership meetings and negotiation sessions since June have been by video and teleconference. For negotiation sessions video conference

facilities at DFN office and in Fort Providence at the Land Use Planning office are used along with Government facilities in Ottawa and Yellowknife. members are still being encouraged to sit in on the sessions when possible.

This fall all the Leadership meetings have been held by teleconference

A number of chapters have been completed and many more are almost complete. Unfortunately some of the most difficult issues remain outstanding. There is a large gap between what

Canada has in their mandate for an amount of land to be included in the Agreement [about 39,000 square kilometers] and the quantum of DFN expects to retain as Dehcho Ndehe lands [about 70,000 square kilometers.] As well DFN continues to fight to protect as much land as possible by different means.

Work continues on finalizing the Edchzie Protected area. As well, the Interim Land Use Plan revisions. *(More details inside this newsletter)*

New Chief in Ft Providence

Chief Wayne Sabourin now leads Deh Gah Gote Dene Band



Chief Tim Lennie term gets renewed as Pehdzeh Ki First Nations holds December election

Background to AiP Negotiations

The Dehcho Process began in 1999 and in 2001, the DFN, Canada and the GNWT signed a framework agreement which sets out an agenda and timetable for negotiations towards an AiP and a final agreement. The Framework Agreement says that the Dehcho Agreement (final agreement) *will not replace Treaties 8 & 11, but will “clarify and build upon the existing treaties”*.

Canada will only negotiate a Comprehensive Land Claim agreement with the Dehcho which is “comparable” to other agreements in the NWT. Under a “comparable” formula, the DFN would own between 34,000 and 70,000 square kilometres of the Dehcho Territory, depending upon how DFN interests are compared to other settlement areas and how many communities remain part of the Dehcho (the original offer was approximately 46,000 sq km, which was reduced to 39,000 sq km when ADK left the Dehcho and will be further reduced if KFN completes its own agreement). DFN would also participate in management of lands throughout the rest of the Dehcho territory through the Mackenzie Valley Land and Water Board (MVLWB) and the Mackenzie Valley Environmental Review Board (MVEIRB) and traditional harvesting rights of DFN members would be preserved on all Crown lands throughout the Dehcho territory.

The 2009 Assembly passed a resolution allowing AiP negotiations based on land selection and Canada’s Comprehensive Claims policy to take place concurrently with negotiations to modify the draft land use plan, while stating that the highest priority for negotiations will remain the completion, approval and implementation of the Interim Land Use Plan.

AiP negotiations have progressed on chapters addressing harvesting rights, but have been very slow in other areas. Canada has so far not responded to the DFN proposal, tabled in September, 2009, for Dehcho Government jurisdiction over lands and resources. Likewise, Canada is not yet prepared to negotiate resource management issues, access by non-Dene to Dehcho lands, or expropriation.



Current AiP Negotiations

Wildlife Harvesting and Trapping

The Dehcho Agreement will recognize the right of all Dehcho Dene to hunt, fish, trap and gather plants throughout the entire traditional territory of the Dehcho First Nations, not only on retained lands. The draft AiP chapter on Wildlife Harvesting says:

Dehcho Citizens have the right to Harvest all species of Wildlife, including Furbearers, throughout the area shown in the map attached as Appendix A at all times of the year. [The map shows the Dehcho Traditional Territory, known as the Dehcho asserted area.] Dehcho Citizens have the exclusive right to harvest Furbearers in Dehcho Ndehe and Dehcho community lands at all times of the year. This right does not preclude others from harvesting Furbearers in Dehcho Ndehe or Dehcho community lands with the consent of the Dehcho Government.

As for jurisdiction over wildlife management and harvesting, the DFN have proposed that the Dehcho Government will have exclusive jurisdiction over wildlife on selected lands (Dehcho Ndehe). The GNWT (supported by Canada) suggests that it should have jurisdiction throughout the NWT, including the Dehcho. Their rationale is that since animals migrate, it is essential that a single central government manage wildlife throughout the NWT.

The chapter also says that, *Within Dehcho Ndehe the Dehcho Government retains the authority to manage and conserve Wildlife and will exercise that authority in a manner that is consistent with the Dehcho Agreement. On Dehcho community lands, local Dehcho community governments retain these authorities.*



Redoing the Mackenzie Valley Resource Management stalls negotiations **Canada still won't talk DCRMA**

Harvesters' Compensation

This chapter would provide a "strict liability" regime for compensating harvesters who are negatively impacted by industrial development. In other NWT claim agreements only trappers have access to the compensation provisions of this chapter. In the draft proposed by the DFN, all harvesters, including those who harvest berries and other plants, would have access to the streamlined compensation process. Canada and the GNWT do not accept this idea.

The DFN proposal also provides for the establishment of a Traditional Activities Advocate who would assist harvesters in making compensation claims and issue annual reports on the state of harvesting and traditional activities in the Dehcho Settlement Area. The reports would identify threats and potential threats to harvesting activities and will make recommendations to Developers and the appropriate Governments for reducing, mitigating or eliminating such threats. Canada and the GNWT continue to take the position that the range of harvesting activities covered by this chapter should be narrowed to cover trapping only. They oppose our proposal for a Traditional Activities Advocate, on the grounds that the Dehcho Government alone should represent harvesters. The GNWT has recently indicated that it would agree to having a TAA who would make recommendations to all governments, as long as the position is created and fully funded by the Dehcho Government.

Land and Resource Management: In a land selection model there is no intention of giving up a Dene role in managing lands and resources throughout the Dehcho traditional territory. Through land use planning and the Dehcho Resource Management Authority the Dehcho Dene would continue to participate in the management of lands and resources throughout the entire Dehcho traditional territory. The DFN have proposed a "stand alone"

Dehcho Resource Management Authority (DCRMA), outside of the MVRMA, which would manage lands and resources throughout the Dehcho Territory.

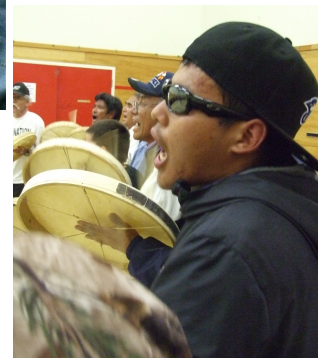
Canada has proposed a Dehcho Resource Management Authority which would only give advice to boards and agencies. Under Canada's proposal, the Mackenzie Valley Resource Management Act would apply throughout the Dehcho territory and the Dehcho Government would appoint a member to the Land and Water Board and to the GNWT prefers co-management throughout the Dehcho Settlement Area.

Jurisdiction Outside of Dehcho Ndehe - DCRMA:

The DFN have proposed that the Dehcho Government and Canada would have shared management and administration of surface and subsurface lands and resources throughout the DFN traditional territory, called the Dehcho Settlement Area. This would include joint land use planning, environmental assessment, and regulatory approval. The management and administration of lands and resources within Dehcho Ndehe and off Dehcho Ndehe will be the responsibility of the Dehcho Resource Management Authority (DCRMA). The DCRMA would operate independently and be made up of Dehcho appointees and government appointees.

For transboundary purposes, the functions of the DCRMA would be harmonized with the Mackenzie Valley Environmental Impact Review Board (MVEIRB) and the Mackenzie Valley Land and Water Board (MVLWB). Canada has refused to begin any negotiations on a DCRMA until an internal review of McCrank's 2008 report on the NWT regulatory system is completed. In 2010 the Minister said Canada will implement most of the McCrank recommendations and appointed John Pollard to meet with First Nations and the GNWT.

DFN has proposed the Agreement create a Traditional Activities Advocate, to assist harvesters in dealing with industry and government.



Land Use Plan: The Planning Committee continues to work on significant revisions to the Interim Land Use Plan. Many of the revisions proposed by Canada and the GNWT would change some conservation zones into “special development zones” to permit industrial activity, and make the Dehcho more open to development than under the Plan approved in 2006. Issues which cannot be resolved by the Committee will soon be brought to the Main Table for negotiation.

Review of MVRMA and the Aboriginal Coalition: As part of the ‘Action Plan to Improve Northern Regulatory Regimes,’ Aboriginal Affairs and Northern Development Canada (AANDC) is proposing amendments to the Mackenzie Valley Resource Management Act (MVRMA). To do so, Aboriginal stakeholders must be adequately consulted on any of the proposed amendments, however, the consultation process currently employed by AANDC is at best a ‘bare-minimum’ approach. One of the major proposed amendments to the MVRMA is to abolish the responsibilities of the regional Land and Water Board and replace this with a single Land and Water Board for the entire Northwest Territories. Dehcho views this proposed amendment as threatening Dehcho negotiations in a way that takes a DCRMA off the negotiations table. As a result of the poor consultation process with Aboriginal governments, representatives and leadership from all the Aboriginal regions (Dehcho, Akaitcho, Tlicho, Gwich’in, Sahtu, and the NWT Metis), along with representatives from various transboundary Aboriginal organizations, met and reached consensus on a more appropriate process to amend the MVRMA. Collectively, all the regions tabled a proposal to Canada outlining a framework for engagement on the MVRMA amendments that is based on equal partnership, collaboration and consensus. A process that intends to respect the unique situations of all Aboriginal groups across the north, both claimants and non-claimants groups, in a way that respects those still in negotiations for their own agreement. Leadership from all the Aboriginal regions recognized the need to support one another during this process rather than allowing AANDC to push forward their proposed amendments at the expense of Aboriginal participation in northern resource management. They titled this new relationship the Aboriginal Coalition on Amendments to the MVRMA. AANDC has yet to formally respond to the proposed framework for new process and no work on the amendments will move forward until commitments to a new process are made.

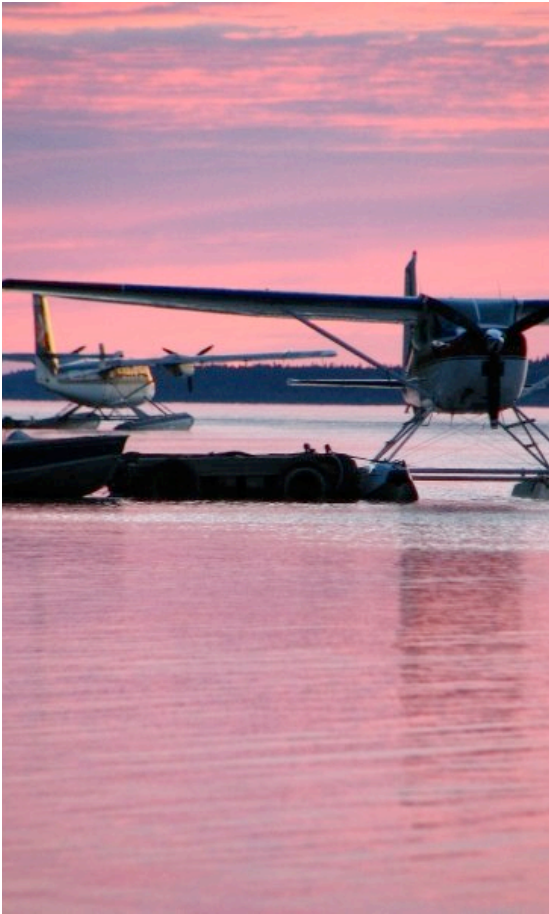
Expropriation: All NWT land claim agreements include provisions allowing Canada and the GNWT to expropriate land owned by First Nations’ governments if it is necessary for public purposes. First Nations are compensated when their land is expropriated by getting other lands and sometimes through cash compensation. So far in negotiations Canada and the GNWT are only prepared to recognize the authority of the Dehcho Government to expropriate interests within Dehcho Ndehe which were granted by the Dehcho Government.

Education: The DFN position is that in Treaties 8 and 11 Canada promised to provide free education for Dehcho Dene so that they could have the opportunity to learn skills which would allow them to compete for jobs in the emerging economy. The Dehcho Proposal calls for multi-year block funding for health, education and housing in recognition of the commitments made in the Treaties. GNWT agrees to recognize Dehcho jurisdiction over K-12 education, including over curriculum. A Dehcho government will also have the authority to create a college or university.

Access: Under other comprehensive land claims agreements Canada has the jurisdiction to enact legislation governing access by non-Natives to First Nations’ settlement lands (selected lands), after consulting with the affected First Nations government. We have proposed that the Dehcho Government have exclusive authority to legislate terms and conditions for non-Dene access to Dehcho Ndehe, after consulting with Canada.

Certainty: There would be no “extinguishment” of Treaty or Aboriginal rights or title in the Dehcho AiP or final agreement. However, Canada expects the DFN to either agree that all the rights and jurisdiction which the Dehcho have are fully set out in the Dehcho Agreement, or that they will not assert or exercise any rights not set out in the Agreement. Canada has proposed Certainty clauses based on the Tlicho model. We have tabled an alternative Certainty chapter which would modify existing Treaty and Aboriginal rights so that they are fully set out in the Dehcho Agreement. This model would not require any commitment to cede, release and surrender, since all DFN s. 35 rights are fully set out in the Agreement.





“People seem to be scared of the bush since we moved into town. If you lived in the bush you had everything. We need to go back into the bush to teach our children.”

Ted Landry, June 30, 2011



“Reconciliation requires investment.”

Shaun Atleo, November 1, 2011



DFN challenges Canada ADK overlap and Edehzhie subsurface in court

ADK: In July 2008, Canada, the Acho Dene Koe First Nation and the GNWT signed a framework agreement to enter into a community based, comprehensive land claim negotiations outside of the Dehcho Process. Smbaa K’e Dene Band and Nahanni Butte Dene Band attempted to negotiate a boundary agreement with ADK. They also sought consultations with Canada before the ADK gets to the stage of signing of an AiP. Unfortunately ADK would not negotiate and Canada continued to refuse to consult prior to the signing of an AiP. SKDB and NBDB have taken legal action seeking an order requiring Canada to consult with them before signing an AiP. The case was heard in November in Calgary and we are awaiting a decision from the Court.

Edehzhie: DFN entered into the Protected Area Strategy (PAS) in the 1990s on the understanding that it would lead to the permanent protection of Edehzhie. Since 2002 an Order-in-Council protected Edehzhie from mineral staking and exploration through a withdrawal of the subsurface. The OiC had been renewed in 2007 and renewed again in 2008. In a meeting with the Minister of INAC in May, 2010, the DFN were assured that the interim withdrawal would be extended to at least October, 2012. However, on October 28, 2010 Canada allowed the subsurface withdrawal to expire, leaving the entire Edehzhie open to mineral staking, exploration and mining. The DFN were not consulted. On that basis, DFN started a court action to have the subsurface protection of Edehzhie reinstated.

The court proceedings were temporarily adjourned so to see if Canada would negotiate a satisfactory response. Unfortunately Canada has not given any indication that it is willing to reinstate all the subsurface protection of Edehzhie. DFN is currently waiting to have another court hearing. It is expected to occur early in the New year.

Mackenzie Gas Project: Although a tentative Access and Benefits Agreement has been negotiated, it remains confidential so it is impossible to discuss what is in it. However we can say DFN leadership aren’t entirely happy with it. If DFN does go ahead to sign it, Dehcho Process negotiations may lose leverage in talks with Canada. The only immediate benefit to signing the Agreement now is the Agreement Consideration payment which will become due within 30 days of the signing of the agreement. None of the other benefits contained within the Access Agreement will ever be realized unless Imperial decides to construct the pipeline. If the pipeline does go ahead, DFN may still have an opportunity to complete an agreement later on with different.

Fracking: A new concern has emerged. *Fracking* is a method used to explore natural gas. Explosions are made underground to release gas through cracks in rock. But where this has been done elsewhere, water has become contaminated. There is interest by some exploration companies of using it in the North. Some provinces are banning this method and at least one reserve has also.



Christmas Message

Grand Chief Sam Gargan

As your Grand Chief my mandate is based on the historical events in our region, the Treaties, the Declaration, the 21 Common Ground Principles, the Framework, Interim Measures and Interim Resource Development Agreements. I will not compromise the integrity of those agreements signed by previous Grand Chiefs. The Canadian Constitution 1982, The Royal Commission on Aboriginal People 1996, Statement of Reconciliation 1998, the UN Declaration on the Rights of Indigenous Peoples 2007 and the Prime Minister's Apology in 2008 should account for something. Each had a glimmer of hope. But is there anything achieved as a result?

Our Dehcho Process remains our top priority. This collective process requires the guidance of our Leaders and members. As stewards, we must have enough land to sustain us for economic self-reliance and self sufficiency for future generations.

I really believe we have made significant progress in the past 30 months. As we all know one of the options we are now face, is negotiating a quantum of land in our traditional territory which will be recognized by all governments as lands owned by the Dehcho First Nations Government and cash compensation. We must also consider how we will collectively govern and manage our retained lands while co-existing and co-managing the rest of the Land in the Dehcho. This will be a big challenge in negotiations. We must stay the course based on resolution # 1 Winter Leadership in February 24-27, 2009.

No matter what they throw at us, we must remain united, collective in our resolve and that we continue to speak with one voice, one land and one people.

In the meantime as we continue to concentrate on the pieces of the puzzle, what we should realize is eventually those different pieces will eventually become one, create harmony.

The Mackenzie Gas Project: The Federal Government and Imperial Oil face some basic conditions for the project to move ahead. The key item for Imperial right now is to negotiate with Canada a fiscal certainty agreement in the form of a loan guarantee. It may also contain a variety of provisions such as tax breaks, royalty breaks and other government commitments. The next major regulatory date for Imperial is the end of 2013, at which time they need to provide the NEB with an update on the status of the project and a go/no go decision. The change in gas markets and lower gas prices have made the project less viable. With the currently low natural gas prices, the economics of the MGP could be in jeopardy even with a fiscal agreement with the federal government.

Devolution: One of the new challenges we face is the Devolution Agreement in Principle between Canada and the GNWT. It could directly impact on our negotiations. There has been strong united opposition, without any regional support for the AiP from the Gwich'in, Sahtu, Tlicho, Akaitcho and our leaders. Following the Territorial Election with new MLA's and Premier, there has a new hope and a renewed relationship that could result in a collective, united effort by all parties to move forward with all our interest considered.

Although it's been difficult for me personal, trying in earnest to satisfy Leaders and membership interest, I can say in all honesty, the pleasure of serving the people of Dehcho has given me courage to carry on. I always believed our process would eventually would provide us with self-determination, self-reliant and self-government. We will have to make some serious decision, remain united in our position and express in the strongest term our bottom line. I cannot, NO, I will not allow our people to throw in the towel, give-up or eliminate ourselves as indigenous in our "Homeland." Remember, **2012** is our year, the year for indigenous nations to make a difference.

Christmas: As we celebrate the Christmas season together, let us face 2012 with solidarity of purpose. Let each of us ask the Creator for guidance and strength as a Nation and in individual lives. May your families be blessed with peace and hope.



IT IS A JOY TO WISH EACH OF YOU MERRY CHRISTMAS. MAY THE NEW YEAR BRING RENewed HOPE, COURAGE AND DETERMINATION, SO WE REMAIN STRONG STEWARDS OF THIS LAND THE CREATOR HAS PUT US IN.

Merry Christmas and Happy New Year!

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