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It's Time

Quarterly Newsletter
Spring 2012 Edition



be aware

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Grand Chief

Samuel Gargan

Blessings to all. It has been my utmost honor in serving the Dehcho as your Grand Chief for the past 3 years. It has been difficult in holding the monumental responsibility that the elders and you have placed in my hands, to carry out the task of implementing the vision of a Dene Government. To walk this path for you, I am humbly grateful for an honor that fuels my determination to fulfil our vision.

Over the past year, it has been a busy time across our region. We have been blessed with beautiful newborn children, hold them up and let their new light fill you with happiness and warmth, just as the sun fills you every day. We have also mourned the loss of our loved ones, remember them in your heart and grasp new opportunities with determined effort so that you may honor your loved ones in your good work. As the snow melts and you begin to cook outside

remember the warmth that you have shared, place a little tobacco in the fire in their honor. It is always good to do this for our ancestors.

On the front lines we have fought very hard to protect our rights. A judicial review had been initiated by Dehcho First Nations to protect the Edehzhie from sub-surface exploitation. The ruling on a judicial review requested by Chief Dolphus Jumbo and Chief Fred Tesou on behalf of their communities had arrived last December of 2011. It was about boundary consultations that did not occur between Canada, Smbaa K'e and Nahanni Butte when Acho Dene Koe signed their framework agreement. Another judicial review ruling had occurred this year on Paramount Resources in their development of Cameron Hills, roughly 70 Kms south of Kakisa. These will be discussed further in detail on PAGE >>

On the negotiation front, some people have said that the negotiations have gone on too long, "When are we going to be finished?" Is what many people have asked me.

Last year in 2011 the negotiators had initialed their workplan to be finished negotiating an Agreement-in-Principle (AiP) by December 2012. As of the last negotiation session, April 2012, an updated workplan was agreed upon by the negotiators. The new workplan aims to have a final AiP drafted by March 2013. Currently we have 40 out of 44 chapters, 2 new chapters were presented at the April session.

The **main reason** for delay began in 2007 with Neil McCrank, an appointed Special Representative of the Minister of Indian Affairs and Northern Development to make recommendations to improve the northern regulatory system. In 2008 his report was finished "The

Road to Improvement.” It provided the Federal government with 2 options to improve the environmental regulatory process. His main point of the report was that the environmental review process needed to be deregulated. To have a “Streamlined” regulatory review process, by having one land and water board for Denendeh (NWT). Shortly after reviewing the report, the Federal Conservative government appointed John Pollard of Hay River to lead the process of modifying the MVRMA and to add a new “Subsurface Act” to GNWT legislation. The changes to the MVRMA (legislation) will be to the structure of rules and add a set timeline on the regulatory review process. The most important point of the changes will be, who makes the decision on what happens on our land. This is also called, **Jurisdiction**.

Both the MVRMA and “Subsurface Act” will see to it that all land and water boards in Denendeh will merge into one environmental

review board. That one board will be the Mackenzie Valley Environmental Impact Review Board (**MVIERB**) The land and water boards of the Sahtu, Gwich’in and Wek’eezhii will become part of the MVIERB. The entire lands of Denendeh will be managed by this board, **leaving no region with any authority of management**.

What does this mean to me?

The vision of our elders and leaders who are no longer with us, had the understanding that we must have control over our own land, that we must have control over our own lives in order for us to grow and prosper as a nation.

As stated in the past, we have said that we are not anti-development. The critical importance of reclaiming our right to determine our own future, is that, we need to have oversight as to how development proceeds on a timeline that respects our fundamental right of existence.

The amendments to the MVRMA will see to it that control will be in the hands of Aboriginal Affairs and Northern Development (AANDC). As the Minister’s office in Ottawa will have final authority in approval of projects where Dene governments will only be consulted and legislation may provide for regional panels. Meaning that subcommittees may be formed for Dene gov’ts to provide

their views on particular development. Where those views may be considered by the Minister of AANDC. A continuation of the Federal Government’s paternalistic approach in our relationship.

Our future as our elders envisioned have set in motion a number of directions for the leaders of the time. That direction was to set our negotiators on **a plan to control our our land**. A question that came out of this was, “How do we do this?” and **“How do we go about controlling our destiny as a people?”**

The answer that came of this is called the “Dehcho Resource Management Authority” It is the equivalent of the Mackenzie Valley Environmental Impact Review Board (MVEIRB). A board that reviews projects, and provides recommendations as to how to mitigate project disturbances. The MVEIRB only provides suggestions as how to protect the land from the possibility of damaging the land. Those suggestions are passed onto the AANDC Minister for final approval. It’s up to the Minister and his/her advisors as to which suggestions to adopt for the developer. We feel the only way to fully protect our way of life is to establish a DCMRA (Dehcho Resource Management Authority). So that we have the jurisdiction over our lands.

We must have input from you.

You have the power and we leaders are honored as you have vested that power in us. We need to know what you think of this. How should we move forward?

In Dene, Grand Chief Samuel Gargan

live
love
hope

Negotiations

Negotiations on harvesting, governance issues, and other subjects to be included in an AiP, have proceeded slowly but steadily. Unfortunately there have been no negotiations on anything related to the management of lands and resources or land ownership. Canada has continued to delay these discussions, despite repeated requests from DFN negotiators.

The draft Interim Land Use Plan will soon be submitted to the main table for negotiations on several important items. The new draft Plan has been revised to reflect the demands of Canada and the GNWT and is very different from the Plan approved by the DFN in 2006.



Image Courtesy of Felix Isiah

AiP Negotiations

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.

If the Tlicho certainty model is used, the DFN would agree that if there are any Aboriginal or Treaty rights which are not set out in the final land claim and governance agreement, they will not be exercised. The agreement will be binding on all DFN members. This is known as the “non-assertion” model. If the non-assertion model is used, DFN must also agree that if a court declares that the non-

assertion clauses are not legally effective any rights, DFN will cede, release and surrender any rights which are not set out in the final Agreement.

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 it is clear that all DFN s. 35 rights are fully set out in



Image Courtesy of Felix Isiah

the Agreement. However, it should be noted that if this Certainty model is used, Canada may not agree to include “faint hope” provisions which allow for the remote possibility of later amending the final agreement to include “new” rights not related to lands or resources.

Land and Water Management – DCRMA or MVRMA?

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 of the MVRMA and consolidate land use planning, permitting and environmental assessments in a single body.

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), established under the Mackenzie Valley Resource Management Act.

In the 2005 Settlement Agreement which ended the DFN legal challenge to the MVRMA, Canada committed to negotiations on the powers and responsibilities of a stand alone DCRMA. In 2009 the Minister of INAC agreed to give his negotiators instructions to explore the DFN proposal for a consolidated system of resource management based on the DCRMA model. However,

LETTER FROM AANDC MINISTER JOHN POLLARD

Copy can be attained at the DFN office.
Letter dated April 05, 2012

RE: Canada’s Action Plan to Improve Northern Regulatory Regime

Dear Grand Chief Gargan:

I am writing with respect to Canada's "Action Plan to Improve Northern Regulatory Regimes," and specifically in regard to our plans to amend the *Mackenzie Valley Resource Management Act*. The Department has been consulting on a number of initiatives related to regulation in the North leading up to and following the announcement of the Action Plan in May 2010. On February 29, 2012, I met with representatives of regional Aboriginal governments and organizations from the Northwest Territories and the Government of the Northwest Territories, to discuss the amendments being contemplated to the *Mackenzie Valley Resource Management Act*, and I am now writing to share the substance of these discussions.

Canada has been looking to improve the way we encourage investment across the country. We have lowered corporate tax rates, we created the Red Tape Reduction Commission to reduce the red tape burden on Canadian businesses, and we will soon introduce a bill in Parliament that will clarify processes for the assessment and permitting of resource projects in Nunavut.

To increase our competitiveness in comparison to other jurisdictions in the world, Canada will be taking a more targeted approach to the amendments of the *Mackenzie Valley Resource Management Act* and is proposing to focus on three issues.

First, this Government is pursuing changes to the land and water board structure in the Northwest Territories that will result in a single land and water board which would have jurisdiction over the entire Mackenzie Valley Region, but which would not include the Inuvialuit Settlement Region at this time. Canada remains committed to the co-management approach to resource management in the North. The new board will maintain Aboriginal representation and will offer a single process for the issuance of water licences and land use permits.

Second, the amendments will add clear timelines to the *Mackenzie Valley Resource Management Act*. Canada would like to make the time frame for the environmental impact assessment process more predictable by placing timelines on certain decision points. These amendments would better align the regime in the Mackenzie Valley with the rest of Canada and make the legislation comparable with the proposed Nunavut Planning and Project Assessment Act. These timelines will address concerns and criticisms about the perceived lack of predictability around processes in the Mackenzie Valley.

Canada refused to begin any negotiations on a DCRMA until INAC completed an internal review of Neil McCrank's 2008 report on the NWT regulatory system and INAC completes internal discussions.

Early in 2010 the Minister of INAC announced that Canada had finished its' review of the McCrank report and would implement most of McCrank's recommendations. INAC appointed John Pollard to hold consultations with First Nations and the GNWT. Those discussions are now underway, however they will not address any of the issues which the DFN have identified as crucial to governing land and water in the Dehcho. The Pollard discussions will not address the DFN demand for a stand-alone MVRMA because they are concerned only with merging the existing regional land and water boards into a single NWT Land and Water Board under the MVRMA. Furthermore, the Gwichin, Sahtu and Tlicho final land claim agreements all state that Canada has the right to merge the current regional land and water boards into a single NWT Land and Water Board.

DFN has maintained its position that any discussions with Canada on resource management outside of the MVRMA must take place within the Dehcho Process, insisting Canada honour the commitments made in the 2005 Settlement Agreement, and by the Minister in 2009, and immediately begin negotiations on a stand alone DCRMA.

We have tabled a draft Preamble which is based on the Dehcho

Declaration of 1993. In addition to outlining the DFN position on treaties and the inherent right of self-government, the draft includes wording which would note the special circumstances and history of Dehcho Metis.

Harvesters' Compensation

This chapter would provide a "strict liability" regime for compensating harvesters who are negatively impacted by industrial development. In other NWT land claim agreements only trappers have access to the compensation provisions of this chapter. In the draft tabled by the DFN, all harvesters, including those who harvest berries and other plants, would have access to the streamlined compensation process.

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 a TAA who would make recommendations to all governments, as long as the position is created and fully funded by the Dehcho Government.

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 selected lands. The draft AiP chapter on Wildlife Harvesting says Dehcho Citizens have the right to Harvest all species of Wildlife at all times of the year, including Furbearers, throughout the area shown in the map (which will be) attached as Appendix A. (Map will be provided at later date)

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.

The map which will be attached as Appendix A will show that harvesting rights continue throughout the entire Dehcho traditional territory. In addition, Dehcho Dene will have the exclusive right to trap on selected lands (Dehcho Ndehe).

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.

DFN proposes 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.

Tree Harvesting

The GNWT tabled a draft which has been discussed by both the LTC and the main table. Under the draft chapter the Dehcho Government would own trees on Dehcho Ndehe and would have the right to harvest trees for personal and subsistence use throughout the Settlement Area outside of Dehcho Ndehe.

Canada and the GNWT oppose setting out any commercial harvesting rights in the

Dehcho Agreement. If any commercial tree harvesting rights are protected they will be addressed in a separate chapter.

Third, this Government will expand the Minister of Aboriginal Affairs and Northern Development's authority to provide policy direction. The Minister currently has the authority to provide policy direction to the Mackenzie Valley Land and Water Board and its regional panels. Proposed amendments will expand the Minister's authority in order to provide policy direction to the Mackenzie Valley Environmental Impact Review Board and the Gwich'in and Sahtu Land Use Planning Boards, as well as the restructured Mackenzie Valley Land and Water Board. While it would only be used in limited circumstances, this authority could be used to clarify issues of federal policy.

I would also like to address the issue of consultation. This Government has established a consultation process for each legislative initiative under the Action Plan, each of which has been guided by settled land claim agreements and existing federal legislation and informed by common law. Canada has considered the "Draft Framework for Process Respecting Changes to MVRMA and the Regulatory System in NWT" proposed in November 2011 by Aboriginal governments and organizations, and we will not be adopting this proposal.

Department officials will continue to consult with Aboriginal organizations and governments on proposed amendments to the *Mackenzie Valley Resource Management Act*. I appreciate your comments about wanting greater detail. That is why I am writing to share Canada's plan for amendments with you.

The vehicle for restructuring land and water boards will be a bill amending the *Mackenzie Valley Resource Management Act*. Those amendments dealing with board restructuring will be part of a larger package which includes all three of the

issues I have described above. When we share the draft legislation with you, it will include my proposals on restructuring, time lines and policy direction, and we will be consulting on the proposed bill as a whole. We will soon be in a position to respond with that detail in the form of a draft bill for your review. In order to ensure consistency, the Chief Federal Negotiator will be involved in those consultations.

There will also be ample opportunity to become engaged in the eventual study of this bill by the House of Commons and the Senate.

The Government of Canada has a responsibility to balance the interests of many parties in its undertakings. In the North, as in other parts of Canada, it is important to balance the interests of Aboriginal organizations and governments with those of the broader society when it comes to resource management and development. I am confident we have found this balance for moving forward quickly to ensure that the North is ready to take advantage of development in a responsible way, one that considers the viewpoints of all stakeholders and makes fair decisions based on facts and in a timely manner.

Thank you again to those of you who participated in the meeting in Calgary.

Sincerely,

John Duncan, PC, MP

We are also awaiting feedback and direction from the DFN leadership as to what further concerns should be expressed from our side.

Governance

In 2010, DFN tabled a lengthy chapter on Governance which outlines the structures and authorities of the Dehcho Government. It is still subject to further discussion.

DFN negotiators require direction on the structure of the Dehcho Government particularly whether the Dehcho Government should have an equal number of representatives from all communities, or weighted representation, which would give larger communities more representatives than smaller communities, or an electoral district (riding) system in which regional government representatives are directly elected to represent their constituents.

Community Governance

DFN negotiators have prepared a draft AiP chapter on the governance of community lands. In some ways it is similar to the Tlicho model, but in other ways is unique. For

example, while Tlicho community governments are implemented through GNWT laws, the Dehcho proposal would recognize community governments through the Dehcho Agreement and through implementation legislation, not through ordinary territorial legislation. The draft chapter would also recognize the right of Dehcho communities to choose their leadership through traditional Dene customs rather than through elections. DFN communities will each have their own constitution, which can be developed with the assistance of DFN staff•



Painting by Melaw Nakehk'o



Prince of wales northern Heritage; n-1992-255-0432

Acho Dene Koe

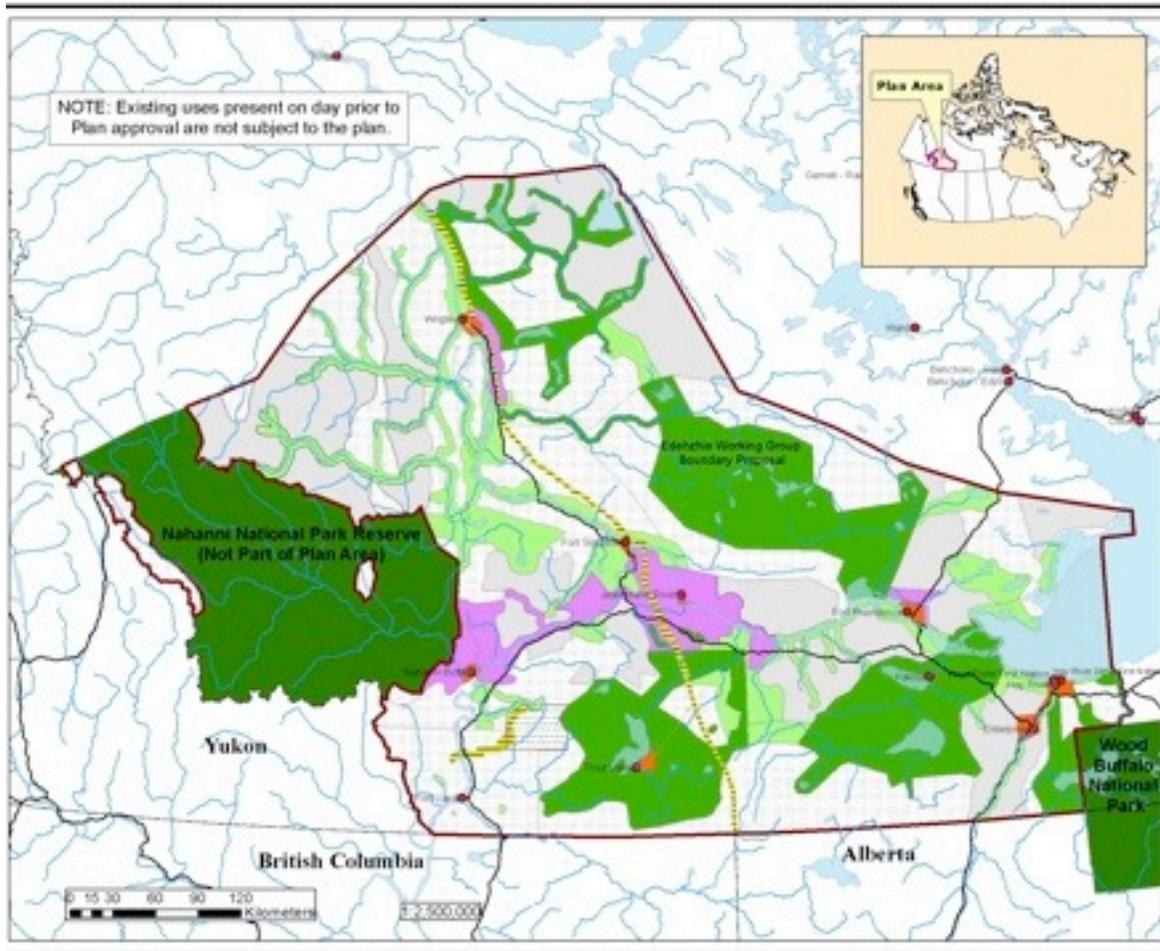
In July 2008, Canada, the Acho Dene Koe First Nation and the GNWT signed a framework agreement to enter into comprehensive land claim negotiations outside of the Dehcho Process. It quickly became clear that ADK intends to select lands from within the primary use areas of SKDB and NBDB.

SKDB and NBDB attempted to negotiate a boundary agreement with ADK, and sought consultations with Canada before the ADK process results in the signing of an AiP. The attempt at negotiations stalled because of

ADK intransigence and Canada's refusal to consult prior to the signing of an AiP. SKDB and NBDB took legal action seeking an order requiring Canada to consult with them before signing an AiP. The case was heard in Federal Court in Calgary in November.

The Court has now ruled in favour of SK and NB and ordered Canada to consult with them before finalizing the AiP with ADK.

DEHCHO



DRAFT; OCTOBER 2011

LAND USE PLAN

The Dehcho Land Use Planning Committee held information sessions in all eight Dehcho communities on the status of the draft Dehcho Land Use Plan. These updates were requested at the Dehcho Leadership Forum in February 2012 in Fort Providence. Meetings were held on the following dates:

February 23, 2012	Jean Marie River
March 6, 2012	Nahanni Butte
March 7, 2012	Wrigley

March 13, 2012	Trout Lake
April 3, 2012	Fort Simpson
April 10, 2012	Kakisa
April 10, 2012	Fort Providence
April 11, 2012	Hay River Reserve

Chair Joachim Bonnetrouge and Vice-Chair Herb Norwegian from the Dehcho Land Use Planning Committee attended all meetings. Between 3 to 14 community members attended each session.



William Tanche-Hanna and Seth Okrainec

PRESENTATION; AN OVERVIEW

The Dehcho land use planning process began with the signing of the 2001 Dehcho Interim Measures Agreement (IMA). The plan is to outline what types of land use activities should occur and where they should take place and describe terms and conditions to guide land use proposals and development projects over time. A land use plan is like your yard. You decide where to put the house, the driveway, the garden, etc. Certain parts of your yard you want protected, like your garden. The plan applies to the entire Dehcho region except Nahanni National Park Reserve

and boundaries of communities. The plan should balance lands for conservation and lands for development. The plan should reflect community values and priorities and take into consideration the interests of all Canadians.

To develop the Plan, the Dehcho Land Use Planning Committee held many workshops with hunters and trappers, elders and leaders to gather information about the land and traditional land use. This information remains the foundation of the current plan. A draft Plan was completed in 2006 and this plan set aside about 70% of the Dehcho as conservation lands. It was approved at the June 2006 Dehcho First Nations Assembly. The Plan was presented to

the other two Parties, the Government of the Northwest Territories and Canada, who did not approve the plan because of the high percentage of conservation lands and conflict with existing regulatory legislation.

In 2007, the three Parties, DFN, GNWT and Canada drafted a new Terms of Reference for the Dehcho land use planning process and a new Committee was formed, made up of two representatives from DFN, one representative from each of GNWT and Canada and a Chair. Currently, Joachim Bonnetrouge is the Chair, Herb Norwegian is one of the DFN representatives and Vice-Chair, Shannon Cumming is the GNWT representative

and Bob Overvold is the federal representative.

Since 2007, the Committee has worked by consensus to resolve most issues, including revision of zoning which was discussed with communities throughout 2008. The presentation provided an October 2011 map of proposed land use zones. The boundaries for these zones remain the same as the June 2006 draft except for the following minor changes:

1. Nahanni National Park Reserve expansion was completed.
2. Final boundaries were recommended for Edehzhie candidate protected area.
3. Poplar River Conservation Zone was reduced in size.
4. The width of the Special Infrastructure Corridor for the proposed Mackenzie Valley Pipeline was increased to 3 km in all zones except Conservation Zones.

At each community presentation, a map was provided that showed the zoning changes between 2006 and now.

The plan proposes six types of land use zones. These are Candidate Protected Areas Zones, Conservation Zones, Special Management Zones, Special Development Zones, General Use Zones and Special Infrastructure Corridors. Most Special Management Zones that were not near communities in the 2006 draft became Special Development Zones. The plan identifies the significant cultural and ecological features in each Special Development Zone. The



Mckenna Hardisty



Ozelotzin Nakehk'o



Tanner Isaiah

Plan does not limit traditional activities and describes which of following five land uses may be permitted – tourism, commercial timber, agriculture, mining and oil/gas. The Plan also includes legally binding rules that Land Use applicants must follow (known as Conformity Requirements) as well as Recommendations and Actions to guide the implementation of the plan.

The Plan proposes the following balance of lands – 48% primarily for conservation (if we include Nahanni National Park) and 51% lands where most types of land use activities may be permitted. This makes the draft Dehcho land use plan one of the best plans in Canada for protecting land.

The Committee is planning to provide a draft interim plan to the three Parties to review in the summer of 2012. The Committee expects comments back in the winter of 2013 and in the interim, the Committee will prepare a draft implementation plan for when the plan is approved. The Committee intends to have a workshop with other regulatory agencies in the Dehcho in the summer of 2012 to discuss implementation and will host a workshop with community resource managers in early fall 2012 to provide a detailed update on the draft plan.

Under the 2007 Terms of Reference, the Committee must refer issues it cannot resolve to the Main Table. There are seven issues the Committee will request direction on. Land use plans are intended to be flexible and the draft plan proposes a review of the plan every five years.

Each presentation concluded



Image; Dehcho First Nations

with the Committee asking about the proposed balance of lands for conservation and development and whether proposed zoning around the communities met the community interests.

Summary of Comments

Meeting notes were provided back to communities. This is a summary of the comments about the plan heard by the Committee. Comments relating to other issues or seeking clarification are not included in this summary.

- Special Development Zones – Special Management Zones around communities should not be changed to Special Development Zones. Communities were not consulted on setting up this new type of zone. As boundaries for protected areas are finalized, the areas that are not included should remain Conservation Zones, not be turned into Special Development Zones (Jean Marie River, Wrigley, Trout Lake, Hay River Reserve)
- Approval of interim plan – DFN must have final say on approval (Jean Marie River)
- Termination of interim plan – approval from DFN must be required if plan is to be terminated (Jean Marie River)
- Balance of lands for conservation and development – proposed balance does not reflect community views and should be more similar to 2006 draft plan (Jean Marie River), proposed balance is reasonable (Fort Simpson, Wrigley, Fort Providence)
- Other options for land management – DFN should identify other land management options if the land use planning process ends (Jean Marie River)
- The plan should be flexible so that future community interests can be addressed (Jean Marie River, Fort Providence)
- The plan should apply to the whole Dehcho region (Jean Marie River)
- Workshop on draft land use plan with community resource managers is needed (Jean Marie River, Nahanni Butte, Wrigley, Trout Lake, Fort Simpson)
- Changes to proposed zones – area west of Kotaneedee River was changed from conservation zone under national park interim land withdrawal to Special Development Zone. This should be changed back to conservation zone (Nahanni). Netla Arrowhead Special Infrastructure Corridor is not supported by Nahanni Butte.
- Insufficient resources in communities to participate in land use planning process (Wrigley)
- Dehcho Land Use Planning Committee should establish a scholarship for youth who want training in land management (Trout Lake)
- The land use planning process should not prevent setting up of protected areas under NWT Protected Areas Strategy (Kakisa Lake)
- The proposed land use plan should allow access to General Use and Special Development Zones so communities can have economic development opportunities (Fort Providence)

Edehzhie

The DFN entered into the PAS in the 1990s on the understanding that it would lead to the permanent protection of at least part of the Edehzhie. Since 2002 an Order-in-Council had protected Edehzhie from mineral staking and exploration through a withdrawal of the subsurface. The OiC was renewed in 2007 and renewed again in 2008. However, on October 28, 2010 Canada allowed the subsurface withdrawal to expire, leaving the entire Edehzhie open to mineral staking, exploration and mining.

After Canada failed to respond to letters asking for protection to be continued, the DFN launched an application for judicial review in November, 2010. The application asks the court to rule

that Canada broke its agreement with DFN when it unilaterally terminated subsurface protection and opened Edehzhie to mining.

In December, 2011 Canada issued a new OiC which restored subsurface protection for the part of Edehzhie which would form the permanent NWA boundaries under the recommendations of the EWG, which the DFN leadership approved in 2009. This area is approximately 57% of the Candidate Area.

In January, 2012 Canada served a motion to dismiss the case on the grounds that it is moot. The Oct., 2010 OiC which is challenged in the case was rescinded and replaced by the

December, 2011 OiC which restored subsurface protection to that part of Edehzhie which would form the permanent NWA boundaries under the recommendations of the EWG, which the DFN leadership approved in 2009. Since the 2010 OiC has been repealed, the federal motion to dismiss for mootness may succeed.

The GC has instructed DFN lawyers to consent to Canada's mootness motion, which

would end the litigation, on condition that Canada agree to pay all or some of the costs incurred by DFN in litigation to date. Canada refused this offer and the mootness motion was argued on March 5. We are awaiting the Court's decision •



MVRMA

Summary by Dahti Tsetso, Resource Management Officer

The last MVRMA/Pollard Process meeting was held in Yellowknife on March 28-29th, 2012. Aboriginal groups held an internal meeting with representatives from the Tlicho, Gwichin, Sahtu, Dehcho, Akaitcho and transboundary groups on March 26-27th to discuss common interests and a strategy for the upcoming meetings with AANDC/Pollard. DFN sent Chief Jim Antoine, Chief Wayne Sabourin, Chief Tim Lennie, Dahti Tsetso and Patrick Scott to attend these meetings on behalf of Dehcho.

At the internal Aboriginal meeting, the discussion focused on how to move forward in light of the federal government's rejection (Calgary/Feb Minister Meeting) of the proposed Collaborative Framework for working together as Aboriginal Governments with the federal government on changes to the MVRMA; rather than their current process that fails to fulfill their duties under S.35. The parties agreed to continue working together and push support for the collaborative Framework despite Canada's rejection of it. The meetings with AANDC and Pollard concluded with a strong, unified message from all the regions that they wanted to work through the proposed Framework on any amendments to the MVRMA.

The Minister sent DFN a letter dated April 5, 2012 that continues to uphold their consultation process despite objections. The letter indicates that they are already drafting a bill for review. They are clearly trying to steamroll ahead with their changes despite strong objections to their process. A letter to the Minister has been drafted by the Aboriginal groups stating that a meeting with the Minister is needed to resolve the issue of working through the proposed Framework before any changes can move forward any further.

Clear direction from Leadership regarding DFN's role in this process is still needed.



Image Courtesy of Felix Isiah

SHORT SUMMARIES; THE JUDICIAL REVIEWS

By Peter Redvers of *Crosscurrent Consultants*

Dehcho Court Rulings Provide Legal Direction

There have been two significant court rulings in the past few months arising from Dehcho court challenges.

[Federal Court Ruling 2012 FC 204](#)

On February 10th, the Honorable Madam Justice Mactavish of the Federal Court ruled that Canada breached its duty to consult the Smbaa K'e and Nahanni Butte Dene Bands with respect to land and resource issues arising from Canada's negotiation of a land claims agreement with Acho Dene Koe First Nation. In her ruling, Justice Mactavish stated that "Canada has a legal and constitutional duty to engage in immediate and substantive discussions directly with SKDB and NBDB with respect to the subjects of the land claim with ADKFN that would affect or potentially affect the asserted Aboriginal and Treaty rights of the SKDB and NBDB, including the determination of land and resources forming the settlement area or settlement lands of ADKFN's land claim, the use of such land and resources, and the regulation or management of such lands and resources" (paragraph 210).



Image Courtesy of Felix Isiah

Importantly, substantive consultation with SKDB and NBDB must take place prior to the signing of an Agreement in Principle (AIP) between Canada and ADKFN. Furthermore, an even deeper level of consultation must continue after the signing of an AIP.

Justice Mactavish pointed out that while it was “reasonable and appropriate” for Canada to encourage the First Nations to resolve their overlap issues through a consensual agreement, “the fostering of overlap negotiations cannot... serve as a substitute for direct consultation by Canada with the affected First Nations” (paragraph 204).

Justice Mactavish noted that the particular circumstances of this case affected her decision (paragraph 205). First, all parties acknowledged that SKDB and NBDB hold Treaty rights in the area. Second, the Samba K'e and Nahanni Butte Dene Band's had presented strong evidence to support and substantiate the strength of their Aboriginal rights in the overlap area. Third, Canada had already committed to actions and made decisions with respect to the ADKFN claim

that had the potential to significantly infringe SKDB and NBDB Aboriginal and/or Treaty rights. Fourth, Canada, through the Minister of AANDC, had committed to consulting with SKDB and NBDB pending the outcome of overlap negotiations, but when these negotiations failed, even though SKDB and NBDB had participated in them in good faith, the Minister unilaterally decided to postpone consultation until after the signing of an AIP with ADKFN.

Together, these factors created a situation where “the honor of the Crown requires that it engage directly with SKDB and NBDB prior to the concluding an agreement in principle with the ADKFN” (paragraph 205).

What is the significance of this ruling for the Dehcho? Given the particular facts of this case, one has to be careful not to apply the decision to all overlap situations that might arise through Canada's decision to support and encourage the negotiation of Community Comprehensive Claims in the Dehcho. But the decision likely means that Canada will have to be very cautious in how it engages in

**SAMBAA K'E DENE BAND and
NAHANNI BUTTE DENE BAND**

and

**JOHN DUNCAN, MINISTER OF
INDIAN AFFAIRS AND NORTHERN
DEVELOPMENT, GOVERNMENT OF THE
NORTHWEST TERRITORIES, and
ACHO DENE KOE FIRST NATION**

REASONS FOR JUDGMENT AND JUDGMENT

[210] Canada has a legal and constitutional duty to engage in immediate and substantive discussions directly with the SKDB and NBDB with respect to the subjects of the land claim with ADKFN that would affect or potentially affect the asserted Aboriginal and Treaty rights of the SKDB and NBDB, including the determination of lands and resources forming the settlement area or settlement lands of ADKFN's land claim, the use of such lands and resources, and the regulation or management of such lands and resources.

[211] Canada shall not enter into an agreement in principle with the ADKFN in relation to its pending land claim until such time as the consultations with the SKDB and NBDB referred to in the previous paragraph have been carried out.

[212] This Court further declares that upon the conclusion of an agreement in principle with the ADKFN, Canada will have a duty to engage in deep, meaningful and adequate consultation with the SKDB and NBDB in order to develop a settlement agreement with them.

Community Comprehensive Claims' processes in the Dehcho given the potential for considerable overlap conflicts among First Nations in the region.

In essence, the current Community Comprehensive Claim process requires the delineation of a 'settlement area', over which one community would negotiate land and resource management authorities and in which that community would select private or 'fee simple' lands. Both these actions have the potential, depending on the specific circumstances, to undermine the Aboriginal and Treaty rights of surrounding First Nations. Where potential infringements may occur, these matters must be addressed either through the negotiation of an overlap agreement between affected First Nations or, where that fails -- as it has between SKDB, NBDB, and ADKFN -- through direct and substantive consultation by Canada.

Federal Court Ruling 2012 FC 297

The second ruling that occurred recently in the Dehcho, even though the ruling was won by Canada, is also significant in that it provides greater

meaning to the phrase 'substantive consultation'. This second ruling is, in fact, already helping to guide SKDB and NBDB engagement in the court-ordered consultation process required by the February 10th SKDB-NBDB ruling.

On March 8th, the Honorable Mr. Justice de Montigny ruled that Canada had fulfilled its court-ordered consultation obligations with respect to the Chicot decision of 2007. The Chicot decision (by the Honorable Mr. Justice Blanchard; 2007 FC 763), was the result of a legal challenge by Chief Lloyd Chicot, on behalf of the K'agee Tu First Nation, of the 'consult to modify' process required under the *Mackenzie Valley Resource Management Act*. Chicot asserted that Canada could not substantively modify recommendations of the Mackenzie Valley Environmental Impact Review Board (MVEIRB) without carrying out s.35 consultation with KTFN where those modifications might affect KTFN Aboriginal or Treaty rights. This ruling resulted in Canada being required to consult with KTFN "in respect to modifications it proposes to bring to the recommendations of the Review Board pursuant to the Environmental Assessment Process

concerning the [Cameron Hills] Extension Project" (paragraph 131).

Following the Chicot ruling, Canada did enter into a formal consultation process with KTFN and, in the summer of 2009, Canada declared that this consultation process was completed and that accommodation measures (including funding of a traditional land use study and development of pending 'traditional practices' and 'environmental monitoring' programs) were adequate. KTFN asserted that the consultation process was not adequate because it did not address compensation for infringement of Aboriginal title in the Cameron Hills.

Without going into the details and facts of this case, Justice Montigny ruled that the scope of the consultation process ordered in the Chicot decision did not require consultation with respect to "mitigation measures designed to take into consideration the impact of the Extension Project on the KTFN's asserted title" (paragraph 108).

Significantly, Justice Montigny examined the nature and extent of the consultation process carried out by Canada from 2007 through 2009 and

JUDGMENT

THIS COURT DECLARES, ORDERS AND ADJUDGES that:

1. Canada has breached its duty to consult with the SKDB and NBDB;
2. This application for judicial review is allowed and the October 25, 2010 decision by the Minister of Indian Affairs and Northern Development postponing consultation with the SKDB and NBDB until after the conclusion of an agreement in principle between Canada and the ADKFN is set aside;
3. Canada shall engage in immediate and substantive discussions directly with the SKDB and NBDB with respect to the subjects of the land claim with ADKFN that would all or potentially affect the asserted Aboriginal and Treaty rights of the SKDB and NBDB including the determination of lands and resources forming the settlement area or settlement lands of ADKFN's land claim, the use of such lands and resources, and the regulation or management of such lands and resources;

4. Canada is prohibited from entering into an agreement in principle with the ADKFN in relation to its pending land claim until such time as the consultations with the SKDB and NBDB referred to in the paragraph 3 of this Order have been carried out;
5. Upon the conclusion of an agreement in principle with the ADKFN, Canada shall engage in deep, meaningful and adequate consultation with the SKDB and NBDB in order to develop workable accommodation measures to address their concerns about the determination of lands and resources forming the settlement area or settlement lands of ADKFN's land claim, and the regulation or management of such lands and resources. This process is to be conducted with the aim of reconciling outstanding differences between the parties, in a manner that is consistent with the honour of the Crown and the principles articulated by the Supreme Court of Canada in *Haida Nation* and *Taku River*; and
6. The SKDB and NBDB shall have their costs of this matter, fixed in the amount of \$15,000.

outlined the elements of that consultation process that resulted in Canada meeting its legal obligations. It is this portion of the ruling that is of particular interest to the SKDB and NBDB (and, perhaps, other Dehcho First Nations).

To summarize and paraphrase, Justice Montigny concluded in paragraphs 112-114 of his ruling that a court-ordered consultation process has met the legal test for consultation where it has included:

- Full funding of First Nation(s) participation in the consultation process, including legal counsel;
- Development of a consultation protocol describing the scope of the Court-ordered consultation process;
- Regular and open sharing of information between Canada and the First Nation(s);
- Recording of all sessions, with minutes circulated and approved by the respective parties;

- Multiple opportunities for the First Nation(s) to share concerns and participate in thorough discussions to explore options for addressing those concerns;
- A genuine effort on the part of Canada to address First Nation views on accommodation measures;
- Agreement on accommodation measures that address the specific infringement concerns within the scope of the Court-ordered consultation process; and
- Reasonable implementation of these accommodation measures.

The Samba K'e and Nahanni Butte Dene Bands have already notified Canada that they expect their court-ordered consultation process to include all of these elements.

Although not directly addressed in this ruling, one might conclude that if Canada wishes to avoid a legal challenge where its actions or decisions may have substantive impacts on the

Aboriginal and/or Treaty rights of First Nations, Justice Montigny's description of the key elements of a legal consultation process may also be useful and relevant.

Closing

Legal challenges are costly and time consuming. In the case of the SKDB and NBDB's challenge of Canada's refusal to consult, the expense and energy were necessary and worthwhile as control over, and use of, primary traditional lands were being threatened.

In the case of KTFN's challenge of Canada's consultation process, the lesson is that court-ordered consultation must be specific to those issues identified in the ruling and must include certain critical elements, including reasonable accommodation of specific concerns. Where these conditions are met, the consultation can be deemed to be complete.



Dehcho AAROM meeting at the Dene Cultural Institute, March, 2012. Back Row: Joe Lacorne, Danny Peterson, Richard Lafferty, Dennis Deneron, Fred Simba, Darrel Betsaka, and Priscilla Canadien. Front Row; George Low, Deanna Leonard, Allen Bouvier, Peter Sabourin and Jonas Sanguez.

DEHCHO AAROM PROJECT

The Dehcho AAROM program receives guidance from Dehcho First Nations, community leaders, elders and by the Dehcho Watershed Ecosystem Advisory Committee.

The Committee's mandate is to;

"...protect and preserve the rights of all Aboriginal peoples to healthy waters, fish stocks and aquatic environments in the Dehcho."

The Mission of the Dehcho AAROM program is to develop;

"More Aboriginal control of fish and water resources under the Dehcho First Nation's 'One House' system of governance -- involving local resource users and enhancing employment and educational opportunities for Dene youth."

SUMMARY OF THE AAROM COMMUNITY BASED RESEARCH AND MONITORING PROGRAM FOR 2011-12;

1. ***Katlocheeche First Nation and West Point First Nation*** collected data useful in the management of Great Slave Lake fisheries. Under contract, they provided four field workers and two fishing vessels to set and lift nets to provide information on Great Slave Lake fish stocks; particularly Inconnu (Coney). This is a Fisheries and Oceans science assessment project. DFO is responsible for analyzing and interpreting the data for use in the management of Great Slave Lake fisheries.

The Katlocheeche First Nation (KFN) is interested in developing a strategic plan for First Nation involvement in the Great Slave Lake commercial fishery. They want to be fully involved in all aspects of Great Slave Lake fisheries. Unfortunately the Great Slave Lake Working Group which was working on developing a management plan for GSL fisheries was disbanded because a major partner, the Akaitcho First Nation decided not participate in the process until their treaty negotiations are complete. However the KFN

and AAROM will continue to meet with DFO in order to have input into the planning process.

2. ***The Deh Gah Gotie First Nation*** called a meeting to deal with the large numbers of sports fishers, mostly from northern Alberta, who fish in the Mackenzie River at or near Fort Providence. DFO, ENR and AAROM attended the special council meeting to discuss ways of reducing resource user conflicts.

The Fort Providence Resource Mgmt. Board already had their two monitors out on the river through a contract with Dehcho AAROM with funding from the DFO Aboriginal Fisheries Strategy. The Band decided to put extra monitors on the river during the busy spring period to discourage disrespectful practises which interfere with local fishing and may be damaging to fish stocks.

The AAROM Technical Advisory, Mike Low, presented the data collected in previous years through the monitoring program.

Recommendations to DFO included reducing catch and possession limits for the sports fishery as well as increasing the Mackenzie River Mgmt Zone further downriver to include the Horn River and Mills Lake.

- Dr. Jessie Carrie and Dr Gary Stern have expanded their temporal study of contaminants from the Good Hope Area to include Trout Lake and the Mackenzie River at Jean Marie River in the Dehcho. Lake trout from Trout Lake and burbot (better known as Loche or Mariah) from the Mackenzie River were collected by Samba Ke and Jean Marie for contaminant studies by these two researchers. ***New in 2012:*** *A sediment core sample was taken from Trout Lake to study the history of contaminant levels in this area.*
- We received funding from the Northern Contaminants Program to continue collecting and analyzing fish samples for mercury levels. ***New in 2012-13;*** *We will be promoting community fishing and the increasing healthy country food in the diet of people in the Dehcho communities. We will be holding workshops in two communities and surveys in other communities to discuss safe sources of fish.* We received funding from Health Canada and NCP to do this.
- AAROM partnered with the Jean Marie River First Nation and ENR to assist with the development of a *Protective Area Strategy* for five lakes along the highway near JMR.
- ***New in 2012-13;*** *We will be offering our community*

monitors an Environment Canada, “CABiN Stream Assessment Course” in August hosted by Ka’a’gee Tu First Nation.

- **New in 2012-13;** We plan to partner with Parks Canada and collect fish samples which they will analyse for a suit of metals including mercury and zinc. Our Nahanni Butte monitors will be collecting the samples.
- **New in 2012-13;** We plan to deploy additional Water Quality Sondes (instruments which record data constantly) in the Liard River and Trout Lake and investigate the possibility of a Sonde deployment in the South Nahanni near the community.
- **New in 2012-13;** We plan to sponsor a trip to the Environment Canada laboratory in Saskatoon, probably in June, for a group of high school students and some of our community monitors.
- **In addition to DFO, AAROM core funding, we have applied for funding from;**
 - DFO, Aboriginal Fisheries Strategy
 - AANDC, Northern Contaminants program
 - AANDC, Cumulative Impact Monitoring Program
 - Health Canada (approved)

3. **The Smbaa Ke Dene Band** has embarked on a community health and wellness program. The fishery resources, the Land and the environment have always been important to them. They plan to look at the current state of the environment in the area including Trout Lake and develop an ongoing monitoring program. AAROM will play a part in this process by continuing to develop a robust research and monitoring program with the community. In 2011-12, the community continued to monitor the sports fishery as well as the community food fishery. They also assisted Mike in setting a string of temperature loggers from a buoy to collect data on a water temperature profile with depth, as well as measuring dissolved oxygen, pH, and total dissolved solids. These measurements are important to track changes due to climate change. We plan to have a meeting in late May to bring the past information to the community and develop a long-term monitoring plan.

4. **The Ka’a’gee Tu First Nation** for the third year monitored the sports fishery on the Kakisa River. Their monitor, Fred Simba, also assisted with a helicopter survey of the Cameron River to see if it is suitable for the CABiN type of stream assessment. The KTFN is also working with AANDC on a

study of possible effects of the Cameron Hills oil and gas development. Shawn Laidlaw has been hired as the community coordinator. Fred and Shawn collected 20 walleye and 20 pike samples for metal level testing in the flesh including mercury. We all work together as much as we can; Mike Low helped out on a couple of occasions with bathymetry and water sampling at Tathlina Lake.

5. **The Jean Marie First Nation (JMRFN)** for the third year in a row monitored activity on their stretch of the Mackenzie as well as collecting water quality data on dissolved oxygen, pH, conductivity and temperature.

The JMRFN also took on several other projects in both summer and winter.

- AAROM collaborated with ENR and ITI with fishing projects at Ekali (Kelly) Lake during the summer and Sanguéz Lake in the winter. Data was collected on the different kinds of fish present, the effort required to catch them as well as measuring fish caught for length, weight and aging structures. Flesh samples were taken to measure mercury levels.
- AAROM also administered an ENR contract with an aquatic ecologist (Bruce Townsend)

and provided him with logistical assistance on Ekali, Sanguéz and Gargan lakes. JMRFN and ENR are working on a “*Protected Area Strategy*” for these lakes as well as DEEP and McGill lakes.

- JMR also participated in a DFO Science study by collecting 20 burbot from the Mackenzie River at the mouth of the Jean Marie River.

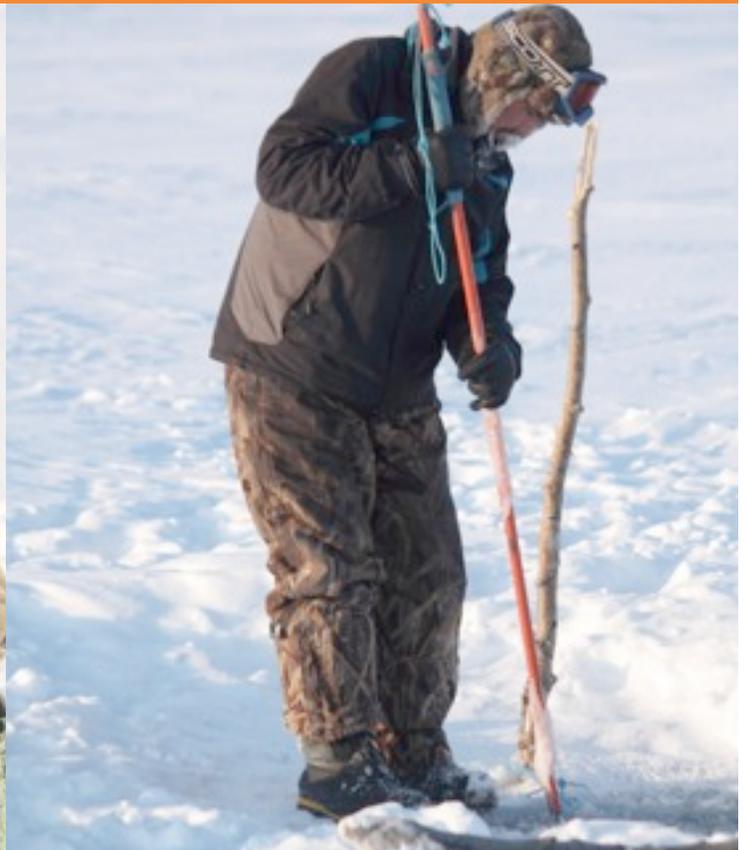
6. *The Nahanni Butte Dene Band* continued to monitor activity on the Nahanni and Liard rivers in their area. They also collected data on dissolved oxygen, pH, conductivity and surface temperature. This information will provide some baseline water quality data prior to the opening of the Prairie Creek mine. WE intend to beef up the program in 2012-13 by deploying a Water Quality Sonde and sampling fish for metals.

7. *The Liidlii Kue First Nation* continued their monitoring program on the Mackenzie River. They are getting a handle on the usages of the resources in their area through monitoring and traditional

knowledge information. They also collected data on water temperature, dissolved oxygen, pH to establish baseline data on the river. Additionally in 2011 they set out a *Water Quality Sonde* supplied to the AAROM program by the ENR, *NWT Water Stewardship Strategy* program. We hope to continue with this new equipment as a long-term monitoring of water quality and expand the program to include the Liard River and Trout Lake.

Liidlii Kue also was involved in organizing the collection of fish samples from Big Island Lake for mercury level analysis.

8. *The Pehdzeh Ki First Nation* will continue initiating their monitoring program. They have been busy with the Willowlake River clean-up process since the spring. AAROM needs to meet with the Chief and Council early in the year to get further direction on their involvement this year. The building of the AAROM program storage garage will be funded early in the year.



George Nadlii and Greg Sabourin fishing at Willow Lake on the Edehzhie



Morris Vital, Mike Low and Stacy Marcellais travelling on the Liard River near Nahanni Butte.

PROGRESS ON AAROM ITEMS ARISING FROM LEADERSHIP MEETINGS AND AAROM SPONSORED CONFERENCE TRAVEL;

1. **Concern about the option to withdraw from the Freshwater Fish Marketing Corporation (FFMC).** Grand Chief Gargan wrote to Robert McLeod, Minister of Industry, Tourism and Investment advising him that the member organizations of the Dehcho First Nations do not agree with the option of withdrawing from the FFMC. Recently, the NWT Fisherman's Federation reversed their stance and have informed the Minister that they do not want to withdraw from FFMC.
2. **Concern about mercury levels in predatory fish.** Levels of mercury in fish



Fred Simba cruising on Kakisa Lake

from some inland lakes in the Mackenzie Valley have been found to be increasing. It is necessary to collect fish samples from fishing lakes to check on the present levels of mercury. AAROM has been working with various First Nations to collect fish samples and test them for mercury levels with funding from the AANDC *Northern Contaminants Program*.

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3. **Keepers of the Waters;** AAROM funded the travel of Grand Chief Sam Gargan and Sam Eleeze to attend the “*Keepers of the Water*” conference in Lac Brochet, Manitoba last summer.
4. **AFN Water Conference in Edmonton;** AAROM funded Chief Dolphus Jumbo, AAROM board member, Peter Sabourin, and Councillor Margret Ireland to attend this Water conference in March.

Youth Activities;

The Annual Dehcho Ecology Camp was hosted by Nahanni Butte Dene Band and Parks Canada this year. AAROM participated by sending Bruce Townsend to deliver the aquatic ecology modules. Two reports on the camp with lots of pictures may be found on www.dehcho.org ;

look under the AAROM page.



Rufus Sangus and Travis Minoza setting nets in Sanguet Lake, December, 2011.

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Felix Isiah Communications Specialist

Negotiation Videoconference sites:

- Dehcho First Nation Boardroom
- Dehcho Land Use Planning Boardroom (Deh Gah Gotie)
- Yellowknife
- Ottawa

Negotiation Session Dates:

May 23rd 2012

June 12–14th 2012

July 10–12th 2012

September 11–13th 2012

October 2–4th 2012

October 30 – November 1st 2012

November 20–22nd 2012

December 11–13th 2012

January (to be determined)

February (to be determined)

March (to be determined)

Toll Free: 1-866-995-3748 ♦ 867-695-2355 ♦ email: communications@dehcho.org

As federal funding cuts have occurred to negotiation grants, the above dates are scheduled as Videoconference sessions. Location sites for Yellowknife and Ottawa vary from session to session. Please call or email if you would like to participate at those locations so we can ensure you have a comfortable seat. All other locations, feel free to drop in, coffee and tea are available. Negotiation staff are always at the DFN office, if you have any questions please don't hesitate to ask, we're here for you. Facebook Page >>>Dehcho Process<<<

