



DEHCHO FIRST NATIONS
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DFN Leadership Conference Call
October 29, 2010

Chief Roy Fabian/Elder Pat Martel
 Chief Fred Tesou/Elder Flora Cli
 Chief Tim Lennie
 Chief Dolphus Jumbo
 Chief Jim Antoine
 President Marie Lafferty

Staff:

Grand Chief Samuel Gargan	Georges Erasmus	Chris Reid	Patrick Scott
Leona Louie	Violet Jumbo	Felix Isiah	Ria Letcher
Wesley Hardisty	Jonas Antoine	Richard Lafferty	
Bernadette Norwegian			

Not on call:

Chief Joachim Bonnetrouge / President Albert Lafferty
 A/Chief Stanley Sanguiez / Chief Lloyd Chicot
 Chief Abner Cayen

Opening Prayer – Elder Pat Martel

Edehzhie

Georges indicated that he received a call from Tim Christian regarding Edehzhie. Only the surface is protected. Georges let Tim know that it could break up the system. We need movement on this quickly. This will be public in a few days. Received legal opinion from lawyer, Chris Reid. *Georges read out opinions presented to leadership (Attached).*

Georges indicated the withdrawal is for only one year with no sub-surface protection.

Chief Roy Fabian asked if it was a renewal of withdrawal? Georges answered yes, it is a renewal. They did part of it but not sub-surface for Edehzhie as per interim agreements. They knew this for about a year and have not told us but have been negotiating with us. It is now open for staking as early as November 1st.

On the first option presented, they failed to consult First Nations.

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MOVED BY CHIEF TIM LENNIE, SECONDED BY A/CHIEF STANLEY SANGUEZ
MOTION CARRIED

Chief Tim Lennie added that the pressure is on and it is difficult for Pehdzeh Ki First Nation to react. When Chris comes on, we need something to stop it. There are a lot of issues.

Chief Jim Antoine indicated that he is involved in devolution with some leaders. Same government, conservatives are doing this. They are trying to make it easier for mining and oil and gas companies. Jim added that he tried to warn leaders not to sign letter with Joe Rabesca.

Chris joined call. He indicated two legal opinions presented on grounds of no consultation or challenge the recording of the claim. Risks are small, with the risk of not doing anything. Don't know how much it would cost for litigation, could be around \$100,000 - \$200,000. Dehcho is quite capable of setting this money aside. There was an agreement with Canada. Strong case can be made.

Georges asked Chris if you could switch strategies if the first one doesn't work. Chris recommended doing both.

With regards to the Bernier Case, leaders agreed they would react with removing stakes and proceed with legal action. DFN to challenge decision to not renew and announce to the world, any staking done in Edehzhie, there would be consequences.

Chief Lennie indicated that it would be good to do a Press Release. Leaders are looking at options. Chris added that the leadership should be careful of what you say.

On the two options, don't know what will happen with negotiations? It is up to Canada. If you take legal action on treaties, they will suspend negotiations. With the second option, there are harvesters that use that area intensely. With the first option, issue of who owns the minerals.

Grand Chief can talk to the media.

Chief Jim Antoine responded that the Edehzhie is a big part of his people. Agree if there is going to be court action, be brief. In support of court action.

Chris spoke with Bill Carpenter and they indicated we have their support. Georges added to let the Tlichos know about this and we could get their support also.

Chief Jim Antoine asked if the court action would be on Edehzhie? Chris and Georges replied that it was. Issue an announcement from the Grand Chief that they are not valid and will be challenged in court. That will be more effective.

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Georges would like to poll chiefs to see who is in agreement with the litigation.

Chief Tim Lennie

Chief Roy Fabian / Elder Pat Martel

Chief Jim Antoine

Chief Dolphus Jumbo

Chief Fred Tesou / Elder Flora Cli

President Marie Lafferty

Jonas Antoine indicated it would be good to have harvesters out there, this could happen next week. Patrick phoned John B. Zoe and he is aware of what we are doing. Grand Chief will issue statement to media.

There was agreement that this call will continue on Monday, November 1, 2010.

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**Leadership Conference Call
November 1, 2010**

On Line:

Chief Fred Tesou/Elder Flora Cli
Chief Stanley Sanguetz/Elder Ernest Hardisty
Chief Joachim Bonnetrouge/Elder Ted Landry
Chief Lloyd Chicot
Chief Tim Lennie
Chief Abner Cayen
President Marie Lafferty/Elder Barb Sloat

Staff:

Grand Chief Sam Gargan	Ria Letcher	Leona Louie	Violet Jumbo	Felix Isiah
Richard Lafferty	Jonas Antoine		Georges Erasmus	
Patrick Scott	Bernadette Norwegian		Keyna Norwegian	

Opening Prayer – Chief Joachim Bonnetrouge

Georges summarized call on Friday. Renewal of Land Withdrawals for one year, surface only, no sub-surface protection for Edehzhie. Outlined options from memo sent to leadership. Negotiations will still go ahead. This is a follow up from Friday. Have a firm decision to go to court from leadership.

Chris indicated that the opinion has not changed. There are two options presented which are attached. Challenge is not to renew Land Withdrawals. Suggestion has been to go with Option one. The threat of mineral staking is more important. No reason for Canada to suspend negotiations, no rationale to do this. Chris can contact Greg McDade to see if he is willing to take on the court case.

Ria indicated that we have surplus of \$900,000. There is also a fund available under the Department of Justice. Chris added that the DFN should look for funding. If you do not do this, it just isn't that important.

Richard Lafferty indicated that the DFN Leadership could sit down with the Tlicho, if they are in agreement, they could share costs. Grand Chief indicated he send an email to Bertha Rabesca for a request for a meeting with Alphonsine Apple.

Chris indicated someone should be monitoring Edehzhie. To do this right, it will take 3-4 weeks and all items to be done on paper. Not much media coverage. Both are winnable cases.

Patrick indicated that Grand Chief was doing a 5-10 minute interview. Tim Christian was on radio also. Press Release was sent out.

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Jonas indicated that the message was not strong enough from Grand Chief. Chief Tim Lennie added that Grand Chief and community chiefs have to be more vocal. Jonas spoke with Herb Norwegian about this and he was livid.

Chief Tim Lennie wanted monitoring program started up. How are we going to help? Protection from legal action? Richard added that Mining Regulations have changed, done by GPS.

Chief Joachim Bonnetrouge indicated that the decision has been made to submit court challenge.

A/Chief Stanley Sanguiez added that he wasn't on call on Friday. Hearing about the two options presented with the update Chris gave. Chris indicated that there is still staking going on, wooden stakes.

You will not be informed unless requested. There is a resolution from leadership still outstanding. Grand Chief is required to take legal action. Chris emailed Greg McDade on decision from Friday's call. Be prepared for all options. If you go back on your word and back out of court, it will be disastrous.

A/Chief Stanley Sanguiez indicated that it was a good case for the federal government. Negotiations are being watered down.

Chief Joachim Bonnetrouge indicated about fifteen years ago, there was a blockage on a Diamond Company on Horn Plateau, wanted an update on this.

Chris is waiting to hear from suggested lawyer. Stress that the goal is no staking permitted. This is to let mining authority that stakes will be removed.

Press Release has to be re-done, not stressed enough in release made this morning.

Richard indicated that the Trust Fund can be accessed: Elder's Fund and Immediate Opportunities Fund can be accessed.

Another Press Release to be done; Jonas to work on this with Patrick and Felix.

Affected communities:

- DGGDB has about 10 harvesters**
- LKFN has about six harvesters**
- JMR has about two harvesters**
- PKFN has eight harvesters.**

Priscilla Canadien indicated that they have money available for this. CHAP dollars also.

Keyna Norwegian asked where the GNWT is on this. They have come out with, "Northern Voices, Northern Waters – NWT Water Stewardship Strategy". Timing is perfect for us. If water

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is important to them as they say in their report. Georges suggested writing a letter to the Premier.

Chief Lloyd Chicot added Kakisa is involved in PAS, has support from other communities. We are in the third stage, seems like we are doing all work for nothing. Give notice to the GNWT.

It is complicated to protect sub-surface in the Land Use Plan and in Protected Areas Strategy.

Ria indicated that we could refuse the MERA. Chris added that this is done before PAS, making it easier for stakeholders. Jonas Antoine responded that original intent was to protect, MERA got involved. We don't want MERA if we don't get sub-surface.

Chris added if there is no MERA, nothing will be done.

Jonas Antoine responded that the PAS are in a dilemma, slap in the face with this. Does this mean all protection areas or just the Edehzhie? Chris answered that they don't necessarily protect land. We don't want to set timelines.

Stress publicly, "Dehcho will not support this".

Next conference call proposed for November 8th.

It was agreed that decisions were made by consensus as per Grand Chief.

Chief Tim Lennie would like a see a budget.

The next steps are:

- Greg McDade – follow up.
- Press Release indicated no staking.
- \$\$ to support harvesters on the land.
- Ria to do up a budget
- Trust \$\$ available.

Closing Prayer – Grand Chief Samuel Gargan

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CONFIDENTIAL

MEMO

CONFIDENTIAL

Re: Termination of Edehzhie Subsurface Land Withdrawals

To: DFN Leadership
Cc: Georges Erasmus, Chief Negotiator

From: Chris Reid, Legal Counsel

Summary

Since 2002 an Order-in-Council has protected Edehzhie from mineral staking and exploration through a withdrawal of the subsurface. Canada has now unilaterally ended the subsurface withdrawal, leaving the entire Edehzhie open to mineral staking, exploration and mining.

It has always been my understanding that the protection of Edehzhie is a VERY high priority for the Dehcho. I do not think it is an exaggeration to say that the Dehcho framework agreement would never have been signed and the Dehcho Process would never have begun if the DFN had not been assured in 2001 that the Edehzhie would be protected through the PAS. The entire PAS process is now effectively trashed, leaving one of the most significant and sensitive areas of the Dehcho exposed to industrial development. This also undermines one of the key 21 Common Ground Principles: that the integrity of the land will be maintained during the Dehcho Process.

I believe that a legal challenge to the termination of subsurface withdrawals in Edehzhie could be framed in a way which does not require a court to rule on the nature of Treaty 11, which means there should not be any disruption in the Dehcho Process.

Background

The Edézhíé area (25,230 km²) is of great ecological and cultural importance to the communities of Fort Providence, Fort Simpson, Jean Marie River and Wrigley. The Horn Plateau, a prominent landform in Edézhíé, contains the 'source waters' of the Willowlake, Horn, and Rabbitskin Rivers. Traditional knowledge identifies the Horn Plateau as a place that could be relied upon during times of food scarcity in the Mackenzie Valley. Mills Lake and the lower Horn River areas are important harvesting areas for the communities.

In the mid 1990s Canada and the GNWT, together with First Nations and environmental groups, launched the Protected Areas Strategy (PAS). The Edehzhie was selected as one of the first candidates for protection through the PAS.

When the Dehcho Process began in 1999, Canada and the DFN agreed on 21 Common Ground Principles which would guide the Process. One of those Principles is that the integrity of the land would be maintained throughout the negotiations process. In

practice, this meant that ecologically sensitive areas would be protected by interim land withdrawals. Since the PAS for Edézhzhíe was already underway when the Dehcho Process started, it was decided to leave the protection of Edézhzhíe to the PAS while negotiating a package of land withdrawals for other sensitive areas through the Dehcho Process.

In June 2002, a five-year land withdrawal of the Edézhzhíe area was secured through a federal Order-in-Council to allow for its further assessment without any further land dispositions beyond those already existing in the area. The interim land withdrawal was extended in June 2007 and again in October 2008 to allow for the completion of the PAS process for the Edézhzhíe candidate protected area.

In 2002, the Canadian Wildlife Service (CWS) reviewed the proposal for sponsorship and determined that Edézhzhíe contained nationally significant ecological values that fell within its legislative mandate. CWS agreed to be the sponsoring agency, and to work toward creating the Edézhzhíe National Wildlife Area through the *Canada Wildlife Act*. At the same time, the Edézhzhíe Working Group (EWG) was established to assess the ecological, cultural and economic values of Edézhzhíe (Step 5 of the PAS). Jonas Antoine represented the DFN on the EWG.

The EWG issued its final report in November, 2009. The EWG recommended that:

- Edézhzhíe NWA should comprise 14,249 km² which is 57% of the original 25,230 km² Edézhzhíe candidate protected area.
- The Edézhzhíe NWA should be established through scheduling in the *Canada Wildlife Act (Wildlife Area Regulations)*.
- An Edézhzhíe Management Committee consisting of the Dehcho and Tlicho First Nations, Environment Canada and other interested parties should be established to co-manage Edézhzhíe through the *Wildlife Area Regulations*, a comanagement agreement, and the Edézhzhíe NWA.
- All traditional use activities of Dehcho communities will be allowed without permits. The Edézhzhíe NWA designation would not restrict access to or require permits for any traditional use activities by Dehcho communities

The Dehcho First Nations recommended that the administration of the surface in Edézhzhíe be transferred to Environment Canada under the *Canada Wildlife Act & Wildlife Area Regulations*, and the subsurface rights be permanently withdrawn through an Order-in-Council permanent land withdrawal under the *Territorial Lands Act*.

Instead of accepting these recommendations, the critical subsurface portion of the withdrawal was allowed to lapse today, leaving the area open to prospecting.

Legal Options

1. Legal action challenging the decision to not renew the sub-surface withdrawal.

The Crown has a duty to consult affected First Nation communities whenever it contemplates a decision which could impact on Treaty or Aboriginal rights. In this case Canada would likely argue that no decision was made; the OiC simply expired and was not renewed with respect to the subsurface. However, I believe that a strong argument can be made that the protection of the subsurface of Edehzhie was understood by Canada and the DFN to be part of a negotiated package of land protection measures which are integral to the Dehcho Process. Clearly a decision was made not to renew the subsurface withdrawal and that decision was made without any consultation whatsoever.

The DFN could apply to a court for judicial review of the decision not to renew the subsurface withdrawal. Further legal research will have to be undertaken to address possible remedies which might be sought from the court. It will be critical to move quickly since the area is now open for staking and exploration under the *Canada Mining Regulations'* free entry system.

2. Legal Action to Challenge Mineral Staking under the Free Entry System

Under the *Canada Mining Regulations*, anyone over 18 can obtain a prospecting license and then stake claims to any Crown lands in the NWT where the subsurface has not been withdrawn. Once a claim is staked the Mining Recorder "shall" record the claim, without any consultation with affected First Nation communities. The prospector is then deemed to own the minerals and has a right to conduct exploration.

In my view, the *Canada Mining Regulations* are unconstitutional because they do not permit any consultation with affected communities before claims are staked and exploration undertaken.

The DFN could challenge any new recording of claims by the Mining Recorder and seek a declaration that the Mining Regulations are unconstitutional.