

## **Chief Negotiator's Report on the Deh Cho Process December 15, 2000**

A negotiating session was held December 6-8, 2000 in Yellowknife. The meeting was attended by myself, Grand Chief Nadli, Negotiator Herb Norwegian, Chief Karen Thomas, land and resources advisory, Petr Cizek, Elder Pat Buggins and Mitch Landry, Ft. Providence Métis President Albert Lafferty, DCFN Executive Director, Alison de Pelham and Hay River Reserve CIO, Arthur Martel. This report is intended to highlight the main issues which were discussed at that meeting and in meeting between the Grand Chief and Minister Bob Nault, December 11 and in a follow up teleconference between negotiators.

### **Executive Summary**

As I have previously reported, negotiations on the draft Framework Agreement have been completed but there are still some issues which still have not been resolved in our Interim Measures Agreement (IMA) negotiations:

1. Protection for withdrawn lands
2. Impact Benefit Agreements
3. Interim Resource Revenue Sharing (Interim Resource Development Agreement)
4. Sale or lease of Commissioner's Land in the Town of Hay River.
5. New Tourism Establishment Licences.

At the December 6-8 negotiations, we made progress on most of the above issues. Canada has now accepted that at least some lands will be fully protected from seismic exploration as well as other industrial activity. Although Canada still refuses to make a commitment that no major projects (such as mines, pipelines, or oil/gas exploration) will be approved without community impact benefit agreements being negotiated, Canada has now agreed to negotiate an interim resource development agreement which could provide for interim resource revenue sharing as well as further environmental protection.

The GNWT, however, has failed to move on anything. We still have not reached agreement with the GNWT on issues related to the expansion of the Town of Hay River and potential land selection claims within the Deh Cho by the South Slave Métis. Furthermore, the GNWT has refused to agree that no new outfitter cabins should be approved without the support of affected Deh Cho communities. They have only offered to "consult" with affected communities.

### **Discussion**

1. Protection for withdrawn lands

The draft Interim Measures Agreement currently provides that after signing the agreement, Canada and the DCFN will negotiate to identify lands which will be "withdrawn from disposal" under the Territorial Lands Act. However, this only means that withdrawn lands cannot be sold or leased. It would not prevent land use permits or licenses being issued by the National Energy Board for seismic exploration on spec, or new tourism establishment licences being issued by the GNWT for big game outfitters.

In our view, the purpose of withdrawing lands is to protect environmentally sensitive areas such as watershed and harvesting areas. It is inconsistent with these purposes to allow continued

industrial or commercial activity on these lands. Withdrawn lands should only be available for traditional activities such as hunting, fishing and trapping.

Canada has now compromised on this issue. They are prepared to prohibit seismic on spec exploration on some withdrawn lands. These would be identified on a "parcel by parcel" basis during negotiations to identify lands for withdrawal. Those negotiations will begin immediately after the signing on the Interim Measures Agreement.

## 2. Impact Benefit Agreements

We have asked for a clause in the interim measures agreement which states that no major economic projects (such as mines or pipelines) will be approved by Canada unless impact benefit agreements have been negotiated with all affected Deh Cho communities.

Canada's negotiators have refused to include such a clause in the IMA. When he met with the Grand Chief in Yellowknife on December 11, Minister Nault again refused to move on this issue. Although it is likely that community impact benefit agreements would be negotiated before any major projects are approved in the Deh Cho, however, Canada refuses to put a guarantee into writing in the IMA.

We may, however, be able to address this issue in negotiations on an interim resource development agreement. See below.

## 3. Interim Resource Development Agreement

The DCFN Negotiating Team has requested a clause in the Interim Measures Agreement (IMA) which would commit Canada and the DCFN to negotiating an interim resource development agreement which will provide for the following:

- Protection of environmentally sensitive lands through land use planning and legal withdrawals and a strong role for Deh Cho First Nations in monitoring environmental impacts;
- Affected Deh Cho communities are assured a fair share of royalties and other resource revenues; and
- Community impact benefit agreements have been negotiated prior to approvals for any new exploration or mines or pipelines.

At the December 6-8, 2000 negotiations in Yellowknife, Canada's negotiators agreed to include a clause in the IMA which says that Canada and the DCFN "may" negotiate an interim resource development agreement, rather than simply saying that Canada "may" negotiate an agreement.

When the Grand Chief met with Minister Nault on December 11, he asked for the Minister's assurance that the IMA will include a clause which says that Canada "will" negotiate an interim resource development agreement. Although he was not perfectly clear on the meeting, it appears that the Minister has now agreed to negotiate an interim resource development agreement.

#### 4. Commissioner's Land

Section 31 of the draft IMA states that the GNWT will not sell or lease any undeveloped Commissioner's Land without the support of affected First Nations. However, the GNWT has so far refused to apply this section to lands in and around the Town of Hay River. They have only agreed to "consult" with affected Deh Cho First Nations on the sale or lease of land within the boundaries of the Town of Hay River. The GNWT argues that the Town of Hay River has ambitious expansion plans and cannot afford to be "hemmed in". They also argue that other Aboriginal groups (such as South Slave Métis) have interests in Hay River and will object to Deh Cho First Nations having a veto over the sale/lease of the land while they do not have a veto.

We responded by proposing to jointly identify the amount of land which the Town of Hay River requires for growth. Grand Chief Nadli also invited representatives of the Town of Hay River to attend the December 6-8 negotiations in Yellowknife. The Mayor and one Councillor attended and gave a presentation on the Town's growth plans. It appears to us that the Town's growth plans can be met within the existing Town boundaries.

We have proposed that the following wording be included in the IMA:

"31. The GNWT will not sell or issue new leases on undeveloped Commissioner's Land in the Deh Cho Territory without the support of the affected Deh Cho First Nation(s). However, the support of the Deh Cho First Nations is not required:

- a. On renewal or assignment of existing leases of Commissioner's Land;
- b. In areas identified in the Hay River General Plan as being required for expansion during the next ten years; (see 34 below) and

32. Where the GNWT is considering either selling undeveloped Commissioner's Land in the Deh Cho territory then the GNWT will give written notice to the affected Deh Cho First Nation(s) setting out the application for either a sale or lease as the case may be.

33. The affected Deh Cho First Nation(s) within 30 days of notice (in 32) will provide written confirmation of their support, or reasons for non-support to the GNWT. Reasons for non-support will not be based on arbitrary or unreasonable grounds.

34. Further to 31(b), the Town of Hay River will work cooperatively with Deh Cho First Nations on the development of its General Plan to jointly identify areas required for town expansion during the next 10 years.

In areas identified in the General Plan as being required for expansion during the next 10 years, the GNWT will not sell or issue new leases without prior consultations with affected Deh Cho First Nation (s).

35. Prior to completing lands and resources negotiations within the Deh Cho process and the South Slave Métis Tribal Council Process, the DCFN and the SSMTC will establish a process for addressing issues related to Commissioner's Lands within the Hay river Block Land Transfer Area."

The words which are underlined above have not been agreed to by the GNWT.

Expansion of the Town of Hay River

In section 34, the GNWT has proposed that the Town of Hay River will “consult” with affected Deh Cho First Nation communities on the development of their official plan to identify lands needed for the Town expansion during the next 10 years. We have proposed that the Town should “work cooperatively” to “jointly” identify areas needed by the Town for expansion during the next 10 years.

On all lands outside the areas identified for expansion during the next 10 years, the consent of affected First Nations will be required for any sales or new leases.

#### South Slave Métis

The GNWT has also proposed to allow the South Slave Métis to “select” lands within the Deh Cho, after merely “consulting” with the DCFN. We have told the GNWT that this is totally unacceptable. In our proposed section 35, we have proposed instead that both the DCFN and the South Slave Métis agree to establish a process for addressing South Slave Métis selection claims within the Deh Cho. The GNWT has not agreed to our proposal.

#### 5. New Tourism Establishment Licenses

Tourism establishment licenses are required for new big game outfitter cabins. The DCFN has proposed that no new licenses should be issued by the GNWT on any lands where the surface has been withdrawn. On all other lands, no new licenses should be issued without the support of affected First Nations.

The GNWT has agreed that there will be no new tourism establishment licenses on withdrawn lands without the support of affected First Nations but has not agreed to a blanket prohibition on new outfitter cabins on withdrawn lands. On lands which are not withdrawn, the GNWT has only agreed to “consult” with affected First Nations before issuing new licenses. We have indicated that it is our position that no new tourist establishment licenses should be issued anywhere in the Deh Cho without the support of affected First Nations.

At the December 6-8 negotiations, the GNWT refused to move on this issue. When we pressed them for an explanation, the GNWT negotiators simply said that they do not want to give the Deh Cho something (a veto over new outfitter cabins) which the other regions of the NWT do not have. Obviously, we consider this rationale completely unacceptable.

#### Conclusion

A part from the issue of tourism establishment licenses and the expansion of the Town of Hay river, progress has been made on the outstanding issues. I am optimistic that we will be able to conclude the interim measures negotiations very soon.

The next negotiating session will be held in Hay River on January 10-12, 2001.