

Chief Negotiator's Report on the Deh Cho Process

October 3, 2002

A negotiating session was held in Nahanni Butte September 17-18. The session was well attended by members of the community who took an active interest in the process.

The session addressed land withdrawals and the draft Interim Resource Development Agreement.

1. Interim Land Withdrawals

"Interim land withdrawals" is a process that will ensure that certain lands are protected during the negotiations towards a final agreement. The Interim Measures Agreement sets out four key guidelines for identifying what lands can be considered for withdrawal:

- a) *lands harvested for food and medicinal purposes*
- b) *culturally and spiritually significant areas;*
- c) *lands which are ecologically sensitive; an*
- d) *watershed protection*

Deh Cho negotiators are consulting Deh Cho community members and gathering the most complete information they can to identify lands should be withdrawn. To do this, they will visit each Deh Cho community to present information and hear people's views.

Once an agreement is reached, the lands will be set aside by a federal Order in Council until negotiations on a final agreement are complete. On lands where both the surface and sub-surface are withdrawn, no mining claims can be registered or land leases or new commercial forestry licenses issued. Existing interests, such as mining claims that are already registered, would not be affected.

On lands where only the sub-surface is withdrawn, commercial forestry will be permitted, but other industrial activity (mining, oil/gas etc...) will be prohibited.

We are very close to an agreement on sub-surface land withdrawals. The attached map shows the most recent Deh Cho proposal. We hope to have Canada's agreement very soon so that we can have these areas legally protected. As soon as agreement is reached on sub-surface withdrawals we will negotiate surface withdrawals.

2. Interim Resource Development Agreement (IRDA)

Negotiators are working toward an Interim Resource Development Agreement, known in Dene as *Duh Gogha Ndeh ts:eh Saamba Holeh Ts'ehk'eh Eleh Seegots'eleh*. With this agreement in place, the Deh Cho will be able to benefit from resource development in the Deh Cho territory and participate in economic development opportunities while a final agreement is being negotiated. The agreement also outlines a process for community involvement in oil and gas development and for the negotiation of impact benefit agreements.

The most recent draft IRDA is attached.

Other Issues:

1. Land Use Planning Committee

The Land Use Planning Committee has established an office in Fort Providence, the committee members have been appointed, and staffing should be complete by this fall. Once it is approved the land use plan will provide for the conservation and development of the land, waters and other resources in the Deh Cho territory.

The Planning Committee will review the land withdrawals which are currently being negotiated and may recommend changes to either protect new lands or re-open lands which have been withdrawn.

4. Agreement-in-Principle

Under the Framework Agreement, the Deh Cho First Nations, the Government of Canada and the GNWT have agreed to work toward an Agreement-in-Principle (AiP) in five years. Early in negotiations, the DCFN stresses that we are looking for a final agreement that is based on land management, not land selection. This approach is new to land and resource negotiations in Canada.

The parties have agreed to work towards a General Agreement-in-Principle (GAIP) as a step towards an AIP. Unlike an AIP, which is very detailed, a GAIP would be designed to address, in broad terms, the major elements of a final agreement.

To begin identifying what elements will be dealt with in the GAIP, a governance workshop was held in Fort Simpson in April. Another workshop was held in Trout Lake in May on land management issues. Peter Russell facilitated both workshops and his reports are available through the DCFN office.

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October 1, 2002

Duh Gogha Ndeh ts;eh Saamba
Holeh Ts'ehk'eh Eleh Seegots'eleh

Interim Resource Development
Agreement

Between:

THE DEH CHO FIRST NATIONS
as represented by
the Deh Cho First Nations Grand
Chief
(Deh Cho First Nations)

and

THE GOVERNMENT OF CANADA
as represented by
the Minister of Indian Affairs and
Northern Development
(Canada)

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Preamble

WHEREAS the Deh Cho First Nations, Canada, and the Government of the Northwest Territories (GNWT), have agreed to negotiate agreements on land, resources and governance; and

WHEREAS the Deh Cho First Nations, Canada, and the GNWT entered into an Interim Measures Agreement on May 23, 2001 in order to advance their negotiations; and

WHEREAS the Deh Cho First Nations and the Crown disagree with respect to the interpretation of Treaties 8 & 11, including issues with respect to land ownership;

WHEREAS clause 44 of the said Interim Measures Agreement commits Canada and the Deh Cho First Nations to enter negotiations for the purpose of concluding an interim resource development agreement,

Now therefore the Parties agree as follows:

Objective

The objective of this Agreement is to foster resource development in the Deh Cho territory and to accrue benefits to the Deh Cho First Nations from Canada in the interim of a Deh Cho Final Agreement.

Definitions

In this Agreement,

"Agreement" means this Agreement and "the date of this Agreement" means the date on which it is signed.

"Deh Cho First Nation" means, for the purposes of this Agreement only, Liidli Kue First Nation (Fort Simpson), Deh Gah Got'ie First Nation (Fort Providence), Acho Dene Koe First Nation (Fort Liard), K'ahtlodeechee First Nation (Hay River Reserve), Pehdzeh Ki First Nation (Wrigley), West Point First Nation (Hay River), Ttheke'edeli First Nation (Jean Marie River), Sambaa K'e First Nation (Trout Lake), Na_ahdee First Nation (Nahanni Butte), K'agee Tu First Nation (Kakisa), Fort Simpson Metis Local 52, Fort Providence Metis Local 57, or Fort Liard Metis Local 67.

"Deh Cho First Nations" consists of, for the purposes of this Agreement only, the Liidli Kue First Nation (Fort Simpson), Deh Gah Got'ie First Nation (Fort Providence), Acho Dene Koe First Nation (Fort Liard), K'atlodeechee First Nation (Hay River Reserve), Pehdzeh Ki First Nation (Wrigley), West Point First Nation (Hay River), Ttheke'edeli First Nation (Jean Marie River), Sambaa K'e First Nation (Trout Lake), Na_ahdee First Nation (Nahanni Butte), K'agee Tu First Nation (Kakisa), Fort Simpson Metis Local 52, Fort Providence Metis Local 57 and Fort Liard Metis Local 67.

"Deh Cho Final Agreement" means the land, resources and governance

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provisions, referred to in the Deh Cho First Nations Framework Agreement and accepted by the Parties, which may be given effect through a variety of mechanisms including the final agreement, legislation, contracts and memoranda of understanding.

"Deh Cho territory" means, for the purposes of this Agreement only, the area shown in Appendix B of this Agreement. (Interim Measures Map)

"Issuance cycle" means, for the time period and on the lands to which this Agreement applies, the process for issuing petroleum Exploration Licences to Crown lands pursuant to the *Canada Petroleum Resources Act*.

"Mackenzie Valley" means, that part of the Northwest Territories bounded on the south by the 60th parallel of latitude, on the west by the Yukon Territory, on the north by the Inuvialuit settlement Region, as defined in the Agreement given effect by the *Western Arctic (Inuvialuit) Claims Settlement Act*, and on the east by the Nunavut Settlement Area, as defined in the *Nunavut Land Claims Agreement Act*, but does not include Wood Buffalo National Park.

"Major mining project" means a project, in the Deh Cho territory, related to the development or production of minerals, other than specified substances and oil and gas, that will employ an average of 50 persons annually for the first five years in the Deh Cho territory and for

which more than \$50 million (\$1998) will be expended in capital costs.

"Parties" means the Deh Cho First Nations and Canada.

"Resource Royalties" means any payment, whether in money or in kind, in respect of production of a resource in, on or under the Mackenzie Valley, including the Norman Wells Proven Area, paid or payable to the federal government as the owner of the resource prior to the production of the resource, including without limiting the generality of the foregoing, the payment to government under the *Frontier Lands Petroleum Royalty Regulations* passed pursuant to the *Canada Petroleum Resources Act*, R.S.C.1985, c. 36, or any successor legislation. For greater certainty "royalty" does not include any payment:

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- a) whether in money or in kind, to government as owner or part owner of the produced resource, including without limiting the generality of the foregoing, the payment to government pursuant to clause 18 of the Proven Area Agreement dated July 21, 1944 between Imperial Oil Limited and Her Majesty in Right of Canada;
- b) whether in money or in kind, by way of transfer between governments;
- c) for a service;
- d) for the issuance of a right or interest; or
- e) for the granting of an approval or authorization.

"Specified substances" means carving stone, clay, construction stone, diatomaceous earth, earth, flint, gravel, gypsum, limestone, marble, marl, ochre, peat, sand, shale, slate, sodium chloride, soil and volcanic ash.

Resource Royalties

1. Canada will identify annually, for the benefit of the Deh Cho First Nations, an amount equal to a percentage of federal resource royalties collected from the Mackenzie Valley in the previous year based on the formula found in Appendix A.
2. Prior to the effective date of a Deh Cho Final Agreement, each amount identified annually, less the amount paid to the Deh Cho First Nations for economic development purposes under 6, will be

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adjusted by multiplying the amount by the value of the Canada Final Domestic Demand Implicit Price Index (FDDIPI) for the latest quarter available for which FDDIPI has been published by Statistics Canada, and by dividing the resulting product by the annual value of FDDIPI for the year in which the amount was identified. The sum of these adjusted amounts, will be paid out in accordance with a schedule to be negotiated as part of the Deh Cho Final Agreement.

identified in 1 for any year, on an annual basis for the purpose of supporting economic development opportunities in the Deh Cho territory.

3. The amount identified for the year in which this Agreement is signed shall be prorated in relation to the number of days remaining in the calendar year of which the Agreement is signed.
4. For greater certainty, the amount identified under 1 for the final year this agreement is in effect will be based on the amount of federal resource royalties collected from the Mackenzie Valley in the previous year, and the number of years for which an amount is identified will equal the number of years in which this agreement is in effect.

Economic Development

5. **The Deh Cho First Nations may access a percentage of the sum**

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6. The percentage in 5 shall not exceed 50% of the amount identified in 1 for any year, unless agreed to by the Parties.
7. Any sum disbursed under 5 which exceeds 50% in any given year shall be deducted from the eligible amount in the following year.
8. Any sum disbursed under 5 shall not exceed one million dollars in any given year.
9. Any amount disbursed in 5 and 10 will be project specific, consistent with the guidelines for economic development initiatives attached as Appendix "C".
10. In exceptional circumstances and by agreement of the Parties, the Deh Cho First Nations may access the total of any amounts not disbursed in previous years under 5.
11. The parties may use mediation to resolve any disputes under 5 and 10 regarding the application of the guidelines in Appendix "C", or the criteria comprising the "exceptional circumstances" in 10. The cost of a mediator will be born equally by both parties.

Oil / Gas Exploration and Consultations

12. The parties share the objective that new issuance cycles for oil and gas exploration licences under the *Canada Petroleum Resources Act* will be initiated in the Deh Cho territory in a predictable manner while this Agreement is in force.
13. Pursuant to 10, the Parties agree that the first issuance cycle will be initiated within one year of the date of the signing of this Agreement, and that each subsequent issuance cycle will be initiated within two year intervals, measured from the date of the instrument indicating Deh Cho First Nation(s) support for the previous issuance cycle.
14. Before an issuance cycle is initiated, the Parties agree to pursue consultations under section 41 of the Deh Cho First Nations Interim Measures Agreement, on such matters as the terms and conditions of the issuance.
15. The affected Deh Cho First Nation(s) support and agreement to initiate an issuance cycle under 10 will be demonstrated by a Deh Cho First Nations Leadership resolution.

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16. Community based oil and gas advisory group(s) may be established to advise the affected Deh Cho First Nation(s) regarding the consultation under section 41 of the Interim Measures Agreement.

Mining

15. The Parties agree to work together, and with representatives of the mining industry to identify areas where an affected Deh Cho First Nation(s) would support new prospecting permits in the Deh Cho territory.

16. Canada will consult with the Deh Cho First Nations on any new proposed amendments to the *Canada Mining Regulations*.

17. Canada will not issue a new surface lease for lands within the Deh Cho territory in connection with any new major mining project that will impact on members of the Deh Cho First Nations unless the proponent of the major mining project and the affected Deh Cho First Nation(s) have entered into negotiations for the purpose of concluding an impact and benefit agreement relating to the major mining project.

18. Canada will provide the Deh Cho First Nations with \$150,000 per year to be included in the *Support to the Deh Cho First Nations* section of the Deh Cho First Nations Interim Measures Agreement.

General

19. This Agreement will terminate on the earlier of:

Funding

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- a) the effective date of the Deh Cho Final Agreement;
 - b) the termination of Deh Cho Process negotiations;
 - c) a breach of a term of the Agreement; or,
 - d) the commencement of litigation related to subject matters under this agreement asserting Aboriginal rights or title or Treaty rights to land and resources.
15. Where a decision to terminate Deh Cho Process negotiations or this Agreement has been made by any party or where this Agreement is to be terminated prior to the effective date of a Deh Cho Final Agreement, 90 days notice will be provided and the Parties shall consult prior to the termination date. This Agreement will terminate on the 90th day following the date of notice, unless otherwise agreed by the Parties.
21. Where this Agreement is terminated prior to the effective date of a Deh Cho Final Agreement, the parties will address any sum which would otherwise have been paid out as part of the Deh Cho Final Agreement under 2, in a new Interim Resources Development Agreement, or any future Canada - Deh Cho First Nations agreement concerning land and resources.
22. This Agreement does not constitute a Final Agreement benefit and is made without prejudice to any Aboriginal or Treaty rights or any legal position taken by the Parties in a legal proceeding and nothing in the Agreement shall be construed as an admission of fact or liability.
23. This Agreement will not result in a change in the

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constitutional status or property rights to the lands and resources of the Deh Cho territory.

24. No monies referred to in this Agreement are to be considered "Indian monies" as that term is defined in the *Indian Act*, R.S.C. 1985, c.1-5.
25. The Parties may review this Agreement after the signing of the Deh Cho Agreement-in-Principle.
26. Any resource revenues being generated in the Deh Cho territory will form part of Agreement-in-Principle/Final Agreement negotiations as outlined in the Deh Cho First Nations Framework Agreement. Any such negotiations would be without prejudice to the Parties' respective positions regarding rights or entitlement to such revenues.
27. This Agreement may be amended at anytime by agreement of the Parties.

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October 1, 2002

Signed at _____,
Northwest Territories, this ___ day of
_____, 200.

For the Deh Cho First Nations:

Grand Chief Michael Nadli

Witness

For Canada:

The Honourable Robert D. Nault
Minister
Indian Affairs and Northern
Development

Witness

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**The annual amount identified in 1
of this Agreement will be an
amount equivalent to:**

12.25 percent of the first \$2.0
million of resource royalties
received by the Government of
Canada in the Mackenzie
Valley; and

2.45 percent of any additional
resource royalties received by
the Government of Canada in
the Mackenzie Valley.

The Parties will determine if this
formula will form part of the Deh Cho
Final Agreement.

Interim Measures Map

**ECONOMIC DEVELOPMENT
GUIDELINES FOR THE
CONSIDERATION OF ECONOMIC
DEVELOPMENT INITIATIVES
PURSUANT TO THE DEH CHO
FIRST NATIONS INTERIM
RESOURCE DEVELOPMENT
AGREEMENT**

Introduction

Canada and the Deh Cho First Nations share the objective of maximizing the economic development opportunities that will arise from new resource development activity resulting from this Agreement. In order to meet this objective, the parties also agree that the Deh Cho First Nations may access funds as outlined in this Agreement for the purpose of supporting economic development opportunities in the Deh Cho territory.

The purpose of these guidelines is to provide:

- an outline of a process for the transfer and administration of the funds;
- an outline of the considerations to be given when assessing the merits of various economic development initiatives; and,
- the Deh Cho First Nations with the flexibility to address the needs and aspirations of its member First Nations while meeting the requirements of DIAND's economic development program authorities.

The Deh Cho First Nations may enter into a contribution agreement, annually, with the Department of Indian Affairs and Northern Development. The contribution agreement will outline the required objectives, deliverables, and audit requirements necessary to meet the department's economic development spending authorities.

It is the intention of the Parties that the Deh Cho First Nations will establish an economic development body which will be involved in the management and administration and

Guidelines

APPENDIX C

The plan should demonstrate why the applicant requires an economic development contribution and how this contribution will make it a viable, ongoing business venture that would not likely go ahead in the absence of support. The business plan should be the basis for preparing the project approval documents.

Business plans typically contain the following information:

- name of applicant (eg community or business);
- history/background of the applicant;
- business sector and location;
- business description, structure and personnel, including
 - business structure and ownership
 - organization, management, key personnel and labour force,
 - administration, financial records and systems.
- markets/marketing plan
- competition,
- production (if applicable)
- historical and projected financial statements
- working capital and
- training requirements
- job creation (jobs maintained and created, and the impact on social assistance);
- project costs (source and application of funds);
- facilities and equipment;
- loan security (if applicable);
- other significant information (eg environmental screening and assessment, contingencies, potential impediment);
- related activities; and
- the impact of the project on the community (eg revenue generation, long-term jobs, role model, provision of services and effects on local economy.)

APPENDIX C

delivery of economic development funds under this Agreement.

The economic development body may financially assist Deh Cho First Nation(s) communities, individuals, and companies to enhance employment and business benefits from resource-based opportunities.

Partnerships between Deh Cho First Nation(s) communities, individuals and companies, the private sector and government are key tools in achieving progress on a wide range of challenges including:

- improved access to capital;
- skill development and increased experience;
- increased participation in and resource development;
- increased market access; and,
- an improved economic infrastructure.

In order to meet these challenges the consideration may be given to proposals which are aimed at the following services (Activities):

- Planning
 - technical assessment
 - opportunity assessment
 - feasibility studies
- Equity Support
 - equity contribution

- infrastructure

- Negotiations
 - benefit agreement
 - joint venture

Nothing in this Agreement prevents the Deh Cho First Nations or its economic development body from securing other sources of funds nor does it prejudice Deh Cho First Nation(s) from accessing Indian Affairs and Northern Development economic development programs.

Eligibility Criteria

Potential recipients seeking funding assistance will be required to submit proposals in writing and to fulfill a number of eligibility criteria to include, but not limited to, the following:

- a) satisfactory management capacity;
- b) the intended impact on the client group or community;
- c) compliance with the program objectives; and
- d) proposed results are achievable within the given time frame.

For most proposals, applicants may demonstrate these requirements as part of an overall business plan. These business plans should provide a detailed outline of the history, management, operations, marketing and financial aspects of the business.