

Summary of the Deh Cho Process
Chief Negotiator Chris Reid
Hay River Reserve
October 10, 2002

I have been involved in the Deh Cho Process for a little over 3 years, but its been going on for a long time. You can go back to the 1900's when the treaties were signed. Basically the issues are still the same, the issues in the treaties were. Canada wants clarity or certainty. they wanted clear rules on who owns the land in the Deh Cho. they wanted to open it up for exploration and development. companies who wanted to extract resources from the land. Canada has always had that objective. And the problem then for Canada as it is now, is that legally it's not clear that they could give companies permission to explore in this land or take out resources because legally they couldn't do this and probably First Nations owned the land. They signed the treaties back then with the goal at that time was to extinguish First Nations title to the land, if you look at the written version of the treaties they appear to do this by using words to cede release and surrender your title land in return they get a little bit of money, and some reserves and a few benefits and they maintain hunting, fishing and trapping rights. So Canada's version of the treaties is basically just what's written on a piece of paper of a page and a half, 2 treaties are almost identical Treaty 8 and Treaty 11.

The Dene view is based on the oral tradition of the people who were there at the treaty negotiations. they did not talk about giving up title to their land. and or ownership of the land or who will govern the land. What was talked about was a treaty of peace and friendship. the oral history was consistently and clearly said that at the negotiations in 1900 and again in 1922 that the Dene Negotiators they said they were not going to do anything. were not going to sign anything that will affect our way of life. or that will affect the way we have always lived here. or let settlers do that. sure we will agree to that. in return we expect certain benefits. Legally its still not clear. the treaties of 1900, 1921 and 1922 did not accomplish what Canada wanted them to accomplish, there may be misunderstandings or misrepresentation. There are different theories about why that happened but the problem is today if anyone took issue to court and ask the court who owns this land. Did treaties 8 and 11 give ownership of the land to Canada or were those treaties really of peace and friendship. Which will confirm. that the Dene own this land. If you went to a court and ask the court to decide that. no one can predict for sure what the court would say. the court would be faced with the written version of the treaties. which is in English only. there was no written Dene version, stacked up against that would be the Dene oral history. No one can say for sure. it would be all or nothing, and very risky for both sides.

During the 1970's there were proposals to build the Mackenzie Valley Pipeline, that's when the Dene said that you can't do that because we own this land. Also during this time there was a court case called the Paulette case. The one thing that it did confirm is that it is not clear who owns the land. The court said that after hearing the evidence. mostly written evidence, in the form of affidavits and a lot of evidence from Elders about their understanding of the treaties and the court looked at all of that and the Judge Moreau said that he couldn't say for sure that Canada's version of the treaties was right or the Dene's version of the treaties was right. That case ended up going higher up in court and being decided on technical issues higher up.

And during this time you had 2 things. the proposal to do the Mackenzie Valley Pipeline and the Paulette case. One think they confirmed, it is still not clear who has ownership who has ownership who has the right to govern this land if its not clear who owns it then its not clear to paramount resources or any other company who wants to do business here, its not clear to them who they are supposed to get permission from to do business here. So this creates uncertainty. that's the problem for everyone that it holds up development.

During the 1980's Canada agreed to negotiate they saw that it was in their interest to negotiate an agreement to clarify who owns this land, and they came up through that process through that decade of about 10 years of negotiations. Herb my partner was involved in those negotiations, those negotiations produced an agreement which some groups signed, the Gwich'in and Sahtu signed and some other Dene groups didn't sign and it failed to produce an agreement. The Gwich'in and Sahtu agreed to extinguish title to their lands, and in return Canada recognizes that they own some portions of their traditional lands and in the rest of it they agreed to extinguish ownership and they got cash payments and certain other benefits. They didn't sign for self-government. The Deh Cho did not sign on to that Land Claims Settlement.

In 1993 the Deh Cho Declaration was adopted at the Kakisa Assembly. Basically say that the Deh Cho can not and will not ever extinguish title to any of their land. that the land in whole and intact and it was given to you by the creator to manage and sustain and that its not possible to ever extinguish title to land or give up Dene government over the land, that's the basic point of the declaration.

In 1994 the Deh Cho Process was adopted at the Kakisa Assembly as well then it was modified and adopted again in 1995 at the Kakisa Assembly and it sets out in a little more detail what kind of government the Deh Cho wants to have in this region, one of the things it says is that the Deh Cho government will be a public government, it will be for both Dene and Non Dene and that was meant to confirm that the Deh Cho will not divide up the territory, the way the Gwich'in and the Sahtu are divided up through the Dene/Metis land claims settlement. Where you have some lands owned by the First Nations and some lands owned by Canada at the end of the process the Deh Cho Proposal says that No we won't do that what we will do instead is to have one government for all people in the Deh Cho. Both Dene and Non Dene, that's what you call a public government, instead of dividing it up into Dene Governments or Non Dene Governments. Canada did not accept this as a basis for negotiations, the Deh Cho First Nations sent the Deh Cho Proposal to Canada and said that they would like to negotiate on the basis of the Deh Cho Proposal, at the time the Government of Canada did not accept that, for a few years nothing happened.

Then an idea came from the Deh Cho, pitched by Grand Chief, ministerial Envoy sort of mediator who will meet with both sides, to find some common ground to begin negotiations between the Deh Cho and Canada and that process happened in 1997/98. Then in 1997 the Ministerial Envoy Peter Russell, who was well respected by the Dene people as well as the federal government officials to determine whether there is enough common ground to begin negotiations between Deh Cho and Canada. In the statements is that they will not lead to extinguishments of title, they will instead focus on certainty, the parties all agreed that they will not lead to extinguishments of title, they will instead focus on certainty, the parties all agreed that they wanted to be clear on who owns the land and who governs the land but we will not do it through extinguishments. Both the Government of Canada and the Deh Cho First Nations accepted the 21 ground principles.

And formal Negotiations began in September 1999 in Fort Simpson and the objective of the negotiations was 2 things at that point. Framework Agreement, which states who's going to negotiate and what the goal of negotiations is and what the agenda for the negotiations will be, what exactly will be negotiated and set out a time frame for negotiations. The 21 common ground principles were all incorporated into the Framework Agreement, we took that as our blue print for our framework, a lot of the work had already been done by the envoy process. The purpose of negotiations will be to produce a Deh Cho First Nations Final Agreement, which clarifies and builds upon the existing treaties. The Framework Agreement predicts its going to take about 5 years to reach an agreement in principle and another 2 years to reach a final agreement we hope that the process will be shorter but it could take that long.

Interim Measures Agreement means a temporary agreement that will bring some protection to the land until you reach that final agreement. It also gives the Deh Cho First Nations a role in managing the land until you reach that final agreement. So it says for example that there will be no new oil and gas exploration or no new commercial forestry in the Deh Cho region without the support of the affected Deh Cho First Nations. It puts in place a land use planning process it says that the Deh Cho First Nations, Canada and the GNWT will put together a land use plan for the Deh Cho First Nations, there are now hiring staff and Colin Beddoes and the Land Use Planning Committee will develop a land use plan for the Deh Cho, that land use plan will say how the land will be managed, what land is open for development and what lands are not open for development.

The other important thing the Interim Measures Agreement says that certain lands will be withdrawn, withdrawn means they are protected from development, there will be no new exploration, no new mining or staking or forestry, on some withdrawn lands there can be forestry but the idea is to protect those withdrawn lands for traditional use.

At the 2000 Kakisa Assembly the Dehcho Assembly re-affirmed their support for the Deh Cho Process and recommends improvements in the Draft Framework Agreement and Interim Measures Agreement. Then in 2001 the Deh Cho First Nations Leadership approved the initialing and signing of the Framework and Interim Measures Agreements followed by the approval of the Federal and Territorial governments approvals to sign the agreements. Both the Agreements were signed in Fort Simpson on May 23, 2001.

Since then we have been negotiating the withdrawal of lands and the IRDA. With the withdrawn lands, the interim lands agreement states that certain lands will be protected till the final agreement is signed. The area outside the withdrawn area on the map is open, but you still have to be consulted if they (anyone applying for lease) want to do something in the Deh Cho Territory, this is in a way a rough land use plan, it says certain areas are off-limits to development and certain areas are open for development. The pipeline corridor, Canada would like the Deh Cho to not use land withdrawals to stop the pipeline, Canada wanted a corridor through the Deh Cho lands, that is where we made our compromise, we agree to the pipeline corridor in return we need these mountain rivers protected and we need some areas around the Trout Lake watersheds protected so some compromise had to be made by both sides. Were hoping to be done this process of withdrawals soon and we can do a round of public meetings in the communities to inform everyone about this. It would go to Leadership for approval, and then cabinet for approval.

Interim Resource Development Agreement IRDA the idea for this agreement is that, if there is some new oil and gas development or new mining in the Deh Cho in the next 5 years. You will benefit from it, this will ensure that some benefits goes to the communities. we hope that both the interim resource development agreement and the land withdrawals will be finished and will be approved and finalized.

The Grand Chief pointed out that one problem we have is that Canada states that they will not sign those agreements and implement them if the litigation that the katlodeeche First Nations is involved in involving the Canada Labor Relations code. If that litigation is still going on and is not changed from its present form, they will not sign or implement those agreements.

Once those 2 agreements are done, we will focusing on an Agreement in Principle, first we would like to complete a general agreement in principle, so that we can see if we have enough common ground between the DCFN, Canada and the GNWT for a more detailed agreement in principle, we have some big issues, the biggest one is the land, because of the Deh Cho's position is not only no extinguishments, but no land selection, don't want to see the land chopped up like in the Sahtu and the Gwich'in settlement agreements. We're trying to find a solution in the Deh Cho, which clarifies who owns the land and who governs the land without doing it like the Sahtu and Gwich'in.