

**Chief Negotiator's Report
on the
Deh Cho Process**

February 12, 2003

A negotiating session was held January 23 in Yellowknife and negotiations teleconferences were held on January 21, January 30, February 10 and February 12. The Yellowknife session was attended by Grand Chief Nadli, Chief Roy Fabian, LKFN councillor Keyna Norwegian, and elders Ted Landry and Pat Buggins. In addition, a technical working group met in Ft. Simpson on January 31 to discuss the routing of a possible Mackenzie Valley pipeline through lands which will be withdrawn (see discussion below).

Community Consultations

Extensive community consultations have been held throughout the negotiations on both the IRDA and land withdrawals. In addition to ongoing community consultations over the past several years, the negotiating team visited every community at least once (several communities were visited 2 or 3 times) during December and January to discuss the withdrawals and IRDA.

Interim Land Withdrawals

Negotiations between the DCFN and Canada on a package of interim land withdrawals which to ensure that certain lands are protected during the negotiations towards a final agreement are almost complete. The Interim Measures Agreement signed in May, 2001 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*

Interim land withdrawals have nothing to do with "land selection" or ownership of land. Withdrawals simply ensure that certain lands are protected during the negotiations towards a final agreement. Deh Cho negotiators have consulted Deh Cho community members over the past 6 years and gathered the most complete information they can to identify lands that should be withdrawn.

Withdrawn lands will be set aside by a federal Order in Council until negotiations on a final agreement are complete. Lands which are not withdrawn will not necessarily be open for development. The Interim Measures Agreement signed in 2001 ensures that the support of affected communities will be required for any new oil/gas exploration or commercial forestry in those areas.

On lands where both the surface and sub-surface are withdrawn, no mining claims can be registered or land leases or new commercial forestry licenses issued.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 (underground) is withdrawn, commercial forestry and outfitter lodges will be permitted, but other industrial activity (staking, mining, oil/gas etc...) will be prohibited.

Canada has agreed that no new **siesmic cut lines** will be allowed on lands where there are high levels of traditional harvesting or near sacred or cultural sites.

Canada has insisted on allowing a **pipeline study area corridor** through the withdrawals. For several months we have said that we are prepared to consider a pipeline corridor, but that we need to know exactly what areas Imperial Oil is considering. We have also made it clear that any DCFN decision to approve a pipeline corridor does NOT imply that the DCFN supports construction of a pipeline before the conditions set out in the resolution passed at the 2001 Special Assembly in Wrigley are met.

Finally, after several months and many requests for information, Imperial Oil has stated that it intends to follow the existing Enbridge Pipeline corridor. We have proposed moving the corridor in certain sensitive areas, especially to keep it away from Trainor Lake and sensitive ponds and wetlands near JMR and Ft. Simpson. Imperial has not agreed to our proposals for ensuring that no pipeline will be built near these areas. It is now up to Canada to decide whether to support Imperial Oil's uncompromising position, or to support the DCFN proposal to make some small adjustments in the pipeline route in order to protect sensitive lands.

Interim Resource Development Agreement (IRDA)

Section 44 of the Deh Cho Interim Measures Agreement signed in May, 2001 says:

44. Upon the signing of this Agreement, Canada and the Deh Cho First Nations will enter into negotiations for the purpose of concluding an agreement regarding resource development. The objective of the agreement will be to foster resource development in the Deh Cho territory and to accrue benefits from Canada to the Deh Cho First Nations in the interim of a Deh Cho Final Agreement. Subjects for negotiations may include federal resource royalties, the geographic scope of the agreement and its relation to the Deh Cho Final Agreement.

Since September, 2001, negotiators have been 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 should 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 before major mining projects are approved.

Unfortunately, Canada rejected the DCFNs proposals for a unique bilateral resource revenue sharing agreement and instead have only offered to share a very small portion of the royalties collected from resource development in the NWT in exchange for the DCFNs agreement to open up new lands for oil/gas exploration. Canada has also insisted that most resource revenue sharing negotiations will take place primarily through the **Intergovernmental Forum (IGF)** rather than through the Deh Cho Process.

Proposed Oil / Gas Exploration Strategy

Although Canada's position on interim resource revenue sharing has been disappointing, Grand Chief Nadli has recommended that the IRDA could be ratified if the 10 Deh Cho communities are prepared to work together over the next year to ensure that any new exploration in the Deh Cho is led by a Deh Cho based company, in partnership with a private oil and gas company. This would ensure that the Deh Cho receives a share of profits from any new oil/gas developments, instead of just a small share of federal

royalties. It will also be important to ensure that any new exploration takes place only on parcels of land which are approved by the DCFNs.

In order to accomplish this, it is important for the Deh Cho to work together on a joint strategy for new exploration. The first step would be to identify one or two parcels of land on which the DCFN is prepared to support exploration. The next step, as Grand Chief Nadli has suggested, is for the DCFN to issue a Request for Proposals (RFP) in Alberta and Texas, inviting companies to submit bids to the DCFN

Steps

1. Identify parcels of land for exploration;
2. Issue RFP;
3. Negotiate revenue-sharing with a company or companies on specific parcels of land and establish commitment for maximum exploration expenditures to win exploration licenses under CPRA;
4. Possibly establish a joint-venture company;
5. Negotiate pre-bid qualifications with DIAND;
6. Submit DCFN resolution to DIAND supporting rights issuance on specific parcel, subject to pre-bid qualifications which include a requirement that the winning bidder have a revenue sharing agreement with DCFN;
7. Win exploration licence to specific parcel by committing maximum exploration expenditures.

There is no guarantee that the DCFN-supported company is not outbid in securing the exploration licence from DIAND. However, the risk could be reduced by having revenue-sharing agreements with several companies.

Other Issues:

Intergovernmental Forum (IGF)

Canada, the GNWT and the Aboriginal Summit have recently begun negotiations toward a framework agreement which will guide negotiations on the transfer (devolution) of provincial-like powers to the GNWT and Aboriginal governments. The IGF process is also addressing resource revenue sharing.

The Summit, Canada and the GNWT are now negotiating a framework agreement which will guide the IGF negotiations.

I attended the IGF negotiations as an observer on January 29-30 in Toronto. While at the negotiations a member of the federal negotiating team gave me a copy of a document titled "Confidential – Canada's Requirements for a Framework Agreement on NWT Devolution". This document, dated January 23, 2003, contains several troubling federal "requirements", including:

- any devolution of legislative authority will be to the Legislature of the NWT;

- administration and control of public lands and waters will be transferred to the Commissioner of the NWT, except for certain excluded lands; and
- any new regime for management of oil and gas must be similar to regimes elsewhere in Canada.

These "requirements" will be negotiated through the IGF and have serious implications for the Deh Cho Process. I recommend that the DCFN participate in the IGF, as an independent party, on an interim basis in order to ensure that Deh Cho interests are protected.

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 any may recommend changes to either protect new lands or re-open lands which have been withdrawn.

The Executive Director of the Planning Committee has recently resigned. The Committee has begun the process of hiring a new ED.

Agreement-in-Principle (AiP) Negotiations

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, 2002. 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.

We expect that a governance workshop will be held in March in the Deh Cho. At the direction of the Executive Committee, I have contracted with Jim Edmondson to draft a Discussion Paper on possible **governance models** outlining how a public government based on Dene laws and customs will work. Jim has been provided with past Assembly and Leadership resolutions, the Deh Cho Declaration, and the Deh Cho Proposal. I have also spoken with him regarding his work and Herb and I will continue to work closely with him. The paper will be discussed at the March workshop.

We expect AiP negotiations to begin in earnest once the land withdrawals and IRDA are ratified.

Wrigley / Sahtu Boundary

PKFN has decided to work for the protection of sensitive lands and waters within their traditional territory through the PAS. They intend to also use the PAS to at least partly address overlap issues with the Sahtu. Several meetings have been held in Wrigley and Tulita. There has been some difficulty in obtaining clear direction from the Sahtu participants in the process, but PKFN is moving ahead with its share of the work.

The DCFN negotiating team (especially Herb and Petr) are working closely with the PKFN.