

# Chief Negotiator's Report on the Deh Cho Process

October 7, 2003

## Summary

A negotiating session / workshop was held August 26-28 in Trout Lake on the lands and resources components of an Agreement-in-Principle (AiP). At the Trout Lake session we tabled the two position papers which were discussed and adopted at the 2003 DCFN Assembly in Kakisa. Those papers outline the DCFNs proposals for governing lands and resources under a Deh Cho government. They also outline how a Deh Cho Resource Management Agreement will function and how land title certainty can be achieved through "co-ownership" or "shared stewardship" of lands and resources in the Deh Cho instead of through land selection.

A negotiating session was also held September 23-24 in Ft. Simpson. This session also focussed on the DCFNs' proposals for the lands and resources components of an AiP and also on the terms and conditions for new oil and gas exploration in the Deh Cho under the Deh Cho Interim Resource Development Agreement (IRDA).

## Agreement-in-Principle (AiP) Negotiations

### Land Title / Certainty

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. 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. It is hoped that a General AiP will be developed by the end of 2004.

The 2003 Assembly in Kakisa approved two papers presented by the negotiating team to guide negotiations on a General AiP. The papers outline **governance models** for a public government based on Dene laws and customs. The Discussion Papers are based on past Assembly and Leadership resolutions, the Deh Cho Declaration, and the Deh Cho Proposal. These papers were discussed at the Trout Lake session in August and the Ft. Simpson session in September.

At both sessions we stressed that the DCFN Leadership and Assemblies have consistently rejected the comprehensive claims model of "land selection" to resolve the issue of title to land. We told the federal negotiators that the Deh Cho First Nations will never agree to any form of "land selection". Therefore, there are only two possible options for providing the "certainty" which we all want: Canada must either agree to recognize full Deh Cho ownership of all lands and resources in the Deh Cho territory, or they must agree to recognize "co-ownership" or "co-stewardship" of the whole territory.

Since the federal negotiators have indicated that recognition of full Deh Cho ownership of all lands and resources is a "non-starter" for Canada, and since land selection and extinguishment are non-starters for the Deh Cho, we have pushed the federal negotiators to respond positively to the option of "shared ownership" or "shared stewardship" of the lands and resources of the Deh Cho. Federal negotiators have informed us that they are seriously considering this option, but that they expect strong resistance from some sections of the federal bureaucracy.

#### Jurisdiction / Decision-Making

The 2003 Assembly adopted a paper titled "Draft – Deh Cho First Nations Agreement-in-Principle". This paper is intended to be the Lands and Resources component of a General AiP. The paper outlines how a Deh Cho Resource Management Authority would function to govern and manage lands and resources throughout the Deh Cho under a Deh Cho final agreement. The DCFN negotiating team tabled this paper at the August and September sessions and explained it to the federal and GNWT negotiators.

The proposed Deh Cho Resource Management Authority would be community based and have authority throughout the Deh Cho territory, not just on "selected" lands. It is based on holistic integration of all the components of lands and resources management, including land use permits, renewable and non-renewable resources, land use planning, environmental assessments, and sales and leases of land. The 10 communities which comprise the Deh Cho would be strongly involved in decision-making and in implementation and enforcement.

Canada's response to the DCFN's proposed Deh Cho Resource Management Authority has so far not been positive, but they also have not rejected our position outright. Although they continue to propose full integration of the Deh Cho under the MVRMA, they have been told repeatedly that this is not an option for the Deh Cho. I believe that the federal negotiators understand our position quite well and realize that they need to give very serious consideration to the model which the DCFN has proposed. However, it will probably be necessary to lobby the Minister of DIAND and also the senior officials to whom the federal negotiators report.

## **Interim Resource Development Agreement (IRDA)**

On April 17, 2003 the DCFN and Canada signed the Interim Resource Development Agreement. The purpose of the IRDA is to ensure that the Deh Cho benefits from resource development in the Deh Cho territory and participate in economic development opportunities while a final agreement is being negotiated.

The IRDA does not require the Deh Cho to open any new lands for exploration. It says that the DCFN and Canada "share the objective" that new exploration will happen, but the IRDA also says we need to negotiate the terms and conditions for any new exploration before any new exploration happens. The target date for agreement on terms and conditions for new exploration is April 17, 2004 – 12 months after the signing of the IRDA.

We have proposed the following terms and conditions for a new cycle of exploration:

Cash bonus bidding. We proposed that the next round of bidding for exploration licenses in the Deh Cho territory be based on the "cash bonus" bid criterion, rather than a work commitment criterion. The successful bidder in any new cycle of bids for exploration licenses in the Deh Cho would be the company which offers to pay the highest cash bonus to the Minister, to be held in trust for the Deh Cho First Nations.

The cash bonus bidding system is based on free market principles and has been used successfully in Alberta for several years. It has the potential to generate new revenue which would benefit the people of the Deh Cho. The unusually high yield from wells drilled in the Liard region of the Deh Cho over the past few years, and the southern Deh Cho's close proximity to Alberta and B.C., indicate that the cash bonus bidding system is very well suited to the Deh Cho territory.

Canada has previously rejected the DCFN's proposals for a cash bonus bidding system, but they seem to be prepared to consider it now. We indicated that the Deh Cho would be prepared to see a cash bonus bid criterion used on a pilot project basis for a new cycle of exploration, and that the Deh Cho is also prepared to discuss conditions which would link the payout of the cash bonus revenue collected by Canada on behalf of the Deh Cho to a Deh Cho final agreement, although we would prefer to have immediate access to any revenue resulting from cash bonus bids. In either

case, it is DCFNs intention to use any funds generated from resource development in the territory to finance the delivery of programs and services for Deh Cho residents.

Community Impact Benefit Agreements. We proposed that the highest bidder in any new cycle of exploration license bidding be required to negotiate impact benefit agreements with affected Deh Cho communities within 30 days (or 60 days) of being named the highest bidder. Impact benefit agreements would address environmental monitoring and mitigation, employment and contracting opportunities, social impacts, and compensation for impacts on traditional harvesters. If the company with highest cash bonus bid is unable to reach agreement with the affected communities within the specified time, the next highest bidder would be given the opportunity to negotiate impact benefit agreements. This process would continue until a company has concluded agreements with affected communities.

Parcel Selection. We advised Canada that the DCFN expects to be directly involved in selecting the parcels which will be opened for exploration under any new licenses issued in respect of Deh Cho lands. This is necessary in order to ensure that environmentally sensitive lands are protected (not all environmentally sensitive lands will be protected by interim land withdrawals) and to ensure that the Deh Cho's interest in having exploration and development occur at a gradual, sustainable pace are protected.

Canada has not yet responded to our proposals. However, Minister Nault has advised Grand Chief Norwegian that he is prepared to consider any options which do not require immediate changes in legislation. The Minister and the Grand Chief agreed to appoint a Working Group to negotiate draft terms and conditions for new exploration licenses, with each side appointing 3 members to the Working Group. The Working Group will present draft proposals to the DCFN Leadership and Canada by April, 2004.

If Canada does not agree to satisfactory terms and conditions, the Deh Cho can walk away from the IRDA without any penalty and no new lands will be opened. It is important to remember that the IRDA does not replace the Interim Measures Agreement (IMA) signed in May, 2001. Under the IMA, Deh Cho First Nation communities still have a veto over any new exploration.