

## **Report on the Deh Cho Process**

**February 4, 2004**

### **Summary**

A full, main table negotiating session was held December 16-17 in Hay River. In addition, the IRDA Oil and Gas Working Group met in Ft. Simpson on January 22 and the KFN Working Group has held two teleconferences on KFN issues.

Main table negotiations focussed on the lands and resources components of an Agreement-in-Principle (AiP), as well as terms and conditions for new oil and gas exploration, and options for including the DCFN in the environmental assessment of the proposed Mackenzie Valley pipeline.

We have also completed the process of re-organizing the negotiating team and have recruited three new members to the team.

### **Negotiating Team**

The new Deh Cho negotiating team is now in place:

**George Erasmus** is the Deh Cho's new Chief Negotiator. Erasmus is a highly respected former National Chief of the Assembly of First Nations, former President of the Dene Nation, and was Co-Chair of the Royal Commission on Aboriginal Peoples.

**Chris Reid** is now Legal Counsel to the Deh Cho after four years as both Chief Negotiator and Legal Counsel.

**Sam Gargan** has been hired as an Assistant Negotiator. Gargan is a former Chief of the Deh Gah Got'ie First Nation, former Mayor of Ft. Providence and former MLA and Speaker of the Territorial Legislature.

**Ria Letcher** of Lidlii Kue (Ft. Simpson) has also been hired as an Assistant Negotiator. Ria is a 32 year old entrepreneur who has worked for the Deh Cho First Nations on natural resource management issues for the past year. She is fluent in the South Slavey dialect.

In addition, Petr Cizek will continue to provide technical support and advice in lands and resources negotiations.

## **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.

We continue to stress 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 the DCFN’s proposed Deh Cho Resource Management Authority has so far not been positive, but they also have not rejected our position paper 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. We 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 new Minister of DIAND and also the senior officials to whom the federal negotiators report.

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

### Terms and Conditions for New Oil and Gas Exploration

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.

In a letter given to former Minister Nault in August, 2003, the DCFN 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.

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.

#### Progress in Negotiations on Oil/Gas – Canada's Response

At their meeting in late August, 2003 Minister Nault advised Grand Chief Norwegian that Canada 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.

The Deh Cho members of the Working Group are: Chief Floyd Bertrand, Councillor Julien Landry and Sam Gargan. Petr Cizek is technical advisor to the Deh Cho members of the Group.

At a session held in January, 2004 in Ft. Simpson, the Deh Cho members of the Working Group tabled a more detailed position based on the 3 points outlined in the Grand Chief's letter to Minister Nault.

At this time, Canada has not agreed to any of the Deh Cho's demands.

Canada argues that it cannot require companies to negotiate IBA's as a pre-bid qualification because this would contradict federal legislation which requires that a single bid criterion be used to select companies for exploration licenses.

Canada has indicated that it is prepared to consider using cash bonus bidding for a future (2005) cycle of exploration licenses, but it will retain any revenue collected. We have informed Canada that this is unacceptable – the Deh Cho must receive a fair share of any revenue collected from Deh Cho oil and gas extraction.

Canada has also rejected our proposal to select exploration parcels on the grounds that it “cannot dictate to companies where to explore”. Canada has, however, agreed that the DCFN will be involved in the selection of larger exploration “blocks” within which companies will choose parcels to bid on.

At this time it appears unlikely that an agreement will be reached by April 17, 2004 – unless either Canada or the DCFN makes major concessions at the negotiating table.

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 for exploration. However, if the IRDA is terminated by either Canada or the DCFN, the Deh Cho will no longer receive a share of resource revenues currently collected by Canada in the Mackenzie Valley.

### **KFN Working Group**

The terms of reference for the KFN Working Group have now been approved by both Canada and the KFN. (ToR attached).

The KFN Working Group held its first meeting by teleconference on January 22, 2004. They will meet face-to-face on the reserve on February 16.

## **Pipeline Environmental Assessment**

At the December session in Hay River we tabled a draft Memorandum of Understanding for a joint panel environmental assessment of the proposed Mackenzie Valley pipeline. Grand Chief Norwegian has also sent the proposed MoU to the appropriate federal ministers and to the other agencies which would have to be parties to the MoU.

The Deh Cho's proposed MoU incorporates most of the recommendations of the Cooperation Plan, but improves on the Cooperation Plan and the other draft MoU's currently under discussion by including all affected regions in the review process, bringing the National Energy Board into a unified process, and incorporating current best practises for environmental assessments.

There has not yet been any formal response to the Deh Cho's proposed MoU.

## **Bernier**

In October, 2003 the Minister of the Environment appointed Vincent O'Donnell, a Montreal lawyer, to investigate the DCFNs' allegations that the Cooperation Plan developed for the environmental assessments of the pipeline project is seriously tainted because of the involvement of Paul Bernier, Vice-President of the Canadian Environmental Assessment Agency. Paul Bernier is the husband of Maureen Bernier who staked mineral claims near Ft. Simpson in 1998. Last year it became clear that those mineral claims closely coincide with the route of the proposed pipeline.

O'Donnell has submitted his report on his investigation to CEAA. CEAA has promised to release the report "once the government has decided what action to take in light of the report." At this time, we have no further information as to the contents of the report or whether O'Donnell concluded that the DCFN allegations are correct.