

Report on the Dehcho Process

February 16, 2007

This report is intended to provide DFN leaders with an update on Dehcho Process negotiations since our last report, which was provided to you in January, 2007.

AiP Negotiations

As you know, Canada has taken the position that it will only negotiate a comprehensive land claim agreement with the Dehcho which is “comparable” to other agreements in the NWT, based on land selection. Federal negotiators are now eager to establish “working groups” to begin negotiations on land selection and other AiP matters.

The November, 2006 Special Assembly gave DFN negotiators a mandate to “explore” land selection, but not to negotiate an agreement based on land selection at this time. The Assembly also directed that the DFN continue to stress the importance of compliance with existing agreements between the DFN and Canada, especially agreements in which Canada promised to implement the completed Land Use Plan (LUP). In a recent letter to Minister Prentice, the Grand Chief called Land Use Planning “the cornerstone of the Dehcho Process” and called on the Minister to honour Canada’s agreements to implement the Land Use Plan regardless of whether or not there is progress towards an AiP or final agreement in the Dehcho Process.

At the negotiating session held in Fort Simpson, February 7-8, 2006, DFN negotiators insisted that Canada comply with existing agreements while AiP negotiations proceed. At the same time, we tabled a compromise which would allow Canada to delay implementing the LUP until an AiP, *if* Canada agrees to extend the current land withdrawals until the LUP is implemented, and agrees that if the Dehcho Process ends without an AiP, the LUP will be immediately implemented. If Canada agrees to this compromise proposal, we would agree to establish working groups and negotiate an AiP, or a General AiP, as soon as possible. Canada has not yet responded to our proposal

In the meantime, while we are pressing Canada to honour its’ commitments to approve and implement the LUP, our team is busy drafting an AiP which we will be prepared to table as soon as it is appropriate. We recommend that the DFN table a “General Agreement-in-Principle” (GAiP) which would be shorter than a typical AiP but would outline how the key issues in the Dehcho Process would be addressed in a final agreement.

Land Use Plan

The Interim Measures Agreement signed by the DFN, Canada and the GNWT in 2001 established a tri-partite Land Use Planning Committee. The Planning Committee and their staff worked very hard over the past five years to develop a draft land use plan which has been praised by public interest groups and land use planning experts all over Canada as an exceptional model of cooperation and balancing the interests of conservation and development. The complete draft Dehcho Land Use Plan was approved by the DFN at the 2006 Assembly. It now requires approval by Canada and the GNWT before it can be implemented.

In the Settlement Agreement signed in July 2005 to end the DFN legal challenge to the Joint Review Panel established to conduct the environmental assessment of the MGP, Canada promised to implement an approved Land Use Plan “as soon as possible after the Plan’s completion”.

In a very serious development, Canada informed the DFN on October 26, 2006 that they will not consider implementing the Dehcho Land Use Plan until Canada and the DFN have reached an AiP and reached agreement on the main elements of a final agreement based on land selection, including land quantum and financial issues.

Without an approved land use plan the interim land withdrawals could expire in 2008, leaving all Dehcho lands exposed to sale, lease and development. In effect, Canada is now holding the Plan hostage to an agreement in our land claim negotiations and renegeing on their commitments to implement the Plan. This is very troubling because it will likely mean that the DFN will have to trade progress on the LUP for progress on an AiP. It was never intended that the Plan would be part of AiP negotiations.

In addition, Canada has declared that they want to dissolve the Land Use Planning Committee. All future work related to the development and implementation of a land use plan would be undertaken by the federal negotiating team. Federal negotiators have also said that they believe that no more than 40% of the Dehcho territory should be protected from development. The Land Use Plan which was approved by the 2006 DFN Assembly would protect 61% of the Dehcho from development and 69% would be protected from mining and oil and gas development.

- We have stressed that our mandate requires that Canada must comply with its commitments to approve and implement the Land Use Plan as soon as possible. However, as a gesture of flexibility and good faith we tentatively offered a compromise to Canada (we indicated that this compromise proposal must be approved by the DFN Leaders). In the compromise proposal DFN would agree to re-open the Plan to allow changes to be made to accommodate Canada’s concerns. These changes would be made through the Land Use Planning Committee,

through the process which was established in the IMA, not at the Dehcho Process negotiating table.

- We have also indicated DFN would allow Canada to delay implementing the LUP until an AiP, if Canada agrees approve the Plan soon after it is revised, and to extend the current land withdrawals until the LUP is implemented, and agrees that if the Dehcho Process ends without an AiP, the LUP will be immediately implemented.

In our view, the compromise offer which DFN negotiators made at the Ft. Simpson session is very reasonable.

The proposal tabled in Fort Simpson is attached.

Prospecting Permits

Section 39 of the Interim Measures Agreement (IMA) says no new prospecting permits will be issued without the support of affected DFN communities. In 2005 the DFN were advised by Ethel Blondin-Andrew that Canada will not honour s. 39 of the IMA. Permits were issued in 2005 and 2006 despite the objections of DFN communities. Appeals of the 2006 Permits are ongoing.

In December, the Mining Recorder wrote to DFN communities to inform them that it had received applications for permits in the Dehcho territory. The Grand Chief wrote to advise the Mining Recorder that the DFN do not support the issuance of those permits, as required by the IMA. On February 1 we were advised that no new Permits will be issued this year, but we continue to object to the Permits which were issued in 2005 and 2006 in violation of the IMA.

KFN Working Group

The KFN working group is a “side table” created by the Dehcho Process main table. Its’ mandate is to address issues which primarily affect the KFN, including KFN’s Treaty Land Entitlement (TLE) claims which seek additional reserve lands, and issues concerning the status of the Town of Hay River. Sam Gargan represents the DFN negotiating team on the KFN working group.

The settlement “offer” tabled by Canada in 2006 states that it is Canada’s position that the KFN will be able to sign either a Treaty Land Entitlement (TLE) claim agreement with Canada, or the Dehcho Process final agreement, but not both. If they choose the Dehcho Process they will not have a reserve but instead will have a share of Dehcho title (fee simple) lands.

Nahanni Park and the PAS

The DFN continue to push for the protection of the entire South Nahanni watershed as a high priority. Currently approximately 85% of the watershed is protected through the 2003 interim land withdrawals agreement with Canada.

The DFN also continue to support the Protected Areas Strategy (PAS) as a way of protecting sensitive lands which have not yet been protected through the interim land withdrawals agreement or through the draft Dehcho land use plan.

Jonas Antoine represents the DFN in these initiatives. He will provide a more detailed report.

Training / Capacity Building

The negotiations team is working to develop a plan for training and capacity building to ensure that DFN members are capable of taking advantage of employment opportunities which may result from implementing a Dehcho final agreement. Although a final agreement is probably still several years away, we want to give DFN members every opportunity to be ready to take on new jobs when the Dehcho territory finally becomes self-governing once again.

West Point First Nation

WPFN have asked the negotiating team to work with them on a strategy to secure additional land for their community. The current land base is far too small to allow for any new housing or economic development. The negotiations team will explore options for achieving the goals of WPFN through a Dehcho final agreement, or through other means, such as legal action.

These discussions are currently on hold pending resolution of the dispute with respect to representation of WPFN.

Next Steps

The next negotiating session is scheduled for March 6-8, 2007 in Ft. Providence. In view of Canada's refusal to honour existing agreements, in which they promised to implement the Land Use Plan whether or not an AiP has been achieved, we question whether it is in the interests of the DFN to hold AiP negotiations on lands and resources at this time. It may be more useful to insist that AiP negotiations, especially on lands and resources, be suspended until Canada agrees to a process and timetable for approving and implementing the Land Use Plan.

The negotiating team requests direction from the Leadership.

Appendix A

DFN Draft Proposal tabled Feb. 8, 2007

1. DFN will agree to link LUP implementation to the initialing of an AiP.
2. The Chair of the LUP Committee will be appointed by Parties.
3. The LUP will be submitted to 3 governments for approval after recommendation by Chief Negotiators.
4. Upon the signing of an AiP and implementation of the LUP, lands will be identified and withdrawn for land selection purposes.
5. Existing land withdrawals will be extended from 2008 until a Final Agreement or implementation of the LUP, whichever comes first. Upon approval of the LUP, withdrawals will be updated to include the conservation zones and special management zones of the approved LUP, as appropriate.
6. Canada will commit that the Interim LUP will “guide” decision making until the LUP is implemented and made legally binding.
7. The Parties will re-commit to the IMA, together with provisions that mineral claims cannot be recorded without the support of affected DFN communities.
8. The approved LUP will be implemented and legally binding upon signing of an AiP or termination of the Dehcho Process, whichever comes first.

Appendix B

Draft Workplan to Negotiate Land Use Plan Revisions

1. Clarify mandate for Land Use Planning Committee (revisions, implementation, monitoring, amendments and 5-year review) – February.
2. Revisit Committee member appointments and direction from Parties – February.
3. Parties to provide substantive detail and rationale for changes to zoning and Conformity Requirements to Committee members – February.
4. Committee members discuss their principals' substantive interests in the Draft Plan (i.e. specific areas for conservation and development, specific issues related to Conformity Requirements) – February 27-28. (LUP meeting)
5. Committee staff to develop sensitivity analysis / options for Plan revisions that address the interests of the Parties –March.
6. The Committee will present options to the Parties – March 27-30, 2007
7. The Parties consult with their principals on the preferred option – April
8. Committee develops consensus around preferred options - April/May
9. Committee recommends Plan for approval to main table – end of May
10. The Chief Negotiators initial and recommend the Plan for approval by the Parties.
11. Parties approve land use plan – June 2007 Annual Assembly
12. Minister (INAC) will recommend to Cabinet an Order-in-Council for revised Land Withdrawals and will, under section 109 of the Mackenzie Valley Resource Management Act, provide written policy direction, in relation to the Plan. binding

on the Mackenzie Valley Land and Water Board with respect to the exercise of its functions.

13. Committee monitors land uses for conformity with the approved Land Use Plan – ongoing.