

Report on the Dehcho Process

May 16, 2007

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

Devolution – Resource Revenue Sharing Agreement-in-Principle

It has recently been reported in the news media that several Aboriginal groups and the GNWT have signed an Agreement-in-Principle on devolution and resource revenue sharing.

The Resource Revenue Sharing Agreement-in-Principle was signed on May 7 between the GNWT and the Inuvialuit Regional Corporation, the Gwich'in Tribal Council, The Sahtu Secretariat and the Northwest Territory Metis Nation. The government of Canada is not a party to the AiP, nor are the Tlicho or the Akaitcho.

Before considering the content of the AiP, it may be useful to ask:

- * Was the AiP negotiated or was it simply offered by the GNWT as a “take it or leave it” proposal?
- If it was negotiated, who were the parties to the negotiations?
- Why were the negotiations held in secret instead of in the open?
- Are minutes or other records of the negotiations available?

AiP Negotiations

An Agreement-in-Principle is an agreement in which the parties outline in general or basic terms how issues will be dealt with in a final, legally binding agreement. An AiP is not legally binding. Some AiPs are very detailed while others are shorter and more general. The Dehcho Framework Agreement signed in 2001 gives some direction as to which issues will be addressed in an AiP and in a final agreement.

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 quantum and other AiP matters. As part of AiP negotiations, they also want to negotiate major revisions to the Dehcho Land Use Plan, which was approved at the 2006 DFN Assembly.

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). Minister Prentice states that he has directed his negotiator, Tim Christian, to negotiate changes to the LUP in conjunction with the AiP based on land selection. In a recent letter to Minister Prentice, the Grand Chief called Land Use Planning “the cornerstone of the Interim Measures Agreement” and called on the Minister to honour Canada’s agreements to implement the Land Use Plan regardless of whether or not there is an AiP or final agreement in the Dehcho Process.

At the negotiating session held in Fort Simpson, February 7-8, 2007, DFN negotiators insisted that Canada comply with existing agreements while AiP negotiations proceed. At the same time, we tabled a tentative (subject to Leadership approval) compromise offer 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 and made legally binding. If Canada agrees to this compromise proposal, we would be able 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 a GAiP which we will be prepared to table as soon as it is appropriate. The GAiP is also being developed into a plain English document and translated into Slavey.

We also recommend that the DFN maintain its position that AiP negotiations on lands and resources issues should only begin after Canada has given assurances that it will comply with existing agreements to approve and implement the Land Use Plan whether or not an AiP is achieved in the Dehcho Process.

Land Use Plan

The Interim Measures Agreement signed by the DFN, Canada and the GNWT in 2001 established the Dehcho Land Use Planning Committee. Canada and the GNWT were full, equal partners in the development of the Plan and were consulted throughout the Planning Process. The Planning Committee staff worked very hard over the past five years to develop a Plan which has been praised by public interest groups and land use planning experts all over Canada as an outstanding model of cooperation that balances the interests of conservation and development. The complete 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 clear violation of both the IMA and the Settlement Agreement, Canada informed the DFN on October 26, 2006 that they will not implement the Land Use Plan until Canada and the DFN have reached a land selection AiP in the Dehcho Process and reached agreement on the main elements of a final agreement based on land selection, including land quantum and financial issues.

Without a Land Use Plan the interim land withdrawals implemented in 2003 could expire in 2008, leaving all Dehcho lands exposed to sale, lease and development. Canada is now holding the Plan hostage to an agreement based on land selection in the Dehcho Process 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 oil and gas development and 69% would be protected from mining. These areas would be protected for traditional uses.

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). The terms of our tentative proposal are:

- DFN would agree to re-open the Plan to allow changes to be made to accommodate Canada's and the GNWT's concerns that the Plan "protects too much land".
- DFN would cooperate with making changes to the Planning Committee membership to allow Canada and the GNWT to replace their members on the Committee and give them new instructions.
- Any changes to the Plan would be made through the Land Use Planning Committee since this is the process which was established in the IMA, *not* at the Dehcho Process negotiating table.
- All parties would approve the revised Land Use Plan in 2007.
- DFN would allow Canada to delay implementing the approved LUP until the initialing of an AiP.
- The approved Land Use Plan would be used as a "guide" by decision makers, but it would not be legally binding until it is implemented.
- The approved Plan would be implemented and become legally binding upon the initialing of an AiP.
- Canada would extend the current land withdrawals until the LUP is implemented, with revisions to reflect the conservation zones in the Land Use Plan.

- Canada would agree that if the Dehcho Process ends without an AiP, the approved LUP will be immediately implemented.

We stressed that this proposal does not have approval yet from the DFN Leadership. but that we were prepared to recommend it to the Leaders.

In our view, the tentative compromise offer which DFN negotiators made at the Ft. Simpson session is very generous to Canada and should enable negotiations on a full AiP 'package' to move forward.

The proposal tabled in Fort Simpson is attached as **Appendix A** to this report.

We also tabled a draft work plan for the Committee to make revisions to the Plan in time for it to be submitted to the 2007 Assembly. The draft work plan is attached as **Appendix B** to this report.

KFN Working Group

The KFN working group is a "side table" created by the Dehcho Process main table in 2004. 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.

KFN has requested a series of meetings with the DFN negotiating team to discuss their options. The first of these sessions will be held March 19 at KFN.

Nahanni Park

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.

In June, 2003 Parks Canada and the DFN signed a Memorandum of Understanding on Park Expansion. The MoU provides that consultations will be completed by September, 2006 and an agreement to expand the Park boundaries will be completed by September, 2007. These deadlines are now in serious doubt.

The consultations which were supposed to be completed by September, 2006 have not yet been held, or even scheduled, and there is no sign of movement by Canada towards reaching agreement on expanded Park boundaries.

The Grand Chief met with the CEO of Parks Canada in Ottawa on February 27 to discuss the issue of Park expansion. At that time the CEO

Protected Areas Strategy (PAS)

Although it is an extremely slow and bureaucratic process, the DFN also continue to support the PAS as a way of protecting sensitive lands which have not yet been protected through the interim land withdrawals agreement or through the Dehcho Land Use Plan.

The Edehzhie PAS process began in 1999. Currently the Edehzhie is protected under an Order-in-Council issued in 2002 which withdrew the area from development while discussions continue on whether it should be permanently protected. That OiC is due to expire in June, 2007. This would leave the Edehzhie open to mineral staking and development. The sponsoring agency for the PAS process is the Canada Wildlife Service. We have no information at this time as to whether the CWS has requested an extension to the land withdrawals

Jonas Antoine represents the DFN in the Edehzhie initiative and on the Nahanni Park Consensus Team. He may be able to 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.

Communications Strategy

Concerns continue to be raised about the flow of information between communities and the negotiating team. The team has developed a draft strategy for improving and maintaining communications between the negotiating team and communities. The proposed strategy would focus less on written material and more on the use of information technology, including the internet, e-mail and audio-visuals.

The draft strategy is attached as **Appendix C**.

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 delayed until Canada agrees to a process and timetable for approving and implementing the Land Use Plan.

The negotiating team requests direction from the Leadership as to whether AiP negotiations on lands and resources issues should proceed without a commitment from Canada to a timetable for implementation of the LUP. If the leadership directs the negotiations team to negotiate lands and resources issues at this time without receiving such assurances from Canada, then permission to have exploratory discussions on land quanta is needed.

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.