

**DFN Chief Negotiator's  
Report on the Dehcho Process**

**May 12, 2008**

**Executive Summary**

The Dehcho Process began in 1999 with the intention of negotiating an agreement which would recognize a Dehcho public government which would have ownership and jurisdiction over all lands and resources in the Dehcho Territory. In 2001 a Framework Agreement and Interim Measures Agreement were signed, and in 2003 the DFN and Canada agreed to package of interim land withdrawals to protect sensitive lands during the negotiations process, as well as an agreement to jointly manage and Nahanni National Park Reserve and to expand the boundaries of the Park to protect the Nahanni watershed.

AiP Negotiations

Canada's position has become clearer and firmer in recent years. It is now clear that they will only negotiate a comprehensive land claim agreement with the Dehcho which is "comparable" to other agreements in the NWT, based on land selection. Under a "comparable" formula, the DFN would end up owning between 47,000 and 70,000 square kilometers of the Dehcho Territory, depending upon how the DFN interests are compared to other settlement areas. Canada would own the remaining 145,000 - 168,000 square kilometers, but DFN members would continue to have treaty harvesting rights throughout the entire Dehcho territory and would be able to participate in advisory boards and co-management arrangements on Crown lands.

The November, 2006 Special Assembly gave DFN negotiators a mandate to "explore" land selection. The Special 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).

Canada has indicated that Dehcho Process negotiations will only continue if the DFN gives its chief negotiator a mandate to actually negotiate, not just explore, an agreement based on land selection.

In the exploratory discussion held to date, DFN negotiators have developed proposed AiP chapters on Dehcho government jurisdictions, justice, education, eligibility and enrolment, final agreement implementation, management of lands and resources (DCRMA), and have been in discussion on other jurisdictional areas including culture and heritage and taxation.

### Nahanni Park Expansion

Several DFN Assembly resolutions have called for Nahanni National Park Reserve to be expanded to protect the entire South Nahanni watershed.

In 2001 Canada and the DFN agreed to an Interim Park Management Agreement which provides for joint management of the Park. The Naha Deh Consensus Team was formed to act as the body managing the Park.

The joint Nahanni Expansion Working Group (NEWG) was established under the 2003 MoU between Canada and the DFN. The work on expanding Nahanni Park is now in the final stages. Jonas Antoine has represented DFN on the NEWG.

The NEWG submitted its final recommendation to the CEO and to the Grand Chief in December, 2007. The NEWG recommendation would achieve most of the DFN objectives as stated through resolutions at annual Assemblies.

The recommendation is now before the Minister of the Environment, John Baird, for final approval. Mr. Baird supports the recommendation, but needs approval of the federal Cabinet. Although the GNWT is not a party to the MoU and their support is not technically needed, Canada will consult with the GNWT before making a final decision on expansion. Baird has asked DFN leaders to lobby the GNWT to support expansion.

### Land Use Plan

The tri-partite LUPC was established by the IMA in 2001 and submitted a complete Land Use Plan in spring, 2006. The Plan was approved by the DFN at the 2006 Assembly, but Canada then refused to approve the Plan, despite their promise in the Settlement Agreement signed in 2005 to approve the Plan as soon as possible after its completion.

In April, 2007 the DFN and Canada agreed to a new work plan for the LUPC to revise the Plan approved by DFN in 2006. Canada and the GNWT changed their appointees on the Committee and Mike Nadli replaced Herb Norwegian as Chair of the Committee. The LUPC is now working on amendments to the Plan approved by the DFN in 2006. While they are making progress, a complete revised Plan may not be ready for approval at this year's Annual Assembly.

At this point, even if a revised Plan is approved by the DFN and Canada this year, there is still no assurance that it will be implemented by Canada. In fact, Canada continues to say that they will not implement the Plan until the DFN approve an AiP based on land selection. The DFN will still have to work hard to have the revised Plan implemented whether or not progress is made towards an AiP.

### KFN

The Katlodehechee First Nations continues to negotiate a separate TLE Agreement with Canada. Their negotiations are in camera and very little detail has been provided to the main table by KFN or Canada.

### ADK

According to Canada, the Acho Dene Koe First Nation and the GNWT are negotiating a framework agreement with Canada and the GNWT to enter into comprehensive negotiations outside of the Dehcho Process. We have no information as to the progress of these talks.

### **Agreement-in-Principle (AiP) Negotiations**

Canada says 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. Under a “comparable” formula, the DFN could end up owning between 46,000 and 70,000 square kilometers of the Dehcho Territory, depending upon how the DFN are compared to other settlement areas.

The November, 2006 Special Assembly gave DFN negotiators a mandate to “explore” land selection. 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).

Canada’s negotiators have recently informed us that their mandate does not allow them to agree to a land quantum of more than 45,810 sq km. The Crown would own the other 169,000 square kilometers of the Dehcho Territory. DFN members would continue to have Treaty harvesting rights throughout the Dehcho Territory, but Dehcho communities would only have self-government over their selected lands. Canada might agree to a land use planning process throughout the Territory, which would give the DFN some influence over Crown lands outside of their settlement areas.

DFN negotiators have developed AiP chapters Dehcho government jurisdictions, justice, eligibility and enrolment, final agreement implementation, management of lands and resources, and Metis issues.

Federal negotiators have tabled their proposed AiP chapters, and have made several comments on the DFN positions tabled during our exploratory discussions, including the following:

- At the November, 2007 session in Yellowknife, Canada tabled its bottom line of 45,810 square km. The DFN tabled its bottom line in November: 70,000 square km.
- Canada will not agree to use the term “retained” lands instead of “selected” lands;
- Lands which are not selected by the DFN will not be “shared” lands – they will be Crown lands;
- Canada does not accept that a Dehcho government will have any areas of exclusive jurisdiction. Instead, they will negotiate provisions which state that, in some areas, Dehcho laws may be paramount over federal or territorial laws dealing with the same subject as the Dehcho law ; and

### Recent Developments in AiP Discussions

At our most recent meetings Canada’s negotiators have tabled proposed AiP chapters on:

- Land and water regulation
- Parks
- DCRMA and land use planning
- Land quantum
- Expropriation and non-Dene access to Dehcho title lands
- Royalties

Canada’s position is that a Dehcho agreement must be “comparable” to other land claim settlements in the NWT. They therefore have proposed that any DCRMA will be only an advisory committee and that the Mackenzie Valley Resource Management Act (MVRMA) will fully apply to the Dehcho Territory.

They have also proposed that the Dehcho will have the same resource royalty sharing formula as in other comprehensive land claim settlements.

Attached as *Appendix A* is a brief paper on land quantum issues tabled by the DFN team. The paper quotes extensively from the Report of the Royal Commission on Aboriginal Peoples in support of our argument that any Dehcho Agreement based on land selection must provide for a large land base.

Also attached are copies of documents tabled by the parties since the 2007 Assembly.

### **The Dehcho 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 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.

The Land Use Plan which was approved by the 2006 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.

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 based on land selection, including land quantum and financial issues.

In the spring of 2007 DFN and Canada made some compromises which will allow the Plan to be revised so that it is acceptable to Canada and the GNWT, but some major issues have still not been resolved. Canada agreed to a work plan which would allow a revised Plan to be approved (but not necessarily implemented) by the summer of 2008.

There is still no commitment by Canada to implement the Plan, despite their promise in article 13 of the 2005 out-of-court Settlement Agreement to implement it as soon as possible after its completion. If the Land Use Plan is not approved and implemented, the interim land withdrawals which were agreed to in 2003 could expire in October, 2008, leaving all Dehcho lands exposed to sale, lease and 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.

### **Next Steps**

The next negotiating session is scheduled for June 9-13. It will focus on AiP negotiations and meetings with federal officials.