

## **Dehcho Process Report –April, 2009**

### Background

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. An Interim Resource Development Agreement (IRDA) was also signed in 2003.

### AiP Negotiations - Background

After completion of the agreement on interim land withdrawals and the signing of the IRDA in 2003, the DFN and Canada began negotiations towards an AiP on land ownership, resource management and governance. DFN negotiators insisted on negotiating an AiP based on shared stewardship of the entire Dehcho Territory, as mandated by the Dehcho Proposal, not land selection. Initially Canada agreed to consider the shared stewardship model, but in 2005 federal negotiators stated clearly that they had instructions only to negotiate an agreement based on land selection under the Comprehensive Claims policy.

Since 2005, Canada has consistently said that it will only negotiate a Comprehensive Land Claim agreement with the Dehcho which is "comparable" to other agreements in the NWT. Under Canada's "comparable" formula, the DFN could end up owning between 46,000 and 60,000 square kilometers of the Dehcho Territory, depending upon how the DFN interests are compared to other settlement areas. DFN would also be able to nominally participate in management of lands throughout the rest of the Dehcho territory through nominations to the Mackenzie Valley Land and Water Board and the Mackenzie Valley Environmental Impact Review Board. As well, the traditional harvesting rights of DFN members would be preserved on all Crown lands throughout the Dehcho territory.

Based on their comparisons between the Dehcho and the Tlicho, Canada's negotiators say their current mandate does not allow them to agree to a land quantum of more than 47,000 sq km, which would mean that Canada would own the remaining 168,000 sq km. Any increase to that mandate will require the approval of Cabinet.

The November, 2006 Special Assembly gave DFN negotiators a mandate to "explore" a land selection agreement. This limited mandate was reaffirmed at the 2007 Annual Assembly, which also directed that the DFN continue to stress the importance of compliance with existing agreements with Canada, especially

agreements in which Canada promised to implement the completed Land Use Plan (LUP).

During 2007 DFN negotiators tabled documents on a variety of issues towards achieving an AiP. These included proposed AiP wording for chapters on:

- Dehcho Resource Management Authority
- Eligibility and Enrolment
- Expropriation of Dehcho Lands
- Access to Dehcho Lands
- Treaty Rights
- Housing, Education and Health
- Harvesters' income support.

As well main table discussions have also included brief discussions on taxation, culture and heritage, Metis issues and capacity building.

In December, 2007 Canada indicated that negotiations couldn't go much further unless the Dehcho negotiating team obtained a clear mandate to negotiate a land claim agreement based on the federal Comprehensive Claims policy. Canada said that having a mandate to "explore" a land selection agreement wasn't sufficient to move further ahead on the main issues.

### 2008 Assembly Resolution

The 2008 Annual Assembly passed a resolution which gave DFN negotiators a mandate to negotiate an AiP based on land selection, but only after the Land Use Plan is completed and Canada has agreed to implement the Plan. The resolution also said that AiP negotiations should proceed in two phases: first, governance negotiations; second, negotiations on lands, resources and land selection.

Canada and the GNWT refuse to negotiate on the terms set out in the 2008 Assembly resolution. They continue to insist that they will only consider approving and implementing a land use plan after an AiP based on land selection is ratified by the DFN.

The delegates at the strategy workshop held February 3-5, 2009 in Ft. Simpson recommended that the 2008 Assembly resolution be modified so that it will not preclude AiP negotiations on self-government and lands and resources being conducted concurrently with work on the timely completion and implementation of the Land Use Plan. This would be a significant modification to the 2008 Assembly resolution which negotiators cannot undertake without direction from the Leadership.

At the February, 2009 Leadership meeting DFN leaders passed a resolution which reaffirms that the highest priority for negotiations will remain the completion, approval and implementation of the Interim Land Use Plan, but allowing for negotiations on AiP issues to take place concurrently. Canada has welcomed the new DFN approach.

### DCRMA

On April 21 the Grand Chief met with Minister of INAC, Chuck Strahl. The GC was accompanied by Chief Negotiator Georges Erasmus. The discussions focused on the DFN proposal for a final agreement to recognize and implement a Dehcho Resource Management Authority (DCRMA) which would operate independently of the *MVRMA* and consolidate land use planning, permitting and environmental assessments in a single body. **See attached briefing note.**

The meeting was successful. Mr. Strahl agreed to give his negotiators instructions to seriously explore the DFN proposal for consolidated system of resource management based on the DCRMA model.

### Nahanni Park Expansion

Several DFN assembly resolutions and leadership resolutions have called for the protection of the South Nahanni watershed through the expansion of Nahanni National Park Reserve.

In 2003 the DFN and Canada signed an Interim Park Management Arrangement, which placed Nahanni National Park Reserve under the joint control of Canada and the DFN under the Naha Deh Consensus Team. Canada and the DFN also signed an MoU on Park Expansion in which both parties agreed to work cooperatively to protect the South Nahanni watershed by expanding the boundaries of the Park. To implement the MoU Canada and the DFN formed a Nahanni Expansion Working Group (NEWG) which reports to the CEO of Parks Canada and to the DFN Grand Chief. Jonas Antoine was the representative for DFN on the NEWG. He was assisted by Laura Pitkanen who continues to work hard on this file.

Discussion on the expansion of Nahanni Park is now in the final stages. The NEWG submitted its final recommendation to the CEO and to the Grand Chief in December, 2007 for approval. The NEWG recommended that the Park boundaries be expanded to protect approximately 97% of the watershed from mining and other industrial activities, while leaving existing third party interests, including the Prairie Creek mine, intact. The expanded Park Reserve would be jointly managed by the Consensus Team.

The recommendation went to the Minister of the Environment for a final round of consultations with the DFN, industry groups, the GNWT and INAC. These consultations have produced a consensus that the Minister should recommend to the federal Cabinet that the NNPR boundaries be expanded to cover approximately 91% of the watershed.

On April 20 the Grand Chief, accompanied by the Chief Negotiator and advisor Laura Pitkanen, met with the Minister of the Environment, Jim Prentice. The Minister requested the meeting to determine whether the DFN remain committed to protecting the watershed through expansion of the NNPR boundaries, and whether the DFN will support expansion to cover approximately 91% of the Dehcho portion of the watershed. The Grand Chief delivered a letter to Prentice reaffirming that the DFN will support such an expansion.

DFN would achieve most of their objectives through the Park expansion proposal now before the federal Cabinet. In our view this is a very significant achievement.

The 9% of the watershed which will not be within the new Park Reserve boundaries will remain protected by the IMA. The lands outside the new Park Reserve boundaries are known to have high mineral potential and could also be owned by the DFN after a final agreement and land selection.

#### 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 DFN are still represented on the Committee by Petr Cizek and Tim Lennie. The LUPC is now working on significant changes to the Plan approved by the DFN in 2006.

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.

The new Committee continues to work on very significant revisions to the Interim Land Use Plan. Issues which cannot be resolved by the Committee will be brought to the Main Table for negotiation.

#### Interim Resource Development Agreement (IRDA)

The IMA provides that no new petroleum exploration licenses will be issued by INAC in the Dehcho without the support of affected DFN communities.

The 2003 Interim Resource Development Agreement (IRDA) provides that the DFN will receive an annual share of the resource royalties collected by Canada in the NWT. In return, the DFN agreed to use best efforts to reach agreement with Canada on terms and conditions for new petroleum exploration licences. In discussions in 2003 and 2004 no progress was made because Canada refused to consider any of the terms and conditions proposed by the DFN.

In the Settlement Agreement signed in 2005 to end the DFN legal challenge to the *MVRMA* and the process for reviewing and approving the MGP, it was agreed that consultations on terms and conditions for new petroleum exploration would address: exploration parcel sizes, air and water emission standards, restrictions on seismic cut lines and cash bonus bidding. These discussions with Canada have not progressed.

On **February 16, 2009** the Grand Chief received a letter from INAC which threatens to terminate the IRDA, along with the annual royalty payouts to the DFN, if there is no agreement by September, 2009 to allow a new cycle of petroleum exploration.

**See attached letter.**

If agreement cannot be reached with Canada on terms and conditions for new exploration licenses the DFN may consider moving on their own to initiate a competitive bidding process to determine appropriate terms and conditions for new exploration.

**We recommend that the Leadership discuss this matter *in camera* since it involves strategic considerations and legal advice.**

#### ADK

In July, 2008 Canada, the Acho Dene Koe First Nation and the GNWT signed a framework agreement to enter into comprehensive land claim negotiations outside of the Dehcho Process.

The DFN Chief Negotiator wrote to Canada's Chief Negotiator on **February 23, 2009**, outlining the DFN position on the removal of ADK from agreements negotiated through the Dehcho Process, including the Framework Agreement, IMA and IRDA. Canada responded on April 21 by indicating that they see no need to negotiate ADK's removal from the Dehcho Process and related agreements.

**See attached letters.**

#### Next Steps

The next main table session will be held May 12-14, 2009 in Ft. Simpson. The next Legal Technical Committee (LTC) will be May 4-5 in Toronto.