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Dehcho Process

Chief Negotiator's Report – September, 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.

Executive Summary

AiP negotiations made little progress between 2003 and 2008 because DFN negotiators had no mandate to negotiate land selection, while Canada and the GNWT refused to negotiate any agreement which is not based on land selection and "comparable" to other Comprehensive Land Claims settlements in the NWT. 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 2009 Assembly passed a resolution which significantly modified the 2008 resolution, allowing AiP negotiations to take place concurrently with negotiations to modify the draft land use plan, while stating that the highest priority for negotiations will remain the completion, approval and implementation of the Interim Land Use Plan.

The draft Interim Land Use Plan will soon be submitted to the main table for negotiations on several very important items. At this time there is still no commitment from Canada to implement the Plan when it is completed, despite their commitment in the 2005 Settlement Agreement to implement the Plan "as soon as possible" after its completion.

Canada has threatened to terminate the Interim Resource Development Agreement if DFN communities do not agree by the end of this year to support the issuance of new licenses for oil and gas exploration in the Dehcho. The DFN responded by reiterating that the IRDA requires the DFN and INAC to consult on terms and conditions for new exploration and that the DFN remain prepared to engage in these consultations.

AiP Negotiations

After completion of the agreement on interim land withdrawals and the signing of the IRDA in 2003, the DFN and Canada began negotiations towards a non-binding 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 kilometres 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 39,000 sq km, which would mean that Canada would own the remaining 176,000 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). This mandate was expanded by the 2008 and 2009 Assemblies, so that DFN negotiators now have a mandate to negotiate, not just 'explore', an agreement based on land selection.

The main table has recently established a working group called the Legal Technical Committee (LTC). The LTC is comprised of the parties' lawyers and technical advisors and has a mandate to draft AiP chapters for discussion and negotiation at the main table. The LTC does not negotiate – it simply produces draft AiP chapters which identify the areas where the parties agree and disagree so that the main table can focus discussions on those areas. The DFN is represented on the LTC by legal counsel Chris Reid, and Chris is assisted by Laura Pitkanen.

Currently AiP negotiations are addressing the following subjects:

- Jurisdiction on retained (selected) lands
- Jurisdiction outside of Dehcho selected lands (Dehcho Resource Management Authority)
- Eligibility and enrolment

- Ratification of AiP and final agreement
- Expropriation of Dehcho lands or Crown lands
- Wildlife harvesting
- Compensation for impacts on traditional activities
- Education
- Tree harvesting
- Access by non-Dene to Dehcho settlement lands

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

DCRMA

On April 21, 2009 the Grand Chief met with Minister of INAC, Chuck Strahl. 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.

Mr. Strahl agreed to give his negotiators instructions to explore the DFN proposal for consolidated system of resource management based on the DCRMA model. However, federal officials have advised us that Canada is not prepared to begin any negotiations on a DCRMA until they complete an internal review of Neil McCrank's 2008 report on the NWT regulatory system. McCrank was critical of the *MVRMA* and the complex system of multiple boards managing natural resources in the NWT. The DFN have expressed the same concerns, however the DFN have recommended establishing a stand-alone DCRMA to manage natural resources in the Dehcho while McCrank instead recommended consolidating resource management in an NWT-wide regime.

The chief negotiators have agreed to establish a working group to begin discussions on how natural resources will be managed in the Dehcho after a final agreement. The DFN recently tabled a draft position paper on this subject, which Canada and the GNWT have not yet responded to.

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 there is still no assurance that the Interim Land Use Plan will be implemented by Canada after it is completed. In fact, Canada continues to say that they will not implement the Plan until the DFN approve an AiP based on land selection.

The GNWT position is even more extreme, and continues to change dramatically from month to month. Recently, after seven years of saying nothing on this issue, the GNWT informed the DFN that they would not approve any land use plan unless the DFN agree that at least 30% of any "Dehcho settlement lands" selected through the Dehcho Process are selected from areas zoned as Conservation Zones in the land use plan. The GNWT also wants significant amendments to the IMA as a condition of approving the Plan.

The Planning Committee continues to work on very significant revisions to the Interim Land Use Plan. Most of the revisions have been proposed by Canada and the GNWT to permit industrial activity in conservation zones, change "special management zones" into "special development zones" which permit industrial activity, and generally make the Dehcho more open to development than it would be under the Plan approved in 2006.

Issues which cannot be resolved by the Committee will be brought to the Main Table for negotiation.

The LUPC have indicated that they have completed as much as they can agree upon. They will soon be sending the draft Interim Plan to the Main Table with several very important issues still to be resolved by negotiators.

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.

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.

In April the Leadership passed a resolution calling for a renewed effort by both the DFN and Canada to find agreement on terms and conditions for a new petroleum exploration

cycle. Negotiations with INAC on terms and conditions will be led by a working group consisting of Chiefs Lloyd Chicot and Keyna Norwegian, Stanley Sanguéz and legal counsel, Chris Reid. No meetings have yet been scheduled.

In a teleconference on August 7, the working group members instructed Chris Reid to begin discussions with INAC. Accordingly, Chris arranged a meeting with INAC officials in Ottawa on September 10. At that meeting we confirmed that:

- the DFN remain committed to the objective of having a new petroleum exploration rights issuance cycle as soon as possible;
- as set out in the IRDA, in order to meet this objective it is necessary for INAC and the DFN to jointly develop terms and conditions for the right issuance; and
- DFN remain committed to working in good faith to find common ground on terms and conditions.

We also asked INAC to provide us with a written response to DFN concerns regarding:

- exploration parcel sizes;
- air and water emission standards; and
- restrictions on seismic cut lines.

To date we have received no information from INAC in response to this request.

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.

The DFN continue to say that the existing agreements should be amended to remove ADK.

SKDB and NBDB are working together to negotiate a boundary agreement with ADK. Peter Redvers has been retained to assist them in their negotiations. The negotiations are proceeding very slowly because ADK initially refused to negotiate with the two communities jointly, and because ADK has had difficulty keeping a chief negotiator.

A meeting between ADK and SKDB and NBDB is scheduled for October 19.

Nahanni Park Expansion

Several DFN assembly resolutions and leadership resolutions 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.

The NEWG submitted its final recommendation to the CEO and to the Grand Chief in December 2007. 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 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. The 9% of the watershed which will not be within the new Park Reserve boundaries will remain protected by the IMA, although they will be open to mineral staking. Much of these 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 if they have not been staked by prospectors.

On June 9, the Minister introduced legislation to expand the boundaries of the NNPR. The legislation passed quickly and is now in effect.

Next Steps

Discussions between DFN and Parks Canada are ongoing on issues related to the implementation of the expansion. For example, it is expected that the Consensus Team will require additional funds to carry out their duties.

Work has begun on a Parks chapter in the Dehcho Process AiP. The AiP will address the final status of the Park Reserve and clarify the rights and jurisdictions of the DFN and Canada with respect to the Park.

Upcoming

The next main table session will be held October 20-21 in Yellowknife.