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## CHAPTER 3: CERTAINTY

### 3.1 GENERAL

- 3.1.1 The Dehcho Agreement will recognize and affirm the Aboriginal and Treaty rights of the Dehcho Dene<sup>1</sup>. It will clarify and build upon Treaty 11, but will not replace or extinguish it.
- 3.1.2 The historical and cultural importance of Treaty 11 will be recognized in the Dehcho Agreement. The Dehcho Agreement will provide that annual meetings will be held to affirm this importance and to make treaty payments.
- 3.1.3 Self-government, as an inherent right, is included among the Aboriginal rights of the Dehcho Dene. It will have the effect and be exercised collectively by the Dehcho Dene and by each Dehcho First Nation community according to the manner set out in the Dehcho Agreement.<sup>2</sup>
- 3.1.4 Self-determination<sup>3</sup>, as an inherent right, is also included among the Aboriginal rights of the Dehcho Dene. It will have the effect and be exercised collectively by the Dehcho Dene according to the manner set out in the Dehcho Agreement.

### 3.2 NON-ASSERTION

- 3.2.1 Except as provided in 3.2.10, the Dehcho Dene will not exercise or assert any Aboriginal or treaty rights in the NWT, other than
- a) any right set out in the Agreement; or
  - b) the Treaty 11 rights respecting annual payments to the Indians and payment of the salaries of teachers to instruct the children of the Indians.
- 3.2.2 A Dehcho Dene who is not a Dehcho Citizen will not exercise or assert any Aboriginal or treaty right held by the Dehcho Dene.
- 3.2.3 For greater certainty, 3.2.1a) prevents a Dehcho Citizen from exercising or asserting any Aboriginal or treaty rights other than those referred to in 3.2.1 a) and b), but does not prevent a Dehcho Dene who is not a Dehcho Citizen from

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<sup>1</sup> As defined "Dehcho Dene" includes ADK and FL Metis.

<sup>2</sup> Some concern around the recognition of Dehcho aboriginal self-government rights

<sup>3</sup> Is this an inherent right? Need to know distinction between inherent right of self-government and inherent right of self-determination.

exercising or asserting any Aboriginal or treaty right held by another Aboriginal people of which that person is a member.

- 3.2.4 The purpose of 3.1.1, 3.1.2, 3.1.3 and 3.1.4 is
- a) to enable Dehcho Citizens, the Dehcho First Nations and the Dehcho Government and Dehcho Community Governments to exercise and enjoy all their rights, authorities, jurisdictions and privileges that are set out in the Agreement;
  - b) to enable all other persons and governments to exercise and enjoy all their rights, authorities, jurisdictions and privileges; and
  - c) to release all other persons and government of any obligation, (i) to the Dehcho Dene and Dehcho Citizens, in relation to any right that, under 3.2.1, is not exercisable or assertable, and (ii) to any Dehcho Dene who is not a Dehcho Citizen, in relation to any Aboriginal or treaty right held by the Dehcho Dene as if those rights did not continue to exist.
- 3.2.5 The Dehcho First Nations, and the persons who comprise it, prior to or after the effective date, release government and all other persons from all claims, of whatever nature or kind and whether known or unknown, that they ever had, now have or may have in the future, arising from any act or omission that occurred prior to the effective date and that may have affected any land right that was, at the time of the act or omission, an Aboriginal or treaty right held by the Dehcho First Nations.
- 3.2.6 The Dehcho First Nations and the persons who comprise it, prior to or after the effective date, release government and all other persons from all claims, of whatever nature or kind and whether known or unknown, that they now have or may have in the future, arising from any act or omission that occurred on or after the effective date and that may have affected any right that, under 3.1, is not exercisable or assertable.
- 3.2.7 In consideration of the rights in the Agreement, the Dehcho Government will indemnify and forever save harmless government from any claim to which 3.2.5 or 3.2.6 applies and that was brought on or after the effective date against Canada or the GNWT. For greater certainty, the right to be indemnified shall not extend to any claim relating to or in any way arising from the failure of Canada or the GNWT to carry out its obligations under the Agreement.

3.2.8 The right to be indemnified under 3.2.7 applies only if Canada or the GNWT, as the case may be, vigorously defends the claim and does not compromise or settle it without the consent of the Dehcho Government. The right to be indemnified under 3.2.7 does not apply to any costs incurred by Canada or the GNWT in such a defence or settlement.

3.2.9 If 3.2.1 or 3.2.2 is not enforceable in relation to a land right, and that

- a) results in the imposition on Canada or the GNWT or any person of any obligations, related to that right, to the Dehcho Dene or any person who is not to exercise or assert it;
- b) affects the ability of Dehcho Citizens, the Dehcho Dene or the Dehcho Government to exercise and enjoy all their rights, authorities, jurisdictions and privileges that are set out in the Agreement; or
- c) affects the ability of any other person or government to exercise and enjoy all the rights, authorities, jurisdictions and privileges they would have if that right did not continue to exist,

the Dehcho First Nations cede, release and surrender, as of the effective date, that land right to the extent required to achieve the purpose in 3.2.4.

3.2.10 If the continued existence of a land right, that under 3.5 or 3.6 is not exercisable or assertable,

- a) results in the imposition on Canada or the GNWT or any person of any obligations, related to that right, to the Dehcho Dene or any person who is not to exercise or assert it;
- b) affects the ability of Dehcho Citizens, the Dehcho First Nations or the Dehcho Government to exercise and enjoy all their rights, authorities, jurisdictions and privileges that are set out in the Agreement; or
- c) affects the ability of any other person or government to exercise and enjoy all the rights, authorities, jurisdictions and privileges they would have if that right did not continue to exist,

the Dehcho Dene cede, release and surrender, as of the effective date, that land right to the extent required to achieve the purpose in 3.2.4.

### **3.3 OTHER ABORIGINAL PEOPLES**

3.3.1 No provision in the Agreement will be construed to

- a) recognize or provide any Aboriginal or treaty rights for any Aboriginal people other than the Dehcho First Nations; or
- b) affect
  - i) any treaty right of any Aboriginal people other than the Dehcho First Nations where the right existed before the provision of the Agreement was in effect, or
  - ii) any Aboriginal rights of any Aboriginal people other than the Dehcho First Nations.

3.3.2 If a superior court of the NWT, the Federal Court of Canada or the Supreme Court of Canada finally determines that 3.3.1 has the effect of rendering a provision of the Agreement wholly or partially inoperative or ineffective because that provision of the Agreement would otherwise affect any right referred to in 3.3.1b),

- a) upon notice by a Party, the Parties shall enter into negotiations for the amendment of the Agreement in order to resolve any problems caused by that provision being inoperative or ineffective and to provide new or replacement rights that are equivalent to or compensate for any rights of Dehcho Citizens, the Dehcho First Nations or the Dehcho Government that would have been enjoyed under the provision; and
- b) if the Parties fail to reach agreement on an amendment under a) within 90 days of the notice, a Party may refer the matter for resolution in accordance with chapter DR.

3.3.3 Despite any other provision in the Agreement, the Dehcho Government may, pursuant to an agreement with another Aboriginal people, agree to share with that Aboriginal people rights held by Dehcho Citizens, the Dehcho First Nations or the Dehcho Government under this Agreement, provided that no such sharing agreement will affect the rights held by persons or peoples who are not party to that sharing agreement.

3.3.4 If an Aboriginal people reaches an agreement with the Dehcho Government and with Canada and the GNWT to modify the authority or structure of [Any board established or referred to for the management or administration of resources in the Dehcho], the Parties will amend the Agreement accordingly.

### 3.4 **VALIDITY OF AGREEMENT**

- 3.4.1 None of the Parties will challenge the validity of any provision of the Agreement.
- 3.4.2 None of the Parties will have a claim or cause of action based on a finding that any provision of the Agreement is invalid.
- 3.4.3 If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the Parties will make best efforts to amend the Agreement to remedy the invalidity or replace the invalid provision.

### **3.5 AMENDMENT**

- 3.5.1 Except as provided in 3.5.9, [or any other provisions that require an amendment], the Agreement may only be amended with the consent of the Parties.
- 3.5.2 If the Dehcho Government proposes the exercise by Dehcho Citizens, the Dehcho First Nations or the Dehcho Government, of a right<sup>4</sup> that is not set out in the Agreement, the Parties shall enter into discussions to determine what their interests are in relation to the proposed right. The Parties may, after these discussions, agree to enter into negotiations for the amendment of the Agreement to incorporate the proposed right.
- 3.5.3 If the Parties do not agree to enter into negotiations within 90 days of receipt under 3.5.2 by government of the proposed right or do not consent to the text of the amendment within one year of agreement to enter into negotiations or such longer period set by the Parties, the Dehcho Government may apply to the Supreme Court of the Northwest Territories for a decision on whether the proposed right is an Aboriginal right of the Dehcho First Nations or Dehcho Citizens, as the case may be. Government has the status of a party in any such application.
- 3.5.4 The Dehcho Government may not make an application under 3.5.3 if it has already made an application in relation to the same proposed right<sup>5</sup> within the preceding five years.

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<sup>4</sup> Tlicho says “...of a right that is not a land right and...”. This is an integral part of Canada’s approach to the “orderly process”.

<sup>5</sup> Canada suggests adding “or another”.

- 3.5.5 If the highest court in which an application under 3.5.3 is considered confirms the existence of an Aboriginal right of the Dehcho First Nations, the Parties shall enter into negotiations to incorporate the right into the Agreement.
- 3.5.6 If the Parties fail to consent to the text of an amendment within one year of the decision by the highest court in which an application under 3.5.3 is considered, or such longer period set by the Parties, the Dehcho Government may submit the issue, as to the text of the amendment, for resolution in accordance with chapter DR.
- 3.5.7 Subject to 3.5.8, an arbitrator under DR [arbitration provisions] is limited to drafting the text to fit the language and format of the Agreement, after consultation with the Parties,
- a) in order to describe the nature and scope of the right, as confirmed by the court; and
  - b) where the right includes a law-making power, in order to confirm that
    - i) the law-making power is concurrent with that of government<sup>6</sup>,
    - ii) a federal law of overriding national importance prevails over any conflict between it and a Dehcho First Nations law made under that power, to the extent of the conflict,
    - iii) a provision of federal legislation that implements an obligation of the Government of Canada under an international agreement prevails over any conflict between it and a Dehcho law made under that power, to the extent of the conflict,
    - iv) except where provided otherwise by the court, federal legislation other than that referred to in (ii) or (iii) prevails over any conflict between it and a Dehcho law made under that power, to the extent of the conflict,
    - v) a provision of territorial legislation that implements an obligation of the Government of Canada under an international agreement prevails over any conflict between it and a Dehcho law made under that power, to the extent of the conflict, and
    - vi) except where provided otherwise by the court, a Dehcho law made under that power prevails over any conflict between it and territorial legislation other than that referred to in (v), to the extent of the conflict.

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<sup>6</sup>Canada suggests that “government” should be defined to mean Canada or the GNWT

- 3.5.8 The arbitrator shall not include in the draft text any financing obligations for any of the Parties notwithstanding any finding of the court.
- 3.5.9 The Agreement shall be considered to be amended in accordance with the text drafted by the arbitrator. The amendment shall be deemed to have been made 30 days after the release of the arbitrator's decision.
- 3.5.10 For the purpose of 3.5.7b)(ii), a federal law of overriding national importance includes a federal law that relates to preservation of peace, order and good government, that relates specifically to the criminal law, human rights or the protection of health and safety of all Canadians or that is essential to national security.

## **CHAPTER 4: DEHCHO COMMUNITY GOVERNMENTS**

- 4.1 DEHCHO COMMUNITY GOVERNMENTS**
- 4.2 STRUCTURE OF DEHCHO COMMUNITY GOVERNMENTS**
- 4.3 DELEGATION**
- 4.4 POWERS TO ENACT LAWS**
- 4.5 ENFORCEMENT**
- 4.6 SANCTIONS**
- 4.7 PROSECUTIONS**
- 4.8 TERRITORIAL COURT**
- 4.8 SUPREME COURT OF THE NORTHWEST TERRITORIES**
- 4.10 PROCEDURES**
- 4.11 ENFORCEMENT OF SANCTIONS**
- 4.12 APPEAL, REHEARING AND REVIEW OF DECISIONS**
- 4.13 INCONSISTENCY OR CONFLICT**
- 4.14 PROGRAMS AND SERVICES**
- 4.15 EXPANSION OF DEHCHO COMMUNITY BOUNDARIES**
- 4.16 DISSOLUTION OR RELOCATION**
- 4.17 ESTABLISHMENT OF NEW DEHCHO COMMUNITY GOVERNMENTS**

### **4.1 DEHCHO COMMUNITY GOVERNMENTS**

- 4.1.1 The Dehcho Community Governments are the community governments in [list Dehcho communities].
- 4.1.2 Dehcho Community Governments represent and serve all residents in their respective communities.
- 4.1.3 The Dehcho Agreement will
  - a) describe the boundary of each Dehcho Community;
  - b) provide for the structures and administration of Dehcho Community Governments and for their dissolution in accordance with 4.16;
  - c) provide for transitional arrangements respecting existing community governments in Dehcho communities, including transfer of their assets and assumption of their liabilities and, where agreed to by the parties, their dissolution;
  - d) set out the powers of the Dehcho Community Governments, including the powers to administer Community Lands and to enter into Municipal Service Agreements;
  - e) describe the procedures through which the Chiefs and Councillors of Dehcho Community Governments may be selected;

- f) describe the authority, if any, of the Government of the Northwest Territories with respect to the operational and financial accountability of Dehcho Community Governments;
- g) provide for the cancellation of any certificate of title or leases issued before the Effective Date for any land that has become Dehcho Community Lands; and
- h) provide for the issuance of a new certificate of title or lease for an interest listed in Schedule XX, where a certificate of title or lease was issued before the Effective Date and cancelled pursuant to 4.1.2 (g).

## 4.2 STRUCTURE OF DEHCHO COMMUNITY GOVERNMENTS<sup>7</sup>

4.2.1 A Dehcho Community Government will be comprised of a Chief and an even number of councillors. No Dehcho Community Government will have less than four councillors. The maximum number of councillors for each Community will be determined in relation to the number of residents in the Community, including children, as confirmed by the most recent Census conducted before the election of the councillors, as follows:

<u>Number of Community Residents</u>	<u>Maximum Number of Councillors</u>
Less than 500	6
500-999	8
1,000-19,999	10
20,000 or more	12

### 4.2.2 The Dehcho Agreement

- a) will recognize the right of Dehcho Communities to choose their leadership according to Dene custom<sup>8</sup> rather than by election;
- b) will define residency in a Dehcho Community [or in Dehcho Ndehe] for the purposes of this chapter;
- c) [for those Dehcho Communities which elect their Chief and Councillors,] will describe eligibility criteria for Dehcho Community Government elections;
- d) may describe the grounds and the processes for removing a Chief or a Councillor from office;
- e) may describe an acclamation process for a Chief or a Councillor;
- f) may provide for a periodic Census for the purposes of 4.2.1;

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<sup>7</sup> This model needs to be revisited and will be discussed by the Parties.

<sup>8</sup> May need to define “Dene custom”. Is custom consistent with public government? And does it meet a democratic minimal test for people’s participation?

- g) may provide for the appointment of a Councillor to act as Sub Chief, who will act as Chief in the absence of the Chief; and
- h) will describe community meetings and the use of referendums.

4.2.3 In Dehcho Community elections, an individual is eligible to vote if that individual

- a) is a Canadian citizen or permanent resident of Canada;
- b) is resident<sup>9</sup> in the Dehcho Community for at least the six months immediately preceding the election;
- c) has been resident in Dehcho Ndehe or Settlement Area or in a Dehcho Community for at least the ~~five-two~~ years<sup>10</sup> immediately preceding the election; and
- d) is at least 18 years of age on the day of the election.

4.2.4 The Chief and Sub-Chief of a Dehcho Community Government must be Dehcho Citizens who are at least 18 years of age and have been resident in the community for at least the two years immediately preceding taking office.

4.2.5 A councillor of a Dehcho Community Government must be an eligible voter who is nominated and elected/selected by eligible voters.

4.2.6 Subject to 4.2.7, in an election for a Dehcho Community Government those candidates with the most votes will be elected as councillors.

4.2.7 At least half of those elected as Community Councillors will be Dehcho Citizens

4.2.8 There will be at least one (1) Community Assembly each calendar year

- a) conducted by the Community Government;
- b) conducted by the Dehcho Government.

### 4.3 DELEGATION

4.3.1 A Dehcho Community Government may delegate any of its powers, except the power to enact laws, to:

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<sup>9</sup> Should only Citizens be eligible to vote for Chief, as in Tlicho, or all residents who meet residency rule? DFN seeking instructions

<sup>10</sup> ~~GNWT and Canada propose a 2-year minimum. DFN seeking instructions.~~ [Key Issues ¶]

- a) a public body or office established by a law of that Dehcho Community Government;
- b) the Dehcho Government or a body or office established by a Dehcho law;
- c) Canada or the Government of the Northwest Territories, including a department, agency or office of either Canada or the Government of the Northwest Territories; or
- d) a public body established by Legislation.

4.3.2 A delegation under 4.3.1 must be in writing and, if under 4.3.1 (b) or (c) must be agreed to by the delegatee.

4.3.3 A Dehcho Community Government has the capacity to enter into agreements to receive powers, including powers to enact laws, by delegation. The delegation agreement may include powers exercisable outside the Dehcho Community and powers to enact laws applicable outside the Dehcho Community.

4.3.4 Where the Dehcho Government has delegated authority to a Dehcho Community Government to deliver programs for which federal or territorial funding would be available to the Dehcho Government if it were delivering the programs, the Dehcho Community Government will be treated as though the Dehcho Government had made the application to Canada or the Government of the Northwest Territories for program funding.

4.3.5 When applying to Canada or the Government of the Northwest Territories for funding under 4.3.4, a Dehcho Community Government will be treated as a separate entity for purposes of calculating the entitlement to and quantum of funding.

#### **4.4 POWERS TO ENACT LAWS<sup>11</sup>**

4.4.1 In addition to [any] other powers provided for in the Dehcho Agreement [for Dehcho Community Governments], a Dehcho Community Government has Jurisdiction of a municipal/community<sup>12</sup> nature within its boundaries with respect to

- a) operations and internal management and procedures;

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<sup>11</sup> Parties to examine potential s.35 responsibilities for Community Governments (i.e. Assembly A and Assembly B).

<sup>12</sup> DFN to review

- b) the purchase and acquisition of real property by the Dehcho Community Government and the sale, lease, disposition, use, holding or development of Dehcho Community Government real property;
- c) [development/ management], use and protection of land including land use planning, zoning and subdivision control<sup>13</sup>
- d) granting utility franchises;
- e) the health, safety, welfare of people and the protection of people and property;
- f) programs, services, and facilities provided by or on behalf of the Dehcho Community Government including, but not limited to, sewers, drainage systems, water distribution and supply, garbage and waste, ambulance services, and recreation;
- g) people, activities and things in, on, or near a public place, or place that is open to the public, including the imposition of curfews;
- h) licensing of businesses, business activities, and Persons engaged in business;
- i) local transportation systems including, but not limited to, buses and taxis;
- j) community roads, except primary highways designated under the *Public Highways Act* (NWT);
- k) restrictions on the operation of All Terrain Vehicles, except on primary highways as defined under the *Public Highways Act* (NWT);
- l) public nuisances, including unsightly property;
- m) domestic animals and activities in relation to them;
- n) community flag, crest and coat of arms;
- o) traditional Dehcho Dene cultural and recreational games, including hand games.<sup>14</sup>

4.4.2 Regulation of land under Part 3 of the *Mackenzie Valley Resource Management Act* (Canada) applies to lands within a Dehcho Community except where the Dehcho Community Government exercises Jurisdiction under 4.4.1 in respect of those lands.<sup>15</sup>

4.4.3 A Dehcho Community Government has Jurisdiction and Authority within its Community Boundary that are the same as the Jurisdiction and Authority of municipalities under Territorial Law in relation to:

- a) the borrowing of money;

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<sup>13</sup> DFN suggested adding in “environmental control”. DFN want jurisdiction over Plants and Trees to be specifically mentioned.

<sup>14</sup> DFN proposal. Canada is ok with proposal and GNWT is reviewing,

<sup>15</sup> ~~DFN is opposed to this clause.~~ [Key Issues ¶]

- b) fire protection and prevention;
- c) emergency preparedness and emergency measures;
- d) motor vehicles;
- e) expropriation of interests in lands;
- f) property taxation;
- g) property assessment; and
- i) any other matter that may be provided for in Territorial Law not addressed by 4.4.1.

4.4.4 In exercising its Jurisdiction and Authority pursuant to 4.4.3, the Dehcho Community Government will perform those duties that are the same as with the duties of municipalities under Territorial Law.

4.4.5 The Jurisdiction of the Dehcho Community Government set out in 4.4.1 and 4.4.3 does not include:

- a) establishing a land titles system;
- b) consumer protection;
- c) regulation of utilities; and
- d) occupational health and safety.

4.4.6 For greater certainty, the authority of a Dehcho Community Government to make laws in respect of a subject matter as set out in the Dehcho Agreement includes the authority to make laws and do other things as may be necessarily incidental to exercising that authority.

4.4.7 Dehcho Community Government Laws made pursuant to 4.4.1 and 4.4.3 will ensure that health, safety and environmental standards, and technical codes regarding public works, community infrastructure and local services, that are at least equivalent to federal and NWT health, safety and environmental standards and technical codes.

4.4.8 The Government of the Northwest Territories will confer with the Dehcho Community Governments prior to amending or establishing standards and technical codes referred to 4.4.7.

4.4.9 A Dehcho Community Government will have standing to make representations to the Public Utilities Board, or any other administrative decision-maker established pursuant to Territorial Law, when the Board or decision-maker considers any matter which:

- a) is within the jurisdiction of the Board or decision maker affecting the provision of a public utility service within the Dehcho Settlement Area; and
- b) may impact upon the Dehcho Community Government.

4.4.10 Notwithstanding the geographic limits applicable to Dehcho Community Government Laws, by agreement between the Dehcho Community Government and the Government of the Northwest Territories, such Dehcho Community Laws may apply outside the community boundaries in order to facilitate the delivery of services.

4.4.11 The Dehcho Community Government has Jurisdiction with respect to the prohibition, taxation,<sup>16</sup> or control of the sale, exchange, possession, or consumption of Liquor or any other Legal Intoxicants<sup>17</sup> within Community Boundaries.

4.4.12 The Jurisdiction under 4.4.11 does not include:

- a) the manufacture of Liquor;
- b) the importing of Liquor into the NWT;
- c) the distribution of Liquor within the NWT; and
- d) the exporting of Liquor.

4.4.13 A licence or approval of gaming or gambling in the Community Boundaries will only be issued with the consent of the Dehcho Community Government.

4.4.14 The consent of the Dehcho Community Government pursuant to 4.4.13 may include terms and conditions, provided that any such terms and conditions are consistent with Federal Law and NWT Law.

4.4.15 Nothing in the Dehcho Agreement will be construed to restrict the ability of the Dehcho Community Government to participate in the regulation, conduct or management of gaming and gambling permitted under any Federal Law or NWT Law.<sup>18</sup>

## 4.5 ENFORCEMENT

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<sup>16</sup> Canada and GNWT's view is to remove reference to taxation in 4.4.11 and to achieve this type of taxation through side agreements.

<sup>17</sup> DFN proposal. Canada and GNWT reviewing,

<sup>18</sup> DFN reviewing adding in 4.4.13, 4.4.14, and 4.4.15.

- 4.5.1 A Dehcho Community Government is responsible for the enforcement of its Dehcho Community Laws.
- 4.5.2 A Dehcho Community Government may make laws for the enforcement of its Dehcho Community Laws.
- 4.5.3 A Dehcho Community Law made pursuant to 4.5.2 may provide for:
- a) the appointment of officers to enforce Dehcho Community Law; and
  - b) powers of enforcement, provided such powers will not exceed those provided by Territorial Law for officers enforcing similar laws in the Northwest Territories.
- 4.5.4 A Dehcho Community Law pursuant to 4.5.2 does not include the authority to:
- a) establish a police force or appoint police officers or peace officers; or
  - b) authorize the carriage or use of firearms or restricted weapons by enforcement officers.
- 4.5.5 A Dehcho Community Law pursuant to 4.5.3 will provide for training standards and accountability standards for enforcement officers that are in accordance with generally recognized standards for enforcement officers in other municipal jurisdictions in the Northwest Territories.
- 4.5.6 A Dehcho Community Government may enter into agreements with the Dehcho Government, Government of the Northwest Territories or Canada regarding:
- a) the enforcement of Dehcho Community Laws; and
  - b) the prosecution of violations of Dehcho Community Laws.

#### **4.6 SANCTIONS**

- 4.6.1 Subject to 4.6.2 and 4.6.3, the jurisdiction of a Dehcho Community Government set out in the Dehcho Agreement includes the jurisdiction to provide for the imposition of a term of imprisonment or a fine, or both, as a consequence of a violation of Dehcho Community Law.
- 4.6.2 A Dehcho Community Law may provide for maximum fines or penalties that are no greater than those which may be imposed for comparable regulatory offences punishable on summary conviction offenses under Territorial Law.

- 4.6.3 Where there is no comparable regulatory offence under Territorial Law, a Dehcho Community Law may provide for a maximum fine or penalty that is no more than the greater between the general penalty provision for the summary conviction offences under the [Criminal Code of Canada or under] Territorial Law.

#### **4.7 PROSECUTIONS**

- 4.7.1 A Dehcho Community Government is responsible for the prosecution of violations of a Dehcho Community Law. A Dehcho Community Government will:
- a) appoint individuals responsible for the prosecution of violations of Dehcho Community Law or enter into agreements with existing prosecution services; and
  - b) ensure that the prosecutorial services are consistent with standards of a public prosecutor for the prosecution of similar types of offences in Canada.

#### **4.8 TERRITORIAL COURT**

- 4.8.1 Where no Dehcho Court has been established pursuant to 25.7.1, the Territorial Court will hear and determine civil matters arising under Dehcho Community Law if the matter would have been within the jurisdiction of the Territorial Court under Territorial Law.
- 4.8.2 Where no Dehcho Court has been established pursuant to 25.7.1, a judge of the Territorial Court or a Justice of the Peace will hear and determine violations of Dehcho Community Law if the matter would have been within the jurisdiction of the Territorial Court or a Justice of the Peace, as the case may be, under Territorial Law.

#### **4.9 SUPREME COURT OF THE NORTHWEST TERRITORIES**

- 4.9.1 The Supreme Court of the Northwest Territories will hear appeals of decisions of the Territorial Court or Justices of the Peace in relation to Dehcho Community Law.
- 4.9.2 The Supreme Court of the Northwest Territories will hear and determine:
- a) civil matters arising under Dehcho Community Law; and
  - b) challenges to Dehcho Community Law,

if the matter would have been within the jurisdiction of the Supreme Court of the Northwest Territories under [Federal Law or] Territorial Law.

- 4.9.3 In addition to any other remedy available to it, a Dehcho Community Government may enforce a Dehcho Community Law by applying to the Supreme Court of the Northwest Territories for an injunction in accordance with the Rules of the Supreme Court.

#### **4.10 PROCEDURES**

- 4.10.1 A Dehcho Community Law will adopt:

- a) [the summary conviction procedures of Part XXVII of the Criminal Code; or]
- b) Territorial Law relating to proceedings in respect of offences that are established by Territorial Law.

- 4.10.2 Any proceeding under 4.8 will follow the procedures of the Territorial Court.

- 4.10.3 Any proceeding under 4.9 will follow the Rules of the Supreme Court of the Northwest Territories.

#### **4.11 ENFORCEMENT OF SANCTIONS**

- 4.11.1 The Government of the Northwest Territories is responsible for enforcing fines or terms of probation and imprisonment imposed by the Territorial Court or the Supreme Court of the Northwest Territories for violations of Dehcho Community Law in the same manner as those imposed under Federal Laws and Territorial Laws.

- 4.11.2 The Government of the Northwest Territories shall pay to a Dehcho Community Government the proceeds of fines imposed by the Territorial Court or the Supreme Court of the Northwest Territories for violations of Dehcho Community Law.

#### **4.12 APPEAL, REHEARING AND REVIEW OF DECISIONS**

- 4.12.1 A Dehcho Community Law will:

- a) provide for a right of appeal, or a right to seek a rehearing, to Persons who are directly affected by decisions of a Dehcho Community Government or a public body or office established pursuant to 4.1.3.a); and

- b) establish the appropriate appeal and rehearing procedures and mechanisms.<sup>19</sup>

4.12.2 The Supreme Court of the Northwest Territories will have exclusive jurisdiction to hear applications for judicial review of the decisions of a Dehcho Community Government or a public body or office established pursuant to 4.1.3.a).

#### **4.13 INCONSISTENCY OR CONFLICT**

4.13.1 In the event of a conflict between a Dehcho Community Government Law made pursuant to 4.4.1 or 4.4.11 and a Federal Law or Territorial Law, the Dehcho Community Government Law prevails to the extent of the conflict.

4.13.2 In the event of a conflict between a Dehcho Community Government Law made pursuant to 4.4.3 and a Federal Law or Territorial Law, the Federal Law or Territorial Law prevails to the extent of the conflict.

4.13.3 In the case of conflict between a Dehcho law and a law enacted by a Dehcho Community Government, the Dehcho law will prevail to the extent of the conflict.<sup>20</sup>

#### **4.14 PROGRAMS AND SERVICES**

4.14.1 A Dehcho Community Government may enter into agreements with government, other community governments or the Dehcho Government to deliver, administer and manage programs and services for residents of a Dehcho Community.

4.14.2 Programs and services delivered and managed by a Dehcho Community Government will be funded at levels comparable to funding levels for similar programs and services in other communities in the Northwest Territories. Where the Dehcho Community Government and the Government of the Northwest Territories do not reach agreement on funding levels, the Dehcho Community government may refer, for resolution under chapter 46, the question as to whether the method used for determining comparable funding levels is equitable.

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<sup>19</sup> LTC to consider a default for appeals for community laws and to check if there is a default for Dehcho Laws. Clause should be linked to 25.6 Dehcho Government Administrative Boards.

<sup>20</sup> Canada is considering in context of government models and Constitution.

4.14.3 Prior to the Dehcho Agreement, the Parties will discuss practical outcomes for the coordination of programs and services between or among different levels of government.

#### **4.15 EXPANSION OF DEHCHO COMMUNITY BOUNDARIES**

4.15.1 The boundary of a Dehcho Community may, in accordance with the Dehcho Agreement and the Appendix to this chapter, be expanded.

#### **4.16 DISSOLUTION OR RELOCATION**

4.16.1 The agreement of the Parties is required before a Dehcho Community Government is dissolved or before a Dehcho Community is relocated.

4.16.2 An agreement under 4.16.1 will, subject to chapter 5, make provision for all assets and liabilities of the Dehcho Community Government.

4.16.3 In the agreement under 4.16.1, the Parties will describe the amendment to the Dehcho Agreement required to reflect the dissolution of any Dehcho Community Government or the relocation of any Dehcho Community.

4.16.4 The dissolution of a Dehcho Community Government or the relocation of a Dehcho Community is not effective until the amendment to the Dehcho Agreement referred to in 4.16.3 is ratified in accordance with the Dehcho Agreement.

#### **4.17 ESTABLISHMENT OF NEW DEHCHO COMMUNITY GOVERNMENTS**

4.17.1 A new Dehcho Community Government will only be established by agreement among the Parties.

4.17.2 In the agreement under 4.17.1, the Parties will describe the amendment to the Agreement required to reflect the establishment of a new Dehcho Community Government.

4.17.3 The establishment of a new Dehcho Community Government is not effective until the amendment to the Agreement referred to in 4.17.2 is ratified in accordance with the Dehcho Agreement.

#### APPENDIX TO CHAPTER 4

##### PROCESS FOR EXPANSION OF THE BOUNDARY OF A COMMUNITY (4.15.1)

1. The Government of the Northwest Territories and the Dehcho Government will negotiate an agreement to expand the boundary of a Dehcho Community at the written request of the Dehcho Community Government.<sup>21</sup>
2. The territorial Minister may not expand the boundary of a Dehcho community except at the written request of the Dehcho community government.<sup>22</sup>
3. The consent of the Dehcho Government is required where the expansion of the boundary would be into an area containing Dehcho Ndehe.
4. Before requesting the territorial Minister to expand the boundary of a Dehcho community into an area containing Dehcho Ndehe, the Dehcho community government will discuss with the Dehcho Government the need for the expansion and will attempt to negotiate an agreement with the Dehcho Government for the conveyance of the Dehcho Ndehe required for the expansion.
5. If the negotiations pursuant to section 1 of this Appendix fail to reach agreement, either the GNWT or the relevant Dehcho Community Government may refer the matter to mediation and / or arbitration under chapter DR.<sup>23</sup>

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<sup>21</sup> DFN proposal. GNWT suggest deleting current #1.

<sup>22</sup> GNWT suggest as a new #2: Upon receiving a written request from a Dehcho Community Government proposing to change in that Dehcho Community's Boundary, the Minister will meet with officials from that Dehcho Community within 90 days of receiving the request, or at a time agreed to by the parties, to discuss the proposal.

<sup>23</sup> DFN proposal. GNWT suggests deleting current #5 and propose to reverting back to previous proposal: "Where the territorial Minister receives a request from a Dehcho community government but decides not to expand the boundary of the community, the Minister will provide written reasons to the community government for that decision."

## CHAPTER 6: DEHCHO GOVERNMENT

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6.2	GENERAL POWERS
6.3	DELEGATION
6.4	LAW MAKING POWERS
6.5	JUDICIAL POWERS
6.6	CONFLICT OF LAWS
6.7	REGISTER OF DEHCHO LAWS
6.8	INTERGOVERNMENTAL ARRANGEMENTS
6.9	INTERGOVERNMENTAL MEETINGS
6.10	COORDINATION OF PROGRAM AND SERVICE DELIVERY
6.11	INTERNATIONAL LEGAL OBLIGATIONS
6.12F	TRANSITIONAL

6.1.1 The Dehcho Government will be recognized at the Effective Date. The Constitution of the Dehcho Government will be approved by a DFN Assembly before the Ratification Vote referred to in EE xxx.

- 6.1.2 Consistent with the Dehcho Agreement, the Dehcho Constitution will provide for:
- a) governing bodies and the exercise of their powers and duties and their composition, membership and procedures;
  - b) protections for Dehcho Citizens and Dehcho Residents, and for other individuals to whom Dehcho laws apply, by way of rights and freedoms no less than those set out in the *Canadian Charter of Rights and Freedoms*;
  - c) a system of political and financial accountability to Dehcho Citizens and Dehcho Residents;
  - d) the selection of regional and community leaders through democratic processes;
  - e) the challenging of the validity of Dehcho Laws by any Person directly affected by such laws and the striking out of invalid laws;
  - f) implementation of the principle that Persons directly affected by any programs or services delivered by any Dehcho Government institution should have an opportunity to participate in the decision making process with respect to the management and delivery of those programs and services;
  - g) the possibility that individuals who are not Dehcho Citizens may be appointed or elected as members of Dehcho Government institutions;

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<sup>24</sup> Need to revisit constitution and structure once a governance model is devised. Need to understand who the constitution applies to and the amending formula.

- h) amendment of the Constitution;
- i) Dehcho public assemblies (annual and special); and
- j) role of referendums.

6.1.3. The governing body of the Dehcho Government that exercises its law making powers and its primary executive functions will include at least

- a) a Grand Chief, who is a Dehcho Dene, elected at large by eligible Dehcho Residents and Dehcho Citizens;<sup>25</sup>
- b) the Chief of each Dehcho Community Government; and
- c) one representative from each Dehcho Community selected by the residents of that Community.

6.1.4 A majority of the members of the governing body of the Dehcho Government will be Dehcho Citizens.

6.1.5 There will be at least one (1) General Assembly each calendar year.

6.1.6 The Dehcho Government will participate in at least one (1) Community Assembly in each Dehcho Community each calendar year as set out in 4.2.8b).<sup>26</sup>

6.1.7 To the extent of any conflict or inconsistency between the Dehcho Constitution and the Dehcho Agreement, the Agreement will prevail.

6.1.8 Every individual will have reasonable access to a copy of the Dehcho Constitution during normal hours, and, upon request, the Dehcho Government will provide, at cost, copies of the Constitution. In addition, the Dehcho Government will make the Constitution available for viewing at any time on the website of the Dehcho Government.

## 6.2 GENERAL POWERS

6.2.1 The Dehcho Government is a legal entity with the legal capacity of a natural person, including but not limited to, the ability to

- a) enter into contracts or agreements;
- b) acquire and hold property, including real property, and any interest therein, sell or otherwise dispose of property or any interest therein;

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<sup>25</sup> DFN seeking instructions on eligibility to vote for GC.

<sup>26</sup> Canada thinks that this should be in the Constitution, or a clause should be added to say that this is at no further cost to Canada

- c) raise, invest, expend and borrow money;
- d) sue or be sued;
- e) form corporations or any other legal entities; and
- f) do such other things as may be conducive to the exercise of its rights, powers and privileges.

6.2.2 For greater certainty, the Dehcho Government may establish trusts and administrative boards, commissions and tribunals and other bodies to perform functions identified in Dehcho Laws.

### 6.3 DELEGATION

6.3.1 The Dehcho Government may delegate any of its powers, except the power to enact laws, to:

- a) a body or official established by Dehcho Law;
- b) Canada or the Government of the Northwest Territories, including a department, agency or office of either Canada or the Government of the Northwest Territories;
- c) a board, or other public body established by Federal Law, Territorial Law or Dehcho Law; or
- d) a Dehcho Community Government or other municipal government.

6.3.2 A delegation under 6.3.1 must be in writing and, if under 6.3.1 (b), (c) or (d), must be agreed to by the delegate.

6.3.3 The Dehcho Government has the capacity to enter into agreements to receive powers, including powers to enact laws, by delegation.

### 6.4 LAW MAKING POWERS

6.4.1 In addition to its other powers, as set out in the Dehcho Agreement, the Dehcho Government has the ~~exclusive~~<sup>27</sup> jurisdiction to enact laws in relation to

- a) the structure of the Dehcho Government and its internal management; and
- b) the management and exercise of rights and benefits provided under the Dehcho Agreement to Dehcho Citizens, to the Dehcho First Nations

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<sup>27</sup> ~~Canada and GNWT are not prepared to recognize any exclusive heads of jurisdiction.~~ [Key Issues ¶1]

- c) or to the Dehcho Government, including those relating to the harvesting of Wildlife, Fish, Migratory Birds, Plants and Trees;<sup>28 29</sup> and any matters ancillary to (a) or (b).

6.4.2 In addition to its other powers, as set out in the Dehcho Agreement the Dehcho Government has the power to enact laws in relation to

- a) the identification of Dehcho Citizens;
- b) licensing of businesses, business activities, and Persons engaged in business of a local nature on Dehcho Ndehe;
- c) the control or prohibition of the transport, sale, manufacture, possession or use of weapons and dangerous substances on Dehcho Ndehe;
- d) the control or prohibition of the transport, sale, possession or use of Liquor or other Legal Intoxicants<sup>30</sup> on Dehcho Ndehe; **and**
- e) protections for the human rights and civil rights of Dehcho Citizens and Dehcho Residents, and for other individuals to whom Dehcho laws apply, by way of rights and freedoms no less than those set out in the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and the NWT Human Rights Act; **and**
- f) ~~trusts.~~<sup>31</sup>

6.4.3 For greater certainty, the authority of the Dehcho Government to make laws in respect of a subject matter as set out in the Dehcho Agreement includes the authority to make laws and do other things as may be necessarily incidental to exercising that authority.

6.4.4 Within 120 days of the Effective Date the Dehcho Government will enact a Dehcho Law providing for the issuance of identification cards that can be used to identify Dehcho Citizens while they are exercising their rights under the Dehcho Agreement. The Dehcho Government will use best efforts to issue such identification cards within a year of the law being passed.

## 6.5 JUDICIAL PROCEEDINGS

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<sup>28</sup> Need to provide that only reps of Dene vote on matters relating to treaties. The Parties are generally in agreement. Need to resolve which jurisdictions will fall under Assembly A and which under Assembly B.

<sup>29</sup> Canada is considering GNWT's proposal: "The Dehcho Government has the power to enact laws consistent with the Dehcho Agreement in relation to the management and exercise of rights and benefits provided under the Agreement to Dehcho Citizens, to the Dehcho First Nation or to the Dehcho Government including those related to harvesting of wildlife, plants and trees."

<sup>30</sup> DFN proposal. Canada and GNWT are considering.

<sup>31</sup> ~~The Parties are continuing to review. Canada notes that this is a matter for Finance Canada.~~ [Key Issues ¶]

6.5.1 The Dehcho Government will have standing in any judicial proceedings, including any other dispute resolution proceedings, to act on behalf of any individual Dehcho Citizen or Dehcho Resident, except where that Dehcho Citizen or Resident objects, or on behalf of the Dehcho First Nations with respect to rights or benefits under the Dehcho Agreement.

6.5.2 In any legal proceedings which could impact on the rights or benefits of Dehcho Citizens or Dehcho Residents, as set out in the Dehcho Agreement, the courts will give serious consideration to the culture and customs of the Dehcho Dene.

## **6.6 CONFLICT OF LAWS**

6.6.1 Unless otherwise provided in the Dehcho Agreement, the powers of the Dehcho Government to enact laws will be concurrent with those of Canada or the Government of the Northwest Territories, as the case may be.

6.6.2 In the event of a conflict between a Dehcho Law made pursuant to 6.4.1 and a Federal or Territorial Law, the Dehcho Law will prevail to the extent of the conflict.

6.6.3 In the event of a conflict between a Dehcho Law made pursuant to 6.4.2 and a Federal or Territorial Law, the Federal or Territorial Law will prevail to the extent of the conflict.

## **6.7 REGISTER OF DEHCHO LAWS**

6.7.1 The Dehcho Government will maintain, at its main offices and on its website, a register on which it will enter the text of all Dehcho Laws, including any amendment to those laws.

6.7.2 Every individual will have reasonable access to the register.

6.7.3 The Dehcho Government upon request will provide, at cost, hard copies of Dehcho Laws.

## **6.8 INTERGOVERNMENTAL ARRANGEMENTS<sup>32</sup>**

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<sup>32</sup> GNWT proposal. Under review by Canada,

6.8.1 The Parties recognize that ongoing relations on a government-to-government basis among the Dehcho Government, the Government of the Northwest Territories and Canada are essential for implementing the Agreement.

6.8.2 The Parties recognize that these ongoing relations are best achieved through a collaborative relationship at both the political level and the administrative level.

## **6.9 INTERGOVERNMENTAL MEETINGS**

6.9.1 The Parties will meet within three years after the Effective Date and thereafter on a periodic basis to:

- a) maintain open lines of communication between them; and
- b) discuss matters of concern to any Party.

## **6.10 COORDINATION OF PROGRAM AND SERVICE DELIVERY**

6.10.1 The Parties may enter into agreements to coordinate the delivery of programs and services or to otherwise harmonize program and service delivery, or enter into arrangements for information sharing, record keeping or other measures as may be agreed upon.

## **6.11 INTERNATIONAL LEGAL OBLIGATIONS<sup>33</sup>**

6.11.1 The following definition applies in 6.11:

“international treaty” means an agreement governed by international law and concluded in written form

- a) between States; or
- b) between one or more States and one or more international organizations,

whether that agreement is embodied in a single instrument or in two or more related instruments and whatever its particular designation.

6.11.2 Prior to consenting to be bound by an international treaty that may affect a right of the Dehcho Government, the Dehcho Government or a Dehcho Citizen, Canada will provide an opportunity for the Dehcho Government to make its views known with respect to the international treaty.

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<sup>33</sup> Canada is reviewing.

- 6.11.3 Where Canada informs the Dehcho Government that it considers that a law or other exercise of power of the Dehcho Government causes Canada to be unable to perform an international legal obligation, the Dehcho Government and Canada will discuss remedial measures to enable Canada to perform the international legal obligation. Subject to 6.11.4, the Dehcho Government will remedy the law or other exercise of power to the extent necessary to enable Canada to perform the international legal obligation.
- 6.11.4 Where Canada and the Dehcho Government disagree over whether a law or other exercise of power of the Dehcho Government causes Canada to be unable to perform an international legal obligation, the dispute will be resolved pursuant to chapter DR. If the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the law or other exercise of power of the Dehcho Government does not cause Canada to be unable to perform the international legal obligation, Canada will not take any further action for this reason aimed at changing the Dehcho Law or other exercise of power. If the arbitrator, having taken into account all relevant considerations including any reservations and exceptions available to Canada, determines that the Dehcho Law or other exercise of power causes Canada to be unable to perform the international legal obligation, the Dehcho Government will remedy the law or other exercise of power to enable Canada to perform the international legal obligation.
- 6.11.5 Canada will consult the Dehcho Government in the development of positions taken by Canada before an international tribunal where a law or other exercise of power of the Dehcho Government has given rise to an issue concerning the performance of an international legal obligation of Canada. Canada's positions before the international tribunal will take into account the commitment of the Parties to the integrity of this Agreement.
- 6.11.6 Notwithstanding 6.11.4, if there is a finding of an international tribunal of nonperformance of an international legal obligation of Canada attributable to a law or other exercise of power of the Dehcho Government, the Dehcho Government will, at the request of Canada, remedy the law or action to enable Canada to perform the international legal obligation consistent with the compliance of Canada.
- 6.11.7 For greater certainty, reference to Canada's international legal obligations in the Agreement includes those that are in force on or after the Effective Date.

**6.12 TRANSITIONAL<sup>34</sup>**

- 6.12.1 On the effective date, the Dehcho First Nations and the (list) bands and Métis locals cease to exist and are succeeded by the Dehcho Government and Community Governments.
- 6.12.2 On the Effective Date, the assets and liabilities of the bands referred to in 10.1 will become the assets and liabilities of the Dehcho Government and Community Governments.
- 6.12.3 Any monies held by Canada for the use and benefit of the bands referred to in 10.1 will be transferred to the Dehcho Government and Community Governments as soon as practicable after the Effective Date.
- 6.12.4 On the effective date,
- a) any assets or liabilities of the Dehcho First Nations become the assets and liabilities of the Dehcho Government; and
  - b) the Leadership of the Dehcho First Nations that is in office immediately before that date becomes the governing body of the Dehcho Government until replaced in accordance with the Dehcho Constitution.

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<sup>34</sup> This section may need to be removed and place in Chapter 45 Transition.

## CHAPTER 7: DEHCHO NDEHE

7.1	DEHCHO TITLE
7.2	SPECIFIED SUBSTANCES
7.3	CONTAMINATED SITES
7.4	BOUNDARIES AND SURVEYS
7.5	REGISTRATION
7.6	ADMINISTRATION OF EXISTING RIGHTS AND INTERESTS
7.7	ROYALTIES AND NON-REFUNDED RENTS

### 7.1 DEHCHO TITLE

7.1.1 The Dehcho Government, on behalf of the Dehcho Dene, will be vested with title, which may be referred to as “Dehcho title”, to the lands the boundaries of which are shown on the map described in part 1 of the appendix to this chapter, totaling approximately X<sup>35</sup> square kilometres, including the mines and minerals that may be found to exist within, upon or under such lands, subject to the interests listed in part 2 of the appendix to this chapter, and to any renewals or replacements of such interests, and to the interests granted under 7.1.2.

7.1.2 Before the Effective Date, an individual authorized by the Dehcho First Nations may, on behalf of the Dehcho Government, execute an agreement for the granting of an interest described in part 3 of the appendix to this chapter. All such interests will come into effect on the Effective Date and the agreement will bind the Dehcho Government on whose behalf it was executed.

7.1.3 Before the Effective Date, the Parties may amend part 3 of the appendix to this chapter by adding thereto the descriptions of additional interests.

7.1.4 During the first year after the Effective Date, the Parties will amend part 2 of the appendix to this chapter to include any interests granted before the Effective Date that are still in effect immediately before that date. Any such amendment will be deemed to have been made immediately before the Effective Date.

7.1.5 In the case of a dispute among the Parties as to whether any interest has been granted before the Effective Date or is still in effect immediately before that

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<sup>35</sup>The Dehcho’s tabled land quantum offer is 80,000 square kilometres and 5% general interest surface and subsurface ownership of the remaining area excluding the 80,000. The Dehcho’s tabled land quantum excludes the Edézhie and Nahanni Park. Canada’s tabled land quantum offer is 39,336 sq km. [Key Issues ¶]

date, one of the Parties may refer the dispute for resolution in accordance with DR. Any interest that an arbitrator determines under DR to have been granted before the Effective Date and to still have been in effect immediately before that date will be deemed to have been included in part 2 of the appendix to this chapter immediately before the Effective Date.<sup>36</sup>

- 7.1.6 During the first year after the Effective Date, the Parties may amend part 2 of the appendix to this chapter to correct an error in the reference to an interest or to remove an interest that did not exist immediately before the Effective Date. Any such amendment will be deemed to have been made immediately before the Effective Date.
- 7.1.7 Dehcho title is held in the form of fee simple title. The form of title will not be construed as having the effect of extinguishing any rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. Title held by the Dehcho Government to Dehcho Ndehe ~~does not include~~ title<sup>37</sup> to water in, on or under the lands.
- 7.1.8 Unless otherwise provided on the map described in part 1 of the appendix to this chapter or on a registered plan of survey of the boundaries of Dehcho Ndehe,
- a) Dehcho title will include title to the beds of lakes, rivers and other water bodies wholly contained within the boundaries of Dehcho Ndehe;
  - b) where a boundary of Dehcho Ndehe crosses a lake, river or other water body, Dehcho title will include the portion of the bed of that water body within the boundaries of Dehcho Ndehe; and
  - c) Dehcho title will not include title to the bed of any lake, river or other water body or to any island in a water body where the water body is shown or described as a boundary of Dehcho lands.
- 7.1.9 Fee Simple interests in Dehcho Ndehe may only be conveyed by the Dehcho Government to
- a) A Dehcho Community Government or the Government of the Northwest Territories or Canada; or

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<sup>36</sup> Canada and GNWT considering consequences of different DR processes. To be addressed at LTC.

~~<sup>37</sup> Canada does not intend to include title to water in, on or under the lands. This is consistent with other land claim agreements.~~ [Key Issues ¶]

- b) Canada, the Government of the Northwest Territories or another expropriating authority, in circumstances where that authority could expropriate those lands pursuant to the Dehcho Agreement.

7.1.10 The lands conveyed by the Dehcho Government under 7.1.9(b) cease to be Dehcho Ndehe and any lands the fee simple title to which is received in exchange<sup>38</sup> become Dehcho Ndehe.

7.1.11 7.1.9 will not be interpreted to prevent the Dehcho Government from granting leases or licences to any person for the use and occupancy of Dehcho Ndehe, or from granting rights to any Person to remove natural resources, including minerals, and to own such resources upon removal.

7.1.12 Dehcho Ndehe lands are not subject to seizure or sale under court order, writ of execution or any other process whether judicial or extra-judicial.

7.1.13 Dehcho Ndehe will not be mortgaged, charged or given as security.

7.1.14 7.1.12 and 7.1.13 do not apply to any leasehold interest in Dehcho Ndehe or to any mortgage, charge or security granted in respect of such a leasehold interest.

7.1.15 No Person may acquire by prescription an estate or interest in Dehcho Ndehe.

7.1.16 Subject to chapter 8 (Access), any access route across Dehcho Ndehe which is established or improved after the Effective Date will, unless the Dehcho Government otherwise agrees, remain Dehcho Ndehe and not be a highway or public road, by operation of law or otherwise.

## **7.2 SPECIFIED SUBSTANCES**

7.2.1 The holder of a mining right listed in part 2 of the appendix to this chapter or that is a renewal or replacement thereof granted by Canada or the Government of the Northwest Territories, has the right to take, use, damage or destroy Specified Substances in those lands, incidentally in the course of exercising that mining right, but will, where practicable, exercise such rights so as to minimize interference with the right of the Dehcho Government to work specified substances.

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<sup>38</sup> Canada is reviewing this clause and qualifying language within settlement area and subsurface rights and also considering developing draft language in the event land within a community boundary is provided in exchange. LTC to review in conjunction with language to be drafted for Expropriation (39.7.8).

7.2.2 No compensation will be paid to the Dehcho Government in respect of any Specified Substances taken, used, damaged or destroyed in accordance with 7.2.1.

7.2.3 Any specified substances taken, used, damaged or destroyed in accordance with 7.2.1 will be the property of the holder of the mining right referred to in 7.2.1, except that the specified substances that are still on the land that is subject to that mining right when the right terminates become the property of the Dehcho Government.

### **7.3 CONTAMINATED SITES**

7.3.1 Where Canada or the Government of the Northwest Territories undertakes any program respecting the clean-up of contaminated sites on Crown lands in the Settlement Area, the program will, at the discretion of the Dehcho Government, apply to such sites on Dehcho Ndehe that are listed in part 4 of the appendix to this chapter as if the lands were Crown lands.

7.3.2 After the Effective Date, the Parties may agree that a site not listed in part 4 of the appendix to this chapter existed on the Effective Date and, upon consent of the Parties, the list in that part of the appendix to this chapter will be considered to have been amended to include that site.

7.3.3 Any dispute as to whether a contaminated site existed on the Effective Date will be referred for arbitration in accordance with the Dispute Resolution chapter by a Party. If a dispute goes to an arbitrator in accordance with chapter DR and if the arbitrator confirms that a site existed on the Effective Date, the list in part 4 of the appendix to this chapter will be considered to have been amended to include that site.

7.3.4 Canada or the Government of the Northwest Territories will be responsible for the costs associated with any clean-up under 7.3.1 on Dehcho Ndehe. This provision will not prevent Canada or the Government of the Northwest Territories from recovering any costs associated with the clean-up from a Person who is liable for these costs.

7.3.5 The Dehcho Government will be solely responsible for the Remediation of Contaminated Sites which become contaminated on Dehcho Ndehe following the Effective Date. This provision will not prevent the Dehcho Government from recovering any costs associated with the clean-up from a Person who is liable for these costs.

7.3.6 No compensation will be payable for damage which may be caused to Dehcho Ndehe as a result of the clean-up of Dehcho Ndehe under 7.3.1.

7.3.7 Canada and the Government of the Northwest Territories will not be liable for any loss or damage to a Dehcho Citizen, to the Dehcho First Nations or to the Dehcho Government from contaminated sites on Dehcho Ndehe whether or not they are known on the Effective Date. This provision does not affect any obligation of government under 7.3.1 and 7.3.4.

#### **7.4 BOUNDARIES AND SURVEYS<sup>39</sup>**

7.4.1 Canada will survey the boundaries of Dehcho Ndehe in accordance with the instructions of the Surveyor General and the *Canada Lands Survey Act* within the time specified in the Implementation Plan.

7.4.2 Canada will be responsible for the cost of the survey conducted under 7.4.1.

7.4.3 During the survey conducted under 7.4.1,

- a) those portions of seismic lines and other artificial features used as reference points for the boundaries of Dehcho Ndehe will be monumented by Canada sufficiently, as determined by the Surveyor General, to define their location; and
- b) natural features used as reference points for boundaries of Dehcho Ndehe will be photographed by Canada.

7.4.4 Where the map described in part 1 of the appendix to this chapter indicates that a part of a boundary of Dehcho Ndehe is defined by reference to natural features but, during the survey conducted under 7.4.1, it is found that the natural features

- a) are not well defined;
- b) do not exist; or
- c) are not located, in relation to other features used as reference points for the boundaries of Dehcho Ndehe, where the map indicates they would be,

the Surveyor General will have the authority, in consultation with the Parties, to mark that part of the boundary on the ground and show it on the plan of

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<sup>39</sup> Devolution will likely affect references to Canada in the agreement. Canada is reviewing. GNWT support s. 7.4 as drafted.

survey in a location that reflects as closely as possible the intention of the Parties when the map was finalized.

- 7.4.5 The Dehcho Government will be responsible for the cost of surveys associated with the leasing and subdivision of Dehcho Ndehe.
- 7.4.6 Boundaries of Dehcho Ndehe that are defined by reference to natural features will change with the movements of the natural features as long as these movements are gradual and imperceptible from moment to moment.
- 7.4.7 Where there is a dispute respecting the boundary of an interest that is listed in part 2 of the appendix to this chapter or that is a renewal or replacement thereof granted by Canada or the Government of the Northwest Territories between the holder of that interest and the holder of an adjacent interest granted by the Dehcho Government, either holder may refer the dispute to the designated representative of the institution from which it received that interest. Where the representative to whom the dispute was referred and the other designated representative agree, a survey will be conducted in accordance with their agreement. The plan of survey, upon registration, replaces any other description of the boundary. The Minister will, for the purpose of this provision, designate who is the representative of a government institution.<sup>40</sup>
- 7.4.8 Where a survey is conducted under 7.4.7 for an interest created by an instrument that is registered at the Land Titles Office for the Northwest Territories, the plan of the survey may, if it is signed by the representatives who agreed to it being conducted, signifying their acceptance of the plan, be submitted by one of those representatives to the Registrar of Land Titles for the Northwest Territories for registration. Upon submission of the plan in the required form, the Registrar will register it.
- 7.4.9 Where a survey is conducted under 7.4.7, the plan of survey replaces any other description of the boundary of the interests upon registration if the instrument creating the interest is registered, or, in any other case, upon signing by the representatives. The costs of the survey and of the registration of the plan will be borne equally by the institutions that granted the interests, each of which may recover its costs from the holder of the interest it granted.

## 7.5 REGISTRATION

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<sup>40</sup> Canada and GNWT considering consequences of different DR processes. To be addressed at LTC.

- 7.5.1 Canada will submit to the Registrar of Land Titles for the Northwest Territories, for registration, the plan of survey of the boundaries of Dehcho Ndehe prepared under 7.4.1 as soon as possible after the plan has been signed by representatives of the Parties, signifying their acceptance of it. Upon submission of the plan in the required form, the Registrar will register it.
- 7.5.2 The Dehcho Government has a right to obtain a certificate of title of Dehcho Ndehe after the plan of survey prepared under 7.4.1 has been registered, upon making a request in the form prescribed by legislation.
- 7.5.3 Upon the registration of the plan of survey prepared under 7.4.1, the surveyed boundaries of Dehcho Ndehe replace the description of the boundaries of Dehcho Ndehe shown on the map described in part 1 of the appendix to this chapter, as of the Effective Date.

## 7.6 ADMINISTRATION OF EXISTING RIGHTS AND INTERESTS<sup>41</sup>

- 7.6.1 Canada or the Government of the Northwest Territories will continue to administer the interests listed in part 2 of the appendix to this chapter and any renewals or replacements thereof granted by Canada or the Government of the Northwest Territories under legislation, as if the lands had not become Dehcho Ndehe. Canada or the Government of the Northwest Territories will have the power to grant renewals and replacements for those interests under that legislation, as if the lands had not become Dehcho Ndehe, except that, in the case of an interest that is not a mining right, this power does not extend to a renewal or replacement that would authorize an activity of a type or in a location not authorized by the interest renewed or replaced. For greater certainty, any dispute resolution process in the Crown lands legislation continues to apply to interests listed in part 2 of the appendix to this chapter and their renewals and replacements.
- 7.6.2 Subject to 7.6.4 and chapter 41.5 Canada or the Government of the Northwest Territories may make discretionary decisions respecting an interest referred to in 7.6.1 on the basis of Canada or the Government of the Northwest Territories's resource management policy, including those respecting royalties, rents and other charges.<sup>42</sup>
- 7.6.3 Canada and the Government of the Northwest Territories will be under no fiduciary obligation to the Dehcho First Nations or to the Dehcho Government in the administration under 7.6.1 or in the decision making under 7.6.2.

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<sup>41</sup> Canada and GNWT are reviewing this section regarding surface interests.

<sup>42</sup> [DFN negotiators seeking instructions- \[Key Issues ¶\]](#)

- 7.6.4 Canada or the Government of the Northwest Territories will Consult the Dehcho Government before changing legislation under which any interests referred to in 7.6.1 were granted.
- 7.6.5 Canada or the Government of the Northwest Territories will notify the Dehcho Government before making any change in any interests referred to in 7.6.1, including a change to the royalties, rents or other charges that apply to them.
- 7.6.6 Nothing in 7.1.1 or 7.6.1 will prevent the holder of an interest referred to in 7.6.1 and the Dehcho Government from agreeing to the termination of the interest, with or without a replacement arrangement between the holder and the Dehcho Government.

## 7.7 ROYALTIES AND NON-REFUNDED RENTS

- 7.7.1 Any royalties or non-refunded rents received by Canada or the Government of the Northwest Territories, in respect of the period between the date of the Agreement and the Effective Date, for an interest listed in part 2 of the appendix to this chapter, will be accounted for by that government and an equal amount paid to the Dehcho Government as soon as practicable after the Effective Date.<sup>43</sup>
- 7.7.2 Any royalties or non-refunded rents received by Canada or the Government of the Northwest Territories in respect of the period after the Effective Date for an interest listed in part 2 of the appendix to this chapter or for any replacement thereof will be accounted for by that government and an equal amount paid to the Dehcho Government as soon as practicable after each calendar year quarter.<sup>44</sup>
- 7.7.3 Amounts payable by Canada or the Government of the Northwest Territories under 7.7.1 and 7.7.2 and amounts payable to another Aboriginal people under any similar provision in another land claims agreement in the Mackenzie Valley will not be considered as amounts received by that government for the purpose of the Mineral Royalties chapter.<sup>45</sup>

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~~43-DFN negotiators seeking instructions-~~ [Key Issues ¶]

~~44-DFN negotiators seeking instructions-~~ [Key Issues ¶]

~~45-DFN negotiators seeking instructions-~~ [Key Issues ¶]

## **APPENDIX TO DEHCHO NDEHE**

### **PART 1 BOUNDARIES OF DEHCHO NDEHE (7.1.1)**

#### Official Description

The map with the description of the boundaries of Dehcho Ndehe is the map, consisting of XX mapsheets, numbered 1 to XX, initialled by the Chief Negotiators and filed in the Land Titles Office, Northwest Territories Registration District on (date) as plan number XXX.

#### Illustrative Map

An illustrative map showing Dehcho Ndehe may be found in part XX of the appendix to chapter XX.

#### List of Excluded Parcels

Notes: The lists in this part are intended to be a snapshot of the excluded parcels as of the effective date, and are included in this appendix for general information only. The official descriptions of the excluded parcels are referenced on the map filed in the Land Titles Office on XXX.

“LTO” means Land Titles Office, Northwest Territories Registration District.

“NTS” means National Topographic System.

“CLSR” means Canada Lands Surveys Records.

The boundaries of the excluded parcels are described in the following:

A. Certificates of Title registered in the Land Titles Office, Northwest Territories Registration District:

### **PART 2 EXISTING INTERESTS (7.6.1)**

### **PART 3 NEW INTERESTS WITH DEHCHO GOVERNMENT (7.1.2; 7.1.3)**

### **PART 4 CONTAMINATED SITES (7.3.1; 7.3.2; 7.3.3)**

## APPENDIX TO CHAPTER 7– Land Selection Criteria

### A.1 DEFINITIONS

“Advanced Stage of Exploration” means

### A.2 GENERAL

A.2.1 The Parties<sup>46</sup> agree that the negotiation of lands that will become Dehcho Ndehe will be in accordance with the criteria set out in this Appendix.

#### Concurrent Land Selection

A.2.2 The land selection processes for Dehcho land selection within Communities, if any, and outside Communities will be undertaken concurrently, unless otherwise agreed. Any community land selection will be distinct from lands transferred to the Community Government.

#### Negotiations in NWT

A.2.3 Land selection negotiations will take place at locations in the Northwest Territories to be determined by a workplan developed by the Parties prior to the commencement of land selection. Where possible, negotiations will take place in the relevant Community.

#### Funding

A.2.4 Prior to land selection, the Parties will discuss the level of funding and funding sources required for the DFN to participate in land selection negotiations.

#### Agreement Area

A.2.5 Subject to any unresolved overlap agreements with other Aboriginal groups, the Parties will agree on a Dehcho Settlement Area prior to land selection.

#### Information

A.2.6 Prior to the commencement of land selection and after the signing of the Agreement-in-Principle, Canada and the Government of the Northwest Territories will provide the DFN with the following information concerning the Dehcho Settlement Area

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<sup>46</sup> DFN position is that, with the possible exception of Part A.5 (Community Boundaries) land selection negotiations should be bilateral, between Cda and DFN since land ownership and selection are core Treaty issues. We note that the interim land withdrawal agreement of 2003 was bilateral. We also point out that s. 3.4 of the Framework Agreement signed by the Parties in 2001 directs that negotiations relating to Treaty issues will be bilateral between Cda and the DFN. Canada and the GNWT have a different interpretation of the Framework Agreement and both feel that, given the transfer of administrative control through Devolution, the GNWT need to be a Party. [Key Issues ¶]

- a) current information respecting the location and nature of existing Canada, the Government of the Northwest Territories and third party interests, including oil and gas permits, commercial fishing licences, surface leases, land use permits and other land use authorizations, agreements for sale, applications for lease, rights-of-way, easements, recorded mining rights, timber permits, outfitters and lodge licences, fee simple grants, quarrying permits and leases;
- b) any available maps and information respecting known deposits of oil, gas, sand, gravel and construction materials;
- c) maps or lists of all proposed parks or other protected areas. The identification of new parks or other protected areas may be considered in the course of land selection negotiations. Provisions relating to particular protected areas may be included in this Agreement;
- d) a list of all identified contaminated waste sites and available information relating to them;
- e) known public routes, utility corridors, pipelines, airstrips and trails; and
- f) any available information regarding known
  - i) unauthorized or traditional use cabins; and
  - ii) burial sites.

### **DFN Land Use Maps**

A.2.7 Prior to land selection, the DFN will table land use maps showing DFN cabins and burial sites for review by Canada and the Government of the Northwest Territories.

## **A.3 LAND SELECTION – DEHCHO NDEHE**

### **DFN Land Selection Maps**

A.3.1 Initial land selection maps (using 1:250,000 scale National Topographic Series maps) will be prepared by the DFN which may identify up to one and one half times the total land quantum. The maps will show surface and subsurface selections, as well as any existing recognized routes being used on a regular basis, whether year round or intermittently. An estimate of the area of each selection will also be indicated on the maps.

A.3.2 Land selection for Dehcho Ndehe will be made so as to provide the DFN with land for inclusion in the Dehcho Agreement, while leaving sufficient Crown land:

- a) which is accessible and available to the Communities for public purposes;
- b) for any affected Aboriginal group not a party to the Dehcho Agreement; and
- c) for public purposes, including access for recreation, and Wildlife and Fish harvesting.

### **Representative Selections<sup>47</sup>**

A.3.3 Land selections in the Dehcho Settlement Area will be representative of the topography and quality of the lands in the Dehcho Settlement Area.

A.3.4 Land selections by the DFN will not be restricted or opposed on the basis that the Dehcho First Nations must select a certain portion of Dehcho Ndehe from conservation lands, or that the selection does not fit within a Party's precondition that a certain quantum or percentage of Dehcho Ndehe lands must be either "open" or closed to development.<sup>48</sup>

### **Special Harvesting Areas**

A.3.5 Where the objectives of the Parties cannot be met through the process of land selection, negotiations at the time of land selection may provide special opportunities for the DFN for the harvesting of Fish and other species of Wildlife in designated areas.

### **Restrictions on Access**

A.3.6 During land selection, the Parties may determine locations where the public rights of access in 8.1.3 and the commercial rights of access in 8.7.1b) and c) are restricted.

### **Dehcho Citizen Interests**

A.3.7 The DFN may, with the consent of a Dehcho Citizen who has a legal interest in a building or other structure affixed to the land, propose for selection Crown or Commissioner's lands underlying such interests. The DFN will provide Canada and the Government of the Northwest Territories the written consent of the Dehcho Citizen. Such consent is not required if the interest of that Dehcho Citizen is limited to that of a tenant or occupant of the building or structure.

### **Selection of Undeveloped Land Administered by Canada**

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<sup>47</sup> The GNWT will review.

<sup>48</sup> GNWT to review and provide comments.

A.3.8 Land that is administered by, or reserved in the name of any department or agency of Canada, and that is not required for public purposes, may be selected.

**A.4 SPECIFIC SITES – WITHIN THE DEHCHO SETTLEMENT AREA**

A.4.1 The Parties may negotiate the selection of specific sites within the Dehcho Settlement Area, which will not exceed one hectare in area which will form part of the quantum, unless otherwise agreed, and will not include the subsurface.

A.4.2 Unless otherwise agreed, and to the extent practical, specific sites will be regular in shape and avoid disproportionately large frontages along water bodies.

A.4.3 Specific Sites are to be areas of traditional and current use by the DFN such as Camps for Harvesting or other traditional uses.

A.4.4 The DFN may, with the consent of a Dehcho Citizen normally occupying or using a specific site, propose that site for selection. The DFN will provide Canada and the Government of the Northwest Territories the written consent of the Dehcho Citizen.

**A.5 COMMUNITY BOUNDARY**

A.5.1 Prior to land selection, the Government of the Northwest Territories will confirm the boundary of each Community in the Dehcho Settlement Area.

A.5.2 In the circumstances where there is an existing Community boundary, the Government of the Northwest Territories will:

- a) confer with the municipal government on its needs in relation to the community boundary for the foreseeable future; and
- b) Consult the Dehcho First Nation on the Community boundaries and accommodate, where appropriate,

prior to confirming community boundaries in A.5.1.

A.5.3 In the circumstance where there is not an existing Community boundary, the Government of the Northwest Territories will:

- a) confer with that Community to ascertain its needs in relation to the provision of local services for the foreseeable future; and

- b) Consult the Dehcho First Nation on a Community boundary and accommodate, where appropriate,  
  
prior to confirming community boundaries in A.5.1.

## **A.6 RESTRICTIONS**

- A.6.1 Land subject to a fee simple interest or an agreement for sale may not be selected, unless otherwise agreed.
- A.6.2 Crown or Commissioner's Land subject to a lease is not available for selection unless the lessee's interest is treated in a manner satisfactory to the DFN and Canada or the Government of the Northwest Territories, as appropriate. The lessee will be given written notice by Canada or the Government of the Northwest Territories, as appropriate, if such land is being considered for selection.
- A.6.3 Lands will not be selected within 30.48 metres of the boundary of the Dehcho Settlement Area, unless otherwise agreed.
- A.6.4 Contaminated sites that have been identified prior to selection will not be available for selection unless otherwise agreed.
- A.6.5 Producing and non producing mines and minerals properties at an Advanced Stage of Exploration will not be identified as Dehcho Ndehe.
- A.6.6 Canada and the Government of the Northwest Territories acknowledge that the Dehcho First Nations are committed to having overlap discussions with Aboriginal groups that have overlapping interests regarding land selection in the Dehcho Settlement Area.
- A.6.7 In the course of land selection, Canada and the Government of the Northwest Territories will consult other Aboriginal groups who have established rights protected by section 35 of the *Constitution Act, 1982*, or who assert that they have rights protected by section 35, which may be adversely affected by the land selection and that as a result, Canada and the Government of the Northwest Territories may, with the view to achieving reconciliation, propose changes to the identification of land to be Dehcho Ndehe.

## **A.7 COMPLETION**

- A.7.1 The land selection maps will, if required, be transposed on to alternative scale maps.
- A.7.2 The transposing of the maps will be the responsibility of Canada or the Government of the Northwest Territories, unless otherwise agreed.
- A.7.3 Land selection will be completed by the initialling by all Parties of all maps, legal descriptions or sketch plans setting out land that may become Dehcho Ndehe outside a Community.
- A.7.4 Consultation with other Aboriginal groups would start prior to the initialling of the maps.

## **A.8 LAND WITHDRAWAL**

- A.8.1 Land withdrawal pursuant to the *Territorial Lands Act* or the *Commissioner's Land Act* will occur as soon as reasonably possible following agreement between Canada, the Government of the Northwest Territories and the DFN respecting land selection. The initialed maps will form the basis for an Order-in-Council to withdraw the final land selection identifications.
- A.8.2 Upon withdrawal of lands following completion of land selection, both Parties concerned will have 60 days to conduct a period of public review and Consultation concerning the initialed maps.
- A.8.3 Where urgent circumstances require, the Parties may agree to the withdrawal of certain land selections notwithstanding that all land selections have not been completed.
- A.8.4 Upon completion of the review period specified in A.8.2, the initialed maps will be confirmed or amended, and the land withdrawal amended by Order-in-Council.
- A.8.5 The withdrawal of lands will be subject to existing rights, titles or interests, including licenses, permits, authorizations, reservations, reservations by notation and any associated benefits and privileges, including renewals, replacements, extensions in time and transfers as might have been granted or permitted had the land not been withdrawn, provided that:
  - a) there will be no significant changes in the terms and conditions of such renewals, replacements, extensions or transfers; and

- b) the interest holder will be given notice of the withdrawal and advised by Canada or the Government of the Northwest Territories, as appropriate, that the lands have been selected.

A.8.6 A.8.5 will not be construed to affect any discretion of Canada or the Government of the Northwest Territories to grant or refuse the renewal, replacement, extension of term or transfer of any interest in land or license, permit or authorization.

A.8.7 Permits may be issued under the *Territorial Quarrying Regulations* or the *Commissioner's Lands Regulations* in respect of sources of construction materials in the following circumstances:

- a) for quarrying sites which were in use or identified prior to the date of the withdrawal order; or
- b) where, after Consultation with the DFN, the territorial land agent or other designated individual determines there is no alternative source of supply reasonably available in the surrounding area and the materials are required for essential public construction purposes.

A.8.8 No new timber permits or licenses, other than renewals or replacements of existing timber permits or licenses issued pursuant to the *Forest Management Act*, will be issued in respect of the withdrawn lands except:

- a) with the consent of the DFN; or,
- b) in cases of overriding public interest as determined by the Minister and after Consultation with the DFN.

A.8.9 For greater certainty, the provisions of this section will not affect access to or across withdrawn lands for the period of the withdrawal.

## **A.9 STATUS OF THIS APPENDIX**

A.9.1 While this Appendix will form part of the Agreement-in-Principle it will not form part of the Dehcho Agreement.

## CHAPTER 8: ACCESS

<b>PART I</b>	<b>GENERAL</b>
<b>PART II</b>	<b>PUBLIC ACCESS</b>
<b>PART III</b>	<b>ACCESS BY HOLDERS OF EXISTING INTERESTS</b>
<b>PART IV</b>	<b>COMMERCIAL ACCESS</b>
<b>PART V</b>	<b>GOVERNMENT AND GOVERNMENT REGULATED UTILITIES ACCESS</b>
<b>PART VI</b>	<b>ACCESS TO CONSTRUCTION MATERIAL</b>
<b>PART VII</b>	<b>ACCESS TO CONTAMINATED SITES</b>
<b>PART VIII</b>	<b>WINTER ROAD ACCESS</b>
<b>PART IX</b>	<b>SURFACE RIGHTS BOARD</b>
<b>PART X</b>	<b>LINEAR PROJECTS</b>

### **PART I GENERAL**

- 8.1.1 Where a Person may exercise access under more than one provision in this chapter, that Person may have access pursuant to the least restrictive provision.
- 8.1.2 Nothing in this Agreement affects the public right of navigation on navigable waters.
- 8.1.3 Any Person may access Dehcho Ndehe and waters overlying such lands without prior notice in an emergency.

### **PART II PUBLIC ACCESS**

#### **8.2 GENERAL**

- 8.2.1 Any individual has the right to enter, cross or stay temporarily on Dehcho Ndehe and waters overlying such lands subject to:
- a) conditions and restrictions set out in 8.3;
  - b) additional conditions which may be made in accordance with 8.4;
  - c) conditions which result from a resolution or determination under the Dispute Resolution chapter; and
  - d) conditions and restrictions set out in Legislation.<sup>49</sup>

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<sup>49</sup> The DFN believe that the provisions of this chapter should reference the Dehcho Land Use Plan. Canada and GNWT considering if a further reference to the Land Use Plan is required, or if it is already covered under 8.2.1d). LTC to consider adding the following language: "including any Dehcho Land Use Plan implemented pursuant to Federal and Territorial Legislation".

- 8.2.2 Any individual exercising access to Dehcho Ndehe and waters overlying such lands under 8.2.1 may<sup>50</sup> lawfully<sup>51</sup>:
- a) harvest Wildlife, Migratory Birds and Fish; and
  - b) employ any mode of transport proportionate to the purpose for which that individual is accessing the land.

- 8.2.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under 8.2.1; and
- b) any cost incurred by the Dehcho Government in relation to access under 8.2.1.

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>52</sup>

- 8.2.4 There is no permitting, licensing or screening required for access under 8.2.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>53</sup>

- 8.2.5 Any Individual exercising access under 8.2.1 who does not comply with a provision of this chapter will be considered a trespasser and the common law or applicable Dehcho Law pursuant to 9.1.1f) applying to trespassers on fee simple land will apply to such Individual.

### 8.3 CONDITIONS AND RESTRICTIONS

- 8.3.1 Unless otherwise agreed to by any individual and the Dehcho Government, an individual accessing Dehcho Ndehe and waters overlying such lands under 8.2.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such individual or for damage to the property of such individual that results from a danger arising from the wilful, negligent or reckless conduct or action of the Dehcho Government or any Dehcho Citizen.

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<sup>50</sup> ~~DFN suggest "...under 8.2.1 may, with the consent of the Dehcho Government, ..."~~ [Key Issues ¶]

<sup>51</sup> Under review by the parties.

<sup>52</sup> ~~DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada"~~ [Key Issues ¶]

<sup>53</sup> ~~The DFN propose the following alternative wording: "...unless otherwise provided by Legislation enacted by the Dehcho Government after consultation with Canada."~~ [Key Issues ¶]

- 8.3.2 Access under 8.2.1 will, where practicable, be exercised upon prior notice to the Dehcho Government
- 8.3.3 Access under 8.2.1 will, where possible, be exercised on a route identified for that purpose by the Dehcho Government; or on an existing route used regularly for such access.
- 8.3.4 Unless otherwise agreed to by the Dehcho Government, an individual exercising access under 8.2.1 is subject to conditions that the individual:
- a) is responsible for unnecessary damage caused to Dehcho Ndehe [and waters overlying such lands] or structures on Dehcho Ndehe ; and
  - b) does not unnecessarily interfere with the use and peaceable enjoyment of Dehcho Ndehe and waters overlying such lands by the Dehcho Government or a Dehcho Citizen.
- 8.3.5 Public access under 8.2.1 does not include the right to:
- a) engage in any commercial activity;
  - b) establish any permanent or seasonal camp;
  - c) establish any permanent or seasonal structure; or
  - d) establish any camp or structure other than for merely casual or temporary purposes.

#### 8.4 **ADDITIONAL CONDITIONS BY AGREEMENT**<sup>54</sup>

- 8.4.1 The Dehcho Government may propose to Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe and waters overlying such lands under 8.2.1 provided such conditions pertain only to:
- a) requirements for notice or registration by individuals accessing Dehcho Ndehe and waters overlying such lands; or
  - b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
    - i) protect the environment;
    - ii) conserve Wildlife, Fish, Migratory Birds or their habitats;

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<sup>54</sup> Sections 4.1 – 4.4 are unnecessary if, as the DFN propose, the Dehcho Government has exclusive or paramount jurisdiction to enact legislation governing access to Dehcho Ndehe. [Key Issues ¶1]

- iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe and waters overlying such lands by Dehcho Citizens; and
- iv) protect Camps or structures.

8.4.2 If the Dehcho Government and Canada and the Government of the Northwest Territories do not reach agreement on an additional condition proposed under 8.4.1, the Dehcho Government may refer the dispute for resolution or determination under the Dispute Resolution chapter.

8.4.3 The Dehcho Government will take reasonable measures to notify the public of additional conditions which may be established under 8.4.1 or 8.4.2.

8.4.4 Additional conditions on access under 8.2.1 may be established by agreement between the Dehcho Government and the individual with whom such conditions would apply.

### **PART III ACCESS BY HOLDERS OF EXISTING INTERESTS**

#### **8.5 GENERAL**

8.5.1 The holder of:

- a) an interest in an excluded parcel set out in Appendix “X” including its renewal or replacement;
- b) an interest set out in Appendix “Y”, including its renewal or replacement; or
- c) a land use permit granted by the Mackenzie Valley Land and Water Board before the Effective Date,

has a right to enter, cross or stay temporarily on Dehcho Ndehe and waters overlying such lands to allow the exercise of that interest, subject to the conditions and restrictions set out in 8.6.

8.5.2 The right of access under 8.5.1 extends to any employee, client, agent or guest of the interest holder.

8.5.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under 8.5.1; and
- b) any cost incurred by the Dehcho Government in relation to access under 8.5.1,

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>55</sup>

- 8.5.4 There is no additional permitting, licensing or screening required for access under 8.5.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.
- 8.5.5 An interest holder exercising access to Dehcho Ndehe and waters overlying such lands under 8.5.1 may employ any mode of transport proportionate to the purpose for which that interest holder is accessing the land.
- 8.5.6 An interest holder exercising access under 8.5.1 who does not comply with a provision of this chapter will be considered a trespasser and the common law applying to trespassers on fee simple land will apply to such Person or where there is a Dehcho Law with respect to trespass enacted pursuant to 9.1.1(f), such Dehcho Law will apply to such Person.

## 8.6 CONDITIONS AND RESTRICTIONS

- 8.6.1 Unless otherwise agreed to by the Dehcho Government, holders of existing interests who access Dehcho Ndehe [and waters overlying such lands] under 8.5.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful, negligent or reckless conduct or action of the Dehcho Government or any Dehcho Citizen.
- 8.6.2 Access under 8.5.1 will be exercised in a manner that is consistent with the terms and conditions of the existing interest
- 8.6.3 Where the exercise of the right of access under 8.5.1 involves any activity of a type or in a location not authorized by the existing interest on the Effective Date of the Dehcho Agreement, the exercise of that right of access is subject to the agreement of the Dehcho Government.
- 8.6.4 Where an agreement is not reached under 8.6.3, the holder of the existing interest may refer the dispute for resolution or determination under the

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~~<sup>55</sup>DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada"- [Key Issues ¶]~~

Dispute Resolution chapter, but may not exercise access with respect to the disputed activity until the dispute has been resolved or determined.<sup>56</sup>

8.6.5 The right of access under 8.5.1 is subject to any restrictions or prohibitions established by Legislation.<sup>57</sup>

#### **PART IV COMMERCIAL ACCESS**

##### **8.7 GENERAL**

8.7.1 Any Person has, for travel by water in the course of conducting commercial activity, a right to enter, cross or stay temporarily on or over:

- a) Navigable rivers that overlie Dehcho Ndehe and other Navigable waters that overlie Dehcho Ndehe and that can be entered from a navigable river;
- b) Portages on Dehcho Ndehe associated with Navigable rivers and other Navigable Waters; and
- c) Dehcho Ndehe that is Waterfront Land.

8.7.2 Any Person has a right to enter, cross over or stay temporarily on Dehcho Ndehe [and waters overlying such lands] to reach adjacent lands or Waters for commercial purposes.

8.7.3 Access under 8.7.1 and 8.7.2 is subject to:

- a) conditions and restrictions set out in 8.8;
- b) additional conditions which may be made in accordance with 8.9;
- c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
- d) conditions and restrictions set out in Legislation<sup>58</sup>.

8.7.4 Any Person exercising access under 8.7.1 and 8.7.2 may employ any mode of transport proportionate to the purpose for which that Person is accessing the land.

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<sup>56</sup> ~~DFN propose that the DCRMA act as the Dispute Resolution body.~~ [Key Issues ¶]

<sup>57</sup> ~~DFN propose: "Legislation enacted by the Dehcho Government"~~. [Key Issues ¶]

<sup>58</sup> The DFN believe that this provision should reference the Dehcho Land Use Plan. Canada and GNWT considering if a further reference to the Land Use Plan is required, or if it is already covered under 8.2.1d). LTC to consider adding the following language: "including any Dehcho Land Use Plan implemented pursuant to Federal and Territorial Legislation".

8.7.5 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under 8.7.1 or 8.7.2; and
- b) any cost incurred by the Dehcho Government in relation to access under 8.7.1 or 8.7.2.

unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>59</sup>

8.7.6 There is no permitting, licensing or screening required for access under 8.7.1 or 8.7.2 unless otherwise provided by:

- a) existing Legislation; or
- b) Legislation enacted after Consultation with the Dehcho Government.<sup>60</sup>

8.7.7 Any Person exercising access under 8.7.1 or 8.7.2 who does not comply with a provision of this chapter will be considered a trespasser and the common law applying to trespassers on fee simple land will apply to such Person or where there is a Dehcho Law with respect to trespass enacted pursuant to 9.1.1(f), such Dehcho Law will apply to such Person.

## 8.8 CONDITIONS AND RESTRICTIONS

8.8.1 Unless otherwise agreed to by the Dehcho Government, Persons accessing Dehcho Ndehe [and waters overlying such lands] under 8.7.2 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful, negligent or reckless conduct or action of the Dehcho Government or any Dehcho Citizen.

8.8.2 Access under 8.7.2 must be exercised:

- a) by using the most direct existing route, or if no route exists, by the most practical route that minimizes impact on the land; and
- b) by minimizing use of portages and Waterfront Lands.

8.8.3 Access to portages and Waterfront Lands under 8.7.1:

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<sup>59</sup>-DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after Consultation with Canada"- [Key Issues ¶]

<sup>60</sup>-DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after Consultation with Canada"- [Key Issues ¶]

- a) is subject to prior notice being given to the Dehcho Government; and
- b) does not include the right:
  - i) to engage in any commercial activity, other than an activity that is necessarily incidental to travel;
  - ii) to establishing any permanent or seasonal camp or structure; or
  - iii) to establish any camp or structure other than for merely casual or temporary purposes.

8.8.4 Access to Dehcho Ndehe [and waters overlying such lands] under 8.7.2 is subject to:

- a) the access being of a casual and insignificant nature;
- b) prior notice given to the Dehcho Government;
- c) the route having been previously used for similar commercial access on a regular basis, whether year round or intermittently; and
- d) the access not resulting in a significant alteration in the use of the route.

8.8.5 Unless otherwise agreed to by the Dehcho Government, a Person exercising access under 8.7.2 is subject to conditions that the Person:

- a) does not cause unnecessary damage to Dehcho Ndehe [and waters overlying such lands] or structures on Dehcho Ndehe , and is responsible for any such damage;
- b) does not unnecessarily interfere with the use and peaceable enjoyment of Dehcho Ndehe [and waters overlying such land] by the Dehcho Government or a Dehcho Citizen.

## 8.9 **ADDITIONAL CONDITIONS BY AGREEMENT**

8.9.1 Where a Person exercising access under 8.7.1 or 8.7.2 is unable to comply with the conditions set out in 8.8, that Person requires the agreement of the Dehcho Government as to any variation of those conditions.

8.9.2 If the Person exercising access under 8.7.1 or 8.7.2 and the Dehcho Government cannot agree on a variation to the conditions set out in 8.8, the Person with the right of access may refer the dispute for resolution under the Dispute Resolution chapter, and may only continue to exercise access under the terms and conditions set out in 8.8

8.9.3 The Dehcho Government may propose<sup>64</sup> to Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe [and waters overlying such lands] under 8.7.2 provided such conditions pertain only to:

- a) requirements for notice or registration by any Person accessing under 8.7.1 or 8.7.2; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:
  - i) protect the environment;
  - ii) conserve Wildlife, Fish Migratory Birds or their habitats;
  - iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe [and waters overlying such lands] by Dehcho Citizens; and
  - iv) protect Camps or structures.

8.9.4 If the Dehcho Government and Canada and the Government of the Northwest Territories do not reach agreement on an additional condition proposed under 8.9.3, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.

8.9.5 The Dehcho Government will take reasonable measures to notify the public of any additional conditions which may result under 8.9.1 or 8.9.3.

8.9.6 Additional conditions under 8.9.1 may be established by agreement between the Dehcho Government and the Person with whom such conditions on access would apply.

## **PART V GOVERNMENT AND GOVERNMENT REGULATED UTILITIES ACCESS**

### **8.10 GENERAL**

8.10.1 In accordance with Federal Law and Territorial Law, agents, employees, contractors, subcontractors and other representatives of Canada, the Government of the Northwest Territories, public utilities, Railways, NAV Canada, members of the Canadian Armed Forces including members of foreign armed forces serving with or under the operational control of the Canadian Armed Forces, and peace officers have access to Dehcho Ndehe [and waters overlying such lands], and may use natural resources incidental to such access in order to:

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~~<sup>64</sup> 8.9.3 and 8.9.4 are unnecessary if the Dehcho Government has exclusive or paramount jurisdiction to enact Legislation- [Key Issues ¶]~~

- a) deliver and manage programs and services;
- b) carry out duties and obligations under Federal Law and Territorial Law;
- c) enforce laws;
- d) respond to emergencies; or
- e) carry out the terms of this Agreement

8.10.2 When exercising access under 8.10.1 Canada and the Government of the Northwest Territories may establish on Dehcho Ndehe [and waters overlying such lands]:

- a) navigational aids and safety devices along the shorelines of Navigable Waters prior to the start of a navigation season, provided that the area occupied by each such navigational aid or safety device does not exceed:
  - i) two hectares, for range markers and buoy transits; or
  - ii) 0.1 hectare, for single beacons;
- b) stream gauges and climate stations; and
- c) fuel caches.

8.10.3 Canada or the Government of the Northwest Territories will notify the Dehcho Government prior to establishing any structures referred to in 8.10.2a) and 8.10.2b).

8.10.4 Canada or the Government of the Northwest Territories will Consult the Dehcho Government prior to establishing any structures referred to in 8.10.2c).

8.10.5 The Department of National Defence and the Canadian Forces, including foreign armed forces serving with or under the operational control of the Canadian Armed Forces, may access Dehcho Ndehe [and waters overlying such lands] for military exercises with the agreement of the Dehcho Government or, failing an agreement, on conditions established in accordance with the Dispute Resolution chapter. Where the Minister of National Defence and the Dehcho Government do not reach agreement on conditions for access, the Minister of National Defence may refer the dispute for resolution in accordance with the Dispute Resolution chapter, but the Department and those Forces may not access Dehcho Ndehe for the purpose of military exercises until the dispute has been resolved or determined.

8.10.6 Nothing in the Dehcho Agreement will limit the authority of the Minister of National Defence under section 257 of the *National Defence Act*.

- 8.10.7 Any representative authorized under Legislation to provide electrical power, telecommunications services or similar public utilities to the public, other than pipelines for the transmission of hydrocarbons, will have a right of access to Dehcho Ndehe [and waters overlying such lands] to carry out assessments, surveys and studies in relation to the proposed services, provided they Consult with Dehcho Government prior to exercising such right.
- 8.10.8 Any mode of transport may be employed in accessing Dehcho Ndehe [and waters overlying such lands] under 8.10.1, 8.10.5 or 8.10.7.
- 8.10.9 There is no fee, cost, charge, rental or other compensation payable to the Dehcho Government for access under 8.10.1, 8.10.5 or 8.10.7 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.
- 8.10.10 There is no permitting, licensing or screening required for access under 8.10.1, 8.10.5 or 8.10.7 unless otherwise provided by
- a) existing Legislation; or
  - b) Legislation enacted after Consultation with the Dehcho Government.
- 8.10.11 Access under 8.10.1, 8.10.5 or 8.10.7 is subject to:
- a) applicable conditions and restrictions set out in 8.11;
  - b) specific additional conditions which may be made in accordance with 8.12;
  - c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
  - d) conditions and restrictions set out in Legislation<sup>62</sup>.

## 8.11 CONDITIONS AND RESTRICTIONS

- 8.11.1 Unless otherwise agreed to by the Dehcho Government, representatives accessing Dehcho Ndehe [and waters overlying such lands] under 8.10.1 or 8.10.7 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising therefrom, except for death or injury to such representative or for damage to the property of such representative that results from a danger arising from

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<sup>62</sup> The DFN believe that this provisions should reference the Dehcho Land Use Plan. Canada and GNWT considering if a further reference to the Land Use Plan is required, or if it is already covered under 8.2.1d). LTC to consider adding the following language: "including any Dehcho Land Use Plan implemented pursuant to Federal and Territorial Legislation".

the wilful, negligent or reckless conduct or action of the Dehcho Government or any Dehcho Citizen.

8.11.2 Unless otherwise agreed to by the Dehcho Government, access under 8.10.1 or 8.10.7 is subject to conditions that the representative exercising the access:

- a) does not cause unnecessary damage to Dehcho Ndehe [and waters overlying such lands] or structures on Dehcho Ndehe, and is responsible for any such damage; and
- b) does not unnecessarily interfere with the use and peaceable enjoyment of Dehcho Ndehe [and waters overlying such lands] by the Dehcho Government or a Dehcho Citizen.

8.11.3 Prior to accessing Dehcho Ndehe [and waters overlying such lands] under 8.10.1 or 8.10.7, Canada or the Government of the Northwest Territories, as applicable, will give prior notice of such access to the Dehcho Government when it is reasonable to do so except no notice will be given when:

- a) the access concerns an activity related to law enforcement, investigations, inspections or crime prevention; or
- b) notice would be contrary to the interests of national defence and national security.

8.11.4 Except for the establishment of structures under 8.10.2, or the Remediation of a Contaminated Site under X in the Dehcho Ndehe chapter or 5.5 in the Community Lands chapter, if Canada or the Government of the Northwest Territories requires the continuous use or occupancy of any part of Dehcho Ndehe for more than two years, the Dehcho Government may require Canada or the Government of the Northwest Territories to acquire an interest in the lands for that purpose by agreement or under the Expropriation chapter.

## **8.12 ADDITIONAL CONDITIONS BY AGREEMENT**

8.12.1 Subject to 8.12.2, the Dehcho Government may propose to Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe [and waters overlying such lands] under 8.10.1 provided such conditions pertain only to:

- a) requirements for notice or registration by representatives accessing Dehcho Ndehe [and waters overlying such lands]; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:

- i) protect the Environment;
- ii) conserve Wildlife, Fish, Migratory Birds or their habitats;
- iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe [and waters overlying such lands] by Dehcho Citizens; and
- iv) protect Camps or structures.

8.12.2 The conditions set out in 8.11.2 do not apply to, and additional conditions may not be established in accordance with 8.12.1, whether through agreement with Canada or the Government of the Northwest Territories or the process set out in the Dispute Resolution chapter, for access under 8.10.1 in relation to law enforcement, investigations, inspections or crime prevention under Federal Law or for the purposes of national defence, national security or emergency response.<sup>63</sup>

8.12.3 If the Dehcho Government and Canada and the Government of the Northwest Territories do not reach agreement on a further condition proposed under 8.12.1, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.

8.12.4 The Dehcho Government will take reasonable measures to notify the public of the further conditions which may result from a resolution or a determination under 8.12.3.

8.12.5 Further conditions on access under 8.10.1 and 8.10.7 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.<sup>64</sup>

## **PART VI ACCESS TO CONSTRUCTION MATERIALS**

### **8.13 GENERAL**

8.13.1 Prior to the Dehcho Agreement the Parties will address access to construction materials in the context of land selection.

## **PART VII ACCESS TO CONTAMINATED SITES**

### **8.14 GENERAL**

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<sup>63</sup> ~~DFN may propose to delete 8.12.2. Further discussion required.~~ [Key Issues ¶]

<sup>64</sup> Under review by Canada.

- 8.14.1 Agents, employees and contractors of Canada and the Government of the Northwest Territories have a right of access to Dehcho Ndehe [and waters overlying such lands] to:
- a) conduct Remediation under Chapters 5 and 7; or
  - b) use Specified Substances or other natural resources on Dehcho Ndehe to the extent necessary to conduct the Remediation.
- 8.14.2 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:
- a) access under 8.14.1;
  - b) the use of Specified Substances or other natural resources<sup>65</sup> under 8.14.1; or
  - c) any cost incurred by the Dehcho Government in relation to the access or Specified Substances and natural resources under 8.14.1.
- 8.14.3 There is no permitting, licensing or screening required for access under 8.14.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>66</sup>
- 8.14.4 Agents, employees and contractors of Canada and the Government of the Northwest Territories exercising access to the Dehcho Ndehe [and waters overlying such lands] under 8.14.1 may employ any mode of transport proportionate to the purpose for which they are accessing the land.

## 8.15 CONDITIONS AND RESTRICTIONS

- 8.15.1 Unless otherwise agreed to by any Person exercising access and the Dehcho Government, a Person accessing Dehcho Ndehe [and waters overlying such lands] under 8.14.1 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful, negligent or reckless conduct or action of the Dehcho Government or any Dehcho Citizen.
- 8.15.2 Prior to accessing Dehcho Ndehe [and waters overlying such lands] under 8.14.1, Canada or the Government of the Northwest Territories, as applicable,

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~~<sup>65</sup>-DFN question whether the Dehcho Government should be paid for the use of its natural resources in Remediation- [Key Issues ¶]~~

~~<sup>66</sup>-DFN propose instead: "...provided by Legislation enacted by the Dehcho Government after consultation with Canada"- [Key Issues ¶]~~

will give prior notice of such access to the Dehcho Government when it is practicable to do so.

## **PART VIII WINTER ROAD ACCESS**

### **8.16 GENERAL**

8.16.1 Agents, employees, and contractors of the Government of the Northwest Territories have a right of access to Dehcho Ndehe and waters overlying such lands to:

- a) establish and build the Winter Roads shown on the map in Appendix “Y”; and
- b) manage, control, vary or close up those Winter Roads.

8.16.2 Any Person has a right to travel on the Roads referred to in 8.16.1 in accordance with Legislation in respect of Public Highways.<sup>67</sup>

8.16.3 There is no fee, charge, rental or other compensation payable to the Dehcho Government for:

- a) access under 8.16.1 or 8.16.2; and
- b) any cost incurred by the Dehcho Government in relation to access under 8.16.1 or 8.16.2,

unless otherwise provided by Legislation enacted after Consultation with the Dehcho.<sup>68</sup>

8.16.4 There is no permitting, licensing or screening required for access under 8.16.1 unless otherwise provided by Legislation enacted after Consultation with the Dehcho Government.<sup>69</sup>

8.16.5 Agents, employees and contractors of Government of the Northwest Territories exercising access to Dehcho Ndehe and waters overlying such lands under 8.16.1 may employ any mode of transport proportionate to the purpose for which they are accessing the land.

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~~<sup>67</sup>The DFN propose that the Dehcho Government will have jurisdiction to restrict use of Winter Roads on Dehcho Ndehe. [Key Issues ¶]~~

~~<sup>68</sup>DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)”. [Key Issues ¶]~~

~~<sup>69</sup>DFN propose instead: “...provided by Legislation enacted by the Dehcho Government after consultation with Canada (or the GNWT)”. [Key Issues ¶]~~

8.16.6 Access under 8.16.1 or 8.16.2 is subject to:

- a) applicable conditions and restrictions set out in 8.17;
- b) specific additional conditions which may be made in accordance with 8.19;
- c) additional conditions resulting from a resolution or determination under the Dispute Resolution chapter; and
- d) conditions and restrictions set out in Legislation.<sup>70</sup>

## 8.17 CONDITIONS AND RESTRICTIONS

8.17.1 Unless otherwise agreed to by any Person exercising access and the Dehcho Government, a Person accessing Dehcho Ndehe and waters overlying such lands under 8.16.1, or 8.16.2 do so at their own risk and have no right of action against the Dehcho Government or any Dehcho Citizen for loss suffered or damage arising there from, except for death or injury to such Person or for damage to the property of such Person that results from a danger arising from the wilful, negligent or reckless conduct or action of the Dehcho Government or any Dehcho Citizen.

8.17.2 Prior to accessing Dehcho Ndehe and waters overlying such lands under 8.16.1, Canada or the Government of the Northwest Territories, as applicable, will give prior notice<sup>71</sup> of such access to the Dehcho Government when it is reasonable to do so.

## 8.18 ADDITIONAL CONDITIONS BY AGREEMENT<sup>72</sup>

8.18.1 Subject to 8.18.2, the Dehcho Government may propose to Canada and the Government of the Northwest Territories additional conditions on access to Dehcho Ndehe and waters overlying such lands under 8.16.1 or 8.16.2 provided such conditions pertain only to:

- a) requirements for notice or registration by Persons accessing Dehcho Ndehe and waters overlying such lands; or
- b) the identification of specific areas, seasons of the year or times of the day in which access may not be exercised in order to:

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<sup>70</sup> The DFN believe that this provision should reference the Dehcho Land Use Plan. Canada and GNWT considering if a further reference to the Land Use Plan is required, or if it is already covered under 8.2.1d). LTC to consider adding the following language: "including any Dehcho Land Use Plan implemented pursuant to Federal and Territorial Legislation".

<sup>71</sup> ~~DFN propose a duty to Consult rather than merely give notice to the Dehcho Government.~~ [Key Issues ¶]

<sup>72</sup> ~~Sections 19.1 and 19.2 may be unnecessary if other DFN proposals respecting Winter Roads are agreed to.~~ [Key Issues ¶]

- i) protect the Environment;
- ii) conserve Wildlife, Fish Migratory Birds or their habitats;
- iii) avoid conflict with Harvesting by Dehcho Citizens or with other uses of Dehcho Ndehe and waters overlying such lands by Dehcho Citizens; and
- iv) protect Camps or structures.

8.18.2 Additional conditions may not be established in accordance with 8.7.1 whether through agreement with Canada or the Government the Northwest Territories or the process set out in the Dispute Resolution chapter, for the exercise of access rights in relation to law enforcement, investigations, inspections or crime prevention under Federal Law or Territorial Law.

8.18.3 If the Dehcho Government and Canada and the Government of the Northwest Territories do not reach agreement on a further condition proposed under 8.18.1, the Dehcho Government may refer the dispute for resolution in accordance with the Dispute Resolution chapter.

8.18.4 The Dehcho Government will take reasonable measures to notify the public of the further conditions which may result from a resolution or a determination under 8.18.2.

8.18.5 Further conditions on access under 8.16.1 or 8.16.2 may be established by agreement between the Dehcho Government and the Person with whom such conditions would apply.

## **PART IX SURFACE RIGHTS BOARD**

### **8.19 GENERAL**

8.19.1 Prior to the Dehcho Agreement, the Parties will review the subject matter of the establishment of a Surface Rights Board in light of current Canada and the Government of the Northwest Territories proposals

## **PART X LINEAR PROJECTS**

### **8.20 GENERAL**

8.20.1 Prior to the Dehcho Agreement, the Parties will discuss provisions for access to Dehcho Ndehe [and waters overlying such lands] for the purpose of planning, constructing, operating and maintaining linear projects.



## CHAPTER 9: JURISDICTION ON DEHCHO NDEHE

- 9.1. JURISDICTION FOR DEHCHO NDEHE AND NON-RENEWABLE RESOURCES
- 9.2. JURISDICTION FOR FISH
- 9.3. JURISDICTION FOR MIGRATORY BIRDS
- 9.4. JURISDICTION FOR PLANTS AND TREES
- 9.5. JURISDICTION FOR WILDLIFE
- 9.6. LIMITATIONS
- 9.7. CONFLICT OF LAWS

### 9.1. JURISDICTION FOR DEHCHO NDEHE AND NON-RENEWABLE RESOURCES

9.1.1 The Dehcho Government has Jurisdiction with respect to the use, administration, management, control and protection of Dehcho Ndehe and the non-renewable resources found thereon, including:

- a) granting of interests in Dehcho Ndehe;
- b) the expropriation of such interests, subject to Chapter 39, Expropriation, except for interests held by Canada or the Government of the Northwest Territories;
- c) the requirement for an authorization from the Mackenzie Valley Land and Water Board for the use of Dehcho Ndehe where the Legislation otherwise provides an exemption from such a requirement;
- d) access on Dehcho Ndehe subject to Chapter 8, Access; and,
- e) trespass on Dehcho Ndehe subject to Chapter 8, Access.

9.1.2 The Dehcho Government has Jurisdiction over land use plans for Dehcho Ndehe. The Dehcho Land Use Plan will be consistent with the provisions of the Dehcho Agreement and Legislation.<sup>73</sup>

9.1.3 The regulation of land, water and the environment on Dehcho Ndehe will be carried out within the regulatory framework set out in the Mackenzie Valley Resource Management Act and Legislation.<sup>74</sup>

### 9.2. JURISDICTION FOR FISH

9.2.1 The Dehcho Government has Jurisdiction in relation to the following matters related to Fish:

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<sup>73</sup> Further discussion is required in the context of a Land Use Planning chapter. Canada and GNWT ask whether the second sentence of this clause should be referring to “any Dehcho Land Use Plan”.

<sup>74</sup> ~~DFN does not support the application of the MVRMA in the Dehcho region-~~ [Key Issues ¶]

- a) who may harvest fish in waters on Dehcho Ndehe;
- b) which Dehcho Citizens may harvest fish in the Dehcho Settlement Area;
- c) use of waters on Dehcho Ndehe to promote fishery opportunities or activities such as aquaculture, fish stocking, fish hatcheries, trophy fish harvesting or catch and release fishing<sup>75</sup>;
- d) limits, other than total allowable harvest levels, on any species or stock of fish which may be harvested,
  - i) by any Person, in waters on Dehcho Ndehe, and
  - ii) by Dehcho Citizens in the Dehcho Settlement Area;
- e) limits on when fish harvesting may occur, including non-quota limitations such as limits on location, methods, quantities and seasons,
  - i) in relation to any Person, in waters on Dehcho Ndehe, and
  - ii) in relation to Dehcho Citizens, in the Dehcho Settlement Area;
- f) restrictions on the type of equipment or gear that may be used for fish harvesting, including methods of use and identification of gear and harvested fish
  - i) by any Person, in waters on Dehcho Ndehe, and
  - ii) in relation to Dehcho Citizens, in the Dehcho Settlement Area;
- g) identification designating
  - i) any Person who is authorized to harvest fish in water on Dehcho Ndehe, and
  - ii) a Dehcho Citizen who is authorized to harvest fish in the Dehcho Settlement Area;
- h) identification of fish transported outside Dehcho Ndehe or the Dehcho Settlement Area by Dehcho Citizens;

### 9.3 JURISDICTION FOR MIGRATORY BIRDS

9.3.1 The Dehcho Government has Jurisdiction over the Dehcho right to harvest Migratory Birds for:

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<sup>75</sup> Canada is still reviewing what is envisioned by this provision and would propose table discussion

- a) the distribution of harvested Migratory Birds among Dehcho Citizens;
- b) designating Dehcho Citizens to harvest Migratory Birds;
- c) the methods, timing, and location of the harvest of Migratory Birds by Dehcho Citizens; and
- d) the sale of inedible parts, including down, of harvested Migratory Birds.

#### **9.4. JURISDICTION FOR PLANTS AND TREES**

9.4.1 The Dehcho Government has Jurisdiction in relation to the following matters:

- a) who may Harvest Plants and Trees on Dehcho Ndehe;
- b) limits, on any species of Plant or Tree which may be harvested, by any Person, on Dehcho Ndehe.
- c) limits on the locations, where, and times Plant and Tree Harvesting may occur on Dehcho Ndehe;
- d) restrictions on equipment and methods used for the Harvesting of Plants and Trees on Dehcho Ndehe;
- e) requirements for identification or documentation for those Harvesting Plants and Trees on Dehcho Ndehe; and
- f) the sale of Plants and Trees Harvested on Dehcho Ndehe.

#### **9.5. JURISDICTION FOR WILDLIFE**

9.5.1 The Minister retains the legislative authority to manage and conserve Wildlife and Wildlife habitat and will exercise that authority in a manner that is consistent with the Dehcho Agreement.<sup>76</sup>

#### **9.6. LIMITATIONS<sup>77</sup>**

9.6.1 Nothing in the Dehcho Agreement will affect any responsibility of Canada or the Government of the Northwest Territories for the fighting of forest fires.<sup>78</sup>

9.6.2 The Jurisdictions set out in 9.1.1 do not include the power to make laws:

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<sup>76</sup> Dehcho disagree. More discussion is needed. Management of wildlife in Settlement Area will be addressed in a separate chapter.

<sup>77</sup> Limitations will need to be cross referenced with other Dehcho Agreement chapters to ensure consistency

<sup>78</sup> DFN see a role for establishing priority zones for fighting forest fires.

- a) authorizing the use of water or the deposit of waste in water on Dehcho Ndehe;
- b) establishing a permitting system for the use of the surface of Dehcho Ndehe<sup>79</sup>;
- c) imposing any conditions on the exercise of an interest listed in Appendix (referred to in 7.6.1), or any renewals, replacements, transfers or extensions of term thereof; and,
- d) respecting environmental assessment.

9.6.3 Before enacting a law in relation to the matters set out in 9.1.1, the Dehcho Government will consult<sup>80</sup> with Canada and the Government of the Northwest Territories.

## **9.7. CONFLICT OF LAWS**

9.7.1 A Dehcho Law prevails to the extent of a conflict with a federal or territorial law for Dehcho Laws respecting:

- a) granting of interests in Dehcho Ndehe;
- b) the expropriation of such interests, subject to Chapter 39, Expropriation, except for interests held by Canada or the Government of the Northwest Territories;
- c) the requirement for an authorization from the Mackenzie Valley Land and Water Board for the use of Dehcho Ndehe where the Legislation otherwise provides an exemption from such a requirement; and
- d) access on Dehcho Ndehe subject to Chapter 8, Access.

9.7.2 Subject to 9.3.1, in the event of a conflict between a Dehcho Law enacted pursuant to this chapter and a Federal Law or Territorial Law, the Federal Law or Territorial Law prevails to the extent of the conflict.

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<sup>79</sup> Canada is reviewing this clause.

<sup>80</sup> The parties have under review.

## CHAPTER 33: WATER RIGHTS AND MANAGEMENT

- 33.1 GENERAL
- 33.2 EXISTING INTERESTS
- 33.3 GOVERNMENT AND OTHER USERS
- 33.4 LICENSING
- 33.5 LEGAL ACTION AND STANDING
- 33.6 INTERJURISDICTIONAL AGREEMENTS
- 33.7 CONFLICTING REGULATORY CONDITIONS

### 33.1 GENERAL

- 33.1.1 Subject to other provisions in the Dehcho Agreement, the Dehcho First Nations, the Dehcho Government and Dehcho Citizens have the exclusive right to use Water and deposit Waste in waters on or that flow through Dehcho Ndehe when such waters are on or flowing through Dehcho Ndehe.
- 33.1.2 Subject to any use of Water, deposit of Waste or activity authorized by Federal Law or Territorial Law, including by an authorization issued by the MVLWB or by another competent authority, the Dehcho First Nations, the Dehcho Government and Dehcho Citizens have the right to waters that are substantially unaltered in quality, quantity and rate of flow when such waters are on, adjacent to, or flow through Dehcho Ndehe.
- 33.1.3 Subject to any negotiated overlap agreements, the Dehcho First Nations, the Dehcho Government and Dehcho Citizens will have the right to use Water within the Dehcho Settlement Area on lands owned by other Aboriginal people for Harvesting for Domestic Purposes, and heritage or cultural purposes, without licence, permit or other authorization.
- 33.1.4 The use of Water and the deposit of Waste in the Dehcho Settlement Area including the rights set out in 33.1 are subject to Legislation<sup>84</sup>.
- 33.1.5 Dehcho Water rights set out in 33.1 will not interfere with:
  - a) rights of navigation and passage on Water;
  - b) the use of Water by an individual for Domestic Uses or emergency purposes;
  - c) community use of Water for community purposes; or
  - d) any right of access set out in the Dehcho Agreement,

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<sup>84</sup> ~~DFN: this clause is unnecessary and objectionable in light of other restrictions in this chapter.~~ [Key Issues ¶1]

nor will the consent of the Dehcho Government be required with respect to these activities.

33.1.6 The Dehcho First Nations, the Dehcho Government and Dehcho Citizens will not use Water or deposit Waste so as to substantially alter the quality, quantity or rate of flow of waters which are on or flow through or are adjacent to Dehcho Ndehe, unless authorized by the MVLWB.<sup>82</sup>

33.1.7 <sup>83</sup>Nothing in the Dehcho Agreement will be construed as granting the Dehcho First Nations, Dehcho Government, a Dehcho Citizen or any other Person property rights in respect of Water.

### 33.2 EXISTING INTERESTS

33.2.1 Notwithstanding 33.1.1, existing interests on Dehcho Ndehe authorized to use Water or deposit Waste in Water will:

- a) be identified in Appendix X of the Dehcho Agreement; and
- b) continue in accordance with applicable Legislation and the terms and conditions of the authorization.

### 33.3 GOVERNMENT AND OTHER USERS

33.3.1 Notwithstanding both the ownership of Beds of certain Water bodies by the Dehcho Government on Dehcho Ndehe and the Dehcho Water rights set out in 33.1, Canada and the Government of the Northwest Territories retains the right to protect, manage and use Water and Beds of such Water bodies, for public purposes which include<sup>84</sup>:

- a) use Water for fighting fires;
- b) the protection of Wildlife and Fish and their habitat;
- c) the protection of Water supplies including community Water supplies from contamination and degradation;
- d) research with respect to Water quality and Water quantity; and
- e) flood control and protection of navigation and transportation.

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<sup>82</sup> DFN propose to change 33.1.6 to: 'No person will use Water or deposit Waste so as to substantially alter the quality, quantity or rate of flow of waters which are on or flow through or are adjacent to Dehcho Ndehe, unless authorized by the MVLWB and the Dehcho Government'.

<sup>83</sup> ~~DFN suggest co-ownership (Crown / Dehcho Gov't) and/or no private water ownership.~~ [Key Issues ¶]

<sup>84</sup> ~~DFN want some restrictions and Consultations with DG, particularly if an open ended list is to be used. DFN will work on a consultation formula for the Parties to consider.~~ [Key Issues ¶]

### 33.4 LICENSING

33.4.1 The Mackenzie Valley Land and Water Board (“MVLWB”)<sup>85</sup> will not authorize a use of Water or a deposit of Waste that, in its opinion, is likely to substantially alter the quality, quantity or rate of flow of waters flowing on, flowing through or flowing adjacent to Dehcho Ndehe, unless the MVLWB considers that:

- a) there is no alternative that could reasonably meet the requirements of the applicant; and
- b) there are no reasonable measures by which the applicant could avoid the alteration.

33.4.2 Should the MVLWB authorize a use of Water or a deposit of Waste under 33.4.1, it will not do so unless:

- a) the applicant seeking authorization has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or
- b) the applicant or the Dehcho Government has applied to the MVLWB for a determination.

33.4.3 The MVLWB will not authorize a use of Water or a deposit of Waste anywhere in the Dehcho Settlement Area, excluding Dehcho Ndehe which, in its opinion, will likely substantially alter the quality, quantity or rate of flow of waters flowing on or flowing through or flowing adjacent to the Dehcho Settlement Area, unless:<sup>86</sup>

- a) the applicant seeking authorization has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or
- b) the applicant or the Dehcho Government has applied to the MVLWB for a determination

33.4.4 Where a use of Water or a deposit of Waste is proposed outside the Dehcho Settlement Area, but within the Northwest Territories, which, in the opinion of the MVLWB, will likely substantially alter the quality, quantity or rate of flow of waters flowing on or flowing through or flowing adjacent to Dehcho Ndehe, the use of Water or the deposit of Waste will not be authorized unless:

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~~<sup>85</sup> DFN position is that the MVRMA does not and will not apply in the Dehcho Settlement Area. [Key Issues ¶]~~

<sup>86</sup> DFN suggests deleting 33.4.3 and have 33.4.1 apply throughout Settlement Area.

- a) the applicant has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or
  - b) the applicant or the Dehcho Government has applied to the MVLWB for a determination.
- 33.4.5 Canada or the Government of the Northwest Territories will Consult with the Dehcho prior to authorizing a use of Water or deposit of Waste in Water that is likely to substantially alter the quality, quantity or rate of flow of Water on, flowing through or adjacent to Dehcho Ndehe when such Water is on, flowing through or adjacent to Dehcho Ndehe.<sup>87</sup>
- 33.4.X Canada or the Government of the Northwest Territories, whichever government is responsible, will, through the MVLWB or such other forum the responsible government deems appropriate, Consult with the Dehcho prior to authorizing a use of Water or deposit of Waste in Water [anywhere in the Dehcho Settlement Area] that could adversely affect the exercise of [a treaty right] set out in the Dehcho Agreement.
- 33.4.6 If the Dehcho Government and the applicant seeking authorization for a use of Water or deposit of Waste described in 33.4.2 or 33.4.3 or 33.4.4 do not reach an agreement on compensation within the time limit established by the MVLWB, either party may refer the matter of compensation for resolution by the MVLWB.
- 33.4.7 Compensation determined by the MVLWB in respect of a use of Water or a deposit of Waste described in 33.4.2 or 33.4.3 or 33.4.4 may be in the form of a lump sum or periodic cash payment or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of Dehcho Citizens or equipment to a different harvesting locale or a combination of such forms of compensation.
- 33.4.8 The MVLWB will consider the following factors in determining the amount of compensation payable to the Dehcho Government in respect of a use of Water or deposit of Waste described in 33.4.2 or 33.4.3 or 33.4.4:
- a) the effect of the use of Water or deposit of Waste on the use by Dehcho Citizens of Water on or adjacent to Dehcho Ndehe;

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<sup>87</sup> DFN: This also is a substantial reduction in Crown's duty to consult. See new s. 33.4.5. Canada provided new wording 33.4.X.

- b) the effect of the use of Water or deposit of Waste on Dehcho Ndehe, taking into account any cultural or special value of the lands to the Dehcho First Nations;
- c) the nuisance, inconvenience and noise caused by the use of Water or deposit of Waste to Dehcho Citizens on Dehcho Ndehe;
- d) the effect of the use of Water or deposit of Waste on the Harvesting of Wildlife, Fish and Migratory Birds by the Dehcho First Nations; and
- e) subject to Legislation, such other factors as the MVLWB may consider relevant.

### 33.5 LEGAL ACTION AND STANDING

33.5.1 The Dehcho Government has a cause of action against any Person in respect of any use of Water, deposit of Waste or other activity not authorized by Federal Law or Territorial Law<sup>88</sup> which substantially alters the quality, quantity or rate of flow of waters which are on, adjacent to or flow through Dehcho Ndehe, with such remedies available to the Dehcho Government as riparian rights holders.

33.5.2 For the purposes of 33.1.2 or 33.5.1, the Dehcho Government will have standing at all times in a court of competent jurisdiction to seek a declaration respecting the authority of any Person to alter the quality, quantity or rate of flow of Water.

### 33.6 INTERJURISDICTIONAL AGREEMENTS

33.6.1 Prior to the Dehcho Agreement, the Parties will discuss Consultation issues concerning the management of Water in the context of interjurisdictional agreements affecting the Dehcho Settlement Area.

### 33.7 CONFLICTING REGULATORY CONDITIONS

33.7.1 For greater certainty, any condition on the use of Waters or the deposit of Waste in Waters which are on or flow through Dehcho Ndehe that is imposed under Legislation, including by an authorization issued by the MVLWB, prevails over any conflicting condition imposed by the the Dehcho Government by or under any authority recognized in the Agreement, including Dehcho Laws.<sup>89</sup>

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<sup>88</sup>DFN: An activity could be authorized by law, yet give rise to a cause of action, eg. negligence. [Key Issues ¶]

<sup>89</sup>DFN say DG laws should be paramount. [Key Issues ¶]

## CHAPTER 38: HERITAGE RESOURCES

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- 38.1 GENERAL**
- 38.2 MANAGEMENT OF HERITAGE RESOURCES**
- 38.3 ACCESS TO AND CARE OF DEHCHO HERITAGE RESOURCES**
- 38.4 BURIAL SITES**
- 38.5 PLACE NAMES**
- 38.6 SACRED OR SPIRITUAL SITES**
- 38.7 DISPUTE RESOLUTION**

### DEFINITIONS

Archaeological Activity – means physical activity carried out in the Dehcho Settlement Area in connection with the discovery, recovery or field study of the remains of pre-contact and post-contact periods and includes any activity that disturbs or may result in the disturbance of a Burial Site, Heritage Resource, Sacred or Spiritual Site.

Burial Site – means a site that contains or might contain the remains of a Dehcho Dene, or an ancestor of a Dehcho Dene, or for which there is evidence that the site did or might have contained such remains, and includes human remains and associated grave goods.

Heritage Resources – means any site, artifact, object, or record of archaeological, historical or cultural significance to the Dehcho Dene, including burial sites, and trails used for accessing heritage sites, artifacts or objects.

Place Names – means a Dehcho Dene Place Name in a Dehcho Dene language.

Sacred or Spiritual Site - means a site where Dehcho Dene carry out traditional and cultural activities, or a site associated with legends of a spiritual nature and unique to the beliefs and customs of the Dehcho Dene, and that is declared to be a Sacred or Spiritual Site according to Dehcho Dene traditions, and is listed in Appendix A to this chapter.

- 38.1 GENERAL**
- 38.1.1 Dehcho Heritage Resources are the cultural patrimony of the Dehcho First Nations.
- 38.1.2 38.1.1 will not be interpreted as creating ownership rights for the Dehcho First Nations.

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<sup>90</sup> Chapter under review by Canada and GNWT.

- 38.1.3 Nothing in this chapter will limit any entitlement, right, title or interest of the Dehcho Government, the Dehcho First Nations or a Dehcho Citizen available under Law in respect of intellectual property.
- 38.1.4 The Dehcho Government may enter into agreements with Dehcho Community Governments, Canada, or the Government of Northwest Territories for the delivery of programs and services related to heritage and Heritage Resources.<sup>91</sup>
- 38.1.5 In developing legislation or policy that may affect Dehcho Heritage Resources, the government contemplating the legislation or policy will Consult with the Dehcho Government, and where appropriate, accommodate the concerns raised in the Consultation.
- 38.1.6 Where the Dehcho Government identifies an issue of concern arising out of the administration of legislation or a government policy in respect of Dehcho Heritage Resources, the government that enacted the legislation or created the policy will discuss that concern with the Dehcho Government and provide it with written reasons for any decision on how to deal with that concern.
- 38.1.7 The location of burial sites in the Dehcho Settlement Area other than burial sites in cemeteries will, as they become known, be recorded by the Government of Northwest Territories. The Government of Northwest Territories will indicate in that record those sites known to be Dehcho burial sites.
- 38.1.8 Any dispute as to whether a Heritage Resource is a Dehcho Heritage Resource may be referred for resolution in accordance with chapter 46 by Canada, the Government of Northwest Territories, the Dehcho Government or a person with a right or interest in the resource or site where it is located.

## **38.2 MANAGEMENT OF HERITAGE RESOURCES**

- 38.2.1 The Dehcho Government will be the custodian of Heritage Resources on Dehcho Ndehe.
- 38.2.2 The Dehcho Government will notify the Government of Northwest Territories when a heritage resource, other than a Dehcho Heritage Resource, is found on Dehcho Ndehe.
- 38.2.3 Canada and the Government of Northwest Territories will notify the Dehcho Government when a Dehcho Heritage Resource is found outside Dehcho Ndehe but in the Northwest Territories.

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<sup>91</sup> Canada – has ‘some concern with the transfer of programs.’

- 38.2.4 The Dehcho Government will have an opportunity to be represented on any board, agency or committee established by Canada or the Government of Northwest Territories with responsibilities restricted to the Northwest Territories that include the administration or protection of Dehcho Heritage Resources in the Mackenzie Valley.
- 38.2.5 Within two years after the effective date, to address the potential effect of land use activities on Heritage Resources in the Dehcho Settlement Area, representatives of the Parties will, in consultation with each other, develop guidelines for
- a) conditions that should be attached to a land use permit issued by any government or a board established by any government in respect of the presence of Heritage Resources on the lands to which the permit applies; and
  - b) the procedure that should be followed where Heritage Resources are discovered on the lands to which the land use permit applies.
- 38.2.6 Prior to the issuance of a land use permit by Canada, the Government of Northwest Territories, or a board established by Canada or the Government of Northwest Territories in the Dehcho Settlement Area, the government or any such board will,
- a) Consult the Dehcho First Nations;
  - b) forward a copy of the land use permit application to the Dehcho Government and the government agency responsible for Heritage Resources; and
  - c) seek advice concerning the presence of Heritage Resources on the lands to which the land use permit will apply from the Dehcho Government.
- 38.2.7 Prior to issuing an authorization for Archaeological Activity, a government will,
- a) in respect of Heritage Resources on Dehcho Ndehe, ensure that the applicant has obtained the written consent of the Dehcho Government; and
  - b) in respect of Dehcho Heritage Resources elsewhere in the Dehcho Settlement Area, Consult with the Dehcho Government.

- 38.2.8 All authorizations for Archaeological Activity in respect of Dehcho Heritage Resources in the Dehcho Settlement Area will
- a) specify plans and methods for site protection and restoration, where applicable;
  - b) require Consultation with the Dehcho Government;
  - c) provide for treatment and disposition of materials extracted; and
  - d) require submission of a technical report and a non-technical report on the work completed.

**38.3 ACCESS TO AND CARE OF DEHCHO HERITAGE RESOURCES**

38.3.1 It is an objective of the Parties that Dehcho Heritage Resources which have been removed from Northwest Territories be available for the benefit, study and enjoyment of Dehcho Citizens and all other residents of Northwest Territories. The attainment of this objective may include the return of such resources to the Northwest Territories, on a temporary or continuing basis, provided that

- a) appropriate facilities and expertise exist in the Northwest Territories which are capable of maintaining such Dehcho Heritage Resources for future generations; and
- b) such relocation is compatible with the maintenance of the integrity of public archives and National and territorial heritage resource collections.

38.3.2 Canada, the Government of Northwest Territories, and the Dehcho Government will work together to attain the objective in 38.3.1.

38.3.3 38.3.1 and 38.3.2 do not apply to human remains and associated grave goods found in Dehcho burial sites.

38.3.4 At the request of the Dehcho Government, Canada, and the Government of Northwest Territories will

- a) deliver any human remains and associated grave goods that were found in Dehcho burial sites in the Northwest Territories and subsequently removed from the Northwest Territories and are still held by Canada or

the Government of Northwest Territories to the Dehcho Government in accordance with applicable legislation and government policies; and

- b) use reasonable efforts to facilitate the Dehcho Government's access to Dehcho artifacts and human remains of Dehcho ancestry that are held in other public and private collections.

38.3.5 Dehcho Citizens will be given opportunities for employment at public sites, museums, heritage resource projects, archaeological works and similar public facilities and projects related to a Dehcho Heritage Resources in the Dehcho Settlement Area, in a manner to be set out in an agreement between Canada or the Government of Northwest Territories in relation to the site or area where the facility or project is located or, where there is no such agreement, in the management or work plans for the site or facility. The Dehcho Government will be Consulted in the development of such plans.

38.3.6 Where Canada or the Government of Northwest Territories prepares public information material with respect to protected areas, or projects and programs concerning Dehcho Heritage Resources in the Dehcho Settlement Area, the Dehcho Government will be Consulted to ensure that appropriate recognition is given to the culture and history of the Dehcho First Nations.

38.3.7 Where requested by the Dehcho Government, Canada or the Government of Northwest Territories will, where practicable, prepare materials in 38.3.6 in a Dehcho Dene language.

#### **38.4 BURIAL SITES**

38.4.1 Immediately upon discovering a burial site in the Dehcho Settlement Area outside a cemetery, a person will notify the Dehcho Government and the Government of Northwest Territories.

38.4.2 Subject to 38.4.4, a Dehcho burial site on Dehcho Ndehe or in a Dehcho community will not be surveyed or disturbed without the written consent of the Dehcho Government.

38.4.3 Any Person surveying or disturbing a Dehcho burial site will take appropriate measures to respect the dignity of the site and of any human remains and associated grave goods therein.

38.4.4 A Dehcho burial site on Dehcho Ndehe or in a Dehcho community may be disturbed by police, where authorized by legislation, without the consent of the

Dehcho Government, if such disturbance is required in relation to a police investigation.

38.4.5 The Dehcho Government will be notified of any disturbance under 38.4.4 as soon as practicable and Consulted regarding any ongoing terms and conditions relating to such disturbance.

38.4.6 At the request of one of the Parties, the Parties will jointly develop procedures for the protection of Dehcho burial sites in the Dehcho Settlement Area. If they fail to agree on those procedures one of the Parties may refer the matter for resolution in accordance with chapter 46.

### **38.5 PLACE NAMES**

38.5.1 The Dehcho Government may establish its own procedures and policies for place naming within Dehcho Ndehe.

38.5.2 The Dehcho Government may, in consultation with Canada and the Government of Northwest Territories, name or rename lakes, rivers, mountains and other geographic features and locations wholly within Dehcho Ndehe and Dehcho communities.

38.5.3 Once the Dehcho Government notifies Canada and the Government of Northwest Territories that it has given a new place name for a lake, river, mountain or other geographic feature or location wholly within Dehcho Ndehe or Dehcho communities, that new name will be recognized as the official name by Canada, the Government of Northwest Territories, and the Dehcho Government.

38.5.4 Where the Dehcho Government requests government to establish a new official name or change an existing official name of a lake, river, mountain or other geographic feature or location wholly or partly in the Dehcho Settlement Area that is located wholly or partly outside Dehcho Ndehe, Canada, the Government of Northwest Territories will, taking into account the integral role that place names play in the living history of the Dehcho First Nations, attempt to reach an agreement on the official name.

38.5.5 Government will Consult the Dehcho Government when considering any proposal to name or rename a lake, river, mountain or other geographic feature or location wholly or partly in the Dehcho Settlement Area.

38.5.6 Dehcho place names recognized as official under 38.5.3 or 38.5.4 will be included, to the extent practicable and in accordance with map production specifications

of the Government of Canada, on NTS mapsheets when they are revised and on other maps when they are produced or revised by government.

**38.6 SACRED OR SPIRITUAL SITES**

38.6.1 The areas described in Appendix A to this chapter are Sacred or Spiritual Sites and Heritage Resources of historical and cultural significance to the Dehcho First Nations.

38.6.3 Canada and the Government of Northwest Territories will not grant any interests in Sacred or Spiritual Sites listed in Appendix A.

**38.7 DISPUTE RESOLUTION**

38.7.1 Any dispute among the Parties regarding the interpretation or implementation of this chapter may be referred to dispute resolution in accordance with chapter 46.