

Canada's offer to the Dehcho First Nations

An overview for Dehcho leaders

BACKGROUND

Canada and the Dehcho First Nations have been exploring models for a Dehcho Process agreement since 2001. The exploratory phase helped all the parties better understand each other's interests and ideas.

Canada was able to determine that it would be able to respond to many of the Dehcho people's interests. It also became clear to Canada that the non-land selection model advocated by the Dehcho would not be workable in a legal or practical sense. In addition, it would confer province-like powers to the Dehcho that are inconsistent with other agreements in the Mackenzie Valley and with on-going devolution negotiations.

In Canada's view, the parties now need to move forward from this exploratory phase in order to make progress towards an Agreement-in-Principle. The federal offer has been tabled to help focus negotiations.

The offer tabled does not propose to share ownership and jurisdiction of the entire settlement region as has been advocated by the Dehcho. What it **does** do is propose a meaningful role for the Dehcho throughout their traditional territory, including the power to make laws on their own lands, while maintaining clear lines of authority for the Dehcho, territorial and federal governments.

Canada is committed to negotiating a fair, reasonable agreement that is uniquely tailored for the Dehcho and is also equitable, consistent and comparable with other settlements in the Mackenzie Valley and the rest of Canada. We are prepared to be flexible and innovative to meet the Dehcho's interests within the principles and parameters set out in the federal offer.

PRINCIPLES FOR NEGOTIATION

Canada is committed to negotiating an agreement that will:

- give Dehcho people important tools for land and resource management, governance, conservation, land use planning;
- give the Dehcho a substantial say in decision-making throughout their settlement area and ability to make laws on Dehcho title lands; and,
- renew the relationship between the Dehcho, federal and territorial governments based on respect and a shared understanding of jurisdiction and authorities.

Canada will approach negotiations based on some key principles:

- The agreement will be in the interest of Canada, the Government of NWT and the Dehcho First Nations;
- The offer is based on the premise that all the Dehcho First Nations would be included in the final agreement;
- Rather than “extinguishing” rights as was done in the past, Canada and the Dehcho First Nations will base a new relationship on mutual recognition and sharing where they agree on the rights of all parties to the agreement;
- The final agreement will be a Treaty under the Constitution;
- The Charter of Rights and Freedoms will apply to the Dehcho and throughout the Dehcho territory;
- The *Indian Act* will no longer apply, except for determining who is a Status Indian;
- The Dehcho people’s rights related to land, resources and governance will be spelled out clearly;
- The agreement will be comparable to other agreements that have come before in the Mackenzie Valley and Canada;
- Third party interests will be taken into account and respected; and,
- Overlaps with other Aboriginal groups and transboundary issues will be addressed in the negotiations.

HIGHLIGHTS OF THE FEDERAL OFFER

The federal offer is based on the idea that a Dehcho agreement will include the following key components.

1) *Structure and organization of governments in the Dehcho (“Governance”)*

Canada is interested in negotiating an agreement that will put in place one regional government and a series of community public governments that are based on the laws and customs of the Dehcho First Nations and of Canada. These governments would be guided by a Dehcho constitution and operate based on key democratic principles to ensure all residents have an appropriate right of standing and participation.

Canada is interested in a governance model that will:

- Provide public government for and by all residents of the Dehcho, but in which Dehcho Dene are guaranteed representation;
- Bring decision-making as close to the Dehcho communities as practical;
- Give the people who are directly affected by the decisions of the governments in the Dehcho region an opportunity to participate in those governments;
- Make sure that governments can operate in a practical and efficient way;
- Make sure that Dehcho governments can have good, practical working relationships with other levels of government; and,

- Make sure that those who make decisions at all levels are accountable.

Dehcho Regional Government: would have the power to make laws and deliver programs and services to all residents of the Dehcho region of the NWT. Fifty per cent of the seats on the Dehcho regional government would be reserved for Dehcho Dene. (“Dehcho Dene” is a comprehensive term used by the Dehcho First Nations which includes the Métis).

Dehcho Community Governments: could combine existing Dehcho First Nations and municipal governments into a new local government body. Some types of law making could also be negotiated for these local governments. Fifty per cent of seats on community governments would be reserved for Dehcho Dene (not including the leader). Arrangements for the communities of Hay River and Fort Simpson would be subject to negotiation.

2) Dehcho lands and the status of other lands

Canada considers clear land title to be a fundamental requirement of any land, resource and governance agreement with Aboriginal people. As the largest Aboriginal group in the NWT in terms of population, the Dehcho people will be in a position to own a significant portion of their traditional territory, in addition to assuming a major role in decision-making throughout the entire region.

In some cases, the Dehcho may choose to own both the surface and sub-surface of a particular piece of land. In this case, they would be able to put in place their own laws and regulations for activities such as mining and oil&gas development. This means that, among other things, they would be able to set royalty rates and keep 100% of the royalties collected. Where only the surface is chosen, the Dehcho would have rights related to the surface uses such as leases, forestry, tourism, specified substances.

In its offer, Canada’s has suggested an initial land quantum of 39,000 square kilometres of both surface sub-surface. These numbers would be subject to negotiation and may be adjusted to respond to the needs and interests expressed by the Dehcho.

Other types of lands included in the Dehcho Agreement areas would include National parks, Community Lands and Protected Areas.

Under the proposed model, the Dehcho would have law-making powers on Dehcho lands as well as Community Lands. They would also play a major role in decision-making throughout the entire Dehcho settlement area. For example, they would be a key player in the Dehcho Resource Management Authority and in land use planning.

In negotiations related to lands, Canada’s priority is to provide a fair and reasonable outcome. Some principles that will guide Canada’s approach are:

- The needs and interests of the Dehcho First Nations will be paramount in identifying Dehcho lands;
- The make up of Dehcho lands will include an equitable representation of the available land, taking into account its topographical and economic characteristics;
- The land component should support the economic development potential of the settlement area;
- Existing third party interests will be respected; and,
- Future public and private needs and interests will be taken into consideration.

3) Protected areas and heritage resources

Some of the Dehcho's interests in land and resource management, as well as conservation can also be met through the inclusion of various protected areas and heritage resources in the agreement. In these areas, the Dehcho people would have a special role to play in management and decision-making. Some of these areas include:

- Nahanni National Park Reserve
- Wood Buffalo National Park
- Protection of Heritage resources throughout settlement area
- Protected areas on Dehcho Lands
- Protected Areas contemplated under the Protected Area Strategy

4) Management of renewable and non-renewable resources, including land use planning

Dehcho Lands

The Dehcho government will have the power to enact laws in relation to use, management, administration, and protection of Dehcho Lands including renewable and non-renewable resources.

Dehcho Resource Management Authority

The Dehcho First Nations' have expressed a strong interest in establishing a "Dehcho Resource Management Authority" (DRMA). The idea behind the DRMA is to bring together under one body the general authority to co-ordinate activities such as land use planning, land and water regulations, heritage resources, protected area management, forest management and wildlife management.

Other characteristics of the DRMA are that it:

- may be a stand-alone "Authority" harmonized with the *Mackenzie Valley Resource Management Act*;
- would be made up of 50% Federal and Territorial Government membership and 50% Dehcho Government membership, plus a Chairperson; and,
- could take on some administration responsibilities related to Dehcho lands if the Dehcho government chose to delegate these responsibilities.

Renewable resources

Under the proposed federal model, the Dehcho people would:

- have the right to use the entire settlement area for harvesting wildlife, trees and plants using any methods they chose. (Some limitation on this right could be negotiated in the interest of conservation, public safety and public health);
- have the primary responsibility for the stewardship and management of all trees and plants on Dehcho Lands; and,
- have exclusive right to harvest furbearers in the settlement areas (subject to grandfathering provisions).

Land Use Planning

Land Use Planning will be integrated into the resource management regime for the settlement area. The land use plan will apply to Dehcho lands and Crown lands.

5) Financial components

The federal offer includes a substantial financial component made up of both cash payments and resource-revenue sharing. Canada's preliminary offer is an agreement that would include:

- A capital transfer payment amounting to \$104 million that would be paid out with interest over 15 years.
- 12.25 % of the first \$2 million and 2.45 % of any additional royalties collected in the Mackenzie Valley. This formula is consistent with the resource-revenue sharing model used for other settlements in the Mackenzie Valley.

6) Considerations for Katlodeeche First Nation (KFN)

- Should KFN opt for a Treaty Land Entitlement (TLE) model for settlement, land and compensation will be negotiated based upon the Specific Claims Policy.
- Should KFN opt for a Dehcho Process Settlement, the *Indian Act* and reserve status would cease to apply and reserve lands may become Dehcho lands.
- Should KFN opt for a TLE model, it would forgo the right to receive land and financial quanta through the Dehcho Process.
- The relationship between the TLE negotiations and KFN's participation in the Dehcho Process with respect to land management and governance regimes would need to be addressed by the Parties.
- Should KFN choose a TLE settlement, the Dehcho Process land and financial benefits will be reduced.

In closing

Canada's offer marks the beginning of a new phase in the relationship between Canada and the Dehcho people and a significant opportunity to make real progress towards a final agreement. Canada encourages the Dehcho people to take the time to review and consider it.

We look forward to getting back to the negotiation table to hear the Dehcho's response to the offer and make progress towards an Agreement-in-Principle together. In the meantime, the federal team is available to provide more detail and answer questions, and is prepared to travel to Dehcho communities to do this in person.

Mahsi cho.

We invite you to contact any of the following team members for more information or to arrange a visit to your community:

Lynne Partel
Associate Chief Federal Negotiator
Phone: (250) 363-8217
Fax: (250) 363-8295

Gary Potts
Intergovernmental Affairs Specialist
Phone: (867) 669-2609
Fax: (867) 669-2710