

## NEGOTIATIONS BRIEFING NOTES

*These briefing notes have been prepared by the Dehcho First Nations communications staff to inform DFN leaders and members of the negotiations talks between DFN, Canada and the GNWT. They are intended as notes, not as detailed minutes or analysis, but simply for information.*

*The third negotiating session of 2007 was held at the Community Centre in Fort Providence. Chief Negotiator Georges Erasmus led the DFN team with Grand Chief Herb Norwegian in attendance. Tim Christian is chief negotiator for Canada and the GNWT was represented by its chief negotiator, Mark Warren. At the invitation of DFN, the Dehcho Land Use Planning Committee (DLUPC) and senior staff were seated on one of the four sides of the negotiating table and participated fully in the discussions, including an hour-long presentation of their work.*

*Fort Providence Chief Berna Landry hosted the negotiating teams and a number of elders, youth and members attended all the sessions, each of which was opened and closed with prayers by elders and community members.*

- The negotiations started March 6, 2007 and concluded March 8, 2007. The DFN team met for a full day's internal caucus before the formal negotiations and held several intensive private discussions between the formal negotiating sessions, producing a number of key documents for consideration by the other two Parties.
- A conference call was also held with chiefs, elders, the Grand Chief and negotiating team on Monday about the strategy and tactics needed to respond to the hardline being taken by Canada and the GNWT. Both wanted the approval and implementation of the Land Use Plan linked to a land-selection Agreement-in-Principal (AiP). The DFN team was very united and productive. Several chiefs, elders and members attended some of the internal meetings, contributing to the discussions. The DFN team was consistent with the mandate given by Special Assembly in Fort Simpson (2006) and the instructions from the Winter (2007) Leadership Meeting in Fort Liard: Canada must comply with all existing agreements, especially the Interim Measures Agreement (IMA) while AiP negotiations proceed.
- The DFN made a compromise offer at the last negotiations session which would allow Canada to delay implementing the LUP until an AiP was initialled. However, Canada, in return, must agree to extend the current land withdrawals until the LUP is implemented; and they must also agree that if the Dehcho Process ends without an AiP, the Land Use Plan would be immediately implemented and made legally binding. The LUP is the centrepiece of the Dehcho Process.
- Up to the time of the Fort Providence meeting, Canada had not responded. However letters, similar in wording and tone, have been received by the Grand

Chief from Canada and, more recently the GNWT, stating, in clear violation of the IMA and the Settlement Agreement, that Canada would not implement the LUP until the Parties reach a land selection AiP in the Dehcho Process. Canada, in effect, was holding the LUP hostage to an agreement based on land selection, a position the DFN leadership has refused many times, giving the negotiators a mandate only to “explore” land selection. Interim withdrawals could expire by 2008 if there was no LUP, leaving all Dehcho lands exposed to sale, lease and development.

- The Grand Chief informed the negotiation teams that two federal ministers were planning to come to Fort Simpson and Nahanni Park on Sunday, March 11, to make an “announcement” that land for the Park expansion would be set aside for one more year. The ministers were not invited by the DFN and the analysis of the chiefs and leaders was that this was a “green” photo-op action to use the Dehcho to further the political ends of the government while still refusing to endorse the Land Use Plan with its clear environmental protection content. The Grand Chief’s refusal to lend his support to the ceremony, received full approval from the chiefs and the Fort Simpson event was cancelled.
- The Dehcho team took the position that no discussions on the AIP could proceed until Canada and the GNWT made a commitment to an LUP. Grand Chief Norwegian reiterated this in his opening remarks, speaking in Slavey. “The Land Use Plan we have approved is here to stay. It is a milestone for First Nations all over Canada.” He said the DFN negotiating team wanted to move forward but Canada and the GNWT were wasting many hours and days trying “to destroy” the work of the DLUPC. “We hope there will be no confrontation and that we will move forward, but the Dehcho are firm, even if we have to take a long recess in negotiations.”
- Canada tabled two papers dealing with their response to the DFN’s proposal from the Fort Simpson session, showing some slight movement on their earlier positions regarding the LUP agreement. The unacceptable linkage of an approved LUP with an AiP based on land selection was clear in Canada’s rather weak reply. The two must be linked, Canada said, and that is unacceptable. Georges Erasmus said that the history of land claims negotiations in modern times was a history of Canada demanding acceptance of its basic comprehensive claims policies of extinguishment or it would “punish” those First Nations who sought something more innovative,

“Canada has not addressed [in these documents] the question of what happens if things fall apart, if a Dehcho Assembly turns down our proposals. What if the Dehcho says ‘yes, we gave you a mandate to explore land selection and you explored, and we don’t like the package?’ Will Canada shut down the process then? Will there be no agreement and no land use plan. We have been hammered over the years by Canada if we refused to accept their demands. We, the Dene were hammered in 1976, our funds were cut off, we were isolated, the Indian

Affairs minister who was supportive (Warren Allmand) was fired and the new minister (Hugh Faulkner) was given the job of breaking up the Dene Nation and he succeeded. Every time, Dene turn down a Canada proposal we felt then, and we will continue to feel, the wrath of Canada.”

“Will the Dehcho feel that wrath? I think so, and I will not be a part of that. I will not recommend a linkage based on a land selection AiP and an LUP. We want a stand-alone Land Use Plan so that if everything collapses the Dehcho will have their land and control of it. You must de-link the AiP and the LUP and let the Land Use Planning Committee get going with its work. Canada has only one policy and it stubbornly holds to that. In the end we must have the LUP in order to survive, that is all we are trying to do, is to save the land use plan.”

- It was a tense evening. The Dehcho would not move from their demands for a LUP and Canada’s negotiator said he had no mandate other than the paper he had presented. And, although he made several calls to his INAC superiors, nothing changed from Canada’s position. Many people thought the negotiations could collapse. Both sides were playing hardball and the risks were high. DFN acknowledged the risks but maintained its position that while it wanted progress towards a settlement and did not want a fight “we want this to work but we cannot take the risk of losing the land through linking land use to an agreement-in-principle based on land selection.” said DFN’s chief negotiator
- Herb Norwegian described the Land Use Plan as “sacred to the Dehcho. “It is like our Bible. The land is our basic faith. We are at the doorstep for the future. Canada has nothing to fear, Canada should grab our land use plan, it is the green plan of the future. All of Canada could live by this plan.” He also said, as did all Dehcho speakers, that linkage was “too dangerous.”
- The DFN had offered many compromises to Canada and it was clear that Canada was not willing to make compromises itself. The federal government (INAC) Minister Jim Prentice would not give the negotiating team a mandate to separate or de-link the LUP from an AiP.
- Canada continually pressed the DFN team to see a draft of a general AiP, but Erasmus steadfastly refused until the LUP issue is dealt with.
- When it seemed as if a tense standoff was imminent, Mark Warren of the GNWT team suggested a way of breaking the logjam. He proposed working on the two issues separately, land use on one stream, and an AiP on another so that at some point in the future they might be merged but not now. (Prior to this suggestion, the GNWT had followed Canada’s lead on almost every position.) He suggested trying to do the two things in parallel, the LUPC revising and updating its plan, but on a separate stream from an AiP.

- Erasmus probed the option carefully, and asked Warren to confirm it. He pointed out again that the LUPC was “a child of the IMA, a child of the Dehcho Process”. The idea of two streams was a possible light at the end of the tunnel. But, the big question mark was Canada. Tim Christian could not deviate from his instruction from the INAC minister, he must seek advice, he said, in order to agree to two parallel streams of work.
- Immediately, the DFN team went to work after an adjournment and developed new terms of reference for the continued work of the LUPC and staff – objectives, participation, resources and responsibilities and a work plan.
- The Land Use Planning Committee’s funding has been secured and that workplans must now be submitted which involves a coordination with the main table in respect to negotiated terms. This uncertainty in funding up until Thursday left the LUP staff in a state of uncertainty. On going funding support of the DLUPC is a negotiated term of the IMA.
- The document would to be signed by the three chief negotiators. Dated March 7, 2007, it could be signed when the next negotiation session is held at Hay River, March 20-22 -- if Canada agrees to proceed the way the GNWT suggested. The GNWT wanted to keep the process going even though Canada was unwilling to agree.
- But, on the morning of March 8, the DFN negotiating team tabled the third of its strongly worded documents, a draft Memorandum of Understanding (MoU) between the three Parties, nine points which all sides could sign at Hay River, if they had the will:

The MoU’s terms are:

1. The chair of the LUPC will be appointed by the Parties upon recommendation of the LUPC.
2. Following the Workplan and Terms of Reference attached, the LUPC will revise the Interim Land Use Plan and submit it for initialling by the Parties respective Chief Negotiators.
3. The initialled Interim LUP will be submitted for favourable consideration and approval as soon as possible after it is initialled. Consideration and approval will be completed within 12 months of the signing of this MoU.
4. Existing land withdrawals will be extended until a Final Agreement or implementation of the LUP, whichever comes first. Upon approval of the LUP, withdrawals will be updated to include the conservation zones and special management zones of the approved LUP, as appropriate.
5. Canada will commit that the approved Interim LUP will “guide” decision-making until such time as it is formally implemented.
6. The Parties will re-commit to the IMA, together with provisions that mineral claims cannot be recorded without the support of affected DFN communities.

- Canada and the GNWT negotiators have agreed to respond to DFN’s proposals at the next meeting in Hay River but the Dehcho can take comfort in the fact that their negotiating team was able to withstand an onslaught of pressure from Canada that no one would have thought possible when the DFN stood firm on the need for a Land Use Plan not linked to an AiP.
- It was four exhausting days for the DFN negotiators and the elders and the leadership. In addition to these tense negotiations, Canada applied pressure on the Nahanni Park announcement, as a political “photo-op” on Dehcho territory but the leadership held firm and the ceremony was called off. The Dehcho team returned the pressure with documents and position papers of its own which were well-crafted and discussed, increasing the pressure on Canada to bargain fairly. Said Erasmus: “They kept ignoring our proposals and papers about the LUP, we modified them three or four times but they never responded. This session, I think we made some progress on the LUP not linked to the GAIp and we’ll continue to work on that.”

#### Acronyms

AiP	Agreement-in-Principle
DFN	Dehcho First Nations
GAIp	General Agreement–in-Principle
GNWT	Government of the Northwest Territories
INAC	Indian and Northern Affairs, Canada
IMA	Interim Measures Agreement
LUP	Land Use Plan
LUPC	Land Use Plan Committee
MoU	Memorandum of Understanding
OiC	Order-in-Council