

Negotiations Briefing Notes

Yellowknife, NT, June 4-7, 2007

The fourth session of the year concentrated largely on draft Agreements in Principle (AiPs). At the end of the last session, the Dehcho First Nations had tabled a General Agreement in Principle, dated March 5, 2007, to Canada and the Government of the Northwest Territories (GNWT) for their comments and reaction. This March 5 AiP had been approved by the DFN leadership at its Winter Meeting..

Canada and the GNWT were expected to respond and to table their own draft AiPs. Canada did table what it called “a preliminary draft of the index and four chapters of an Agreement-in-Principle. The index contains a preamble and 22 chapters but the negotiations team only received the index and chapters 2 (General Provisions), 3 (Eligibility and Enrolment), 4 (Ratification) and 5 (Dehcho Lands).

(Note: the complete text of Canada’s preliminary and partial AiP can be found at www.dehchofirstnations.com link to Negotiations and Tabled Documents under Canada.)

The long-delayed appointments to the Dehcho Land Use Planning Committee (DLUPC) for revisions to be developed according to a work plan initialled April 27, 2007 were discussed. DFN negotiators expressed their frustration over Canada’s delay in presenting a name to be considered by the three parties for a new chair of the DLUPC.

According to the initialled work plan, appointments were to have been made by early May in order for the DLUPC to begin its work and prepare a budget. The DFN leadership named Tim Lennie and Petr Cizek to continue representing the Dehcho, the GNWT appointed former negotiator Mark Warren and Canada confirmed that retiring Indian and Northern Affairs (INAC) regional director, Bob Overvold would be their representative effective June 19, 2007.

However, the committee still remains without a new chair. Grand Chief Herb Norwegian will step aside as the chair of the committee when a replacement is identified. A list of potential chairpersons is to be presented by the Dehcho and the two levels of government to the DLUPC. DFN has submitted the name of Mike Nadli. Despite numerous questions, Canada still says it is unable to come up with a name, leaving the work of the DLUPC at a standstill. It had been hoped that Canada would agree to a meeting at the same time as the negotiating session but without an agreed-upon chair, Canada refused.

According to the agreed-upon Work Plan for the Interim Dehcho Land Use Plan, the work of the committee is now delayed more than a month.

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The DFN team presented a detailed run-through of its March 5 GAIP, informing the other negotiators that further work had been done on the GAIP since that date but had not yet been approved by the Dehcho leadership, hence the working document was that of March 5. It was not long before Canada began to question the DFN preamble of “whereases” indicating how far apart the sides were.

Canada wanted the AiP changed to say that “Dehcho use and occupancy of their territory since time immemorial” was an “assertion” not a fact. Similarly that Treaties 8 and 11 were said by the Dehcho to recognize their inherent political rights and powers. These, said and other points in the preamble, were not accepted by Canada, they were simply ‘assertions’ made by the DFN.

Indeed, Canada said, it wanted the entire preamble left out of the document until after an AiP had been achieved. The DFN team expressed its astonishment that Canada was questioning such fundamental rights and powers, accepted by both Canadian law and the courts.

As they worked their way through the 11-page DFN draft, it became clear that the language, rather than the principle was one of Canada’s main concerns.

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When Canada’s draft AiP was presented and tabled, the DFN had major concerns, eventually raising more than 38 questions about the content and wording of the index and four chapters. The chief negotiator for Canada said other chapters in process of preparation would include governance, access, land and water regulation and definitions.

Following DFN’s critique of the document presented by Canada, the federal government team caucused for almost 24 hours to assess the DFN questions and criticisms, returning with a list of what Canada “thought” DFN had asked.

The process was extremely slow, requiring long discussion. Some analyzed the early AiP draft by Canada as being largely concerned with Department of Justice questions about legal wording of relatively minor issues.

The Dehcho Agreement, when finalized, will be translated into English, French and Slavey and all would be considered “official languages”. Canada disputed that the Agreement in the Slavey could be an “official” version because it couldn’t be used by the courts. The DFN team also sought assurances from Canada that neither devolution, nor the devolution process, of the GNWT towards provincial status would not, in any way, prejudice the negotiations which the DFN asserts are between Canada and the Dehcho, with the GNWT as a junior partner.

DFN analysts said that it seemed clear that Canada’s position was to achieve a standard comprehensive claims agreement with the Dehcho similar to those signed in other parts

of Canada and was unwilling to consider a land use planning model with self-government such as the Dehcho was seeking.

The DFN negotiators will present the annual Dehcho Assembly, June 26-28 with a detailed report of its work since the last Assembly.

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Following instructions from Leadership at the Trout Lake spring leadership meeting, the DFN negotiators raised with Canada the progress of three Orders-in-Council (OiCs) under the Protected Areas Strategy (PAS). OiCs are acted on in secret by the federal Cabinet and the process is not made public, decisions are simply announced.

- Pehdzeh Ki First Nation (PKFN) at Fort Wrigley wrote formally to Canada's chief negotiator that the OiC covering its interim land withdrawals has not been officially approved and requested information on progress through Cabinet. It is especially concerned that Aurora Resources Inc., has been issued a land use permit without PKFN's consent despite assurances that land withdrawals would be protected. However, without the OiC, the Aurora permit may be renewed. PKFN has asked for an immediate halt to Aurora's drilling activities and a clear answer regarding the OiC's progress through cabinet.
- Edehzhie (Horn Plateau) PAS: This vital and ecologically sensitive area has been protected since 2002 by an OiC which expires June 30, 2007 and no word has been received on its progress through cabinet, despite several requests for its speedy approval since 2006. At the Winter Leadership meeting, a resolution was passed.
- Nahanni Park Expansion: A representative of Parks Canada told the negotiations session that the planned withdrawals of land for park expansion are held in place by an OiC which is also due to expire soon. When the OiC is approved, Parks Canada will begin public meetings nationally in both the north and south. The progress of this consultation hinges on the OiC.

On all three OiCs, Tim Christian, Canada's chief negotiator was vague. He said the three were working their way through the system but, citing cabinet confidentiality, he refused to say when or if a decision would be made in time to renew the OiCs before their expiry.

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A draft protocol on prospecting permits, from both sides of the table, was presented and will be discussed during the summer. DFN insists there be no prospecting permits issued by the Canada Mining Recorder under section 39 of the Interim Measures Agreement (IMA) in areas of the Dehcho region that have been withdrawn through interim land withdrawal. The protocol also calls for INAC to be aware of information from DFN to be taken into account by the recorder when making decisions about applications for prospecting permits. The Recorder must make applicants aware of Dehcho concerns and if there are Dehcho communities who do not want the prospecting permit issued, it should be denied.

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The next formal negotiations session will be held the week of September 10, 2007.

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