

## Negotiating Briefing Notes

### Yellowknife, NT. March 25-27, 2008

The second full negotiating session of 2008 in the Dehcho Process between Canada and the Government of the Northwest Territories (GNWT) and the Dehcho First Nations (DFN) team was held in Yellowknife in late March.

The Dehcho team held several internal caucus meetings to develop strategies for moving the process further and faster and expressed serious frustration at what appeared to be Canada's inflexible and intransigent positions, which continued to delay progress in the talks.

This became evident from the opening day after approving a lengthy agenda which included the exchange of tabled documents from the three parties at the Main Table. Under the agenda item, "Land Quantum", it soon became evident that Canada's chief negotiator, Edmonton lawyer Tim Christian had no intention of moving beyond the latest offer of 48,510 sq. km., a figure the Dehcho had rejected out of hand.

Christian insisted he could not increase this offer without a mandate from the Federal cabinet and said he would not take further action until a lot of progress had been made towards a land selection model for negotiating. Two Dehcho Assemblies have rejected, this model opting instead to give the negotiating team a mandate only to "explore" land selection.

Canada's offer, up somewhat from the 39,000 sq km made last year (2007) and, according to Christian, is the best land quantum offer ever made to any First Nation by Canada. Not only that, Canada's chief negotiator said, he was instructed by Ottawa not to even discuss with the Dehcho team going higher than 45,810sq km.

DFN's chief negotiator, Georges Erasmus, was quick to challenge this position, stating the gap between the two parties was huge. The Dehcho Assembly in June, 2008 would certainly want something much larger, especially if it was going to be asked for a land selection mandate. If this is the land quantum figure Canada takes to the Assembly "it won't be a pretty picture in Kakisa". A much higher land quantum offer was needed of the Dehcho were to even consider selecting lands at their Assembly in June.

How to bridge this large gap occupied much of the three-day negotiating session. Key points made during the discussions which were polite but strained:

- Canada: DFN negotiators do not have a mandate from their Assembly to negotiate based on land selection. In order for a Federal cabinet discussion about increasing the land quantum offer to even be considered, we would have to be much closer to a deal. We are not really negotiating, we are still 'exploring'. It is not possible for Canada to go higher;

- Dehcho: Canada has once again changed its position. We need a much higher land quantum offer to get the Assembly to approve a land selection model. No one in the Dehcho supports land selection. Canada keeps attacking the very pillars on which we could build a fair land selection model such as the DCRMA (Dehcho Resource Management Authority) which has been knocked down to an advisory capacity; the Dehcho Land Use Plan (DLUP) which the Dehcho approved was rejected by Canada; governance and jurisdiction positions are far apart. There has to be an alternative model and alternative quantum.
- Dehcho: It gets tougher by the day to narrow the gap. Dehcho have always been able to manage their own land. We had hoped we could put together enough of the remains of the Dehcho Process so control is viable but Canada keeps weakening all the components. Our delegates to the next Assembly are well-informed, and well-educated on this process and they will make educated decisions.
- Canada: Why don't you make a counter-offer, for example, propose 70,000 sq. km because you'll never get 100 percent from Canada? We have to have a deal on quantum and other issues based on (population) proportionality, so you can't have more than other groups who have signed agreements like the Sahtu or the Tlicho. Canada can't give you more than others.
- Dehcho: We have always rejected that formula. Land selection has always been a problem for us, especially since we have no approved or implemented LUP. Canada scuttled it. There is a basic and fundamental difference of opinion on what the Treaties mean. Dehcho do not accept such words as "cede" and "extinguish". Canada doesn't want to change; we won't change our understanding from our elders of what the Treaties mean. So what do we do? Maintain the status quo? For a hundred years?
- Dehcho: Canada continues to use the same old formula because Canada wants our resources, they want to build the (Mackenzie Gas Project) pipeline and get at the minerals. That is why they are so inflexible. It is not honorable, around the globe, people know it is not honorable. For 25 years Canada participated in talks for the UN Rights of Indigenous People and then when it came time to sign, Canada refused. The bottom line is Canada wants Dehcho resources based on fraudulent deals.
- Canada: There is a perception in Canada that on one side this is a poor deal and on the other side that it is a rich deal. Canada thinks it has to be an equitable deal across the country. The Dehcho are small, about 4,500 people, who want an area of land the size of Switzerland. Other First Nations in other parts of Canada would love this deal. Canada has to ensure equitability across the whole country. We will have an LUP, we will massively expand the (Nahanni) Park, and we have offered the largest land quantum. Our people (Federal government officials) are "aghast" at such a rich offer.

- Dehcho: Canada has to find a way to end this impasse of more than seven years. It has to change and overcome the fraud of your interpretation of the treaties.
- GNWT: We have to negotiate something fair, something the elders can live with honorably, something that is acceptable, fair and reasonable. No one, on any side of the table wants this agreement to be dishonorable.
- Dehcho: This afternoon (session) has been a good summary of our problems. Both sides have been consistent from their point-of-view: equitability versus land. Dehcho have thought long and hard about their position. Of all the Dene nations, the Dehcho have held on the longest because they genuinely thought that Canada was fair and we could change this old Treaty formula. If we had an enriched formula offered from Canada, we could perhaps proceed but even that would be a tough process. What is a fair deal? How much is Canada going to offer in the end? We have to get beyond this formula that Canada holds us to, the formula that was made by Canada a long time ago with their understanding of the Treaties.
- Dehcho: There is nothing fair about this at all. No one in our communities will say it's fair. Anything like this formula will be resoundingly turned down. We are the last of these comprehensive claims except the Quebec Crees. They seem to be able to go back to the Feds and get more and more enriched. Why not Dehcho?

After half a day of such exchanges, Erasmus summed it up saying: "keep your money, leave our land alone."

Other major issues raised were (Nahanni Park, OiP, LUP, tabled docs).

- **Nahanni Park Expansion**: A report, with maps, indicated that the working group had three options under discussion and that their work was now completed their recommendations. The chief executive officer of Parks Canada and the DFN Grand Chief have received the final recommendations of the working group. The Grand Chief will require Assembly approval before continuing discussions, although the Nahanni Park Expansion is on the agenda of the April 1-3, 2008 DFN Winter leadership meeting at Hay River.

A "last minute" intervention by the GNWT Ministry of Industry and Tourism came to the working group unexpectedly as they were wrapping up their report. GNWT tourism officials wanted to confer certain tourism powers of jurisdiction to the territorial administration. The working group was unprepared for this intervention and brought it to the Main Table for review. Steve Iveson, the GNWT chief negotiator, said the GNWT was not seeking overlapping powers regarding the park and recognized the "paramountcy" of the Dehcho in any Final Agreement over the expanded park.

This led to some heated discussion about GNWT and Federal negotiators using “final agreement language” in their preliminary Agreement in Principle (AiP) tabled documents.

- **Land use Planning Committee (LUPC):** The Main Table negotiators were given an updated progress report of the work of the LUPC by Michael Nadli, the chairperson and chief executive officer. The update was made by teleconference call from Fort Providence. Nadli report “good progress” on areas of conformity, a narrowing of the gap on zoning requirements, a proposed chiefs and elders conference on LUP and drafting of the first three chapters of the revised Dehcho Land Use Plan. A progress report will also be made to the DFN Winter Leadership meeting. Nadli expects a final interim draft land use plan will be “almost complete” in time for the Dehcho Assembly in June, 2008.

Dehcho representatives on the LUPC have indicated that outstanding conformity issues are minor but the “big ticket” item that remains is the proposed Mackenzie Gas Project (MGP) corridor across Dehcho land. DFN committee members Tim Lennie and Petr Cizek asserted that the committee has reached agreement on about 75 percent of issues, other than the MGP and two unexpected issues brought in by both levels of government (see below).

Federal negotiators expressed some doubts about the LUP being ready by the Assembly because of the long turn-round time needed by governments – estimated from three-to-six months -- and then reports back to the Main Table for possible recommendation and initialling by the chief negotiators. The Dehcho side perceived such delays as another part of the problem of the government side of the negotiations. LUPC members could report their work to date during the two negotiating sessions planned for May and a consensus option could be ready for the June Assembly.

The two unexpected and most troubling recent interventions by Canada and the GNWT were reported by Nadli which he said were beyond the mandate of the LUPC. These had been brought to the discussions recently and involve a “sunset” clause demanded by the GNWT and a “termination” clause from the Federal side. If the LUP was not approved, thereby taking away protection of Dehcho lands. Neither of these issues, Nadli stated, could be dealt with by his committee and would have to come before the Main Table.

DFN committee members found these clauses an “alarming” and unexpected turn of events which they saw as a further delaying tactic that could prevent an LUP from being presented to the June Assembly, postponing it perhaps to an October Special Assembly at which time Federal Orders-in-Council (OiCs) protecting interim land withdrawals from expiration would require renewal.

- **Tabled Documents:** The following documents were tabled and the complete text can be found on the website <http://www.dehchofirstnations.com> and link to tabled documents; or from the DFN office upon request.  
Canada: Chapter 11 on Mineral Royalties;  
GNWT: two Chapters on Local Services and Local Governance;
- **Next negotiating session:** Ottawa April 22-24, followed by two sessions in May in the Dehcho Territory

*These briefing notes are prepared by the DFN communications staff for internal use and information and are not official minutes of the negotiating session.*