

Options for Governance in the Deh Cho

Options Paper

The Framework Agreement between Canada and the DCFNs signed on May 23, 2001 states that one of the objectives of the Deh Cho Process is a final agreement which recognizes a Deh Cho government and sets out the powers of the Deh Cho government. Section 2.1 (d) of the Framework Agreement states that the final agreement will clarify the jurisdiction of the Deh Cho government in "Providing for the use, management, and conservation of lands, water, and other resources, including wildlife, fish, and their habitat in the Deh Cho territory." The Framework Agreement also provides that the Deh Cho government will be the primary government for the provision of programs and services to residents of the Deh Cho, and that it will be a public government.

It is also necessary to preserve the bilateral treaty relationship between Canada and the Deh Cho First Nations in any final agreement.

The government of the Deh Cho will have 2 levels:

1. local community governments
2. a regional Deh Cho government

Local Deh Cho community governments will have jurisdiction to make decisions which do not affect any other communities and the regional Deh Cho government would have jurisdiction over large projects which could affect the whole region. Each community will have exclusive jurisdiction within its traditional territory to issue permits and authorizations for any project or activity which will not affect other communities, including:

- forestry
- tourism
- small oil/gas projects ("small" needs to be defined)
- environmental protection
- sales and leases of land

In overlap or "shared use" areas, all affected communities would have to approve such projects or activities.

The regional Deh Cho government will have jurisdiction over land and resource decisions which could affect the whole Deh Cho, including:

- mining and mineral staking
- wildlife and fisheries
- large oil / gas projects
- large pipelines
- identifying large protected areas
- large dams
- sales and leases of land

The regional Deh Cho government would be required to consult with all affected communities before making land use decisions.

The Deh Cho government will be required to adopt a legally binding **Land Use Plan**, and to periodically review the Plan and modify it as necessary.

The **Land Use Planning Committee** established under the IMA will continue to operate according to its terms of reference and with its present composition (2 members appointed by Deh Cho Regional Government, 1 by Canada, 1 by the GNWT, chair appointed by consensus).

Land and water use permits and leases which are approved by the relevant local or regional Deh Cho government will be issued by the **Deh Cho Resource Management Authority**. The DCRMA will have jurisdiction to order independent environmental assessments of projects. The DCRMA will be established by, and accountable to, the regional Deh Cho Government.

The MVEIRB or CEAA may have concurrent jurisdiction over projects which could have environmental impacts beyond the Deh Cho territory.

The Government of the Deh Cho will have jurisdiction over most programs and services, including health, education, housing, social services, municipal services and infrastructure, child and family services, policing and justice, economic development... (see Framework Agreement for more complete listing).

For certain programs and services which are best delivered at a territorial or national level, the Government of the Deh Cho will contract with the GNWT or the Government of Canada, as appropriate.

The Canadian Charter of Rights and Freedoms will apply in the Deh Cho. The Criminal Code of Canada will also apply.

The Indian Act will not apply in the Deh Cho. Bands and band councils will be merged with towns and hamlets to form unified local governments. (Exception may be made for Hay River).

Local governments will be directly elected by all residents who meet a minimum 10 year residency requirement. In addition, each community will have an Elders Council.

The regional Deh Cho government will be comprised of the Chief (or Mayor) of each local community, plus an Elder from each community.

Local and regional Elders Councils will have a veto over decisions which could impact on core treaty rights relating to lands and resources.

The government of the Deh Cho should not be dependent upon financing from Ottawa or Yellowknife any more than is necessary to make up any shortfall from own source financing, primarily from resource revenues.

The first step in devising a financing formula should be to determine, with as much precision as possible given market variables, the amount of revenue which the Deh Cho can reasonably expect to generate from royalties and other revenue from a gradual, planned program of resource development. The DCFNs believe that royalties should be determined as much as possible by market forces, rather than being set in regulations.

To the extent that financing is necessary to supplement resource revenues, it should come in the form of direct transfers from Ottawa to the Deh Cho government, based on a formula in the final agreement which ensures that residents of the Deh Cho enjoy access to programs and services at least equivalent to other Canadians.

The Deh Cho First Nations seek a final agreement which does not divide their territory into some lands which are owned by them, and other lands which are not owned by them. To this end, they are prepared to consider various options, including:

Option 1 - All land (surface and sub-surface) to be held by the Crown in Right of the Deh Cho.

Option 2 - Title to land (surface and subsurface) to be jointly held by Canada and the Government of the Deh Cho. This could be accomplished by each party conveying its full interests in land to the other party. Canada and the Deh Cho would then have equal and concurrent title.