

Approaches to a Deh Cho Final Agreement

Federal and Deh Cho negotiators have recently tabled discussion papers that outline potential approaches for the Deh Cho First Nations land, resource and governance negotiations.

Rather than directly responding to these options, this paper is intended to follow-up on some of the ideas and issues raised by them as well as the two workshops held earlier this year.

Process

If anything is clear about the Deh Cho Process negotiations, it is that it is not clear what this process will result in. There are too many unknowns at this time and too few precedents to give any clear idea as to what the final agreement will ultimately look like. In the areas that will be central to a final agreement; land tenure and governance, the parties are committed to exploring new approaches. In addition, the final agreement will 'pivot' around how these subjects are addressed.

For example, the approach taken to land tenure may influence how land, water and environmental regulation will be addressed in the agreement. Likewise, the approach to land tenure, land, water and environmental regulation may influence the approach to governance. The model of governance must be appropriate to its scope of responsibilities and the residents it is accountable to. And finally, the approach to finances, including resource revenues, will have a bearing on the entire agreement.

This suggests to us that this negotiation process should be sufficiently flexible to allow the parties to try out new ideas, to experiment with 'what if' scenarios, and consider what may initially be viewed as unorthodox approaches. However, for this to work it needs to be accepted that certain approaches, while initially encouraging, may ultimately turn out to be a dead end. While it will be frustrating to have to take a step back after taking two steps forward, we are confident that negotiations will lead to an overall approach that is agreeable to each party.

Elements of a General AIP

It will be important to come to some general understandings about several topics early on. These include how the Hay River Reserve and the Town of Hay River will fit in, or not fit in, to a general AIP. The GNWT expects that exploring this aspect of the AIP will require extensive consultations with the Hay River Reserve, West Point First Nation and the Town of Hay River. There is also a need to be kept informed, and to inform the South Slave Metis regarding governance matters as they relate to Hay River.

Other basic elements of a governance model should also be sorted out early on, but perhaps the most challenging aspect of early discussions will be the approach to land tenure/land selection.

The GNWT believes the final agreement should result in a practical way of implementing the treaty and aboriginal rights of the Deh Cho First Nations. 'Practical', from the GNWT's perspective, includes being able to be implemented, affordability, and effectiveness.

The GNWT also takes the view, that where practicable, decision making should be made as close to the local level as possible. This means that some areas may be best served by a community approach while other areas may be best served by a regional, territorial, or national approach.

For example municipal zoning decisions may best be addressed by the local level of government, while aspects of renewable resource management may best be addressed at the regional level. Other matters, such as aspects of environmental regulation, may best be addressed territorially, and in other areas an even broader approach may be appropriate.

This means that in many areas no single government will have *exclusive* authority – rather several governments may each have a role to play in certain areas. This should not be viewed as adversarial or competing responsibilities, but as complementary roles each government has in relation to a specific area. The Final Agreement should define the authority of Deh Cho governments and clarify the relationship among Deh Cho governments, and between Deh Cho governments, the GNWT and Canada.

Resource Management

In general, the GNWT supports a regional approach to resource management. In particular the GNWT has an interest in having a regional public approach to renewable resource management. Some Decisions regarding renewable resource management could be made at the local level, but these decisions will need to be compatible with the overall regional regime. The GNWT also recognizes that aspects of land, water and environmental regulation will require a broader approach encompassing other regions.

The GNWT sees the management of Crown lands (other than land, water and environmental regulation) being addressed primarily during devolution discussions. The identification of aspects of the management of Crown lands that could be managed at a regional level will be addressed as part of the discussions during devolution negotiations. Deh Cho Process negotiations should take into account developments at the devolution forum so that regional responsibilities in relation to the management of Crown lands are maximized.

As a result, the GNWT notes that the Deh Cho are uniquely positioned so that regional responsibilities available as a result of devolution can be made compatible with the Deh Cho governance and resource management systems. Likewise, the Deh Cho have the opportunity to articulate regional interests at the devolution forum.

Governance Models

The GNWT recognizes that the framework agreement sets out the general direction for the governance negotiations: a Deh Cho public government with responsibility to be the primary government for the delivery of programs and services in the Deh Cho. While this describes the overall objective of self-government negotiations, specifics regarding the structure of government and its specific responsibilities are left for negotiations.

The GNWT believes that some potential areas of responsibilities are primarily internal and integral to the Deh Cho First Nations. For example, areas related to the culture and language, or 'settlement lands' if land is ultimately selected by the Deh Cho, of the Deh Cho First Nations would appear to be best suited to a governance system that is exclusive to the Deh Cho First Nations. When considering various proposed governance systems it may be worthwhile to look at models that include an exclusive Deh Cho First Nations component.

The GNWT believes that a governance system must be viewed as legitimate by the people it represents. A government that is not considered legitimate will not be effective. It is expected that in order for a government to be considered legitimate by its constituents it must be seen as *fairly* representing the people it serves.

Legitimacy is also reflected in the ability of people to participate in the government that is serving them. A lengthy residency requirement will compromise a government's ability to be considered legitimate. A lengthy residency requirement may also have negative impact on whether individuals will relocate within the Deh Cho, or to the Deh Cho. As well, any residency requirement should also be in line with the Charter of Rights and Freedoms.

Finally, the governance system must be appropriate for the responsibilities it will exercise. A government with a wide range of responsibilities should be structured so that it can effectively discharge those responsibilities. Conversely, a government with a narrow range of responsibilities will be ineffective if it is unnecessarily complex or 'over-built'.

The GNWT has an interest in having a single government at the local level that represents and serves all residents. A single local government in each community should be able to manage and provide basic municipal services as well as other matters identified during negotiations as belonging at the local level.

The GNWT also sees the need for governance structures at the regional level. What these structures, or structure, might be needs to match the responsibilities that are to be carried out at a regional level as well as the residents it serves.

Regardless of what structure is ultimately developed, it will be important to keep in mind the demographics and population distribution within the Deh Cho. The following table summarizes the population within the region.¹

| Deh Cho | Population | % of Total | Aboriginal Pop | Non-Aboriginal Pop | Band List |
|-------------------|-------------------|-------------------|-----------------------|---------------------------|------------------|
| Hay River | 3,835 | 52.89% | 1,660 | 2,175 | 70 |
| Fort Simpson | 1,273 | 17.56% | 875 | 398 | 1,138 |
| Fort Providence | 837 | 11.54% | 751 | 86 | 983 |
| Fort Liard | 524 | 7.23% | 457 | 67 | 557 |
| Hay River Reserve | 268 | 3.70% | 267 | X | 526 |
| Wrigley | 183 | 2.52% | 171 | 12 | 325 |
| Enterprise | 88 | 1.21% | X | X | N/A |
| Nahanni Butte | 82 | 1.13% | X | X | 122 |
| Trout Lake | 68 | 0.94% | X | X | 100 |
| Jean Marie River | 53 | 0.73% | X | X | 115 |
| Kakisa | 40 | 0.55% | X | X | 55 |
| Totals | 7251 | 100.00% | | | |

The Town of Hay River comprises over half of the total population of the Deh Cho region. Since the West Point First Nation is within the Town's boundaries, the Town's population estimate includes those persons in the West Point First Nation.

It is also worthwhile noting the large aboriginal population of Hay River which includes the West Point First Nation, some members of the Katlodeeche First Nation, quite likely some members of other Deh Cho First Nations, and other Aboriginal persons including Metis persons.

The four largest communities have a combined population of 6,469, nearly 90% of the total population. The four smallest communities have a total population of 243 or 3.4% of the total population. If a regional governing body is going to exercise authority or deliver programs and services (e.g., education or social services) to the entire region, it is apparent that a model based on equal representation from each community stretches what would be considered reasonable and would likely be seen as unfair by the larger communities.

A possible initial solution would be to exclude the Town of Hay River from regional governance issues. This results in the following demographics within the remaining Deh Cho region.

¹ Source: NWT Bureau of Statistics Community Population Estimates 2000. Band List numbers from DIAND. West Point First Nation population numbers are included in the Town of Hay River population numbers. Band membership in the Town of Hay River refers to West Point First Nation band list. 'X' numbers are not reported due to small size.

| Deh Cho Excluding Hay River | Population | Percent of Total |
|------------------------------------|-------------------|-------------------------|
| Fort Simpson | 1273 | 38.25% |
| Fort Providence | 837 | 25.15% |
| Fort Liard | 524 | 15.75% |
| Hay River Reserve | 268 | 8.05% |
| Wrigley | 183 | 5.50% |
| Nahanni Butte | 82 | 2.46% |
| Trout Lake | 68 | 2.04% |
| Jean Marie River | 53 | 1.59% |
| Kakisa | 40 | 1.20% |
| Total | 3328 | 100.00% |

However, upon examination, the same regional demographic challenges remain. Fort Simpson has over one third of the regional population. Fort Providence has nearly one quarter of the regional population. The three largest communities constitute nearly 80% of the regional population, while the three smallest communities comprise 4.8% of the regional population. If a regional structure is comprised of equal representation from each community, the GNWT believes that these conditions will also stretch what would be considered reasonable and legitimate.

In the charts above, Enterprise has been included as part of the entire Deh Cho, and excluded along with the Town of Hay River. However many questions require answering regarding Enterprise. Should Enterprise be included within the Deh Cho governance system? Does the delivery of programs and services in the Deh Cho also include Enterprise? Will the approach to Enterprise affect, or be influenced by, the approach taken with the Town of Hay River?

However, excluding the Town of Hay River will itself create some complications since the West Point First Nation is within the Town, and removing the Town of Hay River from the governance system will have implications with respect to the West Point First Nation.

Given the unique circumstances of the greater Hay River area (this includes the Hay River Reserve, West Point First Nation, Enterprise, and overlap with the South Slave Metis) it may be worthwhile considering a governance system for the delivery of certain programs and services within the greater Hay River area that is separate from the delivery system for the rest of the Deh Cho.

Next Steps

The GNWT sees some benefit to having another regional workshop on governance. This could be more focused with the objective to give the negotiating teams direction in certain areas.

In addition to the regional workshop, there is also a need to have workshops/meetings on Hay River issues with all interested and affected parties.

The GNWT also sees a potential benefit to having a 'small' tripartite group develop (without prejudice, for discussion purposes) a governance model, or models. The models would then be presented and debated by the region.