

Briefing Note – April 2, 2002

To: Mike Nadli

From: Chris Reid

### **Dogrib / Deh Cho Boundary / Overlap**

Immediately following the November 13, 2001 meeting between the Deh Cho and Dogrib negotiating teams, the DCFN negotiating team drafted a new offer to the Dogribs. The new offer consists of a boundary line which would include all of the Horn Plateau and Birch Lake area within the Deh Cho territory, but would allow the Dogribs to continue traditional harvesting up to the so-called "Monfwi line". We have advised the Dogrib negotiators that the DCFNs do not see any point in any further meetings unless the Dogribs first respond to the latest Deh Cho proposal in a way which shows some flexibility. We require their response in writing.

The Dogribs have still not responded to the DCFNs' November 13, 2001 proposal for resolving the overlap. We are encouraged by the Dogribs' decision to support protection for the Horn Plateau through the PAS, but this does not address all of the overlap issues.

### **Land Withdrawals – Mackenzie R. and Muskeg R. watershed**

At the September, 2001 negotiating session in Ft. Providence, Canada agreed that the withdrawal negotiations should be based "primarily" on documented evidence and that they should accomplish a "coarse" level land use plan which will identify Development Zones and protected areas. We then agreed to establish a Lands Working Group, comprised of Herb Norwegian and Petr Cizek plus 2 federal appointees, to begin withdrawal negotiations. It is estimated that the withdrawal negotiations will take approximately 1 year to complete.

The Lands Working Group has now held several meetings and its work initially progressed well. Unfortunately, negotiations have stalled recently over Canada's refusal to withdraw certain environmentally sensitive lands. We are particularly concerned about the Muskeg River watershed and the

need for a protective corridor along the Mackenzie River, to protect both the river itself and a buffer around the river.

Canada's negotiators have resisted protecting the Muskeg River, but have given no reason other than their desire to keep lots of land open for oil/gas exploration. Our response is that we can protect the Muskeg and Trout Lake watersheds and still leave plenty of land open for development over the next 10 years.

As for the Mackenzie, Canada has given no reason for refusing to withdraw the River and a buffer around it, except to say "it's a major Canadian River". In our view, that is all the more reason to protect it.

Canada agreed in September that decisions about whether to withdraw lands or leave them open for development would be based on scientific data, not on political positions such as "it's a major Canadian river". If they have no solid evidence as to why these areas should not be protected, they should be withdrawn. There will still be plenty of land open for development.

#### **The Inter-Governmental Forum (IGF)**

Canada continues to urge the DCFNs to join the IGF. Canada wants the IGF to be the main forum for negotiating devolution (self-government) and resource revenue sharing.

We have advised Canada that the DCFNs currently see no reason to become part of the IGF because devolution and resource revenue sharing are issues to be negotiated through the Deh Cho Process. We advised that the DCFNs will need to see significant progress in the Deh Cho Process, especially on resource revenue sharing, before considering joining the IGF.

Canada has agreed to consider drafting a statement of principles setting out the position it will take in the IGF negotiations. So far, we have not received anything.

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## **Environmental Assessment for a Mackenzie Valley Pipeline**

The Special Assembly at Wrigley stated that certain conditions must be met in order for the DCFNs to give their approval of any pipeline crossing Deh Cho territory. One of the conditions is:

### **Full Deh Cho Participation any Environmental Assessment**

The DCFNs must be fully involved in any environmental approval as an equal with the government of Canada. It is not enough to merely be "consulted" or to be an "Intervenor" in an environmental assessment conducted under the MVRMA or the Canadian Environmental Assessment Act.

Since November, 2000, a series of meetings has been held in order to develop a "streamlined" environmental assessment process. The meetings have been attended by officials representing the Mackenzie Valley Environmental Impact Review Board (MVEIRB), Mackenzie Valley Land and Water Board (MVLWB), the National Energy Board (NEB), Canadian Environmental Assessment Agency (CEAA), DIAND and the GNWT. The meetings were held in secret and the Deh Cho was never invited to participate. When we learned of the secret meetings in June, 2001, the DCFN demanded to be fully included. This has not happened.

Canada agreed in July that the DCFN could participate in the secret streamlining process, but only in a very minor way. The DCFNs' nominee for appointment to the Mackenzie Valley Land and Water Board and the MVEIRB (Jonas Antoine) has been allowed to attend 2 meetings of the process, but there has been no funding for consultations with Deh Cho communities or to retain a technical advisor. Meanwhile, the secret meetings have continued and the process is now almost complete, except for "public consultation".

On October 1, 2001, Grand Chief Nadli wrote to Minister Nault to advise that the DCFNs believes that Canada has a fiduciary obligation to ensure that the DCFNs are full participants in this process, at least to the same extent as the northern claimant regions which have established Boards under the MVRMA. The DCFNs expect to participate as equals in every stage of every environmental assessment of a proposed pipeline. We also

require immediate funding in order to begin preliminary environmental assessments and to participate fully in the process of setting up the environmental assessment process.

We met on November 16 in Yellowknife with DIAND officials, including Lorne Tricateaux. We again explained our position: that the secret meetings should be suspended immediately and then a new streamlining process can begin with the DCFN as a full participant. The officials listened, but had no response.

The exclusion of the DCFN from the process which began over a year ago to set up a streamlined environmental assessment may be a breach of Canada's fiduciary obligations towards the DCFNs. The November, 2001 Leadership meeting decided to seek 3 independent legal opinions on the legal options available to the Deh Cho to challenge the validity of any process for an environmental assessment which comes out of the secret negotiations over the past year.

The legal opinions have now been received and all 3 lawyers believe that the DCFNs have a good chance of success if Canada proceeds to implement the Cooperation Plan without negotiating with the DCFNs. One lawyer (Joff Rath) believes that a challenge could be brought to the Cooperation Plan itself, while the other 2 (Louise Mandell and Daryn Leas, believe that the DCFNs should wait until a decision is made by the Minister to implement the Cooperation Plan. I agree with this suggestion and I recommend that continue trying to engage DIAND and the NEB in negotiations on the proper form for an environmental assessment. If these attempts fail and DIAND pushes ahead to implement the Cooperation Plan, a legal challenge should be brought immediately.