

DEH CHO FIRST NATIONS FINAL SETTLEMENT OPTIONS

Introduction

The objective of the Deh Cho process is to complete a Deh Cho Final Agreement which will clarify and build upon the existing treaties. This will be no easy task. To facilitate discussions on the main elements of a Final Agreement, the Parties need to collectively discuss final agreement options. Therefore, this paper is an initial attempt, on behalf of the federal team, at illustrating possible final settlement options for the Deh Cho First Nations (DCFN) land, resource and governance negotiations.

Canada would hope to reach an Agreement-in-Principle on the main elements of a Deh Cho Final Agreement within an 18 to 24 month period.

The concept of “One House” has been used in developing the various options.

While certain subjects may be associated with “comprehensive claims”, it will be important to address a lot of these subjects no matter what type of final agreement is reached as outlined in our framework agreement.

Canada understand’s each Deh Cho First Nation and community have unique circumstances that will require special attention during our negotiations. It may be beneficial for the parties to begin to identify these issues right away.

Options

While this paper outlines three options for a final agreement, there are arguably common elements present in all options.

Common Elements

Community Governments

In Canada’s view, communities in the Deh Cho territory have been highly protective of their independence. They have been seeking greater authority, especially on subject matters that are of a local nature and over traditional lands.

Under a final agreement, each community could have local government authority (similar to any municipal government), including surface lands ownership sufficient to meet local needs in the foreseeable future, entrenched through the final agreement.

Consistent with our governance workshop, a single governing structure at the community level would represent and serve all residents. This would replace the existing community corporations, bands, charter communities and Metis locals or others. For example, in Fort Liard and Fort Providence, presently a Dene Band, Metis Local, and local municipal government (Hamlet) exist. The parties could agree to amalgamate the three institutions into one community government. In addition, community governments could receive delegated authority from other levels of government.

A community government could also have a role in resource management and the delivery of programs and services. Hopefully, the relationship between regional, community and territorial decision making can be resolved early on in our AiP discussions.

This section of the paper may best apply to the following communities: Wrigley, Fort Simpson, Jean Marie River, Nahanni Butte, Trout Lake, Kakisa, Fort Liard and Fort Providence.

Town of Hay River

Issues identified to date include land identification for West Point First Nation, efficient delivery of programs and services, presence of the South Slave Metis, the relationship of West Point and Hatlodehechee First Nation (HFN) with Hay River and the town's relationship with a Deh Cho government.

A working group comprised of affected parties should be established to address issues within the Deh Cho process.

Hay River Reserve

The Hay River Reserve could be maintained as an Indian Reserve with the support of HFN.

A number of issues surrounding this subject will need to be addressed, including specific claims, taxation and public government in relation to an Indian Reserve. DCFN has proposed that a side table addressing these and other specific KFN issues be established. This would seem to be a reasonable way of addressing these issues while keeping the KFN informed of the policy implications affecting their community.

The Settlement of Enterprise

The settlement of Enterprise has similar issues as Hay River, however, there doesn't seem to be a DCFN presence in Enterprise. The main issue to resolve may be the relationship of the settlement with a Deh Cho government.

Resource Management

There could be Deh Cho resource management bodies responsible for land and water regulation, regional land use planning and renewable resources. These institutions would work within a Mackenzie Valley resource management regime. The DCFN would also be guaranteed membership on the Mackenzie Valley Environmental Impact Review Board.

The federal departments of Fisheries and Oceans, Environment, and Parks Canada have strongly expressed their desire for renewable resources (e.g. Wildlife) to be managed through a regional public body.

The establishment of community resource management councils may provide important community input into land, wildlife, and environmental management decisions. A council's role in relation to bodies and governments would be addressed in the AiP/final agreement.

The management of Crown lands would be negotiated primarily through the devolution process. DCFN has been invited to join these negotiations. To date, DCFN has chosen to remain an observer to these talks. The federal government maintains that aspects of the management of Crown lands can be administered at a regional level.

Nahanni National Park Reserve

It is expected that Nahanni National Park would be established as a result of the Deh Cho Final Agreement.

The Nahanni Consensus Team, which was established through the Deh Cho Interim Measures Agreement and is made up of representatives of DCFN and Parks Canada, has completed an ecological integrity statement and a draft park management plan in less than one year. Given these impressive results, this body may be the logical instrument for conducting preliminary boundary identification work in order to undertake the necessary mineral and energy resource assessment (MERA) required for Park establishment and public consultations. The addition of main negotiators may be required.

Overlaps

The following overlaps will need to be addressed within the Northwest Territories: Akaitcho, Dogrib, Sahtu, and South Slave Metis.

Transboundary Claims

DCFN has transboundary claims into Yukon and British Columbia (BC). Preliminary discussions have taken place with Yukon and BC. Further work co-ordinating these negotiations is required.

Other issues

Certainty language, ratification of the final agreement, implementation, access, dispute resolution, expropriation, Dene\Metis loans and issues specific to each Deh Cho community, among others, will need to be addressed regardless of the options described below.

Option 1

DCFN would own x sq km of surface/subsurface lands (Deh Cho lands). The amount of land would be based on population, number of communities, value of land and comparability with other northern settlements. The lands would be selected outside of communities.

A capital transfer (cash amount) would be identified as part of the final agreement.

A DCFN government would be an aboriginal government with certain jurisdiction and authorities over Deh Cho lands and DCFN citizens. Examples of these jurisdictions in these areas could include: government operations; management of Deh Cho lands (including oil and gas and mining); DCFN rights and benefits; harvesting; citizenship; marriage; wills and estates; aspects of education; aspects of social services; aspects of child and family; aspects of health; enforcement and adjudication of DCFN laws; and taxation over Deh Cho citizens.

Resource management functions such as land and water regulation, land use planning and renewable resources throughout the Deh Cho territory would be exercised through institutions of public government. The DCFN government could appoint members to the institutions, along with the federal and territorial governments. The current land use planning committee is an example of how these institutions could operate.

The delivery of other functions and/or programs and services would be addressed through intergovernmental arrangements between the DCFN government and GNWT and could be exercised through the community governments.

The DCFN government would be funded by revenues from Deh Cho lands and fiscal transfer agreements which incorporate other own source revenues of the DCFN government.

Option 2

A Deh Cho government could be established as a regional government that would exercise public jurisdictions and authorities. Specifics regarding representation would require further discussion between the three Parties.

A final agreement would set out areas jurisdictions/authorities for the regional, community and Deh Cho First Nation governments. Jurisdictions/authorities could include: government operations; management of Deh Cho lands (including oil and gas and mining); settlement rights and benefits; beneficiary harvesting; citizenship; marriage; wills and estates; aspects of education; aspects of social services; aspects of child and family; aspects of health; enforcement and adjudication of laws; and taxation over Deh Cho citizens.

Due to the fact that certain jurisdictions will be primarily unique to the Deh Cho First Nations - language, culture, rights and benefits etc., an exclusive DCFN institution would seem to be required. The collective challenge we face is to identify the most efficient way to make decisions so the "one house" objective is achieved.

DCFN would own x sq km of surface/subsurface lands. The amount of land would be based on population, number of communities, value of land and would be comparable to other northern settlements.

A capital transfer (cash amount) would be identified as part of the final agreement.

Resource management functions such as land and water regulation and wildlife management throughout the Deh Cho territory would be exercised through institutions of public government, with the Deh Cho First Nations, GNWT and the federal government appointing members, where appropriate.

The regional government could be funded by fiscal transfer agreements, which incorporate own source revenue (e.g. taxation income).

Option 3

A Deh Cho government could be established as a regional government that would exercise public jurisdictions and authorities. Specifics regarding representation would require further discussion between the three Parties.

A final agreement would set out areas jurisdictions/authorities for regional, community and the DCFN governments. These jurisdictions could include: government operations; management of Deh Cho lands (including oil and gas and mining); settlement rights and benefits; beneficiary harvesting; citizenship; marriage; wills and estates; aspects of education; aspects of social services; aspects of child and family; aspects of health; enforcement and adjudication of laws; and, taxation over Deh Cho citizens.

The Deh Cho would own x sq km. of surface lands. The amount of land would be much less than those contemplated in the other two options. Sacred sites, areas of cultural importance and camps could be the main criteria for exclusive Deh Cho ownership.

While a capital transfer would be identified, it would be less than the other options.

The DCFN would receive a share of resource revenues generated from the Deh Cho territory on an annual basis rather than a substantial land quantum and capital transfer. The share of resource revenues DCFN would receive, would be calculated using population, number of communities, value of land and would be comparable in value with other northern settlements.

As mentioned in the *Common Elements* section, the management of Crown lands would be negotiated primarily through the devolution process. The federal government believes that aspects of the management of Crown lands can be administered at a regional level.

Other Options

While these proposed options are for discussion purposes only and are not the only options available to the parties, they do outline some parameters that the federal team has to work within. Although the options may be incomplete, we hope they will provoke productive discussions over the coming months.