

UPDATE OCTOBER 15, 2010



# dehcho process

Working to protect the land and to build a better future for our children, grandchildren and great grandchildren by honouring the vision of our elders.



## Negotiations continue with monthly sessions but progress is slow

### Governance Workshop held September 28th to Oct 1st.

Leaders and community representatives met with DFN negotiation team members to look at a variety of issues. Over 35 people attended the meeting. No delegates from Trout Lake were able to attend due to their community fall hunt.

Lively discussions on the current talks, which are based on the Comprehensive Claims policy, expressed some concern that the Dehcho Process has moved in a direction people don't like. Canada will only negotiate using the Comprehensive Claims policy or a Treaty Land Entitlement Process. The current process will mean Dehcho First Nations and Dehcho Communities will have recognized

ownership of some of the lands within the Dehcho territory. Some lands will be held by the federal government and either protected or available for development, based on the Dehcho Land Use Plan. Much of the discussions centered on whether the Dehcho Ndehe would be owned collectively by everyone or be owned separately by each community. It will be a decision Dehcho members will have to make.

The Chief of the Katl'odeeche First Nation told delegates they were now looking at doing their own Community Comprehensive Claim like Ft Liard. Since the Dehcho Process began, KFN have had separate talks about completing a Treaty Land Entitlement Agreement because of their reserve status.

The extensive discussions on jurisdictions, the areas of law making power of a regional government and of community government also occurred. More details inside.

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### Lands: objective is to protect and manage Dehcho traditional lands

Canada and DFN remain divided on the management of lands with the Dehcho traditional territory. DFN has proposed a stand alone co-management body, the Dehcho Resource Management Authority to manage all lands within the Dehcho settlement area. The DCRMA would base its decisions on the Dehcho Land Use Plan. It would have Dehcho representatives and government representatives. DFN has been waiting for **2 years** for a response from Canada. DFN is also waiting for Canada to approve the Edehzhie Protected Area which will protect most of the Horne Plateau from development.

*DEHCHO DENE WILL ALWAYS HAVE THE RIGHT TO HUNT AND TRAP ANYWHERE IN THE DEHCHO TERRITORY.*

Canada says Dehcho should have ownership of 39 thousand square kilometers of its traditional lands. DFN says it should be more. All Parties agree there will also be community owned lands. *No decisions about land have been made by DFN leadership or at main table negotiations.* Revisions to the Dehcho Land Use Plan are almost complete. Meetings on the LUP will occur soon.

## AiP Negotiations

The Dehcho negotiating team tabled the Dehcho Proposal, together with relevant Assembly resolutions, which rejects land selection as a basis for achieving certainty. The DFN proposed an agreement based on shared stewardship of the entire Dehcho rather than land selection. Resources would be managed by a Dehcho Resource Management Authority which would operate independently of the Mackenzie Valley Resource Management Act regime.

In November, 2005 Canada's negotiators informed the DFN that there is "no support" in Ottawa for the unique type of final agreement outlined in the Dehcho Proposal, based on shared stewardship and a Dehcho public government having jurisdiction over the entire Dehcho territory. Instead, Canada tabled a proposal to negotiate a conventional comprehensive claim final agreement, based on land selection, similar to the Tlicho agreement.

In May, 2006 federal negotiators tabled an "offer" to settle the Dehcho Process on terms "comparable" to other comprehensive land claims agreements in the NWT. The federal offer would give the DFN ownership of 39,000 square km, or about 17% of their traditional territory. The land quantum might be increased to approximately 25% of the Dehcho territory through negotiations.

The 2006 Annual Assembly reiterated that the DFN prefer to achieve certainty through an Agreement based on shared stewardship rather than land selection, but instructed DFN negotiators to hold community consultations on Canada's offer, followed by a Special Assembly. The November, 2006 Special Assembly reiterated the DFN position against land selection, but gave DFN negotiators a mandate to explore the possibility of an agreement based on land selection.

The 2008 Annual Assembly again debated whether the DFN should negotiate an agreement based on land selection, rather than merely "exploring" such an agreement.

The Assembly passed a resolution instructing DFN negotiators to negotiate an AiP based on land selection, while maintaining the priority of completing and implementing a land use plan for the Dehcho.

The Dehcho Proposal calls for multi-year block funding for health, education and housing in recognition of the commitments made in the Treaties. This winter DFN negotiators will be tabling draft AiP chapters which would require such funding. These provisions, if agreed by Canada, might

implement the spirit and intent of the treaty provisions for these subjects.

*Dehcho Proposal* and the *Framework Agreement*, together with subsequent Assembly resolutions, continue to guide the Dehcho negotiating team. We remind Canada frequently that any AiP will be judged by whether or not it "builds upon and clarifies" Treaties 8 and 11.

## Treaty 8 and 11

### Background

In the late 1800s and early 20th century, minerals and petroleum were discovered in Denendeh. According to Canadian and international law, these valuable resources belonged to the owners of Denendeh – the Dene and their descendants. Mining companies and oil and gas companies were not allowed to explore or develop these lands until an agreement was reached between the Crown and the First Nations.

Canada therefore sent negotiators to meet with Dene leaders and negotiate Treaties which would acquire these resources for Canada and allow them to be exploited.

### Treaties 8 (1899), Treaty 11 (1921-22)

According to Dene oral history, these were treaties of peace and friendship between sovereign nations. The Treaties did



not extinguish Dene title to any land but rather confirmed that the Dene and their descendants would continue to govern their land and resources, and would maintain their right to traditional harvesting throughout Denendeh, while allowing non-Dene to settle and explore for minerals. Oral history also states that the Dene were promised housing, health care and education in exchange for sharing their lands and resources with settlers.

Unfortunately, this version of the treaties was not recorded and has never been accepted by Canada. According to Canada, only the written versions of the Treaties are valid.

The written versions of the Treaties say that the Dene surrendered title to their traditional territories to Canada in exchange for small cash payments, reserves, and

permanent protection for their hunting and fishing rights.

Since the Treaties were signed, there has been uncertainty as to which version of the Treaties is more accurate. This uncertainty as to who owns the land means that it is not clear to investors and companies interested in exploiting the north's resources whether Canada's laws apply or whether First Nations' laws apply. As long as this uncertainty remains, economic development is restricted because big corporations will not invest unless they are sure which government owns and governs the resources and has jurisdiction to permit their activities. Canada's goal in the Dehcho Process is to enter into a new, modern treaty which will provide certainty so that multi-national oil and gas companies and mining companies can invest safely in large resource extraction projects.

## Dehcho Process

The Dehcho Process will result in a final agreement which recognizes the right of Dehcho Dene to continue harvesting wildlife and fish for subsistence and personal use throughout their traditional territory, which will be called the "settlement area". We do not yet have agreement with Canada and the GNWT on the management of wildlife. The DFN have proposed that management within Dehcho Ndehe (retained fee simple lands) be under the jurisdiction of the Dehcho Government. The GNWT argues that it should have jurisdiction over wildlife management throughout the NWT.





## Land and Community

### Concerns:

#### 1. Building homes on band land

Chiefs raised concerns that GNWT was forcing Bands to transfer band land to commissioner lands so houses could be built. They want this practice to stop.

This concern can be discussed at main table talks. Once a final agreement is reached, commissioner lands will be transferred to the community. All lands in a community will be community owned.

The community will have the power to decide where houses can be built. (Note: lands already owned or leased before the Agreement will not change.)

#### 2. Community Boundaries

It is proposed that all the community boundaries will be expanded to enable 100 years of growth. All the lands within those areas will be controlled by Chief and Council. Subsurface rights on those lands have not been decided yet.

Canada and GNWT don't want resource developments to occur within community boundaries. Existing lots will be surveyed by government.

#### 3. Community Planning

Each community government will be able to develop town plans and have people involved in how the community develops.

#### 4. Property Tax and arrears

This is a big concern for leaders. Many people have tax arrears. Changes to the existing taxes will have to be negotiated. It will be up to the new community governments to decide if they will impose property taxes.



Lands will be retained as Dehcho Ndehe (Lands)

## Dehcho Ndehe

Dehcho Ndehe is the term being used to identify the lands which will be owned collectively as fee simple lands. Ownership will include all surface and sub-surface rights. Canada has proposed that these lands will consist of 39,000 square kilometers within the Settlement area. [They offered 46,000 km<sup>2</sup> but subtracted almost 7,000 km<sup>2</sup> for ADK] Dehcho First Nations says Dehcho Ndehe should at the least amount to 60,000 km<sup>2</sup>. The total area of the Dehcho Region is 216,000 km<sup>2</sup>. DFN members have to decide how the ownership of these lands will be divided up and where they will be. No decisions have been made on land selection.

There are a number of issues that will require decisions. As well as the amount of land, members must decide if the Dehcho First Nations should own all the lands on behalf of all members of the region. It has been stated by many leaders that the Dehcho should remain as one house. Another option would be to have the Communities own a portion of Dehcho Ndehe, outside of their community boundaries. Because the 2008 Assembly resolution directed the negotiators to see what a Dehcho Agreement would include under the Comprehensive Claims process, after the amount of land that will be retained is determined then members will have to identify what lands will be held as fee simple lands. A way of how and where to select the lands will have to be figured out.

There remains disagreement about proceeding with a process which requires land selection so only some lands are retained as fee simple. Dehcho descendants will keep all of rights to hunt, trap, fish and gather from all traditional lands. Those rights will not change or be lost. As well the Dehcho government will have the ability to manage all the retained lands that are selected and to co-manage all the lands in the Dehcho. These co-management arrangements are still being negotiated. All the different arrangements, fee simple lands, community lands, the land use plan, the protected areas, and the expanded Park as well as the co-management arrangements will enable good decisions to be made on protecting Dehcho lands, enabling traditional activity and permitting some resource development for economic purposes. It will be up to Dehcho members to decide if the Agreement achieves the objectives set out by the elders when the Dehcho Process began.

The DFN negotiation team is also negotiating provisions on harvesting jurisdictions. Once completed the Dehcho government will be able to make laws regarding plant harvesting, tree harvesting, and wildlife harvesting.

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## Dehcho Resource Management Authority

There will be a co-management body which has the power to decide what developments can occur and what rules must be followed. Their decisions will have to follow the provisions of the Dehcho Land Use Plan.

The DCRMA proposal was submitted to Canada for a response in 2009. Canada has not given an answer. According to their negotiators the delay is because Canada is reviewing the existing procedures. Currently Canada is waiting on a report from John Pollard about making changes to the Mackenzie Valley Land and Water and the Mackenzie Valley Environmental Review Board and the other existing regulatory Boards.

## Edehzhie Protected Area

(the Horne Plateau)

Negotiations on the Edehzhie Protected Area are completed. A recommendation has been sent to the Minister of the Environment for his approval. We have been waiting since July. The Grand Chief has asked the Minister to ensure that all subsurface rights are protected as well as the surface rights for the entire Edehzhie Protected area.

## Nahanni Park Reserve:

The Park expansion is now complete and the co-management of the Park is now in place. A Parks chapter is being negotiated as part of the Agreement.

## Chapters currently being discussed at main table negotiations

**General Provisions:** Lays out the relationship between government and the Dehcho gov't and its citizens.

**Eligibility Enrollment and Ratification:** Describes who can participate as a Dehcho citizen and the steps required to sign up as well as how voting on the Dehcho Agreement will occur.

**Treaty Benefits:** Provisions directly related to outstanding Treaty benefits will be defined in this chapter. These may include matters relating to health, education and housing.

**Dehcho Government:** This chapter will define the structure and law making powers of the Dehcho gov't. There will be a Dehcho constitution

**Dehcho Community Government:** Details of how each community government will be organized and elected will be outlined in this chapter. It will also explain the areas of responsibility. Each community will have a community constitution.

**Dehcho Ndehe:** The amount of lands to be retained as fee simple lands and the location of those lands will be shown in this chapter. The way in which these lands will be owned, either by the Dehcho gov't, or Community gov'ts or both.

**Dehcho Community Lands:** Will be the lands owned exclusively by each community gov't. It is expected that community boundaries will be expanded to much larger areas so each community has growth potential.

**Expropriation:** Explains how government could take some land to use it for public purposes, such as building roads and what the rules will be for compensation.

**Dehcho Land Use Plan:** Will define how lands in the settlement areas are used and what the rules for land use are.

**Wildlife Harvesting:** Explains the rights of Dehcho citizens to harvest wildlife in the settlement area and to share it with others.

**Plant Harvesting:** Explains the ownership & rights of Dehcho citizens to harvest plants in the settlement area & to share.

**Tree Harvesting:** Explains the ownership & rights of Dehcho citizens to harvest trees in the settlement area.

**Migratory Birds:** Explains the rights of Dehcho citizens to harvest and share migratory birds with others.

**Harvesters Compensation:** Will explain how harvesters who are impacted by developments will be compensated.

**Dehcho Resource Management Authority:** The DCRMA will be responsible for the management of resources throughout the Dehcho territory.

**Education - kindergarten to Grade 12:** Will provide for the Dehcho gov't to run and make laws for education from K - 12.

**Educations: post secondary education:** Will define the authority of the Dehcho gov't to establish colleges and universities.

**Education - preschool:** Will provide authority to the Dehcho gov't to set up and regulate facilities such as day cares.

**Education - adult:** Will provide for the operation of programs to train adults and upgrade their formal education.

**Culture Language and Heritage Resources:** Provisions for the protection and development of Dehcho culture, language and heritage will be described in this chapter.

**Housing:** Provides some details on the power the Dehcho gov't will have for social housing programs, to replace GNWT programs.

**Social Services, including child services and income support:** Describes how the Dehcho gov't will take control of social programs from GNWT.

**Adoption:** Explains how the Dehcho gov't can make laws to regulate adoptions, including custom adoptions, and what standards will be used.

**Justice:** Will explain the relationship of the Dehcho gov't to the courts and how Dehcho laws will be enforced.

**Parks:** Will describe rules to establish any new Parks and confirm the co-management of Nahanni National Park Reserve.

**Taxation:** The power of the Dehcho gov't to collect taxes will be outlined in this chapter. Taxes might include GST, income tax, fees, royalties.

**Financial Matters:** The financing of the Dehcho gov't and the amount of compensation provided to the gov't will be explained in this chapter.

**Economic Measures:** Describes special economic measures, such as government contracting and training, that will be put in place for members.

**Dispute Resolution:** Sets out the rules to resolve disputes that come up between the 3 Governments from implementing the Agreement.

**Definitions and interpretation:** This chapter will provide definitions of terms used in the Agreement for a clear understanding of what is meant.

## Dehcho Government

The Dehcho Government will be a regional government, making laws that will affect the whole region. The Dehcho Government will have a constitution which will guide how it operates.

Existing Agreements between DFN and Canada call for a public government which will be able to make laws and provide services to all residents of Dehcho Communities and Dehcho lands. With a public government, provisions will be created to ensure Dehcho Dene always will have the majority of representatives in any governing body.

A number of ideas have been discussed on the structure of the Government. There seems to be a consensus that it will be led by the Grand Chief. How the Grand Chief is selected hasn't been decided. Many prefer a general election, and many feel the selection should continue to be at the Annual Assembly. There have been talks about having an Elders council as part of the new government and special representation for youth. NO decision has been made. Input is needed.

The Dehcho Government will be able to make laws for citizens in number of areas. The list of chapters on the next page provides the general areas of law making powers of the Dehcho Government.

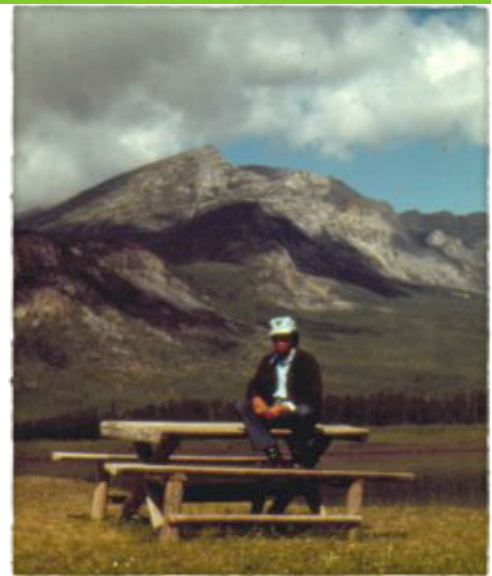
## Dehcho Community Gov't

Each Dehcho community will create its own new government through the Agreement. The current discussions have called for one government in each community which will represent everyone in the community. The idea is that Band Governments, Metis Governments and Municipal governments will amalgamate. However, the community leader will be the Chief and will be elected by only Dehcho Members. The majority of the seats on the new government council will always be held by Dehcho members. These ideas have not been approved or agreed to but they are based on the Framework Agreement and the 21 Common Ground Principles which recommend public community governments. It will be up to each community to decide what they want for their community and how it will be structured.

Each community will have its own lands. There will be no commissioner lands or crown lands within a community. Homes will be built on community government land in the future.

A Community government will make laws to run the community effectively and to manage their lands. They will have some other powers too.

There will be community meetings to help make decisions about each community gov't.



### Dehcho Land Use Plan:

In 2006 DFN approved the LUP but Canada and the GNWT rejected it. Since then a new LUP Committee under the leadership of Michael Nadli has been working on revisions to create an Interim LUP which fits within existing laws. The interim plan will be replaced by a permanent LUP after the Dehcho Agreement becomes law.



# Negotiation Schedule

Main Table :  
Nov 2010 - Video Call (16th - 18th)

Updates: ADK Overlap, other  
Ongoing Chapters: LUP outstanding;  
Education K -12; Community  
Jurisdiction; Parks; Language Culture and  
Heritage; Eligibility and Enrollment;  
New Chapters: Community Lands;  
Preschool; Adult Education; Post  
Secondary;  
General Discussions: John Pollard Report/  
DCRMA;

December 2010 - Edmonton  
(Dec 7th - 9th)

Updates: LUP, ADK Overlap, other  
Ongoing Chapters: Community Lands;  
Jurisdiction; Dispute  
Resolution; Taxation; Expropriation; Parks;  
Treaty Benefits; Language Culture and  
Heritage; Eligibility and Enrollment;  
New Chapters:  
General Discussion: Social Housing Child  
and Family Services; Income  
Assistance; DCRMA

January 2011 - Video Conference  
(Jan 17th -18th -19th)

Updates: ADK Overlap, other  
Ongoing Chapters: Jurisdiction; Economic  
measures; Governance; Community  
Jurisdiction; Treaty Benefits; Language  
Culture and Heritage; Eligibility and  
Enrollment; PAS;  
New Chapters: Social Housing; Child and  
Family Services; Income Assistance;  
DCRMA (Land, Water and Environmental  
Regulations);  
General Discussion: Dehcho Ndehe Lands.

## Key challenges

### Community Claims

The Dehcho Process has been made more difficult to complete as Canada has made policy and position changes. During the first 5 years of negotiation Canada was willing to negotiate based on the DFN proposal for shared ownership and shared stewardship of all Dehcho Lands. In 2006 Canada changed its position and presented a proposal based on their comprehensive claims policy, of selected lands and co-management in the settlement area. This change was extremely difficult for DFN members. However, at an Assembly in 2008 direction was given to 'explore' land selection. There is only limited support for this idea. In 2009 Canada changed its policy and signed a Framework Agreement with the Acho Dene Koe (Ft Liard) to proceed with a community claim. The Katlodeeche First Nation is now considering one as well. This has created numerous difficulties, including creating the need for overlap agreements between Dehcho communities.



### Treaty

The continuation of Treaty 8 and 11 is important for many people. The mandate given to the negotiation team by both Assembly resolutions and leadership support requires the new Agreement to build on the existing Treaties. The Treaty Benefits chapter is one way the team is attempting to do this. However some leaders have expressed an interest to define the future of First Nations in the Dehcho only on the Treaties. It is unclear what that may mean to negotiations. Canada will NOT negotiate Agreements based on both Treaty Land Entitlement and Comprehensive claims. It must be one or the other. Canada would

prefer to recognize the historical importance of Treaties only.



### Developing Constitutions

Over the next few months as community consultations occur, a Dehcho Constitution will have to be developed to describe the structure of the Dehcho Gov't and how its members will be selected. It will also set up the key principles for the operation of the government and how selected/appointed members would be replaced when required.

Community Constitutions will also be required. Each community will define how its government will be structured and who can participate. The structure of Community Governments may vary. Based on the 21 Common Ground Principles and the Framework Agreement it is anticipated that communities will form public governments, with guaranteed representation for Dehcho members.

### Comments

## Negotiation Team:

Chief Negotiator: Georges Erasmus

Assistant Negotiator: Bernadette Norwegian

Assistant Negotiator: Richard Lafferty

Language Specialist: Violet Jumbo

Communication Specialist: Felix Isaiah

Negotiations Secretary: Leona Louie

Legal Counsel: Chris Reid

Negotiation Co-ordinator: Patrick Scott

## Feedback or questions

Members of our negotiations team need comments, ideas and questions from you so the Dehcho Agreement provides the self government members hope to have. You are encouraged to talk to us at any time. Please note that more information is available at: [www.dehcho.org](http://www.dehcho.org)



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