

DEH CHO FIRST NATIONS

THE DEH CHO PROPOSAL

**REQUIREMENT FOR THE
EQUITABLE SETTLEMENT OF
DEH CHO-CROWN RELATIONSHIPS
THROUGH
DENE GOVERNMENT
IN THE DEH CHO**

**Presented to The Honorable Jane Stewart,
Minister of Indian and Northern Affairs
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**In Yellowknife, Denendeh
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Healing Initiative Announcement**

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The Honorable Ron Irwin March 1994

INTRODUCTION

The leadership of the Deh Cho First Nations would like to take this opportunity to present The Honorable Jane Stewart, Minister of Indian Affairs, with the following statements which outline, however briefly, our aspirations for a public government in the Deh Cho which is based in Dene law and customs.

Since 1969, the leadership of the Deh Cho First Nations have directed research and consultations with the elders in our territory on Dene history, land use, social and political order. Since 1992 our research has been more focused to confirm the principles and structures of Dene government in the Deh Cho.

Past work has strengthened the commitment that originally led to the Indian Brotherhood's Dene Declaration, as well as the Deh Cho First Nation's government position on our inherent right to government. This work has offered the context and direction for decisions surrounding the establishment of the First Nation government in our territory. It is our expectation that we will eventually be recognized, by the other governments in Canada, and move into equitable relationships with them from within our own structures and procedures.

It is not the intention of the leadership to lecture on the historical realities of our territory. However, it is crucial that an awareness of our cultural and historical realities be reached by the government and the people of Canada, in order that the boundaries to the options and decisions Deh Cho leaders are able to make are appreciated. It must be emphasized that the present leadership has directed all work to be forward thinking and focused on resolving the differences between Deh Cho First Nations needs and current government policies.

It is the Leadership's intentions to present to you in summary, the Dene understanding of the Treaty relationship that was established between the Crown and our elders in 1898, 1899, 1921 and 1922. It is this relationship that is central to the decisions of our First Nations in regards to our lands and jurisdiction over them.

THE DENE AND THE LAND

As Dene, we have always known and believed that we are an inherent part of a creation with a natural order to which we have to conform if we are to survive as a distinct people.

We believe that all of creation: stars, planets, rock, water, air, fire, plants, animals and people have a spirit with them. We believe that all of creation, as experienced by everyone, whether Dene or not, whether experienced differently or the same, is the product of the will of spiritual beings working in concert with the Creator. In the Dene teachings, the Creator is not named or spoken of directly but the teachings awaken a powerful awareness of the presence, the immediacy and the power of the Creator.

We know from our teachings that human beings were the last beings to be created. Being the youngest of creation we accept that we are the least capable of survival on our own in this world.

It is the rest of creation, which has made it possible for us to survive. As our elders teach, the rock saw the confusion of our emotions and know we would have a hard time to communicate. The rock offered to communicate with Creator for us if we would ask. The animals agree to give themselves for food, medicine, clothing and shelter as long as we lived according to the laws given to us by the spiritual helpers and the One who is above all creation. The plants agree to give us their being for food and medicine.

In our teachings, the mother earth herself is a living conscious being who provides the environment for life, as we know it. Her spirit can take human form and communicate with any individual she chooses. The sun too is a living conscious being who makes it possible with his light and heat for the earth to give life.

According to our beliefs, the Spirit of Creation and of the Land are determining forces in the governance of human life. At the time Treaties 8 and 11 were signed, Dene culture was still intact in its social, political, economic and spiritual manifestations. Our leaders of the day were bound by the social norms, the beliefs and customs of a culture, which spanned more than ten thousand years.

The land has to be obeyed. She provides all the necessities of life. As Dene we are given the responsibility to continue to live with Her in our territory, which has generated our culture; to govern ourselves at a personal, family,

community and national level in a manner which honors and respects Her. This is fundamental to our survival. To disrespect the spirit of the Land is to disrespect life. It is to invite death. This belief extends to people, animals and tools used to bring food, and so life, into the home. This belief influences decisions of a personal, social, political and economic nature.

The Dene have always recognized that the Creator provides life, and the Dene way of life through, the Land the Dene inhabit. To give up the land is to give up life and culture, which the Creator provides. In 1988, Mary Firth, an elder from Fort McPherson stated the following about the Dene/Metis Agreement in Principle; “For me, I am being asked to give up the life which the Creator gave me and to accept life which will be provided by the government of White people. They are not God.”

Early in 1990, Fort Simpson Elder William Antoine voiced his concern; “I do not want the people to make a decision about the land before I die... I do not want to be among the ones who will have to tell our ancestors that we gave up the land they left in our care to White people.”

We believe that our very bodies are an intrinsic part of the land. At the Leadership Assembly of the Dene Nation in Fort Norman, February 1990, Dene Elder, Fred Andrew spoke to the leaders with tears running down his face. He said; “You cannot give up one clump of dirt. It is our blood.”

TREATY AND LAND

Treaties 8 and 11 were entered into by the Dene with the intent of improving living conditions and as sacred trust, which we are required to keep in order to obey our Elders and be able to live with them peacefully when we go to the next world. The Treaties were sealed by the Dene with a handshake, a sign for the Creator to witness and bless the agreement, it is also vow to the Creator by the Dene that as a people they will maintain that peace.

Thousands of years of history stood behind the Dene as the Treaty Party approached. Each of the Dene present were raised on the land with their history, social organizations, religion, understanding of the fundamental relationship between themselves and the land. Each knew from experience as children, parents and leaders that the land provides for those who respect her.

Given the social and historical context of the meeting between the Dene and the Treaty Party, it is impossible to believe, as government of Canada's written version would have us do, that the Dene knowingly ceded their land to the Crown. At that time, in the places where the Treaty was signed, the Dene were the obvious power, the majority, and vast distances from any potential threat from the Crown.

The fact that the Dene then and still believe that the land is the blood of the people; is the conscious being from which the Dene are called to learn the Creator's will; is the provider of Dene life; and, given the fact that the Dene still believe that the land and the people are one; that the land belongs to the Dene and the Dene belong to the land; and that a living relationship with the land is an inherent function of the Dene personal, social, political, economic and religious beliefs and ways of being, makes it inconceivable that the leadership in 1921 would knowingly give up the land. It is long past time the government's written version of Treaties 8 and 11 recognized these facts.

It is from this historical perspective of the Dene that one will understand the Dene position with respect to Treaties 8 and 11. That is, the Dene agreed to allow the subjects of the Crown to live on Dene lands in peace and friendship, and that in return the Crown would provide certain benefits to the Dene. Some of those benefits are spelled out in the government's written version of the Treaties, others are evident in the affidavits signed by witnesses to the Treaty negotiations and oral testimony given by the Dene Negotiators to Treaty 11.

Euro-Canadian processes of decision making and values, forced on the Dene, has meant disorientation, confusion and lack of control over our own government structures and processes; displacement from customary land use base to government controlled communities; dissolution of customary social and political order; weakening of economic and spiritual ties to the Land, Dene laws and teachings; and a movement away from the understandings of life needed to maintain healthy relationship with self, others, Land and Creator. This has resulted in opening the Dene to the onslaught of what the Dene spiritual leaders call disease. It is true what the Dene prophets foretold; Strangers would bring sickness among us.

We believe it is the Creator's will that we exist as Dene; in a way of life, which provides for good people to live together in harmony with each other and the Land. Today we are suffering from the good intentions of government

and Churches from other parts of the world. If a person is not Dene, how can they possibly know what is good for the Dene? They cannot.

Good government for the First Nations will bring peace back into our families and communities. Good government for First Nations will be government according to the needs of First Nations, and the will of the Land and the Creator as understood and lived by the First Nations. Good government for the Dene First Nations will be government according to Dene law, social and political structure and economic activity, which honors the rights of the Land and the responsibilities of the First Nations to live accordingly to the will of the Creator.

Until the above ways of being become the norm again, as they once were, the First Nations will continue to suffer under the dominion of foreign interests and governments; our families will continue to live under state siege. Until we Dene and our government are recognized so that our decisions, about ourselves and our lands, are respected, diseases such as alcoholism, sexual abuse, abuse of elders and other forms of unlawful and/or unconventional behavior will continue. Until we govern ourselves, we do not see the possibility of good government.

The Peace Treaties, which the Dene entered into with the Crown, recognize the sovereignty of both parties within their own territories. They recognize the reality of each other's existence and needs. They recognize the potential for each party to assist the other in meeting their needs, through a fair trade of access (without interference to Dene way of life) to Dene lands for minerals in exchange for benefits, as Treaty Right, from the Crown to citizens of Deh Cho.

The Treaty constitutes a social/political/economic contract between the Dene and the Crown which the Dene have upheld at great expense to their social, political, economic and spiritual life, and which the Crown has breached at every turn to further its intent to acquire complete domination over Dene lands and lives.

The Deh Cho First Nations, composed of fourteen community organizations, remains firm in its' position to keep the Treaty and to seek an equitable relationship with Canada. This relationship will require the Crown and Canada to recognize and affirm our aboriginal title to our lands, and provide for Dene law and custom to stand as the basis for public government in the Deh Cho region of Denendeh.

COMPREHENSIVE CLAIMS POLICY

The Deh Cho First Nations have examined the existing comprehensive claims policy to determine whether our needs for self-determination could be met by entering a claims process. The defining relationship for the Dene of the Deh Cho is the relationship with the Creator and the Land. The Elders have clearly directed the leadership to maintain that relationship at all costs.

The existing policy is premised on the extinguishment of that relationship with the Land. As we have noted it is inconceivable that the leadership of the Deh Cho would enter into any agreement that erodes the very nature of ourselves by extinguishing title. As the Declaration of Rights of the Deh Cho First Nations states: "Our laws from the Creator do not allow us to cede, release, surrender or extinguish our inherent rights." The existing Comprehensive Claims Policy denies the continuing existence of the Dene as people and violates our Aboriginal and Treaty Rights.

TREATY LAND ENTITLEMENT

Federal process of Treaty Land Entitlement presupposes that Treaties 8 and 11 were treaties of cession rather than of peace. Under Treaty Land Entitlement, reserves are created or added to under the principle of extinguishment of Aboriginal Title. The Dene understanding of Treaties 8 and 11 rejects this process.

The First Nations see public governance according to Dene law and custom as the only possible means of ensuring good government for everyone in the Deh Cho. Our inherent rights provide us jurisdiction over our lands.

ADMINISTRATIVE TRANSFER

The Deh Cho First Nations view the administrative transfer of federal responsibilities to their Northwest Territories Administration as problematic for several reasons:

1. The Dene/Crown relationship is undermined.
2. The assignment of 91(24) is unconstitutional.
3. The unanswered question of whether the obligations under the assignment were fulfilled.

4. It is our understanding that in your Common Law it is illegal to sub-delegate a delegated authority. (DIAND has delegated authority, it should not be sub-delegating that to NWTA).
5. The Deh Cho First Nations never consented to these sub-delegations of responsibility.
6. NWTA uses funds voted by Treasury Board to meet Treaty obligations as general funds and does not account for its spending according to Treaty obligations.
7. The inability and lack of interest of NWTA to report its spending according Treaty obligations.
8. The discriminatory funding of services.
9. The violation of existing Aboriginal governance in the Deh Cho.
10. The inconsistency with the development of the inherent right to government as understood by the Deh Cho First Nations.

The Deh Cho First Nations see the resolution of these problems in terms of a direct transfer of funds to the Deh Cho First Nations government through a global financial arrangement with the Crown as represented by the Treasury Board.

SUMMARY OF THE PRINCIPALS OF THE CONSTITUTION OF DEH CHO FIRST NATIONS

I Introduction

The Deh Cho First Nations interprets its' inherent right to govern its' lands and residents in terms of its' jurisdiction over the Deh Cho territory. We desire the federal government of Canada to recognize our inherent governing authorities. The process of achieving the recognition of the government, and the people of Canada, and a corresponding relationship to ensure that Treaties 8 and 11 are implemented equitably by the Crown will be achieved through formal talks. We expect that, within its' process, the federal government will pass legislation applying to itself and its' responsibilities presently in our existing Treaties. The Constitution of Deh Cho will provide for the Dene to meet their Treaty responsibilities towards the Crown.

The jurisdictions, and structures and procedures of Deh Cho First Nations will reflect the traditional principles and values of the Dene. To be effective and to prevent duplication of government infra-structure, the Deh Cho First Nations government will also apply to non-Aboriginal persons residing within

the Deh Cho territory. The closest analogue, of the form of government desired by the Deh Cho First Nations, is that of a province. However, given the unique Aboriginal and Treaty rights attaching to the Deh Cho, the model of government will sui generis (self generating), as some federal jurisdictions and powers may be reflected in the government structures and jurisdictions of the Deh Cho. As is now our practice, future criteria for structuring and operating the Deh Cho government will turn on efficiency, accountability and the balancing of traditional and contemporary institutions and procedures.

To give some context to the objectives of the Constitution of Deh Cho, the following background has to be taken into account. In the wake of the division of the “Northwest Territories”, the NWT Constitutional Development Committee has suggested two ways of accommodating the constitutional development of the Western NWT and First Nation government: 1. an integrated system (First Nations concerns would be dealt with by existing institutions and procedures); 2. a parallel system (one central government and several First Nation governments). The option favored by the NWTA is the integrated system as in its’ opinion it can best accommodate First Nations and non-Indian concerns. We view this as a poorly informed opinion which definitely ignores that last thirty years history of NWTA policies and procedures ignoring First Nation concerns and moving systematically to implement the 1969 White Paper.

The NWTA is underestimating the complexity of Dene history and the nature of Aboriginal governance. They are functioning within the extremely limited scope of current DIAND thinking on land claims. Even DIAND’s current thinking on “Indian Self-Government” does not begin to address the issues, needs and concerns of our cultures. Given our knowledge, history and relationship with our lands, it is difficult to see how the current political system, centralized in Ministerial authority, can provide for equitable, fair and effective Aboriginal governance. In effect, we feel that this process remains clearly reflective of European feudalism, is contrary to our culture and values, and is too restrictive to reach true democratic process for decision making in the best interest of all.

Continuation of the current NWTA direction towards provincial status, within the current system is a violation of our Treaties. If this outcome is achieved, it will marginalize First Nations North of 60 as it has First Nations in the South. We also see continuations of the federal NWT Act as a colonial process, which violates federal obligations to protect Treaty and Aboriginal Rights.

Other factors, that necessitate the constitutional development of Deh Cho, turn on the issues raised by the transfer, to the NWT, of the administration of matters pertaining to the Crown's Treaty obligations to Deh Cho First Nations and its evident lack in fulfilling those legal obligations. These issues are addressed by the Constitution of Deh Cho.

II The Rights and Needs of Non-Aboriginal Residents under the Constitution of Deh Cho

1. The government of Deh Cho will deliver services to member residents; transfer payments will have to reflect the cost of the delivery services to all residents.
2. All rights of Canadians guaranteed by the Charter shall be respected by the government of the Deh Cho, however, special provisions will protect Aboriginal Rights (e.g. a perpetual Aboriginal deciding vote on all matters directly affecting Aboriginal and Treaty Rights).
3. Non-Aboriginal residents may hold interest in land and conduct business in accordance with the laws of Deh Cho. Non-Aboriginal residents will be given opportunity to participate in government councils and hold positions in the administration and courts of Deh Cho.
4. Just as residence within any province guarantees a person with rights, residency in Deh Cho will guarantee rights. These rights, like those rights of Canadians in other parts of Canada, must be balanced with Aboriginal and Treaty Rights. In addition, the government institutions in Deh Cho will be sensitive to the special land rights of the First Nations and the need to maintain homeland for the First Nations.
5. The model of government replaces an emphasis on central government in favor of local government. Hence the residents of Deh Cho will have greater freedom, rights and input to government from a distance (e.g. Ottawa and Yellowknife). The government of Deh Cho will be a government for all residents in the Deh Cho. The government of Deh Cho will be more efficient, accountable and sensitive to the needs, rights and protection of all its' citizens.

III The Principles of the Constitution of Deh Cho

1. Status and Capacity of the First Nations of Deh Cho

- A. The Deh Cho First Nations government shall be a distinct legal entity with powers of a government (i.e. special powers and privileges) and powers of a natural person (e.g. authority to sue, contract, hold interest inland, etc.).
- B. The status and capacity of the Deh Cho First Nations government will be recognized by the federal government and the Crown by federal legislation which will govern the federal government in its responsibilities to meet its Treaty obligations to the Deh Cho First Nations. *(For convenience this Act of Parliament of Canada will be referred to in the rest of the paper as the **Deh Cho Act.**)*
- C. A branch government (legislative, Executive and Judicial) shall function in accordance with the Constitution of Deh Cho.
- D. Deh Cho First Nations governments will assimilate the established Indian Act band councils, the Metis locals and the NWT municipal councils. All assets and liabilities of these councils will vest in the Deh Cho First Nations governments.

2. Structures of Government

- A. Each Deh Cho community will establish a Deh Cho First Nations government to assimilate existing councils where applicable. The composition and selection of leaders will reflect the land based culture and values of the Dene, and will be provided for in the Constitution of Denendeh. The extended family (the traditional political unit in Dene life) shall have a central role in the composition of Deh Cho First Nations government. The government will have jurisdiction over the traditional territories of the families making up the community.
- B. Deh Cho First Nations government shall be composed of two members (an elected leader and an elder appointed by Naxe'cho Ke) of each of the Deh Cho First Nations governments (legislative council); an executive branch (administrative) and judicial branch (courts).

- C. The Constitution of Deh Cho will provide for division of jurisdiction and powers among the community First Nation governments and the Deh Cho First Nations government according to Dene custom.
- D. Both levels of government may delegate powers to boards that they may create and regulate.
- E. Boards shall serve as mechanisms to direct and oversee the administration, by employees, of various matters: land, natural resources, environment, membership, education, social services, business regulations, health, culture, etc. Judicial review of decisions and actions of boards shall be done by the Deh Cho court as required.
- F. Deh Cho first Nation(s) government(s) shall be accountable to the residents of Deh Cho.
- G. The Constitution of Deh Cho shall be ratified and amended by the elector residents in the Deh Cho (residency requirement) as per the Constitution of Deh Cho. Special provisions will protect Aboriginal rights (e.g. a perpetual Aboriginal deciding vote on all matters directly affecting Aboriginal and Treaty rights).
- H. The Constitution of Deh Cho shall be written and shall provide for the structures as well as the executive, legislative and judicial procedures of government and the creation of laws.

3. Residency Requirements

- A. The Deh Cho First Nations governments shall establish a system that will recognize its Aboriginal and non-Aboriginal citizens. The citizen's code shall respect the Charter, shall be in writing, and shall have an appeal mechanism. Residency shall be determined by residency requirements.

4. Selection of Leadership

- A. A Deh Cho First Nations election regulations will provide for the custom selection of leaders, the removal of leaders, and will constitute the election procedure under the Constitution of Deh Cho.

5. Laws Applicable to the Deh Cho

- A. The *Deh Cho Act* of the Parliament of Canada, whereby it will govern itself in meeting its' Treaty obligations to the Deh Cho, will replace the Indian Act, the NWT Act and other legislation it may presently use to justify its' presence in the Deh Cho.
- B. Deh Cho First Nations laws shall apply to all people in the Deh Cho whether resident or visitor.
- C. All federal laws not inconsistent with the *Deh Cho Act* will continue to apply.

6. Management of Land and Resources, Environment and Water

- A. Aboriginal title to the Deh Cho lands shall be held in trust by the Dene of the Deh Cho. The *Deh Cho Act* shall recognize the existing Aboriginal and non-Aboriginal titles within the Deh Cho. In recognition of the Aboriginal and Treaty responsibilities, the title to the lands may never be compromised by the Dene of the Deh Cho for the Crown in Right of Canada.
- B. The Deh Cho First Nations government shall have exclusive legislative jurisdiction over granting interest, use and management of non-renewable resources, environmental protection, access, communal use, roads and trails, inspection of premises for health and safety purposes, and any ancillary matters.
- C. Deh Cho First Nations government shall retain administrative authority to manage Deh Cho lands.
- D. The Deh Cho First Nations Lands Board shall review the management and administrative relating to land use. Extended families, affected by decisions and activities, will have a special say regarding their traditional lands. An appeals process to protect their rights will be put in place.

- E. Deh Cho legislation will provide for a lands register of all registerable interest in the Deh Cho First Nations lands.
- F. Deh Cho First Nations government shall have legislative jurisdiction over: environment assessment, hazardous wastes, solid wastes, land fill sites, air and water pollution and the protection of the Deh Cho environment. The principles of environmental protection shall include the integrity of ecosystems, responsible, sustainable development, the mitigation of damages, and co-operation with other governments. Deh Cho First Nations environmental standards shall be at least equivalent to those of other governments.
- G. Deh Cho First Nations government shall jurisdiction over, but not limited to, the regulation use, quality and quantity of surface and ground water, beds of water and fish and wildlife within them.

7. Financial Arrangements

- A. The Deh Cho First Nations government will retain public financial powers to generate revenue by way of taxation.
- B. Federal Treaty obligations will be met financially by financial transfer arrangements, with Deh Cho First Nation(s) government(s), similar to a federal/provincial/ territorial transfer payment and should be based on the following principles:
 - i) funding to ensure that the traditional Dene form of governance is maintained in its' three branches;
 - ii) funding equivalent to that provided to other Canadians for those services the Crown agreed to in Treaty;
 - iii) funds for each jurisdictional area;
 - iv) start up funding (training and infra-structure) and;
 - v) ongoing funding to cover all services to non-Aboriginal citizens and the maintenance of statutory programs.
- C. Moneys transferred to the Deh Cho First Nation (s) governments(s) will be identified on the federal main estimates.
- D. Deh Cho First Nation(s) government(s) will provide audited financial statements to account for the use of transfer monies.

8. Administration Justice

- A. Deh Cho First Nations government shall have exclusive legislative jurisdiction over the administration of justice regarding review of legislation and executive acts, enforcement of law, prosecutions, representation in the form of a cultural/legal advocacy program, translation services, legal aid, adjudication, rehabilitation and corrections.
- B. The *Deh Cho Act* shall recognize the structure, procedures and authority of the Deh Cho Court.
- C. The Deh Cho Court shall have exclusive jurisdiction regarding: the judicial review of the Deh Cho First Nations government and its delegates, criminal code offences, offenses under Deh Cho law and civil matters arising within the Deh Cho.
- D. To the extent agreed to by other jurisdictions, the judgments and orders of the Deh Cho Court shall be enforceable in and through other courts, except that any order or judgment of the Deh Cho Court pursuant to the Criminal Code of Canada shall have force and effect throughout Canada.
- E. Deh Cho First Nations government may create the office of Deh Cho public trustee, medical examiner and a Deh Cho legal aid system.
- F. The Deh Cho Court may impose punishment by way of fines, penalty or imprisonment and any customary form of rehabilitation (healing process), and grant prerogative remedies.

9. Other Specific Areas Where Deh Cho First Nations Government Shall Exercise Jurisdiction:

- A. Education
- B. Social Services
- C. Health Care
- D. Public Works and Community Infra-structure
- E. Traffic and Transportation
- F. Licensing and Regulation of Business
- G. Sessional Rights