

## **LANDS AND GOVERNANCE WORKSHOP**

**Trout Lake B May 23-24, 2002**

**Report of Facilitator, Peter Russell**

### **1. The Workshop**

The first two days of the workshop, May 21-22, were attended by Deh Cho Dene/ Metis elders, representatives of all the Deh Cho communities, members of the Deh Cho First Nations negotiating team and members of the Trout Lake community. Representatives of the Government of Canada, the Government of the Northwest Territories and the facilitator joined the workshop on May 23. Mr. Blake Lyons representing the NWT Federation of Municipalities, a representative of the village of Enterprise and Chuck Blythe, Superintendent of the Nahanni National Park also joined the workshop at this time.

This report covers only the last two days of the workshop. References to the first two days are based on summaries presented to the second stage of the workshop by Chris Reid and Herb Norwegian.

As with the earlier workshop on governance, this workshop was not a negotiating session. The objective of the part of the workshop covered by this report was to enable the parties to communicate their interests to one another and to explore together possible ways of overcoming differences on the issues discussed.

### **2. The Practice of Deh Cho Land Use Management**

Though the term "land use management" has not been used until recently by the Deh Cho Dene, they have been practicing land management for a very long time. The process of taking care of their lands and waters and making decisions about their use and distribution of their resources has been a vital part of Deh Cho governance since long before the white-man arrived. The Deh Cho Dene/Metis intend to carry that responsibility forward into the future. A key objective of the Agreement with Canada and the GNWT which they are now beginning to negotiate is to re-affirm their role as "Keepers of our Lands and Waters." Their approach assumes that they are the owners of all the lands, waters and natural resources in the Deh Cho Territory, and that to operate their system of land management they require jurisdiction over all aspects of land and resource management in their homeland.

To implement the Interim Measures Agreement with Canada and the GNWT, the Deh Cho Dene/Metis have been identifying parts of their territory which are to be "withdrawn" from development and areas in which development can take place. During the first two days of the workshop, the Deh Cho/Metis explored their decision-making process on land use in the four "areas of development" that have been identified. Their mapping exercise has shown that in each of these areas two or more Deh Cho communities have traditional harvesting interests. One of the issues discussed was how to resolve issues of overlapping interest in these areas. Another issue is to identify development decisions to be made by local communities and those to made by the central Deh Cho Government. Yet another issue is whether seismic activity can take place on withdrawn lands.

### **3. The Priority of Land Management**

The Deh Cho see working out a system of land use planning as the number one priority at the present time. They recognize that there are differences with Canada on treaty and land ownership issues, and that it would be best, eventually, to resolve those issues. But they believe that real progress can be made in the interim in establishing and operating a system of managing the lands and resources of their territory which secures and advances their interests as well as those of Canada and the Government of the Northwest Territories. If a mutually acceptable system of making decisions about the use of land and development of resources can be made to work, underlying issues concerning land and treaty rights may become less “scary” and easier to resolve.

During the workshop representatives of the Government of Canada acknowledged differences with the Deh Cho on fundamental legal questions but agreed that these differences should not prevent proceeding with the system of land use planning called for in the Interim Measures Agreement.

### **4. Principles and Objectives of Land Management**

In the first stage of the workshop the Deh Cho discussed a number of principles and objectives that should guide decision-making about land and resources on their territory. As reported to those participating in the second stage of the workshop these principles and objectives were as follows:

- 1) In areas of development, development should proceed at a slow and moderate pace.
- 2) Development must always take place in a manner that shows respect for the land, that is sustainable and not destructive of the ecological integrity of the land.
- 3) In distributing the economic benefits of development, the priorities should be: first, residents of the Deh Cho territory; second, other northerners; and third, other Canadians.
- 4) Although the Government of Canada might collect royalties from resource development, the value of these royalties should be returned to the Deh Cho and not to the Government of the NWT.
- 5) A Deh Cho Development Act is needed to set out a comprehensive set of rules governing development in the Deh Cho territory.
- 6) There should be a single office in the Deh Cho for issuing permits for every kind of resource development, and regulating the bidding process.

In setting out this statement of principles and objectives, Deh Cho representatives said that they were willing to negotiate on the various issues they raised.

### **5. Government of Canada’s position on land management**

Robin Aitken reminded the workshop that his team has a mandate from Cabinet to explore the approach to land and resource decision-making favoured by the Deh Cho and to develop options on how to respond to these proposals by 2004.

The Government of Canada’s preference is to treat land issues in a similar manner to that used in “comprehensive agreements.” If this approach were followed, full Deh Cho ownership and control would apply only to “community lands”, while the remaining parts of the Deh Cho territory would be Crown lands on which Deh Cho jurisdiction is devolved by the federal government and resource management is shared with the federal and territorial governments. The Government of Canada recognizes that this is different from the approach favoured by the Deh Cho which calls for Deh Cho ownership and jurisdiction of and over the whole Deh Cho territory.

Despite differences about title, ownership and jurisdiction, the federal government believes that it may be possible to establish a mutually acceptable system of land use planning for the whole Deh Cho territory. It certainly wants to work at trying to do this. It would be much easier to obtain a consensus within the Government of Canada on land and resource issues if proposals were based on the preferred federal approach. However, Robin Aitken said his team has a mandate to explore the Deh Cho proposal and develop options for responding to it.

The Government of Canada attaches high importance to linking land use planning and management in the Deh Cho to the system established for co-ordinating land and water management in the Mackenzie Valley under the Mackenzie Valley Resource Management Act.

Canada's objective is to reach an agreement that clarifies rights and responsibilities in land use management. It does not insist on establishing absolute certainty, nor aim for extinguishment of native title.

## **6. Government of Northwest Territories' position on land management**

The GNWT recognizes that the Deh Cho proposal is not a land selection model, and while this raises some questions that have not been faced before, it is willing to explore the Deh Cho proposal.

Its primary interests are wildlife, forestry, commissioner's lands in and around communities and some aspects of environmental regulation.

GNWT representatives set out some of the concerns and principles that have governed its policy in the past, recognizing that some of these need to be reviewed and acknowledging that some change is possible to accommodate new approaches. Among those that would need review is retaining GNWT jurisdiction over wildlife and forests. One possibility here is shared or concurrent jurisdiction with regional or Aboriginal governments.

Another policy that the GNWT may need to review in the Deh Cho context is maintaining parity with respect to rights, roles and opportunities among the regions of the NWT. Parity, it was explained, does not require identical agreements but comparable practical outcomes. In the discussion on this point, Deh Cho representatives expressed doubt as to whether their proposals simply called for different processes or procedures from those used in agreements elsewhere in the NWT.

On several points the GNWT seemed to share common ground with the Deh Cho. These include:

- land use management and environmental regulation should be done through institutions of public government
- management regimes should be effective, workable and affordable
- land-use management should respect the integrity of the land, should be based on principles of sustainability and responsive to societal values
- both traditional and non-traditional scientific knowledge should be used in making land management decisions

One point emphasized by the GNWT is that eco-systems, wildlife migration and rivers do not conform to geo-political boundaries. Therefore, it is essential that whatever land-use management system is established for the Deh Cho, that it relate effectively to regulatory systems that deal with cross-border eco-systems.

## **7. Relationship of Deh Cho Land Use planning to Canada/GNWT**

Four models of how Deh Cho land use planning might be related to the federal and territorial governments were discussed:

- self-management entirely by the Deh Cho with no role for other governments
- co-jurisdiction with the consent of Canada and the Deh Cho needed for resource development decisions
- co-management as in comprehensive land claims agreement in which management is shared over Crown lands not owned by the First Nation
- co-existence as in the current situation where both the Deh Cho First Nations and Canada claim ownership of the same lands and operate their own systems of land use management

There was general agreement that co-existence was not ideal and that it would be best for all the parties to reach an agreement on how to relate to one another and avoid conflict. However, none of the other models were clear guides to structuring a consensual and workable relationship.

## **8. Working with land use planning in the Interim Measures Agreement**

Implementing the land use planning provisions of the Interim Measures Agreement appears to be the most practical way, at present, of moving beyond co-existence towards a co-operative way of managing land and resources in the Deh Cho. The Land Use Planning Committee called for in the Agreement has been established. Its four members (two appointed by the Deh Cho First Nations, one each by Canada and the GNWT) have chosen Herb Norwegian to chair the committee. The Committee has begun to hire staff and will soon open an office at Fort Providence.

The Land Use Planning Committee will develop a land use plan which must be approved by the Deh Cho First Nations. The Plan must also be approved by GNWT and forwarded to the federal Minister of DIAND "for consideration". The Minister may give policy directions based on the Plan to the Mackenzie Valley Land and Water Board.

Robin Aitken suggested that the system of land management under the Interim Measures Agreement was close to the co-jurisdiction model. However, from the Deh Cho's perspective, a serious short-coming of this system is that the Land Use Plan does not have the force of law. The federal minister retains a discretionary power as to whether to base policy directions on it. Discussion indicated that if this limitation were overcome, a system of land use planning such as that currently being carried out by the Land Use Planning Committee chaired by Herb Norwegian might be an acceptable way of achieving inter-governmental co-operation in land and resource decision-making in the Deh Cho.

A further point that was made several times in the discussion is that, while it is important for the parties to have veto powers, intergovernmental decision-making on land and resource management works best when the objective is to develop consensus rather than exercise vetoes.

## **9. Nahanni National Park**

This last point was well illustrated by discussion of progress in implementing the provision of the Interim Measures Agreement for a system of co-managing the Park Reserve. A Consensus Team consisting of 3 Deh Cho appointees and appointees of the federal government has been established and is drafting a park management plan. Chuck Blythe, the Park Superintendent, described how Deh Cho people and Park staff are working together on the Consensus Team to develop a strategic plan. The plan will call for increasing the size of the Park Reserve in order to better secure the ecological integrity of the area.

Chief Konisenta of Nahanni Butte spoke positively about the Consensus Team. He is concerned about re-naming Victoria Falls after a Canadian Prime Minister rather than using the words by which his people have always referred to this waterfall.

The next step is for the Draft Management Plan to be submitted to the Deh Cho First Nations and to Parks Canada for approval. Parks Canada has been conducting a “national consultation” on the Plan, and so far have received favourable reactions.

Herb Norwegian who chaired a recent workshop on the Plan said it was similar to the consensus system being used by the Haida Nation’s park in their homeland in the Queen Charlotte Islands. One concern he has about this system is whether the power of final decision remains with the federal minister.

## **10. Simplifying the Regulatory Process**

There was general agreement that the current system of resource management and decision-making is unduly complicated. The Deh Cho very much want to establish a more streamlined, “one stop” system of decision-making. This is the purpose of the Deh Cho Resource Management Act they are working towards. They are frustrated by the system established under the Mackenzie Valley Resource Management Act, and do not get answers to questions they raise about decision-making under the Act. It was pointed out that the machinery established by the Act is necessary for making decisions on projects like large dams that effect communities and lands all through the Mackenzie Valley.

## **11. Concluding Remarks and Next Steps**

In wrapping up the workshop, Grand Chief Michael Nadli emphasized the Deh Cho people’s determination to hold on to their land. Their land is absolutely essential to their very being. In reference to the other governments, he said they must help each other and find good ways of working with each other. The next workshop will be in another community, as is it is good for communications to have workshops in different communities. Chief Pat Martel, speaking for the Hay River reserve (which wasn’t represented at the Governance Workshop), said he was pleased to be involved in this process and was committed to working out common solutions with all of the Deh Cho First Nations.