



Keeping Treaty Rights  
For the Future of our Children



Making Treaty  
For the Future of our Children



Keeping Treaty Rights  
For the Future of our Children



Securing Financial Resources  
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# BACKGROUND

# DEHCHO PROCESS



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Making Treaty  
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Recognized Ownership  
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Joining Together For the Future of our Children

## DEHCHO PROCESS MLA Briefing Note

November 2015

### Summary

**The Dehcho First Nations (DFN)** have been in negotiations since late 1990s. A number of Agreements between Canada and DFN have been completed and guided the Dehcho Process negotiations. Included in these are the Framework Agreement, The 21 Common Ground Principles, the Interim measures Agreement and the IRDA Agreement. Each of these Agreements is available on the Dehcho website: [www.dehcho.org](http://www.dehcho.org).

There are many unique features of the Dehcho Process. First all negotiations have been held in public. Each sessions is open to the public and all documents tabled at the negotiations are posted on the website.

The Framework Agreement lays the foundation for what will be negotiated. The 21 Common Ground Principles set some ground rules that have been mutually agreed to by DFN and government. Included is an agreement to negotiate public government within the Dehcho Territory. This means each community government and the Dehcho Regional government will become the primary government in the Dehcho region for all residents. This presents both challenges and advantages.

The majority of the Agreement in Principle (AiP) is completed and is available for review on the Dehcho website in the “negotiations” section. Unfortunately key tough issues remain outstanding - lands and resources and land management. DFN talks were sidetracked for the two years prior to devolution being announced while Canada and the GNWT negotiated in secret. During that period neither government would discuss any land matters. It is worth noting that with all other Northern agreements lands were the first matters addressed.

Further delays in the Dehcho Process have been experienced during this past year

There have been only two brief negotiating session this year, in May and June. There were no main table negotiations between January and May, 2015 as a result of the GNWT’s suspension, and negotiations continued to be suspended during the federal and territorial election campaigns. The next session is scheduled for Dec 14th as a one day teleconference.

When negotiations resume, the focus will be on land quantum. The DFN tabled its position in June setting the reasons why Dehcho Ndehe should be no less than **50,000 sq km** of surface and subsurface lands. Canada has now responded with a series of questions which DFN will be addressing. GNWT has not formally responded, except to indicate their interest in the questions raised by Canada.

## Agreement-in-Principle Negotiations

Dehcho negotiators continue to follow our instructions to work towards an Agreement-in-Principle in which the Dehcho Government will own and control the surface and subsurface of Dehcho lands, and where the Dehcho Government and Dehcho Community Governments will be the primary governments for residents of the Dehcho.

Canada and the GNWT have taken positions on land quantum which are far too low. All 3 parties in the Dehcho Process have agreed to now focus our negotiations on the primary issue of how much land the Dehcho Government and Dehcho Community Governments will own and govern. If we reach agreement on this key issue, we will then move on to finish other parts of the AiP.

## Elements of an Agreement

In tabling its position on land quantum, DFN also tabled a series of compromises on issues outstanding in various AiP chapters to demonstrate not only its flexibility but its primary interest in attaining a fair land quantum.

**One key issue Dehcho has been opposed to is the imposition of the Mackenzie Valley Resource Management Act.** However in return for achieving a fair land quantum offer, the DFN could agree that the DFN will accept the application of the *MVRMA* in the Dehcho Settlement Area after a final agreement, on the same terms as Tlicho<sup>1</sup>. In this model, there could still be a Dehcho Resource Management Authority with responsibility for renewable resources and land use planning, but non-renewable resources, permitting and environmental assessments would be under the *MVRMA* not the *DCRMA*. The AiP will also commit all three governments to land use planning for the entire Dehcho settlement area.

If this model is accepted, Dehcho Ndehe would consist of ownership of 45,000 - 50,000<sup>2</sup> sq. km of surface and subsurface lands. In the rest of the Settlement Area, outside Dehcho Ndehe, the Dehcho Government would protect Dehcho interests through joint land use planning and negotiated standards and conditions for approving major industrial developments.

Under older agreements such as the Gwichin and Sahtu agreements, Dene governments own selected blocks of surface only lands in addition to small parcels of lands in which they own both surface and subsurface. Under the Tlicho Agreement the Tlicho Government owns both the surface and subsurface of their 39,336 sq km. In addition, Tlicho communities each own and govern the surface of their local Community lands.

DFN resolutions say that the Dehcho Agreement should recognize surface and subsurface land ownership in one large, contiguous block, called Dehcho Ndehe, in addition to Community Lands which would be owned by each individual Dehcho community, like the Tlicho. In this model, the Dehcho can control development, set our own royalty and collect 100% of royalties from

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<sup>1</sup> The Dehcho Government would have the right to appoint 1 member to the MVLWB and 1 to the MVEIRB. The *MVRMA* would apply throughout the Dehcho Settlement Area.

On a strict per capita comparison with Tlicho, the Dehcho land quantum would be 45,500 sq km, but we seek a higher per capita quantum to reflect unique Dehcho conditions.

resources under Dehcho Ndehe. The GNWT is concerned that this model would allow the Dehcho to select all or most of the "open" lands with high economic development potential from minerals and petroleum.

Over the past year the GNWT has indicated that they would strongly prefer an agreement in which the Dehcho Government would only own the surface of Dehcho Ndehe, but not the subsurface minerals. Instead, the Dehcho would only have a **generalized interest** in the subsurface resources of the Dehcho settlement area. In this model development on Dehcho Ndehe, would be determined by a co-management body such as the DCRMA. Extend of this body authority still needs further discussion. As well in the generalized interest model the revenue from resource extraction anywhere in the Dehcho territory would be shared on a percentage basis between government and DFN. The percentage of share remains unresolved.

The Dehcho Agreement could be based on owning both the surface and subsurface of Dehcho Ndehe, or on owning only the surface of Dehcho Ndehe plus a generalized interest in the rest of the settlement area, as outlined in the draft bilateral agreement with the GNWT. However, the 2014 Assembly mandated DFN to pursue a hybrid model, known as the Dehcho Model, which includes some lands in which only the surface is owned, plus some where both surface and subsurface are owned.

All of these models could include a generalized interest in lands outside of Dehcho Ndehe. It should be noted that Canada and the GNWT are currently open to either the surface / subsurface (Tlicho) model or the pure generalized interest model, but have not yet indicated that they are prepared to consider a hybrid such as the Dehcho Model.

### **Other Features of the Dehcho AiP:**

Here are some highlights of the draft Dehcho AiP:

- Ownership and control of **Dehcho Ndehe lands and resources** (the degree of control could vary depending upon whether Dehcho Ndehe includes subsurface, or is surface-only, as contemplated by the draft bilateral deal with GNWT). In areas where the Dehcho Government owns both the surface and subsurface, it will control development and establish its' own royalty rates.
- In addition to Dehcho Ndehe, each Dehcho Community Government will own **Community Lands**.
- The Dehcho Government will also have a role in managing development in **lands outside of Dehcho Ndehe** through land use planning, a requirement for agreed environmental protection standards, and membership on the MVLWB and MVEIRB.
- A **generalized interest** in all lands, both surface and subsurface, outside of Dehcho Ndehe (this has not yet been agreed to by Canada or the GNWT and could vary depending upon the outcome of bilateral negotiations with the GNWT).

- **Treaty 11** would remain in effect and will still be celebrated every year, but the Dehcho Agreement would clarify and build upon it.
- Protection of **harvesting rights throughout the entire Dehcho territory** (not just on Dehcho owned lands) and **exclusive trapping rights** on Dehcho Ndehe.
- Authority to negotiate **harvesting agreements** with neighboring Dene Governments, to extend harvesting rights throughout the NWT.
- **Land use planning** for the entire Dehcho Settlement Area.
- There will be **2 levels of government**:
  - a) Dehcho Community Governments (public), each with its own Community Lands; plus
  - b) the regional Dehcho Government (public), with representatives from each Dehcho Community
- **Permanent majority of Dene councillors** on community government councils and the regional Dehcho Government. As community populations grow, the Agreement will guarantee that Dehcho Dene always have a majority of councillors.
- Dehcho Community Governments will have **jurisdiction over most local issues**, in addition to owning enough land for 100 years of population growth.
- Complete jurisdiction over the **enrolment** of Dehcho Citizens. All persons who are descended from the Dene who lived in the Dehcho prior to 1921 will be eligible for enrolment as Dehcho Citizens. In addition, Dehcho Communities can decide to enroll other individuals through a process of community acceptance.
- **Taxes** paid by Dehcho residents will be **returned to the Dehcho** Government. Currently, taxes paid by Dehcho residents are collected by the federal government, and some are transferred to the GNWT. The Dehcho Agreement will ensure that taxes paid by Dehcho residents are returned to the Dehcho Government to pay for government services in the Dehcho.
- The ability to have a fully independent **Dehcho education system**. The Dehcho Government will have the choice of establishing a fully independent school system, or using the curriculum of the GNWT.
- control over **traditional medicine** - the Dehcho Government will have primary jurisdiction for the regulation of traditional healers and traditional medicine
- **Harvesters will be protected** by measures which guarantee that they will be quickly compensated if their harvesting areas are damaged by developments anywhere in the Dehcho. There will also be a **Traditional Activities Advocate** to assist harvesters in protecting their rights and interests

- Jurisdiction to establish a **Dehcho justice system** for the enforcement of Dehcho laws
- Jurisdiction over **culture and language** - the Dehcho Government will have jurisdiction to enact laws for the protection and promotion of Dene languages
- jurisdiction over **marriage, adoption and child welfare** services
- jurisdiction over **social housing and income assistance**
- Control over the sale of **liquor and intoxicants**. Dehcho communities will have control over the sale of alcohol and other legal intoxicants, and could receive significant revenue.
- jurisdiction over **wills and estates**

The Dehcho AiP will not be legally binding, but it will set the stage for concluding a legally binding Dehcho Agreement which would be similar to the Tlicho Agreement, but with some significant improvements over Tlicho.

### **Dehcho Process Chronology**

**Late 19<sup>th</sup>, early 20<sup>th</sup> 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 own and govern their land and resources while allowing non-Dene to settle and explore for minerals. 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 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.

**Dene / Metis negotiations, 1980s** - Intended to result in an agreement which would remove uncertainty with respect to land ownership and jurisdiction throughout Denendeh. In the end the DFN did not accept the model which resulted from those negotiations.

**Dehcho Proposal, 1995** – The Proposal offered to end the uncertainty over land ownership through an agreement which would recognize a public government in the Dehcho. The Dehcho public government would own all land and resources in the territory and would have very broad powers to govern the territory. It would be a “public government” because it would represent and provide services to all residents of the Dehcho. Canada rejected the Dehcho Proposal as a basis for negotiations.

**Envoy Process, 1997-98** - Canada and the DFN agreed to the appointment of Peter Russell, a retired professor, as a Ministerial Envoy. Russell had a mandate to consult with all parties to determine whether there was sufficient common ground to begin a process of negotiations towards an agreement between Canada and the DFN. The Envoy process resulted in a set of *21 Common Ground Principles*, which both Canada and the DFN agreed could form the basis for negotiations towards resolving uncertainty.

**Dehcho Process negotiations begin, September, 1999.** The Dehcho First Nations took the position that AiP negotiations would not begin until an interim measures agreement was reached to protect the integrity of the land during the negotiations process.

**Framework Agreement and Interim Measures Agreement signed, May, 2001.** The Framework Agreement, which is based on the *21 Common Ground Principles*, says that the Dehcho Process will result in an agreement which “builds upon and clarifies existing treaties” by recognizing a “government based on Dene laws and customs, and other laws agreed to by the parties”. The Dehcho government will be the “primary government” for all residents of the Dehcho. The IMA establishes the Dehcho Land Use Planning Committee with a mandate to develop a land use plan for the entire Dehcho territory.

**September, 2001** – Special Assembly held at Wrigley passes unanimous resolution which states that the Mackenzie Gas Pipeline will only be allowed to cross Dehcho Territory if certain conditions are met. One of the conditions is that affected DFN communities must be full, equal participants in the environmental assessment of the project, which is impossible under the *Mackenzie Valley Resource Management Act*.

**Interim Land Withdrawal Agreement and Interim Resource Development Agreement (IRDA) signed, April, 2003.** The land withdrawal agreement protects ecologically sensitive lands, watersheds and harvesting areas from sale or development during the Dehcho Process. The IRDA provides for the DFN to receive a share of royalties collected by Canada from mining and petroleum development in the NWT.

**May, 2003** - Following the signing of the IMA, the IRDA and land withdrawal agreements, negotiations towards an Agreement-in-Principle begin.

**June, 2003** – Naha Dehe Interim Park Management Arrangement signed. The IPMA provides for joint management of Nahanni National Park Reserve and commits Canada and the DFN to protecting the ecological integrity of the entire South Nahanni watershed.

**September, 2004** – After Canada signs a Joint Review Panel Agreement, which does not allow the DFN an equal role in approving the MGP, and says the review process will take place entirely under the Mackenzie Valley Resource Management Act, the DFN begin litigation to challenge Canada’s decision to impose *MVRMA* on the Dehcho and to impose an environmental review process for the Mackenzie Gas Project.

**October, 2004** – Canada asks the DFN to negotiate a settlement agreement to resolve the issues which led to the DFN legal action, including the issue of whether a Dehcho Resource Management Authority will operate under the *MVRMA* or outside of the *MVRMA*.

**July, 2005** - Settlement Agreement to end litigation signed. The Agreement commits Canada to implementing an approved land use plan as soon as possible after the completion of the Plan. The Agreement does not provide that there will be a stand-alone Dehcho Resource Management Authority, outside of the *MVRMA*, but says that this “may” be addressed in a final agreement through Dehcho Process. The Settlement Agreement also provides for the DFN to receive \$15 million in funding for economic development opportunities related to the MGP, \$6 million to address environmental impacts of the project, and an increase in Dehcho Process funding for three years. In exchange, the DFN agreed not to challenge the constitutional validity of the *MVRMA*, or to begin any new legal action challenging the MGP.

**September, 2005** - Negotiations on an AiP formally resume.

**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 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 Gwichin and Sahtu agreements.

**May, 2006** - Federal negotiators table 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. If the DFN decide to negotiate based on this offer, the land quantum might be increased to approximately 25% of the Dehcho territory.

**June, 2006** – DFN Annual Assembly approves land use plan which had been completed by the Land Use Planning Committee and submits it to Canada for approval and implementation.



**October, 2006** – Canada informs the DFN that they will not implement any Dehcho Land Use Plan until Canada and the DFN have reached an AiP based on land selection. Canada also announces that the land use plan developed by the tri-partite Land Use Planning Committee “protects too much land” and needs to be revised to leave more land open for development. Without an approved land use plan the interim land withdrawals agreed to in 2003 will expire in 2008, leaving all Dehcho lands exposed to staking, sale, lease and development.

**November, 2006** - DFN Special Assembly reaffirms position against land selection and in favour of an agreement based on public government and shared stewardship of all lands and resources in the Dehcho. The Special Assembly also authorized the DFN negotiating team to hold “exploratory discussions” on a land selection based agreement.

**April, 2007** – Canada and the DFN agree to revamp the Land Use Planning Committee and give it a mandate and work plan to revise the Plan which was approved by the DFN in 2006. No agreement reached on when or if the revised Plan will be implemented. Canada continues to link implementation to approval of an AiP based on land selection.

**April, 2008** – After 18 months of exploratory discussions on land selection, federal negotiators again inform the DFN that Canada will not negotiate an AiP or final agreement unless it is based on Canada’s Comprehensive Claims Policy, which requires a process of land selection which is “comparable” to other land claim agreements. Canada also rejects the DFN idea of a DCRMA with decision making powers operating outside of the MVRMA.

**June, 2008** - The DFN 2008 Annual Assembly adopts a resolution which instructs the DFN negotiators to move beyond exploratory discussions and begin to negotiate an AiP based on Canada’s Comprehensive Claims policy of land selection, but only after the DFN, Canada and the GNWT have completed and approved a Land Use Plan for the Dehcho Territory.

**July, 2008** – ADK signs framework agreement to establish a separate land claim process with Canada and the GNWT. The ADK later write to confirm that they have left the Dehcho Process and the DFN.

**June, 2009** – DFN Assembly retreats from 2008 resolution after Canada rejects the sequence of negotiations set out in the 2008 resolution. The 2009 Assembly adopts a resolution allowing negotiations on the LUP, self-government and land to be conducted concurrently.

**June, 2010** – DFN negotiators have developed and tabled most of the chapters of a detailed, draft Agreement-in-Principle, although Canada still refuses to negotiate most lands and resources issues. The LUPC has continued work on a draft interim land use plan which would be acceptable to Canada and the GNWT. At the spring leadership meeting, DFN passes motion to reject a devolution agreement with GNWT

**January 2011:** DFN rejects Devolution Agreement again and declares it doesn't apply in the Dehcho Territory and Dehcho Process must be completed prior to devolution taking affect in the Dehcho Territory. The Annual Assembly provides a flexible mandate to negotiators.

**June, 2012** - GNWT announced their new policy that 45% of Dehcho lands must remain both Crown land and "open for development", which means that 90% of "open" lands will be owned by GNWT and Dehcho Government will mainly own parks and conservation lands. DFN Assembly unanimously passes resolution declaring that negotiations on land quantum and land ownership should be bilateral between Canada and DFN, with GNWT as observer.

**September, 2012:** Canada agrees to bilateral (Cda-DFN) negotiations with DFN negotiations on quantum, with Canada's opening position at 39,000 sq km surface and subsurface. DFN establishes a bilateral table with GNWT to discuss their position that 45% of Dehcho lands must remain both Crown land and "open for development." Canada stalls on appointing a ministerial rep.

**June, 2013:** Assembly directs negotiators to ensure that land selection occurs in a manner that will create a contiguous block of land surrounding all Dehcho communities with 80,000 sq. km as the quantum of surface and subsurface titled lands. Work begins on identifying lands for West Point due to Metis claims process.

**May, 2014:** Canada appoints Ministerial rep, Anna Marie Doyle to negotiate land quantum but no negotiations take place since DFN had decided to negotiate land quantum issues with GNWT instead. DFN holds special leadership meeting to review bilateral agreement with GNWT on generalized interest. Additional flexible mandate given to negotiators on number of matters to achieve an acceptable land and cash offer from Canada. including acceptance of MVRMA.

**January, 2015:** As main table quantum negotiations are about to begin, GNWT suspends negotiations and threatens to terminate all negotiations unless DFN accepts their demand on land quantum, which is lower than Canada's offer. After a 5 month suspension, GNWT returns to main table negotiations in May.

**June, 2015** - DFN makes submission on land quantum for 50,000 sq km. Canada and GNWT provide no response. Negotiations are further delayed until after federal and GNWT election.

**July, 2015** - Due to the federal and territorial elections negotiations are delayed further until after both elections.

**September, 2015** DFN Chief Negotiator Georges Erasmus retires.