

Article XXX - Expropriation

Definitions

“Expropriating authority” means: an authority with power of expropriation under federal legislation of general application, the Dehcho Agreement, or an Act giving legal effect to the Dehcho Agreement.

General Principles

The Dehcho Agreement will provide that,

- 1) The Dehcho First Nations, Canada and the Government of the Northwest Territories:
 - a. acknowledge the interest of the parties in maintaining the size and integrity of Dehcho Ndehe;
 - b. will make all reasonable efforts to reach agreement regarding expropriated lands; and,
 - c. agree that expropriation of Dehcho Ndehe will occur only as necessary for a public purpose.

- 2) Canada or the GNWT, prior to making a decision to expropriate any part of Dehcho Ndehe, shall:
 - (a) ensure that lands other than Dehcho Ndehe lands are used, if other lands are reasonably available for the purpose for which the Dehcho Ndehe lands are intended to be expropriated; and
 - (b) make reasonable efforts to acquire the Dehcho Ndehe lands through a negotiated land transfer agreement with the Dehcho Government, rather than by expropriation.

Expropriation

The Dehcho Agreement will provide that,

- 3) Any person or authorized representative of any person, who has power of expropriation under federal legislation (expropriating authority), may exercise that power of expropriation in accordance with laws of general application as qualified by the Dehcho Agreement and implementing legislation.

- 4) The size of Dehcho Ndehe, as of the effective date, inclusive of surface and subsurface lands, will be maintained and will not be reduced through expropriation or other means, but may be enlarged.

- 5) Any expropriation legislation coming into force after the date of ratification of the Dehcho Agreement shall, insofar as it applies to Dehcho Ndehe, provide for the following minimum procedures:

- (a) notice of intention to expropriate served on the Dehcho Government;
 - (b) an opportunity for the Dehcho Government to object to the expropriation, including on the basis that the expropriating authority has not complied with the expropriation legislation, and an opportunity to be heard on that objection, including public hearings; and
 - (c) the determination of compensation by negotiation and mediation and, failing that, by reference to arbitration or committee, as set out in ____.
- 6) Compensation for lands expropriated from the Dehcho First Nations will be an exchange of lands, or an exchange of lands plus a cash component where the exchanged lands are of lesser market value or of lesser traditional value to the Dehcho First Nations than the expropriated lands.
 - 7) Where the expropriating authority offers exchanged lands the subsurface of which is held by government, government shall provide the subsurface.
 - 8) Where determined by the Dehcho Government, lands acquired by the Dehcho Government in exchange for expropriated lands shall be contiguous with Dehcho Ndehe.
 - 9) Dehcho Ndehe and interests in Dehcho Ndehe may be expropriated for public purposes in accordance with this Agreement, federal legislation, and under the following conditions:
 - (b) the Minister has reached agreement with the Dehcho Government for the expropriation of the lands, or failing agreement between the parties, agreement has been reached in accordance with mediation/arbitration set out in ____;
 - (c) the Governor in Council consents to the expropriation; and
 - (d) compensation is provided to the Dehcho First Nations in the form of exchanged lands, or in exchanged lands plus a cash component, as agreed to by Canada and the Dehcho First Nations.
 - 10) Where an expropriation authority expropriates Dehcho Ndehe and the exchange lands are acceptable to the Dehcho First Nations, the authority shall acquire and offer as partial or full compensation for the expropriation of Dehcho Ndehe exchange lands in the Dehcho Settlement Area.
 - 11) If no exchange lands are available in the Dehcho Settlement Area, exchange lands shall be in the Dehcho First Nations' asserted traditional territory, as defined in Appendix A of the Dehcho First Nations Framework Agreement, and these lands will become Dehcho Ndehe, and be subject to the Dehcho Agreement.

- 12) Expropriated lands shall only include the minimum interest required for the intended purpose of expropriation.
- 13) Only the surface of lands shall be expropriated where the subsurface lands are not directly necessary for the purpose of expropriation.
- 14) The total value of compensation, whether exchanged lands or exchanged lands and a cash component, for an expropriated interest in Dehcho Ndehe will be determined by taking into account the following factors:
 - (a) the market value of the expropriated interest or of the Dehcho Ndehe in which an interest has been expropriated at the time the notice of expropriation is made;
 - (b) the replacement value of any improvement to Dehcho Ndehe in which an interest has been expropriated;
 - (c) any expenses or losses resulting from a disturbance directly attributable to the expropriation;
 - (d) any reduction in the value of any interest in the Dehcho Ndehe that is not expropriated which directly relates to the expropriation;
 - (e) any adverse effect on any cultural or other special value of Dehcho Ndehe in which an interest has been expropriated to the Dehcho First Nations, provided that the cultural or other special value is only applied to an interest in Dehcho Ndehe recognized in the Dehcho Agreement;
 - (f) the value of any special economic advantage arising out of or incidental to the occupation or use of Dehcho Ndehe by the Dehcho First Nations to the extent that the value is not otherwise compensated.
- 15) Where lands or an interest in Dehcho Ndehe have been expropriated and are, in the opinion of the expropriating authority, no longer required:
 - (a) The Dehcho Government will have first right of refusal to re-acquire the expropriated lands;
 - (b) They may not be alienated to any party other than the Dehcho Government, where such lands are wholly surrounded by Dehcho Ndehe, without the consent of the Dehcho Government;
 - (c) The expropriating authority may not dispose of those lands for a price less than the price offered to the Dehcho First Nations; and
 - (d) Subject to 3, the Dehcho Government may offer to return exchanged lands for expropriated lands, or may offer a combination of exchanged lands and a cash component for expropriated lands;
 - (e) The price for the Dehcho Government to re-acquire expropriated lands shall take into account:
 - (i) degradation to the economic or cultural value or utility of the lands to the Dehcho First Nations arising from the expropriation;

- (ii) outstanding liability to restore or reclaim the integrity of the lands to pre-expropriation conditions;
 - (iii) an annual ___ % cap on the increase in monetary value from the time of expropriation;
 - (iv) lands offered by the Dehcho Government to the expropriating authority in exchange for the return of expropriated lands.
- 16) Where an expropriating authority expropriates a fee simple interest in Dehcho Ndehe, those lands will no longer be Dehcho Ndehe.
- 17) Where an expropriating authority expropriates less than a fee simple interest in Dehcho Ndehe, those lands will remain Dehcho Ndehe, and
- (a) lands remain subject to Dehcho Government laws, except to the extent those laws are inconsistent with the use of the lands for the purpose of expropriation; and
 - (b) the Dehcho First Nations or any person authorized by the Dehcho First Nations may continue to use the lands unless that use is inconsistent with the purpose of expropriation.

Emergencies

- 18) Nothing in the Agreement will affect or limit the application to Dehcho Ndehe of the *Emergencies Act (Canada)* or any successor legislation.

Conflict

- 19) In the event of an inconsistency or conflict between this article and federal or territorial laws of general application, this Agreement takes precedence to the extent of the conflict.