

## CHAPTER XX: WATER RIGHTS AND MANAGEMENT

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### 11.1.0 GENERAL

- 11.1.1 Subject to other provisions in the Dehcho Agreement, the Dehcho First Nations, the Dehcho Government and Dehcho Citizens have the exclusive right to use Water and deposit Waste in waters on or that flow through Dehcho Ndehe when such waters are on or flowing through Dehcho Ndehe.
- 11.1.2 The Dehcho First Nations, the Dehcho Government and Dehcho Citizens have the right to waters that are substantially unaltered in quality, quantity and rate of flow when such waters are on, adjacent to, or flow through Dehcho Ndehe.
- 11.1.3 The Dehcho First Nations, the Dehcho Government and Dehcho Citizens will have the right to use Water within the Dehcho Settlement Area on lands owned by other Aboriginal people for Harvesting for Domestic Purposes, and heritage or cultural purposes, without licence, permit or other authorization, subject to negotiated overlap agreements.
- 11.1.4 The use of Water and the deposit of Waste in the Dehcho Settlement Area including the rights set out in 11.1.0 are subject to Legislation, except as provided for in the Dehcho Agreement.
- 11.1.5 Dehcho Water rights set out in 11.1.0 will not interfere with:
- a) rights of navigation and passage on Water;
  - b) the use of Water by an individual for personal or emergency purposes; or
  - c) community use of Water for community purposes;
  - d) any right of access set out in the Dehcho Agreement,

nor will the consent of the Dehcho Government be required with respect to these activities.

11.2.3 The Dehcho First Nations, the Dehcho Government and Dehcho Citizens will not use Water or deposit Waste so as to substantially alter the quality, quantity or rate of flow of waters which are on or flow through or are adjacent to Dehcho Ndehe.

11.2.4 The property in Water in the Dehcho Settlement Area may be determined by Legislation, and nothing in the Dehcho Agreement will be construed as granting the Dehcho First Nations, Dehcho Government or a Dehcho Citizen property rights in respect of Water.

#### **11.2.0 EXISTING INTERESTS**

11.2.1 Notwithstanding 11.1.1, existing interests on Dehcho Ndehe authorized to use Water or deposit Waste in Water will:

- a) be identified in Appendix X of the Dehcho Agreement; and
- b) continue in accordance with applicable Legislation and the terms and conditions of the authorization.

#### **11.3.0 GOVERNMENT AND OTHER USERS**

11.3.1 Notwithstanding both the ownership of Beds of certain Water bodies by the Dehcho Government on Dehcho Ndehe and the Dehcho Water rights set out in 11.1.0, Government retains the right, without the consent of the Dehcho Government, to:

- a) use Water for fighting fires; and
- b) protect, manage and use Water and Beds of such Water bodies, for public purposes which include:
  - i) the protection of Wildlife and Wildlife habitat;

- ii) the protection of Water supplies including community Water supplies from contamination and degradation;
- iii) research with respect to Water quality and Water quantity; and
- iv) flood control and protection of navigation and transportation.

#### **11.4.0 LICENSING**

11.4.1 The Mackenzie Valley Land and Water Board (“MVLWB”) will not authorize a use of Water or a deposit of Waste that, in its opinion, is likely to substantially alter the quality, quantity or rate of flow of waters flowing on, flowing through or flowing adjacent to Dehcho Ndehe, unless the MVLWB considers that:

- a) there is no alternative that could reasonably satisfy the requirements of the applicant; and
- b) there are no reasonable measures by which the applicant could avoid the alteration.

11.4.2 Should the MVLWB authorize a use of Water or a deposit of Waste under 11.4.1, it will not do so unless:

- a) the applicant seeking authorization has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or
- b) the applicant or the Dehcho Government has applied to the MVLWB for a determination and the MVLWB has determined compensation payable.

11.4.3 The MVLWB will not authorize a use of Water or a deposit of Waste anywhere in the Dehcho Settlement Area, excluding Dehcho Ndehe which, in its opinion, will likely substantially alter the quality, quantity or rate of flow of waters flowing on or flowing through or flowing adjacent to the Dehcho Settlement Area, unless:

- a) the applicant seeking authorization has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or

- b) the applicant or the Dehcho Government has applied to the MVLWB for a determination and the MVLWB has determined compensation payable.

11.4.4 Where a use of Water or a deposit of Waste is proposed outside the Dehcho Settlement Area, but within the Northwest Territories, which, in the opinion of the MVLWB, will likely substantially alter the quality, quantity or rate of flow of waters flowing on or flowing through or flowing adjacent to Dehcho Ndehe, the use of Water or the deposit of Waste will not be authorized unless:

- a) the applicant has entered into an agreement with the Dehcho Government to compensate the Dehcho First Nations for loss or damage which may be caused by such alteration; or
- b) the applicant or the Dehcho Government has applied to the MVLWB for a determination and the MVLWB has determined compensation payable .

11.4.5 If the Dehcho Government and the applicant seeking authorization for a use of Water or deposit of Waste described in 11.4.2 or 11.4.3 or 11.4.4 do not reach an agreement on compensation within the time limit established by the MVLWB, either party may refer the matter of compensation for resolution by the MVLWB.

11.4.6 Compensation determined by the MVLWB in respect of a use of Water or a deposit of Waste described in 11.4.2 or 11.4.3 or 11.4.4 may be in the form of a lump sum or periodic cash payment or non-monetary compensation such as replacement or substitution of damaged or lost property or equipment or relocation or transportation of Dehcho Citizens or equipment to a different harvesting locale or a combination of such forms of compensation.

11.4.7 The MVLWB will consider the following factors in determining the amount of compensation payable to the Dehcho Government in respect of a use of Water or deposit of Waste described in 11.4.2 or 11.4.3 or 11.4.4:

- a) the effect of the use of Water or deposit of Waste on the use by Dehcho Citizens of Water on or adjacent to Dehcho Ndehe;
- b) the effect of the use of Water or deposit of Waste on Dehcho Ndehe, taking into account any cultural or special value of the lands to the Dehcho First Nations;

- c) the nuisance, inconvenience and noise caused by the use of Water or deposit of Waste to Dehcho Citizens on Dehcho Ndehe;
- d) the effect of the use of Water or deposit of Waste on the Harvesting of Wildlife, Fish and Migratory Birds by the Dehcho First Nations; and
- e) subject to Legislation, such other factors as the MVLWB may consider relevant.

#### **11.5.0 LEGAL ACTION AND STANDING**

11.5.1 The Dehcho Government has a cause of action against any Person in respect of any use of Water, deposit of Waste or other activity not authorized by Law which substantially alters the quality, quantity or rate of flow of waters which are on, adjacent to or flow through Dehcho Ndehe, with such remedies as if the Dehcho Government had riparian rights.

11.5.2 For the purposes of 11.1.2 or 11.5.1, the Dehcho Government will have standing at all times in a court of competent jurisdiction to seek a declaration respecting the authority of any Person to alter the quality, quantity or rate of flow of Water.

#### **11.6.0 INTERJURISDICTIONAL AGREEMENTS**

11.6.1 Prior to the Dehcho Agreement, the Parties will discuss Consultation issues concerning the management of Water in the context of interjurisdictional agreements affecting the Dehcho Settlement Area.

#### **11.7.0 CONFLICTING REGULATORY CONDITIONS**

11.7.1 For greater certainty, any regulatory condition imposed under Legislation or by an authorization issued by MVLWB regarding the use of waters or the deposit of Waste in waters which are on or flow through Dehcho Ndehe, prevails over any conflicting regulatory condition imposed by the Dehcho Government, including Dehcho Government Laws.<sup>1</sup>

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<sup>1</sup> Canada is reviewing this provision.