



DEHCHO FIRST NATIONS
BOX 89, FORT SIMPSON NT X0E 0N0
TEL : (867) 695.2610 Toll Free: 1.866.995.3748
FAX : (867) 695.2038
EMAIL: dcfn@dehcho.org



Negotiation Session
June 22, 2011
8-4 pm

Georges Erasmus	Patrick Scott	Leona Louie	Violet Jumbo
Felix Isiah	Bernadette Norwegian		
Eric Porier	Steve Iveson	John Breese	Amber Tremblay
Kathy Paul-Drover			

On Line: Chris Reid, Laura Pitkanen, Richard Lafferty

Expropriation

Amber pointed out the change; it wasn't much as a discussion.

Chris indicated the issue is 1.1. John indicated the discussion that Bruce was talking about. No problems having the general principles of expropriating land. I am reminded that we have a problem – it is not so much the principles, re-organization of the beginning chapter.

Chris added that they could look at this in August when the LTC meets. We need to have another internal before we go to the table with this on the proposed changes. This is different as we are talking about negotiating a chapter.

Georges added John seems to be agreeing with us. If there is agreement around the table, we could drop it. John added how would you define it? You can use the argument that expropriation is not for public interest.

Chris – a public purpose can't be...look at whether it will benefit private interest or public. That seems to be enough that governments are allowed to expropriate.

Georges is okay with dropping it. Bruce - echoing what Chris and John is saying. It will be difficult to define the word. Process-wise, it might not be a good idea. They are comfortable with the other parties. Everyone in agreement to drop.

John suggested in September or October, we will look at the chapter again. There are some principles on the subject matters. One of the subject matters you will see is compensation above what is given in the status, the fair market value. Some go above that and are listed out. John indicated the number of footnotes could be reduced then we could focus on the other issues.

Lunch break will be 11 am for 1.5 hours. Today's session will end at 3 pm so the Dehcho could have an internal.

Petr Cizek & Bob Overvold on DLUPC Report (Attached)

Everyone thanked Petr for his report. Georges indicated that the time we will spend on the report is between 1-4, it looks like we come back and instruct the committee to go back to work rather than resolving those issues at the negotiating table. We are looking at going back to the sixteen items to be resolved at the main table. Eric agreed with Georges on teams having internal discussion.

Bob Overvold – tried to resolve the six items at the main table. Agreed at the committee, when we forwarded the plan to the main table, the six items will be determined by the parties and then the committee. (Couldn't hear discussion)...

Education: K-12 Options Paper

Steve reading out chapter with changes done and presented. Option 1 is the better option to choose. A lot of room for the Dehcho government to develop its own curriculum. We've also said we will respect the Dehcho in either way, in regards to the options. Option 2 is a stand alone option and doesn't mean the Dehcho are obliged to accept this.

Georges – Negotiations team is taken by Option 2. We reported to the leaders on a number of occasions. No one really opted for option one. We are excited this is possible.

Eric – some thoughts; we have some concerns on option two, ability to set up an independent school system...costly to do this. *Inaudible...*

Georges indicated those are good points.

Berna added the last creation of a university, U of Northern Studies, it is a First Nations University and would be a good idea of getting a whole of them and finding out how they were created, established and recognized.

Inaudible. We will have a lunch break until 12:30 pm

Discussion continued on Education. Bernadette had a question but didn't return.

Adult Education & Training

Steve read out chapter. Georges does not have any issues with it. Post Secondary was already dealt with.

Richard – technical institutions...are they considered post secondary institution? Steve replied yes. Footnote can be removed. Eric is okay with the chapter; have to follow up on the discussion of training.

Early Childhood & Training

There is complimentary is out of school care which will be done first then read early childhood and training.

Georges – because of concurrency, we cannot have jurisdiction...Richard has issues in regards to K-12 but can't hear him.

In relation to standards, meet the standards or better, we created it and supposed to beat the GNWT standards. It will be our own law that will be upheld when we say we are going to meet or beat the GNWT.

Richard was asking questions on K-12 and Georges asked him to talk on the early childhood and out of school care. We would meet or beat GNWT standards.

Richard brought up story of a building that is not up to standard in Ft. Providence. GNWT should take back that authority.

Steve – These codes are not by GNWT, they are set by associated professionals in that particular field.

Georges – footnotes are reduced. We will come back with some wording changes. Agree that building codes shouldn't apply to on the land programs and there will be different wordings on meet or beat the GNWT standards.

Parks will be at 9:30 am tomorrow morning.

Culture, Language & Heritage – June 20/11

Georges indicated this is still a work in progress. Thought we should bring it along for awhile. Since we are going to break for the summer, we thought we would bring it forward.

Laura reading chapter. Still need a lot of internal review. Framework position set out on authority and jurisdiction. Some sections aren't fleshed out yet. Definitions are fairly straight forward. Place names will include Dene Zhatie. 2.9 need more fleshing out in regards to other countries. Dispute Resolution left blank, we still need to discuss internally.

Bernadette – Doesn't cover everything but it is a start.

Eric thanked Laura and Bernadette for the chapter. Haven't had a chance to talk to cultural and heritage people in Ottawa. Some initial feedback and options on some of these.

General provisions, we are talking about objectives and the number of times on the language offered...paper being shuffled in YK, can't hear Eric.

Eric indicated there is a problem with 3.1 in their party. 4.0 – linked to traditional advocate is something as we see as internal for your government and do things for your government. Looking at concerns of setting up on a tri-partite basis.

With regard to funding, constraint to the feds. Will bring this back in the fall to advance chapter.

Language and culture in one chapter and resources and heritage in another chapter could be the way we deal with this. In terms of getting in detail, should we do it now?

Georges responded it would be good to get some feedback.

John – have a new mandate in Heritage. In relation to beginning, archaeological activity is not included.

What I don't see is human remains does not appear in the text. Burial sites is another one. There is a notification clause there but there are a couple of more that go with it. Governments

notify each one if they happen to come across one. Directions of other people clause is usually included in there and also trigger to notify the governments. Another one is one that sets out crime investigations. One you missed out is some kind of economic measures paragraph. It is still in play in terms of the chapter. Some of the language is very tough and easy to fill expectations. A clause on access, for the Dehcho government to access these things.

Laura asked question, didn't hear...

John - A clause where the governments are prepared to do an inventory of what heritages and resources they are holding. You might want to have a chapter on law making and central around language. Share a couple of Eric's concerns as well.

Laura indicated we are interested in a discussion around heritage and resources.

Richard asked why Intellectual property being held close by the feds. Eric responded he doesn't know. His instructions are clear...

Georges asked what the issue is in regards to what John was referring to. John explained issue but couldn't hear discussion.

Berna has concern as she was drafting chapter, it is for the Dehcho Dene and their ancestors. Lost culture and language due to the residential school. Feel very strongly about this but this is part of the reconciliation process and would like to think seriously on this.

General Provisions

There is a list of items that are usually in a GP chapter that was posted on collaboration. We could go through some of these. Some will be discussed in other chapters.

Reading out additional general provisions (June 15/11)

Georges asked what does 13.0 mean? All three parties acknowledge the language act as applicable. If there is something more, is the Dehcho required to translate? Georges responded yes, he is concerned. John indicated has this discussion three years ago, Dehcho is not responsible for the translation of the language. Patrick indicated that they did that for the Tlicho Agreement.

Georges asked why is 10.0 there? This is only an AiP. John answered when you get to the final agreement; you are speaking to the future final agreement. This could be for the LTC discussion. Discussion around the inurement of agreement.

Forest Management – Steve still getting reviews done by colleagues.

Social Housing

Include homeownership into definition. CPOs will be put under each chapter that it refers to. Right now, it is under Child & Family Services.

Closing Prayer- Bernadette Norwegian

June 23, 2011

Georges Erasmus	Patrick Scott	Bernadette Norwegian	Leona Louie
Violet Jumbo	Felix Isiah		
Steve Iveson	Kathy Paul-Drover	Caroline Dennill	Amber Tremblay
Eric Poirier	Bruce Littlejohn		

On Line: Chris Reid / Richard Lafferty

Opening Prayer – Bernadette Norwegian

Child & Family Services

Chris would like to know why Dehcho's copy is not the same. Steve answered culture and customs for the Dehcho to take into account.

Steve – definition of child and family services and we didn't agree with that principles, it was a standard in the CPOs. In the case of this, the focus of the adoption should be on the child. We are suggesting that it becomes a requirement in terms of a consideration with respect to child and family services. It is better than the Tlicho and that is the reason. This is where the standard fits in with the CPOs of the child and family services.

There was another clause proposed by GNWT, 1.2.

Georges – There is no culture indicated. We will talk internally and get back to you on it.
4.1 – If there was a child in Edmonton, the approach would be different.

John – no real issue from the GNWT. Inaudible...GP Provisions proposed by GNWT read out.

Steve – make sure that the government is accountable to their own citizens.

Georges would like to clean up some items in the follow up documents. Item 10 – wondering if CMHC was consulted. Eric indicated there is no feedback yet.

Steve – appeared in another agreement, will bring it forward.

Georges – Item 25 can be removed, done. Item 30 will be discussed in connection with other matters under the DCRMA. Eric indicated that item 31 could be dropped as well. Item 14 was for the LTC summer session.

Plant Definition

John indicated there is standard legal definition of gift, reading out. Chris is right regarding the difference between gifting.

Bernadette indicated when you see a medicine person, you provide a gift but on the receiving end, it is expected.

Steve – might be related to traditional healing. It would be a payment for a service. John – we have definitions already proposed. This gift is describing free transfer; it is not allowing you to do something else along with an exchange.

Richard – in the context of the spiritual...cultures are all different in the gifts given. Steve indicated the definition of trade included for subsistence and personal use.

Bruce indicated they were okay with the Tlicho Agreement of the definition. Georges has no problems done in this area. Berries and gift is good. Part of that comes from the fact that gifts from spiritual healers are received.

Migratory Birds

Chris indicated that there was agreement to table the section on gifting and trading.

Bruce – not considered an income and you don't live off of this.

Georges – if there is no definition of trade. Bruce – okay with the definition of trade. Barter, exchange, buy or sell is the definition agreed to by three parties.

Follow up Document

Footnote 29 can be removed. 27 –Steve indicated it would be good to go through the chapters and find all and replace. 28 is done, defined.

Break

Parks Update

Laura – PST met in Vancouver, Chief Fred Tesou, Joan Ekotla, Jonas and Laura, Steve Catto, Gave overview of Haidii Agreement and on the ground management plan. On the land based program. Dehcho negotiated an IPMA, part of what they are interested in that agreement is some of the programs and services offered in their agreement. Watchmen program to be implemented in the Dehcho agreement.

Three sections of the tabled draft, it is a rolling draft, and we are going over the definitions and looking at different definitions in different Agreements.

NNPR already exists and that a park can be established in the future. They are working closely on a clause on a national park, if one were to be established and a clause that includes and recognizes that that NNPR is already established. Purpose of the Park and conversation around the recognizing the right of the Dehcho and how to word that. Inherent and traditional use definitions needed.

As we go through, going through what would be better than an IMA. After we nail down the national park definition, work on general provisions will start next month.

Lee Montgomery – Parks Update

Bruce Littlejohn was also on the phone when the presentation was done. The model we talked about was the decision making model. In the discussions, it was interested in how they dealt with it, the IMPA recognizes the council for Haida Indians.

One of the mechanisms they utilized and models were challenged and taken to court, a tourism officer felt that the decisions coming out of their management board, and I am not putting in a framework agreement, they were not recognizing the minister's authority and that held up in court. Around the table, we appreciated the model was applicable and could adjust it in our context. Daphne did caution this was the first time it was amalgamated with a self government agreement. It won't be an easy process.

Parks Canada provides part of the funding. They are employees of the band council. The administration is the watchmen through a department of Canada

Laura – Interesting arrangement with the Haida and it held up in court. The trick was in drafting it. It seems doable.

Lee – it wasn't clear from reading the agreement, the superintendent sits on the management board. This was an issue that came up in the legal case, the superintendent sitting on the board, is making a decision. It is going as a recommendation to the minister and the Haida Council.

Laura – the reps on the consensus team has to be representing the interest of their parties and they assumed to be consulting on the Dehcho side, with the Grand Chief and chief and council and getting direction and implementing that direction. So that when a decision is made, the Grand Chief is included.

Upcoming meeting in July - should be negotiating team rep involved along with rep from DFN.

Lee would like to fund a meeting between ADK & Dehcho that Parks will be in charge of the agenda and that might be helpful in gaining the understanding. Agenda for next meeting will be given out before the meeting.

Preamble

Chapter was not brought before the assembly or leadership yet, first draft.

Cede, release, surrender clause – verify that some of the other tables, what does assertion mean. It is mostly on the cede, release and surrender clause.

Georges – whereas would have some kind of legal meaning? Interpretation clause or section? Bruce – we seem to have agreed and not stated, it may prejudice some parts of the agreement. They are stated as factual statements. The fact that the clause that this talks about would be inconsistent with our model, would question the back up release. We have stated this causes some discomfort.

Georges – what if Canada didn't agree with the assertions? Bruce indicated if this was there, it is stating that you can't surrender. A court determines a non-assertion model would fail; the back up model would fail. Georges thought it would be possible to do along with the provisions. It was more for the comfort for the Dehcho to put in historical context. The agreement is the full content of the rights and outside of certainty area and so forth. Back up release is something we are looking at. If there is challenge if the court upholds that. We didn't think this would give you too much problems. It would be not legally important.

Bruce – it would be for what the Dehcho agree to the definition. It would be misleading and individuals should be informed of that then this would be removed or modified with certainty or provisions we come up with.

Georges - the non-assertion model we don't disagree with. Dehcho rights continue on, certain rights won't be exercised. The back up release is there and triggered on circumstances and by the Dehcho themselves. If we are going to have core principles from the GNWT, Dehcho should have core principles somewhere. You would get the overall...

Bruce – if there is a problem with what is laid out in the agreement, we have to look at it again before we sign it.

Discussion around preambles and issues on legal wording.

Georges indicated we would break now and come back at 12 pm. We may only need an hour or so, depending on the footnotes.

Lunch Break 11 am – 12 pm

Afternoon Session

Access Chapter

Read out by Amber Tremblay.

Eric indicated there are a number of themes. Some are similar issues.

Georges indicated one of the biggest issues is who has jurisdiction. Dehcho government will try and get additional access conditions and those will be limited in relation to protecting the environment, camps, etc. People have to register or give notice. Our belief was we were going to have any kind of jurisdiction; the minimum would be who would be coming on to Dehcho Ndehe. The one area you would have control of is your land. Other governments will have control not us. Big issue for us.

Having giving free access to everyone, what is left for Dehcho is not recoupable as opposed to your own legislation. You have free access to material, for roads, structures, etc. There is no fee, payments or any kind of payment. If there is any damage, there is no compensation unless you do it. Fundamental issues. We know people want access to the area and camp out but it seems like we bent over backwards.

In relation to whether it is negligence...there are many areas that we need to look at. Winter roads, governments can come in and do what they wish.

Patrick – 2.2 issue- what is the definition, of person. Harvest wildlife and fish in Dehcho lands. In the harvesting chapter, we give exclusive right for harvesting. Canada and the GNWT will recognize fee simple ownership in the territory and in this chapter, making it accessible to everyone is not what we wanted.

Eric – access provisions in here are from a model of Tlicho in relation to sharing such as harvesting, ability to harvest on aboriginal lands.

Bruce - It will be something that will have to be resolved. Would like to hear where the GNWT is on this one.

John – This is the Tlicho Access chapter reorganized and exploded view of their access chapter. This chapter takes a different approach.

Reading from Tlicho Access Chapter. They start with a general chapter then government access and interest, etc. They have a general sub-section, where they went wrong, is the

general sub-section. They had to use the technique of general numbers. *19.1.7 Reading out of the Tlicho Agreement. Their chapter is not very clear.*

All agreements have access chapters. There are restrictions and conditions. The recognition of the fact that you don't want chapters like this frozen in time. One of the techniques you restrict access is the designated route and that is it. As long you as stick with that designated route, you will be fine.

Jurisdiction covers Dehcho Ndehe, citizens, when it comes to those categories, your law making ability will have to be consistent with that. You may find the rules in this chapter then we are okay with it. Some of the rules deal with damage, things like that. With this chapter, comes liability. Set some rules for this chapter.

Georges – it doesn't make any distinctions between one area and another. When you are walking on the road...you are going to have such a large area, temporary use, you don't make any distinctions of anything. Families setting up camps and the rest of it is not different. You loose the whole concept; it is like an open bush.

John replied that is why it is so hard to do this chapter. You could have a small parcel of Dehcho Ndehe with camps and you could say there is no public access on that piece.

Chris – general comment on all chapters. Position is coming from GNWT, John is delivering it and it is on behalf of the GNWT. Message needs to be the Tlicho Agreement is used as a template. It is coming across as a given. I don't recall the Dehcho agreeing the Tlicho Agreement as a template. What we said was we see it as a floor, the Dehcho never accepted the Tlicho or any other agreement as a template. Find it troubling. It is irrelevant to the Tlicho Agreement. There is no reason to hold the Dehcho; the Dehcho is not the Tlicho.

Eric – respond to Chris. Understood from John, this chapter has to be exactly like Tlicho. The point of this is where it comes from. The Tlicho is the latest and greatest in terms of agreements in the NT. It is true about things in the system are easier to explain and get approval on. We said it was not the only perimeter we are moving on.

Steve – John made a point section by section, look at it more closely on how restricted it is. Right to harvest wildlife, fish, etc. is not anywhere near completion.

Eric would like to take back the comments and there is homework to be done on this and bring back in September for a full discussion.

Look at September session, will have a call before.

Patrick indicated the minister and premier said they will pull off the Edehzhie subsurface to be withdrawn. Announcement will be made. Announcement just for the teams.

Update on Parks will be a detailed report and something from Pollard. *Going through work plan changes and updates.*

Negotiators call on September 7th. Teams may want to talk before this in relation to Trout Lake.

Funding

Caroline Dennill

Pushing pretty hard for letter of offer to Dehcho. Did get some interim funding. Normally have letters of offer are usually out by this time. It would be nice to know what the funding will be in terms of the assembly, loan funding talked about. Comprehensive claims is the way Dehcho is going and should try for this funding also.

Received the okay to discuss funding. 3 programs - \$ 1 million available for contribution funding with the additional \$1 million in loan funding should the Dehcho accept.

Patrick indicated the information we receive from INAC, is never enough. Comprehensive Claims is based on loan funding. Not appropriate. Absurd.

Caroline – want to make sure you have adequate notice.

Georges had an issue with DFN getting \$2.3 million at the beginning of negotiations when he first started and now we are down to \$1 million. Big drawback. Patrick added that DFN will be asking for compensation on costs for litigation.

Closing prayer – Bernadette Norwegian

FROM: Petr Cizek, Dehcho First Nations Representative, Dehcho Land Use Planning Committee

TO: Dehcho Process Main Table Negotiations

RE: Update on Interim Land Use Plan Revisions

Progress to Date

- There was no substantive progress on negotiating revisions to the Interim Plan Between June 2010 and June 2011 due to DFN Internal Review, DFN litigation, The federal election, and need to contract technical staff by Canada.
- On June 15-16, 2011 Dehcho Land Use Planning Committee held first substantive “Working group” meeting in almost one year.
- Shannon Cumming, GNWT representative volunteered to take notes and provide Updated revised “rolling” draft of Interim by June 24, 2011.
- Working group reviewed and accepted most “minor” technical changes suggested By DFN in December 2010.
- GNWT will review new proposed wording on hydro-electric development replacing 10MW limit with “no hydro-electric development for export”.
- Canada will review new proposal to add additional “Action” to “Cumulative Effects Management” committing regulatory authorities to consider cumulative effects analysis of landscape disturbance. Threshold numbers will remain the same and will be a “Recommendation” to regulatory authorities.
- Canada and DFN will review new proposal to use definition of “authorization” from MVRMA. DFN will add additional legal instruments to sample authorization table and will review disclaimer language stating that table is not a complete list.
- New maps incorporating expanded Nahanni National Park Reserve and updated Candidate Protected Area Zones from March 2011 were reviewed by working group. Further mapping and discussion required on zoning changes to provide additional protection at mouths of Rabbitskin and Willowlake Rivers as well as upstream of Nahanni Butte.

Main Table Issues

Rolling list of issues likely to be forwarded to the Main Table has not changed for the past year:

1. NEB – Ability of Interim Plan to regulate location of pipelines
2. Roads – Ability of Interim Plan to regulate location of public roads
3. IMA issues, e.g.

- a. Quarrying
- b. Prospecting permits
- c. Forest management
- 4. Plan renewal/Termination clause
- 5. GNWT percentage of open Crown land post-land selection
- 6. Definitions:
 - a. DFN (including or excluding ADK)
 - b. Plan Area (including or excluding ADK)

Next Steps

- DFN Representatives to provide update at DFN Annual Assembly, Wrigley June 29, 2011
- DFN Negotiating Team to conduct internal review with DFN representatives and develop approach to resolving outstanding Main Table issues July 14, 2011
- Committee working group to meet during week of August 8, 2011.
- Target date of fall 2011 to submit recommended interim plan to Chief Negotiators, subject to outstanding Main Table issues.
- As per the Committee's Terms of Reference and Workplan signed by the Chief Negotiators April 27, 2007, these steps will follow after the Committee has recommended a revised draft Interim Plan:
 - 1) The Parties consult on Committee recommendations
 - 2) The Parties present the Committee with their comments
 - 3) Committee provides final recommendation for a revised Interim Dehcho Land Use Plan for approval by the Main Table
 - 4) The Chief Negotiators initial and recommend the Interim Dehcho Land Use Plan for approval by the Parties.