

DEHCHO RESOURCE MANAGEMENT AUTHORITY

Structure and Functions of a Dehcho Renewable Resources Board

Canada's tabled draft Chapter 9: Dehcho Resource Management Authority, dated February 6, 2008, includes the clause;

"12. Any advice that the Dehcho Resource Management Authority provides to the Dehcho Renewable Resources Board is not binding on the Board."

In response to a question from the GNWT, the federal team indicated that this clause was a mistake and that Canada was suggesting the structure, functions and responsibilities of a Regional Renewable Resources Board be incorporated into the proposed Dehcho Resource Management Authority.

The functions and responsibilities of Regional Renewable Resources Boards established pursuant to the Gwichin, Sahtu and Tlicho Agreements rest within the legislative jurisdiction of the GNWT.

In the event that the Dehcho Negotiating Team receives a mandate from the Dehcho General Assembly to negotiate an Agreement in Principle based on a land selection model, the GNWT is prepared to enter into an open discussion with the Dehcho and Canada on the merits and the possible disadvantages of situating the functions and responsibilities of Regional Renewable Resources Boards, as set out in the Gwichin, Sahtu and Tlicho Agreements, within a Dehcho Resource Management Authority which would have other functions and responsibilities.

Delegation of GNWT Responsibilities to a Dehcho Resource Management Authority

Canada's tabled draft Chapter 9: Dehcho Resource Management Authority, dated February 6, 2008, includes the clauses;

"6. Under the Agreement, the Dehcho Resource Management Authority will be responsible for the following:
(c) renewable resource management in respect of forests, wildlife, migratory birds, and fisheries where the authority to do so is delegated by the government having authority, as provided for under the renewable resource provisions of this chapter;"

and,

"11. Under the Agreement, the Dehcho Resource Management Authority shall exercise

its authorities as provide for in Chapter xx in relation to Forestry, Wildlife, and Migratory Birds.”

Forestry and wildlife are within the jurisdiction of the GNWT. In response to a question from the GNWT, Canada indicated that they were referring to GNWT responsibilities for fisheries in 6. (c).

Our assumption is that Canada’s suggestion for the delegation of GNWT authorities in 6. (c) and 11. are in addition to the responsibilities of Regional Renewable Resources Boards as set out in the Gwichin, Sahtu and Tlicho Agreements. Generally speaking, the GNWT delivery of programs and services in these areas, including enforcement, is provided by departmental officials within the Dehcho region. There is generally a close working relationship between officials in the region and officials in Yellowknife, including the provision of policy, program guidelines and support on specific issues. The delegation of responsibilities in the areas suggested by Canada could have a significant impact on existing relationships between the region and headquarters, and other important aspects of program and service delivery.

In the event that the Dehcho Negotiating Team receives a mandate from the Dehcho General Assembly to negotiate an Agreement in Principle based on a land selection model, the GNWT is prepared to initiate an internal review and consideration of the suggestions offered by Canada and to bring the results to the table for discussion. It is not possible to predict the outcome of an internal review at this time.

FOREST MANAGEMENT

Under section 16(n.1)¹ of the *Northwest Territories Act*, the Legislative Assembly may enact laws in relation to the management and sale of timber on Crown lands. The Legislative Assembly has enacted 2 laws under this power: *Forest Management Act* and the *Forest Protection Act*.

The *Forest Protection Act* is for the management and control of forest fires and activities as they relate to prevention. There is a Territorial Forest Supervisor who is responsible to supervise carrying out the implementation of the Act. The powers of the Supervisor are set out in section 19 of the Act.

The purpose of the *Forest Management Act* is to govern activities related to the management of forest resources including harvesting, transporting and using timber, operating a mill, conducting research in relation to forests or scaling timber. There is a Forest Management Supervisor appointed under the Act. The Forest Management Supervisor is responsible for management of forests under the act, designing, implementing and supervising programs respecting forest management (which includes conservation), and conducting research in relation to forests.

General Principles

The GNWT sees the forest management chapter in the Dehcho Agreement-in-Principle addressing:

- the right to harvest trees by Dehcho First Nations members for non-commercial purposes in the Dehcho settlement area to support the exercise of their Aboriginal rights set out in the Agreement, subject to legislation addressing forest management, conservation, environmental protection, land management and public health and safety
- the ability for the Dehcho Government to enact laws in relation to forest management on Dehcho settlement lands and to enact laws in relation to the right to harvest trees by Dehcho First Nations members on Dehcho Settlement Lands – however any laws should be consistent with laws of public health and safety, conservation and environmental protection. Prior to enacting such a law, the Dehcho Government would be required to consult with the GNWT.

¹ 16. The Commissioner in Council may, subject to this Act and any other Act of Parliament, make ordinances for the government of the Territories in relation to the following classes of subjects:

n.1 the management and sale of the properties referred to in subsection 44(1) and of the timber and wood thereon;

- the ability of the Dehcho Renewable Resource Board to provide advice to government prior to:
 - the issuance of a commercial timber licence or permit
 - the development of new legislation for forest management
 - the development of land use plans addressing forest management issues
 - conducting forest research
 - the development of plans and policies related to forest management
- the ability for the GNWT and the Dehcho Government to negotiate with a view to concluding forest management agreements, similar to the agreements contemplated in section 9 of the *Forest Management Act*, to coordinate forest management in the Dehcho Region

The GNWT does not see the draft chapter on forest management in the Dehcho Agreement-in-Principle affecting responsibility or ability of the GNWT for fighting forest fires in the NWT including on Dehcho Settlement Lands.

The GNWT does not see the draft chapter on forest management in the Dehcho Agreement-in-Principle:

- addressing ownership of trees
- guaranteeing a supply of trees to the Dehcho
- precluding an individual who is not a member of the Dehcho First Nations from harvesting trees in accordance with legislation
- entitling the Dehcho to compensation for the loss of trees or harvesting opportunities

RESPONSE TO DFN QUESTIONS REGARDING FOREST MANGEMENT

The GNWT tabled a paper titled Forest Management, dated April 22, 2008 for discussion. The DFN provided the GNWT with a set of written questions regarding forest management on May 30, 2008. Forest Management officials can be invited to the table should the Parties want to ask additional questions or require further elaboration to these responses.

1. Why does GNWT limit the right of the Dehcho First Nations to harvest trees for commercial purposes?

Limiting the right to harvest trees to non-commercial purposes is consistent with other completed agreements in the NWT. A major consideration is that the commercial harvesting of trees can involve large volumes of timber. Issues associated with volume include sustainability of the resource and accountability for sustaining the resource. In our view, accountability for sustaining timber resources must remain with government. A Dehcho Government would exercise this authority and responsibility on Dehcho Ndehe (Dehcho Lands) and the GNWT would retain its authority and responsibility on Crown Lands.

2. Where GNWT addresses DFN rights, it does so “subject to legislation.” What legislation is the GNWT referring to? Territorial legislation only?

The GNWT is referring to territorial legislation as it applies to Crown lands, more specifically the *Forest Management Act* and the *Forest Protection Act*. ***(Are we also referring to any federal legislation? e.g. environment)*** The GNWT paper notes that the Dehcho Government would have the authority to enact legislation in relation to forest management on Dehcho Ndehe and the right to harvest trees by DFN members on Dehcho Ndehe. Dehcho Government laws should be consistent with laws of public health and safety, conservation and environmental protection. ***(does that mean territorial law has paramountcy over DC Govt law with respect to public health and safety, conservation and environmental protection?)*** The Dehcho Government would consult with the GNWT before enacting forest management legislation and the GNWT and the Dehcho Government might enter into forest management agreements for the Dehcho region. Also, under a concurrency model of governance, GNWT laws for forest management would apply on Dehcho Ndehe until the Dehcho Government enacts legislation and they would continue to apply concurrently with the Dehcho Government legislation subject to the paramountcy provisions in the Agreement. ***(Is this correct?)***

3. Does Canada or the GNWT propose that the rights of the Dehcho First Nations to harvest or otherwise use trees and timber within Dehcho Ndehe could be restricted by the GNWT or Canada through territorial legislation?

The *Dehcho Agreement* would clarify that the right of DFN members to harvest trees does not include harvesting for commercial purposes. The right is to harvest for purposes listed in a tree harvesting chapter. The Agreement would also clarify any right to harvest trees for the purposes of gifting or trading.

As stated above, under a concurrency model, GNWT forest management legislation would apply to Dehcho Ndehe in the absence of Dehcho Government legislation regarding forest management and even after the enactment of Dehcho Government legislation subject to the paramountcy provisions in the Agreement.

Nothing in the Agreement would affect the responsibility and the ability of the GNWT for fighting forest fires on Dehcho Ndehe as well as Crown Lands.

4. Does the GNWT accept that the Dehcho Government will have exclusive jurisdiction for forest management in Dehcho Ndehe, including the enactment of laws and authorities pertaining to authorizations for personal and commercial use for forests in Dehcho Ndehe?

As stated above, the GNWT foresees a concurrency model of governance, not a model based on exclusivity. The interaction of Dehcho Government and GNWT legislation is discussed above.

5. How does the GNWT envision the role of the Dehcho First Nations in the co-management of forestry on Crown lands in the Dehcho Settlement Area?

The GNWT and the Dehcho Government will both have jurisdictions with respect to forest management. It is likely that the GNWT and the Dehcho Government will share some common interests with respect to forest management. The GNWT could envision the two governments wanting to enter into a forest management agreement to coordinate forest management in the Dehcho region, i.e. an agreement that would apply to the management of Dehcho Ndehe and Crown lands.

6. Does the GNWT envision the “Dehcho Renewable Resources Board” as a separate board from the DCRMA?

As stated in a discussion paper tabled on May 29, 2008 regarding a Dehcho Resource Management Authority, the GNWT is prepared to enter into discussions with the Dehcho and Canada on the merits and possible disadvantages of situating the functions and responsibilities of Regional Renewable Resource Boards, as set out in the Gwich'in, Sahtu and Tlicho Agreements, within a DRMA which would have other functions and responsibilities.

7. Is the “Dehcho Renewable Resources Board” strictly intended as an advisory body to the territorial government on Dehcho Ndehe and Crown lands? What structure and representation does the GNWT propose for this board?

The GNWT envisions a Dehcho Renewable Resources Board, be it independent or within the DRMA, having functions and responsibilities similar to the Regional Renewable Resource Boards, as set out in the Gwich'in, Sahtu and Tlicho Agreements. See the GNWT's May 29, 2008 paper on the DRMA for comments regarding suggestions to expand these responsibilities. Existing Agreements set a pattern for structure and representation on a separate Dehcho Renewable Resources Board. The GNWT looks forward to discussions on the structure and representation on the DRMA.

