

## CHAPTER GP: GENERAL PROVISIONS

Reviewed by Main Table, May 11, 2011

### GP.1 PURPOSE AND SCOPE OF THE AGREEMENT-IN-PRINCIPLE

#### GP.1.1

This agreement is an Agreement-in-Principle in which the Parties agree upon the structure, the general direction and the principles that will guide the drafting of the Dehcho Agreement. It is also an agreement, where specified, that certain actions will be taken by the Parties.

#### GP.1.2

The Dehcho Agreement will not be limited to the provisions of this Agreement but will remain substantially in conformity with this Agreement.<sup>1</sup>

#### GP.1.3

This Agreement does not create legal obligations binding the Parties, nor does it infringe on the obligations or existing rights of the Parties and will not be construed so as to abrogate, derogate or recognize any aboriginal, treaty or any other right.<sup>2</sup>

### GP.2 NATURE OF THE DEHCHO AGREEMENT

#### GP.2.1

As of the Effective Date the Dehcho Agreement will be a treaty under sections 25 and 35 of the *Constitution Act, 1982*. On the Effective Date the Dehcho Agreement will be a treaty and will have the legal protection of a “land claims agreement” under sections 25 and 35 of the *Constitution Act, 1982*. The term “land claims agreement” is used herein because that term is used in the *Constitution Act, 1982*, and not because the Dehcho Dene “claim” any land within the Dehcho Territory.<sup>3</sup>

### GP.3 RECOGNITION OF ABORIGINAL AND TREATY RIGHTS AND CERTAINTY

#### GP.3.1

The Aboriginal and Treaty rights of the Dehcho Dene, including Aboriginal title and rights under Treaties 11 and 8, will be recognized, affirmed and continued by the Dehcho Agreement and the implementation legislation. The Dehcho Agreement will clarify and build upon Treaties 8 and 11, but will not replace them or result in the restriction or

<sup>1</sup> New language to replace 1.1, 1.2, and part of 1.3: “This Agreement in Principle sets out provisions that if agreed to will form the basis for negotiations of a Dehcho Agreement. This Agreement in Principle is not legally binding on the parties and for greater certainty, nothing in this Agreement in Principle is to be interpreted as creating, defining, or recognizing legal duties or obligations for any party.”

<sup>2</sup> Would need to retain the abrogate, derogate language from 1.3 since it is not covered by new language in footnote 1.

<sup>3</sup> ~~Canada would suggest “As of the Effective Date the Dehcho Agreement will be a treaty under sections 25 and 35 of the *Constitution Act, 1982*.”~~

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extinguishment of any Treaty or Aboriginal rights. From then on, these rights will also be protected by the Dehcho Agreement. They will have the effects and will be exercised in the manner provided for in the Dehcho Agreement.<sup>4</sup>

### **GP.3.2**

The historical and cultural importance of Treaties 11 and 8 will be recognized in the Dehcho Agreement. The Dehcho Agreement will provide that annual meetings will be held to affirm this importance, to make treaty payments, and to recognize and affirm the importance of the Dehcho Agreement.<sup>5</sup>

### **GP.3.3**

The Dehcho Agreement will provide that Dehcho Dene will continue to hold Treaty and Aboriginal harvesting rights throughout their respective Treaty areas and traditional harvesting areas.<sup>6</sup>

### **GP.3.4**

The rights of the Crown covered by the Dehcho Agreement will, from then on, be exercised with respect to the lands and resources of the Dehcho in accordance with the provisions of the Dehcho Agreement.<sup>7</sup>

### **GP.3.5**

The Dehcho Agreement will not seek to exhaustively enumerate or replace the Aboriginal and treaty rights, including Aboriginal title and rights under Treaties 11 and 8, of the Dehcho Dene with Dehcho Agreement rights.<sup>8</sup> It will ensure that these rights, as well as the rights it creates, receive protection under section 35(1) of the *Constitution Act, 1982*.

### **GP.3.6**

Self-government, as an inherent right, is included among the Aboriginal rights of the Dehcho Dene. It will have the effect and be exercised collectively by the Dehcho Dene and by each Dehcho First Nation community according to the manner set out in the Dehcho Agreement within the Dehcho Settlement Area and, when the Dehcho Agreement so provides, outside of the Dehcho Settlement Area.<sup>9</sup>

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<sup>4</sup> This provision will have to be reviewed once certainty approach is in principle agreed to and historic treaty language is agreed to.

<sup>5</sup> Likely more of a policy issue, but may be affected by certainty approach. Clause is similar to 2.5.1 in T'licho.

<sup>6</sup> Canada says this provision may be too broad. Depends on the effect of the certainty provisions.

<sup>7</sup> Have to see how the Treaty 8 and 11 rights will be handled/ addressed by the certainty provisions. This clause seems somewhat circular in that it says the rights of the Crown covered by the Dehcho Agreement will be expressed in accordance with the Dehcho Agreement, but does not say anything about other rights that may be exercisable by the Crown.

<sup>8</sup> Subject to the inclusion of an amendment process, the certainty provisions will seek to set out exhaustively all section 35 rights. Canada's position is that s.35 rights that are to be exercisable are to be exercised as set out in the Agreement.

<sup>9</sup> Some concern around the recognition of Dehcho aboriginal self-government rights

**GP.3.7**

Self-determination as an inherent right, is also included among the Aboriginal rights of the Dehcho Dene. It will have the effect and be exercised collectively by the Dehcho Dene according to the manner set out in the Dehcho Agreement within the Dehcho Settlement Area and, when the Dehcho Agreement so provides, outside of the Dehcho Settlement Area.<sup>10</sup>

**GP.4 DEHCHO DENE RIGHTS AND BENEFITS**

**GP.4.1**

The Dehcho Agreement will include measures for the protection and promotion of the Dene and Metis cultures and languages, including Dene Zhatie.<sup>11</sup>

**GP.4.2**

Nothing in the Dehcho Agreement will prevent a Dehcho First Nation community or their Citizens from participating in the programs of the governments of Canada and the NWT or from benefiting from them in accordance with the general criteria established for these programs, except where the Dehcho Agreement provides otherwise.

**GP.4.3**

Nothing in the Dehcho Agreement will prevent the Dehcho Government or a Community Government from participating in the programs of the governments of Canada and the NWT or from benefiting from them in accordance with the general criteria established for these programs, except where the Dehcho Agreement provides otherwise.

**GP.4.4**

The *Indian Act* will not apply to Dehcho Citizens, except for the purpose of determining whether or not a Dehcho Citizen is an “Indian” under that Act and for the administration of the property of any person where it was being administered by the Minister of Indian Affairs and Northern Development under that Act before the effective date.

**GP.4.5**

Nothing in the Dehcho Agreement will be construed to affect hunting, trapping or fishing rights under a Natural Resources Transfer Agreement, or under treaty, or pursuant to custom, in British Columbia of any person who is eligible to be enrolled as a Dehcho Citizen.<sup>12</sup>

**GP.4.6**

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<sup>10</sup> Same as footnote 9. Need to know distinction between inherent right of self-government and inherent right of self-determination.

<sup>11</sup> This may not be necessary if we can set out a chapter for language and culture.

<sup>12</sup> Have to await outcome of certainty approach particularly as it may relate to NRTA. Canada would like to get more information on the reasoning for this clause.

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Nothing in the Dehcho Agreement will be interpreted so as to limit or extend any authority of the Parties to negotiate and enter into international, national, interprovincial, and inter-territorial agreements, but this will not prevent the Dehcho Government from entering into agreements with a federal, provincial or territorial government for the provision of specific programs and services.

## **GP.5 TERRITORIAL APPLICATION**

### **GP.5.1**

The provisions of the Dehcho Agreement will apply in the Northwest Territories, except where otherwise provided in the Agreement.<sup>13</sup>

### **GP.5.2**

Neither the Dehcho Agreement nor the implementation legislation will have the effect of infringing on the rights of the Dehcho Dene as regards land located outside of the limits of the Northwest Territories.<sup>14</sup>

### **GP.5.3**

The status of Dehcho Dene rights and interests in the Yukon Territory, British Columbia and Alberta will be addressed prior to the signing of the Dehcho Agreement.<sup>15</sup>

### **GP.5.4**

The boundary and overlap issues between the Dehcho First Nations and the Acho Dene Koe, Sahtu, Akaitcho and Dene Tha' will be considered prior to the signing of the Dehcho Agreement.

## **GP.6 CHARTER OF RIGHTS AND FREEDOMS**

### **GP.6.1**

The *Canadian Charter of Rights and Freedoms* will apply to the Dehcho Government in respect of all matters within its authority.

## **GP.7 APPLICATION AND RELATIONSHIP OF FEDERAL LAW, TERRITORIAL LAW AND DEHCHO LAW**

### **GP.7.1**

Nothing in the Dehcho Agreement affects the application of Federal Law in respect of the possession, use or regulation of firearms.

## **GP.8 OTHER ABORIGINAL PEOPLES**

### **GP.8.1**

No provision in the Dehcho Agreement will be construed to

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<sup>13</sup> Have to await the territorial extent of the certainty approach

<sup>14</sup> Same as footnote 13

<sup>15</sup> Same as footnote 13

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- (a) recognize or provide any Aboriginal or treaty rights for any Aboriginal people other than Dehcho Dene; or
- (b) affect
  - (i) any treaty right of any Aboriginal people other than the Dehcho Dene, where the right existed before the provision of the Agreement was in effect, or
  - (ii) any Aboriginal rights of any Aboriginal people other than the Dehcho Dene..

**GP.8.2**

Despite any other provision in the Dehcho Agreement, the Dehcho Government may, pursuant to an agreement with another Aboriginal people, agree to share with that Aboriginal people rights held by Dehcho Citizens, the Dehcho Dene or the Dehcho Government under the Dehcho Agreement, provided that no such sharing agreement will affect the rights held by persons or peoples who are not party to that sharing agreement.<sup>16</sup>

**GP.9 CONSULTATION ON LEGISLATION**

**GP.9.1**

Canada and the GNWT will consult the Dehcho First or, when it is established, the Dehcho Government, in the planning of the institutions established by or under the Dehcho Agreement and the preparation of the settlement legislation and other legislation proposed to implement the provisions of the Agreement, including the preparation of any amendments to such legislation.

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<sup>16</sup> Will want to look at provisions for court rulings that determine aboriginal rights for other aboriginal groups exist and are adversely affected by the Dehcho Agreement. Also look at provisions for the effect of future treaties with other aboriginal groups that adversely affect the Dehcho Agreement.