

CHAPTER GP: GENERAL PROVISIONS

To be Reviewed by Main Table Feb. 4, 2010

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.

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.

GP.1.4

~~This Agreement in Principle was negotiated and concluded without prejudice to the rights of the Parties and nothing in this agreement can be construed as changing the legal situation of either Party or modifying the legal relationship between Canada and the Dehcho First Nations prior to the conclusion of the Dehcho Agreement and the coming into force of the implementation legislation.¹~~

GP.2 NATURE OF THE DEHCHO AGREEMENT

GP.2.1 On the Effective Date the Dehcho Agreement will be a ~~modern~~ 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.

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

¹ Are 1.3 and 1.4 redundant? DFN are prepared to delete either 1.3 or 1.4.

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.

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.

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.²

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.

GP.3.5

~~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.~~

GP.3.6

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. 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.3.7

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.

GP.3.8

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

² Canada says this provision may be too broad.

Settlement Area and, when the Dehcho Agreement so provides, outside of the Dehcho Settlement Area.

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.

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.

GP.4.6

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.

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.

GP.5.2

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.

GP.5.3

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 OTHER ABORIGINAL PEOPLES

GP.7.1

No provision in the Dehcho Agreement will be construed to

- (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.7.2

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.

~~GP.8 INTERPRETATION~~

GP.8.1

~~The Dehcho Agreement will be the entire agreement between the Parties and there will be no representation, warranty, collateral agreement or condition affecting the Agreement except as provided by the Agreement.~~

GP.8.2

~~Where there is any inconsistency or conflict between the provisions of the settlement legislation or the Dehcho Agreement and the provisions of any other legislation, the provisions of the settlement legislation or the Dehcho Agreement, as the case may be, will prevail to the extent of the inconsistency or conflict.~~

GP.8.3

~~Where there is any inconsistency or conflict between the settlement legislation and the Dehcho Agreement, the Agreement will prevail to the extent of the inconsistency or conflict.~~

GP.8.4

~~The Dehcho Agreement may be examined as an aid to interpretation where there is any doubt in respect of the meaning of any legislation or Dehcho laws implementing the provisions of the Dehcho Agreement.~~

GP.8.5

~~There will not be any presumption that doubtful expressions in the Agreement be interpreted in favour of any one of the Parties.~~

GP.8.6

~~Despite any provision of the Dehcho Agreement, Canada or the GNWT may authorize any body or person to act on its behalf, or may identify, or change the identification of, which of its Ministers is responsible for the subject matter of a provision, by legislation or an order of the Governor in Council, in respect of the Government of Canada, or the Commissioner in Executive Council, in respect of the Government of the Northwest Territories.~~

GP.9 – VALIDITY OF AGREEMENT

GP.9.1

~~None of the Parties or the Dehcho Government will challenge the validity of any provision of the Dehcho Agreement.~~

GP.9.2

~~Subject to xxxx, none of the Parties or the Dehcho Government will have a claim or cause of action based on a finding that any provision of the Dehcho Agreement is invalid.~~

GP.9.3

~~If any provision of the Dehcho Agreement is found by a court of competent jurisdiction to be invalid, the Parties will make best efforts to amend the Agreement to remedy the invalidity or replace the invalid provision.~~

GP.10 – AMENDMENT

GP.10.1

~~The Dehcho Agreement will provide that if the Dehcho Government proposes the exercise, by Dehcho Citizens, Dehcho Dene, the Dehcho First Nations or the Dehcho Government, of a right that is not a land right and that is not set out in the Agreement, the Parties will enter into discussions to determine what their interests are in relation to the proposed right. The Parties may, after these discussions, agree to enter into negotiations for the amendment of the Dehcho Agreement to incorporate the proposed right.~~

~~**GP.10.2**~~

~~If the Parties do not agree to enter into negotiations within 90 days of receipt under GP.9.1 by Canada and/or the GNWT of the proposed right or do not consent to the text of the amendment within one year of agreement to enter into negotiations or such longer period set by the Parties, the Dehcho Government may apply to the Supreme Court of the Northwest Territories for a decision on whether the proposed right is a right of the Dehcho Dene.~~

~~**GP.10.3**~~

~~If the highest court in which an application under 9.2 is considered confirms the existence of a right of the Dehcho Dene, the Parties will enter into negotiations to incorporate the right into the Dehcho Agreement.~~

~~**GP.10.4**~~

~~If the Parties fail to agree on the text of an amendment within one year of the decision by the highest court in which an application under 9.2 is considered, or such longer period set by the Parties, the Dehcho Government may submit the issue, as to the text of the amendment, for resolution in accordance with chapter DR.~~

~~**GP.10.5**~~

~~The Dehcho Agreement will be considered to be amended in accordance with the text drafted by the arbitrator. The amendment will be deemed to have been made 30 days after the release of the arbitrator's decision.~~

GP.8 CONSULTATION ON LEGISLATION

GP.8.1

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.