

Heidi Wiebe

From: Philip Wright [wrightp@ainc-inac.gc.ca]
Sent: Tuesday, September 07, 2004 1:45 PM
To: Martha Johnson
Cc: Rick Meyers; Doug Paget
Subject: Draft Deh Cho LUP Options



DehChoLUPComments04Aug.wpd (16...

Hi Martha:

Attached are my comments on the Deh Cho land use planning options. I only reviewed the socio-economic, minerals, and cumulative effects reports. Overall, I think that the DCLUPC has done a very comprehensive job in presenting information upon which to make informed land use choices once communities determine their objectives. However we will see how the Deh Cho leadership chooses to use the material in deciding on an option.

Not sure if you or Giles are planning to send additional written comments so I can send these to Heidi or they can be combined with yours/Giles'. Let me know.

- Phil

Economic Development Assessment Model

Methods and Assumptions

In identifying development projects, it is assumed that development will only go ahead for those projects in multiple use zones. For example, the Prairie Creek mine project is only considered in Option 1 and current land withdrawal scenarios. However the Canada Mining Regulations provide pre-existing mineral rights holders the right to develop their project and to have access to it. These guarantees are also recognized in Sections 19 and 23 of the Deh Cho Interim Measures Agreement. In fact, the description in the draft Land Use Options Atlas of existing activities and third party interests states that “the land use plan will not affect third party interests; that is any new terms and conditions set in the plan will not apply to existing developments, dispositions, permits, licences, claims or leases”. Therefore the assumption that the Prairie Creek project or any projects of other holders of pre-existing mineral rights will not go forward because they are not in multiple use zones is not consistent with these points. It also implies that those rights will be either voluntarily forfeited or expropriated. Since these rights are issued by INAC on federal Crown land, the onus would be on the federal government to negotiate a forfeiture or provide fair market compensation. The assumption that either of these two scenarios would happen is a big one and should be recognized in describing the inputs of the model.

Another point in this section is the assumption that pipeline construction is so labour intensive that no other developments will take place during this period due to a shortage of labour. This may not be a problem if pipeline construction is completed by 2008 as projected in the reports provided. If longer, then it might present a conflict with other possible developments. Again, if a holder of an existing right wishes to develop that right and successfully completes the environmental and permitting phases, then that development will have to proceed. If local labour is unavailable then it will have to come from outside. Recognizing the sensitivity of increased outside pressures on local communities will be a further incentive to provide adequate opportunities and incentives to develop local capacity. If there is close to full employment in the Deh Cho region, the Impact and Benefits Agreement with the mining project could focus on other priorities such as business development opportunities or equity positions in the project. These opportunities should not be lost because there is little local workforce. A conclusion of the “Deh Cho Socio-demographic and Job Creation Needs Analysis” is that information on economic development opportunities and job creation needs for non-oil & gas sectors of the economy such as mining and tourism would be useful in land use planning and would offer a broader information base for decision-making.

The third point is that the analysis only considers known development projects in a 20-year time frame. However the Deh Cho area contains areas of high mineral potential where exploration could lead to development within 20 years. Therefore, in addition to the economic development assessment model, it is important to also take into consideration the potential for new mineral and energy discoveries. In fact, a recommendation of the report “Mineral Priority Areas of the Deh Cho Territory” is that, because areas that are most likely to offer potential for mineral development are in the western-most portion of the territory, higher priority be given to that area for current land use planning considerations.

Deh Cho Cumulative Effects Study

The Deh Cho Land Use Planning Committee has done a lot of good work to develop a range of cumulative effects indicators which can be used once the management objectives of the Land Use Plan are determined. Table 21 presents these management indicators and the various sequenced thresholds for each. As stated in the report, it is important to consider the aggregate effects of these indicators and not concentrate on one or two. The following few points relate to social indicators in Section 8.

Section 8.2.1: Candidate Indicator

The economic indicator chosen in this section is regional revenue by sector. The first point here is that mining is not mentioned as a current and future activity. Secondly, in the choice of regional revenue by sector, the difficulty in predicting revenue well into the future must be recognized, (especially if 50 year land use projections as suggested in Section 9.4.3 are used). Commodity prices for non-renewable resources are extremely difficult to predict beyond a couple of years as the recent rise in oil prices and the extended low prices for lead and zinc in the past few years demonstrate, especially as they are subject to speculative activity. Perhaps per capita income would be more effective, indicating the quality of employment, not just its rate.

Section 8.3.1.2: Resource Availability

In this section the statement “a decision to develop one resource (mining) may permanently or temporarily foreclose opportunities for another (wilderness recreation)”, can be equally true in reverse. Withdrawing land for ecological purposes removes in perpetuity the option of non-renewable resource development unless such a designation is reversed as an amendment to the Land Use Plan. (which may be unlikely as collecting evidence to suggest a change, eg. Exploration, will not be permitted).

Section 8.3.4: Candidate Indicators

In the case of mineral and energy resources, I have concerns that “total area available for each resource use is an appropriate candidate indicator for the Deh Cho Plan area” is used in a general context over the entire area. The caution here is in not assuming the popular misconception that, because a certain area of land is available for non-renewable resource exploration and extraction, those resources will be found and developed all over that area. The highest mineral potential in the Deh Cho coincides with some of the highest ecological and cultural values while areas in the central and eastern portions of the area which may be available for development are rated as low or uncertain mineral potential. Each area has to be examined on its own using a number of indicators. If the Deh Cho as a whole is considered, there could be a bias against the area of high mineral potential because a larger area of lower potential has multi use designation.

It must also be recognized that exploration requires gathering of regional data over large areas to focus in on what may in the end be a very small area. Even after a discovery, less than one in 10,000 prospects becomes a mine.

Report on Mineral Priority Areas of the Deh Cho Territory

In the last recommendation for land use planning considerations on page 4, it is stated that “the DCLUPC may wish to make special considerations in its planning to allow various types of diamond-related activity in areas that would not otherwise be permitted for other deposit types”. It is not clear how this could be achieved. Without a land selection in the Deh Cho, lands remain federal Crown lands. Section 11 of the Canada Mining Regulations allows persons to prospect for minerals and acquire claims on federal Crown lands. The definition of minerals includes a wide range of commodities.

If areas are to be designated as off limits to mineral development on federal Crown lands, there is no mechanism to restrict the definition to exclude diamonds. Interim Land Withdrawals (ILW) under the *Territorial Lands Act* are used to withdraw subsurface rights on an interim basis for an eventual purpose such as establishing protected areas. The ILW specifies minerals and not specific commodities. Once the lands are transferred to national park status or as a protected area under the NWT Protected Areas Strategy, the appropriate legislation does not allow for the extraction of minerals. Therefore the relevant legislation for any of these purposes does not allow the withdrawal of rights to individual minerals from exploration and development on federal Crown lands.

In the Gwich'in Settlement Area, a number of “Conservation Zones” have been created under their approved land use plan. These are federal Crown lands where conservation is the overriding priority over mineral development. If such zones are established in the Deh Cho, a similar priority would be given by the federal government in approving them. Because the diamond potential of the Deh Cho is unknown, there is no way of determining if such zones would have the diamond potential to allow an exception, even if the concept was agreed to.

General Comment

In considering cumulative effects indicators, the Deh Cho Land Use Planning Committee states that the choice of specific indicators will have to await the establishment of objectives to be achieved through the land use plan. It might be worthwhile in establishing objectives to consider the experience of the Tahltan First Nation in northern British Columbia. One of the Tahltan First Nation's objectives is to prosper from a self-sustaining, healthy and enterprising economy. In this regard the Tahltan have developed an eight point resource development policy. Jerry Asp is the Chief of the Tahltan First Nation and Vice-President of the Canadian Aboriginal Minerals Association. I am sure that Jerry would be willing to share the Tahltan experience in this regard with Deh Cho communities.

Eight Points of the Tahltan Resource Development Policy

The following elements and basic principles must be adhered to for mineral development to occur on Tahltan First Nation traditional territory:

1. Assurance that the development will not pose a threat of irreparable environmental damage.
2. Assurance that the development will not jeopardize, prejudice or otherwise compromise the outstanding Tahltan aboriginal rights claim.
3. Assurance that the project will provide more positive than negative social impacts on Tahltan people.
4. Provision for the widest possible opportunity for education and direct employment-related training for Tahltan people in connection with the project.
5. Provision for the widest possible employment opportunities for Tahltan people with respect to all phases of the development.
6. Provision for substantial equity participation by Tahltans in the total project.
7. Provision for the widest possible development of Tahltan business opportunities over which the developer may have control or influence.
8. Provision for the developer to assist the Tahltans to accomplish the objectives stated above by providing financial and managerial assistance and advice where deemed necessary.