

Alan Ehrlich

From: Alan Ehrlich
Sent: Thursday, November 25, 2004 11:46 AM
To: Adam Scott (crosscurrent@northwestel.net); Bernie Swanson (saoftsim@cancom.nt); Briar Young (youngb@dfo-mpo.gc.ca); Chief Berna Landry (bernal@ssimicro.com); Chief Floyd Bertrand (floyd_bertrand@nt.sympatico.ca); Chief Keyna Norwegian (lkfndir@cancom.net); Chief Peter Marcellais (celinea@nahannibutte.com); Dennis Deneron; Doug Bryshun (doughb@ssimicro.com); Ed Hornby (hornbye@inac.gc.ca); Eric Yaxley (yaxleye@inac.gc.ca); Gavin More (gavin_more@gov.nt.ca); Greg Nyuli (inbusnow@hotmail.com); Hamlet of Ft. Providence (susanc@ssimicro.com); Jim Hawkins (jim.r.hawkins@exxonmobil.com); Joe Acorn (joearcorn@theedge.ca); John Holman (john_holman@dehchofirstnations.com); John Renaud (deneres@cancom.net); Kelly Pennycook (kellydcfn@yahoo.ca); Lorraine Seale (sealel@inac.gc.ca); Mandell Pinder (roshan@mandellpinder.com); Mayor Maggie Levavasseur (maggie@ssimicro.com); Mayor Raymond Michaud (vofsmayr@cancom.net); Mike Fournier (mike.fournier@ec.gc.ca); Paul Howard (howard.paul@colteng.com); Peter Redvers (predvers@ssimicro.com); Wade Romanko (wade.romanko@ec.gc.ca)
Cc: John Donihee (donihee@telusplanet.net)
Subject: SKDFN Draft Compensation Agreement

Hello All,

Doug Bryshun has sent this in, at the Board's request, on behalf of Sambaa K'e Dene Band. It is the draft compensation agreement that Doug identified as one of the subjects to be discussed at the Trout Lake community hearing.

Alan Ehrlich

Senior Environmental Assessment Officer

Mackenzie Valley Environmental Impact Review Board

Tel: (867) 766-7056

Fax: (867) 766-7074



SKDB Community
and Harvester C...

Sambaa K'e Dene Band

Draft Template for a Community and Harvester Compensation Agreement

September, 2004

1.0 Introduction

Whereas the Sambaa K'e Dene Band has Aboriginal title to and interest in its traditional lands and, therefore, the right to exercise its authority over any activities that might affect or interfere with traditional land use activities; and

Whereas the Sambaa K'e Dene Band wishes to ensure that the community as a whole as well as individual harvesters are adequately compensated for any disruption or disturbance to their traditional lands or traditional land use activities; and

Whereas the Sambaa K'e Dene Band, as a First Nation government, is responsible for the negotiation and distribution of compensation or other benefits associated with land use activities by industry or agencies operating with the Sambaa K'e traditional land use area;

Therefore be it resolved that the Sambaa K'e Dene Band (herein referred to as SKDB) enters into this Community and Harvester Compensation Agreement (herein referred to as the Agreement) with _____ (herein referred to as the Proponent) to compensate the community and traditional harvesters for both general and specific disturbances resulting from the following land use activities within its traditional area and according to the terms and conditions established in this Agreement.

1.1 Location, Description, and Duration of Specific Activities

The Proponent intends to:

[Note any relevant attachments such as land or water use permit application, EA documents, etc.]

2.0 Compensation Principles

- 2.1 All non-traditional land use activities that involve any change or modification to the land or environment, or any type of disruption or disturbance to traditional land use activities, including traditional gathering and/or recreational purposes, requires negotiation of a Community and Harvester Compensation Agreement.
- 2.2 The terms of this Agreement may vary depending on the nature of the change or disturbance and the types of socio-economic benefits the SKDB and its members are deriving from the land use activity.
- 2.3 Compensation has two components: community (or collective) compensation and individual harvester compensation. Community compensation acknowledges the fact that the all SKDB traditional lands are collectively held and utilized, and individual compensation acknowledges that some lands are more heavily utilized by individual harvesters according to traditional land use protocols established by the community.
- 2.4 Community compensation is of a general form and can take the form of a cash payment, service to the community, equity transfer, or any other form of payment agreed to by the SKDB and Proponent.
- 2.5 Individual compensation has two components: general and specific. General compensation will normally be a cash payment while specific compensation refers to the at-cost replacement of tools, traps, cabins, or any other harvesting equipment damaged directly by the actions of the Proponent.
- 2.6 Once a compensation fee or formula has been established, any general monetary compensation resulted from this Agreement will be paid into a Compensation Trust Fund established and managed by SKDB on behalf of its members and members of surrounding First Nations, identified by the SKDB, who have shared land use rights within the Smbaa K'e traditional land use area. General compensation for harvesters will be issued by the SKDB from this Trust Fund according to criteria established and maintained by the SKDB.
- 2.7 Until otherwise established through the Dehcho Process or other negotiations with the federal government or industry, this Agreement precludes the requirement for an 'access' or other form of 'landholder' agreement with the SKDB. Where an access or other form of landholder agreement is established through the Dehcho Process, the nature of this Compensation Agreement may be re-negotiated to reflect direct harvester compensation costs.
- 2.8 By signing this Compensation Agreement, the Proponent is resolved of any further claims by the SKDB, or by harvesters utilizing its traditional land use area, for disturbances or disruptions to the land, environment, or traditional land use activities -- or from loss of income associated with these traditional activities -- that would normally be associated with the proposed activity and are within environmental and other guidelines established by territorial or federal regulatory agencies. Disturbances or disruptions to the land, environment, or traditional land use activities that are unacceptable within the regulatory framework are

deemed to fall outside of the terms and conditions of this Compensation Agreement and will be addressed separately.

- 2.9 Nothing in this Agreement shall be interpreted as abrogating or derogating the inherent Aboriginal or Treaty rights of the SKDB or its members.

3.0 Definitions

- 3.1 Compensation: See Principles 2.3 to 2.5 above.
- 3.2 Harvester: Any individual identified by the SKDB who, according to community protocols, is considered a primary user of a particular area of land for traditional hunting, fishing, trapping, and/or gathering activities.
- 3.3 SKDB Traditional Land Use Area: See Map SKDB Area in Appendix A.
- 3.4 Project Area: The area of activity identified by the Proponent in which potential land, environmental, or land use disturbance may occur.
- 3.5 Project Activity: Those specific activities scheduled to take place in the project area as identified by the Proponent in Section 1.1 above and in any project-related documents attached to this Agreement.
- 3.6 [Other definitions added as required]

4.0 Terms and Conditions

- 4.1 This Agreement covers the period _____ to _____, but may be extended with the agreement of both parties if the project activities, as described in Section 1.1 above, are not completed.
- 4.2 General community and harvester compensation for the project activities described in Section 1.1 above will include the following:
- 4.2.1 Cash payment of \$____ per hectare of land directly affected by the project activity, environmental, and land use disturbance, which includes both general community and individual harvester compensation, to the total payment of \$____; and/ or
- 4.2.2 Provision of the following in-kind services to the community:
- _____
- _____; and / or
- 4.2.3 Equity or other alternate payment provisions in the following forms:
- _____;

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- 4.3 Specific individual harvester compensation for damage or loss to any tools, traps, cabins, or other equipment as a direct result of Proponent activities, according to the following claims process:

- 4.3.1 The affected harvester must report any loss or damage to the SKDB office within 10 days of discovering the loss or damage and provide an estimate of when and how it occurred and the extent and nature of the loss or damage.
- 4.3.2 The SKDB will prepare a summary of the harvesters claim and submit it to the Proponent within 5 days of receiving the claim.
- 4.3.3 The Proponent will have 15 days to review and verify the claim through field inspection, contact with the SKDB, and/or contact with the harvester.
- 4.3.4 Where there is agreement on the nature and extent of the loss or damage, the Proponent will provide a written offer to replace or repair the loss or damage, at cost. This offer will be directed through the SKDB.
- 4.3.5 Where there is disagreement on the nature or extent of the loss, the SKDB will mediate a resolution to the issue to the satisfaction of the Proponent and the harvester.
- 4.3.6 The Proponent and SKDB will bear their own costs for the claims and mediation process, where reasonable, and unless otherwise negotiated by the parties. Either party may call for a third-party mediator where the other party fails to process claims or participate in mediation in good faith. Where a third-party mediator determines that a party did not process claims or participate in mediation in good faith, that party may be held to cover the costs of the mediation process.

5.0 General Information

- 5.1 The contacts for the respective parties are as follows.

For the Sambaa K'e Dene Band:

For the Proponent:

Draft Compensation Agreement Template

- 5.2 This Agreement is subject to the laws of Canada and the Northwest Territories and any other applicable statutes or legal agreements negotiated between the Dehcho First Nations and Canada.
- 5.3 Either party may request renegotiation of this Agreement with thirty (30) days written notice, with a rationale for this request. No reasonable request for renegotiation may be denied by the other party.
- 5.4 Either party may terminate this Agreement with thirty (30) days written notice.
- 5.5 Each party will make every effort to implement this Agreement in good faith. Where disputes arise, the parties will engage in a mediation process that may, where deemed necessary by both parties, require a third-party mediator acceptable to both parties.

Signed:

Sambaa K'e Dene Band

Dated:

Proponent

Dated: