

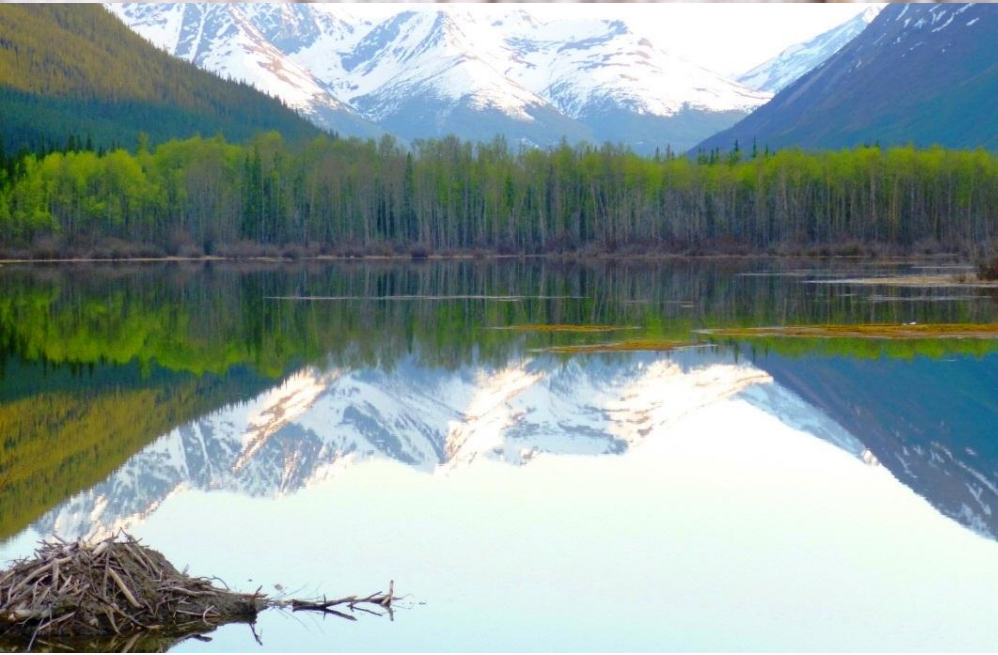


Kaska Dena Council

Kaska Dena Treaty
Negotiations



Building
Treaty
Awareness



October, 2014



Building Treaty Awareness

Kaska Dena Treaty Negotiations

What's happening with Treaty?

Kaska Dena are engaged in Treaty Negotiations with Canada and British Columbia and have been since 1993. The negotiation of a treaty is a lengthy process and will take some time to complete. As negotiations continue, Kaska Dena members have expressed an interest in receiving more information about why we are negotiating a treaty, what is being negotiated, and where we are in the negotiation process. Some are asking why we are negotiating a treaty given the recent Supreme Court Tsilhqot'in Ruling (William Case). Others are questioning what will happen to their medical services and their hunting rights, and are curious about what self-government means.

This publication is intended to supplement other communication tools and methods that are being used to help develop greater understanding and awareness about Treaty Negotiations for Kaska Dena and the benefits that a Treaty will bring for our children and our grandchildren.

A Treaty will not be signed without a vote of approval from Kaska Dena members. It will be your decision. When it comes time to vote on whether or not to accept Treaty it will be important for each and every one of us to understand what the Treaty means so that when we vote, we know what we are voting for or against.

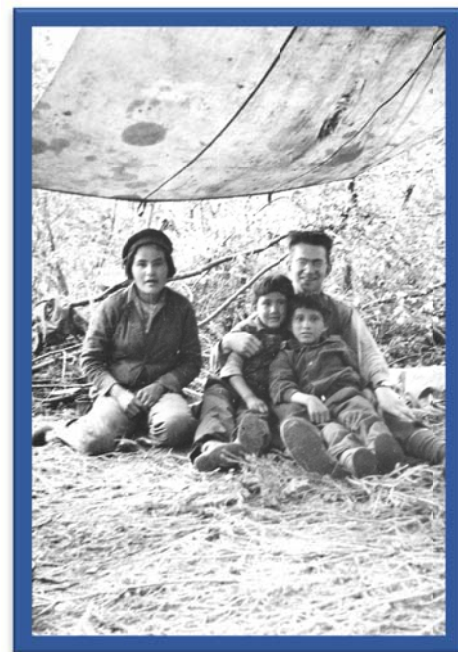
Why are we negotiating a Treaty?

Historically Kaska Dena elders fought for our land, were stewards of the land, and took responsibility for caring for Kaska people, our children and our culture. We had cultural laws and we governed

ourselves. With European settlement and the introduction of the *Indian Act*, our ability to govern ourselves and our land was taken away from us.

We want certainty over our lands and resources and we want to regain the ability to make decisions for ourselves – to create a better future for our children and their children. Treaty is a way to get out from under the *Indian Act*, return to self-government and to once again take responsibility for governing ourselves, our land and our resources.

While Section 35 of the *Constitution Act* says that aboriginal rights are recognized and affirmed, there is no certainty about how and where those rights apply. To get certainty we must either litigate (go to court) or negotiate a Government to Government Agreement, such as Treaty.





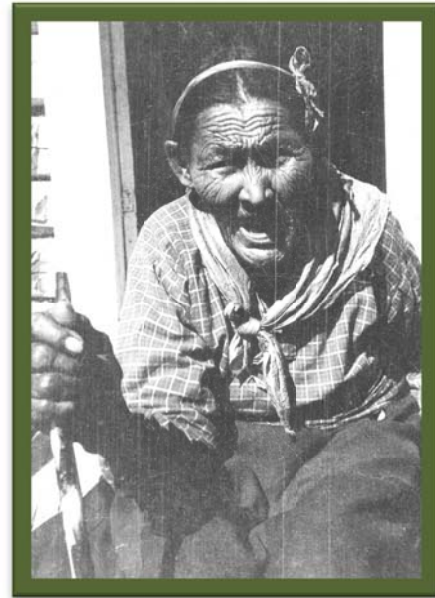
What about the Tsilhqot'in Ruling (William Case)?

With the recent Supreme Court Tsilhqot'in Ruling, the courts affirmed that Aboriginal Title can exist over large tracts of land, not just villages or specific sites and that resource development cannot take place on lands where Aboriginal Title is proven without consent of that First Nation.

Even where title is not proven, the Crown has an obligation to consult and accommodate. The Tsilhqot'in ruling recommends that Government and industry seek consent even where there isn't existing proven title to avoid retroactive penalties when Aboriginal Title is proven.

The Supreme Court Ruling said that proving Aboriginal Title includes demonstrating historical occupation of the land, and must be proven either through the Courts or through negotiating a Government to Government Agreement, such as Treaty.

Kaska Dena are well advanced in Treaty Negotiations so we are well positioned to achieve legally recognized title to our land through a Treaty.



Who is negotiating our Treaty?

A Treaty for Kaska Dena in British Columbia is being negotiated by Canada, the Province of BC, and the Kaska Dena Council (representing Daylu Dena Council, Dease River First Nation, Kwadacha First Nation, Fireside, and Muncho).

We have always said that all Kaska belong to one Nation. Borders not of our making divided us and so our Traditional Territory now lies in what is referred to as British Columbia, Yukon and NWT. Because of these borders, we have to negotiate with the Governments who govern those jurisdictions, (e.g., BC and Canada, or Yukon and Canada) through separate processes (Treaty in British Columbia or Land Claims in the Yukon).

The **Kaska Dena Council** (KDC) was formed as a Society in 1981 to advance interests of Kaska individuals who are potential beneficiaries of a treaty settlement with Canada and British Columbia. Kaska Dena Council will exist for the duration of Treaty Negotiations. However, post Treaty its purpose will have been fulfilled and KDC will no longer be needed.

The Kaska Dena Council has 9 directors including 3 executive officers who are elected by Kaska Dena Council membership every two years at a General Assembly. The remaining 6 Director positions are Deputy Chief of Daylu Dena Council, the Chiefs of Dease River First Nation and Kwadacha and representatives of Muncho, Fireside and the Hereditary System.



The current Board of Directors of Kaska Dena Council:

1. George Miller, Chair
2. Danny Case, Vice-Chair Land & Resources
3. Vice-Chair Finance (Vacant)
4. Deputy Chief Walter Carlick, Daylu Dena Council
5. Chief Donny Van Somer, Kwadacha First Nation
6. Chief Ruby Johnny, Dease River First Nation
7. Steven Jakesta, representing Hereditary System
8. Dennis Porter, representing Fireside
9. Peter Stone, representing Muncho

What is the history of our Treaty Negotiations?

During the 1970's BC Hydro proposed to dam the Liard River north of the Liard Hot Springs. This is when the Kaska Dena in BC (Daylu Dena Council, Dease River First Nation and Kwadacha First Nation) organized themselves through the Kaska Dena Council and in 1982 submitted to Canada a claim to Kaska Dena territory.

Following is a historical perspective of Kaska Dena Treaty negotiations:

- 1982 – the Kaska Dena first submitted to Canada a claim to their territory through Kaska Dena Council;
- 1983 – Canada accepted the Kaska Dena claim for the purposes of negotiation pursuant to Canada's land claim policies;
- 1987 – KDC filed a Statement of Intent with the BC Treaty Commission to negotiate a Treaty under the BC Treaty Process;
- 1993 – KDC engaged in the BC Treaty Process;
- 1995 – Kaska Dena Council, (on behalf of the Kaska Dena), Canada, and British Columbia signed a Framework Agreement to negotiate a treaty for the Kaska Dena in British Columbia;
- 2001 – KDC filed an amendment to the Statement of Intent to include Ross River Dena Council and Liard First Nation. Liard First Nation and Ross River Dena Council sat at the KDC Negotiations Table in BC as observers and were funded by Canada to do so;
- 2002 – Canada chose not to renew their mandate to negotiate based on outstanding court cases;
- 2008 – five years later Canada, BC and KDC agreed to re-engage in negotiations;
- 2008 – BC tabled new template Chapters of an agreement based on agreements reached with other BC First Nations, and Kaska negotiators had to begin re-negotiating all the chapters that had been completed prior to negotiations breaking down in 2002;
- 2011 – Negotiations were suspended for 6 months by British Columbia;
- 2014 – Kaska are currently in Stage 4 (Agreement in Principle) and have made substantive progress is completing the 27 Chapters of an Agreement in Principle.





Where are we in the BC Treaty Process?

Stage 1 - Statement of Intent

The First Nation files a Statement of Intent with the BC Treaty Commission to negotiate a Treaty. Kaska Dena submitted a Statement of Intent in 1987 and filed an Amendment in 2001.

Stage 2 - Preparations for Negotiations

An initial meeting is held to exchange information, discuss research, identify main issues of concern and determine the readiness of all parties to begin negotiations.

Stage 3 - Negotiation of Framework Agreement

This is the agreed upon agenda that identifies the issues to be negotiated, the goals of the negotiation process, and a timetable for negotiations.

Stage 4 - Negotiation of an Agreement - in - Principle (AIP)

Negotiations at this stage will form the basis for the Treaty. The AIP is NOT legally binding. The AIP lays the ground work for the Final Agreement negotiations. If Kaska Dena (and Canada and BC) approve the AIP then negotiations move to Stage 5 – negotiation of a Final Agreement.

We Are Here

Stage 5 - Negotiation of Final Agreement

The Final Agreement that is concluded at this stage will formalize the relationship between all parties. Certain issues of a legal or technical nature are resolved and any outstanding items are negotiated. At the completion of this stage a legally binding final agreement is signed.

Stage 6 - Implementation of a Treaty

Implementation of Treaty begins here.



Negotiating a Treaty Begins with an Agreement in Principle (AIP)

What is an AIP?

An Agreement-in-Principle (AIP) is an agreement that is negotiated in the Treaty Process made up of approximately 27 chapters that describe:

- ▶ First Nations government structures and powers, and related financial arrangements;
- ▶ Jurisdiction and ownership of lands, water and resources, and
- ▶ Cash settlements

While the AIP is written in legal, technical language, it is not a legally binding document. It is intended to be a “blue print” to use in negotiating the Final Agreement. [The Final Agreement becomes a Treaty once approved by Parliament through Settlement legislation.]

Once the AIP is completed, Kaska Dena members will be able to review it and decide for yourselves if you are in agreement with the AIP prior to negotiating the Final Agreement.

Because the AIP is written in legal, technical language, summaries and other tools are being prepared by KDC in non-technical language to communicate the content and meaning of the AIP and to assist KDC members in making informed decisions about whether to accept the AIP or not.

What is the status of our AIP?

We haven’t finished negotiating the AIP, but we are close and we are aiming to have the AIP Chapters negotiated and legal review completed by spring, 2015.

It is important that we provide you with information as we continue to negotiate. It is equally important that Kaska Dena members take the time to attend community meetings, read

information, ask questions and get answers so that you fully understand the AIP.

How long will we have to decide?

Once the negotiation of the AIP is completed by the Treaty Side Table, then a review of the AIP will begin for Kaska Dena members. This could take a number of months because we will need to ensure that Kaska Dena members have been provided with ample opportunity to have their questions answered.



How does the AIP get approved?

Once the review period is completed, then there will be an AIP Approval Process. This process will be decided by Kaska Dena leadership with input from Kaska Dena members. The Approval Process could be as simple as Band Council Resolutions or could be a referendum where everyone votes. It will also need approval from BC and Canada.

What happens next?

If Kaska Dena members say “yes” to the AIP then Kaska negotiators will begin negotiating the Final Agreement. If Kaska Dena members say “no” to the AIP then negotiations stop.



Who Approves the Final Agreement?

Kaska Dena members will vote on whether or not to accept the Final Agreement.

Once Kaska Negotiators have completed the negotiations, and a Final Agreement is reached, a review process will take place ensuring that Kaska Dena members both on and off reserve have ample opportunity to review and gain understanding of the Final Agreement.

Approval of the Final Agreement requires a secret ballot vote by Kaska Dena eligible voters. It will also require an approval process by BC and Canada.

Ratification of the Final Agreement is taken seriously. In fact a chapter entitled “Ratification of the Final Agreement”, which details the Kaska Dena approval process of the Final Agreement, is included in the AIP.

Kaska Dena Governance

What is Self-Government?

Self-government refers to a First Nation’s right to assume greater authority and control over decisions that affect their lands, resources, communities and citizens.

Currently, Kaska Dena Indian Bands are governed by the *Indian Act*, where all the authority lies with AANDC. Under Treaty, the *Indian Act* would no longer apply. Kaska Dena would have their own Government system and would be governed by the Kaska Dena Constitution.

What is a Kaska Dena Constitution?

The Kaska Dena Constitution is a document that speaks to who Kaska Dena are in BC. It describes our system of self-government, defines our territory and, once the Constitution comes into effect, will be the highest law of Kaska Dena Government.

Currently under the *Indian Act*, AANDC dictates how and when Indian Band elections will take place. The Kaska Dena Constitution will define how the Kaska Dena Government is elected by Kaska Dena citizens and the ways in which the Kaska Dena Government is accountable to its citizens.

After Treaty when the Constitution comes into effect, Kaska Dena Government will have authorities to make and carry out laws and perform other functions of self-government such as the management of our land and resources, and the education of our children.

Is this a Kaska Dena Council (KDC) Constitution?

No, it isn’t. The Kaska Dena Constitution will be the Constitution of Kaska Dena Government after Treaty. Kaska Dena Council is a Society, not a Government.





Has the Kaska Dena Constitution been finalized?

No, it hasn't. The Kaska Dena Constitution is presently in draft form. Work is still needed to complete it. The draft Constitution has to be completed through consultation with leadership and Kaska Dena members and it must go through Legal review. It must be voted on by Kaska Dena members before it is approved. The Final Agreement lays out the criteria for a ratification process for the Kaska Dena Constitution.

Why are there two Constitutions – a Kaska Dena Constitution and a Kaska National Constitution?

Kaska have always affirmed that we are one people – one Nation. Because Kaska Dena in British Columbia are negotiating a Treaty with British Columbia and Canada, we are required to have a Constitution that speaks to how Kaska Dena Government will govern over the lands and its citizens in British Columbia.

The Kaska Dena Constitution has been drafted to be consistent with the Kaska National Constitution so that if in the future the National Constitution is ratified by Kaska, the Kaska National Constitution and Kaska Dena Constitution will be compatible.

What is Kaska Dena Citizenship?

The Kaska Dena Constitution will set out who is entitled to be a Kaska Dena citizen and will set out the criteria for citizenship.

The Kaska Dena Constitution will also lay out the responsibilities of the Kaska Dena Government to its citizens.

Will I lose my Status after Treaty?

No, you will not lose your status. Kaska Dena citizens who are Status Indians will still have status cards and will continue to be eligible for all of the programs and services that you are currently entitled to (e.g. medical, eye glasses). This doesn't change after Treaty.

It is the *Indian Act* that governs Status Indians, not the Treaty. While most of the *Indian Act* will not be in effect after Treaty, some provisions will remain; for example the process for registering as a Status Indian under the *Indian Act*.

After Treaty, non- status Kaska Dena citizens who enroll as Kaska Dena Treaty beneficiaries will be eligible for services through the Kaska Dena Government.

Will I still be able to hunt?

Yes. Kaska Dena will have the same rights to hunt as you do now. Hunting rights will not change after Treaty.





Kaska Dena Land

Our Land

Kaska Dena occupied our land for thousands of years prior to European settlement. Canada and BC have held the legally recognized title to our lands. Even our Reserve Lands do not belong to us. Reserve Lands are owned by Canada (reserved for Indians) and are held “for the use and benefit” of, for example, Kaska Dena First Nations.

A Treaty would enable Kaska Dena to have legally recognized title to our land.

How does the Tsilhqot’in Ruling (William Case) affect Treaty Negotiations?

The Kaska Dena Treaty negotiating team anticipate completing the draft chapters for the Agreement in Principle (AIP) by December, 2014 subject to legal review. Then the focus will be on the Lands negotiations based on Aboriginal Title through the (William) Tsilhqot’in ruling. Kaska Dena legal review of the Agreement in Principle will ensure that the AIP is consistent with the (William) Tsilhqot’in ruling. Any clauses which are found by the Kaska lawyer to be inconsistent with the Supreme Court ruling will be brought back to the Treaty Table.

What Work has been done to Date?

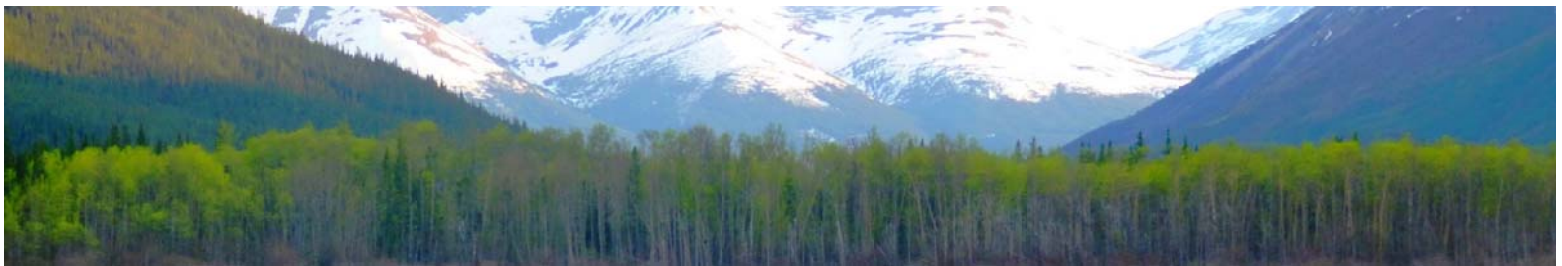
A technical Lands Selection Working Group was formed through the Treaty Side Table with Kaska, BC, and Canada membership to review what work has been done by Kaska Dena in the past and how that work relates to tenures and other dispositions today. Status work (the identification of existing

legal interests) on lands that may be tabled for possible selection is also being reviewed.

Prior to the breakdown in negotiation in 2002, Kaska Dena Council had completed a Land Use Options report where approximately 35 % of the territory in BC was zoned into various land-use categories. This included Community Expansion Lands (lands near the community), Community Regional Lands, Economic Development Lands, Specific Sites, and Special Management Areas. This work was done with community members, elders, and leadership through interviews and meetings.

The first work of the recently formed Lands Technical Working Group was to look at how the landscape has changed since 2002. For example, the Horseranch Range was identified as a Special Management Area in the Land Use Options work; however, through recent negotiations between Kaska Dena and BC it is now classified as Protected Area by the BC Government. In other areas, the zoning has not changed. So this was a technical process to update the work done to date. British Columbia is responsible for identifying on proposed land selections, existing legal interests including surface and subsurface dispositions, tenures, and leases. This work has begun on proposed land selections around the Kaska Dena communities.





Community Engagement and Lands Selection Process

The Kaska Dena technical team is seeking feed-back from each Chief and Council, Land and Resource Officers, and community members to tell us the best way to engage each community in the land selection process.

It might be, for instance, community meetings, focus groups, or interviews. Once this information has been received, there will be more engagement in land selection.

What Progress has been made to date to give legal title to Kaska Dena Lands?

Through an Incremental Treaty Agreement, Kaska Dena Council treaty negotiators negotiated the early transfer of some Kaska Dena Lands to Kaska Dena so that we will have legally recognized title to these lands in advance of our Treaty.

These land parcels first have to be surveyed by British Columbia and then transferred to a Kaska Dena Land Corporation and will be used for economic development purposes. Ten parcels of land were negotiated to be transferred over four years.

Three parcels have already been surveyed by BC and will be transferred to the Kaska Dena Lands Corporation in 2014. Two more parcels are being surveyed this fall and will be transferred to the Kaska Lands Corporation sometime in 2015.

ITA Land Description	Potential Economic Development	Transfer Date
Troutline- In-take and Powerhouse	Alternative power source	2014
5 Mile	Forestry	2014
Kwadacha North	Community expansion	2014
Finbow	Multiple Use	2015
Turnagain	Multiple Use	2015
Rapid River	Tourism	2016
Obo Lake	Tourism	2016
Good Hope Lake	TBD	2017
Old Faddy	TBD	2017





Timeline

How long is all of this going to take?

This is a lengthy and complicated process that requires time at the negotiation table to come to agreement on matters as well as for Kaska Dena negotiators to do the technical work required to negotiate and to discuss matters with Kaska Dena leadership and Kaska Dena members. Additionally, it is impossible for us to predict with any accuracy how long Canada and BC will take to do their work.

Below is an approximate time-line to achieve Agreement in Principle.

Agreement in Principle (AIP)	2014	2015					
Steps to Achieve AIP	Oct - Dec	Jan-Feb	Mar-Apr	May-June	July-Aug	Sept-Oct	Nov - Dec
Complete negotiations of AIP Chapters subject to land, cash and legal review							
Kaska legal review of Chapters							
Complete AIP Chapter negotiations based on legal review							
Kaska Dena engagement re: land selection							
Complete land negotiations							
Land & Cash offer from BC/Canada*							
Chief Negotiators to Initial AIP to* commence review process							
	2016						
Kaska Dena membership review process of AIP							
Kaska Dena Approval Process of AIP							

* Approximate. We cannot predict how long BC/Canada would take to make a land & cash offer.

Kaska Wolf Mask – Gordon Peter, Ross River, Yukon



If you have further questions or would like more clarification please contact Michelle Miller, the KDC Treaty Coordinator at kdcexedir@northwestel.net

Check out the KDC website at www.kaskadenacouncil.com and attend treaty awareness meetings in your community.