

**2008-2009 ANNUAL REPORT**  
**IMPLEMENTATION MONITORING COMMITTEE**  
**1997 MANITOBA FRAMEWORK AGREEMENT ON TLE**

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## 1.0 INTRODUCTION

Twelve years ago, on May 29, 1997, the Treaty Land Entitlement Committee of Manitoba, Inc. (referred to in this Report as the "TLEC"), the organization established by 19 First Nations in Manitoba with entitlement to additional land under Treaties 1, 3, 4, 5, 6 and 10, entered into an agreement with Canada and Manitoba to secure additional Reserve land owed to those First Nations under Treaties with Canada called the *Manitoba Framework Agreement on Treaty Land Entitlement* (referred to in this Report as either the "Framework Agreement" or "MFA").

Canada had long recognized that many Manitoba First Nations had not received the amount of land to be set aside as "Reserve" under the various Treaties in Manitoba. While Canada retained administration and control of the Crown land within Manitoba after the confederation of Canada was formed in 1867, Canada was free to set apart land as reserve as it was selected by First Nations entitled to land for that purpose under Treaties. Treaties and adhesions to Treaties continued in Manitoba from 1871 until 1910 when the last adhesions to Treaty 5 were signed in the northern part of the Province. Accordingly, Canada was aware of its outstanding Treaty obligations when it was decided by Canada that it would transfer administration and control of virtually all Crown land within the province to the Crown in right of Manitoba in 1930. In fact, at the time of the transfer of administration and control of the land and resources from Canada to Manitoba under the Manitoba Natural Resources Transfer Agreement signed on December 14, 1929, which became effective July 15, 1930 (now Schedule 1 of the Constitution Act, 1930) (more commonly referred to as the "MNRTA" in this Report), Canada formally advised Manitoba of its estimates of outstanding Treaty land entitlement or "TLE". Further, in paragraph 11 of that agreement, Canada reserved the right to select Crown land to be transferred back to Canada to enable it to fulfill its Treaty obligations.

Significant progress in addressing the outstanding Treaty Land Entitlement obligations of the Crown was not made until after the Supreme Court of Canada issued its judgment in an aboriginal title case advanced by the Nisga'a of British Columbia in 1969 in *Calder v. Attorney-General of B.C.*, [1973] S.C.R. 313. Shortly after the *Calder* decision, Canada established its first claims policy and an Office of Native Claims. Canada also began to provide funding assistance to First Nations or First Nation organizations to research and examine claims, including TLE. In Manitoba, this work was initially done within the organization then known as the Manitoba Indian Brotherhood and ultimately, as it is today, by the Treaty and Aboriginal Rights Research Centre of Manitoba, Inc. or by First Nations directly. Claims to additional TLE were first prepared and submitted to Canada in the late 1970's and early 1980's.

After the recognition by Canada of most of the TLE claims submitted by Manitoba First Nations, negotiations took place which resulted in a comprehensive "agreement in principle" (AIP) in 1984. However, for various reasons, Canada, Manitoba and the First Nations decided not to proceed with the 1984 AIP shortly after its execution. It was not until early 1991 that the First Nations and Canada agreed to renew TLE negotiations on a comprehensive basis, at which time 19 of the then 26 First Nations in Manitoba with recognized outstanding TLE rights agreed to a coordinated approach to negotiations via their corporate body, the TLEC. The negotiations were undertaken on a dual bi-lateral basis; that is:

- (a) the TLEC negotiated TLE with Canada in recognition of the basis of the Crown/First Nation Treaty relationship, and
- (b) Canada negotiated with Manitoba on the basis of the Crown/Crown relationship reflected in paragraph 11 of the MNRTA.

The Framework Agreement was the result of the dual bi-lateral negotiations conducted over a five year period ending in May 1997. All of the 19 First Nations comprising the membership of the TLEC were entitled to individually choose to accept the terms of the MFA and, if so, enter into a specific Treaty Entitlement Agreement (referred to as a "TEA") with Canada and Manitoba. After the MFA, two of the original 19 First Nations decided to split into two additional First Nations, with the result that there are now 21 First Nations entitled to sign agreements under the Framework Agreement

located throughout Manitoba<sup>1</sup>. See the map illustrating the location of the First Nations entitled to enter into TEAs under the MFA attached as **Appendix A**.

Under the terms of the MFA, the combined 19 (now 21) Entitlement First Nations secured entitlement to an additional 1,100,626 acres of Reserve (approximately 1,720 square miles of land). Circumstances encountered during the negotiations led to the distinction between the selection of Crown land as anticipated by the Treaties and the purchase or "acquisition" of private land on the open market as set out in **Chart 1**. Although all of the First Nations secured entitlement to select Crown Land, six of the First Nations in southern and western Manitoba were provided funds to purchase a portion of the TLE for these six First Nations on the open market due to the lack of sufficient unoccupied Crown Land available in the vicinity of the existing Reserve land base for these six First Nations. Accordingly, if all 21 First Nations entered into agreements, the 21 EFNs would collectively be entitled to select a total of 985,949 acres of provincial Crown Land for Reserve. In addition, six of those First Nations - the Brokenhead Ojibway, Buffalo Point, Opaskwayak Cree, Rolling River, Sapotaweyak and Wuskwi Sipihk Cree First Nations - are entitled to purchase or otherwise acquire the balance of 114,677 acres of land for Reserve.

**Chart 1: Amount of Crown Land and Other Land for Entitlement First Nations under the Manitoba Framework Agreement**

Entitlement First Nations	Treaty Number	Crown Land (Acres)	Other Land (Acres)	Total (Acres)
BARREN LANDS	10	66,420		66,420
BROKENHEAD	1	4,344	10,137	14,481
BUFFALO POINT	3	3,432	607	4,039
BUNIBONIBEE	5	35,434		35,434
FOX LAKE	5	26,391		26,391
GOD'S LAKE	5	42,600		42,600
MANTO SIPI	5	8,725		8,725
MARCEL COLOMB	6	17,007		17,007
MATHIAS COLOMB	6	217,364		217,364
NISICHAWAYASIIHK	5	61,761		61,761
NORTHLANDS	10	94,084		94,084
NORWAY HOUSE	5	104,784		104,784
OPASKWAYAK	5	47,658	8,410	56,068
O-PIPON-NA-PIWIN	5	17,674		17,674
ROLLING RIVER	4	2,356	44,756	47,112
SAPOTAWEYAK	4	108,134	36,045	144,179
SAYISI DENE	5	22,372		22,372
SHAMATTAWA	5	24,912		24,912
WAR LAKE	5	7,156		7,156
WUSKWI SIPIHK	4	44,168	14,722	58,890
YORK FACTORY	5	29,173		29,173
<b>TOTAL</b>		<b>985,949</b>	<b>114,677</b>	<b>1,100,626</b>

<sup>1</sup> Canada declared divisions of the Mathias Colomb Cree Nation and Nisichawayasihk Cree Nation after the MFA settlement, accordingly, adding the Marcel Colomb Cree Nation (as of March 30, 1999) and the OPCN (as of November 25, 2005) to the list of MFA Entitlement First Nations. As of March 31, 2009, these two "new" First Nations had not executed TEAs under the MFA.

The First Nations anticipated significant social, cultural and economic opportunities associated with the ability to secure land for Reserve in the present day. Many First Nations have embarked on a considered and decidedly specific process of land selection to secure reserve for social, cultural and economic reasons including residential development, economic development, protection of cultural and historical land, tourism purposes and traditional uses considered of importance to each First Nation community.

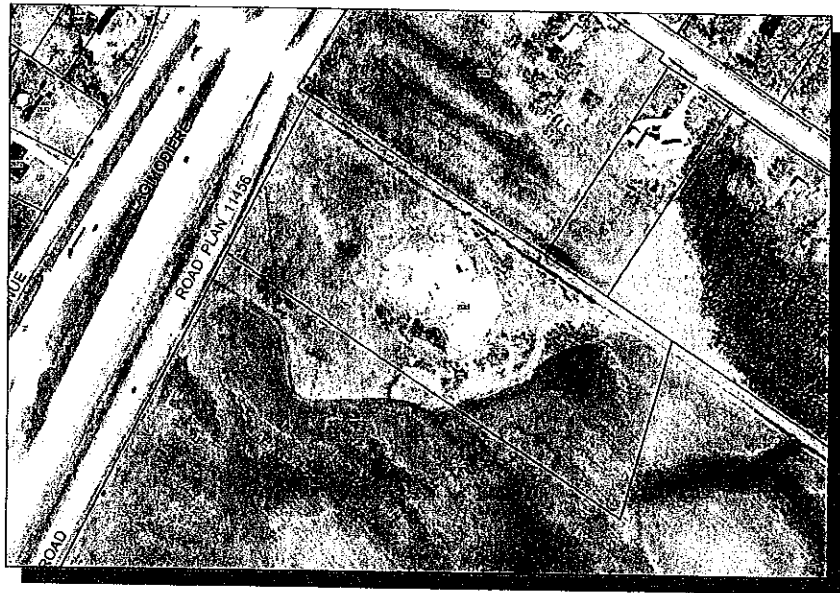
For example:

*Brokenhead East St. Paul Land Acquisition:*

The Brokenhead Ojibway Nation (BON) purchased a 7.46 acre parcel of land in East St. Paul just north of Winnipeg's city limits and the perimeter on Highway 59. This is a major traffic corridor to popular beaches, cottage areas and communities on the east side of Lake Winnipeg. BON's intention is to use this land for economic development - to attract business investment and offer commercial leasing opportunities.



The process of negotiation pertaining to a Municipal Development and Services Agreement (MDSA) that led to the setting apart of this site as Reserve could be a positive model for the building of a successful First Nation / municipal relationship that might assist other First Nations entering into relationship building processes with other municipalities in Manitoba. BON and the Rural Municipality (RM) of East St. Paul each realized the economic spin-offs that development of the land could produce for both communities. Assisted by a letter of support from the RM of East St. Paul, which support was subject to a MDSA being concluded prior to proceeding with land development, the Parties to the MFA agreed to proceed with the setting apart of the land as Reserve pursuant to the Framework Agreement. This is a good example of relationship building. BON and the RM of East St. Paul deferred the conclusion of a costly and time consuming negotiation of a MDSA, until such time as the BON actually finalizes specific development plans with interested businesses and investors and knows with more certainty the specific municipal services that BON will require for development expected to be confirmed in the fall of 2009.



As of March 31, 2009, 15 of the 21 First Nations entitled to enter into TEAs to secure additional TLE (these First Nations are referred to as "Entitlement First Nations" or "EFNs") have entered into a TEA. For various reasons, six First Nations have chosen not to enter into TEAs to date. However, after further discussions this past year, a number of those six First Nations have expressed an interest in considering entering into TEAs under the MFA. The six FNs are at different stages of discussion in the Land Selection Study ("LSS") and Community Approval Process ("CAP") established under the MFA for signing TEAs.

**Chart 2: Entitlement First Nations that have signed TEAs**

ENTITLEMENT FIRST NATION	DATE TREATY ENTITLEMENT AGREEMENT (TEA) SIGNED
BARREN LANDS FIRST NATION	June 23, 1999
BROKENHEAD OJIBWAY NATION	September 9, 1998
BUFFALO POINT FIRST NATION	March 24, 1998
BUNIBONIBEE CREE NATION (formerly known as Oxford House Cree Nation)	February 17, 1999
GOD'S LAKE FIRST NATION	May 28, 1999
MANTO SIPI CREE NATION (formerly known as God's River Cree Nation)	May 19, 1999
MATHIAS COLOMB CREE NATION	October 1, 2003
NISICAWAYASIIK CREE NATION (formerly known as Nelson House Cree Nation)	September 1, 1998
NORTHLANDS FIRST NATION	November 9, 1999
NORWAY HOUSE CREE NATION	November 12, 1998
OPASKWAYAK CREE NATION	January 22, 1999
ROLLING RIVER FIRST NATION	March 6, 1998
SAPOTAWEYAK CREE NATION	September 1, 1998
WAR LAKE FIRST NATION	May 28, 1999
WUSKWI SIPIHK CREE NATION	June 9, 1998

The First Nations that have not signed TEAs continue to have outstanding TLE rights. As recently as the IMC meeting held November 26, 2008, both Canada and Manitoba affirmed that they remained prepared to enter into agreements with the six First Nations, if the First Nations are prepared to confirm in writing a willingness to proceed with the CAP required by the MFA. In addition, the TLEC has affirmed it is ready and willing to assist these First Nations in gaining an understanding of the MFA and planning for a CAP. It is anticipated that the Marcel Colomb Cree Nation will enter into a TEA before the fall of 2009.

During the MFA negotiations, Canada had estimated that the average period of time from the date of Selection or Acquisition of a parcel of land to the date the land was set apart as Reserve by Order in Council took, on average, 2.97 years. However, it appears that this estimated time period has, among other things, been impacted by the volume of TLE settlements and parcels of land going through the process of Reserve creation in Manitoba and elsewhere in Canada. The average time period for Reserve creation today is both unknown and uncertain. All Parties have at times expressed concern that the period appears to be growing longer, rather than shorter, if measured by progress under the MFA over the last 12 years.

After 12 years of implementation, the Parties to the MFA have managed to succeed in setting apart some 313,975.48 acres of land for Reserve comprised of 85 separate selections and 16 acquisitions of land. This represents approximately 33 % of the overall TLE of the 15 Entitlement First Nations that have signed agreements under the MFA. Of the total amount of Reserve set apart to date, some 124,436.55 acres comprised of 23 separate selections and 15 acquisitions of land (about 40% of the total acreage set apart to date) were set apart as Reserve during the 2008/2009 fiscal year.

In recognition of the frustration of EFNs arising from the slow pace of Reserve creation under the MFA and other TLE agreements in Manitoba, both the Minister of Indian Affairs for Canada and the Minister of Aboriginal and Northern Affairs publicly mandated a 4 year plan of action on TLE on August 22, 2006, directing their respective administrations to meet a target 150,000 acres of Reserve each year. This supplementary standing Ministerial direction to improve and accelerate the Reserve creation process for land claim settlements in Manitoba has greatly impacted the overall fulfillment of the MFA objectives and has proven essential at times in dealing with impediments to implementation encountered on a day to day basis.

The MFA provided detailed guidelines in the form of Principles for Land Selection and Acquisition to provide direction for the First Nations with respect to Crown Land selection and purchase of private land. Canada and Manitoba agreed that land selected or purchased/acquired in accordance with the Principles would be eligible to be set apart as Reserve provided the requirements of the MFA were satisfied. If and when issues or matters in dispute arose, the MFA also provided a detailed process for resolution of any issues or matters in dispute, a structure for doing so, guidelines for means and methods for doing so, suggested timelines and procedures as well as a formal body – the Implementation Monitoring Committee (referred to as the “IMC”) – to supervise problem resolution, oversee implementation, report on implementation and recommend improvements as necessary over time. The IMC was to be and has been assisted by an independent Chairperson appointed by the Parties.

In early 2007, after an increasing level of First Nation frustration with the pace of implementation of land claim settlements and TLE in Manitoba, within the context of the Ministerial mandates and following upon the report of the implementation of the MFA issued by the federal Auditor General in November 2005, the IMC agreed upon a special initiative to assist them in improving the MFA implementation process – the establishment of a separate office of the independent Chairperson of the IMC. This initiative has proven to be a positive step in ensuring a more effective IMC as anticipated by the MFA. Although significant challenges to implementation continue to exist and will exist throughout the exercise, the IMC Representatives are working on several areas identified for improvement in the various interrelated elements of implementation, including information management, communications, working relationships, a range of implementation procedures and guidelines, monitoring of Reserve creation and dispute resolution.

This Report is intended to inform the Parties of the progress in implementation of the MFA, the issues faced by the Parties during the past fiscal year, the areas for improvement that have been identified and the steps being taken to build on opportunities for improvement. On behalf of the IMC, the Chairperson of the IMC must provide an Annual Report to the President of the TLEC, the Minister of Indian Affairs and Northern Development for Canada and the Minister of Northern Affairs for Manitoba by June 30th each year during MFA implementation, including:

- (a) a summary of the progress of implementation of the MFA and any TEA;
- (b) the recommendations of the IMC for the improvement of the implementation of the MFA and any TEA;
- (c) a summary of the issues or matters in dispute which have been resolved during the reporting period;
- (d) a summary of the issues or matters in dispute still outstanding at the end of the reporting period;
- (e) recommendations for improvement of the implementation of the MFA and any TEA; and
- (f) an unaudited annual statement including;
  - all funds received by the IMC from the Parties during the fiscal year;
  - a statement of how those funds were distributed; and
  - a statement of all contributions in kind to the costs of the IMC.



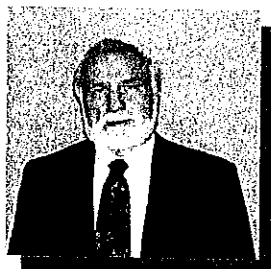
This Annual Report pertains to the fiscal year 2008 /2009 which ended March 31, 2009. Reports were provided for prior years with the exception of the fiscal year ending March 31, 2007.

Under the terms of the MFA, the IMC is comprised of five members, two representatives appointed by the TLEC, one representative appointed by each of Canada and Manitoba and an independent Chairperson. The Chairperson is appointed by the consensus of the President of the TLEC (First Nations), the Deputy Minister of Aboriginal and Northern Affairs (Manitoba) and either of the Regional Director General of INAC Manitoba or the Assistant Deputy Minister of INAC (Canada).

As of March 31, 2009, the IMC Representatives, alternate Representatives and Chairperson were as follows:



Dave Hicks  
Manitoba  
Representative



Rick Kosmick  
Manitoba  
Alternate



Winona Embuldeniya  
Canada  
Representative



Edgar Rasmussen  
Canada  
Alternate

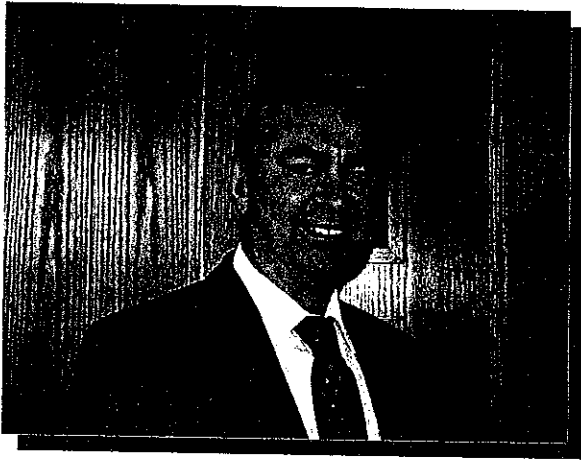


Carl Braun  
TLEC  
Representative



Ed Vystreil  
TLEC  
Representative

Mr. Rod McLeod was appointed Chairperson of the IMC by the Parties effective March 1, 2007, for a two year term which ended February 28, 2009.

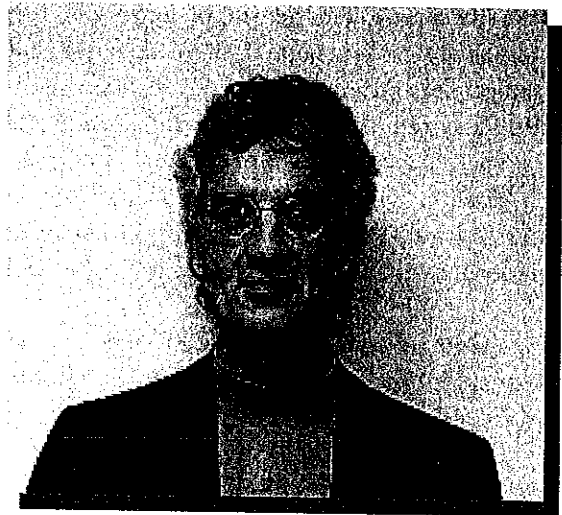


Mr. McLeod has specialized in Aboriginal Law and Claims work for the past 25 years. In addition to acting for his own First Nation, he has acted for Grand Council Treaty 3, area Aboriginal Associations, Tribal Councils and tribal service organizations, as well as many First Nations in both Manitoba and NW Ontario. In particular, he acted as counsel to the Treaty and Aboriginal Rights Research Centers of Grand Council Treaty 3 and Manitoba for many years in the definition and advancement of Specific Claims. Mr. McLeod was the General Counsel to the Treaty Land Entitlement Committee of Manitoba Inc. (TLEC) during the negotiation of the 1997 Framework Agreement on TLE in Manitoba. Practicing out of his offices located at Agency IR1 near Fort Frances, Ontario, he was also lead negotiator in the settlement of the Treaty land entitlement of Peguis First Nation in September 2008.

In August, 2008, Ms Genevieve Boudreau, the Assistant Chairperson left the IMC office to take on a new position. After a recruitment process, her replacement, Mr. Lloyd Grahame, joined the IMC Office in October, 2008.

Lloyd Grahame has over 25 years experience working with First Nations in Manitoba, the majority of which was directly related to fulfillment of outstanding TLE. Lloyd has a Bachelor of Environmental Studies degree and a Masters degree in Urban Planning. Lloyd was the Federal representative on the Lands Technical Working Group that was established during the MFA negotiations, and shared the federal lead role in developing the Land Transfer and Reserve Creation Process Manual; the three Party companion document to the MFA. Lloyd managed the Land Entitlement and Claims Implementation Office at INAC and chaired Canada's Additions to Reserve Policy Committee for five years.

Prior to negotiation of the MFA, Lloyd was responsible for the implementation of the Island Lake First Nation TLE Settlement Agreements. Lloyd has visited and met with every MFA First Nation community, managed over thirty Land Capability, Use, and Selection Studies and completed site assessments on over 125 TLE selections. Upon leaving INAC in 2001, Lloyd was retained by the O-Pipon-Na-Piwin Cree Nation as its principal technical advisor and together they negotiated recognition of OPCN as Manitoba's 63<sup>rd</sup> First Nation under Canada's Additions to Reserves/New Reserves/ New Bands Policy. In addition, his firm was retained by MKIO/KTC/Awasit to provide a strategic implementation plan respecting an urban reserve in Thompson; and by Fox Lake Cree Nation/Manitoba/Manitoba Hydro to provide a strategic implementation plan respecting an urban reserve in Gillam.



## 2.0 PROGRESS IN IMPLEMENTATION OF THE MFA

As observed in the Annual Report for fiscal year 2007/2008, it would be fair to say that all Parties struggled with understanding the scope and range of each Party's duties and responsibilities in the earlier stages of implementation, with the meaning of "Best Efforts of the Parties," as well as the role that the IMC itself had been directed to assume in the overall process. Working relationships were tested as the demands associated with implementation and in particular, the steps leading to Reserve creation required to satisfy the MFA and federal Additions to Reserve Policy became evident, as affirmed by the Reports of the federal Office of the Auditor General of November 2005 and March 2009. Clearly, many of these same factors bear upon the process today. Despite organizational improvements made by the IMC since 2007, the IMC has continued to struggle with its role in relation to resolution of disputes. Indeed, several of the issues or matters in dispute referred to the IMC Representatives shortly after the MFA was signed in 1997 remain unresolved. For example, despite substantial efforts over the last year, the Parties have been unable to reach a consensus on the various issues inhibiting the definition of an agreed form of Hydro Easement required under Article 12 of the MFA and identified as a priority matter for attention in Article 38. (Please refer to Section 5.0(i) for more detail on this matter.)

On the other hand, progress in implementation of the MFA has a number of elements around which positive performance in achievement of the MFA objectives may be measured.

### 2.1 STATISTICAL MONITORING

Shortly after the signing of the MFA, Manitoba's Crown Lands Branch developed an information management system it called "TRELES" (a short form of "Treaty Land Entitlement System") that has been relied on by all three Parties in tracking parcels of land through the provincial system leading up to transfer of the parcels to Canada. However, being a provincial system TRELES was not designed to track Crown land moving through the federal Reserve creation process before or after transfer to Canada. Prior to year end, Manitoba agreed it could, based on information to be provided to Manitoba by Canada, add data fields to TRELES to track key information including the status of the Environmental Site Audit, the status of the site survey, and the date of approval in principle pursuant to the Additions to Reserves Policy. Canada has committed to ensuring that this summary information is made available to Manitoba for this purpose. In order to produce the following graphical illustrations of Reserve creation from both an MFA and First Nation perspective, the IMC relied heavily upon the TRELES system developed and maintained by Manitoba.

Last year, the TLEC reported that it was near completion of its own internal electronic information tracking system by year end. The TLEC system was expected to be operational early this fiscal year, but the system was not completed and still not functional by the end of fiscal year 2008/2009. TLEC attributed this situation to insufficient financial resources.

Although a recommendation of the federal Auditor General's office in its report of November 2005, by the end of the 2008/2009 fiscal year end Canada had still not developed a comprehensive, functional system of internal monitoring of Reserve creation under the MFA through which Canada can advise and inform the other Parties and EFNs of progress in implementation. In examining overall statistical performance under the MFA, this Report focuses on the efforts of the 15 EFNs that have signed TEAs to date as shown in **Chart 3**, rather than the entitlement of all of the EFNs under the MFA. As noted in previous Reports, six EFNs entitled to enter into TEAs under the MFA have not executed an agreement to secure additional Treaty land.

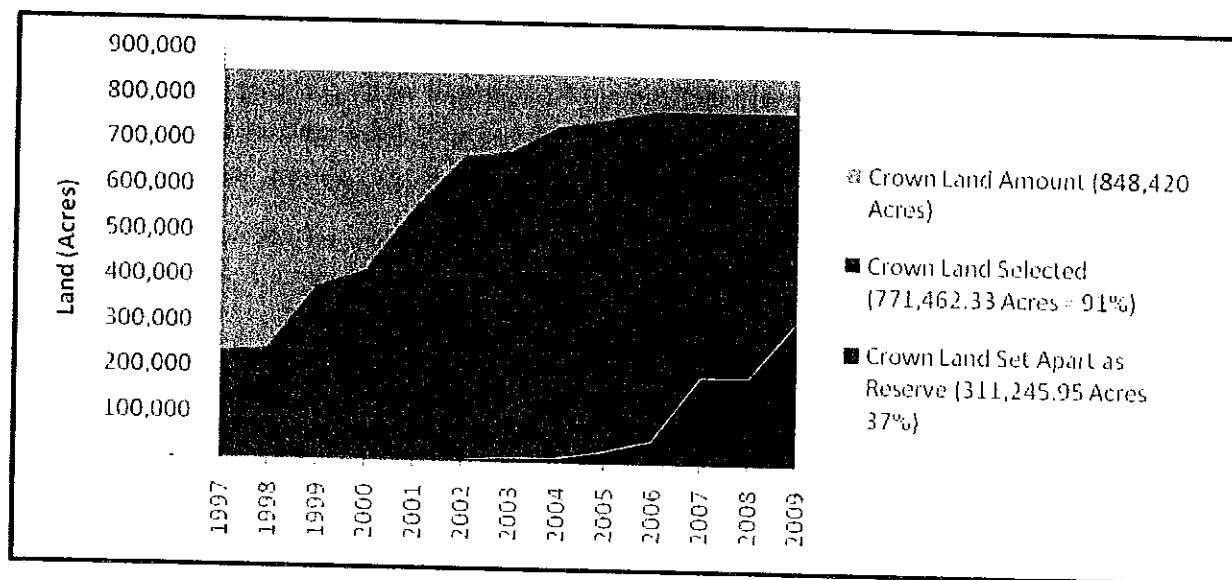
**Chart 3: Total amount of Crown Land and Other Land of the Fifteen Entitlement First Nations that have Signed TEAs**

Entitlement First Nations	Crown Land (Acres)	Other Land (Acres)	Total Land (Acres)
BARREN LANDS	66,420		66,420
BROKENHEAD	4,344	10,137	14,481
BUFFALO POINT	3,432	607	4,039
BUNIBONIBEE	35,434		35,434
GOD'S LAKE	42,600		42,600
MANTO SIPI	8,725		8,725
MATHIAS COLOMB	217,364		217,364
NISICAWAYASIIHK	61,761		61,761
NORTHLANDS	94,084		94,084
NORWAY HOUSE	104,784		104,784
OPASKWAYAK	47,658	8,410	56,068
ROLLING RIVER	2,356	44,756	47,112
SAPOTAWEYAK	108,134	36,045	144,179
WAR LAKE	7,156		7,156
WUSKWI SIPIHK	44,168	14,722	58,890
<b>TOTAL</b>	<b>848,420</b>	<b>114,677</b>	<b>963,097</b>

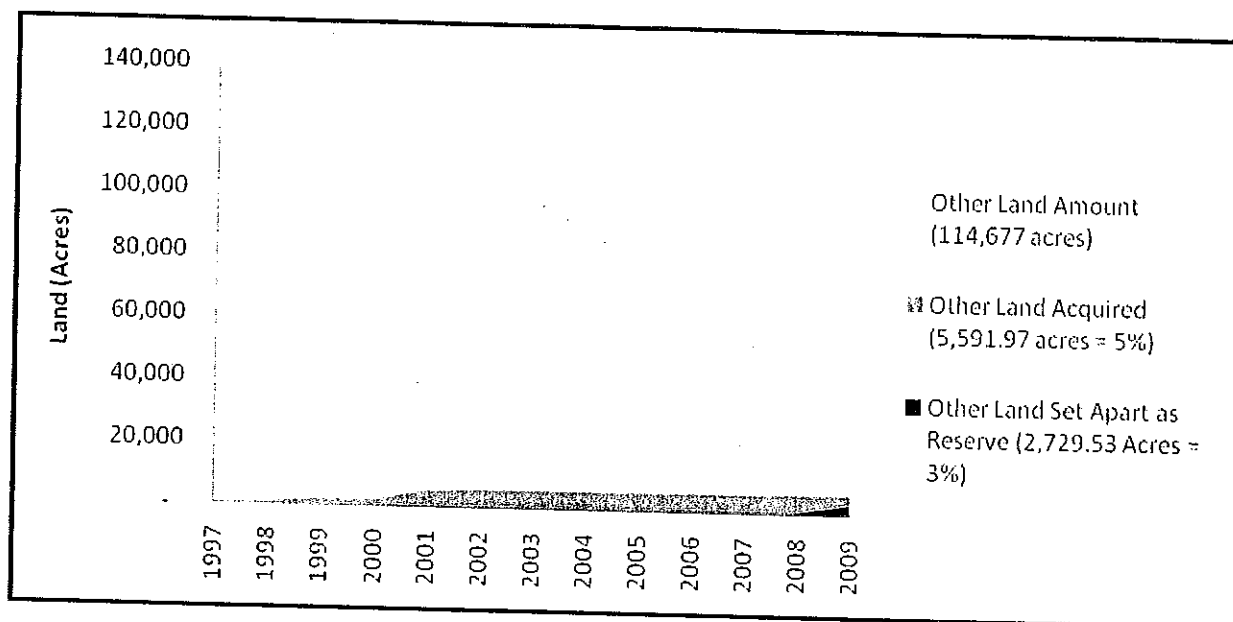
## 2.2 RATE OF CROWN LAND SELECTION AND PRIVATE LAND ACQUISITION

The overall rates of Crown Land selection and private land acquisition/purchase by the First Nations that have signed TEAs are shown in **Charts 4 and 5**.

**Chart 4: Rate and Amount of Crown Land Selection - 1997 to 2009 by the Fifteen Entitlement First Nations that have Signed TEAs**



**Chart 5: Rate and Amount of Other Land Acquisition - 1997 to 2009 by the Six Entitlement First Nations Entitled to Purchase or Acquire Other Land that have Signed TEAs**



As can be seen, on an overall basis, the 15 EFNs had Selected 91% of the total Crown Land Amount (771,462.33 acres) committed to the 15 EFNs, but the six EFNs entitled to purchase or acquire Other Land had acquired only 5% of the total private purchase/Other Land Amount (5,591.97 acres) committed to the six EFNs at year end.

- (a) **Crown Land:** Under the MFA, the EFNs were provided funds to complete a community planning and land selection exercise. The MFA provides for a target 3 - 5 year period for the completion of Crown Land selections. However, only 7 of the 15 EFNs have completed the selection of the total amount of their Crown Land entitlement to date. As anticipated by Article 4, extensions of target time periods for certain EFNs were confirmed by the IMC in the earlier years of implementation, but as reported last year, there were no extensions of the time periods for Crown Land selection in place (except for EFNs affected by the Land in Severalty matter before arbitration) or plans for attending to the balance of Crown Land selections at present. The matter of extension of the Periods of Selection was reviewed by the IMC Representatives of the Parties at an IMC Meeting on January 22, 2009, and the Representatives agreed that extensions were not an issue requiring attention at this time. However, the matter of completion of Crown land selections by EFNs remains a matter for ongoing discussion on a case by case basis as part of the implementation process.
- (b) **Other Land:** Under the MFA, for the six EFNs entitled to purchase or otherwise acquire land for Reserve, the target period for completion of the purchase or other acquisition process was 15 years after the date of each EFN's respective TEA. Accordingly, approximately 2/3 of that period has now passed for most of the EFNs. None of the EFNs entitled to purchase land have acquired all of the purchase land to date, nor are any of the EFNs near acquiring 2/3 of the purchase land entitlement as of this date. Over the past year there has not been any increase in the number of acquisitions confirmed by the six Schedule B EFNs.

As pointed out in the last Annual Report, it is readily apparent that the six EFNs with Other Land entitlement are unlikely to complete the community acquisition of private or Other Land within the target time period. Also expressly anticipated by Article 4, there were no steps taken to request from EFNs that detailed plans be put in place for attending to the target level of land purchases by the six EFNs. It is expected that a specific process of review with each of the six EFNs will be undertaken in 2009/2010.

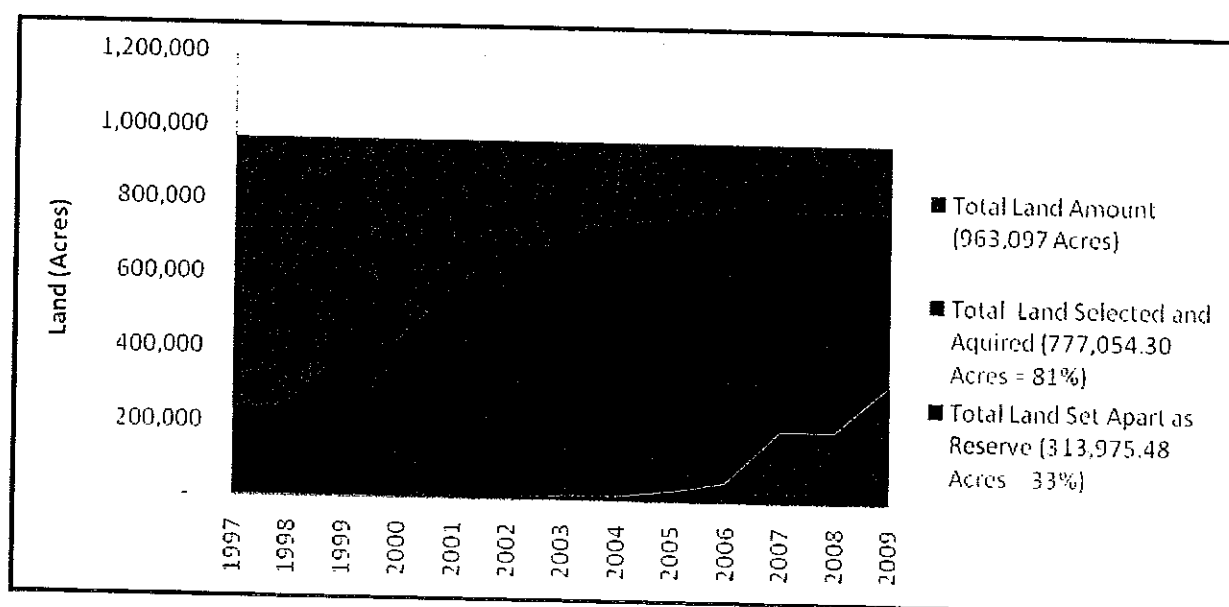
## 2.3 RESERVE CREATION AS A PERFORMANCE MEASUREMENT

### (a) Total Acres Set Apart as Reserve under the MFA:

For the purposes of the MFA, the measurement of progress has historically been the overall number of acres set apart as Reserve. Referring to **Charts 4 and 5** again, it can be seen that; 37% or 311,245.95 acres of the total Crown Land Amount for the 15 EFNs has actually been set apart as reserve, and 3%, or 2,729.53 acres of the total purchase/Other Land Amount has been set apart for the six EFNs found on Schedule "B" of the MFA.

Acceleration in the rate of Reserve creation has been recent as illustrated in **Charts 4 - 6**. As can be seen, the rate of acceleration of Reserve creation on an overall basis has noticeably increased since the commitment of the respective Ministers responsible in August of 2006. About 40% (126,444.20 acres) of the total amount of land now set apart as Reserve under the MFA was set apart by Canada during this past fiscal year. This positive progress could be somewhat misleading if not placed in context. It appears that the overall rate of implementation is generally accelerating; considering that some 140,465.95 acres of land were set apart as Reserve in fiscal year 2007/08, and a further 126,444.20 acres were set apart this past fiscal year. Accordingly, 84.97% of the total land set apart as Reserve for the EFNs to date has occurred during the past two fiscal years. However the Parties recognize that the degree of effort and administrative overhead required to transfer small parcels of land is comparable to that required to transfer large parcels of land, and with the largest parcels now transferred, it may be difficult to maintain this rate of implementation moving forward. For a complete listing of selections and acquisitions which have been set apart to the end of the fiscal year pursuant to the MFA, the date set apart, the official reserve name, and acreage; please refer to **Appendix B**.

**Chart 6: Rate of Reserve Creation - Total Land Amount - 1997 to 2009 by the Fifteen Entitlement First Nations that have signed TEAs**



**(b) Acres Set Apart as Reserve by each Entitlement First Nation:**

Examination of the acres of land set apart as Reserve for each EFN as a measurement of performance over the last 12 years tells another, more graphic story. For example, as set out in **Chart 7** below, at one end of the spectrum, two First Nations have still not had any land set apart for Reserve to date, while at the other end of the spectrum, the Sapotaweyak Cree Nation has had some 96,199.63 acres or 67% of its Total Land Amount set apart as reserve and the Bunibonibee Cree Nation has had some 25,026 acres or 71% of its Total Land Amount set apart as Reserve. As suggested in the last Annual Report of the IMC, progress under the MFA measured by way of acres set apart as Reserve may be one measure of performance on an overall basis against the Total Amount of Land set out in **Chart 6** above, but the IMC recognizes that it is also important to measure performance on a parcel basis and for each individual EFN as illustrated in the charts for the individual EFNs set out in **Chart 8** on pages 17 through 30.

During 2008/2009, 38 parcels of land were set apart as reserve for 11 of the EFNs. Four of the 15 EFNs with TEAs did not have any land set apart as Reserve for the use and benefit of the EFN during this fiscal year.

Even so, the Parties are committed to the achievement of the overall target of 150,000 acres for each of the next 2 years (Note: the target is inclusive of the four other TLE settlement Agreements in Manitoba ) apart from the general obligations of the Parties under the MFA. To a degree, internal planning and coordination efforts by the Parties continue to be focused on Reserve creation proposals that have the greatest likelihood of resolution each year and are able to be set apart by the August anniversary date of the Ministerial commitments. These parcels/proposals are those included on the Indian Affairs "Dashboard" plans. While the Parties agree that a focus on priority parcels of land identified by each EFN should be an important element of the Reserve creation efforts, the "Dashboard" plans developed by Indian Affairs and the priorities identified by the EFNs, are often quite distinct and separate. The Parties recognize that their annual (fiscal year) plan needs to include work/tasks to advance:

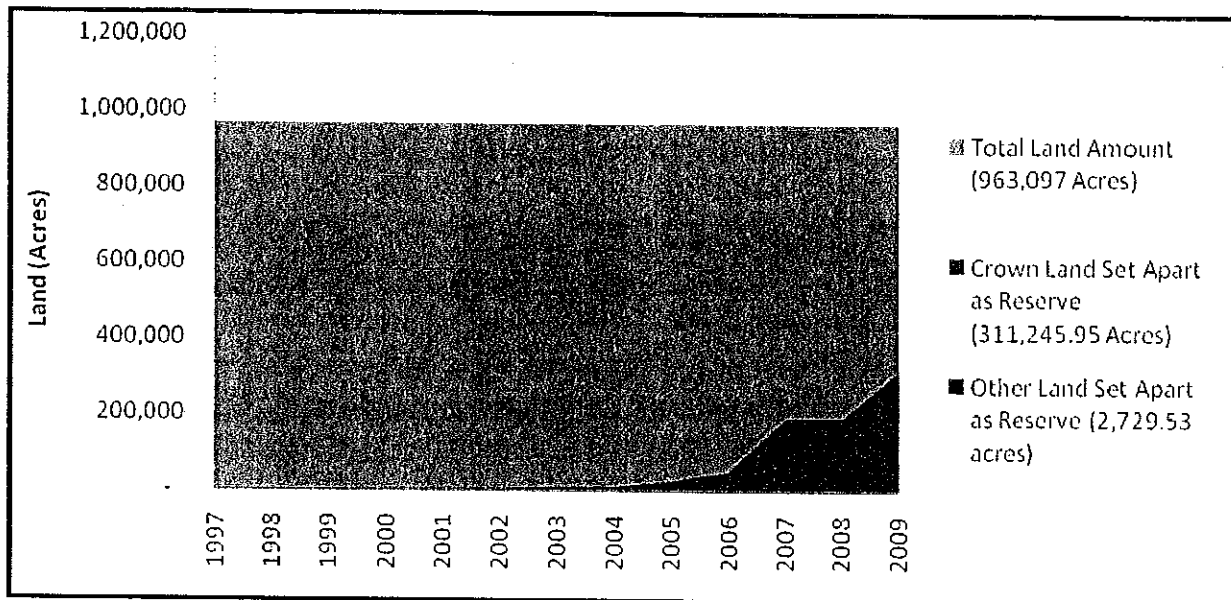
- the parcels on the "Dashboard" plan which are targeted for transfer by August,
- the parcels on the subsequent "Dashboard" plan which are targeted for transfer by the following August, and
- the EFN priority parcels (which are often more complex parcels which are anticipated to take more than one year to transfer), at a minimum.

Although the Parties did not achieve the Year 2 goal of 150,000 acres this past year, improvements in coordination and communications were again the direct result of the considerable efforts of staff responsible within Indian and Northern Affairs Canada (INAC), Aboriginal and Northern Affairs for Manitoba, Crown Lands Branch (Conservation) for Manitoba, TLEC and the individual EFNs involved. Similar continued efforts and cooperation are required to be similarly productive in ensuring that the EFNs ultimately secure the additional land resources assured to them by Treaty, the MFA and individual TEAs.

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*2 Other TLE settlements in Manitoba were reached with the four Island Lake First Nations (Garden Hill, Red Sucker Lake, St. Theresa Point and Wasagamack) – 100,000 acres in 1994; Long Plain First Nation – 4,169 acres minimum - 26,437 acres maximum in 1994; Roseau River Anishinabe First Nation – 5,861 acres minimum - 16,218 acres maximum in 1996; as well as the Swan Lake First Nation – 4,484 acres minimum - 13,035 acres maximum in 1995: involving a combination of Crown land selection (100,000 acres) and private purchase of land (14,514 minimum - 55,690 maximum acres) totaling 114,514 - 155,690 acres. The Island Lake First Nation's Treaty Land Entitlement Settlement Agreement is close to being fully implemented, with 101,260.91 acres of Crown land selections having been set apart as reserve. With respect to the 14,514 - 55,690 acres of acquisition land for Swan Lake, Long Plain, and Roseau River First Nations, a total of 10,116.45 acres, (or 69.7% of the minimum / 18.16% of the maximum), have been set apart as reserve. Individually, the rate of implementation varies considerably among these three First Nations: Swan Lake having 8,771.65 acres, (or 100% of the minimum / 67.29% of the maximum) set apart as reserve; Long Plain having 1,270 acres, (or 30.5% of the minimum / 4.8% of the maximum) set apart as reserve; and Roseau River having only 74.8 acres, (or 1.3% of the minimum / 0.5% of the maximum) set apart as reserve.*

**Chart 7: Rate of Reserve Creation - Crown Land versus Other Land - 1997 to 2008 by the Fifteen Entitlement First Nations that have signed TEAs**



**IMC NOTE:** In the above Chart 7, the amount of Other Land Set Apart as reserve is such a small percentage of the Total Land Amount, that it does not appear evident in this illustration.

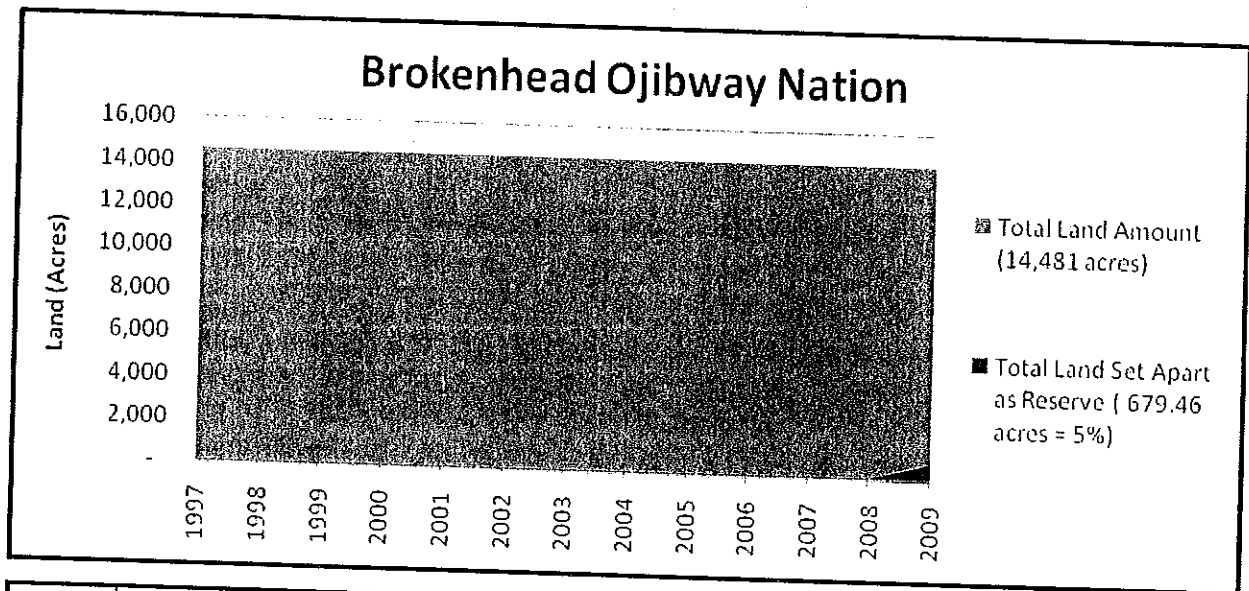
**(c) Reserve Creation – Total Crown Land Acres versus Other Land Acres Set Apart as Reserve under the MFA:**

When Crown Land acres and purchase land (Other Land) acres are separated out for comparison purposes as shown in **Chart 8**, it is quite evident that the purchase of land by First Nations for Reserve is lagging far behind the Crown Land selection and Reserve creation process. This element of implementation was to be given greater attention in the work plans associated with the six Entitlement First Nations purchasing private land, beginning fiscal year 2008/2009. However, other priorities intervened and this planning did not occur during the 2008/2009 fiscal year. As mentioned earlier in this Report, there was no increase in the number of acquisitions confirmed by the EFNs this year.

While the acquisition of Other Land is to be initiated by the six EFNs which have a purchase/Other Land entitlement, this is clearly not occurring. It is important for all Parties to understand why the acquisition of Other Land is not taking place. The TLEC is well positioned to communicate with these six EFNs and determine if the other Parties might be able to assist in this regard. Dialogue, leading to a better understanding may identify possible ways and means for the Parties to assist the EFNs and improve implementation of the MFA.

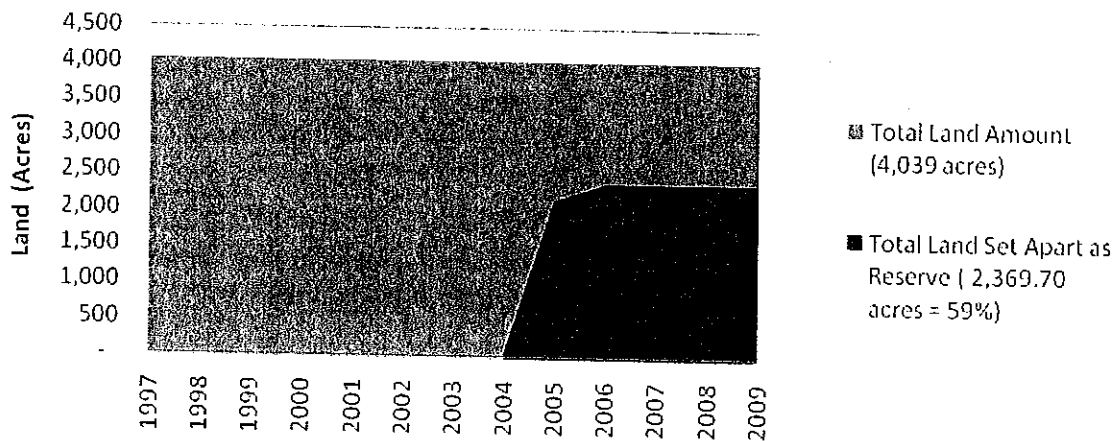


Chart 8: Total Acres set apart as Reserve for each of the Fifteen Entitlement First Nations that have Signed TEAs



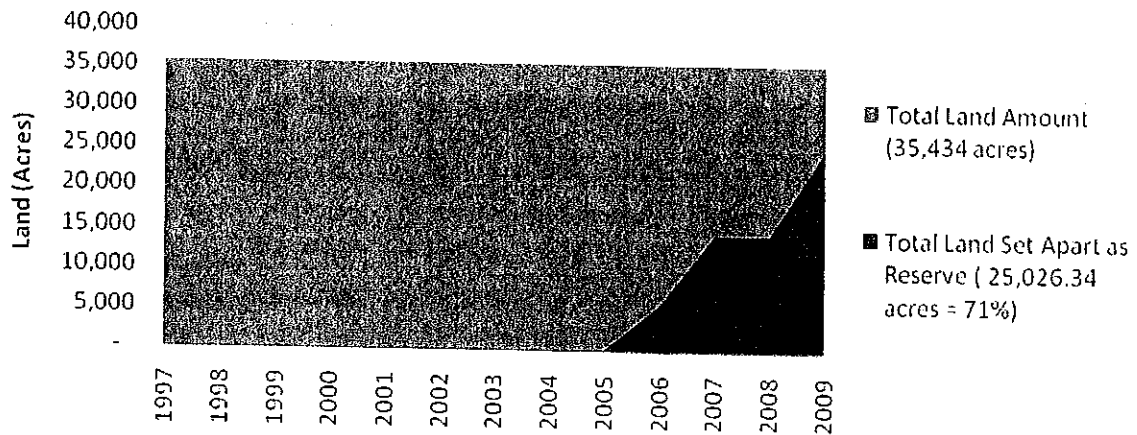
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2008	AUG. 27	MO-2008-032	Birch Landing Indian Reserve	510.58		Ironwood Point Phase 1
				161.42		Ironwood Point Phase 2
2008	OCT.1	MO-2008-040	Nashakepenais Indian Reserve	-	7.46	East St. Paul acquisition
			<b>TOTAL</b>	<b>672.00</b>	<b>7.46</b>	

## Buffalo Point First Nation



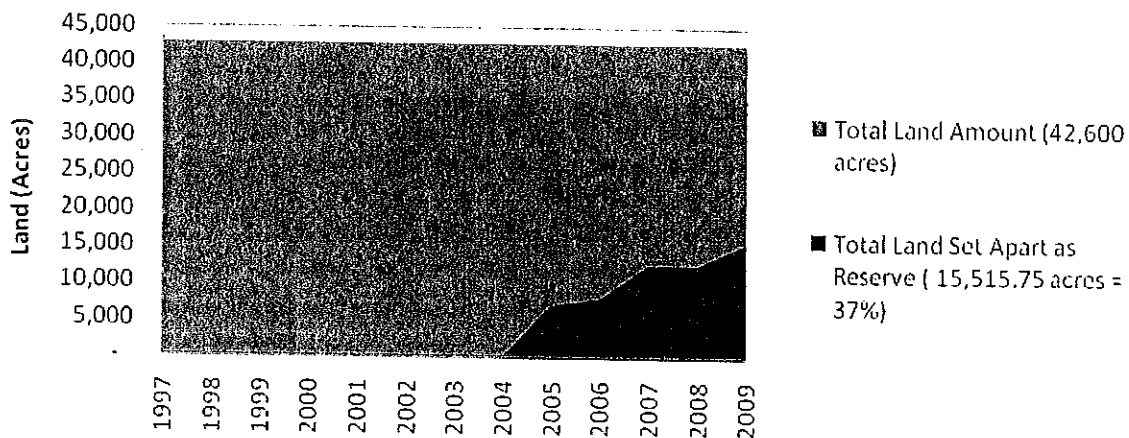
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION / ACQUISITION NAME
2005	FEB. 17	MO - 2005-001	Buffalo Point First Nation I.R. No. 1	92.40		PTH12 / International Boundary
2005	MAR. 14	MO-2005-003	Buffalo Point First Nation I.R. No. 2	859.70		Poplar Point
2005	MAR. 14	MO-2005-003	Addition to Reed River I.R. No. 36A	39.93		Goulds Point 4A
				283.17		Goulds Point 4B
				868.20		Goulds Point 4C
2006	APR. 3	MO-2006-004	Buffalo Point First Nation Indian Reserve No. 3	226.30		Buffalo Point Access Road
			<b>TOTAL</b>	<b>2,369.70</b>	<b>0</b>	

## Bunibonibee Cree Nation (Oxford House)



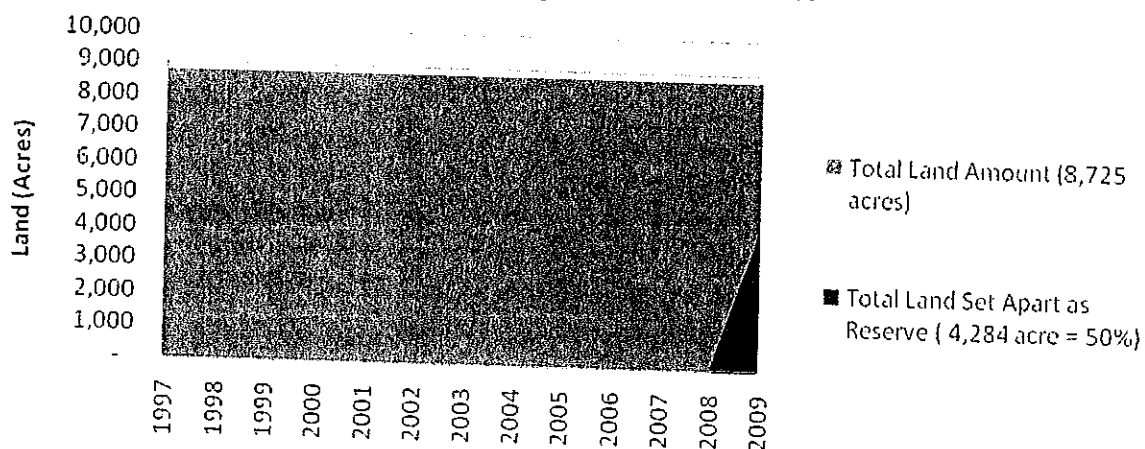
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2006	NOV.23	OCPC-2006-1407	Oxford House Indian Reserve No. 24A	361.00	No. 24A - Carrot Bay
			Oxford House Indian Reserve No. 24B	4,294.70	No. 24B - Colen Lakes
			Oxford House Indian Reserve No. 24C	993.00	No. 24C - Bear Lake
			Oxford House Indian Reserve No. 24D	11.34	No. 24D - Atikosis Lake
2007	JUL. 31	OCPC-2007-1170	Oxford Lake North Shore Indian Reserve	3,422.00	Oxford Lake North Shore
			Wapisew Lake Indian Reserve,	176.00	Wapisew Lake
			Whitemud Lake Indian Reserve	5,110.00	Whitemud Lake
2008	MAY. 29	OCPC-2008-991	Munro Lake Indian Reserve	3,684.00	Munro Lake Ridge
2008	AUG. 21	MO-2008-029	Notin Sakahekun Indian Reserve	6,974.30	Windy Lake
			<b>TOTAL</b>	<b>25,026.34</b>	

## God's Lake First Nation



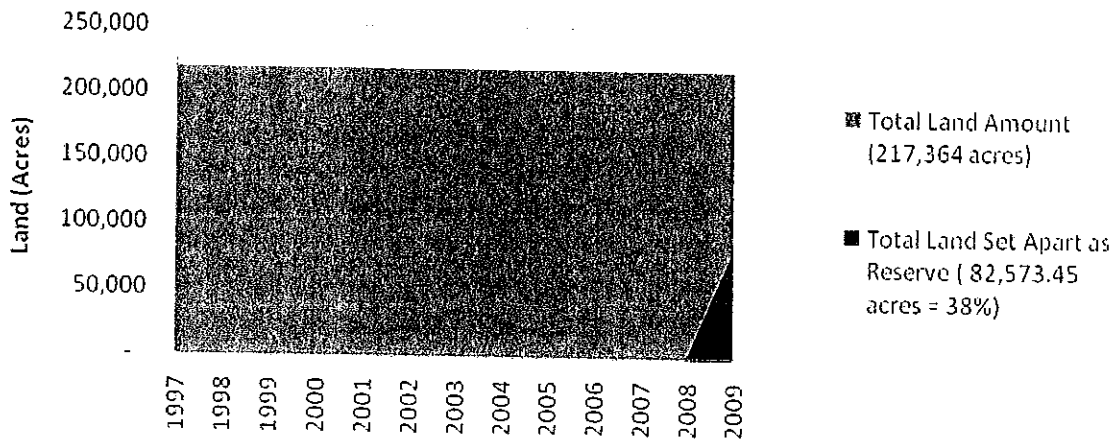
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2005	MAY 10	OCPC-2005-819	Andrew Bay Indian Reserve	168.50	Andrew Bay
2005	MAY 10	OCPC-2005-819	Chataway Lake/Knife Lake Indian Reserve	277.00	Chataway Lake/Knife Lake
2005	MAY 10	OCPC-2005-819	Vermilyea Lake Indian Reserve	8.35	Vermilyea Lake
2005	NOV.28	OCPC-2005-2237	North Prominent Ridge Indian Reserve	6,529.00	North Prominent Ridge
2006	JUN. 22	OCPC-2006-552	Red Cross Lake North Indian Reserve	313.30	Red Cross Lake North
			Red Cross Lake East Indian Reserve	671.60	Red Cross Lake East
2007	JUL. 31	OCPC-2007-1172	Esker Ridge B Indian Reserve	264.00	Esker Ridge
			Peter Burtons/Shorty Rapids Indian Reserve,	1,948.00	Peter Burtons/Shorty Rapids
			Wapaminakoskak Narrows Indian Reserve	2,347.00	Wapaminakoskak Narrows
2008	MAY 1	OCPC-2008-825	Esker Ridge A Indian Reserve	1,189.00	Esker Ridge A
2008	AUG.21	MO-2008-028	God's Lake Southeast of Community Indian Reserve	1,051.00	God's Lake Southeast of Community
2008	AUG. 21	MO-2008-030	Kenyan Lake Indian Reserve	749.00	Kenyon Lake
			<b>TOTAL</b>	<b>15,515.75</b>	

## Manto Sipi Cree Nation



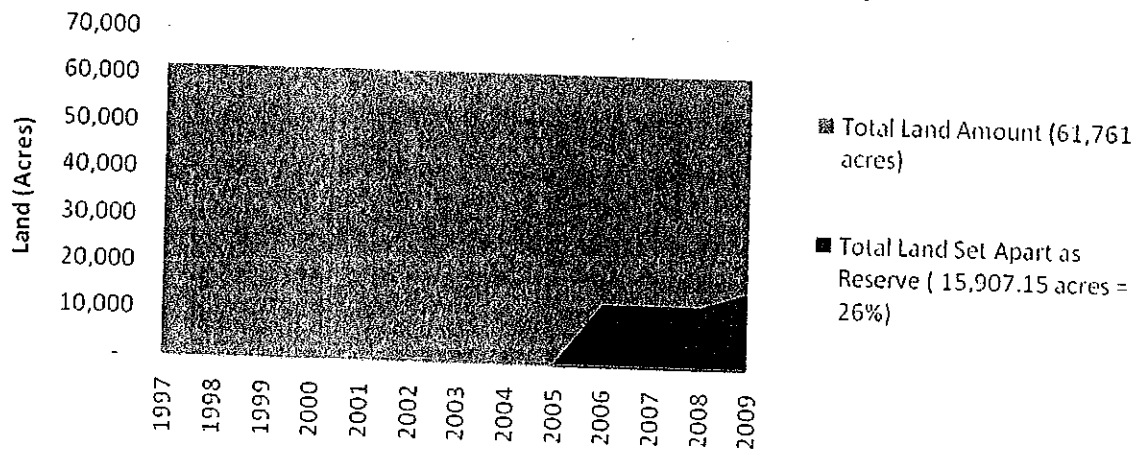
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2008	MAY 1	OCPC-2008-826	Chepi Lake Indian Reserve	264.00	Chepi Lake
			Prominent Ridge Indian Reserve	2,780.00	Prominent Ridge
			Hurley Island Indian Reserve	1,240.00	Hurley Island
			<b>TOTAL</b>	<b>4,284.00</b>	

## Mathias Colomb First Nation



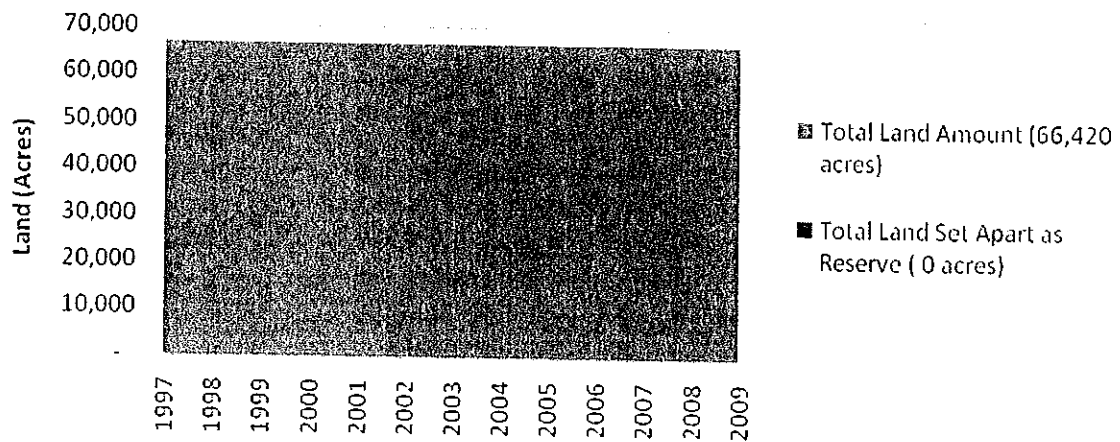
YEAR	DATE	OCPC/ MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2009	JAN.12	MO- 2009-003	Wepuskow Ohnikahp Indian Reserve	76,687.45	Churchill River Area 30A
2009	JAN. 12	MO- 2009-003	Napahkapihskow Sakhahigan Indian Reserve	4,520.00	Churchill River Area 30B
2009	JAN. 12	MO- 2009-003	Kimosominahk Indian Reserve	1,366.00	Churchill River Area 30D
			<b>TOTAL</b>	<b>82,573.45</b>	

## Nisichawayasihk Cree Nation

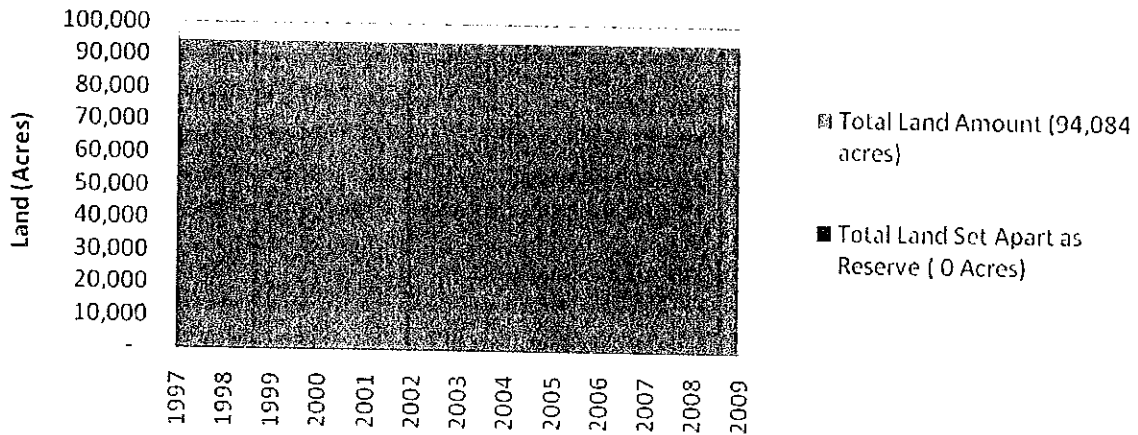


YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2006	JUN. 8	OCPC-2006-504	Kapawasihk Indian Reserve	4,621.00	Pakwaw Lake
2006	JUN. 8	OCPC-2006-505	Monahawuhkan Indian Reserve	986.00	Birch Tree Brook West
2006	JUN. 8	OCPC-2006-506	Opekunosakakanihk Indian Reserve	1,747.62	Harding Lake
2006	JUN. 8	OCPC-2006-507	Wapasihk Indian Reserve	3,586.50	Leftrook Lake
2006	JUN. 8	OCPC-2006-508	Wuskwi Sipi Indian Reserve	1,984.12	Gauer River
2008	SEPT. 5	MO-2008-036	Opekanowi Sakaheykun Indian Reserve	26.91	Apeganau Lake Addition
			Numaykoos Sakaheykun Indian Reserve	2,955.00	Baldock Lake Addition
			<b>TOTAL</b>	<b>15,907.15</b>	

## Barren Lands First Nation

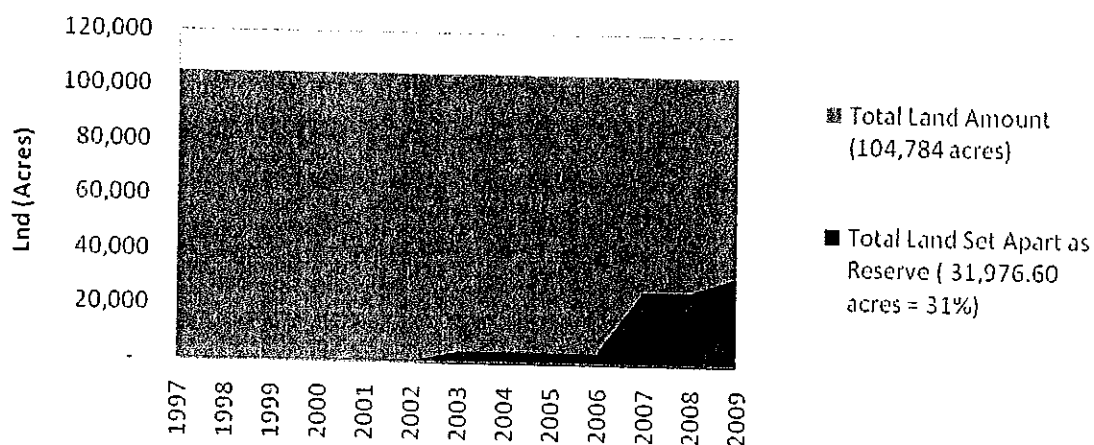


## Northlands Dene First Nation



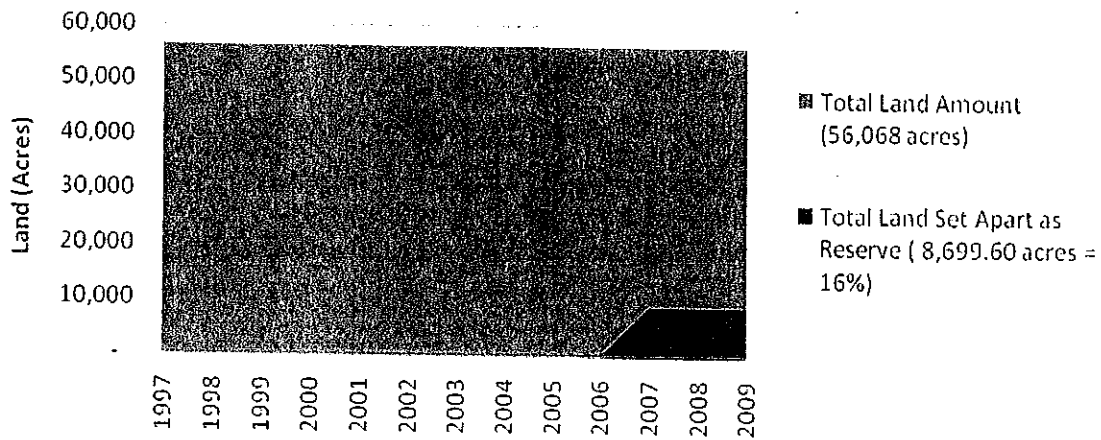


## Norway House Cree Nation



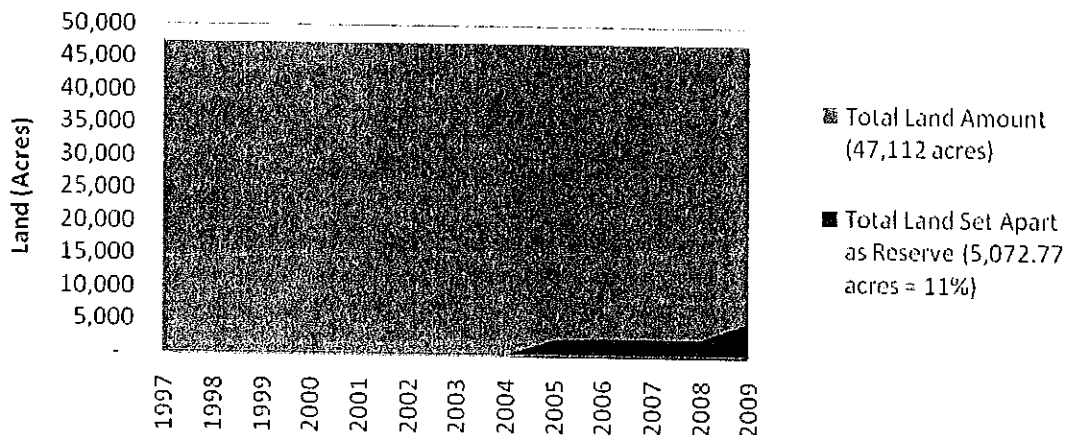
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2003	DEC.3	OCPC 2003-1936	Ponask Lake Indian Reserve	3,898.95	Ponask Lake
2007	AUG. 10	MO-2007-018	Norway House Indian Reserve Nos. 17C1 to 17C-46	2,021.25	(i.e., numbered 1 to 46 inclusive) - Molson Lake Islands
2007	AUG.10	MO-2007-019	Norway House Indian Reserve Nos. 17D-2 17D-3 (Costes Lake B), 17D-4 (Beach Lake) 17D-5 (Little Bolton Lake A & C) 17D-6 (Echimamish River A and The High Rock) 17D-7 (Echimamish River B) 17D-8 (Nelson River East Channel B) 17D-9 (Lawford Lake)	2,916.00 219.00 84.00 792.00 1,357.00 35.00 1,011.60 724.30	Island River A & B 17D-3 (Costes Lake B), 17D-4 (Beach Lake) 17D-5 (Little Bolton Lake A & C) 17D-6 (Echimamish River A and The High Rock) 17D-7 (Echimamish River B) 17D-8 (Nelson River East Channel B) 17D-9 (Lawford Lake) **N.B. There are 3,596 more acres to be transferred as per Prov. OIC No. 324/2006 dated Aug. 2/06.**
2007	AUG. 10	MO-2007-020	Norway House Indian Reserve No. 17D-1	3,598.00 9,915.00	North Molson Lake Phase 3 North Molson Lake Phase 1**N.B. This reserve creation was taken from Prov. OIC Nos. 450/2004 dated Nov. 3/04 and 324/2006 dated Aug. 2/06. There are 8,881 more acres to be transferred as per Prov. OIC No. 450/2004 dated Nov. 3/04.*G53*
2008	DEC.19	MO-2008-043	Anderson Indian Reserve	3,105.40	Painted Stone Portage A
2008	DEC.19	MO-2008-043	Hart Indian Reserve	2,299.10	Painted Stone Portage C
TOTAL				31,976.60	

## Opaskwayak Cree Nation



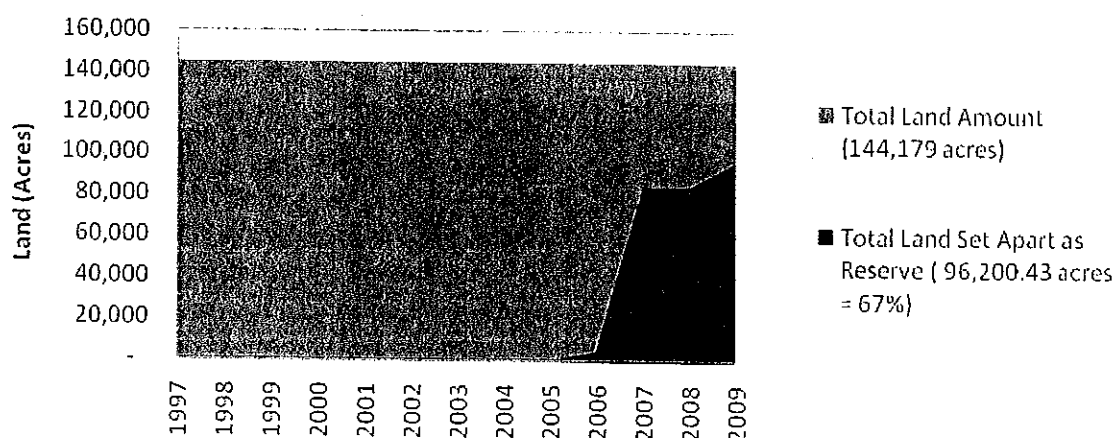
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2007	AUG.10	MO-2007-022	Root Lake Beach Ridge Site Indian Reserve	8,699.60		Root Lake Beach Ridge Site
			TOTAL	8,699.60	0	

## Rolling River First Nation



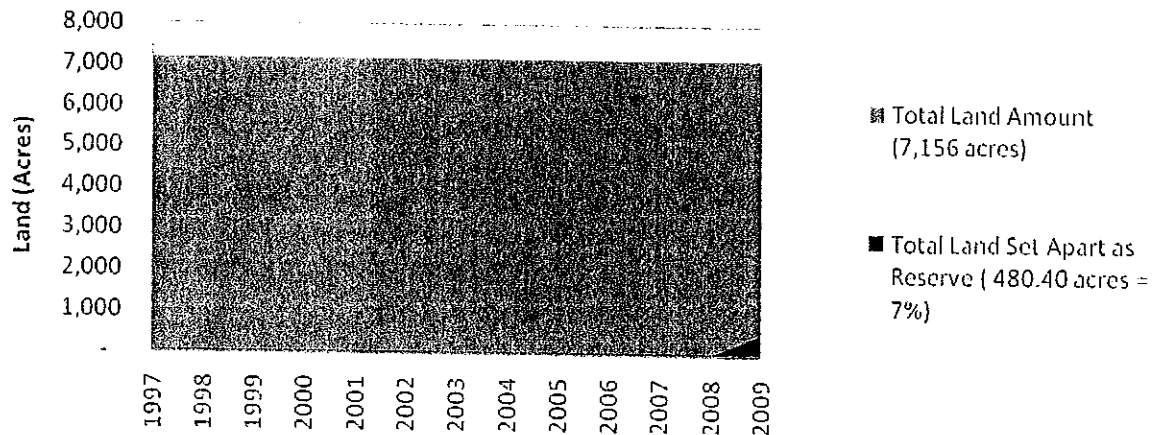
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION / ACQUISITION NAME
2005	MAY 9	MO-2005-006	Rolling River Indian Reserve No. 67A	163.44 163.62 817.54 971.52 163.35 20.13 51.10		3b - Onanole WMA 3c Onanole WMA 3d Onanole WMA 4 Bald Hills 5 NE 12-19-18 WPM RA1 - Interior Road Allowances RA2 - Exterior Road Allowances
2006	MAY 29	MO-2006-009	Rolling River Indian Reserve No. 67 B	-	158.14	Ronald Hill acquisition property
2009	FEB. 26	MO-2009-006	Addition to Rolling River Indian Reserve No. 67		1,823.90	E1/2 of SE 1/4 24-16-19 WPM (Site No. 3-01) - 80.00 NE 1/4 24-16-19 WPM (Site No. 2-01) - 157.92 NE 1/4 30-17-18 WPM (Site 2) - 155.00 NE 1/4 34-16-19 WPM (Site No. 11-01) - 160.00 NW 1/4 18-17-18 WPM (Site No. 3-02) - 156.00 NW 1/4 25-16-19 WPM (Site No. 8-01) - 160.00 S 1/2 36-16-19 WPM (Site No. 14-01) - 320.00 SE 1/4 34-16-19 WPM (Site No. 10-01) - 160.00 SW 1/4 25-16-19 WPM (Site No. 9-01) - 160.00 SW 1/4 26-16-19 WPM (Site No. 7-01) - 160.00 SW 1/4 31-17-18 WPM (Site 1) - 155.00
2009	FEB. 26	MO-2009-006	Addition to Rolling River Indian Reserve No. 67A		164.00	E1/2 of SW 1/4 13-19-18 WPM (Site No. 1-02) - 82.00 W 1/2 of SW 1/4 13-19-18 WPM (Site No. 2-02) - 82.00
2009	FEB. 26	MO-2009-006	Addition to Rolling River Indian Reserve No. 67B		576.03	NE 1/4 27-17-18 WPM (Site 8) - 144.00 NW 1/4 26-17-18 WPM (Site 7) - 157.00 NW 1/4 27-17-18 (Site 10) - 101.00 SE 1/4 34-17-18 WPM (Site 9) - 19.00 SW 1/4 26-17-18 WPM (Site 6) - 155.03
			<b>TOTAL</b>	<b>2,350.70</b>	<b>2,722.07</b>	

## Sapotaweyak Cree Nation



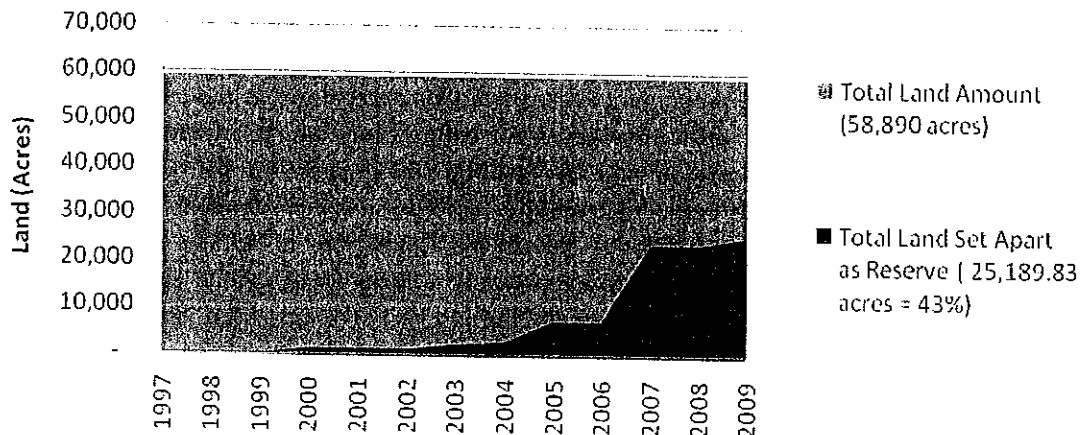
YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2006	APR. 3	MO-2006-004	Sapotaweyak Cree Nation - Spruce Island Indian Reserve	4,566.00		Spruce Island
2007	JUL. 23	MO-2007-014	Sapotaweyak Cree Nation Indian Reserve	58,745.20		Dawson Bay **N.B. There are 6,719.6 more acres to be transferred as per Prov. OIC No.516/2006 dated Nov. 29/06.**
2007	AUG. 10	MO-2007-021	Pelican Rapids Access Road Phase 1 Indian Reserve	20,780.00		Pelican Rapids Access Road Phase 1
2008	JUN. 16	MO-208-017	Addition to Sapotaweyak Cree Nation Indian Reserve	6,719.60		Dawson Bay - Phase Two
2008	AUG. 27	MO-2008-031	Addition to Sapotaweyak Cree Nation Indian Reserve	4,230.73		Dawson Bay - Phase Three
2008	SEPT.4	MO-2008-034	Overflowing River Sapotaweyak Cree Indian Reserve	1,158.90		Overflowing River
			<b>TOTAL</b>	<b>96,200.43</b>	<b>0</b>	

## War Lake First Nation



YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	FORMER SELECTION /ACQUISITION NAME
2008	SEPT.4	MO-2008-035	Moosecoot Indian Reserve No. 2	351.90	No. 2 - Rock Quarry
			Moosecoot Indian Reserve No. 3	128.50	No. 3 - Landing River
			TOTAL	480.40	

## Wuskwi Sipihk Cree Nation

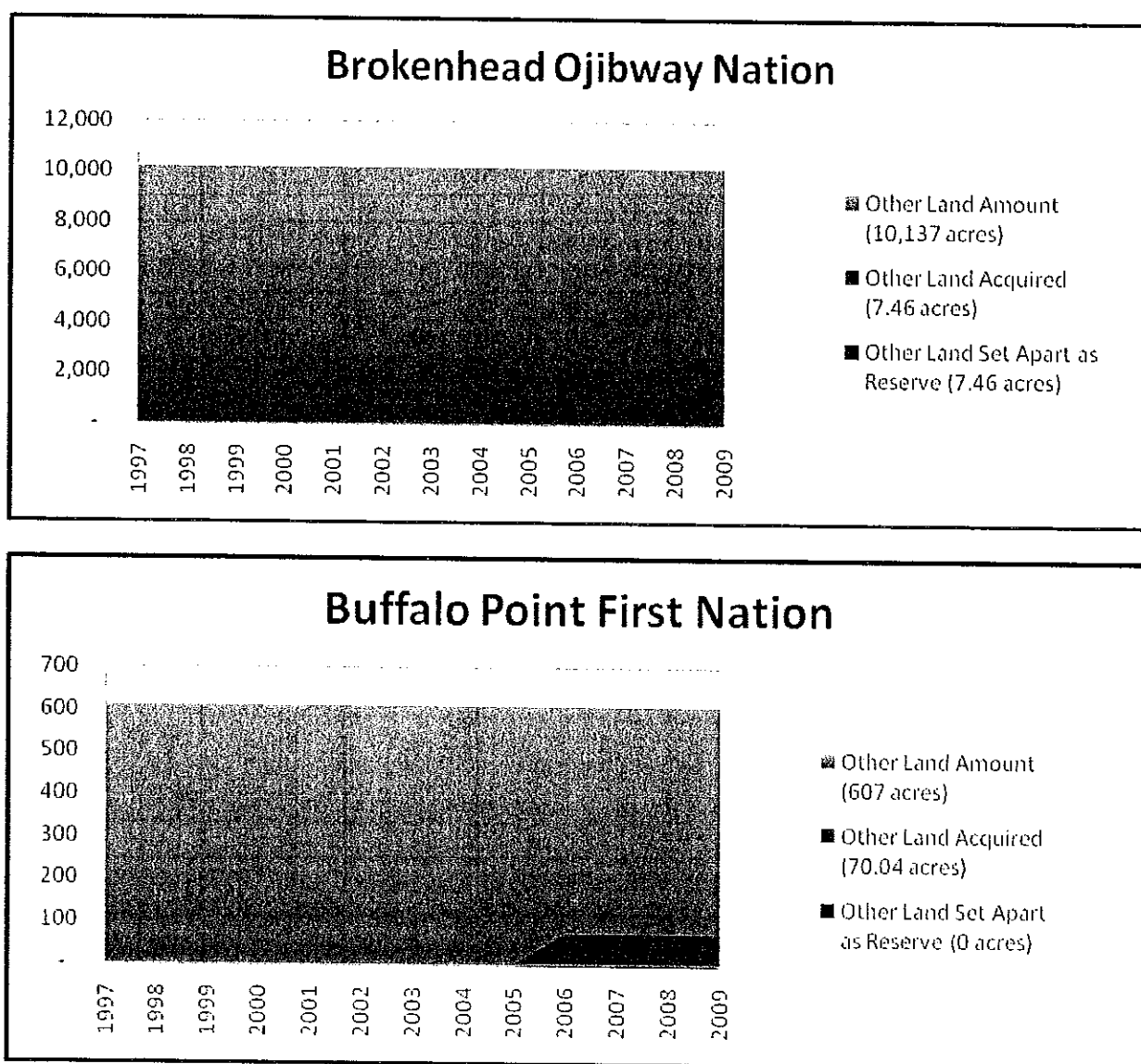


YEAR	DATE	OCPC/MO NO.	RESERVE NAME - ADDITION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION / ACQUISITION NAME
2000	MAR. 23	OCPC 2000-378	Wuskwi Sipihk I.R. FN No. 1	1,049.00		Old Building Bay Phase 1
			Wuskwi Sipihk I.R. No. 2	226.18		PTH No. 10
2003	DEC. 3	OCPC 2003-1938	Addition to Wuskwi Sipihk First Nation I.R. No. 1	995.80		Old Building Bay Phase Two
2004	APR. 22	OCPC-2004-442	Wuskwi Sipihk First Nation I.R. No. 4	472.00		Stone Ridge Point
2005	FEB. 1	OCPC-2005-66	Wuskwi Sipihk Indian Reserve No. 5	3,644.20		Bell River / PTH 10
2005	FEB. 1	OCPC-2005-66	Wuskwi Sipihk Indian Reserve No. 6	270.30		Mafeking North
2005	MAR. 22	OCPC-2005-416	Wuskwi Sipihk Indian Reserve Nos. 3A, 3B, 3C, 3D, 3E and 3F	510.40		Swan Lake Islands (510.39)
	DEC. 6	OCPC-2005-2297				regarding Amendment to P.C. 2005-416 due to correction in wording in OCPC
2007	MAY 10	OCPC-2007-726	Wuskwi Sipihk Indian Reserve No. 8	1,845.00		North Steeprock Lake
2007	JUL. 23	MO-2007-013	Wuskwi Sipihk Indian Reserve No. 7	14,456.00		Kettle Hills
2008	OCT. 1	MO-2008-039	Addition to Wuskwi Sipihk First Nation Indian Reserve No. 1	1,720.95		Various Crown/Leased agricultural lands
			<b>TOTAL</b>	<b>25,189.83</b>	<b>0</b>	

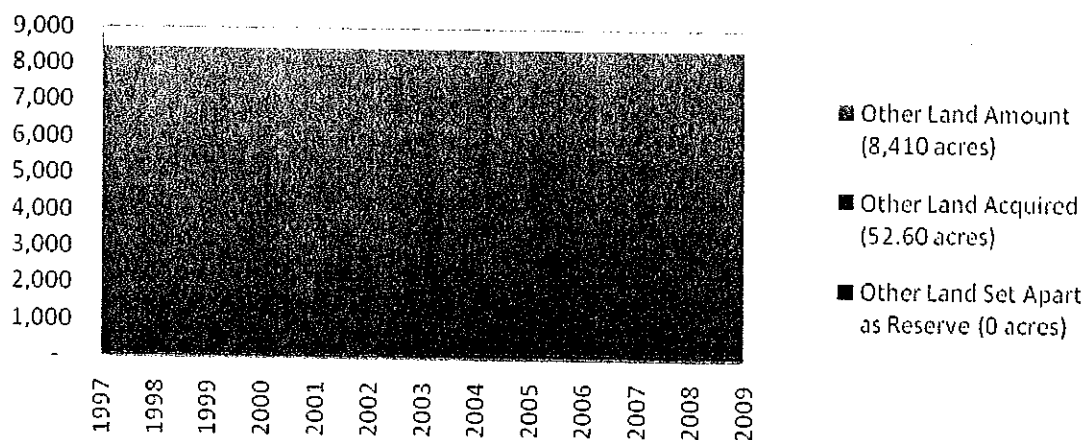
**(d) Other Land Acres Set Apart as Reserve – Six Entitlement First Nations:**

Separating the Crown Land acres from the Total Land amount, to focus solely on implementation of the private land (Other Land) provisions of the MFA for the six EFNs with purchase rights; can assist in measuring implementation of this aspect of the MFA. The six EFNs are entitled to purchase up to 114,677 acres of land for reserve. Land acquisition, which is to be initiated by the six Schedule "B" EFNs, has been minimal to date. See **Chart 9** below. Although only 5,591.97 acres of land representing 4.8% of the total has been acquired for Reserve by the six EFNs having this right to date, some 49% of that amount representing sixteen parcels of land consisting of 2,729.53 acres has been set apart as Reserve. These sixteen acquisitions were set apart as the Nashakepenais Indian Reserve for Brokenhead Ojibway Nation and as additions to Rolling River Indian Reserves #67, #67A, and #67B. Purchase land represents a distinct and unique challenge that requires specific attention by the Parties and the six involved EFNs in the next fiscal year and beyond.

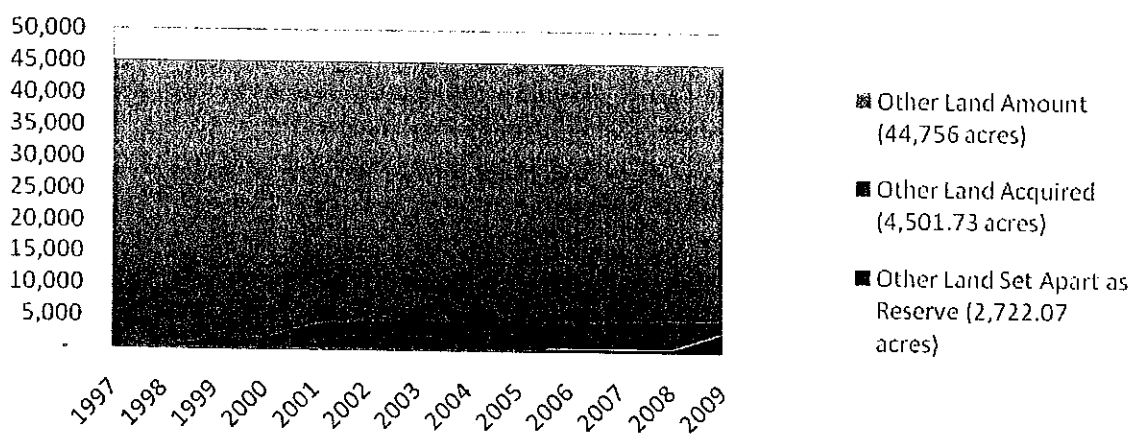
**Chart 9: Other Land Amount, Other Land Acquired, and Other Land Set Apart as Reserve**



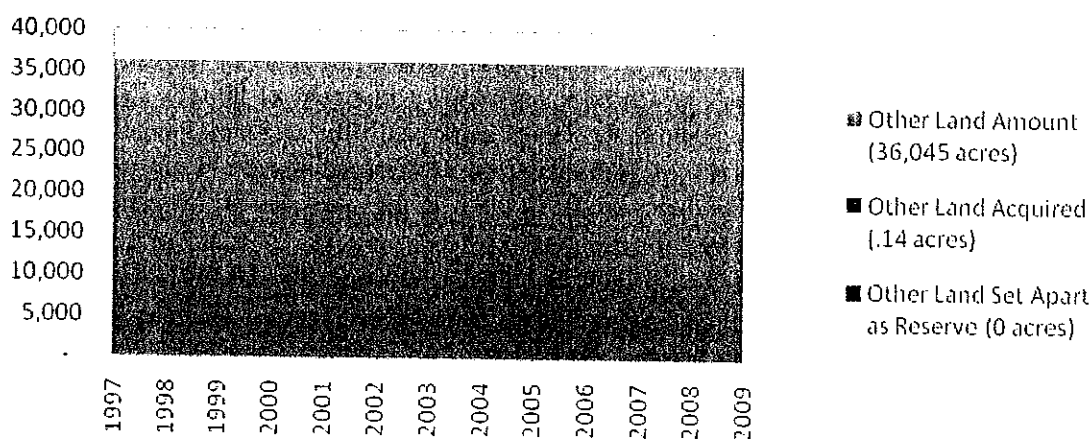
## Opaskwayak Cree Nation



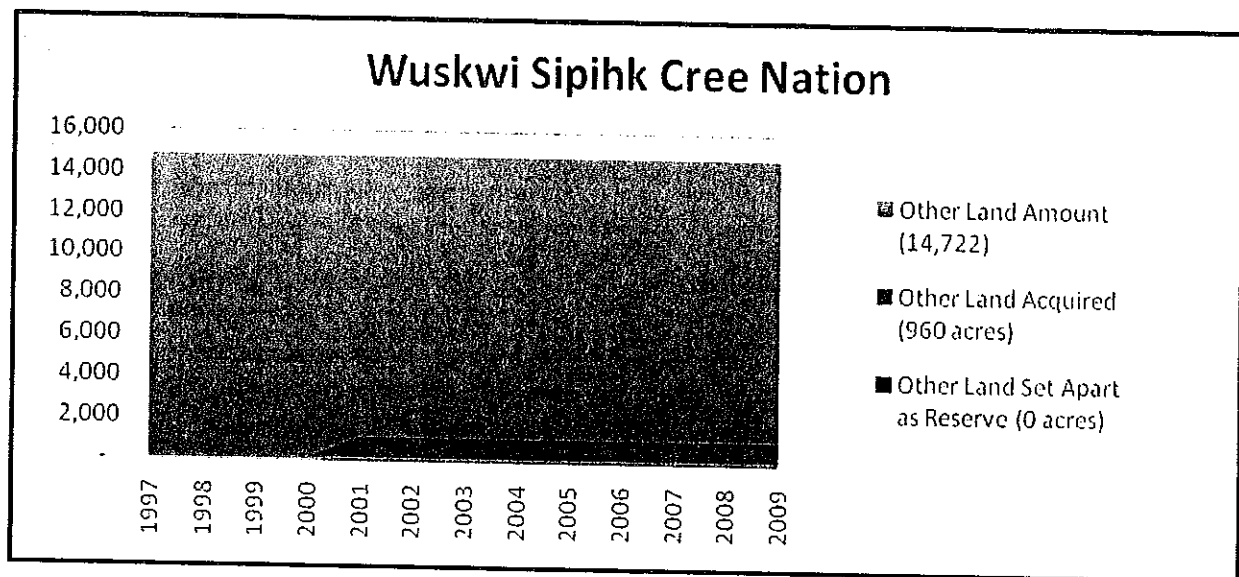
## Rolling River First Nation



## Sapotaweyak Cree Nation







As can be seen in **Chart 9**, even though 16 additional acquisitions of Other Land were set apart as reserve during 2008/2009, there has been minimal progress in terms of Reserve creation associated with the purchase or other acquisition of land by the six EFNs which have a purchase/Other Land entitlement over the past 12 years. Purchase or other acquisition of land is initiated by the involved EFNs. The Parties did not determine the reasons for this situation during fiscal year 2008/2009, although a special initiative for fiscal year 2009/2010 has been discussed.

## 2.4 COORDINATION AND STRATEGIC PLANNING

Overall coordination and communications improved this past year, partially assisted by the target of 150,000 acres of Reserve creation in Manitoba per year for 4 years set by the then Minister of Indian Affairs and supported by the Minister of Manitoba Aboriginal and Northern Affairs on August 22, 2006.

### (a) Coordination and Communication:

Indian Affairs initiated an exercise in annual and future planning to identify priority parcels of land for reserve creation and to produce a focus list of parcels of land by EFN considering the key tasks and issues affecting each parcel (e.g. timelines for completion of title examination, environmental clearance, survey, resolution of third party interests, size, use agreements, etc.). If the results of this analysis resulted in a determination that a parcel could be set apart by August, it was included in the INAC "Dashboard plan", which is an important component of INAC's annual work plan. INAC's focus is on this component of the annual work plan - the accomplishment of the target of setting apart of 150,000 acres of land per year as Reserve based on the joint Ministerial commitments by August 22<sup>nd</sup> of each year. Progress with the other two primary components of the annual work plan; work required to advance the subsequent year's "Dashboard" plan parcels, and work required to steadily advance parcels identified as priorities by the EFNs, is currently more difficult to measure. One reason these aspects of the INAC's annual plan are more difficult to measure may be due to the fact that the process is not fully supported by an information monitoring system accessible or available to all Parties. As information monitoring becomes more parcel specific, it is anticipated that specific impediments to improved implementation will be more readily identifiable, and if so, can then be specifically addressed. It appears that the limited staff resources at TLEC affect the level of assistance provided to EFNs at the community level, and perhaps the limited administrative capacity of the EFNs to respond to the Parties' demands and timelines is a factor affecting the pace of implementation. Achievement of the target of 150,000

acres per year will be an increasingly difficult challenge in 2009/2010 and years thereafter without; all Parties having sufficient resources, trained, experienced staff, and a more detailed monitoring system to identify parcel specific implementation impediments. Improved coordination and communications among the Parties, the resolution of priority referrals by the IMC Strategic Planning initiative, and other process related improvements will also assist the Parties in meeting the upcoming challenge.

**(b) Strategic Planning:**

Three Party Strategic Planning is now in its preliminary stages and required to enable the Parties to move forward with implementation in a coordinated and efficient manner. As there have been few new Crown land selections over the last several years; the parcels and the matters that need to be addressed for each to move forward through the land transfer process are well known to the Parties. What has been lacking is consensus on how these matters should be addressed to ensure the parcels are set apart. During the past fiscal year, the Parties and certain EFNs have accomplished this consensus with respect to 38 parcels of land. It is anticipated that this consensus on how matters impeding transfer might be addressed can now be applied to additional parcels affected by similar impediments.

The IMC office convened a focus meeting on Strategic Planning on March 3, 2009 at the request of the Representatives of the Parties. Despite the limited information available regarding the status of the key steps completed to date for the various Selections and Acquisitions, a number of undertakings were developed and accepted by the Parties, most of which were outstanding at year end. In addition, by year end, the Parties had each reiterated support for three Party Strategic Planning and requested the IMC office to convene additional Strategic Planning sessions.

**2.5 OTHER IMPLEMENTATION ISSUES**

**(a) Third Party Interests:**

The task of resolving the long list of Third Party Interests (TPIs) with a variety of means and methods has been identified as the key issue affecting Reserve creation for some time. Indeed, 273 TPIs affect some 63 parcels of land encompassing a total of 91,640.48 acres of land (Source: February 19/09 TRELES report). Manitoba has developed a TPI impact report from TRELES which can be used to develop a specific strategic plan for the resolution of Third Party Interests in 2009/2010.

**(b) Agreements with Six Unsigned First Nations:**

As of this date, the following six First Nations have not decided to enter into TEAs under the MFA. However, the Marcel Colomb Cree Nation is near completion of the pre-requisites to enter into a TEA under the MFA and is expected to sign a TEA in 2009.

- Fox Lake First Nation
- Sayisi Dene First Nation
- Marcel Colomb Cree Nation
- Shamattawa First Nation
- O-Pipon-Na-Piwin Cree Nation
- York Factory First Nation

Each First Nation listed in the MFA may choose to consider entering into a TEA or choose not to do so. The IMC Representatives made an effort to assist those First Nations interested in pursuing a TEA in fiscal year 2008/2009. Although as mentioned, one EFN is close to doing so, no additional TEAs were entered into during 2008/2009. The Parties expect to develop a work plan with timelines to go forward with those First Nations interested in TEAs during the forthcoming fiscal year; otherwise, the IMC Representatives should review whether or not further efforts should be committed to this exercise in future years and the First Nations should be so advised.

**(c) Periods of Selection and Acquisition:**

Crown Land Selection: In accordance with Paragraph 4.01(a) of the MFA, an EFN may select land up to its Crown Land Amount within three years from the date its TEA comes into force. An EFN may request extension of periods in accordance with Section 4.02 for both Selections and Acquisitions. The IMC may also request a plan from an EFN if it appears it will not complete its Selections or Acquisitions within the target time periods. In 2002 and 2003, some EFNs requested time extensions to confirm Selections, but other than the extensions accorded to the Barren Lands First Nation and Northlands First Nation, all the extensions accorded by the IMC have expired. For Barren Lands and Northlands, the extension will be extended for an additional three year period after the date of resolution of the land in severalty issue.

Other Land Acquisition: In accordance with Paragraph 4.01(b) of the MFA, an EFN may acquire land up to its Other Land Amount within 15 years from the date the EFN's TEA comes into force. The six EFNs with land purchase rights signed TEAs in or about 1999, and therefore the six EFNs have approximately five to six years to complete the necessary private land purchases with the benefit of the Principles for Land Selection and MFA based Additions to Reserve guidelines. However, since little progress has been made in relation to land purchase, the development of specific plans for each EFN is a matter of priority. There were no additional acquisitions confirmed by any of the six EFNs this past fiscal year.

When discussed by the IMC this year at a meeting dated January 22, 2009, the Representatives noting the lack of extensions for the target time periods set for EFNs to complete their Crown Land Selections, reached a consensus that the matter was not an issue for the Parties and with the extent of technical issues to be dealt with to improve TLE implementation/turn around times, etc. would not address the matter until or if it was raised as an issue by a Party or affected EFN. In the meantime, the Parties will continue to act as if the periods had been extended and the Principles and other provisions continue to apply to each EFN. Plans for the completion of Selections and Acquisitions are expected to be further defined during the next fiscal year as multi-year strategic planning begins to be implemented by the Parties.

### **3.0 IMPROVEMENTS IN IMC ADMINISTRATION AND PRACTICES**

In an effort to continue moving forward as part of the renewal initiative, the Parties continued to review existing practices and processes involving the IMC this year, an internal examination undertaken with a view to identifying means and methods for improvement in the functioning of the IMC.

Although one of the IMC's primary tasks is to make recommendations to the Parties for the resolution of any issue or matter in dispute relating to the implementation of the MFA or any TEA referred to it by any Party or EFN, it remains evident to the Parties that the IMC is not functioning effectively in the manner directed by the MFA. Relatively few issues or matters in dispute had been adequately defined or addressed in the manner anticipated by the MFA after its execution in 1997. As a result, the majority of issues or matters in dispute remain partially or completely unresolved for an inordinate amount of time. In response the representatives of the Parties agreed to improve the functioning of the IMC by undertaking a number of specific initiatives as follows:

### 3.1 STRUCTURED APPROACH TO PROBLEM SOLVING

With respect to unresolved issues or matters in dispute referred to the IMC as identified on the draft Current List, the Parties further recognized the need for a more structured approach to determination of the issue, assembly of the relevant facts, assessment/interpretation of the applicable provisions of the MFA, the identification of options or alternatives for resolution of the issue and consideration of the recommendations of the Chairperson. In the event the IMC was unable to resolve an issue or matter in dispute, the IMC or Chairperson is obliged to provide the Senior Advisory Committee with an overall summary statement containing the above stated information/review. Accordingly, with the assistance of the IMC office, an agreed format for the referral and review of an issue or matter in dispute was developed and confirmed by the IMC Representatives during the 2007/2008 fiscal year for use in relation to dispute resolution. A copy was attached as Appendix C to last year's Annual Report.

After the IMC Representatives confirmed a standardized approach to review issues or matters in dispute in the form of the "protocol" in 2007, the IMC office assembled file information from each Party and prepared current draft statements summarizing the state of review of the priority issues or matters in dispute, inclusive of the Issue and Fact portions before the IMC, being:

- (a) The "hydro easement issue" as referred by the TLEC;
- (b) The "portage issue" as referred by the Bunibonibee Cree Nation and TLEC; and
- (c) The "land in severalty issue" as referred by the Barren Lands First Nation and TLEC.

Certain interim steps were also taken with reference to each referral as discussed in Part 5 of this Annual Report.

### 3.2 AGREEMENT ON HISTORIC AND CURRENT LISTS OF ISSUES OR MATTERS IN DISPUTE

The Parties resolved to review the IMC proceedings with a view to define both historic and current Lists of Issues or Matters in Dispute. After an extensive file review with the cooperation of all Parties, the draft lists were prepared, issues identified, status of resolution or means of resolution determined and confirmed. See **Appendix C** for the draft list of Historic Issues or Matters in Dispute and also see **Appendix D** for the draft List of Current Issues or Matters in Dispute as identified by the IMC Representatives. Unfortunately, the Parties could not provide the IMC with documents confirming the resolution of certain referrals or a status summary that all Representatives could accept, and therefore the draft list of Historic Issues or Matters in Dispute remained a work in progress at year end.

### 3.3 ISSUANCE OF EXPLANATORY BULLETINS

It is important that all Parties clearly agree upon the means or methods for resolution of disputes under the MFA. Equally important, the staff and officials involved in implementation on a day to day basis must be informed about the means or methods for resolution to be able to appreciate the implications of clarifications of the MFA and put them into practice for the overall betterment of the process of implementation. This type of communication or explanatory process did not exist. At its March 2008 meeting, the IMC discussed this shortcoming in records and communications practice, directing the IMC office to establish a form of information bulletin and begin the practice of drafting bulletins dealing with issue resolution.

#### (a) Concept of Eligibility of Selections or Acquisitions

The first bulletin was issued in the 2008/2009 fiscal year and dealt with the clarification of the concept of "eligibility" of a Selection or Acquisition to be set apart as Reserve under the MFA and practices associated with the review of Selections and Acquisitions of land in light of that concept found in the MFA. A copy can be found on the IMC web site ([tleimc.ca](http://tleimc.ca)).

**(b) Selections Under 1,000 Acres in Area**

The second topic identified for clarification by the IMC pertained to the size of land Selections, in particular parcels estimated to be less than 1,000 acres in area. Disagreement among Manitoba, TLEC and certain EFNs about the eligibility of and treatment of these smaller land Selections was identified as an impediment to the processing of the Selections. During the course of discussions on this topic, Manitoba completed at least two overall internal reviews to categorize and assess individual parcels resulting in the clearing of many smaller parcels through the system. After several versions of a discussion paper developed by the IMC Office were considered, the IMC Representatives approved the issuance of a formal bulletin on this matter prior to fiscal year end. The second informational bulletin should be issued before the end of June 2009.

**4.0 SUMMARY OF ISSUES OR MATTERS IN DISPUTE RESOLVED**

**REFERRAL NO. 2006-TLEC-004**

The IMC resolved one Referral during the past fiscal year. Referral # 2006-TLEC-004, in which the TLEC alleged that Manitoba was incorrectly characterizing selections ineligible for Selection due to competing considerations on many Selections less than 1,000 acres in area, was resolved by way of the Representatives reaching consensus on the concept of eligibility as reflected in Bulletin #1 dated February, 2009, entitled "Concept of Eligibility of Selections or Acquisitions", and the treatment of selections of Crown Land estimated to be less than 1,000 acres in area as reflected in the discussion paper entitled "Selections of Land Less Than 1,000 Acres in Area". This discussion paper has now been converted to Bulletin #2 and is anticipated to be released by the IMC office before the end of June, 2009.

**5.0 SUMMARY OF ISSUES OR MATTERS IN DISPUTE NOT RESOLVED**

A draft list of the Current Issues or Matters in Dispute not resolved at March 31, 2009, is attached as **Appendix D**. The Representatives agreed that this list remained in draft form at year end, and is a work in progress carried forward for completion in early 2009/10. In summary, the draft Current List consists of the following 9 issues:

**(a) 1999-BPFN-001 – LAND IN A PROVINCIAL PARK, ECOLOGICAL RESERVE, WILDLIFE REFUGE OR PROPOSED NATIONAL PARK (SUBSECTION 3.30(6))**

Buffalo Point First Nation referred this issue to the IMC when its Selection within Birch Point Provincial Park was determined ineligible by Manitoba. The TLEC has agreed to follow up with Buffalo Point First Nation to ascertain whether this is still an issue for IMC attention. This matter was not active during 2008/2009.

**(b) 1999-NCN-003 –EFFECTIVE DATE OF AGREEMENT (SECTION 30.01)**

The Nisichawayasihk Cree Nation referred this issue to the IMC when it disagreed with Canada on the Date of Execution of the Nisichawayasihk Cree Nation's TEA. This matter was not active during 2008/2009. The IMC via the TLEC is following up with the Nisichawayasihk Cree Nation to ascertain whether this is still an active issue.

**(c) 2003-BON-001 – SURPLUS FEDERAL LAND (SECTION 3.10)**

The Brokenhead Ojibway Nation referred this matter to the IMC in relation to the designation of surplus federal land by Canada (Kapyong Barracks in Winnipeg, Manitoba) it had Selected as a “strategic disposal”. Although this remains an open I/M Referral, on January 25, 2008, the Treaty 1 First Nations, including Brokenhead Ojibway Nation (an EFN) filed a lawsuit against Canada in relation to the designation of this surplus land. Therefore, this matter was not active during 2008/2009. The TLEC has undertaken to communicate with the EFN and keep the IMC updated with respect to the status of this issue.

**(d) 2004-BLFN/TLEC-002 – LAND IN SEVERALTY (SECTION 9.01)**

In correspondence dated May 5, 2004 the Barren Lands First Nation alleged that Canada had committed a material failure to comply with a fundamental term or condition of the MFA by not engaging in the discussions with members of the Barren Lands First Nation that were to occur in accordance with sections 9.01 and 9.02. The TLEC made the allegation that Canada materially failed to comply with its obligations set out in the land in severalty provisions of the MFA in correspondence dated June 14, 2004. Terms of reference for a binding arbitration under section 36.01 of the MFA to address the issue were agreed upon in February, 2005.

The terms of reference for that binding arbitration were narrowly focused upon the procedural matter concerning the discussions contemplated under section 9.01 between Canada and the members of the Barren Lands First Nation who had asserted a right to land in severalty. The Barren Lands First Nation and the TLEC did, however, agree to hold the arbitration proceedings in abeyance upon the commitment by Canada to undertake the contemplated discussions on the nature and extent of land in severalty with members of the Barren Lands First Nation between the dates of April 1, 2005 and June 30, 2005. Those discussions with members occurred on May 14 and May 16 through May 19, 2005 in Winnipeg, Brochet, and Thompson.

Efforts to resolve the severalty matter were re-initiated in April, 2006 when legal counsel for the First Nation and the TLEC requested that the arbitrator resume proceedings to address the question of the continued availability of the option to elect land in severalty in law. After further discussion among the Parties, including discussions with the arbitrator on the question related to the continued existence of the Treaty right to elect land in severalty, the Parties opted to undertake a “representative case study of the issue focusing on an individual member”, but this step was postponed by the Barren Lands First Nation and the TLEC on July 19, 2006 pending their appointment of new legal counsel to address the proceeding. Since that time, no further advice has been received from the Barren Lands First Nation and the TLEC as to the further conduct of the arbitration proceeding. As a result, the arbitration action remains active but again on hold pending further directions to the arbitrator by the Parties. In light of the lengthy period of abeyance, the IMC office wrote to the Barren Lands First Nation and requested an update from Barren Lands First Nation, just prior to year end.

**(e) 2003-SCN-004: UNREGISTERED THIRD PARTY INTERESTS**

Canada requested a release of any claims and indemnity from Sapotaweyak Cree Nation (SCN) for land Canada considered occupied by unregistered interests (structures such as cabins) prior to accepting the land transfers from Manitoba. SCN asserted that SCN acceptance of the land on an “as is where is” basis should suffice and further that where cabins were used by SCN members, there were no TPIs to be addressed. Canada asserted this requirement for two reasons; the Selection had been affected by occupation in advance of reserve creation and the occupation by a

Band member gave rise to statutory obligations under Section 22 and 23 of the Indian Act. On February 7, 2003, this matter was referred to IMC by SCN; and there have been many discussions on this matter at IMC meetings since that time. The IMC Office chaired focus meetings on January 10, 2008 and January 30, 2008 to assist the Parties in defining options available to resolve the unregistered interests arising from these types of occupations on Selections. It is understood that the SCN entered into a Pre Transfer Use of Crown Land Agreement, and the selection subsequently transferred, but the IMC referral file remains open as none of the Parties have provided a copy to the IMC office to facilitate closure of this referral by the SCN. The underlying disagreement on procedure remains an active general matter in discussion at the IMC. Definition of the options available for dealing with the various types of unregistered interests encountered in the Selection process may assist those EFNs with selections occupied by unregistered developments, who do not agree with the need for a release and indemnity in favour of Canada.

**(f) 2006-MANITOBA-001 – PROCESS FOR LAND SELECTION AND ACQUISITION (SECTION 6.02(6))**

In this referral, the Bunibonibee Cree Nation alleged that Manitoba breached its MFA obligations contained in MFA Subsection 6.02(6) by not registering the BCN selection known as the Knee Lake Lodge in the Crown Lands Registry, which then enabled several registrations to be made against the lease (Third Party Interest) that currently encumber the property, including an Assignment for collateral purposes that created the authority for a creditor to make a disposition to an interested purchaser pursuant to a receivership of the assignee. This matter was not active during 2008/2009. The TLEC has undertaken to review the matter with the EFN in the 2009/2010 fiscal year to ascertain the status of this issue.

**(g) 2006-BCN/TLEC-003 – GENERAL PRINCIPLES FOR SELECTION AND ACQUISITION OF LAND (SUBSECTION 3.02(12))**

Manitoba is asserting a right to exclude land affected by an existing portage or to an easement agreement over the portage area in relation to two of the Bunibonibee Cree Nation Selections. The IMC office assembled the file documentation and set out the Issue and summary of applicable Facts in the form of the I/M Referral Protocol. The Parties were requested to review the draft for accuracy and completeness. The Bunibonibee Cree Nation and TLEC referred this matter to the IMC disagreeing with Manitoba's request that portage areas on the Trout Falls and Wipanipanis Selections be excluded from the Reserve to be created or if included be subject to an access agreement. The BCN and TLEC each asserted that Manitoba materially failed to comply with a fundamental term or condition of the MFA, specifically in characterizing portages as "reasonable competing considerations and thereby refusing to proceed with the transfer of the Selections to Canada contrary to the requirement of Subsections 3.02(6) and 7.01(2) and the definition of Crown Reservations set out in Subsection 1.01(21). On March 22, 2006, Manitoba referred the allegations of material failure by Bunibonibee Cree Nation and TLEC to the IMC for review in accordance with Subsection 36.01(2).

On July 18, 2007, the TLEC submitted "Crown Reservations – Portages" to the IMC as a matter in dispute. TLEC asserted that a portage is defined as a Crown Reservation under Subsection 1.01(21) transferable to Canada in accordance with Subsection 7.01(2), and accordingly that Manitoba is not entitled to characterize a portage as a "reasonable competing consideration" as the basis upon which to refuse to confirm the eligibility of the Trout Falls and Wipanipanis Portage selections. After review Manitoba has confirmed that it no longer characterizes the portages as a competing consideration, but has asserted the need for continuation of public access to the portage

areas, a matter of public policy that Manitoba asserted was not considered under the Principles in accordance with Sections 3.01(4) and (5) of the MFA, referable to the IMC under Section 3.11. The IMC agreed that the Referrals that were received by IMC and alleged to constitute material failures by Manitoba, be separated from the TLEC Referral concerning the matter of Manitoba retaining Crown Reservations, to enable a focus of efforts on that matter which was at the heart of the Referral. By year end the Parties agreed with the IMC office separating and reorganizing the Referrals in order to review these issues/matters in dispute in accordance with the protocol, and TLEC was asked to communicate with BCN on this matter to better understand BCN's position.

**(h) 2007-BPFN-001: ROAD RIGHT OF WAY (SECTION 13.01)**

Section 13.01 provides that Manitoba is ordinarily entitled to a right of way along provincial trunk highways. The Buffalo Point First Nation acquired land along Provincial Trunk Highway #12. BPFN objected to excluding the control zone from the land to be set apart as Reserve, asserting its future development needs should be given greater weight in considering the right of way requirement, or perhaps offset Manitoba's right. Both the EFN and MANA presented their views at the December 12, 2007 IMC meeting and offered ideas for potential resolution of the matter. Manitoba and the EFN agreed to further discussions to resolve the issue. In September 2008, the IMC office was informally advised by the BPFN that it preferred to defer any further discussions on the Referral pending internal discussions. The IMC office contacted BPFN for an update on this matter prior to the end of the fiscal year. It was determined that Manitoba and BPFN had exchanged letters, offers, and counter offers respecting the sale of the control zone to Manitoba. A final sales agreement had not been reached by year end. Discussions were continuing between the BPFN and Manitoba Infrastructure and Transportation.

**(i) 2007-TLEC-002 – HYDRO EASEMENT (SECTION 12.05)**

The TLEC referred two issues within this referral: firstly, TLEC is asserting that Manitoba is not entitled to administration and control sufficient to support an easement required by Manitoba Hydro and secondly, that the Hydro Easement should set out a resolution process where the EFNs can address alleged impacts on any EFNs existing aboriginal and Treaty rights as well as any potential claim to compensation in respect to the easement area. The IMC prepared an issue analysis and draft recommendations to the IMC Representatives for consideration in September 2008. Several specific focus meetings were held on December 15, 2008, January 21, 2009, and March 24, 2009 to break out and discuss specific problematic aspects of this Referral upon which consensus has yet to be reached. The Hydro Easement is a mechanism to implement the provisions of the MFA respecting the setting apart of EFN selections on Developed Waterways. All Parties share a common interest in the setting apart of these land selections as reserve for EFNs, albeit that some of the Reserve land must be subject to the Hydro Easement under the MFA. Under the Treaties referred to in the MFA (except Treaties 1 and 2), land taken up for settlement purposes, such as hydro development, is expressly not available for Selection as Reserve. Section 12.05 confirms that an EFN may select land for Reserve on a Developed Waterway, but the selection will be subject to a Hydro Easement. Although there may remain outstanding issues related to the hydro development arising from the impact on aboriginal or Treaty rights even after the application of the various hydro/diversion arrangements, the Parties do agree that the Hydro Easement agreement should be legally neutral on those issues.

The Hydro Easement agreement is only a mechanism to facilitate the implementation of the MFA, not a mechanism for resolution of alleged impacts on aboriginal or Treaty rights that may exist. The latest IMC analysis has determined that there are some 71 selections of land comprising 62,305.70 acres, which have been confirmed by 5 EFNs on Developed Waterways affected by this



issue. Although some EFN specific provisions may be required, the Parties need to reach consensus on an agreed form of Hydro Easement agreement for implementation to proceed, and transfer of these Selections of land to Canada in order for them to be set apart as reserve under the MFA.

The discussion is now focused on a number of fundamental concerns about key provisions of a Hydro Easement, including:

- the process of grant of the Hydro Easement, and specifically the provision of administration and control to Manitoba sufficient to enable Manitoba to exercise authority over the Manitoba Hydro operations as required by the Water Power Act (Manitoba);
- any implications or impact of the agreement on Treaty and aboriginal rights;
- certain specific language in the Hydro Easement document; and
- a mechanism or process to deal with consultation requirements and outstanding concerns.

The Representatives also recognized that the resolution of the Referral and reaching agreement on the Hydro Easement terms and conditions would not necessarily result in the transfer of land affected to Canada for Reserve due to the existence of other related issues, and have agreed that these other related issues should be addressed concurrently. These related issues include the associated process for determination of the Easement Lines, the physical and financial planning/setting of priorities for identifying Easement Lines, the process for selecting Additional Land, the costs of that process, and considerations respecting the lands physically required by Manitoba Hydro in relation to Selections on Developed Waterways. In relation to related Article 12 issues, Manitoba has undertaken a detailed review with Manitoba Hydro over the winter months of 2008/2009 and is scheduled to provide a technical presentation of hydro related process to the IMC by the end of June, 2009.

Further discussions have been deferred since January 2009 pending TLEC input after an opportunity to review the matter in detail with the affected EFNs. TLEC anticipated receipt of directions from the EFNs in order to advance discussions respecting the provisions of a possible agreed form of Hydro Easement Agreement.

## **6.0 RECOMMENDATIONS FOR IMPROVEMENTS IN IMPLEMENTATION**

Although the Parties are each fully responsible and liable for the due performance of each Party's respective obligations under the MFA, the MFA prescribes a specific role and list of duties for the IMC and the IMC Chairperson distinct from the roles and responsibilities of the Parties (e.g. Sections 34.07 and 34.09 of the MFA).

### **6.1 IMC ROLE AND RESPONSIBILITY**

The IMC's task is to:

- (a) generally facilitate the implementation of the MFA, by among other things;
  - monitoring of the progress in implementation;

- making recommendations to the Parties for the resolution of an issue or matter in dispute relating to the implementation of the MFA or any TEA referred to it by any Party or EFN; and
- considering the appropriate method of resolution of an issue or matter in dispute; and

(b) Under the general direction of the independent Chairperson:

- maintaining and distributing a record of decisions, awards and other pertinent information;
- determining the sufficiency of information provided to the IMC in relation to implementation;
- if necessary, requesting that appropriate steps be taken to provide information as may be deemed appropriate related to implementation;
- in relation to the resolution of issues or matters in dispute, proposing time periods for responding to referrals, directing the completion of reports, identifying strengths and weaknesses of proposed solutions; directing IMC members to assist in resolving issues or matters in dispute and proposing solutions;
- retaining technical, special or legal advisors to provide advice, guidance and opinions to assist in the proper discharge of the duties of the IMC, in dealing with implementation matters or handling of issues or matters in dispute, with or without the agreement of the IMC;
- recording the means of resolution or inability of the IMC to determine a means of resolution of an issue or matter in dispute referred to the IMC;
- referring any matter the IMC cannot resolve by consensus to the Senior Advisory Committee along with a statement of the issue, means recommended for resolution by the Chairperson, summary of directions given and response of each IMC Party to the recommendation; and
- preparing and tabling annual and other special reports to the Parties on the overall state of implementation, including a summary of issues addressed and resolved and recommendations for improvement of any aspect of the MFA implementation process.

## 6.2 STATUS OF IMC CHAIRPERSON'S PREVIOUS RECOMMENDATIONS

Recognizing the independent status of the Chairperson of the IMC, the IMC Representatives previously requested that the Chairperson provide the IMC with advice and recommendations for improvements with respect to the IMC's obligations, certain of which it acted upon during the 2008/2009 fiscal year and must continue to do so into fiscal year 2009/2010. Steps taken in response to the independent Chairperson's previous identification of issues and recommendations during the 2008/2009 fiscal year are summarized below:

(a) Issue

*That the IMC develop a sufficient internal administrative capacity to manage IMC matters, to ensure timely steps were taken toward the resolution of IMC issues and to act more effectively as a coordinating body to monitor and direct a renewal of the MFA/IMC implementation process.*

Recommendation: Set up a separate office for the administration of the IMC and focus point for the work of the Chairperson in relation to the general facilitation of the implementation process.

Action To Date: With the support of the Parties, in 2007/08 INAC provided funding to rent space, staff and equip office space for an IMC office at 200-400 St. Mary Avenue in Winnipeg. Two support staff were employed.

Funding for this initiative was renewed for a second fiscal year ending March 31, 2009 and the annual budget for this to continue has been confirmed for 2009/10. Although both Manitoba and the TLEC have agreed to accountable advance funding, INAC has been prohibited from doing so due to a minor administrative impediment found in the MFA. The Chairperson recommended an administrative amendment to the MFA to resolve this matter during fiscal year 2008/2009, but that did not occur. The Chairperson has again recommended this administrative amendment and is hopeful that this can be accomplished during the 2009/2010 fiscal year.

Recommendation: Complete the Set up of a File/Information Management System.

Action To Date: The IMC office now has three key groups of files, one group includes all files dealing with issues or matters in dispute, classified as "active", "resolved" or "no longer at issue". However, these files are not necessarily complete and current (see the comments in this regard below). The second group of files deal with the monitoring of Reserve creation and includes the various types of reports produced by the Parties. The IMC does not have a comprehensive monitoring system in place, although the IMC office has made independent efforts to produce a statistical status report. The third group consists of the IMC general office files covering all other subjects necessary to manage IMC matters.

Recommendation: Prepare Lists of Historic and Current Issues or Matters in Dispute.

Action to Date: Draft historic and current lists of the issues or matters in dispute were created to confirm a complete record of the issues or matters in dispute by Party, by EFN, by issue, and by means of resolution. Completion of the lists is expected to have a number of positive results. The lists will result in a historical summary of issues that are addressed under the MFA for the reference of all Parties, and will be able to be applied during implementation today, as well as into the future. A current list will also be an IMC monitoring and reporting tool to be maintained, as well as a public record of progress (or lack thereof) in the resolution of issues and the role of the IMC in support of that process. The lists were again incomplete at year end.

(b) Issue

*That the IMC had not developed nor maintained an accepted standardized procedure to deal with issues or matters in dispute referred to the IMC and the means of resolution or current status despite the extensive directions in that regard set out in the MFA.*

Recommendation: Development of a guideline or protocol for the definition of IMC efforts at resolution of issues or matters in dispute.

Action to Date: The IMC representatives agreed upon a guideline or format for issue definition and resolution which was called the "Protocol for the Referral and Review of an Issue or Matter in Dispute", or for short, the "I/M Referral Protocol", essentially an attempt at a standardized form for the submission of a referral which would also be used to define and track the review of the referral over time by the IMC.

(c) Issue

*That the IMC had evolved into an administrative bottleneck arising from the premature referral of issues or matters in dispute without sufficient discussion among the Parties, in particular including communications with the affected EFN(s) on the resolution of issues and implementation procedure. Unfortunately, at times it appeared that the practice was to frame any issue or difficulty that arose as "an issue or matter in dispute" and refer it to the IMC, before all Parties had exhausted reasonable efforts to deal with the issue or difficulty. In addition, the Parties had shown a tendency to act on an issue or matter in dispute only upon and at IMC meetings once the matter was tabled before or referred to the IMC, thereby greatly delaying attempts at resolution.*

Recommendation: Each Party has the obligation to accept its responsibilities and discharge its duties under the MFA in good faith with due diligence in keeping with their stated Best Efforts, the terms, spirit and intent of the MFA. Each Party has the obligation to do so on a day to day basis in regular communication with the other Parties and EFNs as necessary. This practice should be revisited.

Recommendation: The Chairperson and IMC representatives have and will continue to encourage the Parties to make every effort to resolve implementation matters before making a referral to the IMC and when doing so, will expect the referral to reflect the fullest extent of that effort.

Action To Date: A referral can be made to the IMC based on any aspect of the MFA, however, the MFA anticipates that each Party will have fully determined the issue and made best efforts to resolve the issue or matter in dispute prior to referral. Institution of the agreed review of the I/M Referral Protocol this year provided a format for referral. The IMC office has acted more deliberately to direct adherence to the I/M Referral Protocol resulting in a more structured review and approval of each stage of the review of an issue or matter in dispute. All Parties must continue to cooperate in responding to this approach to referrals on a timely basis.

There were no referrals made to the IMC during the 2008/2009 fiscal year. The most recent referrals on Hydro Easements were in August, 2007. The IMC directed the IMC Chairperson to consolidate the two referrals and deal with them as one matter. Please refer to Section 5.0 (i) for more detail on this specific referral 2007-TLEC-002.

(d) Issue

*Insufficiency of established practices to affirm the MFA obligations of each Party.*

Recommendation: Schedule regular focus meetings

Action To Date: The Parties continued the practice of instituting more regular tri-partite meetings apart from day to day affairs and formal IMC meetings which have been called "focus meetings" to

discuss specific issues that are impeding the implementation of the MFA. In these focus meetings, the Parties are encouraged to build upon, rather than defend past approaches, to take a constructive, rather than positional approach to problem solving, and to come to the table open to new perspectives and solutions in the spirit of cooperation as reflected in the MFA.

Recommendation: Revisit operational concepts that have impeded relationship building

Action To Date: Concept discussions are meant for the IMC Representatives to review and discuss concepts reflected in the MFA to ensure the concepts are being reflected in the handling of issues at the IMC and by the Parties during day to day practice. Subjects or provisions giving rise to MFA concepts requiring discussion are being identified by either the IMC representatives or the Chairperson from time to time. These concepts are general topics that may improve understanding of the MFA and IMC support for implementation like the role of the IMC, ideas/plans for improvements and the application of the concepts reflected in the MFA settlement.

Recommendation: Encourage open discussion of issues around discussion papers

Action To Date: By way of example, Manitoba was asked to review its approach to the concept of "land eligible to be set apart as Reserve" under the MFA. After a series of discussion papers were prepared by the IMC office, at the March 20, 2008, meeting, Manitoba affirmed it would begin to apply a new practice and approach to its review of land Selections and Acquisitions and the IMC issued the first of its informational bulletins to clarify MFA concepts - the "concept of eligibility" - in February, 2009.

A second informational Bulletin was developed to clarify questions pertaining to the Selection of parcels of land less than 1,000 acres in area in and beyond reasonable proximity to existing Reserves. Again after open discussion and exchange, consensus on clarifications required were set out in a bulletin format. It was in process of final editing at year end and is expected to be issued before the end of June 2009.

(e) Issue

*Insufficient communication amongst Parties and with the EFNs.*

Recommendation: Increase communications among the Parties and with the EFNs

Action To Date: While the Parties meet with EFNs at Selection/parcel review meetings, it is felt that more can be done in this regard. In order to increase EFN engagement in MFA implementation it is believed that the annual work plan which includes work/tasks required to advance;

- the parcels on the "Dashboard" plan which are targeted for transfer by August,
- the parcels on next year's "Dashboard" plan, which are targeted for transfer by the subsequent August, and
- parcels identified as priorities by the EFNs,

should be communicated more directly to the EFNs, and that at least one selection be targeted for reserve status for each EFN each year.

### 6.3 SUMMARY COMMENT

The combined effect of these new initiatives was expected to be an increased level of communication among the Parties, within the Departments involved in implementation on behalf of each Party, and between the Parties and the EFNs. In simple terms, each Party must act in accordance with and assume its responsibilities assigned to it under the MFA. Although one informational Bulletin issued and a second is expected early in the next fiscal year, there continues to be insufficient guidelines prepared by any of the Parties to assist the EFNs and the Parties in appreciating the concepts and guidelines of the MFA. To the extent that the Parties continue the efforts begun in the 2007/2008 fiscal year, communications have improved in the form of:

- (a) the frequency of tri-partite communications in relation to the monitoring of the Reserve creation process among the Parties and definition of suitable performance measurements;
- (b) the development of discussion papers to clarify MFA procedure and, upon affirmation, provide guidance to all Parties in implementation;
- (c) the issuance of informational bulletins on issue resolution and clarification of MFA procedure and practice; and
- (d) the practice of regularly scheduled focus meetings among the Parties to deal with year to year planning, resolution of specific implementation issues, identification of priorities and coordination requirements.

### 7.0 RECOMMENDATIONS OF THE IMC CHAIRPERSON

#### 7.1 MONITORING OF THE PROGRESS OF IMPLEMENTATION

The statistical monitoring of implementation must be improved. Manitoba has developed its TRELES system which appears to be sufficient for Manitoba's purposes. However, TRELES continues to be relied upon by all three Parties for information and statistical monitoring. A current and accurate electronic data base and software application is required to produce reports required for monitoring and performance measurement purposes. Despite the recommendations of the federal Auditor General's November 2005 Report, statistical information monitoring by Canada is a matter of manual entry and assembly of file by file and First Nation by First Nation tracking. Considering the extent and complexity of the steps in the Reserve creation process over an extended period of time, all three Parties should have an in-house, manipulative data base to track the status of each parcel of land through the process by each First Nation over time. Without a comprehensive information management system, it is virtually impossible to effectively track Reserve creation in a time efficient manner, much less to establish appropriate performance measurements and to monitor the standards set for that purpose.

##### (a) Canada

For several years now, Canada had stated that it is in the midst of development of an internal information management tracking system, however, the details of that planning and the expected outcomes of the system are unknown to the IMC. The details of a national ATR monitoring system (known by the acronym of "NATS") were not shared with the IMC by Indian Affairs; although it was scheduled to be operational in 2008/2009. However, INAC officials recently disclosed that after a pilot project with NATS in Saskatchewan in December, 2008, ideas for improvements came forward to make NATS more applicable to the day to day operations. The recommended improvements to NATS were being made at year end. INAC anticipated that it would be able to implement the NATS monitoring system within the next couple of months, although more time will then be required to load the data, and to train staff in its operations before NATS will be

operational. Certainly, Indian and Northern Affairs Canada (INAC) will produce the system it determines as suitable for its purposes, but until an electronic data management tracking system is operational, the ability of INAC to provide precise information, on a parcel by parcel basis, in a timely manner, will be severely handicapped. This precise information includes; transfer steps completed, those steps/tasks currently being addressed, and those steps/tasks which are outstanding – all linked to the Party/EFN with primary responsibility for task completion. The need to track and communicate the progress of parcels through a clearly understood land transfer process is fundamental to successfully implementing a tri-partite Reserve creation process, be it MFA based or not. It is essential that there be more open communication among the Parties, and with the volume of parcels, and complexity of the process, an electronic data base system is the best tool available to keep track of progress and improve communication between the Parties and EFNs.

(b) **TLEC**

Also long overdue, the TLEC, reported that it was now near the completion of its own internal Reserve creation tracking system last year, however, further funding was required from Canada to complete its system. Contrary to the approach taken by Canada, the TLEC made a determined effort to share details of its development process at key stages in the process with Canada and Manitoba in an effort to produce a more collaborative and cost effective product more likely to produce a more functional system of monitoring and more useful informational outputs for all the Parties. TLEC confirmed that funding estimated in the range of \$35,000 to \$45,000 would be required to populate and test the TLEC system and make it operational. It is imperative that Canada and TLEC each undertake to do everything to ensure that each has a comprehensive information management and Reserve creation monitoring system in place as soon as possible. The lack of these information management systems are hindering the sharing of information, communication between the Parties and EFNs respecting the status of the files and the identification of critical matters delaying transferring selections to Reserve status.

## 7.2 MONITORING OF THE PROGRESS OF IMPLEMENTATION - PERFORMANCE MEASUREMENT

The charts and illustrations of progress and the form of the various measurements set out in this Annual Report were created by the IMC office for the purposes of the 2007/2008 Report, and have been updated for this year's Report. Except for the MFA entitlement summary, **Chart 2**, none of these Reports in the form presented were available from any of the Parties, nor was any Party able to produce such a report except by way of a time consuming or error prone process of file by file examination or update. Yet, the first obligation of the IMC as stated in the MFA is to facilitate and monitor the implementation of the MFA. Monitoring of progress, much less truly productive facilitation is simply not possible without a variety of statistical monitoring reports. This shortcoming underscores the urgent need for Canada and the TLEC to each complete software applications to monitor MFA implementation as soon as absolutely possible.

Interestingly, the information required to produce sufficient overall monitoring reports is available in parts among the Parties, yet the Parties have been unable to cooperate and dedicate sufficient effort to producing a comprehensive monitoring report at the IMC. During the 2008/2009 year, the IMC office produced an "IMC Land Selection Monitoring Chart" with information made available by the Parties. The areas where there are commonly understood information gaps were identified. The "IMC Land Selection Monitoring Chart" was used to facilitate the Strategic Planning focus meeting on March 3, 2009, and will be updated as information is made available by the Parties until such time as a Party takes on this responsibility.

As well, the IMC office prepared a chart summarizing the selections and acquisitions set apart to date by fiscal year for each EFN. This chart is attached as **Appendix B**. The chart tracks parcels and acreage, and links selection names to final Reserve names as confirmed by the EFNs.

As recommended in the above comments, regardless of the completion of a software application to track Reserve creation, to provide statistical reports to monitor the various aspects of the process and progress year to year, it is further recommended that the Parties collaborate in the types and forms of report suitable for tri-partite/IMC monitoring purposes.

In this regard, the Chairperson has further recommended that the Reports produced include:

- (a) reporting on the basis of the number of parcels of land set apart as Reserve as tracking only by acres set apart can be misleading on an overall MFA and on an EFN by EFN basis if only a few large parcels are set apart as Reserve; and
- (b) reporting that separately tracks the setting apart of both Crown Land and purchase/Other Land as Reserve;

and that these reports be issued to individual EFNs on a not less than quarterly basis.

### 7.3 PACE AND IMPACT OF IMPLEMENTATION - REVISIT PLANNING

It is often assumed that Reserve creation under the MFA begins with the Selection or Acquisition of land by a First Nation that has signed a TEA. However, it can also be said to begin before actual selection or purchase, with the examination of the existing needs of the First Nation and planning for the future by its Chief and Council and Members. In the focus on Reserve creation, it is important that this preliminary step be acknowledged in light of its importance for the First Nation community and its place in the overall exercise of fulfillment of the Parties obligations under the MFA.

It is noted that Article 22 of the MFA speaks to this planning exercise. The community planning exercise formally begins within 30 days after the initiation of the CAP leading to the signing of its TEA. Under the MFA Canada is obliged to provide a reasonable amount of funding reflecting the circumstances of the specific First Nation for the completion of a Land Selection Study that includes:

“... a community planning and development process with the objective of determining, in consultation with its Members, the best interests of the Entitlement First Nation in the Selection or Acquisition of land and to identify suitable land for Selection or Acquisition which will address those interests.”

Considering the slow pace of implementation until the past couple of years following the Ministerial commitments, the difficulties encountered and the passage of time as it would affect community understanding of the FN TEA, the changes in First Nation Councils and administration and the existence of a whole new generation of First Nation members involved in implementation, the various studies that were completed are now likely quite outdated and out of sync with the current views and aspirations of the First Nations.

Last year, I suggested it was advisable to revisit the community planning aspect of the MFA for these reasons, especially with the acceleration of the overall pace of implementation and the need to complete land Selections or Acquisitions. The Parties appreciate the importance of the community planning exercise, especially in hindsight, and have discussed ensuring full involvement in the exercise to be undertaken by any of the unsigned First Nations who decide to proceed with the CAP and enter into TEAs in the future. The IMC did not discuss this recommendation this past year. In light of this year's events and the recognition by the Parties that it may be difficult to meet the 150,000 acre per year targets (perhaps due to the fact that the remaining parcels are smaller, yet require the same program/administrative overhead to advance), much less maintain an acceptable level of Reserve creation under the MFA without fundamental changes in roles, responsibilities and the level of commitment required, revisiting the associated community planning process is again strongly recommended. There appears to be a distinct disconnect emerging between the MFA directed efforts of INAC and those of TLEC and its associated EFNs. In order to prevent this perceived disconnect, it will be essential for the Parties to complete their three Party strategic planning initiative early in this fiscal year, and ensure that the EFNs fully understand that the annual workplan will be comprised of not only transferring the “Dashboard” plan parcels to reserve status by the mid-year target of August; but will also include the requisite work necessary to position parcels for transfer by the following August (the subsequent “Dashboard” plan parcels), as well as the work required to steadily advance the EFN priority parcels, complex or not,



towards reserve status. The Parties have agreed that an essential component of the Strategic Planning initiative is to utilize every opportunity to communicate the plan to the EFNs.

#### **7.4 FOCUS ON PRIORITIES AND PARCEL SELECTIONS**

The continued development of tri-partite efforts to identify and work with an agreed list of priorities assembled on an EFN by EFN and parcel by parcel basis is again strongly recommended and appears to have support from all Parties. Although the setting apart of the overall amount of Reserve land under the TEAs of the EFNs is the ultimate goal of implementation, on a day to day basis, the truer measure of success in implementation is the number of parcels of land selected set apart as Reserve on an annual basis. TLEC has strongly advocated that each EFN annually identify its four priority parcels and commit the effort and resources required to attend to resolution of all issues and interests affecting those parcels, regardless of size. This particular element of priority planning will engage the EFNs in my view; improve communications and perception of the MFA implementation process – that is happening in the EFN community, not in Winnipeg or Ottawa. Further results will improve by and across the spectrum of EFNs if the MFA achievements annually are measured by the overall amount of acres set apart as Reserve as well by EFN.

Where EFN identified priority land selections involve resolution of more complex issues prior to transfer to Canada and setting apart, it is recommended that the Parties communicate the complexities associated with the selection and define a “roadmap” with tasks assigned to each Party to steadily advance these EFN priorities towards Reserve status over time. This strategic planning and communication should be an important component of the annual work plan, and undertaken concurrent with the actions taken in relation to transferring the “Dashboard” plan parcels by August of the fiscal year. If not, the EFNs will experience an increasing disconnection from MFA/TEA implementation as the Parties focus on the “Dashboard” component of the annual work plan, rather than the “advancement of EFN priorities” component of the annual work plan. Both are essential components of the annual work plan, or the EFN priorities are unlikely to move closer to Reserve status year by year.

Unfortunately, during the course of Strategic Planning focus meetings it has become evident that the primary administrative effort under the annual work plan has been upon transferring the “Dashboard” plan parcels to Canada to be set apart as reserve by August. The second component of the annual work plan – steadily advancing the EFN priority parcels of land towards reserve status over time – has received far less attention.

#### **7.5 DEVELOPMENT OF DELIVERY CAPACITY AND FRAMEWORK**

Until the wave of TLE settlements began in the mid-1980s across the Prairie Provinces, the process of Reserve creation was a relatively infrequent event on a national basis, Reserve creation being largely a matter of Crown discretion aimed at land consolidation, necessary relocations and boundary adjustments, rather than the fulfillment of legal obligations. Although INAC has expanded its Additions to Reserve sector nationally and regionally, it is likely that the staff and resources committed to the sector has lagged behind the increasing demand, as appears to be underscored by the March 2009 Report on TLE by the Office of the Auditor General for Canada. This in itself is a matter for specific examination by Canada. To the extent that the MFA dictates roles for the EFNs and the TLEC, sufficiency of the personnel and financial resources available for implementation is equally in question. It is fair to say that the complexity of implementation of the MFA has grown markedly as the TLE “wave” of Reserve creation proposals hit INAC with full force over the last few years followed by an increased political attention to the process by municipalities, business and land owners affected by the process. Although independent third party analysis would be required, it may well be that the process of legal resolution of TLE claims is out of sync with the dedication of governmental resources to meet the implementation requirements of claim settlements.

The question may well be one of delivery capacity across the system. The most glaring insufficiency in my view is the lack of personnel trained in the formal process of Reserve creation outside of the Department of Indian Affairs. It is not simply a matter of numbers, but training, education and experience as well. ATR is a unique and complex task, but the only ATR specific capacity is within the responding Party – INAC. Neither the EFNs, nor the TLEC support organization, have any staff with specific ATR training, it is a matter of in-practice, on the job training. INAC appears to have made minimal, if

any, concerted efforts to transfer its ATR knowledge to the EFNs or TLEC. This should change beginning this year, as soon as possible. An increase in the delivery capabilities of the TLEC and the EFNs can only have a positive effect on the overall process. Steps in capacity building using existing resources could include elements such as:

- (a) general and specific topical workshops;
- (b) inter-office staff exchanges;
- (c) secondments;
- (d) TLEC/EFN participation in INAC ATR workshops;
- (e) regular joint ATR parcel review meetings with INAC, TLEC and affected EFNs; and
- (f) open exchange of policy information and guidelines.

A step that could be taken as a new initiative might be a partnering among Canada, Manitoba and the TLEC with a College or University to design and develop a curriculum for a diploma or certification in "settlement implementation" or the like, funded by Canada and Manitoba. This type of initiative should include funding from Manitoba as Crown Manitoba is the secondary beneficiary of TLE resolution and should also be supportive of employment creation/skill development focusing on First Nation needs.

In terms of consideration of the need for fundamental changes in the MFA and ATR based process of Reserve creation, the need is readily apparent. The interaction between the MFA and ATR remains largely undetermined if not unknown to the federal Departments of Indian Affairs and Justice according to the regional counterparts, a matter of serious concern. Yet these aspects of the problems being experienced in implementation of the MFA in Manitoba are going unnoticed with the focus on the low ratio of acres of land set apart as Reserve and general slow pace of implementation over the last 12 years.

## **7.6 INCREASED EFN COMMUNICATION AND INFORMATION SHARING**

In its most basic sense, the setting apart of all of the TLE due to each EFN is the measure of successful achievement of the MFA. However, the EFNs have expressed the view that EFN involvement seems to be of a limited nature and EFNs have minimal understanding of the general Reserve creation process. Again this past year, the IMC focused on MFA policy identified as important to the EFNs, beginning with the concept of eligibility of Selections under the MFA. The IMC Representatives approved of a discussion paper the prior year and directed the preparation and issuance of the first IMC informational bulletin on this topic. The second informational bulletin on Selections less than 1,000 acres in size will issue during June 2009. With the financial support of INAC, the TLEC organized and hosted a third annual Third Party Interest Workshop on March 17 and 18, 2009. The EFNs were presented with tools for and information of roles and responsibilities in the resolution of Third Party Interests. In addition, the IMC Office itself developed a website accessible by the EFNs and this was launched during the 2008/2009. These initiatives and other means of communication will be expanded in 2009/2010.

## **7.7 ESTABLISHMENT AND MAINTENANCE OF TRI-PARTITE STRATEGIC PLANNING**

Certainly, there is a degree of planning occurring internal to each Party at the beginning of each year and from time to time. However, the IMC office is not aware of any recent tripartite discussions with respect to any strategic planning, but for the INAC/TLEC work plan attached to the TLEC funding agreement. Indeed, the Parties are tracking work against two different time lines – the political mandated time frame ending in August of each year and the fiscal year end of March 31<sup>st</sup>. This is confusing and causing difficulties for all Parties in targeting different periods and duplicated reporting on an annual basis.

Good management is founded upon a comprehensive information base, an agreed set of strategic plans recognizing the shared responsibilities of the Parties under the MFA (and TEAs, of course) and regular, open communications among the key Parties. Yet, from the IMC office perspective, it appears that there is in fact no strategic plan or plans in place that have been developed by the three Parties in consultation with the EFNS. These plans should include:

- (a) Plans regarding the identified priorities of the EFNs;
- (b) Plans by individual EFNs by Crown/Other Land;
- (c) Plans regarding the overall targets/goals for the year (performance dates of August and March in each year) carrying all targets/goals forward into future years as well;
- (d) Plans regarding the segment targets for Reserve creation by Crown Land other/private land acquisition;
- (e) Coordination Plans for tripartite reviews EFN by EFN leading to adjustment of the above Plans and for Party contact/parcel by parcel review with each EFN;
- (f) Coordination Plans for IMC meetings, issue/referral review and focus meetings; and
- (g) Plans for communication and consultations with EFNs and other relevant parties to the process.

INAC's "Dashboard" plan is but one component, albeit an important component, of the overall annual workplan required by the Parties to implement the MFA. The "Dashboard" plan parcels are those deemed to be able to be transferred by August. While this year may be an adjustment year in the planning process by the Parties, it is clear that the land transfer process is a multi year process, and the annual work plan must include work on parcels targeted for transfer in subsequent years if that target is to be realized.

A new approach, a more strategic approach for years ahead, should begin now and be reflected in future year work plans.

The lack of a comprehensive tripartite strategy for TLE implementation has long been a serious matter. The Parties are without a coordinated short or long term plan to which all have agreed and may commit resources. As observed by the federal Auditor General four years ago (see the Auditor General's recommendation 7.60 November 2005 ), this situation should not continue to exist today and cannot be allowed to continue. All administrative protests about pressure on time and resources must be assessed in light of the commitment of time and resources to efforts that are not coordinated, organized among the Parties, nor the subject of effective monitoring. Until there is a coordinated tripartite plan in place year to year, there is in fact no means of effective management or measurement of the performance of any of the Parties.

The IMC must commit itself to acting upon this severe gap in the management of implementation of the MFA. In failing to do so in the immediate future, the Parties will be concurring with a quicker return to the pre-2006 status quo – yet the IMC is responsible for facilitating the implementation of the MFA, in good faith, on a continuing basis until the job is done.

## 7.8 LONG TERM FINANCIAL SUPPORT FOR THE TLEC

During the review of the IMC Annual Report earlier this year, the acting Regional Director of INAC Manitoba commented that INAC was undertaking a cost/benefit analysis in relation to its decision to provide annual funding to the TLEC to provide operational support for the EFNs. Considering the potential liability associated with the various assertions made by the TLEC from time to time that Canada has exhibited a pattern of material failure to comply with its obligations under the MFA, this was a rather startling statement. If the Reports of November 2005 and March 2009 by the federal Office of the Auditor General are any indication of the Best Efforts of INAC as required by the MFA, it appears that the Manitoba Region is fundamentally disconnected from the reality of its level of performance in MFA implementation. After two uncomplimentary Reports of its own internal independent auditors, INAC would be well advised to conduct a complete operational review of the Manitoba Regional office in relation to its performance in TLE implementation under the MFA and otherwise on an annual basis.

In the meantime, in the respectful view of the Chairperson, TLEC must be financially supported on a long term, meaning more than annual basis by INAC, to allow it the security to hire qualified staff and engage in formal, training programs with INAC, Manitoba and other advisors in the interests of developing an internal delivery capacity. Year to year funding does not allow TLEC the opportunity to enhance its skill level to the degree necessary -- skills which it should then pass on to the EFN level of administration.

Financial support for TLEC should then include a separate budget for ongoing training and orientation of EFN Councils and administration in MFA based Reserve creation as well as the technical resources and specialist advisors to deliver this training at the community level. Even being somewhat optimistic in estimating the time frame involved, TLE implementation will likely be a process of several more decades in delivery, but only if the skill set is expanded to include EFN administrations in my view.

## **7.9 INVOLVEMENT OF SENIOR REPRESENTATIVES OF THE PARTIES**

Considering the significance of the implementation issues evident in 12 years of effort to achieve the objectives of the MFA and the 15 TEAs signed by EFNs, it is more than evident that a greater involvement of the senior most officials of the Parties from time to time could be beneficial. Indeed, the Ministers responsible for each of Canada and Manitoba made personal commitments to increasing the level of Reserve creation for at least a 4 year period to 150,000 acres of land per year. The addition of 272,572 acres of land between the date of the Ministerial commitments (August, 2006) and the end of the 2008/2009 fiscal year is encouraging. As mentioned above however, the Parties recognize that the degree of effort required to transfer small parcels of land is comparable to that required to transfer large parcels of land; and with the largest parcels now transferred, it may be difficult to maintain this rate of implementation moving forward. The challenge remains ahead. The pace of implementation is likely to falter after this fiscal year, if not this fiscal year, without a substantive change in senior level direction and supervision, in particular by the senior officials responsible for MFA implementation. Meeting the challenge will, in my opinion, require a "hands-on" approach to ensure that required resources are set aside and available in the years ahead as demands on the staff and funds earmarked for these purposes is truly tested. It is recommended that a detailed and substantive review by the Parties be undertaken at least twice annually with the involvement of the Regional Director General of INAC, the Deputy Minister of Aboriginal and Northern Affairs and President of TLEC.

## **8.0 SUMMARY COMMENTS**

Reserve creation in a modern day context is a challenging exercise, as is amply understood by Canada, Manitoba, the TLEC and the EFNs. Recently, the difficulties associated with the provision of Reserve land to meet constitutional legal obligations based on historic Treaties was the subject of hearings of both the Senate and Commons Standing Committees on Aboriginal Affairs. The federal office of the Auditor General issued a report supplementary to the OAG's November 2005 Report at the end of March 2009. The MFA itself was a reluctant acknowledgement of the difficulties associated with dealing with the "status quo", the legal system of land tenure, the means of registration and the recognition of rights and interests of land owners, First Nations, and other levels of government, that have arisen since Manitoba came into existence as part of Canada in 1870. Yet the Treaty obligations of Canada and obligations of Manitoba arising from the Constitution Act, 1930 must be addressed – land must be provided to the entitled First Nations.

The EFNs have the fastest growing population in the province of Manitoba. The EFNs have a unique modern day opportunity to secure enduring benefits and opportunities arising from outstanding entitlement to additional Reserve (whether it involves land for community needs, economic development, cultural preservation or traditional uses). In these ends, the interests of Canada, Manitoba and the EFNs coincide. In meeting the outstanding legal obligations and in so doing fulfilling Treaty promises, the EFNs can acquire a stake, a compelling economic interest in the well being of EFNs, in the future of Manitoba – no doubt a mutual interest and goal. However, the complexity of the Reserve creation process has presently innumerable challenges, certain of which appear to require a re-thinking of the status quo and realignment of priorities of interests which have historically evolved as Manitoba has evolved over the last 127 years. Certainly, the question of appropriate regard for the Treaty and MFA obligations of Canada and Manitoba may demand a reconsideration of various policy perspectives of both Canada and Manitoba in the interests of more timely implementation and respect for the content of historic Treaty rights. If not, it may be that new grievances will emerge based on Treaty and MFA obligations of the Crown Canada and Crown Manitoba.

Interested observers might remark that none of the Parties appreciated the extent of the problems that have been encountered in TLE implementation in the Prairie Provinces, but after almost 20 years of effort, there are few participants in the process that could not say that the problems to be dealt with are clear and the challenge evident. The insufficiency of

staff and financial resources across the board is a repeated refrain, a refrain heard around any new policy initiative, but as of this date not adequately assessed by Canada, Manitoba or the TLEC. Considering the stakes involved and the urgent need to correct a historic wrong the right way this time around, maybe it is time to complete a comprehensive assessment of the task, the capacity of the Parties, the sufficiency of the financial resources applied and the need for a degree of legal or policy realignment to facilitate change required to implement TLE agreements on a reasonable and timely basis with appropriate involvement of the entitled EFNs.

Although a historic issue, a current day entitlement to land is a new "issue" for most EFNs as is the complex Reserve creation process. The EFNs administrations can be expected to be overwhelmed as local administrations are typically underfunded being "program" oriented, often under trained, there being no plan or program to train EFN staff in Reserve creation and many Councils are otherwise not familiar with the required decisions to be made to advance land Selections and Acquisitions through the federal Reserve creation system.

The TLEC, as the central support agency for the EFNs, has struggled with its responsibilities, but has made significant advances in its communications with the EFNs, training support capacity, monitoring and prioritization of implementation issues. That said, TLEC has forcefully asserted that it remains under-resourced and under-staffed for the task, an assertion that can be affirmed by the federal Department of Indian Affairs. INAC provided supplementary performance related contribution agreement funding to TLEC to expand its delivery capacity in 2007/2008 and 2008/2009. It is planning to do so again in 2009 /2010 and on a year by year basis thereafter dependent upon satisfactory performance and justified need. As TLEC extends its support to the EFN community administration in the future, it is expected that the EFN community level capacity to respond to Reserve creation demands will increase with positive results.

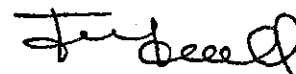
Manitoba continues to refine and expand its statistical monitoring of Reserve creation, essential to technical tracking of the process and measurement of performance for all Parties. Efforts at improved communications and orientation have been reflected in active participation in focus meetings on specific issues, tasks and referrals to the IMC. Manitoba continues to recognize the need for a constant review and re-examination of provincial administration of the MFA, which has included a restatement of the process for review of Selections and Acquisitions around the concept of "eligibility" of those parcels to be set apart as Reserve under the MFA.

Canada accepts its primary role in the overall exercise in support of the lead initiative of the TLEC. Certainly, the achievement of the first year target of setting aside of 150,000 acres of land as Reserve (inclusive of all TLE EFNs, not only those under the MFA) was a notable accomplishment during 2006/2007, however the Parties fell far short of the target during 2007/2008. All Parties must continue to cooperate in the strategic planning exercises essential to the accomplishment of this target again by August 2009 and beyond.

The IMC office as the new element in the implementation of the MFA can be expected to assume a more general role in relation to the facilitation of implementation this next fiscal year. The Parties have responded positively to its emphasis on increased communications, specific discussions on key implementation practices, organization of the process for formal referral of issues and matters in dispute, the conduct of neutral focus meetings, and other discussions on issues, tasks or matters arising during implementation requiring independent perspective.

Regardless, however, the tougher challenges lay ahead. It is evident that disputes unresolved for years must be resolved, for example, the requirement for a form of Hydro Easement, that more emphasis on priorities identified by certain EFNs may be required to ensure that these EFNs also secure the benefits of Reserve creation, that continuous cooperation among the Parties, including a more active role for the EFNs is required to attain the overall target 150,000 acres of Reserve each year, and that strategic planning at all levels is the key to successful implementation of the MFA. Ultimately, the IMC recognizes and acknowledges that it is the improved social, cultural and economic conditions and potential of the individual EFNs that is of greatest importance, the underlying objective of the successful implementation of the MFA, not the achievement of arbitrary "targets" of acres of Reserve creation each year. It is that objective that must sustain IMC efforts over the years ahead.

On behalf of the Implementation Monitoring Committee established under Section 34.01 of the 1997 Manitoba Framework Agreement on Treaty Land Entitlement, I herewith respectfully submit this the Annual Report of the IMC to the President of the TLE Committee, the Minister of Indian Affairs and Northern Development and the Minister of Aboriginal and Northern Affairs for Manitoba, as of March 31, 2009.



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James R. McLeod  
Chairperson

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## 9.0 SUMMARY OF APPENDICES

- Appendix A Location of Entitlement First Nations Map
- Appendix B MFA Implementation: Reserve Land Creation by Fiscal Year
- Appendix C Draft List of Historic Issues or Matters in Dispute
- Appendix D Draft List of Current Issues or Matters in Dispute
- Appendix E Definitions used in the 2008/2009 IMC Annual Report

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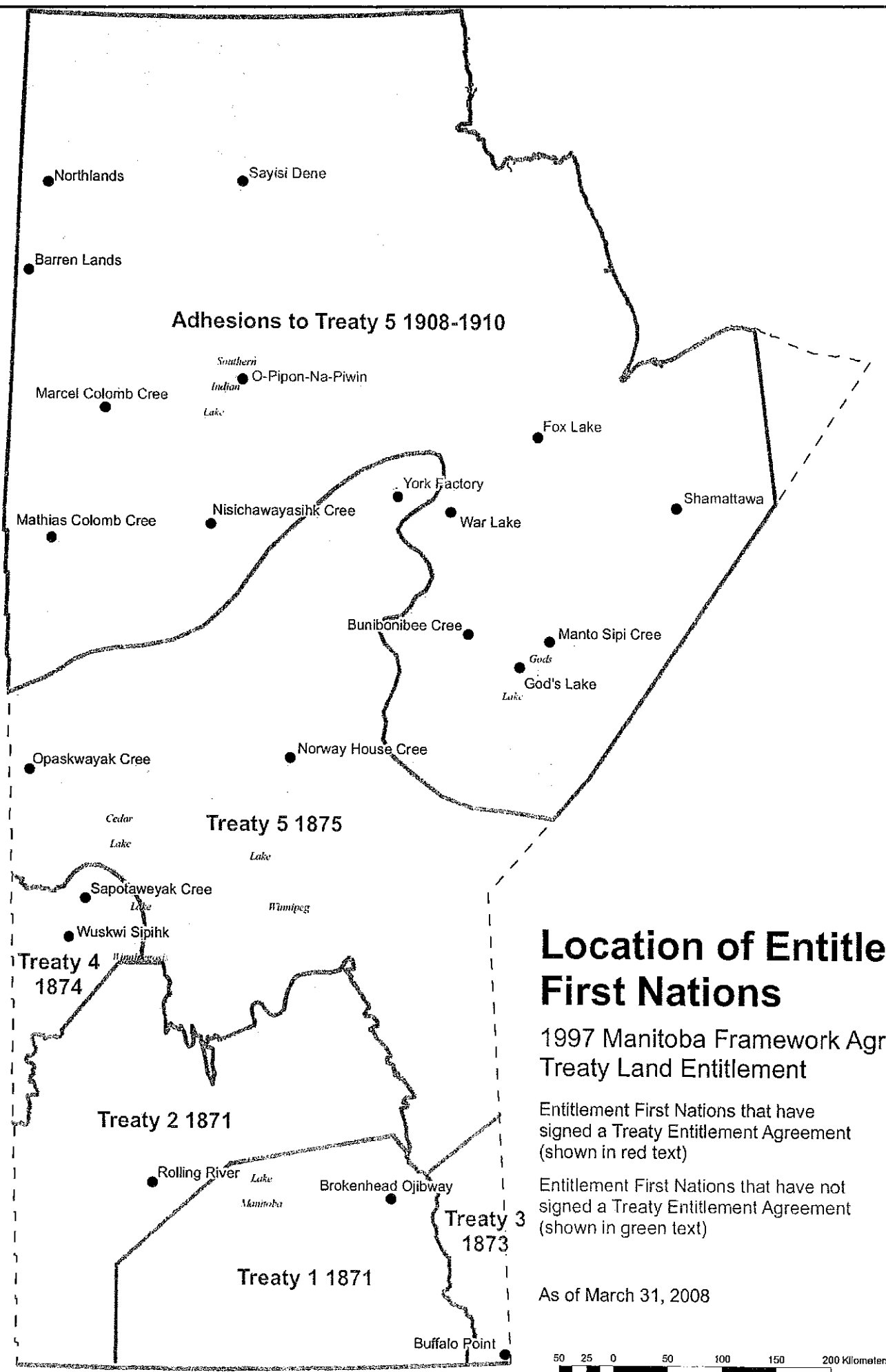
# Appendix A



Location of Entitlement First Nations Map









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## Appendix B



MFA Implementation: Reserve Land Creation by Fiscal Year



**IMPLEMENTATION MONITORING COMMITTEE  
MFA TLE ENTITLEMENT FIRST NATIONS  
IMPLEMENTATION BY FISCAL YEAR**

YEAR	DATE	OCPC/NO.	RESERVE NAME - ADDITION	FIRST NATION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION / ACQUISITION NAME
2000	MARCH 23	OCPC 2000-378	Wuskwisi Siphik I.R. FN No. 1 Wuskwisi Siphik I.R. No. 2	Wuskwisi Siphik	1,049.00 226.18		Old Building Bay Phase 1 PTH No. 10
2003	DECEMBER 3	OCPC 2003-1936	Ponask Lake Indian Reserve	Norway House Cree Nation	3,898.95		Ponask Lake
2003	DECEMBER 3	OCPC 2003-1938	Addition to Wuskwisi Siphik First Nation I.R. No. 1	Wuskwisi Siphik First Nation	995.80		Old Building Bay Phase Two
2004	APRIL 22	OCPC-2004-442	Wuskwisi Siphik First Nation I.R. No. 4	Wuskwisi Siphik First Nation	472.00		Stone Ridge Point
2005	FEBRUARY 1	OCPC-2005-66	Wuskwisi Siphik Indian Reserve No. 5	Wuskwisi Siphik First Nation	3,644.20		Ball River / PTH 10
2005	FEBRUARY 1	OCPC-2005-68	Wuskwisi Siphik Indian Reserve No. 6	Wuskwisi Siphik First Nation	270.30		Makeling North
2005	FEBRUARY 17	MO - 2005-001	Buffalo Point First Nation I.R. No. 1	Buffalo Point First Nation	92.40		PTH12 / International Boundary
2005	MARCH 14	MO-2005-003	Buffalo Point First Nation I.R. No. 2	Buffalo Point First Nation	859.70		Poplar Point
2005	MARCH 14	MO-2005-003	Addition to Reed River I.R. No. 36A	Buffalo Point First Nation	39.93 283.17 868.20		Goulds Point 4A Goulds Point 4B Goulds Point 4C
2005	MARCH 22	OCPC-2005-416	Wuskwisi Siphik Indian Reserve Nos. 3A, 3B, 3C, 3D, 3E and 3F	Wuskwisi Siphik First Nation	510.40		Swan Lake Islands (510.39)
2000/2005					13,210.23	0	2000/2005 Total: 13,210.23
<b>TOTAL</b>					<b>13,210.23</b>	<b>0</b>	<b>CUMULATIVE TOTAL = 13,210.23</b>
2005	MAY 9	MO-2005-006	Rolling River Indian Reserve No. 67A	Rolling River First Nation	163.44 163.62 817.54 971.52 163.35 20.13 51.10		3b - Onandole WMA 3c Onandole WMA 3d Onandole WMA 4 Bald Hills 5 NE 12-19-18 WPM RA1 - Interior Road Allowances RA2 - Exterior Road Allowances
2005	MAY 10	OCPC-2005-819	Andrew Bay Indian Reserve	Gods Lake First Nation	168.50		Andrew Bay
2005	MAY 10	OCPC-2005-819	Chalaway Lake/Knife Lake Indian Reserve	Gods Lake First Nation	277.00		Chalaway Lake/Knife Lake
2005	MAY 10	OCPC-2005-819	Vermilyea Lake Indian Reserve	Gods Lake First Nation	8.35		Vermilyea Lake
2005	NOVEMBER 28	OCPC-2005-2237	North Prominent Ridge Indian Reserve	Gods Lake First Nation	6,529.00		North Prominent Ridge
2005/2006					9,333.55	0	2005/2006 Total: 9,333.55
<b>TOTAL</b>					<b>22,543.78</b>	<b>0</b>	<b>CUMULATIVE TOTAL = 22,543.78</b>
2006	APRIL 3	MO-2006-004	Buffalo Point First Nation Indian Reserve No. 3	Buffalo Point First Nation	226.30		Buffalo Point Access Road
2006	APRIL 3	MO-2006-004	Sapolawayak Cree Nation - Spruce Island Indian Reserve	Sapolawayak Cree Nation	4,566.00		Spruce Island
2006	MAY 29	MO-2006-009	Rolling River Indian Reserve No. 67 B	Rolling River First Nation	-	158.14	Ronald Hill acquisition property

YEAR	DATE	OCPC/MD NO.	RESERVE NAME - ADDITION	FIRST NATION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION / ACQUISITION NAME
2006	JUNE 8	OCPC-2006-504	Kapawashk Indian Reserve	Nisichawayasihk Cree Nation	4,621.00		Pakwaw Lake
2006	JUNE 8	OCPC-2006-505	Monahewukhan Indian Reserve	Nisichawayasihk Cree Nation	986.00		Birch Tree Brook West
2006	JUNE 8	OCPC-2006-506	Opokunokakanik Indian Reserve	Nisichawayasihk Cree Nation	1,747.62		Harding Lake
2006	JUNE 8	OCPC-2006-507	Wapashk Indian Reserve	Nisichawayasihk Cree Nation	3,586.50		Lefbrook Lake
2006	JUNE 8	OCPC-2006-508	Wuskwisi Indian Reserve	Nisichawayasihk Cree Nation	1,984.12		Gauer River
2006	JUNE 22	OCPC-2006-552	Red Cross Lake North Indian Reserve Red Cross Lake East Indian Reserve	Gods Lake First Nation	313.30 671.60		Red Cross Lake North Red Cross Lake East
2006	NOVEMBER 23	OCPC-2006-1407	Oxford House Indian Reserve No. 24A	Bunibonibee Cree Nation	361.00		No. 24A - Carrot Bay
			Oxford House Indian Reserve No. 24B		4,294.70		No. 24B - Colen Lakes
			Oxford House Indian Reserve No. 24C		993.00		No. 24C - Bear Lake
			Oxford House Indian Reserve No. 24D		11.34		No. 24D - Alkosis Lake
2006/2007					24,362.48	158.14	2006/2007 Total: 24,520.62
TOTAL					46,906.26	158.14	CUMULATIVE TOTAL = 47,064.40
2007	MAY 10	OCPC-2007-726	Wuskwisi Sipihk Indian Reserve No. 8	Wuskwisi Sipihk First Nation	1,845.00		North Steeprock Lake
2007	JULY 23	MO-2007-013	Wuskwisi Sipihk Indian Reserve No. 7	Wuskwisi Sipihk First Nation	14,456.00		Kettle Hills
2007	JULY 23	MO-2007-014	Sapotaawayak Cree Nation Indian Reserve	Sapotaawayak Cree Nation	58,745.20		Dawson Bay **N.B. There are 6,719.6 more acres to be transferred as per Prov. OIC No.516/2006 dated Nov. 29/06.**
2007	JULY 31	OCPC-2007-1170	Oxford Lake North Shore Indian Reserve Wapiseew Lake Indian Reserve, Whitemud Lake Indian Reserve	Bunibonibee Cree Nation	3,422.00 176.00 5,110.00		Oxford Lake North Shore Wapiseew Lake Whitemud Lake
2007	JULY 31	OCPC-2007-1172	Esler Ridge B Indian Reserve Peter Burtons/Shorty Rapids Indian Reserve, Wapaminakoskak Narrows Indian Reserve	Gods Lake First Nation	264.00 1,948.00 2,347.00		Esler Ridge Peter Burtons/Shorty Rapids Wapaminakoskak Narrows
2007	AUGUST 10	MO-2007-018	Norway House Indian Reserve Nos. 17C1 to 17C-46	Norway House Cree Nation	2,021.25		(numbered 1 to 46 inclusive) - Molson Lake Islands
2007	AUGUST 10	MO-2007-019	Norway House Indian Reserve Nos. 17D-2 17D-3 (Costes Lake B), 17D-4 (Beach Lake) 17D-5 (Little Bolton Lake A & C) 17D-6 (Echimanish River A and The High Rock) 17D-7 (Echimanish River B) 17D-8 (Nelson River East Channel B) 17D-9 (Lawford Lake)	Norway House Cree Nation	2,916.00 219.00 84.00 792.00 1,357.00 35.00 1,011.60 724.30		Island River A & B 17D-3 Costes Lake B 17D-4 Beach Lake 17D-5 Little Bolton Lake A & C 17D-6 Echimanish River A and The High Rock 17D-7 Echimanish River B 17D-8 Nelson River East Channel B 17D-9 Lawford Lake **N.B. There are 3,596 more acres to be transferred as per Prov. OIC No. 324/2006 dated Aug. 2/06.**






YEAR	DATE	OCPC/IMO NO.	RESERVE NAME - ADDITION	FIRST NATION	SELECTION ACREAGE	ACQUISITION ACREAGE	FORMER SELECTION / ACQUISITION NAME	
2009	JANUARY 12	MO-2009-003	Napanikaphskow Sakahigan Indian Reserve	Mathias Colomb Cree Nation	4,520.00		Churchill River Area 30B	
2009	JANUARY 12	MO-2009-003	Kimosominahk Indian Reserve	Mathias Colomb Cree Nation	1,366.00		Churchill River Area 30D	
2009	FEBRUARY 26	MO-2009-006	Addition to Rolling River Indian Reserve No. 67	Rolling River First Nation		1823.9	NW 1/4 18-17-18 WPM (Site No. 3-02) - 156.00	
							NW 1/4 25-16-19 WPM (Site No. 8-01) - 160.00	
							S 1/2 36-16-19 WPM (Site No. 14-01) - 320.00	
							SE 1/4 34-16-19 WPM (Site No. 10-01) - 160.00	
							SW 1/4 25-16-19 WPM (Site No. 9-01) - 160.00	
							SW 1/4 26-16-19 WPM (Site No. 7.01) - 160.00	
							SW 1/4 31-17-18 WPM (Site 1) - 155.00	
2009	FEBRUARY 26	MO-2009-006	Addition to Rolling River Indian Reserve No. 67A	Rolling River First Nation		164	E1/2 of SW 1/4 13-19-18 WPM (SiteNo. 1-02) - 82.00	
							W 1/2 of SW 1/4 13-19-18 WPM (Site No. 2-02) - 82.00	
2009	FEBRUARY 26	MO-2009-006	Addition to Rolling River Indian Reserve No.67B	Rolling River First Nation		576.03	NE 1/4 27-17-18 WPM (Site 8) - 144.00	
							NW 1/4 26-17-18 WPM (Site 7) - 157.00	
							NW 1/4 27-17-18 (Site 10) - 101.00	
							SE 1/4 34-17-18 WPM (Site 9) - 19.00	
							SW 1/4 26-17-18 WPM (Site 6) - 155.03	
2008/09					123,873.74	2571.39	2008/2009 Total: 126,445.13	
TOTAL AMOUNT OF LAND SET APART AS RESERVE AS OF MARCH 31, 2009						311,245.95	2729.53	CUMULATIVE TOTAL = 313,975.48

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## Appendix C

  
Draft List of Historic Issues or Matters in Dispute



DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
1999-BPFN-002 Buffalo Point First Nation RE: Reed River Selection	6/23/1999	1.01(62), 1.01(65), 6.02(8), 12.01, 12.02	Definitions and Interpretation, Defined Words and Phrases, Navigable Waterway, Ordinary High Water Mark; Water Interests, Selection or Acquisition of Non-navigable Waterways, Reserve Boundaries on Navigable Waterways	<p><b>ISSUE:</b> Is the Reed River a navigable waterway OR is bed of Reed River eligible for transfer?</p> <p><b>BACKGROUND:</b> On December 21, 1999, Manitoba advised the Buffalo Point First Nation (BPFN) that their Reed River Selection was adjacent to a Navigable Waterway and as such the bed of Reed River below the Ordinary High Water Mark was ineligible for Selection under Paragraph 12.02(b). On June 23, 1999, BPFN referred the matter to the IMC under Subsection 6.02(8) regarding the question of whether the Reed River was a Navigable Waterway.</p>	Letter from Manitoba advising the BPFN that the Reed River is a Navigable Waterway and bed not available for selection for Reserve. Report entitled "Historic Uses of the Reed River – Lake of the Woods."	This issue was resolved through discussion of the parties. In support of those discussions, Canada had also provided a report entitled "Historic Uses of the Reed River – Lake of the Woods." The affected property (formerly known as Gould's Point) was set apart as Reserve on March 14, 2005.	
1999-RRFN-004 Rolling River First Nation RE: Certain Selections	9/19/1999	1.01(105), 3.11, 6.02(7) 13.05	Definitions and Interpretation, Defined Words and Phrases, Undeveloped Road Allowance; Principles for Land Selection and Acquisition, Reference of Matters to the Implementation Monitoring Committee; Land Selection and Acquisition Process, Process for Land Selection and Acquisition; Roads, Highways and Airports, Undeveloped Road Allowances	<p><b>ISSUE:</b> The Rolling River First Nation (RRFN) alleged that Manitoba identified an Undeveloped Road Allowance affecting certain Selections a considerable time after Manitoba responded to the RRFN that the Selections were eligible for Selection under Subsection 6.02(7).</p> <p><b>BACKGROUND:</b> On September 19, 2001, the RRFN referred the matter to the IMC under Section 3.11, identifying the availability of the government road allowance located between the (SE 22-19-18WPM) and the (SW 23 – 19 – 18 WPM). To be set apart as reserve as an issue.</p>	Documents referred to in the RRFN Letter to the IMC on September 19, 2001, such as the June 14, 2000 response to the RRFN from Manitoba.	Discussions between Manitoba and Rolling River First Nation led to a resolution in which the government road allowance at issue was made available. The selections, including the Undeveloped Road ROW were set apart as Reserve May 9, 2005.	2001-RRFN-001

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
1999-MCCN-005 Mathias Colomb Cree Nation RE: Non transfer of Federal Payment to MCCN TLE Trust	11/29/1999	18.01, 36.01, 40.20(4)	Federal Payment, Payment of Federal Payment; Material Failure and Events of Default, Material Failure to Comply with Fundamental Term or Condition; Miscellaneous Provisions, Effect of Amalgamation and Creation of First Nations	<b>ISSUE:</b> On August 4, 1999, Canada advised the Mathias Colomb Cree Nation (MCCN) that the conditions in Subsection 40.20(4) had to be satisfied, in addition to the condition precedent set in Section 30.02, prior to the parties executing a TEA with MCCN and more precisely, prior to Canada executing that agreement. On November 29, 1999, the MCCN referred that matter to the IMC alleging that Canada had materially failed to comply with a fundamental condition of both the MFA and the TEA by executing the TEA on April 15, 1999 but not transferring the Federal Payment to the MCCN TLE Trust. The MCCN also alleged that Canada behaved in an inappropriate manner by creating the Marcel Colomb First Nation during the execution phase of the TEA, as well as overturning the election of all councilors in July, 1999.  <b>BACKGROUND:</b> Discussions between the MCCN and the Marcel Colomb First Nation occurred regarding the allocation of the TLE assets until September 27, 2000 when the MCCN referred the matter of allocation to the IMC.		The matter was resolved by the Mediated Settlement Agreement dated March 24 <sup>th</sup> , 2003. Pursuant to the Mediated Settlement Agreement, the MCCN signed a new TEA on October 1, 2003,	2000-MCCN-002,  2001-CANADA-004,  2002-MCCN/TLEC-001
2000-CANADA-001 Canada / TLEC RE: GST Remission Order	3/10/2000	36.01, 37.01	Material Failure and Events of Default, Material Failure to Comply with Fundamental Term or Condition; Taxation, Goods and Services Tax	<b>ISSUE:</b> On February 11, 2000, Canada received a notice from TLEC in accordance with Subsection 36.01(1) alleging a material failure to comply with a fundamental term or condition of the MFA. On March 10, 2000, Canada referred the matter to the IMC in accordance with Paragraph 36.01(2) (b). The TLEC asserted that Canada had failed to comply with Section 37.01 in failing to issue the GST Remission Order.  <b>BACKGROUND:</b> Barry Effler was appointed as adjudicator for the binding arbitration.		On December 13, 2000, Canada issued the GST Remission Order (P.C. 2000-1767) to the TLEC and a Consent Award was signed December 28 <sup>th</sup> , 2001 by the adjudicator.	

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2000-MCCN-002 Mathias Colomb Cree Nation / Marcel Colomb First Nation RE: Allocation of TLA and Federal Payments between MCCN and MCFN	9/27/2000	1.01(23), 40.20	Definition and Interpretation, Defined Words and Phrases, Date of Execution; Miscellaneous Provisions, Effect of Amalgamation and Creation of First Nations	<p><b>ISSUE:</b> On September 27, 2000, the Mathias Colomb Cree Nation (MCCN) requested the assistance of the IMC in resolving the question concerning the allocation of the TLA and Federal payments between the MCCN and the new Marcel Colomb First Nation (MCFN).</p> <p><b>BACKGROUND:</b> On November 15, 2000, the TARR Centre was appointed by the IMC as an independent fact finder to identify relevant dates and populations of the respective EFNs. The parties agreed to the fact finder's report dated December 4, 2000, on the recommended allocation of the TLA and Federal Payments between the MCCN and the MCFN.</p>		On August 23, 2001, the MCCN withdrew its reference to the IMC in regards to the resolution of the allocation of TLE assets between MCCN and MCFN.	1999-MCCN-005, 2001-CANADA-004, 2002-MCCN/TLEC-001
2001-RRFN-001 Rolling River First Nation RE: Extension of Crown Land Selection Time Period	3/26/2001	4.02, 4.02(1)	Periods of Selection and Acquisition of Land, Extension of Periods	<p><b>ISSUE:</b> On March 26, 2001, the Rolling River First Nation (RRFN) requested a 6 month extension to its Crown Land Selection period under Subsection 4.02.</p> <p><b>BACKGROUND:</b> The RRFN alleged it was unable to Select its land within the Period of Selection due to extended discussions with Manitoba regarding the eligibility of their Selections.</p> <p>After the setting apart as Reserve of the Selection at issue in file 1999-RRFN, the RRFN would have only 5.7 acres of its Crown Land Amount to Select.</p>	Plan from RRFN, Letter from IMC to RRFN re the IMC's decision on the RRFN's extension request. Decision of the IMC is not on file.	At the April 2, 2001 IMC meeting, a decision was made that IMC would write to Canada/Manitoba and ask for their comments on this matter. At the May 8, 2001 IMC meeting, the minutes record that IMC has extended the Land Selection period under 4.02(4) subject to a detailed plan being submitted, "that will provide a BCR for the road allowances they wish to purchase to accommodate their acreage selection discrepancy."	1999-RRFN-004

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2001-NCN-002 Nisichawayasihk Cree Nation RE: Extension of Crown Land Selection Time Period	7/18/2001	4.02, 4.02(1), 4.02(2), 4.02(4), 4.02(6)	Periods of Selection and Acquisition of Land, Extension of Periods	<p><b>ISSUE:</b> On July 18, 2001, the Nisichawayasihk Cree Nation (NCN) requested an extension of its Crown Land Selection period under Subsections 4.02(2) and 4.02(6).</p> <p><b>BACKGROUND:</b> The NCN alleged it was unable to select its land within the Period of Selection due to the failure of Canada and Manitoba to fulfill their respective obligations under the MFA.</p> <p>IMC received responses from Canada and Manitoba and agreed to a land selection extension under 4.02(3) at meeting on September 20, 2001.</p> <p>On November 2, 2001, the IMC decided it would be more appropriate to consider the Period of Selection pursuant to Subsection 4.02(4).</p>	<p>Response letter from the IMC to the NCN's letter dated July 4, 2003; in which a further extension till June 11, 2004 was requested.</p> <p>(January 19, 2004 meeting notes indicate that the IMC Chairperson was to send response stating that all Crown land has been selected and therefore the extension is not necessary.)</p>	<p>On January 31, 2002, the IMC decided to extend the Period of Selection for the NCN for up to two additional 1 year periods to July 30, 2003 pursuant to Subsections 4.02(4) to accommodate the creation of O-Pipon-Na-Piwin (South Indian Lake) conditional upon the NCN submitting a detailed plan of the remainder of its Crown Land Amount within 120 days.</p> <p>On May 10, 2002 (revised September 13, 2003), the NCN submitted a plan to the IMC.</p>	

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2001-SCN-003  Sapotaweyak Cree Nation  RE: Extension of Crown Land Selection Time Period	8/16/2001	4.02, 4.02(1), 4.02(6), 4.02(7)	Periods of Selection and Acquisition of Land, Extension of Periods	<p><b>ISSUE:</b> On August 16, 2001, the Sapotaweyak Cree Nation (SCN) requested an extension of its Crown Land Selection period under Subsection 4.02(1).</p> <p><b>BACKGROUND:</b> The SCN alleged it was unable to select its land within the Period of Selection due to the failure of Canada to fulfill its obligations under the MFA, in particular, the SCN advised that the Dawson Bay Selection had been rejected by Canada's Additions to Reserve Committee.</p>	Letter dated February 1, 2002 from the IMC to SCN re their request for extension of period referred to in March 14, 2002 letter from Canada to the IMC.  (NOTE: This may be the January 31, 2002 letter from IMC.)	On November 2, 2001, the IMC decided to grant a reasonable extension to the Period of Selection for the SCN pursuant to Subsection 4.02(6) and (7). On January 31, 2002, the IMC informed the SCN of its decision.	2002-SCN-008
2001-CANADA-004  Canada / Mathias Colomb Cree Nation  RE: Date of Execution of MCCN TEA	8/30/2001	1.01(23), 30.03	Definitions and Interpretation, Defined Words and Phrases, Date of Execution; Coming into Force, Effective Date of Execution of Agreement	<p><b>ISSUE:</b> On September 19, 2001, Canada requested the assistance of the IMC in resolving the question concerning the Date of Execution of the Mathias Colomb Cree Nation's (MCCN) TEA.</p> <p><b>BACKGROUND:</b> On August 4, 1999, Canada advised the MCCN, that the conditions in Subsection 40.20(4) had to be satisfied, in addition to the condition precedent set in Section 30.02, prior to the parties executing a TEA with MCCN and more precisely, prior to Canada executing that agreement. On May 15, 2002, the issue was referred to the SAC pursuant to Subsection 34.09(8) and on July 25, 2002, the SAC referred the matter back to the IMC pursuant to Subsection 34.10(6). In September, 2002, the IMC appointed Lawrie Cherniack as adjudicator for mediation.</p>		Resolved concurrent with the Related Referral 2002 MCCN/TLEC- 001.	1999-MCCN-005, 2000-MCCN-002, 2002-MCCN/TLEC-001



DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2001-NHCN-005 Norway House Cree Nation  RE: Extension of Crown Land Selection Time Period	10/29/2001	4.02, 4.02(1), 4.02(4)	Periods of Selection and Acquisition of Land, Extension of Periods	<b>ISSUE:</b> On October 29, 2001, the Norway House Cree Nation (NHCN) requested an extension of its Crown Land Selection period.  <b>BACKGROUND:</b> The NHCN did not provide a reason for its inability to Select within the Period of Selection. On February 1, 2002, the IMC decided and informed the NHCN that rather than addressing the request under 4.02(1), Canada and Manitoba have agreed to consider referring matter under 4.02(3). If Canada or Manitoba refer the matter under 4.02(3), then NHCN needs to develop and submit a plan as per 4.02(4). On February 8, 2002, Manitoba referred the matter under 4.02(3).		Referral 2001-NHCN-005 was replaced by Referral 2002-Manitoba-006.	2002- Manitoba -006
2002-MCCN/TLEC-001 Mathias Colomb Cree Nation / TLEC  RE: Date of Execution of MCCN TEA	1/16/2002	1.01(23), 30.03, 40.20(4)	Definitions and Interpretation, Defined Words and phrases; Date of Execution; Coming into Force, Effective Date of Treaty Entitlement Agreement; Miscellaneous Provisions, Effect of Amalgamation and Creation of First Nations	<b>ISSUE:</b> On January 16, 2002, the MCCN and TLEC requested the assistance of the IMC in resolving the question concerning the Date of Execution of the MCCN's TEA.  <b>BACKGROUND:</b> On May 15, 2002, the issue was referred to the SAC pursuant to Subsection 34.09(8) and on July 25, 2002, the SAC referred the matter back to the IMC pursuant to Subsection 34.10(6). In September, 2002, the IMC appointed Lawrie Cherniack as adjudicator for mediation.		The TLA and Federal Payment allocation matter was resolved by the Mediated Settlement Agreement dated March 24 <sup>th</sup> , 2003. Pursuant to the Mediated Settlement Agreement, the MCCN signed a new TEA on October 1, 2003.	1999- MCCN- 005,  2000- MCCN- 002,  2001- CANAD A-004

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2002-BCN-002  Bunibonibee Cree Nation  RE: Extension of Crown Land Selection Time Period	1/28/2002	4.02, 4.02(1), 4.02(4)	Periods of Selection and Acquisition of Land, Extension of Periods	<p><b>ISSUE:</b> On January 28, 2002, the Bunibonibee Cree Nation (BCN) requested an extension of its Crown Land Selection period under Subsection 4.02(1).</p> <p><b>BACKGROUND:</b> The BCN alleged it was unable to select its land within the Period of Selection because the BCN did not have sufficient time to confirm Selections in the amount of its Crown Land Amount that satisfied Selection objectives established by the members of the BCN.</p>		On January 31, 2002, the IMC discussed the matter and agreed that it would be preferable if Manitoba or Canada referred the matter under 4.02(3). BCN was advised by letter dated January 31, 2002. IMC further advises that it could then extend the Period of Selection pursuant to Subsection 4.02(4). Manitoba referred the matter under 4.02(3) on February 8, 2002. Referral 2002-BCN-002 was replaced by Referral 2002-Manitoba-004.	2002-MANITO BA-004
2002-OCN-003  Opaskwayak Cree Nation  RE: Extension of Crown Land Selection Time Period	1/31/2002	4.02, 4.02(1), 4.02(4)	Periods of Selection and Acquisition of Land, Extension of Periods	<p><b>ISSUE:</b> On January 31, 2002, the Opaskwayak Cree Nation (OCN) requested an extension of its Crown Land Selection period under Subsection 4.02(1).</p> <p><b>BACKGROUND:</b> The OCN alleged it was unable to select its land within the Period of Selection due to the lack of suitable Crown Land within reasonable proximity that met the requirements set out in the MFA and the OCN's own criteria for Selection.</p>		On January 31, 2002, the IMC discussed the matter and agreed that it would be preferable if Manitoba or Canada referred the matter under 4.02(3). OCN was advised by letter dated January 31, 2002. IMC further advises that it could then extend the Period of Selection pursuant to Subsection 4.02(4). Manitoba referred the matter under 4.02(3) on February 8, 2002. Referral 2002-OCN-003 was replaced by Referral 2002-Manitoba-005.	2002-MANITO BA-005  2003-OCN-005

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2002- MANITOBA-004  Bunibonibee Cree Nation / Manitoba  RE: Extension of Crown Land Selection Time Period	8/2/2002	4.02, 4.02(3), 4.02(4)	Periods of Selection and Acquisition of Land, Extension of Periods	<p>ISSUE: On February 8, 2002, in response to a request from Bunibonibee Cree Nation (BCN) for an extension to their land selection period, Manitoba referred the matter to the IMC under section 4.02(3) of the MFA.</p> <p><b>BACKGROUND:</b> The selection period was to expire on February 17, 2002, and as of February 8, 2002 Manitoba advised that BCN had only selected 1,277.31 acres and 34,156.69 acres were yet to be selected.</p> <p>Please refer to Referral 2002-BCN-002 for additional detail.</p>	<p>Letter referred to in Fax dated March 18, 2002 to INAC from the IMC Chairperson. (A draft letter INAC was to send to BCN, NHCN and OCN by March 5, 2002.)</p> <p>February 6, 2003 letter from IMC to BCN.</p>	<p>On March 1, 2002, the IMC decided to extend the Period of Selection for the BCN for one year to February 17, 2003 pursuant to Subsection 4.02(4) upon condition that the BCN develop a detailed plan for the Selection of the remainder of its Crown Land Amount within 120 days. On March 21, 2002, the IMC informed the BCN of its decision. On April 23, 2002, the BCN submitted a plan to the IMC and at the request of the IMC; the BCN submitted a more detailed plan on May 29, 2002 to the IMC.</p> <p>On June 25, 2002 IMC acknowledged receipt and confirmed the extension till February 17, 2003. In the IMC February 17, 2003 meeting minutes, a second one year extension is discussed along with a February 6, 2003 letter from IMC to BCN. IMC decides to extend for one additional year to February 17, 2004.</p>	2002- BCN- 002

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IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2002- <b>MANITOBA-005</b>  Opaskwayak Cree Nation / Manitoba  RE: Extension of Crown Land Selection Time Period	8/2/2002	4.02, 4.02(3), 4.02(4)	Periods of Selection and Acquisition of Land, Extension of Periods	<p><b>ISSUE:</b> On February 8, 2002, in consideration of a request from OCN, Manitoba confirmed its view that the Opaskwayak Cree Nation (OCN) had not Selected its Crown Land Amount within the Period of Selection set out in Section 4.02, and referred the matter as per 4.02(3).</p> <p><b>BACKGROUND:</b> On January 31, 2002, the Opaskwayak Cree Nation (OCN) requested an extension of its Crown Land Selection period under Subsection 4.02(1). The OCN alleged it was unable to Select its land within the Period of Selection due to the lack of suitable Crown Land within reasonable proximity that met the requirements set out in the MFA and the OCN's own criteria for Selection.</p>	Letter referred to in Fax dated March 18, 2002 to INAC from the IMC Chairperson. (A draft letter INAC was to send to BCN, NHCN, and OCN by March 5, 2002.)	<p>On March 21, 2002 IMC advised OCN that extension for 1 year till January 22, 2003 was approved subject to submission of a plan. On July 22, 2002, the OCN submitted a plan to the IMC as per 4.02(4).</p> <p>On September 17, 2002, the IMC informed the OCN that it appeared unnecessary for the IMC to grant an extension of the Period of Selection at this time because the OCN had actually selected its Land within the 3 year period provided under the MFA. If selections are later withdrawn, IMC can consider again at that time as per 4.02(6) &amp; (7).</p>	2002- OCN-003  2003- OCN-005

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IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2002- <b>MANITOBA-006</b> Norway House Cree Nation / Manitoba  RE: Extension of Crown Land Selection Time Period	8/2/2002	4.02, 4.02(3), 4.02(4)	Periods of Selection and Acquisition of Land, Extension of Periods	<p><b>ISSUE:</b> On February 8, 2002, Manitoba in consideration of a request from NHCN, confirmed its view that the Norway House Cree Nation (NHCN) had not selected its Crown Land Amount within the Period of Selection, and referred the matter to IMC under section 4.02(3).</p> <p><b>BACKGROUND:</b> Please refer to Referral 2001-NHCN-005 for additional information.</p>	Letter referred to in Fax dated March 18, 2002 to INAC from the IMC Chairperson. (A draft letter INAC was to send to BCN, NHCN, and OCN by March 5, 2002.)  NOTE: The IMC annual Report for years ending March, 2002, 2003, and 2004 states that the NHCN land selection extension was for two 1 year periods?	On March 21, 2002, the IMC wrote to NHCN and advised that at a IMC meeting on March 1, 2002 it was decided to extend the Period of Selection for NHCN for one year to November 12, 2002 pursuant to Subsection 4.02(4) upon condition that the NHCN develop a detailed plan for the Selection of the remainder of its Crown Land Amount within 120 days. On May 10, 2002, the NHCN submitted a plan to the IMC.	2001-NHCN-005

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2002-BLFN-007  Barren Lands First Nation / Canada  RE: Extension of Crown Land Selection Time Period	9/13/2002	4.02(1), 9.01-9.04	Periods of Selection and Acquisition of Land, Extension of Periods; Land in Severalty, Land Outside Manitoba and Land of Cultural and Historical Significance in Existing Provincial Parks, ecological Reserves, Wildlife Refuges and National Parks, Land in Severalty	<p><b>ISSUE:</b> On September 13, 2002, the Barren Lands First Nation (BLFN) requested an extension of its Crown Land Selection period under Subsection 4.02(1).</p> <p><b>BACKGROUND:</b> The BLFN alleged it was unable to select its land within the Period of Selection due to Canada's delay in finalizing its policy on Land in Severalty and enter into discussions with the BLFN in that regard.</p>		<p>On October 23, 2002, the IMC decided that the BLFN was granted a one year extension to October 23, 2003 for the purpose of allowing Canada to finalize its position and policy on Land in Severalty (LIS). In addition, that the BLFN Period of Selection would be extended for an additional three year period after the date Canada affirms its LIS policy. In a letter dated February 6, 2003, the IMC informed the BLFN of its decision. On June 22, 2005 the IMC chairperson wrote to BLFN and advised that Canada has not completed its policy on LIS and therefore the extension has not yet commenced.</p>	2004-BLFN-002

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2002-SCN-008 Sapotaweyak Cree Nation  RE: Extension of Crown Land Selection Time Period	9/30/2002	4.02, 4.02(1)	Periods of Selection and Acquisition of Land, Extension of Periods	<b>ISSUE:</b> On September 30, 2002, the Sapotaweyak Cree Nation (SCN) requested a second extension to its Crown Land Selection period under Subsection 4.02(1).  <b>BACKGROUND:</b> The SCN alleged it was unable to select its land within the first one year extension to their period of Selection due to the failure of Canada to fulfill its obligations under the MFA.	Letter with IMC's response to SCN re their request for extension of period.	On February 17, 2003, the IMC met and decided that it appeared unnecessary for the IMC to grant a second extension to the Period of Selection at this time, because the SCN had actually selected more than its total Crown Land Amount under the MFA. In 2003, the IMC informed the SCN of its decision.	2001-SCN-003
2003-IMC-003 Northlands First Nation / IMC / Canada  RE: Extension of Crown Land Selection Time Period	6/2/2003	4.02, 9.01-9.04	Periods of Selection and Acquisition of Land, Extension of periods; Land in Severalty, Land Outside of Manitoba and Land of Cultural and Historical Significance in Existing Provincial Parks, Ecological Reserves, Wildlife Refuges and National Parks, Land in Severalty	<b>ISSUE:</b> On February 6, 2003, the IMC offered to extend the Northlands First Nation (NFN) Period of Selection in light of the fact that Canada had not yet entered into discussions with the NFN's members regarding the land in Severalty issue per Subsection 9.01(4) and (5). This was not a formal referral. Instead, IMC decided to extend the same accommodation that had been reached re BLFN request for extension, given their similar circumstances.  <b>BACKGROUND:</b> THE IMC offered a one year extension effective from October 23, 2002, and once Canada finalized its position on severalty the NFN land selection period would be extended for an additional three year period.	Letter from IMC June 2005. (NOTE: Similar to the June 22, 2005 letter to BLFN)	On October 23, 2002, the IMC decided that the NFN was granted a one year extension to October 23, 2003 for the purpose of allowing Canada to finalize its policy/ discussion paper on Land in Severalty (LIS); adding that the NFN Period of Selection would be extended for an additional three year period after its LIS Policy. In a letter dated February 6, 2003, the IMC informed the NFN of its decision.	2002-BLFN-007

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2003-OCN-005  Opaskwayak Cree Nation  RE: Extension of Crown Land Selection Time Period	12/10/2003	4.02,  4.02(1)	Periods of Selection and Acquisition of Land, Extension of Periods	<p><b>ISSUE:</b> On December 10, 2003 Opaskwayak Cree Nation requested an extension to their Crown Land Selection period as per section 4.02(1). OCN requests an extension for two years and since the Province did not declare certain selections ineligible for over one year, until December 30, 2002, OCN feels this should now be extended until January 21, 2005.</p> <p><b>BACKGROUND:</b> OCN's TEA is dated January 22, 1999, and their period for Crown Land selection expired on January 21, 2002. OCN previously submitted a referral and request for an extension (2002-OCN-003) dated January 31, 2002. Manitoba also referred the matter (2002-MANITOBA-005 on February 8, 2002. On September 17, 2002, the IMC informed the OCN that it appeared unnecessary for the IMC to grant an extension of the Period of Selection at this time because the OCN had actually selected its Land within the 3 year period provided under the MFA. If selections are later withdrawn, IMC can consider again at that time as per 4.02(6) &amp; (7).</p>		<p>In a letter dated December 19, 2003 IMC acknowledges the OCN request.</p> <p>At an IMC meeting dated January 19, 2004 it was agreed that IMC would grant an extension of 6 months to July 21, 2004 owing to issues over the interpretation of the MFA. This will be conditional upon OCN selecting an additional 569.43 acres to fulfill its outstanding Crown Land amount and arranging a selection review meeting with the parties. OCN's next selection was Egg Lake and it was received by Manitoba on 2005/10/11.</p> <p>(NOTE: the IMC Annual Report for years ending March 31, 2002, 2003, and 2004 refer to two extensions granted; the first was valid until January 22, 2003, and the second expired January 22, 2004.)</p>	2002-OCN-003  2002-MANITOBA-005



DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2004-SCN-001  Sapotaweyak Cree Nation  RE: Concerns with Canada's survey practice.	2/26/2004	23.04	Costs of Environmental Audit and Survey of Land, Survey to Meet Standards	<p><b>ISSUE:</b> On February 26, 2004, the Sapotaweyak Cree Nation (SCN) referred the matter to the IMC alleging that errors in cutting survey lines on their Pelican Rapids Selection Phase 1 survey resulted in lost timber and unwanted access to the land and that Canada's surveyor did not adhere to accepted survey standards in completion of the survey.</p> <p><b>BACKGROUND:</b> In March 2005, the IMC retained an independent surveyor (All Sect Surveys Ltd.) as a fact finder.</p> <p>On March 23, 2005 Canada and SCN met with the fact-finder Andrew Miles and resolved the issue to their mutual satisfaction.</p> <p>The EFN subsequently refreshed the boundaries of the Selection.</p>	<p>Letter dated March 9, 2004 from SCN to the IMC referenced in letter dated April 6, 2004 from SCN to IMC.</p> <p>Letter dated May 27, 2004 from the TLEC and other documents from the IMC and SCN referenced in letter dated June 1, 2004 from D'Arcy &amp; Deacon to TLEC.</p> <p>Document appointing fact finder in March, 2005.</p> <p>October 20, 2005 document reference in letter dated October 31, 2005 from SCN to IMC.</p>	<p>Canada and SCN met with fact-finder Andrew Miles on March 23, 2005 and agreed to a resolution by way of having the boundaries refreshed by the First Nation, and the plan of survey approved.</p> <p>On August 10, 2004, the Selection was set apart as Reserve.</p>	

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2006-RRFN-002 Rolling River First Nation RE: Transfer of Administration and Control from Manitoba to Canada	2/27/2006	7.01(2)	Transfer of Land and Interests from Manitoba to Canada, Manitoba to transfer Crown Land and Interests to Canada	<p><b>ISSUE:</b> Rolling River First Nation (RRFN) alleged that there is a "regulatory gap" that occurs when the administration and control of all interests of Manitoba in land is transferred from Manitoba to Canada arising from the existence of a contractor lien on title.</p> <p><b>BACKGROUND:</b> This matter relates to a Rolling River acquisition known as the former Ronald Hill property, specifically the quarter section identified as the SE 20-17-18 WPM. The specifics of the issue revolved around the application of a builder's lien(s) against this quarter section, which by law prevented any further disposition of the property until such time as the lien was addressed and removed. On February 27, 2006, RRFN referred the matter to the IMC. This issue arose as a result of a matter between the First Nation and one of its contractors and was resolved as between them.</p> <p>The characterization of the issue as a regulatory gap issue is confusing. In fact a regulatory gap did not arise in the context of application of a builder's lien against this particular quarter section of the former Ronald Hill property.</p>	Confirmation of actions referred to in the IMC Draft Minutes of May 23 & 24, 2006/ June 1 & 2, 2006, i.e. the Chairperson writing to Canada requesting clarification on this issue and Canada's and Manitoba's responses.	<p>The builder's lien was addressed by the RRFN and the lien removed. The transfer of the title from RRFN to Canada subsequently occurred.</p> <p>The acquired fee simple land was then set apart as Reserve on May 29, 2006.</p>	

DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE

IMC File Number Party/EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2007-TLEC-004  TLEC  RE: BILL 32 consultation and MFA subsection 40.12	8/27/2007	10.02, 40.12	Miscellaneous Provisions, Constitutional or Legislative Changes	<p><b>ISSUE:</b> TLEC alleged that Manitoba failed to consult with the TLEC as per the common law duty to consult and accommodate, as well as under Subsection 40.12 in regards to the introduction of Bill 32</p> <p><b>BACKGROUND:</b> On August 27, 2007, the TLEC referred the matter to the IMC. TLEC further asserts that Bill 32 would unilaterally take away the right of the EFNs to determine the scope of the rights in the Replacement Interest under Subsection 10.02.</p>		Bill 32 did not proceed and died on the Order Paper. File closed. Decision made at May 14, 2008 IMC Meeting.	
2006-TLEC-004  TLEC / Manitoba  RE: Competing considerations and Eligibility of selections less than 1,000 acres.	5/19/2006	3.02(3)-(7), 3.11	General Principles for Selection and Acquisition of Land, Reference of Matter to the Implementation Monitoring Committee	<p><b>ISSUE:</b> The TLEC allege that Manitoba was incorrectly characterizing selections ineligible due to competing considerations (e.g. the cost of survey of a Hydro Easement line) on many Selections under 1,000 acres. In addition that Manitoba was raising the issue a considerable time after it responded to the EFNs regarding the eligibility of the Selections under Subsection 6.02(7).</p> <p><b>BACKGROUND:</b> On May 19, 2006, TLEC referred the matter to the IMC under Section 3.11. On June 7, 2007, Manitoba provided an update of their September 7, 2005 report on the "Less than 1000 acres" issue. At the IMC request, Manitoba provided a report itemizing the 31 Selections of less than 1000 acres that Manitoba "deemed" not</p>	Letter dated November 18, 2004 and letter dated January 28, 2005 referred to in TLEC's letter of referral dated May 19, 2006 to the IMC.	Referral was resolved through the consensus achieved in the form of Bulletin #1 dated February, 2009, and the soon to be released Bulletin #2.	


**DRAFT LIST OF HISTORIC ISSUES OR MATTERS IN DISPUTE**

<p>2006-TLEC-004 - Con't</p>				<p>eligible because of competing considerations. Two focus meetings have been held to review and discuss the varying interpretations and applications of the relevant MFA provisions. In addition a discussion paper on Selections of Land Less Than 1,000 Acres in Area has been prepared by the IMC.</p> <p>The IMC party representatives then asked the IMC Office to prepare a bulletin on this matter, in accordance with the discussion paper, to provide guidance to the parties and the EFNs on this matter. These led to the IMC development of two bulletins, or procedural and operational guidelines; the first on the concept of eligibility, and the second on Selections Under 1,000 Acres in Area. Bulletin #1 on the Concept of Eligibility of Selections or Acquisitions was released in February, 2009. Final comments have been received from the parties and release of Bulletin #2 entitled "Selections Under 1,000 Acres in Area" is imminent.</p>			
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## Appendix D

  
Draft List of Current Issues or Matters in Dispute



DRAFT LIST OF CURRENT ISSUES OR MATTERS IN DISPUTE

IMC File Number Party / EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
1999-BPFN-001  Buffalo Point First Nation  RE: Selection within a Provincial Park	6/23/1999	3.02(12), 3.03(6), 6.02(8)	General Principles for Selection and Acquisition of Land; Specific Principles for Selection of Crown Land, Land in a Provincial Park, Ecological Reserve, Wildlife Refuge or Proposed National Park; Process for Land Selection and Acquisition	<b>ISSUE:</b> BPFN alleges that its Selection within Birch Point Provincial Park should not be excluded under Subsection 3.03(6) and that Manitoba mistakenly applied Subsection 3.02(12) to the Selection.  <b>BACKGROUND:</b> On September 16, 1998, Manitoba advised the Buffalo Point First Nation that its Selection within Birch Point Provincial Park was not eligible for Selection under Subsection 3.03(6) because Birch Point was designated under the Provincial Lands Act and the park is only the only provincial facility to provide access to the Lake of the Woods. On June 23, 1999, the BPFN referred the matter to IMC under Subsection 6.02(8).	The IMC has the following documents: June 23, 1999 letter from BPFN and June 25, 1999 letter from the IMC but missing any other relevant documents.	Not determined as of March 31, 2009	
1999-NCN-003  Nisichawayasikh Cree Nation  RE: Date of Execution of the NCN TEA	8/25/1999	1.01(23), 30.01	Definition and Interpretation, Defined Words and Phrases, Date of Execution; Coming into Force, Effective Date of Agreement	<b>ISSUE:</b> To determine the date of the NCN TEA.  <b>BACKGROUND:</b> On August 25, 1999 (NCN) and June 6, 2001 (Canada), the matter concerning the Date of Execution of the NCN's TEA was referred to the IMC. The NCN alleged that the Date of Execution was July 30, 1998. This was the date that was typed on the TEA, and the date of the signing ceremony in Nelson House. All parties signed the EFN TEA that day excepting Canada who had a representative initial beside the signature block. Canada subsequently sent the TEA to the Minister's office where it was signed by Minister Stewart, who also hand dated her signature September 1, 1998. The July 30, 1998 date is also the 90th anniversary date of NCN signing accession to Treaty No. 5. Canada has taken the position that the date of execution was Sept 1, 1998. Canada references MFA section 30.03 wherein it describes a TEA coming into force upon execution by the EFN and all parties. On November 10, 1999, a Technical Working Group meeting was convened to discuss the issue.	Opinions from the party's legal counsel on the effective date of the TEA in preparation for the Technical Working Group meeting scheduled for November 10, 1999. Any documents other than the August 25, 1999 letter from NCN, the September 9, 1999 letter form IMC, and the May 4, 2000 letter from NCN	Not determined as of March 31, 2009.  This matter has been dormant for some time.	



DRAFT LIST OF CURRENT ISSUES OR MATTERS IN DISPUTE

IMC File Number Party / EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2003-BON-001 Brokenhead Ojibway Nation  RE: Disposal of Surplus Real Property and MFA Process.	1/23/2003	1.01(88), 3.10, 3.10(1)	Definitions and Interpretation, Defined Words and Phrases, Surplus Federal Land; Principles for Land Selection and Acquisition, Specific Principles for Acquisition of Surplus Federal Land	<p><b>ISSUE:</b> Brokenhead Ojibway Nation (BON) alleged that Canada failed to forward notice of Surplus Federal Land, re: the Kapyong Barracks: to the BON and that Canada mistakenly interpreted that the MFA did not apply.</p> <p><b>BACKGROUND:</b> On December 4, 2002, Canada advised the Brokenhead Ojibway Nation (BON) that the Kapyong Barracks had been designated as a "strategic disposal" under the Treasury Board Policy on the Disposal of Surplus Real Property and that it would be transferred to the Canada Lands Company for disposal. In addition they advised that the MFA did not apply to the strategic disposal process as the interest of the EFN's can not be considered on a priority basis. On January 22, 2003, the BON referred the matter to the IMC.</p> <p>The First Nations of Treaty 1, including BON, filed a Notice of Application in Federal Court on January 25, 2008.</p>	he IMC has the following documents: Letter dated January 22, 2003 from the BON to IMC, letter dated February 6, 2003 from the IMC to the BON, and letter dated March 27, 2003 from Canada to the IMC but missing any other relevant documents.	Matter deferred pending outcome of litigation or negotiation as of March 31, 2009	

DRAFT LIST OF CURRENT ISSUES OR MATTERS IN DISPUTE

IMC File Number Party / EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2003-TLEC-002 TLEC RE: Land In Severalty Policy Manual	1/27/2003	9.01, 9.02, 9.04, 36.01	Land in Severalty, Land Outside Manitoba and Land Cultural and Historical Significance in Existing Provincial Parks, Ecological Reserves, Wildlife Refuges and National Parks, Land in Severalty, Election by members, Right and Status of Land in Severalty; Material Failure and Events of Default; Material Failure to Comply with Fundamental Term or Condition	<p><b>ISSUE:</b> TLEC President Fred Muskego wrote to Canada on January 27, 2003 with concern that the Land In Severalty (LIS) Policy Manual has not been completed. He states that TLEC has no other recourse but to refer the matter to the IMC.</p> <p><b>BACKGROUND:</b> A member of BLFN and/or NFN who wishes to select land in severalty must exercise his/her option before the EFN has selected half of their land or within 1 year of the TEA date, whichever is earlier. Canada had not initiated discussions with Manitoba, the two EFNs, or those members who elected to take the land in severalty. In the IMC Annual Report for the year ended March 31, 2001, the IMC recommended that Canada enter into good faith discussions concerning the nature and extent of that right in order to settle this outstanding matter.</p> <p>At the February 17, 2003 IMC meeting, Canada (E. Rasmussen) confirmed that Canada has not finished its policy. Canada linked the delay to: the complexities, the need to engage in a national policy review, and the lack of judicial guidance in policy development. Canada (ER) advised that it would discuss the matter with Manitoba, and advise IMC re the time required for completion of the policy. On June 26, 2003 at an IMC meeting Canada (G. Kitchen) advised that it has completed a draft of the policy and that Canada was on track to complete it by the fall of 2003. On January 19, 2004 at an IMC meeting Canada reported that a timeline for policy completion could be provided by the end of March, 2004. Canada advised that two sets of bilateral discussions will be required – with Manitoba and with the EFNs. IMC undertook to issue a letter extending the land selection period for BLFN.</p> <p>At a June 23, 2004 IMC meeting a letter from INAC RDG</p>			This initial referral was extended into: 2004-BLFN/TLEC-002

DRAFT LIST OF CURRENT ISSUES OR MATTERS IN DISPUTE

<p>2003-TLEC-002 - Con't</p>						<p>Roy Bird to Chief Halkett and Council was distributed. Canada's position is that rather than bring the issue to arbitration, it would rather provide a timeframe for completion of its policy. IMC discussed the pros and cons of arbitration as the EFN is frustrated with no progress on this matter. Decision was made to ask Chief Halkett to place matter in abeyance for 90 days to facilitate the fact finding process and also to prepare for arbitration – deadline is September 30/04. Chair undertook to write letter to Chief, RDG, and Minister.</p> <p>At a January 6, 2005 IMC meeting Chairman circulated a letter from Laurie Cherniak dated January 4, 2005 confirming his interest in being retained as adjudicator. IMC agreed to appoint LC as adjudicator subject to the agreement of BLFN. Once confirmed by BLFN, a meeting would be held to finalize the terms of reference (TOR) and set dates for the binding arbitration. The Chair still encouraged the EFN and Canada to engage in good faith discussions. Canada (ER) agreed because even if adjudicator finds an event of default, Canada would have 180 days to remedy the matter. Canada undertook to send a letter offering to engage in good faith discussions.</p> <p>On June 14, 2007 at an IMC meeting, Canada advised that the arbitration process has been held in abeyance pending further discussion among the lawyers for the parties involved. The Chair indicated that he was trying to confirm the status to complete the historical record in the format of the Protocol for the Referral and Review of an Issue/Matter in Dispute.</p>
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DRAFT LIST OF CURRENT ISSUES OR MATTERS IN DISPUTE

IMC File Number / Party / EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2003-SCN-004	02/07/2003	Part III	Third Party Interests.	<p><b>ISSUE:</b> Canada requested appropriate releases and indemnities from SCN for land they considered occupied by unregistered interests prior to accepting land transfers from Manitoba. SCN believes that their acceptance of the lands on an "as is where is" basis should suffice and further that where cabins were used by SCN members, there were no TPLs to resolve. On February 7, 2003, in follow up to a SCN, Manitoba, and Canada meeting on this matter, Councillor Nelson Genaille referred it to IMC.</p> <p><b>BACKGROUND:</b> Various individuals have developed cabins on Crown land and neglected to obtain the necessary permits or other legal tenure. Crown land selections by various EFNs contain cabins and sometimes more substantial developments and these now encumber property, by their presence rather than by registered third party interests. It is the lack of registration of the interest and lack of legal land tenure that differentiates these developments from other third party interests. On February 12, 2003 Canada wrote to the IMC Chairperson and identified this issue as significant and fundamental to the fulfilment of the contractual obligations set out in the MFA, identified 19 selections with this type of issue, and confirmed their preparedness to continue the reserve creation process for lands affected by such occupation conditional upon Manitoba and TLEC participating towards resolving the issue.</p> <p>Canada developed a document entitled, "An Agreement Respecting Pre Transfer Uses of Crown Lands". It is understood that a few EFNs have executed such a document however IMC does not have a copy of any agreements which have been finalized with EFNs.</p> <p>It is further understood that the SCN entered into an agreement of this type but none of the parties or SCN have provided a copy to the IMC Office to bring closure to this referral. The matter remains controversial for some EFNs with selections occupied by unregistered developments.</p>	<p>Generic copy of Canada's most recent draft of, "An Agreement Respecting Pre Transfer Uses of Crown Lands".</p> <p>A copy of the "An Agreement Respecting Pre Transfer Uses of Crown Lands" signed by SCN to enable this referral to be closed.</p>	<p>The IMC Office chaired focus meetings on January 10, 2008 and January 30, 2008 to assist the Parties in defining options available to resolve the unregistered interests arising from the construction of structures/buildings by members of an EFN on a selection prior to or after the selection is made by the EFN that were not legally permitted. Canada has undertaken to provide a copy of the Canada – SCN Agreement at an IMC meeting on March 25, 2009.</p> <p>Resolution not confirmed as of March 31, 2009.</p>	

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IMC File Number Party / EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2004-BLFN/TLEC-002 Barren Lands First Nation / TLEC RE: Severalty	5/5/2004	9.01, 9.02, 9.04, 36.01	Land in Severalty, Land Outside Manitoba and Land Cultural and Historical Significance in Existing Provincial Parks, Ecological Reserves, Wildlife Refuges and National Parks, Land in Severalty, Election by members, Right and Status of Land in Severalty; Material Failure and Events of Default, Material Failure to Comply with Fundamental Term or Condition	<p><b>ISSUE:</b> BLFN alleges that Canada had materially failed to comply with a fundamental term of the MFA and asserted that although its members had given Canada notice of their election to take Land in Severalty in accordance with Subsection 9.01(1), Canada had failed to enter into discussion with those members under Subsection 9.01(4).</p> <p><b>BACKGROUND:</b> On May 5, 2004, the BLFN referred the matter to the IMC. On June 14, 2004, TLEC jointly referred the matter to IMC with the BLFN.</p> <p>On January 2, 2005, Lawrie Cherniak was appointed as adjudicator for the binding arbitration regarding the procedural issue of the conduct of consultations concerning the nature and extent of the Land in Severalty right. On June 29, 2005, Canada provided to the Arbitrator a listing of dates when they conducted consultation with members of the BLFN.</p> <p>On September 19, 2005 BLFN requested Canada's position on Land in Severalty. As well, Chief Halkett reflects his impression that Canada would at a minimum have provided a report (information) on the May 2005 discussions for BLFN to make an informed decision on how to proceed with arbitration. BLFN asserts that this information is required to determine if the meetings fulfilled meaningful consultation.</p> <p>On July 18, 2006, the revised terms of reference for the binding arbitration were drafted by the TLEC to accommodate a representative member case study for purposes of considering the question of the continued availability of the option to elect Land in Severalty. On July 19, 2006, the review of the revised terms of reference was postponed pending appointment of a new legal counsel for the BLFN and TLEC. In October, 2006, new legal counsel was appointed for the BLFN and TLEC.</p>		Not determined as of March 31, 2009	Initiated as 2003-TLEC-002

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<b>IMC File Number Party / EFN RE:</b>	<b>Referral Date</b>	<b>MFA Sections</b>	<b>MFA Headings</b>	<b>General Issue / Background</b>	<b>Missing Documents</b>	<b>Means of Resolution</b>	<b>Other Related Files</b>
<b>2006- MANITOBA-001</b> Bunibonibee Cree Nation / Manitoba RE: Registration of an Assignment for Collateral Purposes against a lease (TPI) on the Knee Lake Lodge selection.	2/3/2006	6.02(6), 36.01	Process for Land Selection and Acquisition; Material Failure and Events of Default; Material Failure to Comply with Fundamental Term or Condition	<p><b>ISSUE:</b> BCN allege that Manitoba breached obligations under Subsection 6.02(6) by permitting several registrations to be made against a lease affecting the BCN's Knee Lake Lodge Selection.</p> <p><b>BACKGROUND:</b> On January 13, 2006, Manitoba was given notice by the BCN in accordance with Subsection 36.01 asserting a material failure by Manitoba to comply with a fundamental term or condition. On February 3, 2006, Manitoba referred the matter to the IMC in accordance with Paragraph 36.01(2) (b).</p>	Manitoba's response to the BCN's Knee Lake Lodge Selection, letter dated April 7, 2006 referred to in letter dated June 28, 2006 from the IMC to BCN.	Not determined as of March 31, 20089	
<b>2006- BCN/TLEC-003</b> Bunibonibee Cree Nation / Manitoba / TLEC RE: Effect of a Portage on a Selection in relation to MFA provisions	4/7/2006	1.01(21), 3.02(6), 3.02(12), 7.01(2), 36.01	Definitions and Interpretation, Defined Words and Phrases, Crown Reservations; General Principles for Selection and Acquisition of Land; Transfer of Lands and Interests from, Manitoba to Transfer Crown Land and Interests to Canada; Material Failure and Events of default, Material Failure to Comply with Fundamental Term or Condition	<p><b>ISSUE:</b> TLEC asserts that a portage is defined as a Crown Reservation under Subsection 1.01(21) and accordingly that Manitoba is not entitled to characterize a portage as a reasonable competing consideration as the basis upon which to refuse to confirm the eligibility of the Trout Falls and Wipaniapis Portage Selections. TLEC further asserts that Manitoba was obliged to transfer to Canada administration and control of all interests of Manitoba in the Selections, including any Crown Reservations in accordance with Subsection 7.01(2).</p> <p><b>BACKGROUND:</b> On December 23, 2002, Manitoba gave notice to the BCN of the existence of a portage across Trout Falls and Wipaniapis Portage Selections asserting that a portage was a "competing consideration" and therefore that the Selections were not eligible under the Principles. On February 27, 2006, Manitoba was given notice jointly by the BCN and TLEC in accordance with Subsection 36.01 asserting a material failure by Manitoba to comply with a fundamental term or condition. On March 22, 2006, Manitoba referred the matter to the IMC in accordance with Paragraph 36.01(2) (b).</p> <p>July 25, 2006: TLEC tabled its motion to have the Independent Chairperson removed, and this effectively put an end to the normal business of the IMC until a new Chairperson was appointed.</p> <p>March 1, 2007: A Service Agreement was entered into</p>		Review in the Protocol format is in process, however, not determined as of March 31, 2009.	

DRAFT LIST OF CURRENT ISSUES OR MATTERS IN DISPUTE

<p>2006-BCN/TLEC-003 - Con't</p>					<p>between the IMC party representatives and James Roger McLeod wherein the appointment of McLeod as Independent Chairperson of the IMC by the Senior Advisory Committee was acknowledged, and the terms of his two year appointment were confirmed.</p> <p>March 1, 2007 – July, 2007: The IMC representatives began a renewal of the IMC initiative, and adopted procedures and a work plan to do so. In conjunction with this renewal, the IMC representatives adopted a "Protocol For The Referral and Review of an Issue or Matter in Dispute Under the 1997 Manitoba Framework Agreement on Treaty Land Entitlement"</p> <p>April 18, 2007: IMC meeting at which the Portage issue was discussed and Manitoba undertook to provide a report setting out the results of its review of the Selections with portages.</p> <p>June 14, 2007: IMC Meeting at which Manitoba presented its report dated June 6, 2007 to the IMC regarding "Selections containing a portage"</p> <p>On April 7, 2006, the BCN and TLEC jointly requested the IMC to direct the matter to binding arbitration under Subsection 36.01(5). On February 27, 2007, Manitoba sent a letter to the BCN to discuss the retention of the right of public access to the Selections' portages either by way of an access agreement or possible exclusion under Subsection 3.02(12) as directed by the IMC.</p> <p>The IMC office is consolidating the review of the Referral into the format of the I/M Referral Protocol.</p>		
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DRAFT LIST OF CURRENT ISSUES OR MATTERS IN DISPUTE

IMC File Number Party / EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2006-TLEC-004 TLEC / Manitoba RE: Competing considerations and Eligibility of selections less than 1,000 acres.	5/19/2006	3.02(3)-(7), 3.11	General Principles for Selection and Acquisition of Land, Reference of Matter to the Implementation Monitoring Committee	<p><b>ISSUE:</b> The TLEC allege that Manitoba was incorrectly characterizing selections ineligible due to competing considerations (e.g. the cost of survey of a Hydro Easement line) on many Selections under 1,000 acres. In addition that Manitoba was raising the issue a considerable time after it responded to the EFNs regarding the eligibility of the Selections under Subsection 6.02(7).</p> <p><b>BACKGROUND:</b> On May 19, 2006, TLEC referred the matter to the IMC under Section 3.11. On June 7, 2007, Manitoba provided an update of their September 7, 2005 report on the "Less than 1000 acres" issue. At the IMC request, Manitoba provided a report itemizing the 31 Selections of less than 1000 acres that Manitoba "deemed" not eligible because of competing considerations. Two focus meetings have been held to review and discuss the varying interpretations and applications of the relevant MFA provisions. In addition a discussion paper has been prepared by the IMC.</p> <p>The IMC party representatives then asked the IMC Office to prepare a bulletin on this matter, in accordance with the discussion paper, to provide guidance to the parties and the EFNs on this matter. Final comments have been received from the parties and release of the bulletin is imminent. It is anticipated that this will resolve this referral.</p>	Letter dated November 18, 2004 and letter dated January 28, 2005 referred to in TLEC's letter of referral dated May 19, 2006 to the IMC.	Not determined as of March 31, 2009.	



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IMC File Number Party / EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2007-BPFN-001 Buffalo Point First Nation  RE: Proposed purchase of Control Zone lands adjacent PTH #12.	3/15/2007	13.02, 13.03	Roads, Highways and Airports, Exclusion of Certain Land, Widths of Road Right of Way	<p><b>ISSUE:</b> On June 26, 2006, Manitoba advised the BPFN that among other things Manitoba was entitled to a control zone to be excluded from the land purchased by the BPFN along PTH No. 12.</p> <p><b>BACKGROUND:</b> This would result in the exclusion of a 39.52 metre wide strip of land along PTH No. 12 in accordance with Section 13.03, and Manitoba has offered to purchase it from BPFN. On March 15, 2007, the BPFN referred the matter to the IMC. BPFN and Manitoba presented their views at the IMC meeting on December 12, 2007. Negotiations and consideration of options have continued. BPFN and Manitoba have not agreed on a purchase price/ an agreement.</p>		Not determined as of March 31, 2009.	

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IMC File Number Party / EFN RE:	Referral Date	MFA Sections	MFA Headings	General Issue / Background	Missing Documents	Means of Resolution	Other Related Files
2007-TLEC-002 2007-TLEC-003 TLEC / Manitoba  RE: Hydro Easement	8/27/2007	1.01(40), 7.01, 12.05, 12.07, 12.08, 12.09, 12.10, 38.01, 40.11	Definitions and Interpretation, Defined Words and Phrases, Hydro Easement; Manitoba to Transfer Crown Land and Interests to Canada; Water Interests, Hydro Easement and Determination of Easement Line, Land Below Easement Line Not to be Part of Total Land Amount, Limit on Liability for Certain Land to be Selected or Acquired, Land Physically Required by Manitoba Hydro, Riparian Rights, ; Agreed Forms, Use of Agreed Forms; Miscellaneous Provisions, No Effect on Existing Aboriginal or Treaty Rights.	<p><b>ISSUE:</b> TLEC referred two issues within this referral: firstly TLEC is asserting that Manitoba is not entitled to retain even partial constitutional jurisdiction required to support an easement required by Manitoba Hydro; and secondly that the hydro easement should set out a resolution process where the EFNs can address alleged impacts on the EFN's existing aboriginal and Treaty rights, as well as any potential claim to compensation in respect of the easement area.</p> <p><b>BACKGROUND:</b> On August 27, 2007, the TLEC referred the matter to the IMC. The IMC directed the IMC Chairperson to consolidate the submissions of the Parties into the format of the protocol for review of a Referral for further discussion, expected in August 2008.</p> <p>Since that time there has been a number of focus meetings, with and without legal counsel, on this topic. The issues in dispute are now characterized as : a) terms and conditions of the H/E document, and b) Other related issues arising from the application of MFA Article 12.</p> <p>By year end TLEC had undertaken to consult with the affected EFNs with respect to (a) above, and the IMC Office was convening a focus meeting on (b) above.</p>		Not determined as of March 31, 2009.	



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## Appendix E



Definitions used in the 2008/2009 IMC Annual Report

## DEFINITIONS USED IN THE ANNUAL REPORT OF THE IMC 2008/2009

- "AFC" means Agreed Forms Committee;
- "AIP" means Agreement in Principal;
- "BCN" means Bunibonibee Cree Nation;
- "BLFN" means Barren Lands First Nation;
- "BON" means Brokenhead Ojibway Nation;
- "BPFN" means Buffalo Point First Nation;
- "CAP" means Community Approval Process;
- "EFN" means Entitlement First Nation;
- "FRPFIA" means Federal Real Property and Federal Immovables Act;
- "IMC" means the Implementation Monitoring Committee;
- "I/M Referral Protocol" means the agreed format or "Protocol" for the referral and review of an Issue or Matter in Dispute;
- "LIS" means Land In Severalty;
- "LSS" means the Land Selection Study;
- "MANA" means Manitoba Aboriginal and Northern Affairs;
- "MCCN" means Mathias Colomb Cree Nation;
- "MCFN" means Marcel Colomb First Nation;
- "MFA" or "**Framework Agreement**" means the 1997 Manitoba Framework Agreement on Treaty Land Entitlement;
- "MNRTA" means the Manitoba Natural Resources Transfer Agreement;
- "NCN" means Nisichawayasihk Cree Nation;
- "NHCN" means Norway House Cree Nation;
- "OCN" means Opaskwayak Cree Nation;
- "OPCN" means O-Pipon-Na-Piwin Cree Nation;
- "RRFN" means Rolling River First Nation;
- "SCN" means Sapotaweyak Cree Nation;
- "TEA" means a Treaty Entitlement Agreement; and,
- "TLEC" means the Treaty Land Entitlement Committee of Manitoba, Inc.
- "TLE" means Treaty land entitlement under any Treaty in Manitoba.
- "TR" means Third Party Interests;
- "TRELES" means Treaty Land Entitlement System;
- "WSCN" means Wuskwi Sipihk Cree Nation;