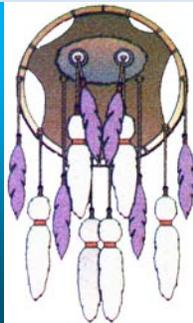


**2014 - 2015**



**Implementation Monitoring Committee  
Annual Report**

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## EXECUTIVE SUMMARY

On behalf of the Implementation Monitoring Committee (IMC) and in accordance with the Manitoba Framework Agreement (MFA) Paragraph 34.09 (10)(b), the IMC Independent Chairperson provides an Annual Report to the Parties of the 1997 MFA represented by the President of the Treaty Land Entitlement Committee, the Minister of Aboriginal Affairs and Northern Development Canada and the Minister of Aboriginal and Northern Affairs for Manitoba.

This Annual Report covers a 10 month period ending March 31, 2015. Mr. Martin Egan served as Interim IMC Chairperson for six (6) months from July 9, 2014 to December 31, 2014. The current Chairperson's appointment commenced on January 13, 2015 for a fifteen (15) month term expiring on March 31, 2016.

This is a summary of the progress of implementing the MFA and Treaty Entitlement Agreements (TEAs), the issues or matters in dispute that have been brought to the IMC by the Parties or the First Nations, the 'Referrals', resolved or outstanding during 2014/2015, areas for improvement that have been identified and the steps being taken to build on opportunities for improvement. The IMC is generally responsible for facilitating the implementation of the MFA and providing the Senior Advisory Committee (SAC) with recommendations for the improvement of the implementation of the MFA and any TEA. The IMC is responsible for an Annual Work Plan jointly developed by the Parties. The IMC makes recommendations as it sees fit in relation to its work plan activities.

In eighteen (18) years of MFA implementation, the Parties have set apart a total of 462,727.25 acres of land for reserve comprised of 115 separate Selections and 24 Acquisition parcels which represent 47% of the total land amount committed to the 15 EFNs with signed TEAs. No land was set aside as reserve during the 2014-2015 period. Land totalling 10,057.56 acres were identified in the Three Party Strategic Plan which was part of the Treaty Land Entitlement (TLE) Annual Work Plan to be set apart as reserve under "Schedule A". However, the primary reason these lands were not set apart as reserve according to Canada, is as a result of their decision that they must discharge the duty to consult with Aboriginal groups prior to setting apart the Selections/Acquisitions as reserve, as this obligation had not been addressed by either the provincial or federal government. Canada advised that it will not make any further requests for Manitoba Orders-in-Council to transfer Crown Land from Manitoba until a process to address the duty to consult obligation has been agreed to and implemented by Manitoba and Canada. Previous Annual Reports identify the land parcels remaining to be transferred are generally smaller and often the most complex Selections or Acquisitions confirmed by the EFNs. Canada is of the view that the duty to consult requires resolution before TLE lands can be set apart as reserve. It is of the view that this matter requires priority attention by the Parties to finding solutions in accordance with the MFA and legal requirements in order to facilitate implementation of the MFA mutual obligations and to any TEA. TLEC is of the view that Canada does not owe a duty to consult on TLE with other Aboriginal groups and that the lands are to be transferred on a priority basis. Manitoba is of this same view that there is no need to consult, more specifically that Manitoba does not have a duty to consult First Nations about transferring lands to Canada for reserve creation.

Six (6) IMC Referrals remain unresolved at the end of the fiscal year. These Referrals are:

- |                      |  |
|----------------------|--|
| 1. 1999-BPFN-001     | Selections in Provincial Park;               |
| 2. 1999-NCN-003      | TEA Effective Date;                          |
| 3. 2004-BLFN-002     | Material Failure re Land in Severalty (LIS); |
| 4. 2003-BON-001      | Surplus Federal Land – Kapyong;              |
| 5. 2006-Manitoba-001 | Material Failure re Knee Lake Lodge;         |
| 6. 2007-TLEC-002     | Hydro Easement (HE).                         |

The Crown Reservations – Portages Referral achieved consensus at the SAC and proceeded to binding arbitration in accordance with the MFA Section 35.04 on March 22, 2013, confirmed by letters of the Parties. An IMC meeting was scheduled to address the next steps to proceed to binding arbitration, which included confirming the budget (which had been carried forward from the 2013/2014 fiscal year), issuing a Request for Proposals and Reference for the Adjudicator, and selecting and confirming the Adjudicator.

In 2014/2015, Canada issued new survey contracts for 17 parcels totalling 9,923.80 acres. It was anticipated that 30 parcels were to be set apart as reserve by March 31, 2015, but this did not occur. Some of the annual survey funds in a given fiscal year are for multi-year contracts. Once the surveyed parcels on Schedules A and B of the Three Party Annual Work Plan have been set apart, (2015/2016 Three Party Annual Work Plan projected 18 parcels totalling approximately 24,280 acres are to be set apart by March 31, 2016), and 50 parcels totalling approximately 42,720.39 acres are targeted to be set apart by March 31, 2017). The pace of transfer of lands to

reserve is affected by the availability of parcels without significant outstanding issues such as complex Third Party Interests (TPIs) or hydro easements, the ability to resolve the TPI and related costs, and the capacity of qualified survey contractors. These factors limit the amount of land being surveyed to approximately 10,000 acres per year thereafter. In the 2012/2013 IMC Annual Report it was noted that, based on this pace, it will take between 17 and 30 additional years to implement the MFA for the existing 15 EFNs with TEAs

Six of the twenty one (21) Entitlement First Nations (EFNs) that have not signed a TEA under the MFA are:

1. Shamattawa First Nation,
2. Fox Lake Cree Nation,
3. Sayisi Dene First Nation,
4. York Factory First Nation,
5. Marcel Colomb First Nation, and
6. O-Pipon-Na-Piwin Cree Nation.

One EFN is anticipated to sign their TEA early in the next fiscal year.

The IMC Independent Chairperson is pleased to offer the following recommendations to improve and facilitate the implementation of the MFA:

1. **Duty to Consult:** Canada advised the IMC and the EFNs that the primary reason that lands were not set apart as reserve in 2014-2015 is that Crown obligations regarding the duty to consult with Aboriginal groups prior to setting apart Selections/Acquisitions as reserve had not been met. Canada advised that it will make no further requests for Manitoba Orders-in-Council to effect the transfer of Manitoba Crown Land until a process to address the duty to consult obligation has been agreed to and implemented by Manitoba and Canada. It is recommended the Parties and the EFNs address this as a priority issue or matter to be resolved as it is a critical component of the implementation of the MFA and TEA obligations. A joint protocol agreement should be developed to facilitate these parcels of land through the consultation process to reserve creation.
2. **Issue/Matter in Dispute Referral Management by IMC:** During 2014-2015 there remained six (6) unresolved Referrals. Several Referrals have been inactive for years without new information or progress toward resolution. One Referral advanced to SAC that was unresolved and referred back to the IMC, after which the IMC determined that the Referral should move to binding arbitration, however this process took some time. It is recommended the Referrals be reviewed through the 2015-2016 IMC Work Plan with a committed view to moving the Referrals forward in a timely manner in accordance with the provisions of the MFA.
3. **Crown Reservation – Portages (2007-TLEC-005), Binding Arbitration:** The IMC referred this issue to the SAC who agreed to move it to Binding Arbitration. The Adjudicator, Mr. Lawrie Cherniack made a decision on this referral in favour of the EFNs – that Portages should not survive the reserve creation process. As a result of this decision the Parties need to implement the next steps in the reserve creation process for those parcels that have Portages identified. It is understood that there may be parcels that have additional issues that require resolution prior to proceeding to reserve status. The Adjudicator's report, the first under the dispute resolution provisions of the MFA, provides excellent contextual information with respect to how provisions of the MFA should be interpreted, and the Parties need to pay close attention to this going forward.
4. **Hydro Easement (2007-TLEC-002):** The Hydro Easement matter in dispute affects the progress of the greatest number of parcels and 65,800 acres. It is recommended the Parties and Manitoba Hydro continue discussions by way of a table process to address the draft Hydro Easement Agreement proposed by Brokenhead Ojibway Nation and confirm an Hydro Easement agreement, as required by the MFA. If there is no agreement reached then the matter should be brought back to the IMC table through the TLEC IMC referral for resolution through the MFA dispute resolution process.
5. **Strategic Planning:** The Three Party Strategic Planning's fourth Annual Work Plan provides a solid approach to addressing many elements of MFA implementation. The Parties have agreed to alternate responsibility for mailing out the final results of the Annual Work Plan. It is recommended the Strategic Planning and Annual Work Plan continue with the Parties sharing the work load, and that the Parties target April of each year for the release of each Annual Work Plan. The Parties should work toward creating focussed strategic goals within the Work Plan. The IMC Chairperson should remain as facilitator/chair of this Work Plan process.
6. **Third Party Interests:** There continues to be a low rate of resolution of TPIs and encumbrances. It is recommended the Parties and EFNs affected have a minimum of two special sessions focussed on the development of a strategy to address the low rate of resolution of TPIs and encumbrances; and that this

strategy include an examination of the methods available to resolve specific TPIs and to attain consensus amongst stakeholders on the most appropriate course of action. The Parties need to reflect on the methods to resolve TPIs and confirm agreement of the instruments that have been agreed to and develop agreements where there are none. The resolution of these TPIs requires the consensus of all Parties to the MFA. It is recommended that the Agreed to Forms Committee be re-established to form a work plan with all Parties Legal Counsels to facilitate the completion of agreed forms to address the following: Mines and Minerals on Crown and Private Lands, Municipal Development Services Agreements (MDSA) – where needed and any other form of agreement that will resolve outstanding issues.

7. **Acquisition Rates and Time Periods:** The Parties and EFNs acknowledge the acquisition of lands by the Schedule “B” EFNs for the balance of their “Other Land” within their 15 year land acquisition period(s) set out in the MFA will not be met. The EFNs have each requested extensions and submitted their plans to the IMC for response. Canada has advised that although the MFA principles will no longer apply after that period, the EFNs still hold the entitlement to acquire their Other Land amount. The Parties are reviewing the principles of the MFA and looking at how best these principles can be applied to the Schedule B EFNs. The Parties need to confirm that the principles of the MFA will apply, to provide a clear process for implementation and to prevent uncertainty should there be no principles to guide the Parties. A possible solution to address this issue is for an amendment to the MFA or a subsequent referral by the Parties that is focussed on clarifying this matter.
8. **Survey Capacity Limitations:** The remaining selections are an average size of approximately 1,070 acres. With a similar size survey budget of \$1.5 million, it is projected that an average of approximately 17 parcels or an average of 10,000 acres can be surveyed annually moving forward. At this pace, implementation of the MFA for the 15 EFNs with TEAs, (was projected in the 2011-2012 Annual Report), to take between 17 and 30 years, and to require a survey budget of \$30 to \$50 million. Additional time and resources will be required to survey the land selections of the six (6) currently unsigned EFNs as well as the acquired parcels. In addition, the Parties will require staff to complete their MFA responsibilities for this same projected time period. It is recommended that the Parties review the survey capacity now that Public Works and Government Services are controlling the contracting for the surveys and its affect on the pace of MFA implementation. The Parties in collaboration with the EFNs need to work together in order to determine where the exterior boundary of a parcel requires demarcation and where it is not. It is understood that this is a major contributing factor to the cost of surveys. Along with providing additional financial resources to the survey budget AANDC needs to confirm the use of additional Canada Land Surveyors from other provinces.
9. **Consistency of MFA Implementation Steps:** With all organizations there is always the scenario of experiencing a change in personnel for a multitude of reasons. The impact this has on the MFA implementation process can result in delays as new personnel become familiarized with the TLE files. It is recommended that in order for consistency of implementing the MFA process steps that the Three Parties meet to review these steps in advance of meeting with the EFN. The new personnel of any of the Three Parties should be provided with the Land Transfer and Reserve Creation Process Manual and walked through this process for each of their respective TLE files. This will provide new personnel the opportunity to understand the process steps prior to meeting with the EFNs and provide the current implementation personnel with a refreshed look a the TLE process steps.

## 1.0 INTRODUCTION

### MANITOBA FRAMEWORK AGREEMENT ON TREATY LAND ENTITLEMENT

Eighteen (18) years have passed since the Treaty Land Entitlement Committee of Manitoba, Inc. (“TLEC”), the organization representing 19 First Nations in Manitoba with entitlement to land under Treaties 1, 3, 4, 5, 6 and 10, signed the May 29, 1997 *Manitoba Framework Agreement on Treaty Land Entitlement* (“MFA”), an agreement with Canada and Manitoba to secure outstanding reserve land owed under Treaties with the Crown in right of Canada.

All of the 19 First Nations initially 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 (“TEA”) with Canada, Manitoba and TLEC. After the MFA was signed, a portion of the membership of two of the original 19 First Nations were independently recognized as two additional First Nations, with the result that there are now 21 First Nations entitled to sign TEAs under the MFA located throughout Manitoba<sup>1</sup>. A map illustrating the geographical location of the Entitlement First Nations (EFNs) eligible to enter into TEAs under the MFA is in **Appendix A**.

Under the terms of the MFA, the combined 19 (now 21) EFNs secured entitlement to an additional 1,100,626 acres (approximately 1,720 square miles) of reserve 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 the following **Chart 1**. Although all of the First Nations secured entitlement to select Crown Land, six of the EFNs were also provided funds to purchase a portion of their Treaty Land Entitlement (TLE) on the open market, due to the lack of sufficient Crown Land of suitable quality being available in the vicinity of their existing reserves. Accordingly, if all 21 EFNs 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 EFNs - the Brokenhead Ojibway Nation, Buffalo Point First Nation, Opaskwayak Cree Nation, Rolling River First Nation, Sapotawayak Cree Nation, and Wuskwi Sipik Cree Nation are entitled to purchase or otherwise acquire the balance of 114,677 acres of land for reserve.

As of March 31, 2015, 15 of the 21 EFNs have entered into a TEA. For various reasons, the six EFNs that have not entered into TEAs to date are: Shamattawa First Nation, Fox Lake Cree Nation, Sayisi Dene First Nation, York Factory First Nation, Marcel Colomb First Nation, and O-Pipon-Na-Piwin Cree Nation. The EFNs that have not signed TEAs continue to have outstanding TLE rights. Canada, TLEC, and Manitoba remain prepared to enter into TEAs with these six (6) EFNs. The O-Pipon-Na-Piwin Cree Nation has completed the Community Approval Process required by the MFA and the Marcel Colomb First Nation has completed all activities to support the signing of their TEA that is anticipated to be signed in the next fiscal year.

This Annual Report pertains to the fiscal year 2014/2015 that ended March 31, 2015, covering the nine (9) month period that an Implementation Monitoring Committee (IMC) Chairperson was in office. On July 9, the Parties appointed Martin Egan as Interim IMC Chairperson, as the position had been vacant since late September 2014 and efforts to identify a full time Independent Chairperson continued. Mr. Martin Egan served in the interim capacity until December 31, 2014. On January 13 the present Independent Chairperson was officially appointed to serve a 15 month term until to March 31, 2016. The IMC was without a quorum as defined by the MFA for three (3) months of the 2014/2015 fiscal year.

The 2014-2015 IMC Annual Report is an update of activities on the IMC Work Plan 2014-2015 and utilizes certain Chart formats of previous Annual Reports for reference or to reflect progress. The previous IMC Annual Reports are available on the website at [www.tleimc.ca](http://www.tleimc.ca)

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<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 First Nation (as of March 30, 1999) and the O-Pipon-Na-Piwin Cree Nation (as of November 25, 2005) to the list of MFA Entitlement First Nations. As of March 31, 2015, these two “new” First Nations had not executed TEAs under the MFA.

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

Entitlement First Nations	Treaty Number	Date Treaty Entitlement Agreement (TEA) Signed	Crown Land (Acres)	Crown Land Set Apart	Other Land (Acres)	Other Land Set Apart	Total (Acres)
BARREN LANDS FIRST NATION	10	June 23, 1999	66,420	0	-	-	66,420
BROKENHEAD OJIBWAY NATION	1	September 9, 1998	4,344	672.00	10,137	7.46	14,481
BUFFALO POINT FIRST NATION	3	March 24, 1998	3,432	2,369.70	607	0	4,039
BUNIBONIBEE CREE NATION	5	February 17, 1999	35,434	31,342.34	-	-	35,434
FOX LAKE CREE NATION	5	Unsigned	26,391	-	-	-	26,391
GOD'S LAKE FIRST NATION	5	May 28, 1999	42,600	16,189.75	-	-	42,600
MANTO SIPI CREE NATION	5	May 19, 1999	8,725	4,284.00	-	-	8,725
MARCEL COLOMB FIRST NATION	6	Unsigned	17,007	-	-	-	17,007
MATHIAS COLOMB CREE NATION	6	October 1, 2003	217,364	172,538.49	-	-	217,364
NISICHAWAYASIIK CREE NATION	5	September 1, 1998**	61,761	33,816.01	-	-	61,761
NORTHLANDS FIRST NATION	10	November 9, 1999	94,084	4,134.00	-	-	94,084
NORWAY HOUSE CREE NATION	5	November 12, 1998	104,784	42,045.60	-	-	104,784
OPASKWAYAK CREE NATION	5	January 22, 1999	47,658	24,375.30	8,410	0	56,068
O-PIPON-NA-PIWIN CREE NATION	5	Unsigned	17,674	-	-	-	17,674
ROLLING RIVER FIRST NATION	4	March 6, 1998	2,356	2,350.70	44,756	3,117.85	47,112
SAPOTAWAYAK CREE NATION	4	September 1, 1998	108,134	99,701.73	36,045	0	144,179
SAYISI DENE FIRST NATION	5	Unsigned	22,372	-	-	-	22,372
SHAMATTAWA FIRST NATION	5	Unsigned	24,912	-	-	-	24,912
WAR LAKE FIRST NATION	5	May 28, 1999	7,156	480.40	-	-	7,156
WUSKWI SIPIHK CREE NATION	4	June 9, 1998	44,168	25,189.83	14,722	0	58,890
YORK FACTORY FIRST NATION	5	Unsigned	29,173	-	-	-	29,173
<b>TOTAL</b>			<b>985,949</b>	<b>459,601.85</b>	<b>114,677</b>	<b>3,125.47</b>	<b>1,100,626</b>

\*\* The effective date of the NCN TEA is an issue that has been referred to the IMC by NCN. File: 1999-NCN-003

After 18 years of implementation, the work that the Parties to the MFA have undertaken has resulted in 462,727.16 acres of land being set apart as reserve. This total is comprised of 115 separate selections and 24 separate acquisitions of land, representing approximately 47% of the overall TLE of the 15 EFNs that have signed their respective TEAs. No parcels of land were set apart as reserve in the 2014/2015 fiscal year. The total amount of Crown Land for the 15 EFNs that have signed is 852,420.00 acres of which 54% has been set apart as reserve.

There is an additional 18,349.10 acres of Crown Land and 661.00 acres of Other Land that Manitoba has signed Provincial Orders In Council transferring 50% of the 15 EFNs Total Land Amount to Canada for reserve creation. The Total Land Amount for the 15 EFNs is 967,097.00 acres, which is 88% of the Total Land Amount and the remaining 12% of the Total Land Amount is allocated to the Unsigned EFNs for Crown Land selections.

The following **Chart 2** illustrates the acreage and number of parcels of land set apart as reserve annually since the signing of the MFA on May 29, 1997.

**Chart 2: Acreage and Parcels Set Apart as Reserve Pursuant to the MFA between May 1997 and March 31, 2015**

DATES	SELECTIONS		ACQUISITIONS		TOTAL	
	Acres	Parcels	Acres	Parcels	Acres	Parcels
May 29, 1997 – March 31, 1998	0	0	0	0	0	0
April 1, 1998 – March 31, 1999	0	0	0	0	0	0
April 1, 1999 – March 31, 2000	1,275.18	2	0	0	1,275.18	2
April 1, 2000 – March 31, 2001	0	0	0	0	0	0
April 1, 2001 – March 31, 2002	0	0	0	0	0	0
April 1, 2002 – March 31, 2003	0	0	0	0	0	0
April 1, 2003 – March 31, 2004	4,894.75	2	0	0	4,894.75	2
April 1, 2004 – March 31, 2005	7,040.30	9	0	0	7,040.30	9
April 1, 2005 – March 31, 2006	9,333.55	11	0	0	9,333.55	11
April 1, 2006 – March 31, 2007	24,362.48	13	158.14	1	24,520.62	14
April 1, 2007 – March 31, 2008	140,465.95	25	0	0	140,465.95	25
April 1, 2008 – March 31, 2009	123,874.29	21	2,571.39	19	126,445.68	40
April 1, 2009 - March 31, 2010	38,757.65	17	0	0	38,757.65	17
April 1, 2010 - March 31, 2011	100,604.70	13	0	0	100,604.70	13
April 1, 2011 – March 31, 2012	8,881.0	1	395.78	3	9,276.78	4
April 1, 2012 – March 31, 2013	112.0	1	0	0	112.0	1
April 1, 2013 – March 31, 2014	0	0	0.14	1	0	0
<b>April 1, 2014 – March 31, 2015</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>	<b>459,601.85</b>	<b>115</b>	<b>3,125.47</b>	<b>24</b>	<b>462,727.16</b>	<b>139*</b>

\*The number of parcels has decreased from the 2013-2014 as a result of the verification from the March 2015 TRELES Report.

It is important to re-emphasise that 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 was expected to be 2.97 years. It is noted in the 2011/2012 Annual Report 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. Volume affects the rate of processing and staff complements do not proportionately increase with each additional Settlement Agreement (i.e., there were no additions to Manitoba and Canada staff levels when the Peguis First Nation TLE Settlement Agreement was signed in 2008.) A former IMC Chairperson's (Mr. Lloyd Grahame) review on the approximate time required to process a parcel from the date that confirmation is received to the date it is set apart as reserve concluded that on average, Acquisitions have taken approximately 9 years and Selections have taken approximately 7.4 years. All Parties have acknowledged that as the majority of land selections were confirmed shortly after a TEA was executed by an EFN with Manitoba, Canada, and the TLEC, the average time period required to set the Selections apart as reserve has lengthened. The IMC has extended the time frames for Selections at an IMC meeting allowing for the Principles to continue to apply to new selections. The excerpt from the 2009-2010 IMC Annual report reads as follows:

“At an IMC 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 next fiscal year as multi-year strategic planning begins to be implemented by the Parties.”

The MFA provides detailed guidelines in the form of Principles for Land Selections and Acquisitions to provide direction for the EFNs with respect to Crown Land Selections and Acquisition of private land. The MFA Parties agreed that land selected or acquired in accordance with the Principles would be eligible to be set apart as reserve provided the requirements of the MFA were satisfied. If issues or matters in dispute arise, the MFA provides for a detailed process and a structure for dispute resolution, which includes guidelines for means and methods and suggested timelines and procedures, and the IMC.

The IMC is generally responsible for facilitating the implementation of the MFA and providing the Senior Advisory Committee (SAC) with recommendations for the improvement of the implementation of the MFA and any TEA. The IMC is responsible for an annual Work Plan that is jointly developed by the Parties, and the findings of the IMC in relation to its work plan activities lead to recommendations.

This Annual Report is a summary on the progress in implementing the MFA and TEAs, the issues or matters in dispute that have been brought to the IMC by the Parties or the First Nations, the ‘Referrals”, resolved or outstanding during 2014-2015; to inform the Parties and EFNs, of the issues faced by the Parties and EFNs during the past fiscal year, the areas for improvement that have been identified, and the steps being taken to build on opportunities for improvement to achieving the Work Plan target results under the three parts of the IMC Work Plan 2014-2015 (**Appendix B**).

#### **IMC STRUCTURE AND WORK PLAN FOR 2014 - 2015**

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 the Regional Director General of the Manitoba Regional Office of Aboriginal Affairs and Northern Development Canada (Canada).

In this fiscal year, the IMC Chairperson, Representatives, Alternates were as follows:

Laren Bill	Independent Chairperson (January 13, 2015 – March 31, 2015)
Martin Egan	Interim Independent Chairperson (July 9, 2014 – December 31, 2014)
Vacant	Independent Chairperson (October 2013 – July 8, 2014)
Merrell-Ann Phare	TLEC IMC Representative
Councillor Paul Chief	TLEC IMC Representative
Chris Henderson	TLEC Alternate Representative
Stew Sabiston	Manitoba IMC Representative (Commenced January 2015)
Jason Fontaine	Manitoba IMC Alternate Representative (Commenced January)
Cynthia Beadle	Manitoba IMC Representative (ended January 2015)
George Ryle	Manitoba IMC Alternate Representative (ended January 2015)
Winona Embuldeniya	Canada IMC Representative
Diana Watson	Canada IMC Alternate Representative

Section 31 of the MFA states that the Parties, TLEC, Canada and Manitoba agree that they will, in good faith use their best efforts to fulfill the terms of the MFA, and that includes their assignment of appropriate personnel to discharge the IMC obligations under the MFA and all undertakings and work supplemental to the IMC. Section 32 of the MFA provides that each EFN that executes a TEA will have the responsibility for the Selection and Acquisition pursuant to their TEAs using their best efforts in its implementation.

Each Annual IMC Work Plan is jointly developed by the MFA Parties Representatives of the IMC and assigns the lead role for an activity to either a Representative of a Party appointed to sit on the IMC, or the Chairperson. The Work Plan describes the issues or tasks, the actions required and targeted results, with agreed upon dates.

## **Summary of IMC Work Plan for July – December 2014**

**Part 1** addresses the resolution of the Third Party Interests under Article 10.02(1)(h) and the flexibility to develop a surface access rights agreement. This is also mentioned in Part 2 of the January – March 2015 work plan where in the goal was to generate consensus on a surface rights access agreement on both crown and private lands.

**Part 2** addresses three IMC Referrals: 2007-TLEC-002: Hydro Easements, 2004-BLFN-002: Lands in Severalty, 2012-Canada/Manioba-001: Acquisition Time Periods.

**Part 3** addresses the closure of IMC referrals that formalized the completion of the referral, specifically 2007-TLEC-005 (and 2006-Manitoba-005): Crown Reservations Portages.

**Part 4** focuses on Coordination of Meetings with SAC in order to address IMC referrals referred to SAC, namely the 1999-BPFN-001 Land in a Provincial Park, and 1999-NCN-003: Effective Date of Agreement.

**Part 5** deals with the completion of the steps regarding the legal opinion on the Kapyong Barracks from Mr. Blair Graham and determination to be shared with the parties on the potential next steps.

**Part 6** addresses the issue of the Unsigned EFNs and writing them to determine their interest in signing a TEA.

**Part 7** looks at working with the Association of Manitoba Municipalities in assisting with the facilitation and joint partnership between First Nations and Municipalities in signing Municipal Development Services Agreements (MDSA's).

**Part 8** focuses on investigating options for improving public access to TLE ATR proposals.

## **Summary of IMC Work Plan January – March 2015**

**Part 1** deals with Hydro Easements; Land in Severalty; Land in a Provincial Park; Effective Date of Agreement; Material Failure Allegation – Knee Lake Lodge and the tasks associated with moving the referrals along the path of resolution.

**Part 2** focuses on the development of a surface rights access agreement and generate consensus on both crown and private lands as an Agreed to Form.

**Part 3** focuses on the development of a consultation protocol by investigating and identifying options that could be utilized by the Parties.

**Part 4** looks at working with relevant parties to address the issue of MDSA's in particular those EFNs (BON, RRFN, & WSN) that require these agreements prior to reserve creation.

**Part 5** focuses on addressing the public access to TLE ATR Proposals and updating the IMC Website.

### **IMC ROLE AND RESPONSIBILITY**

The IMC is responsible to 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

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 SAC along with a statement of the issue, means recommended for resolution by the IMC 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.

## 2.0 PROGRESS ON THE 2014-2015 IMC WORK PLAN

The IMC is generally responsible for facilitating implementation of the MFA and any TEA that includes monitoring the progress of the Parties and the EFNs with implementation, and making recommendations to facilitate implementation, and assisting the Parties with the resolution of any matters or issues in dispute under the MFA.

The Work Plan represents the IMC's agreed scope of activities in the 2014-2015 fiscal year, but it does not replace nor is it intended to alter the terms of the MFA nor any of the obligations of the Parties or the IMC set out in the MFA. This section of the Annual Report is formatted to generally follow the IMC's 2014-2015 Work Plan.

### IMC WORK PLAN: RESOLVING OR REFERRING DISPUTES

The IMC provides for management of Referrals of Issues or Matters in dispute received by the IMC. The IMC prioritized Referral resolution in its 2014-2015 Work Plan. With respect to the unresolved issues/matters (I/M) in dispute referred to the IMC, the IMC process follows a structured submission approach. In accordance with the I/M Referral Protocol, once the Representatives role in the I/M is detailed and each Party/EFN's views and opinions are reflected accurately and comprehensively, the IMC goal is to resolve the I/M by consensus.

Depending on if the I/M is broad based in nature or specific to an individual parcel of land, and the nature of the views and opinions submitted by the Parties, the Chairperson may recommend that: (i) a discussion paper be developed to analyze the situation and clarify linkages to the MFA provisions, or (ii) a Focus Group meeting(s) be convened to discuss the matter in detail, clarify misunderstandings if any, and arrive at a consensus.

If the IMC discussions of the Chairperson's summary document, and/or discussion paper and/or Focus Group discussions do not result in a consensus; the Chairperson may update his/her summary document, based on the IMC and Focus Group discussions, and add two additional sections, (i) The Proposed Interpretation of the MFA by the Chairperson, and (ii) Chairperson's Proposed Resolution as per MFA Paragraph 34.09(5)(e), and circulate this updated summary document to the IMC with a time frame for comments.

If the updated Chairperson's summary document does not result in a consensus, the Chairperson's summary document serves as the information required pursuant to MFA 34.09(7) and (9) for a referral of the I/M to the SAC. (i.e. the I/M summary, any means recommended by the Chairperson for resolving the I/M, any direction to the members to consider the recommendation within a specified time period, any response of the IMC members provided to a recommendation of the Chairperson, and the Chairperson's recommendation on the proposed time period within which the SAC should attempt to resolve the I/M).

During 2014-2015, there were nine (9) Referrals of issues/matters in dispute before the IMC, by year end three of the Referrals had been closed, with the decision from the Arbitrator on 2007-TLEC-005 - Crown Reservations – Portages which effectively closed the Material Failure 2006-Manitoba-005 referral. The 2012-Canada/Manitoba-011 referral has also been closed as a result, the two (2) one (1) year extensions for the applications of the MFA Principles was granted to the Schedule B EFNs.

The current status of the six (6) IMC Referral Files are presented as listed in the 2014-2015 IMC Work Plans and summarized on the following **Chart 3**. (See the Work Plans 2014-2015 at **Appendix C**) At the July 23, 2014 IMC meeting a decision was made for the IMC Interim Chairperson to obtain a legal opinion to assist the Parties with better understanding the meaning of Article 10.02(1)(h) "*in any other way...which the Parties may agree*". This specific Article provides guidance to the Parties in addressing Third Party Interests or other encumbrances. The

legal opinion resulting from this directive was completed during the 2014-2015 fiscal year and is included as **Appendix E** for reference.

There are six (6) Referral files currently before the IMC. The IMC Referrals are:

1. 1999-BPFN-001 - Selections in Provincial Park is parcel specific and affects 116.4 acres, (Birch Point Park) which was referred to Binding Arbitration on February 2015;
2. 1999-NCN-003 - TEA Effective Date relates to a three month time period where the signing ceremony was held and the subsequent signature of the Minister;
3. 2004-BLFN-002 - Material Failure re Land in Severalty (LIS) had been referred to binding arbitration and awaiting information from the Barren Land First Nation (BLFN) Chief and Council who have also advised that the resolution of the Reindeer Lake regulation matter continues to remain a priority. This affects 36,800 acres of BLFN selections.
4. 2003-BON-001 - Surplus Federal Land – Kapyong is in relation to Canada’s characterization of the lands as “Strategic Disposal” of the lands;
5. 2006-Manitoba-001 - Material Failure re Knee Lake Lodge is BCN allegation that Manitoba has failed to comply with a fundamental term or condition of the MFA;
6. 2007-TLEC-002 - Hydro Easement referral, TLEC agreed to allow Brokenhead Ojibway Nation (BON) to lead discussion with Manitoba and Manitoba Hydro

The Crown Reservations – Portage was filed in 2007 and has since been resolved as the decision was provided by Mr. Lawrie Cherniack on April, 16 2014 (**Appendix D**).

With respect to IMC Referral File # 2003-BON-001, the EFN removed itself as a party to the Notice of Application to the Federal Court and judicial review, and at the IMC meeting of June 21, 2012 at the request by letter of the BON legal counsel, the IMC placed the Referral in abeyance and remained as a Referral in the Interim Chairperson’s IMC Work Plan 2014-2015 to await information from the BON. Subsequently, the Independent Chairperson completed the Referral Protocol in anticipation that this Referral would be submitted to the SAC. The IMC Representatives have agreed to not discuss this Referral or comment on the Referral Protocol at the IMC until such time as the BON reengage the IMC process.

**Chart 3: March 31, 2015 Status of IMC Referrals**

REFERRAL FILE	SHORT TITLE	ACRES AFFECTED	STATUS	RESPONSIBILITY FOR NEXT STEP
2007-TLEC-002	Hydro Easement (H/E)	65,800	August 1, BON presented to the IMC Chairperson, an alternate draft H/E Agreement. BON continues discussions with Manitoba.	IMC
2004-BLFN-002	Material Failure re Land in Severalty (LIS)	230 members x 160 acres = 36,800	Referred to Binding Arbitration in 2005. Arbitration pending since 2006. BLFN advised the IMC Chairperson that BLFN is contemplating Certificates of Possession to address the LIS issue. IMC Referral to proceed pursuant to MFA 36.01(5)	Chairperson
2006-Manitoba-005	Material Failure re Portages	Trout Falls = 620 acres Wapanipanis Portage = 327	This matter has been resolved by the Arbitrator’s decision rendered on April 16, 2014.	Chairperson
2007-TLEC-005	Crown Reservations Portages	TF=620 WP=327 Total = 947	A decision from the Arbitrator was issued on April 16, 2014.	Arbitrator

REFERRAL FILE	SHORT TITLE	ACRES AFFECTED	STATUS	RESPONSIBILITY FOR NEXT STEP
1999-BPFN-001	Selections in Provincial Park	116.4	The SAC decided to forward this issue to Binding Arbitration on February 23, 2015. Binding Arbitration is pending.	SAC Chairperson IMC
1999-NCN-003	TEA Effective Date	0	SAC discussed this Referral on February 23, 2015 and decided that AANDC provide additional information to NCN to assist them in making an informed decision on accepting an AANDC proposed method of resolving this Issue/Matter in dispute.	Chairperson NCN
2003-BON-001	Surplus Federal Land - Kapyong	160	Pursuant to Section 34.08, a former IMC Chairperson contracted with Mr. A. Blair Graham of Thompson Dorfman Sweatman to obtain legal advice.	Chairperson
2006-Manitoba-001	Material Failure re Knee Lake Lodge	1,511	This Referral is to be referred to Binding Arbitration pursuant to 36.01(5).	IMC Chairperson BCN
2012-Canada/Manitoba-001	Acquisition Time Periods	114,677	All 6 Schedule B First Nations provided their respective detailed plan for the completion of land acquisition in fulfillment of the requirement under Article 4.02(4)(b) of the Framework Agreement.	IMC

For further information on background details please refer to the previous Annual Reports that provide the history of the Referral.

## 2.1 REFERRAL #2007-TLEC-002: HYDRO EASEMENTS

Referral Date: August 27, 2007.

Issue or Matter in Dispute (I/M): In its referral TLEC asserted that Manitoba is not entitled to retain partial constitutional jurisdiction that the Crown (Manitoba) asserts is required to support an easement required by Manitoba Hydro; and secondly that the Hydro Easement should set out a resolution process whereby 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.

TLEC's letter of January 13, 2012 submitted its findings and recommendations on the main concerns of the EFNs with both the Hydro Easement document and the easement line determination process and proposed an alternate form of Hydro Easement document in December 2013.

### PROGRESS DURING 2014-2015:

The IMC Interim Chairperson met with Brokenhead Ojibway Nation (BON) in August to obtain a better understanding of the BON proposal for a Hydro-Easement Agreement.

The IMC Representatives met to discuss the opinion that Ms. Cathy Sproule provided to the IMC Chairperson. The Chairperson acknowledged that Manitoba and Canada IMC Representatives cannot speak directly to the opinion until they have received legal opinions on the Ms. Cathy Sproule legal opinion.

The IMC Independent Chairperson reminded IMC Representatives that the opinion is intended to assist the Parties with looking outside the box to find solutions to these long standing issues. The opinion is intended to clarify the use of the *Manitoba Claims Settlement Implementation Act* (MCSIA) as well as begin to look into the *First Nations Land Management Act* (FNLMA) as a means to address Third Party Interests.

TLEC's IMC Representative provided an update on the discussions with Manitoba and Brokenhead Ojibway Nation (BON) with regard to the Hydro-Easement Agreement. The BON has since passed their Land Code as of December 13, 2014, which eliminates application of 32 sections of the *Indian Act* with respect to BON Land

Management. As a result of this jurisdictional change, the First Nation now has the authority to manage their lands and resources.

In his capacity as AANDC Director General – TLE Completion, Mr. Martin Egan provided additional comments as to the importance of the use and relevance of the *MCSIA*. The *MCSIA* provides authority for the Minister of AANDC to set apart land as reserve in accordance with the terms of a claim settlement agreement such as the MFA. The Parties need to investigate the full spectrum of option available to address Third Party Interests. It would appear that at the very least the *MCSIA* and the MFA “in any other way” clause support the use of the FNLMA-related land tenure instruments to address Third Party Interests as contemplated in Ms. Cathy Sproule’s legal opinion (**Appendix E**).

The AANDC IMC Representative indicated that First Nations may include in their land code a process for accepting lands for reserve creation that would combine the interest within the reserve acceptance process. Currently, there are two EFN that are operating under an *FNLMA* Land Code (Brokenhead Ojibway Nation and Opaskwayak Cree Nation) and another two in the inventory for becoming *FNLMA* certified Nisichawayasihk Cree Nation and Norway House Cree Nation). These four EFNs have selections where lands have been identified as requiring a Hydro Easement.

BON continues to take a lead role in discussions with Manitoba with regard to reaching agreement on a form of agreement with respect to Hydro Easements on TLE selected lands for reserve creation. The IMC and TLEC have agreed to await the outcome of negotiations between the two Parties in an effort to resolve this issue/matter.

The resolution of this issue has the potential to assist those First Nations that also have Hydro Easements identified on their TLE selections, specifically, Nisichawayasihk Cree Nation, Opaskwayak Cree Nation, Norway House Cree Nation and, Mathias Colomb Cree Nation.

## **2.2 REFERRAL #2004-BLFN-002: LAND IN SEVERALTY**

Referral Date: May 5, 2004.

Issue or Matter in Dispute (I/M): Barren Lands First Nation (BLFN) alleges that Canada had materially failed to comply with a fundamental term of the MFA regarding the LIS issue, that although its members had given Canada notice of their election to take LIS in accordance with MFA Subsection 9.01(1), Canada had failed to enter into discussion with those members pursuant to MFA Subsection 9.01(4).

The Annual Report 2011-2012 describes the IMC discussion and correspondence between the BLFN and Canada on Canada’s proposal for an alternative approach rather than bringing this matter to arbitration. The Referral was initially forwarded to binding arbitration in 2005 and reactivated. It was again placed into abeyance in February 2006. A Binding arbitration process is set out in the MFA Subsection 36.01 (on allegations of) “Material Failure to Comply with Fundamental Term or Condition.”

The BLFN Chief and Council are to reach a decision on how BLFN intends to proceed. Once the information is received from the BLFN, the Parties are to be re-engaged to discuss alternate forms of resolving the I/M, and next steps to advance towards resolution and the precise nature of the action and to BLFN intentions.

### **PROGRESS DURING 2014-2015:**

The IMC Interim Chairperson wrote to the Barren Lands First Nation (BLFN) Chief and Council in July to determine their intention with regard to their referral and how they would like to proceed. At that time one of the proposed options was to submit a general referral on the issue and matter in dispute and withdrawing the material failure allegation.

The IMC Interim Chairperson met with BLFN in September to discuss the options in moving this issue closer to resolution. Contact was made with the BLFN legal counsel in January by the IMC Independent Chairperson and it was indicated by BLFN legal counsel that an update would be provided in February.

BLFN Chief and Council and some of the members have had a thorough briefing on the issues regarding LIS. The direction that BLFN legal counsel received is to continue to explore the idea of issuing Certificate of Possession (CP) under the *Indian Act* to the Barren Lands First Nation citizens who elected LIS, in lieu of continuing to attempt to agree on a definition of LIS. To that end, work on contacting as many members who elected LIS as possible to get their input is ongoing. The response from BLFN Chief and Council and those who attended the briefing session was positive in relation to CPs. There are some outstanding issues that need to be discussed with government. In

particular, there will be a need to reach an understanding on the approach to land selection which is consistent with what is understood to have been the principles of LIS as articulated in the MFA.

At this point, BLFN has chose not to withdraw the referral to Arbitration as they have not been briefed on what could be considered a sufficient number of selectees to justify this, but it is the recommendation from the IMC that the referral be withdrawn or placed into abeyance.

### **2.3 REFERRAL #2006-MANITOBA-005: MATERIAL FAILURE – MAINTAINING AN INTEREST IN PORTAGES**

Referral Date: March 22, 2006.

Issue or Matter in Dispute (I/M): Manitoba's referral to dispute the allegations of material failure by Bunibonibee Cree Nation (BCN) and TLEC to the IMC for review in accordance with MFA Subsection 36.01(2). In February 2006 each of the BCN and TLEC alleged that Manitoba materially failed to comply with a fundamental term or condition of the MFA, regarding the treatment of 'portages'. Manitoba's further characterized portages as "reasonable competing considerations" as a basis for not proceeding with the transfer of the two BCN Selections (Trout Falls and Wipanipanis Portage), to Canada pursuant to the MFA 3.02(6) and 7.01(2) and the definition of "Crown Reservations" under the MFA Subsection 1.01(21). On February 4, 2011 TLEC wrote to IMC to request that TLEC's allegation be placed into abeyance on a without prejudice basis.

#### **PROGRESS DURING 2014-2015:**

The referral that was submitted by TLEC on the issue of Crown Reservations – Portages was placed before an adjudicator for Binding Arbitration. The decision of the Arbitrator (**Appendix – D**) on April 16, 2014 for this arbitration process effectively closed the file with respect to the Material Failure – Maintaining an Interest in Portages Referral. This decision is very important in assisting the Parties with moving forward on this issue as well as how the Parties interpret the MFA on a go forward basis.

### **2.4 REFERRAL #2007-TLEC-005: CROWN RESERVATIONS – PORTAGES**

Referral Date: July 18, 2007.

Issue or Matter in Dispute (I/M): TLEC referred Manitoba's treatment of "Crown Reservation – Portages" as an I/M to the IMC. TLEC asserted that a portage is defined as a Crown Reservation under MFA Subsection 1.01(21) and transferable to Canada in accordance with MFA 7.01(2). Manitoba asserted the need for continuation of public access to the portage areas, as a matter of public policy that Manitoba asserted was not considered under the MFA Principles in accordance with MFA Sections 3.01(4) and (5), and referable to the IMC under MFA Section 3.11. The portages cross two of Bunibonibee Cree Nation's (BCN) selections at Trout Falls and Wipanipanis Portage.

On February 8, 2012 in accordance with MFA Subsection 34.09(7) the Chairperson determined that the IMC was unable to make a decision on a means of resolving this I/M in dispute by consensus and made a Referral to the SAC.

A meeting of the SAC held on March 22, 2012 to consider the referral failed to come to a consensus on the means to resolve the I/M in dispute and as to the dispute resolution mechanism. As a result the issues was referred back to the IMC and the IMC referred the issue to Binding Arbitration. The Arbitrator was appointed on September 11, 2013 by the SAC.

#### **PROGRESS DURING 2014-2015:**

The Arbitration process started on September 11, 2013 with the appointment of Mr. Lawrie Cherniack as the adjudicator for the Binding Arbitration process on the TLEC Referral – Crown Reservations – Portages. The one day hearing was held on March 27, 2014 at the Marlborough Hotel. The decision was rendered on April 16, 2014 (**Appendix D**).

The arbitrator was given five (5) questions to answer as follows:

- 1. Has Manitoba established the existence of “a public right of passage over a portage”, which is a Crown Reservation under Article 1.01(21), in the following Selections? a. Site: 15-02 Trout Falls; b. Site: 20-02 Wipanipanis Portage.**

Yes, there has been a public right of passage over a portage on those two sites.

- 2. If the answer is yes to question 1, is the protection of that “public right of passage over a portage” located in the listed Selections an appropriate basis for determining that that portion of the Selection is not eligible to be set apart as reserve, except under some form of Page 36 access agreement that guarantees the continued “public right of passage over a portage”?**

No, the protection of that public right of passage is not an appropriate basis for determining that that portion of the Selection is not eligible to be set apart as reserve on any terms, including a form of access agreement.

- 3. Can Manitoba assert an additional consideration (in this case, a “compelling public interest”) not expressly contemplated by the terms of the MFA in determining eligibility of a Selection? Specifically, is the MFA subject to consideration and application by Manitoba of a “compelling public interest” in maintaining a “right of public access over a portage” as asserted by Manitoba?**

- a. If so, what is the definition, criteria for determining, and information that must be provided by Manitoba when asserting a “compelling public interest” in these circumstances?**

No, The MFA is not subject to consideration and application by Manitoba of a compelling public interest in maintaining a right of public access over a portage. In addition, the public interest in maintaining a right of public access over a portage is not a compelling public interest. Although the concept of a “compelling public interest” may be necessary, it is not in and of itself sufficient to allow a matter to be dealt with under subsections 3.01(4) and (5).

Under subsections 3.01(4) and (5) to the MFA any issues or circumstances or considerations which will facilitate the selection or acquisition of land by an Entitlement First Nation and which do not appear to have been addressed in the MFA may be raised. Under subsections 3.01(4) and (5) to the MFA any issues or circumstances or considerations which will hinder or delay the selection or acquisition of land by an Entitlement First Nation may be raised only if such matters are compelling or significant and are in the public interest, and Page 37. Such matters were not considered by the parties or were not reasonably foreseeable at the time the MFA was entered into. The burden of proof is on the party raising such matters.

- 4. If the answer is yes to questions 2 or 3, what legal instrument and what content in that legal instrument is appropriate to guarantee the “public right of passage over a portage” after the Selected lands have been set apart as reserve?**

The answers to questions 2 and 3 are no. Therefore no legal instrument is appropriate. If the BCN wished to pass a Band Council Resolution providing public access, that might be a gracious thing to do, but it is not required to do so.

- 5. Is the “Honour of the Crown” at risk where additional considerations not expressly contemplated by the MFA (such as the existence of a “compelling public interest” regarding a “public right of passage over a portage) are being asserted by a Party?**

No, the Honour of the Crown is not at risk in this particular case, subject to any issue as to costs.

This decision from the Arbitrator is the first Binding Arbitration decision rendered under the MFA. There are elements of the decision that may be useful to the Parties as they continue to implement this agreement. One example is the Adjudicator’s advice in setting out basic principles for interpretation of the MFA. In his decision he states that: “The Parties have devoted great care to the words in this agreement. I therefore start with the assumption that every word in the MFA is to be given a meaning.”

## **2.5 REFERRAL #1999-BPFN-001: LAND IN A PROVINCIAL PARK**

Referral Date: June 23, 1999.

Issue or Matter in Dispute: The Buffalo Point First Nation (BPFN) wrote to IMC Chairperson and referred its Birch Point selection pursuant to MFA Subsection 6.02(8) of 116.4 acres that included Birch Point Provincial Park that had been determined as ineligible by Manitoba. BPFN states its understanding of the MFA 3.03(6) that EFNs may not 'generally' select lands in Provincial Parks may be interpreted so that the word "generally" implies that exceptions may be made, and that Manitoba erred in MFA Subsection 3.02(12) to the Selection.

In 2010/2011 the Chairperson circulated the Referral Protocol on January 19, 2011 and requested comments from the Parties, as well as copies of any additional documents/ information that each Party believes to be relevant to a full consideration of this referral. In particular, the Chairperson requested that the sections entitled "Interpretation of the Relevant Provisions of the MFA" and "Proposed Resolution and Options Considered" be submitted by TLEC and Canada, by April 2011.

This referral was sent to the SAC in September 2013.

### **PROGRESS DURING 2014-2015:**

The IMC Interim Chairperson sent a letter to SAC dated August 6, 2014 and copied to the IMC Representatives. The IMC Representatives agreed with the recommendation that the Referral be sent to Arbitration table for resolution.

The IMC Independent Chairperson confirmed with the IMC Representatives that a BCR has been received from BPFN requesting that Referral 1999-BPFN-001: Birch Point to be sent directly to Binding Arbitration. There was discussion on the next steps now that this BCR has been received. It was agreed that this Referral would be formally put in front of SAC for a decision.

On February 23, 2015 SAC directed IMC to prepare the necessary questions for the Binding Arbitration process to be initiated under Article 35.04 of the MFA for the BPFN referral.

The IMC met on March 24, 2015 to begin the development of the framework for the Binding Arbitration process. The decisions made during this meeting included:

- AANDC providing the Judges Act provisions barring judges and/or supernumerary from being adjudicators;
- The IMC Chairperson updating the roster list for potential candidates for Arbitrators;
- Providing final comments on the adjudicator reference binding arbitration document;
- Request submissions from the potential candidates for the Binding Arbitration process.

The Arbitration process will be continued in the following fiscal year. It is anticipated that the Arbitration ruling will be completed in the 2015-2016 fiscal year.

## **2.6 REFERRAL #1999-NCN-003: EFFECTIVE DATE OF AGREEMENT**

Referral Date: August 25, 1999.

The Nisichawayasihk Cree Nation (NCN) referred this issue to the IMC in disagreement with Canada on the 'Effective Date of Agreement' of NCN's Treaty Entitlement Agreement (TEA). The NCN and Manitoba signed the TEA on the ceremonial date of July 30, 1998 that occurred at NCN, and the Federal Minister of DIAND did not sign the TEA until September 1, 1998.

Issue or Matter in Dispute (I/M): The NCN alleged that the effective date of their TEA was July 30, 1998, as this was the date that was typed on the TEA, and the date of the signing ceremony in Nelson House. All parties signed the TEA that day and Canada had a representative initial beside the signature block. Canada subsequently sent the TEA to the Minister's office where it was signed by Minister Jane Stewart, (AANDC).

The July 30, 1998 date is the 90th anniversary date of NCN's signing its adhesion to Treaty No. 5. Canada provided its position on May 12, 2011 that the date of execution is "September 1, 1998". Canada references MFA Section 30.03 that reads "Coming into Force, 30.01 Effective Date of Agreement. This Agreement shall come into force as between the parties on the Date of Execution" and stated this is to mean when signatures are executed by all the Parties."

**PROGRESS DURING 2014-2015:**

On February 23, 2015 SAC agreed that AANDC would provide to the Chief of NCN to SAC and IMC by March 6 the interest calculations as well as the general conditions that AANDC would seek approvals to acknowledge the July 30, 1998 effective date of NCN's TEA.

Based on the amount that would be generated from the principal and compound interest it is estimated that there would be approximately \$16,361.00 that would require a waiver to be signed by NCN. AANDC has indicated that they will not pay this amount, but are looking to confirm whether federal Orders in Council or other legal documents would be adjusted.

There are also questions relating to the separation of Opi-pon-na-piwin Cree Nation (OPCN) and what percentage may be owing to OPCN and whether they would need to sign a waiver as well. The amount would most likely be the same percentage that was distributed as part of the Land Quantum that OPCN received from NCN when they separated under their TEA.

AANDC will be sending NCN the letter to Chief and Council for a response in the new fiscal year. It is anticipated that this issue will also be resolved during this time period.

**2.7 REFERRAL #2003-BON-001: DISPOSAL OF SURPLUS FEDERAL LAND AND THE MFA PROCESS**

Referral Date: January 22, 2003.

Issue or Matter in Dispute (I/M): The Brokenhead Ojibway Nation (BON) referred the issue or matter in dispute to the IMC pursuant to MFA Section 34 alleging that Canada failed to forward notice of Surplus Federal Land; re the Kapyong Barracks to the BON, and Canada erred in interpreting that the MFA provisions dealing with Surplus Federal Crown property did not apply to the Kapyong Barracks and its classification of the lands 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 its referral letter of January 22, 2003 the BON requested the dispute resolution process pursuant to MFA section 34, alleging that Canada failed to forward a notice of Surplus Federal Land, with respect to the Kapyong Barracks to the BON, and that Canada erred in its interpretation that the MFA provisions dealing with surplus Federal Crown property did not apply to the Kapyong Barracks

The BON selected a parcel of approximately 160 acres of surplus federal Crown land (Kapyong Barracks in Winnipeg, Manitoba). On December 4, 2002, Canada advised 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 Canada advised that the MFA did not apply to the strategic disposal process, as the interest of the EFN's cannot be considered on a priority basis.

On January 13, 2011 this Referral was formally placed in abeyance by the IMC due to continuing litigation of this matter by the Treaty No. 1 First Nations (including BON) who filed for an application for judicial review on January 25, 2008. A decision was rendered on September 30, 2009 in favour of the First Nation and appealed by Canada. The appeal was allowed and the matter returned to the Federal Court. Canada is currently on a further appeal to the Federal Court of Appeal to a second ruling in favour of the First Nations of November 2012. The BON has formally advised the IMC it had extracted itself from the legal proceedings. Mr. Maurice Law, on behalf of BON, filed a Motion of Partial Discontinuance in the Federal Court of Canada on September 29, 2011 and thereby BON discontinued its participation as an Applicant in Action No. T-139-08.

The IMC decided by consensus at the IMC meeting of December 16 & 17, 2010 to formally place this issue/matter in dispute in abeyance while the litigation is ongoing. The Chairperson wrote to BON Chief and Council on January 13, 2011 and advised that the 2003-BON-001 referral had been formally placed in abeyance by the IMC due to the ongoing litigation of this matter.

Canada explained that it does not feel BON is entitled to resume the IMC dispute resolution process, as its understanding is that BON has abandoned the IMC process. Canada acknowledged that all Party representatives agreed by consensus with IMC placing the Referral in abeyance on January 13, 2011, which decision implies that IMC had an open file to place in abeyance. Canada however, explained that it does not want to be engaged in two processes at once – one through court and one through the MFA, and therefore feels that the court and appeals processes must be completed first.

On September 8, 2011 the BON advised that it would like to continue pursuing the IMC dispute resolution process and on October 2, 2011 provided a copy of its notice of partial discontinuance relating to Action N. T-139-08. On September 9, 2011 the Chairperson requested that the IMC representatives begin to assemble the facts and documents each considers relevant to a full consideration of this referral. This request was formalized into the October 3, 2011 IMC meeting UND#9.

#### **PROGRESS DURING 2014-2015:**

At the IMC meeting of June 21, 2012 the Chairperson advised that he had contacted BON's lawyer, Mr. Michael Bailey, and asked for confirmation on if BON was now placing its referral into abeyance again. On June 15, 2012 Mr. Michael Bailey of Maurice Law, BON's legal counsel wrote to the Chairperson and confirmed that BON has instructed his office to place the referral into abeyance. At the IMC meeting of March 22, 2013 the IMC was advised that the BON internal review is in progress and the IMC decided to wait to hear from the BON.

A previous Independent Chairperson had decided in September 2014 to obtain a legal opinion on this matter and contracted with Mr. Blair Graham to undertake the work (**Appendix F**) with the following conclusions in November 2014:

"In my opinion, given the nature and character of the dispute between BON and Canada as identified in the Referral, the appropriate process for the resolution of the preliminary arguments and jurisdictional issues, should be one of the dispute resolution methods contemplated by the Framework Agreement. Given the starkly opposed positions of Canada and the BON, and the passage of time which has lapsed since the Referral was made in January, 2003, the most appropriate methods of determining the preliminary arguments and jurisdictional issues would be "binding arbitration" before an Adjudicator."

"This could be accomplished in one of two ways:

1. By the IMC and/or Independent Chairperson submitting to the Adjudicator, pursuant to either subsection 35.04(1) or 35.04(2) of the Framework Agreement, a reference setting out in writing a question or questions substantially similar to the issues identified in BON's January, 2003 referral. Canada would then have the opportunity to raise any preliminary or jurisdictional arguments it wishes based on the 2001 Treasury Board policy, or BON's initial participation in the Federal Court proceedings. Any preliminary or jurisdictional arguments raised by Canada would be heard and determined by the Adjudicator, probably by way of separate hearing, at which evidence could be called, if necessary, on any of the preliminary or jurisdictional arguments raised by Canada.
2. By the IMC and/or Independent Chairperson submitting to the Adjudicator, pursuant to subsection 35.04(1) or 35.04(2) of the Framework Agreement, a reference setting out a question or questions identifying the preliminary and jurisdictional issues to be determined, prior to decisions being made by the IMC as to the matter in which the disputes identified in the BON Referral of January, 2003 could be resolved and determined, if at all."

The IMC is awaiting a response from BON as to whether they intend to proceed with their referral at the IMC.

## **2.8 REFERRAL #2006-MANITOBA-001: PROCESS FOR LAND SELECTION AND ACQUISITION**

Referral Date: February 3, 2006.

Issue or Matter in Dispute (I/M): In letter of Feb. 3, 2006 Manitoba disputes the Bunibonibee Cree Nation (BCN) allegation put forth on January 13, 2006 that Manitoba has materially failed to comply with a fundamental term or condition of the MFA responding that Manitoba does not consider itself to be in breach of the allegations of Manitoba's obligations contained in MFA Subsection 6.02(6), Manitoba's Response referred the matter to the IMC in accordance with MFA Subsection 36.02(2) a) the selection was registered in the Crown Land Register on July 20, 2000, and the selection was already subject to a pre-existing Third Party Interest in miscellaneous lease No.

3482 in favour of Knee Lake Lodge Inc., b) the consent of Manitoba to an assignment of a lease by a leaseholder for collateral purposes is not a “disposition” as defined in the MFA 1.01(27) and c) Manitoba regularly consents to assignments for collateral purposes.

On January 13, 2006 BCN has brought its allegation under MFA 36.01(1) to the IMC with respect to the registration of Knee Lake Lodge selection; a) Manitoba’s breach is contained in MFA 6.02(6) and b) Manitoba permitted several registrations to be made against lease #3482 which encumbers the Knee Lake Lodge selection.

TLEC’s view is that the lease should not be renewed past 2013 when the lease term expires, as TLEC does not feel that it is subject to renewal as a matter of law.

The Chairperson advised he had met with and explained to BCN representatives on October 20, 2011 and to the IMC on July 5, 2011 meeting that the MFA directs the Chairperson to refer the matter to binding arbitration to determine whether the Party or EFN against which the allegation has been made has failed to materially comply with a fundamental term or condition of the MFA or a TEA.

#### **PROGRESS DURING 2014-2015:**

There was a very brief discussion on the topic of the Knee Lake Lodge Referral. The referral as it is currently presented to the IMC is based on a Material Failure Allegation. The MFA provides for two mechanisms with which to remedy this scenario. As a result of the allegation being presented by BCN the onus is on Manitoba to either remedy the issue or matter in dispute or refer the issue/matter to the IMC. In this scenario Manitoba has chosen to submit the referral to the IMC. The process steps required by the IMC are to reach a consensus within 30 days on the issue and if consensus cannot be reached then the issue is directly referred to Binding Arbitration. The detailed process steps are outlined within Article 36 Material Failure and Events of Default.

The Chairperson has sent an email to the Chief requesting a meeting on the issue of the referral being revised to more accurately reflect the issue at hand – which is understood to be the transfer of the ownership of the lodge to a third party. The Chairperson attempted to meet with Chief Irvin Sinclair at the AMC Annual General Meeting in Brokenhead Ojibway Nation, but the Chief was not present at the meeting.

TLEC IMC Representative indicated that the TLEC Board of Directors will be meeting on March 18th or 20th at which time he will request the TLEC Executive Director to invite the Chairperson to attend the meeting. The item of the Knee Lake Lodge will be placed on the TLEC Board of Directors agenda for discussion.

The Chairperson also stated that Manitoba can choose to withdraw the referral as there is nothing in the MFA that prevents this. In response to a TLEC IMC Representative question, the IMC Chairperson responded that the only methods outlined within the MFA for addressing material failure allegations are identified in 36.01(1)(c)(i) and (ii) of the MFA. Specifically, for the party that is being accused of material failure to remedy the issue or refer the matter to the IMC. If the alleged material failure to comply with a fundamental term of condition is not remedied within 30 days of the receipt of the notice, the matter may be referred to binding arbitration. In this scenario, Manitoba chose to refer the matter to the IMC and now that the timeframes have lapsed the only recourse for the Chairperson is to refer the issue to Binding Arbitration. The Chairperson indicated that there has been numerous attempts and letters sent to BCN in order to resolve this issue, but a final resolution has not been obtained.

### **3.0 MONITORING AND FACILITATING MFA IMPLEMENTATION**

The IMC Work Plan assigned to the IMC by the Parties directs the IMC to monitor key topics and make recommendations to achieve the targeted results/goals developed for each activity. In particular the IMC has requested that the Chairperson monitor and facilitate the progress of the Parties by chairing the Three Party Strategic Planning meetings. Through facilitation of the process the Chairperson is challenging the Parties to begin looking at the strategic aspects of the work plan through a coordinated effort. Included in the Annual Work Plan as with previous Work Plans, are the EFN priority parcels that the First Nations would like to see specific attention and focus on. The purpose of this focus is specific to the resolution of Third Party Interests.

The IMC has addressed the issue of the acquisition time frames through the formal referral made in 2012 by Canada and Manitoba, but have agreed that continued focus on this issue is required. Specifically, the time frames for acquisitions while utilising the principles of the MFA will expire for all six Schedule B EFNs in the 2015-2016 fiscal year. The Parties have agreed to take a proactive approach to resolving this issue and are developing a strategy through the IMC to do so.

While the parties have addressed a number of issues through the Annual Work Plan, the Parties have not yet to date developed a concrete plan to address the issues relating to the Unsigned EFNs. The Parties at the very least should be working together to outline the steps required of each EFN should they intend to sign their TEA.

The Chairperson is also tasked with monitoring the resolution of Third Party Interests and providing the Parties with recommendations on how there may be some resolution reached on these outstanding issues. In particular the Chairperson has worked with Martin Egan, in his capacity as AANDC Director General of TLE Completion, to develop a draft Surface Access Rights Agreement that can be utilised in resolving the Crown Land and Private Land Mines and Minerals interest.

There are other specific issues that have not been included in the IMC Work Plan for 2015-2016, but are of importance to the IMC and SAC. In particular, SAC has requested that the IMC work toward addressing the Duty to Consult issue. These other issues include the Barren Lands First Nation and the Reindeer Lake selections, the IMC Chairperson working more closely with SAC, Crown Land Selections, and continued renewal of TPis.

### **3.1 THREE PARTY STRATEGIC PLANNING**

This is the fourth year that the Parties have been engaged in the Three Party Strategic Planning process in order to aid each Party to implement its responsibilities under the MFA. The total amount of acres identified in the Work Plan is 297,020.82 acres. Coordination and communication is essential to implementing any multi-party agreement. The same can be said for work required to implement the MFA. The MFA not only requires coordination amongst the three Parties, but the 15 First Nations as well is critical to navigating through a multi-step process, involving hundreds of parcels of land. The key objectives of the Strategic Planning initiative was to reach consensus on a three Party work plan, and share it with the EFNs, so that the EFNs can understand and anticipate the timeframes to co-ordinate their efforts with those of the Parties to resolve issues on parcels of land anticipated to be set apart as reserve.

During Strategic Planning meetings the Parties confirmed that their Annual Work Plan (**Appendix C**) by fiscal year needed to include at a minimum the work/tasks required to advance:

- the parcels on Schedule "A" 10,057.56 acres which are to be set apart as reserve by fiscal March 31, 2015;
- the parcels on Schedule "B" 64,939.98 acres which are to be set apart as reserve by March 31, 2016;
- the parcels on Schedule "C" 42,720.39 acres which are to be set apart as reserve by March 31, 2017; and,
- the parcels on Schedule "D" 93,697.05 acres (which are anticipated to take more than three years to be set apart as reserve).
- the parcels on Schedule "E" 95,078.09 acres (which are anticipated to take more than three years to be set apart as reserve).

The parcels of land that are in Schedule E have been referred to the IMC for resolution.

The total amount of acres targeted for transfer within **Schedules A-E is 306,493.07 acres.**

The planning process begins with an annual three Party assessment of the land transfer steps that can be completed during the fiscal year for each parcel. If it is determined by the Parties that a particular parcel can meet the dates for transfer during the fiscal year, it is listed on Schedule A of the Work Plan. If the remaining steps will take two years to complete it is included on Schedule B, and if the remaining steps will take three years to complete it is included on Schedule C. For some time the Parties have recognized 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, the Parties recognized that it would be difficult to maintain the rate of implementation moving forward. (**Chart 2** compares the acreage and number of parcels set apart annually).

#### **PROGRESS DURING 2014-2015**

The IMC Chairperson facilitated the Three Party Strategic Planning meetings of January 17, 2015 and March 8, 2015, that were hosted by TLEC and MANA respectively. The meetings identified the importance of coordination and regular communication necessary for self-monitoring of the Three Party Strategic Planning process. The IMC discussed the importance of the Strategic Planning as a positive support to implementing the IMC Work Plan in conjunction with the Strategic Plan the past two years since this planning was implemented. Canada has taken the lead in the first two years and requested one of the other Parties take a lead. It is recommended to SAC and the IMC that the Strategic Planning and Annual Work Plan continue with the Parties finding a solution to work load sharing, and that the Parties target April for the release of each fiscal year's Annual Work Plan.

The IMC and all Parties believe the Annual Plan should be shared with the EFNs earlier in the fiscal year, and the target date for release of the 2015-2016 Annual Work Plan and subsequent Annual Work Plans is June of each year.

In 2014-2015, the EFNs were;

- advised of the Annual Plan and parcel by parcel milestone goals in June, 2014,
- provided updated tracking charts in October confirming progress made during the first 6 months of the fiscal year (between April 1<sup>st</sup> and September 30<sup>th</sup>), and

The Survey planning and resources are also addressed in the Three Party discussions. On January 8, 2015 a Survey Meeting was chaired by MANA where AANDC announced that Public Works and Government Services would be managing the survey contract on a go forward basis.

### **3.2 EFN PRIORITY PARCELS**

Over the past few years, TLEC has annually submitted listings to Canada and Manitoba identifying the selections and acquisitions deemed by the EFNs to be their Priority Parcels. The 2014-2015 Annual Work Plan illustrates 78 priority parcels that have been chosen by the EFNs that are comprised of selections and acquisitions. The primary reason these parcels were chosen is to focus on the resolution of the Third Party Interests and Encumbrances. Once these parcels are free and clear of TPIs and Encumbrances the parcels can be included in the Annual Work Plan Schedules. It is anticipated that in the 2015-2016 fiscal year that these priority parcels will feed into one of the Schedules A, B or C to allow for survey work to be completed on these parcels.

#### **PROGRESS DURING 2014-2015**

The three Parties have confirmed which of the milestone goals set for 2014-2015 were completed by year-end, and which would need to be carried forward on the 2015-2016 Annual Work Plan. The following milestone targets for priority parcels were set and the achievements monitored as follows.

The main issues delaying the advancement of the Priority Parcels is the unresolved TPIs, encumbrances and concluding Municipal Development and Services Agreements (MDSAs) with municipalities.

In the 2014-2015 three Party Annual Plan the Parties decided to place the priority parcels further along in the process on Schedules A, B, and C; with the remainder found on Schedule D. In 2014-2015 the priority parcels are located as follows:

- 4 are on Schedule "A", and targeted to be set apart as reserve by March 31, 2015.
- 7 are on Schedule "B", and targeted to be set apart as reserve by March 31, 2016.
- 9 are on Schedule "C", and targeted to be set apart as reserve by March 31, 2017.
- 45 are on Schedule "D", (no associated time frame for reserve creation).
- 13 are on Schedule "E", (no associated time frame for reserve creation).

In summary, while the EFNs consider these parcels as their priorities, they are heavily encumbered with TPIs and encumbrances, and many require municipal discussions and possibly MDSAs. Accordingly, the majority cannot be targeted for reserve status before 2015-2016. In terms of interim achievements, it is clear from the above assessment that little progress was achieved with respect to advancing the EFN priority parcels during 2014-2015. A strategic focus to address the resolution of these matters will assist the progress of the priority parcels through the land transfer process.

### **3.3 ACQUISITION TIME FRAMES**

The IMC Referral on the Acquisition Time Periods was referred to the IMC in 2012 as a result the IMC decided to extend the Time Frames for the Schedule B EFNs as per the MFA. This resulted in the two, one-year time frame extensions being granted to the 6 Schedule B EFNs. This provides for the Principles of the MFA to apply to all existing acquisitions and any new acquisitions that are made during this time period. The Parties recognize that the Principles do assist with the implementation of the MFA and have agreed to continue looking at mechanisms in order to allow for the Principles to remain relevant after the time frames have lapsed.

#### **PROGRESS DURING 2014-2015**

On April 17, 2012 it was confirmed that Canada and Manitoba had met to jointly submit a referral to the IMC pursuant to the MFA subsection 4.02(3) in order for the IMC to consider extensions to the Schedule B EFNs as

both Canada and Manitoba perceived that the EFNs in Schedule B will not have Acquired their Other land amount within the time frame set out in the MFA subsection 4.01 (b). The Chairperson prepared letters of information to the Schedule 'B' EFNs advising of the Canada/Manitoba Referral to IMC and requested each EFN to develop a detailed plan for the Acquisition of its Minimum Entitlement Acres in accordance with the MFA subsection 4.02 94).

The Chairperson reviewed the letters that were of the same message, in that the IMC would “develop a proposal for consideration by each of the parties, which would extend the application of the principles beyond the time frames provided in the Framework Agreement.”

The IMC representatives have continued the discussion on the issue of the extension of the time period specific to the issue of the ability of First Nations to acquire land for TLE purposes. The reference that was made was with regard to the Minister of AANDC's letter dated: December 3, 2012 to Chief Nelson Genaille wherein he confirms that despite the principles of the Framework Agreement no longer applying the First Nations would have the ability to acquire their Other Land Amount.

The main principle that was identified by TLEC as being of importance to the EFNs is **Section 3.10 Specific Principles for Acquisition of Surplus Federal Land**. The EFNs would like to continue to be provided the first opportunity to consider purchasing Federal Surplus Lands.

AANDC indicated that there may be other avenues where EFNs would be notified of Federal Surplus Lands, specifically under Section 35 of the Constitution in the form of the duty to consult; however it was noted that the priority ability to acquire surplus federal lands under the MFA and the process of s.35 consultation are not the same. It was acknowledged that the Minister's letter of 2012 indicated that EFNs would still be able to purchase lands for TLE purposes. AANDC is to seek direction as to whether the specific requirements to pay for the Environmental Site Assessment and the Survey will continue after the principles expire for acquisition lands.

Manitoba's revised Acquisition of Crown Land for TLE Discussion Paper (**Appendix G**) for TLE EFNs was shared with the EFNs on February 27. The Chairperson was requested by TLEC to facilitate a discussion forum on this topic when the release of the paper was distributed. It will be important to clarify for the EFNs how the principles of the MFA will be applied on a go forward basis. AANDC also indicated that there are three independent First Nations that would also be notified of Federal Surplus Lands, Peguis First Nation, Swan Lake First Nation and Roseau River First Nation. It was indicated that these First Nations have a Trust Agreement that lapses unless it is extended through an approval process. AANDC also mentioned that the Third Party Interest Account is set to lapse in 2022 which is only seven (7) years from now, which may affect the resolution of TPIs on these acquisitions.

Discussions continue on how best to formalize the process for the EFNs as it has been noted that the main issue for AANDC is having the authority to continue to do the things they currently do under the MFA-TLE. A Focus Group was convened in order to go through the principles and the means to have the key principles continue to be implemented. The IMC Representatives agreed to convene a Focus Group Meeting on April 7, 2015 to discuss the implementation of key principles for EFNs under Schedule B of the MFA-TLE. AANDC agreed to provide the first draft of a discussion paper on the means with which the key principles that are of interest to AANDC and the EFNS can be implemented by March 31, 2016.

### **3.4 OUTSTANDING TREATY ENTITLEMENT AGREEMENTS (TEAS)**

By the end of the 2014-2015 fiscal year, six EFNs which are entitled to enter into TEAs under the MFA had not executed a TEA. None of these six EFNs is included in Schedule “B”, and their entitlement is comprised of 100% Provincial Crown land, and totals 137,529.00 acres. These six EFNs are; Shamattawa First Nation, Fox Lake Cree Nation, Sayisi Dene First Nation, York Factory First Nation, Marcel Colomb First Nation, and O-Pipon-Na-Piwinn Cree Nation.

At the meeting of the IMC there was consensus amongst the IMC Representatives on that the lead role should not be assumed by IMC, but rather it is a responsibility of the Parties to drive this process. As a result of this decision the IMC will no longer have this item on the IMC agenda.

The IMC Work Plan calls for a follow up on the IMC recommendation arising from the review of the low level summary report prepared by the IMC Chairperson in 2012. The task is for the Parties to develop a proactive Action Plan specific to each EFN currently without a TEA. Upon receipt and review of the Three Party Action Plan, the IMC would monitor implementation.

### **PROGRESS DURING 2014-2015**

The Parties have not developed an EFN specific Work Plan as recommended by the IMC into the Three Party Strategic Plan process for 2014-2015. The intent is to continue this action plan through future plans. Canada, TLEC, and Manitoba remain prepared to enter into TEA with the six First Nations and discussions are held with the First Nations at their option from the MFA Parties. There have been no TEAs signed by the Parties during this reporting period. There have been numerous attempts by the Parties to confirm the signed of these TEAs and an information session was hosted by TLEC where the Parties could update the EFNs on the status of TLE as well answer questions relating to the TLE process.

The Parties would benefit by outlining the specific tasks required for each EFN in order for them to sign their TEA. This can be achieved through work plan similarly with work plans developed for the 15 EFNs with signed TEAs. Once the Parties develop the specific steps required for each First Nation to sign their TEA the Parties can provide this work plan to new TLE implementation staff within government and TLEC. This would also be useful for new First Nation governments that may not be familiar with the TLE process and the required next steps to complete.

### **3.5 THIRD PARTY INTEREST RESOLUTION**

The IMC representatives agree that there is a need to improve the progress of resolving outstanding Third Party Interests (TPIs). There are a number of third party interests and encumbrances affecting the MFA selection lands according to the latest information obtained from Manitoba noting that there are 65,000 acres affected by hydro easements, mines and minerals interests, lands in municipalities, and utility and general permits. The resolution of TPIs requires the First Nations, Canada, Manitoba and the TPI Holder to reach consensus on the method of resolving the TPIs.

Article 10.01(2) states that:

“Third Party Interests which affect any land which is otherwise eligible to be set apart as reserve in accordance with the Principles must be resolved to the satisfaction of Canada, Manitoba, the Entitlement First Nation which has Selected or Acquired the land and the holder of the Third Party Interest prior to:

The transfer by Manitoba to Canada of administration and control of the Crown Land or any interest in the Crown Land; or

(b) the Entitlement First Nation or a Person on behalf of the Entitlement First Nation providing to Canada a registerable transfer of title to the Other Land.”

The resolution of these outstanding TPIs essentially requires agreement amongst the four parties where an interest exist on the land. In most cases the interest will continue on the land once it becomes reserve. There are agreements that have been reached with respect to the resolution of utility permits known as 28(2) permits, but there is more work required to complete additional agreed to forms.

### **PROGRESS DURING 2014-2015**

Canada, Manitoba and TLEC as signatories to the MFA-TLE have been successful in resolving some Third Party Interests and Encumbrances throughout this fiscal year. In particular, Manitoba and TLEC agreed to forward the issue of the Portage-Crown Reservations, which resulted in a ruling by the arbitrator. This ruling was in favour of the TLEC and allows the transfer of 26,168.32 acres with 6,786.8 acres that have additional issues that require resolution prior to being transferred to reserve status. The resolution of this issue also allows 198.17 acres or two parcels of land that have since been transferred to reserve to now include the portage as part of the selection where it was excluded (NHCN) or an easement agreement was signed (MCCN).

The IMC Interim Chairperson facilitated the completion of a legal opinion prepared by Ms. Cathy Sproule that focused on the meaning of “in any other way” as is referenced in the MFA. This legal opinion is intended to assist the Parties with finding solutions to resolving the outstanding Third Party Interests and Encumbrances that exist on the TLE selections and acquisitions.

### **34.08 Technical Support and Independent Professional Advice**

The Chairperson may, where the members of the IMC agree, retain technical support and independent professional advisors, including legal counsel, as necessary from time to time to assist in the proper discharge of the responsibilities of the IMC, including the responsibilities of the Chairperson.

The Interim IMC Chairperson has asked three specific questions relating to Third Party Interests (which are more fully described in the “Proposal for IMC to Retain Independent Legal Advice” attached hereto as **Appendix E**):

**1. What is the scope of and the limits on the words in any other way which ... the Parties ... may agree in the context of Article 10.02(1)(h) of the Manitoba TLE Framework Agreement?**

I am of the opinion that the parties to the MFA could deal with any third party interest by either an agreed upon common law easement, a federal statutory licence pursuant to the *Indian Act*, the *First Nations Land Management Act* or the *Federal Real Property and Federal Immovables Act*, or by a contractual agreement.

**2. To what extent does the *Manitoba Claim Settlements Implementation Act* support whatever flexibility exists by virtue of Article 10.02(1)(h) to resolve Third Party Interests?**

In my opinion, the answer to Question #2 is that section 11(2)(b) of the *MCSIA* provides an opportunity to create a *FRPFIA* interest prior to reserve creation under the MFA, an option which did not unequivocally exist at law at the time the MFA was signed. The phrase "in any other way" in Article 10.02(1)(h) would certainly include this option.

**3. Is the draft Surface Rights Access Agreement sound, and if not, what if anything can be done to render it useful?**

The issue of access at some undetermined point in the future is difficult. The main issue is that it requires an agreement for something that may or may not take place. In this case, it would be where lands are selected that have disposed minerals or oil and gas rights that are not presently being exploited. These rights would come from a disposition agreement or lease from the province. The third party disposition holder has a right to access those minerals if and when access is needed. This could be tomorrow, in a month, or never.

In order to protect this future right, an agreement is required. Section 10.03(4) of the MFA-TLE requires an agreement "between Canada, the Entitlement First Nation and the Third Party [to provide] the Third Party a right of access on or across the land to exercise its rights in the Mineral Disposition..." The quandary is that until such time the Mineral Rights Holder knows exactly where it requires access, there is no way to create an actual permit or licence to enter. The next best thing is an agreement to agree. While not legally binding, it does indicate intent, and should aim to protect all parties in the event there is a dispute when actual access is required. There may be some risk that at some point in the future the parties will not be able to reach an agreement and that court action is taken, but I am of the opinion that the risk is minimal and it is a risk worth taking to allow the parties to avoid further delays in implementing treaty obligations.

The EFNs with the assistance of TLEC and the respective Federal and Provincial governments have resolved 14 TPIs and encumbrances along with the EFNs selections and acquisitions. These interests range in complexity from resolution to Municipal Development and Services Agreements, Portages, Mines and Mineral Interests and Municipal Access Road requests.

### **3.6 OTHER SPECIFIC ISSUES**

Other matters of concern may be identified from time to time. In this event, the IMC will analyze the matter, determine if IMCs involvement is appropriate, if so determine the nature of IMC's involvement, and integrate the matter into the IMC Work Plan. The specifics of the approach will be dependent upon the issue, but in general will include:

- Issue analysis, and development of an IMC consensus on how best to resolve the matter,
- Enabling implementation of the MFA, and
- Advancing land parcels through the land transfer process.

The SAC has also requested that the IMC assist the Parties with resolving the Duty to Consult issue as is referenced in the IMC Meeting of November 27, 2014. Although these topics have not been included in the IMC Work Plan for 2015-2016 they have been addressed or are of importance to the IMC. In particular, the issue with respect to the Barren Lands First Nation and the Reindeer Lake selections where SaskPower is operating a dam that regulates the water level on Reindeer Lake that has resulted in a requirement for a hydro easement for the TLE selections along the shoreline. The IMC Chairperson is to begin to work more closely with SAC in terms of discussing the IMC Referrals to determine if there is a way the SAC can resolve some of the longstanding issues. The IMC will be looking at the Crown Land Selections and determining if the Parties can facilitate the completion of the Crown land Selections. Also, the Manitoba Government has released a Crown Land Acquisition Discussion Paper that the IMC will need to review to determine if this paper assists with the completing of the Purchase of

Other Land. If this paper does not, the IMC will need to review the paper to determine how this paper can accommodate the completion of purchase of the Other Land Amounts. The IMC has begun to look at the continued renewal of TPIs as it relates to Mines and Minerals interests. The Manitoba Government has provided copies of the Leases and Licenses issued to companies to assist the IMC with understanding the mechanism for which the Manitoba Government uses to continue to renew these licences and leases.

### **PROGRESS DURING 2014-2015**

There have been ongoing updates provided by AANDC with respect to where the consultation process is at with regard to moving the EFN parcels along the Land transfer and reserve Creation process. With this additional step being introduced as a result of Canada's attempt to fulfil its duty to consult, it has prolonged the transfer of parcels of lands that otherwise may have been transferred to reserve.

The latest update from Canada was provided on March 6, where in the discussion on the topic of the Duty to Consult centered on an update from AANDC on the status of consultation with the Metis and Aboriginal Groups. There were 11 parcels going to the Ministers Office by the end of March 31. There were 5 parcels that were Rolling River First Nations, 1 Buffalo Point First Nation, 2 Manto Sipi Cree Nation, 2 Mathias Colomb Cree Nation and 1 Norway House Cree Nation. It was anticipated that by March 10 the Department of Justice would have completed its review of the TLE Additions to reserve submissions to be sent to the Minister and allow the Minister to sign off on the reserve creation for March 31.

AANDC indicated that the Manitoba Metis Federation (MMF) is raising objections to any reserve creation within Manitoba. AANDC believes that they have exhausted all avenues with regard to the consultation process for certain parcels and are now proceeding with recommending reserve creation. There have been specific concerns raised by the MMF with regard to 5 parcels of land selected for TLE. Three of the parcels are Wuskwi Sipi First Nation's (WSFN) and two are Opaskwayak Cree Nation's (OCN).

TLEC asked for further information concerning the quality of the information that the MMF to contest these lands for reserve creation and AANDC has indicated that the MMF have not provided any specific or detailed information, but stated that they have concerns with these lands becoming reserve status. Additionally, WSFN and OCN have offered an invitation to the MMF to meet to discuss their concerns with the 5 parcels that the MMF has identified. The Local Chapter of Metis in both instances has deferred any requests to meet to the MMF. The MMF has not yet replied whether they will meet with the First Nations.

TLEC has asked AANDC if they have sent a letter to the MMF opposing their general concerns for reserve creation and that they have provided insufficient information to stop the reserve creation of these lands. AANDC have indicated that, a letter has been sent which is why AANDC is proceeding with reserve creation on the 11 parcels and sending them to the Minister for final approval. There are however, an additional 40 parcels that require Provincial Order in Councils and have not been sent to the MMF for response. AANDC intends on sending these to the MMF once these 11 parcels have been sent to the Minister.

TLEC queried AANDC as to the potential of sending out the 40 parcels to the MMF as soon as possible in order to determine if a response will be received or not. AANDC's response was positive in that they would consider this once Department of Justice has completed their analysis of the 11 parcels that are going to the Ministers office. AANDC added that they are not providing funding to the MMF for consultation on TLE parcels. AANDC also indicated that the MMF has stated that they are in active negotiations with Manitoba to expand the harvest area that has been recognised by Manitoba. MANA confirmed that there is no intention to expand the harvest area.

TLEC requested that AANDC provide a written response to the IMC as an ongoing update on the status of consultations with the MMF. AANDC agreed to provide this ongoing update at each IMC meeting.

TLEC has further requested clarification on whether or not the Metis would be considered a Third Party Interest given that they are preventing TLE lands from becoming reserve? AANDC responded that no, they would not be considered a Third Party Interest.

The IMC Representatives discussed the benefits of beginning with a discussion paper that would allow the parties to provide examples of where the Metis and First Nations are working together. Such examples include Child and Family Services, and Commercial Fishing.

AANDC added that there are 200 more MFA parcels that have not been sent to the MMF for a response, but that not all of these parcels will trigger the duty to consult. Currently, 144 parcels have been sent to the MMF for review and response. AANDC also explained that it views that provincial government as having a role in the duty to consult

as well, particularly since the federal government is not the government with jurisdiction over many of the issues, which has increased the challenge of the federal government to address the duty.

AANDC will provide an ongoing update on the status of consultations on TLE with the MMF at each scheduled IMC meeting. The IMC Chairperson will start a discussion paper that the IMC Representatives can provide additional information to and that will assist with developing a protocol that outlines the current process that is being undertaken by AANDC to address the issue of consultation on MFA selections and acquisitions.

The status with regard to the Reindeer Lake selections made by Barren Lands First Nation is connected to the SaskPower operation of the Whitesands Dam in Saskatchewan. The Barren Lands First Nation has been in contact with SaskPower to attempt to resolve the issue as a result there has been no solid movement on resolving this issue.

The IMC has agreed with the IMC Interim Chairperson's recommendation that the Chairperson assist SAC with attending the meetings to facilitate, advise and record the results of decisions from the SAC. There has been one SAC meeting where this was completed. It is anticipated that a formal SAC Policy and Procedures manual would be developed to assist SAC and the IMC Chairperson with roles and responsibilities under the MFA.

The IMC has been monitoring the development of the Manitoba Acquisition of Crown Land for TLE Discussion Paper that is intended to assist the Schedule B EFNs with purchasing their remaining acquisition acres. It is anticipated that the IMC will have an opportunity to review this paper and discuss how it will benefit the EFNs with realizing their full land amounts as Schedule B EFNs.

The IMC is also monitoring how Manitoba processes TPIs on EFN selections and acquisitions. In particular, the IMC is becoming aware of how Manitoba renews mining claims, mineral licenses and leases on these parcels of land. Manitoba has provided information as requested by the IMC in order for the IMC to better understand this internal government process.

## **4.0 REPORTING**

### **4.1 EFFECTIVE IMC OPERATIONS**

Since 2007 the MFA Parties had been in agreement to establish a separate office of the independent Chairperson of the IMC to assist them in improving the MFA implementation process. The relocation of the IMC Office to its current location at 200-1765 Sargent Avenue is a shared office premises with the TLEC as determined by the MFA Parties instruction to the Chairperson in 2011-2012. The relocation was completed on May 12, 2012 and it is noted in the IMC meetings summary of proceedings that an inventory was completed and an administrative agreement was developed between the IMC and TLEC.

In 2011-2012 the Parties determined in response to cost-cutting measures required by Manitoba, that the stand alone IMC office would be closed at the termination of its five year lease on May 31, 2012, and the IMC would rent space from the TLEC commencing in the 2012-2013 fiscal year. This was deemed to provide a more affordable base of operations for the independent Chairperson, and a secure place to house the records and files of the IMC, which have grown substantially during 18 years of implementation.

In summary the main revisions were that; an IMC Work Plan would be developed by the Parties (and attached to the Chairperson's Service Agreement), the Assistant Chairperson and Executive Assistant positions would no longer be utilized, and the Chairperson would include with the service agreement with TLEC costs for the use of TLEC's Finance Officer and Executive Assistant, subject to the allocations provided in the IMC annual budget. This structure has been in place for fiscal years 2010-2015. In January 2015 the IMC Chairperson entered into a Terms of Service Agreement between the IMC and TLEC to provide the IMC with Financial and Administrative Assistance Services for a one-year term.

#### **PROGRESS DURING 2014-2015:**

The IMC was without a Chairperson for a nine month period beginning in late September 2014, which included a three month period during the first quarter of 2014-2015 when it was not possible to obtain in order to hold formal meetings. However, a number of achievements were made, one being that a 2007 Referral is now completed the 2014-2015 fiscal year through the Binding Arbitration process. A separate budget cost was needed to implement the next steps associated with that process. Three IMC meetings were held in the second quarter and three in the

fourth quarter. Each meeting resulted in a meeting summaries recording progress towards the targeted results and were confirmed and circulated. The majority of action items were completed for each meeting.

The Financial Management items are reported regularly with quarterly review by the IMC Meetings and the Chairperson advises the SAC as required. At the IMC meeting of July 9, 2015 the unaudited statement was complete and the circulation letter sent with copies at month's end and the Party representatives undertook to provide comments by July 24, 2015. The Annual unaudited statement was approved.

## 5.0 SUMMARY AND RECOMMENDATIONS OF THE IMC CHAIRPERSON

It is an honour and privilege to have been appointed Chairperson of the IMC by SAC to be a part of contributing to the transfer of land to reserve that arises from the Treaty obligations in part with respect to Treaty No. 1, Treaty No. 3, Treaty No. 4, Treaty No. 5, Treaty No. 6, and Treaty No. 10 through the Manitoba Framework Agreement on Treaty Land Entitlement of May 29, 1997 and the resulting Treaty Entitlement Agreements for each of the Entitled First Nations.

My focus of the short three months in office in 2014-2015 has been to understand the full capacity of the role of the IMC Chairperson and the MFA provisions to assist the MFA Parties in resolving the Issues and Matters in dispute that have been brought before the IMC by the IMC Parties and the EFNs. I have also continued to further the excellent work done by the Interim Chairperson.

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 Aboriginal Affairs and Northern Development Canada, and the Minister of Aboriginal and Northern Affairs for Manitoba, for the reporting period ending March 31, 2015.

Article 34.09 (10) (c) as my authority, which states:

The Chairperson may, on behalf of the Implementation Monitoring Committee, provide to the President of the TLE Committee, the Minister of Indian Affairs and Northern Development of Canada and the Minister of Northern Affairs of Manitoba other reports from time to time as the Chairperson deems appropriate.

- 1. Duty to Consult:** The Parties and the EFNs address this as a priority issue or matter to be resolved as it is a critical component of the implementation of the MFA and TEA obligations. A joint protocol agreement should be developed to facilitate these parcels of land through the consultation process to reserve creation.
- 2. Issue/Matter in Dispute Referral Management by IMC:** It is recommended the Referrals be reviewed through the 2015-2016 IMC Work Plan with a committed view to moving the Referrals forward in a timely manner in accordance with the provisions of the MFA.
- 3. Crown Reservation – Portages (2007-TLEC005), Binding Arbitration:** The Parties As a result of the Arbitrators decision implement the next steps in the reserve creation process for those parcels that have Portages identified. The parties work toward resolving any additional issues on these parcels on a priority basis.
- 4. Hydro Easement (2007-TLEC-002):** The Parties and Manitoba Hydro continue discussions to address the draft Hydro Easement Agreement proposed by Brokenhead Ojibway Nation and confirm a Hydro Easement agreement, as required by the MFA. If there is no agreement reached then the matter should be brought back to the IMC table through the TLEC IMC referral for resolution through the MFA dispute resolution process.
- 5. Strategic Planning:** The Parties continue to alternate responsibility for mailing out the beginning of the fiscal year work plan and the final results of the Annual Work Plan. The Parties should work toward creating focussed strategic goals within the Work Plan. The IMC Chairperson should remain as facilitator/chair of this Work Plan process.
- 6. Third Party Interests:** The Parties and EFNs affected have a minimum of two special sessions focussed on the development of a strategy to address the low rate of resolution of TPIs and encumbrances; and that this strategy include an examination of the methods available to resolve specific TPIs and to attain consensus amongst stakeholders on the most appropriate course of action. The Parties confirm agreement on the instruments that have been agreed to and develop agreements where there are none. The resolution of these TPIs requires the consensus of all Parties to the MFA. It is recommended that the Agreed to Forms Committee be re-established to form a work plan with all Parties Legal Counsels to facilitate the completion of agreed

forms to address the following: Mines and Minerals on Crown and Private Lands, Municipal Development Services Agreements (MDSA) – where needed and any other form of agreement that will resolve outstanding issues.

7. **Acquisition Rates and Time Periods:** The Parties confirm that the principles of the MFA will apply, to provide a clear process for implementation and to prevent uncertainty should there be no principles to guide the Parties. A possible solution to address this issue is for an amendment to the MFA or a subsequent referral by the Parties that is focussed on clarifying this matter.
8. **Survey Capacity Limitations:** The Parties review the survey capacity now that Public Works and Government Services are controlling the contracting for the surveys and its affect on the pace of MFA implementation. The Parties in collaboration with the EFNs need to work together in order to determine where the exterior boundary of a parcel requires demarcation and where it is not. It is understood that this is a major contributing factor to the cost of surveys. Along with providing additional financial resources to the survey budget AANDC needs to confirm the use of additional Canada Land Surveyors from other provinces.
9. **Consistency of MFA Implementation Steps:** In order for consistency of implementing the MFA process steps the Three Parties meet to review these steps in advance of meeting with the EFN. The new personnel of any of the Three Parties should be provided with the Land Transfer and Reserve Creation Process Manual and walked through this process for each of their respective TLE files. This will provide new personnel the opportunity to understand the process steps prior to meeting with the EFNs and provide the current implementation personnel with a refreshed look a the TLE process steps.



Laren Bill

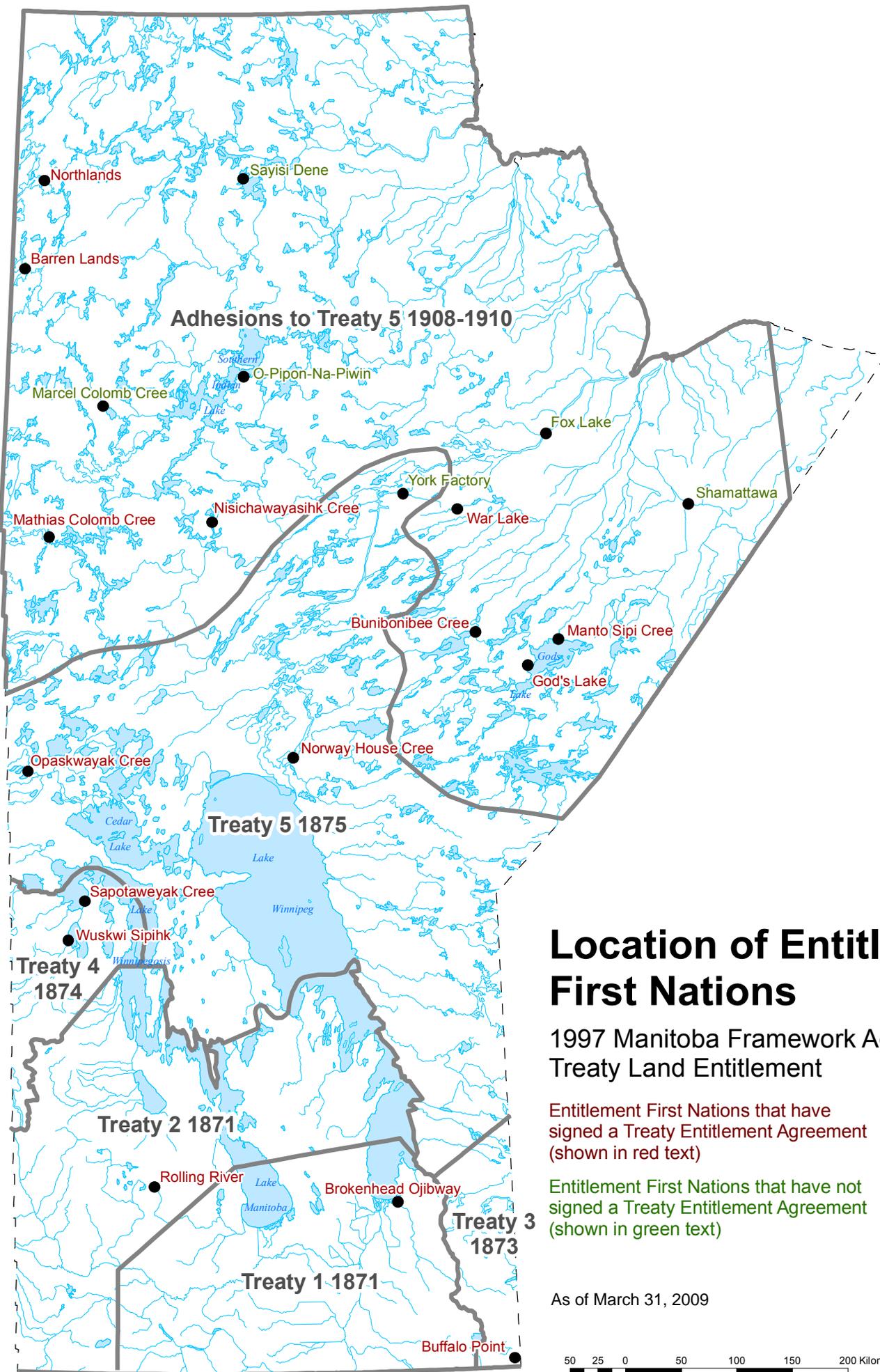
IMC Independent Chairperson

## 6.0 SUMMARY OF APPENDICES

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Appendix A	Map of Entitlement First Nations
Appendix B	2014-2015 IMC Work Plans
Appendix C	2014 - 2015 Three Party Annual Work Plan Results
Appendix D	Crown Reservations – Portages Binding Arbitration Decision By Lawrie Cherniack
Appendix E	Legal Opinion on Resolving Third Party Interests “in any other way” By Cathy Sproule
Appendix F	Legal Opinion on Resolving the Kapyong Barracks Referral 2003-BON-001 By Blair Graham
Appendix G	Manitoba Acquisition of Crown Land for TLE Discussion Paper February 27, 2015

# Map of Entitlement First Nations



# 2014-2015 IMC Work Plans

IMC WORK PLAN  
7 July - 31 December 2014

#	Activity	Expected Results	MFA Authority	Resources
1	Contract appropriate legal expertise on behalf of the IMC to obtain a legal opinion on the scope of and limits to flexibility that may exist to deal with Third Party Interests in accordance with Article 10.02(1)(h) of the Manitoba TLE Framework Agreement, and to apply that flexibility to develop an Agreed Form Surface Rights Access Agreement.	<p>A. New options for dealing with Third Party Interests, that could conceivably be used to resolve many longstanding issues;</p> <p>B. A template Surface Rights Access Agreement that can be adopted as an "Agreed Form".</p>	10.02(1)(h) 11.03 (4)	\$12K
2	Attempt Resolution of Matters In Dispute: Facilitate discussions amongst the parties leading to solutions, or develop consensus on next steps for Dispute Resolution in accordance with Manitoba TLE Framework Agreement Articles 34.07 and 34.09.	<p><b>2007-TLEC-002: HYDRO EASEMENTS</b> – Meet with Brokenhead Ojibway Nation to better understand and assess the potential for the parties and Manitoba Hydro to agree on the form of the Hydro Easement, and the potential for using the possible flexibility noted in #1 above to facilitate agreement.</p> <p><b>2004-BLFN-002: LAND IN SEVERALTY</b> – Write to the Barren Lands First Nation in follow-up to the 27 September 2013 letter from previous Chairperson to determine the current appetite to resolve the matter, and to suggest another option for proceeding.</p> <p><b>2012-CANADA/MANITOBA-001: ACQUISITION TIME PERIODS</b> – Execute the IMC decision to extend the acquisition time periods for 2 years and then close out the referral, but continue to investigate longer term options available to fully resolve this matter.</p>	12.05  9.01 9.02 9.03 9.04  3.03(6)	

IMC WORK PLAN  
7 July - 31 December 2014

#	Activity	Expected Results	MFA Authority	Resources
3	Close out Resolved Matters In Dispute.	<b>2007-TLEC-005 (and 2006-MANITOBA-005?): CROWN RESERVATIONS-PORTAGES</b> - Execute the documentation to formally close this Referral(s) following the 16 April 2014 Adjudicator's Decision.		
4	Coordinate with Senior Advisory Committee (SAC) concerning Matters In Dispute referred to SAC.	<p><b>1999-BPFN-001: LAND IN A PROVINCIAL PARK</b> - Complete the process begun in 2012 to obtain the positions of each party, and determine if resolution is possible by consensus and if not then prepare the necessary documentation to refer the matter to another level of dispute resolution.</p> <p><b>1999-NCN-003: EFFECTIVE DATE OF AGREEMENT</b> - In discussion with Nisichawayasihk Cree Nation, determine options for resolution, and if necessary prepare documentation to refer the matter to another level of dispute resolution.</p>	<p>30.01 30.02 30.03</p> <p>4.01 4.02 4.03</p>	
5	Meet with lawyer Blair Graham on the Kapyong Legal Opinion commissioned by the previous Chairperson, and determine next steps including closing out the contract.	Legal opinion completed and shared with all parties. Determination from IMC on potential next steps.	34.08(3)	

**IMC WORK PLAN**  
7 July - 31 December 2014

#	Activity	Expected Results	MFA Authority	Resources
6	Write to the four First Nations who are signatory to the Framework Agreement, but have yet signed their respective Treaty Entitlement Agreement, to begin discussion on next steps. The parties are already in discussion with the other two First Nations.	An understanding of the plans of the O-Pipon-Na-Piwin Cree Nation, Sayisi Dene Nation, Shamattawa First Nation and York Factory First Nation to sign their TEA. A determination of any impediments that may exist for these First Nations in proceeding with next steps.	32.02(f) 33.02(e) (vii)	
7	Liaise with the Association of Manitoba Municipalities concerning potential joint measures to improve and facilitate First Nation/municipal government relations and the signing of MDSAs.	Potential results could include a workshop for newly elected municipal leaders following the October 2014 elections, and/or joint work on a template MDSA.	32.02(f) 33.02(e) (vii)	
8	Investigate options for improving access to information respecting the processing of TLE ATR proposals	Easier access to up to date information concerning where proposals are in the ATR process, and what if anything is causing a delay in that process.	34.07(1)(c)	

IMC WORK PLAN  
January 2015 March 2015

#	Activity	Expected Results	MFA Authority	Resources
1	<p><b>Resolution of Matters In Dispute:</b> Facilitate discussions amongst the parties leading to solutions, or develop consensus on next steps for Dispute Resolution.</p>	<p><b>2007-TLEC-002: HYDRO EASEMENTS</b> - Determine if the Parties and Manitoba Hydro can agree on the form of the Hydro Easement Agreement by March 31, 2015 or if this is not possible then begin work on and execute the documentation necessary to initiate the appropriate Dispute Resolution option.</p> <p><b>2004-BLFN-002: LAND IN SEVERALTY (MATERIAL FAILURE ALLEGATION)</b> - In discussion with the Barren Lands First Nation determine if it would be possible to revise the referral on material failure to reflect a substantive issue or matter in dispute.</p> <p><b>1999-BPFN-001: LAND IN A PROVINCIAL PARK</b> - Engage the process of referring the Issue/Matter in Dispute to SAC for decision as per the MFA-TLE prior to March 31, 2015. Share relevant referral docs to BPFN &amp; SAC prior to March 31, 2015.</p> <p><b>1999-NCN-003: EFFECTIVE DATE OF AGREEMENT</b> - Engage the process of referring the Issue/Matter in Dispute to SAC for decision as per the MFA-TLE prior to March 31, 2015. Share relevant referral documentation with NCN &amp; SAC prior to a scheduled meeting.</p> <p><b>2012-CANADA/MANITOBA-001: ACQUISITION TIME PERIODS</b> – Convene a focus meeting in January 2015 with IMC Reps on options available to resolve this dispute.</p> <p><b>2006-MANITOBA-001: (MATERIAL FAILURE ALLEGATION – Knee Lake Lodge)</b> MFA directs Chairperson to refer matter to Binding arbitration, confirm with BCN in January. Further clarification on the next steps required. Confirm that BCN wants to proceed in this manner.</p>	<p>34.07(1)(c) (d) (e)</p> <p>34.09(7) (8) (9)</p> <p>38.01(5)</p>	

IMC WORK PLAN  
January 2015 March 2015

#	Activity	Expected Results	MFA Authority	Resources
2	<b>Develop an Agreed Form Surface Rights Access Agreement</b>	Generate consensus by March 31, 2015 with the Parties on a Surface Rights Access Agreement for Crown/Private owned Mines & Minerals as well as Crown/Private Oil and Gas rights that can be adopted by the IMC as an "Agreed Form".	11.03 (4)	
3	<b>Develop a Consultation Protocol</b>	Investigate and identify options for the development of a Consultation Protocol on TLE Selections/acquisitions with TLEC First Nations, Canada and Manitoba, which could be expanded to include other TLE Manitoba First Nations.	34.07(1)(c)	
4	<b>Assist First Nations and Municipal Governments</b>	Work with relevant Parties, including Federation of Canadian Municipalities to develop an Agreed to Form of MDSA to assist <ul style="list-style-type: none"> <li>- Brokenhead Ojibway Nation w/RM ESP/City of Winnipeg;</li> <li>- Wuskwi Sipiik First Nation w/Town of The Pas; and,</li> <li>- Rolling River First Nation w/RM of Headingley. Commence discussions with the Association of Manitoba Municipalities respecting the facts about the best practices concerning MDSAs.</li> </ul>	32.02(f) 33.02(e)(vii)	
5	<b>Improve Access to Information Respecting the Processing of TLE ATR Proposals</b>	Investigate the options to make the TLE ATR process more readily accessible by the Parties for tracking purposes.  Upgrade the IMC Website and keep it current.	34.07(1)(c)	

# 2014 - 2015 Three Party Annual Work Plan Results

**FINAL RESULTS Work Plan -  
2014-2015**

Q1 April 01 to June 30  
Q2 July 1 to September 30  
Q3 October 1 to December 31  
Q4 January 1 to March 31

Canada updated April 14, 2015

TLEC updated April 23, 2015

MB update May 14

First Nation	Site Name (Site#) Acres	Site#	Acres	Canada Process Steps / Target Date	Canada Status as of Date	Manitoba Process Steps / Target Date	Manitoba Status as of Date	TLEC / EFN Process Steps / Target Date	TLEC Status as of Date	EFN Status as of Date	TPIs	Schedule
Buffalo Point	The Galley Restaurant (2) 81.20	2	81.20	2.37b INAC submits MO submission to HQ 2.38 INAC MO establishes reserve	2.37b met 03/13/15 2.38 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Manto Sipi	East of God's River (1-01) 177.20	1-01	177.20	2.37b INAC submits MO submission to HQ 2.38 INAC MO establishes reserve	2.37b met 03/13/15 2.38 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Manto Sipi	West Shore of Semmen's Lake (2-01) 914.00	2-01	914.00	2.37b INAC submits MO submission to HQ 2.38 INAC MO establishes reserve	2.37b met 03/13/15 2.38 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Mathias Colomb	King Fisher Bay (28) 1,491.38	28	1,470.28	2.16 INAC site visit/screening Q2 [ESA update required ] 2.37b INAC submits MO submission to HQ 2.38 INAC MO establishes reserve	2.16 met 01/28/14 2.37b met 03/13/15 2.38 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Mathias Colomb	Kississing Lake (25) 1,313.99	25.00	1,331.57	2.37b INAC submits MO submission to HQ 2.38 INAC MO establishes reserve	2.37b met 03/13/15 2.38 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Rolling River	Gusdal (1.03) 45.00	1.03	41.00	3.24 INAC submits MO submission to HQ 3.25 INAC MO establishes reserve	3.24 met 03/13/15 3.25 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A

**FINAL RESULTS Work Plan -  
2014-2015**

Q1 April 01 to June 30  
Q2 July 1 to September 30  
Q3 October 1 to December 31  
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Canada updated April 14, 2015

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First Nation	Site Name (Site#) Acres	Site#	Acres	Canada Process Steps / Target Date	Canada Status as of Date	Manitoba Process Steps / Target Date	Manitoba Status as of Date	TLEC / EFN Process Steps / Target Date	TLEC Status as of Date	EFN Status as of Date	TPIs	Schedule
Rolling River	Gusdal (2.03) 140.61	2.03	140.61	3.24 INAC submits MO submission to HQ 3.25 INAC MO establishes reserve	3.24 met 03/13/15 3.25 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Rolling River	Manns (15-01) 80.00 Priority Parcel	15-01	80.00	3.24 INAC submits MO submission to HQ 3.25 INAC MO establishes reserve	3.24 met 03/13/15 3.25 not met						The Ministerial Order submission for this acquisition was sent for approval on Mar. 13/15.	A
Rolling River	Manns (16-01) 160.00 NE 1/4 25-16-19 Priority Parcel	16-01	160.00	3.24 INAC submits MO submission to HQ 3.25 INAC MO establishes reserve	3.24 met 03/13/15 3.25 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Rolling River	Manns E 1/2 SE 1/4 25-16-19 (16-01) 80.00 Priority Parcel	16-01	80.00	3.24 INAC submits MO submission to HQ 3.25 INAC MO establishes reserve	3.24 met 03/13/15 3.25 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Rolling River	Cameron (1-01) 160.00 Priority Parcel	1-01	160.00	3.24 INAC submits MO submission to HQ 3.25 INAC MO establishes reserve	3.24 met 03/13/15 3.25 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Wuskwi Siphk	Bell Lake (2-02) 201.90	2-02	201.90	2.37b INAC submits MO submission to HQ 2.38 INAC MO establishes reserve							Consultation must be addressed prior to parcel proceeding further.	A
Wuskwi Siphk	Kettle Hills Addition (1-01) 737.00	1-01	737.00	2.37b INAC submits MO submission to HQ 2.38 INAC MO establishes reserve							Consultation must be addressed prior to parcel proceeding further.	A

**FINAL RESULTS Work Plan -  
2014-2015**

Q1 April 01 to June 30  
Q2 July 1 to September 30  
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Canada updated April 14, 2015

TLEC updated April 23, 2015

MB update May 14

First Nation	Site Name (Site#) Acres	Site#	Acres	Canada Process Steps / Target Date	Canada Status as of Date	Manitoba Process Steps / Target Date	Manitoba Status as of Date	TLEC / EFN Process Steps / Target Date	TLEC Status as of Date	EFN Status as of Date	TPIs	Schedule
Wuskwi Sipiik	North Kettle Hills (4-02) 2,652.00	4-02	2,652.00	2.37b INAC submits MO submission to HQ 2.38 INAC MO establishes reserve							Consultation must be addressed prior to parcel proceeding further.	A
Norway House	Fairy Lake (2-02) 1,830.80	2-02	1,830.80	2.37b INAC submits MO Submission to HQ Q2 2.38 INAC MO establishes reserve Q4	2.37b met 03/13/15 2.38 not met						The Ministerial Order submission was forwarded to headquarters on March. 13/15.	A
Opaskwayak	Atik Lake (2-03) 1,181.34	2-03	1,181.34	2.37b INAC submits MO Submission to HQ Q2 2.38 INAC MO establishes reserve Q4						CAP completed: Membership voted to approve on October 16, 2014.	Consultation must be addressed prior to parcel proceeding further.	B
God's Lake	DNR Lot (3-02) 2.20	3-02	2.20	ESA update required 2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.33 INAC forwards legal description to MB Q4	ESA will stale date Dec.21/15. Site visit required.			2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q4	BCR sent March 28/14	Pre-Transfer Use Agreement to be completed by April 30/15	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC - Consultation letters sent March 2014	B
God's Lake	Kanuchuan Rapids Addition (3-2000) 3,906.23	3-2000	3,906.23	ESA update required 2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.33 INAC forwards legal description to MB Q4	ESA stale dated April 30/15. Desk Audit required					Moved to Schedule B Mylars sent to PLTO Sep 24/12 for registration. Consultation issue to be addressed prior to forwarding legal to MB.	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC - Consultation letters sent March 2014 <b>Garden Hill expressed concern</b>	B
God's Lake	Lot 6 Grp 424 (10) (Hyers Lot) 13.10	10	13.10	ESA update required 2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.33 INAC forwards legal description to MB Q4	ESA will stale date Dec.21/15. Site visit required.			2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	BCR sent March 28/14	Pre-Transfer Use Agreement to be completed by April 30/15	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC - Consultation letters sent in March 2014	B

**FINAL RESULTS Work Plan -  
2014-2015**

Q1 April 01 to June 30  
Q2 July 1 to September 30  
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MB update May 14

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Bunibonibee	Atik Lake (1-02) 1,310.64	1-02	1,310.64	2.33 INAC forwards legal description to MB							Consultation will need to be addressed prior to AANDC requesting the Provincial OIC.	B
Bunibonibee	Jacob's Point (2-2000) 32.85 <b>Priority parcel</b>	2-2000	32.85	2.28b LTO provides tentative approval  2.33 INAC forwards legal description to MB Q4	2.28b met			2.21a EFN resolves TPI/Encumbrances Q4. 2.29 TLEC assists in securing BCR from EFN approving survey by Q4 2.30b TLEC assists in securing naming BCR from EFN approving survey by Q4			Access Road - Hydro - Plan # 38682 Parcel B (M) (access agreement required for road) Hydro Distribution and MTS Facilities - 28(2) Permits; House - Pre-Transfer Use Agreement required. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Bunibonibee	Jacobs Point (amended) (1-07) 10.03 <b>Priority parcel</b>	1-07	10.03	2.33 INAC forwards legal description to MB							Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Bunibonibee	Addition to Lynx Bay 10.89 acres	Site 10-02-01	10.89	2.33 INAC forwards legal description to MB							Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Manto Sipi	Allen Rapids (amended) (3-01) 2.00	3-01	2.00	2.33 INAC forwards legal description to MB							FN provided agreement respecting pre-transfer uses of crown lands. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B

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Q1 April 01 to June 30  
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TLEC updated April 23, 2015

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Manto Sipi	God's River - North of Lodge (20) 106.15	20	106.15	2.33 INAC forwards legal description to MB				2.21a EFN resolves TPI/Encumbrances Q3		Access Agreement - Offtake Drain Maintenance (for airport). Require NRCAN Approved Legal Description	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Manto Sipi	Neekwaskan Lake (15.2) 78.86	15.2	78.86	2.33 INAC forwards legal description to MB							Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Manto Sipi	Neekwaskan Lake (15.4) 22.64	15.4	22.64	2.33 INAC forwards legal description to MB							Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Manto Sipi	Sturgeon Falls Camp (6.A) 8.86	6.A	8.86	2.33 INAC forwards legal description to MB							FN provided agreement respecting pre-transfer uses of crown lands. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Manto Sipi	Wasekuscusik Bay (16) 85.17	16	85.17	2.33 INAC forwards legal description to MB						MB will cancel the youth camp permit once the Provincial OIC is requested by AANDC.	GP 4870 for youth camp still appears on TRELES as of Dec 30, 2013. Fax cancelling interest rec'd Dec. 13, 2011. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B

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Northlands	Belfie Lake (1-04) 5,457.00	1-04		ESA will stale 2015. Desk audit update required. 2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Unregistered Occupation Pre-transfer Use Agreement required in Q1 for step 2.33 to occur Agreement has been signed by EFN, Canada received agreement from Legal Oct. 29, 2013. Legal received from NRCan. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Belfie Lake Parcel B (26-04) 855.08	26-04	855.08	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Brigden Lake (2-04) 428.34	2-04	428.34	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Cochrane River Parcel A (4-04A) 582.27	4-04A	582.27	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B

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Northlands	Fort Hall Lake (7-04) 759.80	7-04	759.80	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.35 MB approves transfer by OiC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Keewatinkinokumaw Lake (3-04B) 251.52	3-04B	251.52	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.35 MB approves transfer by OiC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Koona Lake (revised) (9-04) 1,388.64	9-04	1,388.64	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.35 MB approves transfer by OiC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Maria Lake A (11-04A) 266.63	11-04A	266.63	2.16 INAC site visit/screening Q4 [ESA update required] 2.20 INAC RDG/DM considers/grants conditional AIP Q1 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required. 2.20 met April 17, 2014	2.35 MB approves transfer by OiC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B

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Northlands	Maria Lake B (11-04B) 569.91	11-04B	569.91	2.16 INAC site visit/screening Q4 [ESA update required] 2.20 INAC RDG/DM considers/grants conditional AIP Q1 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required. 2.20 met April 17, 2014	2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Maria Lake D (11-04D) 384.60	11-04D	384.60	2.16 INAC site visit/screening Q4 [ESA update required] 2.20 INAC RDG/DM considers/grants conditional AIP Q1 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required. 2.20 met April 17, 2014	2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Putahow Lake Site A (15-04A) 1,726.52 Priority Parcel	15-04A	1,726.52	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.31a MB DOS issues tentative approval 2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Surveyor providing final response to DOS. EFN provided BCR June 19, 2013 approving survey plan and naming selection.	B

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Northlands	Putahow Lake Site B (15-04B) 1,233.55	15-04B	1,233.55	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.31a MB DOS issues tentative approval Q2				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Surveyor providing final response to DOS. EFN provided BCR June 19, 2013 approving survey plan and naming selection.	B
Northlands	Putahow Lake Site C (15-04C) 416.87	15-04C	416.87	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.31a MB DOS issues tentative approval Q2				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Surveyor providing final response to DOS. EFN provided BCR June 19, 2013 approving survey plan and naming selection.	B
Northlands	Putahow Lake Site D (15-04D) 490.01	15-04D	490.01	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.31a MB DOS issues tentative approval 2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Surveyor providing final response to DOS. EFN provided BCR June 19, 2013 approving survey plan and naming selection.	B
Northlands	Putahow Lake Site F (15-04F) 2,086.55	15-04F	2,086.55	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.	2.31a MB DOS issues tentative approval Q2				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Surveyor providing final response to DOS. EFN provided BCR June 19, 2013 approving survey plan and naming selection.	B

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Northlands	Snyder Lake A (18-04A) 689.97	18-04A	689.97	2.16 INAC site visit/screening Q4 [ESA update required] 2.20 INAC RDG/DM considers/grants conditional AIP Q1  2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.  2.20 met May 1, 2014	2.35 MB approves transfer by OIC				Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	Tatowaycho Lake (revised) (21-04) 1,744.51	21-04	1,744.51	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.					Desk audit letter received November 7, 2013	Unregistered Occupation Pre-transfer Use Agreement required. Agreement has been signed by EFN, Canada has received agreement from Legal October 29, 2013. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Northlands	West of Brochet Bay (25-04) 428.95	25-04	428.95	2.16 INAC site visit/screening Q4 [ESA update required] 2.33 INAC forwards legal description to MB	ESA will stale 2015. Desk audit update required.					Desk audit letter received November 7, 2013	Consultation will need to be addressed prior to AANDC requesting the Provincial OIC	B
Norway House	Painted Stone Portage North Shore (11-02) 399.66	11-02	399.66	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by OIC Q3					Requires ESA Report to complete ATR Submission. Consultation issue to be addressed prior of forwarding legal to MB - Consultation letters sent in March 2014.	B

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Norway House	Robinson Lake A (43-01A) 268.34	43-01A	268.34	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3		2.30a EFN approves survey plan by BCR Q1 2.30b EFN names new reserve by BCR Q1			Consultation issue to be addressed prior to forwarding legal to MB.	B
Norway House	Bolton Lake A (3-01A) 134.29	3-01A	134.29	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.35 MB approves transfer by Oic Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Bolton Lake B (3-01B) 230.90	3-01B	230.90		ESA will stale date Oct.18, 2015. Desk audit required							B
Norway House	Gunisao Lake A (13-01A) 308.63	13-01A	308.63	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B

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Norway House	Gunisao Lake B (13-01B) 2,396.30	13-01B	2,396.30	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by OiC Q3					Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Gunisao Lake C (13-01C) 722.15	13-01C	722.15	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by OiC Q3					Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Gunisao Lake D (13-01D) 10.05	13-01D	10.05	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by OiC Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Lebrix Lake A (21-01A) 800.00	21-01A	800.00	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by OiC Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B

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Norway House	Lebrix Lake B (21-01B) 391.00	21-01B	391.00	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Little Bolton Lake B (22-01B) 25.34	22-01B	25.34	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4		2.35 MB approves transfer by Oic Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Logan Lake A (23-01A) 4,636.00	23-01A	4,636.00	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.35 MB approves transfer by Oic Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B

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Norway House	Logan Lake B (23-01B) 497.00	23-01B	497.00	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.35 MB approves transfer by Oic Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3 (check whether we have these bcrs)	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Norway House	Max Lake (25-01) 1,425.81	25-01	1,425.81	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.35 MB approves transfer by Oic Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		TPI - GP 5734 - Tourist Outcamp (M) - Corp of NHCN Consultation letters sent in March 2014.	B
Norway House	Max Lake South Shore (8-02) 1,451.82	8-02	1,451.82	2.33 INAC forwards legal description to MB Q2 2.37B INAC submits MO Submission to HQ Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.35 MB approves transfer by Oic Q3		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B

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Norway House	Provincial Road 373A (42-01A) 244.55	42-01A	244.55	2.33 INAC forwards legal description to MB Q3	ESA will stale date Oct.18, 2015. Desk audit required	2.35 MB approves transfer by OIC Q4		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Letters to be sent in Q2.	B
Norway House	Provincial Road 373C (42-01C) 1,222.71	42-01C	1,222.71	2.33 INAC forwards legal description to MB Q3	ESA will stale date Oct.18, 2015. Desk audit required	2.35 MB approves transfer by OIC Q4		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Letters to be sent in Q2.	B
Norway House	Provincial Road 373 Parcel C Additions (12-02) 832.67	12-02	832.67	2.33 INAC forwards legal description to MB Q3	ESA will stale date Oct.18, 2015. Desk audit required	2.35 MB approves transfer by OIC Q4		2.29 TLEC assists in securing BCR from EFN approving survey plan by Q1 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q3	2.29 met 2.30b met		Consultation issue to be addressed prior to forwarding legal to MB - Letters to be sent in Q2.	B
Opaskwayak	Rocky Lake Interior (1-06) 5,400.33	1-06	5,400.33		ESA completed 10/9/13.	2.35 MB approves transfer by OIC		EFN to schedule Community Meeting.		CAP completed: Membership voted to approve on October 16, 2014.	Consultation must be addressed prior to parcel proceeding further.	B

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Opaskwayak	Surplus Federal Crown Land - City of Thompson (2-04) 1.74 <b>Priority parcel</b>	2-04	1.74	2.20 INAC considers/grants AIP Q4.  Environment Site visit dated May 2010 will staledate in 2015, requested a new site visit for Fiscal 15/16.	ESA stale dated 5/10/15. Require site visit.	2.24 MB notifies INAC< EFN and TLEC of results of review of preliminary photo base map		2.21 EFN resolves TPI's/encumbrances by Q4			TPI - Stittco caveat on the property. Partial Discharge initiated by the FN (unusual caveat, for future services). Updated EA required. Consultation will need to be addressed prior to AANDC requesting the Provincial OIC. Community Approval Process is required	B
Opaskwayak	Rocky Lake Interior (1-06) 5,400.33	1-06	5,400.33	Desk Audit completed on October 19, 2013	Site Visit completed	2.35 MB approves transfer by OIC: Provincial OIC received March 21, 2012				CAP completed: Membership voted to approve on October 16, 2014.	Consultation must be addressed prior to parcel proceeding further (letter sent to MMF on November 17, 2014 with response deadline January 17, 2014). Provincial OIC dated March 21, 2012 has been received).	B
Rolling River	Lot 1 Plan 21180 WLTO in RL 87 and 88 Parish of St. Charles (Former Dairy King Property) <b>Priority Parcel</b>	1-13	119.00	3.8b INAC completes ESA checklist or final report 3.12 INAC determines survey requirements, if any	3.8b on hold - requires FN completion of MIT negotiations			3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4		MDSA Negotiations are in progress	MIT negotiations are in progress	B
Rolling River	1-11-19W (Brownridge Farms) (1-09) 534.23 <b>Priority Parcel</b>	1-09	534.23	3.8b INAC completes ESA checklist or final report Q2 3.12 INAC determines survey requirements, if any Q3	3.8b met			2.21a EFN resolves TPI/encumbrances Q4		EFN awaiting confirmation of AANDC to issue Eric Stanzelite FMAA for 2/5 mineral interest.		B

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Rolling River	Cameron (5-01) 157.92	5-01	157.92	3.20INAC forwards legal description to MB		3.21 MB drafts provincial OIC		3.11a EFN/TLEC negotiates settlement of TPI/Provincial interests/encumbrances and confirms the method of resolution for all issues in writing. Q4	3.11a not met Awaiting confirmation of road closure/sale from RM		Treatment of Road encroachment will affect the legal description. RM road is closed, however title will remain under the RM name and then effect transfer to the RRFN. Consultation must be addressed prior to parcel proceeding further.	B
Rolling River	Manns (12-01) 156.25	12-01	156.25	3.20INAC forwards legal description to MB		3.21 MB drafts provincial OIC		3.11a EFN/TLEC negotiates settlement of TPI/Provincial interests/encumbrances and confirms the method of resolution for all issues in writing. Q4	3.11a not met Awaiting confirmation of road closure/sale from RM; awaiting confirmation from Canada on method of resolution for Harvard Energy TPI	TPI Harvard Energy - mines and minerals Potential road encroachment	RM road is closed, however title will remain under the RM name and then effect transfer to the RRFN. Consultation must be addressed prior to parcel proceeding further. Private Minerals not addressed to satisfaction of TPI holder, Harvard International. RRFN awaiting confirmation of AANDC to issue FMAA or Permit?	B
Rolling River	Ronald Hill (3) 163.00	3	163.00	3.20INAC forwards legal description to MB 3.23d Canada accepts transfer of title 3.24 INAC submits MO submission to HQ Q3		3.21 MB drafts provincial OIC					Caveat 87-5032 NLTO - MTS - 28(2) Permit Hydro Distribution Line - 28(2) Permit Once the registration is complete at LTO, and consultation has been addressed, AANDC can proceed with step 3.20.	B

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Rolling River	SW 1/4 19-17-18 (Ronald Hill) (4) 154	4	154.00	3.20INAC forwards legal description to MB 3.23d Canada accepts transfer of title 3.24 INAC submits MO submission to HQ Q3		3.21 MB drafts provincial OIC					Once the registration is complete at LTO, and consultation has been addressed, AANDC can proceed with step 3.20.	B
Wuskwi Sipiik	Antler Corner (1-02) 1,463.12	1-02	1,463.12	2.33 INAC forwards legal description to MB		2.34 MB draft provincial OIC					Consultation must be addressed prior to parcel proceeding further.	B
Wuskwi Sipiik	Bell River/PTH 10 Addition (3-01) 3,520.66	3-01	3,520.66	2.33 INAC forwards legal description to MB		2.34 MB draft provincial OIC					Consultation must be addressed prior to parcel proceeding further.	B
Wuskwi Sipiik	DT Lagace Property (NW 5-41-24 WPM) (2) 160.00	2	160.00	3.12 INAC continues survey requirements	3.12 survey contract extended to 2015/16	3.21 MB drafts provincial OIC					Consultation analysis must be completed prior to parcel proceeding.	B
Wuskwi Sipiik	Plamonden Property (All 30-41-24 WPM ) (3) 640.00	3	640.00	3.12 INAC continues survey requirements	3.12 survey contract extended	3.21 MB drafts provincial OIC					Boundary inspection report showed 2 houses on the property. Building condition reports will be required for these houses. Consultation must be addressed prior to parcel proceeding further.	B

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Wuskwi Sipihk <b>Priority Parcel</b>	NW 8-41-24 WPM (former Watson Property) (1) 160.00	1	160.00	3.12 INAC continues survey requirements	3.12 survey contract extended to 2015/16	3.21 MB drafts provincial OIC					CanPar Ltd. FMAA signed by WSFN does not include letter from CanPar. EFN will need to secure letter from CanPar and amend FMAA by selecting applicable clause, or alternatively signing a new FMAA. Consultation must be addressed prior to parcel proceeding further.	B
Wuskwi Sipihk	NE 1/4 6-39-26 WPM & NW 1/4 5-39-26 WPM - former Kirkpatrick properties (7-10) (8-10) 304.96	7-10	143.09	3.8b INAC completes ESA checklist or final report Q3 3.10b INAC RDG considers/grants conditional AIP Q4 3.12 INAC determines survey requirements, if any	3.8b met	3.11b Manitoba confirms agreement to method of resolve					Hydro Distribution - Electrical Lines -legal description required from AANDC. Consultation must be addressed prior to parcel proceeding further.	B
Wuskwi Sipihk	NE 1/4 6-39-26 WPM & NW 1/4 5-39-26 WPM - former Kirkpatrick properties (7-10) (8-10) 304.96	8-10	160	3.8b INAC completes ESA checklist or final report Q3 3.10b INAC RDG considers/grants conditional AIP Q4 3.12 INAC determines survey requirements, if any	3.8b met	3.11b Manitoba confirms agreement to method of resolve					Hydro Distribution - Electrical Lines -legal description required from AANDC. Consultation must be addressed prior to parcel proceeding further.	B

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War Lake	Atkinson Lake A (2-02) 1,610.38	2-02	1,610.38	2.20 INAC RDG/DM considers/grants conditional AIP Q1 2.33 INAC forwards legal description to MB Q3	2.20 completed Q1	2.35 MB approves transfer by OIC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	Atkinson Lake B (3-02) 993.30	3-02	993.30	2.20 INAC RDG/DM considers/grants conditional AIP Q1 2.33 INAC forwards legal description to MB Q3	2.20 completed Q1	2.35 MB approves transfer by OIC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	Atkinson Lake C (4-02) 76.59	4-02	76.59	2.20 INAC RDG/DM considers/grants conditional AIP Q1 2.33 INAC forwards legal description to MB Q3	2.20 completed Q1	2.35 MB approves transfer by OIC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	Atkinson Lake (now Fox Lake) (1-05) 100.58	1-05	100.58	2.20 INAC RDG/DM considers/grants conditional AIP Q2 2.33 INAC forwards legal description to MB Q3		2.35 MB approves transfer by OIC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	Cyril Lake (7-02) 302.08	7-02	302.08	2.20 INAC RDG/DM considers/grants conditional AIP Q2 2.28b LTO provides tentative approval Q3		2.35 MB approves transfer by OIC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B

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War Lake	Dafoe River (8-02) 187.64	8-02	187.64	2.20 INAC RDG/DM considers/grants conditional AIP Q2 2.33 INAC forwards legal description to MB Q3		2.35 MB approves transfer by OIC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	Moose Nose Lake (10-02) 35.14	10-02	35.14	2.20 INAC RDG/DM considers/grants conditional AIP Q2 2.33 INAC forwards legal description to MB Q3		2.35 MB approves transfer by OIC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
War Lake	War Lake amended (13-02) 771.70	13-02	771.70	2.20 INAC RDG/DM considers/grants conditional AIP Q2 2.33 INAC forwards legal description to MB Q3		2.35 MB approves transfer by OIC Q4					Consultation to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	B
Barren Lands	Paskwachi Bay PR 394 (3PR) 95.65	3PR	95.65	2.20 INAC RDG/DM considers/grants conditional AIP Q4		2.35 MB approves transfer by OIC		2.17b EFN accepts ESA checklist or final report BCR			Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	C
God's Lake	East End of God's Lake (4-02) 195.81 <b>Priority parcel</b>	4-02	195.81	ESA update required 2.20 INAC RDG/DM considers/grants AIP Q4				2.11 TLEC/EFN will analyze methods of resolution Q4			Private Land - Pcl A, Plan 23524 PLTO Private Land - Pcl B, Plan 2386 PLTO Access Agreement - Lodge to Airstrip  Consultation letters sent in March	C

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Norway House	Belanger River (1-02) 3,701.17	1-02	3,701.17	2.17a INAC completes ES checklist or final report Q3 2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.17b EFN accepts ESA checklist or final report BCR Q4		2.17 met	Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014. Site visit in 2011, ESA report still outstanding	C
Norway House	Bolton River (4-01) 1,949.25 Priority Parcel	4-01	1,949.25	**Pre-Transfer Use Agreement 2.17a INAC completes ES checklist or final report Q3 2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.11 TLEC/EFN analyze methods of resolution 2.21a EFN resolves TPI/encumbrances Q4	2.11 met	2.21a not met	TPI - GP 4497 - Trapper's Cabin . Consultation to be addressed - Consultation letters sent in March 2014. Portage/Access <b>contact established</b> Pre-Transfer Use Agreement required for the structure	C
Norway House	Butterfly Lake A (5-01A)	5-01A	2,338.87	**Pre-Transfer Use Agreement 2.17a INAC completes ES checklist or final report Q3 2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	C

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Norway House	Butterfly Lake B (5-01B)	5-01B	123.82	**Pre-Transfer Use Agreement 2.17a INAC completes ES checklist or final report Q3 2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.28b LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	C
Norway House	Hairy Lake (4-02) 124.11	4-02	124.11	2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.28b LTO provides tentative approval Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	C
Norway House	Hayes River Ridge B (15-01B) 180.58	15-01B	180.58	2.28b LTO provides tentative approval Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	C
Norway House	Logan Lake North Shore (7-02) 625.84	7-02	625.84	2.28b LTO provides tentative approval Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	C

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Norway House	Opiminegoka Lake (35-01) 702.83	35-01	702.83	2.20 INAC RDG/DM considers/grants conditional AIP Q3 2.28b LTO provides tentative approval Q4	ESA will stale date Oct.18, 2015. Desk audit required	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation issue to be addressed prior to forwarding legal to MB - Consultation letters sent in March 2014.	C
Norway House	Pakatawacun Lake (37-01) 324.07	37-01	324.07	**Pre-Transfer Use Agreement 2.20 INAC RDG/DM considers/grants conditional AIP Q4							Cabin as per ESA - "Pre-Transfer Use Agreement" Consultation letters sent in March 2014.	C
Opaskwayak	Cemetery Lake (6-2000) 1,116.00 <b>priority parcel</b>	6-2000	1,116.00	2.16 INAC /EFN EA site visit/screening	2.16 complete	2.21b MB confirms agreement with the methods proposed to resolve all issues		2017b TLEC assists in securing the acceptance EA BCR Q4 2.21a EFN resolves TPI / encumbrances Q4			Community Approval Process required Land in a Municipality - RM of Kelsey  Privately held mines and minerals issue to be resolved.	C
Opaskwayak	Egg Lake Access Road Phase 2 (1-05R) 5.19	1-05R	5.19					2.17b TLEC assists in securing the acceptance EA BCR from EFN by Q3 2.21a EFN resolves TPI / encumbrances Q3 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q4			Community Approval Process required in order for Canada and Manitoba to proceed with the transfer of lands. Hydro Distribution for Plan # 50047 Access - Public Access Road - Egg Lake (M) ROW permit under OCN Land Code.	C

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Opaskwayak	Egg Lake Acquisition (former rehab centre, Surplus Prov Crown Land) (1-08) 45.50	1-08	45.50					2.17b TLEC assists in securing the acceptance EA BCR from EFN by Q2 2.21a EFN resolves TPI / encumbrances Q3 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN by Q4			Community Approval Process required in order for Canada and Manitoba to proceed with the transfer of lands. Hydro Distribution Facility - Permit under OCN Land Code required.	C
Opaskwayak	Springwater (3-03) 958.39	3-03	958.39					2.30b EFN names new reserve by BCR Q4			Community Approval Process required in order for Canada and Manitoba to proceed with the transfer of lands. Consultation will need to be addressed prior to AANDC requesting Prov. OIC BCR# 315-2019, accepting survey and naming reserve received April 3, 2013	C
Brokenhead	Parcel 1-01A, 1-01B (Lac du Bonnet South) <b>Priority Parcel</b>	1-01A, 1-01B	944.37	2.17a INAC completes ESA checklist or final report Q4 2.20 INAC RDG considers/grants conditional AIP Q4 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC Q4	Survey contract cannot be completed as third party interests identified as a result of the survey	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.13 EFN concludes MDSA negotiations Q4 2.17b EFN accepts ESA checklist or final report Q4			Hydro Distribution - Legal description needed for insertion into 28(2) permit. By letter dated January 30, 2013, AANDC requested that MB provide a breakdown of the TPIs & acreages for each of the phases of Lac du Bonnet South Parcel 1-01 (A, B, B1, B2, B3 & C).	C

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Brokenhead	East St. Paul CT#2343345 (5-11) 144.00 Parcel Priority	5-11	144.00	3.8b INAC completes ESA checklist or final report Q4 3.10b INAC RDG considers/grants conditional AIP 3.12 INAC determines survey requirements, if any Q4		3.21 MB drafts provincial OIC		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Ceveat#235786 - MTS Allstream Inc. - legal description required from AANDC Hydro Distribution - 28(2) Permit required legal description required from AANDC Easement #A17145 - Winnipeg Pipe Line Co. Ltd.	C
Brokenhead	East St. Paul CT#2343348 (6-11) 9.00 Parcel Priority	6-11	9.00	3.8b INAC completes ESA checklist or final report Q4 3.10b INAC RDG considers/grants conditional AIP 3.12 INAC determines survey requirements, if any Q4	3.10b not met 3.12 not met	3.21 MB drafts provincial OIC		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - resolved as per agreed to form. Legal description needed for insertion into 28(2) permit. Easement #A16594 - Winnipeg Pipe Line Co. Ltd. require legal description from AANDC prior to executing 28(2)	C
Manto Sipi	Pine Rapids (4-01) 76.49	4-01	76.49	2.27b survey contract  2.28b LTO provides tentative approval Q4	2.27b met Aug 2013 survey continues in 2014/15	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.11 TLEC/EFN analyze methods of resolution Q2 2.25a EFN signs RSM with conditions noted, if any. Q3	2.11 met	2.11 met 2.25a met in Q3	Surrender of GP 2742 Tourist Outcamp received by MB - permit to be canceled by MB upon reserve creation. RSM mylar to be corrected to reflect surrendered GP and initialled by all Parties. FN provided agreement respecting pre-transfer uses of crown lands.	C

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Mathias Colomb	Granville Lake 2B (2B) 1,770.33	2B	1,770.33	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.21a EFN resolves TPI/Encumbrances Q4				C
Mathias Colomb	Kipahigan Lake (24) 502.69	24	502.69	2.20 INAC RDG considers/grants AIP Q4 2.25c INAC signs RSM with conditions noted, if any QTBD		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.17b EFN accepts results environmental assessment Q2 2.21a EFN resolves TPI/Encumbrances Q2	Assist with BCR	Phase 1 acceptance BCR needed	TPI - GP 1972 - Fish Camp Treatment of fish camp must be addressed before signing the RSM Phase 2 EA recommended for Fish Camp.	C
Mathias Colomb	Mile 99 (26) 391.83 <b>Priority Parcel</b>	26	391.83	2.20 INAC RDG/DM considers/grants conditional AIP Q4 2.25c INAC signs RSM with conditions noted, if any QTBD		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.17b EFN accepts results of Phase II environmental assessment Q2 2.21a EFN resolves TPI/Encumbrances Q3 2.25a EFN signs RSM with conditions noted if any Q3	Assist with BCR	Phase 2 acceptance BCR needed	TPI - GP 4720 - Primary Residence There is another house without a GP - Pre-Transfer Use Agreement schedule is required Private land and Hydro 66KV Transmission Line to be excluded MTS Facilities - EFN has concerns with Ph 2 EA.	C
Mathias Colomb	Pawistik Falls (14) 838.74	14	838.74	2.20 INAC RDG/DM considers/grants conditional AIP Q4		2.21b MB confirms agreement with the methods proposed to resolve all issues			Assist with BCR	Phase 2 EA acceptance BCR needed	Potential contamination to be addressed	C

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Northlands	Fort Hall (6-04) 689.09	6-04	689.09	2.27a Survey contracted continues in 2014/15	ESA will stale 2015. Desk audit update required.	2.31a MB DOS issues tentative approval Q		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN		Desk audit letter received November 7, 2013	BCR 317-293 dated April 18/13 selected Manitoba boundary.	C
Northlands	Kasmere Lake Parcel B (8-04B) 1,332.44	8-04B	1,332.44	2.27a Survey contracted continues in 2014/15	ESA will stale 2015. Desk audit update required.	2.31a MB DOS issues tentative approval Q		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN		Desk audit letter received November 7, 2013	BCR 317-293 dated April 18/13 selected Manitoba boundary.	C
Northlands	Lac Brochet IR 197A (1-12)	1-12	10,232.25	2.27a Survey contracted continues in 2014/15 2.20 INAC RDG/DM considers/grants conditional AIP Q3	2.20 met Sept 22, 2014	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					BCR 317-301 dated Sep. 23/13 amended boundary to include and exclude certain areas.	C

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Northlands	Maria Lake C (11-04C) 624.12	11-04C	624.12	2.27a identified for future survey contract	ESA will stale 2015. Desk audit update required.	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN		Desk audit letter received November 7, 2013	BCR 317-294 dated April 18/13 selected Canada boundary.	C
Northlands	Maria Lake E (11-04E) 690.77	11-04E	690.77	2.27a identified for future survey contract	ESA will stale 2015. Desk audit update required.	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN		Desk audit letter received November 7, 2013	BCR 317-294 dated April 18/13 selected Canada boundary.	C
Northlands	Misty Lake (13-04) 964.21	13-04	964.21	2.27a Survey contracted continues in 2014/15	ESA will stale 2015. Desk audit update required.	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN		Desk audit letter received November 7, 2013	BCR 317-293 dated April 18/13 selected Manitoba boundary. Survey work began October 2013.	C

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Northlands	North Arm (14-04) 181.24	14-04	181.24	2.27a Survey contracted continues in 2014/15	ESA will stale 2015. Desk audit update required.	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN		Desk audit letter received November 7, 2013	BCR 317-293 dated April 18/13 selected Manitoba boundary.	C
Northlands	Tice Lake (24-04) 1,599.24	24-04	1,599.24	2.27a identified for future survey contract	ESA will stale 2015. Desk audit update required.	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN		Desk audit letter received November 7, 2013	BCR 317-294 dated April 18/13 selected Canada boundary.	C
Sapotaweyak	Pelican Rapids Access Road Phase 3 (5-02) 4,061.28 <b>Priority Parcel</b>	5-02	4,061.28	2.20 INAC RDG/DM grants conditional AIP Q4 2.28B LTO provides tentative approval Q4		2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.						C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 5 (purple)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q2		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot Reverted back to Crown	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 6 (purple)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q2		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot Reverted back to Crown	C

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 21 (purple)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q2		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot Reverted back to Crown	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 3 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 4 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 20 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear -Charges on CT: 1) Hydro - 39483N 2) INAC - 40140N 3) INAC - 40142N 4) INAC - 40143N	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 22 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 3 Lot 1 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C

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War Lake	Iford Phase 2 (Site 3-05) - Plan 605 Block 3 Lot 2 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C
War Lake	Iford Phase 2 (Site 3-05) - Plan 6254 Lot 10 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear -Encumbrance found on Crown Land Records: WSS 08112 E RESV (ANA to Confirm)	C
War Lake	Iford Phase 2 (Site 3-05) - Plan 905 Lot 13 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C
War Lake	Iford Phase 2 (Site 3-05) - Plan 6305 Block 3 Lot 1 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C
War Lake	Iford Phase 2 (Site 3-05) - Plan 6305 Block 3 Lot 2 (yellow)	3-05	TBD	2.20 INAC RDG/DM considers/grants conditional AIP Q3		2.21b MB confirms agreement with the methods proposed to resolve all issues		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Lot identified by MB as clear	C

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Wuskwi Sipiik	Crown/Agricultural lands (6-99B2)	6-99B2	624.00	2.17a INAC completes ESA checklist or final report 2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC Q4	2.17a met 2.25c met Mar. 26/13	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Crown/Agricultural lands	6-99B5	312.00	2.17a INAC completes ESA checklist or final report 2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC Q4	2.17a met 2.25c met Mar. 26/13	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Crown/Agricultural lands	6-99B6	157.00	2.17a INAC completes ESA checklist or final report 2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC Q4	2.17a met 2.25c met Mar. 26/13	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.17b TLEC assists in securing BCR from EFN accepting ESA checklist or final report Q4			Consultation must be addressed prior to parcel proceeding further.	C

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Wuskwi Sipiik	Crown/Agricultural lands Priority Parcel	6-99B9	155.00	2.17a INAC completes ESA checklist or final report 2.20 INAC RDG considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted Q4	2.17a not met 2.22a met July 9/12	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.25a EFN signs RSM with conditions noted if any Q4			Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Crown/Agricultural lands	6-99B10	159.00	2.17a INAC completes ESA checklist or final report 2.20 INAC RDG considers/grants conditional AIP 2.27/2.28 survey contracted/completed & sent to DOS/EFN/TLEC Q4	2.17a not met 2.225c met Mar. 26/13	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Crown/Agricultural lands Priority Parcel	6-99B12	446.00	2.17a INAC completes ESA checklist or final report 2.20 INAC RDG considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted	2.17a met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.25a EFN signs RSM with conditions noted if any Q4			CanPar Ltd. - correspondence sent, no response - AANDC to decide if a FMAA or Permit will be issued Hydro Distribution - Legal description needed for insertion into 28(2) permit. Drain to be excluded. Consultation must be addressed prior to parcel proceeding further.	C

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Wuskwi Sipiik	Bell River North (3-02) 1,955.27	3-02	1,955.27	2.20 INAC RDG considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted	2.20 not met 2.25c not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.21a TLEC assists EFN in resolution of TPI/encumbrance Q4			Road Drain - Plan 1489 (M) - to be excluded Access Agreement - Bell Canyon Lookout Point (m) Prov Forest Withdrawal Porcupine (internal task). Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Porcupine Ridge (6-02) 651.02	6-02	651.02	2.17a INAC completes ESA checklist of final report 2.20 INAC RDG considers/grants conditional AIP 2.25c INAC signs RSM with conditions noted	2.17a not met	2.31 DOS (MB) reviews provisional plan of survey and issues tentative approval.		2.21a TLEC assists EFN in resolution of TPI/encumbrance Q4			Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	N 1/2 36-40-25 WPM (former Burwash property) <b>Priority Parcel</b> (1-10) 314.00	1-10	314.00	3.8b INAC completes ESA checklist of final report Q3 3.10 INAC RDG considers/grants conditional AIP Q4 3.12 INAC determines survey requirements, if any Q1	3.8b met	3.21 MB drafts provincial OIC		3.6 TLEC assists EFN in concluding MDSA negotiations Q4			MTS Facilities - buried cable Caveat #1032626 (MTS) Consultation must be addressed prior to parcel proceeding further.	C

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Wuskwi Sipiik	W 1/2 of NW 1/4 30-40-24 WPM (former Burwash property) (2-10) 78.48	2-10	78.48	3.8b INAC completes ESA checklist of final report Q3 3.10 INAC RDG considers/grants conditional AIP Q4 3.12 INAC determines survey requirements, if any Q1	3.8b met	3.21 MB drafts provincial OIC					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	SW 1/4 36-40-25 WPM (former Burwash property) (3-10) 150.63	3-10	150.63	3.8b INAC completes ESA checklist of final report Q3 3.10 INAC RDG considers/grants conditional AIP Q4 3.12 INAC determines survey requirements, if any Q1	3.8b met	3.21 MB drafts provincial OIC					Consultation must be addressed prior to parcel proceeding further.	C
Wuskwi Sipiik	Lot 22 Plan 820 DLTO (Former McKay Property) (4-10) 7.00	4-10	7.00	3.8b INAC completes ESA checklist of final report Q3 3.10 INAC RDG considers/grants conditional AIP Q4	3.8b met	3.21 MB drafts provincial OIC					MTS Facilities - cable and pedestal - Legal description needed for insertion into 28(2) permit. Hydro Distribution - electrical lines - Legal description needed for insertion into 28(2) permit. Land in a Municipality - RM of Mountain North - MDSA negotiations are ongoing. Consultation must be addressed prior to parcel proceeding further.	C

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Wuskwi Sipiik	Lot 25 Plan 1069 DLTO (former McKay property) (5-10) 16.60	5-10	16.60	3.8b INAC completes ESA checklist of final report Q3 3.10 INAC RDG considers/grants conditional AIP Q4	3.8b met	3.11b MB confirms agreement with the methods proposed to resolve all issues.					MTS Facilities - cable - Legal description needed from AANDC needed for insertion into 28(2) permit. Hydro Distribution - electrical lines -Legal description needed from AANDC for insertion into 28(2) permit. Consultation analysis must be completed prior to parcel proceeding.	C
Wuskwi Sipiik	NE 1/4 25-40-25 WPM (former McGregor property) (6-10) 155.22	6-10	155.22	3.8b INAC completes ESA checklist of final report Q3 3.10 INAC RDG considers/grants conditional AIP Q4 3.12 INAC determines survey requirements, if any Q1	3.8b met	3.21 MB drafts provincial OIC					Consultation must be addressed prior to parcel proceeding further.	C
Barren Lands	Paskwachi Bay <b>Priority Parcel</b> (3) 8,529.17	3	8529.17	Next steps to be determined following response from SASK POWER dated March 28, 2012							Sask Power Regulation of Waterbody Consultation letters sent in March 2014.	D
Barren Lands	Reserve East <b>Priority Parcel</b> (1-06) 11,101.27	1-06	11,101.27	Next steps to be determined following response from SASK POWER dated March 28, 2012							Sask Power Regulation of Waterbody Consultation letters sent in March 2014.	D

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Barren Lands	Sawbill <b>Priority Parcel</b> (5) 694.64	5	694.64	Next steps to be determined following receipt of response from SASK POWER dated March 28, 2012							Sask Power Regulation of Waterbody  Consultation letters sent in March 2014.	D
God's Lake	Elk Island (2-2000B) 193.2	2-2000-B	193.20								TPI - Mining Claim - GoGo Abandoned Mine Site Clean-Up Program	D
God's Lake	Little Stull Lake (9) 8,421.12 <b>Priority parcel</b>	9	8,421.12					2.11 TLEC/EFN analyze methods of resolution - to follow after the Q3 Meeting EFN response after Q4 Meeting			TPI - Mining Claim - Katie 1 - W50856 TPI - Mining Claim - Katie 2 - W50857 TPI - Mining Claim - Katie 3 - W50858 TPI - Mining Claim - Gail 1 - W50863 TPI - Mining Claim - Gail 2 - W50864 TPI - Mining Claim - Island 2 - W52235 TPI - Mining Claim - Ken 1 - W52561	D

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Nisichawayasihk	Birch Tree Brook (2-2000) 598.33	2-2000	598.33			Hydro Easement.  EFN to reply to MB on prioritizing of parcels encumbered by an easement Q#		Mtg. in May with MB Hydro and NCN to discuss matter of lands physically required. Hydro Easement. Mining claim issue 2.11 TLEC/EFN to analyze methods of resolution. EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#		PRIORITY PARCEL.	TPI - Mining Claim - Falcon 26 Land in a Municipality - RM of Mystery Lake WPR Withdrawal Burntwood River (internal task) Hydro Communication Cable Hydro Lands Physically Required TPI - Mining Claim - Man 10	D
Nisichawayasihk	Birch Tree Brook (Addition) (3-2000) 400.82	3-2000	400.82			Hydro Easement.  EFN to reply to MB on prioritizing of parcels encumbered by an easement Q#		Mtg. in May with MB Hydro and NCN to discuss matter of lands physically required. Hydro Easement. Mining claim issue 2.11 TLEC/EFN to analyze methods of resolution. EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#		PRIORITY PARCEL.	Hydro Lands Physically Required TPI - Mining Claim - Falcon 12 TPI - Mining Claim - Falcon 26 Land in a Municipality - RM of Mystery Lake WPR Withdrawal Burntwood River (internal task)	D

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Nisichawayasihk	Kepuche Falls (8-2000) 1,424.21	8-2000	1,424.21			Hydro Easement.		2.11 TLEC/EFN to analyze methods of resolution. EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#		PRIORITY PARCEL.	Hydro Lands Physically Required Hydro Easement Estimate 698.8' (60.9%)	D
Nisichawayasihk	Mile 17 A (Revised) (1-05) 308.29	1-05	308.29					EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#			Hydro Lands Physically Required - Road & Work Cp Hydro Transmission Line	D
Nisichawayasihk	Osik Lake (13-01) 5,195.00	13-01	5,195.00					EFN to reply to MB on prioritizing of parcels encumbered by an easement by Q#		PRIORITY PARCEL.	Aggregate - NW 3-80-10 WPM MIT - Figure 1 Hydro Easement Required 810' WPR Withdrawal Burntwood River (internal task) WPL Withdrawal Churchill River (internal task)	D

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Nisichawayasihk	Parcel W (Plan 5965) (1-2000) 10.52	1-2000	10.52					EFN to reply to MB on prioritizing of parcels encumbered by an easement and a response required to MB re: Less than 1,000 acres by Q# Mining Leases 2.11 TLEC/EFN to analyze methods of resolution.		PRIORITY PARCEL.	TPI - Mining Lease - M4875 TPI - Mining Lease - M5280 TPI - Mining Lease - M5281 TPI - Mining Lease - M5282 TPI - Mining Lease - M5283 TPI - Mining Lease - M5293 Hydro Distribution Hydro Easement Required 635' WPL Withdrawal Churchill River (internal task) WPR Withdrawal Burntwood River (internal task) Less than 1000 - Competing Consideration (Hydro) MTS Facilities	D
Nisichawayasihk	Driftwood Rapids to Grindstone Rapids (4-01) 1,028.35	4-01	1,028.35					2.29 TLEC assists in securing BCR from EFN approving survey plan			ESA Report April 2010 This parcel moving with Driftwood Rapids to Grindstone Rapids Addition Consultation will need to be addressed	D
Nisichawayasihk	Driftwood Rapids to Grindstone Rapids Addition (3-06) 80.04	3-06	80.04					2.29 TLEC assists in securing BCR from EFN approving survey plan			ESA Report June 2010 This parcel moving with Driftwood Rapids to Grindstone Rapids Consultation will need to be addressed	D

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Nisichawayasihk	Wuskwatim Brook (23-01) 367.03	23-01	367.03					2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			ESA Report June 2010 This parcel moving with Wuskwatim Lake South. Consultation will need to be addressed	D
Nisichawayasihk	Wuskwatim Lake South (26-01) 998.01	26-01	998.01					2.29 TLEC assists in securing BCR from EFN approving survey plan 2.30b TLEC assists in securing the naming BCR for the new reserve from the EFN			ESA Report June 2010 This parcel moving with Wuskwatim Brook. Consultation will need to be addressed	D
Norway House	Mission Island (9-02) 136.63 Parcel <b>Priority</b>	9-02	136.63	2.16 enviro confirm status - potential site visit.		Access agreement to TLEC by Q#		EFN to coordinate meeting with Northern Affairs Community			Private Land - NW 18-57-3 WPM Access Agreement - Private Lands WPR Withdrawal Nelson River (internal task) Hydro Distribution Land in a Northern Community - Norway House	D

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Opaskwayak	No. 10 Addition (Formerly 4) (2) 550.32 priority parcel	2	550.32	PRIORITY PARCEL.				The private lands are not eligible and must be acquired.			Private Land to be excluded, BCR required. Land in a Municipality - RM of Kelsey Hydro Distribution MTS Facilities *Env Report dated 2001	D
Opaskwayak	Parcel B, Plan 38784 PLTO Post Office, Acquisition (1-04)	1-04	0.00								MDSA with Town of The Pas required.	D
Opaskwayak	Yawningstone (2-2000) 7,381.32 priority parcel	2-2000	7,381.32					EFN development of easement under Land Code			TPI - GP 4446 - Trapper's Cabin Hydro Easement Estimate 848.1' (11.7%) Grave Site WPR Withdrawal Sask River-Grand Rapids (internal) ESA Visit October 13, 2007	D

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Sapotaweyak	Former Bilow Gas Bar (Acquisition Mafeking) (1-09) 1.55 <b>Priority Parcel</b>	1-09	1.55	Phase II ESA revealed contamination. AANDC reviewed the report and will require the EFN to remediate the lands.		3.21 MB drafts provincial OIC	Hydro Distribution - 28(2) Permit Caveat # 95-5194 - MIT Encroachment Land in a Municipality - RM of Mountain	2.17a Phase II environmental assessment is required and will be conducted by the EFN. Q2		2.17a completed in Q1	Caveat #39929 - MTS - 28(2) Permit Hydro Distribution - 28(2) Permit Caveat # 95-5194 - MIT Encroachment Agreement Land in a Municipality - RM of Mountain Caveat #37173 Caveat 37173 was discharged April 2012. RM of Mountain has confirmed a water line crosses the property. recommend to move to ScheduleD AANDC to provide easement template for water line - EFN signed off on BCRs for MTS and Hydro permits - MIT has removed gas pumps on ROW and in the process of discharging Caveat 95-5194 - MTS will not discharge Caveat 39929 unless SCN consents to updated MTS permit on main reserve. SCN provided consenting BCRs to AANDC in April 2013 for Hydro and MTS permits.	D

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Sapotaweyak	Pelican Rapids Access Road Phase 2 (Amended) (1-03) 5,281.93 <b>Priority Parcel</b>	1-03	5,281.93			2.21b MB confirms agreement with methods proposed to resolve all issues.					SCN meeting with Graymont Quarry Lease - QL 1209 TPI - Quarry Lease - QL 1211 TPI - Quarry Lease - QL 1210 TPI - Quarry Leases - QL 516, 567, 566, 565, 517 expired May 7, 2012. TPI - GP 956 - All-weather Road Access (hunting/fishing) TPI - GP 1351 - Remote Cottage (recreation) TPI - GP 1882 - Remote Cottage (recreation) Cottages to be excluded upon signing of the RSM.	D
Sapotaweyak	Red Deer Lake (1-02) 1,815.01 <b>Priority Parcel</b>	1-02	1,815.01			2.21b MB confirms agreement with methods proposed to resolve all issues.		EFN to confirm whether this parcel will be rescinded.				D
Sapotaweyak	The Bluff (3-99) 1,922.20 <b>Priority Parcel</b>	3-99	1,922.20			2.21b MB confirms agreement with methods proposed to resolve all issues.		EFN to confirm whether this parcel will be rescinded.			EFN addressing Third Party Interests (primary residents)	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 855 Block 1 Plan 1 (orange)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Surveyed Lot, identified by MB as clear -Charge on CT: MTS-42755N -Encumbrance on Crown Land Record: EASMHYD19600CAGRE	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 855 Block 1 (orange)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Surveyed Lot, identified by MB as clear -Charge on CT: MTS-42755N -Encumbrance on Crown Land Record: EASMHYD19600CAGRE	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan West of 905 (orange)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -Surveyed Lot, identified by MB as clear	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Lot 5 (green)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -MB to verify if Lot clear -Charges on CT: Hydro/MTS - 95 - 430 -Encumbrances on Crown Land Record: EASEMHYD19600CAGRE EASEMHYD526 AGRE ROW ILFORD RESV	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Lot 6 (green)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -MB to verify if Lot clear -Charges on CT: Hydro/MTS - 95 - 430 -Encumbrances on Crown Land Record: EASEMHYD19600CAGRE EASEMHYD526 AGRE	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Lot 7 (green)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -MB to verify if Lot clear -Charges on CT: Hydro/MTS - 95 - 430 -Encumbrances on Crown Land Record: EASEMHYD19600CAGRE EASEMHYD526 AGRE	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Lot 8 (green)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels -MB to verify if Lot clear -Charges on CT: Hydro/MTS - 95 - 430 -Encumbrances on Crown Land Record: EASEMHYD19600CAGRE EASEMHYD526 AGRE	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 3 Lot 3 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels (Empty Lot - Public Reserve?)	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 1 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels (Empty Lot - MB to verify if clear)	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Plan 1 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot -Charge on CT: MTS - 42755N -Encumbrances on Crown Land Record: ROW ILFORD RESV EASEMHYD19600CAGR	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Plan 2 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot -Charge on CT: MTS - 42755N -Encumbrances on Crown Land Record: EASEMHYD19600CAGR	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Plan 3 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot -Charge on CT: MTS - 42755N -Encumbrances on Crown Land Record: EASEMHYD19600CAGR	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 28106 Block 1 Plan 4 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot -Charge on CT: MTS - 42755N -Encumbrances on Crown Land Record: EASEMHYD19600CAGR	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 855 Block 1 Lot 2 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 855 Block 1 Lot 3 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC housing on lot	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 2 Lot 1 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 2 Lot 2 (red)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot with MHRC housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6305 Block 2 Lot 3 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 1 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 2 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 3 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 4 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 11 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 12 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 15 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 5 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 8 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D

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War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 9 (blue)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels MHRC Lot without housing	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 2 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 18 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 605 Block 1 Lot 19 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 6 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 6254 Lot 7 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Moosecoot Housing Authority	D
War Lake	Ilford Phase 2 (Site 3-05) - Plan 905 Lot 14 (white)	3-05	TBD			2.21b MB confirms agreement with methods proposed to resolve all issues.		2.13 TLEC assists EFN in concluding MDSA negotiations Q4			EFN indicated that these are their Priority Parcels Private Lot	D

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War Lake	North of Ilford (Amended) (11-02) 6.52 (white)	11-02	6.52			2.21b MB confirms agreement with methods proposed to resolve all issues.						D
War Lake	Weir River (14-02) 872.91 (white)	14-02	872.91					EFN to undertake discussions with Fox Lake			Competing Interest - Fox Lake FN (as per INAC & TRELES) Access - Abandoned Railway WMA - Cape Churchill - No concerns	D
Brokenhead	East St. Paul CT#2343338 (1-11) 2.00 <b>Priority Parcel</b>	1-11	2.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - <b>Legal description needed from AANDC for insertion into 28(2) permit.</b> Road - MIT - PTH 59 & 101 Right of Way Requirement - <b>BON met with MIT to review Plans</b> Caveat#2211448- RM of East St. Paul	D
Brokenhead	East St. Paul CT#2343339 (2-11) 5.0 <b>Priority Parcel</b>	2-11	5.00			3.11b Manitoba confirms agreement to method of resolve Q3		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - <b>Legal description needed from AANDC for insertion into 28(2) permit.</b> Road - MIT - PTH 59 & 101 Right of Way Requirement - <b>BON met with MIT to review Plans</b>	D

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Brokenhead	East St. Paul CT#2343341 (3-11) 54.00 Parcel Priority	3-11	54.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - Legal description needed for insertion into 28(2) permit. Road - MIT - PTH 59 & 101 Right of Way Requirement - BON met with MIT to review Plans Easement#A16372 - Winnipeg Pipe Line Co. Ltd. Easement#A16754 - Winnipeg Pipe Line Co. Ltd. Caveat#209804 - Manitoba Hydro Electric Board Caveat#2211442- RM of East St. Paul	D
Brokenhead	East St. Paul CT#2343342 (4-11) 155.00 Parcel Priority	4-11	155.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Caveat#199722 - MTS Allstream Inc. Caveat#3498425 - MTS Allstream Inc. Road - MIT - PTH101 & Wenzel St. Right of Way Required	D

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Brokenhead	East St. Paul CT#2343352 (7-11) 14.00 Parcel Priority	7-11	14.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Hydro Distribution - resolved as per agreed to form. Legal description needed for insertion into 28(2) permit. Road - MIT - PTH 59 & PR 202 Right of Way Requirement Caveat#2257312- RM of East St. Paul Caveat#3339966- RM of East St. Paul	D
Brokenhead	East St. Paul CT#2343354 (8-11) 51.00 Parcel Priority	8-11	51.00			3.11b Manitoba confirms agreement to method of resolve Q3		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Caveat#235805 - MTS Allstream Inc. Hydro Distribution - resolved as per agreed to form. Legal description needed for insertion into 28(2) permit. Road - MIT - PTH 59 & PT 202 Right of Way Requirement Caveat#2257312-RM of East St. Paul Caveat#3339966-RM of East St. Paul Caveat#3413094-SSS/MRM Guide Rail Inc.	D

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Brokenhead	East St. Paul CT#2343355 (9-11) 44.00 Parcel Priority	9-11	44.00			3.11b Manitoba confirms agreement to method of resolve		3.6 EFN concludes MDSA negotiations Q4 3.11a EFN resolves TPI/encumbrances Q4			Land in a Municipality - RM of East St. Paul Caveat#235394 - MTS Allstream Inc. Hydro Distribution - resolved as per agreed to form. Legal description needed for insertion into 28(2) permit. Road - MIT - PTH 59 & PR 202 Right of Way Requirement	D
Brokenhead	Parcel 2A (Lac du Bonnet South) (2-01A) 278.64 Parcel Priority	2-01A	278.64	Hydro Easement				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and Manitoba.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and an Manitoba.	WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 840.22' (7.5%)	D

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Brokenhead	Parcel 2B (Lac du Bonnet South) (2-01B) 501.90 <b>Priority</b> Parcel	2-01B	501.90	Hydro Easement				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and Manitoba.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and an Manitoba.	WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 840.22' (6.8%)	D
Brokenhead	Parcel 2C (Lac du Bonnet South) (2-01C) 125.15 <b>Priority</b> Parcel	2-01C	125.15	Hydro Easement				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and Manitoba.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and an Manitoba.	WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 839.57' (31.7%)	D

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Brokenhead	Lac Du Bonnet North Shore (3-01) 1,057.13 <b>Priority Parcel</b>	3-01	1,057.13	Hydro Easement				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and Manitoba.	BON has provided a BCR agreeing to the H-EA they have drafted in response to the 2007 version provided by Canada and an Manitoba.	WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 841.86' (5.4%)	D
Brokenhead	Bannock Point Petroforms			EFN in Co-Management discussions with the Province over Park management							Whiteshell Provincial Park	D
Brokenhead	Bannock Point Rehabilitation Camp			EFN in Co-Management discussions with the Province over Park management							Whiteshell Provincial Park	D
Brokenhead	Pine Point			EFN in Co-Management discussions with the Province over Park management							Whiteshell Provincial Park	D
Brokenhead	Tie Creek Petroforms			EFN in Co-Management discussions with the Province over Park management							Whiteshell Provincial Park	D

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Buffalo Point	Birch Point (1) 138.75 Priority Parcel	1	138.75					This parcel is in a provincial park. MB has advised it is not available.			IMC confirmed proceeding to Binding Arbitration	D
Buffalo Point	Cochrane Island (ON) (None) 540 Priority Parcel		540.00					EFN to decide next steps. Ontario has advised this parcel is unavailable for selection.			NOT ON TRELES	D
Buffalo Point	Eagles Rock (ON) (None) 970 Priority Parcel		970.00					EFN to decide next steps. Ontario has advised this parcel is unavailable for selection.			NOT ON TRELES	D
Buffalo Point	PTH 12 Acquisition (1-06) 70 Priority Parcel		70.00					EFN and MIT to discuss resolution of the set back line.			Hydro Distribution Facilities MTS Copper Cable (not in service) resolved Road PTH # 12 - fa 13.03c Taxes paid - Tax Certificate issued	D
Buffalo Point	Thunder Lake Island (1-10) 41.96 Priority Parcel	1-10	41.96					This parcel is in a provincial park. MB has advised it is not available.			Co-Management - TBD	D

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Bunibonibee	Trout Falls (15-02) 619.6	15-02	619.60	identified for future survey contract				Binding Arbitration Decision: Manitoba will transfer to Canada lands including the public access to portages.			To be surveyed	D
Bunibonibee	Wipanipanis Portage (20-02) 326.79 <b>Priority parcel</b>	20-02	326.79	requires revised RSM				Binding Arbitration Decision: Manitoba will transfer to Canada lands including the public access to portages.			Winter Road has been excluded from the parcel, BCR 301-988. The FN is in current discussions with ESRA concerning a proposed all weather road on this seelction. Once discussions complete - a revised RSM will be required.	D
Manto Sipi	Johnson Bay (Amended) (6-01) 512.38 <b>Priority Parcel</b>	6-01	512.38	Mining Claims - Crown Minerals Canada and MB to meet to discuss options to deal with mining interests on selections		Independent review completed on the validity of interest by June 30, 2011					TPI - Mining Claim - Godslith - W45426 318.28 acres are encumbered by the mining claim.	D
Manto Sipi	Kistigan Lake (12) 1,600.15 <b>Priority Parcel</b>	12	1,600.15	Mining Claims - Crown Minerals Canada and MB to meet to discuss options to deal with mining interests on selections		Mining Claims Canada and MB to meet in Q1 to discuss options to deal with mining interests on selections		2.11 TLEC/EFN analyze methods of resolution by Q2			TPI - Mining Claim - Andrew 1 - W50853 TPI - Mining Claim - Cole 1 - W52072 TPI - Mining Claim - Cole 2 - W52073 TPI - Mining Claim - Cole 3 - W52074 TPI - Mining Claim - Otter 1 - W52079 TPI - Mining Claim - Otter 2 - W52080	D

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Manto Sipi	Little Stull Lake (Amended) (7-01) 818.33 Parcel Priority	7-01	818.33	Mining Claims - Crown Minerals Canada and MB to meet to discuss options to deal with mining interests on selections		Mining Claims Canada and MB to meet in Q1 to discuss options to deal with mining interests on selections		2.11 TLEC/EFN analyze methods of resolution by Q2			TPI - Mining Claim - Cabin 2 - W50862	D
Manto Sipi	Little Stull Lake (Additional) (12-01) 542.4 Parcel Priority	12-01	542.40	Mining Claims - Crown Minerals Canada and MB to meet to discuss options to deal with mining interests on selections		Mining Claims Canada and MB to meet in Q1 to discuss options to deal with mining interests on selections		2.11 TLEC/EFN analyze methods of resolution by Q2	2.11		TPI - Mining Claim - Andrew 1 - W50853 (M) TPI - Mining Claim - Andrew 2 - W50854 (M) TPI - Mining Claim - Andrew 3 - W50855 (M) TPI - Mining Claim - Cole 1 - W52072 TPI - Mining Claim - Cole 2 - W52073 TPI - Mining Claim - Cole 3 - W52074 TPI - GP 6476 Pt NE 28-64-9E 2nd FIPPA request made.	D
Manto Sipi	Wapawaka Bay (Edmund Lake) (13) 50.69 Parcel Priority	13	50.69			Letter from MB dated December 7, 1999 advises this selection is not available because it is "pristine wilderness".		EFN to meet with lodge owner tentatively in June 2011. EFN to send request to MB by Q# with respect to location of lodge.			TPI - GP 4527 - Lodge Tourist Operation Impact	D

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Mathias Colomb	Granville Lake 2A Phase 2 <b>Priority Parcel</b> (2A Ph2) 36.37	2-A(Ph2)	36.37								WPR Withdrawal Churchill River (internal task) - MCCN currently addressing MB Housing issues on this selection - Hydro easement requirement removed on 25-Apr-2012.	D
Mathias Colomb	Russell Lake 6A <b>Priority Parcel</b> (6A)135.79	6A	135.79								Hydro Easement Required 1072.80' (56.7%) WPL Withdrawal Laurie River Final (internal task) This parcel cannot advance any further without agreement on the hydro easement.	D
Mathias Colomb	Russell Lake 6B <b>Priority Parcel</b> (6B) 308.95	6B	308.95								Hydro Easement Required 1072.80 <b>This parcel cannot advance any further without agreement on the hydro easement.</b>	D
Northlands	Kasmere Lake (Parcel A) (8-04A) 3,994.11 <b>Priority</b>	8-04A	3,994.11		ESA will stale 2015. Desk audit update required.			2.21a EFN resolves TPI/encumbrances.  EFN Lodge		EFN provided desk audit letter November 7, 2013	TPI - GP 4497 - Trapper's Cabin Portage/Access	D
Northlands	Nahilin Falls (12-04) 1,498.11 <b>Priority</b>	12-04	1,498.11					2.21a EFN resolves TPI/encumbrances.  EFN Lodge		EFN provided desk audit letter November 7, 2013	TPI - GP 4541 - Trapper's Cabin WPR Withdrawal Nelson River (internal task)	D

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Northlands	Shannon Lake (17-04) 441.36 Priority	17-04	441.36					2.21a EFN resolves TPI/encumbrances.  EFN Lodge		EFN provided desk audit letter November 7, 2013	Tourist Operation Impact	D
Northlands	Putahow Lake (Site E) (15-04E) 991.97 Priority	15-04E	991.97					2.21a EFN resolves TPI/encumbrances.  EFN Lodge		EFN provided desk audit letter November 7, 2013	TPI - GP 6757 - Tourist Outcamp	D
Northlands	Thlewiaza Lake (22-04) 1,488.61	22-04	1,488.61	2.28b LTO provides tentative approval Q4	2.28b met	2.31a MB DOS issues tentative approval Q1	2.31a not met survey - not submitted for review	2.21a EFN resolves TPI / encumbrances (Portages) Q4 2.29 TLEC assists in securing BCR from EFN approving survey plan Q4		EFN provided desk audit letter November 7, 2013	Portage/Access Decision required whether Portage Agreement will be signed or if portage is to be excluded in order to finalize survey and for the parcel to move forward in the reserve creation process.	D
Northlands	Thuycholeeni Lake (23-04) 15,048.32	23-04	15,048.32	2.28c Provisional plan submitted to DOS Q4	2.28c met	2.31a MB DOS issues tentative approval Q1	2.31a met final Jan 30/13	2.21a EFN resolves TPI/Encumbrances (Portages) Q4		EFN provided desk audit letter November 7, 2013	Portage/Access Unregistered Occupation Decision required whether Portage Agreement or exclusion needed in order to finalize survey plan and for the parcel to move forward in the reserve creation process. Agreement has been signed by EFN, Canada received agreement from Legal Oct. 29, 2013	D
Rolling River	Undeveloped Road Allowances (URA-02)				3.1 not met					Meeting held with CWS, awaiting confirmation letter from MB		D

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Rolling River	N 1/2 of NW 1/4 of 20-16-19 WPM (Former Strand) (7-11) 160	7-11	80.00		3.7c met 11/16/11	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4				D
Rolling River	SW 1/4 35-16-19 WPM (Former Strand) (8-11) 160 <b>Priority Parcel</b>	8-11	160.00		3.7c met 11/16/11	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4				D
Rolling River	NE 1/4 27-16-19 WPM (Former Strand) (2-11) 160	2-11	160.00		3.7c met 11/16/11	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4				D
Rolling River	NW 1/4 27-16-19 WPM (Former Strand) (3-11) 160	3-11	160.00		3.7c met 11/16/11	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4				D
Rolling River	SE 1/4 27-16-19 WPM (Former Strand) (1-11) 160	1-11	160.00		3.7c met 11/16/11	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4				D
Rolling River	NE 1/4 28-16-19 WPM (Former Strand) (4-11) 160 <b>Priority Parcel</b>	4-11	160.00		3.7c met 11/16/11	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4				D

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Rolling River	NW 1/4 28-16-19 (Former Strand) (5-11) 160 <b>Priority Parcel</b>	5-11	160.00		3.7c met 11/16/11	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4				D
Rolling River	NW 1/4 13-19-21 (Stuart Lake Selection)	1-14	5.12		2.2 met 11/10/14							D
Rolling River	N 1/2 of the SW 1/4 28-16-19 WPM (Former Strand) (6-11) 160 <b>Priority Parcel</b>	6-11	160.00		3.7c met 11/16/11	3.11b MB confirms agreement with the methods proposed to resolve all issues.		3.6 EFN concludes MDSA negotiations Q4				D
Wuskwi Sipiik	Red Deer River North <b>Priority Parcel</b> (5-01) 1,163.11	5-01	1,163.11			2.21b MB confirms agreement with methods proposed to resolve all issues.					Hydro Distribution - <b>need legal description to complete agreed to form 28(2)</b> TPI - GP 845 - Primary Residence	D
Wuskwi Sipiik	Red Deer River South (7-02) 1,547.97	7-02	1,547.97			2.21b MB confirms agreement with methods proposed to resolve all issues.					Hydro Distribution - <b>need legal description from AANDC to complete agreed to form 28(2)</b> Private Land - S 1/2 8-45-25W - <b>not on selection</b>	D

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Barren Lands	Long Point <b>Priority Parcel</b> (6) 2,973.61	6	2,973.61	Next steps to be determined following response from SASK POWER dated March 28, 2012							Sask Power Regulation of Waterbody - BLFN addressing SP with legal counsel  Consultation letters sent in March 2014.	E
Barren Lands	Lower Cochrane <b>Priority Parcel</b> (2) 4,837.55	2	4,837.55	Next steps to be determined following response from SASK POWER dated March 28, 2012							Portage/Access - Kamechayt Rapids Portage/Access - West of winter road Sask Power Regulation of Waterbody Winter Road  Consultation letters sent in March 2014.	E
God's Lake	Elk Island (2-2000) 11,499.70 <b>Priority parcel</b>	2-2000	11,499.70								Parcel is contaminated and cannot proceed.	E
God's Lake	Kanuchuan Rapids (1-2000) 544.17 <b>priority parcel</b>	1-2000	544.17					2.11 TLEC/EFN analyze methods of resolution 2.21a EFN resolves TPI/Encumbrances Q#		<b>Portage issue resolved by bind arbitration as per letter from MB dated December 24, 2014 comment should be deleted/</b>	Portage/Access - Kanuchuan-withdrawn (M) Sketch on Circ file. Exterior boundary survey outline for snowmobile traffic. Not acceptable resolution to address this use.	E
Nisichawayasihk	Chipewyan Bay (3-01) 820.88	3-01	820.88								Hydro Easement required.	E
Nisichawayasihk	Early Morning Rapids (4-06) 1,760.79	4-06	1,760.79								Hydro Easement required.	E

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Nisichawayasihk	Gauer River Addition (4-03) 1,766.39	4-03	1,766.39								Hydro Easement required.	E
Nisichawayasihk	Leaf Rapids to Gate Falls (8-01) 2,369.78	8-01	2,369.78								Hydro easement; Hydro monitoring station.	E
Nisichawayasihk	Manasan Falls (5-2000) 186.05	5-2000	186.05								Hydro lands physically required; Portage/Access; TPI: Mining Claim, Mineral Leases (2), Private land, water recording site.	E
Nisichawayasihk	Manasan Falls (revised) (1-02) 1,003.98	1-02	1,003.98								Hydro Easement; Hydro lands physically required; multiple TPI issues.	E
Nisichawayasihk	Mile 17B (1-06) 1,146.89	1-06	1,146.89								Hydro transmission line; access road privately owned; 100 meter exclusion to access road; TPI issues.	E
Nisichawayasihk	Moak Lake (11-01) 3,326.61	11-01	3,626.61								Aggregate, LGD Mystery Lake, over 100 Mineral Leases, Road, Private Lands.	E
Nisichawayasihk	Mynarski Lakes (12-01) 492.59	12-01	492.59								Hydro Easement required.	E
Nisichawayasihk	Notigi (6-2000) 149.74	6-2000	149.74								Hydro lands physically required.	E
Nisichawayasihk	Notigi Lake (7-2000) 172.32	7-2000	172.32								Hydro lands physically required.	E

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Nisichawayasihk	Reading River (15-01) 1,171.68	15-01	1,171.68								Hydro Easement required.	E
Nisichawayasihk	Reserve 170 to Junction (16-01) 1,043.99	16-01	1,043.99								Hydro Easement required, aggregate, Hydro transmission line, Hydro distribution, Northern Community (Nelson House), Private lands.	E
Nisichawayasihk	Taskinigup Falls (4-2000) 1,631.75	4-2000	1,631.75								Hydro lands physically required.	E
Nisichawayasihk	Taskinigup Falls Addition (18-01) 300.24	18-01	300.24								Hydro Easement required.	E
Nisichawayasihk	Wapisu Lake E (20-01) 5,381.44	20-01	5,381.44								Hydro Easement required.	E
Nisichawayasihk	Wapisu Lake SW (21-01) 948.89	21-01	948.89								Hydro Easement required.	E
Nisichawayasihk	Wapisu Lake W (22-01) 1,852.12	22-01	1,852.12								Hydro Easement required.	E
Nisichawayasihk	Wuskwatim Lake North (24-01) 1,700.93	24-01	1,700.93								Hydro Easement required; Hydro monitoring station.	E
Nisichawayasihk	Wuskwatim Lake Northeast (25-01) 312.12	25-01	312.12								Hydro Easement required; Hydro monitoring station.	E

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Nisichawayasihk	Wuskwatim Lake West (27-01) 669.89	27-01	669.89								Hydro Easement required; Hydro monitoring station.	E
Norway House	Big Birch Islands (2-01) 45.34	2-01	45.34							EFN to provide desk audit letter Q3	Hydro Easement	E
Norway House	Bolton Lake C (3-01C) 494.79	3-01C	494.79									E
Norway House	Butterfly Lake C (5-01C) 10.72	5-01C	10.72		NFA overlap						NFA Overlap	E
Norway House	Costes Lake A (6-01A) 21.04	6-01A	21.04								Cabin	E
Norway House	Dennison Point (7-01) 32.57	7-01	32.57								Hydro Easement	E
Norway House	Flett Islands (10-01) 169.54	10-01	169.54								Hydro Easement; Cottage; Northern Community	E
Norway House	Flett Point Islands (11-01) 31.62	11-01	31.62								Hydro Easement	E
Norway House	Goose Islands (12-01) 22.73	12-01	22.73								Hydro Easement	E
Norway House	Gunisao Lake E (13-01E) 160.39	13-01E	160.39		NFA overlap						NFA Overlap	E

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TLEC updated April 23, 2015

MB update May 14

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Norway House	Gunisao River (3-02) 4,503.95	3-02	4,503.95								No ESA	E
Norway House	Hart Point Islands (14-01) 45.21	14-01	45.21								Hydro Easement	E
Norway House	Hayes River Ridge A (15-01A) 2,236.08	15-01A	2,236.08								Portage	E
Norway House	Jackfish Islands (17-01) 89.46	17-01	89.46								Fish camp; Cottage; Hydro easement	E
Norway House	Kettle Islands (18-01) 57.97	18-01	57.97								Hydro Easement	E
Norway House	Kiskitto Lake (5-02) 82.04 <b>Priority Parcel</b>	5-02	82.04								Trapper's cabin; Dyke & road required by Hydro; Hydro easement	E
Norway House	Kiskittogisu Lake A (19-01A) 30.20	19-01A	30.20								Hydro Easement	E
Norway House	Kiskittogisu Lake B (19-01B) 4.07	19-01B	4.07								Hydro Easement	E

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Norway House	Kiskittogisu Lake C (19-01C) 20.12 Priority Parcel	19-01C	20.12								Hydro Easement; Fish camp	E
Norway House	Kiskittogisu Lake D (19-01D) 80.52	19-01D	80.52								Hydro Easement	E
Norway House	Kiskittogisu Lake E (19-01E) 114.52	19-01E	114.52								Hydro Easement	E
Norway House	Kiskittogisu Lake West Shore (6-02) 1,681.64	6-02	1,681.64								Hydro easement; Hydro requires land for Borrow Pit, Dyke(s) and Road	E
Norway House	Lac Du Bonnet North Shore (1-2001) 2,517.36 Priority Parcel	1-2001	2,517.36								Private lands - 3; 2 Permits - TPI's; Hydro easement; GRA Closure	E
Norway House	Lebrix Lake C (21-01C) 162.24	21-01C	162.24		NFA overlap						NFA Overlap	E
Norway House	Logan Lake C (23-01) 128.93	23-01	128.93		NFA overlap						NFA Overlap	E

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Norway House	Malcolms Landing (24-01) 19.86 Priority Parcel	24-01	19.86								Hydro Easement; Fish camp	E
Norway House	McLeod Islands (26-01) 25.86	26-01	25.86								Hydro easement Land in northern community	E
Norway House	McLeod Island Point (27-01) 38.98	27-01	38.98								Hydro easement Land in northern community	E
Norway House	Menow Bay A (28-01A) 317.92	28-01A	317.92								Hydro Easement	E
Norway House	Menow Bay B (28-01B) 545.04	28-01B	545.04								Hydro Easement	E
Norway House	Menow Bay C (28-01C) 753.96	28-01C	753.96								Hydro Easement	E
Norway House	Metchanais Island South (29-01) 33.07	29-01	33.07								Hydro Easement	E
Norway House	Montreal Point (31-01) 46.67	31-01	46.67		NFA overlap						Hydro Monitoring Station; Hydro easement; NFA Site overlap	E
Norway House	Namayo Point Islands (32-01) 9.75	32-01	9.75								Hydro Easement	E

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Norway House	Nelson River East Channel A (33 -01) 3596	33 -01	3,596.00								Pending litigation	E
Norway House	Nelson River East Channel Addition (10-02) 915.83	10-02	915.83								3 Hydro Monitoring Stations (survey pins) - awaiting letter from MB Hydro	E
Norway House	North Molson Lake A&D Plan 39 (3-ISLB) 317.2	3-ISLB	317.20								Unauthorized structures	E
Norway House	Painted Stone Portage B (36-01B) 64.34	36-01B	64.34								Portage	E
Norway House	Playgreen Lake A (38-01A) 32.73	38-01A	32.73								Hydro Easement	E
Norway House	Playgreen Lake B (38-01B) 3.73	38-01B	3.73								Hydro Easement	E
Norway House	Playgreen Lake C (38-01C) 5.08	38-01C	5.08								Hydro Easement	E

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Norway House	Playgreen Lake Ridge A (39-01A) 6,814.55	39-01A	6,814.55								Hydro Easement	E
Norway House	Playgreen Lake Ridge B (39-01B) 1,163.40	39-01B	1,163.40								Hydro Easement	E
Norway House	Playgreen Lake South Shore A (41-01A) 6.48	41-01A	6.48								Hydro Easement	E
Norway House	Playgreen Lake South Shore B (41-01B) 724.61	41-01B	724.61								Hydro Easement <1000 competing interest (Hydro)	E
Norway House	Playgreen Lake South Shore C (41-01C) 233.10	41-01C	233.10								Hydro Easement	E
Norway House	Playgreen Lake South Shore D (41-01D) 355.18	41-01D	355.18								Hydro Easement	E
Norway House	Playgreen Lake South Shore E (41-01E) 273.64	41-01E	273.64								Hydro Easement <1000 competing interest (Hydro)	E
Norway House	Playgreen Lake South Shore F (41-01F) 743.30	41-01F	743.30								Hydro Easement <1000 competing interest (Hydro)	E

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Norway House	Playgreen Point Island (40-01) 2.09	40-01	2.09								Hydro Easement	E
Norway House	PR 373B (42-01B) <b>Priority Parcel</b>	(42-01B)									Aggregate site TPI	E
Norway House	Robinson Lake B (43-01B) 86.18	43-01B	86.18		NFA overlap						NFA Overlap	E
Norway House	Sandy Bar (44-01) 717.84 <b>Priority Parcel</b>	44-01	717.84		NFA overlap						NFA Site overlap Hydro easement TPI	E
Norway House	Tait Islands (45-01) 59.81 <b>Priority Parcel</b>	45-01	59.81								Hydro Easement; Fish camp	E
Norway House	Taylor Islands (46-01) 863.31	46-01	863.31								Hydro Easement	E
Norway House	Whitefish Islands (48-01) 26.10	48-01	26.10								Hydro Easement	E
Opaskwayak	Barrier Settlement (Acquisition) 137.67		137.67	The selection and the acquisition of the same name will move together.				5.10 EFN negotiates purchase price of property with PWGSC - Q4		Execution of Purchase Agreement required. Community Approval Process required.		E

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Opaskwayak	Barrier Settlement (8) 9.85	8	9.85	The selection and the acquisition of the same name will move together.				2.21a EFN resolves TPI / encumbrances Q4		Unregistered Interest - Cabin Community Approval Process required.	Unresolved unregistered interest (cabin)	E
Opaskwayak	Fisher Island (8-2000) 798.27	8-2000	798.27								ESA visit July 2002 Riparian Rights issue Ducks Unlimited Control Structure Community Approval	E
Opaskwayak	Guy Hill School (4)		0.00								Not eligible - to be rescinded.	E
Opaskwayak	Landry Lake (4-2000) 2,805.48	4-2000	2,805.48								ESA visits October 2007, July 2008 Hydro Easement Community Approval	E
Opaskwayak	Lot 8, Block 65, Plan 559 (Food Town, Acquisition)		0.00					EFN to negotiate MDSA with town of The Pas.			MDSA required Utilities Permit under OCN Land Code required	E
Opaskwayak	Mitchell Lake Road (1-10) 133.55		133.55								Not eligible - to be rescinded.	E

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Opaskwayak	Parcel A, Plan 38771 (Hogan Ave. formerly Lots 1-7 , Surplus Fed Crown)		0.00	Surplus Federal Crown Land, has not yet been acquired. Appraisal completed and submitted to DOJ for review. Next step: Offer to Purchase.							MDSA required Utilities Permit under OCN Land Code required	E
Opaskwayak	Parcel A, Plan 38769 (Paul Ave., formerly Lot 69 Surplus Fed Crown)		0.00	Surplus Federal Crown Land, has not yet been acquired. Appraisal completed and submitted to DOJ for review. Next step: Offer to Purchase.							MDSA required Utilities Permit under OCN Land Code required	E
Opaskwayak	Saskeram WMA (1) 1,439.59	1	1,439.59								Ducks Unlimited Private Land Community Approval	E
Opaskwayak	Trapline (7-2000) 157.41	7-2000	157.41								ESA visit July 2002 Riparian Rights issue Ducks Unlimited Full Supply Line Community Approval	E
Mathias Colomb	Sandy Bay (SK) <b>Priority Parcel</b> 115 Priority Parcel		115.00								MCCN working with SK region to schedule a mtg with SK provincial officials.	E

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Brokenhead	Parcel 1-01B1, B2, B3 & 1-01C (Lac du Bonnet South) (1-01B) (1-01C) TBD	1-01-B1,B2,B3 1-01C	TBD	All of these parcels are affected by hydro easements				EFN to confirm whether they intend to meet separately with hydro to attempt to reach agreement on the hydro easement or wait for the resolution of this matter at IMC.			WPR Withdrawal Winnipeg (internal task) WPL Withdrawal McArthur Final (internal task) Hydro Easement Estimate 840.88' (1.5%) By letter dated January 30, 2013, AANDC requested that MB provide a breakdown of the TPIs & acreages for each of the phases of Lac du Bonnet South Parcel 1-01 (A, B, B1, B2, B3 & C).	E
Bunibonibee	Knee Lake Lodge (1-2000) 1,511.09 --priority parcel	1-2000	1,511.09					2.11 TLEC/EFN to analyze methods of resolution. EFN to advise on outcome of meeting with lodge owner Q4			TPI - MISC 3482 - Airstrip TPI - MISC 3482 - Lodge Tourist Operation Impact - Reasonable Use Area	E
Manto Sipi	Elk Island (17.1) 15.50	17.1	15.50								Parcel is surveyed. Parcel is contaminated and cannot proceed.	E
Manto Sipi	Elk Island (17.2) 17.18	17.2	17.18								Parcel is surveyed. Parcel is contaminated and cannot proceed.	E
Manto Sipi	Elk Island (17.3) 30.27	17.3	30.27								Parcel is contaminated and cannot proceed.	E
Manto Sipi	Elk Island (17.4) 25.48	17.4	25.48								Parcel is contaminated and cannot proceed.	E

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Manto Sipi	Elk Island (17.5) 50.92	17.5	50.92								Parcel is contaminated and cannot proceed.	E
Manto Sipi	Elk Island (17.6) 22.68	17.6+C16	22.68								Parcel is surveyed. Parcel is contaminated and cannot proceed.	E
Manto Sipi	Johnson Peninsula (18) 292.79	18	292.79	2.17a INAC completes ES checklist or final report Q1							Private Minerals. - AANDC to determine if a FMAA or Pre-Permit will be issued.	E
Manto Sipi Parcel is contaminated - moved to Schedule E	Jowsey Island (17.A) 11.97	17.A	11.97								Parcel is surveyed. This parcel is contaminated. Funds for a Phase II are not likely to be available this fiscal year. The utility of a Phase II must be discussed since this parcel did not pass the Phase I due to arsenic contamination.	E
Manto Sipi	Lot 1 Plan 2491 and Pt Plan 4955 (B) (B) 10.75	B	10.75	confirm whether this is a TLE parcel								E
Manto Sipi	Neekwaskan Lake (15.1) 125.53	15.1	125.53					EFN to confirm whether they wish to rescind this parcel and have burial grounds protected under provincial legislation.			EFN has indicated they wish to proceed with this parcel.	E

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Manto Sipi	Neekwaskan Lake (15.3) 28.39	15.3	28.39					EFN to confirm whether they wish to rescind this parcel and have burial grounds protected under provincial legislation.			EFN has indicated they wish to proceed with this parcel.	E
Mathias Colomb	Burntwood Lake (4) 1,189.60	4	1,189.60					2.17b EFN accepts results of environmental assessment Q4			TPI - GP 2723 - Lodge Tourist Operation Impact	E
Mathias Colomb	Granville Lake 2A Phase 1 (2A Ph 1) 1,118.23	2A(Ph1)	1,118.23								Hydro Distribution MTS Facilities Land in a Northern Community (Granville Lake) TPI interests - Granville Lake - Northern Affairs Hydro Easement requirement was withdrawn 25-Apr-2012 Lagoon Road - Access Agreement	E
Mathias Colomb	Kamuchawie Lake (8) 1,412.35	8	1,412.35					2.17b EFN accepts results of environmental assessment Q2			TPI - GP 2500 - Tourist Outcamp WPL Withdrawal Laurie River Final (internal task) Hydro Easement Estimate - Easement Line Photo Map This parcel cannot advance any further without agreement on the hydro easement.	E

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Northlands	Burnie Lake (3-04A) 417.70	3-04A	417.70					2.21a EFN resolves TPI/Encumbrances Q4		EFN provided desk audit letter November 7, 2013	TPI GP 2873 - Outcamp (M) Tourist Operation Impact. Less than 1000 acres. ESA acceptance BCR has been received.	E
Northlands	Charcoal Lake Saskatchewan (?)			province has advised that this parcel is not eligible.								E
Northlands	Seman River (16-04) 256.82	16-04	256.82	identified for future survey contract						EFN provided desk audit letter November 7, 2013	This parcel has two RSMs that do not match/and or irregular boundaries. Issue must be resolved before this parcel can advance.	E
Northlands	Snyder Lake B (18-04B) 598.19	18-04B	598.19	identified for future survey contract						EFN provided desk audit letter November 7, 2013	This parcel has two RSMs that do not match/and or irregular boundaries. Issue must be resolved before this parcel can advance.	E
Northlands	Snyder Lake C (18-04C) 887.70	18-04C	887.70	identified for future survey contract						EFN provided desk audit letter November 7, 2013	This parcel has two RSMs that do not match/and or irregular boundaries. Issue must be resolved before this parcel can advance.	E
Northlands	Snyder Lake D (18-04D) 852.26	18-04D	852.26							EFN provided desk audit letter November 7, 2013	This parcel has two RSMs that do not match/and or irregular boundaries. Issue must be resolved before this parcel can advance.	E

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Northlands	Stevens Lake (20-04) 152.60	20-04	152.60							EFN provided desk audit letter November 7, 2013	TPI - Tourist Operation Impact - Less than 1000 acres - competing consideration (tourist)	E
Wuskwi Sipiik	NW 1/4 6-39-26 WPM (former Koutecky Property) (9-10) 143.09	9-10	143.09	3.8b The ESA Report will be finalized once the houses on the property are relocated.							Hydro Distribution - electrical lines  There are houses on the property that are being relocated - The ESA Report will be finalized once this is done Building condition reports will be required for the remaining housing on the property.	E
Wuskwi Sipiik	Lot 14-16 Block 29 Plan 426 PLTO (Former Town of the Pas property) (10-10) 0.78	10-10	0.78								Hydro Distribution - electrical lines Land in an Urban Area - Town of the Pas	E

# Crown Reservations – Portages Binding Arbitration Decision By Lawrie Cherniack

In the Matter of an Adjudication  
Respecting the *Framework Agreement — Treaty Land Entitlement*  
("MFA")  
Implementation Monitoring Committee Referral File 2007-TLEC-005  
Bunibonibee Cree Nation  
Trout Falls and Wipanipanis Portage Selections

BETWEEN:

Treaty Land Entitlement Committee of Manitoba Inc.  
("TLEC")

—and—

Her Majesty the Queen in right of the Province of Manitoba  
("Manitoba")

**Adjudicator's Decision**

*Appearances:*

**For TLEC:**

Harley Schachter, Legal Counsel  
Kaitlyn Lewis, Legal Counsel

**For Manitoba:**

Gordon E. Hannon, Legal Counsel  
Iris C. Allen, Legal Counsel  
Dave Hicks, Director, Agreements, Management and Aboriginal Consultation Branch,  
Manitoba

**Introduction:**

On September 11, 2013, I was appointed as an Adjudicator by the Implementation Monitoring Committee (“IMC”) to deal with a dispute between the TLEC and Manitoba respecting two portages on the Hayes River System. The parties agreed to my jurisdiction.<sup>1</sup>

Following an exchange of documents and briefs between the parties, a hearing was held on March 27, 2014, in Winnipeg at which submissions were made on the factual and legal issues raised by this dispute. I want to thank legal counsel for the thoroughness of their submissions, both written and oral, for their diligence in reaching consensus on documentary evidence, and for the collegial way in which they conducted themselves.

The MFA is a tri-partite agreement between the parties herein and Her Majesty the Queen in Right of Canada. Canada was given notice of the hearing and sent an observer, but declined to participate.

The MFA is a complex agreement, over 250 pages long, entered into as of May 29, 1997. It provides processes by which First Nations, represented by the TLEC and entitled to lands under various treaties entered into between Canada and the First Nations, can acquire lands in Manitoba in partial or full fulfilment of the treaty obligations. One of the First Nations represented by the TLEC is the Bunibonibee Cree Nation (“BCN”).

Pursuant to the MFA, on October 7, 2002, BCN passed a Band Council Resolution selecting certain parcels of land. On October 15, 2002, BCN provided notice to Manitoba of its selections.

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<sup>1</sup>By agreement between the parties, the very strict timelines set out in the *Arbitration Agreement* of September 11, 2013, were eased. Some time was spent in discussion between the parties.

Among those selections were 600 acres around Trout Falls and 319 acres around the Wipanipanis Portage. On December 23, 2002, Manitoba expressed its concerns to BCN about, among other sites, these two selections, using identical wording: “Manitoba has identified another competing interest which we choose to protect, namely a portage and the right of public use of this portage.” Manitoba did not have concerns about the selections themselves; it was concerned only about the public use of the two portages.<sup>2</sup>

There is a lengthy history of discussion about these portages among the parties. The history is well-known to the parties. It is documented in the December 29, 2011, report by the then-Chair of the IMC, Lloyd Grahame, and in Appendix A to that document. Ultimately the issue of the two portages, in accordance with the process for final adjudication in the MFA, was referred by the IMC to me as the agreed-upon adjudicator.

**The relevant facts:**

Thanks to the cooperation of legal counsel and the intensive research by the then-chair of the IMC, I was provided with a number of documents which established the facts. Although they differ as to which facts are relevant and what weight to place upon them, the parties do not dispute the following facts:

- The two portages in question are along the Hayes River in Northern Manitoba. Through the cooperation of Manitoba, Canada, and First Nations, including the BCN, The Hayes River has been designated as a Canadian Heritage River System. It has historical significance to both

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<sup>2</sup>There were other issues between Manitoba and BCN with respect to the selection of sites. These issues were not referred to me and I do not deal with them in this Award.

Each of the two portages has two routes — a shorter one used by canoeists, and a longer one used by larger boats. These two routes within each portage are connected, and I therefore treat them as one for the purposes of this Decision.

First Nations people and early settlers in Canada. It is a navigable waterway at common law and thus as defined in the MFA, which uses the common law definition. The photographs provided to me show that the terrain and the river are beautiful.

- The Hayes River System should only be used by “experienced canoeists familiar with the demands of the northern wilderness. Over its course, the route flows over more than 80 sets of rapids, many of which require considerable boating skills or portages.”<sup>3</sup>
- The Trout Falls portage allows for land transportation to avoid going through a waterfall which is not navigable by boats. The Wipanipanis portage allows for land transportation to avoid going through rapids which are not navigable by boats.<sup>4</sup>
- The best information available — and it is not necessarily accurate information and is certainly not up-to-date — is that non-First Nations use of the Hayes River, and presumably these portages, has historically been three to ten (or perhaps fifteen) canoe parties a year, with the number increasing to 30 parties in 2003 because of a documentary involving the Hayes River. There is apparently no information about the use of the portages by boaters. There is probably other non-documented use by tourists staying at tourist lodges on the Hayes River.
- The lands selected by BCN at both portages include the land on either side of the portages. Therefore any alternatives to these two portages that would not trespass on BCN land would require significantly longer (at least more than one mile) portages.
- BCN has indicated that it has no intention of placing restrictions on the use of the portages. It has never placed restrictions in over 40 years on an airport on its land.

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<sup>3</sup>Graham Dodds, *The Hayes River: Canadian Heritage Rivers System Background Study*, November 1987; part of the submission to have the Hayes River declared a Heritage River. The assessment is confirmed by other sources provided to me.

<sup>4</sup>Early on there was concern about a winter road close to the site of this portage, but that issue was resolved.

**Questions to be answered and summary of the parties' positions on those questions:**

The issue ultimately revolves around whether or not the MFA allows for some form of reservation of the portages for public use that would be binding on BCN.

Manitoba submits that subsections 3.01(4) and (5) (reproduced in full below) provide it with the right to raise the issue of a “compelling public interest” to protect the portages in question. Those subsections provide for resolution (ultimately through an adjudicator) of “issues or circumstances encountered in and considerations affecting the Selection or Acquisition of land by an Entitlement First Nation *which are not addressed by the Principles*” (italics mine). “The Principles” are specifically set out in sections 3.02 to 3.10.

TLEC submits that section 3.01(4) and (5) do not apply and that once Manitoba has accepted the lands selected as eligible to become part of the BCN reserve in partial fulfilment of the treaty obligations and the MFA, it cannot put conditions on that process.

As part of the referral to adjudication, I was provided by the Implementation Monitoring Committee with a series of questions. The parties both suggested how I should answer the specific questions set out by the IMC. These are the questions and a summary of the parties' positions on the questions:<sup>5</sup>

- 1. Has Manitoba established the existence of “a public right of passage over a portage”, which is a Crown Reservation under Article 1.01(21), in the following Selections? a. Site: 15-02 Trout Falls; b. Site: 20-02 Wipanipanis Portage.
  - TLEC agrees “that at the time the selections were made by BCN in 2002, there were in fact portages in existence on the two selections.”

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<sup>5</sup>As well, I was given the responsibility “[t]o answer any other question that the Arbitrator deems necessary to resolve the issue(s) in dispute, including procedural matters.”

- Manitoba submits “that there is a compelling public interest in providing for a continued right of access over a portage trail around the rapids or falls on the two sites as related to the safe navigation of the Hayes River.”
- 2. If the answer is yes to question 1, is the protection of that “public right of passage over a portage” located in the listed Selections an appropriate basis for determining that that portion of the Selection is not eligible to be set apart as Reserve, except under some form of access agreement that guarantees the continued “public right of passage over a portage”?
    - TLEC submits that “[n]either the existence of a portage, nor the desire to protect it in the future, could or should be an appropriate basis to determine that a Selection is not eligible to be set apart as reserve.”
    - Manitoba submits that in some way there should be a guaranteed protection of the public right of passage.
- 3. Can Manitoba assert an additional consideration (in this case, a “compelling public interest”) not expressly contemplated by the terms of the MFA in determining eligibility of a Selection? Specifically, is the MFA subject to consideration and application by Manitoba of a “compelling public interest” in maintaining a “right of public access over a portage” as asserted by Manitoba? a. If so, what is the definition, criteria for determining, and information that must be provided by Manitoba when asserting a “compelling public interest” in these circumstances?
    - TLEC responded to this in detail, but says generally that “Manitoba may not assert any additional consideration not expressly identified by the express terms of the MFA in determining eligibility of a ‘Selection’”, saying further that Manitoba’s role is solely to deal with eligibility of a particular Selection to be set apart as a Reserve, and once having done so, it cannot assert other restrictions on the eligibility of that Selection.
    - Manitoba submits that the test of “compelling public interest” can be used in this case in determining eligibility of a Selection.
- 4. If the answer is yes to questions 2 or 3, what legal instrument and what content in that legal instrument is appropriate to guarantee the “public right of passage over a portage” after the Selected lands have been set apart as Reserve?

- TLEC submits that there would be no guarantee of the public right of passage even if Manitoba had jurisdiction over the land if there were a more compelling public interest that outweighed that right. TLEC further submits that a Band Council Resolution — even though it can be changed later on — would be sufficient to protect any interests.
  - Manitoba submits that it is open to a number of ways of doing this, but suggests that an easement agreement would be one appropriate instrument.
- 5. Is the “Honour of the Crown” at risk where additional considerations not expressly contemplated by the MFA (such as the existence of a “compelling public interest” regarding a “public right of passage over a portage) are being asserted by a Party?
- TLEC submits that the Honour of the Crown is at risk.
  - Manitoba says that it is not.

The parties made overall submissions, both oral and written, that did not necessarily follow the order of the questions originally submitted to me. Accordingly I set out a summary of the positions of the parties on the legal issues derived from the written and oral submissions, including the responses of one party to another party’s position. I stress that the following is a *summary*; in this decision I cannot do justice to the quality of the detailed and nuanced submissions made other than to acknowledge them and thank legal counsel for them. I wish to assure the parties that I have studied their complete submissions, both oral and written, in depth.

### Summary of TLEC's position on the legal issues:

TLEC submits that subsection 3.01(5) cannot be used to create a further restriction on or narrowing of the right of BCN to select land, so long as the selection meets the Principles set out in the MFA. Therefore, TLEC submits, there is no issue that is properly before me since Manitoba has already accepted the eligibility of the lands selected, subject only to what is a non-enforceable, therefore non-existent, concern. Once having accepted the selection of the lands, TLEC says that Manitoba is therefore obligated to transfer them to Canada for the benefit of BCN.

TLEC makes the following points respecting the interpretation of subsections 3.01(4) and (5):

- The “Honour of the Crown” requires me to interpret these subsections in a way that facilitates the acquisition of land pursuant to the original treaties and to the MFA.

TLEC cited the following cases:

- *Reference re Secession of Quebec*, [1988] 2 S.C.R. 217.
  - *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388.
  - *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] S.C.J. No. 14.
  - *Keewatin et al. v. Ontario (Minister of Natural Resources) et al.*, 114 O.R. (3d) 401 (Ont. C.A., 2013).
- Subsections 3.01(4) and (5) are not part of the Principles and cannot be used to produce an additional limitation on the right of selection of lands by an eligible First Nation. These subsections are designed to provide benefit to First Nations, not to allow either Manitoba or Canada to put an obstacle to the selection of lands. TLEC cited, as an example of a selection of land which did *not* meet the Principles, *Long Plain First Nation v. Canada (Attorney General)*, [2013] 1 C.N.L.R. 184 (F.C.T.D., 2012).

- Portages are part of the definition of “Crown Reservation” in subsection 1.01(21)(b)(ii); thus the issue of portages cannot be considered to be an issue “not addressed by the Principles”. On interpretative principles TLEC cited *Eli Lilly & Co. v. Novopharm Ltd.*, [1998] 2 S.C.R. 129.
- To allow Manitoba to introduce any issue it wants that is not specifically mentioned in the Principles and thus to hold up the acquisition of land by an eligible First Nation would be to introduce “unwarranted and unacceptable uncertainty to the MFA . . . [that] would effectively eviscerate the Bands’ selection ‘right’ that was negotiated as part of the MFA in 1997.”
- If Manitoba had wanted to reserve a right to deal with “compelling public interests”, it could have negotiated such a right in the MFA, and implying such a right into the MFA would effectively rewrite the terms of the MFA.

In the alternative, if subsections 3.01(4) and (5) permit Manitoba to have the issue of the portages raised as a compelling public interest, TLEC submits that the issue of the portages is not a compelling public interest that should override the right of BCN to land that it has otherwise properly selected

- The portages are put to limited use and as such there is no compelling public interest.
- In the balance between the limited use to which the portages are put and the right of BCN to select land pursuant to its treat rights and the MFA, the balance should go to the right of BCN.
- There are alternatives to the portages; even though they may be arduous alternatives, the river system itself should only be travelled by experienced boaters who should be prepared for such long portages.
- The public has a right to navigate navigable waterways only insofar as they are navigable. When parts of them are non-navigable, the public has no right to portage through private land between the navigable portions of the waterways. TLEC cited:
  - Hogg, *Constitutional Law of Canada*, 5th ed. (Carswell, n.d.).
  - Laskin and Finkelstein, *Laskin’s Canadian Constitutional Law*, 5th ed. (Carswell, 1986).

- *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3.
  - *Canoe Ontario v. Reed*, [1989] O.J. No. 1293 (Ont. H.C.J.).
  - *Simpson v. Ontario (Ministry of Natural Resources)*, 2011 ONSC 1168 (Ont. S.C.J.).
- BCN is a government and can be trusted to make as appropriate land use decisions as Manitoba would make.
  - Sections 28(2) and 35(1) of the *Indian Act* provide a method by which Canada could deal with the protection of portages, if they need protection, after the land is acquired. TLEC cited:
    - *Osoyoos Indian Band v. Oliver (Town)*, [2001] 3 S.C.R. 746.
    - *Fairford First Nation v. Canada (Attorney General)*, [1999] 2 C.N.L.R. 60 (F.C.T.D., 1998).
    - *Opetchesaht Indian Band v. Canada* [1997] 2 S.C.R. 119.

### **Summary of Manitoba's position on the legal issues:**

Manitoba summarized its basic position as follows:

Manitoba submits that the issue in question to be considered in answering the formal questions posed by the IMC Chair is whether measures to ensure that members of the public may continue to use a portage around the falls or rapids as necessary for navigation on the river in respect of the two Sites is a matter not addressed by the Principles of Land Selection and Acquisition and, if that is the case, determining how that issue would best be addressed in a manner consistent with the Principles set out in the MFA.

Manitoba submits that a right of use of the portages is a compelling public interest that is reasonable to address as part of the determination of eligibility of Selections to be set apart as reserve.

Manitoba submits that it is appropriate for the sites to be considered to be eligible to be set apart as reserve in accordance with the Principles, subject only to such interests as is necessary to ensure that public right of use for a passage around the falls or rapids is assured.

Manitoba submits that subsections 3.01(4) and (5) allow it to take this position on the basis that the issue of the portages “are not addressed by the Principles” and therefore the issue can be dealt with through the dispute resolution process which has given rise to this adjudication.<sup>6</sup>

If it is accepted that the issue of the portages is “not addressed by the Principles” and can therefore be adjudicated upon, then Manitoba submits that the criterion (at least in this case) that should be applied in resolving an issue which is not addressed by the Principles is whether there are what it calls “compelling public interests” at stake. Manitoba uses the phrase “compelling public interests” but accepts that the phrase is not a “term of art” interpreted or given meaning to by courts or statutes, and thus has no specific legal meaning to it. Manitoba uses the phrase purely as a descriptive concept. The interests must be “public” and must be “compelling” if they are to be addressed by me.

Manitoba makes the following submissions on the issue of “compelling public interests”:

- The “[r]ight of the public to access portages on navigable waterways is a compelling public interest” (Manitoba brief, page 12). In support Manitoba cited:
  - *Wood v. Esson*, 9 S.C.R. 239 (1884).
  - *Friends of the Oldman River Society v. Canada (Minister of Transport)* [1992] 1 S.C.R. 3.

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<sup>6</sup>Manitoba first suggested on December 23, 2002, that the use of these portages was a “competing interest”, which was interpreted by all parties as invoking “reasonable competing considerations” under subsection 3.02(6) of the MFA, which allows Manitoba to identify those considerations and commits the parties to attempt to address those considerations and, failing a resolution, to refer the matter to the IMC. On February 27, 2007, however, Manitoba sent a letter respecting, among other things, the two portages, which did *not* use the words “competing interest” as used previously. On August 8, 2007, in response to a question from the IMC, Manitoba sent an e-mail pointing out that in that February 27, 2007, letter “[T]he reference to a portage as a competing interest (consideration) per Subsection 3.02(6) has been excluded.” This made clear that Manitoba no longer relied on subsection 3.02(6).

- MFA Principle 3.02(12) recognizes the importance of not depriving access to land, and this “should be understood to apply to ensure that a portage on a navigable waterway remains available for use” (Manitoba brief, page 14). Manitoba submitted that the alternative longer routes that would not trespass on BCN lands would simply encourage canoeists and boaters to try to navigate the dangerous waterfall and rapids, and that the safety issues are therefore significant.
- Manitoba wants to ensure public access to the portage in the most minimal way possible. Manitoba suggested an easement and cited:
  - Gaunt and Morgan, *Gale on Easements*, eighteenth edition (London: Sweet & Maxwell, 2008), section 1-01.
  - Manitoba Law Reform Commission, *Report on Prescriptive Easements and Profits-à-Prendre*, January 18, 1982.
  - As examples, a redacted list of easements which Manitoba has negotiated with other First Nations and examples of how that can be accomplished.
- The definition of “Crown Reservation” in subsection 1.01(21)(b)(ii) is taken almost word-for-word from the description of what is reserved to the Crown in section 4(1) of *The Crown Lands Act* of Manitoba. Thus the inclusion of “portage” in that definition should not be taken as showing that the parties had completely dealt with the issues of portages and compelling public interest.
- On whether the Honour of the Crown applies, Manitoba submitted that it had fulfilled the requirements of the Honour of the Crown first, by entering into the MFA, and secondly with respect to this particular case, by being clear about its concerns and using the dispute resolution process set out in the MFA. Manitoba cited *Eastman Band v. Canada (Federal Administrator)*, [1992] F.C.J. No. 1041 (F.C.A.).
- On interpretative principles, Manitoba submitted that the MFA should be interpreted as a whole, and cited:
  - *Hnatiuk v. Court*, [2010] M.J. (Man. C.A.).
  - Hall, *Canadian Contractual Interpretation Law*, 2d ed. (LexisNexis, 2012)
  - *Hillis Oil & Sales Ltd., v. Wynn’s Canada Ltd.*, [1986] 1 S.C.R. 57.

- With respect to the use of section 28(2) of the *Indian Act* to allow Manitoba to ask Canada to reserve the portages after the transfer, Manitoba submitted that Canada's policy on the use of this right would make it difficult if not impossible to do this.

### **Interpretation of the MFA:**

The MFA is a very carefully-written, detailed, and complex document. It is divided into seven parts and includes eight appendices. One hundred seven words are specifically defined in the sixteen pages of the definitions section (1.01). The section on Land provides ten Principles over twenty-five pages relating to the selection and acquisition of land. Third party interests are considered for over twenty pages. The agreement is a testament to a good-faith process coupled with diligence and creativity.

Because of its complexity, the MFA is not an easy agreement to interpret. I am informed that this is the first adjudication under the MFA; accordingly I will try to set out basic principles that might help the parties in the future.

Contract interpretation begins with an assumption that the parties intended every word in the order in which the words appear — that there is no excess verbiage and that the contract has been carefully written. This is not always the factual experience, but it is the basic assumption behind contract interpretation. It is clear that in this case the assumption is factually true. The parties have devoted great care to the words in this agreement. I therefore start with the assumption that every word in the MFA is to be given a meaning.

*The MFA's purpose:*

**Preamble:** The Preamble (“Whereas” section) that begins the MFA acknowledges that the signatory First Nations to the MFA, as represented by the TLEC, did not receive “land of sufficient area to fulfill the requirements” set out in the treaties that the First Nations entered into at various times in the early history of this country. BCN is represented by the TLEC and was party to Treaty 5, which promised 160 acres for each family of five (and proportionately larger or smaller amount for different sizes of families). BCN is therefore an “Entitlement First Nation” — entitled to select and acquire land subject to the provisions of the MFA.

The Preamble goes on to describe the obligations of Canada to fulfill its treaty obligations that have been enshrined in various pieces of legislation. In 1930, *The Manitoba Natural Resources Transfer Agreement* (MNRTA) was entered into between Canada and Manitoba which transferred the interests of Canada to Manitoba subject to whatever was necessary to allow Canada to fulfill its treaty obligations. Manitoba’s title to Canada’s land was thus made subject to Canada’s treaty obligations.

The Preamble goes on to indicate that there is a difference between Canada and the Entitlement First Nations as to how to calculate the amount of land owing to each First Nation to fulfill the treaty obligations, and ends with the following:

Y. Despite their respective positions [on calculation], the TLE Committee and Canada have agreed that the obligation of Canada to provide land of sufficient area to each Entitlement First Nation to fulfil the requirements of the Per Capita Provision of each Entitlement First Nation will be addressed in the manner and to the extent provided in this Agreement; and

Z. Canada and Manitoba have agreed that Manitoba will satisfy its obligations to Canada under paragraph 11 of the MNRTA in the manner and to the extent provided in this Agreement.

Manitoba’s role is to satisfy its obligations under the MNRTA to allow Canada to fulfill its treaty obligations in the manner set out by the MFA.

**Section 1:** Section 1 defines a number of words; words that are capitalized in the MFA are defined in Section 1. One significant phrase that is defined is “Crown Reservation”:

(21) “Crown Reservations” means all interests which are reserved to Manitoba in or out of any disposition of Crown Land under *The Crown Lands Act* or under any other act of the Legislature of Manitoba, whether enacted before or after the Date of Execution, which interests may include:

(a) in the case of land extending to the shores of any navigable water or inlet thereof:

(i) a strip of land one and one-half chains (being 99 feet) in width, measured from the Ordinary High Water Mark; and

(ii) the public right of landing from, and mooring, boats and vessels so far as is reasonably necessary;

(b) in the case of land bordering a body of water:

(i) the bed of the body of water below the Ordinary High Water Mark; and

(ii) the public right of passage over a portage, road or trail in existence at the date of disposition;

(c) Mines and Minerals, together with the right to enter, locate prospect, mine for and remove minerals;

(d) the right to, and use of, land necessary for the protection and development of adjacent water power; and

(e) the right to raise or lower the levels of a body of water adjacent to the land, regardless of the effect upon the land.

The reference in subparagraph 1.01(21)(b)(ii) to “the public right of passage over a portage, road or trail in existence at the date of disposition” is the only reference in the MFA to that concept. The word “portage” occurs only in this subparagraph and is not found anywhere else in the MFA. The only uses of the phrase “public right” are found in paragraph 1.01(21)(a) and 1.01(21)(b) and nowhere else in the MFA.<sup>7</sup>

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<sup>7</sup>In addition, section 1 sets out some rudimentary rules of interpretation (definitions apply with grammatical variations; acts of Canada or Manitoba are defined so that their names can be used without citation; names are given to identify parts, articles, sections, etc., of the MFA. None of these rules is applicable in this case and I do not reproduce them.

**Section 2:** Subsection 2.01 sets out how much land each Entitlement First Nation is entitled to by incorporating by reference two Schedules to the MFA.

Section 2.02 then sets out the basic purpose of the MFA.

2.02 Selection and Acquisition of Land in Accordance with Principles

(1) During the Period of Selection and Period of Acquisition, an Entitlement First Nation shall Select and Acquire land which conforms with the Principles.

(2) Land Selected or Acquired in accordance with the Principles shall be eligible to be set apart as Reserve subject to the provisions of this Agreement.

“Selection” is the identification of Crown Land by an Entitlement First Nation that that First Nation wishes to be set apart as a Reserve. “Acquisition”, which is not in issue here, is the acquiring of land that is not what is defined as “Crown Land” — generally other lands owned by Manitoba and third-party lands.

Within a set period of time (“the Period of Selection and Period of Acquisition”), the right is given to an Entitlement First Nation — in this case the BCN — to select and acquire land if it conforms with the Principles. If that land is selected in accordance with the Principles, it “shall be eligible to be set apart as Reserve land”. There is a mandatory aspect to this.

**Purpose:** It is therefore clear that the purpose of the MFA is to define a process to facilitate the selection or acquisition of land by an Entitlement First Nation which will become part of its reserve in fulfilment of the treaty obligations that Canada undertook over a century ago. The purpose of the MFA can be used to facilitate the interpretation of the MFA.

*Subsections 3.01(4) and (5):*

**Section 3.01 generally:** Manitoba's position rests on whether or not subsections 3.01(4) and (5) provide it with the right to ask me to "resolve" its issues by finding a way to protect a right of access to the portages.

Section 3.01 reads:

3.01 Principles Provide Guidelines

(1) Sections 3.02 to 3.10 inclusive, including the other provisions of this Agreement incorporated into those Sections, constitute the Principles for Land Selection and Acquisition.

(2) The Principles provide guidelines applicable to the Selection or Acquisition of land by an Entitlement First Nation.

(3) The Principles are not listed in any particular order of priority and land shall be Selected or Acquired by an Entitlement First Nation and considered by the parties with reference to all applicable Principles.

Clearly the Principles set out in sections 3.02 to 3.10 inclusive must be considered paramount.

(4) The Principles may not address all of the issues or circumstances to be encountered and considerations affecting the Selection or Acquisition of land by an Entitlement First Nation.

(5) Any issues or circumstances encountered in and considerations affecting the Selection or Acquisition of land by an Entitlement First Nation which are not addressed by the Principles shall be addressed by the parties and the Entitlement First Nation to the extent that they are able, and if they are unable to resolve any issues or circumstances encountered in or considerations affecting a Selection or Acquisition to the satisfaction of any party or the Entitlement First Nation, Section 3.11 [*the resolution section, ultimately leading to adjudication*] shall apply.

**Interpretation of the words of subsections 3.01(4) and (5):** Both parties take for granted that the question was simply whether the issue of the portages had been considered in the MFA. I will call that the "standard" interpretation of the subsections. TLEC says the issue has been considered; Manitoba says it has not been. Since one of the questions asked of me requires it, I interpret subsections 3.01(4) and (5) very closely in order to see whether the question is as clear as that.

Subsection (4) provides for the possibility that “all of the issues or circumstances to be encountered and considerations affecting the Selection or Acquisition of land by an Entitlement First Nation” “may not” be addressed by the Principles set out in 3.02-3.10.

Subsection (5) provides for the resolution of “[a]ny issues or circumstances encountered in and considerations affecting the Selection or Acquisition of land by an Entitlement First Nation which are not addressed by the Principles”. Save for the grammatical changes, the language is identical and obviously carefully written.

Clearly a distinction is made among “issues”, “circumstances” — both of which can be “encountered” — and “considerations” — which “affect” either selection or acquisition.

Relevant definitions of these words are as follows:

- *Issue:*

“A point in question; an important subject of debate or litigation” (*The Canadian Oxford Dictionary*).

“A point on the decision of which something depends or is made to rest; a point or matter in contention between two parties; the point at which a matter becomes ripe for decision. . . . A matter or point which remains to be decided; a matter the decision of which involves important consequences. . . . A choice between alternatives, a dilemma” (*Oxford English Dictionary*).

“A matter of which the result is to be decided; that which is to be determined by trial or contention; a conclusion held in abeyance for consideration or debate; a choice between alternatives . . . ” (*The Century Dictionary and Cyclopædia*).

- *Circumstance:*

“A fact, occurrence, or condition, esp[ecially] (in *pl/ural*) the time, place, manner, cause, occasion etc., or surroundings of an act or event. . . . (in *pl*) the external conditions that affect or might affect an occasion. . . .” (*The Canadian Oxford Dictionary*).

“[A] condition, fact, or event accompanying, conditioning, or determining another: an essential or inevitable concomitant. . . . [A] subordinate or accessory fact or detail. . . . [S]tate of affairs” (*Merriam-Webster Dictionary*).<sup>8</sup>

- *Consideration:*

“[A] fact or a thing taken into account in deciding or judging something” (*The Canadian Oxford Dictionary*).

“That which is or should be considered; a subject of reflection or deliberation; a matter of import or consequence; something taken or to be taken into account . . . .” (*The Century Dictionary and Cyclopaedia*).

The use of all of the three nouns is intentional; a standard interpretation tool (*noscitur a sociis* — words are known by the company they keep) would therefore require that each of the nouns be read as being different from each of the other nouns, because if that were not the case then all three words would not have been used.

I therefore interpret “issue” as being some important idea or concept that is in contention between parties; and “circumstance” as being a fact that has a significant effect on something to be done. Both of these must be “encountered” in the Selection of land by BCN.

I interpret a “consideration” as being an important fact or idea which reasonably ought to be taken into account in making a decision. A consideration must “affect” the selection of land by BCN.

Relevant definitions of the two verbs are as follows:

- *Encounter:*

“[M]eet, come across, esp. by chance or unexpectedly. . . . meet as an adversary” (*The Canadian Oxford Dictionary*).

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<sup>8</sup>The original and older *Oxford English Dictionary* and the relative contemporary of the OED, *The Century Dictionary and Cyclopaedia*, both treat “circumstance” as being something secondary, or a matter of small consequence. I take it that the meaning of the word has changed from the early 1900s, when those dictionaries were published, and that “circumstances” is now a word that can describe significant occurrences or conditions.

“[T]o meet as an adversary or enemy . . . To engage in conflict with . . . To come upon face-to-face . . . To come upon or experience especially unexpectedly” (*Merriam-Webster Dictionary*).

The older dictionaries are to the same effect. S.I. Hayakawa’s *Choose the Right Word: A Modern Guide to Synonyms* (Harper & Row, 1968) contrasts “meet” with “encounter”, saying that *encounter* “strongly implies a casual or unexpected meeting.”

- *Affect:*

“[P]roduce an effect on; influence” (*The Canadian Oxford Dictionary*).

“To make a material impression on; to act upon, influence, move, touch, or have an effect on” (*The Oxford English Dictionary*).

I therefore interpret “encounter” as meaning to come across by chance or meet in an adverse way. There must be something objective about what is encountered, and that something must have import. It is also something that was neither already considered nor reasonably foreseeable at the time that the MFA was entered into. I note that the words “to be encountered” in subsection 3.01(4) are future-oriented, and emphasize that same concept.

I interpret “affect” as meaning to have a significant influence or have a material effect on something.

In addition, any of these issues or circumstances encountered, and any consideration affecting the selection or acquisition of land by an Entitlement First Nation must also not have been “addressed” in the Principles. The only applicable meaning for “address” as a verb from any of the standard dictionaries is “to direct attention to”. Since the present tense of “address” is used in the subsections, I interpret the verb as referring to matters to which attention was directed at the time of the signing of the MFA, *or* matters that were reasonably foreseeable at the time of the signing of the MFA.

Recasting 3.01(4) using the meanings I've given to the words in the context of this case provides the following:

The Principles may not have directed attention to points in contention, or facts that have arisen, after the time of entering into the MFA, or that the Parties did not deal with, or that were not reasonably foreseeable, at the time of entering into the MFA, or may not have directed attention to matters which are significant and which have a material effect on the selection or acquisition of land by an Entitlement First Nation, if such matters were not considered or could reasonably have been considered, at the time of entering the MFA.

Thus my interpretation of the subsections goes beyond the standard interpretation. I will, however, provide my decision using both the standard interpretation and my interpretation.

Under Section 3.01(5) the dispute resolution process that has culminated in this adjudication allows me to consider *only* matters that meet the description in 3.01(4).

*Sections 3.02 to 3.10 — The Principles:*

The Principles referred to are found in sections 3.02 to 3.10 of the MFA.

The Principles in sections 3.04 (Wapusk National Park), 3.05 (Acquisition of Other Land), 3.06 (Land in an Urban Area), 3.07 (Land in a Municipality), 3.08 (Land in a Northern Community), 3.09 (Surplus Provincial Land), and 3.10 (Surplus Federal Land), are not relevant to the case at hand.

Part of TLEC's submission — and the submission went into some detail on this issue — is that the detail into which the parties went to write the Principles, including the ones that are not relevant, and the fact that portages are not specifically mentioned in the Principles, should be taken as an indication that the parties decided that portages were not significant enough to allow any limitation to the eligibility of lands for selection on the basis of retaining public access to portages. Manitoba, on the other hand, submits that the fact that portages are not

specifically dealt with in the Principles allows it to raise the issue pursuant to subsections 3.01(4) and (5).

The relevant portions of the remaining Principles (3.02 and 3.03) are as follows:

3.02 General Principles for Selection and Acquisition of Land

(1) An Entitlement First Nation may Select its Crown Land Amount from:

(a) the area comprising its Treaty Area or Traditional Territory in the Province of Manitoba;

*[Subsection (b) provides for selecting land from outside the Treaty Area, which is not applicable in this case] . . .*

*[Subsection (2) deals with acquisition of Other Land, not applicable in this case.]*

(3) Subject to Subsection (4), an Entitlement First Nation may Select or Acquire parcels of land of such size and configuration as the Entitlement First Nation determines will reasonably contribute to the enhancement of its historical and cultural identity or provide economic or social benefit.

(4) Subject to Subsections (5) and (7), an Entitlement First Nation will generally Select parcels of land of 1,000 acres or more in area except where suitable Crown Land is not available in the location preferred by the Entitlement First Nation or where the purpose of a Selection for historical, cultural, economic or social reasons necessitates the Selection of a parcel of Crown Land of a less than 1,000 acres in area.

(5) Subject to Subsection (7), where an Entitlement First Nation Selects a parcel of land of less than 1,000 acres in area, the Entitlement First Nation shall, upon receipt of a written request from Manitoba, provide to Manitoba a written statement outlining the reasons for the Selection of less than 1,000 acres in area.

(6) Where, after considering the written statement referred to in Subsection (5), Manitoba identifies other reasonable competing considerations relating to the Selection not addressed by the Principles:

(a) Manitoba shall set out those competing considerations in writing to the Entitlement First Nation;

(b) Manitoba and the Entitlement First Nation shall make a reasonable effort to address those considerations having appropriate regard to the right of the Entitlement First Nation to Select land in accordance with this Agreement; and

(c) where Manitoba and the Entitlement First Nation do not address those considerations to their satisfaction, the matter may be referred to the Implementation Monitoring Committee.

(7) An Entitlement First Nation may Select a parcel of land of less than 1,000 acres in area where the land is located in reasonable proximity to a Reserve of that Entitlement First Nation. . . .

*[Subsection (8) deals with competing interests with other First Nations. Subsection (9) deals with the ability to make adjustments to the boundaries. Subsection (10) allows two or more First Nations to agree on land. None of these subsections applies in this case.]*

(11) An Entitlement First Nation may Select or Acquire land where the Selection or Acquisition does not deprive the owner or lawful user (including Canada or Manitoba) of another parcel of land which does not form part of the Selection or Acquisition of access to that other parcel of land.

(12) Where a Selection or Acquisition may deprive the owner or lawful user (including Canada or Manitoba) of another parcel of land which does not form part of the Selection or Acquisition of access to that other parcel, the Selection or Acquisition may be made where an agreement is entered into between the Entitlement First Nation and that owner or lawful user providing access to that other parcel of land.

### 3.03 Specific Principles for Selection of Crown Land

*Specific Principles part of Principles:*

(1) Subsections (2) to (38) inclusive set out specific Principles for the Selection of various categories of Crown Land.

*Land not affected by a Third Party Interest:*

(2) An Entitlement First Nation may Select land not affected by a Third Party Interest.

*[Subsections (3) through (12) deal with selection of land in situations that are not applicable in this case.]*

*Crown Land Bordering upon Navigable Waterways, Non-navigable Waterways or Developed Waterways:*

(13) An Entitlement First Nation may Select land bordering upon a Navigable Waterway, a Non-navigable Waterway or a Developed Waterway in accordance with Article 12. . . .

Article 12 referred to in subsection 3.03(13) is entitled “Water Interests”. Relevant sections from that Article are:

#### 12.02 Reserve Boundaries on Navigable Waterways

Where land Selected or Acquired by an Entitlement First Nation is adjacent to a Navigable Waterway:

- (a) the water boundaries of the Reserve shall be the Ordinary High Water Mark for that body of water; and

(b) the Reserve shall not include within its boundaries any portion of the bed or the banks of the body of water below the Ordinary High Water Mark.

#### 12.09 Land Physically Required by Manitoba Hydro

(3) Land consisting of the specific geographic sites reasonably required by Manitoba or Manitoba Hydro for potential hydro-electric development identified as “1” to “16” inclusive on the map attached as Schedule “E” may not be Selected by an Entitlement First Nation except with the agreement of Manitoba Hydro. . . .<sup>9</sup>

Schedule E lists “Potential Water Power Sites” where hydroelectric dams may be built; among those sites (14, 15, 16) are places on the Hayes River, but not the sites of the portages in issue in this Adjudication.

#### *The facts applied to the Principles:*

In the case before me BCN requested some parcels of land, including the two parcels of land which contain the portages at issue, each of which has an area of fewer than 1000 acres. BCN’s selections therefore fell under subsection 3.02(5), giving Manitoba the right to ask for “a written statement outlining the reasons for the Selection of less than 1,000 acres in area.”

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<sup>9</sup>As I was writing this award, I noticed that subsection 12.09(7) might be applicable because it mentions “or any other reservations”, and I wrote to Messrs. Schachter and Hannon to ask them if they had anything to say about the applicability of this subsection. Both responded.

Mr. Hannon submitted that section 12.09 deals only with hydro-electric development and that “The purpose of subsection 12.09(7) is to say that 12.09(5) and (7) entirely address the principles relating to hydro-electric development on the Fox River, Hayes River and God’s River systems. . . . The ‘other reservation’ suggests that the parties acknowledge that no other restriction relating to hydro-electric development would apply.”

Mr. Schachter accepted that section 12.09 deals only with hydro-electric development, but he submitted that subsection 12.09(7) only reinforces TLEC’s submission that the parties took care “to expressly identify situations where Manitoba required a continuing interest post-selection and post-Reserve creation.” He submitted that if public access to portages, which are Crown Reservations, “were intended not to be transferred to Canada, there would be paragraphs in the agreement making sure that this happened.”

Given these submissions, and also invoking the principle of interpretation known as *ejusdem generis* (the general is limited by specifics), I find that the specific mention in subsection 12.09(7) of “Hydro Easement” limits the meaning of the general phrase “or any other reservations to Manitoba” in that same subsection to reservations dealing with hydro-electric development and therefore does not apply in this case. Accordingly I have not reproduced that subsection in this decision.

Manitoba did make such a request, and BCN responded with a written statement giving reasons for selecting, among others, these two areas of fewer than 1,000 acres.

On February 27, 2007, Manitoba wrote to BCN and said:

Manitoba has further reviewed its position with respect to Treaty Land Entitlement (TLE) Land Selections of less than 1000 acres currently on record and is of the opinion that if there are no overriding Framework Agreement principles and/or competing interests associated with a given TLE land Selection they shall be deemed eligible. . . .

Therefore further to our response letter of December 23, 2002 the following TLE land Selection is now deemed eligible, subject to any previous or current conditions noted that still apply.

The land selections deemed eligible included the two sites containing the two portages. With respect to each of these two sites Manitoba wrote the same words in that letter:

There is a portage affecting this Selection and Manitoba would like to meet with Bunibonibee Cree Nation to discuss the retention of the right of public access to this portage either by way of an access easement or possibly exclusion in accordance with Subsection 3.02(12) of the Framework Agreement.<sup>10</sup>

TLEC submits that once Manitoba deems the land selections to be eligible, its role ceases and it cannot raise other issues, such as “the retention of the right of public access to this portage”, which stand in the way of BCN’s right to have the land declared part of the Reserve once eligibility is accepted. Manitoba clearly disagrees.

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<sup>10</sup>This letter was the first indication that Manitoba had dropped the concept of “competing interests”, or as the words are used in paragraph 3.02(6), “reasonable competing considerations”. See footnote 6 on page 11.

## **MFA provisions respecting the transfer of Manitoba's land:**

The following are the relevant portions of the MFA respecting the transfer of land by Manitoba to Canada to be set apart as Reserve.

### **6.03 Crown Land Use Permit**

(1) Upon Canada and Manitoba confirming that land Selected is eligible to be set apart as Reserve in accordance with the Principles, Manitoba shall issue to the Entitlement First Nation which Selected the land a Crown Land use permit which will provide the Entitlement First Nation with the exclusive right to use and occupy the land, subject to any existing Third Party Interests, until:

- (a) Canada and the Entitlement First Nation advise Manitoba that they are both not satisfied with the results of the Environmental Audit of the land;
- (b) Canada determines that the Selection does not meet the requirements of the Additions to Reserve Policy; or
- (c) the acceptance by Canada of administration and control of the Selection from Manitoba whichever shall first occur.

### **7.01 Manitoba to Transfer Crown Land and Interests to Canada**

(1) Where land is Selected or Acquired by an Entitlement First Nation which Canada and Manitoba confirm is eligible to be set apart as Reserve in accordance with the Principles, Canada will:

- (a) undertake or cause to be undertaken an Environmental Audit of the land in accordance with Article 23;
- (b) upon Canada and the Entitlement First Nation both being satisfied with the results of that Environmental Audit, determine whether the Selection or Acquisition satisfies the requirements of the Additions to Reserves Policy;
- (c) upon Canada determining the Selection or Acquisition satisfies the requirements of the Additions to Reserves Policy, undertake or cause to be undertaken a survey of the boundaries of the land in accordance with Article 23; and
- (d) upon the Council of the Entitlement First Nation by Council Resolution confirming the boundaries of the Selection or Acquisition as determined by the survey, provide Manitoba with a legal description of the land based on a registered plan of survey reflecting the survey undertaken in accordance with Paragraph (c).

(2) Subject to Subsection 10.01(2), upon Manitoba receiving from Canada a legal description of land Selected or Acquired by an Entitlement First Nation in accordance with Paragraph (1)(d), Manitoba undertakes to transfer to Canada, by order in council, administration and control of all interests of Manitoba in that land, including any Crown Reservations and Residual Crown Interests.

TLEC submits that these provisions show that Manitoba's role is a secondary one. Once the land has been selected, and once it has been deemed eligible for selection in accordance with the Principles, TLEC submits that Manitoba's role is then relegated to transferring to Canada, as set out in subsection 7.01(2), "administration and control of all interests of Manitoba in that land, including any Crown Reservations and Residual Crown Interests."<sup>11</sup>

**Manitoba's right to rely on subsections 3.01(4) and (5):**

I find that the inclusion of public access to portages in the definition of "Crown Reservations" shows that the parties were aware of the issue of the right of public access to portages when they entered into the MFA. This is the case whether the standard interpretation or my interpretation of subsections 3.01(4) and (5) is used.

Manitoba's submission that, because the wording in that definition mirrors the wording in *The Crown Lands Act*, I should infer that the parties had not addressed the issue of portages, cannot stand in the face of how carefully-worded and complex the MFA is; it is an agreement in which clearly every word was scrutinized carefully.

The initial assumption that every word in the document is intended to be there leads inexorably to another major principle of interpretation: words that are *not* in an agreement

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<sup>11</sup>As noted earlier, TLEC submits that the inclusion of "Crown Reservations", which is defined in subsection 1.01(21) as including "the public right of passage over a portage", in this subsection shows that the parties have already dealt with the issue of portages and thus that subsections 3.01(4) & (5) cannot be invoked by Manitoba. Manitoba responds that the definition of Crown Reservations is not in the Principles and that the issue of portages is therefore something not addressed by the Principles.

are intended *not* to be there — the legal maxim of *expressio unius est exclusio alterius* (the expression of one concept means the exclusion of another). Portages are mentioned in the MFA; they are excluded in the Principles; they were intended to be excluded.

Given that the parties were conscious of the right of public access to portages, what decision did the parties make about that right?

Section 7.01 sets that out. First, subsection 7.01(1) sets out Canada's obligations. When land is selected and Canada and Manitoba confirm that that land "is eligible to be set apart as Reserve in accordance with the Principles", then Canada has a specific role to play as set out in paragraphs 7.01(1) (a) through (d). When those obligations are met, and Manitoba has been provided with the legal description of the land (paragraph 7.01(1)(d)), then, second, under subsection 7.01(2) Manitoba is obligated to transfer to Canada "all interests of Manitoba in that land, *including any Crown Reservations*" — which Crown Reservations include the right of public access to portages.

Given that the parties decided what would happen to the right of public access to portages, can Manitoba rely on the wording of subsections 3.01(4) and (5)? Is it the case that Manitoba could simply come up with any apparently significant issue and say that it has the right to raise it as an exception "not addressed by the Principles"? It is clear that "portages" are mentioned neither in the Principles nor in any sections that are referred to in the Principles,

The TLEC submits that these subsections are available only for the benefit of an Entitlement First Nation, to deal with situations that don't fall under the Principles, and that neither Manitoba nor Canada was intended to be given the right to invoke these subparagraphs in a way that would prevent an Entitlement First Nation from acquiring land. TLEC points to many clauses in the MFA, some of which I have cited above, which show, as I have found, that the

MFA is intended to give rights to Entitlement First Nations to select or acquire land in order for Canada's treaty obligations to be fulfilled.<sup>12</sup> Given that that is the purpose of the MFA, TLEC submits, Manitoba should not be able to put impediments in fulfilling that purpose other than those specifically set out. In addition, TLEC submits, the Honour of the Crown should be used as a further interpretative tool to the same effect.

While I understand the tenor of that submission and am sympathetic to it, the wording of subsections 3.01(4) and (5) do not explicitly limit the right to raise issues to an Entitlement First Nation. Nor have I been presented with any case authority to show that the Honour of the Crown provides in this case a tool of contract interpretation that would allow me to override the clear wording of subsections 3.01(4) and (5).

It is true that the Honour of the Crown may be used as a principle of contract interpretation (see *Manitoba Metis Federation Inc. v. Canada (Attorney General)* [2013] S.C.J. No. 14, at ¶168, 76-77, for instance); in this case, however, the clear wording of subsections 3.01(4) and (5), coupled with the clear admonition in subparagraphs 40.09, 40.10, and 40.11, to the effect that the MFA should be interpreted as conferring no new rights other than those found in the MFA, does not allow me, in my opinion, to impose the Honour of the Crown to interpret subsections 3.01(4) and (5). On the other hand, the purpose of the MFA, as I have found, does inform the interpretation of those subsections; and the Honour of the Crown was in fact fulfilled by entering into the MFA for the purposes I have described.<sup>13</sup> Those purposes, however, influence my interpretation of subsections 3.01(4) and (5).

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<sup>12</sup>TLEC also cited sections 31.01 (obligation of all the parties "that they will, in good faith, use their best efforts to fulfill the terms of this Agreement"); 31.04 (Manitoba's obligations, which do *not* refer to any right to impose conditions on the selection of lands other than as set out in the Principles); 40.11 (MFA does not abrogate any aboriginal or treaty rights); 40.13 (obligation "to carry out and implement the terms of this Agreement").

<sup>13</sup>See page 34.

To use TLEC's submissions concerning the mention of portages, if the parties had wanted to limit the right to raise issues or circumstances or considerations to an Entitlement First Nation, they would have written subsections 3.01(4) and (5) to do that.

Accordingly I find that any party to the MFA can raise an issue or circumstance or consideration under subsections 3.01(4) and (5), and that Manitoba's role cannot be strictly restricted solely to determining issues of eligibility.

The purpose of the MFA, however, is to facilitate the selection or acquisition of land by an Entitlement First Nation. Subsections 3.01(4) and (5) should be read in light of that purpose.

If raising such a matter would facilitate the selection or acquisition of land by an Entitlement First Nation, then any party could raise the matter.

Such right to raise the issue is, however, as I read these subsections in light of the purpose of the MFA, circumscribed when raising the issue would hinder or delay the selection or acquisition of land by an Entitlement First Nation. Since the purpose of the MFA is to facilitate the selection or acquisition of land, there is a burden of proof on the party raising a matter if the raising of such matter would act contrary to that purpose.

As I interpret those subsections, if raising these matters would hinder the selection or acquisition of land by an Entitlement First Nation, the matters would certainly have to be, at the least, a matter that is important and significant — what the Manitoba has termed “of compelling public interest” — but they would also have to fit another criterion.

The issue or circumstance or consideration must in addition be something not contemplated by the parties or reasonably foreseeable when they entered into the MFA. As such it should be something which has arisen, in a sense, afresh.

Given how carefully the MFA is written, and the words used in these two subsections, there is an evidentiary burden on any party who raises an issue or circumstance or consideration to prove that the parties did not contemplate that issue or circumstance or consideration at the time of entering into the MFA, or that such issue or circumstance or consideration was not reasonably foreseeable at that time.

Practically speaking, because the purpose of the MFA is to facilitate the selection and acquisition of land for the benefit of an Entitlement First Nation, the burden would be lighter on an Entitlement First Nation and quite a bit heavier on Canada or Manitoba because it is probable that anything an Entitlement First Nation would raise would be to facilitate the selection and acquisition of land, and it is probable that anything Canada or Manitoba raised would hinder or delay the selection and acquisition of land.

In the case at hand, I find that Manitoba has not met the required evidentiary burden. In fact, I find that the parties were aware of the issue of public access to portages and chose not to put anything in the Principles relating to that. I find that Manitoba has not provided a basis to invoke any right under subsections 3.01(4) and (5) that would give me jurisdiction to place any restrictions on the transfer of the land by Manitoba.

I point out that even on the standard interpretation of subsections 3.01(4) and (5) — one that the parties themselves put forward that does not invoke the purpose of the MFA or include the notion of “reasonable foreseeability” — Manitoba has not been able to show that the parties did not address the issue of public access to portages. The definition of “Crown Reservations” shows that the parties did address that issue. I therefore find that the MFA does in fact address the issue of public access to portages and that the parties intended to omit this issue from the Principles.

Manitoba therefore has a duty to transfer to Canada the eligible lands in question, including the public access to portages (one of the Crown Reservations to be transferred), for the benefit of the BCN.

**Alternative finding on “compelling public interest”:**

In the alternative, if I am wrong in my interpretation of subsections 3.01(4) and (5), or if I am wrong that even the standard interpretation of subsections 3.01(4) and (5) shows that the parties contemplated the issue of portages, and if in fact a “compelling public interest” is not only necessary but also sufficient to invoke subsections 3.01(4) and (5), I find that Manitoba has not established that the issue of public access to the two portages is a compelling public interest that is an issue or circumstance or consideration not addressed by the Principles.

Manitoba agrees that not every difference deserves to be considered as that kind of an issue, circumstance, or consideration. Manitoba’s use of the concept of “compelling public interest” shows that the difference must be compelling, and the interest must be a public one. Although the interest with respect to public access to portages is certainly a public one, I find that access to recreational portages, and in particular these portages, is not sufficiently compelling or significant so as to become an issue, circumstance, or consideration not addressed by the Principles.

I am strengthened in that finding by the court decisions which find that the right of public access to a navigable waterway does not extend to the right to trespass in order to portage between sections of that navigable waterway. Manitoba’s submission that the right to navigate navigable waterways somehow can be extended to the *right* to portage land not owned by the Crown does not appear to have a basis in law. Certainly Manitoba provided no

statute or case-law to that effect, and TLEC's case-law, although stemming from lower non-Manitoba courts, contains strong reasoning.

I agree with TLEC's submission that when it comes to balancing, on the one hand, the right of an Entitlement First Nation to the fulfilment of Canada's treaty obligations with, on the other hand, the convenience of a select and historically small group of highly-experienced boaters to have a short rather than a long portage, the right of the Entitlement First Nation overwhelmingly defeats the convenience of the select group. There are alternative routes, and though they may be much more arduous and significantly longer than the simple portages currently available, they are available. Thus it is merely a matter of convenience. I do not accept Manitoba's submission that safety is an issue. Experienced canoeists and boaters should not be presumed to take unreasonable risks.

Therefore, in the alternative, if "compelling public interests" provide a method of invoking subsections 3.01(4) and (5), Manitoba has not proved that the public access to the portages in question consist of a compelling public interest. Having declared that the sites in question are eligible, and having no other basis for objecting to the sites, Manitoba must fulfill its obligations under the MFA and transfer to Canada the eligible lands in question, including the public access to portages (one of the Crown Reservations to be transferred), for the benefit of the BCN.

**Other issues raised in this adjudication:**

Although my decision is in favour of the TLEC's ultimate position, I think it is important, because they were argued at length, and because some of them inform my answers to the specific questions asked by the IMC, to provide my opinion on various other submissions.

*The Honour of the Crown:*

I do not agree with the TLEC's submission that the Honour of the Crown is at risk in this situation. I have studied the court decisions. They are clear that the Honour of the Crown requires consultation and an obligation to act reasonably and promptly. I accept Manitoba's position that in agreeing to the MFA and in providing its position, it has generally consulted and acted reasonably and promptly.<sup>14</sup>

I cannot extend the concept of the Honour of the Crown to the point of saying that the Crown cannot raise a legal issue which may have merit. Even though I have ruled against Manitoba on the issue it raised, Manitoba's position is not vexatious or abusive, and it was grounded on an interpretation of the MFA which was neither absurd nor deliberately done to delay matters. I cannot say that Manitoba's raising of the issue of the portages is an affront to the Honour of the Crown.

It is because I have found that the purpose of the MFA is to facilitate the transfer of lands for the benefit of Entitlement First Nations that I find that the Honour of the Crown has, in the entering into of the MFA, been fulfilled. The purpose of the MFA significantly influences the interpretation of subsections 3.01(4) and (5), as I have held above.

*BCN as a government equal to Manitoba:*

I accept the concept that BCN is a nation and that it can be trusted to make decisions as a government. The Chief of the BCN, in his opening and closing prayers, eloquently, movingly, and sincerely, spoke of the BCN's interest in preserving the land and of inviting anyone to

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<sup>14</sup>The issue of the delays between the date that the BCN informed Canada and Manitoba of its selection and the date this matter was submitted to adjudication is not the issue. It is open to TLEC to prove that Manitoba breached the Honour of the Crown with respect to these delays, although the chronology reveals that much of the delay was caused by problems relating to the composition of the IMC. If necessary I can deal with the issue of delays on a basis of costs if the parties cannot agree on costs.

enter BCN's lands and partake of their beauty. I do not question the sincerity of what he said, nor do I question the BCN's current approach to non-First Nation persons' accessibility to BCN's lands. From a legal point of view, however, I cannot agree with TLEC's submission that the BCN, as another government, can be trusted to make as appropriate land use decisions as Manitoba would make.

At the moment the BCN has made clear that it views itself as the trustee of the lands and is happy to invite recreational tourists to visit the lands, and that is commendable. But BCN is a local government. It has the right to make decisions in its own best interests, and those are local and not public interests. Nothing would or should stop BCN, once it has the right to treat these portages as Reserve land, from deciding in the future to restrict access to the portages in question either completely or by charging fees.

Manitoba, on the other hand, represents a larger constituency, including those who would use the publicly-navigable river system which the land in question will surround. Thus it would be more reasonable to entrust public access to Manitoba rather than to the BCN.

Even so, as pointed out by TLEC, any public access to portages protected by Manitoba are subject to Manitoba's decisions about the Hayes River in general that might affect those portages. In addition, as TLEC pointed out, Canada also has the duty to act in the interest of a larger public than even Manitoba does, and it has the right of expropriation if there were a compelling public interest.

*Could sections 28(2) and 35(1) of the Indian Act allow for protection if needed?:*

TLEC submitted that sections 28(2) and 35(1) of the *Indian Act* provide a method by which Canada could deal with the protection of portages, if they need protection, after the land is

acquired by BCN. Manitoba submitted that Canada's policies would make that highly unlikely, given that Canada provides for only short-term and not long-term uses.

*Opetchesaht Indian Band v. Canada*, [1997] 2 S.C.R. 119 makes clear that the use of section 28(2) to create an easement should only be done in situations where there is a end point, either by date (short-term) or by the occurrence of a specific event; there cannot be a grant in perpetuity. For an easement that guarantees public access to a portage, it is difficult for me to imagine what specific event could end an easement.

Section 35 provides the ability of Canada to agree to the expropriation of land by a province. There is no guarantee that Canada would ever agree.

TLEC's submission on this point certainly does not provide a guaranteed method by which a public right of access to a portage could be enforced *after* the transfer of Manitoba's lands to Canada under the MFA.

#### **Answers to the questions submitted by the IMC:**

My answers to the questions submitted to me by the IMC are as follows:

- 1. Has Manitoba established the existence of “a public right of passage over a portage”, which is a Crown Reservation under Article 1.01(21), in the following Selections? a. Site: 15-02 Trout Falls; b. Site: 20-02 Wipanipanis Portage.
  - Yes, there has been a public right of passage over a portage on those two sites.
- 2. If the answer is yes to question 1, is the protection of that “public right of passage over a portage” located in the listed Selections an appropriate basis for determining that that portion of the Selection is not eligible to be set apart as Reserve, except under some form of

access agreement that guarantees the continued “public right of passage over a portage”?

- No, the protection of that public right of passage is not an appropriate basis for determining that that portion of the Selection is not eligible to be set apart as Reserve on any terms, including a form of access agreement.
- 3. Can Manitoba assert an additional consideration (in this case, a “compelling public interest”) not expressly contemplated by the terms of the MFA in determining eligibility of a Selection? Specifically, is the MFA subject to consideration and application by Manitoba of a “compelling public interest” in maintaining a “right of public access over a portage” as asserted by Manitoba? a. If so, what is the definition, criteria for determining, and information that must be provided by Manitoba when asserting a “compelling public interest” in these circumstances?
- No, The MFA is not subject to consideration and application by Manitoba of a compelling public interest in maintaining a right of public access over a portage.
  - In addition, the public interest in maintaining a right of public access over a portage is not a compelling public interest.
  - Although the concept of a “compelling public interest” may be necessary, it is not in and of itself sufficient to allow a matter to be dealt with under subsections 3.01(4) and (5).
  - Under subsections 3.01(4) and (5) to the MFA any issues or circumstances or considerations which will facilitate the selection or acquisition of land by an Entitlement First Nation and which do not appear to have been addressed in the MFA may be raised.
  - Under subsections 3.01(4) and (5) to the MFA any issues or circumstances or considerations which will hinder or delay the selection or acquisition of land by an Entitlement First Nation may be raised only if
    - Such matters are compelling or significant and are in the public interest, *and*

- Such matters were not considered by the parties or were not reasonably foreseeable at the time the MFA was entered into. The burden of proof is on the party raising such matters.
- 4. If the answer is yes to questions 2 or 3, what legal instrument and what content in that legal instrument is appropriate to guarantee the “public right of passage over a portage” after the Selected lands have been set apart as Reserve?
  - The answers to questions 2 and 3 are no. Therefore no legal instrument is appropriate. If the BCN wished to pass a Band Council Resolution providing public access, that might be a gracious thing to do, but it is not required to do so.
- 5. Is the “Honour of the Crown” at risk where additional considerations not expressly contemplated by the MFA (such as the existence of a “compelling public interest” regarding a “public right of passage over a portage) are being asserted by a Party?
  - No, the Honour of the Crown is not at risk in this particular case, subject to any issue as to costs.

The parties agreed that they would discuss the issue of costs. I therefore reserve jurisdiction to resolve any issue concerning costs.

I want to thank the parties for entrusting me with this issue.

DATED this 16th day of April, 2014, in Winnipeg, Manitoba

*Laurie Cherniack*

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# Legal Opinion on Resolving Third Party Interests “in any other way” By Cathy Sproule

## **The Request for a Legal Opinion**

I have been retained by the Implementation Monitoring Committee to provide a legal opinion pursuant to Article 34.08 of the Manitoba Treaty Land Entitlement Framework Committee which reads:

### **34.08 Technical Support and Independent Professional Advice**

(1) The Chairperson may, where the members of the Implementation Monitoring Committee agree, retain technical support and independent professional advisors, including legal counsel, as necessary from time to time to assist in the proper discharge of the responsibilities of the Implementation Monitoring Committee, including the responsibilities of the Chairperson.

The Chairperson has asked three specific questions relating to Third Party Interests (which are more fully described in the “Proposal for IMC to Retain Independent Legal Advice” attached hereto as Schedule 1):

1. What is the scope of and the limits on the words *in any other way which ... the Parties ... may agree* in the context of Article 10.02(1)(h) of the Manitoba TLE Framework Agreement?
2. To what extent does the *Manitoba Claim Settlements Implementation Act* support whatever flexibility exists by virtue of Article 10.02(1)(h) to resolve Third Party Interests?
3. Is the draft Surface Rights Access Agreement sound, and if not, what if anything can be done to render it useful?

## **Background**

In order to answer the specific legal questions, one must first look at the context in which they present themselves. Two long-standing issues are impeding almost 90,000 acres of land selected for reserve creation in Manitoba. Over 66,000 acres are encumbered by Manitoba Hydro Water Power Licences and over 20,000 have Surface Rights Access issues involving Third Party Mineral Rights Holders. (Please note that all capitalized words used herein are defined in Article 1 of the MTLEFA and have very specific meanings. Refer to the MTLEFA for their definition.) The Hydro Easement issue will be examined in more detail in the discussion on Questions 1 and 2, but how did it come to be that the Brokenhead Ojibway Nation and Manitoba Hydro are unable to agree on specific terms for a Hydro Easement on their TLE selections?

To begin then, the Brokenhead Ojibway Nation (BON) signed a treaty (Treaty No. 1) with Canada on August 3, 1871. One of the terms of the treaty was that BON would receive a quantum of land for them to reside upon. They did not receive their quantum as promised. They are still trying to acquire lands 143 years later.

## **The Natural Resources Transfer of 1930**

Fast forward to 1930. The Prairie Provinces were anxious to take on administration and control of all the natural resources within their provincial boundaries, which to that date, had been under the control of the federal government. (Administration and control is a specific

legal construct that relates to lands vested in the Crown, either federal or provincial. This term will be discussed later in this opinion as it is an important factor in the current dispute.)

The Manitoba Natural Resources Transfer Agreement (MNRTA) was negotiated in 1930, and because both the federal and provincial governments acknowledged that they had not yet fulfilled their commitments under the numbered Treaties, a specific clause was drafted to reflect this outstanding obligation.

Paragraph 11 of the MNRTA said:

" ... the Province will, from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied crown lands hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the Minister of Mines and Natural Resources of the Province, select as necessary to enable Canada to fulfill its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects **as if they never passed to the Province** under the provisions hereof." (Emphasis mine)

### **Section 35 Constitutional Rights of the Aboriginal Peoples of Canada**

Fast forward another six decades. BON, along with many other First Nations in the treaty areas within the Manitoba boundaries still had not received their promised quantum of land. In the meantime, a very significant change in the constitutional framework of Canada had taken place. In 1982, the *Constitution Act, 1982* was enacted. Part II, *Rights of the Aboriginal Peoples of Canada*, Section 35, reads:

"The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed."

This is likely the most important change to our constitution since the Dominion of Canada was created in 1867. Many Section 35 cases have been brought to the highest court in Canada, the Supreme Court, and they have provided a number of significant rulings that have fleshed out breadth and depth of this clause.

In *Sparrow v. R.* [1990] 1 S.C.R. 1075, the Court said that; "[t]he relationship between the government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship." The most recent Supreme Court ruling, commonly referred to as the Roger William case (*Tsilhqot'in Nation v. British Columbia, 2014 SCC 44*) provides further enlightenment on the meaning of Section 35:

"[Section 35] protects Aboriginal rights against provincial and federal legislative power and provides a framework to facilitate negotiations and reconciliation of Aboriginal interests with those of the broader public. [para 118]

While rights that are recognized and affirmed are not absolute, s. 35 requires the Crown to reconcile its power with its duty. [para 119]

As discussed, s. 35 of the *Constitution Act, 1982* imposes limits on how both the federal and provincial governments can deal with land under Aboriginal title. Neither level of government is permitted to legislate in a way that results in a meaningful diminution of an Aboriginal or treaty right, unless such an infringement is justified in the broader public interest and is consistent with the Crown's fiduciary duty owed to the Aboriginal group. The result is to protect Aboriginal and treaty rights while also allowing the reconciliation of Aboriginal interest with those of the broader society." [para 139]

Another seminal case in recent history was the Haida decision (*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511). This decision formulated the legal test for determining whether a "duty to consult" arises in the context of Crown – First Nations dealings. For the purposes of this opinion, it is important to note what the Court had to say about the origin of the duty to consult at paragraphs 16 and 17:

"The honour of the Crown is always at stake in its dealings with Aboriginal peoples. . . It is not a mere incantation, but rather a core precept that finds its application in concrete practices.

The historical roots of the principle of the honour of the Crown suggest that it must be understood generously in order to reflect the underlying realities from which it stems. In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably. Nothing less is required if we are to achieve "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown": *Delgamuukw, supra*, at para. 186, quoting *Van der Peet, supra*, at para. 31."

Words like "honour", "trust-like" and "reconciliation" are repeatedly found in the highest court's rulings. These principles guide all governments in their modern relations with First Nations and guide officials and decision-makers as treaties like Treaty #1 are being implemented.

In the recent Roger William decision, the court also reviewed the doctrine of "interjurisdictional immunity" which applies to the determination of which federal or provincial laws have exclusive application. They identified that the issue of whether provincial laws like *The Forest Act*, [RSBC 1996] c. 157, apply to lands which have Aboriginal title is not really about "competing provincial and federal powers, but rather tension between the right of the Aboriginal title holders to use their land as they choose and the province which seeks to regulate it, like all other land in the province." [para 144]. This quote provides us with another lens to view the MTLEFA experience.

### **The Manitoba Treaty Land Entitlement Framework Agreement**

Since the numbered treaties were signed over 140 years ago, the First Nations in Manitoba have demanded that their treaty rights to reserve land be fulfilled. Canada and Manitoba have always agreed that the obligation was not fulfilled. The problem was that Canada had no more land in its control because of the large volume of homesteads granted under the Dominion Lands Act and the transfer of administration and control of Crown land to

Manitoba under the MNRTA in 1930. As a result, much of the desirable farming land was deeded to individuals, and much of the Crown land became "encumbered" by third party interests as the Province developed.

Negotiations on how to deal with these roadblocks finally led to a breakthrough in the 1990's. On May 29<sup>th</sup>, 1997, several First Nations in Manitoba, Canada and Manitoba entered into a 255-page Agreement that details how the quantum of reserve land promised in the treaties would finally be met. The Manitoba Treaty Land Entitlement Framework Agreement (MTLEFA) contains 40 detailed Articles dealing with a wide variety of issues, for example, Articles like: "Payments and Contributions by Canada" (Article 15) or "Land Selection and Acquisition Process" (Article 6).

"Part III: Third Party Interests" has three articles which are the main subject of this opinion, Article 10, Third Party Interests, Article 11, Mines and Minerals, and Article 12, Water Interests. For easier reference, I have attached these articles as Schedule 2 to this opinion. Also important are the clauses relating to the resolution of disputes, particularly, Article 34, Implementation Monitoring and Senior Advisory Committees and Section 35, Dispute Resolution.

### **The Situation Today**

So, within the context of the history of the relationship between BON and the two levels of Canadian government, and the guidance of the Supreme Court of Canada, how do tensions between Canada, the Province and First Nations regarding applicability of laws, and "administration and control" get resolved?

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### **Question 1: "In Any Other Way"**

The first question posed by the Implementation Monitoring Committee is:

1. What is the scope of and the limits on the words *in any other way which ... the Parties ... may agree* in the context of Article 10.02(1)(h) of the Manitoba TLE Framework Agreement?

Given the broader historical and legal framework described above, it is clear that the Crowns must give a very broad and liberal interpretation of this clause. The clear obligation to set aside land as a reserve under the Treaty, the delay of over 140 years, the trust-like relationship with the First Nations, the honour of the Crown and the need for reconciliation all indicate that there must be an interpretation which points to a speedy and positive agreement on third party interests. The fact that there has been a long and unsuccessful attempt at agreement under Article 12 of the MTLEFA suggests that it may be time to look at

clause 10.02(1)(h) very closely to see if it may provide for an alternate resolution which has not been considered to date.

What are possible "other ways" to agree?

Obviously, there are a number of ways by which individuals can come to an agreement. People can agree verbally, or by a handshake. They can also jot down an agreement on a piece of paper. These types of agreements take place everyday, an agreement on where to meet for lunch, for example, or a sale of a lawnmower between neighbours. These types of informal arrangements are perfectly legal, but could be more difficult to prove if challenged legally.

I am of the opinion that the informal agreements I have just described would not be appropriate nor would they have been intended by the signatories to the MTLEFA. "Any other way" would, by the nature of the Framework Agreement itself and the parties who have signed it, require a formal legal agreement in writing.

There are three types of legal agreements that could apply here – an easement, a licence or a contract.

The Free Legal Dictionary provides the following definition of an easement:

**easement** n. the right to use the real property of another for a specific purpose. The easement is itself a real property interest, but legal title to the underlying land is retained by the original owner for all other purposes. Typical easements are for access to another property, (redundantly often stated "access and egress," since entry and exit are over the same path), for utility or sewer lines both under and above ground, use of spring water, entry to make repairs on a fence or slide area, drive cattle across, and other uses. Easements can be created by a deed to be recorded just like any real property interest.

(source: <http://legal-dictionary.thefreedictionary.com/easement>)

A licence is a particular form of agreement that is normally issued by a statutory authority. It is often specific to a particular Act, for example, the existing agreements on the land selected by BON are licenses issued pursuant to *The Water Power Act* of Manitoba.

A licence can be defined as:

formal permission from a governmental or other constituted authority to do something, as to carry on some business or profession.

(source: <http://dictionary.reference.com/browse/license>)

Here is an example of a legal definition of a contract:

**contract** 1) n. an agreement with specific terms between two or more persons or entities in which

there is a promise to do something in return for a valuable benefit known as consideration. Since the law of contracts is at the heart of most business dealings, it is one of the three or four most significant areas of legal concern and can involve variations on circumstances and complexities. The existence of a contract requires finding the following factual elements: a) an offer; b) an acceptance of that offer which results in a meeting of the minds; c) a promise to perform; d) a valuable consideration (which can be a promise or payment in some form); e) a time or event when performance must be made (meet commitments); f) terms and conditions for performance, including fulfilling promises; g) performance.

(source: <http://legal-dictionary.thefreedictionary.com/contract>)

I am of the opinion that the parties to the MTLEFA could deal with any third party interest by either an agreed upon common law easement, a federal statutory licence pursuant to the *Indian Act*, the *First Nations Land Management Act* or the *Federal Real Property and Federal Immovables Act*, or by a contractual agreement.

### **"In any other way" – Flooding for Manitoba Hydro**

I will now focus my comments on the interpretation of "in any other way" in Article 10 as it relates to water interests and Article 12.

#### **Article 12 – Water Interests**

The signatories to the MTLEFA agreed that a Hydro Easement would be entered into when selected lands included a Water Project on a Developed Waterway. Article 12.05(1) reads:

Subject to Subsection 12.09(4), an Entitlement First Nation may Select or Acquire land adjacent to a Developed Waterway subject to a Hydro Easement.

Article 12.05 then goes on to describe the process of determining the Easement Line, how long that would take, how it would be determined, how the field survey would be paid for, how lands below the Easement Line would not be considered part of the quantum and much more. Article 12.05(8) reads:

A Hydro Easement may be in one or more Agreed Forms.

What is an "Agreed Form"? To understand the intent of this phrase, one must turn to Article 38 of the MTLEFA, "Agreed Forms":

38.01(4) The parties are committed to the approval of the following Agreed Forms in accordance with Subsection (2) *as soon as is reasonably practicable*: (Emphasis mine)

...

(c) The Hydro Easement referred to in Subsection 12.05(1)

Anyone reading this will quickly come to the conclusion that the intent of the parties to create an agreed upon Hydro Easement was not going to take long. I don't think anyone could have imagined back in 1997 that there would still not be agreement on the terms of a Hydro Easement **seventeen years later** in 2014! The current stalemate between BON and the

Manitoba Government is indicative that other measures are necessary in order for the Treaties to be finally implemented. Article 10.02(1)(h) is certainly an alternative that needs to be taken into consideration.

The guidance of the Supreme Court must also be taken into account here – and it is my opinion that, based on certain correspondence that I received, much of the difficulty lies in the position being reiterated by Aboriginal and Northern Affairs, Manitoba. I say this with the caveat that I have not received all correspondence in relation to this issue, and have only received a selected series of letters from the time frame of March 2013 to June 2014. Therefore I must qualify my opinion as being limited to the correspondence I refer to herein.

### **Administration and Control**

On March 20, 2013 Manitoba Aboriginal and Northern Affairs (ANA) stated:

“Manitoba considers that the transfer of administration and control of interests in the easement land to be the appropriate way for the interests of the Crown to be transferred, within the Canadian legislative and constitutional framework. The administration and control interest in the easement lands to be held by Manitoba would be only that interest necessary to ensure that Manitoba Hydro would be able to continue to use the easement lands for the purpose of operating its hydroelectric projects, as it did before the lands were set apart as reserve.”

ANA repeated the same position, verbatim, in a letter December 3, 2013.

On February 25, 2014, ANA stated:

“When land is transferred between levels of government, the principle is that the Crown is the holder of the administration and control of the easement land. . . . [T]he starting point in a Hydro Easement Agreement is the transfer of administration and control.”

With respect, these statements by ANA are not correct. There is no requirement in law for the Crown in right of Manitoba to have administration and control of the land in question. In fact, the law supports the opposite position when it comes to Indian Reserves. In order for the land to legally become an Indian Reserve, within the current constitutional framework, the Crown in right of Canada must retain administration and control of the land.

In his book *Crown Law*<sup>1</sup>, Paul Lordon describes the concept of administration and control at page 229:

“The legislative jurisdiction over property is distinct from the ownership of property. The legislative jurisdiction for each of the federal and provincial Crowns for the exercise of power over property is found primarily in sections 91(A), 92(5), (13) and 92A of the *Constitution Act, 1867*. Section 91 is the source of federal legislative power, and sections 92 and 92A that of the provinces.”

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<sup>1</sup> Lordon, Paul. *Crown Law*. Toronto and Vancouver: Butterworths, 1991

The legal exercise of power to create an Indian Reserve is found in section 91(24) of the *Constitution Act, 1867*. This was recognized by the province of Manitoba in 1930, in Article 11 of the MNRTA, which I cited earlier, a portion of which I will reiterate here:

"[S]uch areas shall thereafter be administered by Canada in the same way in all respects **as if they never passed to the Province** under the provisions hereof." (Emphasis mine)

It is not clear why ANA is taking this unsupported position. Manitoba Hydro does not seem to be taking this position. They want an easement, to be sure, but are not calling for administration and control by Manitoba as part of that. (One must also keep in mind that although Manitoba Hydro is a provincial Crown corporation, it could be privatized in the future and would not have the same ties to the Crown it currently does.) Certainly the BON, Canada, and TLEC have not taken this position. From the discussions I have had with various individuals working on this file, this position from ANA is the crux of the stalemate. BON, nor any other TLE First Nation, has never refused to enter into an easement agreement issued pursuant to the *Indian Act*, or under the *Manitoba Claim Settlements Implementation Act*, for that matter. The issuance of a statutory easement under the *Indian Act* is not uncommon, and is standard practice in other provinces.

As I indicated earlier, the three legal "ways" that would fit the description of "any other way" in Article 10.02(1)(h) would be by contract, by licence or by easement. Since the parties to the MTLEFA agreed to a Hydro Easement as the solution to the existing Water Licenses - that would be the best way to ensure all parties are legally protected.

There are a couple of ways an easement could be issued by Canada. Canada could issue Manitoba Hydro a Section 35 *Indian Act* easement. This would give the power utility the right to flood the agreed upon area whenever they need to. The First Nation would maintain its riparian rights under Article 12.10 of the MTLEFA, and there would be no question as to the legal status of the land, which is central to any First Nation plans for economic development of their TLE reserves.

Canada could also create an easement prior to reserve creation (after Canada has received admin and control from Manitoba) under the *Federal Real Property and Federal Immovables Act*. The reserve could then be set aside subject to the easement. I will cover this option later when considering the utility of the *Manitoba Claim Settlements Implementation Act*.

### **A Statutory Licence?**

The existing interest held by the power utility is a statutory licence issued pursuant to *The Water Power Act*. One of these licences is a renewal of a federal licence issued back in 1928 for the Seven Sisters Falls Site. Hydro pays annual rent and the licence has a fixed term. I presume that Hydro, even if privatized at some point in the future, would continue with the same type of interest. It may be argued that the current licence does not fully come under the definition of Third Party Interest in the MTLEFA because of the existence of Article 12, but that is a red herring, in my opinion. It is conceivable that the current licence could be replaced with a federal licence, either under the *Indian Act* (section 28) or under the *Federal Real Property and Federal Immovables Act*.

In other reserve creation scenarios, a licence has been issued in circumstances where the only "access" to the reserve would be flooding. I understand that is the case for the BON selection. Manitoba Hydro does not require any physical human access to the selected area and would only need to be able to raise the water level from the ordinary high water mark to the agreed upon Easement Line. If the parties agreed, a replacement licence could be issued to provide for the occasional flooding as required by Manitoba Hydro.

In a letter dated February 7, 2014, Manitoba Hydro indicated that it required an easement. They stated: "An Easement provides for the lawful use by one person over a defined area of the land owned by another person." They referred to the terms of the MTLEFA where the parties agreed to enter into an easement. Based on that letter, it appears that a licence might not be acceptable, but there is nothing stopping the parties from agreeing to not use an easement and to use a licence instead. Article 10 provides for "any other way", and in my opinion, it would apply to any agreement the parties can come to, a license, an easement, or a contractual agreement.

The fact that the Hydro Agreement has not been agreed upon 17 years after the signing of the MTLEFA suggests that the parties have been locked into positions based on their respective but irreconcilable understanding of "the only way" to resolve the issue. It might be helpful if they would now cooperatively consider the flexibility that is offered in Article 10.02(1)(h). Resolution may be possible by setting aside those positions and truly investigating the "in any other way" possibilities. If the parties took time to explore the full extent of possibilities then they might not need to employ the dispute resolution measures provided for in the MTLEFA, which is certainly a last resort to be used when there is a complete breakdown.

One thing the province did say in its letter of March 20, 2013 was "[G]iven that this issue has been under discussion through various forums ...since 2007, perhaps it is now time to move this issue through the dispute resolution process as outlined in the Framework Agreement." Perhaps the Manitoba government could take some time to consider these other possibilities before resorting to this last ditch measure. The BON has requested a facilitated discussion - perhaps the Manitoba government would at least participate once in such a discussion before pressing for the extreme measure of arbitration, particularly because their current position is not sustainable at law and they would likely be unsuccessful if it did go to arbitration.

In conclusion, the answer to the first question is that there **are** several legal ways to reach an agreement regarding land – including a contractual agreement, a licence or an easement - which could be used pursuant to Article 10.02(1)(h). Even though Article 12 shows that the original signatories intended to use a Hydro Easement, these "other ways" are not precluded as Article 10's wording would be inclusive of the replacement interest contemplated in Article 12. And, given that there is the stalemate in interpreting exactly what a Hydro Easement is (full admin and control to Manitoba government versus an easement from the Federal Government on behalf of the First Nation), it behooves the parties to come to the table and find a creative solution to this barrier. The honour of the Crown is at stake.

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**Question #2: The *Manitoba Claim Settlements Implementation Act* (S.C. 2000, c.33)**

1. To what extent does the *Manitoba Claim Settlements Implementation Act* support whatever flexibility exists by virtue of Article 10.02(1)(h) to resolve Third Party Interests?

In 2000, the *Manitoba Claim Settlements Implementation Act* (S.C. 2000, c. 33) (herein the MCSIA) became law. The impetus for this piece of legislation was twofold. The first was the establishment of an agreement to settle a claim for flooding for the Norway House First Nation. The second was to try and address some of the difficulties First Nations were encountering when trying to add land to reserve that were encumbered by various third party interests, including economic interests that the First Nation wanted to continue after reserve creation. To address the second issue, there are two main provisions in Part II, sections 11 and 12, which deal with setting lands apart subject to certain rights or interest (Section 11) and the allowance of a designation of future reserve lands to ensure seamless application of commercial interests pre and post reserve creation (Section 12). For the purposes of this opinion, it is section 11, particularly subclause 11(2) which is of primary interest.

**Section 11, *Manitoba Claim Settlements Implementation Act***

**Setting lands apart**

**11.** (1) The Minister may, in accordance with an agreement to which this Part applies, set apart as a reserve any lands the title to which is vested in Her Majesty in right of Canada.

**Third parties**

(2) Lands set apart as a reserve under this section are subject to any right or interest of a third party in the lands or in its mines and minerals if

(a) the agreement contemplates the continuation of rights or interests of that kind, and any requirement of the agreement with respect to the continuation of the right or interest has been satisfied;

(b) the right or interest has been granted to the third party under the *Federal Real Property and Federal Immovables Act*; or

(c) the right or interest is granted to the third party in accordance with section 12 or 13.

2000, c. 33, s. 11; 2001, c. 4, s. 165; 2002, c. 3, s. 8(F).

Subclause 11(1) has been very successful since it was enacted. I understand that most reserve creation is done now under this clause, which allows the Minister to create reserve, rather than having it go to Privy Council for approval under the Royal Prerogative, which was the only way to create reserve in Manitoba prior to this Act. This saves weeks, if not months, in the reserve creation process. The second innovation in the MCSIA which has been successful

is the ability of First Nations to seek a membership vote to continue an existing interest before the reserve is created (section 12). This enables a smooth transition of interests and is particularly useful where there are viable economic activities underway on lands selected to become reserve.

But it is subclause 11(2) which is the main focus for the second question posed by the IMC. How does this section of the MCSIA support Article 10.02(1)(h)? I am of the opinion that it fully supports Article 10, indeed that was the *raison d'etre* for the Bill. It has not, though, seen the same uptake as the other subclauses in this section. In order to understand why this Bill was enacted, it is helpful to refer back to comments made to the Standing Committee on Aboriginal Affairs and Northern Development (the "Committee") as the proposed bill made its way through the parliamentary process.

On March 2 and March 11, 1999, the Committee heard from a number of witnesses regarding the proposed legislation. Much of the testimony centered on part I of the Bill, which related to the final agreements for the Norway House Cree Nation flooding claims, but there was also considerable discussion about Part II of the Bill, which is of concern to us here.

Terry Henderson, Director General, Claims Implementation Branch, DIAND, explained the intent of this part of the Bill as follows:

"Part 2 of Bill C-56 would have the potential to facilitate the implementation of a larger number of Manitoba claim settlements... Part 2 focuses on existing and future Manitoba claim settlements that require Canada to create additional reserve lands...

... This part of the bill, if enacted, would improve how first nations address the interests of third parties on lands selected for reserve under the claim settlement. ... These innovations would enable the Manitoba first nations to develop these lands to the economic benefit of their members sooner than would otherwise be possible.

... [T]he rest of part II addresses the fact that land parcels selected for reserve purposes will, generally speaking, already be affected by some other existing property interests, for example, leases and easements. These interests must be addressed in some way before the land in which they lie can be made reserve. This does not mean that in all cases these interests must be removed. To the contrary, both the first nation and the interest holder will often share a mutual advantage in the preservation of a lease easement or other existing interest after the land moves from the provincial system and becomes reserve.

Within existing laws, however, this sort of continuity is not automatic. Even where the third party and the first nation want it to happen, the formal consent of the first nation is required. The Indian Act gives first nations the power to issue these consents, but only after the land holding the interest has already become reserve. Part 2 of Bill C-56 will allow first nations and their members to consent to the granting of third-party interests on the lands in question prior to reserve creation [*pre-reserve designation votes*].

The key to these new provisions then is one of timing. Just as soon as a parcel of land has been identified for reserve creation under a settlement, first nations would be able to consent to the continuation of the interests that will affect this land. No less significant is that these provisions would allow first nations to consent to the granting of brand-new interests just as early in the

reserve creation process so that they can take full advantage of emerging opportunities.

In summary then, part 2 benefits Manitoba first nations and other Manitobans alike. First nations will be able to take the benefit of existing or potential economic activity on the lands they select. Other Manitobans will be able to secure very early in the reserve creation process a legally binding agreement for the preservation of their economic interests in these lands. They will also be free to approach first nations with new economic proposals for lands not yet made reserve, secure in the knowledge that a legally binding agreement can be put in place at an early stage.<sup>2</sup>

### **Section 11(2)(b) – Federal Real Property and Federal Immovables Act**

Section 11(2)(b) allows for the creation of a reserve subject to a *Federal Real Property and Federal Immovables Act* (FRPFIA) interest.

Federal government lawyer, Tom Saunders, spoke to the Committee on March 2<sup>nd</sup>, 1999, about how this clause was intended to operate:

“What we were concerned with in the context of TLE was that there would be situations where third-party interests were affecting reserve land at the time the land came in, and the question was how do you deal with those interests. Mr. Henderson spoke about the process of allowing pre-reserve surrenders. But there may also be common-law interests that may be simply easily solved by converting those interests into interests under the Federal Real Property Act. [Editorial note: the name of the Act changed in 2001 to the *Federal Real Property and Federal Immovables Act*] We believed we always had the ability to set land apart, subject to interests that had been created under the Federal Real Property Act, but there was no expressed provision to that effect in the act. The purpose of the reference here was to pick up not only a provision we made in the agreement to allow that to happen, but also to end the uncertainty about the question of whether in fact FRPA interests could be created and flow through once the lands were set apart as reserves.

In other words, what would happen would be that you'd have the land coming first as federal crown land, and at that point an interest is created or continued under the Federal Real Property Act. When the land makes the next step forward into reserve, that FRPA interest might continue. It's not that it would continue, but rather that it's on the menu of options the parties could consider when they're talking about how they might address dealing with a third-party interest.<sup>3</sup>

Despite Mr. Saunder's optimistic predictions for the utility of the FRPFIA clause in section 11(2)(b) of the MCSIA, there has not been any considerable uptake on that legislative innovation. There are likely several reasons for this, the main one being the reluctance of officials to create a reserve “subject to” third-party interests – there is some legal uncertainty about the resulting administration and control of the reserve land and the effect of creating a reserve which has interests carved out before it is set aside by order of the Crown. This legal uncertainty makes legal advisors nervous and uncomfortable. They are loathe to advise their clients to create such a situation, because of inherent vagueness. I understand their reluctance

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<sup>2</sup> Canada. Parliament. House of Commons. Standing Committee on Aboriginal Affairs and Northern Development. Evidence. (meeting No. 50, March 2, 1999) 36th Parliament, 1st Session. (Online). Available:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=1039307&Language=E&Mode=1&Parl=36&Ses=1>

<sup>3</sup> Canada. Parliament. House of Commons. Standing Committee on Aboriginal Affairs and Northern Development. Evidence. (meeting No. 50, March 2, 1999) 36th Parliament, 1st Session. (Online). Available:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=1039307&Language=E&Mode=1&Parl=36&Ses=1>

as I share it. Fortunately, in almost all circumstances, a replacement interest can be created pursuant to the various provisions of the *Indian Act* and therefore a FRPFIA interest is not needed. There are rare instances where Federal land is being added to reserve with existing FRPFIA interests and this process is likely designed to be most useful in those situations. In the event, however, an *Indian Act* agreement cannot be reached after best efforts, and a FRPFIA interest is acceptable to all parties, then this tool is available and could be used.

Using the Manitoba Hydro and BON example, the existing licences could be replaced with a valid federal interest, either a licence or an easement under FRPFIA, and the selected lands could be added to reserve subject to the licence or easement. I have not been informed if the parties have discussed this possible procedure, and whether it would address the concerns of Manitoba. Perhaps a FRPFIA interest might be more acceptable to Manitoba than an *Indian Act* interest, because the reserve would be created "subject to" the negotiated interest. The existing definitions in Article 10 of the MTLEFA and section 11(2)(b) of the MSCIA would certainly allow the parties to develop a FRPFIA interest and set the reserve aside subject to that interest.

At the time the Bill was being considered in Committee, Manitoba's legal counsel, Gord Hannon, expressed some optimism for the utility of the legislation:

"I had the pleasure personally of being involved in the consultation process, and I can say that although there were some differences in the preparation of drafting of the legislation, ultimately, after the consultation process, the Government of Manitoba is pleased to support Bill C-56 [Now the MCSIA]."<sup>4</sup>

Later on, Mr. Hannon gave a very good explanation of the impetus for the Bill and the province's desire to see reserves created in a timely way:

"In respect of part 2, relating to reserve establishment, like part 1, the proposed legislation is designed to give effect to the agreement that is already in force. It is designed to make the reserve establishment for treaty land and other purposes easier. It doesn't affect the validity of the framework agreement or the specific agreements contemplated by the framework agreement. It just makes them work better.

As I know the committee has already heard—but I think it's worth repeating—the framework agreement provides for up to 1.1 million acres of land to be set apart as reserve land for 19 specific first nations in Manitoba, and we are looking at a timeframe of three to five years to complete that. **The legislation is designed to make it easier to accomplish that objective sooner rather than later.**

We should point out as well that there are seven other first nations with treaty land entitlement settlements in addition to the 19 represented by Chief Thunder's treaty land entitlement committee, and we can anticipate up to another 155,000 acres of land to be set apart as reserve under those

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<sup>4</sup> Canada. Parliament. House of Commons. Standing Committee on Aboriginal Affairs and Northern Development. Evidence. (meeting No. 54, March 11, 1999) 36th Parliament, 1st Session. (Online). Available: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=1039315&Language=E&Mode=1&Parl=36&Ses=1>

seven agreements. **This is an important thing from Manitoba's perspective. Manitoba has a constitutional obligation, under the Manitoba Natural Resources Transfer Act, to return land to Canada to enable Canada to fulfil the terms of the treaties. It is an important priority to Manitoba that these constitutional obligations are implemented in a timely and effective way.** We believe we have, through the negotiations process, designed the framework agreement in a way that will assist all parties to achieve that important objective.

Very specifically, there are aspects of the Indian Act that make it difficult to establish reserves in circumstances in which there are third-party interests on land. This is a very important aspect of the framework agreement. It took up a great deal of table time in the negotiations in terms of how to accommodate existing, legitimate interests of third parties in circumstances in which all of the parties wish to have the land become reserve, but also in terms of how to protect the interests of the third party.

In the written brief that I have submitted, we have attached an excerpt from article 10 of the framework agreement. It shows that there are a large number of different ways in which third-party interests can be accommodated. They are to be applied based on the specific facts of the case and the interests of the parties in question, but are designed to make it as easy as possible to allow reserves to be created while protecting third-party interests. **Bill C-56 is part of this process. It is specifically contemplated in article 10 of the framework agreement,** and in certain cases will allow for land to be set apart as reserve while protecting third-party interests by allowing for first nations to designate land for lease or other purposes before the land is set apart as reserve.

...

In short, we think Bill C-56 is a legitimate and appropriate way to allow the parties to achieve the objectives they sought under both the framework agreement for treaty land entitlement and the implementation agreement for Norway House Northern Flood Agreement."<sup>5</sup> (All emphasis is mine)

The point is that the option is there, but the will to use it does not appear to be there. First of all there is the reluctance on the part of federal officials to use this procedure, and perhaps similar concerns on the part of First Nations and third parties. The optimism expressed by the province when the Bill was in committee 15 years ago was, unfortunately, unfounded when it comes to current situation the hydro licences, and much of the delay is, in my opinion, due to the unusual demand by the province that they have administration and control of the flooded areas. This does not rule out exploring whether creating a FRPFIA interest under Section 11(2)(b) would allay some of the province's concerns – there may be some possibility there.

In my opinion, the answer to Question #2 is that section 11(2)(b) of the MCSIA provides an opportunity to create a FRPFIA interest prior to reserve creation under the MTLEFA, an option which did not unequivocally exist at law at the time the MTLEFA was signed. The phrase "in any other way" in Article 10.02(1)(h) would certainly include this option.

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<sup>5</sup> Canada. Parliament. House of Commons. Standing Committee on Aboriginal Affairs and Northern Development. Evidence. (meeting No. 54, March 11, 1999) 36th Parliament, 1st Session. (Online). Available: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=1039315&Language=E&Mode=1&Parl=36&Ses=1>

### Question #3

The final question being asked by the IMC is:

3. Is the draft Surface Rights Access Agreement sound, and if not, what if anything can be done to render it useful?

I have reviewed the draft Surface Rights Access Agreement, and have the following observations regarding its soundness.

#### **1. Future Access – An Agreement to Agree**

The issue of access at some undetermined point in the future is difficult. The main issue is that it requires an agreement for something that may or may not take place. In this case, it would be where lands are selected that have disposed minerals or oil and gas rights that are not presently being exploited. These rights would come from a disposition agreement or lease from the province. The third party disposition holder has a right to access those minerals if and when access is needed. This could be tomorrow, in a month, or never.

In order to protect this future right, an agreement is required. Section 10.03(4) of the MTLEFA requires an agreement "between Canada, the Entitlement First Nation and the Third Party [to provide] the Third Party a right of access on or across the land to exercise its rights in the Mineral Disposition..." The quandary is that until such time the Mineral Rights Holder (MRH) knows exactly where it requires access, there is no way to create an actual permit or licence to enter. The next best thing is an agreement to agree. While not legally binding, it does indicate intent, and should aim to protect all parties in the event there is a dispute when actual access is required. There may be some risk that at some point in the future the parties will not be able to reach an agreement and that court action is taken, but I am of the opinion that the risk is minimal and it is a risk worth taking to allow the parties to avoid further delays in implementing treaty obligations.

#### **2. Change in Jurisdiction**

When the surface changes jurisdiction before the MRH requires access (like the creation of an Indian reserve), then the laws that apply to the surface land changes. The provincial laws relating to access, namely *The Mines and Minerals Act*, C.C.S.M. c M162 and *The Surface Rights Act*, C.C.S.M. c S235 will no longer apply. The reserve will be governed by the *Indian Act*, or the *First Nation Land Management Act*, or some other future Federal legislation. (There is still the residual common law regarding access, which could be brought into play in the event of a dispute. That is, although the provincial statutory regimes governing access will not be applicable, the common law would still be there protect the MRH and the surface owner, Canada, as bare title holder for the First Nation.)

#### **3. Lack of Federal Surface Access Legislation**

The other problem is that there is no equivalent Federal law to the various provincial laws that govern disputes regarding access on First Nation reserves. Most provinces have a fairly sophisticated dispute resolution and arbitration statute, with legislated boards and technical expertise to govern disputes. The only law available in Canada, pending some form of

legislation for surface access on reserves, is the *Commercial Arbitration Act*, R.S.C., 1985, c. 17 (2nd Supp. R.S.C., 1985, c. 17 (2nd Supp.)) This has been an outstanding issue for many TLE First Nations in Saskatchewan. There is some agreement that the *First Nation Commercial and Industrial Development Act* could allow for incorporation of the provincial regimes into federal law, but a federal law drafted to specifically address surface access would be much cleaner and more appropriate. Despite repeated recommendations from the Saskatchewan region, Parliament has not seen fit to enact such federal surface access legislation.

#### **4. Manitoba as a Signatory?**

Section 10.03(4) of the MTLEFA does not require Manitoba to be a party to the agreement. Despite that, the draft agreement I was provided includes Manitoba as a signatory. I am not certain this is necessary unless Manitoba is needed as a party due to any agreement about who pays for the costs of arbitration. Since Manitoba is the beneficiary of any mineral development, through royalties, etc., they may agree to assist in the costs of arbitration. If they do, and this agreement is adopted as an "Agreed Form" then it might be helpful to have that included in the agreed upon form. But this could also be accomplished by a stand-alone agreement with Manitoba, Canada and TLEC.

I assume that one of the reasons Manitoba was included as a signatory in the draft agreement is the content of Clause 5, where there is a requirement that Manitoba will maintain a First Nations member on the Manitoba Mining Board. I believe that could also be the subject of a separate agreement with Canada, Manitoba and TLEC. That would keep this agreement simple.

#### **5. Manitoba Mining Board Jurisdiction**

Perhaps another reason Manitoba is included in the draft agreement is that there is an attempt to incorporate the Manitoba *Mines and Minerals Act* by reference in clause 3(c) of the draft agreement. This is not legally appropriate in a contractual agreement like this. Further, the Saskatchewan Surface Rights Board has ruled in the past that it does not have jurisdiction over any federal land, and has declined to rule on surface rights disputes between the former PFRA and mineral rights holders. There is a risk that the Manitoba Mining Board would rule in the same way, if pressed. Unless there is a formal incorporation of this law by reference federally, this could cause problems in the future. Clause 3(c) also indicates that the Manitoba Mining Board would issue an Order. This word, although capitalized in the agreement, is not defined. Is it meant to be an Order under the provincial act? If so, they would likely not have the authority to do so under the provincial Act on federal lands, so that order could be challenged in court.

#### **6. Canada and the *Commercial Arbitration Act***

One other problem with the way the draft is set up, using the Manitoba Mining Board as arbiters, is that the only authority Canada has to enter into arbitration is pursuant to Section 5 of the *Commercial Arbitration Act*. The following excerpt from the Federal Department of Justice webpage is instructive:

In Canada, arbitration is regulated by statute. Every province and territory has its own separate arbitration legislation. At the federal level, commercial arbitration is governed by the [\*Commercial Arbitration Act\*](#) (CAA), which came into force on August 10, 1986. The CAA is a short statute which serves principally to introduce the *Commercial Arbitration Code* ("the Code"), which is a

Schedule to the CAA and which provides a basic procedural framework for commercial arbitration. **The Code applies to all commercial arbitrations where at least one of the parties is a federal department** or Crown corporation or in relation to admiralty or maritime law issues where the place of arbitration is Canada.<sup>6</sup> (emphasis added)

Therefore, if Canada is to be a signatory to this agreement, any arbitration must be governed by the Commercial Arbitration Code, which is a schedule to the *Commercial Arbitration Act*. I would recommend that the draft agreement be amended to reflect that requirement. This is not to say that the parties couldn't agree that sitting members of the Mining Board (or the Surface Rights Board for oil and gas) would be suitable arbitrators in their capacity as an individual, and a clause to that effect in the agreement would help clarify the desire to have experienced arbitrators.

### **7. Include Oil and Gas**

It appears that there is an assumption that all future access requests will be in relation to mines and minerals – hence the sole reference to *The Mines and Minerals Act*. It may be advisable to include a reference to *The Surface Rights Act* if there is any chance in the future that there will be a selection with oil and gas dispositions. I assume this agreement will become an Agreed Form under the MTLEFA and therefore oil and gas situations should be included as a possibility, either as an option under this draft or by a parallel draft agreement. (This recommendation is assuming that the reference to provincial legislation is not removed as recommended earlier.)

### **8. Future Legislation**

In Clause 3, the reference to the type of permit should be broader. It is currently limited to a section 28(2) Permit under the *Indian Act*. It is foreseeable that other legislation could come into effect with other options for issuing surface access instruments. There is a reference to FNLMA in Clause 5. It might be better to move that to Clause 3 as one of the possible options.

### **9. Manitoba Claim Settlements Implementation Act**

Article 11.03(b) of the MTLEFA indicates that an Entitlement First Nation could ask Canada to set apart a reserve, subject to a Mineral Disposition Interest. While this would not work where there is no surface interest yet in place, only the right to acquire such an interest, it would work in situations where there is an existing interest, particularly in light of the confirmation that reserves could be set aside subject to existing interests found in Section 11(2)(a) of the MCIA.

While there is some legal uncertainty about the weight this agreement would be given in future disputes, it is instructive, at a minimum, and shows the intent of the parties at this point in time. A number of these sorts of agreements have been entered into in Saskatchewan pursuant to Article 5.05 of the Saskatchewan Treaty Land Entitlement Framework Agreement, but they have not been put to the test yet, as far as I know. The point is that all parties are on record in terms of how they want the future to look when it comes to access. It isn't perfect, but it is the best option available at this time. Federal legislation which

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<sup>6</sup> <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/06.html#ref3>

addresses the regulatory gap in managing surface access disputes on reserve land would go a long way to address this uncertainty. In the meantime, the risk of Canada being subject to damages in the unlikely event that the parties cannot come to an agreement is minimal.

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I would like to thank the IMC for providing me with this opportunity. I trust that this opinion will be helpful in moving some of these issues towards a positive resolution. The honour of the Crown is at stake, and the outstanding commitments under the Treaty need to be met. I am concerned about the amount of time which has already passed without an agreed upon Hydro Easement or draft Surface Access Agreement. The parties must do better. I have not been provided with all of the details, letters, and chronology in relation to the issue, but from what I have been given, it appears that Manitoba must move off of its rigid demand that the province obtain administration and control before the easement can be agreed upon, giving some credible meaning to the phrase “as soon as is reasonably practicable” in Article 38.01(4) of the MTFEFA. Having worked in this area for several years in Saskatchewan, I’m sure that there is more to the story than the brief overview I have been given, but one would hope that the province and Canada would be leading the way to find the solution, rather than refusing to work with a facilitator and relying on an unreasonable position.

I would recommend that the Chairperson of the IMC, with the support of the Senior Advisory Committee, pursuant to his responsibilities in Article 34.09(5), identify proposed solutions to this matter, and that the IMC makes a decision on how the Hydro Easement issue be resolved, “as soon as is reasonably practicable”.

As previously mentioned, on March 20, 2013, Manitoba suggested “perhaps it is now time to move this issue through the dispute resolution process as outlined in the Framework Agreement”. Unless the parties actively try to find a solution using the flexibilities that exist “in any other way” or setting apart the reserve “subject to” within the next few months, I would strongly recommend that the dispute resolution process be invoked.

I will leave you with one last comment from Gord Hannon, legal counsel for Manitoba, taken from his remarks on March 11, 1999 at the Standing Committee on Aboriginal Affairs and Northern Development:

“I just want to make one last point, Mr. Chairman, because I think it is the source of some pride personally and on behalf of all of the parties to the framework agreement in particular. There is a more detailed and more creative approach to dispute resolution built right into the agreement, and it includes a formal implementation monitoring committee that consists of representatives of each of the three parties to the agreement: the Government of Canada, the Government of Manitoba, and the treaty land entitlement committee. The objectives of the implementation monitoring committee are to provide a mechanism to resolve disputes by consensus, to allow for discussion and consideration of what are sometimes very complicated fact and legal situations, and then to find a solution. Recognizing that this is not always possible, the implementation monitoring committee is backstopped with more formal methods of dispute resolution, including a senior advisory committee consisting of senior representatives of each of the three parties. If that doesn't

work, there is then a formal dispute resolution process involving fact-finding mediation, non-binding arbitration, or binding arbitration.”<sup>7</sup>

It is high time for this dispute to be resolved, preferably through innovation and active exploration of the realm of possible “other ways”. But if the signatories cannot reach an agreement, then it must go through the process the drafters of the Manitoba Treaty Land Entitlement Agreement had the foresight to include in the final agreement. To delay any further is against the principles of the Treaties, and the Framework Agreement, and the Constitution of Canada.

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<sup>7</sup> Canada. Parliament. House of Commons. Standing Committee on Aboriginal Affairs and Northern Development. Evidence. (meeting No. 54, March 11, 1999) 36th Parliament, 1st Session. (Online). Available: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=1039315&Language=E&Mode=1&Parl=36&Ses=1>

# Legal Opinion on Resolving the Kapyong Barracks Referral 2003-BON-001 By Blair Graham



THOMPSON DORFMAN SWEATMAN LLP

|                           |                       |
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November 28, 2014

**"BY COURIER"**

~~"PERSONAL & CONFIDENTIAL"~~  
no.

Martin Egan  
 c/o Aboriginal Affairs and Northern Development  
 Room 200 - 365 Hargrave Street  
 Winnipeg, MB R3R 3A3

*Received as JMC Chairperson  
ME*

Dear Mr. Egan:

Re: Opinion - Kapyong Barracks  
Our Matter No. 0120444 ABG

Further to your e-mail of November 27, 2014, we have corrected the typographical errors which you have identified.

Enclosed is a corrected copy of the opinion letter. I apologize for the inconvenience.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:   
 A. Blair Graham

ABG/gd  
Encl.



THOMPSON DORFMAN SWEATMAN LLP

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November 24, 2014

**"BY COURIER"**

~~"PERSONAL & CONFIDENTIAL"~~

No.

Martin Egan  
 c/o Aboriginal Affairs and Northern Development  
 Room 200 - 365 Hargrave Street  
 Winnipeg, MB R3R 3A3

*Received as IMC Chairperson  
ME.*

Dear Mr. Egan:

Re: Opinion - Kapyong Barracks  
Our Matter No. 0120444 ABG

Further to your e-mail of November 24, 2014, I am enclosing herewith my opinion in final form with Schedule A attached.

After you and the IMC have met and considered this opinion, please let me know if anything further is required.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:



A. Blair Graham

ABG/gd  
Encl.



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November 24, 2014

Treaty Land Entitlement Implementation  
Monitoring Committee  
Independent Chairperson  
200 - 1765 Sargent Avenue  
Winnipeg MB R3H 0C6

Attention: Martin Egan

Dear Sirs:

Re: Opinion Kapyong Barracks  
Our Matter No. 0120444 ABG

**INTRODUCTION**

Thompson Dorfman Sweatman LLP ("TDS"), through the undersigned (Blair Graham) has been retained for the purposes of providing independent legal advice and an opinion to the Independent Chairperson of the Implementation Monitoring Committee (the "IMC") pursuant to Section 34.08 of *The Treaty Land Entitlement Framework Agreement* (the "Framework Agreement") with respect to the impact and effect of the ongoing Federal Court proceedings on the Brokenhead Ojibway First Nation's ("BON") referral to the IMC of a dispute relating to the position taken by Canada that the provisions of the Framework Agreement do not apply to the lands commonly referred to as the Kapyong Barracks lands located in the City of Winnipeg. Specifically, the IMC Chairperson is seeking an opinion from TDS with respect to whether the IMC has the necessary authority and jurisdiction to proceed with BON's referral, or any aspect thereof, while proceedings in the Federal Court of Canada (which will be more particularly described elsewhere in this opinion) are ongoing.

The factual background of this matter is lengthy and moderately complex. I expect that you and the other members of the IMC are generally familiar with the factual background of this dispute. Accordingly, rather than including a detailed outline of the relevant facts in this opinion, I have attached, as Schedule A, to this opinion, a Timeline of events, which incorporates a point form summary of the material events and the relevant information contained in the voluminous background documentation.



The purpose of the Timeline is twofold:

1. To provide the readers of this opinion with a relatively detailed but accessible summary of the relevant background facts; and
2. To outline the documents which TDS has reviewed in providing this opinion.

I would suggest that the Timeline be reviewed first, before the balance of the opinion is considered.

### Assumption

In preparing this opinion, I have made two important assumptions. Before making those assumptions, I did sufficient research and analysis to satisfy myself that the assumptions are valid. The assumptions are that:

1. The Framework Agreement is constitutionally sound and that the authority and jurisdiction of the various individuals and entities referred to in the Framework Agreement have been validly conferred upon them; and
2. The parties to the Framework Agreement, namely, the Treaty Land Entitlement Committee of Manitoba Inc., Her Majesty the Queen in Right of Canada, and Her Majesty the Queen in Right of Manitoba, had the capacity to enter into the Framework Agreement and to agree to the dispute resolution provisions outlined in Article 35 of the Framework Agreement.

The fulfillment of Canada's Treaty obligations is a constitutional obligation. The British Crown entered into various Treaties with First Nations Peoples in Manitoba between 1871 and 1910. Those Treaties are collectively known as the Numbered Treaties. Treaties 1 to 10 provided that the Crown would set aside a certain amount of land as reserve land, based on the populations of the "Indian bands". Canada has recognized that various First Nations have each not received land of sufficient area to fulfill the requirements of the Numbered Treaties. BON, being a signatory or adherent to, or a successor to a signatory or adherent to Treaty No. 1 has not received land of sufficient area to fulfill the requirements of that Treaty.

When Manitoba entered Confederation in 1870, it did not have control over its natural resources. This was also true of Alberta, British Columbia and Saskatchewan. Those four provinces entered into agreements, whereby the administration of each province's natural resources was transferred to the Provincial Governments. Those agreements were called the *Natural Resources Transfer Agreements*. The British Parliament passed the *Constitution Act 1930* to ratify those agreements, which were thereby entrenched into the Constitution of Canada.



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*The Manitoba Natural Resources Transfer Agreement ("MNRTA")* of 1930, which is part of the *Constitution Act 1930*, transferred control and administration of the natural resources and lands within the boundaries of Manitoba to Manitoba. However, the *MNRTA* required Manitoba to set aside sufficient unoccupied Crown land to enable Canada to satisfy its outstanding Treaty obligations.

Furthermore, subsection 35(1) of the *Constitution Act 1982* states that the "existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed".

To fulfill these constitutional obligations, the Framework Agreement was signed on May 29, 1997 between Canada, Manitoba and the Treaty Land Entitlement Committee of Manitoba Inc. ("TLEC"), (representing various Entitlement First Nations). The purpose of the Framework Agreement was to ensure that Canada fulfills its outstanding debt of lands owed to the various Entitlement First Nations, and to provide mechanisms for doing so.

I am satisfied that the Framework Agreement is constitutionally sound and is a means by which Canada and Manitoba are able to fulfill the Treaty obligations referred to in the *Constitution Act 1930*.

BON became a signatory to the Framework Agreement in 1998.

Pursuant to the Framework Agreement, the parties have agreed to various methods of dispute resolution, none of which (at least at first instance) involved the courts (either the Court of Queen Bench of Manitoba or the Federal Court of Canada). The methods of dispute resolution contemplated by the Framework Agreement are "fact finding", "mediation", "non-binding arbitration" and "binding arbitration" using an Adjudicator. The Framework Agreement does provide for an appeal of "binding arbitration" awards to the Manitoba Court of Queen's Bench within 30 days of the date of the arbitration award. The appeal may be based on:

- a) A failure of the Adjudicator to consider the matter fairly;
- b) The bias of the Adjudicator;
- c) The failure of the Adjudicator to act within the jurisdiction provided to the Adjudicator;
- d) An error of law committed by the Adjudicator, including an error in interpreting the Framework Agreement or a specific Treaty Entitlement Agreement.

There is no doubt that the parties to the Framework Agreement had the capacity to contract with one another. The TLEC is a corporation incorporated under the laws of Manitoba on its own behalf and as a general partner on behalf of TLEC Limited Partnership, a limited



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partnership formed under the laws of Manitoba. It is a legal entity with a capacity to contract. The Crown, in right of Canada, and the Crown, in Right of Manitoba, are legal entities with the capacity to contract, with each other, and with other entities.

In general terms, parties with legal capacity are able to reach agreements and to incorporate into those agreements, dispute resolution processes, which do not involve the Courts. I know of no principle of law which would prevent parties with the capacity to contract with each other from doing so, even in relation to disputes involving constitutionally entrenched obligations or in relation to the manner in which those obligations may be fulfilled.

Furthermore, as noted above, the Framework Agreement provides that if a dispute is to be resolved through a “binding arbitration” process, the parties have a right of appeal to the Manitoba Court of Queen’s Bench on the grounds enumerated above.

In my opinion, the dispute resolution provisions of the Framework Agreement are valid and enforceable as between all of the parties to the Framework Agreement.

## ANALYSIS

### The BON Referral

In order to address the impact and effect of the ongoing Federal Court proceedings on BON’s Referral to the IMC of a matter in dispute for resolution under the Framework Agreement, it is necessary to identify and assess the nature and character of the dispute which has been referred to the IMC by BON.

The Referral was made by letter dated January 22, 2003 from Tina Leveque, Chief of the BON to Ron Maurice, who was then the Independent Chairperson of the IMC. Chief Leveque’s letter was very clear in stating that she was referring a matter in dispute to the IMC for resolution under the dispute resolution provisions of the Framework Agreement. Chief Leveque was equally clear in defining the nature of the dispute. Her letter asserted that:

- i. The Kapyong Barracks had become Federal surplus property;
- ii. As such, Canada was obliged under subsection 3.10 (1) of the Framework Agreement to forward notice to the BON and to the TLEC of the property’s status and an appraisal of its fair market value;
- iii. No such notice had been provided by Canada with respect to the Kapyong Barracks property;
- iv. BON had notified Canada that it was interested in the property;



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- v. In December, 2002, BON had been advised by Canada that the Kapyong Barracks property had been declared “strategic” and therefore the Framework Agreement was not applicable to that property;
- vi. BON was taking “direct issue” with Canada’s position;
- vii. BON was requesting that the Independent Chairperson of the IMC initiate the dispute resolution process under the Framework Agreement;
- viii. BON was reserving its right to proceed under Section 36 of the Framework Agreement regarding Material Failures and Events of Default if Canada proceeded to dispose of the Kapyong Barracks property without resolving the issue of BON’s potential entitlement to the property.

The nature and character of the Referral as described in Chief Leveque’s letter dated January 22, 2003 relates directly to issues which arise under the Framework Agreement.

The Referral directly relates to the interpretation of the definition of “Surplus Federal Land” contained in the definition section of the Framework Agreement, and particularly, whether the Kapyong Property constituted “Surplus Federal Land”, after the Department of Natural Defence announced the closure of the barracks and that all of its former activities and operations would be carried out at other locations. The Framework Agreement defines “Surplus Federal Land” as follows:

“(88) **Surplus Federal Land**” means any “federal real property”, as defined in the *Federal Real Property Act*, excluding any “real property” as defined in the *Federal Real Property Act* to which the title is vested in a “federal crown corporation” as defined in section 83 of the *Financial Administration Act*, that is:

- (a) within the Province of Manitoba;
- (b) determined by a “minister”, as defined in the *Federal Real Property Act*, who has the “administration”, as defined in the *Federal Real Property Act*, of that “federal real property”, to no longer be required for the program purposes of that “minister’s” department;
- (c) determined by that “minister” to be available for sale; and



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- (d) made available by that “minister” to any “other minister” of Canada for a transfer of administration in accordance with any then existing policies or directives of the Treasury Board of Canada.”

The Referral also directly relates to the interpretation and application of subsection 3.10 (1) of the Framework Agreement, which states:

“3.10 (1) Where the Department of Indian Affairs and Northern Development receives notice of Surplus Federal Land which is located in the Treaty Area of an Entitlement First Nation identified in Schedule “B”, the department shall forward to that Entitlement First Nation and to the TLE Committee notice of that Surplus Federal Land and a copy of any appraisal or an estimate of the fair market value of that Surplus Federal Land, provided:

- (a) the period of Acquisition of that Entitlement First Nation has not expired; and
- (b) the Entitlement of First Nation has not Acquired its Other Land Amount as of the date the Department of Indian Affairs and Northern Development receives notice of the Federal Surplus Land.”

There are also several other provisions of the Framework Agreement which may be relevant to the Referral by BON, including the balance of subsection 3.10, and subsections 3.02 (General Principles for Selection and Acquisition of Land), 3.03 (specific principles for Selection of Crown Land), 3.05 (Specific Principles for Selection or Acquisition of Land in an Urban Area).

Subsection 3.11 of the Framework Agreement (Reference of Matters to the Implementation Monitoring Committee) is important. It stipulates that:

“Any issues or matters in dispute relating to the Selection or Acquisition of land by an Entitlement First Nation not resolved by the parties or an Entitlement First Nation may be referred to the Implementation Monitoring Committee.



The dispute as defined in Chief Leveque's letter is a dispute with respect to the selection or acquisition of land (the "Kapyong Barracks Property") by an Entitlement First Nation (the "BON"). Pursuant to subsection 3.11 of the Framework Agreement, BON was entitled to refer the issue in dispute to the IMC and to request the Independent Chairperson of the IMC to initiate the dispute resolution processes contemplated by the Framework Agreement.

In the initial stages of this dispute, namely, prior to the commencement of any proceedings in the Federal Court, Canada's position with respect to BON's interest in acquiring the Kapyong Barracks property, was that pursuant to a Treasury Board Policy with respect to the Disposal of Surplus Real Property formulated in July 2001, the Kapyong Barracks' property had been designated as "strategic", and that the provisions of the Framework Agreement therefore did not apply to the Property.

The Treasury Board Policy was put in place after the Barracks had been closed and after the Department of Natural Defence had indicated that the Barracks property would be declared surplus.

Under the Treasury Board policy, surplus property was divided into two categories, "routine" and "strategic". Routine properties were properties with lesser value that could readily be sold without any substantial investment and would usually be sold on an "as is" basis on the open market. All surplus properties were "routine" unless designated as "strategic". Strategic properties were properties with the potential for a significantly enhanced value or which may be particularly sensitive for other reasons. Lands determined to be "strategic" might require innovative marketing efforts in order for them to realize their full value. Under the Treasury Board policy, lands determined to be strategic were to be transferred to the Canada Lands Corporation (the "CLC") for ultimate disposal, usually through a sophisticated marketing process.

In November, 2001, the Treasury Board declared that the Kapyong Barracks would be designated as strategic and would be disposed of through a strategic process after being transferred to the CLC. As a result of that designation, Canada alleged that the Kapyong Barracks property was no longer available for purchase or other utilization on a priority basis by the BON or any other Entitlement First Nation pursuant to the Framework Agreement.

At the time of the BON Referral, BON was aware of, and disagreed with Canada's position. BON wanted that disagreement resolved through the dispute resolution processes in the Framework Agreement.

Prior to the commencement of the Federal Court proceedings, Canada was asserting that once the Barracks property had been designated as strategic, the BON could not rely on the provisions of the Framework Agreement to argue that it had any entitlement to the property, and that the decision to characterize the property as "strategic" was a policy decision of government, which could not be challenged under the Framework Agreement and was not



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reviewable by the IMC or any other entity deriving its authority from the Framework Agreement. Subsections 35.04 (4) (a) (i) and (ii) of the Framework Agreement are arguably relevant to that issue. Those subsections state:

“35.04 (4) An Adjudicator on an issue or matter in dispute submitted to binding arbitration shall not have jurisdiction to make an Award which:

- (a) requires any of the parties or an Entitlement First Nation to change any of its policies, provided that:
  - (i) the Adjudicator may identify and determine any inconsistencies or deficiencies in the policies of any party or Entitlement First Nation and make recommendations to that party or any Entitlement First Nation concerning its policies affecting the due implementation of this Agreement or any Treaty Entitlement Agreement; and
  - (ii) a party or an Entitlement First Nation which receives a recommendation from the Adjudicator made in accordance with Subparagraph (i) shall have due regard for its obligations under this Agreement or a Treaty Entitlement Agreement in the consideration of any determination or recommendation of the Adjudicator; or”

Notwithstanding Canada’s assertions that the Framework Agreement did not apply to the Kapyong Barracks property after they had been designated as “strategic” and that the policy decision to designate the property as strategic was not reviewable under the Framework Agreement or by anyone deriving their authority and jurisdiction from the Framework Agreement, it is my opinion that the dispute between BON and Canada as defined in BON’s Referral of January 22, 2003 was a dispute that, prior to the initiation of the Federal Court proceedings, could have been resolved or determined pursuant to the dispute resolution provisions of the Framework Agreement.

My opinion is based on the following:

- i. As noted above, subsection 3.11 of the Framework Agreement states that any issues or matters in dispute relating to the selection or acquisition of land by an Entitlement First Nation, not resolved by the parties or an Entitlement First Nation, may be referred to the IMC.



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- ii. The responsibilities of the IMC, under the Framework Agreement, include resolving disputes arising under the Framework Agreement. The responsibilities of the IMC are outlined in subsection 34.07 of the Framework Agreement. They include:

“34.07 Responsibilities of the Implementation Monitoring Committee

- (1) The Implementation Monitoring Committee shall be generally responsible for facilitating the implementation of this Agreement and any Treaty Entitlement Agreements, including ...:
  - (c) making recommendations to the parties for the resolution of any issue or matter in dispute relating to the implementation of this Agreement or any Treaty Entitlement Agreement;
  - (d) resolving any issue or matter in dispute relating to the implementation of this Agreement or any Treaty Entitlement Agreement which is referred to it by a party or an Entitlement First Nation under this Agreement or that Treaty Entitlement Agreement; and ...”
- iii. As noted earlier, BON’s Referral directly related to the interpretation of the definition of “surplus Federal land” in the Framework Agreement and to the interpretation and application of subsection 3.10(1) of the Framework Agreement.
- iv. Canada argues that the Treasury Board’s decisions to designate the Kapyong Barracks property as strategic and that the property would be disposed of pursuant to the strategic disposal process were policy decisions made by the Government of Canada and that such policy decisions are not reviewable under the Framework Agreement. However, the rebuttal to that argument is that Canada has made a contractual commitment to the TLEC and the Entitlement First Nations, including BON to deal with “surplus Federal lands” as defined by the Framework Agreement in a certain fashion and pursuant to a certain process, and that Canada cannot escape its contractual commitments by subsequently enacting a Policy and purporting to act pursuant to that Policy in a way which allows it to avoid its contractual commitments as defined in the Framework Agreement. Central to Canada’s argument and BON’s rebuttal will be an interpretation of subsection 35.04 (4) (a) (i) and (ii) set forth earlier in this opinion.
- v. Furthermore, the definition of Surplus Federal Land under the Framework Agreement, specifically contemplates in subsection (e) of the definition, that Surplus Federal Land will include lands made available “... for a transfer of



administration in accordance with any then existing policies or directives of the Treasury Board of Canada” (*underlining add*). Similarly subsection 3.10 of the Framework Agreement (which outlines specific principles for acquisition of surplus federal land) contains several specific references to policies of the Treasury Board of Canada (see for example, subparagraphs 3.10 (2) (a) and (b) and 3.10 (7). The specific references to Treasury Board policies and directives within the Framework Agreement demonstrate that the parties to the Framework Agreement specifically contemplated that Treasury Board policies would be relevant and important considerations in determining whether or not, and in what manner various parcels of land and property would be made available to the entitlement First Nations. It is therefore my opinion that the parties to the Framework Agreement contemplated and agreed that disputes such as that defined in the BON Referral of January, 2003 would be within the scope and ambit of the Framework Agreement and would be resolved and/or determined through the dispute resolution processes in the Framework Agreement.

It is important to emphasize that this conclusion does not mean that the dispute between Canada and BON will ultimately be determined in favour of BON. Rather, this conclusion simply means that the dispute should be resolved and/or determined utilizing the dispute resolution provisions of the Framework Agreement. Canada will have every opportunity to make whatever arguments it wishes, relying on the 2001 Treasury Board Policy with respect to the disposal of surplus real property in opposition to whatever right of entitlement to the Kapyong Barracks land is advanced by BON.

Based on all of the foregoing, it is my opinion that at the time of the BON Referral in January, 22, 2003, and for an extended period thereafter, the dispute between BON and Canada, as defined in the Referral was a dispute which BON was entitled to refer to the IMC to be resolved pursuant to the dispute resolution provisions of the Framework Agreement, and that the IMC had the authority and jurisdiction to take steps to resolve or determine the dispute utilizing those provisions.

#### The Effect of the Federal Court Proceedings

However, it is also necessary to consider whether subsequent events, and specifically the judicial review proceedings commenced by various Entitlement First Nations, including the BON in January, 2008, and various steps taken in connection with those proceedings, have had the effect of either preventing BON from now being able to access the dispute resolution provisions of the Framework Agreement, or of depriving the IMC or an Adjudicator appointed pursuant to the provisions of the Framework Agreement of jurisdiction over the dispute.



On January 25, 2008, various Entitlement First Nations, including BON, commenced an application for judicial review of the November 2, 2007 Treasury Board decision to transfer the Kapyong Barracks to the CLC and sought a declaration that Canada had a legal duty to consult and accommodate those First Nations before disposing of the Kapyong Barracks.

As a result of BON's participation in those Federal Court proceedings, Canada has asserted a number of further positions with respect to BON's ability to utilize the dispute resolution process in the Framework Agreement to resolve its dispute with Canada. Specifically, Canada has stated that:

- i. BON has abandoned the IMC/Framework Agreement process in favour of pursuing its rights through the Federal Court proceedings;
- ii. Canada has not acknowledged any right on the part of BON to pursue or to continue to pursue the IMC/Framework Agreement process either exclusively or in parallel with the Federal Court proceedings, nor has Canada consented to BON utilizing the IMC/Framework Agreement process to have the dispute resolved or determined pursuant to that process;
- iii. The Federal Court proceedings will likely determine the same issues, or issues which are substantially similar to the issues involved in the BON Referral. Any decision from the Federal Court will either be determinative of the issues in the BON Referral or will have a significant value as a precedent in relation to those issues.

The positions taken by Canada can find expression in a variety of legal principles, including waiver, abandonment, issue estoppel, and abuse of process. Canada's basic argument is that having chosen to initiate proceedings in the Federal Court, dealing with issues that are the same or substantially similar to the issues in its 2003 Referral, BON should not be permitted to simultaneously pursue the IMC/Framework Agreement process.

BON adamantly disagrees. BON submits that:

- i. It never abandoned the IMC/Framework Agreement dispute resolution process;
- ii. Prior to April, 2012, Canada either agreed to or acquiesced in BON's claims being processed through the IMC/Framework Agreement process;
- iii. The issues to be determined in the Federal Court proceedings and the issues to be resolved or determined through the IMC/Framework Agreement process are not the same, nor are they substantially similar. The Federal Court proceedings deal only with the relatively narrow issue of whether or not Canada had a duty to consult the



Entitlement First Nations before disposing of the Kapyong Barracks property. In contrast, in the IMC/Framework Agreement proceedings, the BON is asserting a far broader right than merely to be consulted. BON is asserting a contractual right to acquire an interest in, or ownership of some or all of the Kapyong Barracks property. Inasmuch as the issues in the two proceedings are different, the Federal Court proceedings will neither be determinative of, nor are they likely to be of significant value as a precedent in relation to the issues involved in BON's Referral.

The jurisdictional arguments of both BON and Canada are significant and substantive.

It is beyond the scope of this opinion to comment upon which of their arguments are ultimately likely to prevail. Indeed, on some of those issues, such as abandonment, estoppel and abuse of process, evidence from various sources may be required before a proper determination can be made as to whether or not the BON Referral can be determined on its merits, using the IMC/Framework Agreement process.

However, this opinion will address the critical preliminary issue of whether or not BON can utilize the dispute resolution process under the Framework Agreement to resolve the issue of whether its Referral can be determined on its merits, using the IMC Framework Agreement process.

It is evident that the issues raised by the Referral and the issues in the judicial review proceedings are different. The issues are similar in some respects, and there may be "overlap" between them, but they are not identical. The issues raised by the Referral are much broader than whether or not Canada had a duty to consult with BON, as one of the Entitlement First Nations, before disposing of the Kapyong Barracks property, and if so, the nature and extent of that duty.

In that Referral, BON claims a contractual right to acquire an interest in or ownership of some or all of the Kapyong Barracks property. In the Referral, BON also reserves its right under Section 36 of the Framework Agreement to allege that Canada has materially failed to comply with a fundamental term or condition of the Framework Agreement, or a Treaty Entitlement Agreement, by not making the Kapyong Barracks property available to the BON.

As indicated elsewhere in this opinion, the nature and character of the dispute between BON and Canada, as identified in the Referral, relates to the interpretation of various provisions in the Framework Agreement. The dispute also relates to the nature and extent of Canada's obligations under the Framework Agreement and whether or not it has complied with its contractual obligations under the Framework Agreement in relation to the Kapyong Barracks property.



## CONCLUSION

The jurisdictional issues and preliminary arguments raised by Canada as a result of BON's participation in the judicial review proceedings must be resolved before the issues raised by the Referral can be resolved or determined.

In my opinion, given the nature and character of the dispute between BON and Canada as identified in the Referral, the appropriate process for the resolution of the preliminary arguments and jurisdictional issues, should be one of the dispute resolution methods contemplated by the Framework Agreement. Given the starkly opposed positions of Canada and the BON, and the passage of time which has elapsed since the Referral was made in January, 2003, the most appropriate method of determining the preliminary arguments and jurisdictional issues would be "binding arbitration" before an Adjudicator.

This could be accomplished in one of two ways:

1. By the IMC and/or Independent Chairperson submitting to the Adjudicator, pursuant to either subsection 35.04(1) or 35.04(2) of the Framework Agreement, a reference setting out in writing a question or questions substantially similar to the issues identified in BON's January, 2003 Referral. Canada would then have the opportunity to raise any preliminary or jurisdictional arguments it wishes based on the 2001 Treasury Board policy, or BON's initial participation in the Federal Court proceedings. Any preliminary or jurisdictional arguments raised by Canada would be heard and determined by the Adjudicator, probably by way of separate hearing, at which evidence could be called, if necessary, on any of the preliminary or jurisdictional arguments raised by Canada.
2. By the IMC and/or Independent Chairperson submitting to the Adjudicator, pursuant to subsection 35.04(1) or 35.04(2) of the Framework Agreement, a reference setting out a question or questions identifying the preliminary and jurisdictional issues to be determined, prior to decisions being made by the IMC as to the manner in which the disputes identified in the BON Referral of January, 2003 could be resolved and determined, if at all.

In either of the above-noted scenarios, an Adjudicator, appointed under the Framework Agreement will determine the preliminary or jurisdictional arguments raised by Canada. The Adjudicator's decision on those preliminary or jurisdictional issues would be subject to appeal by either party, to the Court of Queen's Bench of Manitoba, pursuant to subsection 35.05 of the Framework Agreement.



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In my opinion, this is both a fundamentally fair, and a practical way of moving forward and overcoming the current impasse. The process recommended herein also protects the fundamental rights of all of the parties.

**OTHER MATTERS**

There are some other issues related to this opinion which warrant comment. They are:

1. BON is no longer a party to the Federal Court proceedings. However, the conclusion expressed in this letter would be the same regardless of whether or not BON remains a party in the Federal Court proceedings.
2. There is no specific mention in this opinion of the position Manitoba may take in relation to the dispute as set forth in the BON Referral. In my view, it would be open to Manitoba to take any position it deems advisable in the proceedings recommended herein. In other words, Manitoba could participate in the proceedings by supporting or opposing Canada's position or BON's position, in whole or in part. Alternatively, Manitoba could take no position, or it could decide not to participate in the proceedings.
3. There is no specific mention in this opinion as to the potential involvement, if any, in these matters by the Senior Advisory Committee. There are ways in which the Senior Advisory Committee could become involved in considering these matters. I am certainly prepared to discuss that issue with you, as you may require. However, I think it is appropriate for you and the IMC to receive and consider this opinion first, before involving the Senior Advisory Committee.

I would be pleased to discuss any of the foregoing with you and/or the IMC at your convenience.

Yours truly,

THOMPSON DOREMAN SWEATMAN LLP

Per:

A handwritten signature in black ink, appearing to read 'A. Blair Graham'. The signature is written over a horizontal line.

A. Blair Graham

ABG/lh/gd

## SCHEDULE A

### Treaty Land Entitlement Implementation Monitoring Committee Kapyong Barracks

#### Timeline of Events/Correspondence

| <u>Date</u>    | <u>Sender</u> | <u>Recipient</u> | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------|---------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Year 2000      | N/A           | N/A              | <ul style="list-style-type: none"><li>▪ Discussions began about closing Kapyong Barracks (the “Barracks”) and declaring it federal surplus property.</li><li>▪ Brokenhead Ojibway Nation (“BON”) became aware of the availability of the Barracks through the media.</li></ul>                                                                                                                                                                                                          |
| April 12, 2001 | N/A           | N/A              | <ul style="list-style-type: none"><li>▪ A news release from the Department of National Defence (“DND”) announced that the Barracks were being closed.</li><li>▪ At some point following the announcement, the Department of Indian Affairs and Northern Development (“DIAND”) received notice from DND that the Barracks would be declared surplus federal property.</li><li>▪ Shortly after the closure announcement, BON and Long Plain expressed interest in the Barracks.</li></ul> |

| <u>Date</u>    | <u>Sender</u> | <u>Recipient</u> | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------|---------------|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| July 1, 2001   | N/A           | N/A              | <ul style="list-style-type: none"> <li>▪ Treasury Board enacted the <i>Treasury Board Policy on the Disposal of Surplus Real Property</i> (the “Policy”) which governs the disposal of surplus federal real property. This Policy divided surplus property disposal into two categories: routine and strategic.</li> <li>▪ All property is routine unless it has an especially high market value or is “sensitive”, which moves it into the “strategic” category.</li> </ul>                                               |
| November 2001  | N/A           | N/A              | <ul style="list-style-type: none"> <li>▪ Treasury Board decided that the Barracks would be disposed of through the “strategic” process. As such, and pursuant to the Policy, the Barracks were no longer available to be purchased on a priority basis.</li> <li>▪ Designating the lands “strategic” means that the property would be assessed and subsequently transferred to Canada Lands Company Ltd. (“CLC”) (a federal non-agent Crown corporation which disposes of property for the federal government.)</li> </ul> |
| August 2002    | N/A           | N/A              | <ul style="list-style-type: none"> <li>▪ Long Plain informed Canada that it remained interested in the Barracks.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                |
| September 2002 | N/A           | N/A              | <ul style="list-style-type: none"> <li>▪ Canada informed Long Plain that disposal of the Barracks would take place pursuant to the strategic disposal process.</li> </ul>                                                                                                                                                                                                                                                                                                                                                  |

| <u>Date</u>      | <u>Sender</u>                                                            | <u>Recipient</u>                                                                          | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| December 4, 2002 | INAC - Jim Welsh,<br>Director, Corporate<br>Services, Manitoba<br>Region | BON - Chief and Council                                                                   | <ul style="list-style-type: none"> <li>▪ INAC reaffirms in writing BON's interest in the Barracks and explains that the property is classified as "strategic" under the Policy. As such, the property will be transferred to CLC for disposal.</li> <li>▪ INAC stated that the Treaty Land Entitlement Framework Agreement (the "Framework Agreement") does not apply to the strategic disposal process.</li> <li>▪ INAC directed BON to contact DND to reconfirm interest in the property and to request that DND forward BON's expression of interest to CLC upon completion of the property transfer.</li> <li>▪ In response to this letter, BON and Long Plain indicated to Canada that they remained interested in the Barracks.</li> </ul> |
| January 22, 2003 | BON - Chief Tina<br>Leveque                                              | Implementation Monitoring<br>Committee (IMC) - Ron<br>Maurice, Independent<br>Chairperson | <ul style="list-style-type: none"> <li>▪ BON initiated dispute resolution process under section 34 of the Framework Agreement - the Barracks should not have been removed from the scope of its Agreement with Canada</li> <li>▪ S. 310.(1) of the Framework Agreement - Canada is required to forward notice to BON and the TLE Committee of the notice of surplus federal land along with appraisal of estimated fair market value. This was not done.</li> </ul>                                                                                                                                                                                                                                                                              |

| <u>Date</u>      | <u>Sender</u>                                    | <u>Recipient</u>         | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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|                  |                                                  |                          | <ul style="list-style-type: none"> <li>▪ Canada stated that they do not need to comply with the terms of the Framework Agreement. BON disagrees with that interpretation.</li> <li>▪ It has become apparent that the federal government has sought ways to remove the application of the Framework Agreement to the Barracks in order to avoid providing BON with the rights under the Framework Agreement.</li> <li>▪ Ask Independent Chairperson to initiate the dispute resolution process as per Article 34 of the Framework Agreement within specified time frames.</li> <li>▪ Try to resolve matter in dispute by consensus and proposed solutions.</li> <li>▪ Reserve right to proceed under section 36 of Framework Agreement regarding Material Failures and Events of Default should Canada proceed to dispose of the surplus federal property w/o resolving the issue first.</li> </ul> |
| February 5, 2003 | TLEC                                             | BON - Chief Tina Leveque | <ul style="list-style-type: none"> <li>▪ BON must request approval to attend the IMC meetings obo BON concerning the Barracks.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| February 6, 2003 | IMC - Ron Maurice,<br>Independent<br>Chairperson | BON - Chief Tina Leveque | <ul style="list-style-type: none"> <li>▪ Confirmed receipt of Jan. 22, 2003 letter requesting that an issue in dispute regarding the eligibility of the Kapyong Barracks as federal surplus lands be referred to dispute resolution under s. 34 of the Framework Agreement.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

| <u>Date</u>                        | <u>Sender</u>            | <u>Recipient</u>                              | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|                                    |                          |                                               | <ul style="list-style-type: none"> <li>▪ Issue put on the agenda for the next IMC Meeting.</li> <li>▪ Requested a report from the parties regarding this issue along with proposed solutions as to how it may be resolved.</li> <li>▪ Requested report from BON perspective and proposed solutions. Will forward to IMC members for discussion.</li> </ul>                                                                                                                                                                                                                                                                                                                                                               |
| February 14, 2003                  | BON - Chief Tina Leveque | IMC - Ron Maurice,<br>Independent Chairperson | <ul style="list-style-type: none"> <li>▪ Letter requesting that BON, Councillor Bev Smith be allowed to attend and present at the IMC Feb. 17, 2003 meeting regarding concerns pertaining to Barracks.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| February 17, 2003<br>(IMC Meeting) | N/A                      | N/A                                           | <ul style="list-style-type: none"> <li>▪ Gord Kitchen - B/c property designated "strategic" no priority given to EFN's. This particular land selection is not a routine parcel of surplus land, but is a "strategic" disposal that is governed by Treasury Board Policy, and, therefore, falls outside the Framework Agreement.</li> <li>▪ Ron - BON feels that they are entitled to priority which raises questions about the proper interpretation of the Framework Agreement.</li> <li>▪ When an issue is referred to the IMC, standard operating procedure is to request a detailed report from each of the parties. Letter to be sent to the parties requesting a report on the issue by March 15, 2003.</li> </ul> |

| <u>Date</u>    | <u>Sender</u>                                                                                          | <u>Recipient</u>                              | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|                |                                                                                                        |                                               | <ul style="list-style-type: none"> <li>IMC would then set a date for a meeting to try and resolve the matter by consensus. If not, the dispute would have to move through the alternative dispute resolution process contemplated in the Framework Agreement.</li> </ul>                                                                                                                                                                                                                                                                                  |
| March 2003     | N/A                                                                                                    | N/A                                           | <ul style="list-style-type: none"> <li>DIAND asked Long Plain and BON for specific information with regard to the amount of land each was interested in acquiring, the proposed purchase price for that land and the proposed use for any land purchased.</li> <li>BON and Long Plain continued to express interest in the Barracks and held several meetings with DIAND.</li> </ul>                                                                                                                                                                      |
| March 27, 2003 | INAC - Gord Kitchen,<br>Director, Land<br>Entitlement and Claims<br>Implementation,<br>Manitoba Region | IMC - Ron Maurice,<br>Independent Chairperson | <ul style="list-style-type: none"> <li>Letter (follow-up to Feb. 17, 2003 IMC meeting) - Canada's report on the reference by BON dated Jan. 22, 2003.</li> <li>Reiterated position that property is "strategic" as per the Policy and is outside parameters of Framework Agreement as no portion of them are currently being offered on a "priority basis."</li> <li>Interest of BON in the property has been noted and conveyed to DND.</li> <li>Requested more info re: BON interest, if any, in land. Responsibility of BON to provide this</li> </ul> |

| <u>Date</u>                        | <u>Sender</u>                                    | <u>Recipient</u>         | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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|                                    |                                                  |                          | additional information.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| June 18, 2003                      | IMC - Ron Maurice,<br>Independent<br>Chairperson | BON - Chief Tina Leveque | <ul style="list-style-type: none"> <li>▪ Writing further to BON letter of Jan. 22, 2003 setting out Canada's position that the Barracks fall outside the parameters of the Framework Agreement b/c lands deemed "strategic."</li> <li>▪ Please confirm whether the parties are satisfied that this matter has been resolved or whether BON still wishes to refer the matter to dispute resolution under s. 34 of the Framework Agreement.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| June 26, 2003<br><br>(IMC Meeting) | N/A                                              | N/A                      | <ul style="list-style-type: none"> <li>▪ Discussed March 27, 2003 letter from Gord Kitchen to IMC which states that Barracks are "strategic" and not available for selection. The property is classified as federal surplus land and is subject to Treasury Board Policy.</li> <li>▪ Under guidelines of the Framework Agreement, the DND requested that BON provide a detailed business plan that expresses their interest in selecting the Barracks as an addition to reserve within 30 days. Bev Smith - this was impractical under the circumstances.</li> <li>▪ Bev - BON is preparing a report on their position on the Barracks that will be provided to the IMC. Possibly working with Long Plain First Nation, which has also expressed interest in developing the Barracks property. The timeline of 30 days to provide the DND with a business plan is way too</li> </ul> |

| <u>Date</u>                       | <u>Sender</u> | <u>Recipient</u> | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|                                   |               |                  | <p>short under the circumstances. Upon receiving response from DND, the First Nation will decide whether any further action needs to be taken.</p> <ul style="list-style-type: none"> <li>▪ Ken - would like more information on what constitutes “federal surplus lands” b/c Manitoba applies a single policy to provincial surplus lands.</li> <li>▪ Gord Kitchen - Canada simply followed the policy in place governing surplus federal real property.</li> <li>▪ Hope is that parties can find agreement on the issue by Fall 2003. If matter remains unresolved, BON may request that the IMC offer assistance to resolve the matter.</li> </ul>                                                                                                    |
| January 19, 2004<br>(IMC Meeting) | N/A           | N/A              | <ul style="list-style-type: none"> <li>▪ Bev - BON has been working with their lawyer and the DND and correspondence was sent regarding the 30 day deadline to provide the business plan. BON also looked into why they were not informed that the lands were declared surplus but that it was considered a “strategic” disposition. BON looking at some, but not all of the lands. BON met with Long Plain FN and their legal counsel b/c Long Plain also interested in the lands. Plans to do a site tour of the Barracks.</li> <li>▪ Edgar Rasmussen stated that the central issue is whether this is a “strategic” disposal that is outside the scope of land selection principles in the Framework Agreement. This is a policy issue and</li> </ul> |

| <u>Date</u>                                                                      | <u>Sender</u> | <u>Recipient</u> | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------|---------------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                  |               |                  | <p>the IMC does not have any mandate to comment on that policy.</p> <ul style="list-style-type: none"> <li>▪ Ron - question of whether the Barracks are “surplus lands” within the meaning of the Framework Agreement is a question of interpretation. Parties have different views on whether this is within or outside the scope of the Framework Agreement.</li> <li>▪ If parties can reach agreement on how to deal with this issue the IMC may not need to deal with it as an issue in dispute.</li> </ul>                                                                                                                                                                                                                                                                    |
| IMC Annual Report<br>(for years ending March 31, March 31/2002 & March 31, 2004) | N/A           | N/A              | <ul style="list-style-type: none"> <li>▪ Eligibility of the Barracks as federal surplus lands has been referred to the IMC for dispute resolution under s. 34 of the Framework Agreement.</li> <li>▪ At issue: federal policy which states there is no priority for a request akin to the one from the BON.</li> <li>▪ BON claims it should have been given priority to acquire these surplus Crown lands.</li> <li>▪ DND - requested that the BON provide a detailed business plan that expresses their interests in selecting the Barracks as an addition to their reserve.</li> <li>▪ Letter dated Jan. 22, 2003 from BON notified Canada of their position and reiterated that Canada must look beyond policy and comply with the terms of the Framework Agreement.</li> </ul> |

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|                               |                                                   |                          | <ul style="list-style-type: none"> <li>IMC was requested to resolve this issue in dispute. IMC will refer the matter to the Senior Advisory Committee with a recommendation on an appropriate Alternative Dispute Resolution process if parties are unable to resolve the matter through further discussions on their own.</li> </ul>                                                                                                                                                                                                                                                                                                                      |
| May 20, 2004<br>(IMC Meeting) | N/A                                               | N/A                      | <ul style="list-style-type: none"> <li>Status of the Barracks (Bev Smith) - DND agreed to give BON a tour of the Barracks. Also met with Long Plain Trust to explore possibility of jointly acquiring portions of the Barracks but have since been informed that they will not be pursuing the Barracks lands.</li> <li>BON still interested in acquiring some of the property but Bev advised no steps need to be taken by the IMC on this matter at this time.</li> <li><u>Action:</u> Councillor Bev Smith indicated that she will inform the IMC of the progress of acquiring the Barracks and if IMC assistance is required in the future.</li> </ul> |
| December 1, 2004              | TLEC - Ed Vystreil,<br>TLEC Executive<br>Director | BON - Chief Tina Leveque | <ul style="list-style-type: none"> <li>Understand that federal government did not provide notice to EFN regarding the Barracks as required by s. 3.10 of the Framework Agreement.</li> <li>Assuming that the Barracks is the same "surplus federal lands" that are identified in s. 3.10 of the</li> </ul>                                                                                                                                                                                                                                                                                                                                                 |

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|             |               |                  | <p>Framework Agreement. Classification of these lands may be debatable and may need to be referred to the IMC for clarification provided BON is still interested in acquiring a portion or all of the lands.</p> <ul style="list-style-type: none"> <li>▪ DND has prepared a submission <i>The Treasury Board of Canada</i>, which is to be reviewed in early January 2005. Upon acceptance of the submission, the Treasury Board would then formally transfer the land and buildings to the CLC.</li> <li>▪ Understand that BON visited these particular surplus federal lands and at the time expressed a definite interest in purchasing and developing the lands as there is significant economic opportunity involved.</li> <li>▪ Have now learned that the Barracks have become a “strategic disposal” in accordance with the Policy.</li> <li>▪ Recommending that BON refer this matter to the IMC as matter in dispute as INAC representative Edgar Rasmussen has clearly indicated to Councillor Bev Smith that these lands are not available to BON b/c they are “strategic” disposal as per the Policy.</li> <li>▪ Further recommend that BON should get Canada’s position in writing asap or before DND’s submission is accepted by the Treasury Board.</li> <li>▪ “ We believe that these lands have enormous economic potential and should have been lands</li> </ul> |

| <u>Date</u>       | <u>Sender</u>                                        | <u>Recipient</u>                                                                                    | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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|                   |                                                      |                                                                                                     | available under section 3.10 of the May 29, 1997 Framework Agreement. We are in full support of your pursuit of these lands.”                                                                                                                                                                                                                                                                                                                                                                                    |
| November 1, 2006  | N/A                                                  | N/A                                                                                                 | <ul style="list-style-type: none"> <li>▪ Treasury Board issued the <i>Directive on the Sale or Transfer of Surplus Real Property</i> (the “Directive”) amending the Policy of July, 2001, which provided that Canada should consider the possible effects of declaring a property “strategic” on any relevant aboriginal rights or claims.</li> </ul>                                                                                                                                                            |
| November 1, 2006  | Duboff Edwards Haight & Schachter - Harley Schachter | Treasury Board of Canada Secretariat - Executive Director, Assets and Acquired Services Directorate | <ul style="list-style-type: none"> <li>▪ Acts for TLEC</li> <li>▪ Neither TLEC nor the EFN’s were consulted re: changes to Treasury Board policies scheduled to take effect on Nov. 1, 2006.</li> <li>▪ Requests a meeting with proper government officials to discuss interpretation and implementation issues surrounding the amended Treasury Board policies to ensure they will be consistent with the Honour of the Crown and the Federal Crown obligations owing under the Framework Agreement.</li> </ul> |
| January 25, 2007  | Treasury Board of Canada Secretariat                 | Duboff Edwards Haight & Schachter - Harley Schachter                                                | <ul style="list-style-type: none"> <li>▪ No fundamental changes occurred re: requirements for real property management, including disposal of surplus federal lands.</li> </ul>                                                                                                                                                                                                                                                                                                                                  |
| September 5, 2007 | N/A                                                  | N/A                                                                                                 | <ul style="list-style-type: none"> <li>▪ Respondents to Federal Court proceedings wrote to DIAND stating that they were laying claim to the</li> </ul>                                                                                                                                                                                                                                                                                                                                                           |

| <u>Date</u>        | <u>Sender</u> | <u>Recipient</u>              | <u>Content</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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|                    |               |                               | <p>Barracks as part of their unfulfilled treaty land entitlements. Specifically, the claim was premised upon a claim of aboriginal title, not restricted to only the Barracks, but to the City of Winnipeg.</p> <ul style="list-style-type: none"> <li>▪ However, at a hearing before the Judge, the respondents' claim was narrowed and they asserted only a right to be consulted by Canada regarding land promises made to them pursuant to the per capita provision in <i>Treaty No. 1</i>.</li> </ul> |
| November 2007      | N/A           | N/A                           | <ul style="list-style-type: none"> <li>▪ Treasury Board approved the transfer of the Barracks to CLC for development and disposal outside the scope of the agreements.</li> </ul>                                                                                                                                                                                                                                                                                                                          |
| January 25, 2008   | N/A           | N/A                           | <ul style="list-style-type: none"> <li>▪ BON commenced an application for judicial review of the November 2007 Treasury Board decision to transfer the Barracks to CLC, seeking a declaration that Canada had a legal duty to consult and accommodate them before disposing of the Barracks.</li> </ul>                                                                                                                                                                                                    |
| September 10, 2009 | N/A           | N/A                           | <ul style="list-style-type: none"> <li>▪ Judicial review heard.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| September 30, 2009 | N/A           | N/A                           | <ul style="list-style-type: none"> <li>▪ Federal Court decision - Canada has "a legal duty to consult" and "acted contrary to law by failing to meet the mandatory requirement of consultation with BON and Peguis First Nations."</li> </ul>                                                                                                                                                                                                                                                              |
| January 13, 2011   | IMC           | BON - Chief Deborah & Council | <ul style="list-style-type: none"> <li>▪ Given ongoing litigation in this matter, formally placing referral file in abeyance.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                   |

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|                   |                                                                                                                                    |                                  | <ul style="list-style-type: none"> <li>▪ Upon the conclusion of the court action, and dependent upon any ongoing requirement, the IMC is prepared to reactivate BON referral file.</li> </ul>                                                                                                                                                                                                                                         |
| February 22, 2011 | N/A                                                                                                                                | N/A                              | <ul style="list-style-type: none"> <li>▪ Appeal of Federal Court decision was heard.</li> </ul>                                                                                                                                                                                                                                                                                                                                       |
| May 13, 2011      | N/A                                                                                                                                | N/A                              | <ul style="list-style-type: none"> <li>▪ Court of Appeal judgment - judicial review re-hearing to take place before a different Federal Court judge.</li> </ul>                                                                                                                                                                                                                                                                       |
| September 2011    | N/A                                                                                                                                | N/A                              | <ul style="list-style-type: none"> <li>▪ BON obtained independent legal counsel</li> <li>▪ Formally removed itself as an applicant at the judicial review re-hearing</li> <li>▪ Provided formal notice to resume the Framework Agreement's dispute resolution process.</li> <li>▪ Confidential settlement discussions began between BON, Canada, CLC, and other FN parties.</li> </ul>                                                |
| April 5, 2012     | Aboriginal Affairs and Northern Development Canada - Winona Embuldeniya, Director, Lands and Economic Development, Manitoba Region | IMC - Lloyd Grahame, Chairperson | <ul style="list-style-type: none"> <li>▪ BON is not entitled to and is estopped from re-initiating its IMC complaint.</li> <li>▪ Canada has neither consented to nor acknowledged any right on the part of BON to pursue the IMC process it initially commenced in 2003.</li> <li>▪ BON abandoned the IMC process in favour of the jurisdiction of the Federal Court of Canada as an originating party to the proceedings.</li> </ul> |

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|                |                                                      |                                  | <ul style="list-style-type: none"> <li>▪ BON is now attempting to bring before the IMC the same issues and arguments that it placed before the Federal Court, which proceedings it consciously chose to discontinue.</li> <li>▪ Any decision of the Federal Court in the ongoing judicial review application will be of precedential value, if not binding authority as its determination will be based on the same substantive material and arguments, and address the same issues as raised in BON's 2003 referral.</li> <li>▪ Should the IMC find or believe that BON is not estopped from reactivating its 2003 complaint, at the very least, BON's ability to do so should be dealt with as a necessarily preliminary and independent matter in dispute. No IMC process of any kind can occur re: the Barracks until such time as the Federal Court process and all appeals related to it have been exhausted.</li> </ul> |
| April 23, 2012 | Maurice Law (Counsel for BON) - Michael Bailey, Q.C. | IMC - Lloyd Grahame, Chairperson | <ul style="list-style-type: none"> <li>▪ Response to Ms. Embuldeniya's undated letter to IMC date-stamped April 5, 2012.</li> <li>▪ BON never abandoned the IMC dispute resolution process.</li> <li>▪ IMC has always maintained BON's dispute claim w/o any objection from Canada at any material time. Available evidence shows that BON's dispute claim was preserved in abeyance, and shows Canada's</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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|                                          |               |                  | <p>agreement (by acquiescence at the very least) with that status.</p> <ul style="list-style-type: none"> <li>▪ Federal Court action seeks a declaration of Canada's duty to consult and accommodate the Treaty One FN.</li> <li>▪ Relief sought in those proceedings falls short, and is distinct from the relief sought by BON in the IMC proceedings. BON under the IMC process claims far more than the right to be consulted. It claims a contractual right to acquire an interest in land.</li> <li>▪ Any decision of the Federal Court on the duty to consult will NOT determine BON's contractual right to acquire an interest in land. Any decision by the Federal Court will not have any binding or even precedential impact on BON's contractual dispute claim which is before the IMC.</li> </ul> |
| May 3, 2012                              | N/A           | N/A              | <ul style="list-style-type: none"> <li>▪ Chief and Council of BON passed a motion by consensus to place both the Framework Agreement Dispute Resolution Process and Notice of Application in abeyance and return to the negotiation discussion meetings.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| May 10, 2013<br>(BON Council Resolution) | N/A           | N/A              | <ul style="list-style-type: none"> <li>▪ BON Chief and Council directs that Maurice Law be provided instructions to place both the Framework Agreement Dispute Resolution Process and the Notice of Application in abeyance.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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| June 14, 2012                | Thompson Law Office<br>(General Council to<br>BON) - Lorie<br>Thompson | IMC - Lloyd Grahame,<br>Chairperson | <ul style="list-style-type: none"> <li>▪ As per May 10, 2012 resolution - referral placed in abeyance until further notice.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| December, 2012 to<br>present |                                                                        |                                     | <ul style="list-style-type: none"> <li>▪ The Federal Court proceedings have been protracted and have involved decisions at both the trial and appeal levels. The most recent decision is that of Mr. Justice Hughes of the Trial Division. Mr. Justice Hughes determined, and Canada conceded, that Canada had a duty to consult with the Long Plain, Peguis, Roseau River and Swan Lake First Nations. Mr. Justice Hughes also found that the scope of that duty included the giving of notice, the disclosure of information, responding to concerns raised, meeting and discussing those concerns with the First Nations, taking those concerns into meaningful consideration and advising as to the course of action taken and the reasons for the course of action taken.</li> <li>▪ Mr. Justice Hughes also enjoined the sale of a significant portion of the Kapyong Barracks property to CLC until Canada can demonstrate that it has fulfilled its duty to consult in a meaningful way.</li> <li>▪ Mr. Justice Hughes' decision has been appealed to the Federal Court of Appeal. The Appeal hearing has been held and the Court of Appeal decision is pending.</li> </ul> |
|                              |                                                                        |                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

# Manitoba Acquisition of Crown Land for TLE Discussion Paper February 27, 2015

## Acquisition of Crown Land for TLE as presented on February 27, 2015

Conservation and Water Stewardship and Aboriginal and Northern Affairs sought direction on the ability for certain First Nations to purchase Crown land to fulfill their Treaty Land Entitlements.

- Manitoba has implemented the 1997 Treaty Land Entitlement Framework Agreement (FA) and the 2008 Peguis Treaty Entitlement Agreement on the basis that Manitoba contributed a set amount of Crown land for Selection in accordance with the Principles set out in the agreements.
- Manitoba has considered that “Other Land” to be acquired will generally be private land owned by a third party acquired on a “willing buyer-and willing seller” basis.
- During the TLE agreements negotiation it was known that land had already been disposed of by Canada prior to 1930 and by Manitoba after 1930 and was no longer Crown land. Generally, in southern Manitoba there are significant areas of private land and fewer areas of Crown land remaining.
- The determination of the Crown Land Amount and “Other Land” Amount for each Entitlement First Nation (EFN) in part considered there would be a reduced amount of suitable unoccupied Crown land available for Selection by Brokenhead, Buffalo Point, Opaskwayak, Rolling River, Sapotaweyak, Wuskwi Sipiik (also known as Schedule “B” EFNs) and Peguis First Nation.
- The six Schedule “B” EFNs and Peguis First Nation are entitled to received a Land Acquisition Payment from Canada under their agreements as well a defined a Minimum Entitlement Acres and an Other Land Amount.
- Manitoba recognizes that under clause 1.01 (66) (d) of the FA and 1.01 (59) (d) of the Peguis agreement *“Other Land” means Crown Land that Manitoba agrees to sell on a “willing buyer and willing seller” basis...* Based on this definition, it is noted that Manitoba is not required to sell Crown land unless it is willing to do so.
- Although we had heard that some EFN’s were having difficulty finding suitable private land to acquire, the matter was raised through correspondence and meetings by Chief Nelson Genaille and later by Wuskwi Sipiik Cree Nation. Chief Genaille’s request was that the province should consider the transfer of Crown land as “Other Land” for no fee to First Nations to fulfill outstanding TLE (including their Other Land amount).
- Although the current provincial policy to sell Crown land at market value plus forestry values, and other related costs, subject to agreement by the province to sell, was an option currently available to these First Nations, we understood that both the cost and the process are considered prohibitive. As a result, no applications were received.
- Following a detailed review of the request the province decided to change its sale policy, but only for the purpose of supporting the fulfillment of treaty land entitlement, and more specifically to these First Nations that have both a Crown land amount and an “Other Land” amount.

Crown land that Manitoba agrees to sell will be made available for acquisition by six Schedule “B” EFNs and Peguis First Nation as “Other Land” for a fixed cost per acre (range between \$197-\$446/acre), based on the individual First Nation’s land acquisition payment as a representation of the value of “Other Land” at time of agreement, subject to;

- a request being received within three years of approval by Manitoba,
- made available only to EFNs that have fulfilled their Crown land amount, and
- limited to an amount not to exceed the minimum entitlement amount;

Note: If the estimated market value plus forestry costs would be less than the fixed costs per acre the lesser would be used.

- It is known that there is not an abundance of unencumbered Crown land in southern Manitoba and the amount of Crown land that may be made available to acquire is likely to be limited, however this policy change may allow for flexibility when a First Nation is near fulfillment of their Crown Land Amount and possibly other opportunities under TLE.

Requests to purchase Crown land for the purpose of becoming "Other Land" for TLE:  
General parameters and considerations (defined by Manitoba):

- Once an Entitlement First Nation's has had their total Crown land amount Selected and those Selections have progressed to at least the stage of issuance of an Exclusive Use Permit, the province is prepared to consider requests to purchase Crown land for TLE up to an EFN's minimum entitlement amount.
- First Nations will provide a Band Council Resolution and map to the Conservation and Water Stewardship office in Neepawa setting out the Crown land to be considered for purchase. The land will be circulated provincially utilizing generally the same administrative methods carried out by the unit to review Crown land TLE Selection requests. This will ensure that a timely review of requests occurs and that the requests are tracked in a way familiar to EFNs.
- Crown land involved in a request to purchase would not become "Other Land" until Manitoba has determined whether the land can be sold, therefore the principles guiding the determination of eligibility or time restrictions set out in the TLE Framework Agreement would not apply during the request and review stage. However, Manitoba would still expedite and be reasonable in its review of lands requested.
- One significant change from the "Selection" of Crown land for TLE is that requests to acquire lands will not be accepted for consideration and review where existing third party interests exist, there are defined public purpose requirements, designations exist such as Wildlife Management Areas, Community Pastures or where the lands are known to contain matters that have not yet been resolved through the TLE process.
- The requested Crown lands will be reviewed by the Neepawa office before the provincial circulation occurs and any Crown land with existing encumbrances or designations would not be processed further and the EFN would be advised.
- Following the provincial review of the request other reasonable exclusions may be required by Manitoba.
- The EFN would be advised of the results of the provincial review. Should the EFN wish to proceed with the purchase of Crown land as "Other Land" a Sale agreement would be entered into. (Note: Consultation requirements to be determined.) The Crown lands could then be considered as "Other Land" and the EFN would provide appropriate notice to Canada (no further provincial circulation would be required.)

Note: Requires fulfillment of an EFN's Crown land amount prior to the transfer of Crown land as "Other Land". Crown lands to be acquired as "Other Land" will be transferred by Order in Council from Manitoba to Canada including mines and minerals and residual interests, upon completion of surveys by Canada and acknowledgement of AIP of ATR.

Presented by Lori Stevenson, Director of Lands, Conservation and Water Stewardship  
February 27, 2015