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Report of the
**Auditor General
of Canada**
to the House of Commons

NOVEMBER

Chapter 7
Indian and Northern Affairs Canada—
Meeting Treaty Land Entitlement Obligations



Office of the Auditor General of Canada

The November 2005 Report of the Auditor General of Canada comprises Matters of Special Importance—2005, Main Points—Chapters 1 to 8, eight chapters, and appendices. The main table of contents is found at the end of this publication.

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Chapter

7

Indian and Northern Affairs Canada

Meeting Treaty Land Entitlement
Obligations

All of the audit work in this chapter was conducted in accordance with the standards for assurance engagements set by the Canadian Institute of Chartered Accountants. While the Office adopts these standards as the minimum requirement for our audits, we also draw upon the standards and practices of other disciplines.

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Indian and Northern Affairs Canada

Meeting Treaty Land Entitlement Obligations

Main Points

What we examined

Indian and Northern Affairs Canada is responsible for managing the implementation of treaty land entitlement agreements on behalf of the federal government. These agreements set out how the government will provide land to First Nations that it failed to provide in accordance with treaties. We examined the Department's progress in converting land selected under the agreements to reserve status in Saskatchewan and Manitoba—the two regions with the majority of agreements—and whether the Department is managing the conversion process in a way that is consistent with its legal obligations to First Nations.

Why it's important

Treaties between the Crown and First Nations are solemn agreements that set out promises, obligations, and benefits for both parties. However, not all First Nations received the full amount of land to which historic treaties entitled them. Treaty land entitlement agreements provide those First Nations with funds to buy land or give them the right to select Crown land, or both. These agreements are modern legal commitments that recognize the government's failure to comply with its treaty obligations. Recognizing that it was taking too long—from five to seven years—to convert land to reserve status, the Minister of Indian and Northern Affairs committed in 2001 to reducing the length of time to two years.

Meeting the obligations set out in treaty land entitlement agreements within a reasonable time is important to both Canada and First Nations. By doing so, Canada honours its long-standing commitments to treaty land for First Nations, who have a strong traditional attachment to land and view it as vital to their cultural preservation and economic development. The federal government has committed over \$500 million since 1992 to meet these obligations in Saskatchewan and Manitoba.

What we found

- Deficiencies in the Department's management practices—inadequate planning and an absence of targets for land conversion, for example—have limited its progress in converting to reserve status the large number of acres that First Nations have selected in both Saskatchewan and Manitoba.
- Since 1992, 58 percent of acres selected by First Nations in Saskatchewan have been converted to reserve status; only 12 percent of acres selected by First Nations in Manitoba have been converted since 1994. Furthermore, the Department has been unable to demonstrate that it has any plan in place to process remaining selections and to fulfil commitments under these agreements.
- While the terms of the agreements differ and may explain in part the different rates of progress in the two regions, in general the slow progress is due to deficiencies in the way the Department manages certain requirements in the process. Fixing some of these deficiencies is directly within the Department's control—for example, issues related to environmental reviews and land surveys, two of the processes that must take place before land can be converted. The Department has less control over other steps, such as the requirement for First Nations to resolve third-party interests, including reaching agreement with municipalities on the provision of municipal services.
- Inconsistencies in the Department's communications about what is required of First Nations to move the conversion process forward have caused frustration among First Nations. We found that, overall, the Department's communication with First Nations is limited, seldom providing information on what stage in the process a selection has reached and what steps are next. The Department does little work to fulfill its responsibility to identify First Nations that may need more assistance to meet requirements.

The Department has responded. Indian and Northern Affairs Canada agrees with the recommendations. Its detailed response follows each recommendation throughout the chapter.

Introduction

Canada's obligations to First Nations

7.1 In the 1760s, First Nations throughout southern Ontario began to exchange land ownership for money in early treaties. After Confederation, Canada and First Nations across the Prairies, parts of Ontario, the Northwest Territories, and northeast British Columbia signed 11 treaties referred to as the numbered treaties. They were intended, in part, to deal with the waves of settlers moving onto the Prairies. Treaty First Nations surrendered land to Canada and in return, Canada promised that it would reserve land for them. For First Nations, the promise of reserved land was crucial to protecting their way of life. For Canada, these treaties were important to making development possible.

7.2 Treaties are solemn agreements between the Crown and First Nations. The numbered treaties set out how much land per family was to be set aside for reserves; however, they did not specify exactly when it was to be set aside. When the treaties were signed, it was understood that First Nations and Canada were to agree on what land to set aside, and government agents were to return within a year or two to count the band population and survey the land for reserves. However, band populations were in flux in the late 1800s. Disease and the collapse of traditional food sources meant more people were on the move as they sought food. Consequently, surveyors sometimes did not include all band members in initial calculations or missed entire bands. As a result, certain First Nations did not receive land promised under treaties.

7.3 Treaties are constitutionally protected. The *Constitution Act* recognizes and affirms treaty rights. Canada has acknowledged its failure to meet treaty obligations for land, and its desire to fulfil these obligations, by signing treaty land entitlement agreements with First Nations. Although these agreements have been signed with First Nations in several regions, the majority are in Saskatchewan and Manitoba. The governments of Manitoba and Saskatchewan are also signatories to the agreements, as they are required under the 1929–30 Natural Resources Transfer Agreements to make land available to satisfy outstanding treaty obligations.

Canada's commitments to fulfill its treaty obligations

7.4 In 1992, the Saskatchewan Treaty Land Entitlement Framework Agreement was signed by 25 First Nations, Canada, and Saskatchewan to fulfil commitments made by Canada in treaties entered into between 1871 and 1906 (Exhibit 7.1). The Agreement states that “Canada recognizes that it has unfulfilled obligations in respect of treaty land entitlement in respect of the entitlement bands and is desirous of ensuring that such obligations are fulfilled.” The Framework Agreement, along with four separate but similar treaty land entitlement agreements (signed between 1992 and 2000), provided about \$380 million in federal compensation to 29 First Nations.

7.5 In 1997, the Manitoba Treaty Land Entitlement Framework Agreement was signed by the Treaty Land Entitlement Committee of Manitoba (representing 19 First Nations), Canada, and Manitoba. The Agreement provides **Crown land** and funds to the 19 First Nations, fulfilling a long-standing commitment arising from treaties signed by Canada and the First Nations between 1871 and 1910 (Exhibit 7.1). The Agreement states that “Canada has recognized that the entitlement First Nations have each not received land of sufficient area to fulfil the requirements of the treaties” and that “the Treaty Land Entitlement Committee and Canada have agreed that the obligation of Canada [is] to provide land of sufficient area to each entitlement First Nation.” In addition, seven other Manitoba First Nations signed separate agreements between 1994 and 1996. Total federal funding for all agreements in Manitoba was set at \$126 million.

Crown land—Land transferred by Canada to the province under the 1929–30 Natural Resources Transfer Agreement.

Respective responsibilities under treaty land entitlement agreements

7.6 In Saskatchewan and Manitoba, treaty land entitlement agreements set out specific responsibilities of the Department, the provinces, and First Nations. Key responsibilities of the Department include committing sufficient staff to facilitate compliance with its obligations, and undertaking environmental reviews and land survey work. First Nations are responsible for, among other things, making land selections and resolving third-party interests. The provinces' responsibilities include making Crown land available once it has been selected (Exhibit 7.2).

Exhibit 7.1 Treaty land entitlement agreements in Saskatchewan and Manitoba

	Saskatchewan		Manitoba	
Framework agreements				
Date signed	22 September 1992		29 May 1997	
Number of First Nations included	25		19	
Duration	First Nations agree to use all reasonable efforts to reach shortfall acres before the 12th anniversary of the agreement date.		No deadline is specified.	
Eligible and entitlement acres	Shortfall acres:	420,792	Crown land:	985,949
	Equity acres:¹	1,560,417	Other land:	114,677
	Honour acres:	85,546	Total acres:	1,100,626
	Total acres:	1,645,963		
Entitlement monies (\$ millions)	Settlement:	421.3	Payment:	26.8
	Mineral:	18.9	Land acquisition payment:	24.5
	Total:	440.2	Other:	24.7
	Provincial share (30%):	132.1	Federal total:	76.0
	Federal share (70%):	308.1		
Land acquisition costs	First Nations must pay the cost of land from settlement money transferred to them.		First Nations do not pay for Crown land they select, but must pay for other land using land acquisition money provided by the federal government.	
Individual agreements				
Provisions	Four First Nations have individual agreements.		Seven First Nations have individual agreements.	
	406,161 acres		187,613 acres	
	\$69.4 million		\$49.9 million	
Total costs for Canada for all individual agreements (\$ millions)	377.5		125.9	

¹The equity acres total includes shortfall acres.

Shortfall acres—The amount of land that a First Nation should have received when its reserve was first surveyed, but did not. Under treaty land entitlement agreements, it is the minimal acreage that must be purchased and/or selected and set apart as reserve land.

Equity acres—Acres allocated under the Saskatchewan Treaty Land Entitlement Framework Agreement that are determined by an equity formula. This formula takes into account both the entitlement band's current population and its population when the band's land was first surveyed.

Honour acres—The amount of acres that a First Nation was entitled to in previous agreements (such as the 1976 Treaty Land Entitlement Agreement) that were honoured in the subsequent Treaty Land Entitlement Agreement if the 1992 formula provided acreage of a lesser amount.

Crown land—Land transferred by Canada to the province under the 1929–30 Natural Resources Transfer Agreement.

Other land—Private land that may be purchased by certain entitlement First Nations where insufficient Crown land is available for selection.

Source: Treaty land entitlement agreements and Indian and Northern Affairs Canada

Exhibit 7.2 Summary of roles and responsibilities for treaty land entitlement in Saskatchewan and Manitoba

Saskatchewan (1992)	Indian and Northern Affairs Canada	Province of Saskatchewan	Individual First Nations
General Responsibility			
Commit sufficient personnel to promptly and efficiently co-ordinate and facilitate compliance with obligations	●	●	
Use all reasonable efforts to reach shortfall acres acquisition date within 12 years			●
Process Responsibility			
Complete title search and initial Band Council Resolution on land selection			●
Act as the liaison between the First Nation and the Province	●		
Negotiate promptly to not unreasonably withhold the sale of provincial Crown land; expedite any release documentation required from any third-party interest holder that has an interest in Crown land; expedite the preparation and passage of provincial order-in-council		●	
Prepare and finalize formal submission to Additions to Reserve Committee	◐		●
Complete environmental screening and, if necessary, environmental review and cleanup	●		●
Determine survey requirements	●		●
Satisfy third-party interests			●
Obtain legal description of the land			●
Ensure written records of consultation with the province and rural municipality	◐		●
Obtain Additions to Reserve Committee recommendation and Regional Director General approval in principle of submission	●		
Complete purchase of land if have not already done so			●
Complete transfer of title to Canada			●
Carry out required boundaries survey	●		
Expedite the preparation and passage of federal order-in-council and ministerial approval	●		

● Responsible party ◐ Assists responsible party

Exhibit 7.2 Summary of roles and responsibilities for treaty land entitlement in Saskatchewan and Manitoba (continued)

Manitoba (1997)	Indian and Northern Affairs Canada	Province of Manitoba	Individual First Nations	Treaty Land Entitlement Committee ¹
General Responsibility				
Ensure appropriate personnel are assigned to fully and effectively discharge Canada's obligation	●	●		●
Provide ongoing orientation of departmental personnel to Agreement requirements to encourage and foster a positive and productive working relationship between its personnel, the Treaty Land Entitlement Committee, Manitoba, and First Nations	●	●		●
Assist the First Nations and municipalities in negotiation of issues relating to municipal development and services agreements		●		
Provide technical and professional support and assistance on a timely basis to any First Nation				●
Negotiate municipal development and services agreement as required; and remove, discharge, or accommodate third-party interests			●	●
Process Responsibility				
Conduct land selection study			●	
Conduct environmental audit	●			
Complete initial Band Council Resolution on land selection and associated documents			●	
Act as the liaison between the First Nation and the Province	●			
Canvass provincial departments and agencies and obtain response		●		
Examine land use history and conduct legal title search	●			
Prepare submission to Additions to Reserve Committee	●			
Address provincial/third-party interests and encumbrances	●		●	
Conclude services agreement with local councils		◐	●	
Estimate survey cost	●			
Complete environmental screening	●			
Complete Additions to Reserve submission	●			
Obtain Additions to Reserve Committee recommendations and Regional Director General approval in principle	●			
Settle provincial/third-party interests and encumbrances (with Band Council Resolution to Indian and Northern Affairs Canada)			●	
Finalize provincial approval in principle		●		
Conduct survey and line cutting	●			
Approve survey	●	●	●	
Obtain provincial order-in-council for transfers of land to Canada		●		
Obtain federal order-in-council	●			

¹The Treaty Land Entitlement Committee is composed of representatives from the First Nations who signed the Framework Agreement.
Source: Manitoba Treaty Land Entitlement Framework Agreement and Saskatchewan Treaty Land Entitlement Framework Agreement

● Responsible party ◐ Assists responsible party

Treaty land entitlement agreements set out the process for converting selected land to reserve status

Reserve—A tract of land that is vested in Her Majesty and has been set apart for the use and benefit of a First Nation.

7.7 To convert a tract of land to **reserve** status under an agreement, the First Nation must first select Crown land or purchase private land. The Chief and Council notifies the Department, via a Band Council Resolution, of its decision to have the land converted to reserve status. The First Nation, the Department, and for Crown land the Province then must satisfy the conditions and requirements specified in the agreement. When all requirements are satisfied, the title of the land is transferred to Canada and an order-in-council is issued converting that land to a reserve (Exhibit 7.3).

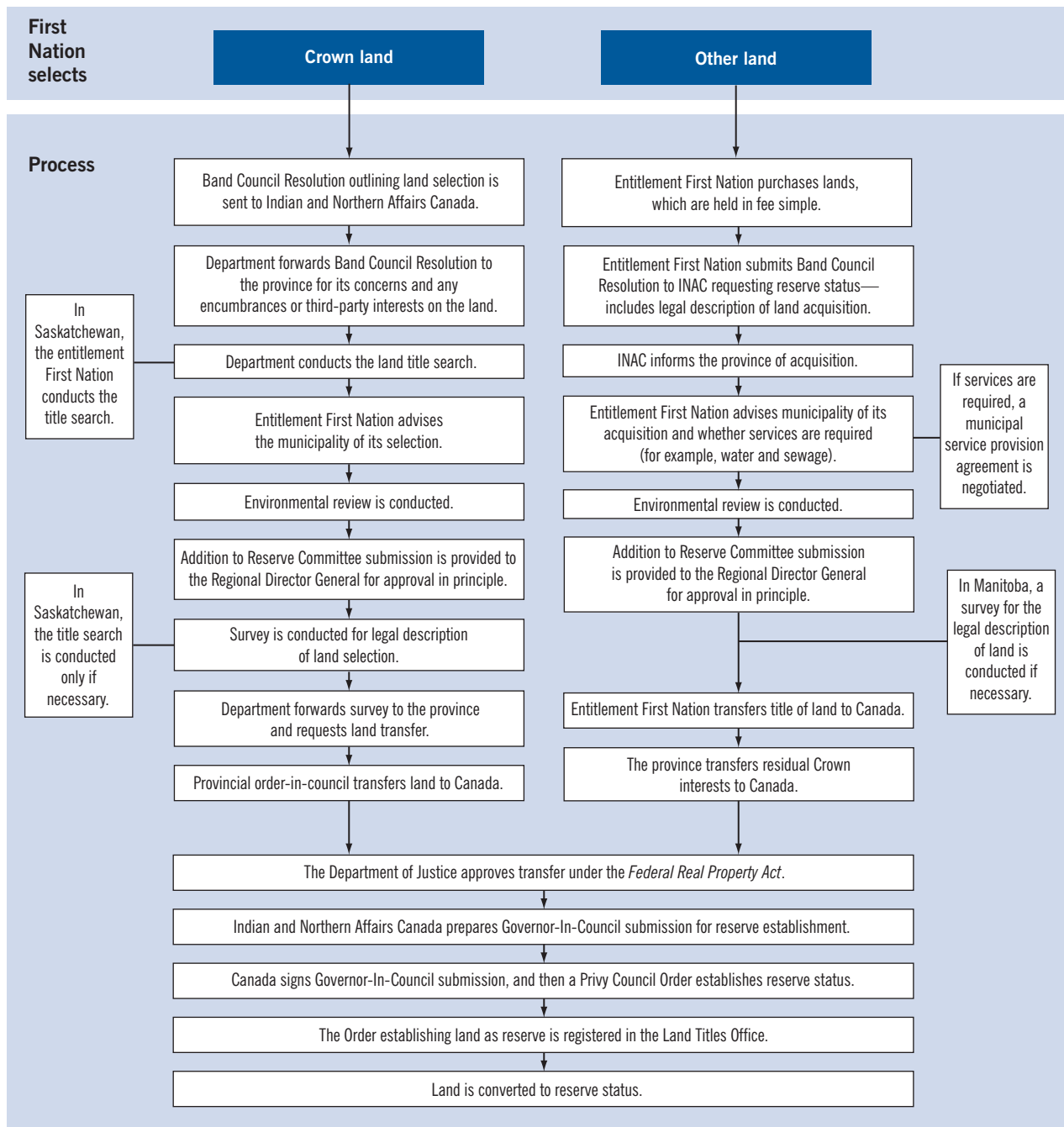
Fee simple—A title that signifies the ownership of all the rights in a parcel of real property, subject only to the limitations of the four powers of government (taxation, eminent domain, police power, and escheat).

7.8 The agreements require First Nations to purchase and/or select land for conversion to reserve status. An individual First Nation may elect to hold all or some of the purchased land in **fee simple**, or it may select all or some of the land to be converted to reserve status. Furthermore, a First Nation may choose instead to use some of the funding it receives for land acquisition for economic development activities, within the limits prescribed in its treaty land entitlement agreement. However, once a First Nation selects land and indicates that it wants it converted to reserve status, the First Nation, the Department, and for Crown land the Province must follow the steps set out in the agreement.

7.9 In Saskatchewan, when private land is purchased by First Nations, as limited Crown land is available, there are provisions for two separate tax loss compensation funds. These funds are intended to help offset the anticipated loss of tax revenues to municipalities when the land achieves reserve status. For the Rural Municipal Compensation Fund, the compensation rate is 22.5 times the previous year's tax revenue, and for the Rural School Division Compensation Fund the compensation rate is 17.5 times this revenue. In instances where provincial Crown land is selected by First Nations, the Agreement states that the Province receives compensation for the land.

7.10 In Manitoba, the Framework Agreement stipulates that 90 percent of the land selections are to be from Crown land since there is sufficient available Crown land. The Framework Agreement outlines that municipal tax loss compensation is paid by the province. If the municipality can demonstrate a tax loss, the province has determined that the payment rate is five times the annual net tax loss at the time of conversion. The province does not receive compensation from the federal government for provincial Crown land selected by First Nations.

Exhibit 7.3 Overview of process for converting selected land to reserve status



Source: Manitoba Treaty Land Entitlement Framework Agreement, Saskatchewan Treaty Land Entitlement Framework Agreement, and Indian and Northern Affairs Canada

7.11 Reserve creation procedures set out in the Saskatchewan Framework Agreement apply for 15 years. The Agreement states that, following the 14th anniversary (September 2006), the parties agree to enter into negotiations to determine what additional period of time, if any, the procedures shall continue to be effective and what amendments, if any, are required. If the parties do not reach an agreement before the 15th anniversary, then the procedures as set out in the agreement apply for a period of three years, at which time, unless otherwise agreed to, the procedures in place for other categories of reserve creation will apply. There is no expiry date for the Manitoba Treaty Land Entitlement Framework Agreement.

Focus of the audit

7.12 Our audit examined whether Indian and Northern Affairs Canada has a framework in place to manage additions to reserves resulting from treaty land entitlement agreements, consistent with its legal obligations as set out in those agreements. We also assessed whether the Department adequately communicates to First Nations their responsibilities under treaty land entitlement agreements to allow for the timely conversion of selected land to reserve status. Finally, we examined whether the Department reports relevant information to Parliament on the results achieved in meeting its legal obligations with regard to treaty land entitlement agreements.

7.13 We did not audit other organizations involved in the process; nor did we audit First Nations or treaty land entitlement trust agreements, which manage funds received as part of agreements. However, we did interview officials from these organizations and First Nations to determine how the Department is managing its responsibilities. Further details on our audit objectives, scope, approach, and criteria are presented in **About the Audit** at the end of the chapter.

Observations and Recommendations

7.14 The Department had difficulty reconciling data provided to us and demonstrating their accuracy. The data presented in this audit came from various databases, individual land selection files, and other regional files. Overall the data represent the Department's and our best estimates based upon the information that was available.

Converting land to reserve status

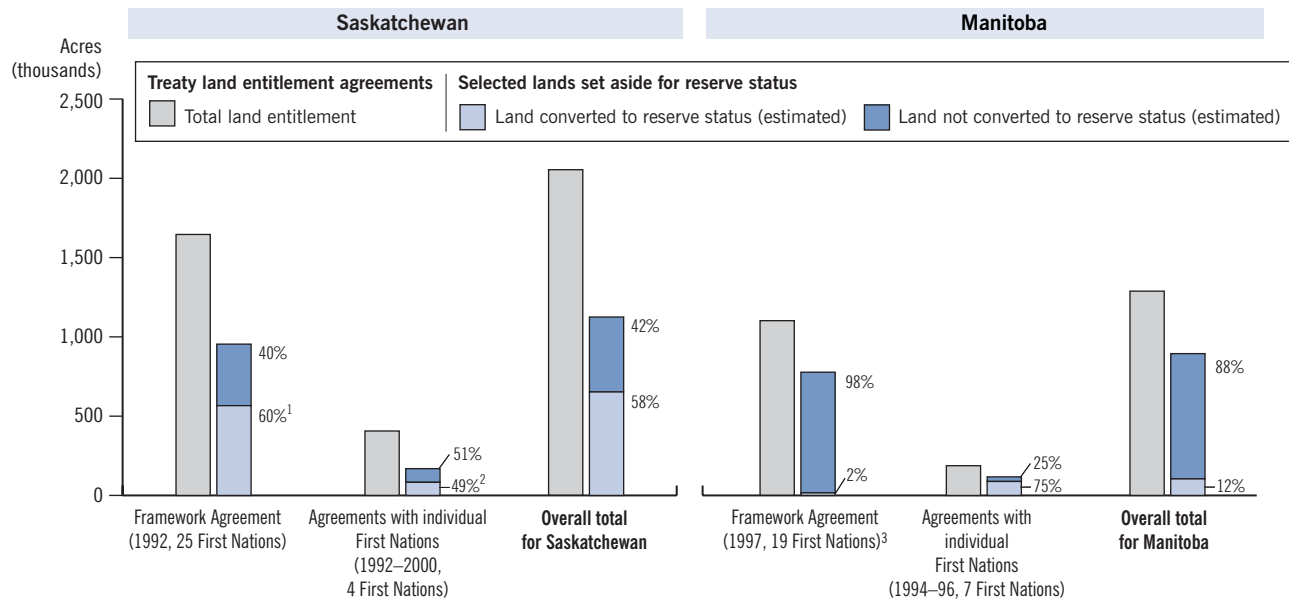
Limited progress has been made converting land to reserve status

7.15 In 2001, the Minister of Indian and Northern Affairs made a commitment to reduce the time to convert land selected by First Nations to reserve status from five-to-seven years to two years. We expected that the Department would have pursued this commitment as well as its commitment to fulfill its obligations outlined in the agreements. We found that the Department has made some progress in meeting these obligations in Saskatchewan, but it has made little progress in Manitoba.

7.16 Overall, about 58 percent of acres selected by First Nations in Saskatchewan have been converted to reserve status. More specifically, since the signing of Saskatchewan Framework Agreement in 1992, about 60 percent of acres selected for conversion to reserve under the Framework Agreement have been converted to date, although about 90 percent of **shortfall acres** have been converted. In addition, about 49 percent of acres selected for conversion under individual agreements signed between 1992 and 2000 have been converted (Exhibit 7.4).

Shortfall acres—The amount of land that a First Nation should have received when its reserve was first surveyed, but did not. Under treaty land entitlement agreements, it is the minimal acreage that must be purchased and/or selected and set apart as reserve land.

Exhibit 7.4 Progress in converting selected land to reserve status in Saskatchewan and Manitoba*



*This exhibit is based on departmental estimates.

¹ In the Saskatchewan Treaty Land Entitlement Framework Agreement 420,792 acres were designated as shortfall acres. Approximately 378,852 acres (90 percent) have been converted to reserve status. This translates to 20 of 25 First Nations having all their shortfall acres converted to reserve status.

² In the four individual agreements, a total of 101,664 acres were designated as shortfall acres. Approximately 72,700 (71.5 percent) have been converted to reserve status. This translates to one of four First Nations having all its shortfall acres converted to reserve status.

³ Four First Nations have yet to ratify the Manitoba Treaty Land Entitlement Framework Agreement. Although not included in these calculations, these First Nations have made selections totalling 32,021 acres—none of which have been converted to reserve status.

Source: Indian and Northern Affairs Canada

7.17 Overall, about 12 percent of acres selected by First Nations in Manitoba have been converted to reserve status. More specifically, since the signing of the Manitoba Framework Agreement in 1997, only about two percent of acres selected under the Framework Agreement have been converted to reserve status. However, about 75 percent of acres selected to date under individual agreements signed between 1994 and 1996 have been converted to reserve status (Exhibit 7.4).

7.18 A large number of acres in both provinces have been selected by First Nations, but are not yet converted to reserve status. The Department estimates the total to be about 473,000 acres in Saskatchewan and about 790,000 acres in Manitoba. Furthermore, the Department has been unable to demonstrate that it has any plan in place to process remaining selections and to fulfil commitments under these agreements.

7.19 We believe the Department's progress is inconsistent with Canada's commitments to meet its obligations to First Nations under treaty land entitlement agreements and convert lands to reserve status within two years. This is particularly of concern given that the Saskatchewan Framework Agreement is to expire soon.

7.20 Recommendation. Indian and Northern Affairs Canada should develop and implement a plan setting out explicit steps it will take to process outstanding selections and to meet commitments to reduce the processing time for treaty land entitlement selections from initial Band Council Resolution to conversion to reserve status.

Department's response. Over the past few years, Indian and Northern Affairs Canada has made investments in improving the overall processes by which land is set apart as reserve. Building on past accomplishments, the Department will continue to work in this area and include a focus on regionally specific challenges that have historically hindered the conversion of land.

First Nations realize tangible benefits in converting land to reserve status

7.21 The Department acknowledges that delays in converting land to reserve status under treaty land entitlement agreements have an impact on First Nations' social and economic development opportunities. The delays can also result in significant financial costs for First Nations that purchase private land for conversion and need to pay taxes until it is converted to reserve status. However, when land is converted, tangible benefits are sometimes realized.

7.22 A recent publication by Western Economic Diversification Canada, which was intended to provide some context to the issue of reserve creation in Saskatchewan, points out that some observers note several potential community and social impacts on First Nations of acquiring additional reserve land, in particular urban land. These impacts may include a raise in members' standard of living; a cultural environment in which to interact as entrepreneurs, clients, and educators; and a centralized location for First Nations businesses and organizations. Potential economic impacts may include increased employment and an environment for developing First Nations-owned businesses. Communities may benefit as well from increased demand for professional services and from increased revenues for municipal governments due to the services provided. Exhibit 7.5 sets out some examples of First Nations that have used treaty land entitlement selections to improve their economic and social situation.

Exhibit 7.5 Impact of reserve land created under treaty land entitlement agreements

Muskeg Lake First Nation purchased land in Saskatoon, Saskatchewan and created a commercial business park.

The benefits include 40 on-site businesses (Aboriginal and non-Aboriginal owned), a wide variety of employment opportunities for First Nations, increased revenues to the city for municipal services, and important commercial and economic development for the First Nation.

Star Blanket First Nation purchased land with an office building in Fort Qu'Appelle, Saskatchewan.

The benefits include economic opportunity and growth for both the First Nation and the municipality; space for Aboriginal businesses and financial institutions, which employ over 100 people in the town; and valuable training and employment opportunities for First Nations.

Source: Muskeg Lake First Nation, Star Blanket First Nation, and Indian and Northern Affairs Canada

The Department needs to clearly communicate procedures and timelines to First Nations

7.23 In order to facilitate the treaty land entitlement process, we expected that the Department would follow the processes set out in the agreements to convert selected land to reserve status and communicate them clearly to First Nations. We also expected that the Department would have an effective administrative process to convert selected land to reserve status.

7.24 Although procedures in the treaty land entitlement process are prescribed in the agreements, various departmental documents outline how land can be converted under circumstances outside the

agreements. These different versions of procedures to be followed to convert land to reserve status have frustrated First Nations because the Department does not always clearly communicate to First Nations which process is being applied to their treaty land entitlement selections, where First Nations are in the process, and what the next steps are and when they are to be completed.

7.25 We expected that the Department would work closely with First Nations involved in the process and with First Nations organizations in each region to ensure that the requirements were understood and met. This is especially the case for those First Nations with less capacity to meet such requirements.

7.26 The Department's communication is both formal (documented) and informal (telephone calls or meetings between project officers and First Nations or visits by project officers to First Nations, which are not documented in the files). However, this communication is not co-ordinated or sustained. We found instances where there had been little communication regarding selections for several years. This is particularly significant given that band elections are held as often as every two years and may result in new band councils with little knowledge of treaty land entitlement or of where their First Nation is in the process, which can further delay the process. We also found that the Department does little work with province-wide First Nations organizations to facilitate progress.

7.27 Recommendation. Indian and Northern Affairs Canada should work more closely with each First Nation to develop an action plan for its selections. This should include

- ensuring that the First Nation understands the conversion process,
- setting out timelines or schedules for key milestones in the process,
- setting out a strategy for converting each of the selections to reserve status, and
- providing ongoing assistance to First Nations as they work to meet their responsibilities under the agreements.

Department's response. Indian and Northern Affairs Canada has already begun to implement this recommendation, with regional offices now meeting with individual First Nations on a regularly scheduled basis. Jointly with First Nation partners, Indian and Northern Affairs regional offices will undertake to have long-term

strategic plans in place by December 2006. A component of these strategic long-term plans will be an operational element that is dedicated to identifying problematic selections of each First Nation, as well as a plan on how to move these selections forward. These plans will include a clear articulation of individual roles and responsibilities consistent with the treaty land entitlement settlement agreements, critical steps, and targeted time frames. These sessions will also provide an opportunity for regular communication and for the Department to further assist First Nations in meeting their obligations as set out under the agreements.

The Department's management of the process

Long-recognized problems with the conversion process have not been resolved

7.28 The Department has known about problems with the reserve conversion process for many years. Since 1996, the Department has conducted several reviews examining the problems in implementing treaty land entitlement. These reviews have resulted in action plans to address the problems. However, the Department has made limited progress on commitments made in these action plans, and the problems persist. Three major issues have been identified: environmental reviews, land surveys, and the resolution of third-party interests.

Updating environmental reviews is not always necessary

7.29 As part of converting land to reserve status, the agreements require an environmental review (or site assessment) of the parcel of land selected to determine if any past activities have adversely affected the land. This review can be done before property is purchased or, in the case of Crown land, before the land is surveyed. In some cases, a more detailed environmental impact assessment may also be required.

7.30 In 1999, the Department issued guidance that stale dates environmental reviews based on risk factors, such as change to the use of lands after the initial environmental site visit. The guidance sets two years as the time frame for which an environmental site assessment is considered valid. However, the process of converting land to reserve usually takes longer than two years, meaning the environmental reviews often need to be updated. In Manitoba, about 600,000 acres have already gone through the environmental review process. However, since only a small number of these acres have been converted to reserve status to date, a significant number of environmental reviews may become stale-dated and need to be updated, potentially further delaying the conversion.

7.31 The majority of land selected in Manitoba is in remote undeveloped forest settings with limited road access. Many selections in Saskatchewan are also in remote settings. As such, development and activity on these parcels is limited, and there is little risk that environmental conditions will have changed during the two years. Regional departmental staff have proposed that the guidance be revised, allowing for more discretion in determining whether reviews need to be updated. However, their attempts have been unsuccessful. In both regions, we found repeated environmental reviews (two and three versions) with few changes, separated by several years, on the same parcels of land.

7.32 Environmental reviews can be expensive (staff time, flights and charters, accommodations), and conducting additional site visits means increased costs for each selection. Further, we found no formal co-ordination of environmental reviews with other requirements, such as surveys.

Planning land surveys results in delays

7.33 As part of the process to transfer land to the Crown, the agreements require land surveys. The effort needed to meet this requirement varies considerably, from parcels of land where existing surveys can be relied on to land where original survey work must be undertaken, such as northern Crown land.

7.34 A lot of time and money is spent doing survey work in remote areas. In Manitoba, departmental officials told us that this requirement can impede the progress of some proposals because surveys can only be undertaken during certain parts of the year, and there are few available surveyors and a limited survey budget. Officials also told us that, given the circumstances, some parcels of land in Manitoba will not be surveyed for up to 10 years. The provincial regulatory authority for surveys rejected proposals by regional staff to do less detailed survey work in remote locations.

7.35 Similar to environmental reviews, survey work is often undertaken independent of the resolution of **third-party interests** and other work that needs to be done to convert land. In some cases, we found that although the survey was complete, the file remained stalled because of unresolved third-party interests. In our view, better co-ordinated survey planning would facilitate the land conversion process.

Third-party interest—Any interest, right, or estate of any nature held by a third party in or to land, or any right of use or occupation of land, other than outright ownership.

7.36 Recommendation. While respecting legislation and statutes, Indian and Northern Affairs Canada should

- issue revised guidance that sets out criteria for departmental officials to follow when carrying out environmental reviews, with specific time frames and that allows for discretion on the part of personnel to determine whether updates are necessary;
- plan land surveys so that they are undertaken to allow selected land to be converted to reserve status in a timely manner; and
- develop a co-ordinated strategic plan so that the required environmental reviews and land surveys do not hold up conversion of land to reserve status.

Department’s response. Indian and Northern Affairs Canada will make available, on its Web site by April 2006, Chapter 12 of the *Lands Management Manual* that will be dedicated to environmental management. This chapter will include a clearly articulated policy on what will be considered a “stale dated” environmental site assessment. This policy will be based on appropriate principles, such as the use of discretion and risk management when assessing whether individual land selections require environmental reassessment.

Prior to the start of each fiscal year, regional offices will develop annual operational plans within their broader strategic plans that deal with the timing of land surveys and environmental assessments. To the extent possible, the land surveys and environmental assessments will be planned so that they are carried out simultaneously, especially on land parcels in remote locations.

Resolving third-party interests needs to be given priority

7.37 The agreements require First Nations to resolve third-party interests, although the Saskatchewan Framework Agreement provides that the Department may assist First Nations in this work. Departmental officials in both regions told us that third-party interests are a significant challenge, often contributing to long delays.

7.38 We expected that the Department would have a strategy in place to assist First Nations in their efforts to resolve third-party interests. We found that there is no strategy for facilitation, or guidance to First Nations on how to resolve third-party interests. To date, the Department’s efforts to assist First Nations have been ad hoc and sporadic.

Municipal service provision agreement—An agreement between a First Nation and a municipality, where the First Nation purchases services, such as garbage pickup, snow removal, fire and police protection, and the provision of water or electricity, for an agreed-upon price from the municipality.

7.39 Municipal service provision agreements present problems. If a First Nation requires services from a municipality for reserve land, the agreements require the First Nation to request that the municipality enter into negotiations for a **municipal service provision agreement**. In both regions, these agreements present problems and delay the conversion of land to reserve status.

7.40 The framework agreements do not absolutely require municipal service provision agreements to be in place before land is converted to reserve status. If the First Nation has made reasonable attempts to address the municipality's concerns, and the municipality has refused to sign an agreement, the Department can recommend to the Minister that land be set apart as reserve. However, this is seldom done. In one case, a parcel was held up in negotiations for six years, with the First Nation paying the taxes out of its settlement funds. When asked to assist in resolving this issue, the Department was unable to respond because the land selection had not been tracked due to internal miscommunication, and more information was needed.

7.41 According to departmental estimates, many land selections initiated in Saskatchewan are later de-selected. Officials told us this is often done because third-party interests cannot be resolved. In our view, the Department should take a stronger role in facilitating the resolution of third-party interests, so that it may fulfill its obligation to provide reserve land to First Nations.

7.42 While the Manitoba Framework Agreement has made funds available for First Nations to resolve third-party interests in Manitoba, First Nations have not accessed these funds. As part of the agreement, \$8.9 million was set aside in 1997 for First Nations to help them address third-party interests. These funds are administered by the Treaty Land Entitlement Committee, which is made up of signatory First Nations. To date, none of this money has been used even though for many selections third-party interests have been unresolved for many years and continue to delay conversions. The Treaty Land Entitlement Committee told us that First Nations found the process to access this fund very complicated, due to the lengthy process and complex documentation required for approval of a disbursement.

7.43 At the same time, officials noted examples where the Department has helped First Nations resolve third-party interests with some success. For example, in one case where a municipality was seeking input from residents on whether to oppose a conversion within its municipal boundary, the Department participated in a public meeting to address concerns about reserve land being created within

the municipality. The Department was able to explain treaty land entitlement and to set out that the First Nation had fulfilled requirements under its agreement. After this meeting, the First Nation was able to successfully negotiate a service provision agreement with the municipality. This indicates that where the Department is more active in participating, such issues can be resolved. However, as there are many instances where parcels of land remain stalled because of third-party interests, the Department should consider providing more assistance to First Nations to resolve these issues.

7.44 The Department has taken steps to clarify requirements.

In 2003, the Department, with the Federation of Canadian Municipalities, began a project to enhance communication between First Nations and municipal governments to address some of the issues preventing the signing of municipal service provision agreements. This project focussed on developing a tool kit that, among many things, included an overview of the national additions to reserves policy, suggestions for establishing municipal-First Nations relationships, and case studies showing positive municipal-First Nations partnerships. Complementing this project were workshops that involved the participation of First Nations communities and municipalities. This collaborative initiative is a positive first step toward resolving outstanding issues stemming from treaty land entitlement.

7.45 Provisions to resolve impediments are not used to full potential. Dispute resolution mechanisms for resolving obstacles that may arise during the course of implementation can be helpful, but only when the parties involved use them. Given the number of land selections in process, we expected that the parties would use dispute resolution mechanisms to resolve issues that arose during the implementation process. Although such mechanisms exist in both regions—the Settlement Board and Arbitration Board in Saskatchewan and the Implementation Monitoring Committee and Senior Advisory Committee in Manitoba—they are not being used in a way that helps to resolve outstanding issues and conflicts, such as third-party interests.

7.46 Recommendation. Indian and Northern Affairs should work with First Nations to assist them in their efforts to resolve third-party interests. This should include

- building on initial efforts, and identifying and educating stakeholders that typically have third-party interests and educating them on what treaty land entitlement involves and how it affects them;

- identifying systemic barriers to resolving recurring third-party interests and providing information to First Nations on possible strategies and actions to address them; and
- encouraging the use of dispute resolution mechanisms set up under treaty land entitlement agreements to help resolve third-party interests.

Department's response. Indian and Northern Affairs Canada will increase activities related to joint education and information sessions between First Nations, provinces, and other interests such as municipalities. This will include building on the best practices realized through the Saskatchewan treaty land entitlement processes as well as the ongoing work of the Federation of Canadian Municipalities in this area. The Department will further develop practical tools, such as case studies that identify systemic challenges and examples of how these have been successfully addressed.

The treaty land entitlement settlement agreements included the creation of First Nations dispute resolution entities in some cases. These entities were mandated to assist First Nations signatories to the agreements in their negotiations with third-party interests. The Department has begun meeting with these First Nations dispute resolution entities on a regular basis to facilitate First Nations' access to and use of these mechanisms.

The Department needs to address deficiencies in its management practices

7.47 We expected the Department to have a management accountability framework setting out plans, human resources requirements, guidelines, and systems and procedures that need to be in place to meet its treaty land entitlement obligations. However, we found that it has limited planning, formal guidance, and alignment of human resources to do the work, and that systems and procedures are not in place to facilitate the processing of selections.

Land selection files illustrate the need for improved management practices

7.48 We reviewed land selection files in both Saskatchewan and Manitoba to gain insight into particular problems and assess departmental performance against stated commitments. To accomplish this, we extracted two purposeful samples. In the first sample, we asked both Saskatchewan and Manitoba to identify their best cases and more problematic cases, for a total of 24 files. The function of this sample was to determine what the Department determines as successes and failures. In our second sample, we selected 44 files representing a cross-

section of land selection situations with specific characteristics, such as the location (urban or rural, northern or southern), affiliation (part of multi-party framework agreement or an individual agreement), and status (complete or still in process). These cases were reviewed and compared with the best and problematic cases.

7.49 In both samples, we found that most files contained the key documents required to the point that the files had progressed in the process. The majority of completed files were from Saskatchewan, whereas Manitoba had a significant number of files still in the process. Overall, we found little evidence of communication with individual First Nations, such as notes-to-file and records of meetings—documentation necessary for properly managing selections.

7.50 Most significant was the considerable variation in file management methods by individual project officers. This ranged from detailed and comprehensive checklists, to periodic notes-to-file, to very little file management whatsoever. This finding is of particular concern when coupled with the level of staff turnover noted among project officers responsible for the selections in each sample. Some files had as many as four project officers in six years. If information is not systematically collected and recorded, then it quickly becomes an issue of high risk when coupled with staff turnover and the Department's unreliable data systems.

7.51 Within the sample of best and problematic cases, almost all of the files that the Department considered a success had proceeded or were proceeding through the process with few complications. However, we noted that the processing times were much faster in Saskatchewan than in Manitoba. Conversely, most of the files that the Department considered problematic were more complex, involving third-party interests, difficulties with municipalities, and procedural matters (for example, land selections deemed ineligible under the framework agreements).

7.52 In our second sample, we found that the majority of files had the same characteristics as the problematic cases in our first sample. Very few cases had gone through the process without complications, and most were delayed at some point in the process. Delays were most often caused by third-party interests, such as concerns of municipalities or issues related to natural resources (minerals or oil and gas). When the files remained stalled for several years, there were no plans to resolve the impasse. Conditions attached by the Department to regional approval-in-principle, a document indicating the region's support for selections, were another cause of delays. Given that most of

the files in our second sample exhibited the same characteristics as the problematic files in the first sample, we believe there are critical issues that must be addressed in planning and file management.

The Department does no planning to improve the conversion rate for the remaining land selections

7.53 Given the number of land selections in both regions that have yet to be converted to reserve status and the 2001 ministerial commitment to reduce the conversion time to two years, we expected to see regional plans that set out a strategy to speed the conversion time.

7.54 In Saskatchewan, annual planning documents do not set out any specific objectives for treaty land entitlement agreements. For instance, there is no mention of the number of selections to be processed or a projected time frame within which the remaining lands will be converted. In addition, we found that the region sometimes tells First Nations to “split” larger selections of land into several smaller selections. This serves to isolate parcels of land with more difficult issues (for example, third-party interests), allowing simpler parcels to be processed first. This in turn leaves the more difficult selections to be processed later, and sometimes results in a “checkerboard” of reserve land interspersed with fee simple land. We did not find a plan to resolve the more complex selections.

7.55 The situation is the same in Manitoba, where there is no annual plan specifying how many land selections will be processed. In addition, officials told us that there is no plan to address those selections that are “high graded”—the easiest are processed first, and the more complex selections are delayed.

7.56 Additional treaty land entitlement agreements are being negotiated. Several First Nations in Saskatchewan and one in Manitoba, which have not been part of the treaty land entitlement process to this point, are negotiating to finalize treaty land entitlement agreements. Therefore, it is likely that the Department will be processing selections from additional agreements in the future, and it will need to consider this as it develops regional plans and allocates resources for future work.

7.57 Insufficient human resources allocated to processing selections. While more complex selections remain incomplete, the Saskatchewan region has reduced the number of staff managing these files in recent years. In addition, junior officers now manage these files. Officials told us that this is because remaining proposals are considered

to be more routine or administrative in nature. However, given the number of remaining files known to be complex, we believe that this is not the case. In Manitoba, there has been a recent reorganization, and some positions remain unfilled. This presents difficulties, given the large number of selections the region must still process.

7.58 Lack of tools and guidelines for staff to follow. The limited number of project officers and their often limited experience reinforces the importance of tools (for example, checklists and file management systems) and guidelines that all staff should be following. However, we found there is little guidance available to staff and little evidence of professional development or training to ensure that project officers have the requisite knowledge and training to process selections.

7.59 Recommendation. Indian and Northern Affairs Canada should develop and implement a consistent approach to ensure that its land selection files are properly organized and contain documentation required to facilitate conversion.

Department's response. Indian and Northern Affairs Canada will develop an appropriate and consistent file management practice over the coming months, and implement it in the future.

7.60 Recommendation. Indian and Northern Affairs Canada should develop a strategic management plan outlining how it will manage its operations to process selections within a reasonable period of time. This strategic plan should

- include a projection of the ongoing workload (in terms of selections in process and selections expected in the future);
- set out how the Department will process remaining selections, which are often complex;
- set out resources required (people and financial resources); and
- track the information needed to better plan and report the results of its work.

Department's response. Working with First Nation partners, the Department's regional offices will develop long-term strategic plans that include various operational (annual) components. The plans will be subject to periodic review and adjustment and will include time targets and performance measures. These strategic plans will be in place by December 2006, with the operational planning components coming into effect incrementally along the way.

The Department does not have a centralized information tracking system

7.61 We had considerable difficulty relying on departmental data due to incomplete and inconsistent information. There is no national database to manage, track, and report on the Crown's commitments to meet its treaty land obligations. Existing information systems vary by region. Management information gathered by the Department does not provide a basis for adequate management and control of the process. Nor does it encourage accountability for results as it does not capture the Department's progress in meeting its obligations.

7.62 Both framework agreements set out timelines for parties to complete steps in the process. We expected the Department to have collected sufficient information to track progress and identify delays or other problems at the various stages in the process. However, the Department has no tracking system to monitor whether these timelines are respected. Where timelines are set out in agreements they are not monitored to keep selections moving, and actual time spent on each selection is not formally captured. Such information could help identify the potential for improvements in processing efficiency. Due to these deficiencies, the Department cannot directly link results to costs or time frames, or identify and address trends.

7.63 The proposed national tracking system will not meet the Department's needs. The Department has repeatedly noted the need for a comprehensive, national tracking system to help it manage the complex process of treaty land entitlement and additions to reserve, and track and report on progress of individual selections. However, while the Department has been planning for a national database since 1999, there is still none in place.

7.64 The latest effort, the Additions to Reserve Reports Initiative, seeks to implement a national system to track ongoing efforts through a defined life cycle and to contribute to streamlining and shortening the overall process. In our review of the initial modules rolled out to regional offices, we found that the data elements suggested by headquarters are general and of little use in helping regions manage the process. The system will not allow the Department to identify obstacles in the process, and to track and report performance. In short, this database will not allow the Department to effectively monitor progress for management or accountability purposes.

7.65 Recommendation. Indian and Northern Affairs Canada should

- take steps to ensure that treaty land entitlement data are complete and accurate;

- develop and implement a file-tracking system that can provide accurate information on results achieved (for example, number of acres selected, number of acres converted). The file-tracking system should be designed to flag barriers and risks to individual files so that remedies may be introduced and files can be completed in a timely and efficient fashion; and
- regularly provide information needed to process selections to those involved in the process, including entitlement First Nations and provincial governments.

Department's response. Indian and Northern Affairs Canada will develop a horizontal database/electronic management system based on the integration of a variety of modules, including a redesigned Additions to Reserves module. When fully operational, by 1 April 2009, this database/electronic management system will allow for optimal information retrieval as well as daily operational management of files.

A number of incremental phases will be required. In the first year of development (2006–07), the data integrity of information contained in existing databases and paper files will be verified. At the same time, the project plan and system architecture plan will be developed. By the end of the second year (2007–08), paper records will be converted to electronic media, and existing modules will be appropriately reworked and some horizontally integrated. The third year (2008–09) will be the final system construction year. Over of the year, the system will be tested. Upon completion of successful testing, the system will be deployed by the end of the year.

Monitoring and reporting of results to Parliament

The Department's monitoring and reporting of results is incomplete

7.66 Good performance reporting is fundamental to effective governance and accountability to Parliament. We reviewed the Department's reports on plans and priorities and departmental performance reports for the last five years. We wanted to determine if the Department had established objectives that matched its legal obligations set out in treaty land entitlement agreements, if there were specific timelines and targets showing how it planned to meet these objectives, and if results were reported.

7.67 We found limited information on the Department's objectives, performance expectations, timelines, and reporting of results. While we do not necessarily expect detailed reporting annually, Parliament needs this information periodically. For example, the expiry of the

Saskatchewan Framework Agreement is an ideal opportunity to report on the obligations met by Canada under the 1992 Agreement. We found no public documents setting out the Department's progress in meeting treaty land entitlement obligations. In 2001 the Minister made a commitment to reduce the time to convert selected lands to reserve from five-to-seven years to two years. Subsequent departmental performance reports do not report against this commitment.

7.68 Recommendation. Indian and Northern Affairs should periodically include in its performance report to Parliament

- results information on meeting its legal obligations for treaty land entitlement, including costs, numbers of acres selected, and acres converted to reserve status; and
- an update on its efforts to reduce the time taken to convert selected land to reserve status.

Department's response. Indian and Northern Affairs Canada is committed to providing relevant performance information to Parliament on treaty land entitlement. It will do so in its next departmental performance report and then periodically, every three years.

Conclusion

7.69 The Department has made limited progress in converting lands selected under treaty land entitlement agreements to reserve status. While there has been more progress in Saskatchewan than in Manitoba, a large number of land selections have yet to be processed. Furthermore, the Department has been unable to demonstrate that it has any plan in place to process remaining selections and to fulfil commitments under these agreements.

7.70 The Department does not have a management framework in place to convert lands selected by First Nations under treaty land entitlement agreements to reserve status within a reasonable period of time. We found limited planning, information on tracking of selections, formal procedures, and tools and guidance for project officers—all necessary for the Department to meet its obligations under the agreements.

7.71 The Department needs to communicate to First Nations what is required of them and when, and to do so in a manner that helps First Nations meet these requirements as quickly as possible.

7.72 Long-recognized problems with the conversion process remain, and they slow down the conversion of land. The Department needs to address issues related to environmental reviews and land surveys; their resolution will reduce the time taken to convert land.

7.73 While addressing third-party interests is a responsibility of First Nations, the Department needs to work with First Nations to assist them in developing strategies to deal with these interests.

7.74 The Department provides limited information to Parliament on the progress made in meeting its obligations. It needs to develop an information-tracking system to produce reliable and meaningful data that will enable the Department to better manage its activities and report on its performance.

Department's overall response. Canada is committed to honouring its lawful obligations to First Nations and resolving outstanding grievances to the benefit of all Canadians. By addressing historic injustices that undermine trust and co-operation, strong partnerships among Aboriginal people, governments, and non-Aboriginal communities are emerging. The settlement of specific claims, such as those that have resulted in treaty land entitlement settlement agreements in Manitoba and Saskatchewan, assists in building these partnerships and spurs economic development on-reserve and in surrounding communities. Investments in this area have so far yielded tangible benefits for First Nations and for provincial and local governments.

Indian and Northern Affairs Canada is committed to ongoing improvements in meeting its obligations associated with treaty land entitlement settlement agreements in Manitoba and Saskatchewan. The Department will continue to work with the First Nations and provincial governments signatory to these agreements, while respecting the negotiated roles of each party as defined in the agreements.

The Department recognizes the importance of issues raised in this chapter and will work with First Nations and other partners to put in place measures that build on existing accomplishments, in an effort to address these issues. These issues range in complexity and involve the co-operation of all those signatory to the treaty land entitlement agreements. While the Department accepts the recommendations, in

the current financial context we will need to ensure that appropriate funding is available to deliver on them. As well, it must be recognized that this work will also require the co-operation of other parties, such as municipal governments, other government departments, and third-party interests, who, while not specifically signatory to these agreements, have varying degrees of involvement and impact on the processes that were examined in this audit.

About the Audit

Objectives

The objectives of the audit were to determine whether Indian and Northern Affairs Canada

- has a framework in place to manage additions to reserves resulting from treaty land entitlement agreements in a manner consistent with its legal obligations as set out in these agreements,
- adequately communicates to First Nations their responsibilities under treaty land entitlement agreements to allow for the timely transferral of lands acquired under treaty land entitlement agreements to reserve status, and
- reports to Parliament relevant information on the results achieved in meeting its legal obligations with regard to treaty land entitlement agreements.

Scope and approach

Our audit focussed on Indian and Northern Affairs' management of the treaty land entitlement obligations and assessed whether it was consistent with the legal obligations as set out in treaty land entitlement agreements. We focussed on Manitoba and Saskatchewan because together they have the majority of all treaty land entitlement agreements.

We used two samples in order to gain insight into particular problems and assess departmental performance on their stated commitments. The first sample was an extreme or deviant case sample where we asked both Saskatchewan and Manitoba to identify an equal number of their best cases and their more problematic cases, for a total of 24 files. Our second sample was a purposeful stratified sample where we selected a number of files from each region to represent a cross-section of land selection situations, for a total of 44 files. This second sampling technique was used to determine whether selections were facing the same situations described in the better cases or more problematic cases.

We based our analysis on each region's treaty land entitlement agreements. We identified critical points in the land conversion process and assessed selections against these critical points. We tracked selections by using key dates, starting with when a First Nation initiated a land selection (initial Band Council Resolution) through to when the selection reached reserve status (order-in-council).

The audit team interviewed departmental personnel at headquarters and regional offices in Saskatchewan and Manitoba. We also met with regional officials from Natural Resources Canada and the Department of Justice Canada. We sought the views of selected representatives from First Nations communities and organizations, in addition to representatives at the provincial and municipal levels. We reviewed relevant documentation, including legislation, corporate and regional documents, planning documents, studies, action plans, evaluation and other reports, and information from stakeholders.

Criteria

Our audit was based on the following criteria:

- Indian and Northern Affairs Canada consulted and reached agreements with First Nations and other stakeholders regarding the manner to convert the land selected under treaty land entitlement agreements to reserve status in a timely manner for the optimal benefit of First Nations.
- The Department had in place the organization and resources, as well as clearly articulated policies, procedures, and timelines for implementing treaty land entitlement agreements and processing additions-to-reserve proposals.
- The Department communicated to First Nations their responsibilities and the steps involved in the additions-to-reserve process following from treaty land entitlement agreements, and the associated timeframes, in a manner that allows First Nations to understand and adequately respond to them.
- The Department provided adequate resources, training, and guidance to First Nations involved in the additions-to-reserve process following from treaty land entitlement agreements to assist meeting the requirements being made of them.
- The Department established objectives consistent with meeting its legal obligations related to treaty land entitlement agreements, monitored and measured its progress in meeting its objectives, and publicly reported its performance.

Audit team

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Appendix List of recommendations

The following is a list of recommendations found in Chapter 7. The number in front of the recommendation indicates the paragraph where it appears in the chapter. The numbers in parentheses indicate the paragraphs where the topic is discussed.

Recommendation	Department's response
<p>Converting land to reserve status</p> <p>7.20 Indian and Northern Affairs Canada should develop and implement a plan setting out explicit steps it will take to process outstanding selections and to meet commitments to reduce the processing time for treaty land entitlement selections from initial Band Council Resolution to conversion to reserve status. (7.15-7.19)</p> <p>7.27 Indian and Northern Affairs Canada should work more closely with each First Nation to develop an action plan for its selections. This should include</p> <ul style="list-style-type: none"> • ensuring that the First Nation understands the conversion process, • setting out timelines or schedules for key milestones in the process, • setting out a strategy for converting each of the selections to reserve status, and • providing ongoing assistance to First Nations as they work to meet their responsibilities under the agreements. (7.23-7.26) 	<p>Over the past few years, Indian and Northern Affairs Canada has made investments in improving the overall processes by which land is set apart as reserve. Building on past accomplishments, the Department will continue to work in this area and include a focus on regionally specific challenges that have historically hindered the conversion of land.</p> <p>Indian and Northern Affairs Canada has already begun to implement this recommendation, with regional offices now meeting with individual First Nations on a regularly scheduled basis. Jointly with First Nation partners, Indian and Northern Affairs regional offices will undertake to have long-term strategic plans in place by December 2006. A component of these strategic long-term plans will be an operational element that is dedicated to identifying problematic selections of each First Nation, as well as a plan on how to move these selections forward. These plans will include a clear articulation of individual roles and responsibilities consistent with the treaty land entitlement settlement agreements, critical steps, and targeted time frames. These sessions will also provide an opportunity for regular communication and for the Department to further assist First Nations in meeting their obligations as set out under the agreements.</p>

Recommendation	Department's response
<p>The Department's management of the process</p> <p>7.36 While respecting legislation and statutes, Indian and Northern Affairs Canada should</p> <ul style="list-style-type: none"> • issue revised guidance that sets out criteria for departmental officials to follow when carrying out environmental reviews, with specific time frames and that allows for discretion on the part of personnel to determine whether updates are necessary; • plan land surveys so that they are undertaken to allow selected land to be converted to reserve status in a timely manner; and • develop a co-ordinated strategic plan so that the required environmental reviews and land surveys do not hold up conversion of land to reserve status. <p>(7.33-7.35)</p>	<p>Indian and Northern Affairs Canada will make available, on its Web site by April 2006, Chapter 12 of the <i>Lands Management Manual</i> that will be dedicated to environmental management. This chapter will include a clearly articulated policy on what will be considered a “stale dated” environmental site assessment. This policy will be based on appropriate principles, such as the use of discretion and risk management when assessing whether individual land selections require environmental reassessment.</p> <p>Prior to the start of each fiscal year, regional offices will develop annual operational plans within their broader strategic plans that deal with the timing of land surveys and environmental assessments. To the extent possible, the land surveys and environmental assessments will be planned so that they are carried out simultaneously, especially on land parcels in remote locations.</p>
<p>7.46 Indian and Northern Affairs should work with First Nations to assist them in their efforts to resolve third-party interests. This should include</p> <ul style="list-style-type: none"> • building on initial efforts, and identifying and educating stakeholders that typically have third-party interests and educating them on what treaty land entitlement involves and how it affects them; • identifying systemic barriers to resolving recurring third-party interests and providing information to First Nations on possible strategies and actions to address them; and 	<p>Indian and Northern Affairs Canada will increase activities related to joint education and information sessions between First Nations, provinces, and other interests such as municipalities. This will include building on the best practices realized through the Saskatchewan treaty land entitlement processes as well as the ongoing work of the Federation of Canadian Municipalities in this area. The Department will further develop practical tools, such as case studies that identify systemic challenges and examples of how these have been successfully addressed.</p> <p>The treaty land entitlement settlement agreements included the creation of First Nations dispute resolution entities in some cases. These entities were mandated to assist First Nations signatories to the agreements in their negotiations with third-party interests. The Department has begun meeting with these First Nations dispute resolution entities on a regular basis to facilitate First Nations' access to and use of these mechanisms.</p>

Recommendation	Department's response
<ul style="list-style-type: none"> encouraging the use of dispute resolution mechanisms set up under treaty land entitlement agreements to help resolve third-party interests. <p>(7.37-7.45)</p>	
<p>7.59 Indian and Northern Affairs Canada should develop and implement a consistent approach to ensure that its land selection files are properly organized and contain documentation required to facilitate conversion.</p> <p>(7.53-7.58)</p>	<p>Indian and Northern Affairs Canada will develop an appropriate and consistent file management practice over the coming months, and implement it in the future.</p>
<p>7.60 Indian and Northern Affairs Canada should develop a strategic management plan outlining how it will manage its operations to process selections within a reasonable period of time. This strategic plan should</p> <ul style="list-style-type: none"> include a projection of the ongoing workload (in terms of selections in process and selections expected in the future); set out how the Department will process remaining selections, which are often complex; set out resources required (people and financial resources); and track the information needed to better plan and report the results of its work. <p>(7.53-7.58)</p>	<p>Working with First Nation partners, the Department's regional offices will develop long-term strategic plans that include various operational (annual) components. The plans will be subject to periodic review and adjustment and will include time targets and performance measures. These strategic plans will be in place by December 2006, with the operational planning components coming into effect incrementally along the way.</p>

Recommendation	Department's response
<p>7.65 Indian and Northern Affairs Canada should</p> <ul style="list-style-type: none"> • take steps to ensure that treaty land entitlement data are complete and accurate; • develop and implement a file-tracking system that can provide accurate information on results achieved (for example, number of acres selected, number of acres converted). The file-tracking system should be designed to flag barriers and risks to individual files so that remedies may be introduced and files can be completed in a timely and efficient fashion; and • regularly provide information needed to process selections to those involved in the process, including entitlement First Nations and provincial governments. <p>(7.61-7.64)</p>	<p>Indian and Northern Affairs Canada will develop a horizontal database/electronic management system based on the integration of a variety of modules, including a redesigned Additions to Reserves module. When fully operational, by 1 April 2009, this database/electronic management system will allow for optimal information retrieval as well as daily operational management of files.</p> <p>A number of incremental phases will be required. In the first year of development (2006–07), the data integrity of information contained in existing databases and paper files will be verified. At the same time, the project plan and system architecture plan will be developed. By the end of the second year (2007–08), paper records will be converted to electronic media, and existing modules will be appropriately reworked and some horizontally integrated. The third year (2008–09) will be the final system construction year. Over of the year, the system will be tested. Upon completion of successful testing, the system will be deployed by the end of the year.</p>
<p>Monitoring and reporting of results to Parliament</p>	
<p>7.68 Indian and Northern Affairs should periodically include in its performance report to Parliament</p> <ul style="list-style-type: none"> • results information on meeting its legal obligations for treaty land entitlement, including costs, numbers of acres selected, and acres converted to reserve status; and • an update on its efforts to reduce the time taken to convert selected land to reserve status. <p>(7.66-7.67)</p>	<p>Indian and Northern Affairs Canada is committed to providing relevant performance information to Parliament on treaty land entitlement. It will do so in its next departmental performance report and then periodically, every three years.</p>

Department's overall response

Canada is committed to honouring its lawful obligations to First Nations and resolving outstanding grievances to the benefit of all Canadians. By addressing historic injustices that undermine trust and co-operation, strong partnerships among Aboriginal people, governments, and non-Aboriginal communities are emerging. The settlement of specific claims, such as those that have resulted in treaty land entitlement settlement agreements in Manitoba and Saskatchewan, assists in building these partnerships and spurs economic development on-reserve and in surrounding communities. Investments in this area have so far yielded tangible benefits for First Nations and for provincial and local governments.

Indian and Northern Affairs Canada is committed to ongoing improvements in meeting its obligations associated with treaty land entitlement settlement agreements in Manitoba and Saskatchewan. The Department will continue to work with the First Nations and provincial governments signatory to these agreements, while respecting the negotiated roles of each party as defined in the agreements.

The Department recognizes the importance of issues raised in this chapter and will work with First Nations and other partners to put in place measures that build on existing accomplishments, in an effort to address these issues. These issues range in complexity and involve the co-operation of all those signatory to the treaty land entitlement agreements. While the Department accepts the recommendations, in the current financial context we will need to ensure that appropriate funding is available to deliver on them. As well, it must be recognized that this work will also require the co-operation of other parties, such as municipal governments, other government departments, and third-party interests, who, while not specifically signatory to these agreements, have varying degrees of involvement and impact on the processes that were examined in this audit.

Report of the Auditor General of Canada to the House of Commons—November 2005

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