

2009



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

Chapter 4 Treaty Land Entitlement Obligations— Indian and Northern Affairs Canada



Office of the Auditor General of Canada

The 2009 Status Report of the Auditor General of Canada comprises a Message from the Auditor General of Canada, Main Points—Chapters 1 to 5, an appendix, and five chapters. The main table of contents for the Report is found at the end of this publication.

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Chapter

4

Treaty Land Entitlement Obligations
Indian and Northern Affairs Canada

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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Treaty Land Entitlement Obligations

Indian and Northern Affairs Canada

Main Points

What we examined

A treaty land entitlement claim arises when a First Nation asserts that the Government of Canada did not provide all of the reserve land promised under an historical treaty signed with the Crown. Once the federal government is satisfied that a First Nation has a valid claim, a settlement is negotiated and set out in a treaty land entitlement agreement.

Treaty land entitlement agreements provide First Nations with the right to select Crown land or with funds to buy private land, or both. These agreements are modern legal commitments that recognize the government's failure to comply with its treaty obligations. These obligations extend beyond land issues, but the agreements that we audited focus on land transfers. Indian and Northern Affairs Canada is responsible for managing the implementation of these agreements on behalf of the federal government, including the conversion of selected or purchased land to reserve status.

We examined the Department's progress in implementing recommendations from an audit we conducted in 2005, in which we reported a number of specific deficiencies in the Department's management practices for meeting treaty land entitlement obligations in Saskatchewan and Manitoba. The 2005 audit found that there had been limited progress in converting to reserve status the large number of acres selected in those provinces by First Nations.

Why it's important

First Nations of Saskatchewan and Manitoba are among the most impoverished in Canada. Acquiring land could serve as a means of improving their standard of living—for example, by providing an environment for developing First Nations-owned businesses. The Department has acknowledged that delays in converting land to reserve status under treaty land entitlement agreements affect First Nations' use of these lands and can have an impact on their social and economic development opportunities.

First Nations have a strong traditional attachment to land and view it as vital to their cultural preservation and economic development. It is important to both Canada and First Nations that the government meet the obligations set out in treaty land entitlement agreements within a reasonable time. Canada has century-old commitments to provide land for First Nations under treaties, which are constitutionally protected.

What we found

- Overall, Indian and Northern Affairs Canada has made satisfactory progress since 2005 in converting land selected by First Nations to reserve status. More than 315,000 acres have been converted to reserves in Manitoba and Saskatchewan, an increase of 42 percent since our previous audit. In both regions, the Department has also made satisfactory progress in working more closely with First Nations on plans to convert their outstanding selections of land, in its efforts to coordinate environmental assessments and land surveys of selected land, and in improving its capture and processing of data.
- The Department has not made satisfactory progress toward implementing several of our recommendations for improving its management practices to meet its obligations. For example, it still does not track the overall time it takes to process land selections and it cannot demonstrate that processing times have improved over the last three years. It has rarely supported the First Nations in Manitoba in their efforts to resolve third-party interests, as it did for Saskatchewan First Nations. And it has not established plans for converting to reserve status more than 250 selections of land in Manitoba that are not part of a four-year ministerial commitment.
- Without sustained attention to correct the weaknesses we have identified in our audit, the Department risks being unable to sustain its progress in converting land to reserve status.

The Department has responded. The Department agrees with our recommendation. Its detailed response follows the recommendation in the Chapter.

Introduction

Treaty land entitlement obligations

4.1 Following Confederation in 1867, Canada signed 11 treaties with First Nations in Central and Western Canada, intended, in part, to deal with the waves of settlers moving across the Prairies. Under these treaties, Canada promised to reserve alternative lands for First Nations (that is, create reserves). In exchange, the First Nations agreed to surrender the land that Canada planned to develop. However, fulfilling treaty obligations extends beyond promising land. Treaties are solemn agreements between the Crown and First Nations. Treaty rights are recognized and affirmed under the *Constitution Act* and, as such, are constitutionally protected.

4.2 While the historical treaties set out how much land per family was to be set aside for reserves, they did not specify when it was to be set aside. When the treaties were signed, it was understood that First Nations and Canada would agree on what land would be set aside and that government agents would 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 the land promised under the treaties.

4.3 Canada has acknowledged its failure to meet these treaty obligations for land. It has also demonstrated its desire to fulfil these obligations by signing treaty land entitlement agreements, which are also constitutionally protected documents, with these First Nations. Most of the treaty land entitlement agreements relate to First Nations in Manitoba and Saskatchewan.

4.4 Under the agreements, a quantity of land is determined through a negotiation process, and the First Nation may obtain federal or provincial (territorial) land or purchase private land. This land can then be converted to reserve status, according to the terms of settlement agreements and the federal Additions to Reserve/New Reserve Policy.

4.5 In 1992, the Saskatchewan Treaty Land Entitlement Framework Agreement was signed by 25 First Nations, by Canada, and by Saskatchewan. Canada entered into this Agreement to fulfill earlier

commitments made in treaties signed by Canada and First Nations in Saskatchewan between 1871 and 1906. Along with eight separate but similar treaty land entitlement agreements signed with individual First Nations since 1992, these agreements provide about \$415 million in federal compensation to 33 First Nations, enabling those First Nations to acquire up to 2.7 million acres of land.

4.6 In 1997, the Manitoba Treaty Land Entitlement Framework Agreement was signed by the Treaty Land Entitlement Committee of Manitoba Inc. (representing 19 First Nations), by Canada, and by Manitoba. Canada entered into this Agreement to fulfill long-standing commitments made in treaties signed by Canada and First Nations in Manitoba between 1871 and 1910. Eight additional First Nations in Manitoba have signed separate treaty land entitlement agreements.

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

4.7 Under these treaty land entitlement agreements, Canada and Manitoba committed to establishing up to 1.4 million additional acres of reserve lands to make up for the **shortfall** that occurred when reserves were created. Manitoba provides the First Nations with 1.1 million acres of Crown land, and Canada provides \$190 million in federal compensation. First Nations that do not have enough Crown land available to select in their immediate vicinity can use some of this money to purchase up to 300,000 acres of land from private owners.

Land conversions involve several partners and processes

4.8 Treaty land entitlement agreements set out the necessary responsibilities for Indian and Northern Affairs Canada, the provinces, and First Nations to complete the process of converting land selections to reserve status. According to these agreements, First Nations are responsible for, among other things, making land selections and satisfying third-party interests. The provinces' responsibilities include informing First Nations of third-party interests and passing orders-in-council to transfer provincial lands to Canada. In Manitoba, the province is also involved in approving surveys and assisting First Nations in concluding service agreements with local councils.

4.9 We did not audit First Nations or provincial governments. All of our audit observations relate to the Department's progress in implementing the recommendations in our 2005 audit.

4.10 The Department's key responsibilities are to

- carry out legal title searches for selected lands;
- prepare agreements under the *Indian Act* to replace third-party interests in the selected land;

- conduct environmental site assessments;
- survey selected lands;
- seek approvals through ministerial orders or orders-in-council, which would transfer the selected land to the First Nation.

These agreements also require the Department to ensure that it has the necessary staff to meet its obligations.

4.11 The Department is supported in fulfilling some of these responsibilities by other federal departments, including the Department of Justice Canada and Natural Resources Canada. However, those departments were not included in the scope of our audit.

4.12 There are three phases to the treaty land entitlement process:

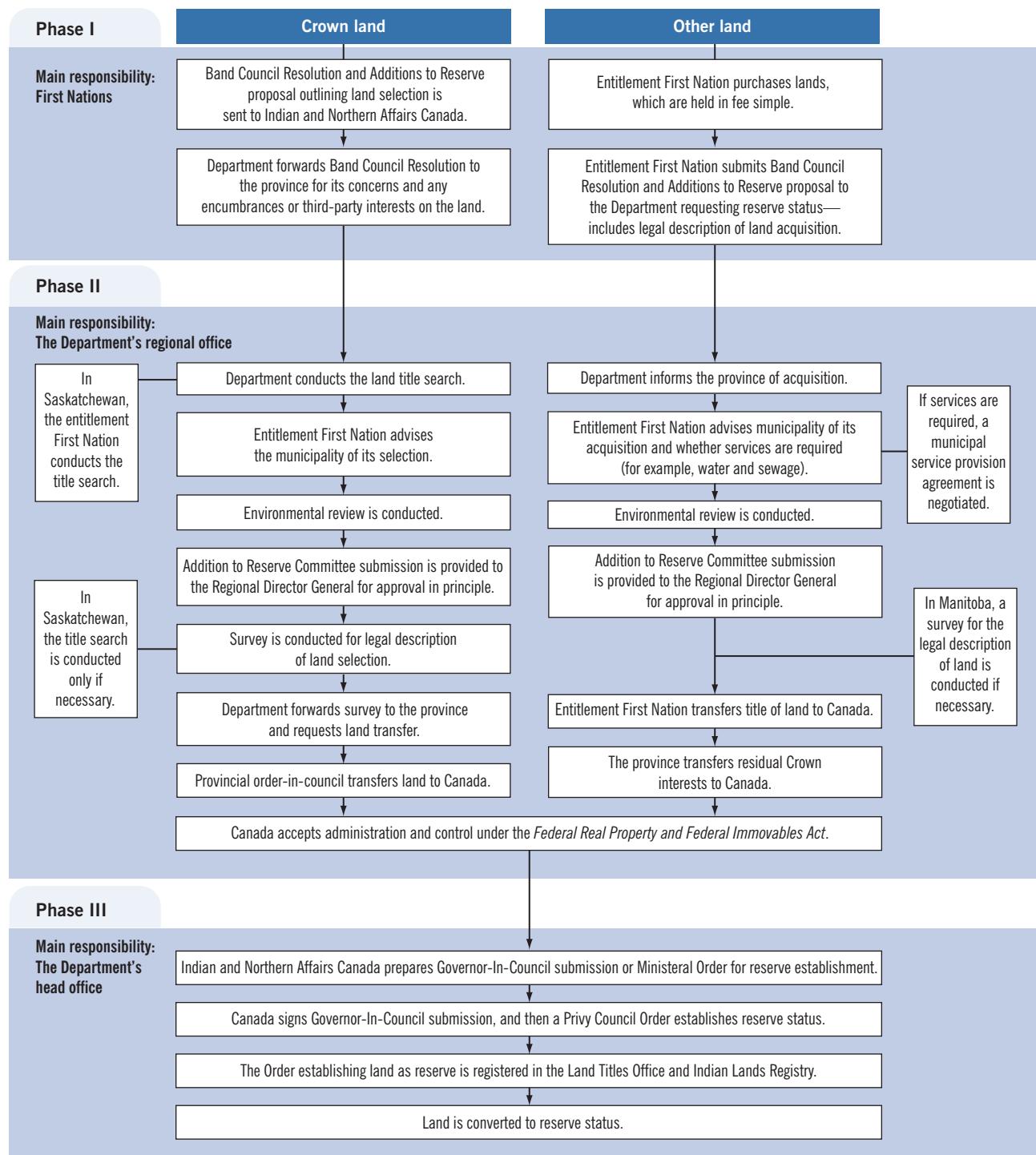
- Phase I includes land selection and (if necessary) purchase of land, which is the responsibility of First Nations. This phase ends with a formal Band Council Resolution that transmits the First Nation's proposal on the land selected to the Department and requests that the selected land be added to their reserve.
- Phase II includes, among other things, the completion of the required land surveys and environmental assessments. The Department's regional offices are very active during this phase.
- Phase III is primarily the responsibility of the Department's head office. It includes seeking approvals through ministerial orders or orders-in-council to convert land to reserve status.

4.13 Exhibit 4.1 illustrates the complexities of each phase of the treaty land entitlement conversion process.

What we found in 2005

4.14 In 2005, we audited the Department's management of its responsibilities under treaty land entitlement agreements. We found a number of deficiencies that affected the Department's fulfillment of its obligations, including the following:

- Inadequate planning and an absence of targets for land conversions limited the Department's progress in converting to reserve status the large number of acres selected by First Nations.
- The Department had converted 12 percent of the acres selected by First Nations in Manitoba and 58 percent of those selected in Saskatchewan. It had no plan in place to process remaining selections and to fulfill commitments under the treaty land entitlement agreements.

Exhibit 4.1 Overview of process for converting selected land to reserve status

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

- Inadequate management of the conversion process by the Department. For example, a lack of coordination in land surveys and expired environmental assessments resulted in delays in the conversion of land to reserve status.
- Communication between the Department and First Nations was limited and sometimes inconsistent, which caused frustration for First Nations and had a negative impact on the conversion process.

Events since 2005

4.15 After our 2005 audit, the Minister of Indian and Northern Affairs, at the 18th Annual General Assembly of the Assembly of Manitoba Chiefs in August 2006, committed the federal government to converting 150,000 acres of land in Manitoba to reserve status for each of the following four years. At the time, the Department reported that less than 130,000 acres had been converted to reserve status in Manitoba since the initial treaty land entitlement agreement was signed in 1997.

4.16 Additional treaty land entitlement agreements have also been signed since the 2005 audit: Four new agreements in Saskatchewan and one in Manitoba.

Focus of the audit

4.17 We examined whether the Department was able to demonstrate that it had made satisfactory progress in implementing the recommendations we made in our November 2005 Report, Chapter 7, Indian and Northern Affairs Canada—Meeting Treaty Land Entitlement Obligations.

4.18 While we did not audit First Nations or other organizations involved in the process, we did interview their officials to help us determine how the Department is managing its responsibilities.

4.19 More details on the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this chapter.

Observations and Recommendation

4.20 The 2005 audit made eight recommendations to Indian and Northern Affairs Canada related to converting lands to reserve status, managing the treaty land entitlement process, and reporting results. The Department accepted our recommendations and committed to making ongoing improvements to meet its treaty land entitlement agreement obligations. It also committed to working with First Nations as well as other partners to address the issues we raised in our audit.

4.21 Throughout this audit, the Department provided us with information on costs, on the acres that First Nations are entitled to, and on the lands they have selected. We found numerous examples of data being received from the Manitoba region that was inaccurate or incomplete. In each of these cases, we took all reasonable measures to obtain the most accurate information available. The data in this audit represent the Department's and our best estimates, based on the information that was available.

Conversion of lands to reserve status

The Department has not reduced processing times

4.22 In our 2005 audit, we noted that the Minister of Indian and Northern Affairs, recognizing that processing times of five to seven years to convert land to reserve status were too long, had made a commitment in 2001 to reduce them to two years. In that audit, we recommended that the Department develop and implement a plan that sets out the explicit steps it would take to process outstanding selections and reduce processing times to two years.

4.23 In this follow-up audit, we assessed the Department's planning processes and sought to determine progress made to reduce processing times. We found that the Department has developed plans that focus on the processing of outstanding land selections for entitlement First Nations. In Manitoba, the Department has developed an operational tool to capture next steps and outstanding issues for land selections that it is converting to reserve status in order to meet the commitment it made in 2006.

4.24 In Saskatchewan, the Department has an operational tool that tracks the status of all land selections for each Entitlement First Nation. The level of detail captured in this tool varies by land selection. However, it generally outlines requirements for land conversion and action items or issues to be addressed. For some land selections, it also provides details on who is responsible for completing specific actions and on what the next steps are in the process.

4.25 While the Department has improved its planning for processing outstanding selections, we found that it has not developed or implemented a plan to reduce processing times, as we recommended in 2005. For land selections in Saskatchewan, the necessary information is captured, but is not analyzed. For those in Manitoba, we found that the Department does not even capture the information necessary to determine whether processing times are being reduced.

4.26 We reviewed each of the 32 land selections converted in Manitoba during the first year of the 2006 commitment, to identify processing times for each of these selections. We found that the average processing time for phases II and III of these selections was close to seven years, with some of these selections taking over a decade. The Department was not able to demonstrate a reduction in processing times.

4.27 Lengthy processing times have the potential to negatively affect First Nations' plans for economic development on land selections, as this development may not be possible until the land is converted to reserve status. The Brokenhead Ojibway Nation in Manitoba is an example of a First Nation that is at risk of having to delay projects while waiting for land to be converted to reserve status (Exhibit 4.2).

Exhibit 4.2 Delays in converting land inhibits economic initiatives

Brokenhead Ojibway Nation, Manitoba

The Manitoba Treaty Land Entitlement Framework Agreement recognized the entitlement of the Brokenhead Ojibway Nation (a First Nation community located north of Winnipeg) to a total amount of 14,481 acres. The First Nation has informed us that it has a variety of plans for economic development activities that it intends to pursue once the selected lands have been converted to reserve status. For example, it plans to develop commercial office space on a land selection located along a provincial highway. This land selection has been in the conversion process for over five years.

The Department supports First Nations in their development of plans to convert lands

4.28 In our 2005 audit, we found that the Department did not always clearly communicate with First Nations about

- what the process was for converting their treaty land entitlement selections to reserves,
- where their land selections were in the process,
- what the next steps were, and
- when the process was expected to be completed.

4.29 We also found that communication with First Nations was neither coordinated nor sustained. We recommended that the Department work more closely with First Nations to develop an action plan for land selections that would, among other things, set out a strategy for converting these lands to reserves.

4.30 In this follow-up audit, we expected that the Department would have worked with First Nations to develop action plans for their land selections. We found that the Department has improved its communications with First Nations and is making efforts to work more closely with them on their plans to convert outstanding land selections.

4.31 In the Department's Saskatchewan region, officials regularly share information with First Nations on the status of their land selections. They also meet with them periodically to discuss challenges and next steps in the conversion process. The Department has also demonstrated that it has made efforts to meet with many First Nations in Manitoba to discuss the status of their land selections.

A significant amount of land has been converted to reserve status

4.32 In our 2005 audit, we found that only about 12 percent of selected lands in Manitoba had been converted to reserve status, and about 58 percent of selected lands had been converted in Saskatchewan. We made several recommendations aimed at improving the Department's processes for converting lands to reserves. In this follow-up audit, we note that the Department has processed over 200 land selections in the two provinces since 2005, designating over 315,000 acres as additional reserve land. This represents a 42 percent increase in land conversions in just three years. In Manitoba alone, over 227,000 acres have been converted to reserve status since our 2005 audit—more than double the total acres converted in the previous eight years.

4.33 The increase in land conversions in Manitoba can be attributed to the commitment made, in August 2006, by the former Minister of Indian Affairs and Northern Development, to convert 150,000 acres of land in that province to reserve status every year for four years. In the first year of this commitment, over 159,000 acres were converted—more land than had been converted between 1997 and our 2005 audit. In the second year, however, the Department converted only 43,000 acres in Manitoba, less than one third of its commitment for that year. Nonetheless, by the end of the second year, the percentage of acres selected by First Nations that had been converted to reserve

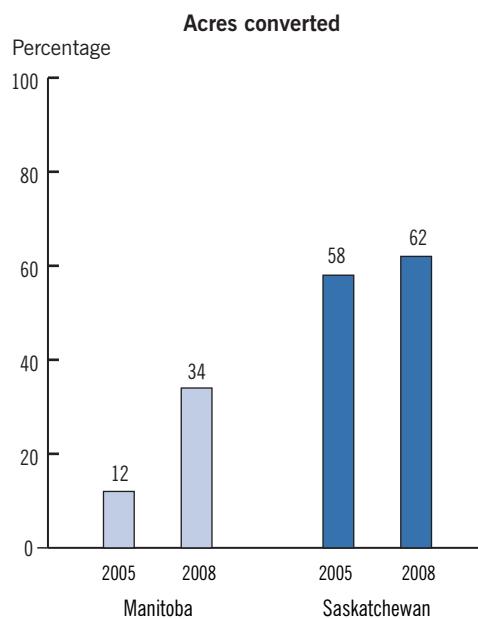
status in Manitoba had increased to 34 percent, up from 12 percent in 2005 (Exhibit 4.3). Since the 2006 commitment, of the 20 First Nations that have ratified their agreements and made land selections, 14 had at least one land selection converted and some had multiple selections converted.

4.34 The size of the land selections in Manitoba contributed to the Department's success in converting a large number of acres. Since 2005, 68 land selections were converted, with an average size of approximately 3,300 acres—one of these selections was more than 58,000 acres. In contrast, the average size of land selections that still need to be converted in Manitoba is less than 1,500 acres.

4.35 In order to convert 150,000 acres per year (as required under the 2006 commitment), the Department will need to process a much higher number of selections. At the end of our audit, over 430 selections—close to 650,000 acres of reserve land—remained to be converted in Manitoba.

4.36 We noted in this follow-up audit that, in Saskatchewan, about 62 percent of the selected acres have been converted, up from 58 percent in 2005. Since 2005, the Department has converted over 89,000 acres in Saskatchewan to reserves. Of the original 25 First Nations that were part of the initial treaty land entitlement agreement,

Exhibit 4.3 Between 2005 and 2008, the percentage of acres converted to reserves has increased, especially in Manitoba



22 have obtained their minimum required reserve acres. Three additional First Nations, covered under agreements that were signed more recently, have also reached their minimum required reserve acres. The Department has identified over 700 land selections that still need to be converted, representing 451,000 acres of reserve land. In contrast to those in Manitoba, the average size of outstanding land selections in Saskatchewan remains about the same as those that have been converted to date, about 600 acres.

4.37 We found that the Department's priority for converting large volumes of land in Manitoba has had an adverse impact on the time required to convert land in Saskatchewan. Phase III of the land conversion process requires that the Department's head office staff process the file and obtain either a ministerial order or an order-in-council. Since the 2006 commitment made processing Manitoba land conversion files the priority at the Department's head office, the average Phase III processing times for land selections from Saskatchewan has almost tripled—from 76 to 210 days. According to information provided by the Department, it now takes almost twice as long to complete the Phase III process for selections in Saskatchewan as it does for selections in Manitoba. Delays in converting lands in Saskatchewan sometimes have direct financial implications, both for First Nations in Saskatchewan and for the Department.

4.38 Exhibit 4.4 summarizes our assessment of the Department's progress in implementing our 2005 recommendations on converting lands to reserves.

Management of the treaty land entitlement process

4.39 During our 2005 audit, we reported on several long-standing weaknesses in the Department's management processes for meeting treaty land entitlement obligations, particularly those related to

- environmental reviews,
- land surveys, and
- the resolution of third-party interests.

4.40 In our 2005 audit, we made five recommendations to address the need for improved management processes. During this follow-up audit, we expected that the Department would have acted on our recommendations and would now have appropriate systems and processes in place to manage its treaty land entitlement obligations.

Exhibit 4.4 Progress in addressing our recommendations on converting lands to reserves

November 2005 Report of the Auditor General, Chapter 7	
Recommendation	Progress
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 (paragraph 7.20).	Unsatisfactory
Indian and Northern Affairs Canada should work more closely with each First Nation to develop an action plan for its selections. This should include <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 these agreements (paragraph 7.27). 	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Coordination of processes and data capture has improved

4.41 Environmental reviews and land surveys. In 2005, we recommended that the Department take measures that would lead to better coordination of environmental reviews and land surveys. In this follow-up audit, we found that the Department has changed its requirements for updating environmental assessments, which is consistent with the intent of our 2005 recommendation. The period for which environmental reviews remain valid has increased from two years to five years. This helps the Department coordinate having simultaneously valid environmental reviews and land surveys.

4.42 Data capture. In 2005, we also recommended that the Department improve its data capture and sharing capabilities for land selection files. The Department committed to having an operational system in place to achieve this by April 2009. At the time of our follow-up audit, the Department had almost completed the development of a new national database designed to improve data collection, file tracking, and information sharing. Field testing of the

database was scheduled for fall 2008 and winter 2009. Officials informed us that the database will address many elements of our 2005 recommendation. We noted, however, that there were significant weaknesses in the integrity of some of the data to be included in the new database and that the Department has yet to identify how these weaknesses will be addressed. The success of the database depends on this critical issue (Exhibit 4.5).

Greater efforts are needed to improve management processes

4.43 Third-party interests. The Treaty Land Entitlement Framework agreements in Manitoba and Saskatchewan do not obligate the Department to resolve third-party interests. Nevertheless, in 2005, we

Exhibit 4.5 Progress in addressing recommendations on improving the coordination of processes and data capture

November 2005 Report of the Auditor General, Chapter 7	
Recommendation	Progress
<p>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 coordinated strategic plan so that the required environmental reviews and land surveys do not hold up conversion of land to reserve status (paragraph 7.36). 	Satisfactory
<p>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 (paragraph 7.65). 	Satisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

recommended that the Department work with First Nations to assist them in their efforts to resolve these interests. The Department agreed with our recommendation and made a commitment to take action. In this follow-up audit, we found that, while the Department has participated in a number of initiatives to discuss third-party issues, it was only able to give a few examples of its direct role in supporting First Nations in Manitoba. In fact, throughout the audit, Department officials repeatedly referred to the fact that the Manitoba Framework Agreement does not obligate them to resolve third-party interests.

4.44 In contrast, the Department actively supported First Nations in Saskatchewan in resolving third-party interests. For example, we found, in one of the files we examined, the Department had devoted extra resources to help resolve third-party interests for a land selection that was a priority for a First Nation.

4.45 We also found that the Department has increased its efforts to better inform First Nations, the provinces, and other stakeholders, through joint education and information sessions about third-party interests in both regions. However, the Department was unable to demonstrate that it had developed additional tools to help resolve third-party interests, as it had committed to do in 2005.

4.46 Land selection files. In 2005, we also recommended that the Department develop and implement a consistent approach to ensuring that its land selection files are properly organized and that they contain the documentation required to facilitate conversion. We found that most of the land selection files that we reviewed in the Department's Manitoba office were not well organized and often were not comprehensive. Conversely, the majority of files that we reviewed from the Saskatchewan office were well organized and comprehensive. However, we found that neither office had a protocol for file management.

4.47 Management plans. In 2005, we recommended that the Department develop a management plan that outlines how it will manage its operations for processing outstanding selections within a reasonable period of time. During this follow-up audit, we found that it had not done so for the Manitoba region. Instead, the Department's strategic planning for Manitoba is focused on meeting its 2006 commitment to convert 150,000 acres annually for four years; it does not include plans to prioritize and process the more than 250 selections that are not part of this 2006 commitment.

4.48 The Department's planning for Saskatchewan is consistent with its obligations under the agreement, in that planning is focused on the First Nations that have yet to reach their minimum required reserve acres. We found that the Department also processes land selections for First Nations that have already met their minimum required reserve acres. As a result, the Department has successfully converted over 1,200 selections in Saskatchewan, 145 since our 2005 audit. In addition, the Department uses management tools in Saskatchewan that track the status of all land selections to help keep officials up to date on the outstanding treaty land entitlement workload.

4.49 Continuing management weaknesses we identified in this follow-up audit are of particular concern, as they relate to treaty obligations that Canada incurred more than a century ago and that it reiterated its commitment to fulfilling over the past two decades. The Rolling River community, in Manitoba, and the Onion Lake community, in Saskatchewan, are examples of First Nations communities where land being converted to reserve status has helped improve economic prosperity and social well being, even though more remains to be done (Exhibit 4.6).

Exhibit 4.6 Converting land to reserve status benefits First Nation communities

Rolling River, Manitoba

The Manitoba Treaty Land Entitlement Framework Agreement recognized the entitlement of Rolling River (a First Nation community in southern Manitoba) to a total amount of 47,112 acres. To date, 2,509 acres of the 8,894 selected by Rolling River have been converted to reserve status.

The Rolling River First Nation community informed us that it has used lands that were converted to reserve status under its Treaty Land Entitlement Agreement for developments that it believes are both economically and socially beneficial to the community. Of the land converted to reserve status in 2006, 156 acres now house a community-staffed health centre and gas bar, which is located on a busy provincial highway in the vicinity of a national park.

The community also informed us that it had purchased land on which it plans to build log cabins to be used as summer rental properties. However, the land must be converted to reserve status before it is economically feasible to do so. The First Nation also plans to make other land selections available to the community, so other options, such as housing, can be pursued.

Onion Lake, Saskatchewan

The Saskatchewan Treaty Land Entitlement Framework Agreement recognized Onion Lake's entitlement to a total of 108,551 acres. To date, of the 102,825 acres that have been selected by Onion Lake, 90,350 acres have been converted to reserves.

The First Nation informed us that one of its selections was for a small parcel of land between the existing reserve and the Saskatchewan River. The First Nation used that land to drill a well, which now provides clean drinking water to the community. This well serves as an important source of clean drinking water and has helped the community deal with a long-standing potable water problem.

4.50 In summary, we found that the Department has made satisfactory progress in addressing two of the management-related recommendations, while progress made on the remaining three recommendations was unsatisfactory (Exhibit 4.7).

Exhibit 4.7 Progress in addressing recommendations on improving management processes

November 2005 Report of the Auditor General, Chapter 7	
Recommendation	Progress
Indian and Northern Affairs should work with First Nations to assist them in their efforts to resolve third-party interests. This should include <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 • encouraging the use of dispute resolution mechanisms set up under treaty land entitlement agreements to help resolve third-party interests (paragraph 7.46). 	Unsatisfactory
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 (paragraph 7.59).	Unsatisfactory
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 <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 (paragraph 7.60). 	Unsatisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Reporting of results**Reporting on meeting treaty land entitlement obligations is inadequate**

4.51 In 2005, we found limited information on Indian and Northern Affairs Canada's objectives, performance expectations, timelines, and its reporting of results. We recommended that the Department periodically report results related to treaty land entitlement agreements, including the progress it made in meeting its legal obligations, the costs that were incurred, and the number of acres that were selected and converted. We also recommended that the Department provide updates on its efforts to reduce the time taken to convert selected land to reserve status.

4.52 We expected the Department would have reported this information in its 2005–06 Departmental Performance Report and would have provided updates every three years thereafter, as it committed to do in its response to our recommendation.

4.53 We found that information related to its treaty land entitlement obligations in the 2005–06 Departmental Performance Report was minimal. It focused instead on the Addition to Reserve process, which includes treaty land entitlements and other provisions for converting land to reserve status. This report includes only general information on the Department's efforts to reduce processing times and on its efforts to improve the process overall. We also examined the 2006–07 Departmental Performance Report and found that the only information about treaty land entitlements was a reference to the 2006 commitment in Manitoba.

4.54 There is no information in these departmental performance reports about the relationship between lands selected and lands converted under treaty land entitlement agreements or about the cost of meeting treaty land entitlement obligations. As a result, the Department is not clearly presenting the progress it has achieved and the challenges that remain for Canada to meet its treaty land entitlement obligations in Saskatchewan and Manitoba.

4.55 We found that the Department's reporting on its treaty land entitlement obligations was inadequate (Exhibit 4.8).

Exhibit 4.8 Progress in addressing our recommendation on performance reporting

November 2005 Report of the Auditor General, Chapter 7	
Recommendation	Progress
<p>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 (paragraph 7.68). 	Unsatisfactory

Satisfactory—Progress is satisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Unsatisfactory—Progress is unsatisfactory, given the significance and complexity of the issue, and the time that has elapsed since the recommendation was made.

Management attention**Sustained management attention is required**

4.56 While recognizing the substantial progress that has been made in converting land to reserves over the past three years, we also note that the Department has not sufficiently addressed several underlying weaknesses in its processes for meeting treaty land entitlement obligations. Although treaty land entitlement agreements are constitutionally protected, the Department has not implemented several of our 2005 recommendations aimed at improving their implementation.

4.57 Sustained management attention to implement the recommendations we made in 2005 could help the Department to continue to process outstanding land selections, reduce the time required to do so, and meet Canada's treaty land entitlement obligations.

4.58 Recommendation. Indian and Northern Affairs Canada should develop and implement an action plan that sets out how it plans to convert lands to reserve status. In the plan, the Department should clearly identify its next steps, responsibilities, and timelines for actions for each land selection that is to be converted to reserve status. The action plan should include details on

- the Department's commitment to help First Nations resolve third-party interests,
- the way data integrity issues will be resolved, and

- the Department’s plan for developing a consistent file structure to better monitor the status of treaty land entitlement selections.

The Department’s response. Canada is committed to honouring its lawful obligations to First Nations through the resolution of treaty land entitlements. Since the 2005 audit, Indian and Northern Affairs Canada has made great strides in the conversion of land to reserve status, with more than 315,000 acres being converted in Manitoba and Saskatchewan, representing a 42 percent increase in three years. Additionally, Indian and Northern Affairs Canada has improved the coordination of environmental assessments and land surveys of selected land and has worked closely with First Nations to develop future plans to convert outstanding selections.

Indian and Northern Affairs Canada agrees with the recommendation and commits to an action plan that sets out next steps, responsibilities, and timelines for the process by which land selected is to be converted to reserve status. The action plan will include details on how the Department intends to help First Nations resolve third-party interests and how data integrity issues will be resolved as well as on the development of a consistent file process to monitor the status of treaty land entitlement selections.

Conclusion

4.59 Overall, Indian and Northern Affairs Canada has made satisfactory progress in converting land to reserve status. Since our 2005 audit, the Department has converted over 315,000 acres in Manitoba and Saskatchewan—a 42 percent increase in three years.

4.60 We found that the Department has made satisfactory progress in implementing some of our 2005 recommendations. These relate to working more closely with First Nations on plans to convert their outstanding selections, enabling better coordination of its environmental assessments and land surveys, and making efforts to improve its data capture and processing capabilities.

4.61 However, we are not satisfied with progress made by the Department to implement several of our recommendations, including the following:

- The Department does not track the overall time it takes to convert lands to reserve status and cannot demonstrate improvements in processing times over the last three years.

- The Department has not made satisfactory progress in working with First Nations in Manitoba to assist them in their efforts to resolve third-party interests; in Saskatchewan, the Department did support First Nations in these efforts.
- While the Department did prioritize lands to be converted to reserve status, it has not established plans for converting to reserves more than 250 land selections in Manitoba that are not part of a four-year ministerial commitment.
- The Department has not adequately reported results it achieved in relation to the overall objective of land conversions.

4.62 Meeting Canada's obligations to provide lands to First Nations will require significant and ongoing effort. We believe that the Department will need to address management weaknesses we identified to further build on its success of the last three years and meet its treaty land entitlement obligations.

About the Audit

Objective

The objective of the audit was to determine if Indian and Northern Affairs Canada was able to demonstrate that it had made satisfactory progress in implementing the recommendations made in our November 2005 Report, Chapter 7, Meeting Treaty Land Entitlement Obligations.

Scope and approach

We examined how the Department had implemented the recommendations made in the 2005 audit chapter. Consistent with the approach used in 2005, the audit focused on the Manitoba and Saskatchewan regions as, according to the Department, approximately 90 percent of treaty land entitlement transactions take place in these two regions. We examined work completed at headquarters and in the regional offices in Saskatchewan and Manitoba.

We conducted interviews with officials at headquarters and at regional offices in Saskatchewan and Manitoba to better understand the treaty land entitlement processes and related operations.

We also reviewed relevant documentation—including legislation, corporate and regional documents, planning documents, and other reports as well as information from stakeholders—to better understand the Additions to Reserve Policy and the roles, responsibilities, and practices of the parties.

We reviewed seven files each in Saskatchewan and Manitoba to determine whether the Department's implementation plan had been effectively applied to those files. These included files that were active at the time of our audit in 2005, where land selections had since been converted to reserve status, and files that were active during our follow-up audit.

We also met with representatives from four First Nations in Saskatchewan and Manitoba and met with regional First Nation organizations to obtain their perspectives.

We did not audit treaty land entitlement trust agreements, which are used to manage funds received as part of the agreements, and we did not audit First Nations or any other organizations involved in the process.

Criteria

Listed below are the criteria that were used to conduct this audit and their sources.

Criteria	Sources
Departmental response to November 2005 Report of the Auditor General of Canada, Chapter 7, Indian and Northern Affairs Canada—Meeting Treaty Land Entitlement Obligations	
<p>We expected that Indian and Northern Affairs Canada would have developed and implemented a plan setting out explicit steps it would 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.</p>	Paragraph 7.20
<p>We expected that the Department would have worked more closely with each First Nation to develop an action plan for its selections. This would 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 <p>providing ongoing assistance to First Nations as they work to meet their responsibilities under these agreements.</p>	Paragraph 7.27
<p>We expected that, while respecting legislation and statutes, the Department would have</p> <ul style="list-style-type: none"> • issued 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; • planned land surveys so that they are undertaken to allow selected land to be converted to reserve status in a timely manner; and • developed a coordinated strategic plan so that the required environmental reviews and land surveys do not hold up conversion of land to reserve status. 	Paragraph 7.36
<p>We expected that the Department would have worked with First Nations to assist them in their efforts to resolve third-party interests. This includes</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 • encouraging the use of dispute resolution mechanisms set up under treaty land entitlement agreements to help resolve third-party interests. 	Paragraph 7.46

Criteria	Sources
Departmental response to November 2005 Report of the Auditor General of Canada, Chapter 7, Indian and Northern Affairs Canada—Meeting Treaty Land Entitlement Obligations	
<p>We expected that the Department would have developed and implemented a consistent approach to ensure that its land selection files are properly organized and contain documentation required to facilitate conversion.</p>	Paragraph 7.59
<p>We expected that the Department would have developed a strategic management plan that outlines how it will manage its operations to process selections within a reasonable period of time. We expect the strategic plan to</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 results of its work. 	Paragraph 7.60
<p>We expected that the Department would have</p> <ul style="list-style-type: none"> • taken steps to ensure that treaty land entitlement data are complete and accurate; • developed and implemented a file-tracking system that can provide accurate information on results achieved (for example, number of acres selected, number of acres converted) and that is 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 provided information needed to process selections to those involved in the process, including entitlement First Nations and provincial governments. 	Paragraph 7.65

Management reviewed and accepted the suitability of the criteria used in the audit.

Audit work completed

Audit work for this chapter was substantially completed on 12 September 2008

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Appendix List of recommendations

The following is the recommendation found in Chapter 4. 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	Response
<p>Conversion of lands to reserve status</p> <p>4.58 Indian and Northern Affairs Canada should develop and implement an action plan that sets out how it plans to convert lands to reserve status. In the plan, the Department should clearly identify its next steps, responsibilities, and timelines for actions for each land selection that is to be converted to reserve status. Specifically, the action plan should include details on</p> <ul style="list-style-type: none"> • the Department's commitment to help First Nations resolve third-party interests, • the way data integrity issues will be resolved, and • the Department's plan for developing a consistent file structure to better monitor the status of treaty land entitlement selections. (4.22–4.57) 	<p>Canada is committed to honouring its lawful obligations to First Nations through the resolution of treaty land entitlements. Since the 2005 audit, Indian and Northern Affairs Canada has made great strides in the conversion of land to reserve status, with more than 315,000 acres being converted in Manitoba and Saskatchewan, representing a 42 percent increase in three years. Additionally, Indian and Northern Affairs Canada has improved the coordination of environmental assessments and land surveys of selected land and has worked closely with First Nations to develop future plans to convert outstanding selections.</p> <p>Indian and Northern Affairs Canada agrees with the recommendation and commits to an action plan that sets out next steps, responsibilities, and timelines for the process by which land selected is to be converted to reserve status. The action plan will include details on how the Department intends to help First Nations resolve third-party interests and how data integrity issues will be resolved as well as on the development of a consistent file process to monitor the status of treaty land entitlement selections.</p>

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