

Introduction

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Following the failure of the 1976 Saskatchewan Agreement to settle the treaty land entitlement claims of twenty-seven Entitlement Bands, the Federation of Saskatchewan Indian Nations (FSIN) and Canada agreed to establish an Office of the Treaty Commissioner to make recommendations on how entitlement land claims in Saskatchewan could be settled.

The report prepared by the Treaty Commissioner in May 1990 was used as a basis for negotiating the Framework Agreement. It recommended a new formula (Equity Formula vs. 1976 Formula) for calculating each Band's Entitlement acreage. It also suggested that money be provided to assist Bands in acquiring the lands that Canada would transfer to reserve status and recommended ways in which other issues between Canada, Saskatchewan and the Entitlement Bands could be settled.

After two and a half years of negotiations between Canada, Saskatchewan and the Assembly of Entitlement Chiefs (AEC), an Agreement was reached on how to settle outstanding Treaty Land Entitlement for twenty-six bands in Saskatchewan. It involves over 500 million dollars and 1.67 million acres of land that can be acquired with reserve status. It also deals with land, water, minerals, third-party interests, roads and other issues that frustrated the transfer of lands to reserve status under the 1976 Agreement. This Agreement now provides the framework for individual bands to conclude with Canada their own band-specific agreements.

Editor's note

David C. Knoll acted as legal council to the FSIN/Assembly of Entitlement Chiefs Negotiation Team, assisting in the negotiation and drafting of the Framework Agreement along with legal counsel from Canada and Saskatchewan.

Saskatchewan Treaty Land Entitlement Framework Agreement: A Summary

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Preamble

1. The following is a summary of the Framework Agreement and is not intended to be a detailed analysis of all the Articles or clauses in the Agreement. A more thorough review of the Agreement should be conducted with your legal counsel, financial advisors and/or band technicians. The FSIN staff are available to conduct workshops and provide resource support upon request.

Introduction

1. The Framework Agreement is to come into force as between Canada and Saskatchewan at the time they sign the Agreement.
2. Entitlement Bands who are ready to do so may sign on at the same time or can thereafter "adhere" to the Agreement no later than March 1, 1993.
3. The Framework will come into force, as between Canada, Saskatchewan and the Entitlement Bands, when the Band Specific Agreement is concluded.
4. The Band Specific Agreement must be ratified and concluded no later than three (3) years after Canada and Saskatchewan have signed the Framework Agreement.
5. Although Canada, Saskatchewan and the Entitlement Bands have a different understanding of what the Treaty Land Entitlement obligations are and have agreed to disagree on this point, nevertheless all parties who have executed this Agreement and Band Specific Agreements have agreed to settle these obligations on the basis set out in those Agreements.

Terms of Settlement

1. Canada and Saskatchewan have agreed to cost-share paying \$500 million dollars over 12 years to enable the Treaty Land Entitlement Bands to acquire up to 1.7 million acres of land with reserve status and to also compensate the Rural Municipalities and School Divisions for tax loss.

2. The Entitlement Bands are only obligated to acquire with reserve status their "shortfall acres," including minerals and try their best to do this within 12 years.
3. After they have acquired their shortfall acres with reserve status, Entitlement Bands can use the balance of their settlement funds to either acquire additional land with reserve status up to "Equity" or the "76 Formula" acreage or for other Band development purposes. These purposes are defined in the Framework Agreement and how they will be utilized will be clarified in each Band Trust Agreement.
4. The Specifics of an Entitlement Bands Shortfall acres, Equity or '76 Formula Acreage, compensation amounts and other land quantum information is contained in Schedule 1 of the Framework Agreement.
5. These figures are fixed and not subject to further negotiation in Band Specific Agreements.
6. Clauses are drafted to ensure as much as possible that Entitlement Monies are not subject to tax and that the purchase of land and most acquisition costs will be exempt from GST.

Execution of the Framework Agreement by Bands

1. The Band Council must first authorize by B.C.R. their Chief to either sign the Framework Agreement at the same time as Canada and Saskatchewan or, if they are not ready, to later "adhere" to the Agreement. The Adherence Agreement is attached as Appendix 2 to the Framework Agreement.
2. The Entitlement Bands have only until March 1, 1993 to adhere to the Framework Agreement after which there is no obligation to pay under the Agreement and its provisions for those Bands who don't adhere are terminated.
3. Upon execution of the Agreement by Canada and Saskatchewan their payments under the Cost Sharing Agreement begin within 30 days for those Bands who have signed at the same time and within 60 days for Saskatchewan and 30 days for Canada from the time a Band adheres to the Framework Agreement.
4. Saskatchewan's monies will be paid into a fund held by Canada and begin earning interest immediately.
5. The monies paid by Canada will be placed in a Special Account and begin earning interest but only after federal legislation has been passed setting up this Account.
6. Until the Special Account is established Canada's contributions will come out of a regular appropriations and both Canada's and Saskatchewan's

payments, whether before or after the establishment of the Special Account, will be available to be paid with or without interest to the Entitlement Bands once their Band Specific Agreements are concluded.

7. Also upon signing the Framework the balance of the Entitlement Bands planning dollars will be paid within 60 days.

Execution of Band Specific Agreement

1. The Band Specific Agreement must be ratified and concluded within three years from the date the Framework Agreement is signed by Canada and Saskatchewan. The form of the Agreement is attached as Appendix 1 to the Framework Agreement.
2. Failure to ratify and conclude the Band Specific Agreement within 3 years will result in termination of Canada's and Saskatchewan's payments and application of the Framework Agreement to that Band.
3. Once the Band Specific Agreement is concluded the monies held by Canada in the Entitlement Fund will be paid within 30 days to the Entitlement Band's Trust Account and thereafter on or before August 31, for the remaining years.
4. The \$100,000 for acquisition costs will also be paid to the Entitlement Bands within 60 days from concluding their Band Specific Agreement.
5. The Band Specific Agreement must be approved by 50% + 1 of all eligible voters in a ratification vote held according to the voting guidelines attached as Schedule 3 to the Framework Agreement.
6. The eligible voters are all those who are 18 years of age at the time of the vote and are either on the General List, or for those who have their own membership codes, those that are only on their membership list. But in the latter case, who can vote will have to be decided between Canada and the Band prior to the ratification vote.
7. Canada will pay reasonable ratification costs which must be negotiated with Canada prior to the vote. Any payment of this amount to conduct the vote should be agreed upon in advance.
8. At the same time Bands ratify their Band Specific Agreements they will also have to ratify their Trust Agreements. Through this Agreement the Entitlement monies will be paid by Canada into the Band's Trust Accounts for the purpose of land acquisition and other band development purposes according to Schedule 7 of the Framework Agreement.
9. Apart from up to \$300,000 and the interest earned on the Trust, the monies must be first used to acquire the shortfall acres and comply with other trust conditions contained in the Framework Agreement.
10. A model Trust Agreement is attached as Schedule 5 to the Framework

Agreement. Another sample from the FSIN will be made available.

11. What also must be ratified at the same time as the Band Specific Agreement will be Public Utility Easement Agreements to deal with how the interests of Sask-Tel, Sask-Power and Sask-Energy will be dealt with in the future when reserve land is acquired by an Entitlement Band. These are attached as Appendix 3 to the Framework Agreement.

Release and Indemnity

1. Because the Framework Agreement and the Band Specific Agreements are settling outstanding Treaty Land Entitlement obligations and doing so by providing money to Entitlement Bands to acquire reserve lands up to Equity or '76 and after shortfall to use these monies for other Band development purposes, Canada and Saskatchewan want certain releases based on these Agreement's being in full satisfaction of their respective obligations and also want assurances that no actions will be taken against them for proceeding on this basis.

2. Canada wants to be released by the Entitlement Bands of its Treaty Land Entitlement obligations and Saskatchewan of its obligations to provide land to Canada under the Natural Resources Transfer Agreement. Both want to be assured that no action will be taken against them and this deal will be in full and final satisfaction of their respective obligations.

3. It is made clear that these obligations only relate to land entitlement and not in respect of surrender or other claims under Canada's Specific Claims Policy or that might relate to traditional lands.

4. Nor is this release to affect other Treaty Rights and should there be a future variation to Treaty terms nothing shall prevent the Entitlement Bands from benefiting from those changes.

5. Finally, Canada cannot rely on the release of its Treaty obligations until an Entitlement Band has acquired its shortfall acres or after 12 years or until Canada has paid its monies. Nor will it rely on the release if it is responsible for the Entitlement Band not reaching its shortfall acres.

6. Otherwise, the release is effective and after shortfall, 12 years or after the money is paid the Entitlement Bands have to sue under the Agreement to force Canada to fulfil its other obligations, such as setting aside reserve lands up to Equity or '76.

7. Canada will pay damages for not following through with their commitment to set apart land with reserve status up to Equity or '76 as long as the Band has complied with the Agreement and Canada fails to follow through with the recommendations to establish these lands with reserve status.

8. Saskatchewan will get their release from Canada through the terms of the Framework Agreement and an amendment to the Natural Resources Transfer Agreement attached as Schedule 4 to the Framework Agreement.
9. Canada also wants those Bands who have started court action against them, if they are a party to this Agreement, to stop the court action as part of this deal.

Land Acquisition Principles

1. The approach taken in the Framework Agreement to the acquisition of Land, Minerals, Improvements and dealing with other interests is strictly on a willing seller/willing buyer basis. This does not obligate a private owner or Canada and Saskatchewan to sell anything although they will give favourable consideration to an offer to purchase.
2. The price of Land, Minerals, and Improvements can be the subject of an independent appraisal and if there is a dispute over who the appraiser should be an Arbitrator will decide on his appointment. The price determined by the appraiser will be binding.
3. Because of the new approach by Canada and Saskatchewan to the purchase of land and how water, roads and other interests are dealt with, both governments will have to amend their legislation to permit this.
4. Until a Bands shortfall acres are acquired, each Entitlement Band, unless otherwise agreed, will have an upper limit on what price per acre they can spend on the purchase of Land, Minerals, and Improvements.
5. With the exception of Onion Lake, all Entitlement Lands must be acquired in Saskatchewan.

Land Acquisition Process

1. Once the Band Specific Agreement has been concluded and the monies are in an Entitlement Bands Trust Account, they can begin acquiring land for reserve status through a process outlined in the Framework Agreement, their Trust Agreement and the Terms and Conditions of Reserve Creation attached as Schedule 6 to the Framework Agreement.
2. The first step is to identify the land, determine whether it is for sale, conduct all necessary land title searches to find out what third party interests have to be dealt with and then pass a B.C.R. with this information advising the Department of Indian Affairs that the Band wishes to purchase the land for reserve status.
3. Once the B.C.R. goes to the Department, it is registered and the Province is notified. Both Canada and Saskatchewan have certain time frames in which to get certain things done.

4. The Entitlement Bands also have certain time frames within which to do certain things.
5. Once the B.C.R. is registered the Entitlement Bands will have an official from the Department appointed to help them prepare their submission to ensure that all the provisions in the Framework Agreement and the Terms and Conditions are dealt with.
6. Once the submission is complete and ready to go to the Additions to Reserve Committee, upon delivery the Committee has 30 days within which to unconditionally recommend, conditionally recommend or reject the land for reserve status. If rejected the Bands are entitled to a written explanation or meeting with the officials to discuss the rejection.
7. If the submission is unconditionally approved it goes to the Regional Director General who has 15 days within which to also unconditionally approve, conditionally approve or reject the land for reserve status.
8. If unconditionally approved and once the land is completely purchased, the boundary surveys completed and the title transferred to Canada, the Minister will recommend to Cabinet that the land be set apart as a reserve. Cabinet will ordinarily pass an Order-in-Council recognizing these lands with reserve status.
9. Canada will pick up environmental screening and reserve boundary survey costs.
10. The Entitlement Bands will have the responsibility to deal with all Third Party Interests at their own expense before title will be transferred to Canada and reserves will be established.
11. This process of land acquisition will only last for a maximum of 18 years unless the parties can agree to a longer term, otherwise the Additions to Reserve Policy in place at that time will apply.
12. What lands are available for purchase, how they will be purchased, what will happen to water, roads and occupants and how minerals will be acquired are all covered in the Framework Agreement. These must all be dealt with in one way or another before lands will be transferred to reserve status.

Land

1. Land can be purchased from a private owner at whatever price the Entitlement Band can negotiate.
2. Federal and Provincial Crown Land and Improvements will be generally available for purchase to be transferred to reserve status except:
 - a) those provincial lands that will only be made available in exceptional circumstances;

- b) those that are required by Saskatchewan for a public purpose;
 - c) those which do not receive the proper approval from the Occupants;
and
 - d) only if Third Party Interests are dealt with.
3. Entitlement Bands have to notify Saskatchewan in writing within 12 months from the signing of the Framework Agreement that they are interested in Crown lands which were the subject of a "freeze policy."
 4. If Saskatchewan says within 90 days that these lands are available for sale the Entitlement Bands have to complete the purchase within the latter of either one year from execution of their Band Specific Agreement or within three years from the signing of the Framework Agreement.
 5. For those lands not subject to the "freeze policy," Saskatchewan will, upon written request by the Band, notify the Entitlement Band within 90 days that it is available for sale and thereafter the Band has 18 months to purchase the land.
 6. During the time periods mentioned in 4 and 5, Saskatchewan will not, with minor exceptions, permit any other interest to be created on the land unless the Band consents.
 7. The price for private or Crown land will be the fair market value which can be either agreed upon or determined by an appraiser.
 8. The value for northern Crown lands is set at a certain base price (\$30/acre) and thereafter increased for shore land within a certain distance from a Northern Municipality (\$150-\$300/acre). There is also a top up for productive forest land (\$9-\$18/acre).
 9. Northern Community assets will be valued at a price which takes into consideration certain valuation factors. If a price cannot be agreed upon it can be submitted to the Arbitration Board.
 10. Certain northern community assets held by the Department of Indian Affairs will be transferred without cost to the Entitlement Bands.
 11. Before P.F.R.A. pastures, provincial community pastures and land within an F.M.L.A. will be available for sale, there has to be an agreement with the Occupants. However, Canada and Saskatchewan will consider selling P.F.R.A. and community pastures if 75% of the Occupants agree. Any lands within an F.M.L.A. may also be sold where Saskatchewan can get the land under that agreement without cost or if they are compensated for any costs they might incur in transferring those lands.

Minerals

1. Provisions under the Framework Agreement dealing with minerals are very complex and must be studied with care. The general principle is

that reserve land up to Shortfall must be acquired with the minerals. After that reserve land can be purchased without minerals as long as access is permitted to those who have an interest in the minerals.

2. Since there is a difference sometimes between those who own the minerals and those who have a right to use the minerals, the Framework Agreement provides how the Entitlement Bands can deal with and acquire these separate interests.

3. There are a few instances where a private owner of land also owns the minerals. In this case the Entitlement Band can deal solely with that owner, however, most frequently Saskatchewan owns the minerals and has permitted others to use the minerals from which Saskatchewan receives certain revenues. In this situation the Entitlement Band has to deal with Saskatchewan and the mineral user to get the minerals.

4. Arrangements can be made to purchase the minerals from Canada and Saskatchewan in which case they have to let the Entitlement Band know within 90 days of the written request that they are available for sale after which for 18 months Saskatchewan shall not dispose of these.

5. The price of minerals will be determined by an independent appraiser using an approach to valuation contained in the Framework Agreement with reference to the sources of mineral revenue mentioned in Schedule 2.

6. Generally, the mineral users have to approve the sale of minerals from the Crown but where they don't arrangements can be made to purchase Saskatchewan's interests and the revenues they would have received from the user will go to the Entitlement Band.

7. Special financial arrangements can also be made to purchase land and minerals up front out of future treaty Land Entitlement payments so that reserve land and, in particular, shortfall acres can be acquired sooner.

8. Certain financial arrangements can also be made to purchase minerals from Saskatchewan, with the consent of the mineral user, whereby the minerals can be paid for out of future revenues earned on the minerals. Provisions are made for what to do in situations where the user of the minerals fails to follow through with his mineral agreement.

9. In situations where the Entitlement Bands have purchased the Minerals from Saskatchewan and the mineral user has not sold his interest, the Band has to permit the mineral user access to the land.

10. Where Entitlement Bands own the minerals and are exploiting them they have to abide by the rules set for mineral production.

11. Finally, Saskatchewan agrees to transfer to an Entitlement Band all undisposed of Minerals in their selection for free. What is or when a mineral is disposed or undisposed of is defined in the Framework Agreement.

Water

1. Saskatchewan agrees to transfer all water, beds and shores of waterbodies wholly enclosed within an Entitlement Reserve which has no discernable outlet.
2. The boundary of an Entitlement Reserve will be the ordinary highwater mark. However, beds and shores of waterbodies adjacent to a reserve can be purchased.
3. Entitlement Bands will have common law "riparian rights" to waterbodies adjacent to the reserve which will ensure that the quality, quantity and flow of that water remains the same.
4. However, the Entitlement Band's "riparian rights" will not be used in the courts to stop a provincial water project as long as the Band has been notified within 6 months of the project and they can, in a meaningful way, participate in the decision to approve or operate the project.
5. Furthermore, nothing prevents the Band from suing Saskatchewan for any damages caused by the water project.
6. Where a project may adversely affect the Entitlement Band an environmental impact assessment or other review may be required in which case the Band may participate and the review will take into consideration Indian use of the water.
7. Entitlement Bands may also enter into Co-Management Agreements with Saskatchewan to deal with the management and use of the water adjacent to their Reserve.
8. This Agreement could deal with the exchange of information and consultation with the Band about any waterbody or water project, participate in any decision making process involving a water project and participate in a Co-Management Board which can make binding decisions.
9. The structure of the Co-Management Board could include equal representation by the Board.
10. Finally, nothing in this Article 6 dealing with water shall be effective if it is contrary to Treaty, as determined by the courts.

Roads

1. The general principle is that Provincial Roads will not be transferred to reserve status unless there is an agreement between Canada, Saskatchewan, the Entitlement Band and the Rural Municipality, Northern Municipality, or Urban Municipality.
2. However, despite this Saskatchewan will transfer Provincial Roads to reserve status where they are used to provide access to locations within an

Entitlement Reserve and arrangements have been made so the public can still use these roads.

3. Undeveloped Roads bounded on both sides by a reserve will, upon request, be transferred without compensation as long as Saskatchewan can get them back if needed for a road or public utility purposes in the future.

4. When Saskatchewan wants the Undeveloped Roads back but improvements have been built on them, alternate land has to be provided by the Band or if these Undeveloped Roads have been developed by the Band as a road, Saskatchewan has to provide compensation.

5. If there is a disagreement between the parties, the matter goes to the Arbitration Board.

6. Roads that cease to be used as Provincial Roads within a Reserve will become Undeveloped Roads and, in any case, roads transferred to Canada will not be counted toward an Entitlement Bands entitlement acreage.

7. Finally, under the Cost-Sharing Agreement, it is acknowledged that the R.M. tax loss compensation was to enable them to continue to maintain roads located within, adjacent to or providing access to an Entitlement Reserve on the same standard as other roads.

8. But nothing in the Cost-Sharing Agreement will affect federal funding available to an Entitlement Band should they choose to operate and maintain these reserve roads.

Third Parties

1. Except for some Third Parties, all other Third Party Interest must be either cleared or replaced before Canada will transfer the land to reserve status.

2. The Third Party Interests that have to be removed are listed as well as those that can be included after the shortfall acres have been set apart with reserve status.

3. How public utilities will be dealt with through standard agreements is covered in some detail.

4. For those Third Party Interests that have to be replaced the surrender principles and replacement procedures are described.

5. It is understood that the need to surrender and replace Third Party Interests upon reserve creation might not be required in the future if the courts, the parties or Canada agree otherwise.

Urban Reserves

1. Entitlement Bands can acquire lands with reserve status in Urban Municipalities as long as there is agreement between the Entitlement

Band, the Urban or Northern Municipality and School Division about compensation, compatible municipal and Band by-laws, their application and enforceability and an appropriate dispute resolution mechanism is established.

2. Despite this, the parties can enter into their own Agreements.
3. If there is no agreement and 5 months after a request to the other parties by the Entitlement Band to enter into a reasonable and adequate agreement but the other parties fail to respond reasonably or in good faith, Canada can still proceed to set their lands apart with reserve status without an agreement.
4. However, Canada will not set apart urban lands with reserve status if the municipalities and school divisions have decided to arbitrate whether they are acting reasonably or in good faith or whether the proposed agreement by the Entitlement Band is reasonable and adequate.
5. Only for urban reserves will certain provisions of the Additions to Reserve Policy apply since special consideration must be taken into account before these lands will receive reserve status.
6. The special provisions in the Framework Agreement to deal with urban reserve creation will only last for a maximum of 18 years, unless the parties can agree to a further extension, otherwise the Additions to Reserve Policy in place at that time will apply.

Settlement Board and Arbitration

1. The Framework Agreement provides for a Settlement Board to be established within 6 months from the date Canada and Saskatchewan sign the Agreement. It will, upon request, oversee and facilitate the implementation of the Framework Agreement and Band Specific Agreement with only the power to make recommendations.
2. Issues that need to be decided or are in dispute will be either dealt with through a single arbitrator or an Arbitration Board.
3. The arbitration procedures will be governed by federal legislation with a permanent and independent chairperson selected.

Conclusion

1. Nothing in this Agreement or Band Specific Agreement is to affect existing program funding or services.
2. Nothing in this Agreement or Band Specific Agreement is to affect Bill C-31 persons not included in this Agreement.
3. Nothing in this Agreement is to affect the rights and obligations of Canada to other Bands or affect those Bands or confer certain rights on those Bands.

4. Nothing in this Agreement shall prejudice those Entitlement Bands not a party to this Agreement from negotiating their own settlements.
5. Nothing in this Agreement, which deals with membership, shall prejudice the Bands right to determine its own membership.
6. Canada and Saskatchewan also recognize that there may be other Bands who may have valid entitlement claims and can take part in the provisions of the Framework Agreement and have the Cost-Sharing Agreement applied to them.
7. Should there be any constitutional or other legislative changes in the future, which change the legal rights and obligations of those parties and thereby change provisions in the Framework Agreement, then the parties agree to negotiate amendments to this Agreement.
8. Finally, Canada and Saskatchewan not only agree to make legislative amendments to give effect to this Agreement but all parties agree to employ their best efforts to fulfil the terms of this Agreement.