

March 2021

BACKGROUND INFORMATION FACT SHEET

SETTLING THE HISTORIC FLOODING CLAIMS

OF THE RAINY LAKE FIRST NATIONS

The Couchiching, Naicatchewenin, Mitaanjigamiing, Nigigoonsiminikaaning, and Seine River First Nations and the Governments of Canada and Ontario (“the Negotiating Partners”) are engaged in negotiations to settle the First Nations’ claims that the dam built across the Rainy River at Fort Frances-International Falls caused the flooding of their reserve lands on Rainy Lake without proper authorization and without appropriate compensation. Discussions among the Negotiating Partners began in October 2009.

In addition to settling the flooding claims, the Couchiching and Mitaanjigamiing First Nations, Canada and Ontario will address the status of the Two Chain Allowance, a strip of land 132 feet wide that was surveyed along the pre-flood shoreline of Reserves 16A and 18C. The Two Chain Allowance has a complicated history and Ontario and Canada will be taking steps to ensure that the status of these lands is clear.

The goal of the negotiation process is to conclude fair and final settlements that will bring closure to these longstanding issues and foster reconciliation.

Quick Facts

- The Couchiching, Naicatchewenin, Mitaanjigamiing, Nigigoonsiminikaaning, and Seine River First Nations are among the signatories to Treaty 3, which was signed in 1873. Pursuant to that Treaty, the locations of reserve lands were selected by the signatory First Nations and surveyed by the Government of Canada.
- The First Nations’ Reserves were surveyed on Rainy Lake over the course of several years after Treaty 3 was signed and before the Fort Frances-International Falls Dam was constructed on the Rainy River. These Reserves¹ are the subject of these negotiations.

¹ The Reserves are: Couchiching 16A, Naicatchewenin 17A, Mitaanjigamiing 18C, Seine River 23, 23A and 23B, and Nigigoonsiminikaaning 26A, 26B and 26C. Couchiching Reserve 16A today is the amalgamation of three reserves: 16A, 18B and 16D

- Construction of the Fort Frances-International Falls Dam began in 1905 and it became fully operational in 1909, raising the water level of Rainy Lake by 2.85 metres² (9.35 feet) and permanently inundating the shorelines of the nine First Nation Reserves. Canada and Ontario were both involved in authorizing the construction of the Dam on the Canadian side of the International Border, however no provisions were made at that time for the resulting flooding of the nine First Nation Reserves.
- The flooding was brought to the attention of the Government of Canada by some of the First Nations and legal action in relation to some of the flooded reserves was taken by Canada against the owner of the Dam in 1920. In 1924, a decision was provided by the Privy Council in favour of the Government of Canada. The compensation that was ultimately paid in 1938 by the Dam owner likely did not address the full extent of the flooding and the resulting damages to reserve lands and did not include compensation for damage to all the affected First Nation Reserves. In addition, no arrangements for the on-going flooding of the Rainy Lake First Nations' reserve lands were put in place.
- The higher water levels resulted in the permanent inundation of the shorelines of the nine First Nation Reserves, additional reserve lands being subject to periodic flooding caused by extreme weather events, and the creation of islands within the Reserves where none existed prior to the operation of the Dam. The permanently flooded lands and islands created by the flooding were not recognized as part of the First Nation Reserves in subsequent years and were, at times, administered by Ontario.
- Recent surveys of eight of the First Nation Reserves have shown that approximately 2,960 hectares (7,300 acres) of land are situated above the natural, pre-dam water level (the "Lands") and have confirmed that these Lands were part of the First Nation Reserves before the dam-related flooding. The Mitaanjigamiing Two Chain Allowance, discussed above, is also identified as being within the surveyed Lands of Reserve 18C and its status will be clarified through the settlement of that First Nation's flooding claim. Please refer to **Table 1: Flooded Reserve Lands - Areas and Islands** for more information.

² This measure is based on the difference between the natural, pre-dam low water elevation of Rainy Lake, as determined by survey, and the regulated high elevation of Rainy Lake as set by the International Joint Commission.

The Negotiations

The Negotiating Partners agree that the settlement of the flooding claims will be financial settlements that include an appropriate arrangement for the on-going flooding of the First Nations' reserve lands. The settlement of the Couchiching and Mitaanjigamiing First Nation's claims will also include a resolution to the status of the Two Chain Allowance lands. In addition, Ontario is taking the appropriate steps to address circumstances where certain reserve lands have been administered by Ontario.

The Negotiating Partners have worked together to find mutually acceptable solutions to issues that were identified during the negotiations.

A key issue during the negotiations was determining the natural, pre-dam water levels on Rainy Lake. This information was needed to confirm the locations of the reserve lands and establish the flooded areas on the nine First Nations Reserves. The Negotiating Partners agreed that the best approach would be to have surveys completed by a qualified, independent surveyor. Eight of these were undertaken between 2018 and 2020. The surveyor determined the contour that best represents the elevation of the natural or pre-dam low water level on Rainy Lake and then used that elevation to determine the extent of flooding on each of the First Nation Reserves. The ninth survey will be undertaken in 2021 for Reserve 16A.

Ontario's Steps to Correct Past Actions

In the past, there was a lack of clarity about the locations of the First Nations' reserve lands following the dam-related flooding. The surveys have clarified the situation. Ontario has identified the appropriate steps to address circumstances where certain reserve lands were administered by Ontario.

Past actions by Ontario include:

- regulating islands as Rainy Lake Islands Conservation Reserve lands under the Ontario *Provincial Parks and Conservation Reserves Act*,
- including reserve islands within the boundaries of allocations issued under the *Fish and Wildlife Conservation Act*, including traplines, bear management areas, and bait harvest areas; and
- selling an island³ under the Ontario *Public Lands Act*.

³ Once the survey for Reserve 16A is completed, Ontario will be able to determine if additional islands were sold.

Appropriate steps to address these circumstances include:

- amending the boundary of the Rainy Lake Islands Conservation Reserve to confirm that reserve lands are not included in the Conservation Reserve;
- amending resource harvester licenses, such as bear management area licences, baitfish harvester licences and trapline licences, to confirm that reserve lands are not included in those licenses;
- ensuring that reserve lands are identified and not available for registration of mining claims in Ontario's Mining Lands Administration System (MLAS); and
- identifying potential solutions with respect to a privately-owned island which has been confirmed to be within the area identified as forming part of a First Nation Reserve.

Privately-Owned Islands

Based on the eight surveys that are currently available, there is one privately-owned island that was part of a First Nation Reserve before the dam raised water levels. The ninth survey may identify additional privately-owned islands. Ontario will be identifying potential solutions.

Two Chain Allowance

As noted, the Two Chain Allowance has a complicated history that includes errors that may have been made when the Couchiching and Mitaanjugamiing First Nations Reserves were first surveyed following the Treaty. To further complicate the history, in 1924, the Privy Council determined in the context of determining the extent of flooding damage to some of the Rainy Lake Reserves, that the Couchiching Two Chain Allowance lands were not part of that Reserve.

The Negotiating Partners agree that there was never any intention to exclude the Two Chain Allowance lands from these two First Nation Reserves and have agreed that as part of the settlement of the Couchiching and Mitaanjugamiing First Nations' flooding claims, Canada and Ontario will address the status of these lands.

Toward Settlement Agreements

Before the recent surveys were done, it was thought that Ontario's Class Environmental Assessment (EA) processes under the *Environmental Assessment Act* might be triggered by the proposed settlement of the flooding claims. For example, it was initially thought that the Class EA for Provincial Parks and Conservation Reserves might apply in respect of any proposed amendment to the boundary of the Rainy Lake Islands Conservation Reserve. This would have been necessary if any of the lands involved were provincial Crown lands. Now that

the surveys have been completed and it has been established that the Lands are First Nation reserve lands, Ontario's Class EA processes are not applicable.

Given its complicated history, steps required to confirm that the Two Chain Allowance forms part of Reserves 16A and 18C may include the Ministry of Natural Resources and Forestry Resource Stewardship and Facility Development Projects Class EA. As is noted above, as part of the settlement of the Couchiching and Mitaanigamiing First Nations' flooding claims, Ontario is taking the appropriate steps to address circumstances where certain reserve lands, including islands, were administered by Ontario.

Once the Negotiating Partners have concluded their talks on settlement proposals with each of the First Nations, the legal text of the proposed settlement agreements will be drafted by lawyers representing the First Nations, and the Governments of Ontario and Canada.

The First Nations' members will then have the opportunity to say "yes" or "no" to the respective proposed settlements in a community ratification vote held for each First Nation. Following the ratification by the membership of the individual First Nations, Ontario and Canada will make their respective decisions to approve the settlement agreements. The settlements are not final until each of the respective settlement agreements have been signed by all three parties.

Benefits of Negotiated Settlements

The timely resolution of these claims through negotiation is in everyone's best interest. Negotiations lead to "win-win" situations that balance the rights and interests of all concerned.

The goal of negotiated settlements is to provide First Nations with fair compensation to right past wrongs and honour outstanding obligations. They also bring economic benefits and certainty to First Nations and neighbouring communities, creating economic opportunities and potential new business partnerships in the region.

For more information, please contact:

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Comments and personal information concerning the proposed settlements are collected by the Ontario Ministry of Indigenous Affairs (IAO) to allow for follow-up with individuals as required. This activity occurs under IAO's mandate to resolve land claims and, where appropriate, is in compliance with the requirements of the Environmental Assessment Act. IAO may provide the Ministry of Natural Resources and Forestry (MNRF), the Ministry of the Environment, Conservation and Parks (MECP) and the Ministry of Energy, Northern Development and Mines (ENDM) with copies of comments received that pertain to matters that are under their respective authorities. Comments not constituting personal information as defined by the Freedom of Information and Protection of Privacy Act, will be shared with others as appropriate, and may be included in documentation available for public review. Personal information will only be used/disclosed in accordance with the Freedom of Information and Protection of Privacy Act. If you have questions regarding the collection, use or disclosure of your personal information please contact Lise Hansen (contact information above).