

September 2021

BACKGROUND INFORMATION FACT SHEET

**SETTLING THE HISTORIC FLOODING CLAIMS OF THE
LAKE OF THE WOODS/WINNIPEG RIVER/SHOAL LAKE FIRST NATIONS**

The Lake of the Woods, Winnipeg River and Shoal Lake First Nations and the Governments of Canada and Ontario (“the Negotiating Partners”) are engaged in negotiations to find a resolution to the First Nations’ claims that the Rollerway Dam and the Norman Dam built respectively in 1887 and 1895 at Kenora, caused the flooding of their reserve lands without proper authorization and without appropriate compensation. Negotiations among the Negotiating Partners began in September 2009.

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

- Thirteen Treaty 3 First Nations on Lake of the Woods, Shoal Lake and the Winnipeg River with a total of 45 reserves have filed flooding claims with Ontario and Canada. One Lake of the Woods flooding claim has been settled (Rainy River First Nations).
- Treaty 3 was signed in 1873. Pursuant to that Treaty, the locations of reserve lands were selected by the above noted signatory First Nations and surveyed by the Government of Canada.
- 45 First Nation reserves were surveyed for Animakee Wa Zhing #37, Anishinaabeg of Naongashiing, Wauzhushk Onigum Nation, Big Grassy River, Buffalo Point, Iskatewizaagegan #39 Independent First Nation, Ojibways of Onigaming, Naotkamegwanning, Niisaachewan Anishinaabe Nation, Northwest Angle #33, Rainy River, Shoal Lake #40 and Washagamis Bay over the course of several years after Treaty 3 was signed and before any dams were constructed on Lake of the Woods.
- In 1887, the Government of Canada authorized the construction of a dam (the Rollerway Dam) at the natural western outlet of Lake of the Woods. The Rollerway Dam was used to maintain the lake at a constant level to satisfy navigation interests and to maintain a constant head of water for power development at mills on the lake. The dam remained in operation until 1899, when it was demolished and replaced by another dam (the Norman

Dam). The Norman Dam has been the main control structure on the Lake since 1899. A second dam, the Kenora Powerhouse Dam, built in 1895, became operational in 1905.

- The flooding was brought to the attention of the Government of Canada by the First Nations as early as 1887. Claims from the First Nations would continue through the 20th century but no compensation for damages were paid. In addition, no arrangements for the ongoing flooding of the First Nations' reserve lands were put in place.
- The higher water levels resulted in the permanent inundation of the shorelines of the 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 dams. 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.
- Currently there are eight First Nations (with 26 parcels of reserve lands) whose flooded lands are the subject of the current public engagement. The eight First Nations include: Niisaachewan Anishinaabe Nation (formerly Ochiichagwe'Babigo'Ining Ojibway Nation), Naotkamegwaning (Whitefish Bay), Big Grassy River (Mishkosiminiziibiing), Ojibways of Onigaming, Animakee Wa Zhing 37 (Northwest Angle 37), Anishinabe of Wauzhushk Onigum Nation (Rat Portage), Obashkaandagaang (Washagamis Bay) and Northwest Angle 33 First Nations ("the Negotiating Partners").
- There are four additional First Nations (with 14 parcels of reserve lands) whose lands have not yet been surveyed and when appropriate will be the subject of a future public engagement.

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 land. 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 Lake of the Woods. This information was needed to confirm the locations of the reserve lands and establish the flooded areas on the First Nations Reserves. The Negotiating Partners

agreed that the best approach would be to have surveys completed by a qualified, independent surveyor. Surveys 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 Lake of the Woods and then used that elevation to determine the extent of flooding on each of the First Nation Reserves.

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 reserve islands as Lake of the Woods 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 islands under the *Ontario Public Lands Act*.

Appropriate steps to address these circumstances include:

- amending the boundary of the Lake of the Woods 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 privately-owned islands which have been confirmed to be within the area identified as forming part of a First Nation Reserve.

Privately-Owned Islands

Based on the 26 surveys that are currently available, there are two privately-owned islands that were part of a First Nation Reserve before the dam raised water levels. Ontario will be identifying potential solutions.

Towards 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 Lake of the Woods 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.

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.

The 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:

Dianne Woods, Negotiator
Ministry of Indigenous Affairs
Telephone: 416-575-9838
E-mail: LOTWFloodClaim@ontario.ca

c: Ryan Metcalfe Associate Negotiator
Ministry of Indigenous Affairs

Comments and personal information concerning the claim are collected by the Ministry of Indigenous Affairs (IAO) to assist with decision making and to allow for follow-up with individuals as required. This activity occurs under IAO's mandate to resolve land claims. 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 disclosures of your personal information please contact Dianne Woods (contact information above).