

Peguis First Nation

Review: Negotiation of a Settlement Treaty Land Entitlement of Peguis First Nation

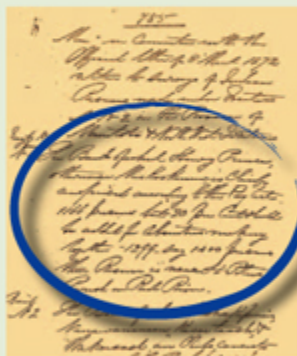
Newsletter No. 8

May 2006

Introduction

Mis-Koo-Kinew (a.k.a. Henry Prince), the son of Chief Peguis, was the first Chief to sign Treaty 1 on August 3, 1871. He signed Treaty on behalf of the "St. Peter's Band" as the Peguis First Nation was then called (in fact, the official name of the First Nation is still the "Peguis Indian Band"). Under the written terms of Treaty 1, Peguis was entitled to 160 acres of reserve land for each family of 5 persons to be held in common by the band. In addition, all Chiefs signing Treaty 1 had been orally assured by the Treaty Commissioners that the amount of land already occupied by Band members would not be included in the calculation of the amount of common Reserve to be set aside for the First Nation under Treaty 1.

Canada also agreed to complete an "accurate census" to determine the actual number of members before Canada set aside land as Reserve. However, it failed to take an accurate census. Instead the written historical record confirms that Canada estimated the number of Peguis members. Canada's estimate was incorrect. The actual number of members was higher than Canada estimated before the St. Peter's Reserve was surveyed in 1873/74.



Canada's 1872 population estimate

...The Band of which Henry Prince, otherwise Mis Koo Kinew, is Chief comprised according to the Paylist 1166 persons but 20 per Cent should be added for Absentees making together -1399- say 1400 persons This Reserve is near St. Peters Parish on Red River. ...

Peguis did not then receive all of the Reserve to which it was entitled under Treaty 1. This shortfall in land amount is called an outstanding "Treaty land entitlement" or TLE.

Inside this issue:

- Peguis Claims Additional TLE 2
- Peguis Requests an Independent Federal Inquiry 2
- Peguis TLE Claim is Accepted 3
- Negotiations on Amount of Additional TLE due to Peguis 3
- Other Key Terms of Potential TLE Settlement 4
- Advance Tax Ruling 5
- Transfer of Former St. Peter's Reserve Land 5
- Approval of a TLE Settlement by the Peguis Membership 6
- Summary Comments 7
- Questions & Answers- More Information 8

Peguis Claims Additional TLE

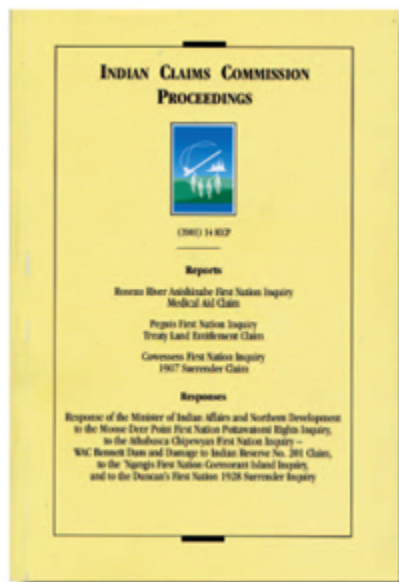
Peguis has long asserted that it has outstanding TLE - a related claim was submitted as long ago as 1978, but rejected by Canada.

In November 1983, some 130 years after Treaty 1, Peguis submitted a claim to Canada under its new "specific land claims policy" asserting that Canada had failed to provide Peguis the TLE it was due under Treaty 1. It claimed:

- (a) that land occupied by Peguis members should not have been included in the calculation of Peguis TLE;
- (b) that Canada had inaccurately estimated the number of Peguis members in calculating its TLE; and
- (c) that the setting aside of the Peguis Reserves after the 1907 surrender did not fulfill Canada's TLE obligations to Peguis.

Canada essentially refused to reply to the Peguis TLE claim until the confrontation with the Mohawks of Kanasetake at Oka, Quebec in the summer of 1990 brought the state of land claims policy in Canada into question. In July 1991, nearly 8 years after submission by Peguis, Canada replied to Peguis – rejecting its claim to additional TLE, asserting that the amount of land provided under the 1907 surrender satisfied all Peguis TLE due under Treaty 1.

Peguis refused to accept Canada's reply because it did not deal with the specific assertions made by Peguis (as stated in the above paragraphs) or the technical legal issues they reflected. A revised claim submission was made to Canada in March 1992. When Canada again failed to respond after 2 years had passed, Chief Louis Stevenson sought the intervention of the then Minister of Indian Affairs Ron Irwin. As a result, Indian Affairs did respond, but rejected the Peguis TLE claim a second time in their letter dated May 27, 1994.



ISCC Report 2001 - 14 ICCP

Peguis Requests an Independent Federal Inquiry

After the confrontation at Oka, Quebec, Canada was compelled to establish the independent federal Indian Specific Claims Commission (ISCC) with the authority to inquire into the reasons for rejection of land claims by Canada. Peguis formally requested an inquiry in June 1994. The ISCC agreed to conduct an inquiry in September 1994.

Between January 1995 and April 1997, the ISCC held 5 planning conferences - formal discussions supervised by retired Ontario Supreme Court Justice Robert Reid of the ISCC to examine the claim and views of both parties. During this period of time, the parties agreed that the validity of the 1907 surrender of St. Peter's

Reserve should be reviewed, and in particular, the status of Peguis Reserve 1B set apart under the terms of surrender. Peguis asserted that Peguis Reserve 1B was not set apart under the terms of Treaty 1, but as consideration for those matters released under the 1907 surrender.

After extensive research and review of the legal issues raised by Peguis before the ISCC and a re-examination of the facts and law by Justice Canada, Canada finally agreed that Peguis had outstanding TLE for the reasons asserted by Peguis.



Peguis TLE Claim is Accepted

On June 29, 1998, in addition to accepting that Peguis had outstanding TLE, Canada agreed that the 1907 surrender of St. Peter's Reserve was legally invalid and offered to enter into negotiations on both claims. Although the 1907 surrender claim remains in negotiation, the terms of a possible TLE settlement will soon be placed before members of Peguis for consideration.



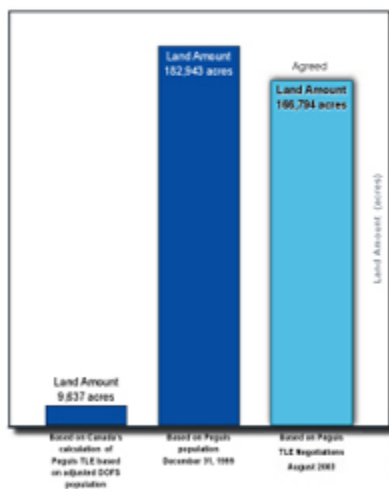
Canada's letter of June 29, 1998, accepting Peguis' TLE and Surrender claims for negotiation



Negotiations on Amount of Additional TLE due to Peguis

Canada's view is that Peguis is entitled to only 9,637 acres of additional Reserve under Treaty 1. Regardless, the parties agreed to be guided by the 1997 Manitoba Framework Agreement on

Treaty Land Entitlement (1997 MFA). Peguis then negotiated its TLE applying the formulas used in the 1997 MFA, but incorporated its own ideas on entitlement and implementation into the final result. In August 2003, Peguis accepted Canada's offer of an additional 166,794 acres of land for Reserve under Treaty 1 as a first step in reaching agreement on a possible TLE settlement.



Comparison of TLE Shortfall Calculations

By comparison, Peguis Reserve 1B is estimated to contain 77,208 acres of land. The additional TLE may then triple the Reserve land base of Peguis after implementation.

Of the 166,794 acres, at least 55,038 acres will be selected from suitable Crown land within the areas encompassed by Treaty 1 and Treaty 2. With some conditions, Crown land may also be selected from anywhere in Manitoba. The balance of land will be purchased, on a willing buyer / willing seller basis, by Peguis anywhere in Manitoba.

Other Key Terms of Potential TLE Settlement

Final negotiations have resulted in modest adjustments to the August 2003 consensus, but the essential terms of settlement remain unchanged.

Land Purchase Fund: Funds required for land purchase were estimated using 2 independent appraisals, resulting in the amount of \$51,400,000.00. Of this sum \$1,600,000.00 will be allocated by Peguis for resolution of third party interests on land.

Federal Payment: Canada will provide Peguis compensation for its delay in providing TLE. Peguis will allot \$5,000,000.00 to a community trust for community purposes under control of Peguis Trustees.

Claim Implementation: Peguis will require funds for its administration of land purchases, holding costs, monitoring of Reserve creation and reporting to the members over the 25+ years it will take to implement the TLE agreement. Peguis will allot \$4,972,215.00 for these purposes.

Negotiation and Legal

Costs: Compensation will include additional amounts for the repayment of negotiation loan funding from Canada of \$1,527,785.00, final legal costs of \$1,250,000.00 and \$250,000.00 for the costs

of the community consultation process leading to the vote of the Peguis membership on the settlement. This amounts to \$3,027,785.00.

Land Selection Study: In addition to funds already provided for this purpose, Peguis will receive a further \$25,000.00 to offset costs of community planning in relation to economic, social and cultural goals of the First Nation associated with its land purchase program.

Overall Settlement Compensation: Overall, including funds for the repayment of loans to offset negotiation costs and final legal costs, Canada will pay Peguis the sum of \$64,425,000.00 as explained above. Of that amount, after the repayment of negotiating loans provided by Canada, final legal costs and setting aside the Land Selection Study funding, a total of \$61,372,215.00 will be paid into the Peguis Trust.



Breakdown of Financial Terms of Settlement

Of the \$61,372,215.00 deposited into the Peguis Trust for investment and safekeeping, \$5,000,000.00 will be set apart in a Community Fund to be used over time for community purposes. The balance of the settlement funds to be used to buy land for reserve and for related implementation costs.

The Peguis Trust document specifically provides that the Trust funds may not be used to pay the debt or operational deficit of Peguis or to make any per capita distribution.

Treaty 1 is silent on the tax status of First Nations. The Indian Act provides little protection against taxation today, except for employment income of status Indians living and working on Reserve. In order to ensure that neither the settlement funds, nor the income on its investment would be subject to taxation, Peguis hired specialist tax lawyers and obtained a written ruling from Canada (the Canada Revenue Agency) to confirm that fact.

Canada's operating policy is to recognize the inherent right of self-government. Consistent with this policy, Canada agreed, among other things, that Peguis is a body performing a function of government in Canada under Section 149(1)(c) of the Income Tax Act, and provided Peguis follows the terms of the Trust agreement, the capital and investment income will be exempt from taxation by Canada.

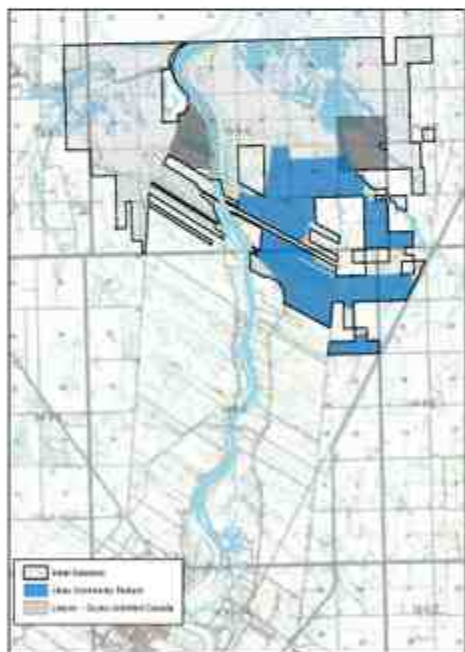


Transfer of Former St. Peter's Reserve Land

In 1946, Manitoba purchased from Canada approximately 16,000 acres of unsold surrendered land formerly part of the St. Peter's Reserve. During the course of TLE negotiations relating to the payment of costs of holding land purchased by Peguis pending Reserve creation, Peguis proposed to Manitoba that it transfer that land to Peguis for Reserve under the agreement to offset any potential holding costs for Peguis. Manitoba agreed to this proposal, but Canada initially refused to agree to the selection/transfer, unless its financial contribution to the land purchase fund was reduced.

Since Peguis would not have to buy the amount of former St. Peter's Reserve land transferred by Manitoba and the Peguis land purchase fund was based on an average of \$440.00 per acre of land, the reduction demanded by Canada could have been in the range of \$4.4 million to \$6.6 million depending on how much land was finally transferred (assuming between 10,000 acres to 16,000 acres would be ultimately transferred). Reducing the purchase fund would have provided 100% credit for the Peguis negotiations to Canada and no financial offset for Peguis – a totally unacceptable result for

Peguis. Fortunately, Canada accepted the Peguis view and agreed not to reduce the amount of the land purchase fund which remains at \$51.4 million (less \$1.6M allocated for resolving Third Party Interests).



Map of Initial Selection

Approval of a TLE Settlement by the Peguis Membership

Most of the last 2 years have been dedicated to the completion of the form of TLE settlement agreement. The final form was initiated by Canada at the beginning of March confirming the conclusion of negotiations. Once the arrangements for a vote are completed by Peguis and Indian Affairs, Council must set dates for community consultation meetings and a voting date.

All "eligible voting members of Peguis," meaning those persons on the Membership List who will be 18 years of age and older on the voting date, will receive notice of the meetings and a large information package if their current mailing address is on file. The information package will contain the proposed TLE settlement agreement, the Peguis Trust Agreement, various explanations, information on the voting process and mail-in ballots from Indian Affairs.

Members are entitled to vote by mail-in ballot, at an advance poll, or by personal attendance on the voting day.

For a valid first vote in favour of settlement, the majority of the number of eligible voting members

on the Membership List must cast a vote. In order to confirm a settlement of TLE, the majority of Peguis members who vote must vote "YES" in favour of settlement. If the majority of eligible voting members do not vote on the first vote, a second vote may be called within six months. In the case of the second vote, a simple majority of that vote is required to approve a settlement.

Current Information is Required:

Once again, Council requests that all members on the Membership List who are 18 years of age or older provide the Administration office with a current address. In addition, if you know of a relative 18 years or older that may not have their current address on file, we encourage you to provide their address or contact information. **It is important that the addresses of all Members of Peguis have current, accurate contact information on file.** If you have any questions regarding **Membership** please contact the Membership Clerk at **654-2359** or toll free at **1-866-645-2359**. Membership applications are available at www.peguis.ca or through telephone request to have one sent to you. If you wish to provide information regarding mailing addresses, please contact Linda McPherson at the numbers listed above.



Peguis Chief and Council:
(L to R) Lloyd Sinclair, Chief Louis Stevenson, Glennis Sutherland, Mary Sutherland, Glen Cochrane.

Summary Comments:

A TLE settlement by Peguis is a positive step, the provision of land to Peguis in the long overdue implementation of Treaty 1. Canada has struggled with its historic debt, the provision of outstanding TLE since Treaties were signed, but only recently has Canada begun the process of meeting its lawful obligations. Even so, a Peguis TLE settlement is one of some 70 TLE settlements in the Prairies since the early 1990s.

Settlement of the Peguis TLE would be the largest combined cash and land TLE settlement with a First Nation in the history of Manitoba.

The acceptance of the proposed TLE settlement by the Members of Peguis will be a positive and important event for the First Nation involving the implementation of our Treaty rights. Peguis will have more opportunity to provide a secure foundation for the future generations of the First Nation.

The Peguis settlement to TLE will include many notable achievements:

- lump sum payment of an all inclusive amount of \$64,425,000.00 for land purchase,

community purposes, resolution of third party interests, the repayment of negotiation loan funding and all final legal costs, a land selection study and the costs of the community approval process;

- entitlement to approximately 260 square miles (166,794 acres) of additional Reserve land that would triple the existing land base of Peguis, providing increased opportunities for community growth and economic development;
- a substantial land purchase fund of \$51.4 million based on current market values determined by independent appraisals;
- allocation of \$1.6 million of the land purchase fund to address any third party interest encountered;
- a \$5 million community purposes fund to compensate Peguis for Canada's delay in providing TLE owed to Peguis;
- an unprecedented level of funding for implementation administration expected to take 25 or more years to complete;



ATTENTION: Lloyd Stevenson
Legal Advisor

Affix
Postage

Peguis First Nation
P.O. Box 10
Peguis Reserve, MB
R0C 3J0

Summary Comments continued:

- possible return of up to about 16,000 acres of former St. Peters Reserve land by Manitoba;
- a permanent tri-partite Implementation Committee including Canada and Manitoba to oversee implementation and resolve problems encountered; and
- an advance tax ruling confirmation that the settlement funds to be paid and deposited into the Peguis Trust will be exempt from taxation.



Settlement funds will be administered in the Peguis First Nation Trust, a separate legal body under the control of the Peguis membership. Although Council will act as the "initial Trustees", they will be replaced by Trustees elected by the Peguis membership. Two independent Trustees are appointed by Council.

Chief Louis Stevenson has carried the responsibility for advancement of the Peguis TLE claim for over 20 years, a responsibility shared with the many Chiefs and Councils that came before his long term in office. The settlement of TLE has been difficult to negotiate and we have faced many complicated issues. The detailed terms of settlement are over 200 pages in length, but the most important terms with respect to land, implementation costs, payment of negotiation loans and legal costs are described in this Newsletter.

Questions & Answers

Our members will soon be asked to consider the terms of settlement. We will be planning a series of open meetings, for Peguis Members, in the near future. As always should any members of Peguis have any questions, you are invited to refer your questions to any member of Council, or set out your question on the attached postcard and mail to the Peguis Administration offices.

Also for further information
see our website at

Peguis.ca.



I have a question about:

Treaty Land Entitlement

Surrender Claim

Date: _____

My question:

