

**PROPOSAL TO ADDRESS THE GRIEVANCES OF THE DAKOTA/LAKOTA
FIRST NATIONS IN MANITOBA AND SASKATCHEWAN**

As stated in Michel Roy's letter dated July 25, 2007, it is Canada's position that the Dakota First Nations do not have Aboriginal rights in Canada, nor do the historical facts give rise to a treaty adhesion claim; therefore, the only remedy I can recommend to the Minister, to address the objectives listed in the Dakota/Lakota proposal dated October 17, 2007, is to make a financial offer to assist the First Nations in meeting those objectives.

I am prepared to recommend to the Minister, that an offer of \$60.3 million in total for the 9 Dakota/Lakota First Nations in Saskatchewan and Manitoba, be made, to address the objectives identified in your proposal. Canada's proposal lays out the offer on a First Nation basis, \$6.7 million per First Nation, and is set out below in the order of the elements laid out in your proposal.

Land and Resources

Canada does not acknowledge any legal obligation to provide land to the Dakota/Lakota First Nations; however, it does acknowledge the First Nations' objective to add land to its current reserve land base.

To address this objective, Canada's proposal would include:

- \$1,500,000 per First Nation to be used by the First Nations to purchase land on a willing-seller/willing-buyer basis.
- All requests for land transfers to reserve status will be subject to the Additions to Reserve (ATR) Policy as amended from time to time. Consequently, matters such as environmental site assessment, survey, legal descriptions, title, appraisal fees, encumbrances, municipal tax losses, subsurface rights etc. are the responsibility of the First Nation to resolve prior to the ATR submission.
- \$150,000 per First Nation (10% of the value of the land to be purchased) toward the cost of acquiring the land to fulfil the requirements of the ATR Policy noted above.
- Additions to Reserves of 1 square mile (640 acres) of land, per First Nation, purchased with the above-mentioned funds, would be considered under Annex A (legal obligations pursuant to the ATR Policy).
- Any lands that the First Nations currently own, or, are in the process of purchasing, and wish to add to reserve, could be included in the 640 acres to be considered under Annex A - ATR Policy.

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The following restrictions apply to the 1 square mile (640 acres) to be considered under Annex A - ATR Policy :

- The First Nations would have 10 years to purchase the 640 acres and submit requests for ATR.
- A minimum selection will be approximately 160 acres. One exclusion per First Nation will be permitted, for parcel purchases of a smaller size to allow for urban acquisitions, or commercial, or non-commercial purposes.
- Acquisitions will be confined to the province of residence of each First Nation and within reasonable proximity to their respective primary reserves.
- All other ATR requests related to land purchased with the above-mentioned funds would be outside of Annex A - ATR Policy.

General Resource Issues

- As this proposal involves providing funds to the First Nations to purchase lands on a willing-seller/willing-buyer basis, the responsibility to secure surface and subsurface rights as well as addressing third party interests rests with the First Nations. These considerations must be resolved to satisfy the ATR Policy.

Resource Revenues

- Nothing in this proposal/agreement prevents the Dakota/Lakota First Nations from pursuing resource revenue sharing arrangements with provincial or federal authorities.

Harvesting and Other Aboriginal Rights

- Canada confirms that the Dakota/Lakota Nations have harvesting rights in Saskatchewan and Manitoba and are included in the definition of the word 'Indian' contained in the Natural Resource Transfer Agreements in force in their province of residence. For your information, s.13, of schd 1 of the MB NRTA (identical to s. 12 schd 3 SK NRTA) specifically sets out those harvesting rights as follows..."

In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the

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Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of

the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

Self-government

- Canada's Inherent Right Policy recognizes the inherent right of self-government as an aboriginal right protected by s. 35, (i.e. it recognizes that such a right exists), but does not recognize that any specific group has that aboriginal right. The policy calls for implementation of the inherent right to self-government through negotiations, and for leaving questions about the nature, scope and content of any aboriginal rights to self-government to the courts. In that respect, the Dakota/Lakota Nations would not be treated any differently than any other First Nation in Canada.
- Canada confirms that, under the Inherent Right Policy, the Dakota/Lakota First Nations are eligible to submit a self-government negotiation proposal to the Department in the same manner as all other First Nations and that the proposal would be assessed against the same criteria used for all First Nations.

Financial Settlement

Canada does not acknowledge any legal obligation to the Dakota/Lakota First Nations, therefore any financial component to the settlement is not characterized as compensation, nor was it determined by any period of time.

Canada does recognize the objective of the Dakota/Lakota First Nations to achieve a degree of economic independence and self-sufficiency and to address certain community development needs.

To address this objective, Canada's proposal would include:

- \$3,000,000 per First Nation to be directed to economic development initiatives.
- \$2,000,000 per First Nation, to employ the expertise required to carry out the land acquisition and economic development activities resulting from the cash injection for those components of the proposal. These funds would cover the salary dollars and administrative costs for two positions over a 10-year period.

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- \$50,000 per First Nation to cover the start-up costs for office space, equipment and furniture.

Constitutional Status

- Canada is of the view that the Dakota/Lakota Nations do not possess aboriginal and treaty rights identified in s. 35 of the *Constitution Act, 1982*.
- Any Settlement Agreement that may be concluded between Canada and any or all of the Dakota/Lakota Nations will be honoured by Canada and enforceable by the First Nation, outside the *Constitution Act*, to the same extent as an agreement entered into between Canada and a First Nation that does possess s. 35 rights.

Other Considerations

- The proposed resolution package undertakes to recognize the Dakota/Lakota as valuable and respected residents of this country's First Nation community. Furthermore, the resolution package will seek to commemorate the unique historical relationship, based on alliance, peace and friendship, between the British Sovereign and the Dakota/Lakota in the evolution of British North America. Canada would welcome discussions to devise an acceptable approach to implement this element of the resolution package when and if the Minister receives a mandate to enter into a settlement agreement.
- Canada would enter into individual settlement agreements with each First Nation and would require that the settlement agreement be ratified by each community. The threshold level for the ratification would be agreed upon at time of drafting the settlement.

Releases

Canada will require comprehensive releases from each Dakota/Lakota First Nation entering into a settlement agreement releasing Canada from any future claims by the First Nations for aboriginal or treaty rights identified in Section 35 of the *Constitution Act, 1982*, the right to seek to adhere to any existing treaty or to claim any treaty rights, the right to further land claims pursuant to treaty, the Orders in Council of 1873 and/or 1874, any harvesting rights except as provided in their provincial *Natural Resource Transfer Agreements*. Canada will further require that these releases be supported by

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comprehensive indemnification agreements protecting Canada from liability in the event any Dakota/Lakota First Nation members ever commence proceedings in the future against Canada for any of the claims to be released by the settlement agreements. Conclusion

If consensus is reached on the elements of a settlement, and the Minister agrees that this proposal is a reasonable one to address the grievances of the Dakota/Lakota

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First Nations, he will seek the funds and the authority to enter into a settlement agreement with the Dakota/Lakota First Nations. All that will remain, will be the drafting of the settlement document, community information meetings and ratification by the respective communities. Financial assistance will be requested at that time to cover the First Nations' costs to participate in those activities.