

**AHTAHKAKOOP CREE NATION
TREATY LAND ENTITLEMENT (TLE)
CLAIM OVERVIEW**

Membership Meeting – Friday Oct. 8/10
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TREATY LAND ENTITLEMENT (TLE) CLAIM OVERVIEW

Background:

For the past several years Ahtahkakoop has been working on addressing the many issues surrounding treaty land entitlement and specific claims. The objective being to move these long standing issues forward by formally documenting and registering our claims with Canada and ultimately working towards a resolve.

In doing so, Ahtahkakoop's first priority was to conduct research into the various claims. This research work is necessary to gather facts in support of our positions and is an integral part of strengthening our claims. Although research work is continuing on several fronts regarding "Specific Claims", Ahtahkakoop did conclude its research in the area of "Treaty Land Entitlement" (TLE) and has proceeded to submit a formal claim to Ottawa pertaining to the same under Canada's 1998 Guidelines for Treaty Land Entitlement.

The basis by which Ahtahkakoop's claim was submitted pertained to the "Date of First Survey". Within the Treaty Six territory land was supposed to be surveyed for each First Nation based on a formula of one square mile per family of five (640 acres) or 128 acres per person. The date of first survey is the date when the First Nation was first provided with Treaty land. When the surveyor came out to survey our reserve he should have looked at the population of the First Nation at the time plus added additional land to account for individuals and families that would come into the First Nation later. In the case of Ahtahkakoop the date of first survey was 1878.

In determining whether Ahtahkakoop received all the land it was entitled to when the reserve was surveyed required research into how much land the First Nation received versus how much land we should have received. In Ahtahkakoop's case we were provided with 67.17 square miles or **42,988.8 acres**. Based on the Treaty formula this would be enough land for about **335.85 individuals**.

The next step was to determine how much land Ahtahkakoop should have received. In answering this question, research was conducted looking at who should have been counted at the date of first survey, plus eligible individuals that later joined the First Nation to determine the historical population for entitlement purposes.

The findings of the First Nation's research enabled Ahtahkakoop to formalize an official Treaty Land Entitlement claim with Canada. On May 27, 2010, Canada responded to Ahtahkakoop's claim by way of letter stating that based on the *1998 Guidelines*, Canada had acknowledged that First Nation **did not** receive all the land it was entitled to under Treaty and that Canada accepted Ahtahkakoop's claim for negotiation.

TLE Frameworks:

1998 Framework Agreement – Shortfall Calculation

For validation purposes, research into historical population was based on Canada's *1998 Guidelines*. These are guidelines that have been used by Canada since 1998, to determine who is counted in the historical population. Under this Framework, Canada accepted **349 individuals** were eligible for count.

Based on our current land base there was only sufficient land for **335.85 individuals**. Therefore, there was a shortfall in allocated lands to the First Nation of **1,683.2 acres**.

Shortfall calculation – 1998 Framework Agreement

<i>Existing land base</i>	$335.85 \times 128 \text{ acres} = 42,988.8$
<i>Size based on 349 members</i>	$349.00 \times 128 \text{ acres} = 44,672.0$
<i>Shortfall acres</i>	$44,672.0 - 42,988.8 = 1,683.2$

1992 Saskatchewan TLE Framework Agreement

In 1992 Canada adopted a TLE framework Agreement called the "1992 Saskatchewan TLE Framework Agreement". The guidelines for this framework are somewhat different than the *1998 Guidelines* which was the one used by Canada to validate Ahtahkakoop's TLE claim.

One of the main differences is that under the *1992 Guidelines* anyone that accepted Métis scrip or was the descendent of someone that accepted scrip was also eligible to be counted under the historical population.

In Ahtahkakoop's case, Canada has agreed to proceed with the same principles of this Framework Agreement resulting in an additional **19 individuals** to be counted within Ahtahkakoop's historic population. The result of this decision increases Ahtahkakoop's acreage shortfall under its claim to **4,115.2 acres**.

Shortfall calculation – 1992 Framework Agreement

<i>Existing land base</i>	$335.85 \times 128 \text{ acres} = 42,988.8$
<i>Size based on 368 members</i>	$368.00 \times 128 \text{ acres} = 47,104.0$
<i>Shortfall acres</i>	$47,104.0 - 42,988.8 = 4,115.2$

Equity Formula:

Ahtahkakoop should have received all the land it was entitled to in 1878 when the reserve was first surveyed. If the 4,115.2 extra acres had been included at that time,

there would be no outstanding TLE claim today. However, to simply add that acreage today would not account for the fact that Ahtahkakoop has been denied the use of that land for 132 years. To make up for the loss of use, the equity formula was used under the Framework Agreement to allow First Nations to not only acquire their shortfall, but to acquire additional reserve lands called “equity acres”.

The first step in calculating the equity formula is to determine the percentage of the historical shortfall. This percentage is then multiplied by the current population and then by 128 (the Treaty Formula) with the results being equity acres. In Ahtahkakoop’s case, using a population of **3100**, the claim size using the equity formula would equate to **34,664.4 acres**.

1. Ahtahkakoop received 42,988.8 acres in 1878, but should have received 47,104.0 acres.
2. We were short changed 8.736% of the land to which we were entitled.
3. The historical population counted for Ahtahkakoop should have been 368 individuals (349 for validation plus 19 more under the *Framework Agreement*).
4. The current population of the First Nation is approximately 3,100.
5. Under the equity formula the percentage historical shortfall is then multiplied by the current population and then multiplied by 128 (the Treaty Formula) with the results being the equity acres.

Formula Calculation

Percentage historical shortfall 8.736% (4,115.2/47,104.0 is the %) x current population of 3,100 x Treaty Formula of 128 acres = Equity acres

*(8.736% x *3,100) x 128 = 34,664.4 Equity acres*

** Note: Current population will be based on the population on the date that the parties agree. As such it will not be exactly 3,100.*

Compensation:

Since not enough Crown land is available, one of the principles of the *Framework Agreement* is that First Nations would be provided cash compensation to purchase lands on a willing buyer/willing seller basis. First Nations must, at a minimum, purchase their shortfall acres with minerals and transfer them to reserve status. They can also purchase up to their equity acres, either with or without minerals, and have these lands transferred to reserve status.

Under the 1992 framework agreement, the price per acre for cash compensation was set at \$262.19. Under the framework, there is also a mineral allowance that adds \$45 per acre for shortfall acres.

Based on this compensation value, Canada is currently offering the First Nation **\$9,273,543**. (Equity acres \$9,088,359) + (Mineral \$185,184) = 9,273,543.

Equity Acres Compensation
Equity acres x per acre amount = Compensation
 $34,664.4 \times 262.19 = \$9,088,359.$

Mineral Compensation
Mineral value x shortfall acres = Compensation
 $\$45 \times 4,115.2 = \$185,184.$

Note: The compensation is cost shared between Canada and the Province with Canada paying 70% and the Province 30%.

Ahtakakoop's Concerns:

Framework Agreement:

The defined processes outline Canada's framework by which they have used to settle outstanding claims with First Nations. However, there are some evident concerns with these processes pertaining to the following questions:

- Why do we have to buy our land back?
- Why do we have to buy mineral rights when we never surrendered these rights under the Treaty agreements?

Although taking a position outside of defined processes may delay resolve to our claim, the First Nation must confirm its position before moving forward in negotiating a settlement.

Price per Acre:

Since 1992 land prices have substantially increased. As a result Canada's current offer of \$262.19 per acre may not be adequate to allow the First Nation to purchase its entire equity acres.

If the \$262.19 per acre was brought forward to current dollars using the Consumer Price Index the value would be \$421 per acre. This increase in land value is supported by a report done by an appraiser who estimated average price of agricultural land in the Province in 2009 is more likely between \$375 per acre and \$475 per acre.

Mclvor Case:

The Mclvor case pertains to individuals who lost their Indian status due to marriage. In the Mclvor case the judge ruled that status women should not lose their Indian status for marrying a non-Indian person.

As a result of this ruling, Canada is working on changing its legislation to grant Indian status to individuals who can demonstrate that somewhere in their ancestry a female person lost status by marrying a non-Indian. Because our First Nation does not have its own membership code, this law would apply to our First Nation.

As the implementation of this decision may significantly increase our membership statistics, the First Nation may want to consider holding off on finalizing its Claim until the impacts of this decision are realized. The following is a sample calculation showing the impacts that an additional **200** members would have on our First Nation's claim.

<i>Current Calculation</i>	$(8.736\% \times *3,100) \times 128 = 34,664.4$ Equity acres
<i>Extra 200 members</i>	$(8.736\% \times 3300) \times 128 = 36,901.12$ Equity acres
<i>Additional Acres</i>	$36,901.12 - 34,664.4 = 2,236.72$ acres
<i>Compensation Offer</i>	$262.19 \times 2236.72 =$ \$586,445.62.

Negotiations:

Ahtahkakoop is now entering the negotiation stage in settling its claim. To begin this process Ahtahkakoop is first compiling a "Work Plan" that will identify the tasks required to settle our claim. An integral component of this work plan will be to establish a communication strategy by which the leadership can consult with membership to get the necessary feedback, direction and position by which the First Nation should move forward in settling its claim.

The work plan will also define the processes by which the Treaty Land Entitlement funds will be managed and protected should an agreement be reached. This entails the formation of a Trust agreement that will define the rules by which TLE funds will be used including land selections and acquisitions and/or investment processes.

Ultimately, the final decision on how Ahtahkakoop settles its claim will be made by the membership. Final acceptance and ratification of any settlement must be made by an absolute majority vote of the membership. As such, it is very important for our membership to become involved, know, and understand our Treaty Land Entitlement processes.

Footnotes:

This report only addresses the First Nation's claim under "**Treaty Land Entitlement**". Ahtahkakoop has several other claims which are currently being researched and will be pursued pending a favorable research conclusion. These additional claims will be pursued under the "**Specific Claim**" process.

The following is a listing of other “Specific Claims” that the First Nation is researching:

Mineral Rights
Veterans Claims
Church Property

Agriculture Lands
Other

The First Nation should also start engaging in discussions with membership regarding land use as it will be important to identify how reserve additions will be managed and used.