HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 014 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, November 22, 2011

Chair

Mr. Chris Warkentin

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● (1100)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I will call this fourteenth meeting of the Standing Committee on Aboriginal Affairs and Northern Development to order.

Today we have witnesses from the department coming to speak to us specifically about the additions to reserves. We've had some of these witnesses here before.

Mr. Beynon, Ms. Buist, and Ms. Head, welcome, and thank you for coming.

Thanks so much for being here. We appreciate your briefings. I can tell you that I've learned a lot over the last number of meetings, and I'm certain that colleagues have as well. We'll turn it over to you now and ask you to make your opening comments.

Ms. Buist, I believe you'll be bringing us comments, and then, of course, we'll have questions for you, so please take charge and take over.

Ms. Margaret Buist (Director General, Lands and Environmental Management, Department of Indian Affairs and Northern Development): Thank you very much, Mr. Chair and members, for inviting us back today.

As the chair said, my name is Margaret Buist. I am the director general of the lands and environment management branch in Aboriginal Affairs. With me today is Andrew Beynon, who has been here before, as you know. He's the director general of community opportunities. Also here is Jolene Head, the director of lands and environment operational policy.

Andrew and I both had the opportunity to speak with you last week regarding land tenure and land registration on reserve. Today we're going to take you through the reserve creation process, its legal origins, and departmental policies that relate to it, and we'll try to describe some of the issues and challenges faced by various stakeholders with respect to reserve creation. Finally, we'll highlight some of the achievements and milestones related to reserve creation by the department.

Lands have been added to reserves over time for many reasons, including: as part of historic treaties; to settle outstanding claims; for exchanges of land due to the expropriation of existing reserve lands; to accommodate expanding reserve populations; and more recently, for economic development purposes.

Canada currently has a decade-old policy to guide its decisions on when and how lands will be added to existing reserves or when new reserves will be created. The policy and the associated procedures are time-consuming, expensive, and complex. Many issues have been raised, not only by first nations, but by other parties, including the Office of the Auditor General, which in 2005 and 2009 criticized the government for the delays and costs involved in the additions to reserve process.

Aboriginal Affairs has responded to these criticisms by revisiting the 10-year-old policy, by establishing a joint working group with the Assembly of First Nations to examine policy changes, and by creating changes internally to our own procedures and systems to try to make things more efficient. The changes have begun to show progress.

In the last five years, significant gains have been made in adding lands to reserves. Since 2001, over a million acres of land have been added to reserves across Canada, with more than two-thirds of that amount happening in the last five years. More is yet to be done, and our department is committed to working with first nations to continue finding improvements to existing systems. Challenges will continue as new claims are being negotiated in the prairie provinces and Ontario, which are likely to greatly increase the amounts to be added to reserve.

For a brief refresher on what a reserve is, I'll review some background information to set the stage for understanding the challenges of adding to reserve.

A reserve is a tract of land that has been set apart for the use and benefit of a band, the legal title to which is vested in the crown. Title is held by the federal crown, and the federal crown has the authority to create reserves. The land, when set aside as a reserve, is for the benefit of the entire band, not just one individual.

Reserve creation is the process of setting apart land by way of royal prerogative; it is not found under the Indian Act. There's a long history of reserve creation, and it begins with the Royal Proclamation of 1763. There are two types of reserve creations.

The first is called additions to reserve; you may hear the acronym “ATRs”. The granting of reserve status to a parcel of land that is added to an existing reserve is an ATR.

A new reserve is the granting of reserve status to land that is not within the area of an existing reserve community. According to departmental policy, additions to reserve proposals are for land located in the general geographic area of an existing reserve so that services and infrastructure can be extended at little or no cost. New reserve proposals are for land that is not in the geographic area and will therefore be more costly. As a result of that, new reserves are not as common as additions to reserve.

For the three prairie provinces, additions to reserve are reinforced by optional legislation called the Claim Settlement Implementation Acts. These allow lands to be set aside as a reserve by ministerial order rather than executive order of the Governor in Council.

● (1105)

These acts also provide for pre-reserve designations of land, which allow the land to be developed in advance of the addition to a reserve, so as soon as it's approved, the development can be under way.

In addition, in the three prairie provinces there are treaty land entitlement framework agreements that have been negotiated on a tripartite basis among Canada, the province in question, and a first nation. These are specific claim settlement agreements in which first nations are compensated for lands owed to them under historic treaties that blanket the prairie provinces. Lands are acquired through this process and converted to reserves in accordance with the federal additions to reserve policy, which I'll now talk to you about.

Under the policy, any proposal for an addition to a reserve or the creation of a new reserve must fit into one of three categories. These categories are: legal obligations, so these are obligations that result in law from treaties or claim settlement agreements; court orders, and those are not as common; and other legal reasons, such as the return or exchange of lands appropriated under the Indian Act.

The second category is what we call “community additions”. That encompasses needs due to community growth for housing, schools, economic projects, or infrastructure enhancements. This category also includes the return of unsold surrendered land.

The third category is new reserve creation or other reasons. All proposals that don't fall within the first two categories come within this section of the policy. Examples include new reserves for landless bands, band relocations, and economic development. This is the most restrictive category under the policy, and it requires extensive justification in order to add lands to reserves.

There's also a fourth category, which is currently under discussion with the AFN. As you may know, the new Specific Claims Tribunal will have the power to order compensation for successful claims. It's anticipated that this compensation will be used to purchase lands added to reserves. This new category that's being developed will allow for this new type of additions to reserves.

Let me now take you through some of the issues and challenges faced by all of the parties involved in an addition to a reserve. Those parties include first nations, municipalities, provinces, and, of course, Canada. These issues and challenges range from tax loss, consistency in land use and zoning, complexity in the negotiation processes, and the time and resources involved in reserve creation.

There are many positive examples of reserve communities that contribute to the quality of life of neighbouring municipalities, but there's still an element of resistance to the notion of creation of new reserve lands. First nations, our government, and provincial governments must work together to explain the benefits and necessities of reserve creation so that proposals for reserve creation can be accepted and understood by all Canadians.

Municipalities often express concern about the loss of taxes when a reserve is created. First nations are required to negotiate a tax loss adjustment to compensate for the effect of a reduced tax base and the reduction in municipal services. This, however, is not meant to compensate the municipality fully or indefinitely for the gross level of lost taxes, and that remains a concern to municipalities.

Another concern raised by municipalities is the need for consistent application of land use planning and zoning on adjacent reserve lands. Once lands have been added to a reserve, the first nation has the authority to determine how to use their reserve lands according to the needs and interests of their own community; municipal jurisdiction doesn't apply to the reserve lands anymore. However, as a prerequisite to the approval of the addition to a reserve, the federal policy requires that first nations need to negotiate joint land use planning and bylaw harmonization as much as possible.

● (1110)

Another issue and challenge is the negotiation of municipal service agreements when these are required for reserves that are adjacent to municipalities. There are also negotiations related to the purchase of the land to be added to reserve, of course, and there are negotiations needed with third parties that may have interests already on the land that's needed to add to reserve, such as easements, leases, and permits. All of these negotiations can contribute significantly to the delays experienced in the reserve creation process.

There are no formal dispute resolution mechanisms in place in the federal policy to assist the parties when negotiations break down. Municipalities have expressed concern that first nations and the department can proceed with the reserve creation despite their objections. First nations have expressed concern that municipalities and third parties that refuse to negotiate agreements in good faith can hold up for long periods of time the addition to reserve process.

A final challenge is cost of reserve creation. The cost of purchasing land at fair market value can be prohibitive for first nations, particularly when they're looking at urban or resource-rich lands to add to reserve and they have only a fixed amount of compensation from the claim settlements with which to purchase these lands. The cost of completing all the necessary pieces that go with additions to reserve, like surveys and environmental site assessments, is very high, even more so when land is remotely located.

These issues and challenges have a significant impact on the level of resources required and the length of time it takes to add land to reserve in Canada. We're working with the Assembly of First Nations in tackling these issues head on and revisiting our federal policy.

More specifically, to address these challenges, the department and first nations have begun to address them directly. For example, there's an organization called the National Aboriginal Lands Managers Association, or NALMA, that trains land managers on reserve, and together with the department they created an ATR tool kit for first nations at the first stage of adding lands to reserve to assist them in developing their proposals. We've also implemented a national tracking system, an IT system, to monitor the progress of proposals and as a project management tool to assist us in helping first nations.

As I mentioned earlier, we're also undergoing a complete review of the ATR policy in chapter 10 of the "Land Management Manual", and we're examining our internal processes that have developed over time to look for efficiencies. We're developing further tools to assist first nations at the early stage when they're developing their proposals and negotiating with municipalities over service agreements or with third parties over their interests.

Finally, as I mentioned, we have a large of piece of work going forward with the Assembly of First Nations to explore the policy changes for ATRs, which I've described to you here today.

As I indicated at the beginning, over the past 10 years over a million acres of land have been added to reserve. In addition to the treaty land entitlements, specific claim settlement agreements since 2006 have provided the potential for a further half million acres of future ATRs. When fully implemented, the treaty land entitlement agreements in the prairie provinces will result in the conversion to reserve of over two million acres of land in Saskatchewan and over a million acres of land in Manitoba—more than twice the size of P.E.I.

Approximately 61% of the land selected by first nations in Saskatchewan has been converted to reserve, and about 43% in Manitoba. More agreements are currently being negotiated in Saskatchewan, Manitoba, and Ontario, which will add even more land to reserve.

In conclusion, the additions to reserve respect Canada's legal obligations to first nations and they provide for additional land for much-needed housing, infrastructure, and economic development opportunities. Our department is committed to working with first nations to meet the challenges of adding lands to reserve while continuing to explore other avenues for land tenure, which you've already heard about, under legislation other than the Indian Act, such as the First Nations Land Management Act.

Thank you.

● (1115)

The Chair: Thank you very much.

We're going to start the rounds of questioning, colleagues.

Ms. Duncan, for seven minutes.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you, Mr. Chair.

Thank you for appearing again. We appreciate your knowledge and experience and hope you can come back after we hear directly from some of the first nations about their experience and what their issues are.

I have two requests for information, which you don't have to answer now but which would probably be helpful to us.

One, how many of these applications for new reserves are in process, how many of those involve municipal land, how many of those are considered specific claims, and how many have been given final offers?

My second request for information would be on the report you mentioned at the beginning about an improved process for dealing with the new reserves and on what the membership is of the advisory committee you mentioned at the outset.

Ms. Margaret Buist: Do you mean the joint working group with the AFN?

Ms. Linda Duncan: Yes. Thanks.

I have two quick questions and then I'm going to turn the rest of my time over to my colleague, Monsieur Genest-Jourdain.

I wonder if you have the same process for dealing with compensation requests on prior deletions from reserve. Also, how many of these requests for new land are related to the fact that there have been severe diminutions of the original allocated lands? I would give the example of the Six Nations, where the original lands allocated to them were tenfold what they're left with now, or the Paul First Nation in Alberta, which has been severely cut back.

I'm curious to know what the relationship is between where large parcels of land were allocated originally and then taken away, and whether there is a relationship between those disputes and those who are asking for additional lands.

Mr. Andrew Beynon (Director General, Community Opportunities Branch, Department of Indian Affairs and Northern Development): I will take a first stab at answering that question.

I think we'd have to get back to you with the exact percentages and so on, for precision, but broadly speaking I would say that the number of cut-off claims, which is what they're typically referred to as, or claims related to removal of lands from reserve historically, is actually a smaller category than the total amount outstanding as treaty land entitlement—in other words, where historic treaties have said there is a promise to create a certain amount of reserve land and that hasn't been carried through. They're a smaller category.

The issue most often is one that has to be resolved through a specific claim, so that first nations in British Columbia or Saskatchewan, for example, will file a claim saying there was land that was taken away from the reserve and it was, for whatever reason, an improper procedure—for example, an invalid surrender of lands. When that specific claim is negotiated and resolved, sometimes the parties will come to the conclusion that there will be a certain form of cash compensation, or sometimes there will be a decision to say, "Well, we want to now add some lands to reserve".

When that is the result of a specific claim settlement, it turns into an addition to reserve, and the process is one under which you again go through these categories of working through the availability of the land, the purchase of the land, dealing with third-party interests, such as municipal issues and so on, and then ultimately setting it aside through an order in council.

● (1120)

Ms. Linda Duncan: If I can just clarify quickly, I'm trying to understand this. Obviously if you're a first nation you're trying to find the most advantageous process whereby you're going to get additional land, so on the way it's working now, is it more advantageous for you to forget the specific claims process or the general claims process and say that you're simply going to apply for some new lands? Which is the more expeditious process and which is given a more expeditious, favoured response?

Ms. Margaret Buist: Well, any of the specific claims that Andrew referred to, so if it's a question of lands having been taken improperly in the past.... I'll give you the example of railway lands, which is a very common situation whereby railway lands were expropriated and the first nation would like to get them back. Anything like that falls under the first category of legal obligations.

When we reach a settlement with a first nation, whether it's a specific claim for the return of expropriated land or it's a treaty land entitlement where not enough was given under an historic treaty, those both fall within our first category of priorities for ATRs, and that's the legal obligations category.

Ms. Linda Duncan: It's clear as mud.

Mr. Andrew Beynon: Maybe I can add just a little more to that. When you're asking the question about which is the most advantageous route to go, as Margaret said in her opening remarks, the priority under the federal policy is on legal obligations and those that are related to the expansion of a community—for example, for community needs for housing.

For the third category, where there's more of a discretion, where a first nation comes forward and says they have an economic development opportunity and they'd like to have an addition to reserve lands, that's actually less of a priority for the resources of the federal government.

The logic of it is that there is not an infinite amount of resources. The priority effort is trying to deal with those outstanding legal obligations. So that is the easier avenue, though it does require establishing the lawful obligation.

Ms. Linda Duncan: Go ahead, Jonathan. Then we'll have the next round.

The Chair: You just have a minute left. If you just have a short question, there might be time to answer.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): I am going to ask my question in French.

What are the consequences of the first nations land management regime on the course of your department's activities, on the one hand?

Mr. Andrew Beynon: Unless I misunderstood, you want to know what effect the new first nations land management regulations have on additions to reserves.

The communities that are interested in participating in this regulation sometimes want to solve issues connected to the addition of lands before they become first nations that are governed by it. However, it will also be possible for a first nation, even after it becomes one of the first nations that abides by the regulations on first nations land management, to pursue a specific or historical claim.

Thus the fact of becoming a participant in this modern regulation, rather than coming under the Indian Act, does not eliminate any remaining legal obligations.

[*English*]

The Chair: Thank you very much.

Mr. Wilks, for seven minutes.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Mr. Chair.

Thank you for coming today.

To refer to your remarks on pages 4 and 5 specific to the two types of reserve creations, the additions to reserve and new reserve, and then the federal additions to reserve policy and the three policies of legal obligation, community additions, and new reserve creation or other reasons, I wonder if you could explain further what the benefits are of adding land to reserves.

● (1125)

Ms. Jolene Head (Acting Director, Lands and Environment Operational Policy, Department of Indian Affairs and Northern Development): Mr. Chair, there are three main benefits to adding land to reserves.

The first is the economic benefit. Adding lands to reserve provides lands and resources for economic development by creating more jobs, increasing incomes for families, and independence from public support. Also, new businesses attract other businesses, to add to the vitality of the community.

Second are the legal benefits. Margaret and Andrew spoke to that in terms of adding lands to reserve to conclude specific claims settlement agreements, including TLE. Claims are truly settled not when agreements are signed, but when they are implemented, which is what reserve creation does.

Lastly, there are the social benefits. It provides land for housing and other first nation needs.

Mr. David Wilks: Thank you.

On page 2 and carrying over to page 3, you say, “The policy and the associated procedures are time-consuming, expensive, and complex”. First nations have expressed concern that the process of adding land to reserves is time-consuming and costly. In that effort, can you talk about what contributes to this and expand on what the department is doing to address these challenges?

Ms. Jolene Head: Thank you.

Adding land to reserves is a complex process requiring due diligence on the part of the federal crown, and it is dependent on the active participation and agreement of a number of parties, including the Government of Canada, first nations, the provinces and municipalities, and other affected interests, such as third party interests.

The actual time it takes to create a reserve has ranged from less than one year to well over five years. It depends on the issues that are involved with each particular situation. Many variables affect the length of time.

For example, the negotiation to acquire land can take a considerable amount of time, depending on the availability, the price, and the willingness of the seller. Also, in instances where remote tracts of provincial crown land are selected, land surveys are completed as seasonal conditions permit and often require multiple seasons to complete—for example, in the northern regions of the prairie provinces—and it depends as well on the size of the parcel being surveyed.

In addition, environmental site assessment and potential remediation of the condition of the land are required before lands are transferred to Canada and then set apart as reserves. This, as Margaret has said, can be costly and very time-consuming.

We're addressing these challenges in several ways. Annual funding is provided both for surveys and for environmental site assessment and remediation when required. Funding is provided to NALMA for training and for developing ATR proposals. Internal procedures for processing ATR submissions are being streamlined. Finally, the policy is being reviewed through the joint working group with the Assembly of First Nations.

Mr. David Wilks: Is there time remaining?

The Chair: There are three minutes.

Mr. David Wilks: Thank you.

On page 7, you said, “Municipalities express concern about the loss of taxes when a reserve is created”. Further on, you said, “This is not meant to compensate the municipality indefinitely for the gross level of lost taxes...”. I wonder if you could expand upon that a bit. Has there ever been a set time for a municipality to come to an acceptable agreement with first nations? Do you seem to be getting some headway on that?

Ms. Margaret Buist: There's no set time. That's one of the difficulties. I'm not sure it's possible to set a time, but certainly the idea of assisting in the negotiations is one of the things we're taking a look at: how can we help move those negotiations forward when they reach sticking points?

There are some first nations that have been negotiating for years with various municipalities to try to get service agreements in place and some that get them in place in a matter of months. It's a very independent situation. So I don't think a time limit would work, but certainly some view to providing assistance with respect to those negotiations I think is definitely one of our considerations.

The Chair: You have two minutes.

Mr. David Wilks: Thank you.

Further to that, with regard to the municipalities with joint land and to land use planning and bylaw harmonization, obviously those can be tricky, because sometimes you're dealing with R1, R2, or R3 lots, or C1 or C2. How are first nations adapting to the role of trying to work with municipalities on zoning?

● (1130)

Ms. Margaret Buist: Well, that depends on the first nation and, again, on the municipality. We have a number of instances, though, where first nations have adopted a really positive good-neighbour approach—and we ask for that.

Under the Indian Act, first nations have the ability to create zoning bylaws. We talked to you in the meeting last week,I think, about our work with first nations on land use planning projects. We have some good success stories around the country involving efforts for bylaw development and land use planning on reserve, to match what's going on in the municipality, but there's still a lot of work to be done.

Mr. David Wilks: We're glad to hear that municipalities and first nations work together on that because certainly the idea that both have to work together is an integral part.

If I have any more time, I will share it.

The Chair: You've pretty well run out.

But if I could just ask something quickly, on page 9 you talk about the cost of the additions to reserves, and obviously a good portion of that is for environmental assessments and the surveying of those properties. Who typically pays for that? Is it the first nation or is there some help from the department?

Ms. Jolene Head: It largely depends on the situation for the particular addition to reserve. In certain specific claims settlements, they may receive a certain amount of compensation that would allow them to pay for the survey work or ESAs. For the most part, though, we do pay for the survey work and the ESAs out of departmental funds.

The Chair: So there's not necessarily a standard, but it is oftentimes out of the department's funds?

Ms. Margaret Buist: The largest cost, of course, would be the purchase of the land.

The Chair: Right.

Ms. Bennett, go ahead, for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thanks very much.

I understood that one of the three categories for addition to reserve was community relocations. I'd been told that you could add land because of natural occurrences like flooding and there would be “site-specific considerations” related, it says, “to comparing the cost-benefit of the relocation against a variety of other options”. I understand the policy, which still says that:

> INAC will continue to provide the necessary assistance (including the provision of reserve land by adding to or creating a new reserve or by relocating a reserve community within an existing reserve) where a natural disaster (e.g., flooding) threatens the immediate safety of a community's residents, or where such a disaster has already occurred. When relocation is the most viable long-term option according to the criteria set out below, INAC will assist the First Nation in relocating the community on an urgent basis.

I guess I want to know, if that's the case—and sometimes examples are the most educative things for us as members of Parliament—why are the thousands of people from Lake St. Martin and Little Saskatchewan First Nations still in hotels in Manitoba six months later, and why has there been no negotiation on setting up a new reserve on an urgent basis when even more severe flooding is expected this fall?

It's quite clear that this land is too low and that it will always be flooded. I understand there's crown land, higher land, adjacent to that reserve. Why aren't we getting on and doing it if it says in the policy that this is normally done “on an urgent basis” and when it's quite clear that the land they have right now is completely unsuitable for an ongoing community?

Ms. Margaret Buist: You're quite right: that is an example of a very urgent situation. It has been a top priority for the department throughout the spring and summer, and for the province as well.

I know that our regional colleagues in Manitoba have been working very closely with the first nations and with the provincial government to look at all the available options, one of them being permanent relocation. A number of options are being explored. Relocation is a desire of some of the affected communities, but not all of them. They don't all necessarily want to permanently move, so there's a balancing of the interests going on there—

● (1135)

Hon. Carolyn Bennett: I guess from some of the communities they're saying there has been no negotiation. The minister appointed somebody from Alberta to come and negotiate this, somebody who apparently didn't even come and talk to them for months after his appointment.

But if this is the policy of the department, why can't the department just get on and do it?

Ms. Margaret Buist: I can't talk to the specifics of the negotiation. It's something going on in our regional—

Hon. Carolyn Bennett: Could you get back to this committee with what has happened from the time that there was clearly an untenable situation, long term? What is the situation with crown land sitting right next to the reserve? The government doesn't even have to buy it; it already owns it.

Ms. Margaret Buist: I can certainly get back to you with what I'm able to say about the ongoing negotiations that are taking place with the province and the first nations. I've been involved in some of the calls that have been going on with that, through headquarters, but as I said, it's mostly going on in the region.

As you mentioned in the beginning, though, that is the third category under the policy, which is to find lands to relocate bands. There are definitely situations...situations in Labrador where that was required, and situations of the flooding in Lake St. Martin, as you've indicated. Those would come under the third policy.

But when it's an emergency situation, obviously that moves up in the priorities. It's not a long-term solution then; it's a much shorter-term solution. That is most definitely one of the considerations that's going on in negotiations right now: to find the appropriate solutions for the first nations, including relocation.

Hon. Carolyn Bennett: Could that include just moving almost temporary...? Obviously you negotiate the land, but then you also have to help them rebuild the infrastructure. That, I understood, could even be trailer kinds of temporary facilities to be able to get these people back on the land and out of the hotels.

Ms. Margaret Buist: That's absolutely one of the options.

Hon. Carolyn Bennett: What does “urgent” mean when we're spending millions of dollars on hotel bills? I mean, we've almost spent what it would cost to relocate it in these six months.

Ms. Margaret Buist: As I said, I'm not intimately involved in the negotiations, but I will be able to bring back to you what I can in terms of what's happening. These are behind-closed-doors negotiations with the first nations and the province for the most part, but I certainly can provide you with the information.

Yes, the department has recognized it as an urgent matter from day one when the flooding occurred.

Hon. Carolyn Bennett: Some of the crown lands have been leased to ranchers, and that is deemed to be the reason that this solution isn't as obvious to others as it would seem to be to the first nation. How does the Government of Canada get out of those leases so you can actually end up helping these people relocate urgently?

Ms. Margaret Buist: Again, I can't answer you on the specifics on that, but I will bring back to you what I'm able to from the negotiations.

Mr. Andrew Beynon: If I may though, I think one point should be added. With all these examples of where you have flooding, or fires, or emergencies that would trigger a need to deal with new reserve lands, I think it's inevitable that in order to respond to the short-term emergency you're going to have to use hotels and some temporary accommodation.

No matter how fast you try to move on the addition to reserve, you do have to deal with purchasing the lands and dealing with existing interests, not only of third parties like ranchers, but also of public utilities, provincial interests, and any municipal tax loss compensation.

Even if you do put it into an urgent category, because you must have a stable solution that's less expensive than hotels, in the best of circumstances you're likely to see situations where the department is incurring immediate costs for first nation residents.

Hon. Carolyn Bennett: In the definition of whether this is sustainable, a flood plain is a flood plain, and we can't go on in the same location. Don't you then immediately trigger that it's urgent?

The Chair: Ms. Bennett, your time has expired. I did give time for an answer.

I think it might be helpful, though, if committee members.... My understanding is that crown lands are held in trust by the provinces and they are the ones who undertake agreements with ranchers or different utility companies. It wouldn't be the federal government. Is that a correct understanding of it? That crown lands in most, areas, at least in the areas that I'm familiar with, are held by the provinces...?

● (1140)

Ms. Margaret Buist: Absolutely: the majority of lands in provinces are provincial crown lands. There are some pockets that are federal crown lands, without a doubt, but the majority are provincial crown lands. That's correct. That's why in a situation like Lake St. Martin they have to be at the table.

The Chair: Thank you so much.

Mr. Payne, for seven minutes.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Chair. My questions are through you, Chair, to the witnesses.

Thank you again for being here. The information you're providing this committee is extremely important in order for us to understand all the aspects of aboriginal affairs, and particularly the land management process.

First, what else has the department done to address key recommendations of the Office of the Auditor General in the 2005 and 2009 reports regarding the additions to reserve lands and that process? Could you help me out with that?

Ms. Jolene Head: In addition to the minister's commitment outlined earlier in Margaret's speech, the department has implemented, as she also said, the national ATR tracking system. NATS is what we call it. It tracks all ATRs and provides up-to-date statistics on the conversion process.

As well, the Manitoba and Saskatchewan regions, where the bulk of our ATR submissions are, are continuously working with first nations to develop action plans for the land selections, by way of workshops and regular meetings with the first nation communities.

Our department as well, jointly with NALMA, as Margaret had outlined, has developed the ATR tool kit and subsequent training, which has been under way for the last two years, so that first nations can better understand their roles and responsibilities in the ATR process, as well as those of all of the other stakeholders, and are better able to promote consistency in the approach to the transactions.

Mr. LaVar Payne: Thank you.

That's something interesting. You talked about the ATR tool kits. I'm wondering if you have some quick examples of what it might look like in the tool kit.

Ms. Jolene Head: The tool kit consist of a binder. It's a working tool for first nations. There are checklists and examples of best practices from across the country to help first nations know what types of activities they have to complete for an ATR proposal. For example, they would look at survey requirements, environmental site assessments, and title searches and those sorts of things.

NALMA developed those tools based on consultation with the first nations and the department on what is required to complete an ATR proposal. That is what's in the tool kit. It also has a bit of a diary, so they can write in their remarks and be up to date on where the file is if somebody else has to take it over.

Mr. LaVar Payne: That sounds like a very good tool kit to me.

How is the department responding to the creation of a specific claims tribunal with regard to ATRs?

Mr. Andrew Beynon: This may be something that I'll comment on.

The opposition critic, for instance, raised a question of some cutoffs and specific claims issues. Back in 2009, the government announced its “Justice at Last”, very much focusing on trying to increase and drive more specific claims settlements. It was recognized that it was only one step to resolving the specific claims and negotiating the settlements. Very, very often, the specific claims settlements contemplate additions to reserve, expanding the reserve land base, as part of the overall settlement.

What the parties recognized was that it's very important to make sure that the implementation of the promise of the specific claims settlement can be delivered. So right up front, working with the AFN, we all recognized, based on experience, that it was important to invest in making sure the additions to reserve processes were as effective as possible, or else the specific clams settlements would only carry you to a certain point.

So with an eye to implementation, beginning back in 2009 we've been working with the Assembly of First Nations, which has a lot of experience with specific cases of additions to reserve across the country. At first, the lens of that work was very much the Justice at Last...the expectation, for example, that the Specific Claims Tribunal would make orders and that we would be dealing with additions to reserve in the context of specific claims settlements. But I think fortunately, that work with AFN...at least the officials involved would like to see it expand to take in the opportunity to improve additions to reserve more generally.

I think that's the great promise of it. One is the possibility of improvement to policies and procedures—purely process steps. Two, there may even be the potential for perhaps some legislative changes that could also assist with additions to reserve.

Margaret mentioned in her opening remarks the fact, for example, that there is legislation: Claim Settlement Implementation Acts that apply in some of the western provinces. We're not sure where the work with the AFN will necessarily end, but for committee members' interest, there could potentially be legislative improvements that would help us with the speed and cost of additions to reserve.

● (1145)

Mr. LaVar Payne: I believe that the things you have agreed on with the AFN will certainly help in the process.

I just have another question in terms of the federal ATR policy. In particular, I'm wondering a bit about the three steps. You talk about the legal obligations on page 6 and community additions as well as the new reserve creation. I was looking at numbers two and three, and in particular the community economic projects.

Under number three, of course, I believe you said it was much more difficult in that particular clause. But you have economic development reasons, so I'm trying to figure out what the difference is between “community economic projects” and the economic development reasons. Perhaps you can help me out with what that difference really is.

Ms. Margaret Buist: It's a fine distinction, but in terms of the community economic projects this is something the community would be doing themselves. The third category, economic development, would be a third party wanting to develop a mine on a reserve, for example. A community economic development project would be a shopping mall that the community was doing itself, as opposed to with a third party developer.

Mr. LaVar Payne: In the example of the community one, there would be no third party involvement?

Ms. Margaret Buist: That's correct.

Mr. LaVar Payne: Okay.

Thank you.

The Chair: Thank you, Mr. Payne.

Mr. Genest-Jourdain has five minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Before considering adding land to a reserve, what attention do you give to the environmental site assessments on the existing reserve?

Ms. Margaret Buist: Before adding land, the condition of the land has to be assessed. This is expensive and time-consuming, but it is absolutely necessary before crown land can be transformed into reserve land.

Mr. Andrew Beynon: It is necessary because when adding land, as the clerk mentioned, we often begin with lands that are provincial crown lands. It can happen that the province has already developed land and that there have been environmental problems. Before they become federal land and become, in part, land that will be assigned to a first nation, we want to resolve or at the very least assess environmental issues.

There are two things that are important and need to be done. Firstly, we have to know the environmental status of the land. We want to avoid situations where we receive lands without knowing about their environmental condition. Secondly, as Ms. Buist and Ms. Head mentioned, often the first nation needs that land. As a first nation, it wants to know what the environmental condition of that land is and what solutions were brought to existing problems.

● (1150)

Mr. Jonathan Genest-Jourdain: Concerning reserve lands that are already occupied by communities, what importance to you attribute to land management that has already occurred? In other words, aside from lands that are being considered for future use, are the lands that are already a part of the reserve's territory taken into consideration from the environmental perspective?

Ms. Margaret Buist: The department already has programs to remediate reserve lands. However, there is a long list of projects given the funds that are available for that work.

As for additions of land to the reserve, that land may have been used by the province for industrial activities. The members of the community generally want to live on these lands. And so it is necessary to clean the land to make it comply with residential, not industrial, standards. That is a problem. It costs a lot of money to reclaim this land.

Mr. Andrew Beynon: I would add that the issue of reclaiming or improving existing reserve lands falls under a broader federal program. All federal land is considered, be it airports, Environment Canada sites, reserves, or land located in the Canadian north. National priorities are analyzed.

[*English*]

The Chair: We have about a minute left, if anybody would like to take it.

Ms. Duncan.

Ms. Linda Duncan: I have a quick question.

It's all very interesting. There's a lot to absorb and appreciate. Additional material would be helpful.

You mentioned in your presentation, Ms. Buist, that in some cases where lands are being added, there may be allowance for development before the lands are added, and presumably before there is a land code. Can you tell us what law those developments are being governed by? Are they under the Indian Act? What governs those developments?

Mr. Andrew Beynon: Let me take the start of this. It's a very good question that you ask.

The issue is this. Under the Indian Act, you can have a designation of lands for leasing purposes. That's something we talked about in an earlier presentation.

The fascinating thing about a community vote to designate lands to allow them to be leased for various purposes is that the language of the Indian Act confines that process to a reserve. Many communities that want to deal with economic development opportunities and target particular lands for additions to reserve can't technically do the community designation. You can't have the community vote and prepare for the lease until after the land is added to a reserve. That creates a huge timing problem.

Another example of this is found when you have some existing third party interests on land that you'd like to see added to reserve. For example, there may be a strategically valuable parcel of land that has a public utility right-of-way running right through it. The first nation may say: “We would like to have that land added to reserve because it's very strategically valuable and we don't want to remove the public utility right-of-way. We recognize that it may benefit us or benefit the Canadian public.”

The problem is that the utility right-of-way is created under provincial legislation, not under the Indian Act, and again you have a gap whereby you can't have the designation or the authorization under the Indian Act until after the land becomes a reserve. You may jeopardize the existing third party interest in that way.

What Margaret was referring to in her opening remarks is that the claims settlement legislation that has limited application in western Canada created an authority for the community to have a pre-reserve designation of the lands, so that even before the lands are added to a reserve you can turn to the community and have a vote asking whether there is agreement that there should be this particular interest on what are going to become reserve lands.

It's a very effective tool for doing two things: one, responding to community aspirations for lands that may already have some existing interests on them; and two, working with municipalities, provinces, and third parties such as utility authorities to deal with a parcel of land and not put at risk existing interests.

What's interesting about it, perhaps for you as parliamentarians, is that the claims settlement legislation only has limited application right now. That pre-reserve designation opportunity doesn't apply everywhere.

The Chair: Thank you very much.

Ms. Buist?

● (1155)

Ms. Margaret Buist: I just want to add—

A voice: [*Inaudible—Editor*]

Ms. Margaret Buist: There are 63 first nations that taking part in the Claim Settlement Implementation Acts. Two benefits under that act are that you only need a ministerial order—you don't have to go all the way to Governor in Council—and you can have the pre-reserve designations, as Andrew has pointed out.

Ms. Linda Duncan: Is there a document on this that we could be given, such as a separate policy about that process?

Ms. Margaret Buist: There is no separate policy. We can certainly get you the statute—

Ms. Linda Duncan: Is there an administrative document about it?

The Chair: I'm sure that we as a committee will look into this issue further. It's of interest and obviously there are some issues that need to be resolved.

Mr. Clarke will be the final questioner, for five minutes.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thanks, Mr. Chair.

Thanks for coming back again. It's nice to see you.

I have a couple of things. From my standpoint in looking at northern Saskatchewan, what I see is that many northern communities in northern Saskatchewan are purchasing a lot of property in urban centres such as Saskatoon. I look at Patuanak, which purchased property right in the downtown core and on the outskirts of Saskatoon to build a mini gas bar. What I've seen as well is my home reserve also purchasing property right in the core of Saskatoon, which at one time was being considered for a casino; however, that didn't come to fruition.

What I see is that many of the communities specifically in northern Saskatchewan don't have the economic ability to promote businesses on reserve. Many of the first nations communities and some Métis are purchasing property in the cores of such cities as Vancouver, Saskatoon, and Regina, for instance, and creating a different spinoff for development.

Economics is one of the key elements to help first nations communities get the hand up, not the hand out. I'd like to get some more clarification in regard to urban reserves. How are they benefiting the municipalities? Also, for the first part, are they looking at how they are affecting the municipalities as partners?

Ms. Jolene Head: Certainly the urban reserve situation is extremely beneficial to first nations. When they are able to secure land in an urban centre, urban reserves offer first nation members economic opportunities that are generally unavailable in remote areas. Urban reserves can be a stepping stone for the development of new aboriginal businesses and a way into the mainstream job market for many first nation people.

With increased economic development comes increased self-sufficiency for first nations and their communities. Stronger first nations mean a stronger contribution to the Canadian economy.

The benefits of urban reserves also extend to the host municipalities. Urban reserves can contribute to the revitalization of a municipality by providing a much-needed economic stimulus to urban centres. In addition to the revenue derived from municipal service agreements, urban centres also benefit from job creation and new taxation revenue generated from off-reserve spinoffs of first nation businesses.

For the first time ever, I was able to visit Squamish First Nation and the Park Royal development there. I was quite amazed at what they had done in an urban centre. For example, they had Liberty Wine Merchants there, which was very exciting for me, and Lululemon. It's very much of benefit to have an urban reserve because the spinoffs are enormous for both community members: the first nation as well as the adjacent municipalities.

● (1200)

Mr. Rob Clarke: What I've seen in some of the urban areas is some of the progressive thinking of some of the first nations communities in what they're trying to do. When they build an urban area, some are now looking at trying to subdivide, at subdivisions, and building homes that aboriginals and non-aboriginals can purchase and can rent out or lease to the non-aboriginals. That is pretty much promoting economic development.

I see this down in Regina, where some first nations individuals are purchasing homes. It is becoming more or less a mini-subdivision in which they are renting out property. Do you have any more examples of that?

Ms. Margaret Buist: Sure: both the Squamish and the Musqueam in Vancouver have quite extensive residential areas that are inhabited both by band members and by non-band members. It has quite a good success rate. If you're in Vancouver and drive along South West Marine Drive, there are big, big houses on the reserve in the Musqueam area and, as I say, inhabited by both band and non-band members.

Mr. Andrew Beynon: I will add that you're making a very good point about the recent history of urban additions to reserve. It's not something that you saw 10 or 15 years back.

I agree with you that many first nations now, in the context of dealing with the legal obligation for settlement of treaty land entitlements, are saying in some cases that they would like to have some of their traditional lands that may not be so much focused for economic development purposes, but also target some very valuable lands for economic development. So within the context of addressing Canada's legal obligations, it's possible to also address the agenda of improved economic development.

Just one thing I would say about this is that there are two ingredients that may be of interest to the community. I've heard not only an interest from first nations in targeting lands for economic development—say, urban lands—but also in paving the way very effectively for it. One way is to have high-quality planning in advance of setting aside the land as a reserve. The other is in this potential for pre-reserve designations, for example, so that you already have a signal about how the land is going to be used. The planning not only assists first nations, but also assists neighbouring municipalities in understanding how the land is going to be used in future.

Lastly, and it's a theme we've talked about, is that first nations land management legislation, for example, can be an effective tool, because those first nations that are interested will have a greater strength when dealing with subdivisions or complex commercial development under that regime than under the Indian Act.

The Chair: Thank you very much.

Our time has come to an end, but as you can tell, there are still questions. I'm sure we will hear from you again. Thank you so much for today.

Committee members, we are going to move to adjournment shortly. I want to make committee members aware that our next meeting, our Thursday meeting, coincides or at least overlaps with celebrations that are happening in the Senate chambers respecting the Libyan mission.

If you have opinions with respect to this, make your representatives at the subcommittee aware of them, because I think that we as a subcommittee will have a conversation about planning agenda items for a Thursday meeting. I put it out that all of your offices have I believe been contacted with regard to that matter.

Committee members, as far as today is concerned, the meeting is adjourned.

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