

SPECIFIC CLAIMS TRIBUNAL

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TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
December 20, 2012	D E P O S E
Amy Clark	
Ottawa, ON	34

BETWEEN:

DOIG RIVER FIRST NATION

Claimant

AND:

BLUEBERRY RIVER FIRST NATIONS

Claimant

V.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

As represented by the Minister of Aboriginal Affairs and Northern Development Canada

Respondent

**DECLARATION OF CLAIM OF THE
BLUEBERRY RIVER FIRST NATIONS**

This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act*, the *Specific Claims Tribunal Rules of Practice and Procedure*, and pursuant to the Order of Justice Patrick Smith, dated November 30, 2012.

Date: December 20, 2012

(Registry Officer)

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I. INTRODUCTION

1. The claimant, Blueberry River First Nations (“BRFN”), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act* (the “Act”), in the province of British Columbia. BRFN is one of two successor First Nations to the Fort St. John Beaver Band. The other successor is the claimant, Doig River First Nation (“DRFN”). DRFN is also a First Nation within the meaning of s. 2(a) of the Act.
2. The conditions precedent set out in s. 16(1)(a) of the Act, have been fulfilled by DRFN, as set out at paragraphs 2 through 6 of DRFN’s Declaration of Claim, filed December 15, 2011.
3. Subsequent to the filing of DRFN’s Declaration of Claim, the Specific Claims Tribunal (the “Tribunal”) notified BRFN under s. 22 of the Act that a decision on DRFN’s claim may significantly affect the legal interests of BRFN. BRFN then applied to be added as a claimant and a hearing was held by videoconference before Justice Patrick Smith on October 4, 2012.
4. On November 30, 2012, Smith J. ordered that BRFN be added as a claimant in this proceeding and that BRFN file a Declaration of Claim within 20 days.
5. As required by s. 41 of the *Specific Claims Tribunal Rules of Practice and Procedure* (the “Rules”), for the purposes of this claim, BRFN does not seek compensation in excess of \$150 million.
6. BRFN’s Declaration of Claim is based on the following enumerated grounds under s. 14(1) of the Act:
 - (a) a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;
 - (b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation - pertaining to Indians or lands reserved for Indians - of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada; and,
 - (c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian monies or other assets of the First Nation.

The issues arising from these grounds form the basis for the compensation sought.

II. ALLEGATIONS OF FACT

A. Mineral Rights on the Replacement Reserves

i. Establishment of the Replacement Reserves and Canada's Conduct

7. BRFN is located in British Columbia and is a signatory to Treaty 8. Treaty 8 was originally made at Lesser Slave Lake in 1899, and was ratified by Order in Council 363 on February 2, 1900. On May 30, 1900, 46 Beaver Indians from Fort St. John, the ancestors of DRFN and BRFN, adhered to Treaty 8.
8. Treaty 8 provides that Canada would set aside reserve lands for the use and benefit of the signatory First Nations in an amount of 128 acres per person.
9. On May 15 1907, three and one half million acres of land known as the "Peace River Block", including mineral title to these lands, were conveyed by the Province of British Columbia (the "Province") to the Dominion of Canada. These lands were conveyed as part of a land agreement between Canada and the Province.
10. In 1914, reserve lands were surveyed within the Peace River Block for the Fort St. John Beaver Band.
11. On April 11, 1916, Canada set aside 18,168 acres of land within the Peace River Block as Indian Reserve 172 (the "Montney Reserve") for the use and benefit of the Fort St. John Beaver Band.
12. In 1930, Canada transferred the lands in the Peace River Block, except for Indian Reserve lands which included the Montney Reserve, back to the Province.
13. In 1940, the Fort St. John Beaver Band surrendered the mineral rights in the Montney Reserve to Canada in trust to lease for the benefit of the Band.
14. The Montney Reserve contained prime agricultural land. Following the Second World War, Canada faced increasing pressure to obtain a surrender of the Montney Reserve for the settlement of returning soldiers.
15. In 1945, the Fort St. John Beaver Band surrendered the Montney Reserve to "Canada in trust to sell or lease" for the Band's benefit. The surrender was confirmed on October 16, 1945 by Order in Council 6506.
16. In obtaining the surrender of the Montney Reserve, Canada promised to provide the Band with reserves which would be paid for from the funds obtained from the sale of the Montney Reserve.
17. In 1946, Indian Reserves 204, 205 and 206 (the "Replacement Reserves") were surveyed. In total, the Replacement Reserves comprised 6,194 acres.

18. In March 1948, Canada sold and transferred the Montney Reserve, including title to the minerals underlying the reserve, to the Director of the *Veterans' Land Act* for \$70,000.
19. In June 1948, the Fort St. John Beaver Band passed a Band Council Resolution authorizing the disbursement of not more than \$5,000 for the purchase of the surveyed Replacement Reserves. By Order in Council 9/2300, the Privy Council approved the expenditure of \$4,932.50 of the Band's capital funds for the purchase of the Replacement Reserves and these funds were transferred to the Province as payment for the lands.
20. On July 25, 1950, by Provincial Order in Council 1655, the Province transferred administration and control over the Replacement Reserves, as previously surveyed, to Canada.
21. In breach of its legal obligations to the Fort St. John Beaver Band, Canada did not require or ensure that the subsurface rights were duly transferred to Canada along with the surface rights. Rather, the subsurface rights were reserved to the Province.
22. On August 25, 1950, Canada set aside the Replacement Reserves, namely Beaton River IR 204, Blueberry River IR 205, and Doig River IR 206, for the use and benefit of the Fort St. John Beaver Band.
23. On September 8, 1950, apparently believing that it had acquired from the Province and held the mineral title in the Replacement Reserve lands, Canada obtained a surrender of the mineral rights in the Replacement Reserves from the Fort St. John Beaver Band. This surrender permitted Canada to lease the mineral rights in the Replacement Reserves for the Band's benefit.
24. On October 11, 1950, the Privy Council confirmed the surrender of the mineral rights for lease by Order in Council 4875.
25. On October 25, 1950, Canada issued mineral exploration permits with respect to the three Replacement Reserves to Halfway River Development Co. Ltd.
26. On January 25, 1952, the Province's Superintendent of Lands notified Canada that the mineral rights in the lands transferred for the Replacement Reserves had been reserved to the province at the time of transfer.
27. Only after this notification did Canada examine the titles to the Replacement Reserves and confirm that the mineral rights, including those to petroleum and natural gas, had been reserved to the Province in the transfer by Provincial Order in Council 1655, dated July 25, 1950.
28. The Director of the Indian Affairs Branch then informed Halfway River Development Co. Ltd. that the mineral rights to the Replacement Reserves were vested in the Province. Halfway River Development Co. Ltd was reimbursed for the licence fees it had paid to Canada.

ii. Band Division

29. On May 19, 1977, the members of the Fort St. John Beaver Band voted to divide and form two new bands to be known as the Blueberry River Band and the Doig River Band. This division was approved by the Minister of Indian and Northern Affairs on August 8, 1977.
30. When the Fort St. John Beaver Band split, the Blueberry River Band obtained Blueberry River Indian Reserve No. 205 (approximately 2,800 acres) and the southern half of the Beaton River Indian Reserve No. 204 (approximately 440 acres). The Doig River Band obtained Doig River Indian Reserve No. 206 (approximately 2,450 acres) and the northern half of the Beaton River Indian Reserve No. 204 (approximately 440 acres).

B. Litigation respecting the Montney Reserve: *Apsassin*

31. On September 19, 1978, the Doig River Band and the Blueberry River Band filed a Statement of Claim in the Federal Court of Canada, alleging that Canada had breached its fiduciary duty in relation to the surrender of the Montney Reserve and its post-surrender dealings concerning the Montney Reserve surface and mineral rights (the "*Apsassin* Litigation"). The Bands sought declarations that:
 - (a) the 1945 surrender was null and void;
 - (b) the 1948 transfer to Veterans' Affairs was null and void;
 - (c) in the alternative, that the 1945 surrender and the 1948 transfer to Veterans' Affairs were of no force and effect with respect to the mineral rights on Montney Reserve; and,
 - (d) the Plaintiffs continued to be entitled by the terms of Treaty 8 to 18,168 acres of reserve land.
32. The Bands also sought an accounting and damages for loss in relation to the Montney Reserve, including loss of the use and benefit of the Montney Reserve and the loss of the past and future beneficial interest in the mineral rights in relation to the Montney Reserve.
33. The Bands made no claim, and sought no relief, in relation to mineral rights to, or title in, the Replacement Reserves.
34. Despite this, Federal Court trial judge Addy (1987) [1988] 3 F.C. 20, [1987] F.C.J. 1005) made statements with respect to the terms on which Canada had agreed to provide the Replacement Reserves. Addy J.'s statements included a comment that there was a lack of evidence to support the view that Canada undertook to provide mineral rights in the Replacement Reserves and that the evidence tended to support the opposite view. These statements are set out in paragraphs 144 and 152 of the 178-paragraph decision.

35. At trial, Addy J. dismissed the Bands' claims, except for the sale of the surface rights, which he found to be under value.
36. In 1993, the Federal Court of Appeal ([1993] 3 F.C. 28) dismissed the Bands' appeal and the Crown's cross-appeal. No issues directly related to the Replacement Reserves were raised or addressed.
37. On December 14, 1995, the Supreme Court of Canada allowed the Bands' appeal and the Crown's cross-appeal ([1995] 4 S.C.R. 344). Again, no issues directly related to the Replacement Reserves were raised or addressed.
38. The Supreme Court of Canada held that because the Fort St. John Beaver Band had surrendered its original reserve in trust to "sell or lease", Canada had breached its fiduciary duty to the Band by failing to reserve the mineral rights to the Montney Reserve when it transferred the land to the Director of the *Veterans' Land Act*.
39. The Court held that the Department of Indian Affairs committed further breaches by failing to utilize its authority, pursuant to s. 64 of the *Indian Act*, to reacquire mineral title to the Montney Reserve lands that remained in the possession of Canada (by the Director of the *Veterans' Land Act*) at or after the time at which Canada realized its error and the potential value of the Montney Reserve minerals.
40. On limitations, the Supreme Court held the breaches of fiduciary duty committed by Canada were not limited to the date the lands were transferred to the Director of the *Veterans' Land Act*, and that an action arose on August 9, 1949, when Canada knew that it had transferred the mineral rights to the Montney Reserve in error and that they were potentially very valuable. As such, the Bands were entitled to compensation for losses stemming from transfers of land held by the Director of the *Veterans' Land Act* to private parties, but only where such losses took place on or after August 9, 1949.
41. On April 12, 1999, DRFN submitted the Mineral Rights claim to the Specific Claims Branch. An updated submission was provided to the Minister on May 24, 2009.
42. On December 21, 2009, the Minister advised of his refusal to negotiate the Mineral Rights Claim on the basis of the statements made by the trial judge in the *Apsassin* Litigation.

III. ALLEGATIONS OF LAW

A. Canada's Breaches of Legal Obligations

43. BRFN submits that Canada breached its fiduciary duty and/or contractual obligations to the Fort St. John Beaver Band by failing to secure the mineral rights in the Replacement Reserves when the land for the same was transferred to Canada by the Province in 1950, and in failing to correct this error or compensate the Band for the resulting loss.

44. It is clear that the Fort St. John Beaver Band and Canada reached an agreement at the time of the surrender of the Montney Reserve to the effect that Canada would supply the Band with Replacement Reserves.
45. Further, it is clear that the parties intended and understood that the Replacement Reserves would include mineral rights for reasons that follow.
 - (a) The legislation in force at the relevant time defined a “reserve” as including mineral rights. The *Indian Act* S.C. 1876, c.18 defined the term “reserve” as “any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is unsurrendered, and includes all the trees, wood, timber, soil, stone, minerals, metals, or other valuables thereon or therein”.
 - (b) The Fort St. John Beaver Band had mineral rights in the Montney Reserve.
 - (c) The Band surrendered its interests in the Montney Reserve on the understanding that it would receive Replacement Reserves and barring any specific agreement to the contrary, Canada and the Band must have intended that the Band would receive these Replacement Reserves on the same terms that had applied to its original Montney Reserve.
 - (d) Both parties’ subsequent conduct in executing a surrender (for lease) of mineral rights in the Replacement Reserves demonstrates that they understood that the Replacement Reserves were to include mineral rights.
 - (e) Canada’s subsequent conduct in issuing exploration permits in relation to the Replacement Reserves demonstrates that Canada intended and understood that the replacement reserves were to include mineral rights.
46. In breach of its obligations to the Fort St. John Beaver Band, Canada was not aware that the land transferred by the Province for the Replacement Reserves excluded mineral rights and, as such, Canada did not inform the Band of this fact or obtain the Band’s consent to exclude mineral rights from the Replacement Reserves.

B. *Obiter Dicta* in the *Apsassin* Trial

47. A mere observation, or a statement made by a court that is made on an issue not raised by the parties and not essential to the issues in the case, constitutes *obiter dictum* and is not binding on this Tribunal.
48. As pleaded at paragraph 33, the Bands in the *Apsassin* Litigation made no claim, and sought no relief, in relation to mineral rights to, or title in, the Replacement Reserves.
49. Therefore, the comments of Addy J. concerning the mineral rights of the Replacement Reserves summarized at paragraph 34 were expressions of an opinion on a matter which was unnecessary to the disposition of the issues before him. They have no binding

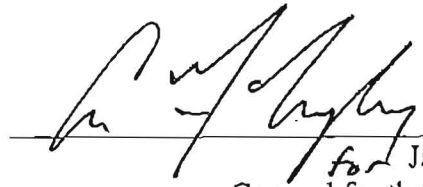
authority on this Tribunal, and are not determinative of the issues raised in the Mineral Rights claim or of the claim itself.

50. In the alternative, BRFN submits that, in the circumstances, it is in the interests of justice for the Tribunal to exercise its discretion to allow BRFN's Mineral Rights claim to proceed.

C. Remedy Sought

51. BRFN seeks compensation for the loss of the mineral rights in the Replacement Reserves, brought forward from the date upon which the Replacement Reserves were set aside to the present, as well as future losses resulting from Canada's breaches.

Dated: December 20, 2012


for James Tate
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