SCT File No.: SCT **-6006-12**

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

ATHABASCA CHIPEWYAN FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indian Affairs and Northern Development

Respondent

RESPONSE
Pursuant to Rule 42 of the *Specific Claims Tribunal Rules of Practice and Procedure*

This Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure.*

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I. Status of Claim (R. 42(a))

1. The Claimant, the Athabasca Chipewyan First Nation (the "First Nation"), which is a First Nation within the meaning of section 2(a) of the *Specific Claims Tribunal Act* (the "*Act*"), has submitted a claim to the Minister of Indian Affairs and Northern Development (the "Minister"), asserting that the First Nation did not receive any of the agricultural benefits to which it was entitled pursuant to the terms of Treaty No. 8 (the "Original Claim").

2. The Original Claim was submitted in or about February of 1994.

3. The Original Claim was deemed to have been accepted for negotiation by the Minister as of October 16, 2008.

4. The Original Claim has not been settled by final settlement agreement.

II. Validity (R. 42(b) and (c))

5. In its Declaration of Claim (the "Claim"), the First Nation alleges that Her Majesty the Queen in right of Canada, as represented by the Minister of Indian Affairs and Northern Development (the "Crown") failed to provide the First Nation with certain benefits under Treaty No. 8 (the "Claimed Benefits").

6. The Crown does not accept and specifically denies the validity of these allegations set out in the Claim.

7. To the extent they were owed, the First Nation has been supplied with the Claimed Benefits, in whole or in part.

8. In the alternative, if the First Nation has suffered any damages regarding the failure to provide any of the Claimed Benefits, none of sections 20(1)(e) to (h) of

the *Act* provide the basis for the Tribunal to award compensation. If a loss is established regarding the failure to provide any of the Claimed Benefits, any compensation would be awarded pursuant to section 20(1)(c).

9. Further, the Crown specifically pleads section 20(3) of the *Act* and the application of set-off.

III. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))

10. Unless expressly admitted or accepted in this Response, the Crown denies the facts alleged in the Claim.

11. With respect to paragraph 9 of the Claim, the Crown accepts that Treaty No. 8 was signed in 1899 and that Chief Laviolette signed on behalf of the First Nation.

12. With respect to paragraphs 10, the Crown accepts that Treaty No. 8 contains the clause referred to by which the Crown agreed to provide certain benefits described in Treaty No. 8. The Crown says its obligation was to provide the benefits once and for all. The remaining statements are not allegations of fact; rather, they constitute legal argument.

13. With respect to paragraph 11, the Crown denies the facts alleged.

14. With respect to paragraphs 12-16 the text of Treaty No. 8 speaks for itself. The Crown accepts that the First Nation did request the Crown to set aside reserve lands in the 1920s. Lands were surveyed in or about 1931. The Crown further accepts that by Orders in Council in 1954, Indian Reserve No. 201 was designated and set aside for the First Nation, as well as Indian Reserves 201A, 201B, 201C, 201D, 201E, 201F, and 201G.

IV. Statements of Fact (R. 42(a))

15. Treaty No. 8 was made and concluded in 1899. The text of Treaty No. 8 sets out accurately the terms of the Treaty:

> Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.
>
> Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller and larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.

16. Upon entering into Treaty No. 8 with the First Nation and thereafter, the Crown provided the First Nation with benefits including ammunition and twine, and in addition, supported the First Nation with cultivation of its land and agricultural efforts.

17. The Crown provided the First Nation with enough seed to plant the land actually broken up for cultivation, as well as agricultural tools and implements.

18. Alternatively or additionally, the First Nation members have not elected to settle on reserve, cultivate the soil and signify that they are prepared to break up the soil. Nor have they signified a preference to raise stock instead of cultivating the soil. As such, the Crown does not have an obligation under Treaty to provide the Claimed Benefits.

19. Alternatively or additionally, the Crown has fulfilled its obligations pursuant to Treaty No. 8 in that the First Nation was continually supplied with ammunition and twine, during the relevant time periods.

20. Alternatively or additionally, the First Nation has received ongoing economic benefits, apart from the Crown's Treaty obligations.

V. Relief (R. 42(f))

21. The Crown seeks dismissal of the Claim in its entirety.

22. The Crown seeks its costs in the proceedings.

23. Alternatively, the Crown's obligation to provide the Claimed Benefits is limited to those members of the First Nation who have indicated an intention to settle on reserve and raise stock or cultivate the soil. The Crown's obligation to provide seed is only to the extent seed is suited to the locality of a reserve.

24. The Crown seeks to have deducted from the amount of compensation, if any is awarded and payable, the value of any benefit received by the First Nation in relation to the Claimed Benefits.

25. Such further relief as this Honourable Tribunal deems just.

VI. Communication (R. 42(g))

28. The Respondent's email addresses for service of documents are:

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Dated this 12th day of March, 2013.

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