

SPECIFIC CLAIMS TRIBUNAL	
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TRIBUNAL DES REVENDIGATIONS PARTICULIÈRES December 11, 2014 Nicholas Young	
Ottawa, ON	69

File No.: SCT-5001-13

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

**KAWACATOOSE FIRST NATION, PASQUA FIRST NATION,
 PIAPOT FIRST NATION, MUSCOWPETUNG FIRST NATION,
 GEORGE GORDON FIRST NATION, MUSKOWEKWAN FIRST NATION
 and DAY STAR FIRST NATION**

Claimants

AND:

LITTLE BLACK BEAR FIRST NATION

Claimant

AND:

STAR BLANKET FIRST NATION

Claimant

AND:

STANDING BUFFALO DAKOTA FIRST NATION

Claimant

AND:

PEEPEEKISIS FIRST NATION

Claimant

AND:

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

Respondent

**RESPONSE TO DECLARATION OF CLAIM FILED BY
 PEEPEEKISIS FIRST NATION
 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*.

TO: The Claimant, Peepeekisis First Nation
 as represented by Thomas J. Waller, Q.C.,
 Olive Waller Zinkhan & Waller LLP
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1. This is the Crown's Response to the Declaration of Claim ("Declaration") filed by Peepeekisis First Nation ("PFN") with the Specific Claim Tribunal ("Tribunal") on October 30, 2014 pursuant to the *Specific Claims Tribunal Act* ("Act").
2. The Declaration relates to the 1918 surrender of Last Mountain Indian Reserve No. 80A ("IR 80A") and the subsequent disposition of some of the surrendered lands.

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

3. The original claim submission for IR 80A ("original claim") was submitted to the Minister on June 7, 2008 by Piapot, Day Star, Kawacatoose, Muskowekwan, Star Blanket, Pasqua and George Gordon First Nations ("original claimants"). PFN has never submitted a claim to the Minister. The Crown has no knowledge of the facts set out in paragraph 12 of the Declaration.
4. PFN asked the Minister to consider it to be a claimant with respect to the original claim. The Minister advised PFN that Canada did not consider PFN a proper beneficiary to the claim.
5. PFN has never submitted a claim to the Minister and so the conditions precedent have not been fulfilled by PFN.
6. The Minister decided not to negotiate the original claim in whole or in part on December 8, 2011.
7. The Tribunal provided a s. 22(1) Notice to PFN and PFN has been made a party to these proceedings as a "necessary or proper party" pursuant to s. 24 of the *Act*.
8. With respect to paragraphs 6 to 10 and 13 inclusive of the Declaration, the Crown says that all details of the communications between Canada and First

Nations were made on a without prejudice basis and are subject to settlement privilege.

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

9. The Crown does not accept and specifically denies the validity of all of the allegations and claims set out in the Declaration. Without limiting the generality of the foregoing, the Crown denies the allegations contained in paragraphs 64 to 74 of the Declaration which allege that the Crown failed to meet or breached its lawful obligations.

III. Basis of the Tribunal to Award Compensation (R. 42(c))

10. The Crown denies the validity of the claim.

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

11. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Declaration and puts PFN to the strict proof thereof.
12. The Crown has no knowledge of the facts set out in paragraphs 35 and 50.
13. The Crown admits the facts set out in the following paragraphs of the Declaration: 16 in part, 17, 18, 19 in part, 20 to 32, 33 in part, 34, 36, 37 in part, 38 to 47, 51, 52 in part, 53, 54, 55 in part, and 56 to 60.
14. The Crown admits the facts set out in paragraph 16 of the Declaration, except that the area called Touchwood Hills is not specifically mentioned in either Treaty No. 4 or Order-in-Council 1874-1332. Treaty No. 4 was approved by Privy Council on November 4, 1874.

15. With respect to paragraph 19 of the Declaration, the Crown admits only that IR80A was set aside as a fishing station for the use of the Touchwood Hills and Qu'Appelle Valley Indians.
16. The Crown admits the facts set out in paragraph 33 of the Declaration subject to the correction of the number of lots sold to be 19 in August 1919.
17. With respect to paragraph 37 of the Declaration, the Crown admits only that on July 12, 1924 Chief Surveyor Robertson wrote to the Deputy Minister:

Correspondence from Departmental headquarters at the time of selection refers to it as for the Indians in the vicinity of Long or Last Mountain Lake. Strictly speaking, the terms Qu'Appelle Valley Indians would include the File Hills reserves, which are Peepeekeesis, Okanase [sic], Star Blanket, Little Black Bear and also Crooked Lakes reserves, which are Ochapowace, Kakewistahaw [sic], Cowesses, Sheseep and Sakimay, as well as Assiniboine and Standing Buffalo. All the above reserves are additional to those which apparently the Department has considered were entitled to share the proceeds of the sale of Indian reserve No. 80A.

18. The Crown admits paragraph 52 of the Declaration, subject to the correction that the February 11, 1958 letter was written to Colonel Jones, Director, Department of Citizenship and Immigration from E.S. Jones, Regional Supervisor of Indian Agencies.
19. With respect to paragraph 55 of the Declaration, the Crown says there is no reference in Mr. Jones' August 15, 1958 letter to "similar arguments raised by Piapot", and it is not clear from the letter whether Pat Cappo was from Muscowpetung or Pasqua.

V. Statement of Facts (R. 42(e))

Surrender of IR 80A

20. John C. Nelson surveyed IR 80A as a fishing station for the Touchwood Hills and Qu'Appelle Valley Indians in 1885.
21. Order in Council PC 1151 dated May 17, 1889 confirmed the Indian reserves that had been set aside pursuant to Treaty No. 4, including IR 80A. The plan attached to the Order in Council listed IR 80A as a "Fishing Ground" with an area of 2.23 square miles that was set aside for the use of the Touchwood Hills and Qu'Appelle Valley Indians.
22. By 1885, the identity of the bands that would have an interest in the fishing station that was ultimately set aside as IR 80A was documented as Day Star, Muskowekwan, Kawacatoose and George Gordon (Touchwood Hills Agency) and Piapot, Muscowpetung, Pasqua and Standing Buffalo (Qu'Appelle Valley Agency).
23. Neither the survey nor the Order in Council identified the individual bands that had an interest in the reserve.
24. On May 4, 1907 Inspector of Indian Agencies Graham responded to a letter written on April 29, 1907 by Deputy Superintendent General of Indian Affairs Frank Pedley and identified what he believed to be the bands who had an interest in IR 80A, that being Piapot, Muscowpetung, Pasqua, "and I presume the Sioux" of the Qu'Appelle Agency and Gordon's, Muskowekwan, Day Star and Poorman of the Touchwood Agency.
25. On December 27, 1913 in a letter to Secretary McLean, Indian Agent Murison discussed which bands had an interest in IR 80A. He stated that there were old Indians within the Touchwood Agency who were of the opinion that the Indians of the Qu'Appelle Valley Agency had no interest, but the Peepeekisis Band in the File Hills Agency was originally a Touchwood Agency band and originally

would have had an interest in IR 80A. The band had later decided not to take a reserve within the Touchwood Agency.

26. On July 20, 1918, Order in Council 1813 authorized the surrender of IR 80A containing 1408 acres. The Order in Council was approved noting that it was executed and attested to in the manner required by Section 49 of the *Indian Act* and that Muscowpetung, Pasqua, Piapot, Poorman, Day Star, George Gordon and Muskowekwan Bands had agreed to the surrender.
27. The surrender document dated March 23, 1918 was signed by the seven chiefs who represented the seven bands noted in the Order in Council.
28. Two affidavits in support of the surrender were sworn. They were signed by the Indian Agents and the chiefs of the Touchwood and Qu'Appelle Agencies. The Affidavits attest to the fact that the surrender was assented to by a majority of the members of the bands, that there was a meeting of council, that the terms were interpreted to the Indians by an interpreter and that other conditions were followed.
29. The documents accompanying the surrender included two undated documents provided by Indian Agents Christianson and Murison that listed the names of the bands in their respective agencies who had an interest in the lands to be surrendered, the number of eligible voters, those voters present at the surrender meeting and those who voted on the surrender. Murison's document certified that the meetings at which the surrender was agreed to were called in accordance with the regulations.
30. The Crown admits the facts in paragraph 41 of the Declaration, and states the said correspondence (Memorandum) from Chief Surveyor Donald Robertson to Deputy Minister, Department of Indian Affairs, July 12, 1924 also says:

In taking a surrender of the reserve, the Indians who were requested to vote were those of the Piapot, Pasqua, Moscowpetung reserves in the Qu'Appelle Valley and Poorman, Day Star, Gordon, Muscowekwan reserves in the Touchwood Hills

and a distribution of a part of the money received from sale of lands in No. 80-A has been made to the Indians of these reserves.

From their location it would certainly appear that the Indians of the File Hills reserve should have been provided with a fishing station but if this were being done the obvious site would appear to be on Fishing Lake. The most easterly group of reserves in the Qu'Appelle Valley I think may quite safely be eliminated on account of the fact that three of them border on Crooked and Round Lakes.....

Personally I am inclined to think that the Indians intended to be covered by the term Qu'Appelle or Qu'Appelle Valley Indians were the Indians of those reserves which were known in the Department's reports and correspondence of that date as Qu'Appelle reserves, namely: Piapot, Muscowpetung, Pasqua and Standing Buffalo and it is just possible that it was even intended not to include the Pasqua and Standing Buffalo as they bordered on the Fishing Lakes.

31. On February 9, 1954 the Chief and Councillors of the Piapot Band of Indians in the Qu'Appelle Agency asked the Minister of the Department of Citizenship and Immigration (who was also Superintendent General of Indian Affairs) to investigate the surrender of IR 80A. The Piapot Band of Indians again wrote to the Minister on May 21, 1954 challenging the surrender.
32. Correspondence dated May 25, 1954 and June 17, 1954 indicate that there is no documentation to substantiate that the surrender was not given in accordance with the provisions of the 1906 *Indian Act*.
33. Correspondence from L.L. Brown, Superintendent, Reserves & Trusts, to E.S. Jones, Regional Supervisor of Indian Agencies, dated December 1, 1954 indicated that, although Chief Ball of Piapot alleged that Chief Musqua did not sign the surrender, his mark was on the surrender, and his name and mark were in a declaration made before a Commissioner for Oaths at Fort Qu'Appelle on May 9, 1918.
34. On February 21, 1966, the Administrator of Lands reported that there had been a number of enquiries from chiefs of various bands regarding the status of the

reserve. The Administrator noted that the surrender document complies with the provisions of the 1906 *Indian Act* and there was no evidence that it was not properly taken.

Sale of Surrendered Lands

35. IR 80A was divided into small lots known as the Lakeview Subdivision (subdivision).
36. Approximately 200 of the 1408 surrendered acres of IR 80A were sold at public auction between 1918 and 1922.
37. In 1922, 9 acres of unsold land was leased to the Village of Regina Beach for a term of 21 years with a renewal option of an additional 21 years.
38. In 1934 it was reported that 460 lots had been sold and 83 lots remained unsold. In January of 1938, the number of unsold lots was 58. Further, 30 sold lots were being re-sold due to tax arrears by original purchasers. As a result, the Department of Indian Affairs (DIA) decided that a further subdivision of the lands was not warranted as there were a number of available lots for sale.
39. By 1954 a parcel of 3.78 acres, known as Parcel B, had been surveyed and sold.

Leases of Unsold Surrendered Lands

40. In 1923 the DIA leased the northeast quarter of section 16-21-22 to the Regina Beach Golf and Country Club.
41. The Regina Beach Golf and Country Club assigned the lease to the Village of Regina Beach.
42. On June 16, 1928 the DIA entered a five year grazing lease with Florence Josephine Dufree for 160 acres of land of the northwest part of section 16 of the reserve. The lease was for \$16 per annum and provided for a possible renewal

for a further five year term. On September 24, 1935 the lease was cancelled and a new lease was issued to the Village of Regina Beach on the understanding that the Village would in turn sublet the lands to Mrs. Dufree.

43. On October 10, 1930 the DIA entered into a five year grazing lease with F. Wollatt for parts of sections 17, 18 and 19, Township 21, containing 450 acres. The lease was for \$65 per annum. After five years, the lease was cancelled for rental arrears and the lands were leased to the Village of Regina Beach.
44. On or about May 22, 1935 the DIA entered into a lease with the Village of Regina Beach for a term of 20 years for the north half of section 16, the south half and the south half of the north half of section 17, all fractional section 18 and all fractional section 19, excepting lands taken up by the CPR right of way. The total area leased amounted to 1207.5 acres. The lease ran from June 1, 1955 and the annual fee was \$120.75.
45. In 1955 the DIA sought a valuation of the property and met with delegates from several of the First Nations. For 1957 the rental was \$600. The lease was thereafter renewed for two successive periods of one year at a rental of \$1,000 per annum.
46. The Village of Regina Beach lease was renewed to 1968 and thereafter renewed for one more year at the rate of \$1,000.
47. On August 10, 1973 the DIA entered into a lease with the Kinookimaw Beach Association, comprised of Poorman, Day Star, Gordon, Muskowekwan, Muscowpetung, Piapot and Pasqua First Nations, to lease the unsold portion of IR 80A for the period of July 1, 1973 to June 30, 2023. The First Nations' Band Councils had passed Resolutions that the surrender of IR 80A be amended to permit the DIA to lease the unsold portion of the reserve to the Kinookimaw Beach Association.

VI. Relief (R. 42(f))

48. The Crown seeks dismissal of the Declaration in its entirety;
49. Costs; and,
50. Such further relief as this Honourable Tribunal deems just and may allow.

VII. Communication (R. 42(g))

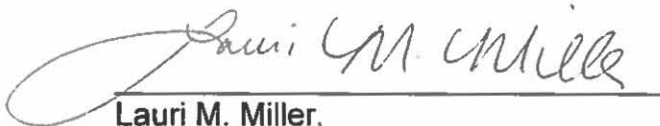
51. Respondent's address for service of documents:

Department of Justice (Canada)
Prairies Regional Office (Saskatoon)
10th Floor, 123 – 2nd Avenue South
Saskatoon, SK S7K 7E6
Attention: Lauri M. Miller
Phone: (306) 975-6070

52. Facsimile number address for service: (306) 975-5013

53. E-mail address for service: saskSCT-5001-13-kawaca@justice.gc.ca

Dated this 11th day of December, 2014.



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