

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SAULTEAUX FIRST NATION

F I L E D	SPECIFIC CLAIMS TRIBUNAL TRIBUNAL DES REVENdicATIONS PARTICULIÈRES	D É P O S É
	January 29, 2014	
	Guillaume Phaneuf	
Ottawa, ON		5

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*.

TO: Saulteaux First Nation
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1. This is the Crown's Response to the Declaration of Claim (the "Claim") filed by the Saulteaux First Nation (the "First Nation") with the Specific Claims Tribunal (the "Tribunal") on December 3, 2013 pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Claim relates to the lawfulness of the surrender of a portion of Saulteaux Indian Reserve No. 159 (the "Reserve") which was situated on the shores of Jackfish Lake near Cochin, Saskatchewan.

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

3. On November 17, 2008, the First Nation submitted its claim to the Minister of Indian and Northern Affairs Canada (the "Minister"). The claim was filed with the Minister on December 10, 2008.
4. On November 25, 2011, the Minister notified the First Nation in writing of his decision not to accept the claim for negotiation.

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

5. The Crown does not accept and specifically denies the validity of all allegations and claims set out in the Claim. Without limiting the generality of the foregoing, the Crown denies that it:
 - a. failed to provide the First Nation with legal or technical advice or to conduct the surrender meeting in accordance with the intent of the *Indian Act* so that members of the First Nation would be afforded an opportunity to provide free, full and informed consent to the surrender proposal;
 - b. failed to take steps to ensure that the First Nation understood the surrender;
 - c. failed to minimize the taking of the reserve land by reserving mines and minerals, considering the leasing option and failing to include

certain First Nation terms regarding enduring rights to the Jackfish Lake area; and

- d. failed to withhold its consent to a transaction that was clearly foolish, improvident and exploitative.
- III. Allegations of Fact – Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))**
6. The Crown, unless hereinafter expressly admitted, denies each and every fact alleged in the Claim and puts the Claimant to the strict proof thereof. Further, and without limiting the generality of the foregoing, the Crown specifically denies the facts contained in the following paragraphs of the Claim: 20, 22, and 23.
 7. The Crown admits the facts in paragraphs 1, 2, 4, 6, 7, 8, 12, 14, 15, 17, and 21.
 8. The Crown has no knowledge of the facts set out in paragraphs 5, 9, and 16.
 9. With respect to paragraph 3 of the Claim, the Crown repeats the contents of paragraph 3 of this Response, as set out above.
 10. With respect to paragraph 10 of the Claim, the Crown states that the Saskatchewan Government was informed that “the First Nation had wood, hay, and considerable commercial fishing and had no desire to move Birch Lake” on September 12, 1947, not August 12, 1947. The Crown admits that the First Nation indicated it had no desire to move from Jackfish Lake at that time. The Crown has no knowledge of whether the First Nation decided at that time not to entertain thoughts of surrendering part of the Reserve.
 11. With respect to paragraph 11 of the Claim, the Crown admits that the Province of Saskatchewan commissioned a study of land in northwestern

Saskatchewan to determine sites for future recreational facilities in 1952. The Crown admits that two sites on the shores of Jackfish Lake were identified as potential recreational areas, and both of these sites were within the Reserve.

12. With respect to paragraph 13 of the Claim, the Crown admits that some interdepartmental correspondence refers to the possibility of the First Nation leasing parcels of land on Jackfish Lake. The Crown denies that such references were made "repeatedly".
13. With respect to paragraph 18 of the Claim, the Crown admits that the DIA took the position that the proposed exchange of land would be of benefit to the First Nation. The Crown denies that a federal official had an "inadequate basis" on which to advise with respect to mineral rights at Jackfish Lake and Birch Lake. The Crown states that the official in question made use of all available information and consulted with the Geological Survey of Canada in concluding that the mineral rights at Birch Lake were more attractive than those at Jackfish Lake.
14. With respect to paragraph 19 of the Claim, the Crown denies that the First Nation's position with respect to the sale of the land at Jackfish Lake was "far from clear." The Crown states that by December 29, 1959 it was clear that the First Nation was no longer interested in leasing the land. Further, as set out in more detail in paragraph 23 below, on January 25, 1960, a majority of the members of the First Nation voted in favour of a sale.

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

15. Treaty 6 was entered into between the Crown and the Plains and Wood Cree of central and northern Saskatchewan on August 23 and 28, 1876.
16. Although members of the First Nation did not begin adhering to Treaty 6 until 1954, early in the 20th century the First Nation requested that a reserve be set aside. A survey of the Reserve was completed in 1909 and

- comprised a total of 9010.869 acres. The Reserve was established by way of Order in Council No. 2617 dated December 22, 1922.
17. In 1947, members of the First Nation petitioned the Premier of Saskatchewan, requesting that they transfer their residence from Jackfish Lake to Birch Lake. The Department of Indian Affairs (the "DIA") consulted the First Nation and advised that the First Nation opposed such a transfer. Only ten members of the First Nation were present at the consultation meeting called by the DIA. The Indian Agent subsequently reported that another group within the First Nation that had been responsible for the petition to the Premier had not been present at the meeting.
 18. In 1952, the Province of Saskatchewan (the "Province") commissioned a study of land in northwestern Saskatchewan to determine sites for future recreational facilities. Two sites on the shores of Jackfish Lake were identified as potential recreational areas. Both sites were within the Reserve.
 19. Initially, it appears that the Province proposed leasing the land in question. However, on March 18, 1958, a meeting was held with the First Nation whereby a sale of the land was discussed. All present at the meeting objected to a sale. The DIA subsequently advised the Province that the First Nation might still be interested in leasing the land.
 20. On October 12, 1959, another Band meeting was held in which the First Nation agreed to negotiate with the Province for the sale of the Reserve. In a Band Council Resolution dated October 13, 1959, the First Nation indicated that it would accept an exchange of land, monetary compensation, and an exchange of mineral rights in return for the lands comprising the Reserve.

21. On October 29, 1959, the Province submitted a written proposal to the First Nation offering to purchase 207 acres of the Reserve in exchange for the following:
 - a. approximately 4600 acres of land in the vicinity of Birch Lake;
 - b. monetary compensation in the sum of \$20,000;
 - c. mineral rights in one parcel of the proposed new reserve in exchange for mineral rights in the relinquished land;
 - d. compensation for improvements to one family occupying a portion of the relinquished land;
 - e. the closing and transfer of surveyed road allowances in the proposed new reserve;
 - f. the Province's continued access to a trail running through the proposed new Reserve.
22. On November 2, 1959, the First Nation passed a Band Council Resolution asking that the DIA prepare the necessary documents for a surrender vote.
23. On January 12, 1960, the First Nation passed a Band Council Resolution asking the DIA to hold a meeting for the purpose of voting on the surrender of the land in question.
24. The meeting was held on January 25, 1960. Sixty ballots were cast. Fifty two voted in favour of the surrender, 8 were opposed, and there were 21 absentees. Out of a total of 81 eligible voters, 52 (approximately 64%) voted in favour of the surrender. Both the chief of the First Nation, Alex Katcheech; and the Crown's representative, Superintendent Doll swore affidavits of execution attesting to the First Nation's assent to the surrender.

25. The DIA subsequently recommended to the Governor in Council that the surrender be accepted. As a result, on February 18, 1960 Order in Council P. C. 1960-297 was passed, accepting the surrender. On March 10, 1960, Order in Council P. C. 1960-297 was passed transferring the administration and control of the lands at Jackfish Lake to the Province. This Order in Council mistakenly reserved the mines and minerals and a new order in Council was passed on June 11, 1960 transferring the mineral rights to the Province.
26. The Province executed the conditions of the surrender as follows:
 - a. On May 9, 1960, the Province passed an Order in Council authorizing the transfer of the new reserve lands to the DIA, in trust for the First Nation, in exchange for the surrendered land. Between July 28, 1960 and June 5, 1961, the Province issued Certificates of Title transferring all the agreed upon land to the federal Crown;
 - b. also in May 1960, the Province paid the sum of \$20,000 to the DIA which the DIA then deposited into the First Nation's trust account;
 - c. in January 1961, the Province amended the Certificate of Title to one of the parcels transferring the agreed upon mineral rights to the federal Crown;
 - d. by June 30, 1960 compensation for improvements had been paid to the family occupying a portion of the surrendered land; and
 - e. on June 27, 1960 the Province passed Order in Council 1063/60 transferring the road allowances on the land to the federal Crown.
27. Indian Reserve 159A was officially set apart for the First Nation on February 13, 1964, by Order in Council P.C. 1964-219.

V. Relief (R. 42(f))

- 28. The Crown seeks to have the Claim dismissed in its entirety;
- 29. Costs; and
- 30. Such further relief as this Honourable Tribunal deems just and may allow.

VI. Communication (R. 42(g))

- 31. 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: David Culleton

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

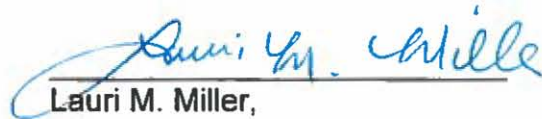
- 33. Email address for the service of documents:

saskSCT-5003-13-sault@justice.gc.ca

Dated this 28 day of January, 2014.



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