

**SPECIFIC CLAIMS TRIBUNAL**

**BETWEEN:**

F I L E D	SPECIFIC CLAIMS TRIBUNAL	D É P O S É
	TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
	March 13, 2014	
	Nicholas Young	
	Ottawa, ON	3

**WOOD MOUNTAIN LAKOTA FIRST NATION**

**Claimant**

**v.**

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

**Respondent**

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

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

TO: Wood Mountain Lakota First Nation  
As represented by G. Rangi Jeerakathil  
MacPherson Leslie & Tyerman LLP  
Barristers & Solicitors  
1500 – 410 – 22<sup>nd</sup> Street  
Saskatoon, Saskatchewan S7K 5T6  
Phone: (306) 975-7100  
Fax: (306) 975-7145  
Email: RJeerakathil@mlt.com

1. This is the Crown's Response to the Declaration of Claim (the "Claim") filed by the Wood Mountain Lakota First Nation (the "First Nation") with the Specific Claims Tribunal (the "Tribunal") on February 11, 2014 pursuant to the *Specific Claims Tribunal Act* (the "Act").
2. The Declaration of Claim relates to an alleged alienation of reserve land from the First Nation's reserve.

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

3. On August 31, 2009, 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 October 8, 2009.
4. On August 24, 2012, 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 the allegations contained in paragraph 28 of the Declaration of Claim that the Crown:
  - a. Breached any legal obligation to provide the Claimant with the Wood Mountain Reserve;
  - b. Owed a statutory legal obligation to the Claimant under section 49 of the *1906 Indian Act* or that it breached the same as alleged;
  - c. Had a common law fiduciary obligation to the Claimant to obtain a surrender or provide compensation or that it breached the same as alleged.

**III. Allegations of Fact - Declaration of Claim: 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.
7. The Crown is unable to indicate agreement or disagreement with the facts contained in paragraphs 7 and 8 of the Declaration of Claim.
8. The Crown admits the facts in paragraphs 9, 10, 14, 15, 16, 17, 18 and 27.
9. With respect to paragraphs 11 and 12 of the Declaration of Claim, Indian Commissioner David Laird's observations in an April 16, 1908 letter to The Secretary, Department of Indian Affairs (DIA) were as follows:

The basic principle of our Indian policy has for its object, I take it, not the meting out of their strict rights or the advancement of the interest of the Indians as a race apart and without regard to the public interest as a whole. Treaties were made and reserves set aside for the purpose of making the settlement of the West possible, and if these straggling Indians in the vicinity of Medicine Hat and Maple Creek are now, owing to the extent to which that country is being settled, a public nuisance, it is, in my judgment, in the public interest that they should be settled upon a reserve; and if we cannot get them upon reserves which have already been set apart, we can only do the next best thing, and that is, to get them upon a reserve which so meets their wishes as to lead them to live upon it.

10. The Crown denies the facts alleged in paragraphs 19 to 26.
11. The Crown has no knowledge of the facts set out in paragraphs 13.

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

12. In June 1909, Reverend A.D. Pringle wrote to the Commissioner of Indian Affairs requesting that a reserve be set aside for the "Indians who reside

- for the most part in the Wood Mountain district 9 who frequently camp in the vicinity of Moose Jaw”.
13. In July 1909 Indian Commissioner Laird recommended to Deputy Superintendent General of Indian Affairs Scott that Reverend Pringle’s request be considered if it could be ascertained that they would settle down on a reserve at Wood Mountain. Laird pointed out that the Sioux were normally given 80 acres for a family of 5, and this group consisted of 70 persons so 36 sections would an excess amount.
  14. In September 1909 the Indian Affairs Chief Surveyor Bray indicated that the Wood Mountain Sioux were non-treaty Indians and had not had any lands allotted to them, but since they were Indians under the *Indian Act*, they were precluded from homesteading. He recommended that Township 4 be reserved for sale or settlement “until this Department has been able to ascertain what portion of the said Township is required for Indian purposes”.
  15. In December 1909 the Interior Secretary asked DIA Secretary McLean to specify which lands should be reserved for the Sioux in the Wood Mountain vicinity, as the Department could not exclude all of Township 4 from disposition indefinitely.
  16. In May 1910 Inspector of Indian Agencies Graham went to the Wood Mountain area to determine the requirements of the Indians and select suitable lands for them. He recommended that the North Half of Township 4 be reserved for them.
  17. In June 1910 DIA Secretary McLean instructed Graham to select a tract of land for the Sioux at Wood Mountain. Graham made his recommendation of the northern half of Township 4, Range 4 in July 1910.
  18. In July 1910 McLean wrote to the Interior Secretary, regarding the lands that had been surveyed for the Wood Mountain Sioux and requested the

Interior Department to pass the necessary Order in Council to have the lands vested in the Superintendent of Indian Affairs. The lands consisted of sections 19, 20, 21, 22, 23, 24, 25, 28, 30, 31, 32, 33, 34, 35 and 36, the northeast ¼ of section 26, and the northwest, southeast and southwest ¼s of section 27. The northeast ¼ of section 27 had been previously homesteaded, the remainder of section 26 was reserved for the Hudson's Bay Company, and section 29 was reserved for school lands.

19. On October 14, 1910 the Deputy Minister of the Interior, in a letter to the Chief of the Land Patents Branch of the Department of the Interior, stated that although it had been decided to hold the lands for the Indians, they should not be transferred by Order in Council but "simply reserved in our books for the time being...".
20. A subsequent letter on October 29, 1910 from Interior Secretary Keys to DIA Secretary McLean confirmed that the lands would not be transferred by Order in Council.
21. Correspondence between DIA and the Interior Department between November 1910 and January 1913 termed the lands as a "temporary reservation" and indicated there may be grounds to have it set aside permanently if the Indians settled on it and made use of it.
22. In 1913 the DIA again asked the Department of the Interior to have the lands of the temporary reservation confirmed by Order in Council as an Indian Reserve.
23. In April 1919 the Indian Commissioner made the observation to the Minister of the Interior that "These Indians have not made use of the land to any extent and I doubt if they ever will." On April 29, 1919 Surveyor Bray reported to the Deputy Minister of Indian Affairs that "As sufficient time has elapsed to enable the Indians to occupy the lands they require and to make use of them, Mr. Graham's suggestion might be acted upon,

that is to say, all of that portion of the reserve not required for the Indians might be returned to the Department of the Interior."

24. On May 12, 1919 DSGIA Scott informed the Chairman of the Soldier Settlement Board that since "a portion of the land temporarily reserved for the Sioux Indians at Wood Mountain... is not required for the Indians, specified sections were handed over to the Interior Department for soldier settlement purposes".
25. On August 5, 1930 Order in Council P.C. 1775 set apart "for the use of the Indians as Wood Mountain Indian Reserve No. 160 the northeast  $\frac{1}{4}$  of section 13, sections 22, 23, 24 25, 34, 35, 36, the northeast  $\frac{1}{4}$  of Section 26, and the northwest  $\frac{1}{4}$  and southern half of Section 27. The reserve was described as 5,280 acres in size.
26. The reserve was subsequently expanded by Order in Council P.C. 1968-166.

**V. Relief (R. 42(f))**

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

**VI. Communication (R. 42(g))**

30. Respondent's address for service of documents:

Department of Justice (Canada)  
Prairies Regional Office (Saskatoon)  
10<sup>th</sup> Floor, 123 – 2<sup>nd</sup> Avenue South  
Saskatoon, SK S7K 7E6  
Attention: Scott D. MacDonald / Lauri M. Miller

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

32. Email address for the service of documents:

saskSCT-5004-13-woodmtnlakota@justice.gc.ca

Dated this 13<sup>th</sup> day of March, 2014.

  
Scott D. MacDonald,  
Counsel for the Respondent

  
for: Lauri M. Miller,  
Counsel for the Respondent

WILLIAM F. PENTNEY  
Deputy Attorney General  
Per: Scott D. MacDonald and Lauri M. Miller  
Department of Justice  
Prairie Region (Saskatoon)  
123 – 2<sup>nd</sup> Avenue South, 10<sup>th</sup> Floor  
Saskatoon, SK S7K 7E6  
Tel: (306) 975-5870 / (306) 975-6070  
Fax: (306) 975-5013  
E-mail address: saskSCT-5004-13-woodmtnlakota@justice.gc.ca