

**SPECIFIC CLAIMS TRIBUNAL**

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TRIBUNAL DES REVENDEICATIONS PARTICULIERES		
F I L E D	May 9, 2017	D É P O S É
David Burnside		
Ottawa, ON	18	

B E T W E E N:

SAULTEAUX 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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**AMENDED DECLARATION OF CLAIM**  
**Pursuant to Rule 41 of the**  
***Specific Claims Tribunal Rules of Practice and Procedure***

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

Original Filed: August 17, 2015

Amended: May 9, 2017

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
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**I. Claimant (R. 41(a))**

1. The Claimant, the Saulteaux First Nation (hereinafter also referred to as the “First Nation”) is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5, as amended, and within the meaning of Treaty No. 6 (hereafter “Treaty 6”). The First Nation is located in the vicinity of Jackfish Lake near Cochin, Saskatchewan.

**II. Conditions Precedent (R. 41(c))**

2. The following conditions precedent, as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have been fulfilled:

16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part; ...

3. The First Nation originally filed the Claim with the Minister of Indian Affairs on November 7, 2012, respecting the illegal alienation of land from the Saulteaux Indian Reserve No. 159 (the “Reserve” or “IR 159”) as a result of a surveyor error and for roadway purposes (hereinafter referred to as the “Claim”).
4. The Specific Claims Branch notified the First Nation in writing on June 4, 2015, that the Claim was not accepted for negotiation on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

**III. Claim Limit (R. 41(f))**

5. The First Nation does not seek compensation in excess of \$150 million for the Claim.

**IV. Grounds (R. 41(d))**

6. The following are the grounds for the Specific Claim, as provided for in s. 14(1) of the *Specific Claims Tribunal Act*:

14. (1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

- (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;
- (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 moneys or other assets of the First Nation;
- (d) an illegal lease or disposition by the Crown of reserve lands;
- (e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority; ...

**V. Allegations of Fact (R. 41(e))**

**(a) *The Signing of Treaty 6***

- 7. Treaty 6 was negotiated between Canada and the Plains and Wood Cree of central and northern Saskatchewan in the vicinity of Fort Carlton during August of 1876. On September 9, 1876, near Fort Pitt, Lieutenant Governor Alexander Morris, along with fellow Treaty Commissioners James McKay and W.J. Christie, negotiated Treaty 6.
- 8. The ancestors of the Saulteaux held out on adhering to Treaty 6. The Saulteaux of Jack Fish Lake, and some Crees under the Chief of the Saulteaux, Yellow Sky Chief, were favourably disposed to the treaty but were unable to remain to confirm their adhesion as a result of the impending buffalo hunt.
- 9. Although in 1878 some Cree members of Yellow Sky's band adhered to treaty and then formed a band in 1880 under the leadership of Chief Moosomin, the remainder of Yellow Sky's people remained out of treaty for decades.

**(b) *Prelude to Survey and Selection of Reserve Lands***

10. However, in response to settlement pressure, in 1905-06, the Claimant's ancestors (hereinafter also "the Saulteaux") requested a strip along the North East shore of Jackfish Lake, where the land had not yet been settled.
11. Indian Commissioner David Laird confirmed that the Saulteaux made the Jackfish Lake area their headquarters for a number of years, supporting themselves through hunting and fishing, and that they had been regarded as "independent and non-Treaty Indians". Laird thought "the matter worthy of the Department's consideration; but before locating a reserve the Indians should be called together, a correct estimate of their number ascertained, and an understanding arrived at...".
12. In June of 1906, Secretary of the Department of Indian Affairs, J.D. McLean, then wrote to Secretary of the Department of the Interior, P.G. Keyes, requesting that "a strip of land along the Northeast shore of Jackfish Lake" be reserved from settlement.
13. By the end of August 1906, after various internal investigations at the Department of the Interior concerning the availability of lands around Jackfish Lake, Indian Commissioner Laird wrote to Indian Agent Day attaching certain plans provided by the Department of the Interior and asking Day to select lands for the Saulteaux after a review of the plans provided and to select the best farming land from unappropriated lands in proportion to the formula under Treaty 6.
14. In the spring of 1908, Indian Agent Day wrote Commissioner Laird citing the fact that he was unable to gather enough Saulteaux together to get the reserve matter resolved until that date. Day submitted a list of sections that the Saulteaux had identified as preferred areas for a reserve. These sections included Section 30 in which the lands at issue are situated. In particular, the list of sections identified by the Saulteaux according to Day's correspondence of May 21, 1908, included:

“Tp. 47, Rge 16, West of 3<sup>rd</sup> M., N ½ [Section] 20, *whole of [Sections] 28, 29, 30, 31, 32, 33.*” [Emphasis added]

15. Indian Commissioner Laird forwarded Indian Agent Day’s report to the Secretary of the Department of Indian Affairs, J.D. McLean, on May 29, 1908, noting that “it would be well to ascertain definitely whether the lands marked upon the plan are still available, and to what extent the Department of the Interior would be prepared to go in the direction of reserving such thereof as is available for the Saulteaux Indians.”
16. Secretary J.D. McLean then requested that certain parcels of land be reserved for the Saulteaux in correspondence to P.G. Keyes, Secretary of the Department of the Interior, on June 4, 1908, attaching “a plan showing the lands desired coloured purple,” which included the whole of Section 30.
17. On July 14, 1908, a memorandum written by N.O. Cote of the Department of the Interior indicates that some of the lands requested by the Saulteaux had been taken up by homestead settlers. Specifically, the northwest quarter of Section 30, Township 47, Range 16, West of the Third Meridian had been homesteaded in May 1908, as had the southwest quarter of Section 30, Township 47, Range 16, West of the Third Meridian.
18. In February 1909, the anxiety of the Jackfish Lake Saulteaux appears to have intensified as Indian Agent Day wrote Commissioner Laird expressing their definite intentions: “They want this Land as a Home! They want the Land, but no Treaty Money!” Day also expressed their concern that settlers were taking up and settling on their land and that they wished their reserve surveyed in the Spring of 1909.

**(c) *The Survey of Township 47, Range 16, West of the 3rd Meridian***

19. The first edition of the township Survey Plan of Township 47, Range 16, West of the 3<sup>rd</sup> Meridian was confirmed by the Surveyor General on September 10, 1890. According to that plan, the area of Section 30 comprised: 148.45 acres in the

northeast quarter section; 15.22 acres in the southeast quarter section (15 acres on the east side of Long Lake and a small peninsula of land on the west side of Long Lake comprising 0.22 acres); 159.96 acres in the northwest quarter section; and 144.35 acres in the southwest quarter section.

20. The image of the survey plan clearly identifies 0.22 acres as being included in the *southeast* quarter section of Section 30.
21. In the sixth edition of the Survey Plan of Township 47, dated September 28, 1918, which was used for the purposes of confirming Saulteaux IR 159, the small peninsula in the southeast quarter section of Section 30, shown as 0.22 acres in the 1890 township survey, was revised to 0.6 acres. The 0.6 acres of land is included in the eastern half of Section 30. In addition, two other parcels of land, comprising 1.2 and 0.1 acres respectively, are also identified at the northwestern tip of Murray Lake (also known as Long Lake) as being included in the *eastern half* of Section 30. Therefore, the sixth edition of the Survey Plan of Township 47 also clearly demarcates these three parcels of land totaling 1.9 acres (0.6 + 1.2 + 0.1) in the eastern half of Section 30, not the western half.

**(d) *The Survey of Saulteaux IR 159 and Confirming Order-in-Council***

22. In April 1909, in the first stages of the reserve selection process, the Department of Interior and Indian Affairs conferred with each other as to the potential option of providing the Saulteaux “two portions” of land, with one near Jackfish Lake and another “North of the North limit of Township 53” or even one reserve situated entirely north of Township 53. These options were abandoned by the summer of 1909. On June 18, 1909, P.G. Keyes, Secretary of the Department of the Interior, wrote to J.D. McLean, Secretary of the Department of Indian Affairs, confirming that they had “reserved temporarily” certain tracts of land for the purposes of the Saulteaux’s reserve. The tracts identified specifically included “E. ½ Sec. 30,” Township 47, Range 16, West of the Third Meridian.

23. On June 22, 1909, J.D. McLean then wrote J. Lestock Reid, Surveyor at the Department of Indian Affairs, relaying that the same tracts identified by P.G. Keyes were available as a reserve for the Saulteaux Indians, and authorizing Reid to survey the Reserve with the following instructions: “As soon as you can arrange, and in such sequence as you may find to be convenient, please take up and endeavor to decide the question of a reserve for the Saulteaux Indians residing at Jack Fish Lake...” Again, the lands identified specifically included “E. ½ Sec. 30, Tp. 47, R. 16, W. 3<sup>rd</sup>.”
24. However, Reid’s survey plan of January 10, 1910 and field book reveal an error. The survey line does not extend north-south through Murray Lake (then identified as Long Lake) to include the entire eastern half of Section 30. As a result, the survey plan does not take into account the three small parcels of land on the western shore of Murray Lake (as they were identified in the 6<sup>th</sup> edition of the Township plan).
25. Despite the above error in the survey plan, on January 18, 1910, S. Stewart, Assistant Secretary, Department of Indian Affairs, forwarded Reid’s survey plan to officials at the Department of the Interior requesting them to “take the necessary action” to confirm the Reserve by Order-in-Council “at an early date.” In that correspondence, again it was specifically requested and confirmed that “the Fractional East half of Section 30, and Section 31, Township 47, Range 16” be included in IR 159.
26. On October 22, 1914, Assistant Deputy Secretary S. Stewart wrote to officials of the Department of the Interior requesting to be informed of the status of the Order-in-Council confirming IR 159. Thirteen years after the survey of the Reserve by Reid and eight years after the request by Stewart for the Order-in-Council setting aside the Reserve, N.O. Cote, Controller of the Lands Patent Branch, Department of the Interior, wrote to J.D. McLean, Assistant Deputy and Secretary of the Department of Indian Affairs, asking whether “these lands are still required for the Saulteaux Band.” Only a month earlier, the Department of

the Interior had circulated a query to various branches of that Department asking for the standing of the lands set apart for the Saulteaux, listing, in part, the land which made up the Reserve, which included the Northeast and Southeast quarter sections of Section 30.

27. Finally, on December 9, 1922, a Memorandum to Council was submitted to Deputy Minister W.W. Cory asking for his signature recommending the confirmation of Saulteaux IR 159.
28. The Reserve was confirmed on December 22, 1922, by Order-in-Council P.C. 2617. The Order-in-Council referred to the 6<sup>th</sup> edition of the Township Plan in describing the parcels of land and the acreage. The only other plans referred to were the highway plans when describing exceptions to these parcels. The survey conducted by Reid in 1909 was not referred to in the Order-in-Council. Instead, the description of the Reserve is as follows:

All that portion of township forty-seven, range sixteen, west of the third meridian, which is contained within the limits of Saulteaux Indian Reserve No. 159, as shown upon a map or plan of survey of the said township approved and confirmed at Ottawa on the 28th day of September, A.D. 1918, by Edouard Deville, Surveyor General of Dominion Lands and of record in the Department of the Interior, and containing by admeasurement seven hundred and ninety and forty-eight hundredths acres more or less; saving and excepting thereout for a roadway a strip of land one chain in width crossing the said land, as shown upon a plan of survey of the said roadway, signed by Stewart Young, Dominion Land Surveyor, on the 7th day of May, A.D. 1917, and of record in the Department of the Interior, under Number 26292, a duplicate whereof is on file in the Lands Title Office for the West Saskatchewan Land Registration District under No. P. 3183, containing by admeasurement four and sixty-two hundredths acres more or less.

29. The township plan referred to in the Order-in-Council is the 6<sup>th</sup> edition of the Township Plan that shows three parcels of land (1.2 acres, 0.1 acres and 0.6 acres) as being in the eastern half of Section 30. However, the Township Plan only highlighted the eastern shores of Murray Lake as being part of the Saulteaux Reserve, failing to include the entirety of the eastern half of Section 30, which included the three small parcels on the western shore. The eastern half of Section 30 had been consistently referenced by the Crown as being included in IR 159.

30. Further, the Roadway Survey Plan (dated May 7, 1917) referred to in the Order-in-Council signed by Stewart Young clearly demarcates the boundary of IR159 as being the east half of Section 30, thus including the three parcels. Young had planted at least one iron post as a boundary monument on the western shore of Murray Lake, marking the eastern half of Section 30, and he had identified the post as being “Mkd. I.R.” or Marked Indian Reserve.
31. Upon investigation in 2009, a monument was found at the exact spot indicated on Young’s survey. The iron post is located at the intersection between the southeast and southwest quarter sections of Section 30 and the northeast and northwest quarter sections of Section 19, Township 47, Range 16, West of the 3<sup>rd</sup> Meridian (being the section immediately to the south of Section 30).
32. In summary, the eastern half of Section 30 is consistently included in all descriptions of IR 159 by those responsible for setting aside the Reserve at the Department of Indian Affairs and the Department of the Interior. The final request for the Order-in-Council specifically includes the eastern half of Section 30 as land to be included in the Reserve. The Order-in-Council refers to a Township plan which does not specifically include the parcels in the eastern half of Section 30 in IR 159, but does identify those parcels. The Order-in-Council then incorporates by reference the roadway survey by Young, which specifically refers to these three parcels and marks them as part of IR 159. In other words, Young had specifically included the eastern half of Section 30 as part of the Reserve, which was entirely consistent with all historical descriptions of the Reserve and the underlying request which resulted in the Order-in-Council’s promulgation.

**(e) Parcel Alienated for Roadway**

33. As indicated at Paragraph 28, the Order-in-Council P.C. 2617 of December 22, 1922, confirmed IR 159 and described its boundaries referencing the 6<sup>th</sup> edition Plan of Township 47, dated September 28, 1918. However, the description excepts from the Reserve an area for a roadway consisting of “a strip of land one

chain in width crossing the said land” as shown on ~~a~~the survey of the roadway dated 1916 (CLSR Plan 1694) affirmed signed by Stewart Young, Dominion Land Surveyor, on May 7, 1917, and consists of approximately 4.62 acres of land within Section 30, Township 47, Range 16.

34. The remainder of the Order-in-Council describes other alienations of land for roadway purposes but all of these pre-date the first survey of the reserve conducted by James Lestock Reid in 1909.
35. The 6<sup>th</sup> edition Plan shows that the northeastern quarter section of Section 30 is clearly part of IR 159. No road survey is indicated on that document.
36. Survey instructions dated July 15, 1963, issued to the Director of Surveys, Department of Highways and Transportation in Saskatchewan, from the Surveyor General of Canada, outlined survey instructions for a right-of-way through a number of reserves, including IR 159. Referenced under the heading “Saulteaux I.R. No. 159” in the instructions were, *inter alia*, “C.L.S.R. [Canada Land Survey Records] Plan 1694, Road by Young in 1916”.
37. The road depicted on C.L.S.R. Plan 1694, referenced in the Order-in-Council P.C. 2617 at paragraph 28, is the same road shown on plans later entitled C.L.S.R. 26292 and Provincial Plan 5232.
38. There is numerous Crown correspondence from 1963 onward between Crown and Provincial officials which indicated that the road depicted on C.L.S.R. Plan 1694 (also referred to as C.L.S.R. 26292 and Provincial Plan 5232) was to be relocated and “exchanged” for the road depicted on C.L.S.R. Plan 55147.
39. C.L.S.R. Plan 55147 dated September 17, 1968, depicts a surveyed road through IR 159 taking up 5.74 acres within Section 30, Township 47, Range 16.
40. On November 12, 1974, the Saulteaux First Nation Council passed a Band Council Resolution agreeing to transfer to the Province the reserve land shown on C.L.S.R. Plan 55147 in exchange for the land shown on C.L.S.R. Plan 1694.

**VI. The Basis in Law on which the Crown is said to have failed to meet or otherwise breached a lawful obligation**

41. The Saulteaux Surveyor Error and Roadway Claim is brought on the grounds that the Respondent breached its statutory and fiduciary duties to the Saulteaux First Nation by:

- a. failing to fulfill a legal obligation to provide lands under treaty;
- b. a breach of a legal obligation of the Crown under the *Indian Act*;
- c. a breach of a legal obligation through the Crown's non-provision of reserve lands;
- d. an illegal disposition by the Crown of reserve lands; and
- e. failing to provide adequate compensation for reserve lands taken.

**VII. Relief Sought**

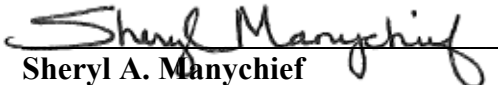
42. In light of the foregoing, the Saulteaux First Nation seeks compensation for:

- a. the current, unimproved value of the lands in lieu of restoring the Claim lands as reserve;
- b. damages suffered by the First Nation as a result of the loss of use of the lands; and
- c. such other damages or compensation as this Honourable Tribunal deems just.


Original Declaration of Claim filed on the ~~Dated this~~ 17<sup>th</sup> day of August, 2015 at the City of Calgary in the Province of Alberta.

Amended Declaration of Claim filed May 9, 2017, at the City of Calgary, in the Province of Alberta.

**MAURICE LAW**

  
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