

**SPECIFIC CLAIMS TRIBUNAL**

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Ottawa, ON		1

B E T W E E N:

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

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

May 6, 2019  
\_\_\_\_\_  
Date

Isabelle Bourassa  
\_\_\_\_\_  
Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada  
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Fax: (613) 954-1920

**I. Claimant (R. 41(a))**

1. The Claimant, the One Arrow First Nation (the “First Nation”, the “Claimant” or “One Arrow”) confirms that it 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 *Treaty No. 6* (“Treaty 6”) and the *Indian Act*, RSC 1985, c 1-5, as amended. The First Nation’s reserve lands and governance structure is situated in the Province of 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. One Arrow originally filed a Specific Claim entitled *One Arrow First Nation Western Reserve Boundary Claim* with the Specific Claims Branch in 2014. The Claim alleged that Canada owes an outstanding lawful obligation to the Claimant in respect of the illegal taking in 1884 of approximately 800 acres situated on the western boundary of IR #95 surveyed in 1881. The Claim further alleged that alternative lands provided in exchange were of inferior quality to those lands illegally taken.
4. In a letter dated September 12, 2017, Joe Wild, the Senior Assistant Deputy Minister of Indigenous and Northern Affairs Canada, informed Chief Tricia Sutherland of the Minister’s decision not to accept the Claim for negotiation under Canada’s Specific Claims Policy on the basis that there is no outstanding lawful obligation on the part of the Government of Canada.

**III. Claim Limit (Act, s. 20(1)(b))**

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

**IV. Grounds (Act, s. 14(1))**

6. The First Nation submits that the specific claim falls within s. 14(1) of the *Specific Claims Tribunal Act* which states that:

**14(1)** Subject to sections 15 and 16, a First Nation may file with the Tribunal 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 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 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) Reserve Creation in 1881**

7. On August 28, 1876, the Willow Cree Indians from the vicinity of Duck Lake, including Kah-pa-yak-wais-ka-mum (“One Arrow”), adhered to Treaty 6 at an encampment halfway between Fort Carlton and the town of Duck Lake. By 1878, the distinct identity of the One Arrow Band had been established, and its own treaty annuity payroll created.
8. The First Nation is the successor in interest to the One Arrow Band who became a party to, and is therefore entitled to, the benefits of Treaty 6. Those benefits include, *inter alia*, reserve lands to be set aside for each band in the amount of one square mile for each family of five (or 128 acres per person).
9. By late autumn of 1880 or in 1881 at the latest, the One Arrow Band had settled about five miles south of the south branch of the Saskatchewan River. They preceded Métis settlement in the area. They immediately commenced farming activities on the land and made other improvements.
10. Dominion Lands Surveyor George Simpson, who reported directly to the Surveyor General for the Department of the Interior (“DI”), Lindsay Russell, surveyed the One Arrow Indian Reserve #95 (“IR 95”) in 1881. He consulted with the Chief and Headmen of the One Arrow Band. The survey commenced on June 27, 1881 and was completed on July 5, 1881.
11. The following spring, Simpson prepared a detailed survey plan entitled *Treaty VI Plan of One Arrows Reserve*. Simpson signed the map on April 24, 1882, and copies were made for the Department of Indian Affairs (“DIA”) and the DI, both of which were stamped as having been examined on June 14, 1882 by “R.R.” of the Surveys Branch in Ottawa. The survey plan was also included in Simpson’s annual report as a reduced signed copy that was tabled before Parliament and published in Canada’s Sessional Papers. The survey plan is reproduced in two parts as Appendix 1.

12. This plan also shows the modifications later made to the survey by A.W. Ponton, Dominion Land Surveyor, in 1884 who superimposed the St. Laurent township survey lines and Métis river lots on the plan to show the conflicting areas with IR 95.
13. From the date of survey on July 5, 1881, IR 95 was administered, treated as, and referred to as reserve land. From 1876 at the latest, it was the government's view that a reserve surveyed with the acquiescence of the Indian band and the approval of the government constituted a reserve without the need for further formalities.
14. The Band population on the reserve swelled. By the end of 1881, 50 members were listed as being on the reserve, and a further 43 were absent trapping. In the summer of 1883, there were about 105 members on the reserve. At the end of 1883, all 127 members were listed as being on the reserve.
15. Starting in 1882, the Band was paid its annuities on its reserve.
16. The One Arrow Band's farming activities also dramatically increased following the date of survey. In 1881, 25 acres were under cultivation. This number increased to 53 acres the next year and 93 in 1884. The size of the crop harvest varied, but overall progress was made with respect to agricultural activities.
17. In the years that followed, internal government correspondence repeatedly referred to and treated IR 95 as an established reserve.
18. In 1991, the Office of the Treaty Commissioner determined, and Canada and the Band ultimately agreed, that the "date of first survey" for One Arrow was 1881, and that the "base payroll" was 1880. There was no objection on this point.

**(b) Métis Encroachment**

19. Starting in the 1870s, thousands of Métis moved west from Manitoba. With the decline of the buffalo, they began to settle down and engage in some farming to supplement other activities.
20. Starting in the spring of 1872, a Métis colony called St. Laurent developed across the banks of the South Saskatchewan River about ten miles below the main river crossing, close to IR 95.
21. Canada had passed a homestead law in 1872, the *Dominion Lands Act* and related regulations, to govern the surveying and settlement of the North-West Territories. It prescribed surveys in rectangular lots and a system by which homesteaders could register their "entries" onto land and ultimately acquire title through payments and prescribed development of the land.
22. By the time Montagu Aldous, a Dominion Land Surveyor acting for the DI, arrived at St. Laurent in 1878, some Métis were squatting on vacant river frontage along the South Saskatchewan in long narrow lots. Where surveyors came upon a pre-existing colony

of squatters, usually Métis, they were authorized to subdivide the banks of major rivers into river lots, standardized to ten chains in width and two miles in depth, yielding 160 acres.

23. Under this authority, Aldous surveyed approximately nine miles of the east bank of the South Saskatchewan into river lots, including all of Township 43 and the southern half of Township 44. This amounted to 71 river lots, generally conforming to ten chains in width and two miles in depth. Aldous adopted the township surveying system on the west bank of the river.
24. While he surveyed the outlines of a block of river lots, Aldous did not mark all the lots on the ground. Further, no plan of the 71 river lots became available until the spring of 1884. It was thus impossible to make entry, or register interests in land, during this time. Thus, the Métis could not and did not do anything to confirm their rights to the land or otherwise register it in line with the homestead laws.
25. Over the years, and particularly in 1882, more Métis came into the area and settled on lands around the South Saskatchewan. They pressed for a re-survey, and the Dominion Lands Board was mandated to deal with the grievances of settlers over the land settlement process.
26. Inspector of Dominion Lands, William Pearce, was sent out as Commissioner in January 1884 to take evidence on individual cases in parts of the North-West where settlement had preceded survey. Regarding the complaints from the Métis, Dominion Lands Agent, George Duck, made inquiries into the complaints at St. Laurent and neighbouring communities, and provided information to Pearce. The inquiry began on May 1884.
27. Duck's instructions were to take affidavits from all Métis who had not yet made entry, including those who had settled on the 71 river lots near IR 95. He was also to take information about the date of settlement, length of residence, improvements made, and other relevant facts, accepting oral testimony from the Métis themselves as evidence.
28. Those who claimed the lots were to receive a letter informing them which land they could enter as a homestead, and may then be eligible for immediate patent on their homestead if their improvements and length of residence were sufficient.
29. Early in May 1884, Duck gathered evidence through affidavit on 99 claims, representing a substantial portion of the Métis. He sent his schedule of cases to Pearce in mid-June 1884. Pearce's recommendations were approved by Ottawa in February 1885 and letters to those who claimed lots were prepared afterward.
30. The Métis had sought immediate free patents to the land they occupied, but generally received only the right of entry. Even if they had been on the land more than the requisite three years, their "improvements" were not usually sufficient to qualify for patents immediately.
31. In undertaking his work, Duck uncovered a conflict between the river lots on the east bank

of the South Saskatchewan at St. Laurent with IR 95, which lay immediately to the east of St. Laurent. Roughly 40 chains of the rear end of 20 of the river lots overlapped with the previously surveyed reserve (overlap to be referred to as “Western Boundary Lands”).

32. Because the river lots had not been marked on the ground, and no plan was available until the spring of 1884, it was only in 1884 – over three years after IR 95 was confirmed – that this overlap was discovered by government officials charged with land surveys.

**(c) Illegal Taking Styled as an “Exchange”**

33. These events were taking place against a backdrop of mounting tension. The Métis, led by Gabriel Dumont, were petitioning the government for land rights, stating in 1883 that:

Having so long held this country as its masters and so often defended it against the Indians at the price of our blood, we consider it not asking too much to request that the Government allow us to occupy our lands in peace, and that exception be made to its regulations, by making to the half-breeds of the North-West free grants of land.

34. Louis Riel had returned to the area in 1883, and began coordinating “discontent”. A Petition of Rights to the Secretary of State, dated December 16, 1884, set out the grievances of the parties in the North-West Territories, including Métis complaints about not receiving land or quality of title.
35. In early March 1885, what became known as the five-month North-West Rebellion commenced, involving primarily those Métis at Batoche, just south of St. Laurent.
36. It was in this context that the government addressed the overlap between Métis claims and the reserve status of the Western Boundary Lands in the vicinity of Batoche in 1884.
37. The government acknowledged that the Métis land claimants were generally new to the area, finding that less than 20 claimants had settled at St. Laurent prior to 1880. It also acknowledged that, despite having the right to do so, the Métis claimants had not attended the Land Office to register their entries. Further, the Western Boundary Lands contained ongoing “improvements” by the One Arrow Band.
38. Notwithstanding this overlap, the government illegally took the Western Boundary Lands from One Arrow to give to the Métis in a transaction it characterized as an “exchange.”
39. Indian Commissioner Dewdney appeared to ignore the recommendations of both the Indian Agent and Inspector of Dominion Lands to leave the Indians undisturbed, as well as a study showing that Indians had been improving the lands. Dewdney also acknowledged that “it is doubtful whether any of the settlers were on the Reserve prior to the Indians”. Dewdney wrote to the Superintendent General of Indian Affairs on September 9, 1884, recommending a “settlement” by which land adjoining IR 95 to the south be taken into the reserve in lieu of the Western Boundary Lands.

40. The DIA acknowledged that the Band's consent was required to take the Western Boundary Lands, but took no steps to obtain a surrender from the One Arrow Band.
41. Instead, the DIA consulted internally with the DI to appropriate the land on the southern border of the reserve. The amended boundaries for IR 95 were approved on a survey plan in September 1884.
42. The "new" land was poor quality farm land, inferior to the Western Boundary Lands they were ostensibly replacing in this "exchange".
43. During this period, there is some indication that the One Arrow Band was struggling to sustain itself from its agricultural production, a fact of which the Crown was aware.
44. Throughout the internal government discussions regarding the exchange, it was never in question that the Western Boundary Lands had reserve status. For example, a memorandum to the Minister of the Interior, dated November 20, 1884, stated that,

From Lieutenant Governor Dewdney's report it appears that some of the settlers squatted after the survey of the Reserve which had been occupied by One Arrow's band some time prior to the Survey; and the Lieutenant Governor thinks it doubtful whether any settlers were on the Reserve prior to the Indians.

45. In a letter dated September 18, 1884, Lawrence Vankoughnet, Deputy Superintendent General of Indian Affairs, advised the DI:

... if your Department will accept [defines the land identified] that land will be included in the reserve, it being understood that the Indians abandon any claims which they may have to the river lots now included in their reserve, but which are occupied by settlers.

46. Finally, the DI informed the Commissioner of Dominion Lands in Winnipeg of the Exchange, stating it would take place "on the understanding that the Indians abandon any claims which they may have to the lots fronting upon the river which are now included in their reserve."
47. The Crown presented the transaction to the band as a *fait accompli*. The Indian Agent who had recommended preserving the reserve was informed in December 15, 1884, after the altered boundaries were approved, stating:

... it must be understood that in return the Indians shall abandon any claim they may have to the River lots now included in their Reserve.

You may have land ploughed on the new location for the Indians of like area to the cultivated land on the lots which they give up, and they should be informed of the decision arrived at by the Government in regard to their claim to the above named river lots.

48. In 1886, the Surveyor General and DI sought clarification of reserve boundaries and its transfer to the DIA, as there had been grave deficiencies in common record keeping between the departments involved in land surveying throughout the 1880s.
49. In July 1888, Dominion Lands Surveyor John C. Nelson surveyed the changes to IR 95 resulting from the 1884 “exchange” of land. The diagram accompanying his field notes shows the “old” reserve boundary as surveyed by Simpson, the Western Boundary Lands overlap with the river lots, and the “new” boundary. Nelson also included the “Part added” to the reserve. The amended survey plan for IR 95 is reproduced in Appendix 1.

**(d) Bureaucratic Confusion Leading to Orders-in-Council**

50. Until May 1880, Indian Affairs was a branch of the DI and authorization and approval of reserve location and surveying was the responsibility of the Surveyor General.
51. After the DIA was created in 1880, it would take over responsibility for reserve land surveys. In the short term, surveyors worked under Indian Commissioners but ostensibly submitted surveys to the Surveyor General for approval.
52. By 1882, the DIA had established its own surveys branch and acted to fulfil the reserve clauses of the treaties. The DI had the mandate to administer the Crown domain under the *Dominion Lands Act*. Thus, two departments were responsible for different aspects of surveying Dominion Lands, and struggled to coordinate and communicate in their work. The DI’s Chief Inspector of Surveys acknowledged this problem to his superiors in September 1884, and suggested centralizing approval of reserves.
53. In 1886, the Surveyor General inquired about the boundaries of IR 95 and sought clarification that it had actually been transferred to the DIA.
54. In response, the DI provided an important contemporaneous account. First, it reaffirms that IR 95 was created in 1881. Second, it explains the confusion between Simpson and Aldous: the reserve was mapped after the township map was printed. P.B. Douglas, Assistant Secretary of the DI, explained:

You will observe that this Township was surveyed in 1879 and “One Arrow’s” Reserve in 1881 which will account for the Reserve not appearing on the Tp. plan, as it was printed before the survey of the Reserve. It will be well to reprint the plan of Tp. 43 Rge 1. West of 3rd Meridian, and for that purpose the original plan and all copies thereof are sent herewith.

55. However, there continued to be a disconnect between the departments over surveys, with conflicts between reserve and settler surveys abounding. Both the Surveyor General and the DI noted the need for better coordination, proposed a centralized arrangement for reserve survey approval, and inquired about whether reserve lands had been properly transferred. There appears to have been strong disagreement between the DIA on one hand and the DI on the other regarding the former’s process for surveying reserves and,

particularly, for ensuring that reserve lands were formally removed from the *Dominion Lands Act*.

56. The practice of Orders-in-Council establishing Indian reserves on the Prairies came about as a response to administrative disputes such as those described herein. The practice did not, however, displace the Crown's notorious misadministration of key documents in the reserve creation process.
57. On May 17, 1889, the Privy Council passed an Order-in-Council confirming a large number of the Indian reserves surveyed on the southern Prairies, including for One Arrow. However, disagreements persisted.
58. In the years that followed, the Surveyor General continued to raise the issue of the status of reserve lands, ostensibly believing that they had not been properly removed from the *Dominion Lands Act* and refusing to show them on township surveys until their status was adjusted.
59. Consequently, a second Order-in-Council was issued, formally withdrawing all reserves that had been "confirmed" by the 1889 Order-in-Council from the operation of the *Dominion Lands Act*.
60. In the following years, the system for surveying reserves was again regularized, after a decade and a half of confusion and conflict resulting in the Crown's misadministration of documents key to the reserve creation process. With the cooperation of the DIA, all reserve descriptions were submitted to the DI for approval and for withdrawal from the operations of the *Dominion Lands Act*. The DI would draft the Orders-in-Council from information supplied by the DIA. This system would remain in effect until 1930.
61. It is clear that IR 95 was created during the period of bureaucratic confusion and inconsistency. However, One Arrow should not be prejudiced due to this confusion. IR 95 was created by mutual intention of the parties 1881; ongoing governmental discussion and disagreement about technicalities does not alter this fact.

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

62. The evidence pertaining to the survey itself and Canada's subsequent administration of the land, in addition to the Band's use and occupation of the Reserve, indicate that Simpson's 1881 survey of IR 95 was accepted by Canada as creating a reserve a full three years before the boundaries were unilaterally changed by the DIA to accommodate conflicting Métis claims on lands that were already set apart as a reserve for One Arrow. Thus, the Crown breached its legal, honourable, equitable and fiduciary duties by unilaterally taking 800 acres of reserve land without legal authority or the Band's lawful consent, and without adequate compensation.
63. Specifically, the Claimant submits that:

- a. The reserve was legally created for the One Arrow Band by no later than July 5, 1881 and the lands surveyed for the Band included the Western Boundary Lands.
- b. The Métis did not have any prior vested rights in the Western Boundary Lands because their occupation did not precede the One Arrow Band's and they had not complied with all of the necessary homesteading requirements under the *Dominion Lands Act*.
- c. The Crown failed to discharge its fiduciary obligations to One Arrow by unilaterally relinquishing the One Arrow's interest in the Western Boundary Lands to accommodate the Métis without first obtaining the consent of the Band pursuant to the surrender requirements set out in *Indian Act* and/or the consent regime apparent in the *Royal Proclamation* of 1763, in breach of its fiduciary and honourable obligations to the First Nation.
- d. Canada owes an outstanding lawful obligation to One Arrow for the unlawful alienation of the Western Boundary Lands in 1884 in exchange for lands of lesser value.

## VII. Relief Sought

64. The Claimant seeks the following relief:

- a. A determination that Canada breached its lawful obligations to the Claimant when it unlawfully alienated the Western Boundary Lands in breach of its statutory, fiduciary, and honourable obligations;
- b. Equitable compensation for the unlawful alienation of the Western Boundary Lands and loss of use of the same from 1884 to the present;
- c. Such other compensation as this Honourable Tribunal deems just; and,
- d. Costs in relation to the specific claim and this proceeding.

Dated this 6<sup>th</sup> day of May, 2019, at the City of Calgary in the Province of Alberta.

## MAURICE LAW



**Ryan M. Lake/Amy Barrington**

Counsel for the Claimant

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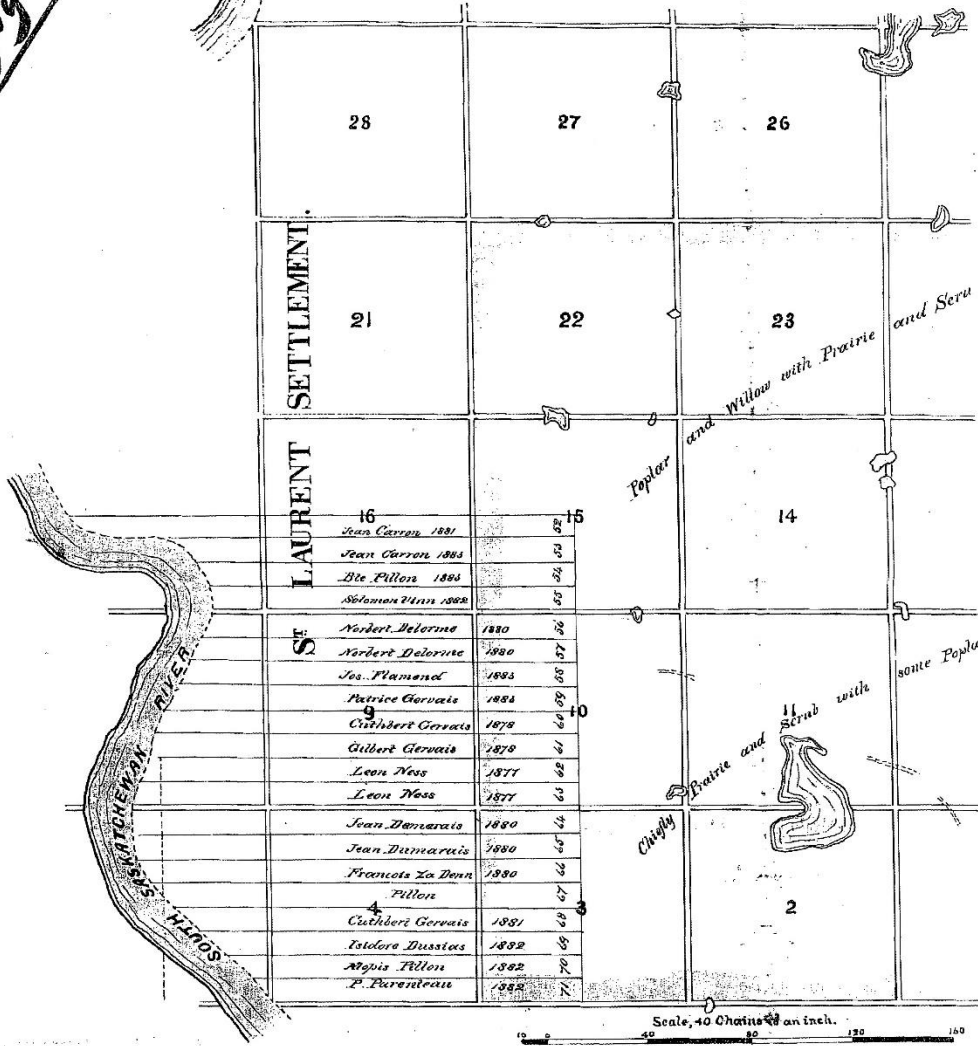
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Appendix 1

Township 43  
Range 1 West of 3<sup>rd</sup> Meridian.

Copy

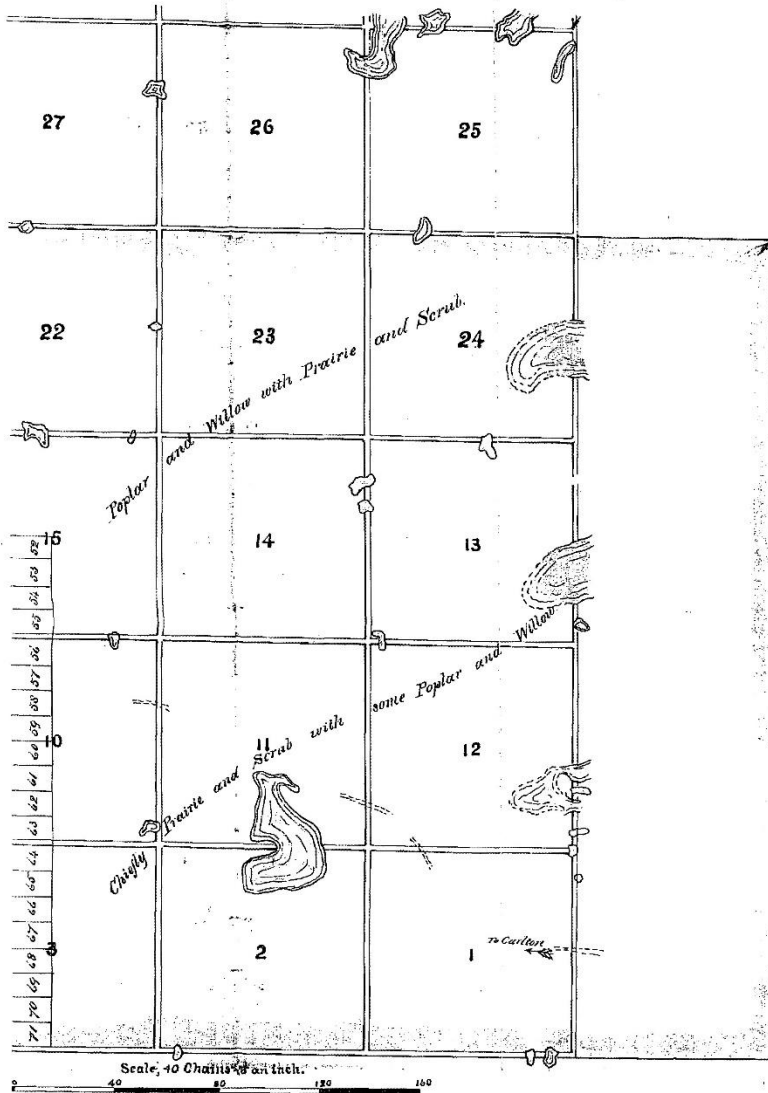


10-9-84

One Arrow's Reserve  
Area 16 sq. miles.  
Surveyed in June & July.  
1881

P.A.C., R.G. 15, Vol. 326, File 80522.

rd Meridian.



# Arrow's Reserve.

Area 16 sq. miles.

Surveyed in June & July.

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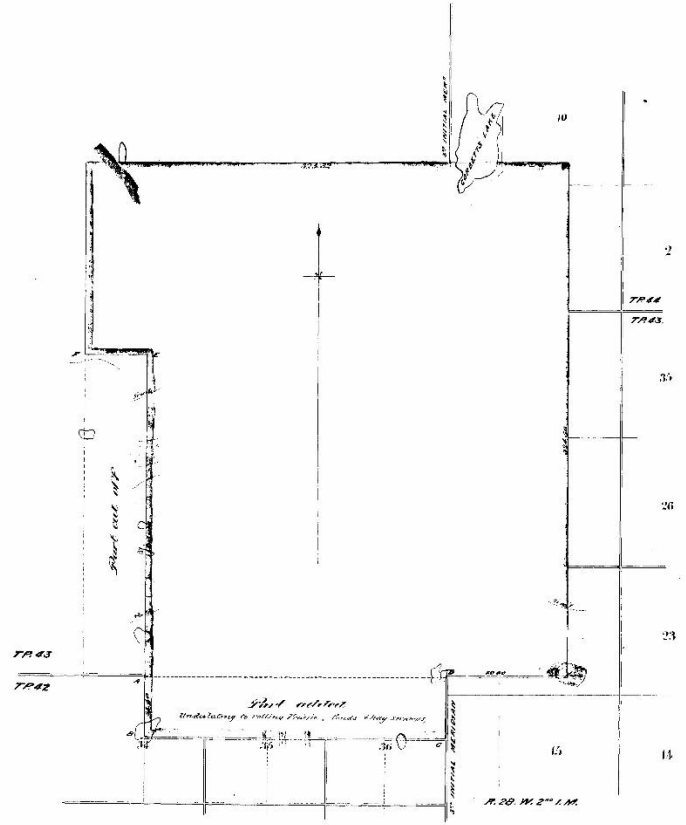
P.A.C., R.C. 15, Vol. 326, File 80522.

*A. Haukojuuri*  
 Deputy of the Supt. Genl. of Indian Affairs.



TREATY N°8  
 NORTH WEST TERRITORIES  
 PLAN  
 SHOWING ALTERATIONS EFFECTED IN THE BOUNDARIES  
 OF INDIAN RESERVE N°95  
 BAND OF CHIEF "ONE ARROW"  
 NEAR BATOUCHE

*Scale: 1 inch to 1 mile*



INDIAN AFFAIRS SURVEY RECORDS  
 No. 265

Surveyed in July 1880  
 by John Nelson, S. L. S.  
 in charge of Indian Reserve Surveys

Tr. 6