SCT File No.: SCT-7001-20

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

COOK'S FERRY INDIAN BAND

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations

Respondent

DECLARATION OF CLAIM

Pursuant to Rule 41 of the

Specific Claims Tribunal Rules of Practice and Procedure

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

July 13, 2020

Guillaume Phaneuf
_____

(Registry Officer)

TO: HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
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I. Claimant

1. The Claimant, Cook's Ferry Indian Band (the "Band"), confirms that it is a First Nation within the meaning of s. 2 of the *Specific Claim Tribunal Act* (the "Act") by being a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended, in the Province of British Columbia.

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

2. The following conditions precedent as set out in s. 16(1) of the 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 Minster 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. In or about 2008, the Band filed a specific claim in respect to the improper 'taking' of reserve lands within IR 10 for a right of way for the Canadian Pacific Railway (the "Claim") with the Specific Claims Branch of the Department of Indian Affairs and Northern Development Canada ("Canada").

4. On or about May 25, 2009, the Band submitted the Claim refreshed to Canada including additional supporting documents and information.

5. By letter, dated May 13, 2011, Canada advised the Band of the partial acceptance of the Claim for negotiation.

6. By letter dated September 18, 2018, Canada advised the Band it was amending Canada's previous position on the basis of partial acceptance for negotiation, "in light of developments in case law."

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

7. For the purposes of the claim, the Band does not seek compensation in excess of $150 million.

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

8. The following are the grounds for the specific claim, as provided for in s. 14 of the Act:

> (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; or
>
> (e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority.

IV. Allegations of Fact (R. 41(e))

Pokheistk IR 10

9. The Band is a part of the Nlaka'pamux / Nlha7kápmx Nation with traditional use and occupancy throughout its traditional territory that encompasses both sides of the Thompson River, near Spences Bridge, British Columbia, among other areas.

10. Pokheitsk I.R. 10 (“IR 10”) was allotted by Indian Reserve Commissioner Sproat on July 20, 1878. He allotted the reserve “to include land formerly cultivated by the Indians”. He noted that some settlers were intruding on these lands. Sproat also recognized the importance of the fishery at Cook’s Ferry and specified that “the Indians are to have access to, and to be at liberty to carry on as formerly, their fisheries for the various kinds of fish at their accustomed fishing places”.

11. Historically, the river bank of the Thompson River for the length of IR 10 was a major fishing ground for the Band. The north and south ends of IR 10 are old gill net and dipping spots. Platforms used to be built out from the shore for dip netting. The riparian lands along IR 10 were important for landing canoes in conjunction with the pitch lamp fishing process.

12. IR 10 was surveyed by Ernest Skinner in 1885 at 79.9 acres. He described the reserve as "an arable flat of good quality”, but his attached sketch showed settler encroachments on Pokheitsk.

13. Despite lengthy correspondence from Commissioner Sproat on the subject, preemptions of the disputed areas by the encroaching settlers were allowed and the reserve was re-surveyed by F.C. Swannell in 1907 at 22 acres. The northern portion of IR 10 was cut off. The aforementioned preememptions of IR 10 are the subject matter of a separate Specific Claim and are not included in this Claim.

14. The Canadian Pacific Railway (“CPR”) was constructed through IR 10 in the early 1880’s. A survey plan, dated May 4, 1890, entitled *CPR Plan of Lands taken from Indian Reserves*, showed the location of the CPR as a right of way of 210 ft. through the length of IR 10, taking all riparian land. It was also more than

double the allowable 99 ft. width and comprised 7.55 acres. The right of way cut off access to the river and the fishery entirely.

15. The contract between Canada and the CPR Company called for the conveyance of title to the railway constructed by the government within the right of way. The *Canadian Pacific Railway Act*, SC 1881 (44 Vict), c 1 ("*CPR Act*") contained provisions relating to the granting of land to the CPR Company. *The Consolidated Railway Act*, SC 1879 (42 Vict), c 9 ("*Consolidated Railway Act*") forbade the alienation of interests in Crown land granted to railway companies.

16. British Columbia joined Confederation pursuant to the *Terms of Union, 1871*, by which Canada assumed under Article 13 the "charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit".

17. The right of way through IR 10 was not included in the first Order in Council, P.C. 58 of January 15, 1886, (the "1886 OIC") authorizing the transfer of the rights of way through 30 Indian reserves. However, by Order in Council dated August 25, 1891 (the "1891 OIC"), authority was given to transfer the right of way to the Department of Railways and Canals on payment of compensation. The acreage listed was 7.55 acres.

18. The CPR right of way was re-surveyed (as constructed) in 1904 by James F. Garden (Plan 11196/RR2006, the "Garden Plan"). This plan showed the acreage of right of way through IR 10 as 8.80 acres; a difference of 1.25 acres.

19. By 1911 Letters Patent had still not been issued, and the CPR resumed efforts to obtain them. Order in Council P.C. 2983, dated December 29, 1911, re-transferred the proposed CPR right of way through 30 Indian reserves back to the Department of Indian Affairs ("DIA") from the Department of Railways and Canals, so that the DIA could issue Patents to CPR "for the correct areas,

together with such areas as they may decide to grant". However, IR 10 was not a part of the original 30 reserves included in the 1886 OIC, and consequently was not retransferred to the DIA by the 1911 Order.

20. Letters patent were finally issued in April 1928 for 8.80 acres and were signed by an official of the DIA. These letters patent claim the authority of the 1886 OIC for the conveyance of right of way through IR 10 to the CPR. The schedule attached to the 1886 OIC did not mention any reserves above Kumcheen at the Nicola River. The schedule attached to the 1891 OIC that did authorize a conveyance mentioned only an area of 7.55 acres. There is no Order in Council that approved the conveyance of the extra 1.25 acres included in the right of way as shown on the Garden Plan.

21. On January 25, 1913, IR 10 was removed from the operation of Dominion Lands Regulations for the Railway Belt as land reserved for Indians by Dominion Order in Council P.C. 205. The effect of this Order was to transfer the administration of IR 10 from the Department of the Interior to the DIA. OIC P.C. 205 included an attached list of the reserves to be transferred to the DIA and stated that the reserves on the attached list had been surveyed and were shown on the official plans of the respective townships. The list attached to PC 205 stated that the official survey plan showing IR 10 was confirmed February 15, 1907.

Compensation

22. The compensation indicated for IR 10 in 1890, and eventually paid to the benefit of the Band was $7.55 for 7.55 acres. No further compensation was paid to the Band even though the actual acreage purportedly patented to CPR in 1928 was 8.80 acres.

23. There is no information available regarding the exact methods of evaluation for the lands taken from Indian reserves in 1890. There was never any detailed

analysis given with respect to the calculations at IR 10, but it would appear that compensation was based on the simple formula of one dollar per acre.

24. In December 1879, J.W. Trutch had been appointed as Dominion Land Agent in B.C., with broad powers to oversee the valuation of lands taken by the Dominion for the CPR. He hired valuators to appraise the lands and damages. The valuations for right of way lands through the Fraser and Thompson Canyons were submitted by Croasdaile and Ball on November 4, 1884 in the form of a very brief report for each. This was put into a schedule that showed: value of cleared lands, value of fruit trees, value of fencing, cost of removing buildings, value of buildings, value of road, and value of clearing land.

25. An August 1885 report by Joseph Trutch, Dominion Land Agent in B.C., included a schedule of lands taken from thirty reserves along the railway from Port Moody to Savonas, stating the amount of acreage taken and the compensation which had been calculated by the "official valuators" as the value of the land and improvements taken from each reserve. IR 10 was not included in this schedule. In this memorandum Trutch pointed out that "there are other lands on which Indians reside along the line of the Railway, which although claimed by the Indians resident thereon, do not appear to have been surveyed or authoritatively allotted for their use".

26. The Department of Railways and Canals duly sent information on the location of the reserves in question, including IR 10. The schedule of compensation presented by the Department of Railways and Canals for this second group of conveyances in March 1890 (the "Valuation Schedule") was also only concerned with land acreage and unspecified improvements. There is no record of any investigation and valuation of these specific rights of way. The list shows only IR 10, acreage taken 7.75 acres, value of land at $7.75 and no improvements. While there were also categories for fences and buildings, these were blank.

27. Notable by their absence are other standard heads of damages, such as severance, smoke, noise and vibration, and other damages normally regarded as compensable “injurious affection”. Also absent is any detailed calculation for loss of riparian lands.

28. The Valuation Schedule was sent to the Indian Superintendent on June 3, 1890. He then forwarded it to the local Indian Agent. Indian Agent Mackay responded on September 11, 1890, that “there does not appear to my mind any reason for amending the lists as regards the sums to be paid to individuals and those to be credited to Bands”. He did not respond as to the valuation of these lands taken six or seven years previously. In 1891 Indian Superintendent Vowell formally accepted the Department of Railways and Canals valuations for right of way and requested that payment be made.

29. By Order in Council PC 2006, dated August 25, 1891, the Governor in Council approved the recommendation of the Minister of Railways and Canals authorizing the transfer of right of way through IR 10 from the DIA to the department of Railways “based on valuations of similar lands.” The 1928 Letters Patent state that $8.80 was paid for 8.80 acres of right of way through IR 10. In 1892, $7.55 had been paid for 7.55 acres, based on the earlier plans. There is no documentation confirming any investigation into, authorisation for or payment of the difference of $1.25.

30. The sum of $7.75 was not credited to the Band's trust account managed by Canada until 1892, and did not include interest for the seven year interim.

Excessive Width

31. In or about 1910, residents of Boston Bar I.R. 2 and homesteaders between North Bend and Keefers began complaining to the Department of Interior about

the excessive width of right of way through their lands. They had assumed that the CPR right of way through their lands was the regular 99 ft., and later learned the CPR was claiming an average of 400 ft. which usually included the only arable parcels on their lands. They protested vigorously. The Department of Interior investigated and began negotiations with the CPR on behalf of the settlers.

32. DIA was informed of the Department of Interior investigation because of the claim of an Indian homesteader on what is now Skuppah I.R. 2A. No action was taken by DIA to examine the CPR right of way through any other reserves in the area traversed by the CPR.

33. The Department of Interior's investigation resulted in yet another survey of the CPR right of way. Representatives of the CPR and the Department of Interior visited the disputed lands and met with the interested homesteaders. The DIA did not take part in this inspection.

34. Ultimately, a new plan was prepared showing "portions of the right of way to be ceded to settlers, portions required for the CPR main line, and portions required for double tracking" between Boston Bar and Boothroyd (the "Doupe Plan"). The CPR sought to retain the unusually wide right of way for the purpose of laying a second track at some future date. The Doupe Plan eventually superseded the Garden Plan for the portion of the line that it covered. The CPR solicitors sent a copy of this plan to the DIA Secretary in 1921.

35. The Doupe Plan did not affect the right of way through IR 10, and the DIA did not seek to have a similar re-survey done through IR 10, even though the right of way was greatly in excess of the normal 99 feet.

Additional Taking in 1968

36. In December 1966, the CPR Company applied to widen its right of way through IR 10 for a double track. The CPR Company proposed to take a strip 60 ft. wide for the extent of IR 10 comprising 2.48 acres (the “Additional Lands”).The lands desired by the CPR also encroached on the lands of Pemynoos I.R. 9.

37. The Band had already complained to the Indian Agent that the CPR was encroaching on IR 10 for the construction of the new siding. The CPR first offered $50.00 per acre for the Additional Lands. The Band maintained that this land had been irrigated in the past and could be rendered productive again. The Band wanted at least $500.00 per acre or a land exchange.

38. The concept of the land exchange was not taken up by the DIA. The Band Council had been advised by DIA officials that the CPR had the power to expropriate the Additional Lands, and eventually they agreed to a price of $250 per acre. By Order in Council of August 28, 1968, the Additional Lands were taken from the reserve pursuant to Section 35 of the *Indian Act*. Patent was issued for additional right of way in December 1968.

Unauthorized Use of Reserve Land by CPR

39. A further source of grievance to the Band has been the continuing trespass by the CPR Company to access the CPR track. The CPR Company has used existing Band farm roads and tracks to access the CPR track with no permission from or compensation to the Band. The Crown has been aware of the CPR’s unauthorized use of the Band’s reserve lands on IR 10 and by failing to take action, has knowingly permitted it.

V. The Basis in Law on Which the Crown is Said to Have Failed to Meet or Otherwise Breached a Lawful Obligation

Source of Fiduciary Duty

40. This claim is based on the Crown's breach of its common law fiduciary duty and legal obligation under the *Indian Act* for authorizing an excessive right-of-way through IR 10, failing to ensure fair market compensation was paid by the CPR Company, and failing to ensure compensation was paid by CPR Company at the time of transfer to the Department of Railways.

41. Fiduciary duties originate with the *Royal Proclamation, 1763*, which establishes the Crown-Indigenous relationship as fiduciary in nature. The associated precept is the Honour of the Crown.

42. The Honour of the Crown gives rise to a fiduciary duty where the Crown assumes discretionary control over a specific Aboriginal interest.

43. Canada's fiduciary duty with respect to the reserve creation for the Band was triggered by Article 13 of the *Terms of Union* and section 91(24) of the *British North America Act* because Canada had assumed unilateral discretionary control of the reserve creation process for the Band as the exclusive intermediary with the Province in relation to its aboriginal interests.

44. Canada's fiduciary obligation arose as an exclusive intermediary with the Province for the purpose of reserve creation in relation to the Band's interest in land habitually and historically used and occupied by the Band. Canada's position as an exclusive intermediary conferred a degree of control that left the Band's cognizable Aboriginal land interest in IR 10 vulnerable to the adverse exercise of Canada's discretion. Canada's fiduciary duty arose at the outset of the reserve creation process and continued during the exercise of its discretionary control until the reserve creation process was concluded.

Fiduciary Duty during the Reserve Creation Process

45. The land allotted to the Band in 1878 by Commissioner Sproat was, at a minimum, a provisional reserve.

46. IR 10 became a reserve within the meaning of that term in the *Indian Act* at the latest on January 25, 1913, the date on which IR 10 was removed from the operation of Dominion Lands Regulations for the Railway Belt as land reserved for Indians by Dominion Order in Council P.C. 205, and the administration and control of IR 10 was transferred from the Department of the Interior to the DIA. Prior to that time, Canada owed to the Band at least the basic fiduciary obligations of loyalty, good faith in the discharge of its mandate, providing full disclosure appropriate to the subject matter, and acting with ordinary prudence with a view to the best interest of the aboriginal beneficiaries.

47. As the right of way land was part of the traditional territory of the Band, the Crown owed a high standard of fiduciary duty and care in the present matter, including a duty to preserve and protect the Band's interest.

48. Ordinary prudence in this context required that, at a minimum, the Crown elicit the concerns of the Band and consider its best interests. This called for full disclosure and consultation. The Band's obvious interest would include protection of its arable land and protection from damage and continued access to its fishing stations. The Band was not consulted over the impact the occupation of the land within the right of way by the CPR would have on its use of the land and access to its fishing stations.

49. Irrespective of whether the IR 10 came within the *Indian Act* at the date of the grant to the CPR Company, the duties of the Crown to the Band included an assessment of how much land the CPR Company reasonably required for the operation and protection of the railway.

50. The land “granted” by the Crown exceeded that which was permissible under *the Consolidated Railway Act*. Section 9, limited the width of land that may be granted to a Railway Company to 99 feet.

51. The Crown had a legal obligation to safeguard and protect the Band's interest in its reserve lands and to deal with the lands in the best interests of the members of the Band. The Crown had a fiduciary duty to only grant to the CPR Company the minimum interest it required for the purposes of construction, maintenance and operation of the railway, and to ensure minimal impairment to the use and enjoyment of the reserve lands by the Band.

52. The Crown fulfils its fiduciary obligation by meeting the prescribed standard of conduct. This included ensuring there was minimal impairment to the use and enjoyment of the reserve lands by the Band. The Crown did not act diligently to safeguard and protect the Band's interest in its reserve lands, did not deal with the lands in the best interests of the members of the Band, and did not meet the standard of conduct required of a fiduciary.

Cognizable Interest

53. As the Band was in occupation before and after the allotments, its interest was substantial and practical. The Band’s interest in IR 10 was recognized by enactments and policies as an independent interest in land anchored in collective use and occupation. The Band’s interest in IR 10 was an interest in the land from which the Band had sustained itself, to which it had a tangible, practical, and cultural connection and that formed part of its traditional territory.

Fiduciary and Statutory Duty after Reserve Creation

54. On January 25, 1913, the date on which administration of IR 10 passed to the DIA under the *Indian Act*, at the latest, Canada's obligations expanded to include

the protection and preservation of the Band's interest in IR 10. As a fiduciary, the Crown was also obligated to ensure that it did not let the public interest in the building of the railway supersede the Band's interest in its lands. The Crown breached its legal obligations under the *Indian Act*, RSC 1906, c 81 including, but not limited to section 48, when it allowed the CPR right of way through IR 10.

55. Once IR 10 came under the *Indian Act*, the duty of the Crown was to enforce the protective provisions of the *Indian Act* and preserve the Band's interest in the reserve from exploitation. If expropriation was necessary to establish a proprietary interest in the CPR, the Governor in Council could, under section 35 of the *Indian Act*, have exercised its authority to allow the taking of a form of non-exclusive tenure such as an easement.

56. As IR 10 had become an *Indian Act* reserve by the latest on January 25, 1913, the purported grant to the CPR Company in 1928 required surrender under the *Indian Act*. There was no surrender. As the grant purported to convey legal title to the CPR Company, it was made without statutory authority within the meaning of the term in the Act, paragraph 14(1)(d).

57. The Crown had a fiduciary duty to protect the Band's cognizable interest in IR 10 from alienation and the forsaking the interests of all others in favour of the Band's interest in IR 10.

Restriction on Alienation

58. The *Consolidated Railway Act* forbade the alienation of interests in Crown land granted to railway companies. The CPR Company could receive no greater interest than an easement. As the *CPR Act* did not override the restriction on alienation in the *Consolidated Railway Act*, the purported grant to the CPR Company in 1928 exceeded the statutory authority of the *Consolidated Railway Act* resulting in an illegal dispostion by the Crown of the Band's reserve lands.

The grant was not authorized by statute. This applied irrespective of whether IR 10 came within the *Indian Act* at the date of the grant.

59. The transfer was a transfer of administration of the land from one Ministry to another in anticipation of a grant to the CPR Company as required by the CPR Contract.

60. The lands were in the Railway Belt which were deemed transferred to the Dominion on December 19, 1883. Accordingly the lands were vested in Her Majesty when the purported grant in 1928 was made, and the restriction on alienation applied.

61. The dedication of Crown land for railway right of way purposes under the *Government Railways Act* was not a taking of the Band's interest in IR 10. The *Government Railways Act* did not provide for taking land already vested in the federal Crown. No taking of the Band's interest in IR 10 occurred. Instead, the effect of the *Government Railways Act* was to allow the construction of a railway that would, as constructed, be conveyed to the CPR Company as required by the CPR Contract. It did establish the ability of the government to construct the railway within an area known colloquially as a right of way.

62. Although the Band's possession of the right of way lands in IR 10 was affected, its interest in the land was not.

63. As the latest, the government of Canada accepted IR 10 for purposes of the *Indian Act* on January 25, 1913. The 1928 grant was made in contravention of the surrender provisions of the *Indian Act*. The *Indian Act* would have permitted the taking of an interest less than title; hence Canada's obligation under Article 11 of the *Terms of Union, 1871*, could have been performed without contravening any statute or breach of duty.

Restriction on Width of Right of Way

64. The grant of 1928 also purported to convey land in excess of that permitted by the *Consolidated Railway Act* and to that extent was not authorized by statute.

65. Whether or not the width restriction in the *Consolidated Railway Act* applied to a grant made under the *CPR Act*, more land was granted than was necessary for railway purposes. In either case, the Crown was in breach of its fiduciary duty to act in the best interests of the Band by failing to consult and ascertain its needs and take measures to protect its interests. This included the failure to protect and provide access to the Band's fishing stations.

66. In addition to the usual noise, smoke and vibration damages, the lands of IR 10 were severely damaged by severance, to the point where they were unfit for the original intended purpose. These specific damages were not addressed by the valuators or by the DIA.

Additional Lands

67. The CPR legislation, the *CPR Act, 1881*, stipulated that the company's power to take lands without the consent of the owner was to be governed by the provisions of the *Railway Act*, except that, with the consent of the federal government, they might obtain more lands. Since the prior consent of the Federal Crown was required, the CPR had no independent power to take the additional lands in 1968.

68. A railway could only exercise powers of expropriation under a provision of the *Indian Act* that required, upon the recommendation of the DIA, the consent of the Crown.

69. Fiduciary obligations require that the Crown not engage in “tainted dealings” that would make it improper to rely on the Band’s understanding or intention with respect to the transaction.

70. The actions of DIA officials advising the Band that the CPR Company had a power of expropriation when it did not, breached Crown fiduciary duties of loyalty, consultation and adequate consideration of the interest of the Band in preserving its land base. This tainted the dealings in a manner that made it unsafe to rely on the Band agreeing to a price of $250 per acre, when it initially sought at least $500 per acre of exchange lands. The transaction was exploitative. It was in the administration of IR 10 that the Crown breached its fiduciary duties.

71. As the taking of the Additional Lands was pursuant to Section 35 of the *Indian Act*, the Crown also had a fiduciary duty of minimal impairment to grant only the minimum interest required for the public interest. The Crown’s duty of minimal impairment required the Crown to consider whether a lease or permit could have been issued to grant only the minimum interest required the CPR Company. The Crown did not consider the option of a lease or permit and instead granted a full interest to the CPR Company thereby breaching its fiduciary duty owed to the Band.

72. Without limiting the foregoing, the Crown acted dishonorably and breached its fiduciary and/or legal obligations to the Band:

a. when it failed to exercise ordinary prudence, loyalty and good faith in the discharge of its constitutional obligation to set aside reserve land for the Band during the transfer of land for the CPR right of way through IR 10;

b. when it failed to act in the Band’s best interest in exercising discretionary control over the specific Aboriginal interest of the Band in the lands transferred for the CPR right of way through IR 10;

c. when its officials failed to take steps to protect the Band's interest in the lands transferred for the CPR right of way through IR 10;

d. when it failed to provide full disclosure to the Band during the reserve creation process relating to the transfer of land for the CPR right of way through IR 10;

e. by failing to consult and ascertain the Band's needs and take measures to protect its interests;

f. by failing to obtain a surrender vote from the Band as required by the *Indian Act*;

g. by failing to investigate, inquire or ascertain whether the land requested by CPR was in excess of what was required for railway purposes;

h. by failing to protect and provide access to the Band's fishing stations;

i. by failing to comply with the provisions of the *Consolidated Railways Act* by transferring more land than required from IR 10;

j. when it granted more land was than was necessary for railway purposes;

k. by failing to minimally impair the Band's interest in the land transferred for the CPR right of way;

l. by failing to properly value the land transferred for the CPR right of way;

m. by failing to ensure the Band received adequate compensation from CPR for the railway right of way;

n. by failing to consult with and obtain the consent of the Band regarding the amount of compensation paid by CPR;

o. by failing to ensure compensation was paid by CPR to the Band upon the existence of the CPR right of way through IR 10 in 1884;

p. by failing to value the injurious affection to the remaining lands of IR 10;

q. by failing to ensure the Band received payment from CPR in a timely manner;

r. by failing to distinguish between improved and unimproved land in carrying out the valuation;

s. by failing to ensure interest was paid by CPR on the payments received in 1891 in respect to the CPR right of way through IR 10;

t. by failing to inquire into or obtain replacement lands for the Band;

u. by authorizing a taking of the Additional Lands in 1968;

v. by knowingly allowing a third party to use reserve land without authorization or compensation; and

w. throughout all times by falling below the standard of conduct mandated by its fiduciary duty to the Band.

VI. Relief Requested

73. The Band seeks:

a. an order from the Tribunal validating this specific claim of the Band in relation to IR 10 under the *Specific Claims Tribunal Act*;

b. compensation from the Crown for failure to uphold its fiduciary and legal obligations to the Band arising from the Crown's administration of IR 10 by the disposition of the CPR right of way through IR 10;

c. damages and equitable compensation on current unimproved market value of the land transferred for the CPR right of way plus compensation for loss of use of the land transferred for the CPR right of way;

d. compensation for damages and injurious affection to the Band's adjacent reserve lands relative to IR 10;

e. disturbance damages arising from the Crown's breach of fiduciary duty in regards to IR 10 including interference with the Band's fisheries;

f. compensation for the Band's loss of riparian rights relative to the CPR right of way through IR 10;

g. other demonstrable and reasonably foreseeable damages including noise, disturbance, smoke and vibration;

h. interest on compensation;

i. costs of this claim; and

j. such other relief or compensation as this Honourable Tribunal deems just.

Dated this 13th day of July, 2020

Signature of Solicitor
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