

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
June 28, 2016	D É P O S É
David Burnside	
Ottawa, ON	112

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

DOIG RIVER FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

As represented by the Minister of Indian Affairs and Northern Development Canada

Respondent

**AMENDED DECLARATION OF CLAIM
OF DOIG RIVER FIRST NATION**

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*, and pursuant to the Endorsement of the Honourable W.L. Whalen dated June 13, 2016.

Date: June 27, 2016 ~~December 15, 2011.~~

(Registry Officer)

TO: Counsel for the Respondent Canada
Mary French and Josef Rosenthal
Department of Justice
900 – 840 Howe Street
Vancouver, BC V6Z 2S9
Tel: 604-666-8390
Fax: 604-666-2710
Email: mary.french@justice.gc.ca

Counsel for the Claimant Blueberry
River First Nations
James Tate, Ratcliff & Company LLP
500 – 221 West Esplanade
North Vancouver, BC V7M 3J3
Tel: 604-988-5201
Fax: 604-988-1452
Email: jtate@ratcliff.com

~~Assistant Deputy Attorney General, Litigation, Justice-~~
~~Canada Bank of Canada Building 234 Wellington Street,~~
~~East Tower Ottawa, ON K1A 0H8~~
~~Fax: (613) 954 1920~~

I. Claimant (R. 41(a))

1. The Claimant, Doig River First Nation ("DRFN") confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, in the Province of British Columbia. DRFN is one of two successor First Nations to the Fort St. John Beaver Band (the "Band"). The other successor is Blueberry River First Nations ("BRFN").

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) The 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. On April 12, 1999, DRFN filed its claim concerning Mineral Rights to Indian Reserves Nos. 204, 205 and 206 (the "Mineral Rights Claim").
4. By letter dated November 24, 2008, the Director General of the Specific Claims Branch informed DRFN that the Mineral Rights Claim met the Minimum Standard established by the Minister pursuant to the *Specific Claims Tribunal Act* and was deemed to be claiming compensation as set out in the Specific Claims Policy. According to this letter, the Mineral Rights Claim was deemed to have been filed with the Minister on October 16, 2008.
5. On May 24, 2009, DRFN filed its supplemental submission updating the original claim.
6. By letter dated December 21, 2009 from Michel Roy, Senior Assistant Deputy Minister, Treaties and Aboriginal Government, the Minister rejected DRFN's Mineral Rights Claim for negotiation. The Minister determined that Canada had

no outstanding lawful obligation to DRFN due to comments made by the trial judge in *Apsassin v. Canada*, [1988] 3 FC 20, 14 FTR 161, which concerned the claim of DRFN and BRFN regarding the surrender of the Fort St. John Beaver Band's original reserve IR 172 (the "Montney Reserve") in 1945. It appears to be the Minister's position that the trial judge's comments in *Apsassin* were determinative of the question of whether or not Canada had breached its obligation to provide the Band with the mineral rights in the reserves that it acquired subsequent to the surrender of the Montney Reserve.

7. DRFN disputes this basis for the rejection of its claim: The issues and claims raised in DRFN's Mineral Rights Claim were not properly before the trial court in *Apsassin* and were not finally determined by the comments made by the trial judge in his reasons for decision. As such, DRFN has decided to proceed by filing this claim for determination by the Specific Claims Tribunal of Canada.

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

8. For the purposes of this of this claim, DRFN does not seek compensation in excess of \$150 million.

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

9. The following are the grounds for the specific claim, as provided for in s. 14(1) of the *Specific Claims Tribunal Act*:
 - (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;

V. Allegations of Fact (R. 4I(e))

10. DRFN is located in British Columbia and is a signatory to Treaty 8. Treaty 8 was originally made at Lesser Slave Lake in 1899, and was ratified by Order in Council 363 on February 2, 1900. On May 30, 1900, 46 Beaver Indians from Fort St. John, the ancestors of the present-day DRFN and BRFN, adhered to Treaty 8.
11. Treaty 8 provides that Canada would set aside reserve lands for the use and benefit of the signatory First Nations in an amount of 128 acres per person.
12. On May 15, 1907, three and one half million acres of land known as the "Peace River Block", including mineral title to these lands, were conveyed by the Province of British Columbia (the "Province") to the Dominion of Canada. These lands were conveyed as part of a land agreement between Canada and the Province.
13. In 1914, reserve lands were surveyed within the Peace River Block for the Fort St. John Beaver Band.
14. On April 11, 1916, Canada set aside 18,168 acres of land within the Peace River Block as Indian Reserve 172 (the "Montney Reserve") for the use and benefit of the Fort St. John Beaver Band.
15. In 1930, Canada transferred the lands in the Peace River Block, aside from Indian Reserve lands, back to the Province.
16. In 1940, the Fort St. John Beaver Band surrendered the mineral rights in the Montney Reserve to the Crown for lease for the benefit of the Band.
17. The Montney Reserve contained prime agricultural land. Following the Second World War, the Crown faced increasing pressure to obtain a surrender of the Montney Reserve for the settlement of returning soldiers.

18. In 1945, the Fort St. John Beaver Band surrendered the Montney Reserve to the Crown for sale or lease for the Band's benefit. The surrender was confirmed on October 16, 1945 by Order in Council 6506.
19. In obtaining the surrender of the Montney Reserve, the Crown promised the Band that the Band would be provided with reserves as needed (the "Replacement Reserves"), which would be paid for from the funds obtained from the sale of the Montney Reserve.
20. In 1946, Indian Reserves 204, 205 and 206 - the Replacement Reserves - were surveyed. In total, the Replacement Reserves comprised 6194 acres.
21. In March 1948, the Montney Reserve, including title to the minerals underlying the reserve, was sold and transferred to the Director of the *Veterans' Land Act* for \$70,000.00.
22. In June 1948, the Fort St. John Beaver Band passed a Band Council Resolution authorizing the disbursement of not more than \$5,000.00 for the purchase of the surveyed Replacement Reserves. By Order in Council 9/2300, the Privy Council approved the expenditure of \$4,932.50 of the Band's capital funds for the purchase of the Replacement Reserves and these funds were transferred to the Province as payment for the lands.
23. On July 25, 1950, by Provincial Order in Council 1655, the Province transferred administration and control over the Replacement Reserves, as previously surveyed, to Canada. Apparently unbeknownst to Canada, subsurface rights were reserved to the Province.
24. On August 25, 1950, Canada set aside the Replacement Reserves-Beaton River IR 204, the Blueberry River IR 205 and the Doig River IR 206 for the use and benefit of the Fort St. John Beaver Band.

25. On September 8, 1950, on the apparent belief that it held the mineral title in the Replacement Reserve lands, Canada obtained a surrender of the mineral rights in the Replacement Reserves from the Fort St. John Beaver Band. This surrender permitted the Canada to lease the mineral rights in the Replacement Reserves for the Band's benefit.
26. On October 11, 1950, the Privy Council confirmed the surrender of the mineral rights for lease by Order in Council 4875.
27. On October 25, 1950, Canada issued mineral exploration permits with respect to the three Replacement Reserves to Halfway River Development Co. Ltd.
28. On January 25, 1952, the Province's Superintendent of Lands notified Canada that the mineral rights in the lands transferred for the Replacement Reserves had been reserved to the Province at the time of transfer.
29. Canada then examined the titles to the Replacement Reserves and confirmed that the mineral rights, including those to petroleum and natural gas, had been reserved to the Province in the transfer by Provincial Order in Council 1655, dated July 25, 1950.
30. The Director of the Indian Affairs Branch then informed Halfway River Development Co. Ltd. that the mineral rights to the Replacement Reserves were vested in the Province. Halfway River Development Co. Ltd. was reimbursed for the licence fees it had paid to Canada.
31. On May 19, 1977, the members of the Fort St. John Beaver Band voted to divide and form two new bands to be known as the Blueberry River Band and the Doig River Band. This division was approved by the Minister of Indian and Northern Affairs on August 8, 1977.

32. When the Fort St. John Beaver Band split, the Blueberry River Band obtained Blueberry River Indian Reserve No. 205 (approximately 2800 acres), and the southern half of the Beaton River Indian Reserve No. 204 (approximately 440 acres). The Doig River Band obtained Doig River Indian Reserve No. 206 (approximately 2450 acres) and the northern half of the Beaton River Indian Reserve No. 204 (approximately 440 acres).
33. On September 19, 1978, the Doig River Band and the Blueberry River Band filed a Statement of Claim in the Federal Court of Canada, alleging that Canada had breached its fiduciary duty in relation to the surrender of the Montney Reserve and its post-surrender dealings concerning the Montney Reserve land and mineral rights. The Bands sought declarations that:
- (a) The 1945 surrender was null and void;
 - (b) The 1948 transfer of the land to Veterans' Affairs was null and void;
 - (c) In the alternative, that the 1945 surrender and the 1948 transfer are of no force and effect with respect to mineral rights; and
 - (d) The Plaintiffs continue to be entitled by the terms of Treaty 8 to 18,168 acres of reserve land.
34. The Bands also sought an accounting and damages for loss in relation to the Montney Reserve, including loss of the use and benefit of the reserve and the loss of the past and future beneficial interest in the mineral rights in relation to the reserve.
35. While some of the issues related to mineral rights in the Replacement Reserves were discussed at trial to provide full context with respect to the claims concerning the surrender of the Montney Reserve, the Bands made no claim, and sought no relief, in relation to mineral rights to, or title in, the Replacement Reserves.

36. The Federal Court Trial Division dismissed the Bands' claim. Although the Statement of Claim did not allege a claim with respect to the loss of mineral rights in the Replacement Reserves and no relief was specifically sought in relation to any such claim, the trial judge made statements with respect to the terms on which Canada had agreed to provide the Replacement Reserves. The trial judge's statements included a comment that there was a lack of evidence to support the view that Canada undertook to provide mineral rights in the Replacement Reserves and that, in fact, the evidence tended to support the opposite view. These statements are set out in paragraphs 144 and 152 of the 178-paragraph decision.
37. In 1993, the Federal Court of Appeal dismissed the Bands' appeal. No issues related to the Replacement Reserves were raised or addressed on appeal.
38. The Bands were granted leave to appeal to the Supreme Court of Canada. On December 14, 1995, the Supreme Court of Canada allowed the Bands' appeal, determining that because the Fort St. John Beaver Band had surrendered its original reserve to "sell or lease", Canada had breached its fiduciary duty to the Band by inadvertently failing to reserve the mineral rights to the Montney Reserve when it transferred the land to the Director of the *Veterans' Land Act*. The Court determined that the Department of Indian Affairs committed further breaches by failing to utilize its authority, pursuant to s. 64 of the *Indian Act*, to reacquire mineral title to the Montney Reserve lands that remained in the possession of Canada (the Director of the *Veterans' Lands Act*) at or after the time at which Canada realized its error and the potential value of the Montney Reserve minerals.
39. The Supreme Court of Canada held that the First Nations' claim was not barred by the 30-year ultimate limitation period set out in British Columbia's *Limitation Act*, R.S.B.C. 1979, c. 236 because the action in relation to the latter breaches arose on August 9, 1949, when Canada knew that that it had transferred the mineral rights to the Montney Reserve in error and that these lands were

potentially very valuable. As such, the Bands were entitled to compensation for any losses stemming from transfers of land held by the Director of the *Veterans' Land Act* to private parties, where such losses took place on or after August 9, 1949.

40. On April 12, 1999, DRFN submitted the Mineral Rights claim to the Specific Claims Branch. An updated submission was provided to the Minister on May 24, 2009. On December 21, 2009, the Minister advised of his refusal to negotiate the Mineral Rights Claim on the basis of the statements made by the trial judge in *Apsassin*.

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

41. DRFN submits that Canada breached its fiduciary duty and/or contractual obligations to the Fort St. John Beaver Band by failing to secure the mineral rights in the Replacement Reserves when the land for the same was transferred to Canada by the Province in 1950, and in failing to correct this error or compensate the Band for the resulting loss.

42. It is clear that the original Fort St. John Beaver Band and Canada reached an agreement at the time of the surrender of the Montney Reserve to the effect that Canada would supply the Band with Replacement Reserves.

43. Further, it is clear that the parties understood that the Replacement Reserves were to include mineral rights because:

- (a) The legislation in force at the relevant time defined a "reserve" as including mineral rights. The *Indian Act*, S.C. 1876, c.18 defined the term "reserve" as "any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, but which is

unsurrendered, and includes all the trees, wood, timber, soil, stone, minerals, metals, or other valuables thereon or therein";

- (b) The Fort St. John Beaver Band had mineral rights in the Montney Reserve;
- (c) The Band surrendered its interests in the Montney Reserve on the understanding that it would receive Replacement Reserves and, barring any specific agreement to the contrary, Canada and the Band must have intended that the Band would receive these Replacement Reserves on the same terms that had applied to its original Montney Reserve;
- (d) Both parties' subsequent conduct in executing a surrender (for lease) of mineral rights in the Replacement Reserves demonstrates that they understood that the Replacement Reserves were to include mineral rights; and/or
- (e) Canada's subsequent conduct in issuing exploration permits in relation to the Replacement Reserves demonstrates that Canada intended and understood that the replacement reserves were to include mineral rights.

44. Canada was not aware that the land transferred by the Province for the Replacement Reserves excluded mineral rights and, as such, Canada did not inform the Band of this fact or obtain the Band's consent to exclude mineral rights from the Replacement Reserves.

45. DRFN submits that the comments of the trial judge in *Apsassin* were *obiter dicta* and not determinative of the issues raised in its Mineral Rights claim or of the claim itself. In the alternative, DRFN submits that, in the circumstances, it is in

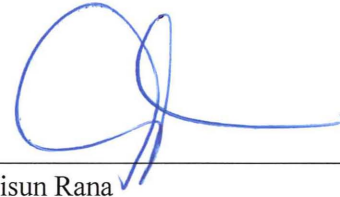
the interests of justice for the Tribunal to exercise its discretion to allow DRFN's Mineral Rights claim to proceed.

46. DRFN seeks compensation from Canada for the present value of:

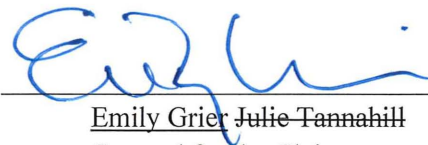
- a) Canada's breaches of fiduciary duty as set out in the Reasons for Decision of the Honourable W.L. Whalen dated November 5, 2015 (the "Breaches") and any losses resulting therefrom;
- b) Any future losses resulting from the Breaches; and
- c) Such other losses or compensation as this Honourable Tribunal deems just.

~~46. DRFN seeks compensation for the loss of the mineral rights in the Replacement Reserves, brought forward from the date upon which the reserves were set aside to the present, as well as future losses resulting from the Crown's breaches.~~

Dated this 27th day of June, 2016 ~~15th day of December, 2011.~~



Allisun Rana
Counsel for the Claimant
Doig River First Nation



Emily Grier Julie Tannahill
Counsel for the Claimant
Doig River First Nation

Submitted by Allisun Rana and Emily Grier Julie Tannahill, Rana Law, Barristers & Solicitors, Suite 102, 620-12th Avenue SW, Calgary, Alberta T2R 0H5, Ph: 403-455-3673, Fax: 403-452-9803, Email: allisun@ranalaw.com or emily@ranalaw.com.