

HER MAJESTY THE QUEEN IN RIGHT)
OF CANADA) Lauri M. Miller, for the Respondent
As represented by the Minister of Indian)
Affairs and Northern Development)
Respondent)
) **HEARD:** January 28, 2015

ENDORSEMENT

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on January 28, 2015, at 12:00 P.M., Eastern Time (Ottawa).

[1] The Respondent reported that it had produced documents in two installments, most recently this month as a result of the varying claims of the Claimants and the Amended Declaration of Claim of the Kawacatoose First Nation et al. The Claimants Kawacatoose First Nation et al., Star Blanket First Nation and Little Black Bear First Nation indicated that they had produced all of their documents. The Claimant Standing Buffalo Dakota First Nation indicated that it was in the process of organizing its documents, which it expected to produce on or by **February 27, 2015**. The Claimant Peepeekisis First Nation reported that it was checking its documents against what it had received from the other Parties, and that it would produce its documents on or by **February 27, 2015**.

[2] The Respondent reported that it had requested particulars from each of the Claimants and that each request was a little different in most cases. Each Claimant is to respond to the request for particulars on or by **February 27, 2015**. The subject will be canvassed at the next CMC.

[3] The Claimants Kawacatoose First Nation et al. and Standing Buffalo Dakota First Nation indicated that there was a document privilege issue. The Kawacatoose First Nation et al. had very recently sent a letter to the Respondent summarizing its concerns, but the Standing Buffalo Dakota First Nation had not done so yet. These Claimants agreed to attempt to resolve their concerns with the Respondent. The question will be canvassed at the next CMC.

[4] There was discussion about how to deal with the Claimants' different interests in a fair and efficient manner. The original Claimants will likely be focusing mainly on the validity of their claim while the added Claimants will be focusing on standing to participate in a validity claim. The Tribunal suggested that the validity phase be bifurcated into standing and validity stages, with the standing phase to be heard first. The Parties would make written submissions in respect of standing, including in respect of each other's right to standing. The standing phase would then proceed to hearing, including receiving evidence (such as oral history evidence). When the standing phase has been determined, the validity phase would proceed in the usual manner and involving all Parties with standing. The Parties agreed to seek instructions and to discuss the suggestion with a view to formulating a plan at the next CMC.

[5] The Respondent indicated that it had proposed an oral history protocol to the Claimants but had received no response. The Respondent described that the proposed protocol was based on a mixture of the protocol used in the Williams Lake Indian Band Claim and the protocol recommended by the Federal Court of Canada. The Respondent stated that it had used its proposed model in other cases and the model had worked well. The Claimant Kawacatoose First Nation et al. indicated satisfaction with the proposed model. The other Claimants had either not considered it or had some concerns. The Parties agreed to work cooperatively in reaching a consensus on a protocol. The question will be reconsidered at the next CMC.

[6] All of the Claimants intend to present oral history evidence, except for the Claimant Little Black Bear First Nation, which does not intend to do so. The Claimants proposing to adduce oral history evidence are at various stages of preparation. The Claimant Standing Buffalo Dakota First Nation proposes to put forward a transcript of sworn oral history testimony by two deceased elders who testified at a National Energy Board Tribunal hearing. The Claimant Standing Buffalo Dakota First Nation will provide the Respondent with a copy of the proposed transcript and the Respondent will be prepared to state a position on its admissibility at the next CMC. It was observed that oral history evidence may focus on different issues, i.e. standing and validity. All of the Claimants proposing to adduce oral history evidence agreed to identify their proposed elders and to produce Will-Say Statements of their proposed evidence on or before the next CMC.

[7] The Tribunal raised a question as to whether the Okanese First Nation should be served with a Section 22 Notice of possible interest in the proceeding because of a comment in respect of that First Nation in one of the pleadings. The Parties are to consider their positions on this question and provide it in writing to the Tribunal on or by **February 27, 2015** at which time the Tribunal will determine an appropriate course of action.

[8] Because of statements in a pleading, the Tribunal expressed concern that counsel for the Claimant Kawacatoose First Nation et al. could find himself in a conflict position, specifically in respect of the Piapot First Nation. Counsel assured that the situation had been resolved and that there would be no conflict.

[9] The Tribunal expressed concern that claims in paragraph 14 of the Claimant Kawacatoose First Nation et al.'s Declaration of Claim be stated as alternative claims. Counsel for this Claimant will consider the suggestion for further discussion at the next CMC.

[10] The next CMC will be held by teleconference on **April 24, 2015**, at 12:00 P.M. Eastern Time (Ottawa).

W.L. WHALEN

Honourable W.L. Whalen