

FILE NO.: SCT-5001-13
DATE: 20150511

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)
)
KAWACATOOSE FIRST NATION,)
PASQUA FIRST NATION, PIAPOT) David Knoll, for the Claimants
FIRST NATION, MUSCOWPETUNG)
FIRST NATION, GEORGE GORDON)
FIRST NATION, MUSKOWEKWAN)
FIRST NATION AND DAY STAR FIRST)
NATION)
Claimants)
)
- and -)
)
STAR BLANKET FIRST NATION) Aaron B. Starr, for the Claimant
Claimant)
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- and -)
)
LITTLE BLACK BEAR FIRST NATION) Michael Bailey and Ryan Lake, for the
Claimant) Claimant
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- and -)
)
STANDING BUFFALO DAKOTA FIRST)
NATION) Mervin Phillips and Leane Phillips, for the
Claimant) Claimant
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- and -)
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PEEPEEKISIS FIRST NATION) T. J. Waller, for the Claimant
Claimant)
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- and -)
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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:** April 24, 2015
)

ENDORSEMENT AND ORDER

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on April 24, 2015, at 12:00 P.M., Eastern Time (Ottawa).

[1] The Parties reported that they had resolved the issue of particulars.

[2] The Respondent indicated that its document research is still underway but expected to be completed by early May 2015. The Claimants Kawacatoose First Nation et al indicated that it had produced its documents. The other Claimants are still assembling documents. The issue will be reviewed at the next CMC.

[3] Counsel for the Claimants Kawacatoose First Nation et al indicated that Pasqua First Nation had identified four oral history witnesses and Muscowpetung First Nation one. He has not heard from the other First Nations in the group and will canvass their chiefs. Standing Buffalo Dakota First Nation reported that its oral history witnesses would be Elders: Wayne Goodwill, Vincent Ryder and Albert Yuzicappi. Star Blanket First Nation indicated that it has a list of Elder witnesses but has not finalized which of the Elders will be able to provide relevant evidence. Little Black Bear First Nation stated that it had identified potential oral history witnesses and started interviewing them to determine who might offer relevant evidence. Peepeekisis First Nation reported that its efforts to identify oral history witnesses had been delayed by the illness of its Chief and staff turnover. The Parties are to identify their potential oral history witnesses by

the time of the next CMC. Time lines for the completion of Will-Say statements will be considered at that time together with when, how and where the oral history evidence will be received.

[4] The Respondent reported that it had provided the Claimants with a proposed Oral History Protocol. After some changes were made, the Parties confirmed that they are in agreement with the protocol but they have not formally signed it pending development of details as to time lines and other matters. The protocol will be reconsidered at the next CMC in conjunction with the matters to be considered in respect of the receipt of oral history testimony.

[5] Standing Buffalo Dakota First Nation wishes to present the transcribed evidence of two now deceased Elders who testified before the National Energy Board. The Respondent expressed its opposition to admitting this testimony as oral history evidence on relevance grounds. Standing Buffalo is directed to provide all of the Parties with copies of the transcriptions of this proposed evidence so that they can formulate their positions for discussion at the next CMC, including the timing of an Application if agreement cannot be achieved by then.

[6] The Parties agreed that the Claims be bifurcated into a validity phase and a compensation phase. They also agreed that the validity phase be divided into sub-phases, including a standing sub-phase and a validity sub-phase. An order is issued below.

[7] There was discussion as to whether there would be a separate Common Book of Documents for each of the sub-phases of the validity phase and for the compensation phase, or whether there would be one Common Book of Documents that would serve all of the phases and sub-phases. The same question was discussed in respect of an Agreed Statement of Facts. The Parties are requested to discuss these matters further and be prepared to resolve the question at the next CMC.

[8] The Kawacatoose First Nation et al has filed an Application questioning whether under section 16(1)(a) of the *Specific Claims Tribunal Act* the Tribunal should be considering aspects of the claim filed by the Claimants with the Minister that have been accepted for negotiation.

The Application was only filed several days ago so there has been no response by any Party and the Parties indicated that they were still considering the matter. On consent, the Respondent's time for filing a Response is extended to **May 8, 2015**. After general discussion it appeared that the question of alternative claims addressed in paragraph 9 of the March 3, 2015 Endorsement may be dealt with in this Application. The timing of hearing the Application will be considered at the next CMC.

[9] Standing Buffalo Dakota First Nation reported its desire to enter certain documents into evidence and the Respondent voiced opposition on the basis of settlement privilege. The Tribunal suggested that Standing Buffalo Dakota First Nation make a formal request to the Respondent for the admission of the specified documents, and if the Respondent expressed opposition in reply or failed to reply within a reasonable time, Standing Buffalo Dakota First Nation could commence an Application for the admission of the documents in question.

[10] The First Nations indicated that they were having difficulty with funding these Claims, and that it was Canada's responsibility to provide a reasonable level of funding. For example, Standing Buffalo Dakota First Nation has identified an expert anthropologist to address its standing as a Claimant but it cannot contract without the funds to do so and Canada is not responding to this need. The Tribunal questioned its jurisdiction or other ability to deal with this issue and encouraged the Claimants to discuss the matter further amongst themselves to explore possible avenues of resolution. The question will be revisited at the next CMC.

[11] It is premature to discuss completion of a Common Book of Documents or an Agreed Statement of Facts until the document production is complete, the Application has been resolved and perhaps the Will-Say evidence or testimony of oral history witnesses has been received. The matter will be reconsidered at the next CMC.

[12] The possibility of a conflict of interest as raised in paragraph 8 of the March 3, 2015 Endorsement has been resolved. There is no conflict of interest.

[13] The next CMC will be held by teleconference on **June 22, 2015**, at 12:00 P.M., Eastern Time (Ottawa).

[14] Pursuant to Rule 10 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119, and upon the request of the Parties, **THE TRIBUNAL ORDERS that:**

- a. The hearing of the Claim shall proceed in two separate stages, in order to deal with issues of validity and compensation, respectively;
- b. The Tribunal will first hold a hearing and render its decision on the validity of the Claim (“Validity Stage”). This stage will be divided into sub-phases, including a standing sub-phase and a validity sub-phase;
- c. The second stage of this claim pertaining to compensation, including the principles of compensation and any applicable compensation criteria (“Compensation Stage”), will only proceed if the Claim is found to be valid. The Compensation Stage will not begin until the Validity Stage has been completed, the issue(s) of validity decided, and the Parties have exhausted any rights they may have for judicial review to the Federal Court of Appeal or appeal to the Supreme Court of Canada;
- d. If the Claim is ultimately determined to be valid, the Parties will have a reasonable amount of time to gather evidence relating to compensation, including expert evidence, before the Compensation Stage begins;
- e. The Parties may delay taking steps to prepare their cases on compensation until a determination is made on validity; and,
- f. In relation to this Order of Bifurcation, there shall be no costs awarded to either party.

[15] The Order for Bifurcation dated June 17, 2014 is hereby rescinded.

W.L. WHALEN

Honourable W.L. Whalen