

SPECIFIC CLAIMS TRIBUNAL	
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TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
August 31, 2015	
Nicholas Young	
Ottawa, ON	101

**SCT-5001-13**

**SPECIFIC CLAIMS TRIBUNAL**

**BETWEEN:**

**KAWACATOOSE FIRST NATION, PASQUA FIRST NATION, PIAPOT FIRST NATION, MUSCOWPETUNG FIRST NATION, GEORGE GORDON FIRST NATION, MUSKOWEKWAN FIRST NATION AND DAY STAR FIRST NATION**

**CLAIMANTS**

**-and-**

**LITTLE BLACK BEAR FIRST NATION**

**CLAIMANT**

**-and-**

**STAR BLANKET FIRST NATION**

**CLAIMANT**

**-and-**

**STANDING BUFFALO DAKOTA FIRST NATION**

**CLAIMANT**

**-and-**

**PEEPEEKISIS FIRST NATION**

**CLAIMANT**

**-and-**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**  
(as represented by the Minister of Aboriginal Affairs and Northern Development Canada)

**RESPONDENT**

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**NOTICE OF APPLICATION**  
**(pursuant to Rule 31)**  
**of Standing Buffalo Dakota First Nation**

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1. The following is an application by the Claimant, Standing Buffalo Dakota First Nation [“Standing Buffalo”] in relation to the admission of documents and transcripts into these proceedings.
2. The first area of the application involves documents exchanged by Standing Buffalo and the Respondent Crown for which the Respondent Crown has asserted a claim of settlement privilege. Standing Buffalo applies to have the following documents admitted for the purposes of these proceedings, at least for the purposes of the first stage of these proceedings, in determining whether the Claimant, Standing Buffalo has standing or an interest in these proceedings:
  - a. Correspondence from Phillips & Co. to Department of Justice dated June 19, 2014
  - b. Correspondence from Department of Justice to Phillips & Co. dated July 23, 2014
  - c. Correspondence from Phillips & Co. to Department of Justice dated July 31, 2014
  - d. Correspondence from Department of Justice to Phillips & Co. dated August 1, 2014
3. The above documentation was exchanged with no reference to settlement discussions. Nor does any of the documentation expressly state a claim of privilege. Further, these documents were exchanged with the Respondent Crown as a result of Standing Buffalo’s participation in the Federal Court proceedings in T-1616-11 to determine the terms under which Standing Buffalo would participate in these proceedings and conduct T-1616-11 excluding the content/claim of these proceedings.
4. In particular, the invitation from the Respondent Crown was made on February 28, 2012 to participate in the negotiation of the accepted claim with respect to the Last Mountain Reserve No. 80A 1918 Surrender Specific Claim as set out at paragraph 8 of the Declaration of Claim of Standing Buffalo.

5. Standing Buffalo sent correspondence to the Respondent Crown on June 19, 2014, addressing the invitation of Standing Buffalo to participate in the process to settle the claim with respect to the Last Mountain Reserve No. 80A 1918 Surrender Specific Claim and provided proposal regarding participation in the specific tribunal proceedings given the existence of the Federal Court proceedings in T-1616-11.
6. The correspondence of the Respondent Crown of July 23, 2014 was not marked without prejudice nor did it contain settlement discussions. Within the correspondence, the Respondent Crown admits that in 2012 Indian and Northern Affairs Canada invited Standing Buffalo to participate in anticipated negotiations of the Last Mountain Reserve No. 80A 1918 Surrender specific claim submitted to the Minister. The correspondence goes onto address the anticipated participation of Standing Buffalo in the specific claims proceeding. The correspondence is a direct admission by the Respondent Crown that it believes that Standing Buffalo has an interest in the within claim and is a party that has standing in these proceedings. This is directly relevant to the first sub phase hearing of the within proceedings.
7. The correspondence exchanged again on July 31, 2014 and August 1, 2014, again pertain to the agreement regarding Standing Buffalo's participation in the within proceedings to occur on the basis that the claim in relation to the Last Mountain 80A reserve would not be the subject of claim in T-1616-11.
8. The second area this application pertains to is the admission of National Energy Board transcripts and related documents pertaining thereto into these proceedings from Elders which are deceased and their evidence is no longer able to be provided first hand to the Tribunal. Standing Buffalo relies upon the necessity and reliability of the transcripts pursuant to the principles established in *Xeni Gwet'in First Nations v. British Columbia* 2004 BCSC 148. The Elders who provided oral traditional evidence as part of these tribunal hearings are now deceased and no longer able to provide this testimony as part of these proceedings nor is it part of any other written record. It is Standing Buffalo's position that the oral traditional evidence presented as part of these National Energy

Tribunal proceedings is reliable, and the tribunal will have the discretion to decide what weight the evidence should be afforded in rendering its determination.

9. The transcripts provide oral traditional evidence as to the relationship between the Crown and Standing Buffalo, as well as the unique circumstances of Standing Buffalo as a member of the 7 Council Fires and a non-treaty First Nation. There is also some reference to use of the lakes in the Qu'Appelle Valley.
10. The oral traditional knowledge evidence previously presented by Elder Dennis Thorne and Elder Clifford Tawiyaka before the National Energy Board Tribunal will be advanced as these individuals are now deceased and not available to provide testimony. A letter of April 15, 2015 was provided to the Respondent Crown outlining the particular portions of the transcript, providing an exhibit of a map relied up at the hearing and in the testimony as well as indicating the relevance and necessity to advance the transcripts at hearing:
  - 1) National Energy Board Hearing Transcripts (OH-1-2007) with respect to the TransCanada Keystone Pipeline GP Ltd. hearing held on June 14, 2007;
    - 9729-9768 (Elder Clifford Tawiyaka)
    - 9813-9927 (Elder Dennis Thorne)
  - 2) National Energy Board Hearing Transcripts (OH-2-2007) with respect to the Enbridge Pipelines (Westspur) Inc. ACCE project hearing held on April 12, 2007;
    - 2269-2317 (Elder Clifford Tawiyaka)
  - 3) National Energy Board Hearing Transcripts (OH-3-2007) with respect to the Enbridge Southern Lights GP Inc. hearing held on August 21, 2007; and
    - 4268-4314 (Elder Clifford Tawiyaka)
    - 4364-4433 (Elder Dennis Thorne)
  - 4) Map Showing Modern Political Boundaries of the Traditional Lands of the Dakota/Nakota/Lakota Nation

11. The Respondent Crown has not consented to the relief sought by Standing Buffalo with respect to either part of the within application addressing admission of documents and transcripts to which Standing Buffalo intends to rely upon as part of these proceedings.
12. The Claimant, Standing Buffalo respectfully submits that the Tribunal should admit the documents and transcripts indicated above for the aforesaid reasons.

All of which is respectfully submitted this 31<sup>st</sup> day of August, 2015

PHILLIPS & CO.



Per:

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