

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
F I L E D	D É P O S É
March 31, 2014	
Guillaume Phaneuf	
Ottawa, ON	37

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 -

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

RESPONDENT

- and -

LITTLE BLACK BEAR FIRST NATION

CLAIMANT

- and -

STAR BLANKET FIRST NATION

CLAIMANT

**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 provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

Date

Guillaume Phaneuf
Registry Officer

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

I. Claimant (R. 41(a))

1. The Claimant Little Black Bear First Nation (hereinafter “Band” or “Claimant” depending on the historical context) confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5, as amended. The First Nation is located within Saskatchewan.
2. The Claimant is represented by Mr. Jamie Hammersmith, Barrister and Solicitor, of Maurice Law Barristers and Solicitors, Saskatchewan Office: 243 Robin Crescent, Saskatoon SK S7L 6M8 and the e-mail address for service of documents is jhammersmith@mauricelaw.com.

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

3. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal 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 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;

4. The Last Mountain Reserve No. 80A 1918 surrender claim was submitted to the Specific Claims Branch on June 7, 2008 on behalf of Piapot, Day Star, Kawacatoose, Muskowekwan, Star Blanket, Pasqua and George Gordon First Nations.
5. On March 31, 2009, Anik Dupont, Director General, Specific Claims Branch, advised the First Nations that a review of the claim had been completed and that it was filed with the Minister as having met the minimum standards pursuant to the *Specific Claims Tribunal Act* and as set out in the *Specific Claims Policy and Process Guide*.

6. On December 8, 2011, Senior Assistant Deputy Minister Patrick Borbey advised the Piapot, Day Star, Kawacatoose, Muskowekwan, Muscowpetung, Star Blanket, Pasqua, George Gordon and Little Black Bear First Nations (the last of which had later joined as a party to the submission) that some of the allegations raised were accepted for negotiation. With respect to the surrender, Canada's position was that it did not breach its pre-surrender fiduciary duty and had complied with all *Indian Act* requirements for the taking of the surrender. The improper surrender allegation was not accepted for negotiation.
7. The December 8, 2011 letter noted that the issue of who the proper beneficiary First Nations were remained outstanding and that, prior to commencing negotiations, the beneficiary issue had to be resolved. Canada pointed out that determining the proper beneficiaries would impact on all aspects of the negotiations, including whether the surrender pursuant to provisions of the *Indian Act* was required from certain First Nations. Canada advised it would inform all First Nations of its position on the beneficiary question by February 2012.
8. On February 28, 2012 Acting Senior Assistant Deputy Minister Joelle Montminy determined that of the nine First Nations who submitted the specific claim, the Day Star, Pasqua, Piapot, Muscowpetung, Muskowekwan, George Gordon and Kawacatoose First Nations were proper beneficiaries. Canada was prepared to negotiate with the beneficiaries identified only aspects of the submission accepted for negotiation.
9. On February 28, 2012 a letter from Acting Senior Assistant Deputy Minister Joelle Montminy was sent to the Star Blanket First Nation and Little Black Bear First Nation stating that, although they were two of the nine First Nations that submitted the claim, they were not proper beneficiaries and therefore Canada would not engage in negotiations with them.
10. On February 28, 2012 a letter from Acting Senior Assistant Deputy Minister

Joelle Montminy was sent to the Standing Buffalo First Nation advising that the Last Mountain Reserve No. 80A 1918 Surrender claim had been submitted by a number of First Nations. It was Canada's position that the Standing Buffalo First Nation had an interest in 80A and the settlement of the claim. Canada therefore invited the Standing Buffalo First Nation to participate in the process to settle the claim.

11. Little Black Bear First Nation was a party to the original claim submission regarding IR 80 (the Last Mountain Indian Reserve). However, in a letter dated February 28, 2012, Canada decided that Little Black Bear First Nation was not a proper beneficiary with regard to this claim and advised Chief Clarence Bellegarde in the letter that it would not negotiate with Little Black Bear First Nation regarding this claim.
12. By way of letter to Canada dated March 12, 2012 the Peepeksis First Nation asked to be considered a claimant in the Last Mountain Reserve 80A claim. In a letter dated April 12, 2012, Anik Dupont, Director General, Specific Claims Branch advised the Peepeksis First Nation that they would not be added as a claimant and it was Canada's position that the First Nation was not a proper beneficiary to the claim.
13. At a meeting of First Nations with an interest in the claim on April 17, 2012, instructions were given to inquire of Canada whether negotiations could proceed on those aspects of the claim accepted for negotiation while determining whether the validity of the surrender could proceed by way of a declaration before the Tribunal.
14. On July 6, 2012 e-mail correspondence from Lyle Henderson, negotiator for Canada, advised that it was Canada's position that it would not be appropriate to "split" the claim for the purposes of both negotiating and litigating the same issues, the same facts and the same transaction concurrently.

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

15. The Claimant does not seek compensation in excess of \$150 million.

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

16. The grounds for the specific claim as provided for in s. 14 of the Specific Claims Tribunal Act are 14(b): a breach of legal obligation of the Crown under the Indian Act pertaining to lands reserved for Indians; 14(c) a breach of a legal obligation in its administration of reserve lands, or other assets of the First Nations, including unilateral undertaking that give rise to a fiduciary obligation in law; 14(d): an illegal lease or disposition by the Crown of reserved lands; and 14(e) a failure to provide adequate compensation for reserve lands taken by the Crown or any of its agencies under legal authority.

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

17. Treaty No. 4 between Her Majesty the Queen and certain Cree, Saulteaux and other Indians of the Northwest Territories was signed at Qu'Appelle on September 15, 1874. Order In Council 1332/1874 confirmed treaty No. 4. Treaty No. 4 covered a large territory including most of what is known today as the southern part of Saskatchewan, which included the Qu'Appelle Valley and Touchwood Hills areas.

18. Treaty No. 4 contemplated the setting aside of a reserve for the various First Nations that resided in the Treaty No. 4 area. SCT-5001-13 deals with the Last Mountain Reserve I.R. 80A, which was surveyed in 1885 and confirmed in 1889 as a reserve for the Touchwood Hills and Qu'Appelle Indians.

19. In the spring of 1884 John C. Nelson, Dominion Land Surveyor travelled to Long or Last Mountain Lake in order to select a suitable site(s) for Fishing

Station(s) for what he referred to as the Touchwood Hills and Qu'Appelle Valley Indians.

20. Nelson proposed that the Fishing Station should be reserved at the mouth of the "Little Arm" River on the Long or Last Mountain Lake. Nelson considered the south side of the lake, which had been previously utilized for fishing and winter camping, to be especially good for hunting ducks and other waterfowl.
21. The "Fishing Station" or "I.R. 80A" consisted of 2.2 square miles (1,408 acres), and was confirmed on May 17, 1889 as part of Order in Council 1151.
22. There is a significant amount of historical documentary evidence suggesting that the Little Black Bear First Nation had an interest in the lands that became I.R. 80A and were ultimately surrendered.
23. For example, in July 1924, Chief Surveyor Donald Robertson reviewed the matter as to who was entitled to share in this reserve. In a letter to the Deputy Minister dated July 21, 1924, Robertson stated:

Correspondence from Departmental headquarters at the time of selection refers to it as for the Indians in the vicinity of Long or Last Mountain Lake. Strictly speaking, the terms Qu'Appelle Valley Indians would include the File Hills reserves, which are Peepeekeesis, Okanase [sic], Star Blanke, Little Black Bear and also the Crooked Lakes reserves, which are Ochapowace, Kakewistahaw [sic], Cowesses, Sheseep and Sakimay, as well as Assiniboine and Standing Buffalo. All the above reserves are additional to those which apparently the Department has considered were entitled to share the proceeds of the sale of Indian reserve No. 80A [emphasis added].¹

24. On May 14, 1915 Inspector Graham had written to the Deputy Superintendent General of Indian Affairs, D.C. Scott, recommending that the surrender of IR 80A not proceed. In making this recommendation, Inspector Graham stated:

¹ Memorandum, Chief Surveyor Robertson to Deputy Minister, 21 July 1924, PAC, RG10, Vol. 8050, File 601/32-0-80A-2.

[A]s nearly as I can make out the Indians interested in this reserve are those of the Touchwood Hills Agency, Qu'Appelle Valley, which includes all the Indians of the Qu'Appelle, File Hills and Crooked Lake Agencies, as the latter claim they are interested to the same extent as are the Indians of Qu'Appelle and File Hills. If this is the case there would be about eighteen hundred Indians entitled to share in the proceeds derived from the sale of this reserve.²

25. These comments show that Little Black Bear First Nation has long been considered to be a part of the File Hills Agency and that Inspector Graham viewed the Indians of the File Hills Agency as partial beneficiaries of any proceeds that would result from the surrender of IR 80A.

26. Chief Harry Ball of the Piapot First Nation also considered Little Black Bear First Nation to be part of the group of Indian Bands with a claim to the lands formerly comprising IR 80A. Chief Harry Ball's letter to the Superintendent Reserves and Trusts, Department of Citizenship and Immigration, Indian Affairs dated February 9, 1954 stated, in part:

When Piapot asked for a fishing reserve for his band and six other bands, namely; Muscowpetung's, Gordon's, Poorman's, Day Star, Muscovequan, and Little Black Bear, from Hayter Reed, who was the Indian Commissioner, he was allotted the 80A Reserve burdening [sic] on Last Mountain Lake [emphasis added].³

27. On May 21, 1954 the Piapot Cree Nation wrote to Minister of Citizenship and Immigration, Walter Harris, regarding the matter of I.R. 80A. In their letter, the First Nation maintained that until recently no one knew that Piapot's interest in I.R. 80A had been surrendered. The letter stated, in part:

This affair about the Last Mountain fishing reserve had already been put through, but nobody knew it was a surrender until a few years ago.

I am sending a list of members, still living, on the Piapot Reserve

² Inspector Graham to D.S.G.I.A. Scott, 15 May 1914, PAC, RG10, Vol 3813, File 56101.

³ It seems that "burdening" should have been typed as "bordering." Chief Harry Ball to Allen, Superintendent Reserves and Trusts, Department of Citizenship and Immigration, Indian Affairs, 9 February 1954, PAC, Vol. 8050, File 601/43-0-80A-1.

and each one of them say there was never a band meeting. Fort Qu'Appelle is about forty-five miles away from the Piapot Reserve and it would have been impossible for the whole band to make the trip for that purpose.

Chief Piapot In his later years used to tell me that the Arm River portion was allotted to his band. This is a portion of the land in dispute.

*Muscowpetung's portion was east adjoining the Piapot portion and takes in the present Regina Beach. **Little Black Bear's portion was east of the two.** Note: this can be seen in the Land Titles Office, Victoria Ave., Regina. The four Touchwood reserves had theirs across the lake north of Regina Beach.*

The Pasqua Band had no share whatever as their own reserve adjoins a lake all along-the north boundary and had their own fishing reserve.

In regards to the document signed by M. Christianson about the surrender, so called, why did he persist In coming to the Piapot Reserve afterwards during the months of April, May, and June 1918 to try and get deceased Chief Masqua to sign or put his mark to the document. Our present chief, Harry Ball was the interpreter and I believe you have Ball's statement.

As long as the officials of the time, namely; W.M. Graham, Mr. Murison, Mr. Christianson, were living, any inquiries about the lake reserve were sidetracked and no information was available. It was only after they were all dead, we got a copy of the surrender.

In one of Mr. Christianson's visits to Chief Masqua the chief told him that he had a map of the fishing reserve, left him by the old chief Piapot. Mr. Christianson was surprised to see the map and he asked Masqua a loan of it, and that was the end of it. His reasons afterwards were it was lost in the Indian Office.

So you see in what we are in and we will not accept the documents as final.

We were cheated in the first place of eighteen sections from the reserve southeast of Wolseley, which had seventy-two sections to the present reserve of about fifty-four sections more or less. Our present stand remains the same and these are our reasons:

1st. The fishing reserve was never surrendered, that is legally, according to the Indian Act, there was no meeting.

2nd. The four Touchwood reserves had no rights to the area in dispute, they had their individual fishing areas.

3rd. The Pasqua Band had no share whatsoever.

4th. How could one Individual even though a chief sign any document, without the consent of his band [emphasis added].

28. According to Piapot, Piapot, Muscowpetung and Little Black Bear each had specified portions of I.R. 80A that were side by side; however, Pasqua had no interest, as their reserve proper bordered a lake.

29. On May 25, 1954 Director N.M. Jones prepared a reply to the Chief and Councillors of Piapot. This reply stated, in part:

You will recall that while discussing the complaints made by Chief Harry Ball concerning the surrender of the above noted Reserve, I pointed out that our investigation had come to a standstill, in that what few records we have on the matter do not disclose the manner in which the surrender was taken. You were interested in securing a copy of the surrender and in particular the declarations made by the Chiefs who signed it and as promised, I am enclosing copies herewith. Chief Ball has been quite consistent in stating that former Chief Musqua did not sign the surrender, although asked to do so several times. You will note that his mark appears on the document, which may or may not mean anything, but what would mean something in any Court is the fact that Musqua's name and mark appear in a declaration alleged to have been made before a Commissioner for Oaths at Fort Qu'Appelle on May 9, 1918. If Chief Ball's statement is correct, it is difficult to understand why Musqua made the declaration, for we have to assume that he was present before the Commissioner when the declaration was made.

As mentioned, there is some uncertainty as to what Bands were entitled to have an interest in this Reserve. The Reserve was set aside as a fishing station "for the Indians of the Touchwood Hills and Qu'Appelle [sic] areas" and our first records on the subject show that Poorman's, Day Star, Muscowequan, Gordon's, Piapot, Muscowpetung and Pasqua were the Bands railing within the general nomenclature of the establishment.

Who decided this is not clear and it is always possible the decision was wrong, but until someone can establish this fact, we have no alternative but to assume these were the proper Bands. Chief Ball

in his last letter to the Minister made various statements as to certain Bands being given certain portions and indicated there was at least on map in existence showing this. Your office investigated these statements and could not confirm them and our letter of August 12, 1954, to the Chief, seeking further information from him, has not been answered.

As was pointed out, there is no definite evidence to show either that the surrender was improperly taken or that the wrong Band have been sharing the land, and until we have something more definite to go on, it is not seen what further Investigation can be made by the Department.⁴

30. In fact, the Crown was required by the *Indian Act* to know who was entitled to the reserve. Only those Indians entitled to I.R. 80A could be present at a meeting and vote on the proposed surrender. Furthermore, for a valid surrender to occur, the Crown needed to know who was entitled to the reserve, since they had to ensure a majority of those Indians entitled to I.R. 80A, was present at the meeting, held for the purpose of voting on the surrender.

31. It is clear that there was uncertainty and confusion (which lasted for decades after the purported surrender) over who was entitled to I.R. 80A and who was entitled to be present at a meeting called for the purpose of voting on a surrender of the reserve. Given that the Crown did not know who was entitled to the reserve, they clearly did not know who was properly entitled to vote on a surrender of the reserve or whether a majority was present.

32. Even the Crown questioned the propriety of the surrender. In a memorandum dated June 17, 1954, Director Jones acknowledged:

...It is very difficult to comment on this case because the Indian Affairs Branch file on files covering the period at which the

⁴ L.L. Brown, Superintendent, Reserves & Trusts to E.S. Jones, Regional Supervisor of Indian Agencies, 1 December 1954, PAC, RG10, Vol. 8050, File 601/34-0-80A-1.

surrender was taken have been lost for some years and we have no records concerning the surrender which would indicate whether it was properly taken or was taken in the manner suggested by Chief Ball, that is, by merely having the Chiefs of the respective Bands sign the surrender. There is suspicion in the minds of our officials that the claim by the Indians may be only too true but it seems next to impossible to substantiate this from our records for, as stated above, we have none that are material...⁵

33. The evidence shows that Canada failed to properly manage competing interests and used its position of authority to effect the surrender. The evidence also shows that Canada's process of determining who was entitled to share in the reserve, and hence the proceeds of surrender, was confused and unorganized.

34. Oral history evidence as to Little Black Bear's interest in I.R. 80A also exists. This evidence can be summarized as follows:

- a) Alvin Bellegarde Sr.'s father, Archie Bellegarde, has told Alvin that Little Black Bear had land and fishing rights around the Regina Beach and Last Mountain Lake area. Archie Bellegarde's father was John Bellegarde Sr.;
- b) Sidney Akapew's father, Bob Akapew, has told Sidney that Little Black Bear had land in and around the Regina Beach area;
- c) Band Councillor Clarence Akapew's mother, Shorley Akapew, has told Clarence that Little Black Bear had land and fishing rights in and around the Regina Beach area;
- d) John D. Bellegarde's father, former Chief Wilfred Bellegarde, has told John that Little Black Bear had hay meadows and a place to fish around the Regina Beach area.

35. The Claimant raises the following additional allegations:

- a) Canada permitted the unauthorized construction of a roadway across IR80A;

⁵ Memorandum to Deputy Minister from H.M. Jones, 17 June 1954, PAC, Vol. 8050, File 601/34-0-80A-1.

- b) Canada failed to obtain compensation from non-Indians hauling water from IR80A;
- c) Canada permitted squatters to trespass on IR80A
- d) Canada failed to obtain compensation from campers who enjoyed free camping privileges and who caused damage to the beach and trees;
- e) Canada failed to arrange adequate leasing arrangements of IR80A and failed to act in the best interests of the First Nations by authorizing nominal lease arrangements, without consultation and the consent of the First Nations;
- f) Canada entered into grazing leases with two individuals at questionable rental rates without consultation and approval of the First Nations; and
- g) Canada allowed gravel to be removed without compensation and without consultation and approval from the First Nations.

36. All of this demonstrates that reliance on Canada's version of events would be imprudent, and that it is possible that Little Black Bear's interest in I.R. 80A was overlooked and/or ignored.

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

37. The alleged surrender of the Last Mountain Indian Reserve 80A on March 23, 1918 was not obtained in compliance with the surrender provisions of section 49 of the *Indian Act*, R.S.C. 1906, c. 81, namely, without approval from all Indian bands who had an interest in IR. 80A, without approval from eligible voting members of the signatory Indian bands who were habitual residents on or near I.R. 80A and without compliance with the surrender provisions of the *Indian Act*.

38. The surrender was not obtained in compliance with Treaty #4, which required the consent of the “Indians entitled thereto” before reserve lands could be “sold, leased or otherwise disposed of.”
39. The surrender of Last Mountain Indian Reserve 80A constituted a breach of Canada’s fiduciary duty because the surrender was not in the best interests of those Indian bands that had an interest in the reserve.
40. Canada breached its fiduciary obligation by entering into lease arrangements with third parties, contrary to the terms of the surrender on March 23, 1918 of Last Mountain Indian Reserve 80A. These terms stipulated that surrendered lands were to be held by the Crown in trust to sell.
41. Canada breached its fiduciary obligations by permitting the construction of a road over IR80A without lawful authority and with securing compensation;
42. Canada breached a lawful obligation by permitting the removal of water from a spring that was located on IR80A without lawful authority and without securing compensation.
43. Canada breached its fiduciary obligations by permitting squatters to trespass on IR80A;
44. Canada breached a lawful obligation by failing to obtain compensation from campers who enjoyed free camping privileges and who caused damage to the beach and trees;
45. Canada breached its fiduciary obligations by entering into various lease arrangements of land in IR80A that were inadequate, nominal in terms of rates, questionable in duration, contrary to terms requested by the First Nations, and contrary to terms of the surrender, all without consultation and approval of the First Nations and contrary to their best interests.

46. Canada breached its fiduciary obligation by failing to prevent the removal of gravel from IR80A without compensation and without consultation and consent of the First Nations.

DATED at the City of Saskatoon in the Province of Saskatchewan this 31st day of March, 2014.

MAURICE LAW

A handwritten signature in black ink, appearing to read 'Jamie Hammersmith', written over a horizontal line.

Per:

Jamie Hammersmith

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