

SPECIFIC CLAIMS TRIBUNAL		
F I L E D	TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	D É P O S É
	March 31, 2014	
	Guillaume Phaneuf	
Ottawa, ON	38	

SCT File No.: 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

STAR BLANKET FIRST NATION

Claimant

LITTLE BLACK BEAR FIRST NATION

Claimant

v.

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA**

(as represented by the Minister of Indian Affairs and Northern
Development Canada)

Respondent

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*.

March 31, 2014

Guillaume Phaneuf

(Registry Officer)

To: Assistant Deputy Attorney General, Litigation, Justice, Canada
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I. Claimants (R. 41(a))

1. The Claimant, STAR BLANKET FIRST NATION (the “First Nation”), confirms that it is a First Nation within the meaning of s.2 (a) of the *Specific Claims Tribunal Act*, located in the Province of Saskatchewan.

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) 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 Nations in writing of his decision not to negotiate the claim, in whole or in part.

....

3. The Last Mountain Reserve No. 80A 1918 Surrender Specific Claims submission 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.
4. 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*.
5. 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.

6. The December 8, 2011, letter noted that the issue of who the proper beneficiary First Nations 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.
7. 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.
8. 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.
9. At a meeting of the 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 the validity

of the surrender proceeded by way of a Declaration before the Tribunal.

10. On or around July 6, 2012, email correspondence from Lyle Henderson, negotiator for Canada, advised that it was Canada's position it would not be appropriate to "split" the claim for purposes of both negotiating and litigating the same issues, the same facts and the same transaction concurrently.
11. On August 20, 2013, the Claimant, Star Blanket First Nation requested that notice be given to it pursuant to section (s.) 22 of the *Specific Claims Tribunal Act*.
12. On August 29, 2013, the Tribunal provided the Claimant, Star Blanket First Nation with notice pursuant to section 22 of the *Specific Claims Tribunal Act* indicating that a decision in this matter may, in the opinion of the Tribunal, significantly affect the legal interests of the Claimant, Star Blanket First Nation.
13. On October 28, 2013, the Claimant, Star Blanket First Nation filed with the Tribunal an Application for leave and Application for Intervenor Status.
14. On or around February 27, 2014, in the Endorsement Honourable W.L. Whalen stated that upon the parties consent, Star Blanket First Nation and Little Black Bear First Nation shall be added as Claimants to the present claim and each First Nation shall file and serve a Declaration of Claim no later than March 31, 2014.

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

15. For the purposes of this claim, the Claimant, Star Blanket First Nation does not seek compensation in excess of \$150 million.

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

16. The following are the grounds for the specific claim, as provided for in s.14 of the

Specific Claims Tribunal Act:

- 14(b) a breach of a 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 reserve 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 was signed at Qu'Appelle on September 15, 1874. Treaty No.4 contemplated the setting aside of a reserve for the various First Nations which resided in the Treaty No. 4 area. Chief Wah-pii-mooes-too-sis entered into Treaty 4 on behalf of the Star Blanket First Nation.

- 18. A reserve was originally surveyed in 1876 for the Applicant near the Round and Crooked Lakes. On July 13, 1875, J.S. Dennis, the Surveyor General, made several recommendations to the Department of the Interior on Treaty No.4 reserve selection he stated:

....in setting apart any Reserves, the interests of the Indians should be considered so far as to give them all the necessary frontage upon a river or lake...

The Claimant was then forced or convinced to settle on a Reserve not in the proximity of any fishing lakes in 1880 in the File Hills area.

- 19. In contemplating the setting aside of reserve land pursuant to Treaty No. 4, in certain circumstances, essential resources were not found on First Nation resident reserves and, as a consequence, additional lands were set aside for relevant First

Nations. The Last Mountain Indian Reserve 80A, on the Little Arm River, on the south side of Long or Last Mountain Lake in the Qu' Appelle Valley, Saskatchewan, composed of 2.2 sq. miles (1,408 acres), was surveyed by Nelson in 1885 and confirmed on May 17, 1889, by Order in Council 1151 as a suitable site for a fishing station.

20. Although the Order in Council 1151 states that the Last Mountain Indian Reserve was set apart for the use of the Touchwood Hills and Qu' Appelle Valley Indians neither the survey nor the Order in Council identified the individual bands that had an interest in the reserve. The Claimant claims that there are historical documents and evidence that suggests that the location of the Fishing Station indicates that the Star Blanket First Nation had an interest in the Last Mountain Indian Reserve which was ultimately surrendered.
21. In 1907, the Department of Indian Affairs instructed Agent Graham to take up the question of the surrender of IR 80A. Graham inquired whether, in order to obtain a surrender, he was required to approach Piapot, Muscowpetung, Pasqua, the Sioux of Qu' Appelle Agency, Gordons, Muscowekwan, Day Star and Poormans or whether he could simply obtain a surrender from those living on IR 80A.
22. Secretary McLean responded that it was:

sufficient, under provisions of the Indian Act, to take a surrender of this reserve from the Indians resident on or near the same and interested therein, but of course the Indians for whom the reserve was set aside would be entitled to share in the distribution of the moneys received therefore.
23. On February 24, 1908, Graham wrote to Secretary McLean returning the surrender forms and stating “the Indians interested in this reserve would not consider the proposition.”

24. In 1913, there was a request by CPR Engineer Daniels to acquire 40 acres of 80A to lay a pipeline for the purpose of erecting bottle works from a spring on the reserve. Agents Murison and Nicol arranged for an “ad hoc” surrender signed by Chiefs and Councils from Poorman, Day Star, Gordon and Muskowekwan. Despite this Secretary McLean wrote to Daniels that, because the Indians were quite adverse to the surrender, the Department could not consider the request for the land.
25. In 1913, Secretary McLean inquired of Agent Murison which bands were interested in IR 80A “of the five bands in the Touchwood Agency and four bands in the Qu’Appelle Agency”. Agent Murison reported the File Hills Agency included Muscowequons, Gordons, Day Stars and Poormans. In the Qu’Appelle Agency he said “old Indians” claim Piapot had no claim to the Fishing Station; Pasqua and Muscowpetung had fishing privileges on Qu’Appelle Lake and were not mentioned when the Fishing Station was set aside; and Peepeekesis was the only Band to have a right to share in the Fishing Station.
26. On May 15, 1914, Graham wrote to the Department of Interior and Superintendent General of Indian Affairs (D.S.G.I.A.) Scott recommending that the surrender of IR. 80A not proceed for the following reasons:
-[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.....*
27. In February 1918, Deputy Superintendent General Scott request surrender forms be

sent to Inspector Graham so a surrender could be taken simultaneously from the Qu'Appelle and Touchwood Hills Agency Bands. This followed a number of events concerning IR 80A: permission being granted to use spring water on reserve to provide water to Regina Beach in 1915; frequent usage of the reserve by campers in the summer starting in 1916; a request to build a hotel on the reserve in 1916; concern raised in 1917 about sanitation conditions on the reserve; and a request in January, 1918, for permission to graze and produce hogs.

28. By letter dated May 17, 1918, Commissioner Graham forwarded a surrender document to Deputy Superintendent General Scott, dated March 23, 1918, for the surrender of 1,408 acres of IR 80A, in trust to sell, signed by the Touchwood Agency Chiefs from George Gordon, Poorman, Day Star and Muscowequon and the Qu'Appelle Agency Chiefs from Muscowpetung, Pasqua and Piapot.
29. The affidavit in support of the alleged surrender dated March 23, 1918, was signed with Agent Murison by Chief Gordon, Chief Kinequon, Chief Tawekesiquape and Chief Desjarlais from the Touchwood Agency. The second affidavit in support of the alleged surrender dated May 9, 1918, was signed with Agent Christianson by Chief Cappo, Chief Pasqua, and Chief Musqua from the Qu'Appelle Agency.
30. On May 27, 1918, Secretary McLean requested Inspector Graham provide information "as to the number of Indians of these bands entitled to vote, the number present at the meetings, the number voting for the surrender, and the number voting against."
31. On June 13, 1918, Inspector Graham provided certificates from Agents Christianson and Murison certifying that from Qu'Appelle Agency: Muscowpetung 18 for, none against, 6 absent; from Pasqua 19 for, none against, 6 absent; and from Piapot 31 for, none against, 21 absent. From the Touchwood

Agency: Poorman 30 for, none against, 8 absent; from Day Star 18 for, none against, 1 absent; from Gordon 42 for, none against, 6 absent; and from Muscowequon 38 for, none against and 4 absent.

32. On July 20, 1918, Order in Council P.C. 1813 was passed pursuant to s.49 of the *Indian Act* approving the “duly authorized surrender” by Muscowpetung, Pasqua and Piapot bands from the Qu’Appelle Agency and Poorman, Day Star, George Gordon and Muscowequon bands from the Touchwood Agency.
33. On June 4, 1919, 33 lots were sold by auction. Later, in July 1919, an additional 51 lots were sold. In August 1919, an additional 18 lots were sold. Some additional lots were sold in September, October and November 1919. However, by January 1938 it was reported there were 58 unsold lots.
34. Despite the surrender stipulation that the surrendered land be sold, on April 7, 1922, the Department and the Village of Regina Beach entered into a 21-year lease of nine acres of lakefront property for recreational purposes with a right to renew for another 21 years. On August 15, 1923, a lease was entered into between the Department and the Regina Beach Golf and Country Club for a quarter section of land to develop a municipal golf course. On June 18, 1928, a renewal of the lease was granted to the Village of Regina Beach, who had received the lease by assignment. On June 16, 1928, a grazing lease covering 160 acres was granted for five years with Florence Dufree, with a right to renew for further five years. Another five-year grazing lease, of approximately 450 acres, was granted to F. Wollatt on October 10, 1930, with a right to renew for another five years. Finally, on May 22, 1935, the Department entered into a lease with the Village of Regina Beach for 1,207.5 acres for a term of 20 years.
35. When it came to the distribution of the sale proceeds, Chief Surveyor Bray, in a memo dated September 23, 1919, wrote to the Department that IR 80A was set apart

for the Touchwood Hills and Qu'Appelle Valley Indians and the surrender was made by Muscowpetung, Pasqua, Piapot, Poorman, Day Star, George Gordon and Muskowekwan Bands to whom the settlement funds should be distributed.

36. On July 12, 1924, Chief Surveyor Donald Robertson reviewed the matter of who was entitled to share in the reserve. In his memorandum to the Deputy Minister, he advised as follows:

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 Blanket, 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].

37. Deputy Superintendent Scott wrote to Graham on July 19, 1924, that, although the File Hills reserves of Little Black Bear, Okanese, Peepeekeesis and Star Blanket could geographically be included under the term Qu'Appelle Valley Indians, this would also include the Assiniboine reserve, as well as the Kakewistahaw, Cowesses, Sheseep and Sakimay reserves. In his view Qu'Appelle Valley Indians was a "misnomer" since Qu'Appelle reserves, with the exception of Standing Buffalo (described by him as American Sioux Indians), were known as those around Fort Qu'Appelle as Piapot, Muscowpetung and Pasqua. Although 80A might not have been intended for Pasqua, he was reluctant to exclude them from sharing in the proceeds, since the correspondence at the time of the survey did not exclude them. This finding, as to who were the Touchwood and Qu'Appelle Indian Bands, Scott considered was consistent with those bands Graham had considered were eligible to vote in the surrender.

38. On June 20, 1924, Commissioner Graham wrote to Deputy Superintendent General Scott regarding claims by the File Hills Indians who claimed to be entitled to a share in the proceeds, which in his opinion “is well founded, that they are Qu’Appelle Indians”. He referenced elders who said the fishing station 80A was for bands who had no access to fishing lakes which excluded Pasqua and Piapot but included Poorman, Day Star, Muscowequan, Gordons, File Hills Bands and Muscowpetung.

39. The distribution of the settlement proceeds up until 1937 were made proportionately to the seven bands that allegedly participated in the surrender. However, on August 29, 1938, a lawyer for the Touchwood Agency Bands stated that the four bands he represented asserted that the Qu’Appelle Bands had no interest in IR 80A since they were located next to a lake or close to one, that the fishing station was intended only for them and that the Qu’Appelle Bands should not receive the benefits of the settlement proceeds. The Director of Indian Affairs responded, that according to the Order in Council confirming the reserve in 1889 for the Touchwood Hill and Qu’Appelle Valley Indians, the Indian Bands who had an equal interest in IR 80A were Piapot, Muscowpetung, Standing Buffalo, Pasqua (from Qu’Appelle Valley) and Gordon, Muscowequan, Day Star and Poorman (from the Touchwood Hills district).

40. Later in March, 1949, the Regional Supervisor of Indian Agencies inquired of the Department as to which bands were entitled to share in the surrender proceeds, since some Indians claimed specific areas of the reserve were allocated to them while others mentioned they had rights to the reserve. In response Superintendent Allen, Reserves and Trusts, in a letter dated April 2, 1949, stated IR 80A was set aside for the benefit of Pasqua, Piapot, Muscowpetung, Gordon, Day Star, Poorman and Muskowekwan Bands.

41. On February 25, 1954, Mr. Wang, Member of Parliament for Qu’Appelle, forwarded to the Minister of Citizenship and Immigration a letter dated February 9,

1954, from Piapot Chief Ball and Councillors Crowe and Watetch alleging that the signatories to the surrender were approached individually over three months by Inspectors Murison and Christianson to sign the surrender; that no meeting was held; and that Chief Ball was interpreter at the time and was therefore aware of the repeated requests. He also identified the bands for which the reserve was set apart. Chief Ball wrote, in part:

The signatories to the surrender were approached individually and were all illiterate and the last on the list was Masqua who was the Chief of Piapot Reserve at the time. While the signature of Masqua was on the surrender, in March 1918, he was approached time and again for three months after that, by the then Inspectors Murison and Cheristianson and was asked to sign the document.

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 as the Indian Commissioner, he was allotted the 80A reserve bordering on Last Mountain Lake. The Pasqua Reserve had a lake bordering their reserve, so they had no share in 80A...

42. In support of this was a statement enclosed with the letter from Chief Ball which stated:

This is to certify that as a private member in 1918, during the summer months of May, June, July, I was asked to act as an interpreter for Inspector Christianson to explain to Chief Masqua that his signature was necessary to finish the deal or surrender. Masqua replied to the Inspector that he did not have the right without the Band's permission to sign any document. He never signed or put his mark as far as I knew.

43. On May 21, 1954, Chief Ball and Councillor Watetch wrote a follow up letter to

the Minister of Citizenship and Immigration stating that until recently no one at Piapot knew of the surrender; that Piapot, Muscowpetung and Little Black Bear had specified portions of IR 80A set aside for them; that Pasqua had no interest in 80A since their reserve bordered a lake; that the Touchwood Bands did not have an interest in 80A since they had their own Fishing Stations; that a list of Piapot members could verify there was never a surrender meeting; and that Inspector Christianson persisted over three months to get Chief Masqua to sign the surrender.

44. On May 25, 1954, Director Jones replied to the Piapot Chief and Councillors “there was no evidence uncovered that would indicate that the surrender was not given in accordance with the provisions of the then Indian Act” and that the consent of a majority of the members was obtained. Furthermore, he stated that while Pasqua was to share in the reserve Little Black Bear was not, having been allocated a reserve in the File Hills area.

45. However, in a memorandum dated June 17, 1954, Mr. Jones acknowledged:

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

46. On December 1, 1954, Superintendent Brown wrote to Jones that he had reviewed the matter of IR 80A and could not confirm or discount the allegations made by Chief Ball. He suggested another interview with Chief Ball stating that a further investigation was fruitless until they discovered something more to go on.

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 areas” and our first records on the subject show that Poorman’s, Day Star, Muscowequan, Gordon’s, Piapot, Muscowpetung and Pasqua were the Bands falling 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....

As was pointed out, there is no definite evidence to show either that the surrender was improperly taken or that the wrong Bands 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....

47. The Claimant raises the following additional allegations:

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

VI. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached its lawful obligations.

48. The alleged surrender of Last Mountain Indian Reserve 80A on March 23, 1918, was not obtained in compliance with the surrender provisions under s.49 of the *Indian Act*, R.S.C. 1906, c.81, namely, without approval obtained from all Indian bands who had an interest in IR 80A; without approval obtained from the eligible voting members of the signatory Indian bands who were habitual residents on or near 80A; and without compliance with the surrender provisions of the *Indian Act*.
49. The surrender was not obtained in compliance with Treaty No. 4 which required the consent of the “Indians entitled thereto” before reserve lands could be “sold, leased or otherwise disposed of.”
50. Canada breached its fiduciary obligation by obtaining the surrender of Last Mountain Indian Reserve 80A on March 23, 1918, which was not in the best interests of those Indian bands that had an interest in the reserve.
51. Canada breached its fiduciary obligation by entering into lease arrangements with third parties, contrary to terms of the surrender on March 23, 1918, of Last Mountain Indian Reserve 80A. These terms stipulated that the surrendered lands were to be held by the Crown in trust to sell.
52. Canada breached its fiduciary obligations by permitting the construction of a road over IR80A without lawful authority and with securing compensation.

53. 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.
54. Canada breached its fiduciary obligations by permitting squatters to trespass on IR80A.
55. 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.
56. 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.
57. 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 this 31st day of March, 2014.

McKERCHER LLP

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