

SCT-5001-13

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES		
F I L E D	September 25, 2014	D É P O S É
Nicholas Young		
Ottawa, ON	57	

**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-

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

RESPONDENT

-and-

STANDING BUFFALO DAKOTA FIRST NATION

APPLICANT

APPLICATION FOR LEAVE and APPLICATION FOR PARTY STATUS

**Pursuant to Rules 29, 30, 31 and 34 of the *Specific Claims Tribunal Rules of Practice and
Procedure* and Section 24 of the *Specific Claims Tribunal Act***

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

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AND TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA

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APPLICATION FOR LEAVE and APPLICATION FOR PARTY STATUS

I. RELIEF SOUGHT

TAKE NOTICE than an application will be made on behalf of the Applicant, STANDING BUFFALO DAKOTA FIRST NATION (“Standing Buffalo”), before the Specific Claims Tribunal (the “Tribunal”), at a time and place to be determined by the Tribunal, for the following relief:

- (a) An order for leave of the Tribunal to bring an application pursuant to Rule 30 of the *Specific Claims Tribunal Rules of Practice and Procedure* (the “Rules”); and
- (b) An order that the Applicant be granted party status in the within action pursuant to Section 24 of the *Specific Claims Tribunal Act* (the “Act”).

II. GROUNDS

TAKE NOTICE that this application is brought on the following grounds:

1. The Declaration of Claim in *Kawacatoose First Nation et al. v. Her Majesty the Queen in Right of Canada* (SCT-5001-13) asserts Canada breached its fiduciary obligations in relation to the surrender of approximately 1,408 acres of Last Mountain Reserve IR 80A (the “Last Mountain Reserve”) in 1918 in which the surrender was not obtained in compliance with the surrender provisions of the *Indian Act*, R.S.C. 1906, c.81, or the terms of Treaty 4.
2. Standing Buffalo is part of the Dakota/Sioux Nation, which has had traditional land in what is now known as Canada since prior to contact with Europeans. This traditional land is located primarily in what is now known as Alberta, Saskatchewan and Manitoba. Standing Buffalo has never signed a treaty and relies upon ally-ship in its historical relationship with Canada. There is acknowledgment of Aboriginal Title of the reserve situate at Standing Buffalo First Nation No. 78, however Standing Buffalo claims un-extinguished Aboriginal Title beyond same. Further there is acknowledged Aboriginal Title in the Last Mountain Reserve as provided for hereafter.

3. Between the Dakota/Sioux and the Crown there is a special relationship, which is known in the Dakota language as *ochechea*, *zoya ochechea-pi*, and *apa to dehun okcheya okum-pi* (roughly translated as ‘alliance’ or ‘ally-ship’), and this relationship creates heightened obligations on the Crown in comparison to the Crown’s obligations to Aboriginal people in general, based on the fact that the specific obligations of the Crown in relation to a particular Aboriginal people arise out of the specific nature of their relationship.
4. The original claims submission for the Last Mountain Reserve 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 February 28, 2012, a letter from Acting Senior Assistant Deputy Minister Joelle Montminy was sent to the Standing Buffalo First Nation advising of the claim that had been received with respect to the Last Mountain Reserve. 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 with respect to the claim.

The Last Mountain Reserve Claim

6. 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 the Touchwood Hills and Qu’Appelle Valley Indians. He proposed that the Fishing Station should be reserved at the mouth of the “Little Arm” River on the Long or Last Mountain Lake.
7. On May 17, 1889, the Last Mountain Reserve was selected as the site for the “Fishing Station” to be used by the First Nations in the Touchwood Hills and Qu’Appelle Valley Indians by the Order in Council 1151.
8. There is extensive oral traditional evidence in addition to documentary historical evidence including archeological evidence as to Standing Buffalo’s use of the site of the site at the Long or Last Mountain Lake at or near the site of the Last Mountain Reserve as part of their traditional territory and following creation of the Standing Buffalo Reserve.

This evidence suggests that Standing Buffalo had an interest in the lands that became the Last Mountain Reserve and were surrendered.

9. 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

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

[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

11. Standing Buffalo is a band within the Qu'Appelle Valley and its band members Indians of the Qu'Appelle Valley, and as such Inspector Graham viewed the Indians of the Qu'Appelle partial beneficiaries of any proceeds that would result from the surrender of the Last Mountain Reserve.

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

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

12. It is clear that the Crown had uncertainty and confusion as to who was entitled to benefit of the Last Mountain Reserve, and given this it is clear the Crown did know who was properly entitled to vote on the surrender or obtain a majority in support of the surrender.
13. Even the Crown questioned whether the surrender properly occurred. 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 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...³

14. 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.
15. Oral history and archeological evidence as to Standing Buffalo's interest in the Last Mountain Reserve exists and supports Standing Buffalo as a party to these proceedings:
 - a. Oral traditional knowledge evidence of Elders Wayne Goodwill, Dennis Thorne, Clifford Tawiyaka, Elder Vincent Ryder and Elder Albert Yuzicappi.
 - b. Archaeological evidence of Standing Buffalo use of the Last Mountain Reserve.
16. Standing Buffalo has consulted with the Crown regarding participation in these proceedings notwithstanding the existing comprehensive claim in the Federal Court in T-1616-11. Pursuant to s. 15(3) of the *Act* where "there are proceedings before a court or tribunal other than the Tribunal that relate to the same land or other assets and could result in a decision irreconcilable with that of the claim or that are based on the same or

³ Memorandum to Deputy Minister from H.M. Jones, 17 June 1954, PAC, Vol. 8050, File 601/34-0-80A-1.

substantially the same facts”, then the First Nation is not able to file a claim. Standing Buffalo has proposed and consented to an amendment of the Statement of Claim in T-1616-11 to exclude any cause of action pertaining to the Last Mountain Reserve addressed through the Specific Claims Tribunal process. Canada has indicated it is prepared to proceed on this basis and does not oppose Standing Buffalo’s involvement in the claim with respect to the Last Mountain Reserve.⁴

17. On August 12, 2014, the Applicant requested that notice be given to it pursuant to s. 22 of the *Act*.
18. On August 19, 2014, the Tribunal provided the Applicant with notice pursuant to s. 22 of the *Act* indicating that a decision in this matter may, in the opinion of the Tribunal, significantly affect the legal interests of the Applicant.
19. The Applicant has a direct interest in the claim and outcome and therefore the Applicant requests the Tribunal grant leave to the Applicant for the application and grant the relief requested for the Applicant to be granted party status.

III. CONSENT

20. The Respondent has indicated in correspondence to the Tribunal dated August 1, 2014 that it does not oppose the relief sought herein, namely the applicant being added as a party to the within proceedings.
21. The Applicant is unaware of the position of the claimants in these proceedings at this time.

⁴ Letter from Lauri M. Miller of the Department of Justice Canada to Specific Claims Tribunal of Canada dated August 1, 2014.

IV. COMMUNICATION

22. The name, address and telephone number of the Applicant and its legal counsel are as follows:

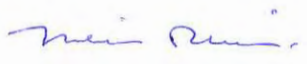
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23. If the Applicant is granted party, it intends to present evidence and legal arguments.
24. The Applicant intends to support the claimants' position regarding the non-validity of the surrender of the Last Mountain Reserve and also the Crown's breach of fiduciary obligations.
25. The Applicant intends to use the English language in these proceedings.

DATED at the City of Regina in the Province of Saskatchewan this 24th day of September, 2014

PHILLIPS & CO.

Per: _____


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