

FILE NO.:SCT-5001-13
DATE: 20150630

**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)
)
- and -)
)
LITTLE BLACK BEAR FIRST NATION) Michael Bailey, for the Claimant
Claimant)
)
- and -)
)
STANDING BUFFALO DAKOTA FIRST) Mervin Phillips, for the Claimant
NATION)
Claimant)
)
- and -)
)
PEEPEEKISIS FIRST NATION) T. J. Waller, for the Claimant
Claimant)
)
)
- and -)
)
)

HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	Lauri Miller and Donna Harris, for the
As represented by the Minister of Indian)	Respondent
Affairs and Northern Development)	
)	
)	
Respondent)	
)	
)	
)	HEARD: June 22, 2015

ENDORSEMENT

Honourable W.L. Whalen

A Case Management Conference (CMC) was held by teleconference on June 22, 2015, at 12:20 P.M., Eastern Time (Ottawa).

[1] The Parties reported that they had completed document production with a few possible exceptions: Standing Buffalo First Nation may have further documents if found by an expert anthropologist; Peepeekisis First Nation has just learned of the possible existence of a tape recording of an elder that it will produce if found, and; oral history Will-Says must be prepared and produced.

[2] The Parties further reported that they agree in principal on a draft protocol for oral history to be received from living witnesses. The draft protocol cannot be finalized until it is known how many witnesses will testify, and it is known where and when the oral history testimony will be received. The protocol will be filed once those dates are set.

[3] The Parties have all identified potential oral history witnesses and are at varied levels of preparation. It is directed that the Parties intending to produce oral history evidence identify their proposed witnesses and produce Will-Says of such witness' expected testimony on or before **August 31, 2015**.

[4] Oral history witnesses will give testimony relevant to both the Standing and Validity Sub-phases at the same time. The Parties are directed to discuss the potential location and timing of the oral history testimony hearing, which will be discussed at the next CMC. The Parties that require interpretation for oral history witnesses are requested to identify and propose qualified interpreters for discussion and planning at the next CMC. They must submit particulars in writing to the other Parties and the Registry prior to the next CMC in order to facilitate discussion.

[5] Standing Buffalo First Nation confirmed its desire to admit into evidence transcripts of the testimony of some of its elders, taken at a National Energy Board hearing. The Crown and perhaps some of the other Parties are opposed. Standing Buffalo First Nation also seeks the admission into evidence of some documents that may attract settlement privilege. Standing Buffalo First Nation is directed to produce copies of the proposed documents to the Crown and other Parties by **July 15, 2015**. Standing Buffalo First Nation is further directed to bring such Applications as it thinks appropriate to obtain admission of the said documents and transcripts into evidence by **August 31, 2015**. Standing Buffalo First Nation indicated that these documents and transcripts are related to the issue of standing, so that any Applications for their admission should be resolved before the commencement of the Standing Sub-phase hearing. Standing Buffalo First Nation shall serve its Applications on all Parties; All Parties shall have the right to respond.

[6] Standing Buffalo First Nation confirmed its intention to engage an expert in anthropology in aid of its position on the standing issue. However, it cannot engage the expert without funding, which remains a problem. The Tribunal indicated that it could not assist the Parties with funding. Other Parties reported that they had been recently approved for funding. Standing Buffalo indicated that it would follow up with its request for funding in view of the assistance having been provided to the other First Nation Parties. This question will be revisited at the next CMC.

[7] The Crown and some Parties expressed concern that Standing Buffalo First Nation might intend its anthropological expert to deal with the question of un-extinguished aboriginal rights and title. The basis of concern was the Tribunal's specific lack of jurisdiction to deal with this

issue, as well as the potential broadening of the dispute with resulting increased pressure on time and resources. If Standing Buffalo First Nation intends to instruct its proposed anthropological expert to deal with un-extinguished aboriginal rights and title, it is directed to instruct the expert to deal with those issues in separate severable parts of any report that may be intended to support its position at hearing.

[8] There was discussion on the manner of proceeding from this point forward. There was consensus that after Applications for admission of evidence have been resolved and after all proposed oral history testimony has been received at a hearing for that purpose, the hearing of the Standing Sub-phase should proceed to hearing and be resolved before the hearing of the Validity Sub-phase commences. It is ordered that these Claims proceed on that basis. The location and timing of the Standing Sub-phase hearing will be discussed at the next CMC, along with the location and timing of the oral history testimony hearings.

[9] It is directed that the Parties co-operatively prepare an Agreed Statement of Issues on the question of standing. Each Claimant shall submit a proposed Statement of Issues from its perspective to the Crown and all other Parties on or before **August 15, 2015**. The Parties will work together on reconciling the various Statements of Issues into one Agreed Statement of Issues on Standing. Progress will be discussed at the next CMC.

[10] The Parties are requested to work collectively on a Common Book of Documents that will serve both the Standing Sub-phase and the Validity Sub-phase of hearing. They are also requested to work collectively on the preparation of an Agreed Statement of Facts for the Standing Sub-phase hearing, while acknowledging that this document cannot be finalized until after the oral history testimony hearing. Progress on these documents will be reviewed at the next CMC.

[11] The Application brought by the Kawacatoose First Nation et al will be held in abeyance until the Standing Sub-phase has been heard and resolved. Consideration of possible experts and the preparation of Agreed Statement of Issues and Agreed Statement of Facts in respect of the Validity Sub-phase are premature until resolution of the Standing Sub-phase.

[12] The next CMC will be held by teleconference on **September 9, 2015** at 11:00 A.M., Eastern Time (Ottawa).

W.L. WHALEN

Honourable W.L. Whalen