

SPECIFIC CLAIMS TRIBUNAL

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F I L E D	TRIBUNAL DES REVENDICATIONS PARTICULIÈRES February 11, 2014 Amy Clark	D É P O S É
Ottawa, ON	1	

B E T W E E N:

WOOD MOUNTAIN LAKOTA FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indian Affairs and Northern Development

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*.

February 10, 2014

Amy Clark

(Registry Officer)

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Indian Affairs and Northern Development
Assistant Deputy Attorney General, Litigation, Justice Canada
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CLAIM

I. Claimant (R.41(a))

1. The Claimant, Wood Mountain Lakota First Nation, (the "Nation"), confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, S.C. 2008, c. 22 (the "Act"), 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:
 - a) s.16(1)(a): The Minister has notified the First Nation of his decision not to negotiate the claim in whole or in part.
3. The Nation filed its claim with the Specific Claims Branch on August 27, 2010.
4. On August 24, 2012, the Nation was advised that Canada did not accept the within claim for negotiation.

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

5. For the purposes of this claim, the Nation does not seek compensation in excess of \$150 million.

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

6. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:
 - a) a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown;

- b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to Indians or lands reserved for Indians – of Canada or a colony of Great Britain of which at least some portion now forms part of Canada;
- c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation;
- d) an illegal lease or disposition by the Crown of reserve lands; and
- e) a failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority.

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

- 7. The Nation is a Lakota Sioux First Nation whose traditional lands straddled both sides of the modern day United States of America and Canadian border.
- 8. The Nation has claimed prior use and occupation of lands in southern Saskatchewan.
- 9. Members of the Nation permanently re-entered into Canada from the United States of America following the defeat of Lieutenant Colonel George Custer at the Battle of Little Big Horn in June of 1876.
- 10. Following the purchase of Rupert's Land in 1869, the Crown set about settling the modern Canadian west with British settlers.
- 11. The Crown had valid policy reasons to provide lands to the Nation and had a policy of setting out reserve lands for the Sioux peoples (including all nine Lakota/Dakota bands) and, in fact, set out such lands for Sioux Bands in Canada both prior to and after 1910. Indian Commissioner David Laird observed that the "basic principle of our Indian Policy has for its basic object...not the meting out

of their strict rights or the advancement of the interest of the Indians as a race apart, but instead settling landless Indians on reserves to curb their nomadic ways and prevent them from becoming a 'public nuisance'."

12. David Laird specifically considered the plight of the Sioux, and he considered it appropriate to give them reserves because he considered having the Sioux wandering freely over the country to be against the public interest.
13. Laird's view is also consistent with policy set by the Privy Council who took note of the Sioux Bands in the Northwest Territories in 1873 and by order in council #1873-0002 resolved to set apart reserves for them.
14. Beginning in 1909, and with the assistance of Reverend A.D. Pringle, the Nation began requesting that the Crown create a reserve or otherwise set apart lands for the use of members of the Nation.
15. In the same year, the Crown unilaterally undertook to withhold the whole of Township 4, Range 4, West of the third meridian from sale or settlement until the Crown could ascertain how much land was required for the Nation's reserve and advised Reverend A.D. Pringle of its intention to do so.
16. In April 1910, the Crown instructed William M. Graham, then the Inspector of Indian Agencies ("Graham"), to "Proceed at [his] earliest conveniences to the locality and inform [himself] of the facts and requirements of these Indians and forward to the Department a list of sections, accompanied by a sketch of those that should be reserved in the said township for the use of the Indians in question."
17. In or about June or July of 1910, Graham met with the members of the Nation for the purpose of selecting a reserve for the Nation.
18. On July 12, 1910, Graham reported that he had completed his meeting with the Nation and selected the North half of Township 4, Range 4, West of the third

- meridian, less the N.E. quarter of Section 27 and three quarters of Section 26 as the Nation's reserve.
19. Thereafter, as requested, the Crown agreed or unilaterally undertook to provide, and did provide, the Nation with a reserve comprising the North half of Township 4, Range 4, West of the 3rd Meridian, less the N.E. quarter of Section 27, and the N.W. quarter and South half of Section 26 ("Wood Mountain Reserve").
 20. The Wood Mountain Reserve was a reserve within the meaning of the *1906 Indian Act*, R.S.C. 1906, c.81 ("*1906 Indian Act*"). Alternatively, it was a cognizable Indian interest.
 21. The members of the Nation moved to the Wood Mountain Reserve and began occupying it by the summer of 1911.
 22. Subsequent to the establishment of the Wood Mountain Reserve, J.D. McLean, Secretary of the Department of Indian Affairs, wrote to P.G. Keyes, Secretary of the Department of Interior, on July 21, 1910, that the Wood Mountain Reserve be confirmed by Order in Council. N.O. Coté, Chief of the Land Patent's Branch of the Department of Interior, subsequently referred J.D. McLean's request to the Deputy Minister, W.W. Cory.
 23. W.W. Cory replied to N.O. Coté on October 14, 1910, that it had been decided to simply reserve the Wood Mountain Reserve in the Department of the Interior's books but that they should not be transferred by order-in-council. The Crown later justified that decision on the basis that the Nation members were not treaty Indians and therefore not entitled to any land reservation and accordingly, the best that could be done for them was to reserve the lands in the Department of the Interior's books.
 24. In October of 1910, the Crown unilaterally removed Section 29, Township 4, Range 4, West of the third meridian from the Wood Mountain Reserve without providing any reason for its decision. The Nation received no compensation for the Crown's unilateral removal or disposition of Section 29.

25. In May of 1919, the Crown unilaterally removed the West half of the Wood Mountain Reserve, being:

- Section 19,
- the North half and S.E. quarter of Section 20, and
- Sections 21, 28, 30, 31, 32, and 33

all in Township 4, Range 4, West of the third meridian (the lands described in this paragraph and Section 29 are collectively referred to as the "Western Reserve Lands").

26. The Western Reserve Lands were then transferred to the Department of the Interior for use by the Soldier Settlement Board. The Nation never received any compensation for the Crown's unilateral taking or disposition of the Western Reserve Lands.

27. Order in Council PC 1775 was passed on August 5th, 1930, formalizing the Wood Mountain Reserve.

VI. The Basis in Law in which the Crown is said to have failed to meet or otherwise breached a lawful obligation.

28. This claim is based on a breach of legal obligations including statutory duties under the *1906 Indian Act*, in particular section 49, and a breach of fiduciary duty under the common law with respect to the removal and disposition of the Western Reserve Lands from the Wood Mountain Reserve. The following breaches of legal obligations occurred:

- a. The Crown's unilateral removal of the Western Reserve Lands constituted a breach of its legal obligation pursuant to its agreement or undertaking to provide the Nation with the Wood Mountain Reserve and constitutes a breach of its fiduciary obligations.

- b. The Crown breached its statutory legal obligation under section 49 of the *1906 Indian Act* when it unilaterally removed the Western Reserve Lands and transferred the same to the Department of the Interior for Soldier Settlement purposes, without obtaining a surrender from the Nation in either case as required by that section.
- c. The Crown breached its common law fiduciary obligations arising from its provision and administration of reserve lands and other assets of the Nation by unilaterally removing the Western Reserve Lands from the Wood Mountain Reserve in 1910 and 1919 without obtaining a surrender and without providing any compensation.
- d. The steps taken by the Crown between April and October of 1910 created a cognizable Indian interest in the Wood Mountain Reserve lands, for which the Crown assumed discretionary control. The Crown therefore owed a fiduciary obligation to the Nation with respect to these lands. The Crown breached its fiduciary obligations when it disposed of the Western Reserve Lands without the Nation's consent and without compensation. The Crown breached its common law fiduciary obligations and statutory duties when it disposed of these portions of the Wood Mountain Reserve without surrenders in 1910 and 1919.
- e. The Crown failed to provide adequate or indeed any compensation to the Band for the disposition of large portions of the Wood Mountain Reserve in 1910 and 1919.

29. As a result of the Crown's breaches of its lawful obligations, the Nation has suffered damages for which Canada is liable.

30. The Nation seeks compensation from Canada for the loss of the Western Reserve Lands.

Dated this 10th day of February, 2014

MacPHERSON LESLIE & TYERMAN LLP

Per:



Solicitors for the Claimant,
Wood Mountain Lakota First Nation

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