

**SPECIFIC CLAIMS TRIBUNAL**

BETWEEN:

SKUPPAH INDIAN BAND

SPECIFIC CLAIMS TRIBUNAL		
TRIBUNAL DES REVENdicATIONS PARTICULIÈRES		
F I L E D	January 31, 2014	D E P O S É
Guillaume Phaneuf		
Ottawa, ON	5	

CLAIMANT

v.

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

RESPONDENT

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**RESPONSE**

**Pursuant to Rule 42 of the  
*Specific Claims Tribunal Rules of Practice and Procedure***

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This Response is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

TO: SKUPPAH INDIAN BAND  
As represented by Clarine Ostrove  
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**I. Status of Claim (R 42(a))**

1. Canada admits that the Skuppah Indian Band (the “Band” or “Skuppah”) is a First Nation within the meaning of section 2 of the *Specific Claim Tribunal Act*, S.C. 2008, c.22 (the “Act”) as pleaded in paragraph 1 of the Declaration of Claim (the “Claim”).
2. In response to paragraph 2, Canada admits that this claim is eligible to be filed with the Specific Claims Tribunal pursuant to section 16(1) (a) of the Act.

**II. Validity (R. 42(b) and (c))**

3. Canada admits, in response to paragraph 3, that the Band filed a specific claim with the Minister of Indian Affairs and Northern Development (the “Minister”) relating to the taking of lands from Inklyuhkinatko IR 2 (“IR 2”) and Skuppah IR 4 (“IR 4”) for a right of way for the Canadian Pacific Railway (“CPR”), but says that the claim was originally filed in December 1990.
4. In further response to paragraph 3, Canada admits that a paper entitled “Canadian Pacific Railway Excessive Right of Way: The Dispute and Settlement with the Department of Interior” was submitted by the Nlaka’pamux Nation Tribal Council to Canada in June 1990, and that this paper formed part of the Band’s claim submission to the Minister.
5. In response to paragraph 4, Canada admits that the Specific Claims Branch completed a review of the claim, but says that its initial review was completed in March 1992 and was provided to the Band for comment. Canada further says that the Band provided comments in December 1992 and, at the same time, amended its claim to exclude the issue of loss of control and/or management of the fisheries adjacent to IR 4 or IR 2.
6. In response to paragraphs 5 and 7, Canada admits that the Band has submitted additional legal arguments since the claim was originally filed, but has no record of any submissions in 1995. Canada does have records of additional legal arguments from the Band in 1992, 1999, and 2009.
7. In response to paragraph 6, Canada admits that, for the purposes of the Act, the Claim was deemed to be filed with the Minister on October 16, 2008.

8. In response to paragraph 8, the contents of the letter dated August 19, 2011 from Canada to the Band are either irrelevant to this proceeding or, if they are relevant, they are subject to settlement privilege.
9. In response to paragraph 10, Canada does not accept that this specific claim discloses a valid claim in accordance with any of the grounds set out in section 14 of the Act.

**III. Allegations of Fact- Declaration of Claim (R. 41(e)): Acceptance, denial or no knowledge (R. 42(d))**

10. In response to paragraph 11, Canada does not know if the Band is part of the Nlaka'pamux Nation, and whether the Nlaka'pamux Nation traditionally used and occupied land traversed by the Fraser, Thompson, Nicola and Skagit Rivers in south-central British Columbia and northern Washington state.
11. In response to paragraph 12, Canada does not know whether the Band had a village site and fishing spots approximately five miles below Lytton prior to and at 1870.
12. In response to paragraph 13, Canada does not know whether, in 1870, lands on the banks of the Fraser River were used by the Band for a variety of purposes including hunting, fishing, harvesting and mining. Canada also does not know whether, in 1870, the Band used the flat land for ranching and agriculture.
13. In response to paragraph 14, Canada admits that lands on the left side of the Fraser River at the Waggon Road were surveyed by John Trutch in 1870 and that Skuppah IR 4 was later established in this area, encompassing much of the same land. Canada does not admit that the 1870 survey resulted in the final establishment of an Indian reserve at law.
14. In response to paragraph 15, Canada admits that on June 18, 1878, Indian Commissioner G.M. Sproat ("Sproat") confirmed the "old reserve" at Skuppah on the Yale Cariboo wagon road about 5 miles below Lytton. This reserve became known as Skuppah IR 4. Sproat also extended the old colonial allotment by including "cultivable spots" on a bench to the northeast of IR 4. The extension of IR 4 was later surveyed as Skuppah IR 1.
15. In response to paragraph 16, Canada admits that, in or about June of 1878, Sproat also allotted lands on the left bank of the Fraser River about a mile north of IR 4. This allotment became known as IR 2. Canada denies that this allotment of IR 2 "included" Sawmill Creek or In Kly-uk-Kinatko Creek. Rather the north boundary

- was the left bank of Sawmill Creek and the south boundary was the right bank of In Kly-uk-Kinatko Creek. The west boundary was the left bank of the Fraser River, and the east boundary was a north-south line drawn along or near the old mule trail.
16. In response to paragraph 17, Canada admits that IR 2 and IR 4 are in the Yale District, but denies that Sproat's allotment of these reserves resulted in the final establishment of a reserve within the meaning of the *Indian Act*.
  17. In response to paragraph 18, Canada does not know if the Band had an old village site within IR 4 or if the Band had a dipnet fishing site on or in the vicinity of IR 4. Canada admits that the topography of IR 4 and the surrounding areas is generally steep.
  18. In response to paragraph 19, Canada does not know if the Band had gillnet fishing sites on or in the vicinity of IR 2. Canada admits that the topography of IR 2 and surrounding areas is generally steep.
  19. In further answer to paragraph 19, Canada also admits that lands at the northwest end of IR 2 were cultivated by Band member Charles Gilpas (also known as Charles Guelpas or Charles Cisco) and his family, beginning in approximately 1895, as set out in further detail below at paragraphs 87 to 97.
  20. In response to paragraph 20, Canada admits that W.S. Jemmett surveyed IR 2 and IR 4 in August 1885. Canada further says that Jemmett's 1885 survey was approved by the Provincial Chief Commissioner of Lands and Works on June 24, 1887.
  21. In response to paragraph 21, Canada says that in 1885 Jemmett surveyed where the CPR crossed the boundaries of IR 2 and IR 4.
  22. In response to paragraph 22, Canada admits that during the late 1870s and early 1880s, the federal and provincial governments were taking a number of steps to advance the construction of a transcontinental railway pursuant to Article 11 of the *Terms of Union*.
  23. In response to paragraph 23, Canada admits that *An Act to authorize the grant of certain Public Lands on the Mainland of British Columbia to the Government of the Dominion of Canada for Canadian Pacific Railway purposes*, S.B.C. 1880, c. 11 conveyed a strip of land from British Columbia to Canada to facilitate the construction of the railway (known as the "Railway Belt"). Canada further says that this Act was amended in 1883 and the official date of the transfer was deemed to be December 19, 1883.

24. In response to paragraph 24, Canada admits that IR 2 and IR 4 are located within the Railway Belt. Canada further says that, at the time the lands were taken for the CPR and the CPR was constructed, IR 2 and IR 4 had not yet been officially surveyed and were not marked on the original CPR location plan, Plan 33117, at the time that Plan was produced in or about 1884.
25. In response to paragraph 25, Canada says that the location plan, Plan 33117, is entitled “CPR Contract No. 61 Plan shewing land required for Railway Right of Way 1884” and was deposited in the provincial land registry on July 14, 1885, on behalf of the Minister of Railways and Canals.
26. In response to paragraph 26, Canada admits that Plan 33117 states area values for the right of way through IR 2 and IR 4. These reserves were plotted on Plan 33117 in 1889 and the railway right of way areas through the said reserves were calculated at that time.
27. In further response to paragraph 26, Canada says that Plan 33117 shows a required right of way of irregular width through both IR 2 and IR 4.
28. In response to paragraph 27, Canada admits that on March 11, 1890, the Department of Railways and Canals submitted valuations to DIA for lands taken for the CPR from Indian reserves, including valuations of \$60 for IR 2 and \$17 for IR 4. Canada further says that the Department of Indian Affairs (“DIA”) received a tracing of the location plan (Plan 33117) labelled Plan 585 in May 1890.
29. In response to paragraph 28, Canada says that on September 11, 1890 Indian Agent MacKay, in whose agency IR 2 and IR 4 were located, reviewed the valuations and advised that none of the valuations required amendment. Canada further says that on October 13, 1890 the office of the Indian Superintendent for British Columbia forwarded Agent MacKay’s report to L. Vankoughnet, Deputy Superintendent General of Indian Affairs.
30. In response to paragraph 29, Canada admits that the valuations submitted by the Department of Railways and Canals were accepted, but denies that it was Indian Superintendent Vowell who accepted them. Rather, it was Deputy Superintendent General Vankoughnet who accepted the valuations on July 28, 1891.
31. In response to paragraph 30, Canada says that Order in Council P.C. 2006, dated August 25, 1891, refers to a Memorandum from the acting Minister of Railways and

- Canals, dated August 20, 1891. As described in Order in Council P.C. 2006, the Memorandum stated that a valuation of certain Indian Reserve Lands, traversed by the main line of the CPR, had been accepted by the Department of Indian Affairs.
32. In response to paragraph 31, Canada says that, pursuant P.C. 2006, the Governor in Council accepted the recommendation of the Minister of Railways and Canals that 17 acres of land in IR 4, and 60 acres of land in IR2, be transferred to the Department of Railways and Canals, upon deposit of the purchase money, so that those lands could then be transferred to the Canadian Pacific Railway Company (the “CPR Company”) in accordance with the CPR Company’s contract with Canada dated October 21, 1880 (the “CPR Contract”).
  33. In response to paragraph 32, Canada admits that, on January 13, 1892, DIA deposited \$77 into the Band’s trust account.
  34. In response to paragraph 33, Canada admits that Plan 33117 was inadequate to accurately define the lands to be conveyed to the CPR Company and that accordingly a new plan was prepared by James F. Garden, Dominion Land Surveyor in or about 1904 (the “Garden Plan”).
  35. In response to paragraph 34, Canada says that the Garden Plan was registered in the Land Registry Office at Kamloops on October 31, 1905 as Plan 287, and deposited in the survey records branch of the Department of Interior as Plan 11195. The Department of Indian Affairs assigned the number RR2006 to the Garden Plan in 1923.
  36. In further response to paragraph 34, Canada admits that the Garden Plan showed a right of way through IR 2 of 58.72 acres and a right of way through IR 4 of 18.35 acres. Canada further says that the right of way through IR 2 was reduced in 1928 to 53.52 acres as a result of the CPR Company ceding 5.2 acres of land which had been improved by the family of Charles Gilpas.
  37. In response to paragraph 35, Canada says that, in or around 1913, settlers began complaining to the Department of the Interior about the width of the railway right of way as a result of the CPR Company fencing portions of the railway right of way.
  38. In response to paragraph 36, Canada admits that the Department of Interior began an investigation into the width of the CPR right of way but denies that DIA took no action to examine or investigate the CPR right of way through IR 2 and IR 4. Canada says that DIA communicated with the Department of Interior about the claim of

- Charles Gilpas, who had made improvements to lands on or in the vicinity of IR 2 and IR 2A, which had been surveyed adjacent to the northern boundary of IR 2 in 1911.
39. In response to paragraph 37, Canada denies that Order in Council P.C. 953, dated April 19, 1912, according to its terms, authorized the conveyance of a right of way through IR 2 and IR 4.
  40. In further response to paragraph 37, Canada says that P.C. 953, according to its terms, authorized the issuance of Letters Patent to the CPR Company for rights of way “as constructed” through five Indian Reserves, including the issuance of Letters Patent for 18.35 acres of land through IR 4 and Letters Patent for 58.72 acres of land through IR 2.
  41. In response to paragraph 38, Canada admits that, on October 12, 1911, Canada issued Letters Patent to the CPR Company for 58.72 acres of land through IR 2. Canada further admits that on July 5, 1912, Canada issued Letters Patent for a right of way of 18.35 acres through IR 4.
  42. In response to paragraph 39, Canada admits that on November 16, 1914, a number of members of the Band, resident on Skuppah Reserves, appeared before the Royal Commission of Indian Affairs. They provided information about the number of people residing on their reserves and the amount of water available, as well as other matters. They also requested that additional lands be added to their existing reserves and noted that – apart from cultivated bench lands – the reserves consisted largely of side-hills.
  43. In response to paragraph 40, Canada admits that, on April 10, 1928, Canada issued Letters Patent to the CPR Company, transferring 18.35 acres through IR 4.
  44. In further response to paragraph 40, Canada admits that, on April 12, 1928, Canada issued Letters Patent to the CPR Company for that part of the right of way through IR 2, but says that the acreage conveyed was 53.52 acres.
  45. In response to paragraphs 41 to 46, Canada denies that it breached any legal duty to the Band, as alleged or at all.
  46. In specific response to paragraph 42, Canada denies that IR 2 or IR 4 were reserves within the meaning of the *Indian Act* at the time the Railway Belt was conveyed to Canada or upon the survey of the reserves.

47. In further answer to paragraphs 41 to 46 and all of the Declaration of Claim, Canada says that IR 2 and IR 4 did not become reserves within the meaning of the *Indian Act* until August 1, 1930, following the passage of Order in Council P.C. 208 by the Governor in Council and the implementation of P.C. 208 by federal-provincial agreement and Imperial legislation.
48. In the alternative to paragraph 47 herein, Canada says that IR 2 and IR 4 became reserves within the meaning of the *Indian Act* no earlier than January 25, 1913, when the Governor in Council withdrew these reserves from the operation of the general Railway Belt land regulations pursuant to Order in Council P.C. 205.
49. In further response to paragraph 43, Canada admits that in 1878, when Commissioner Sproat allotted lands which became known as IR 2 and IR 4, there was no CPR track traversing through those lands.

#### **IV. Statements of Fact (R. 42 (a))**

##### **Establishment of the Railway Belt**

50. When British Columbia joined Confederation in 1871, one of the conditions of its entry was that Canada would arrange for the construction of a railway joining the new province with the rest of the country. The construction of such a railway was considered at the time a matter of profound national importance.
51. The government of British Columbia agreed to convey land to Canada to support the construction of the railway. To this end, the Province granted the Railway Belt to Canada: a 40-mile wide strip of land along the route of the main line of the CPR from Port Moody on the coast to the BC-Alberta border.
52. The transfer of the Railway Belt happened in two steps. First, in 1880, the Legislative Assembly of British Columbia enacted *An Act to Grant Public Lands on the Mainland to the Dominion in aid of the Canadian Pacific Railway*, S.B.C. 1880, c. 11. However, the route originally conceived was not ultimately followed for the entire line. As a result, the second step was that the 1880 Act was amended in 1883 to provide that twenty miles on each side of the line – wherever it was finally located – would be granted to Canada.

### **Creation of Inklyuhkinatko IR 2 and Skuppah IR 4**

53. On June 18, 1878, Indian Reserve Commissioner Sproat allotted four reserves for Skuppah, including IR 2 and IR 4. IR 2 was a new allotment, while IR 4 was a confirmation of an earlier allotment by colonial authorities in 1870.
54. Sproat's allotment of IR 2 was subject to any rights that a settler, Ah Chee, may have had to land and water, and was also subject to survey requirements.
55. With respect to IR 4, Sproat stated that the "old reserve at Skuppah" was confirmed, and that it was also to be extended to include cultivable spots on a flattened ridge to the north of the old reserve. This extension would become Skuppah IR 1.
56. Sproat did not record any fishing stations or village sites on IR 2 or 4 when he allotted these reserves.
57. W.S. Jemmett surveyed the boundaries of the Skuppah reserves in August 1885. IR 2 contained 169 acres and IR 4 contained 59 acres of land. In his survey plans and field book, Jemmett identified steep banks, streams, trails, fences, water courses, a flume, the Waggon Road, and the centre line of the CPR.
58. In June 1887, the Province's Chief Commissioner of Lands and Works approved Jemmett's surveys of IR 2 and IR 4.
59. In Order in Council P.C. 205, passed on January 25, 1913, the Governor in Council withdrew IRs 2 and 4, along with many other reserves in the Railway Belt, from the operation of the Dominion's general regulations governing the administration and disposal of lands within the Railway Belt. These regulations were administered by the Department of Interior and applied to all lands in the Railway Belt under federal administration and control.
60. The Royal Commission on Indian Affairs for the Province of British Columbia (the "McKenna-McBride Commission"), which was established in April 1913 to aid in resolving the matter of Indian reserve allotments in British Columbia, confirmed all Skuppah reserve allotments, including IRs 2, 2A and 4.
61. All of the Skuppah reserves confirmed or recommended by the McKenna-McBride Commission, including IRs 2 and 4, were officially confirmed by the provincial

- government in July 1923 through provincial Order in Council 911. The federal government confirmed the allotment of these reserves in July 1924 through Order in Council P.C. 1265.
62. Notwithstanding this long history, the matter of reserve creation in British Columbia, including within the Railway Belt, remained incomplete. In or about 1928, the federal and provincial governments entered into negotiations for the return of the Railway Belt lands to provincial administration.
  63. The re-transfer negotiations between Canada and British Columbia involved a number of matters, including the status of Indian reserves within the Railway Belt. With respect to Indian reserves, they agreed that reserves in the Railway Belt “shall continue to be vested in trust for the Indians on the terms and conditions set out in a certain order of the Governor General of Canada in Council approved on the 3rd day of February, 1930 (P.C. 208).”
  64. The agreement between Canada and British Columbia on all matters relating to the re-transfer, including the status of Indian reserves, was brought into force by reciprocal provincial and federal legislation, and subsequently by an Act of the Parliament of the United Kingdom, the *Constitution Act, 1930* (U.K.), 20-21 Geo. V, c. 26, which conferred constitutional status on the agreement.
  65. The terms and conditions set out in P.C. 208 were the result of another federal-provincial agreement, the 1929 Scott-Cathcart Agreement. Duncan Campbell Scott, the Deputy Superintendent General of Indian Affairs, and Henry Cathcart, the provincial Superintendent of Lands, had been designated by their respective governments to, among other things, recommend conditions on which the re-transfer of the Railway Belt would be made. Scott and Cathcart agreed upon the terms of the “tenure and mode of administration” of the Indians Reserves in the Railway Belt.
  66. The Scott-Cathcart Agreement, P.C. 208, and the federal-provincial agreement on the re-transfer finally settled the matter of reserve creation in the Railway Belt once they were implemented by Imperial legislation on August 1, 1930.
  67. According to P.C. 208, Canada retained 169 acres for IR 2 and 59 acres for IR 4.

### **Construction of the Canadian Pacific Railway 1880-1886**

68. In 1880, Canada entered into contracts with Andrew Onderdonk to build the western segment of the CPR from Savona’s Ferry (near Kamloops) to Port Moody. Contract

- 61, dated February 10, 1880, dealt with the line from Boston Bar to Lytton, which included the lands at issue in this claim.
69. In 1881, pursuant to *An Act Respecting the Canadian Pacific Railway* S.C. 1881, c.1 Parliament granted a charter to the CPR Company and approved the CPR Contract. Under the CPR Contract, Canada agreed to construct the western section of the CPR mainline from Kamloops to Port Moody, and to convey the railway and right of way to the CPR Company.
  70. Between 1881 and 1884, Canada, acting through the Department of Railways and Canals, prepared location plans (including Plan 33117 pertaining to the lands in this claim) for the mainline and the right of way.
  71. Plan 33117 was filed in the Land Registry Office in Victoria on July 14, 1885, pursuant to the *Government Railways Act*, S.C. 1881, c. 25., before the allotments of IR 2 and IR 4 were surveyed in August 1885 and before the surveys were approved by the provincial government in June 1887.
  72. The CPR right of way through the lands that would ultimately become known as IR 2 and IR 4 was 300 feet on the east side of the centre line of the railway. The right of way on the west side of the centre line went to the left bank of the Fraser River, and accordingly varied in width depending on the curvature and variation of the bank.
  73. The construction of the western section of the CPR railway was completed by July 1885 and the railway was in operation starting June 1886. On November 2, 1886, pursuant to an agreement between Canada and the CPR Company and Order in Council P.C. 1935, the Governor in Council authorized the conveyance of the portion of the CPR that Canada was required to construct and convey to the CPR Company pursuant to the CPR Contract.

#### **Valuation of land taken for the CPR and payment of compensation**

74. In December 1879, the Governor in Council appointed Joseph Trutch as Canada's "Resident Agent for British Columbia." Trutch's functions were to assist the Department of Interior in the administration of railway lands, and to oversee the construction of the CPR under the instructions of the Department of Railways and Canals. One of his duties in this capacity included advising the government on the valuations of and compensation for lands to be taken for the railway.

75. To aid in the valuation of the lands taken for the right of way, “official valuers” were appointed to appraise the right of way through settler holdings and Indian reserves. The valuers visited the lands and assessed compensation based on the quality and value of the land, the value of any improvements affected by the right of way, as well as damages attributable to severance.
76. On August 3, 1885, Trutch provided valuations of those segments of the railway right of way that traversed Indian reserves between Savona’s Ferry and Port Moody, excluding lands which had not yet been surveyed or authoritatively allotted for the use of Indians. Trutch did not provide valuations for IR 2 and IR 4 because they had not yet been surveyed or authoritatively allotted by this date.
77. In 1888, DIA became aware that the CPR had passed through other reserves in addition to those for which valuations had been provided in 1885. DIA submitted a list of these reserves, which included IRs 2 and 4, to the Department of Railways and Canals for an assessment of the compensation payable for these lands.
78. In March 1890, following an exchange of correspondence between the Departments to clarify the boundaries of the reserves, the Department of Railways and Canals provided valuations for the reserves in question, including IR 2 and IR 4, to DIA.
79. DIA sent the proposed valuations – \$17 for 17 acres from IR 4 and \$60 for 60 acres from IR 2 – to the Indian Superintendent in BC for review. The Superintendent forwarded the valuations to Indian Agent J.W. MacKay, in whose agencies IR 2 and IR 4 were situated.
80. There was some delay on the part of Indian Agent J.W. MacKay in responding to the proposed valuations. MacKay was required to “make a tour of a large portion of his agency in order to provide the desired information.” Agent MacKay found that there was no basis to change the valuations for any of the lands taken, including IR 2 or IR 4. DIA accepted MacKay’s opinion, and advised the Department of Railways accordingly on July 28, 1891.
81. On August 25, 1891, pursuant to P.C. 2006, the Governor in Council authorized the payment of funds from the Department of Railways and Canals to DIA for various reserves including IR 2 and IR 4.
82. On January 13, 1892, \$77 was deposited into the Skuppah Band’s trust account administered by the Department of Indian Affairs as compensation for the lands taken for the CPR right of way.

### **Re-survey of the CPR Right of Way: The Garden Plan**

83. In the 1890s, discussions commenced among the Department of Railways and Canals, DIA, the Surveyor General, and the CPR Company regarding the process for conveying the right of way lands to the CPR Company and the issuance and form of the Letters Patent.
84. In 1903, Canada determined that a re-survey of the CPR right of way was required to provide for the identification and adequate definition of the lands to be conveyed to the CPR Company. The Garden Plan was prepared in 1904 for this purpose. The Garden Plan was certified by the Chief Engineer, Department of Railways and Canals as showing “the lands of the Government to be conveyed to the Canadian Pacific Railway Company.”
85. The Garden Plan showed that the CPR right of way comprised 58.72 acres of IR 2 and 18.35 acres of IR 4. As stated above in paragraph 41, Letters Patent were later issued to the CPR Company for these areas.
86. Due to a dispute between British Columbia and Canada about the legal status of reserve lands – British Columbia claimed an underlying reversionary interest in Indian reserve lands – British Columbia refused to register Dominion Letters Patent in provincial land registry offices. It was not until the late 1920s, when agreement was reached between Canada and British Columbia for the return of the Railway Belt to British Columbia that Letters Patent were finally registered.

### **Charles Gilpas**

87. In or about January of 1909, it came to Canada’s attention that a number of Indian groups, including Charles Gilpas of the Skuppah Band and his family, were using and occupying Dominion Crown land located along the Fraser River. The lands under use by the Gilpas family were reported to be located between the CPR right of way and the Fraser River, and adjoining IR 2.
88. After further enquiries, it was determined in or about July of 1911, that Charles Gilpas had been in occupation of lands on and adjoining IR 2 on the left bank of the Fraser River for about 15 years, and that the Gilpas family resided upon and cultivated the said lands.

89. DIA requested the Department of Interior to reserve the lands used by various Indian groups, including the Gilpas family, from sale or settlement until the parcels could be properly surveyed. DIA instructed surveyor A.W. Johnson to survey the various parcels. In 1911, Johnson surveyed Skuppah I.R. 2A at 43.67 acres, which included some of the lands occupied and improved by the Gilpas family.
90. In November 1914, Gilpas testified before the McKenna-McBride Commission that he had six acres under cultivation. A homestead inspector reported in 1915 that Gilpas had three acres under cultivation on IR 2 and over 5 acres under cultivation on IR 2A.
91. By Minute of Decision dated December 3, 1914, the McKenna-McBride Commission recommended that IR 2A be confirmed as an Indian reserve.
92. On or about July 6, 1916, the CPR Company registered a complaint with Indian Agent Graham of the Lytton Agency, that Indians were cultivating lands located within the CPR right of way in the vicinity of Skuppah reserves, and that a lease of the said CPR lands would be required to permit the continued use of the lands by the said Indians.
93. As a result of receiving the CPR Company's complaint, Indian Agent Graham visited the lands in dispute and then responded to the CPR Company on or about July 21, 1916. Indian Agent Graham advised the CPR Company that there were Indian improvements on the lands in dispute.
94. Upon further investigation, in early September of 1916, Indian Agent Graham reported to DIA in Ottawa that about five acres of land located within the CPR right of way were under active occupation by the Gilpas family, in good faith though under the mistaken belief that these lands had been included in IR 2A. Indian Agent Graham also expressed the opinion that it would work a great hardship if the said Indians were to lose the lands in issue in light of the significant investment of labour, including the establishment of an orchard, the cultivation of crops, and the location of a residence on the said lands.
95. In the ensuing years, DIA officials continued to press the claim of the Gilpas family to the CPR lands they used and occupied in the vicinity of IR2 and IR2A and, on March 7 of 1921, the CPR Company's solicitors advised DIA that the CPR Company proposed to cede lands on the western side of the CPR right of way, including lands improved by the Gilpas family.

96. Ultimately, the CPR Company and DIA agreed that the original Letters Patent for 58.72 acres of land from Skuppah IR 2, issued to the CPR Company in 1911, would be cancelled and that new Letters Patent would be issued to the CPR Company, excluding the lands improved by the Gilpas family.
97. Revised Letters Patent for 53.52 acres of land from Skuppah IR 2, excluding 5.2 acres of land improved by the Gilpas family, were issued to the CPR Company on or about April 12, 1928; and the 5.2 acres were included in the description of Skuppah IR 2 in P.C. 208, dated February 3, 1930.

#### **Recent events**

98. Skuppah was party to litigation (*Canadian Pacific Ltd. v. Matsqui Indian Band*, [2000] 1 F.C. 325) that arose as a result of a dispute regarding the jurisdiction of several bands, including Skuppah, to levy property taxes against the CPR Company with respect to the CPR right of way through various reserves, including IR 2 and IR 4. Skuppah had levied taxes against the CPR Company pursuant to the Band's December 5, 1991 taxation and assessment by-laws, which were passed pursuant to section 83(1)(a) of the *Indian Act*, as amended in 1988.
99. On June 25, 1999, the Federal Court of Appeal held that the railway rights of way through the various reserves are "in the reserve" for the purposes of section 83, and that the claimant bands, including Skuppah, have jurisdiction to levy property taxes.
100. On June 22, 2001, the electors of Skuppah successfully voted to designate the railway right of way lands pursuant to section 38(2) of the *Indian Act*.
101. On October 18, 2001, the Governor in Council accepted Skuppah's designation of the railway right of way lands by Order in Council P.C. 2001-1908, passed pursuant to section 40 of the *Indian Act*.

#### **V. Relief (R. 42(f))**

102. Canada seeks to have the claim dismissed in its entirety.
103. Canada seeks its costs in the proceedings.

**Communication (R. 42(g))**

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Dated: *January 30, 2014*

*Heather Frankson*

Signature of

Respondent     lawyer for Respondent

**William F. Pentney,**

Deputy Attorney General of Canada

**Per: Heather Frankson**

Department of Justice

British Columbia Regional Office