

FILE NO.: SCT-1001-16
DATE: 20190312

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
EEL RIVER BAR FIRST NATION)	
)	Delia Opekokew, for the Claimant
)	
Claimant)	
)	
– and –)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	Patricia MacPhee, for the Respondent
Affairs and Northern Development)	
)	
)	
Respondent)	
)	
)	
)	
)	HEARD: March 5, 2019

ENDORSEMENT

Honourable Paul Mayer

A Case Management Conference (CMC) was held by teleconference on March 5, 2019, at 4:30 P.M., Eastern Time (Ottawa).

[1] The Claimant reported that the expert report of Mr. Armitage is very close to completion. The Claimant explained that most of the report will be relevant to a distinct specific claim that is expected to be filed with the Minister in late 2019, dealing with alleged impacts from a dam on

the Eel River. The Claimant stated that only a small part of the report, relating to certain sand bars and clam beds, is expected to be applicable to this Claim.

[2] The Parties expressed difficulty resolving the questions to be posed to the proposed joint expert, who is expected to assess the impacts of sand and gravel removal from the Claimant's reserve. A key point of difficulty is the estimation of the volume of sand and gravel removed. The Respondent has written records and the Claimant has a different view based on oral history and lay witness testimony. The Tribunal suggested that the Parties may wish to consider the use of aerial photography and/or a land surveyor. The Claimant stated that it may share some aerial photographs with the Respondent for the purpose of assisting in the estimation of the volume of sand and gravel removed. The Claimant noted that it would require an expert on aerial photography if the photographs were to be used. The Parties agreed to discuss the matter further.

[3] Within 30 days, the Parties will either determine that they cannot agree or will agree on the variables or best estimates of the amount of sand and gravel removed from the Claimant's reserve that will be submitted to the proposed joint expert. If the Parties are unable to agree, they will consider retaining separate experts for the purpose of estimating the amount of sand and gravel removed and the impacts of the removal. The Parties will report on their determinations at the next CMC.

[4] The Claimant reported that it has been working hard on the draft Common Book of Documents and has identified 97 missing documents. The Claimant will provide the Respondent with the list of documents in hand and documents that are missing within 10 days.

[5] The Respondent expressed concern with overlapping issues between this Claim and the separate specific claim relating to the dam that the Claimant expects to file soon (mentioned in paragraph 1 above). The Claimant confirmed that the elements of the specific claim relating to the dam are not presently intended to be brought forward in this Claim. The Respondent agreed to send the Claimant, by email, its concerns regarding the potential overlap between the two claims and uncertainty in the issues to be resolved in the validity stage of this Claim.

[6] To clarify the issues for the validity stage of this Claim, the Parties agreed to draft an Agreed Statement of Issues for consideration at the next CMC. When preparing the draft Agreed

Statement of Issues, the Claimant will consider and discuss with the Respondent, as the responding Party, each breach of a legal obligation alleged in the Declaration of Claim that remains in issue; for example, the allegation that the Claimant was not sufficiently compensated for the sand and gravel removed, among other allegations.

[7] The Tribunal noted that to decide on the validity of the Claim pursuant to subsection 14(1) of the *Specific Claims Tribunal Act*, the Tribunal will need each alleged breach of a legal obligation to be elaborated and for each alleged breach, evidence will be necessary. The Agreed Statement of Issues and the intended evidence relating to each issue will be discussed at the next CMC, keeping in mind the bifurcation of the Claim.

[8] The next CMC will be held by teleconference on **June 18, 2019**, at 4:30 P.M., Eastern Time (Ottawa).

PAUL MAYER

Honourable Paul Mayer