

FILE NO.: SCT-4002-14
DATE: 20181022

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

BETWEEN:)	
)	
FISHER RIVER CREE NATION)	
)	Earl C. Stevenson, for the Claimant
)	
)	
Claimant)	
)	
– and –)	
)	
HER MAJESTY THE QUEEN IN RIGHT)	
OF CANADA)	
As represented by the Minister of Indian)	Lisa Cholosky, for the Respondent
Affairs and Northern Development)	
)	
)	
Respondent)	
)	
)	
)	
)	HEARD: October 17, 2018

ENDORSEMENT AND ORDER

Honourable Paul Mayer

FURTHER to a Case Management Conference (CMC) held by teleconference on October 17, 2018, at 4:30 P.M., Eastern Time (Ottawa).

[1] The Tribunal reviewed the procedural history of this Claim with the Parties. On April 17, 2018, the Tribunal granted a stay of proceedings until October 17, 2018, to allow the Parties to

enter into mediation discussions. An oral submissions hearing scheduled for May 8-10, 2018, was adjourned *sine die*.

[2] The Parties have been engaged in gathering evidence to mediate the issue of compensation.

[3] The Tribunal noted that there are three issues that are impacting the orderly progress of this work for the Parties:

- a. Expert reports: proxy model or loss of use studies;
- b. The Respondent's set-off defence; and,
- c. Funding issues.

[4] These issues were discussed with the Parties in the CMC.

Expert Reports:

[5] On the issue of expert reports, the Tribunal noted that both Parties agree that compensation should be established based on loss of use and on current unimproved market value of the claims land, but the Parties do not agree how that is to be established.

[6] The Claimant prefers to have five or six loss of use studies done, and wishes to have elders involved in the studies, given their insights and wisdom. The Respondent considers that a proxy study would be more cost effective to establish loss of use.

[7] The Tribunal noted that the Parties are masters of their own case, but invited the Parties to consider the possibility of a mixed result that would be cost effective: something faster than the five or six fulsome loss of use reports but possibly using the proxy model, to include input from elders.

[8] The Parties plan to meet next week to discuss these issues.

Respondent's Set-Off Defence:

[9] The Respondent's set-off defence is set out in paragraph 46 of its Response. It relates to 1,920 acres added to Reserve in 1911 for agricultural purposes. The Claimant indicated that in its view, the 1911 lands are not related to this Claim. The Respondent stated that on a without prejudice basis, it was willing to disregard this defence for the purposes of mediation.

Funding:

[10] On the issue of funding, the Tribunal noted the importance of funding from the perspective of access to justice, but indicated that the Tribunal has no power over funding.

Conclusion:

[11] The Tribunal indicated that in accordance with section 6 of the Tribunal's Practice Direction # 15, Stay of Proceedings, the Tribunal may extend a stay of proceedings if it is satisfied that the Parties have made diligent progress in negotiations and that the Parties will diligently use time granted in a further extension to continue to make timely progress in negotiations during the extension. The Tribunal indicated that it was not convinced of this at the present time but that it would extend the stay until **November 23, 2018** to satisfy these conditions.

[12] Prior to the next CMC, the Tribunal expects that the Parties will file a joint brief or separate briefs indicating whether they have agreed on an approach for the loss of use studies or a proxy study and a further extension of the stay of proceedings.

THE TRIBUNAL ORDERS THAT:

[13] The stay of proceedings is extended until **November 23, 2018**; and,

[14] The next CMC will be held by teleconference on **November 23, 2018**, at 4:30 P.M., Eastern Time (Ottawa).

PAUL MAYER

Honourable Paul Mayer