

SPECIFIC CLAIMS TRIBUNAL

BETWEEN:

SPECIFIC CLAIMS TRIBUNAL		
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	October 20, 2020	
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Ottawa, ON		5

WHITECAP DAKOTA FIRST NATION

Claimant

v.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Crown-Indigenous Relations

Respondent

RESPONSE

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

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

TO: Whitecap Dakota First Nation
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Overview

1. Her Majesty the Queen in right of Canada, as represented by the Minister of Crown-Indigenous Relations, (Canada) is committed to reconciliation with Indigenous peoples based on recognition of rights, respect, cooperation, and partnership. Canada undertakes to assist the Tribunal in its adjudicative function with regard to these guiding principles.
2. Canada favours resolving claims made by Indigenous peoples through negotiation and settlement. Canada will continue to pursue all appropriate forms of resolution as this Tribunal claim proceeds through the Tribunal process.
3. Canada acknowledges Whitecap Dakota First Nation is a part of the Dakota-Nakota-Lakota Nation, whose traditional governance structure is called the Seven Council Fires. Canada agrees Whitecap Dakota First Nation is a band within the meaning of the *Indian Act* and a First Nation within the meaning of the *Specific Claims Tribunal Act (SCTA)*.
4. Canada acknowledges Whitecap Dakota First Nation's right to Whitecap Dakota Reserve No. 94 (Whitecap Reserve), set apart for its use on May 17, 1889. In addition, Canada leased land in the Dundurn Forest Reserve to Whitecap Dakota First Nation to provide grazing lands for its livestock.
5. At some point in 1935, most of the lands in the Dundurn Forest Reserve were transferred to the Province of Saskatchewan. Whitecap Dakota First Nation continued to use approximately 1,100 acres of the Dundurn Forest Reserve Land free of charge into the 1940's on the conditions that the land would have to be vacated on three days' notice and grazing rights may not be granted the following year. The Whitecap Dakota First Nation's interest was in the use of that land, secured by permit or lease with no renewal rights guaranteed. The lands were never set aside as reserve land for Whitecap Dakota First Nation and access to the lands was never intended to continue indefinitely.

6. Canada complied with any fiduciary obligations that it had to Whitecap Dakota First Nation and the facts set out in the Declaration of Claim, filed June 18, 2020 (the "Claim"), do not establish a valid claim under the *SCTA*.

I. Status of Claim

7. In response to paragraphs 2 through 6 of the Claim, Canada admits the requirements in section 16 of the *SCTA* are satisfied.
8. Whitecap Dakota First Nation submitted a claim to the Minister of Indigenous and Northern Affairs (as he was then known) (the Minister) on April 28, 2005, before the *SCTA* came into force. Canada admits that pursuant to section 42(1) of the *SCTA*, the claim is deemed to have been filed with the Minister in accordance with section 16 of the *SCTA*. Canada received Whitecap Dakota First Nation's claim on August 3, 2005 and acknowledged receipt of the claim on August 18, 2005.
9. Canada submitted Whitecap Dakota First Nation's claim to the Minister on October 16, 2008 and notified Whitecap Dakota First Nation of the filing on November 24, 2008.
10. On August 24, 2009, Canada informed Whitecap Dakota First Nation that their claim was not accepted for negotiations. Canada acknowledges this decision satisfies the requirements of section 16(1)(a) of the *SCTA* and the specific claim is validly before the Tribunal.

II. Canada's position with respect to Validity of the Claim

11. Canada does not accept the validity of the claim set out in the Declaration of Claim.
12. Any fiduciary duty owed by Canada to Indigenous peoples arises in specific contexts and does not apply broadly to all of Canada's interactions with First Nations.

13. There was no fiduciary obligation to maintain off-reserve grazing land in the form of access to the Dundurn Forest Reserve for the Whitecap Dakota First Nation.
14. Instead, the use of the grazing lands by Whitecap Dakota First Nation was guided by the terms of the various lease agreements. After 1935, the lease agreement was between Whitecap Dakota First Nation and the Province of Saskatchewan. The use of the land was secured by permit or lease, which was not guaranteed to continue indefinitely, nor did Canada represent that the lease would continue indefinitely.
15. Whitecap Dakota First Nation's livestock industry was undertaken independently, and Canada did not have a fiduciary obligation to secure and maintain reasonable lands to sustain that industry, nor did Canada have a fiduciary duty to accommodate or seek alternative arrangements for Whitecap Dakota First Nation's independent cattle enterprise following the cessation of the parties' lease arrangement.
16. Whitecap Dakota First Nation's requests for additional lands and Canada's consideration of those requests do not establish a fiduciary duty. The lands leased by Whitecap Dakota First Nation in the Dundurn Forest Reserve were never set aside for the benefit of Whitecap Dakota First Nation, nor did Canada represent that the leased lands would be added to Whitecap Reserve.
17. Canada further submits any fiduciary duty owed to Whitecap Dakota First Nation that might have existed during the material time of the Claim was met through the creation of the reserve, which was allotted in accordance with policy at that time, and through subsequent additions to the reserve to increase grazing lands. Any such fiduciary obligation did not extend to securing or retaining grazing lands outside the reserve. Canada's fiduciary obligation is not increased or heightened based on the fact that Whitecap Dakota First Nation is not a Treaty First Nation.
18. Alternatively, if any fiduciary obligation did exist in connection with the leased land, then such obligation was met by steps taken to provide Whitecap Dakota

First Nation with up to 4,640 acres of additional grazing land during the material time, including the provision of 1,100 acres of land free of charge including and following 1941.

19. Canada further submits that the decline in Whitecap Dakota First Nation's cattle industry is not materially connected to the reduction in their access to off-reserve grazing lands. Whitecap Dakota First Nation's cattle industry continued to thrive into the 1950's, well after their grazing land access had been reduced.
20. If the Tribunal should find the claim of the Whitecap Dakota First Nation valid, Canada states that sections 20(1)(a) to (c) of the *SCTA* may provide the basis for the Tribunal to award compensation. This would be subject, however, to any applicable deduction or set-off from such compensation calculated in accordance with section 20(3) of the *SCTA*.

III. Canada's position with respect to Allegations of Fact

21. The material facts related to this claim are largely not in dispute. Canada has either admitted or qualified assertions of fact from the Declaration of Claim and included its own statement of facts in the Response, without admitting all the facts are relevant. Canada will propose the parties work towards an agreed statement of facts early in the process.

Whitecap Dakota First Nation History

22. In response to paragraph 16 of the Claim, Canada admits Whitecap Dakota First Nation is part of the larger Dakota-Nakota-Lakota Nations, whose traditional governance structure is called the Seven Council Fires.
23. In response to paragraph 17 of the Claim, Canada says that Dakota-Nakota-Lakota First Nations enjoyed agreements of peace, friendship, trade, and alliance with the French and British Crowns and participated in war alongside the British, including the American Revolution and the War of 1812. Canada further says that Whitecap Dakota First Nation's traditional territory included parts of northwest Ontario, southern Manitoba and Saskatchewan, and southeast Alberta, as well as areas in the United States.

24. In response to paragraph 18 of the Claim, Canada admits Chief Whitecap (also historically known as Chief Wabasha) was commissioned as a General, that Wabasha II was commissioned a Captain by the British, and that Chief Whitecap would become one of the founding fathers of the City of Saskatoon, along with John Lake.
25. In response to paragraph 19 of the Claim, Canada says the British sought and obtained alliance and military support from the Dakota-Nakota-Lakota First Nations during the War of 1812, and in doing so, promised to preserve and protect Dakota-Nakota-Lakota First Nations Territory. The Dakota-Nakota-Lakota First Nations were recognized after the war and at the War of 1812 bicentennial celebration for their contributions.
26. In response to paragraph 20 of the Claim, Canada says Britain surrendered any claim to Dakota-Nakota-Lakota First Nations territory south of the 49th parallel to the United States and reached peace with the United States under the Treaty of Ghent in 1814.
27. In response to paragraph 21 of the Claim, Canada has no knowledge that the Dakota-Nakota-Lakota First Nations had strained relations with the United States after the War of 1812.
28. In response to paragraph 22 of the Claim, Canada says many Dakota-Nakota-Lakota First Nations moved into what is now the provinces of Manitoba and Saskatchewan following an 1862 uprising in Minnesota. Canada says further that Dakota-Nakota-Lakota Chiefs brought with them medals and flags that they showed to British officials.
29. In response to paragraph 23 of the Claim, Canada admits that it negotiated treaties with First Nations following Canadian Confederation in 1867 and the *Rupert's Land Act* in 1868.
30. In response to paragraph 24 of the Claim, Canada admits Chief Whitecap was present at Treaty discussions for both Treaty 4 and Treaty 6 and acknowledges that Whitecap Dakota First Nation was not a signatory to Treaty 4 or Treaty 6.

31. In response to paragraph 26 of the Claim, Canada says that Whitecap Dakota First Nation requested in 1878 to settle in the Beaver Creek area. Finding the soil inadequate for farming, Whitecap Dakota First Nation selected an area south of Beaver Creek to settle in 1879.
32. In response to paragraph 27 of the Claim, Canada admits Dominion Lands Surveyor Simpson surveyed Whitecap Reserve (historically known as “Moose Woods Reserve”) on June 17, 1881, but says Order-in-Council 1151 officially set aside the Whitecap Reserve for the benefit of the Whitecap Dakota First Nation on May 17, 1889. Canada further admits that Surveyor Simpson identified the need for 1,280 acres of land for Whitecap Dakota First Nation and 1,472 was provided in the Order-in-Council.
33. In response to paragraph 25 and 28 of the Claim, Canada admits Whitecap Dakota First Nation was allotted 80 acres per family of five, rather than the 640 acres per family of five allotted to First Nation signatories of Treaty 4 and Treaty 6.
34. In response to paragraph 28 of the Claim, Canada says Whitecap Dakota First Nation received benefits different from those received by First Nations that signed a numbered Treaty and says further that Whitecap Dakota First Nation received implements, equipment, and additions to reserve periodically following the setting aside of its reserve in 1889.

Additions to Reserve and Grazing

35. In response to paragraph 29 of the Claim, Canada admits that Whitecap Dakota First Nation was struggling by January 1886 due to crop failure and the 1885 Northwest Rebellion. Canada further admits that Whitecap Dakota First Nation sent a letter to Indian Commissioner Edgar Dewdney requesting government assistance.
36. In response to paragraph 30 of the Claim, Canada admits that Commissioner Dewdney requested a piece of additional land be added to Whitecap Reserve in August of 1887 on the basis that the land would provide hay not found on the reserve at that time.
37. In response to paragraph 31 of the Claim, Canada admits that in June of 1888, Dominion Lands Surveyor Nelson added 424 acres to the north end and removed 240 acres from the northeast corner of Whitecap Reserve. The removed portions were described as, "sandy, hilly land of muskeg." Canada further admits the additional acres were incorporated into the 1889 Order-in-Council.
38. In response to paragraph 32 of the Claim Canada admits that in July of 1889 Inspector Wadsworth reported Whitecap Dakota First Nation's use of lands adjacent to the reserve as grazing lands and recommended these lands be added to reserve. Canada further admits that the Commissioner of Indian Affairs, Hayter Reed, agreed in July of 1891 that additional grazing lands were needed and that Commissioner Reed sent Surveyor Ponton to assist Agent Tucker in selecting suitable land.
39. In response to paragraph 33 of the Claim, Canada admits Dominion Lands Surveyor Ponton reported on the land selection, finding that Whitecap Dakota First Nation had experienced crop failure and that dependence would be placed on stock raising, where an increase of 29 was expected the following year.
40. In response to paragraph 34 of the Claim, Canada admits the lands selected by Agent Tucker for addition to Whitecap Reserve were part of the Temperance Colonization Company's grant. Canada further admits that Commissioner Reed

thought the issue could be resolved by exchanging the requested land for other land.

41. In response to paragraph 34 of the Claim, Canada admits that Commissioner Reed wrote the Deputy Superintendent of Indian Affairs, asking whether the Department of Interior (as it was then known) had set aside hay lands for Whitecap Dakota First Nation in April 1892. Canada further admits that in August 1892, the Department of Interior denied the request for addition to reserve on the basis of protests from the Temperance Colony and a belief that adequate hay existed on the reserve.
42. In response to paragraph 35 of the Claim, Canada admits that Inspector McGibbon made a request for more hay land in November of 1892 and was supported by a letter from Agent Tucker.
43. In response to paragraph 36 of the Claim, Canada admits that in March 1893, Commissioner Reed advised, in response to Agent Tucker's letter, that he was seeking to have the Department of Interior's rejection of adding more hay land to Whitecap Reserve overturned. Canada further admits Agent Tucker was advised of 175 tons of hay being sought for Whitecap Dakota First Nation and of the assignment of an officer from the Department of Indian Affairs (as it was then known) to determine the needs of the band.
44. In response to paragraph 37 of the Claim, Canada admits that Agent Tucker inquired about the hay permits two months after receiving Commissioner Reed's letter and that Commissioner Reed responded saying he had made no specific promise to do so.
45. In response to paragraph 37 of the Claim, Canada admits that by letter dated July 8, 1893, Inspector Cook reported Whitecap Dakota First Nation's need for more hay lands and a dependency on hay obtained outside the reserve for winter fodder and the ability for settlers to obtain hay land permits in the area.

46. In response to paragraph 38 of the Claim, Canada admits that Surveyor Ponton, having accompanied Inspector Cook, also saw the necessity of hay and grazing land access for Whitecap Dakota First Nation.
47. In response to paragraph 39 of the Claim, Canada admits that on October 21, 1893, an Order-in-Council was passed providing for the addition to reserve of Sections 19, 30 and 31, Township. 33, Range 5, W3M. Canada further admits Whitecap Dakota First Nation was made aware of the reserve additions on February 12, 1894.
48. In response to paragraph 39 of the Claim, Canada admits that Assistant Commissioner Forget inquired about the hay lands on January 27, 1894, and reported that Agent Tucker could not compel settlers to remove their cattle from the hay land Whitecap Dakota First Nation desired for reserve until the land was officially set apart as reserve.
49. In response to paragraph 40 of the Claim, Canada admits that Whitecap Dakota First Nation's cattle herd doubled from 1893 to 1895.
50. In response to paragraph 40 of the Claim, Canada does not currently have information to deny or confirm an 1896 report indicating a significant increase in Whitecap Dakota First Nation's cattle herd, or that cattle herding was the Whitecap Dakota First Nation's primary income source and a significant food source by 1902.
51. In response to paragraph 41 of the Claim, Canada admits that Agent Tucker requested Section 25, Township 33, Range 6, W3M, consisting of hay and grazing lands, be added to reserve on October 15, 1898, and that on November 24, 1898 this land was added to reserve upon the passing of an Order-in-Council.

Dundurn Forest Permits

52. In response to paragraph 42 of the Claim, Canada admits that on December 20, 1911, Inspector Chisholm wrote to Secretary McLean to request three parcels of land adjacent to the reserve be added to Whitecap Reserve. Canada further admits that Secretary McLean wrote the Department of Interior requesting the lands be

made available for Whitecap Dakota First Nation's use. The Department of Interior responded in May of 1913 that some of the lands requested were unavailable but that they would make note of the undisposed lands.

53. In response to paragraph 43 of the Claim, Canada does not currently have information to deny or confirm that Whitecap Dakota First Nation had 255 livestock on reserve in 1913 requiring 1,256 tons of hay, which was a reduction of 42 head from the previous year.
54. In response to paragraph 43 of the Claim, Canada admits that Inspector Chisholm's 1913 report expressed Whitecap Dakota First Nation's need for additional grazing lands and that grazing lands previously used had been taken up by settlers.
55. In response to paragraph 44 of the Claim, Canada admits the exchange of correspondence between officials within the Department of Indian Affairs and the Department of Interior in the years following Inspector Chisholm's 1913 report, during which time some of the requested land had been added to the Dundurn Forest Reserve. Canada further admits there was a discussion about securing access to land added to the Dundurn Forest Reserve and that Secretary McLean described Whitecap Dakota First Nation's lands as insufficient to supply feed for their stock.
56. In response to paragraph 45 of the Declaration of Claim, Canada admits that in October of 1914 Inspector Chisholm agreed and Secretary McLean requested that the Department of Interior add the west half and northeast quarter of Section 6, Township 34 be added to reserve. However, Canada says the addition to reserve was delayed as Canada investigated and inquired into land availability, suitability, and the status of homesteaders.
57. In response to paragraph 46 of the Claim, Canada admits the passing of the following Orders-in-Council:

- a. July 14, 1921, adding the southeast quarter of Section 6, Township 34, Range 5, W2M;
 - b. May 14, 1926, adding the southwest quarter of Section 6, Township 34, Range 5, W2M following the abandonment of the homestead on this parcel; and
 - c. March 7, 1933, adding the northeast quarter of Section 6, Township 34.
58. In response to paragraph 46 of the Claim, Canada further admits Whitecap Dakota First Nation obtained access to the northeast quarter of Section 6, Township 34 in April of 1934 following a determination that the Department of National Defence held the land.
59. In response to paragraph 47 of the Claim, Canada admits that on October 24, 1914, Inspector Chisholm informed Secretary McLean that the Supervisor of Forest Reserves was prepared to grant a grazing permit to Whitecap Dakota First Nation for Section 5, Township 34, Range 5 and all of sections 29 and 32, and but says that the northeast quarter of Section 6 was also contemplated in the grazing permit.
60. In response to paragraph 48 of the Claim, Canada admits that Secretary McLean approved the leasing arrangement on February 11, 1915 and that Whitecap Dakota First Nation was to pay the leasing fees.
61. In response to paragraph 49 of the Claim, Canada does not currently have information to deny or confirm Inspector Chisholm's July 1915 report in which he is said to have successfully obtained a grazing lease for Whitecap Dakota First Nation on the Dundurn Forest Reserve and that Whitecap Dakota First Nation members were building a fence around portions of the leased land at that time.
62. In response to paragraph 50 of the Claim, Canada admits that in April of 1917, Inspector of Indian Agencies, W.B. Crombie wrote to Secretary McLean, saying his office was having difficulty finding additional land for Whitecap Dakota First Nation. Canada further admits that Inspector Crombie reported Whitecap Dakota First Nation was leasing four and one quarter sections of grazing land within the

Dundurn Forest Reserve for a sum of \$30.50 per annum, and that if additional land could not be found that the Forest Department should not charge Whitecap Dakota First Nation for the grazing permits.

63. In response to paragraph 51 of the Claim, Canada does not currently have information to deny or confirm that Secretary McLean wrote to Agent Schmidt on January 28, 1918 stating there was no record of Whitecap Dakota First Nation's grazing permit over four and one quarter sections of land and agreeing that the land should be fenced, and Whitecap Dakota First Nation would pay the grazing fees.
64. In response to paragraph 52 of the Claim, Canada admits that by 1918 the value of Whitecap Dakota First Nation's livestock, including poultry, was \$28,251, and that the sale of beef accounted for 38% of their total income by 1921.
65. In response to paragraph 52 of the Claim, Canada admits according to the Department of Indian Affairs' 1919 Annual Report, Whitecap Dakota First Nation had 7,940 acres of fenced land and Whitecap Reserve consisted of 4,160 acres.
66. In response to paragraph 53 of the Claim, Canada does not currently have information to deny or confirm that in February 1921 the Department of National Defence requested a portion of the Dundurn Forest Reserve for its use as a training area and that the Director of Forestry approved the proposal on certain conditions, including not interfering with grazing rights granted.
67. In response to paragraph 54 of the Claim, Canada admits that on April 15, 1921, Agent Schmidt wrote to Secretary McLean to express that the annual grazing lease increase from \$45.50 to \$91 was too high, and that Agent Schmidt requested Whitecap Dakota First Nation be given a free grazing permit.
68. In response to paragraph 55 of the Claim, Canada admits that on May 2, 1921, the Director of Forestry responded that there had been an increase per head for grazing livestock on forestry lands resulting in the annual grazing lease fee increase.

69. In response to paragraph 55 of the Claim, Canada further admits that the Director of Forestry rejected the idea of a free grazing permit for Whitecap Dakota First Nation and suggested the Department of Indian Affairs pay for the permits. Canada further admits Secretary McLean informed Agent Schmidt that Whitecap Dakota First Nation would have to pay the fees, as they had no funds with the Department.
70. In response to paragraph 56 of the Claim, Canada admits that on May 26, 1921, Agent Schmidt requested lands that were being leased as grazing lands be added to Whitecap Reserve.
71. In response to paragraph 57 of the Claim, Canada does not currently have information to deny or confirm the 1923 and 1924 values of Whitecap Dakota First Nation's livestock, and Agent Schmidt's report of surplus cattle being sold.
72. In response to paragraph 58 of the Claim, Canada does not currently have information to deny or confirm the passing of an Order-in-Council on June 14, 1924 giving the Minister of the Interior authority to include grazing lands within the boundaries of forest reserves.
73. In response to paragraph 59 of the Claim, Canada does not currently have information to deny or confirm that on November 28, 1924, the Acting Director of Forestry expressed that Dundurn Forest Reserve had been almost entirely subject to fencing permits for grazing purposes while considering a lease to the Department of National Defence.
74. In response to paragraph 60 of the Claim, Canada does not currently have information to deny or confirm that a Order-in-Council was passed on February 7, 1925 authorizing the Minister of Interior to issue a 21-year grazing lease on vacant Dominion lands unfit for agricultural purposes in Saskatchewan. Furthermore, Canada does not currently have information to deny or confirm the value of Whitecap Dakota First Nation's livestock in 1925 and 1926.
75. In response to paragraph 61 of the Claim, Canada admits that in 1926, an Order-in-Council passed to allow the Department of National Defence to use a part of

the Dundurn Forest Reserve. Canada further admits that in 1928 the Department of Indian Affairs inquired about purchasing additional land for the Whitecap Dakota First Nation, but were advised by the Department of Interior that the land could not be withdrawn until an amendment was made to the *Forest Reserves Act*.

Dundurn Forest Reserve transferred to Saskatchewan

76. In response to paragraph 62 of the Claim, Canada admits that in August of 1930 the Department of Indian Affairs was advised the Dundurn Forest Reserve was being transferred to the Province of Saskatchewan, which resulted in the transfer of public lands and natural resources from the federal Crown to the Province.
77. In response to paragraph 63 of the Claim, Canada admits that Whitecap Dakota First Nation continued to lease a portion of the Dundurn Forest Reserve while it was under control of the Province, but says it was in February of 1932, not 1931, that Agent Schmidt raised concerns Whitecap Dakota First Nation could not pay the Province's increased fee on grazing lands in the coming year. Canada further admits Secretary McKenzie agreed the Department of Indian Affairs would pay the increased grazing fees.
78. In response to paragraph 64 of the Claim, Canada admits that in 1933, the Department of Indian Affairs became aware that portions of the Dundurn Forest Reserve had been transferred to the Department of National Defence. Canada further admits Agent Schmidt wrote to the District Engineer of Military District #12 in March of 1935 requesting use of portions of the Dundurn Forest Reserve for Whitecap Dakota First Nation grazing lands and expressing that the lands had been previously fenced by the First Nation.
79. In response to paragraph 65 of the Claim, Canada admits that on April 27, 1935, Captain Fraser of the Department of National Defence informed Agent Schmidt that only the north half of Section 5, Section 8, and the northwest half of Section 9 was under the control of the Department of Defence and grazing permission

was granted over these lands at no cost. The remainder of the land was under the control of the Department of Interior.

80. In response to paragraph 66 of the Claim, Canada admits Acting Secretary MacInnes wrote Assistant Deputy Minister of the Department of Interior Gibson regarding grazing lands within the Dundurn Forest Reserve for Whitecap Dakota First Nation. Assistant Deputy Minister Gibson replied on August 21, 1935, advising that the requested lands had been transferred to the Province of Saskatchewan and that the Department of Interior had not been made aware of interest from the Department of Indian Affairs in these parcels at the time of transfer.
81. In response to paragraph 67 of the Claim, Canada admits that the Department of Indian Affairs wrote the Province of Saskatchewan's Department of Natural Resources on August 27, 1935 regarding Whitecap Dakota First Nation's grazing lands and that the letter stated the Whitecap Dakota First Nation had been leasing the land since 1918 and had fenced the land at its own expense.
82. In response to paragraph 68 of the Claim, Canada admits that on September 6, 1935, Saskatchewan replied to the Department of Indian Affairs, stating that the requested lands had been disposed of under a long-term grazing lease to the University of Saskatchewan. Canada further admits the Province of Saskatchewan stated they were not aware of the Whitecap Dakota First Nation's use of the land for grazing prior to the Department of Indian Affairs' August 27 letter.
83. In response to paragraph 69, Canada says Whitecap Dakota First Nation had access to 1,100 acres of grazing land by 1941 and that their cattle enterprise continued to thrive well into the 1950's. The Whitecap Dakota First Nation reportedly had 130 head of cattle as recently as 1957.
84. In response to paragraph 70 and 71 of the Claim, Canada recognizes and admits that the Elders of Whitecap Dakota First Nation participated in cutting and

harvesting crops in the area, implementation of fencing, and use of the land as a sacred burial ground.

IV. Canada's statements of fact

Additions to Whitecap Reserve and Grazing Permits: 1889-1915

85. Chief Whitecap and the Whitecap Dakota First Nation settled on the east bank of the South Saskatchewan River where Whitecap Reserve was set aside for their benefit via Order-in-Council dated May 17, 1889. Whitecap Reserve consisted of 1,472 acres.
86. By the early 1890's Whitecap Dakota First Nation's focus shifted to raising cattle rather than growing crops. In 1891, the Whitecap Dakota First Nation had reportedly 29 head of cattle.
87. Further additions were made to Whitecap Reserve beginning in 1893 upon recognition from Indian Agent Tucker that the Whitecap Dakota First Nation required further grazing lands for their livestock:
 - a. 1,930 acres granted via Order-in-Council dated October 21, 1893
 - b. 320 acres added via Order-in-Council dated November 24, 1898
88. Whitecap Dakota First Nation's cattle grew from 86 head in 1893 to 171 head of cattle in 1895 following the nearly 2,000-acre addition to Whitecap Reserve.
89. Whitecap Dakota First Nation did not report any land issues for the next thirteen years following the 1898 addition to reserve.
90. In 1911, Whitecap Dakota First Nation indicated a need for further grazing lands. Secretary McLean, of the Department of Indian Affairs, forwarded the First Nation's request to the Department of Interior, which controlled much of the land surrounding Whitecap Reserve. Inspector Chisholm requested on behalf of the Whitecap Dakota First Nation, three pieces of land, specifically:
 - a. The north half of Section 36, Township. 33, Range 6, W3M;

- b. The west half (fractional) of Section 25, Township 33, Range 6, W3M; and
 - c. All of Section 6, Township 34, Range 5, W3M.
91. Between January 1912 and October 1914, Secretary McLean and Inspector Chisholm corresponded regularly on the Whitecap Dakota First Nation's need for grazing lands and the availability of the requested lands for the Band's use adjacent to Whitecap Reserve.
92. Chisholm also reported on October 24, 1914 that the Supervisor of Forest Reserves was prepared to grant a grazing permit to Whitecap Dakota First Nation at five cents per head, monthly, for several sections within the Dundurn Forest Reserve, all west of the third meridian:
- a. The northeast quarter of Section 6, Township 34, Range 5
 - b. Section 5, Township 34, Range 5
 - c. Section 29, Township 33, Range 5
 - d. Section 32, Township. 33, Range 5
93. On February 11, 1915, Secretary McLean informed Chisholm that the proposed grazing permit had been approved on the understanding the Whitecap Dakota First Nation would pay the annual fee.

Additions to Whitecap Reserve and Grazing Permits: 1915-1933

94. Between February 1915 and October 1916, Controller Cote and Secretary McLean corresponded about the three quarter sections of Section 6, Township 34, Range 5 to be added to Whitecap Reserve. Secretary McLean noted in an October 19, 1916 letter to Cote that homesteaders had encroached on the west half of section 6 but that he still hoped the land could be added to Whitecap Reserve.
95. On January 25, 1918, Agent Schmidt reported Whitecap Dakota First Nation had 100 head of cattle and a lease on the four and one quarter sections of land in the Dundurn Forest Reserve. He requested the enlargement of the leased grazing land

to accommodate 150 head of cattle at a cost of \$45.50 per annum, which the Whitecap Dakota First Nation could afford.

96. On October 25, 1919, Secretary McLean wrote to Controller Cote requesting a pre-emption filed on the west half of Section 6 by a Mr. Owens be cancelled due to a lack of improvement on the land and that the land be placed under the control of his Department.
97. On May 6, 1921, the Department of the Interior informed Secretary McLean that Mr. Owen was, in fact, fulfilling the regulations in respect to his homestead on the west half of section 6 and therefore his pre-emption could not be cancelled.
98. In July of 1921, the Department of Indian Affairs secured the first of several additions to reserve of Section 6 for Whitecap Dakota First Nation:
 - a. the southeast quarter of Section 6 was added by Order-in-Council dated July 14, 1921;
 - b. the southwest quarter of Section 6 was added by Order-in-Council dated May 14, 1926; and
 - c. the northwest quarter of Section 6 was added by Order-in-Council dated November 7, 1928; and
 - d. the northeast quarter of Section 6 was added by Order-in-Council dated March 7, 1933.
99. On March 27, 1926, Agent Schmidt informed Secretary McLean that Mr. Owen had abandoned his pre-emption of the southwest quarter of Section 6, Township 34 and that the pre-emption had therefore been cancelled by the Department of the Interior, allowing the quarter to be added to reserve in May of that year.
100. On September 28, 1928, Secretary McLean wrote to the Commissioner of Dominion Lands at the Department of the Interior reporting that the Department of Indian Affairs was arranging for the purchase of the northwest quarter of Section 6. McLean also requested the northeast quarter of Section 6 be granted to the Department of Indian Affairs, noting the land was currently in the Dundurn Forest Reserve.

101. On October 17, 1928, the Department of Indian Affairs purchased the northwest quarter of Section 6 from Mr. Owens for \$325.00, allowing the quarter to be added to reserve in November of that year.
102. On December 12, 1928, J. Martin of the Department of the Interior informed Secretary McLean that his Department had no objection to the northeast quarter of Section 6 being withdrawn from the Dundurn Forest Reserve for the use of Whitecap Dakota First Nation. Martin added that the land could not be withdrawn until the *Forest Reserves Act* was amended.
103. The northeast quarter of Section 6 was added to reserve on March 7, 1933, after which the entirety of Section 6 became part of Whitecap Reserve. Agent Schmidt and the Whitecap Dakota First Nation were made aware of the addition in March of 1934.

Grazing Permits and Provincial Land Transfer: 1935

104. On March 29, 1935, Agent Schmidt wrote to the Department of National Defence requesting permission on behalf of Whitecap Dakota First Nation to graze 100 head of cattle on portions of the Dundurn Forest Reserve that the Band had previously used. Agent Schmidt requested permission to graze on the land free of charge.
105. On April 27, 1935, Captain Fraser, on behalf of the Department of National Defence granted Whitecap Dakota First Nation permission to graze on the following land under its control, free of charge:
 - a. The north half of Section 5;
 - b. All of Section 8; and
 - c. The northwest quarter of Section 9.

Captain Fraser advised he could not grant permits for the remainder of the land because it was under the control of the Department of Interior.

106. On May 3, 1935, Agent Schmidt wrote Secretary MacKenzie of the Department of Indian Affairs regarding grazing access to the remainder of the land. Acting

Secretary MacInnes forwarded Agent Schmidt's letter to the Department of Interior on August 8, 1935.

107. On August 21, 1935, Assistant Deputy Minister K. Gibson of the Department of the Interior advised the Department of Indian Affairs that the requested grazing land had been transferred to the Province of Saskatchewan by way of a February 16, 1935 Order-in-Council.
108. On September 6, 1935, Saskatchewan's Director of Lands advised Secretary MacKenzie that the requested lands had been disposed of under a long-term grazing lease to the University of Saskatchewan.
109. On September 17, 1935, Secretary MacKenzie informed Agent Schmidt of the Province's transfer and grazing lease with the University of Saskatchewan.

Additions to Reserve: 1938 – 1941

110. On April 8, 1938, Indian Agent Simpson (replacing Agent Schmidt) inquired with the Inspector of Indian Agencies regarding further additions to Whitecap Reserve. Inspector Robertson replied on April 11, 1938 agreeing more land should be secured for the Whitecap Dakota First Nation.
111. On April 30, 1938, the Department of Indian Affairs advised Inspector Robertson that no funds were available to purchase land this year for the Whitecap Dakota First Nation, but that \$3,600 might be available for 1939-40.
112. On November 4, 1938, Agent Simpson advised the Department of Indian Affairs that Whitecap Dakota First Nation had 125 head of cattle and that the band was leasing 1,120 acres of land free of charge in the Dundurn Forest Reserve.
113. On March 9, 1939, Inspector Robertson was informed that no funds were available in that year's appropriation to purchase additional land for Whitecap Dakota First Nation and that the matter would be included in the 1940 Band funding estimates.

114. On January 20, 1941, Agent Simpson advised the General Superintendent of Indian Agencies, M. Christianson, that the Whitecap Dakota First Nation's cattle herd had grown from 123 head in 1938 to 194 head by 1940. Simpson also reported that further land might be secured from a settler who was willing to sell in the area and that Whitecap Dakota First Nation was still leasing 1,100 acres of land free of charge in the Dundurn Forest Reserve with the understanding it be vacated on three days' notice and with no guarantee that grazing rights would be granted for 1941.
115. On January 31, 1941, Superintendent Allan of the Department of Indian Affairs wrote to General Superintendent Christianson explaining how funds to secure one parcel of land from the Province and one parcel of land from a settler might be obtained for the benefit of Whitecap Dakota First Nation.
116. Following the securing of funds, two additions were made to the Whitecap Reserve in 1941:
 - a. 157 acres added via Order-in-Council dated February 24, 1941
 - b. 216.5 acres added via Order-in-Council dated September 25, 1941
117. Between the years 1926 and 1932, Whitecap Dakota First Nation owned an average of 200 head of cattle with access to 4,640 acres of land within the Whitecap Reserve and as leased in the Dundurn Forest Reserve.
118. Ten years after the 1935 transfer of lands previously leased by Whitecap Dakota First Nation in the Dundurn Forest Reserve, Superintendent Allan reported on June 23, 1945 that the Whitecap Dakota First Nation's cattle herd had grown from 194 head in 1940 to 206 head in 1945.
119. On November 15, 1957, the Department of Indian Affairs' Senior Administrative Officer reported internally that the Whitecap Dakota First Nation still had approximately 130 head of cattle.

V. Relief

120. Canada seeks the following relief:

- a. Dismissal of the Claims set out in the Declaration of Claim;
- b. Costs; and
- c. Such further relief as this Honourable Tribunal deems just.

VI. Communication

121. The Respondent's address for the service of documents is:

Department of Justice (Canada)
Prairie Regional Office (Saskatoon)
410 – 22nd Street East, Suite 410
Saskatoon, SK S7K 5T6
Attention: Judith Boer and Brady Fetch

122. Facsimile number for service is (306) 975-4030.

Email address for service is: saskSCT-5001-20-whitecap@justice.gc.ca

123. Dated this 16th day of October, 2020.



ATTORNEY GENERAL OF CANADA

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Prairie Region (Saskatoon)
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