
RESPONSES

Re: Carry the Kettle First Nation Cypress Hills Inquiry
Robert D. Nault, Minister of Indian Affairs and Northern Development, to
Roger J. Augustine, Carole T. Corcoran, James Prentice,
Indian Claims Commission,
January 5, 2001
373

Re: Cowessess First Nation 1907 Surrender Claim Inquiry
Robert D. Nault, Minister of Indian Affairs and Northern Development, to
Phil Fontaine, Indian Claims Commission,
March 27, 2002
376

Re: Primrose Lake Air Weapons Range (PLAWR) II Inquiries
Robert D. Nault, Minister of Indian Affairs and Northern Development, to
Phil Fontaine, Indian Claims Commission,
Richard Mirasty, Flying Dust First Nation,
Joseph Fiddler, Waterhen Lake First Nation,
Elmer Campbell, Buffalo River Dene Nation,
Ernest Sundown, Big Island Lake (Joseph Bighead) Cree Nation,
March 27, 2002
378

RESPONSE TO CARRY THE KETTLE INQUIRY

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

Mr. Roger J. Augustine
Ms. Carole T. Corcoran
Mr. James Prentice, Q.C.
Co-Chairs
Indian Specific Claims Commission
P.O. Box 1750, Station B
OTTAWA ON K1P 1A2

Dear Commissioners Augustine, Corcoran and Prentice:

Thank you for providing me with copies of the Indian Specific Claims Commission's (ISCC) July 2000 report concerning the Carry the Kettle First Nation's specific claim, *Carry the Kettle First Nation Inquiry - Report on: Cypress Hills*.

As you will recall, there were three issues reviewed by the ISCC in this report:

- (1) Was a reserve set apart at the Cypress Hills for the people of Chiefs Man Who Took the Coat and Long Lodge? More specifically: (a) was a reserve created pursuant to the terms of Treaty 4; (b) was a reserve created pursuant to the provisions of the *Indian Act*; or (c) was a *de facto* reserve created;
- (2) If a reserve was created, was there a valid surrender or extinguishment of the First Nation's interest in the reserve; and
- (3) If there was a valid surrender, did the Crown breach any treaty, fiduciary, or other lawful obligation owed by Canada to the people of Chiefs Man Who Took the Coat and Long Lodge?

The ISCC concluded that the Carry the Kettle First Nation's specific claim did not disclose a lawful obligation on the part of Canada under the Specific Claims Policy, *Outstanding Business*. Therefore, Canada will not reconsider its original decision. The claim will not be accepted for negotiation.

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Although there are several references in the report with which Canada does not concur, Canada agrees with the ISCC that the lands in the survey plan were not set apart as a reserve pursuant to the terms of Treaty 4, the provisions of the *Indian Act* or on a *de facto* basis.

The ISCC recommended that the Government of Canada undertake the following: acquire the site of the Cypress Hills massacre and recognize it for its historical significance; and work with the Assiniboine people to secure an appropriate site in the Cypress Hills for the cultural and spiritual purposes of this First Nation. My colleague, the Honourable Sheila Copps, Minister of Canadian Heritage, has the mandate to designate national historic sites. If the Carry the Kettle First Nation is interested in pursuing this process, Parks Canada will assist it in this endeavour.

For its part, Indian and Northern Affairs Canada's (INAC) Saskatchewan Regional Office is helping the Carry the Kettle First Nation re-establish its association with the Cypress Hills. It is providing financial assistance to Carry the Kettle First Nation in the development of a cultural interpretive program at the Cypress Hills Interprovincial Park in partnership with the Nekaneet First Nation, and the Saskatchewan Ministry of Environment and Resource Management.

The interpretative program will serve to educate park visitors about the views and beliefs of First Nation peoples and their history and relationship to the natural environment. Cultural history and traditions would be presented to promote an understanding of local history and its effects on contemporary life in the area of Cypress Hills Interprovincial Park.

Ms. Elsie Koochicum and Ms. Joyce Ironstar of Carry the Kettle First Nation have been active participants in this project. They have recommended that both Nekaneet and Carry the Kettle First Nations' histories be documented and that information be disseminated as part of the park's interpretative programming. As well, INAC's Saskatchewan Regional Office has reached an agreement with both First Nations to proceed with researching and developing a First Nations interpretative program this fiscal year with a view to full implementation by next summer.

Furthermore, with its Treaty Land Entitlement settlement, the Carry the Kettle First Nation purchased 2,500 acres of Crown land near the Cypress Hills. The First Nation negotiated a conservation easement agreement on the land previously protected by the *Saskatchewan Wildlife Habitat Protection Act*. In December 1998, the provincial government and the Carry the Kettle First Nation initiated a resource management

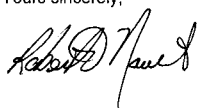
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participation agreement that laid the groundwork for the easement. Around the same time, the Carry the Kettle First Nation bought two deeded quarter-sections in the Cypress Hills. In total, the Carry the Kettle First Nation purchased 2,880 acres in the rural municipality of Maple Creek near Cypress Hills. The lands are currently being used for agricultural purposes (grain production and grazing) through a lease to a non-band member.

I would like to thank the Indian Specific Claims Commission for its consideration of this claim.

Yours sincerely,



Robert D. Nault, P.C., M.P.

c.c.: The Honourable Sheila Copps, P.C., M.P.

RESPONSE TO COWESSESS INQUIRY

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
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Ottawa, Canada K1A 0H4

MAR 27 2002

Mr. Phil Fontaine
Chief Commissioner
Indian Specific Claims Commission
PO Box 1750, Station B
OTTAWA ON K1P 1A2

Dear Mr. Fontaine:

I wish to thank Commissioner Roger Augustine for his letter of April 26, 2001, to my colleague, the Honourable Anne McLellan, former Minister of Justice and Attorney General of Canada, former Chief Terrance Pelletier, Cowessess First Nation, and me, enclosing a copy of the March 2001 Indian Specific Claims Commission's (ISCC) interim report on its inquiry into the Cowessess First Nation's specific claim regarding the 1907 surrender of a portion of Indian Reserve 73.

This report deals with one part of the Cowessess First Nation's claim, originally rejected by Canada, alleging that a breach of section 49 of the *Indian Act* (now section 38) occurred when Canada took the 1907 surrender of 20,704 acres of land for sale. By agreement of the parties, the three issues identified for the purpose of Phase I of the inquiry were:

1. The application of section 49 of the *Indian Act*;
2. The number of eligible voters present at the surrender meeting; and,
3. Whether or not a majority of the eligible voters assented.

The other allegations of the First Nation regarding pre- and post-surrender breaches were not dealt with in Phase I of the inquiry.

I appreciate the work which the ISCC undertook relative to this inquiry. I note that, in your conclusions, you have recommended that Canada accept the 1907 Surrender Claim for negotiation. Canada has reviewed your recommendations and the reasons thereto in detail. A summary of the ISCC's conclusions and Canada's position is below:

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1. The ISCC accepts Cowessess's argument that there were 30 band members present at the vote.

Canada asserts that there is no persuasive evidence of the presence of a 30th voter. Twenty-nine names are recorded as being present at the vote on the voters list. The 30th name may have been added to the surrender document later. We note that the ISCC itself indicates that whether there were 29 or 30 members at the vote is equivocal but decided the matter on inferences drawn from the signing of the surrender document. Payment of the surrender monies took place over the period of a week, thus the 30th signature could have been added at any time during that time period. With respect, Canada is not convinced that it is more likely than not that a 30th voter was present at the vote.

2. The ISCC agrees with the First Nation's interpretation of the word "majority" to mean a majority of those present.

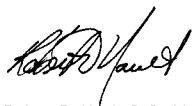
While Canada can agree that case law has not given a final interpretation of section 49, the obiter from the Supreme Court favours interpreting the word "majority," as used in that section, to mean a majority of votes cast. Canada finds the position of the Supreme Court a compelling one. Thus Canada does not agree with the First Nation's interpretation and asserts that, given the conclusion arrived at above, 15 votes in favour constitutes a majority out of a total of 29 votes cast.

In summary, it is our view that Canada does not owe an outstanding lawful obligation to the Cowessess First Nation regarding the 1907 Surrender with respect to the Phase I issues. However, as previously agreed between the parties, the inquiry should continue into Phase II, and we should examine together the issues concerning the possibility of a pre-surrender breach.

My officials are prepared to meet with you and the representatives of the First Nation, at a mutually agreed upon time, to pursue Phase II of the inquiry.

Again, thank you for the work you have done in this phase of this inquiry. Should you require any further details, please feel free to contact Canada's legal counsel on the inquiry, Mr. Jeffery Hutchinson, at (819) 953-5336.

Yours sincerely,



Robert D. Nault, P.C., M.P.

c.c.: The Honourable Martin Cauchon, P.C., M.P.
Chief Patricia Sparvier

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

MAR 27 2002

Mr. Phil Fontaine
Chief Commissioner
Indian Specific Claims Commission
PO Box 1750, Station B
OTTAWA ON K1P 1A2

Dear Mr. Fontaine:

This is in response to the Indian Specific Claims Commission's (ISCC) September 1995 report, entitled *Primrose Lake Air Weapons Range II Inquiry Report*, copies of which were presented to my predecessor, the Honourable Jane Stewart. I regret Canada's delay in responding to the Commission's report on this claim.

As you know, three issues were canvassed by the Commission in this report:

- Whether Canada has an outstanding lawful obligation towards the claimants arising from the creation of the range;
- Did Canada breach its treaty obligations; and,
- Did Canada have fiduciary duty towards the claimants, and did it breach that duty?

In addition, Canada's "statement of issues" included an additional issue:

- Were there oral agreements made collateral to Treaty No. 6 and Treaty No. 10 and, if so, what are their effects?

As you will note, the ISCC report concludes that the Government of Canada did not breach its treaty obligations to the Buffalo River Dene, Flying Dust, Waterhen Lake and Big Island Lake Cree First Nations. The report also concludes that there is no entitlement to compensation for the reduction in food harvesting rights based on breach

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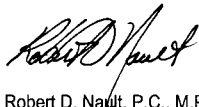
of a fiduciary duty. However, the report concludes that the Government of Canada breached its fiduciary obligation to the Buffalo River Dene Nation, the Waterhen Lake First Nation and the Flying Dust First Nation by failing to ensure that First Nations people were compensated for lost commercial harvesting rights. The ISCC recommended that Canada accept these claims for negotiation on this basis. Finally, the Commission recommended that the claim of the Big Island Lake Cree Nation was properly rejected under the policy.

After a thorough consideration of the Commission's report, I regret that I am unable to accept the ISCC's recommendation to accept the claim of the Buffalo River Dene, Waterhen Lake and Flying Dust First Nations for negotiation under the Specific Claims Policy. This is due to the fact that the policy addresses only claims by a First Nation collective, and not individual rights. The ISCC's recommendation that Canada accept the First Nations' claims and negotiate to compensate for the loss of commercial harvesting rights is based on a memorandum of understanding between Canada and Saskatchewan dated August 4, 1953, in which Canada agreed to compensate "persons or corporations" having rights in the area. However, the commercial harvesting rights to which the ISCC report refers were held by individuals or groups of people rather than by any of the claimant First Nations.

Further, under the terms of this agreement between Canada and Saskatchewan, compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range.

I would like to thank the Indian Specific Claims Commission for its considerable time and work throughout this Inquiry. I thank you also for your patience in waiting for Canada's response, and I regret that my reply could not be more positive.

Yours sincerely,



Robert D. Nault, P.C., M.P.

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

MAR 27 2000

Chief Richard Mirasty
Flying Dust First Nation
8001 Flying Dust Reserve
MEADOW LAKE SK S9X 1T8

Dear Chief Mirasty:

As you are aware, I am in receipt of the Indian Specific Claims Commission's (ISCC) September 1995 report on your First Nation's specific claim, *Primrose Lake Air Weapons Range II Inquiry Report*. I regret Canada's delay in responding to the Commission's report on this claim.

As you will remember, three issues were canvassed by the ISCC in this report:

- Whether Canada has an outstanding lawful obligation towards the claimants arising from the creation of the range;
- Did Canada breach its treaty obligations?; and,
- Did Canada have fiduciary duty towards the claimants, and did it breach that duty?

In addition, Canada's "statement of issues" included an additional issue:

- Were there oral agreements made collateral to Treaty No. 6 and Treaty No. 10 and, if so, what are their effects?

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Canada 

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As you know, the ISCC report concludes that the Government of Canada did not breach its treaty obligations to the Flying Dust, Buffalo River Dene, Waterhen Lake and Big Island Lake Cree First Nations. The report also concludes that there is no entitlement to compensation for the reduction in food harvesting rights based on breach of a fiduciary duty. However, the report concludes that the Government of Canada breached its fiduciary obligation to the Flying Dust First Nation, as well as to the Waterhen Lake First Nation and the Buffalo River Dene Nation, by failing to ensure that First Nations people were compensated for lost commercial harvesting rights. The ISCC recommended that Canada accept these claims for negotiation.

After a thorough consideration of the Commission's report, I regret that I am unable to accept the ISCC's recommendation to enter into negotiations with the Flying Dust First Nation under the Specific Claims Policy. I regret that this claim cannot be negotiated under the policy, as the policy addresses only claims by a First Nation collective, and not individual rights. The ISCC report concludes that Canada should accept the First Nations' claims and negotiate to compensate for the loss of commercial harvesting rights. It bases its finding on a memorandum of understanding between Canada and Saskatchewan dated August 4, 1953, in which Canada agreed to compensate "persons or corporations" having rights in the area. However, the commercial harvesting rights which the ISCC report refers to were held by individuals or groups of people rather than by the Buffalo River Dene Nation or other claimant First Nations.

Further, under the terms of this agreement between Canada and Saskatchewan, compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range.

I thank you for your patience in waiting for Canada's response, and I regret that my reply could not be more positive.

Yours sincerely,



Robert D. Nault, P.C., M.P.

c.c.: Mr. Phil Fontaine

RESPONSE TO PLAWR II INQUIRIES

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

MAR 27 2004

Chief Joseph Fiddler
Waterhen Lake First Nation
PO Box 9
WATERHEN LAKE SK S0M 3B0

Dear Chief Fiddler:

As you are aware, I am in receipt of the Indian Specific Claims Commission's (ISCC) September 1995 report on your First Nation's specific claim, *Primrose Lake Air Weapons Range II Inquiry Report*. I regret Canada's delay in responding to the Commission's report on this claim.

As you will remember, three issues were canvassed by the ISCC in this report:

- Whether Canada has an outstanding lawful obligation towards the claimants arising from the creation of the range;
- Did Canada breach its treaty obligations?; and,
- Did Canada have fiduciary duty towards the claimants, and did it breach that duty?

In addition, Canada's "statement of issues" included an additional issue:

- Were there oral agreements made collateral to Treaty No. 6 and Treaty No. 10 and, if so, what are their effects?

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Canada

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As you know, the ISCC report concludes that the Government of Canada did not breach its treaty obligations to the Waterhen Lake, Buffalo River Dene, Flying Dust and Big Island Lake Cree First Nations. The report also concludes that there is no entitlement to compensation for the reduction in food harvesting rights based on breach of a fiduciary duty. However, the report concludes that the Government of Canada breached its fiduciary obligation to the Waterhen Lake First Nation, as well as to the Buffalo River Dene Nation and the Flying Dust First Nation, by failing to ensure that First Nations people were compensated for lost commercial harvesting rights. The ISCC recommended that Canada accept these claims for negotiation.

After a thorough consideration of the Commission's report, I regret that I am unable to accept the ISCC's recommendation to enter into negotiations with the Waterhen Lake First Nation under the Specific Claims Policy. I regret that this claim cannot be negotiated under the policy, as the policy addresses only claims by a First Nation collective, and not individual rights. The ISCC report concludes that Canada should accept the First Nations' claims and negotiate to compensate for the loss of commercial harvesting rights. It bases its finding on a memorandum of understanding between Canada and Saskatchewan dated August 4, 1953, in which Canada agreed to compensate "persons or corporations" having rights in the area. However, the commercial harvesting rights which the ISCC report refers to were held by individuals or groups of people rather than by the Buffalo River Dene Nation or other claimant First Nations.

Further, under the terms of this agreement between Canada and Saskatchewan, compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range.

I thank you for your patience in waiting for Canada's response, and I regret that my reply could not be more positive.

Yours sincerely,



Robert D. Nault, P.C., M.P.

c.c.: Mr. Phil Fontaine

RESPONSE TO PLAWR II INQUIRIES

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

MAR 27 2002

Chief Elmer Campbell
Buffalo River Dene Nation
General Delivery
DILLION SK S0M 0S0

Dear Chief Campbell:

As you are aware, I am in receipt of the Indian Specific Claims Commission's (ISCC) September 1995 report on your First Nation's specific claim, *Primrose Lake Air Weapons Range II Inquiry Report*. I regret Canada's delay in responding to the Commission's report on this claim.

As you will remember, three issues were canvassed by the ISCC in this report:

- Whether Canada has an outstanding lawful obligation towards the claimants arising from the creation of the range;
- Did Canada breach its treaty obligations?; and,
- Did Canada have fiduciary duty towards the claimants, and did it breach that duty?

In addition, Canada's "statement of issues" included an additional issue:

- Were there oral agreements made collateral to Treaty No. 6 and Treaty No. 10 and, if so, what are their effects?

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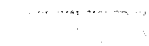
As you know, the ISCC report concludes that the Government of Canada did not breach its treaty obligations to the Buffalo River Dene, Flying Dust, Waterhen Lake and Big Island Lake Cree First Nations. The report also concludes that there is no entitlement to compensation for the reduction in food harvesting rights based on breach of a fiduciary duty. However, the report concludes that the Government of Canada breached its fiduciary obligation to the Buffalo River Dene Nation, as well as the Waterhen Lake and Flying Dust First Nations, by failing to ensure that First Nations people were compensated for lost commercial harvesting rights. The ISCC recommended that Canada accept these claims for negotiation.

After a thorough consideration of the Commission's report, I regret that I am unable to accept the ISCC's recommendation to enter into negotiations with the Buffalo River Dene under the Specific Claims Policy. I regret that this claim cannot be negotiated under the policy, as the policy addresses only claims by a First Nation collective, and not individual rights. The ISCC report concludes that Canada should accept the First Nations' claims and negotiate to compensate for the loss of commercial harvesting rights. It bases its finding on a memorandum of understanding between Canada and Saskatchewan dated August 4, 1953, in which Canada agreed to compensate "persons or corporations" having rights in the area. However, the commercial harvesting rights which the ISCC report refers to were held by individuals or groups of people rather than by the Buffalo River Dene Nation or other claimant First Nations.

Further, under the terms of this agreement between Canada and Saskatchewan, compensation for commercial harvesting rights was not based on either Indian status or membership in an Indian Band; rather, it was to be paid to anyone who held a licence on the land which became the Primrose Lake Air Weapons Range.

I thank you for your patience in waiting for Canada's response, and I regret that my reply could not be more positive.

Yours sincerely,



Robert D. Nault, P.C., M.P.

c.c.: Mr. Phil Fontaine

RESPONSE TO PLAWR II INQUIRIES

Minister of Indian Affairs
and Northern Development



Ministre des Affaires
indiennes et du Nord canadien

Ottawa, Canada K1A 0H4

MAR 27 2002

Chief Ernest Sundown
Big Island Lake Cree Nation
PO Box 309
PIERCELAND SK S0M 2K0

Dear Chief Sundown:

As you are aware, I am in receipt of the Indian Specific Claims Commission's (ISCC) September 1995 report on your First Nation's specific claim, *Primrose Lake Air Weapons Range II Inquiry Report*. I regret Canada's delay in responding to the Commission's report on this claim.

As you will remember, three issues were canvassed by the ISCC in this report:

- Whether Canada has an outstanding lawful obligation towards the claimants arising from the creation of the range;
- Did Canada breach its treaty obligations?; and,
- Did Canada have fiduciary duty towards the claimants, and did it breach that duty?

In addition, Canada's "statement of issues" included an additional issue:

- Were there oral agreements made collateral to Treaty No. 6 and Treaty No. 10 and, if so, what are their effects?

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Canada

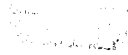
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As you know, the ISCC report concludes that the Government of Canada did not breach its treaty obligations to the Big Island Lake Cree Nation (BILCN), Buffalo River Dene, Flying Dust and Waterhen Lake First Nations. The report also concludes that there is no entitlement to compensation for the reduction in food harvesting rights based on breach of a fiduciary duty. Finally, the ISCC concluded that the BILCN claim was properly rejected by the then Minister, the Honourable Judd Buchanan, on the basis that it lost none of its traditional harvesting lands when the Range was created.

I would like to advise you that the Government of Canada accepts the ISCC's conclusions with respect to the BILCN.

I thank you for your patience in waiting for Canada's response.

Yours sincerely,



Robert D. Naut, P.C., M.P.

c.c.: Mr. Phil Fontaine