

INDIAN CLAIMS COMMISSION

SAKIMAY FIRST NATION TREATY LAND ENTITLEMENT INQUIRY

PANEL

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Commissioner Jane Dickson-Gilmore
Commissioner Sheila G. Purdy**

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To the Indian Claims Commission
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February 2007

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SUMMARY

SAKIMAY FIRST NATION TREATY LAND ENTITLEMENT INQUIRY Saskatchewan

The report may be cited as Indian Claims Commission, *Sakimay First Nation: Treaty Land Entitlement Inquiry* (Ottawa, February 2007).

*This summary is intended for research purposes only.
For a complete account of the inquiry, the reader should refer to the published report.*

Panel: Commissioner A.C. Holman (Chair), Commissioner J. Dickson-Gilmore,
Commissioner S.G. Purdy

Treaties – Treaty 4 (1874); **Treaty Land Entitlement** – Amalgamation – Policy; **Saskatchewan**

THE SPECIFIC CLAIM

In 1984, the Sakimay First Nation's treaty land entitlement (TLE) claim was rejected by the Specific Claims Branch of the Department of Indian Affairs and Northern Development (DIAND). The First Nation completed further research and re-submitted the claim in 1997. Following the rejection of this submission in 2002, the First Nation requested that the Indian Claims Commission (ICC) review its rejected specific claim. In September 2003, the ICC accepted the request for inquiry. At issue in this inquiry is whether the First Nation has an outstanding treaty land entitlement.

BACKGROUND

The Sakimay First Nation is a Cree-speaking nation located east of Regina, Saskatchewan, near the community of Grenfell. Today's Sakimay First Nation is a combination of the Sakimay or Mosquito Band and the Little Bone Band. Historically, the Sakimay Band was part of the Fort Ellice Band led by Waywayseecappo, who signed Treaty 4 in 1874 on behalf of the Fort Ellice Band. Following the signing, Sakimay and his followers were paid treaty annuities with Waywayseecappo and were listed under his payroll.

In 1875, W.J. Christie travelled to Fort Ellice and Qu'Appelle to meet with the treaty bands to select reserves. Christie later reported that a few of the families that were part of Waywayseecappo's Band had settled at the Round and Crooked Lakes on the Qu'Appelle River and did not wish to move. As a result, a reserve for Sakimay (Mosquito) was originally surveyed in 1876 on the north shore of Crooked Lake; however, the survey of the southern boundary was never completed, and the reserve was never confirmed.

In 1881, a separate payroll was created for the Sakimay Band, and Indian Reserve (IR) 74 was surveyed for the Band on the south side of Crooked Lake. After Sakimay's death in 1881, the Band split into two groups. One group, led by Yellow Calf, occupied the south side of the reserve, while the other, led by Shesheep, occupied the north side of the reserve. IR 74A, consisting of 1,651.2 acres on the north side of Crooked Lake, was set aside in 1884 after a re-survey of the area. The two groups had separate paylists until 1883, when they were recombined under one payroll. In 1889, additional lands were added to this reserve and its size was confirmed as 3,584 acres.

By 1887, the Sakimay First Nation had developed close ties with the Little Bone Band, which occupied IR 73A, near the Sakimay reserve. Little Bone and his followers were paid annuities under the Sakimay payroll from 1887 on. By 1907, the Department of Indian Affairs acknowledged that the two bands had amalgamated, an arrangement it formalized. A surrender of the Little Bone reserve resulted.

ISSUES

What is the date of first survey for the Sakimay First Nation? What are the appropriate paylists to use for determining the Sakimay First Nation's treaty land entitlement population? Should Little Bone and his followers be counted with the Sakimay First Nation for the purpose of calculating its treaty land entitlement? If Little Bone or any of his followers were counted elsewhere for purposes of treaty land entitlement, does that preclude such individuals from being included in the Sakimay First Nation population for TLE purposes? What is the Sakimay First Nation's population for Treaty land entitlement purposes? Does the Sakimay First Nation have an outstanding treaty land entitlement?

OUTCOME

The specific claim was accepted for negotiation by Canada in September 2006. The Sakimay First Nation accepted this offer and requested the ICC conclude its inquiry, which the ICC did by issuing a declaration on February 21, 2007.

REFERENCES

In addition to the various sources noted below, ICC inquiries depend on a base of oral and documentary research, often including maps, plans, and photographs, that is fully referenced in the report.

ICC Reports Referred To

Gamblers First Nation: Treaty Land Entitlement Inquiry (Ottawa, October 1998), reported (1999) 11 ICCP 3.

Treaties and Statutes Referred To

Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu'Appelle and Fort Ellice (Ottawa: Queen's Printer, 1966).

Other Sources Referred To

DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 ICCP 171–85.

COUNSEL, PARTIES, INTERVENORS

R.S. Maurice for the Sakimay First Nation; V. Russell for the Government of Canada; J.B. Edmond, D. Kwan to the Indian Claims Commission.

PART I
INTRODUCTION

The Sakimay First Nation is a Cree-speaking nation located east of Regina, Saskatchewan, near the community of Grenfell. In the early 1980s, the Sakimay First Nation submitted a claim to the Minister of Indian Affairs alleging an outstanding treaty land entitlement (TLE) under Treaty 4. This claim was originally rejected in 1984. After completing further research, the First Nation re-submitted the TLE claim to the Specific Claims Branch of the Department of Indian Affairs and Northern Development (DIAND) in 1997. This claim was rejected in 2002. In 2003, the First Nation requested that the Indian Claims Commission (ICC) conduct an inquiry into its rejected claim. The ICC accepted the request for an inquiry in September 2003.

This TLE claim is intricately connected to the First Nation's history. The modern-day Sakimay First Nation is a combination of the Sakimay or Mosquito Band and the Little Bone Band. Sakimay or Mosquito was Chief of a band that received annuity payments with Waywayseecappo's Band for six years following the conclusion of Treaty 4. A reserve for Sakimay was originally surveyed in 1876 on the north shore of Crooked Lake; however, the survey of the southern boundary was never completed, and the reserve was never confirmed. In 1881, a separate payroll was created for the Sakimay Band and Indian Reserve (IR) 74 was surveyed for the Band on the south side of Crooked Lake. Also in 1881, Sakimay passed away. After his death, the Sakimay Band split into two groups. One group, led by Yellow Calf, occupied the south side of the reserve, while the other, led by Shesheep, occupied the north side of the reserve. IR 74A, consisting of 1,651.2 acres on the north side of Crooked Lake, was set aside in 1884. In 1889, additional lands were added to this reserve and its size was confirmed as 3,584 acres.

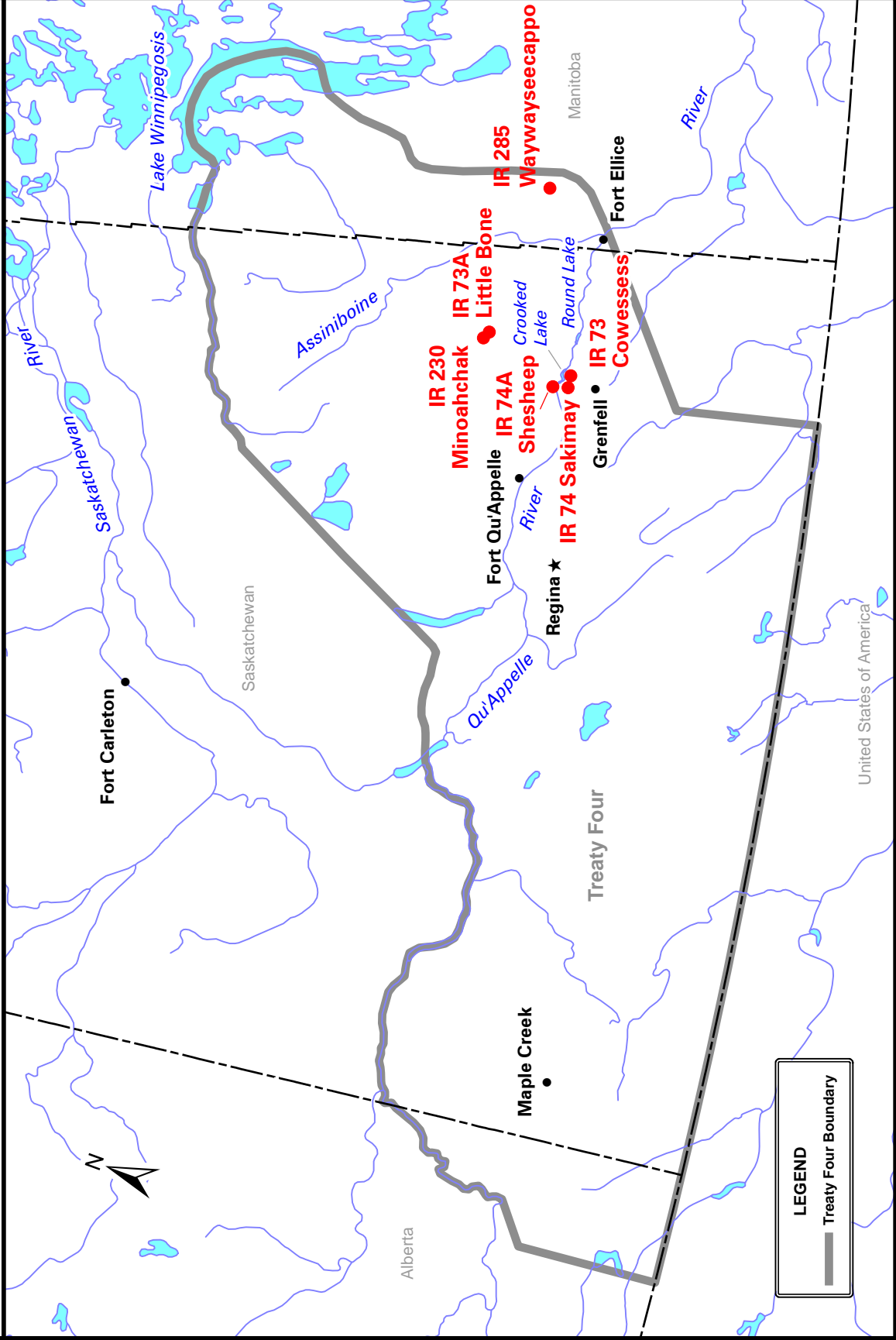
By 1887, the Sakimay First Nation had developed close ties with the Little Bone Band, which occupied IR 73A on Leech Lake, near the Sakimay reserve. The Department of Indian Affairs acknowledged that the two bands had informally amalgamated and, in 1907, proceeded to formalize the amalgamation. A surrender of the Little Bone reserve resulted.

MANDATE OF THE COMMISSION

The mandate of the Indian Claims Commission is set out in federal Orders in Council providing the Commissioners with the authority to conduct public inquiries into specific claims and to issue

Map 1

Claim Area Map



reports on “whether a claimant has a valid claim for negotiation under the [Specific Claims] Policy where the claim was already rejected by the Minister.”¹ This Policy, outlined in DIAND’s 1982 booklet entitled *Outstanding Business: A Native Claims Policy – Specific Claims*, states that Canada will accept claims for negotiation where they disclose an outstanding “lawful obligation” on the part of the federal government.² The term “lawful obligation” is defined in *Outstanding Business* as follows:

The government’s policy on specific claims is that it will recognize claims by Indian bands which disclose an outstanding “lawful obligation,” i.e., an obligation derived from the law on the part of the federal government.

A lawful obligation may arise in any of the following circumstances:

- i) The non-fulfillment of a treaty or agreement between Indians and the Crown.
- ii) A breach of an obligation arising out of the *Indian Act* or other statutes pertaining to Indians and the regulations thereunder.
- iii) A breach of an obligation arising out of government administration of Indian funds or other assets.
- iv) An illegal disposition of Indian land.³

¹ Commission issued September 1, 1992, pursuant to Order in Council PC 1992-1730, July 27, 1992, amending the Commission issued to Chief Commissioner Harry S. LaForme on August 12, 1991, pursuant to Order in Council PC 1991-1329, July 15, 1991.

² Department of Indian Affairs and Northern Development (DIAND), *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 ICCP 171–85 (hereafter *Outstanding Business*).

³ *Outstanding Business*, 20; reprinted in (1994) 1 ICCP 179–80.

PART II

HISTORICAL BACKGROUND

TREATY 4, 1874

On September 15, 1874, Treaty 4 was concluded between the Dominion of Canada, represented by Commissioners Alexander Morris and David Laird, and a group of “Cree, Saulteaux and other Indians” at Qu’Appelle Lakes.⁴ As with the other “numbered treaties,” Treaty 4 sought to assert the Crown’s title to certain areas of land, providing Aboriginal people with some protection from advancing immigration and settlement⁵ in exchange for an area of approximately 194,000 square kilometres (or 75,000 square miles) in what is now southern Saskatchewan.⁶ The Aboriginal signatories were promised annuities of five dollars per person, as well as schools, agricultural assistance, and the establishment of reserves. Reserves were to be selected by the Crown

after conference with each band of the Indians, and to be of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families; provided, however, that it be understood that, if at the time of the selection of any reserves, as aforesaid, there are any settlers within the bounds of the lands reserved for any band, Her Majesty retains the right to deal with such settlers as She shall deem just, so as not to diminish the extent of land allotted to the Indians; and provided, further, that the aforesaid reserves of land, or any part thereof, or any interest or right therein, or appurtenant thereto, may be sold, leased or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto first had and obtained, but in no wise shall the said Indians, or any of them, be entitled to sell or otherwise alienate any of the lands allotted to them as reserves.⁷

⁴ *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu’Appelle and Fort Ellice* (Ottawa: Queen’s Printer, 1966), 5 (ICC Exhibit 1a, p. 25).

⁵ *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu’Appelle and Fort Ellice* (Ottawa: Queen’s Printer, 1966), 6 (ICC Exhibit 1a, p. 26).

⁶ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords Clark, 1880; Coles reprint), 77 (ICC Exhibit 1c, p. 3). Treaty 4 also extends into Manitoba and Alberta; however, the majority of the treaty area is within Saskatchewan. At the time of treaty, Saskatchewan was part of the North-West Territories.

⁷ *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu’Appelle and Fort Ellice* (Ottawa: Queen’s Printer, 1966), 6 (ICC Exhibit 1a, p. 26).

Treaty 4 was signed by 13 Chiefs and headmen who represented over 3,000 Cree and Saulteaux Indians.⁸ After concluding treaty negotiations at Qu'Appelle Lakes, Commissioners Morris and Laird proceeded to Fort Ellice, arriving on September 19, 1874. They met with a "Band of Saulteaux Indians, who make their headquarters at Fort Ellice"⁹ and had remained at Fort Ellice instead of going to Qu'Appelle Lakes for treaty negotiations. Not all the Indians of the Fort Ellice area were present but, on September 21, 1874, Waywayseecappo and one headman accepted the terms of Treaty 4 on their behalf. Commissioner Morris wrote:

We proposed to them to give their adhesion to the Qu'Appelle Treaty, and surrender their claim to lands, wherever situated, in the North West Territories, on being given a Reserve and being granted the terms on which the Treaty in question was made. We explained fully these terms and asked the Indians, to present to us their chief and headmen. As some of the band were absent whom the Indians desired to be recognized as head-men, only the chief and one head man were presented.¹⁰

The Fort Ellice Band was led primarily by Waywayseecappo, but also included several other bands. One of these bands was led by Sakimay ("Sha-ke-ma" or "Mosquito"). Following the signing of Treaty 4, Sakimay and his followers, along with the other bands, were paid treaty annuities under Waywayseecappo's payroll.¹¹

WAGNER'S SURVEY OF A RESERVE FOR SAKIMAY, 1876

In July 1875, W.J. Christie was appointed by order in council to travel to Fort Ellice and Qu'Appelle to obtain adhesions to Treaty 4, pay annuities, and to meet with the treaty bands in order to select

⁸ Joan Holmes, "Sakimay First Nation, The Origins of the Little Bone / Ouchaness First Nation and Its Affiliation with First Nations in the Qu'Appelle Valley," July 2004, 10 (ICC Exhibit 8a, p. 10).

⁹ Alexander Morris, Lieutenant Governor, NWT, to the Secretary of State for the Provinces, October 17, 1874, Library and Archives Canada (LAC), RG 10, vol. 3614, file 4063 (ICC Exhibit 1a, p. 40).

¹⁰ Alexander Morris, Lieutenant Governor, NWT, to the Secretary of State for the Provinces, October 17, 1874, LAC, RG 10, vol. 3614, file 4063 (ICC Exhibit 1a, pp. 40–41).

¹¹ Treaty annuity payroll for "Wawasecapow's Band," 1875, LAC, RG 10, vol. 9412, pp. 41–43 (ICC Exhibit 1b, pp. 182–83).

reserves.¹² With respect to the location of future reserves, Christie was subsequently advised to consider future settlement, the proposed route of the railway, and the agricultural and hunting needs of the Indians.¹³ Furthermore, Christie was instructed to seek consent to group some of the bands together on one reserve.¹⁴

Christie arrived at Fort Ellice on August 24, 1875, and stayed until August 29, 1875.¹⁵ On October 7, 1875, Christie reported:

7. Wawasecappo's Band (58 families) wanted their Reserve at the head of the Bird Tail Creek, but as that locality is included in the limits of Treaty No. 2, no decision could be given until the Department had been consulted on the subject. A few families belonging to this band have been settled for nine or ten years at the Round and Crooked Lakes on the Qu' Appelle River about 60 miles from Fort Ellice, and as they have made considerable improvements there do not wish to be removed. As we saw no serious objection to this, their wishes were acceded to, and instructions given to Mr. Wagner [surveyor] accordingly. There are seven families now living at these lakes.¹⁶

Christie later provided instructions to William Wagner, Dominion Land Surveyor (DLS), to "commence the Survey of Indian Reserves under Treaty No. 4 as follows ... Mosquito – Round & Crooked Lakes, Qu' Appelle River 60 miles from Fort Ellice."¹⁷

¹² Order in Council PC (unknown), July 9, 1875, LAC, RG 10, vol. 3742, file 29200 (ICC Exhibit 1a, pp. 50–53).

¹³ J.S. Dennis, Surveyor General, Memorandum dated July 13, 1875, LAC, RG 10, vol. 3622, file 5007 (ICC Exhibit 1a, pp. 57–59).

¹⁴ [A.E. Meredith, Deputy Minister of the Interior,] to W.J. Christie, July 15, 1875, LAC, RG 10, vol. 3622, file 5007 (ICC Exhibit 1a, p. 63).

¹⁵ W.J. Christie to E.A. Meredith, Deputy Minister of Interior, September 9, 1875, LAC, RG 10, vol. 3622, file 5007 (ICC Exhibit 1a, pp. 70–73).

¹⁶ W.J. Christie and M.G. Dickieson to the Minister of the Interior, October 7, 1875, LAC, RG 10, vol. 3625, file 5489 (ICC Exhibit 1a, p. 85).

¹⁷ W.J. Christie to William Wagner, September 17, 1875, LAC, RG 10, vol. 3625, file 5489 (ICC Exhibit 1a, p. 74).

In August 1876, Wagner surveyed a reserve totaling 4,691 acres (or 7.33 square miles) for the Sakimay Band on the north side of the Qu'Appelle River and Crooked Lake.¹⁸ In his field notes, Wagner observed that Sakimay (whom he also referred to as Mosquito)

is not a chief but belongs to the Band of Wa-was-a-cappo. At the Payments made in 1875 Mr. Indian Commissioner Christie, in consideration of having houses erected at the head of Crooked Lake, River Qu'appelle, granted to this Mosquito and to his nearest relatives about 25 to 30 in number, a small reserve of Seven Square Miles.¹⁹

Wagner also indicated that Sakimay was not satisfied with the reserve as he expected “more of his friends to join” and that he wanted “his Reserve Extended to the South and to embrace both sides of the River.”²⁰ In his report to the Minister of the Interior dated February 19, 1877, Wagner wrote that Mosquito’s “idea of [the] extent of [the] Reserve differed materially with the reality (he wished to have it 40 miles along the River) but after I had explained to him the situation and seeing me determined to go on with the work he yielded and was reasonable.”²¹

SEPARATE PAYLISTS FOR SAKIMAY, 1881

From 1875 to 1881, the Sakimay Band was paid under the Waywayseecappo treaty annuity payroll. In 1881, separate treaty annuity paylists were drawn up for the Waywayseecappo and Sakimay Bands.²² That same year, a further division occurred. The Sakimay Band split into two groups after

¹⁸ Canada Lands Surveys Records (CLSR) SK Plan B964, “Indian Reserve Treaty No. 4, Sha-ke-ma – Mosquito, Crooked Lake on River Qu'Appelle,” William Wagner, DLS, August 1876 (ICC Exhibit 7a).

¹⁹ CLSR SK Field book FB 719, “Field Notes of Survey of Indian Reserves, Treaty No. 4, Sha-ke-ma – Mosquitoe, (Shesheep I.R. 74A),” August 1876, William Wagner, DLS, p. 26 (ICC Exhibit 7b, p. 29).

²⁰ CLSR SK Field book FB 719, “Field Notes of Survey of Indian Reserves, Treaty No. 4, Sha-ke-ma – Mosquitoe, (Shesheep I.R. 74A),” August 1876, William Wagner, DLS, p. 27 (ICC Exhibit 7b, p. 30).

²¹ William Wagner, DLS, to the Minister of the Interior, February 19, 1877, LAC, RG 88, vol. 300, file 0644 (ICC Exhibit 1a, p. 174).

²² ICC, *Gamblers First Nation: Treaty Land Entitlement Inquiry* (Ottawa, October 1998), reported (1999) 11 ICCP 3 at 29.

the death of Sakimay himself.²³ Subsequently, one group, led by Yellow Calf, collected annuities at Crooked Lake,²⁴ while the other, led by Shesheep, was paid at Fort Ellice.²⁵

In 1881, 49 people were paid treaty annuities with Yellow Calf (“Sa Ka may” payroll), and 81 were paid with Shesheep (“Mosquito” payroll), for a total of 130.²⁶ A table showing the “Number of Indians in the North-West Territories and their whereabouts on the 31st December, 1881,” published in the 1881 *Annual Report of the Department of Indian Affairs*, also numbers the “Mosquito” Band at 130 members, 75 being “on Reserve” and 55 “Hunting in District.”²⁷ In 1883, these two groups recombined under one payroll.²⁸

NELSON’S SURVEY OF THE SAKIMAY RESERVES (IR 74 AND IR 74A), 1881 AND 1884

In 1881, John C. Nelson, DLS, was instructed to survey a new reserve for the Sakimay (Mosquito) Band on the south side of the Qu’Appelle Valley.²⁹ A collection of Nelson’s surveys, published by Order in Council in 1889, confirms that he surveyed IR 74 for the Sakimay (Mosquito) Band in

²³ Anne Seymour, “Treaty Land Entitlement Review: Sakimay First Nation,” draft report prepared for Specific Claims Branch, Vancouver, October 2001, edited by Eric Wolfhard, Richard Yen, and Dr John Hall, January 2002, p. 16 (ICC Exhibit 3b, p. 16).

²⁴ Treaty annuity payroll for “Sa Ka may’s Band,” August 8, 1881, LAC, RG 10, vol. 9415, p. 58 (ICC Exhibit 1b, p. 376).

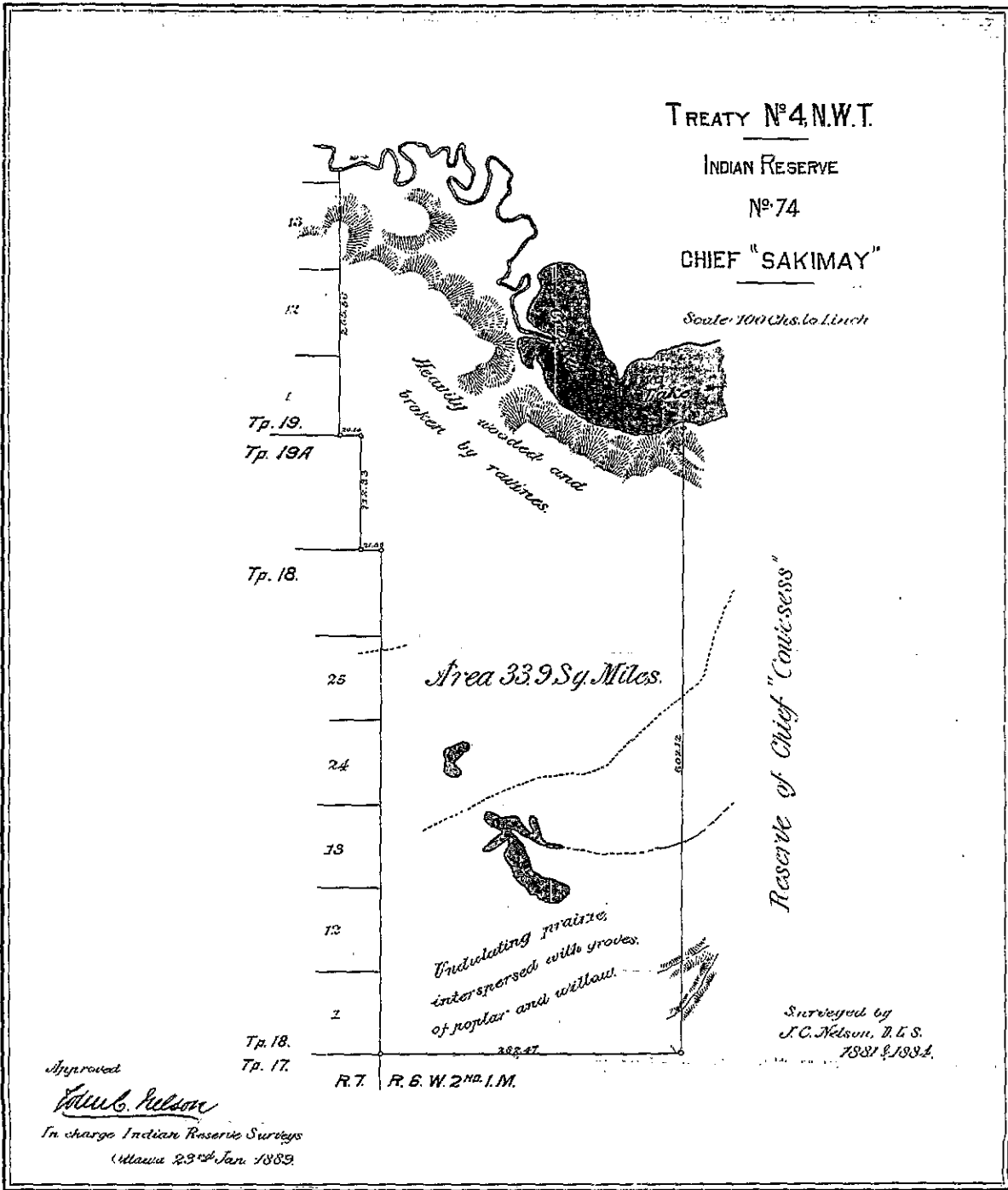
²⁵ Treaty annuity payroll for “Mosquito’s Band,” August 3, 1881, LAC, RG 10, vol. 9415, p. 79 (ICC Exhibit 1b, p. 375).

²⁶ Treaty annuity payroll for “Sa Ka may’s Band,” August 8, 1881, LAC, RG 10, vol. 9415, p. 58 (ICC Exhibit 1b, p. 376); Treaty annuity payroll for “Mosquito’s Band,” August 3, 1881, LAC, RG 10, vol. 9415, p. 79 (ICC Exhibit 1b, p. 375).

²⁷ Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881*, 56–57 (ICC Exhibit 1a, pp. 224–25).

²⁸ Treaty annuity payroll for “Sakimay’s Band,” October 10, 1883, LAC, RG 10, vol. 9416, p. 48 (ICC Exhibit 1b, p. 379).

²⁹ John Nelson, DLS, to Indian Commissioner, report dated January 10, 1882, LAC, RG 10, vol. 3573, file 154, pt. 2 (ICC Exhibit 1a, p. 252).



1881.³⁰ It is not clear how much land was initially surveyed in August 1881 because Nelson's survey book includes the modifications he made in his re-survey of the reserve in February 1884. The accompanying sketch in his book indicates that an area of 33.9 square miles (21,696 acres) was ultimately surveyed for the Band.³¹

In May 1882, Indian Agent A. McDonald reported that he had encountered some difficulty with Mosquito's Band because a portion of the group

didn't wish to receive assistance from the Government, and prevented those who so desired from taking same. After some talking I came to the following settlement. Those who did not wish to take assistance from the Government were to stay at one end of the reserve and those who did were to remain at the other, but the reserve was not to be divided. The wood was to be common to both. I promised them at their request a mile square on the opposite side of the lake [the location of the reserve originally surveyed by Wagner]. This is where they have their huts and have been living for a long time. I trust that my action in this matter will have approval.³²

In order to fulfill the government's promise of a reserve north of Crooked Lake, Nelson completed a new survey of the original Sakimay reserve in February 1884 and named it Shesheep IR 74A.³³ This survey was conducted over much of the same area surveyed for the band by Wagner in 1876. On February 8, 1884, Nelson reported:

³⁰ Canada, Order in Council PC 1151, May 17, 1889, DIAND, Indian Lands Registry, Instrument no. 4000, 28 (ICC Exhibit 1a, pp. 511–14). For survey book notes for Sakimay, see John Nelson, *Descriptions and Plans of Certain Indian Reserves in the Province of Manitoba and the North-West Territories, 1889* (1889) (ICC Exhibit 1d, pp. 31–32).

³¹ John Nelson, *Descriptions and Plans of Certain Indian Reserves in the Province of Manitoba and the North-West Territories, 1889* (1889) (ICC Exhibit 1d, p. 32).

³² A. McDonald, Indian Agent, Qu'Appelle Agency, to the Superintendent General of Indian Affairs, May 9, 1882, in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December, 1882*, 205 (ICC Exhibit 1a, p. 259).

³³ CLSR SK Plan 180, "Treaty No. 4, N.W.T. Plan of Indian Reserve No. 74a at Crooked Lake for part of the Band of Chief Mosquito (Sakimay) under Shesheep," J.C. Nelson, DLS, February 1884 (ICC Exhibit 7r). John Nelson, *Descriptions and Plans of Certain Indian Reserves in the Province of Manitoba and the North-West Territories, 1889* (1889) (ICC Exhibit 1d, pp. 34–35). Plans confirmed by: Order in Council PC 1151, May 17, 1889, DIAND, Indian Lands Registry, Instrument no. 4000, pp. 26–28 (ICC Exhibit 1d, pp. 31–35).

TREATY NO 4, N.W.T.

INDIAN RESERVE

NO 74 A

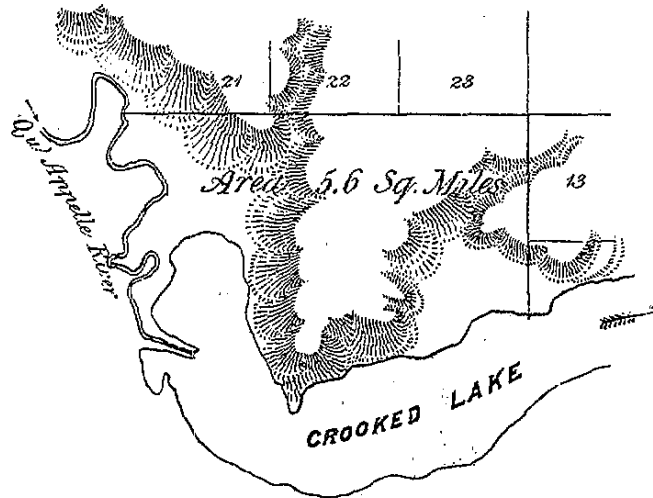
At Crooked Lake

"SHEESHEEP'S" BAND

Scale 100 Chs. to 1 Inch



Twp. No. 19, R. 6 W. 2nd. I.M.



Approved

J. C. Nelson

In Charge Indian Reserve Surveys

Ottawa 23rd. Jan. 1889

Surveyed by ...

J. C. Nelson D.L.S.

in 1884

Note:- In 1889, sec. 14, fractional secs. 10
11 & 15 were added to the above reserve
as originally surveyed

I have the honor to enclose herewith a rough sketch showing my survey of a small reserve, on the North side of Crooked Lake, covering the houses and gardens belonging to “Sheesheep” Old “Asseinboine” and other members of the Band of the late Chief “Seckimay” or the “Mosquito” whose reserve proper lies on the south side of the lake, and who have hitherto declined to accept any assistance from the government, as they prefer to subsist more by hunting and fishing, and raising potatoes and other vegetables, in accordance with their own recognised methods, in which they seem to have been to some extent successful, for they showed me some pits of very excellent potatoes.

...

The area of land in this Reserve is about two square miles. Its Eastern boundary was formerly run by Mr. Waggoner, D.L.S.; the lake the river and the Northern boundaries have been surveyed by me during the past few days and the Indians are perfectly satisfied.³⁴

Nelson refers to an area of about two square miles, but his field notes provide a more precise measurement of 2.58 square miles (1,651.2 acres).³⁵ A note on Plan 5967-28 CLSR SK, however, indicates that additional lands were added to the reserve in 1889,³⁶ which explains why Nelson’s published 1889 description of IR 74A, as well as Plan T1037 from February 1884, refer to an area of 5.6 square miles or 3,584 acres.³⁷

In April 1884, the Department of Indian Affairs sent the plan of the “proposed Reserve” to the Department of the Interior for registration:

The proposed Reserve added to the original one on the South side of the Lake will not exceed in area the quantity of land to which the whole Band is entitled under Treaty. It appears that a promise was made these Indians that owing to the fact of

³⁴ John C. Nelson, DLS, to Edgar Dewdney, Indian Commissioner, February 8, 1884, DIAND, file 673/30-5-74A (ICC Exhibit 1a, pp. 363–64).

³⁵ CLSR SK Field book FB 104, “Field Notes of Survey of the Boundaries of Indian Rese. No. 74a, for the part of the Band of Chief “Mosquito” (Sakimay) under “Sheesheep,” surveyed in February 1884 by John C. Nelson, DLS, p. 15 (ICC Exhibit 7q, p. 12).

³⁶ CLSR SK Plan 5967-28, “Plan of Township No. 19, Range 6 West of Second Meridian,” surveyed by R.C. McPhillips, DLS, October 1881 and July 1884 (ICC Exhibit 7s).

³⁷ John Nelson, *Descriptions and Plans of Certain Indian Reserves in the Province of Manitoba and the North-West Territories, 1889* (1889) (ICC Exhibit 1d, pp. 34–35). Confirmed by Order in Council PC 1151, May 17, 1889, DIAND, Indian Lands Registry, Instrument no. 4000, pp. 26–28 (ICC Exhibit 1a, pp. 31–35). See also: CLSR SK Plan T1037, “Treaty No. 4, N.W.T. Plan of Indian Reserve No. 74a at Crooked Lake for part of the Band of Chief Mosquito (Sakimay) under Shesheep,” J.C. Nelson, DLS, February 1884 (ICC Exhibit 7p).

their having houses and cultivated lands on this proposed Reserve the same would be granted to them.

Will you be good enough to have the necessary entry made in your maps & other records of the Reserve in question.³⁸

Indian Commissioner Dewdney later recognized that the newly reserved lands had “been held by that portion of Mosquito’s Band for over thirty years.”³⁹

The two reserves, IR 74 (containing at least 21,696 acres as of 1881) and IR 74A (containing 3,584 acres as of 1889), provided the Sakimay Band with reserve land totaling 25,280 acres. On May 17, 1889, the reserves of Sakimay (IR 74 and 74A) were confirmed by Order in Council PC 1151.⁴⁰ The reserves were subsequently withdrawn from the operation of the *Dominion Lands Act* by Order in Council PC 1694, dated June 12, 1893.⁴¹

NELSON’S SURVEY OF LITTLE BONE RESERVE, 1884

Prior to its amalgamation with the Sakimay Band in 1907 (particulars of which follow), the Little Bone Band occupied its own reserve, IR 73A, on Leech Lake. Little Bone (also known as “Ouchanness” or “Okanis”) was the half-brother of Cowessess (“Ka-wezauce” or “Little Child”),⁴² an original signatory to Treaty 4.⁴³ Although Little Bone was not a signatory to the treaty himself, sources suggest he was one of the Saulteaux leaders who was represented at treaty by Cowessess.

³⁸ Department of Indian Affairs to A.M. Burgess, Deputy Minister of the Interior, April 17, 1884, no file reference available (ICC Exhibit 1a, p. 397).

³⁹ Department of Indian Affairs, draft letter to A.M. Burgess, Deputy Minister of the Interior, October 17, 1884, DIAND, file 673/30-5-74A (ICC Exhibit 1a, pp. 411–12).

⁴⁰ Order in Council PC 1151, May 17, 1889, DIAND, Indian Land Registry, Instrument no. 4000 (ICC Exhibit 1a, pp. 511–14); and John Nelson, *Descriptions and Plans of Certain Indian Reserves in the Province of Manitoba and the North-West Territories, 1889* (1889) (ICC Exhibit 1d, pp. 31–35).

⁴¹ Order in Council PC 1694, June 12, 1893, DIAND, Indian Land Registry, Instrument no. 1151-6 (ICC Exhibit 1a, pp. 519–23).

⁴² John C. Nelson to E. Dewdney, Indian Commissioner, February 14, 1884, LAC, RG 15, vol. 310, file 68071 (ICC Exhibit 1a, p. 365).

⁴³ *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at Qu’Appelle and Fort Ellice* (Ottawa: Queen’s Printer, 1966), 5 (ICC Exhibit 1a, p. 25).

From 1874 through 1880, Little Bone and his followers were included on the Cowessess payroll.⁴⁴ In 1880, Little Bone received annuities at Fort Ellice, apart from Cowessess, who was paid at Maple Creek, although both groups were still listed on the same payroll.⁴⁵ In 1881, Little Bone and his followers (a total of 33) started receiving annuities on a separate payroll from Cowessess.⁴⁶

On May 29, 1883, Indian Agent McDonald asked the Indian Commissioner “to have a Surveyor sent up to Leech Lake [or Crescent Lake]”⁴⁷ to survey a reserve for Little Bone. As he reported in July of that year, “Little bone [sic] of Leech Lake” had himself “applied for a reserve at that point.” McDonald continued: “he and his father have always lived there. ... They number thirty-seven souls. The reserve has been approved of, and the boundaries will be established as soon as possible.”⁴⁸ A letter written by McDonald on August 29, 1883, noted a “complaint made by Oucheness or Little Bone about his Reserve at Leech Lake,” because the Saskatchewan Homestead Company was claiming that they had “purchased this land [Little Bone’s Reserve] from the Government.”⁴⁹ In November 1883, McDonald again reported on Little Bone’s claim that settlers were encroaching on reserve land. He wrote that Little Bone made efforts to secure land for himself

⁴⁴ A. McDonald, Indian Agent, to the Indian Commissioner, August 6, 1885, LAC, RG 10, vol. 3575, file 256 (ICC Exhibit 1a, p. 475); Treaty annuity payroll for “Cow we cess Band,” 1875, LAC, RG 10, vol. 9412, p. 67 (ICC Exhibit 1b, p. 2); see also Joan Holmes, “Sakimay First Nation, The Origins of the Little Bone / Ouchanness First Nation and Its Affiliation with First Nations in the Qu’Appelle Valley,” July 2004, p. 5 (ICC Exhibit 8, p. 5).

⁴⁵ Treaty annuity payroll for “Cowecess Band,” August 2, 1880, LAC, RG 10, vol. 9414, pp. 41–3 (ICC Exhibit 1b, pp. 14–15).

⁴⁶ Treaty annuity payroll for “Okanee (Little Bone) Leech Lake,” 1881, LAC, RG 10, vol. 9415, p. 55 (ICC Exhibit 1b, p. 491).

⁴⁷ McDonald referred to the May 29, 1883, correspondence in a subsequent letter: A. McDonald, Indian Agent, Qu’Appelle Agency, to the Indian Commissioner, August 29, 1883, LAC, RG 10, vol. 3537, file 256 (ICC Exhibit 1a, p. 308).

⁴⁸ A. McDonald, Indian Agent, Qu’Appelle Agency, to the Superintendent General of Indian Affairs, July 6, 1883, in Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December, 1883*, 73 (ICC Exhibit 1a, p. 305).

⁴⁹ A. McDonald, Indian Agent, Qu’Appelle Agency, to the Indian Commissioner, August 29, 1883, LAC, RG 10, vol. 3537, file 256 (ICC Exhibit 1a, p. 308).

and his followers after the signing of Treaty 1 in 1871 by marking the territory with mounds of earth.⁵⁰ After investigating the complaint, McDonald wrote:

On the morning of the 1st Inst. "Little Bone" brought me to the mounds made by him, eleven or twelve years since, Mr. Setter & I examined the place where the earth was removed and we are of opinion that his statement is correct.⁵¹

Indian Commissioner Edgar Dewdney forwarded this information to the Department of Indian Affairs in Ottawa on November 8, 1883.⁵²

A letter dated November 13, 1883, from Lawrence Vankoughnet, Deputy Superintendent General of Indian Affairs (DSGIA), to the Deputy Minister of the Interior, reveals that the department accepted McDonald's view regarding Little Bone's assertion. Vankoughnet wrote: "Little Bone occupied it [the land at Leech Lake] long before the Treaty was made, and the Reserve was given him there at the time of the Treaty. ... No doubt the Saskatchewan Homestead Co. can be arranged with by giving them additional land at some other point in lieu of the Indian land referred to."⁵³ Vankoughnet then suggested to the Indian Commissioner that he "send Nelson at once to fix the boundaries."⁵⁴ An account provided in 1918 by a settler named Frank Baines confirmed the attendance of a surveyor in 1884:

White settlers came to Crescent Lake during the summer of 1883. They found a band of about twenty or thirty adult Indians on the Okanese Indian Reserve ...
... A surveyor was sent up in January 1884 from the Indian Department and he showed very plainly that the white men were trespassers. This surveyor had with

⁵⁰ A. McDonald, Indian Agent, Treaty No. 4, to the Indian Commissioner, November 6, 1883, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 321–22).

⁵¹ A. McDonald, Indian Agent, Treaty No. 4, to the Indian Commissioner, November 6, 1883, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 322–23).

⁵² L. Vankoughnet, Deputy Superintendent General of Indian Affairs (DSGIA), refers to this correspondence in a letter to A.M. Burgess, Deputy Minister of the Interior, November 13, 1883, LAC, RG 10, vol. 3575, file 256 (ICC Exhibit 1a, p. 335).

⁵³ L. Vankoughnet, DSGIA, to A.M. Burgess, Deputy Minister of the Interior, November 13, 1883, LAC, RG 15, Series D-II-1, vol. 310, file 68071 (ICC Exhibit 1a, pp. 337–39).

⁵⁴ L. Vankoughnet, DSGIA, to Edgar Dewdney, Indian Commissioner, November 13, 1883, LAC, RG 10, vol. 3575, file 256 (ICC Exhibit 1a, p. 341).

him a map showing that these Indians were living there and growing potatoes in 1860. The Indian Chief, Little Bones had seen the lake dry twice, indicating that they had been there at least fifty or sixty years prior to 1883.⁵⁵

Plan 181 CLSR SK shows the “proposed” reserve for Little Bone as surveyed by John C. Nelson in January 1884.⁵⁶ By the end of January, the Minister of the Interior approved a decision which favoured Little Bone’s Band over the Saskatchewan Homestead Co., but required the exchange of one section of the reserve that had been “occupied by homesteaders before that notification that it was claimed by the Indians was received” by the Department of the Interior.⁵⁷

On February 14, 1884, Nelson reported on his survey of the reserve boundaries:

“Ochaniss” or the Little Bone, half brother to Chief Cowesess at Crooked Lake, and followers numbering forty five souls have been for several generations back, in possession of a certain point of land on the east side of Leech Lake, shown on the accompanying plan of my survey illustrating this report.

...

From as far back as 1879 the Little Bone was led to believe by Mr. Agent McDonald that he would be granted a Reserve at the place he was located, namely Leech Lake, and early in 1882 by authority from the Department he was definitely promised his reserve and was told that it would be surveyed for him in the fall of that year. The quantity of land to be set aside, was explained to him, viz: – one square mile for each five Indians.

In the summer of 1882 seeing an influx of settlers, and prospecting parties in the neighbourhood of his reserve, or rather the land which he desired to have set aside as a reserve, he became alarmed at the white man’s encroachments as he called it, and came down to Fort Qu’Appelle, to the Indian Office, when a paper was given him wherein was set forth this claim to the Reserve at Leech Lake and calling upon settlers and land seekers, to respect his claim. This paper was emanating from the Indian Office, was countersigned by the Indian Commissioner.

⁵⁵ Frank Baines to Thomas MacNutt, Member of Parliament, October 21, 1918, DIAND, file 673/30-5-73A, vol. 1 (ICC Exhibit 1a, p. 653).

⁵⁶ CLSR SK Plan 181, “Treaty 4 Survey of a ‘Proposed’ Reserve for Little Bones Band at Leech Lake or Crecent Lake,” surveyed in January 1884 by John C. Nelson, DLS (ICC Exhibit 7o).

⁵⁷ A.M. Burgess, Deputy Minister of the Interior, to the Minister of the Interior, January 23, 1884, LAC, RG 15, Series D-II-1, vol. 310, file 68071 (ICC Exhibit 1a, pp. 352–53). Marginalia indicates that the Minister approved the Deputy Minister’s recommendation.

With the above facts in view, as well as that of the Saskatchewan Homestead and Land Company having acquired part of the tract claimed by the Indians, I proceeded to Leech Lake to make the survey.⁵⁸

Nelson also requested that Little Bone Band be allowed to retain the north half of the section claimed by the homesteaders,⁵⁹ but that request was eventually denied by the department.⁶⁰

The following year, however, some questions were raised as to whether sufficient land had been surveyed for Little Bone. On February 26, 1885, Samuel Bray, Chief Surveyor for the Department of Indian Affairs, wrote the Deputy Minister:

I beg to draw your attention to the area of this Reserve 10 $\frac{9}{10}$ sq. miles or 6976 acres. Mr. Nelson in his letter of 14th Feby. 1884 (file 505) states that Little Bone's Band numbers 45 souls; according to the provisions of Treaty No. 4 the above area is probably for this number of people, as although in excess of the actual area (5760 acres) required, the excess is probably to provide for marshes &c. &c. but Mr. Agent McDonald in his Tabular Statement for the same year (ending June 30, 1884) states that Ouchaness' or Little Bone's Band numbers 37 males and 36 females, a total of 73, it would therefore appear that the Band is entitled to 9344 acres or about 10,000 acres to allow for marshes &c. &c. and that their present Reserve is too small by about 3000 acres.⁶¹

No changes were made, however; Nelson's description of Little Bone's reserve (IR 73A), published in 1889, indicates that the completed survey provided 10.9 square miles (6,976 acres) of land for Little Bone's Band.⁶² As with IR 74 and 74A, the survey of IR 73A was confirmed by Order in

⁵⁸ John C. Nelson, February 14, 1884, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 365–67).

⁵⁹ John C. Nelson, February 14, 1884, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 372–73).

⁶⁰ Hayter Reed, Acting Assistant Indian Commissioner, to the Indian Agent, Indian Head, June 2, 1884, LAC, RG 10, vol. 3575, file 256 (ICC Exhibit 1a, pp. 403–4).

⁶¹ Samuel Bray, Chief Surveyor, Department of Indian Affairs, to the Deputy Minister of Indian Affairs, February 26, 1885, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 452–53).

⁶² John Nelson, *Descriptions and Plans of Certain Indian Reserves in the Province of Manitoba and the North-West Territories, 1889* (1889) (ICC Exhibit 1d, pp. 29–30).

Council PC 1151, dated May 17, 1889, and the IR 73A lands were withdrawn from the operation of the *Dominion Lands Act* by Order in Council PC 1694, dated June 12, 1893.⁶³

AMALGAMATION OF SAKIMAY BAND AND LITTLE BONE BAND, 1907

As early as 1885, Department of Indian Affairs officials acknowledged the close ties between the bands in the vicinity of Crooked Lake (including Sakimay) and the Little Bone Band.⁶⁴ As previously mentioned, Little Bone was the half brother of Cowessess,⁶⁵ whose band resided on IR 73, adjacent to Sakimay IR 74.⁶⁶ Government agents had previously encouraged the Little Bone Band to transfer to Crooked Lake and establish itself alongside the Cowessess Band.⁶⁷

In 1887, Little Bone and his followers received annuities under the Sakimay payroll.⁶⁸ A table published in the *Indian Affairs Annual Report* for 1888 indicates that the Little Bone Band was “Now amalgamated with Sakimay and other bands.”⁶⁹ Although no formal amalgamation had been made, subsequent department correspondence referred to the shared use of IR 74, 74A, and 73A.⁷⁰

⁶³ Order in Council PC 1151, May 17, 1889, DIAND, Indian Land Registry, Instrument no. 4000 (ICC Exhibit 1a, pp. 511–14); Order in Council PC 1694, June 12, 1893, DIAND, Indian Land Registry, Instrument no. 1151-6 (ICC Exhibit 1a, pp. 519–23).

⁶⁴ Edgar Dewdney, Indian Commissioner, to Superintendent General of Indian Affairs, July 31, 1885, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 472–73).

⁶⁵ John C. Nelson to E. Dewdney, Indian Commissioner, February 14, 1884, LAC, RG 15, vol. 310, file 68071 (ICC Exhibit 1a, p. 365).

⁶⁶ John Nelson, *Descriptions and Plans of Certain Indian Reserves in the Province of Manitoba and the North-West Territories, 1889* (1889) (ICC Exhibit 1d, p. 25).

⁶⁷ Joan Holmes, “Sakimay First Nation, The Origins of the Little Bone / Ouchaness First Nation and Its Affiliation with First Nations in the Qu’Appelle Valley,” July 2004, p. 27 (ICC Exhibit 8, p. 27).

⁶⁸ Treaty annuity payroll for “Sakimay’s Band,” July 15, 1887, LAC, RG 10, vol. 9420, pp. 62–64 (ICC Exhibit 1a, pp. 385–87).

⁶⁹ Canada, *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1888*, 281 (ICC Exhibit 1a, p. 504).

⁷⁰ J.P. Wright, Indian Agent, Crooked Lake Agency, to the Superintendent General of Indian Affairs, July 25, 1899, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30 1899*, 142 (ICC Exhibit 1a, p. 546); J.P. Wright, Indian Agent, Crooked Lake Agency, to the Superintendent General of Indian Affairs, July 27, 1900, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30 1900*, 149 (ICC Exhibit 1a, p. 561); Magnus Begg, Indian Agent, Crooked Lake Agency, to the Superintendent General of Indian Affairs, July 31, 1901, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30 1901*, 144 (ICC

On June 30, 1906, Matthew Millar, Indian Agent for the Crooked Lakes Agency, reported the following on “Sakimay Band, No. 74”:

Reserve. – This reserve is on the west side of the north half of Cowessess reserve, and bounded on the north by the Qu’Appelle valley and Crooked lake, a small part of the reserve (No. 74A) being on the north side of the river. The area of this reserve is 25,280 acres. These Indians also have the Little Bone reserve (No. 73A) 40 miles north, containing 6,796 acres.

...
Population. – The band has a population of 158.⁷¹

In March 1907, the Chief Accountant of the Department of Indian Affairs, Duncan Campbell Scott, wrote a memorandum to the DSGIA acknowledging the de facto amalgamation of Little Bone Band with Sakimay Band and recommending their formal amalgamation, as well as the surrender for sale of the Little Bone reserve. He wrote:

I beg to present the following facts with reference to Little-Bones Reserve at Leech Lake. All the members of this Band but two families reside on Sakimays Reserve and are paid on the pay list of that Band. They were transferred seemingly without authority of the Department in 1887 and have since been there paid. As it seems desirable to establish a surrender of the Reserve I have been looking into precedents for this action, the peculiar position being that nearly the whole population of the Band is residing on another Reserve, sharing equally with the owner of that Reserve in all membership rights.

...
... [T]he best way would be to carefully trace the original members of Little Bones’ Band in Sakimays [*sic*] Band, and after such information is obtained take a surrender from all the Indians found to belong to Little Bones [*sic*] Band. After that obtain an agreement between Sakimays and Little Bones Bands for the amalgamation of their lands and money. I would suggest that Inspector Graham be authorized to take such a surrender, and also to carry out the amalgamation.⁷²

Exhibit 1a, p. 568).

⁷¹ Matthew Millar, Indian Agent, Crooked Lake Agency, to the Superintendent General of Indian Affairs, June 30, 1906, Canada, *Annual Report of the Department of Indian Affairs for the Year Ended June 30 1906*, 127–28 (ICC Exhibit 1a, p. 585).

⁷² Duncan Campbell Scott, Accountant, Department of Indian Affairs, memorandum to the DSGIA, March 19, 1907, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 588–89).

Scott's recommendation was approved, and on March 22, William M. Graham was "authorized to take a surrender of the Little Bone Reserve, at Leech Lake, from all the Indians found to belong to Little Bone Band, on forms enclosed, and after surrender has been executed, ... to obtain an agreement from the Sakimay and Little Bone Bands, for the amalgamation of their lands and moneys."⁷³

On July 6, 1907, a meeting was held on the Little Bone reserve, attended by five adult male band members, three of whom voted in favour of the surrender.⁷⁴ On July 9, 1907, another meeting was held on the Sakimay reserve, where the bands voted in favour of amalgamation.⁷⁵

At a meeting held at the Leech Lake reserve on July 17, Graham reported that only two of six male members of Little Bone over the age of 21 were "resident on the reserve" and they "were much opposed to the surrender," but that the remaining four "members of the Band who had been residing on Sakimay Reserve agreed to surrender after a great deal of talk." He continued:

The Indians of Little Bone's Band number about 30 souls in all. The Indians signing the surrender thought they should receive \$150.00 for each member of the Band. I promised them \$40.00 and said I would make their request known to the Department. I do not think it would be wise to pay them \$150.00 each. I should be glad to have a cheque from you for \$1200.00 so that I would make this payment on my return from Fishing Lake late in August.

I held a meeting with the Indians of Sakimay's Band on the reserve on the 9th of July. After explaining to the Band fully the object of the meeting, they agreed unanimously to admit the Little Bone Indians on the condition that the Band will participate in the benefits that will accrue from the sale of the Little Bone Reserve after the Department deduct the usual amount for land management and the Indians of Little Bone Band receive \$40.00 each.⁷⁶

⁷³ Frank Pedley, DSGIA, to William M. Graham, Inspector of Indian Agencies, March 22, 1907, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, p. 591).

⁷⁴ "Minutes of Meeting of Little Bone band of Indians," Leech Lake, Little Bone Reserve, July 6, 1907, Saskatchewan Archives (SA), R-E3692, file: Crooked Lakes Indian Reserves (ICC Exhibit 1a, p. 602).

⁷⁵ "Minutes of Meeting of the joint bands Sakimay and Little Bone," Sakimay Reserve, July 9, 1907, SA, R-E3692, file: Crooked Lakes Indian Reserves (ICC Exhibit 1a, p. 612); Agreement between the Owners of Sakimays and Little Bone reserves, July 9, 1907, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 613–14).

⁷⁶ W.M. Graham, Inspector of Indian Agencies, Qu'Appelle Inspectorate, to the Secretary, Department of Indian Affairs, July 17, 1907, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 616–17).

The surrender was confirmed by Order in Council PC 1904, dated August 31, 1907.⁷⁷

On November 28, 1908, Graham paid \$40 to each of 19 Little Bone band members, under six band tickets.⁷⁸ When Graham reported this payment two days later, he noted “that the majority of the Indians of this Band accepted the money here yesterday, and I have sent word to those Indians residing at Leech Lake to come across to File Hills to get their money. File Hills is about the same distance from Leech Lake as Crooked Lake Agency is.”⁷⁹ Graham also stated that the two families still resident at Leech Lake, the families of Peepech and his brother Kinistino, were opposed to the surrender of the reserve.⁸⁰ There is no evidence on record that those families accepted payment.

SAKIMAY RESERVES AFTER AMALGAMATION

The Sakimay and Little Bone Bands formally amalgamated in 1907, and the Little Bone reserve (IR 73A) was surrendered for sale. In June 1909, a portion of the Little Bone reserve was offered for sale by public auction (excluding N ½ section 35 and E ½ section 34), but only a small amount of the land was sold.⁸¹ Eventually, some of the unsold portions were exchanged in 1966 for provincial lands that were reserved as Minoahchak IR 230 for the Sakimay First Nation,⁸² and the remaining unsold portions were returned to reserve status in 1977.⁸³ In 1989, the Little Bone IR 73A

⁷⁷ Order in Council PC 1904, August 31, 1907, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, p. 620).

⁷⁸ Paylist for “Leech Lake Little Bone Band Paid at Crooked Lake Agency,” November 28, 1908, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, p. 630).

⁷⁹ W.M. Graham, Inspector of Indian Agencies, Qu’Appelle Inspectorate, to the Secretary, Department of Indian Affairs, November 30, 1908, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, p. 631).

⁸⁰ W.M. Graham, Inspector of Indian Agencies, to the Secretary, Department of Indian Affairs, June 6, 1908, LAC, RG 10, vol. 3578, file 505 (ICC Exhibit 1a, pp. 627–29).

⁸¹ Department of Indian Affairs, Memorandum “re Little Bones, Leech Lake or Crescent Lake reserve,” March 21, 1921, no file reference available (ICC Exhibit 1a, p. 661).

⁸² Sakimay Band, Band Council Resolutions dated October 31, 1966 (ICC Exhibit 1a, pp. 668–69) and March 15, 1967, no file reference available (ICC Exhibit 1a, pp. 670–71); Order in Council PC 1968-540, March 21, 1968, DIAND, Indian Lands Registry, Instrument no. 1428 (ICC Exhibit 1a, pp. 672–75).

⁸³ Sakimay Band, Amendment of Surrender, February 15, 1977, DIAND, Indian Lands Registry, Instrument no. 57564 (ICC Exhibit 1a, pp. 676–81); Order in Council, PC 1978-507, February 23, 1978, DIAND, Indian Lands Registry, Instrument no. 57564 (ICC Exhibit 1a, pp. 682–84).

was renamed Little Bone IR 74B, and Minoahchak IR 230 was renamed Minoahchak IR 74C.⁸⁴ Currently, Little Bone IR 74B and Minoahchak IR 74C belong to the Sakimay First Nation.

⁸⁴ Sakimay Band, Band Council Resolution, September 29, 1989, DIAND, Indian Lands Registry, Instrument no. 129779 (ICC Exhibit 1a, pp. 685–86).

PART III
ISSUES

By agreement of the parties, the Indian Claims Commission was asked to inquire into the following issues.

- 1 What is the date of first survey for the Sakimay First Nation?⁸⁵
- 2 What are the appropriate paylists to use for determining the Sakimay First Nation's treaty land entitlement population?⁸⁶
- 3 Should Little Bone and his followers be counted with the Sakimay First Nation for the purpose of calculating its treaty land entitlement?
- 4 If Little Bone or any of his followers were counted elsewhere for purposes of Treaty land entitlement, does that preclude such individuals from being included in the Sakimay First Nation population for TLE purposes?
- 5 What is the Sakimay First Nation's population for treaty land entitlement purposes?
- 6 Does the Sakimay First Nation have an outstanding treaty land entitlement?

⁸⁵ The parties agreed that the date of first survey is 1881 for Sakimay and 1884 for Little Bone.

⁸⁶ The parties agreed that the 1881 payroll is the appropriate payroll for Sakimay, and that the 1884 is the appropriate one for Little Bone.

PART IV
PROCEDURAL HISTORY

The Sakimay First Nation originally submitted its TLE claim to the Specific Claims Branch in 1997. This claim was rejected in 2002, leading to a request for the ICC to conduct an inquiry in 2003. The ICC accepted this request in September 2003.

The parties finalized the statement of issues for the inquiry in February 2004 and agreed that the claim centred on one key question, which was whether 28 members of the Little Bone Band could be counted with Sakimay for TLE purposes. During a planning conference in February 2004, the parties agreed that information regarding the affiliations of the Little Bone Band was missing from the record and that the inquiry could benefit from additional research. To this end, the parties proceeded with a joint research project facilitated by the ICC.

The parties selected Joan Holmes as the researcher, and her project was completed by the end of July 2004. The parties met again to discuss her findings, which showed that Little Bone was properly affiliated with Sakimay. Canada acknowledged these conclusions, but was concerned as Little Bone's 28 members had been counted with another First Nation to validate its TLE. However, the late Dr John Hall, Canada's Specific Claims representative, was prepared to recommend double counting, since a mistake had been made, so that Sakimay would not be prejudiced by Canada's TLE policy.

The parties also agreed to proceed with a staff visit and community session. The staff visit took place at the end of July 2004, and a community session was scheduled for September 2004. During the staff visit, interviews with the Elders were recorded on a DVD, and "willsay" statements summarizing their information were prepared after the visit.

Shortly before the community session, Richard Kaye, one of the Elders scheduled to provide evidence, passed away. During a conference call held in October 2004, the parties agreed that the information contained in the willsay statements agreed with both the documentary record and the research completed by Joan Holmes. Canada did not object to including the willsay statements or the DVD of the staff visit as part of the record of inquiry. As a result, the community session was cancelled.

The parties also agreed that the First Nation would submit written submissions without Canada making responding submissions. The First Nation's submissions were received on October 18, 2004.⁸⁷

In 2005, the claim was reviewed by the Claims Advisory Committee (CAC), part of the Specific Claims Branch. The committee recommended additional research into the "questionables" category of Sakimay's proposed TLE population number.

Conference calls and meetings facilitated by the ICC were held to try to finalize the population number. By the end of June 2006, the parties believed they had exhausted the research, and the First Nation requested that Canada proceed through the CAC. Canada agreed, and stated it would recommend acceptance of Sakimay's claim.

The CAC review process was completed by the end of August 2006, and a letter of acceptance from the Minister's office was sent to the First Nation by the end of September 2006.⁸⁸ Accordingly, the Commission issued a declaration on February 21, 2007, concluding this inquiry.⁸⁹

⁸⁷ Written Submissions on Behalf of the Sakimay First Nation, October 18, 2004.

⁸⁸ Michel Roy, Assistant Deputy Minister, DIAND, to Chief Lindsay Kaye, Sakimay First Nation, September 18, 2006 (ICC file 2107-42-01, vol. 4), reproduced as Appendix A to this report.

⁸⁹ ICC Declaration, dated February 21, 2007. This order is reproduced as appendix B to this report.

PART V
CONCLUSION

This inquiry is concluded as follows:

SINCE the specific claim has been accepted by the Minister for negotiation and the First Nation has requested that this inquiry be closed, and since the panel hearing this inquiry finds there are no longer any matters to be inquired into,

THIS COMMISSION THEREFORE DECLARES AS FOLLOWS:

The inquiry into this specific claim is hereby concluded.

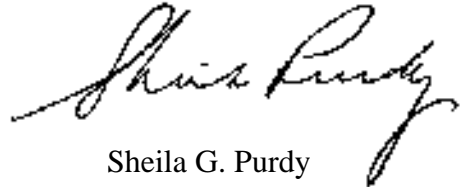
FOR THE INDIAN CLAIMS COMMISSION



Alan C. Holman (Chair)
Commissioner



Jane Dickson-Gilmore
Commissioner



Sheila G. Purdy
Commissioner

Dated this 21st day of February, 2007.

APPENDIX A

GOVERNMENT OF CANADA'S OFFER TO ACCEPT CLAIM



Indian and Northern
Affairs Canada

Affaires indiennes
et du Nord Canada

Assistant Deputy Minister

Sous-ministre adjoint

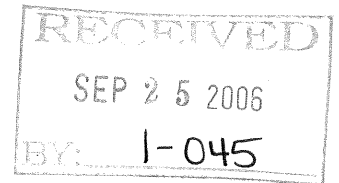
Ottawa, Canada
K1A 0H4

WITHOUT PREJUDICE

SEP 18 2006

B8260

Chief Lindsay Kaye
Sakimay First Nation
P.O. Box 339
GRENFELL SK S0G 2B0



Dear Chief Kaye:

On behalf of the Government of Canada, and pursuant to the 1998 Treaty Land Entitlement authority, I am pleased to accept for negotiation the Sakimay First Nation's Treaty Land Entitlement Claim.

For the purposes of negotiations, the Government of Canada accepts that the Sakimay First Nation has sufficiently established under the 1998 Treaty Land Entitlement authority that there is an outstanding treaty land entitlement of 1024 acres. The assessment of this claim is based on a comprehensive review of the known facts of the claim as contained in the 2002 report by Anne Seymour, entitled "Treaty Land Entitlement Review: Sakimay First Nation", and the 2006 "Addendum to the Sakimay Treaty Land Entitlement Report" by the Specific Claims Branch.

Canada will request that the Province of Saskatchewan participate in the negotiations. If the Sakimay First Nation is prepared to proceed with negotiations on the basis outlined in this letter, the next step in the claims process which will be followed hereafter for negotiations includes finalizing the joint negotiating protocol, development of a settlement agreement, conclusion of the agreement, ratification of the agreement and finally, implementation of the agreement.

All negotiations are conducted on a "Without Prejudice" basis. All communications, oral, written, formal or informal are made with the intention of encouraging settlement of the dispute between the parties only and are not intended to constitute admissions of fact or liability by any party.

- 2 -

In the event that a final settlement is reached, the Government of Canada will require a full and final release from the Sakimay First Nation on every aspect of this claim, ensuring that the claim cannot be reopened, as well as an appropriate indemnity. Canada will also require that your legal counsel provide a Certificate of Independent Legal Advice with respect to the claims and Settlement Agreement.

Ms. Mary Hyde, Senior Policy Advisor, and Shelly Pikowicz, who has been designated the Negotiator for Canada on this claim, are prepared to meet with representatives of the Sakimay First Nation to outline the basis for Canada's position. Mary Hyde and Shelly Pokowicz and can be reached at (819) 953-7673 and (819) 953-1987 respectively.

Before incurring negotiation costs, including legal costs, I encourage you to obtain information, details, and procedures for loans under the Native Claimants Loan Program by contacting:

Mr. Tony Richard, Director of Finance
Administration and Funding Services Directorate
Indian and Northern Affairs Canada
Room 1305
OTTAWA ON K1A 0H4

Telephone: (819) 997-9757 Fax: (819) 994-0273.

If the Sakimay First Nation is agreeable to entering into negotiations on the basis stated in this letter, I would ask you to provide a Band Council Resolution to this effect to:

Ms. Sheila Parry, Director
Negotiation Directorate
Specific Claims Branch
Indian and Northern Affairs Canada
Room 1610
OTTAWA ON K1A 0H4

Telephone: (819) 994-7440 Fax: (819) 953-9618.

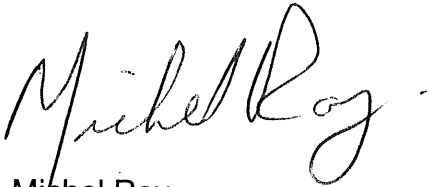
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- 3 -

Finally I wish to advise you that this letter is written on a "Without Prejudice" basis and should not be considered an admission of fact or liability by Canada. Technical defences such as limitations periods, strict rules of evidence or the law of laches, have not been considered in the review of your claim. However, in the event this claim becomes the subject of litigation, the government reserves the right to plead these and all other defences available to it. Please be advised, as well, that our government files are subject to the *Access to Information Act* and the *Privacy Act*.

I send my best wishes and trust that a fair and just resolution to this claim can be achieved through a negotiated settlement.

Yours sincerely,

A handwritten signature in cursive script that reads "Michel Roy".

Michel Roy
Assistant Deputy Minister
Claims and Indian Government

c.c.: Ron Maurice, Legal Counsel, Sakimay First Nation
Tony Richard, Director of Finance, Administration and Funding

APPENDIX B

DECLARATION

Sakimay First Nation Treaty Land Entitlement Inquiry

Première Nation de Sakimay Enquête sur les droits fonciers issus de traité

DECLARATION

On April 30, 1997, the Sakimay First Nation (“the First Nation”) submitted a specific claim to the Minister of Indian Affairs and Northern Development (“the Minister”) with respect to their treaty land entitlement claim.

On January 11, 2002, the Minister rejected this claim for negotiation.

By letter dated July 16, 2003 and a Band Council Resolution dated July 10, 2003, the Council requested that this Commission conduct an inquiry into this claim.

On September 9, 2003, this Commission accepted this request.

The inquiry into this claim proceeded. A joint research project was completed in July 2004, and a community session was scheduled to take the evidence of Mr. Raymond Acoose and Mr. Richard Kaye in September 2004. Mr. Kaye passed away just before the community session. The parties then agreed to proceed with written submissions, and the First Nation provided their submissions on October 18, 2004.

Canada agreed to review the First Nation’s written submissions. Further research was conducted into the claim by both parties.

DÉCLARATION

Le 30 avril 1997, la Première Nation de Sakimay (« la Première Nation ») a présenté une revendication particulière au ministre des Affaires indiennes et du Nord canadien (« le ministre ») concernant ses droits fonciers issus de traité.

Le 11 janvier 2002, le ministre a rejeté cette revendication aux fins de négociation.

Par une lettre du 16 juillet 2003 et une résolution du conseil de bande datée du 10 juillet 2003, le conseil a demandé à la Commission d’enquêter sur cette revendication.

Le 9 septembre 2003, la Commission a accepté cette demande.

La Commission a mené son enquête sur la revendication. Un projet de recherche conjoint a pris fin en juillet 2004, et une audience publique communautaire, au cours de laquelle M. Raymond Acoose et M. Richard Kaye devaient témoigner, a été prévue pour septembre 2004. M. Kaye est décédé juste avant l’audience publique. Les parties ont alors convenu de présenter des mémoires; la Première Nation a déposé le sien le 18 octobre 2004.

Le Canada a accepté d’examiner le mémoire de la Première Nation. Les parties ont effectué des recherches supplémentaires sur la revendication.

By letter of September 18, 2006, the Minister offered to accept the claim for negotiation.

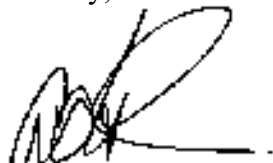
By letter of October 17, 2006, the First Nation advised the Commission that the claim had been accepted for negotiation and that it would not be necessary to proceed with the remaining steps of the inquiry.

SINCE the specific claim has been accepted by the Minister for negotiation by letter of September 18, 2006, and the First Nation has advised that the offer will be accepted, the panel hearing these inquiries finds that there are no longer any matters to be inquired into.

THIS COMMISSION THEREFORE ORDERS AS FOLLOWS:

The inquiry into this specific claim is hereby concluded.

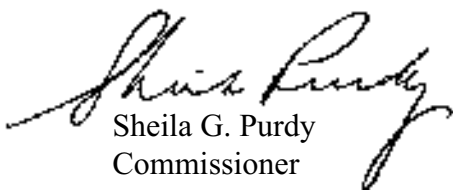
At Ottawa, Ontario, this 21st day of February, 2007.



Alan C. Holman (Panel Chair)
Commissioner



Jane Dickson-Gilmore
Commissioner



Sheila G. Purdy
Commissioner

Dans une lettre du 18 septembre 2006, le ministre a offert d'accepter la revendication aux fins de négociation.

Dans une lettre du 17 octobre 2006, la Première Nation a informé la Commission que la revendication avait été acceptée aux fins de négociation et qu'il n'était pas nécessaire de poursuivre l'enquête.

PUISQUE la revendication particulière a été acceptée par le ministre aux fins de négociation dans une lettre datée du 18 septembre 2006 et que la Première Nation a annoncé qu'elle accepterait l'offre, le comité saisi de l'enquête constate qu'il n'y a plus matière à enquête.

LA COMMISSION DÉCLARE DONC CE QUI SUIT :

L'enquête sur la revendication particulière précitée est par la présente close.

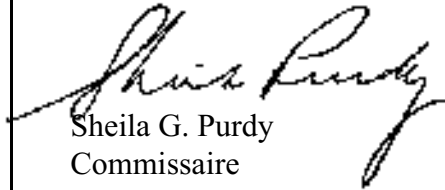
Fait à Ottawa (Ontario) le 21 février 2007.



Alan C. Holman (président du comité)
Commissaire



Jane Dickson-Gilmore
Commissaire



Sheila G. Purdy
Commissaire

APPENDIX C
CHRONOLOGY

SAKIMAY FIRST NATION: TREATY LAND ENTITLEMENT INQUIRY

1	<u>Planning conference</u>	Regina, February 4, 2004 Regina, May 17, 2005
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2 Content of formal record

The formal record of the Sakimay First Nation Treaty Land Entitlement Inquiry consists of the following materials:

- Exhibits 1a – 10b tendered during the inquiry
- Written Submissions of the Sakimay First Nation, October 18, 2004

The report of the Commission and letter of transmittal to the parties will complete the formal record of this inquiry.