

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

Big Grassy (Mishkosiimiiniiziibing) First Nation (Indian Band)

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES	
F I L E D	D É P O S É
October 25, 2011	
Chantal Houle-Mrak	
Ottawa, ON	Doc. 1

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
As represented by the Minister of Aboriginal Affairs and Northern Development Canada

Respondent

DECLARATION OF CLAIM
Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

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

October 25, 2011

Chantal Houle-Mrak

(Registry Officer)

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
Bank of Canada Building 234 Wellington Street East Tower
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920

I. Claimant (R. 41(a))

1. The Claimant Big Grassy First Nation confirms that it is a First Nation within the meaning of s. 2 (a) of the *Specific Claims Tribunal Act*, in the Province of Ontario.

II. Conditions Precedent (R. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have been fulfilled:
The conditions precedent in s. 16 (1) (d) are fulfilled.

III. Claim Limit (Act, s. 20(1)(b))

3. For the purposes of the claim the Claimant does not seek compensation in excess of \$150 million.

IV. Grounds (Act, s. 14(1))

4. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*: Failure of the Respondent to provide adequate compensation for reserve lands taken or damaged by the Crown (s. 14, subsection (e)).

V. Allegations of Fact (R. 41(e))

5. The Claimant's reserves include Indian Reserve 35G, located on the east shore of Lake of the Woods, in the province of Ontario. Reserve 35G includes the Big Grassy River, a wide slow-moving stream that flows east to west.
6. In the 1920's a road that would transect Reserve 35G in a generally north – south direction was desired by the government of Ontario. This would be part of a road connecting the Sabaskong Bay area with the more settled Rainy River valley to

the south. The road was for access by settlers, tourists, and to provide winter work for needy settlers.

7. From 1929 through 1932 Ontario built the road across Reserve 35G. The Claimant was not paid for the land.
8. Gravel, rock and other fill, and timber to corduroy the roadbed, were taken from Reserve 35G and used in the construction, but the Claimant was not paid for this material.
9. Wooden post and guard rail material was cut from Reserve 35G and used to fence the road, but the Claimant was not paid for this.
10. The road did not include a bridge over the Big Grassy River. On the south side of the river non-Indians constructed garages and other buildings, and a parking area, for storing their vehicles and for staging materials. No rent was paid to the Claimant for this use of Reserve 35G land.
11. The provincial highway department constructed and maintained a "road camp", for unemployment relief from 1932 to 1936, on Reserve 35G. Materials for building the camp, and fuel wood for heating it and for other uses, were taken from the reserve but the Claimant was not paid for this, nor was the Claimant paid rent for the land used by the camp.
12. A wharf of log crib construction with rock fill was built where the road reached the south bank of the Big Grassy River. The materials were taken from Reserve 35G but the Claimant was not paid for this, nor was the Claimant paid rent for the land on which the wharf and its approaches were built.
13. In 1933, after construction of the road was substantially completed, Canada expropriated the right of way out of Reserve 35G and transferred it to Ontario. The order in council did not require payment of compensation to the Claimant, and none was paid.
14. Elders of the Claimant community report that opening of the road caused profound and immediate social and economic changes. A self-sufficient traditional Anishinaabe community became immediately accessible by automobile traffic.

15. Construction of the road had immediate impact on natural resources available for harvesting on Reserve 35G, including wild rice, game birds, and animals taken by hunting and trapping. The Claimant was paid no compensation for these losses. Prior to construction of the road the Claimant community lived mainly from harvesting natural resources.
16. Creation of the road corridor severed and disrupted the natural habitats and movement patterns of game and trapping animals.
17. Road access transformed the Big Grassy River. What had been a large highly-productive water body used exclusively by the Claimant to provide abundant wild rice, fish, and water fowl, and fur bearing animals, became a public thoroughfare. Outside hunters and fishermen took game and fish. The wild rice beds were damaged by power boats.
18. In or about 1938 Ontario required re-alignment of part of the road to facilitate construction of a bridge over the Big Grassy River, and to widen the corridor for the entire road from 66 to 100 feet.
19. The re-alignment of the road put it through improved lands on Reserve 35G occupied by First Nation members George Bob, Peter Indian, Tom Adams, Joe Seymour and Robert Archie.
20. In 1941 Canada by order in council expropriated out of Reserve 35G the road right of way within the new alignment. The total area taken was 39.374 acres. The total length of the road taken was 3.2 miles. Previous to this, in 1940, Ontario had by order in council returned the 27 acres expropriated in 1933 for the original road, but no provision was made for rehabilitation of the land that was returned but did not form a part of the right of way for the road in its new alignment.
21. Ontario paid \$337.30 for the road right of way in its new alignment. Part of this sum was to reimburse the First Nation members named in paragraph 19 herein for their improvements, including houses.
22. In the construction and maintenance of the road in its new alignment large quantities of gravel, rock and other fill were taken from borrow pits on Reserve 35G, including one large pit of four acres. The Claimant was not paid for this material, or for damage to the land at the site of the pits.

23. The road in its new alignment was designated Provincial Highway 621 and still runs through Reserve 35G in a generally north – south direction.
24. The Claimant claims compensation for:
- a. The value of the land occupied by the road taken by expropriation in 1933 from the time of commencement of construction.
 - b. The value of gravel, rock and other fill, and timber taken from Reserve 35G for the construction and maintenance of the road as expropriated in 1933.
 - c. The value of wooden posts and guardrail material taken from Reserve 35G to fence the road.
 - d. The value of rent for the buildings and parking areas on Reserve 35G occupied prior to construction of the bridge over the Big Grassy River.
 - e. The value of rent for the “road camp” located on Reserve 35G from 1932 to 1936, and the value of materials taken from Reserve 35G to build the camp, and of fuel wood used by the camp.
 - f. The value of logs and rock taken from Reserve 35G and used in the construction of the wharf on the south shore of the Big Grassy River.
 - g. The value of the new land taken by expropriation in 1941 when the road was re-aligned.
 - h. The value of gravel, rock and fill taken from Reserve 35G for the construction and maintenance of the re-aligned road and for maintenance of Provincial Highway 621.
 - i. The value of damage to the land taken for the original road but not included in the re-aligned road, and damage to the land used as borrow pits for extracting gravel, rock and other fill material from Reserve 35G.
 - j. The value of lost income and income equivalents from game and trapping animals, game birds and wild rice caused by the construction and location of the original road and of the re-aligned road that continues as the present day Provincial Highway 621.

25. In February 1988 the claimant submitted a claim for the above into Canada's specific claims process.
26. The claim submitted in 1988 included matters concerning whether the Big Grassy River is part of Reserve 35G, and concerning the site where Provincial Highway 621 crosses the Big Grassy River.
27. In April 1999 the claim was accepted for negotiation in the specific claims process.
28. Subsequently, by agreement of the parties, the parts of the claim concerning whether the Big Grassy River is part of Reserve 35G, and concerning the site where Provincial Highway 621 crosses the Big Grassy River, were separated out of the original claim and settled.
29. The remainder of the claim, being the compensation matters listed in paragraph 24 herein, including whether the Respondent is liable for them, or some of them, is not settled.
30. By letter dated January 5, 2009 the Claimant was advised that pursuant to the *Specific Claims Tribunal Act* the date of the decision by Canada to negotiate the claim was deemed to be October 16, 2008.

Dated this 25th day of October, 2011


Donald R. Colborne
Barrister and Solicitor
1125 Fort Street
Victoria BC V8V 3K9
Telephone 807-344-6628
Fax 807-983-3079
Email: drcolborne@shaw.ca