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To: Muskowekwan First Nation

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Date: February 9, 2022

Subject: **Update on Status of Muskowekwan First Nation Specific Claims**

BRIEFING NOTE

The 1910 & 1920 Surrenders Claim

This claim alleges that Canada breached its fiduciary and honourable obligations to the Muskowekwan First Nation (“MFN”) with respect to two land surrenders of Indian Reserve #85, one taken in 1910 and the other in 1920, and the subsequent sale of those lands.

MFN filed a claim with the Minister of Indian Affairs and Northern Development in September 1992 in relation to the surrenders. MFN made supplementary legal submissions in 1994-1999. In May 1997, Canada advised MFN that Canada would not negotiate the Claim.

In December 2003, the Indian Claims Commission (“ICC”) agreed to hold an inquiry in relation to the Claim. In January 2008, while the inquiry was still in process, Canada agreed to negotiate two aspects of the Claim: the sale of the lands to the Lestock School District below the assessed value, and the unlawful application of the Farmers’ Creditors Arrangement Act.

In March 2009, the ICC issued its report, finding that Canada had breached its fiduciary duty to MFN regarding both surrenders. On November 2, 2009, the Crown advised MFN that it did not accept the ICC’s findings and would not negotiate the Claim. After MFN did not respond to the January 2008 offer to negotiate the Claim in part, the Crown’s file on the Claim was “closed” on March 13, 2013.

MFN filed a Declaration of Claim with the Specific Claims Tribunal on March 18, 2020. Canada filed a Response on July 9, 2020. While the parties worked to prepare their cases, Canada brought a motion to split the proceedings into two separate phases: the first phase regarding validity of

the claims and, if MSFN was successful in the first phase, a second phase regarding compensation owing. MSFN opposed this motion because it would cause unnecessary delay. The Tribunal heard the parties' arguments on October 8, 2021, and ultimately dismissed Canada's motion for bifurcation on December 23, 2021.

MFN is now organizing community oral history meetings as an introductory process to identifying potential participants for an oral history hearing and finalizing its expert evidence. At present, we expect this claim could proceed to a full hearing on the merits within 12-18 months.

The Treaty 4 Benefits Claim (aka "Cows & Ploughs")

The MFN Treaty 4 Benefits Claim alleges that the Crown failed to provide the full complement of agricultural implements owing to MFN under the terms of Treaty 4.

To date, the only cows and ploughs claims that have ever been finally resolved are in Treaty 8. There has never been a similar claim resolved under any of the other numbered treaties, including Treaty 4.

Maurice Law filed the Agricultural Benefits Claim with the Minister of Crown-Indigenous Relations in March 2021 and it deemed filed under the Specific Claims policy on September 29, 2021. Under Canada's Specific Claims Policy, Canada has until September 29, 2024, to indicate whether it will accept the claim for negotiation. Should the claim be accepted, the parties may choose to enter settlement negotiations to resolve the claim. If Canada rejects the claim or fails to provide a response by September 29, 2024, MFN file the claim with the Specific Claims Tribunal where it can obtain a binding resolution from a judge.

While under review, Maurice Law and Chief and Council will be making every possible effort to reach an agreement with Canada for a fair and expeditious resolution of the Claim.

Railway Taking and Contamination Claims

In late 1905, the GTP applied to the Department of Indian Affairs to construct its railway line through the Muskowekwan Reserve. By Order in Council dated May 12, 1906, 164.8 acres of the reserve were granted to the GTP for a right of way and station grounds. The claim alleges the Crown breached its statutory and fiduciary duties to MFN in relation to the taking, and further that the Crown breached its fiduciary duty by allowing contamination of reserve lands.

This claim was submitted to the Specific Claims Branch on January 13, 2020, and MFN was notified that the claim met the minimum technical standards. As a result, the claim has been deemed filed with the Minister of Crown-Indigenous Relations on June 30, 2020. The claim is now in the three-year review period so Canada has until June 30, 2023, to determine whether it will accept or reject the claim for negotiation.

In the meantime, Pinter & Associates Ltd. conducted an Environmental Assessment Phase I to identify actual and potential site contamination. This report was reviewed with Chief and Council and a proposal for a Phase II assessment is currently being prepared that will assess the extent of contamination. In addition, a historical expert has been hired to ensure we have the complete collection of historical documents in relation to the claim and to prepare a draft historical report.

Misadministration of Trust Funds Claim

Since the inception of Muskowekwan's Trust managed by the Department of Indian Affairs, moneys have been intermittently misspent or spent without the requisite authority. This misadministration of trust funds is a breach of the Crown's fiduciary obligations as trustee. With respect to compensation, the most significant factors are (i) tracing the quantum of improper expenditures; (ii) method of compounding interest to present value.

This claim was filed with the Specific Claims Branch on March 21, 2019. A settlement proposal was tabled on April 27, 2020. Canada has acknowledged the terms of settlement and are in the course of contemplating same. The claim is now in the three-year review period and will be eligible to proceed to the Tribunal in Spring if negotiations do not start earlier.

MAURICE LAW

Per:


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