

INDIAN CLAIMS COMMISSION

BLUEBERRY RIVER FIRST NATION DOIG RIVER FIRST NATION HIGHWAY RIGHT OF WAY IR 172 INQUIRY

PANEL

**Chief Commissioner Renée Dupuis, C.M. (Chair)
Commissioner Daniel J. Bellegarde
Commissioner Jane Dickson-Gilmore**

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To the Indian Claims Commission
John B. Edmond / Karen L. Webb

March 2006

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SUMMARY

BLUEBERRY RIVER FIRST NATION AND DOIG RIVER FIRST NATION HIGHWAY RIGHT OF WAY IR 172 INQUIRY British Columbia

The report may be cited as Indian Claims Commission, *Blueberry River First Nation and Doig River First Nation: Highway Right of Way Indian Reserve 172 Inquiry* (Ottawa, March 2006).

*This summary is intended for research purposes only.
For greater detail, the reader should refer to the published report.*

Panel: Chief Commissioner R. Dupuis, C.M. (Chair), Commissioner D.J. Bellegarde, Commissioner J. Dickson-Gilmore

Treaties – Treaty 8 (1899); **Right of Way** – Road – Expropriation; **Fiduciary Duty** – Right of Way;
British Columbia

THE SPECIFIC CLAIM

On February 13, 1995, the Treaty 8 Tribal Association submitted a specific claim to the Department of Indian Affairs and Northern Development (DIAND) on behalf of the Blueberry River and Doig River First Nations concerning a highway right of way through the St John Indian Reserve (IR 172) in the Peace River area of northeastern British Columbia. The First Nations claimed the Crown had breached its legal and fiduciary obligations to the Fort St John Indian Band by agreeing to transfer lands within IR 172 to the Province of British Columbia for the purpose of building a road, without paying compensation or notifying the Band of the expropriation.

In 2003, the Indian Claims Commission (ICC) accepted this claim as having been constructively rejected by the Minister. In September 2004, Canada accepted the claim for negotiation. For the purposes of negotiation, Canada recognized that a lawful obligation was owed to the Blueberry River and Doig River First Nations. As a result of this acceptance, the Commission panel declared the inquiry closed on May 31, 2005.

BACKGROUND

In 1934, British Columbia requested that Canada transfer to it a strip of land passing through IR 172 for the purpose of a highway right of way. The province stated the reserve was not being used by the Fort St John band members, and the right of way was needed for nearby settlers. The province also stated it wished the transfer to be free of charge, since the Indians would benefit from having the improved access and the land would increase in value. Canada transferred 32.11 acres of land to the province in 1934. Canada did not pay compensation to the Band, nor, apparently, did it notify the Band of the expropriation.

OUTCOME

The specific claim was accepted for negotiation by Canada in September 2004, before the parties had agreed to a joint statement of issues.

REFERENCES

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

Cases Referred To

Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development), [1995] 4 SCR 344 (sub nom. *Apsassin*).

Treaties and Statutes Referred To

British Columbia Terms of Union [16th May, 1871]; *Constitution Act, 1867*.

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, INTERVENERS

M. Vanderkruyk for the Blueberry River First Nation; A. Rana for the Doig River First Nation; P. Robinson for the Government of Canada; J.B. Edmond, K.L. Webb to the Indian Claims Commission.

PART I
INTRODUCTION

In February 1995, the Treaty 8 Tribal Association submitted a specific claim to the Government of Canada on behalf of the Blueberry River and Doig River First Nations concerning the expropriation of land for a provincial highway through the St John Indian Reserve (IR 172) in 1934. The Blueberry River and Doig River First Nations are successors to the Fort St John Indian Band (also known as the Beaver Band of Fort St John), which was disbanded in 1977. The First Nations claimed the lands had been expropriated from them for the purpose of creating a provincial right of way and that the Band had not been compensated for the taking.

This claim is one of several advanced over the years by the Blueberry River and Doig River First Nations with regard to IR 172. In 1940, the Fort St John Indian Band surrendered the mineral rights in the reserve for lease and, in 1945, the Band surrendered the reserve in its entirety. The 1945 surrender was the subject of the 1995 Supreme Court decision most commonly known as *Apsassin*.¹

In 1995, the Treaty 8 Tribal Association submitted the claim on the “fast track” process for claims under \$500,000. After eight years, during which the bands had not learned of either acceptance or rejection of the claim by the Minister, the Tribal Association requested that the Indian Claims Commission (ICC) conduct an inquiry into the claim, on the basis that, owing to the passage of time, it had been constructively rejected. The ICC accepted the claim for inquiry in November 2003.

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 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.”² This Policy, outlined in the 1982 booklet put out

¹ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 (sub nom. *Apsassin*).

² 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.

by the Department of Indian Affairs and Northern Development (DIAND) and 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.³ The term “lawful obligation” is defined in *Outstanding Business* as follows:

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.⁴

The Commission was asked to inquire into whether the expropriation of 32.11 acres of land for the purpose of a provincial right of way, without compensation and without notice, was a valid claim for negotiation under the Specific Claims Policy. The ICC accepted the claim for inquiry in November 2003 as having been constructively rejected, under its mandate to “inquire into and report on ... whether a claimant has a valid claim for negotiation under the Policy where that claim has already been rejected by the Minister.”⁵ In September 2004, the department accepted the claim for negotiation.

³ DIAND, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Services, 1982), 20; reprinted in (1994) 1 Indian Claims Commission *Proceedings* (ICCP) 171–85 (hereafter *Outstanding Business*).

⁴ *Outstanding Business*, 20; reprinted in (1994) 1 ICCP 171 at 179–80.

⁵ Order in Council PC 1992-1730, Part “a” of the mandate.

PART II

HISTORICAL BACKGROUND

INTRODUCTION

St John Indian Reserve 172 originally comprised an area of 18,168 acres, located approximately six miles north of the town of Fort St John in the Peace River region of northeastern British Columbia.⁶ Members of the Fort St John Indian Band⁷ used this reserve as a summer campground and received their treaty annuity payments at the reserve.⁸ Traditionally, band members relied upon hunting and trapping for their subsistence.

The Fort St John Indian Band was disbanded in 1977. Its former members and their successors currently constitute the Blueberry River First Nation and the Doig River First Nation.

TREATY 8

The Fort St John Indian Band was given notice to meet with the Commissioners for Treaty 8 on June 21, 1899. When the treaty commissioners were delayed, they sent a message requesting that the Band remain to meet with them; however, the First Nation had already left the area.⁹ Treaty 8 was concluded on September 22, 1899, and the Fort St John Indian Band adhered to treaty on May 30,

⁶ Director, Ottawa, to L.A. Shearer, Fairview, Alta, January 4, 1946, Library and Archives Canada (hereafter LAC), RG 10, vol. 7779, file 27143-4, pt 1 (ICC file 2109-34-01-17), and Order in Council PC 819, April 11, 1916, *Canada Gazette*, May 13, 1916 (ICC file 2109-34-01-17).

⁷ The Fort St John Indian Band is also known as the Beaver Band of Fort St John. In addition, documents from the historical record refer to the Band as the St John Band, the St John Beaver Band of Indians, and the St John Beaver Band. The Supreme Court, in its decision in *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344, refers to the Band as the “Beaver Band.” For the purposes of this report, the First Nation’s most common usage of “Fort St John Indian Band” has been adopted.

⁸ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at 346, and Lester Reed, Secretary, Rose Prairie Board of Trade, Rose Prairie, BC, to Indian Department, Ottawa, April 17, 1933, LAC, RG 10, vol. 7779, file 27143-4, pt 1 (ICC file 2109-34-01-17).

⁹ David Laird, J.H. Ross, and J.A.J. McKenna, Treaty Commissioners, to Clifford Sifton, Superintendent General, Department of Indian Affairs, Ottawa, September 22, 1899, Canada, *Copy of Treaty No. 8 Made June 21, 1899, and Adhesions, Reports, etc.* (Ottawa: Queen’s Printer, 1966), 5–10 (ICC file 2109-34-01-17); A.E. Snyder, Inspector Commanding Treaty Escort, North-West Mounted Police, Edmonton, Alta., to Officer Commanding Division, Fort Saskatchewan, September 8, 1899 (ICC file 2109-34-01-17).

1900.¹⁰ That adhesion, among others, was ratified by Order in Council dated January 3, 1901.¹¹

ESTABLISHMENT OF INDIAN RESERVE 172

The Fort St John Indian Band selected the site of its reserve in 1913, and an area of “28 square miles constituting the Crown’s calculation of its land entitlement under Treaty No. 8”¹² was surveyed in July 1914. In a letter dated March 1915, Surveyor Donald Roberts reported:

This band is comprised of 166 Indians, 25 of whom were given land in the reserve at the east end of Moberly Lake. The remainder being entitled to 28 sq. miles, were given a reserve in township 85, ranges 18 and 19, W.6th, about 10 miles north of Fort St. John ... This reserve is rolling country, excellently adapted for grazing and the soil is suitable for gardens and mixed farming.¹³

IR 172 was confirmed by Order in Council PC 819 on April 11, 1916.¹⁴

LAND CONVEYANCE – BRITISH COLUMBIA TO CANADA

The land selected by the Band for its reserve was within an area known as the Peace River Block. The Peace River Block had been part of a series of land conveyances¹⁵ between Canada and British

¹⁰ H.T. Vergette, Chief, Lands Division, Ottawa, to Chief, Membership Division, December 3, 1973, DIAND, file 975/30-1, vol. 6 (ICC file 2109-34-01-17).

¹¹ Order in Council PC, January 3, 1901, Canada, *Copy of Treaty No. 8 Made June 21, 1899 and Adhesions, Reports, etc.* (Ottawa: Queen’s Printer, 1966), 26 (ICC file 2109-34-01-17).

¹² Specific Claim of the Blueberry River and Doig River First Nations Concerning Land Expropriated by the Department of Public Works of the Province of British Columbia for the Purposes of a Road Right-of-Way through Fort St. John Indian Reserve No. 172 – Statement of Fact, Legal Arguments and Supporting Documentation, prepared by Robert Metcs & Associates for Treaty 8 Tribal Association, Treaty and Aboriginal Rights Research, February 1995, p. ii (ICC file 2109-34-01-17).

¹³ Donald F. Robertson, DLS, Ottawa, to Assistant Deputy and Secretary, Department of Indian Affairs, Ottawa, March [18], 1915, LAC, RG 10, vol. 7778, file 27143-4, pt 1 (ICC file 2109-34-01-17).

¹⁴ Order in Council PC 819, April 11, 1916, *Canada Gazette*, May 13, 1916 (ICC file 2109-34-01-17).

¹⁵ British Columbia, Executive Order in Council No. 450, May 15, 1907, no file reference available (ICC file 2109-34-01-17).

Columbia put in place to implement the *Terms of Union*.¹⁶ In the last land transaction, in 1930, British Columbia confirmed the transfer of the Indian reserves within the block to Canada, subject to the right to “resume any part of the said lands which it may be deemed necessary to resume for making roads, canals, bridges, towing paths or other works of public utility or convenience.”¹⁷ As a result, British Columbia retained the authority to expropriate reserve land for public purposes, including for a highway right of way, subject to the conditions and provisions in the provincial legislation authorizing expropriation.

HIGHWAY RIGHT OF WAY

In the late 1920s, settlers near the town of Fort St John began to request the construction of a road through IR 172 to the Alberta border.¹⁸ The first documented query into the possibility of constructing a road (and telephone line) through the reserve was made to the Department of Indian Affairs in Ottawa on November 1, 1928, by John Cooper, a settler of Fort St John.¹⁹ In response, J.D. McLean, Assistant Deputy and Secretary of the Department of Indian Affairs, stated that the construction of such a road would have to be done in accordance with the *Indian Act* and through the Department of Indian Affairs, which would then authorize the province to construct the road.²⁰

On July 30, 1934, P. Phillip, Chief Engineer, BC Department of Public Works, wrote to C.C. Perry, Dominion Indian Commissioner, requesting permission to construct a road through IR 172:

¹⁶ British Columbia, *Terms of Union*, May 27, 1871, no file reference available, 4 (ICC file 2109-34-01-17), which set out the terms under which British Columbia entered Confederation.

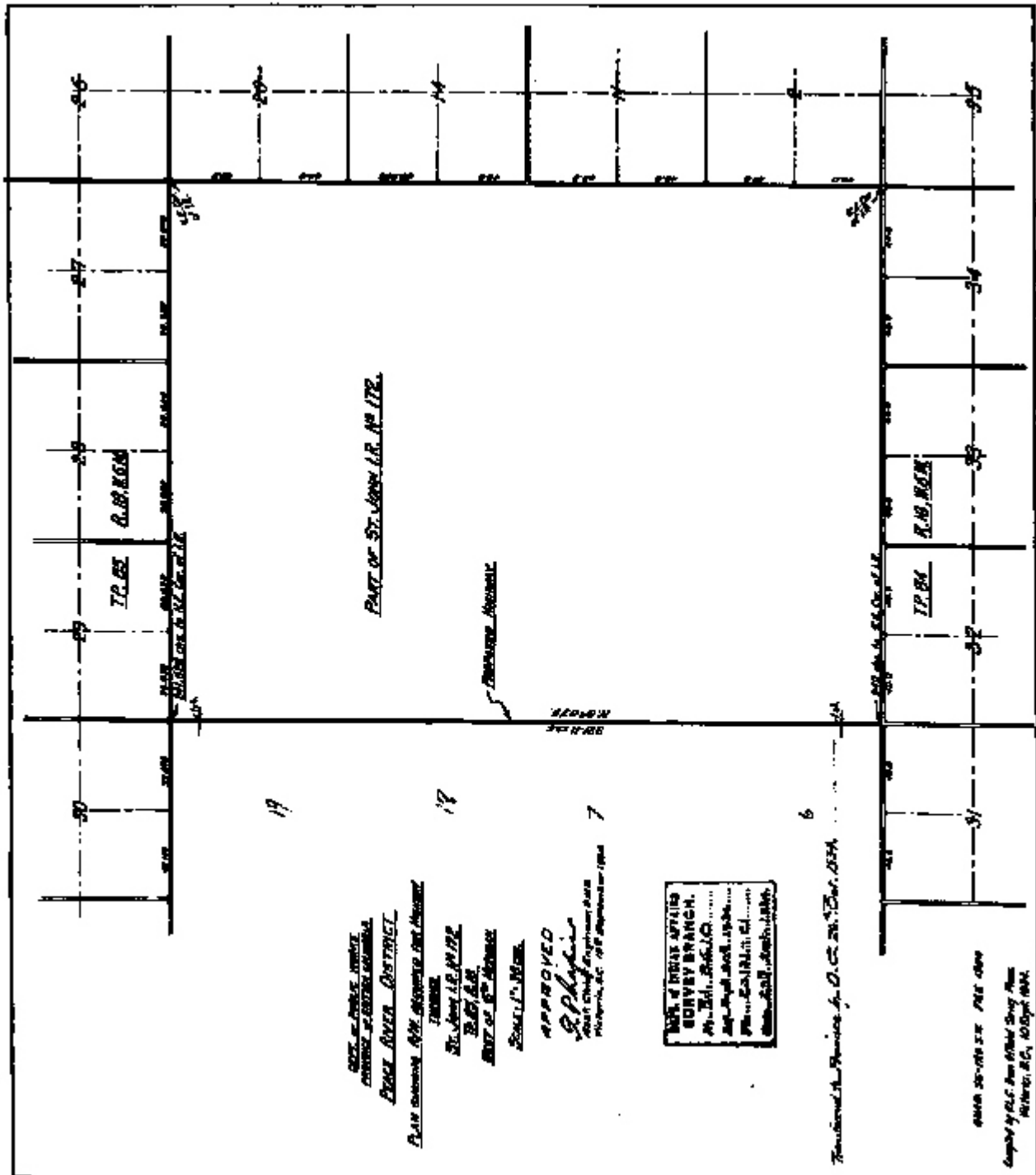
¹⁷ Schedule 4 Indian Reserves in the Railway Belt and Peace River Block in the Province of British Columbia, attached to Order in Council PC 208, February 3, 1930, [Specific Claims West Resource Centre] (ICC file 2109-34-01-17), confirmed by Order in Council BC 1151, September 24, 1930, no file reference available (ICC file 2109-34-01-17).

¹⁸ P. Phillip, Chief Engineer, Fort George, to Major J.C. Johnstone, Asst. Dist. Engineer, Pouce Coupé, BC, January 21, 1931 (ICC file 2109-34-01-17).

¹⁹ John Cooper, Fort St John, to Department of Indian Affairs, November 1, 1928, LAC, RG 10, vol. 8069, file 975/31-4-9, pt 1 (ICC file 2109-34-01-17).

²⁰ J.D. McLean, Assistant Deputy and Secretary, Ottawa, to John Cooper, Fort St John, BC, November 20, 1928, LAC, RG 10, vol. 8069, file 975/31-4-9, pt 1 (ICC file 2109-34-01-17).

Map 1: IR 172 Showing Highway Right of Way



Plan Rd. 2610 showing R/W required for Highway through St. John IR No 172, Tp 85, R 18, West of 6th Meridian, Department of Public Works, Province of British Columbia, Peace River District, 29 September 1934

I herewith enclose map showing St. John Reserve No. 172, Peace River Block, with a suggested road running north and south through the middle thereof.

You will note that this block prevents travel in a northerly and southerly direction for a strip of country seven miles wide north of it. At present there is a road along the west boundary and a very rough trail on the east side. From the map you will see that residents in the Rose Prairie area for instance, have to travel six miles farther than necessary to reach their market town which is Fort St. John.

It appears that in past years a road was constructed from the south to the south boundary of the Reserve, and from the north to a point due north of the south road, but to date there has been no means of crossing the Reserve except by saddle horse. The intermediate section had been examined and it was found that there is no obstacle of a physical nature to stop the connection. If your Department will allow a right-of-way we will be able to build the road with relief labour this fall.

I would point out that the Reserve is not fenced nor does it contain any improved land. There are at present no Indians living on the Reserve and I think that the construction of the road would be of benefit to the Band as it certainly will appreciate the value of the property. Under the circumstances, therefore, could you arrange for us to have free, without charge, a right-of-way 66 ft. wide, beginning at the N.E. corner of Sec. 31 Tp. 84, Range 18, thence due north for a distance of four miles to the S.E. corner of Sec. 30, Tp. 85, Range 18. This will involve some 32 acres of land.²¹

Canada agreed to consider the construction of the road on condition that British Columbia compensate the First Nation by providing fencing around the road in return for the right of way.²² The province declined to accept. Chief Engineer Dixon stated:

As explained in my report to the Assistant Indian Commissioner for B.C., dated July 30th, my information is that the Reserve is not fenced and does not contain any improved land. There are at present no Indians living on the reserve and, as explained, it is considered the construction of the road will be a benefit to the Indians as it will increase the value of the property.

²¹ P. Phillip, Chief Engineer, Department of Public Works, BC, to C.C. Perry, Dominion Indian Commissioner, July 30, 1934, LAC, RG 10, vol. 8069, file 975/31-4-9-4, pt 1 (ICC file 2109-34-01-17).

²² A.F. MacKenzie, Secretary, Ottawa, to Chief Engineer, Department of Public Works, Victoria, BC, August 14, 1934, LAC, RG 10, vol. 8069, file 975/31-4-9-4, pt 1 (ICC file 2109-34-01-17).

I regret it is not possible for this Department to give any undertaking with regard to future fencing of the roadway as in these matters we are bound by the “Highway Act” and it is only when existing fences are disturbed or that fenced land is opened up by the construction of a highway that this Department gives consideration to erection of additional fencing along the highway.²³

On September 28, 1934, Canada granted permission to the province to construct the road through IR 172, concluding that “the benefit of having the road constructed [was] sufficient compensation for the land required” from the First Nation.²⁴ British Columbia was granted expropriation rights to 32.11 acres of land required to construct the road, and the right of way was transferred to the province, without compensation, by Order in Council PC 2631, dated October 26, 1934.²⁵ The First Nation alleges that neither it nor its Indian Agent was consulted about the construction of the road.²⁶ Although it is unclear exactly when construction of the road commenced, the project is mentioned in correspondence dated May 1935,²⁷ which suggests the construction began around that time.

²³ A. Dixon, Chief Engineer, Department of Public Works, Victoria, BC, to A.F. MacKenzie, Secretary, Department of Indian Affairs, Ottawa, September 20, 1934, LAC, RG 10, vol. 8069, file 975/31-4-9-4, pt 1 (ICC file 2109-34-01-17).

²⁴ T.R.L. MacInnes, Acting Secretary, Department of Indian Affairs, to R. Dixon, Chief Engineer, Department of Public Works, Victoria, BC, September 28, 1934, BC, Ministry of Transportation and Highways, file 1384, section 1 (microfilm), Roads near North Pine and Rose Prairie (ICC file 2109-34-01-17).

²⁵ Order in Council 2631, October 26, 1934, LAC, RG 10, vol. 8069, file 975/31-4-9-4, pt 1 (ICC file 2109-34-01-17).

²⁶ H.A.W. Brown, Indian Agent, Fort St John, BC, to Secretary, Department of Indian Affairs, Ottawa, May 3, 1935, LAC, RG 10, vol. 8069, file 975/31-4-9-4, pt 1 (ICC file 2109-34-01-17), and Specific Claim of the Blueberry River and Doig River First Nations Concerning Land Expropriated by the Department of Public Works of the Province of British Columbia for the Purposes of a Road Right-of-Way through Fort St. John Indian Reserve No. 172. – Statement of Fact, Legal Arguments and Supporting Documentation, prepared by Robert Metes & Associates for Treaty 8 Tribal Association, Treaty and Aboriginal Rights Research, February 1995, pp. 15–16 (ICC file 2109-34-01-17).

²⁷ H.A.W. Brown, Indian Agent, Fort St John, BC, to Secretary, Department of Indian Affairs, Ottawa, May 3, 1935, LAC, RG 10, vol. 8069, file 975/31-4-9-4, pt 1 (ICC file 2109-34-01-17); A.F. MacKenzie, Secretary, Ottawa, to H.A.W. Brown, Indian Agent, Fort St John, BC, May 16, 1935, LAC, RG 10, vol. 8069, file 975/31-4-9-4, pt 1 (ICC file 2109-34-01-17).

THE SURRENDER OF INDIAN RESERVE 172

In 1933, when requests were being received by the department regarding the proposed roadway, other requests that the reserve be opened for settlement were also arriving in Ottawa.²⁸ In subsequent years, two surrenders were taken from the First Nation. In the first of these, dated July 9, 1940, the Fort St John Indian Band surrendered for lease, its “petroleum, and natural gas and the mining right thereof” in IR 172. Under the terms of the second surrender, dated September 22, 1945, the First Nation surrendered IR 172 in its entirety for sale or lease.²⁹ The surrender of September 22, 1945, was accepted by Order in Council 6506, dated October 16, 1945.³⁰ It should be noted that these surrenders were not issues within this inquiry.

The Fort St John Indian Band surrendered its reserve at the same time as the federal government was looking for available land with good agricultural potential. The band members did not live on the reserve and, because the community’s economic base was hunting and trapping, they were not farming the land. Soon after these surrenders, the Director of the *Veterans’ Land Act* (DVLA) expressed interest in the surrendered IR 172 and Canada began to make preparations to sell lands “for veterans’ reestablishment purposes.”³¹ The DVLA was issued letters patent for the surrendered land on March 30, 1948, for \$70,000.³² The road that bisected the reserve was not included in the surrender, nor was it included in the plan registered by the DVLA.³³ Sales to

²⁸ Lester P. Reed, Secretary, Rose Prairie Board of Trade, Rose Prairie, BC, to Indian Department, Ottawa, April 17, 1933, LAC, RG 10, vol. 7779, file 27143-4, pt 1 (ICC file 2109-34-01-17); W.T.R. Delve, Montaney and District Board of Trade, Montaney, BC, to Department of Indian Affairs, Ottawa, June 20, 1933, [LAC, RG 10, vol. 7779, file 27143-4, pt 1] (ICC file 2109-34-01-17).

²⁹ Surrender, September 22, 1945, LAC, RG 10, vol. 7779, file 27143-4, pt 1 (ICC file 2109-34-01-17).

³⁰ Order in Council 6506, October 16, 1945, no file reference available (ICC file 2109-34-01-17).

³¹ Director, Ottawa, to L.A. Shearer, Fairview, Alta, January 4, 1946, LAC, RG 10, vol. 7779, file 27143-4, pt 1 (ICC file 2109-34-01-17).

³² Letters Patent, March 30, 1948, BC, Ministry of Transportation and Highways, file 1384, section 1 (microfilm), Roads near North Pine and Rose Prairie (ICC file 2109-34-01-17). *See also* Trust fund account, Fort St John Reserve No. 172, c. 1847 (ICC file 2109-34-01-17).

³³ Memorandum, B.W. Waugh, Surveyor General, Department of Mines and Resources, Surveys and Engineering Branch, to D.J. Allan, Indian Affairs Branch, December 10, 1947, FRC file 975/30-4-172, v. 1 (ICC file 2109-34-01-17).

individual veterans of subdivided parcels within the surrendered reserve continued until 1956.³⁴ A portion of the revenue from the sale of the reserve was used to purchase new reserve land for the Fort St John Indian Band closer to its traplines.³⁵

In 1982, the Union of British Columbia Indian Chiefs queried the provincial government as to who held the rights to the road. This query was apparently prompted by the Union's observation that the Crown grant to the DVLA did not include the roads.³⁶

DISCOVERY OF PETROLEUM RESERVES

Soon after the surrendered IR 172 was transferred to the DVLA in 1948, petroleum reserves were discovered in the general area. Oil and gas companies immediately began to express interest in exploring the former reserve lands for these resources and approached both Indian Affairs and Veterans Affairs with requests to do so.³⁷

Oil and gas were discovered within the boundaries of the surrendered reserve in 1976. Under the terms of the transfer and purchase of the land, however, the veterans and their assigns were the beneficiaries of revenue generated from exploitation.³⁸ As stated above, the Fort St John Band divided itself into the Blueberry River First Nation and the Doig River First Nation in 1977 for reasons not put before this Commission.³⁹ Also in 1977, the First Nations were informed by Indian Affairs that they had lost the right to the natural resources under the former reserve.

³⁴ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at para 28.

³⁵ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344.

³⁶ A.C. Brown, Director of Property Services, per D.I.D. MacSween, Senior Property Negotiator, to T.D. Johnson, Assistant Deputy Minister, Highways Operations, June 17, 1982, [BC, Ministry of Transportation and Highways, Headquarters Properties, file PS 51005 (former) Fort St John IR#172] (ICC file 2109-34-01-17).

³⁷ D.J. Allan, Superintendent, Reserves and Trusts, to Peace River Natural Gas Co. Ltd, Calgary, Alta, August 29, 1949, DIA file 975/1 (ICC file 2109-34-01-17).

³⁸ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at para 28.

³⁹ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at para. 28.

APSASSIN

The First Nations have been involved in several proceedings regarding IR 172. In September 1978, they filed an action against the Department of Indian Affairs claiming (among other things) that the Crown had breached its fiduciary duty in allowing the First Nations to “make an improvident surrender of the reserve, and once surrendered, for disposing of it under value.”⁴⁰ The bands also claimed damages for permitting the transfer of the mineral rights to the Director of the *Veterans’ Land Act*. The resulting Supreme Court judgment, *Blueberry River Indian Band v. Canada*, commonly known as *Apsassin*, has become one of the leading cases on the nature of the Crown’s pre-surrender fiduciary duty.

⁴⁰ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at para. 29.

PART III
ISSUES

The Treaty 8 Tribal Association on behalf of the First Nations requested an inquiry into their claim on the basis that the Crown had unlawfully taken a road allowance from IR 172. During the time between the First Nations' request for an inquiry and the Crown's accepting their claim for negotiation, the inquiry did not progress to the point of the parties agreeing on a joint statement of issues.

PART IV
PROCEDURAL HISTORY

The claim regarding the highway right of way had been submitted to the Minister on February 13, 1995, through what is known as the “fast track” process. By the summer of 2003, the First Nations had not heard from Canada regarding either the acceptance or rejection of their claim. On August 21, 2003, the First Nations requested that the Indian Claims Commission conduct an inquiry into their claim.⁴¹ On November 28, 2003, the Chief Commissioner notified the parties that the First Nations’ request for an inquiry had been accepted.⁴² The Commission asked the parties to provide the relevant documentation. On behalf of the First Nations, the Treaty 8 Tribal Association submitted part of its document collection and advised that more material would be forthcoming. Canada provided no documentation and notified the Commission that the First Nation’s participation in the inquiry would not be funded, since Canada did not consider the claim to be rejected.

On September 8, 2004, Canada accepted this claim for negotiation.⁴³ Accordingly, the Commission issued a declaration on May 31, 2005, concluding this inquiry.⁴⁴

⁴¹ Deborah Smithson, Director, Treaty and Aboriginal Rights Research, Treaty 8 Tribal Association, to Kathleen Lickers, Commission Counsel, ICC, August 21, 2003 (ICC file 2109-39-01, vol. 1).

⁴² Renée Dupuis, Chief Commissioner, ICC, to Deborah Smithson, Director, Treaty and Aboriginal Rights Research, Treaty 8 Tribal Association, December 18, 2003; Renée Dupuis, Chief Commissioner, ICC, to Audrey Stewart, Director General, Specific Claims Branch, DIAND, and Sylvia Duquette, General Counsel, Specific Claims Branch, December 18, 2003 (ICC file 2109-39-01, vol. 1).

⁴³ Andy Scott, Minister of Indian Affairs and Northern Development, Ottawa, to Linda Chipesia, Chief, Blueberry River First Nation, and Garry Oker, Chief, Doig River First Nation, September 9, 2004 (ICC file 2109-39-01, vol. 1). This letter is reproduced as Appendix A to this report.

⁴⁴ ICC, Declaration, dated May 31, 2005. This order is reproduced as Appendix B to this report.

PART V
CONCLUSION

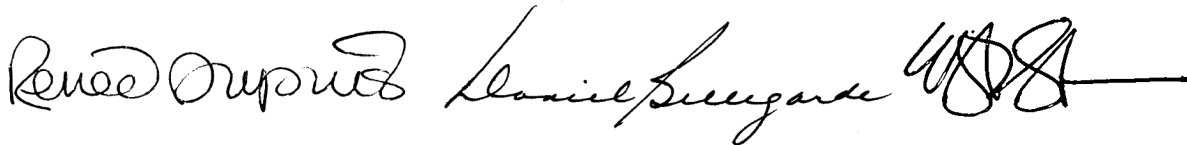
For the reasons given in our declaration of May 31, 2005, the inquiry was concluded as follows:

SINCE the specific claim has been accepted by the Minister for negotiation and the First Nations have requested 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



Renée Dupuis, C.M. (Chair)
Chief Commissioner

Daniel J. Bellegarde
Commissioner

Jane Dickson-Gilmore
Commissioner

Dated this 30th day of March, 2006.

APPENDIX A

GOVERNMENT OF CANADA'S OFFER TO ACCEPT CLAIM

Ministre des Affaires indiennes et
Nord canadien et interlocuteur fédéral
auprès des Métis et des Indiens non inscrits



Minister of Indian Affairs and
Northern Development and Federal Interlocutor
for Métis and Non-Status Indians

Ottawa, Canada K1A 0H4

WITHOUT PREJUDICE

SEP 9 2004

Chief Linda Chipesia
Blueberry River First Nation
PO Box 3009
BUICK BC V0C 2R0

Chief Garry Oker
Doig River First Nation
PO Box 56
ROSE PRAIRIE BC V0C 2H0

Dear Chief Chipesia and Chief Oker:

On behalf of the Government of Canada, and pursuant to the Specific Claims Policy, I am pleased to accept for negotiation the Blueberry River and Doig River First Nations' specific claim concerning the road right-of-way over the former Fort St. John Indian Reserve No. 172.

For the purposes of the negotiations, the Government of Canada accepts that the Blueberry River and Doig River First Nations, as the successors to the Fort St. John Beaver Band, have sufficiently established in accordance with the Specific Claims Policy that Canada has a lawful obligation in respect of the road right-of-way referred to in the Treaty 8 Tribal Association submission entitled "Specific Claim of the Blueberry River and Doig River First Nations Concerning Lands Expropriated by the Department of Public Works of the Province of British Columbia for the Purposes of a Road Right-of-Way through Fort St. John Indian Reserve No. 172", dated February 1995. Further correspondence outlining the details of this acceptance will be contained in a letter from Michel Roy, Assistant Deputy Minister, Claims and Indian Government.

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I would like to extend to you and to the Blueberry River First Nation and Doig River First Nations my best wishes for a fair and successful negotiation of this claim.

Yours sincerely,

A handwritten signature in black ink that reads "Andy Scott". The signature is written in a cursive, slightly slanted style.

The Honourable Andy Scott, PC, MP

c.c.: Ms. Deborah Smithson

APPENDIX B

DECLARATION

**Treaty 8 Tribal Association
Blueberry River First Nation and Doig River First Nation
Highway Right of Way IR 172 Claim**

**Association tribale du Traité 8
Première Nation de Blueberry River et Première Nation de Doig River
Emprise routière - Revendication relative à la RI 172**

DECLARATION

On February 13, 1995, the Treaty 8 Tribal Association, on behalf of the Blueberry River First Nation and the Doig River First Nation, submitted a specific claim to the Minister of Indian Affairs and Northern Development (“the Minister”) respecting the Highway Right of Way through IR 172.

By letter dated August 21, 2003, supported by Band Council Resolutions from the Blueberry River First Nation and the Doig River First Nation, dated August 21, 2003, and July 27, 2004, respectively, the Treaty 8 Tribal Association requested that the Indian Claims Commission conduct an inquiry into their claim.

On November 5, 2003, this Commission deemed the claim to have been rejected and accepted the claim for inquiry.

By letter of September 8, 2004 (attached as Appendix A), the Minister offered to accept this claim for negotiation. By Band Council Resolutions dated February 15, 2005, from the Blueberry River First Nation and February 7, 2005, from the Doig River First Nation (attached as Appendix B), the First Nations requested that this inquiry be closed.

DÉCLARATION

Le 13 février 1995, l'Association tribale du Traité 8, au nom de la Première Nation de Blueberry River et de la Première Nation de Doig River, a présenté une revendication particulière au ministre des Affaires indiennes et du Nord canadien (« le Ministre ») au sujet de l'emprise routière traversant la RI 172.

Dans une lettre datée du 21 août 2003, appuyée par les résolutions des Conseils de bande de la Première Nation de Blueberry River et de la Première Nation de Doig River datées du 21 août 2003 et du 27 juillet 2004, respectivement, l'Association tribale du Traité 8 a demandé à la Commission des revendications des Indiens de faire enquête sur leur revendication.

Le 5 novembre 2003, la Commission, considérant que la revendication avait été rejetée, a accepté d'ouvrir une enquête.

Dans une lettre datée du 8 septembre 2004, constituant l'annexe A, le Ministre a offert d'accepter cette revendication aux fins de négociation. Dans une résolution du Conseil de bande de la Première Nation de Blueberry River datée du 15 février 2005, et une résolution du Conseil de bande de la Première Nation de Doig River datée du 7 février 2005, constituant l'annexe B, les Premières Nations ont demandé la clôture de l'enquête.

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

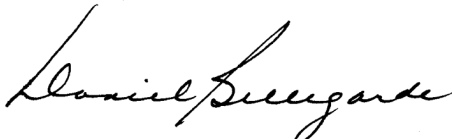
THIS COMMISSION THEREFORE DECLARES AS FOLLOWS:

The inquiry into this specific claim is hereby concluded.

At Ottawa, Ontario, this 31st day of May, 2005.



Renée Dupuis
Chief Commissioner (Chair)



Daniel J. Bellegarde
Commissioner



Jane Dickson-Gilmore
Commissioner

PUISQUE le Ministre a accepté la revendication particulière en l'espèce aux fins de négociation et que les Premières Nations ont demandé la clôture de l'enquête, et puisque le comité chargé des travaux conclut qu'il y a lieu de clore cette enquête,

LA COMMISSION DÉCLARE DONC :

Que l'enquête sur cette revendication particulière est close.


Fait à Ottawa (Ontario), ce 31^e jour de mai 2005.



Renée Dupuis
Présidente (présidente du comité)



Daniel J. Bellegarde
Commissaire



Jane Dickson-Gilmore
Commissaire