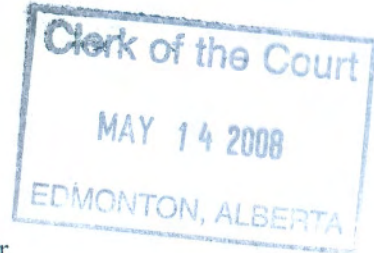


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Action No.

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON



Between:

Alphonse Lameman on his own behalf and on behalf of all other
Beaver Lake Cree Nation beneficiaries of Treaty No. 6, and Beaver
Lake Cree Nation

Plaintiffs

And:

Her Majesty the Queen in Right of the Province of Alberta
and the Attorney General of Canada

Defendants

STATEMENT OF CLAIM

1. The Beaver Lake Cree Nation ("Beaver Lake") is a band within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5, as amended, is an aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c.11 (the "*Constitution Act, 1982*"), and is the successor to an aboriginal group adherent to Treaty No. 6 (the "Treaty").
2. Alphonse Lameman is the elected Chief of Beaver Lake and a member of Beaver Lake. He resides on the Beaver Lake Cree Nation Indian Reserve No. 131 and he is a beneficiary of the Treaty.
3. Alphonse Lameman brings this claim on his own behalf and as a representative on behalf of all other Beaver Lake Cree Nation beneficiaries of the Treaty (the "Beneficiaries") and Beaver Lake.

4. The Defendant the Attorney General of Canada is the representative of Her Majesty the Queen in right of Canada and is named in these proceedings pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended (“Canada”). Canada is subject to all of the obligations, duties, and liabilities which the Crown has or owes to the Beneficiaries and to Beaver Lake.
5. The Defendant, Her Majesty the Queen in Right of the Province of Alberta, is that aspect of the Monarch in which the lands material to the issues in this proceeding are vested, subject to the interests of the Plaintiffs (“Alberta”).
6. That portion of Alberta in which the Plaintiffs have traditionally hunted, trapped and fished and continue to do so today includes the area outlined in red on the map attached as Schedule 1 and which is herein referred to as the “Core Traditional Territory”.

Treaty Rights

7. Ancestors of the Beneficiaries adhered to the Treaty on or about September 9, 1876.
8. The Treaty is a treaty within the meaning of s. 35 of the *Constitution Act, 1982*. Under the Treaty, ancestors of the Beneficiaries ceded lands in what is now the province of Alberta and in exchange for this surrender, the ancestors of the Beneficiaries were promised reserves and some other benefits including the right to hunt and fish throughout the tract surrendered “saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes...”. The right to hunt for the purpose of the Treaty includes the right to trap.

9. Before and at the time of adhering to the Treaty the ancestors of the Beneficiaries hunted, trapped and fished certain animal, bird and fish species for subsistence, for cultural, social and spiritual needs, and to sell and trade for livelihood purposes with other Tribes, settlers, the Hudson's Bay Company and others. The Treaty confirmed these rights and the Natural Resource Transfer Agreements, 1930 *Constitution Act, 1930 (U.K.)* 20-21 George V, c. 26 (the "NRTA") secured to the Beneficiaries the right of subsistence and support (collectively the "Treaty Rights").

10. The Treaty also embodied a promise by the Crown that the Crown would act honourably in taking up lands for settlement, mining, lumbering, trading, or other purposes.

11. The Treaty Rights include the right to hunt and trap certain animal species, including, but not limited to:
 - (i) caribou;
 - (ii) buffalo;
 - (iii) elk;
 - (iv) mule deer;
 - (v) white-tailed deer;
 - (vi) moose;
 - (vii) marten;
 - (viii) fisher;
 - (ix) wolverine;
 - (x) river otter;
 - (xi) mink;
 - (xii) weasel;

- (xiii) lynx;
- (xiv) mountain lion;
- (xv) snowshoe hare;
- (xvi) red squirrel;
- (xvii) northern flying squirrel;
- (xviii) ground squirrel;
- (xix) beaver;
- (xx) skunk;
- (xxi) muskrat;
- (xxii) black bear;
- (xxiii) grizzly bear;
- (xxiv) wolf;
- (xxv) fox;
- (xxvi) coyote; and
- (xxvii) badger.

12. The Treaty Rights include the right to hunt and trap, and collect the eggs of, certain species of bird, including, but not limited to:

- (i) wren;
- (ii) wild turkey;
- (iii) cranes;
- (iv) ducks;
- (v) geese;
- (vi) bald eagle (regalia);
- (vii) golden eagle (regalia);

- (viii) hawks (regalia); and
 - (ix) owls (regalia).
13. The Treaty Rights include the right to fish certain species of fish, including, but not limited to:
- (i) whitefish;
 - (ii) northern pike;
 - (iii) tullibee;
 - (iv) walleye;
 - (v) yellow perch;
 - (vi) suckers;
 - (vii) maria (ling);
 - (viii) trout;
 - (ix) bass;
 - (x) grayling;
 - (xi) goldeye; and
 - (xii) sturgeon.
14. The Treaty Rights include activities incidental to the exercise of the Treaty Rights.
15. The Treaty Rights include a duty on the Crown:
- (i) to manage animal, bird and fish (collectively the “Wildlife”) habitats to ensure the continuation of the Treaty Rights;

- (ii) to manage water resources to ensure the continuation of water quality and quantity for the continuation of the Treaty Rights;
- (iii) to manage Wildlife and water resources to ensure a harvestable surplus of each Wildlife species; and
- (iv) to manage Wildlife habitats and water resources to ensure that the abundance and diversity of Wildlife species remains available to provide the Beneficiaries with sufficient supplies to feed themselves and to provide a livelihood.

Obligation of the Crown to Respect Treaty Rights – Honour of the Crown

- 16. Alberta has granted leases, including the lease to Canada of lands comprising the Cold Lake Air Weapons Range (the “Cold Lake Lease”), or is in the process of granting leases, in the Core Traditional Territory (collectively, the “Leases”).
- 17. The Defendants, or either of them, have authorized or are in the process of authorizing, oil and gas related activities, forestry activities, mining activities and other activities in the Core Traditional Territory and/or in lands adjacent to the Core Traditional Territory (the “Projects”). The Leases, the Projects, and the activities carried out pursuant to the Lease and the Projects are herein collectively referred to as the “Developments” and are set out in Schedule 2.
- 18. The Defendants, and each of them, have an obligation to respect the Treaty Rights and the process through which the Defendants, or either of them, have authorized, or are in the process of authorizing, the Developments is in breach of that obligation and of the honour of the Crown.
- 19. The Defendants, or either of them, have failed to respect the Treaty Rights and have breached the honour of the Crown, including by:
 - (i) failing to fully inform themselves respecting the Treaty Rights;

- (ii) failing to fully inform themselves respecting the impact, or potential impact, of the Developments or any of them on the Treaty Rights;
- (iii) failing to provide the Plaintiffs with any, or adequate information relevant to the authorizations and/or proposed authorizations of the Developments;
- (iv) failing to provide the Plaintiffs with an adequate opportunity to respond to and comment on the Developments;
- (v) failing to provide the Plaintiffs with sufficient resources to adequately respond to and comment on the Developments;
- (vi) failing to meaningfully address the Plaintiffs' concerns with respect to the Developments;
- (vii) failing to consult in good faith with the Plaintiffs with respect to the Developments;
- (viii) failing to seek accommodation, or to accommodate, the Treaty Rights; and
- (ix) failing to ensure that the Treaty Rights were minimally impaired by the Developments.

Infringement

20. The Developments infringe the Treaty Rights. Without limiting the generality of the foregoing, the Developments infringe the Treaty Rights by:

- (i) failing to ensure minimal impairment of the Treaty Rights;
- (ii) leaving the Plaintiffs with no meaningful way to exercise the Treaty Rights;
- (iii) reducing the abundance and diversity of Wildlife species available to the Plaintiffs;
- (iv) compromising the ecological, cultural and/or spiritual integrity of the Core Traditional Territory; and
- (v) reducing the available Wildlife habitat of the Core Traditional Territory.

21. In particular, the Developments have adversely affected, will adversely affect, or are likely to adversely affect the ability of the Plaintiffs to meaningfully exercise the Treaty Rights.

22. Each of the Developments and/or their cumulative effect, taking into account industrial activities in lands adjacent to the Core Traditional Territory, has rendered or will render the Treaty Rights meaningless within the Core Traditional Territory.

23. Each of the Developments and/or their cumulative effect, taking into account industrial activities in lands adjacent to the Core Traditional Territory, infringe the Treaty Rights, including in some or all of the following ways:
 - (i) diminution in the abundance and/or diversity of Wildlife;
 - (ii) fragmentation of Wildlife habitat and/or disruption of migration patterns in the Core Traditional Territory;
 - (iii) loss of Wildlife habitat;
 - (iv) loss of water abundance;
 - (v) loss of water purity;
 - (vi) loss of the Beneficiaries' ability to exercise the Treaty Rights in the manner of their choosing;
 - (vii) loss of access to the lands comprising the Cold Lake Air Weapons Range;
 - (viii) loss of access to key hunting, trapping and/or fishing areas;
 - (ix) loss of access to traditional cultural and/or spiritual locations; and/or
 - (x) loss of available land in its natural condition.(collectively, the "Infringements")

24. The Infringements are an unreasonable limitation on the Treaty Rights.
25. The Infringements impose undue hardship on the Plaintiffs by denying them their preferred means of exercising the Treaty Rights.
26. The Defendants, or either of them, have infringed the Treaty Rights, including by:
 - (i) failing to fully inform themselves respecting the Treaty Rights;
 - (ii) failing to fully inform themselves respecting the impact, or potential impact, of the Developments, or any of them, on the Treaty Rights;
 - (iii) failing to provide the Plaintiffs with any, or adequate information relevant to the authorizations and/or proposed authorizations of the Developments;
 - (iv) failing to provide the Plaintiffs with an adequate opportunity to respond to and comment on the Developments;
 - (v) failing to provide the Plaintiffs with sufficient resources to adequately respond to and comment on the Developments;
 - (vi) failing to meaningfully address the Plaintiffs' concerns with respect to the Developments; and
 - (vii) failing to ensure that the Treaty Rights were minimally impaired by the Developments.

Breach of Fiduciary Duty

27. The Treaty created a fiduciary relationship between the Defendants and the Plaintiffs and created fiduciary duties of the Defendants to ensure that the Plaintiffs can continue to meaningfully exercise their Treaty Rights.
28. At all material times, the Defendants were under a fiduciary duty to the Plaintiffs to secure the continuing meaningful exercise of the Treaty Rights.

29. The Defendants, or either of them, in breach of their fiduciary duty, have wrongfully received revenues from third parties while infringing the Treaty Rights. The Defendants, or either of them, have been enriched by their appropriation of these revenues.

30. The Defendants, or either of them, in breach of their fiduciary duty, have failed to protect Wildlife habitat and have failed to protect water quality and quantity, leading to loss of aquatic resources.

31. The Defendants, or either of them, have breached their fiduciary duty to the Plaintiffs, including by:
 - (i) failing to fully inform themselves respecting the Treaty Rights;
 - (ii) failing to fully inform themselves respecting the impact, or potential impact, of the Developments or any of them on the Treaty Rights;
 - (iii) failing to provide the Plaintiffs with any, or adequate information relevant to the authorizations and/or proposed authorizations of the Developments;
 - (iv) failing to provide the Plaintiffs with an adequate opportunity to respond to and comment on the Developments;
 - (v) failing to provide the Plaintiffs with sufficient resources to adequately respond to and comment on the Developments;
 - (vi) failing to meaningfully address the Plaintiffs' concerns with respect to the Developments;
 - (vii) failing to consult in good faith, or at all, with the Plaintiffs, with respect to the Developments;
 - (viii) failing to seek accommodation, or to accommodate, the Treaty Rights; and
 - (ix) failing to ensure that the Treaty Rights were minimally impaired by the Developments.

32. The Plaintiffs propose that the trial of this action will take more than 25 days and that it be held at the Law Courts, in the City of Edmonton, in the Province of Alberta.

Wherefore the Plaintiffs claim against the Defendants:

- a) a declaration that the Plaintiffs have a constitutional right within the meaning of s. 35 of the *Constitution Act, 1982*, pursuant to the Treaty and the NRTA to hunt, trap and fish certain Wildlife species for subsistence, for cultural, social and spiritual needs, and to sell and trade for livelihood purposes;
- b) a declaration that the Developments or any of them unjustifiably infringe the Treaty Rights;
- c) a declaration that the authorizations for the Developments which unjustifiably infringe the Treaty Rights are of no force or effect;
- d) an interim, interlocutory and/or permanent injunction against the Defendants, or either of them, restraining them from acting unconstitutionally in respect of the Developments;
- e) damages and/or equitable compensation from the Defendants for any failure of the Defendants, or either of them, to respect the Treaty Rights
- f) damages and/or equitable compensation from the Defendants, or either of them, for any unjustifiable infringement of the Treaty Rights;
- g) an accounting and/or damages and/or equitable compensation from the Defendants in respect of any breach of fiduciary duty by the Defendants, or either of them;
- h) pre- and post- judgment compound interest in respect of any damages or compensation;
- i) costs; and

j) such further and other or partial relief as this Honourable Court may deem just.

DATED at the City of Victoria, in the Province of British Columbia, this 14 day of MAY A.D. 2008 and delivered by Woodward & Company, Barristers and Solicitors, Solicitors for the Plaintiffs, whose address for service is in care of the said solicitors at 2nd Floor, 844 Courtney Street, Victoria, British Columbia.

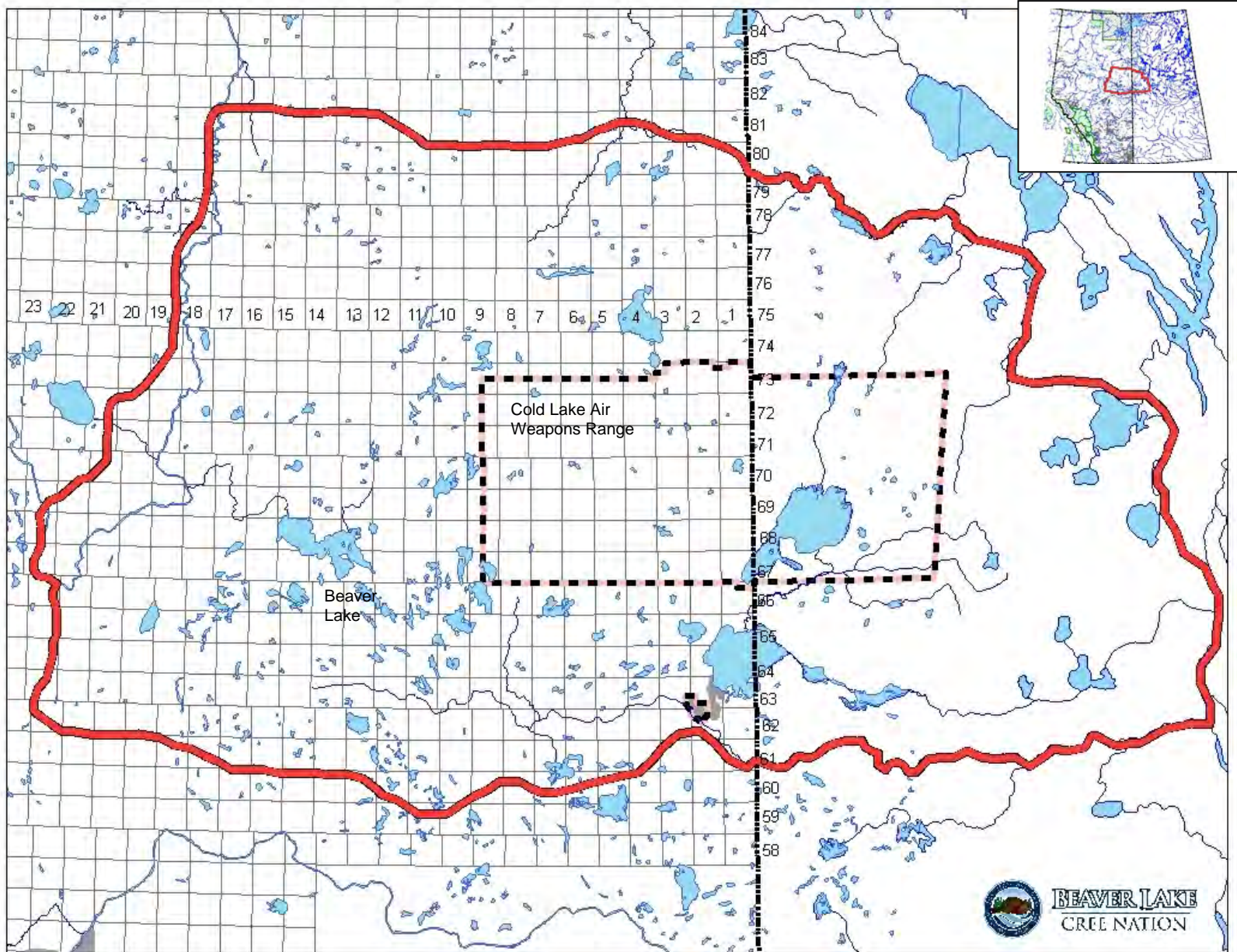
ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Edmonton, this 14 day of MAY, A.D. 2008.

L. ROSS



CLERK OF THE COURT

Schedule 1 – Core Traditional Territory



Schedule 2

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