‘WHAT THE GOVERNMENT GIVETH, CAN ALSO BE TAKEN AWAY’ – the ‘story’ behind Stoney Indian Reserve 142A , 1904 – 1921.

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ABSTRACT / SYNOPSIS

After petitioning the department of Indian Affairs for several years at the turn of the 19th century, the government of Canada agreed to set aside several sections of Crown land in Township 26, Range 7, W5M comprised of 6,702 acres located adjacent to the north boundary of Stoney I.R. 142,143,144 for the use and benefit of the Stoney band in 1904. In 1921 following World War I (1914-1918) the land was unilaterally removed from the reserve without consultation, a surrender vote, or consent of the Stoney band council.

This paper will analyze the events and facts surrounding the granting and the alienation of the subject lands as recorded by the various officials who supported or rejected the Stoney’s request for additional reserve land. And we will conclude with some observations on the rejection in 2009 by the Specific Claims Branch and discuss the options for appealing the rejection of the specific claim by INAC (now AAND).

BACKGROUND AND CONTEXT:

In May 2007 the Stoney Tribal Council, representing the Bearspaw, Chiniki and Wesley First Nations at Morley, Alberta, submitted a claim to the Specific Claims Branch (SCB) asserting that:

> “ We have concluded from the historical record that the government acted unilaterally and without consultation or authorization from the Stoney Band Council or membership, to alienate this section of land [designated I.R. 142A on the Indian Land Registry] set aside for our use and benefit.”

Following an assessment by the SCB, the Stoney Chiefs were advised by INAC in a letter dated August 6, 2009 that the claim had not been accepted for negotiation by the government of Canada on the basis that there was “ no outstanding lawful obligation on the part of the Government of Canada.” The government simply rejected the two arguments advanced by the historical report and legal submission. (See appendice for copy of letter from INAC.)

It would appear that the Stoney Nakoda Nations' most reasonable recourse will be to appeal the rejection to the new Specific Claims Tribunal which in now operational and ready to receive appeals.

HISTORICAL BACKGROUND: 1877 to 1904

The three Stoney First Nations, comprised of the Bearspaw, Chiniki and Wesley First Nations, are parties to Treaty 7 made on 22 September 1877 at Blackfoot Crossing (where today the Siksika Nation have their reservation). In accordance with the written terms of the treaty, the Stoney Nations received three contiguous undivided reserves, I.R. 142,143,144, at Morley located north and south of the Bow River a days ride by horse west of Calgary. Surveyed in 1879 and confirmed a decade later by O.C. 1151 dated May 17, 1889 covering 109 square miles, the three Stoney Chiefs immediately raised concerns about the size and location of their allotted reserve lands. In preparation for a re-survey by John C. Nelson in 1881, Indian Commissioner Edgar Dewdney reportedly managed to persuade the Stoney leaders to settle on the Morley reserve which was also the site of the 320 acre McDougall Methodist Mission property that straddled the Bow River and Jacobs Creek. [See MAP of Reserve]

In the twenty years following the treaty and reserve creation, Stoney society went through many challenges and life style changes. The CPR ran through the middle of the reserve; Banff National Park was created in 1885 which brought profound changes to livelihood and traditional camp sites; and the forestry, mining and ranching industries began to exploit natural resources all through traditional Stoney Nakoda lands. By the mid 1890s reserve conditions had reached such extreme social disruption that one leader, Peter Wesley or Ta Otha (Moosekiller) lead about 100 members back to the Kootenay Plains area 100 miles north of Morley in protest against government interference and restrictions. The NWT government passed legislation restricting the hunting of big game, now the main staple because the buffalo were gone from the Canadian plains, and Indian people were restricted in their travels off the reserve. It is within this context of growing unrest and turmoil among the Stoney people, that the actions of the Nations' leadership and of government officials must be viewed to understand the motives behind the search for additional reserve land and the creation of I.R 142 in 1904 as a " temporary reserve".

THE SEARCH FOR ADDITIONAL RESERVE LAND

The earliest known request for additional reserve land was made by the Stoneys in 1886 in correspondence from Lawrence Vankoughnet (DSGIA) advising that the Stoneys were prepared to exchange part of the reserve located west of Bow Fort Creek for land north of the Reserve in Tp.26 R. 7. The Department of the Interior which was responsible for the Dominion lands replied that all of the lands north of the reserve had been leased as ranches and therefore was unavailable. The land issue appears to have lay

dormant until 1898 when a Stoney Land Committee was formed comprised of the three Stoney Chiefs, Indian Agent E.J Bangs, and the long serving Rev. John McDougall presiding over the Morley Methodist Church mission (established in 1873 adjacent to Jacobs' Creek) and the McDougall orphanage. The joint land committee wrote Indian Commissioner A.E. Forget requesting an extension of the reserve both north and south of the Bow River to increase the stock raising capability of their " principal means of livelihood" .The Wesley band residents on the north side wanted land proportional to that on the south side where the Bearspaw and Chiniki members lived. They suggested defining the reserve by natural boundaries using the mountains and local waterways such as the Ghost River. The request for expansion was endorsed by Commissioner Forget and W. A. Orr, clerk in charge of the Land and Timber Branch in Indian Affairs.

After consulting the Interior department, Indian Affairs was informed that the lands north and west of the reserve were included in a timber berth and a grazing lease and therefore not available. Nothing happened for another 18 months until the newly appointed Indian Commissioner, David Laird, who was one of the Treaty Commissioners at Treaty 7 in 1877, enquired whether the subject lands were still under lease. The Interior department replied that they were still not available.

The new Indian Agent, Andrew Sibbald, tried a new argument in 1902 asking Ottawa to secure land north of the reserve for timber purposes to raise revenue for the band. The boundaries of Banff National Park had been greatly expanded in 1901 and engulfed nearly all the hunting grounds of the tribe along the eastern slopes of the Rocky Mountains. This prompted Commissioner Laird to visit the Morley Reserve in the spring of 1902 and informed Ottawa that he was " more than ever convinced of the justice of granting the extension of the Reserve asked for by the Indians." He commented upon the poor agricultural quality of their original reserve land and sympathetically observed that if their reserve was increased by fifty percent, " they would not have been too generously dealt with". (Makes you wonder what he really thought of the Treaty 7 reserve-creation formula of 128 acres per person .) Laird become a strong advocate of additional reserve land in order to encourage lumbering and stock raising to make the reserve self sufficient.

> "The Stony Indians have in the past chiefly supported themselves by hunting; but now that the B. C. Legislature has forbidden them to hunt across the Rocky Mountains, and Banff National Park has been extended, and strict game laws have been passed in the Territories, the Indians are naturally anxious about the future. If they must not be allowed to compete with outsiders in the lumber line or other such business, the ration house to able-bodied Indians, as well as to the sick and aged, will become a permanency. These are my views. I hold it should be the policy of the Department to do almost anything for the Indians [to work] rather than pauperize them by keeping them on ration houses."

This prompted Ottawa to keep looking for available reserve land, and in the summer of 1902 , the Interior department revealed that many of the former encumbrances were clear on the north side and that " such lands as are now available may be reserved for the

purposes of an addition to the Stony Indian Reserve." Indian Agent Sibbald inspected the lands and forwarded a map of the area to headquarters that eventually became known as Reserve 142A.

Upon closer examination by officials, it was found that some sections of land were already set aside for the Hudson's Bay Company, for the CPR, and as school lands. In May 1904 the CPR agreed to release its interest in the land and Indian Affairs was informed that sections 7, 15, 16, 17, 18, 20, 21, 22, 27, 28, and 30 in Tp. 26, R. 7 were available as an addition to the Stoney Reserve. (See MAP in Appendice I). Interior replied that if the lands were satisfactory, then …" an Order in Council can be passed reserving the several parcels of land mentioned as part of this reserve." Indian Affairs immediately agreed to accept the 12 sections and asked the Interior department to… "have the necessary Order in Council passed as soon as possible reserving the said lands part of the [Stoney Indian] Reserve." After much correspondence between Indian Commissioner David Laird, the Indian Affairs secretary J.D. McLean, and the Interior dept. Secretary P.G. Keyes, there was agreement that the identified sections of land in Tp. 26, Range 7 would be added to the Indian Reserve at Morley by Order in Council. The Inspector of Alberta Indian Agencies, J. Markle, was in support of the addition because it would provide a new source of timber for band members who were employed at a local sawmill operated by a Mr. Hatt and his partner Mr. Richards (who later obtained the lease to the land in the 1920s and whose family members still operate the Bar C Ranch today). Markle estimated that the Stoneys could earn $12,000.00 per year plus wages if they worked in the mill or hauled lumber to the railway loading station.

Officials at the Interior department drafted a recommendation to the Governor in Council for the Minister's signature to reserve the land for the Stoneys and submitted the document to James A. Smart, the Deputy Minister of the Interior, for his signature as was the normal procedure. Surprisingly, Smart refused to sign the request for the Order in Council, explaining:

> " I do not see upon what ground the Department [Interior] would be justified in giving up these lands for the purpose mentioned. There does not appear to be any consideration whatever given to this Department in lieu of the land proposed to be surrendered, and until som[e] reason for the proposed transfer is shown, I do not see that we would be justified in making the grant applied for."

In the normal course of the relationship between the Interior department and Indian Affairs, such requests to set aside land for Indian purposes was done routinely as a matter of course, unless the land was subject to prior legal interests such as leases. It is never clearly explained what " consideration" meant in this context.

After being informed of Smart's refusal to reserve the lands requested, Indian Affairs Secretary McLean replied that the additional land was a " necessity" for the Stoneys, and asked that the lands be reserved from sale or settlement " and [be] placed temporarily under the control of this Department for a period of five years." The

intention was to decide at the end of the time period whether the lands would be formally added to the Stoney Reserve. Interior Secretary Keyes advised in July 1904 that the Agent of Dominion Lands in Calgary had been instructed to reserve the lands in question " for the use of the [Stoney] Indians."

Commmissioner Laird was happy; Indian Agent T.J. Fleetham was informed; and in August 1904 Assistant Indian Commissioner J. A. McKenna toured the Morley Reserve to investigate the timber proposal offer of Hatt and Richards and recommended that their sawmill operation be approved. An agreement was concluded and in 1907 Indian Agent Fleetham reported that 300,000 board feet of timber had been harvested.

In 1905 and spring of 1906 the boundaries of the "temporary addition" were formally surveyed and commonly referred to as an addition to the Stoney Reserve. In 1909 the Indian Department again looked into additional land for the Stoneys when pressed by Commissioner David Laird to provide additional agricultural and grazing land to the Stoneys because of the poor quality of the original reserve lands set aside under treaty and due to the increase in reserve population. Both Agent Fleetham and Secretary McLean asked the Interior department to make the subject lands " a permanent addition to the Reserve." Subsequently, the Interior department sent out a Homestead Inspector who reported on the " splendid merchantable timber" and wrote: " I am of the opinion that the public would be best served by the Department retaining this land and disposing of the timber in the usual way in the public interest." His views were duly forwarded to the Commissioner of Dominion Lands in July 1910.

Meanwhile Indian Affairs was considering obtaining other lands located south of the Morley Reserve as well as land on the Kootenay Plains on the North Saskatchewan River for the Bighorn group of members. Delays stretched into 1911. The creation of the massive Rocky Mountain Forest Reserve along the eastern slopes of Alberta lead to the abandonment of additional reserve land on the Kootenay Plains and the land south of the reserve (which has been extensively documented in Chief John Snow's autobiography ("These Mountains are our Sacred Places"), a land claim report submitted to INAC in 1972 , and a couple of masters and doctoral theses), but the lands reserved in Tp. 26 would be " continued for the present." In 1913 the Annual Report the Indian Department published a " Schedule of Indian Reserves" which references " Reserve 142A" comprising 6,702 acres in Tp. 26, Range 7, west of the 5th Meridian as being set aside for the " Stony " Band. In 1914 after much debate and discussion, a further addition to the Stoney Reserve was confirmed by Order in Council 947 dated 7 April 1914 called Rabbit Lake 142B comprised of 12,742.6 acres. It still remains a part of the Stoney Indian reserve land base today.

There is very little discussion of the need for additional reserve land for the next 7 years while events were playing out in World War I (1914-1918). In August 1914 Secretary McLean asked the Interior department to renew the temporary reservation for another 5 years. Interior used the opportunity to inquire of Indian Affairs if the mineral rights could be alienated. In response the new Deputy Superintendent General of Indian Affairs, Duncan Campbell Scott, wrote:

> " I beg to say that these Indians having had possession of these lands for so long a time practically consider them as a part of their reserve, whatever may be the final disposition of them. They are very jealous of their rights, especially their oil rights, I would , therefore particularly request that no lease for petroleum or gas rights be given on these lands."

Consequently, no oil rights were granted and in due course, Interior Secretary McLean sent confirmation that the land would be reserved an additional five years until October 1920.

In February 1920 the Indian Department applied to renew the temporary reserve for another five years, which the Indian Agent described as the " principal source of hay supply for the North side of the [Bow] river…" In response the Interior department asked Indian Affairs to determine what tracts of land could be opened for settlement under the Soldier Settlement policy to aid returning war veterans. Citing the report of Indian Agent E. A. Yeomans, Indian Affairs replied to the Interior department:

> " Our [Indian] Agent reports that this area is the principal source of hay supply for the Indians on the North side of the [Bow] river and that they would have difficulty in procuring sufficient hay if an extension is not granted, I have therefore to request you to be good enough to hold the above parcel as a temporary reserve for the Stony Indians for a further period of five years from the 3rd October last."

The Interior department persisted and instructed that a Homestead Inspector report on the advisability of further extending the reservation for the Stoneys, specifically that "… consideration should be given as to the requirements of settlers in this tract of land." The Inspector's report in November 1920 gave a totally new twist to the use of the land by the Stoneys.

> " I beg to advise you I have examined these lands and have seen the Indian Agent at Morley. He informed me that these lands have been sub-leased to different parties for a number of years and are not required by the Indians… There are seldom more than 4 or 5 tons of hay cut a year…I would recommend that these lands be made available for grazing purposes….[to ranchers and settlers.]"

Deputy Supt. General Duncan Campbell Scott was asked to explain the discrepancy between this report and the Agents earlier claim that the land was the "principal source of hay" for the Band. Upon further inquiry, Scott learned that a lease had been issued to three ranchers for all the Reserve located north of the Bow River, including the Tp. 26 reserve, for an annual rental of $6,000. Scott directed Indian

Commissioner Wm. Graham to look into the matter. Graham reported that as a result of a meeting with Agent Yeomans, he concluded that " the land is not being used by [the Stoneys] and it can therefore be relinquished." Scott subsequently decided not to request renewal of the "temporary reserve", however, he did ask Interior to allow the Stoneys to use the land until March 1921. Indian Affairs had one final request; that any future leasee be required to fence the north (original) boundary of the Indian Reserve. Interior officials confirmed that the reservation would "automatically lapse" on March 31st, 1921.

Although Interior officials intended to post the lands publicly in 1921 as being available for lease for grazing purposes, this was postponed when it was discovered that the CPR land transfer discussed in 1904 had not been properly completed. Eventually in 1924, the lands reserved for the use and benefit of the Stoney people from 1904 to 1921 was ultimately leased to the Bar C Ranch. (Today the ranch is still owned and operated by the Richards family who promote the property as a working ranch resort with " Real Cowboys on a Real Ranch", utilizing the same lands removed from the Stoney Indian Reserve in 1921 in order to make it available to the general public.)

THE LEGAL SUBMISSION (combined with some HISTORICAL ANALYSIS and MORAL ARGUMENT)

The formal submission to SCB by our legal researcher makes 2 arguments:

> "that the land [designated as IR 142A] constituted a "Reserve" within the meaning of the Indian Act, such that its alienation in the absence of a duly conducted surrender vote and an executed deed of surrender was unlawful; and in the alternative, that the Crown breached the fiduciary duties it owed to the Stoney Indians, by failing to secure the land for the Band", when several representatives (from the local Indian Agent to the Indian Commissioner and the Secretary of the Indian Affairs in Ottawa) repeatedly requested that the land in question be added to the Stoney Indian Reserve and asked that the appropriate Order in Council be passed as soon as practical.

Our submission looked at the Indian Act's definition of "Reserve" from the 1886 and 1906 revised statutes. The 1906 revised statute states:

> "reserve" means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted to a particular band of Indians, of which the legal title is in the Crown, and which remains so set apart and has not been surrendered to the Crown, and includes all the trees, wood, timber, soil, minerals, metals and other valuables thereon or therein;

The Indian Act contemplates that a "reserve" may be created by several means as indicated by the phrase " by treaty or otherwise". The criteria for reserve creation appears to be:

- a tract of land
- set apart
- by treaty or otherwise
- for the use or benefit of or granted to a particular band of Indians
- of which the legal title is in the Crown
- and has not been surrendered to the Crown
- and includes all (the natural resources listed)

This is the procedure and criteria set out since reserves were surveyed in western Canada during the 1870s and 1880s, until the government passed Order in Council 1151 dated 17 May 1889 confirming the survey work done the previous decade. Once a reserve was surveyed, it received all the protections and administrative procedures mandated by the Indian Act, including trespass, surrender requirements, and enforcement. This appears to have been the course of action followed when I.R 142A was set aside as a "temporary reserve" in 1904 and administered by the Crown until 1921.

The issue of reserve creation has received some definition and direction form the Supreme Court of Canada (SCC) in the case of "Ross River Dena Council v. The Queen" (2002). Although dealing with a more recent instance of reserve creation, the basic definition of what constitutes a "reserve" remains the same (as discussed above), and explains that the Crown's intention must be considered in the context of its own historical and legal development.

> "Under the Indian Act, the setting apart of a tract of land as a reserve implies both an action and an intention. In other words, the Crown must do certain things to set apart the land, but it must also have an intention in doing those acts to accomplish the end of creating a reserve. It may also be that, in some cases, certain political or legal acts performed by the Crown are so definitive or conclusive that it is unnecessary to prove a subjective intent on the part of the Crown to effect a setting apart to create a reserve. For example, the signing of a treaty or the issuing of an Order in Council are of such an authoritative nature that the mental requirements or intention would be implicit or presumed."

This suggests that an Order in Council confirming land as a "reserve" is not the only means by which a reserve can be created, and that in the absence of an O.C., there may be some other proof of the intent on the part of the Crown.

> "Whatever method is employed, the Crown must have had an intention to create a reserve. This intention must be possessed by Crown agents holding sufficient authority to bind the Crown…. Steps must be taken in order to set apart land. The setting apart must occur for the benefit of Indians. And finally, the band concerned must have accepted the setting apart and must have started to make use

> of the lands so set apart. Hence the process remains fact-sensitive. The evaluation of its legal effect turns on a very contextual and fact-driven analysis.

The SCC adopted the same principles in the closely related decision of " Wewaykum Indian Band v. The Queen" (2002).

> "The legal requirements for the creation of a reserve within the meaning of the Indian Act were considered by this Court in Ross River Dena Band v. Canada….They include an act by the Crown to set apart Crown land for use of an Indian Band combined with an intention to create a reserve on the part of persons having authority to bind the Crown and practical steps by the Crown and the Indian Band to realize that intent."

The facts surrounding the creation of I.R. 142A seem to meet the criteria for creation of a "reserve"; that is a tract of land, of which the legal title remained in the Crown until 1921, and which was never surrendered back to the Crown (but rather unilaterally cancelled by a bureaucratic process).

RECAPITULATION AND DISCUSSION

What does it take to create a reserve? The Indian Act states that a reserve can be " set apart by Treaty or otherwise " . The SCC (in Ross and Wewaykum) defines the creation as a three part process: 1) and "act" by the Crown to set apart land; 2) the "intention" to create a reserve for the benefit and use of an Indian band; and 3) the authority to bind the Crown. The passing of an O.C. would provide the strongest evidence of the intention to create a reserve, but the Crowns' intention regarding reserve creation can be inferred by other evidence.

The documentary record of correspondence surrounding 142A shows a clear intent in 1902-1903 to extend the northern boundary of IR 142,143,144 to facilitate a sawmill operation deemed necessary for the Band's economic self-sufficiency. The request was supported by the Indian Agent, Commissioner David Laird, and the Departmental Secretary J.D. McLean, the most senior civil servant in Ottawa for Indian Affairs. In repeated correspondence with the Dept. of Interior Secretary (P.G. Keyes), Indian Affairs officials repeatedly asked that the lands in question be confirmed as an "addition to the Stony Reserve". It was the Interior dept. officials who stymied the process and raised questions, which in effect derailed Indian Affairs intent.

It is instructive to discuss the organizational relationship between Indian Affairs and the Interior department. While Indian Affairs administered Indian lands under the Indian Act, it was the Interior Dept. which administered all Crown land under the authority of the Dominion Lands Act, until it was patented to the authority of another Department. Interior did not control the creation of a reserve, but rather their role as defined by section 90(a) of the Dominion Lands Act was to "…withdraw from the operations of the Act….such lands as have been or are reserved for Indians'. This wording implies that the act of reserve creation has already taken place and that the

"withdrawal" from the operations of the DL Act is the formal confirmation of that fact, in order to facilitate the administration of the reserve lands by Indian Affairs.

The first delay by Interior occurred when it identified the CPR had an interest in part of the subject land, band after this was cleared up by the CPR, the Deputy Minister of the Interior, James Smart, refused to comply with the DIA request until there was a "consideration" made in exchange for the lands. We argue that Smart was exceeding his authority by refusing to grant the request. Reserve creation was an obligation required by Treaty and it was never dependent upon a "consideration" flowing to the Interior Department. Indian Affairs made several more requests to "set apart the reserve land" and make it " a permanent addition" (in 1909), but despite the refusal to pass an Order in Council, every five years, the land was designated as a "temporary reserve" for the use of the Stoneys in the records of the Dept.of Interior from 1904 to 1921. The 1913 "Schedule of Indian Reserves" which listed Reserve 142A reinforces the fact that "steps" were taken to set apart the land (as defined by the SCC).

The SCC guidelines also want confirmation that the Indians have in fact used and benefited from the reserve land. In the various Indian Agent's reports and departmental correspondence, it is documented that the Stoneys made substantial income from timber sales in the early years, then it become their primary source for hay in later years, and finally the land was leased out to three ranchers to provide cash rental income. There can be no doubt that the Stoneys used and benefited form the land as contemplated by the SCC test governing reserve creation pursuant to the Indian Act. When the status of the "temporary reserve" was allowed to lapse in 1921, it was done without a duly executed surrender as required by the Indian Act.

It is further argued, that the Crown acted in breach of the fiduciary duty owed to the Stoneys, by failing to secure the lands that would protect them from alienation. The Crown officials failed their duty to protect the Band's interest in Reserve 142A, most notably by not having the reserve land confirmed by O.C., which was repeatedly requested by Indian Affairs officials and even by some Interior officials. Senior officials failed to adequately take into account the Stoney's need for additional land; the Interior officials placed the interests of ranchers and settlers ahead of its duty to protect the Stoney's interest; and finally, the Crown failed to consult with the Stoneys in making the decision to relinquish Reserve 142 in 1921.

As articulated in the Ross River and Wewaykum decisions of the SCC, the Crown owes a fiduciary duty towards aboriginal peoples in reserve creation. In Wewaykum the SCC made the following observation, which is of direct relevance to the circumstances of the Reserve 142A claim:

> "In the present case the reserve-creation process dragged on from about 1878 to 1928, a period of 50 years. From at least 1907 onwards, the Department treated the reserves as having come into existence, which, in terms of actual occupation, they had. It cannot reasonably be considered that the Crown owed no fiduciary duty during this period to bands which had not only gone into occupation of

> provisional reserves, but were also entirely dependent on the Crown to see the reserve-creation process through to completion. [para 89]

The identification, acquisition and the safe-guarding of Reserve 142A was at the sole discretion of the two government departments involved in the decisions regarding reserve creation. It is our conclusion that the government officials failed to exercise ordinary diligence to secure Reserve 142A for the Stoney Band and thereby failed to act in the Band's best interests.

First in 1904, when deputy Minister of the Interior, James Smart, refused to proceed with an Order in Council as requested by Indian Affairs (contrary to the recommendations of his own senior officials). Indian Affairs replied by quoting excerpts From Commissioner Laird's report supporting the necessity of more land for the Stoneys, but meekly agreed to a five year temporary reserve instead of the normal O.C.

Again in 1909, upon expiry of the 5 year term, Indian Affairs asked that the addition be made permanent but there is no recorded reply from Interior. In fact, I.A. agreed later to drop its request if other reserve land was set aside on the Kootenay Plains or on other available lands. However, no other lands were legally available and the status quo was accepted.

Finally, in 1920 I.A. at first proposed to keep Reserve 142A because it was valuable as hay lands and in raising rental fees for the Band, but despite the obvious benefits to the community, Commissioner Graham inexplicably concluded that " the land is not required by the Indians and is not being used by them, and it can therefore be relinquished" back to Interior for public use. We can only speculate that the pressure on government to open Crown lands for returned soldiers took precedence over the interests of First Nations people.

Currently, no reserve land exists at this location. The land in question is part of the operations of the Bar C Ranch owned by the descendents of the Richards family who first operated a saw mill on the property at the turn of the nineteenth century.

AFTERWORD

It is likely that the Stoney First Nations will appeal the rejection by INAC (AAND) to the newly created Specific Claims Tribunal. As the cliché goes, " See you in Court"!

POSTSCRIPT

Does anyone know of other examples of a so-called "temporary reserve" ? I would be pleased to receive any documentation, references or reports.

NOTE ON SOURCES

In the files of the then called ‘ Treaties and Historical Research Centre’, INAC headquarters (Ottawa), there is a folder titled Stoney I.R. 142A. My task over the past 40 years has been to collect, copy, beg, borrow or otherwise retain any documents dealing with the Stoney Nakoda Nations at Morley, Alberta.

Intrigued by this collection compiled by someone unknown, I eventually started enquiring on where this piece of land was located and what we could find out about it. One of our research staff interviewed our elders and prepared a preliminary report. We then contracted a legal researcher in Calgary to prepare the historical narrative and the legal arguments which were submitted to SCB in 2007 and ultimately rejected in 2009.

Like the majority of specific claims, the main source of evidence, documentation, and explanation is found in the government records for Indian Affairs (R.G.10, NAC) and the Interior department (R.G.15, NAC). All the correspondence and memos quoted in this report are found in the following four (4) files located in the NAC (Ottawa).

R.G. 15, Vol. 436, f. 114602

R.G. 10, Vol. 7771, f. 27119-1 Part 1
` Vol. 3563, f. 82, Pt. 16
Vol. 4043, f. 339,151

Supreme Court of Canada cases cited:

Ross River Dena Council Band v. Canada. [2002] 2 S.C.R. 816 or 3 C.N.L.R. 229.

Wewaykum Indian Band v. Canada. 2002 SCC 79.