

August 30, 2012

# **INFORMATION DOCUMENT**

## **MUSCOWPETUNG SAULTEAUX FIRST NATION FLOOD CLAIM**

**For Muscowpetung band members**

**Prepared by:**

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**DISCLAIMER** - This information booklet is added to the ratification settlement package for a summary review of the legal documents to assist you with a general overview of this complex document package; and to assist you in making an informed decision on the Ballot question. However, this is a summary review **ONLY** and in no way can this review replace your personal reading of the enclosed settlement package, or be relied upon to answer the detailed or complex questions you may have.

After your review of this settlement package, if there are questions that you have, there are several options for you to have them answered before voting:

1. Attend one of the Information Meetings, listed in the Notice of Vote and ask legal counsel present, or one of the Ratification team members or consultants personally;
2. Attend Muscowpetung School Gymnasium on vote day, October 19, 2012 and ask legal counsel, one of the consultants, or one of the Ratification team members personally;
3. Email your question to legal counsel Dwayne Stonechild and identify the email in the “re” section as “Muscowpetung Flood Claim Question”. My email address is [d.stonechild@shaw.ca](mailto:d.stonechild@shaw.ca) .
4. You can call Chief and Council at the band office toll free at 1.866.848.4747.
5. You can call the INAC Electoral Officer, Tracy Desjarlais, at her office at 1.306.780.3869.
6. You can call the deputy Electoral Officers, Jamie Poitras or Kim Pratt, toll free at 1.866.848.4747.

If you do not have any questions and are comfortable with the Settlement Package, the ratification team would still respectfully request the honor of your presence at the Information Meetings, so we can have a complimentary dinner with you and meet your family.

For members who like to work in electronic format and the mobile device users, this information is also available at: [www.muscowpetungtrust.com](http://www.muscowpetungtrust.com)

## **Muscowpetung Saulteaux First Nation**

### **FLOOD CLAIM SETTLEMENT AGREEMENT AND MUSCOWPETUNG LEGACY TRUST AGREEMENT RATIFICATION VOTE**

**For the purpose of:**

**Ratifying the Settlement Package to authorize Chief and Council to duly execute and accept on behalf of Muscowpetung Saulteaux First Nation, the following:**

- 1. MUSCOWPETUNG SAULTEAUX FLOODING CLAIM SETTLEMENT AGREEMENT, dated for reference August 22, 2012, and attached schedules and appendixes; AND**
- 2. MUSCOWPETUNG LEGACY TRUST AGREEMENT, dated for reference August 22, 2012, and attached schedules and appendixes.**

#### **1. HISTROY OF THE CLAIM**

In 1942, Prairie Farm Rehabilitation Administration, a branch of the federal government, constructed the Echo Lake water control structure (dam) in the town of Fort Qu'Appelle. This resulted in the flooding of up to 1,138.7 acres of Muscowpetung Reserve lands.

After years of political lobbying by Muscowpetung leaders dating back to the 1940's, a specific claim was submitted by legal counsel in 1986. This claim was accepted for negotiation in 1998. A negotiated settlement framework was offered to Muscowpetung First Nation on May 29, 2008. Settlement Agreements were agreed to between the parties and initialed on August 22, 2012. Muscowpetung Ratification process was called on September 7, 2012 with the Ratification vote on October 19, 2012.

The negotiation table was large and included several sub-tables that reported to the main table. Parties and their legal counsels at the Negotiation table were: The Government of Canada, The Government of Saskatchewan, the department of Indian and Northern Affairs, Prairie Farm Rehabilitation Administration Branch (now "AESB), Surveyor's General Branch, Saskatchewan Watershed Authority, Saskatchewan ISC/SGB, Saskatchewan First Nation and Metis Relations, Pasqua First Nation and Muscowpetung First Nation; and each parties consultants from time to time.

Attached hereto are the two surveyed maps of the "Easement Area" that is essentially the basis of this claim. These maps in full resolution can be downloaded on the Muscowpetung website: [www.muscowpetungtrust.com](http://www.muscowpetungtrust.com) .

## **2. MUSCOWPETUNG FLOOD CLAIM SETTLEMENT AGREEMENT**

This Settlement Agreement details the negotiated terms between the parties, that include the following summarized key provisions:

- 2.1 Section 2 protects your existing aboriginal, constitutional and treaty rights.
- 2.2 Section 3 describes the Compensation payment in the amount of \$30,643,418.00. There will be no set-off or deduction from this amount.
- 2.3 Section 4 describes the terms agreed to by the First Nation to designate the 1,138.7 acres of reserve lands to Canada, to allow Canada to grant an Easement pursuant to the terms in the Designation.
- 2.4 Section 5 – allows Muscowpetung to purchase and set apart and add as Muscowpetung reserve lands, up to 1,280 of rural lands, or 1,100 acres if urban lands are fully or partially selected.
- 2.5 Section 6 – is the release section. This will release and settle all further legal claims regarding this flood claim, EXCEPT for any claim precluded in sub-section 6.3.
- 2.6 Section 7 – is the indemnity section. Muscowpetung agrees to indemnify Canada for any successful claims against Canada over the issues related in sub-section 7.2.
- 2.7 Section 8 – describes the ratification vote of the Settlement Package that will authorize Council to sign and implement the agreements. It also describes that to be successful, a majority of eligible voters have to vote; and a majority of the votes cast have to be in favor (this is commonly referred to as a “double majority vote”).
- 2.8 Section 9 – describes that the Settlement Agreement becomes effective when duly executed by Council and Canada.
- 2.9 Section 10 – describes the authorization needed by the parties to duly sign the Settlement Agreement.
- 2.10 Section 11 – describes the conditions precedent needed before Canada will sign the Settlement Agreement. Most notably, is the requirement of a successful ratification vote by Muscowpetung, that Saskatchewan signs the Tripartite Agreement, that the Governor in Council authorizes execution by Canada and that Pasqua First Nation ratifies and executes their settlement package.

- 2.11 Section 12 – describes that upon completion, Canada will deposit the settlement money into the Trust Account and requests confirmation from our Corporate Trustee, Peace Hills Trust, of receipt.
- 2.12 Section 13 – describes the representations and warranties of Muscowpetung. This includes confirmation from Muscowpetung that they have obtained professional legal and financial advice with regard to the terms of the Agreements, the settlement package and the Trust Agreement. Moreover, that a Saulteaux speaker would be present at the information meetings for those members that need an interpreter.
- 2.13 Section 14 – describes further assurances from the parties, including the obligation to act in good faith to execute, carry out and implement the agreements.
- 2.14 Section 15 – is the dispute resolution process that was agreed upon to try to resolve any future disputes regarding this claim with an attempt at mediation, before resorting to litigation.
- 2.15 Section 16 – describes how certain amendments to the agreements can be made.
- 2.16 Sections 17 – 20 – are general contract provisions.
- 2.17 Attached as schedules are:
- i.) Schedule “1” – Ballot Question;
  - ii.) Schedule “2” – Tripartite Agreement;
  - iii.) Schedule “3” – Designation for Easement on the Muscowpetung Reserve;
    - Attached: Schedule “A” – Instrument of Grant
    - Attached: Schedule “B” – Easement Agreement
  - iv.) Schedule “4” – Certificate of Solicitor;
  - v.) Schedule “5” – Certificate of Financial Advisor;
  - vi.) Schedule “6” – Trustees’ Receipt.

### **3. TRIPARTITE AGREEMENT TO FACILITATE THE MUSCOWPETUNG SAULTEAUX FLOODING CLAIM SETTLEMENT AGREEMENT**

This is a three party agreement (Tripartite), between Canada, Saskatchewan and Muscowpetung. This agreement was necessary because in essence, the federal government wants to transfer the ownership and operation of all water control structures in Saskatchewan, to the Government of Saskatchewan. This includes the Echo Lake dam.

Saskatchewan will not accept transfer of ownership of the Echo Lake dam, until Muscowpetung and Pasqua execute the settlement package, including this Tripartite Agreement that links itself to the Settlement Agreement.

- 3.1 Section 2 – protects your existing aboriginal, constitutional and treaty rights.
- 3.2 Section 3 – describes the boundaries agreed to by Muscowpetung for this settlement package; including the boundaries of the Easement lands; and protects any future claim Muscowpetung may advance regarding ownership of the beds and shores of the Qu'Appelle River and Pasqua Lake.
- 3.3 Section 4 – describes the agreements and authorizations needed for Muscowpetung to Designate the Easement lands to Canada for the purposes of granting an Easement for flooding. The Easement shall be governed by the Easement Agreement.
- 3.4 Section 5 – describes the obligation of Saskatchewan to conduct an Environmental Baseline Study report to document the environmental condition of the Easement Lands at or near the effective date of the Easement. Essentially, if the Easement were to ever terminate, Saskatchewan has a positive duty to restore the Easement Lands to the baseline condition.
- 3.5 Section 6 – describes the permitted uses of Muscowpetung in the Easement Area. Essentially, Saskatchewan has agreed to continue with the status quo with regard to controlled flooding and lake level operations. Therefore the uses Muscowpetung has enjoyed of the Easement Lands in the last several decades will continue unfettered: ie. wild hay production, harvest, livestock grazing, commercial, recreational and social purposes, and access to water.
- 3.6 Section 7 – describes the controlled flooding operations allowed by the Easement Holder (Saskatchewan). Section 7.2 summarizes the negotiated terms succinctly. Normal operations shall be 1572 feet ASL. Maximum operations shall be 1574 ASL, usually in extreme weather conditions, which is the outermost boundary of the Easement Lands as seen in the attached map at maximum operations. As surveyed, maximum operations in the buffer zone will flood 1,138.7 acres of Muscowpetung lands. Note however, in section 7.4, Saskatchewan has agreed not to flood intentionally above 1572 feet ASL.
- 3.7 Section 8 – describes the Pasqua Lake Water Management Agreement, attached to the Tripartite Agreement as Appendix “A”. This is a unique initiative between Saskatchewan Watershed Authority, Pasqua First Nation and Muscowpetung First Nation. Essentially, this is a three government agreement (Muscowpetung, Pasqua and Saskatchewan) and the first of its kind in Canada with First Nation Governments, where the parties are attempting to cooperatively manage the Pasqua Lake Water Management Area. It will be interesting how this initiative

- develops over time. Chief and Council will keep membership updated on the management issues faced and results determined. Water management in Canada is an increasingly important governing issue that Muscowpetung Chief and Council have decided they must be involved in.
- 3.8 Section 9 - is the release section. This will release and settle all further legal claims regarding this flood claim, EXCEPT for any claim precluded in sub-section 9.3.
  - 3.9 Section 10 - is the indemnity section in favor of Saskatchewan. Muscowpetung agrees to indemnify Saskatchewan for any successful claims against Saskatchewan over the issues related in sub-section 10.1 and 10.2.
  - 3.10 Section 11 – is the indemnity section in favor of Muscowpetung. Saskatchewan agrees to indemnify Muscowpetung for any successful claims against Muscowpetung over issues related in sub-section 11.1.
  - 3.11 Section 12 – describes the authorization needed by the parties to sign the Tripartite Agreement.
  - 3.12 Section 13 – describes the conditions precedent needed before Saskatchewan will sign the Tripartite Agreement. Most notably, is the requirement of a successful ratification vote by Muscowpetung, an accurate approved Easement Survey Plan, execution of the Settlement Agreement by Muscowpetung, authorization from the Lieutenant Governor in Council for Saskatchewan to sign the Agreement and Pasqua First Nation ratifying and executing their settlement package.
  - 3.13 Section 14 - describes the representations and warranties of Muscowpetung. This includes confirmation from Muscowpetung that they obtained professional legal and financial advice with regard to the terms of the tripartite agreements and that a Saulteaux speaker would be present at the information meetings for those members that need an interpreter.
  - 3.14 Section 15 - describes further assurances from the parties, including the obligation to act in good faith to execute, carry out and implement the agreements.
  - 3.15 Section 16 - is the dispute resolution process that was agreed upon to try to resolve any future disputes regarding this claim with an attempt at negotiation or mediation, before resorting to litigation.
  - 3.16 Section 17 – describes how certain amendments to the agreements can be made.
  - 3.17 Sections 18 – 20 – are general contract provisions.

3.18 Attached as Schedules are:

- i.) Schedule “A” – Terms of Reference for Environmental Baseline Study.
- ii.) Appendix “A” – Water Management Agreement

#### **4. MUSCOWPETUNG LEGACY TRUST**

Legal Counsel and the Financial Advisor were instructed to create a Legacy Trust that was representative of the Muscowpetung hay lands destroyed by the flooding. In this sense it had to be as secure as land, last for time immemorial, rise in value, grow and produce sustenance and replace the hay as an annual economic base for employment, income and leverage. Chief and Council acknowledge they were not able to return the productive hay lands back to the band, however, they have developed a Legacy Trust which they hope will replace the everlasting economic benefit of those flooded lands.

Chief and Council selected Peace Hills Trust Company as their corporate trustee. This is the most efficient, economical and legal liability insured Trust model available in these situations. Moreover, the Trust will be professionally invested, managed, audited and reported. The terms have been drafted to provide tight controls on termination, amendments and encroachment of the principle.

4.1 Section 1 – is a very important section as it defines several important terms in the Trust Agreement that will assist you to comprehend the Trust Agreement. We highlight for your specific review the following definitions:

- (i) “b” – Annual Allotment;
- (ii) “c” – Annual Income;
- (iii) “d” – Annual Payment;
- (iv) “h” – Authorized Loan;
- (v) “I” – Authorized Loan Payments;
- (vi) “j” – Beneficiary;
- (vii) “I” – Community Development Account;
- (viii) “u” – Fiscal Year; and
- (ix) “ee” – Muscowpetung Legacy Trust Community Development Account Expenditure By-law;

4.2 Section 2 - provides that the flood claim settlement money of \$30,643,418.00 be directly deposited into the Trust Account by Canada. All legal right, title and interest in and to the Trust Property, vests in the Trustee.

4.3 Section 3 – describes how the Trustee shall and shall not use the money.

4.4 Section 4 – describes how the Trustee shall invest the Trust Property. Approximately 28,000,000.00 shall be invested as Trust Principle. The Trustee

shall oversee and monitor the performance and investments of a third party professional certified Investment Manager and report to Muscowpetung quarterly.

4.5 Section 5 – describes the Annual Payment to Muscowpetung that shall be, due to tax planning, deemed to be due and payable in its entirety to the Beneficiary as at the last day of each Fiscal Year. From the Annual Payment, the Annual Allotment shall be paid into the Community Development Account, the balance shall be deposited into the Trust to grow the Trust principle.

4.6 Section 6 – describes that the Trust can be secured for Authorized Loans and Annual Payments shall be used to pay Authorized Loan Payments. Authorized Loans cannot exceed 25% of the value of the Trust Property.

Additionally, when Authorized Loans are negotiated, repayment terms must not exceed a ten (10) year amortization term and must not exceed security more than 80% of Muscowpetung’s Annual Allotment, determined at the time the loan is requested.

4.7 Section 7 – describes that the Authorized Expenses of the Trustee can be paid from the Trust Property. The fee and expense structure are negotiated in the Peace Hills Trust – Trust Administration Agreement, as amended from time to time.

4.8 Section 8 – describes the “Duties” of the Trustee to, among other things, administer, manage, protect, audit and report all matters of the Trust Property to and on behalf of the Beneficiaries, in accordance with the Trust Agreement and the Law.

4.9 Section 9 – describes the “Powers” of the Trustee to, among other things, manage, invest, supervise, protect, defend and administer the Trust Property as if it were their own.

4.10 Section 10 – describes the “Liability” of the Trustee. The Trustee’s liability of the Trust Property ceases when the funds are paid out of the Trust Account to the Muscowpetung Community Development Account and ceases to be Trust Property. Section 10.3 describes that the Trustee shall not be liable for losses or damages to the Trust provided that the Trustee has acted honestly, in good faith and in accordance with the terms of the Trust Agreement, and has exercised reasonable skill and prudence in the administration and management of the Trust Property.

4.11 Section 11 – describes how the Trustee can resign or be replaced.

4.12 Section 12 – describes the very limited amendments that can be proposed to the Legacy Trust Agreement. Essentially, no amendments can occur to clauses, principles or definitions that would terminate the Legacy Trust; or cause larger lending capacity, Annual Payments or Annual Allotments.

4.13 Section 13 – describes the duration and termination of the Legacy Trust, which states that “It is the First Nation’s intention that the Trust shall remain in perpetuity....” But can be terminated by court order, and only after all appeal processes are exhausted.

4.14 Section 14 and 15 - are general contract provisions.

## **5. DESIGNATION FOR EASEMENT ON THE MUSCOWPETUNG RESERVE**

Muscowpetung has agreed, pursuant to negotiated terms set out in the Settlement Agreement and in accordance with subsection 38(2) and section 39 of the Indian Act, to designate and authorize Canada to grant an Easement on its reserve lands. This designation does not take effect unless ratified by the members of Muscowpetung and accepted by Canada.

## **6. WHAT ARE THE MUSCOWPETUNG LANDS TO BE DESIGNATED?**

The reserved lands to be designated in the Easement, comprise of 1,138.73 acres and are legally described as:

All that portion of the Muscowpetung Indian Reserve number 80 shown as Flood Claim Easement on the  
**PLAN OF SURVEY SHOWING FLOOD CLAIM EASEMENT AFFECTING  
PLAN 176 CLSR,  
PLAN 1931 CLSR,  
PLAN 55144 CLSR,  
PLAN 58648 CLSR,  
PLAN 58938 CLSR,  
SECTIONS 14 TO 19, TP. 21, R. 16, W2M. AND ADJOINING ROAD  
ALLOWANCES MUSCOWPETUNG INDIAN RESERVE NO. 80  
PROVINCE OF SASKATCHEWAN**  
Containing 460.83 hectares (1138.73 acres) more or less.  
Signed by Ronald J. Eichel C.L.S., S.L.S. on the 13th day of August, 2012

We will be displaying a large visual map at information meetings of the Easement Area. Additionally, digital maps of the Easement Area can be downloaded at [www.muscowpetungtrust.com](http://www.muscowpetungtrust.com).

## **7. DESIGNATION – WHAT IS IT AND WHY IS IT NECESSARY**

A Designation authorizes Canada, pursuant to section 38(2) of the *Indian Act*, to grant an Easement to Saskatchewan Watershed Authority (or their successor) for the purposes set out in this Settlement Package, particularly the Easement Agreement that is attached as Schedule “B” to the Designation for Easement.

Muscowpetung must vote to authorize the proposed designation of their land. If the Settlement Agreement and attached Designation is ratified by band members, the Minister of Indian Affairs will be authorized to Grant the Easement, in the form attached as Schedule “A” to the Designation for Easement.

The Easement Agreement sets out the rights, terms and conditions of the easement interest granted to Saskatchewan by Canada. Saskatchewan shall have the easement essentially for as long as it requires the same, as future use of the Easement Lands is paid for as part of the settlement compensation. If and when the Easement Lands are no longer required, they will be reclaimed by Saskatchewan and the Easement will be terminated on Muscowpetung Saulteaux First Nation.

#### **8. HOW WILL DESIGNATION AFFECT THE USE AND OCCUPATION OF THE EASEMENT LANDS?**

Muscowpetung has not, and refused to, surrender any portion of the Easement Lands. They remain Muscowpetung reserve lands.

The Designation authorizes Canada to provide an *Instrument of Grant For Flooding Easement* in accordance with the terms agreed to and settled between the parties.

Muscowpetung band members shall be able to enjoy the same rights and privileges they have enjoyed for the past several decades, including farming in the Easement Lands, harvesting, hunting, fishing, construction, exploring for minerals, extraction, access to water, grazing, social and recreational use. Therefore current use and occupation of the Easement Lands will not be affected.

Use and occupation would only be affected if such use and occupation interferes with the rights given in the Easement to the Easement Holder.

#### **9. HOW LONG WILL THE DESIGNATION LAST?**

The Designation will last until it is no longer needed by Saskatchewan for flooding purposes or operation of the Echo Lake Control Structure. It is reasonable to assume this will be a permanent Easement.

There are provisions that Canada and Saskatchewan can mutually terminate the Easement, which is possible but highly unlikely.

There are provisions that the Easement can be terminated if the Easement Holder continually breaches it, or uses the Easement Lands for “other purposes”. In such an instance, Canada does have the legal obligation to enforce the terms of the Easement and the Easement Agreement, including compliance with environmental laws. However, the agreements provide for a termination process, whereby Saskatchewan is given an

opportunity to rectify any breaches. Again, such a termination scenario is possible, but it is highly unlikely to result in Termination.

It is reasonable to suggest that any future breaches of the Easement would be settled with negotiations for compensation and remedial action, rather than immediate termination.

**10. IF I VOTE “YES” WILL THE RESERVE LANDS LOSE THEIR RESERVE STATUS?**

NO – Chief and Council have assured this Designation does NOT cause the lands to lose their reserve status. *The Indian Act* specifically includes designated lands in its definition of “Reserve Lands”.

**11. WHAT HAPPENS IF THE RATIFICATION VOTE IS “YES”?**

A yes vote will give the Chief and Council the necessary authority to sign the Muscowpetung Saulteaux Flood Claim Settlement Agreement, all related schedules and appendixes; and implement the Muscowpetung Legacy Trust Agreement.

**12. HOW MANY “YES” VOTES ARE NEEDED TO APPROVE THE RATIFICATION VOTE BALLOT QUESTION?**

A “double majority” is required. This means a majority (50% plus one) of the eligible voters of Muscowpetung must vote, **and** a majority (50% plus one) of those voting must vote “Yes”.

Therefore, as estimated on May 1, 2012, in order for a “YES” ratification:

- i.) There are 825 eligible voters on Muscowpetung;
- ii.) 413 eligible voters must validly vote; and
- iii.) **207** eligible voters must validly vote in favor.

**13. WHAT HAPPENS IF NOT ENOUGH VOTERS VOTE?**

If fewer than 50% plus one of the eligible voters vote (ie. fewer than 413), but a majority of those that did vote, voted in favor of designation, the Minister of Indian and Northern Affairs Canada may pursuant to section 39(2) of the *Indian Act* and at the request of the Chief and Council, call a second vote. If the Minister calls a second vote, then only a majority of those who vote is required to pass the designation.

**14. WHAT HAPPENS IF THE VOTE IS “NO”?**

If the vote results in a “NO” vote, the referendum fails and the Settlement Package and the Trust Agreement are withdrawn.

## **15. CAN I MAIL IN MY BALLOT?**

If you live on reserve or if you live off reserve and your current address was available, you should have received this Information Document in the mail, including a ballot package containing the following:

- a.) A mail-in ballot (initialed on the back by the Electoral Officer);
- b.) A prepaid return envelope addressed to the Electoral Officer;
- c.) A second envelope marked ballot envelope;
- d.) A declaration of identity form (printed on the reverse of the ballot envelope);  
and
- e.) Instructions explaining how to vote using the mail-in ballot process.

Please read the instructions carefully. If you have any questions regarding the mail-in ballot process, please contact the Electoral Officer, **Tracy Desjarlais, at 1-306-780-3869**. Alternatively, you can contact the deputy-electoral officers Tracy Poitras and Kim Pratt at the band office toll-free at 1-866-848-4747.

An elector may vote by either mail-in ballot or in person at the on-reserve poll, but not by both means. However, if you have already mailed your ballot, you are invited and more than welcome to attend the Information Meeting of your choice.

The Electoral Officer must receive all mail-in ballots before the on-reserve poll is closed at **8:00 p.m., Friday, October 17, 2012**.

## **16. WHO CAN VOTE?**

Registered members of Muscowpetung are eligible to vote who are at least 18 years of age on October 17, 2012.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

### **STONECHILD & RACINE LAW FIRM**

Dwayne J. Stonechild  
Barrister & Solicitor

Attached as Appendixes - the mapping of the Easement Lands



