

Asini Wachi Nehiyawak
CONSULTATION
718 Blackfalds, AB Canada
TON OJO

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Joseph Fromhold <heritagedatabank@gmail.com>
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to Secretary NEB

From: Asini Wachi Nehiyawak (Mountain Cree)

Sept 20, 2015

Re: Nova Gas Transmission Lines Expansion 2017
OF-Fac-Gas-N081-2014-20 02

Submission of Written Evidence

Once again the NEB filing system, both e-file and portal, will not digest our submission and we must request a manual filing.

Our apologies and Thanks.

J. Fromhold, C.E.O.

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MAIL ROOM
SALLE DE COURIER
2015 SEP 23 P 2:00
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Asini Wachi Nehiyawak
CONSULTATION
718 Blackfalds, AB Canada
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MOUNTAIN CREE

ASINI WACHI NEHIYAWAK/Bobtail Descendants

Traditional Band
Administrative Office

718 * Blackfalds, Alberta * CANADA TOM OJO * 1-403-885-2991

Asini Wachi Nehiyawak Consultation/Heritage Consulting

www.inewhistory.com

c/o heritagedatabank@gmail.com

Member: Heritage Canada Mountain Parks Aboriginal Advisory Forum
Nations of Jasper Camp Administrator/Host Nation, 2011 & 2012 Nations of Jasper Assembly

National Energy Board,
517 10 Ave. S.W.,
Calgary, Alberta
T2R 0A4
e-m: sheri_young@neb-one.gc.ca

Attn: Ms. Sheri Young, Secretary of the Board

September 20, 2015

Dear Ms. Young:

Re: Nova Gas Transmission Ltd. (NGTL)
Application for the 2017 NGTL System Expansion Project (Application)
OF-Fac-Gas-N081-2014-20 02

Please find enclosed our submission of Written Evidence and a Statement of Claim stating our legal standing.

KI TA MIYOHIN

J. Fromhold, (B.A., Arky.; M.A. Soc/Anth; Ph.D. Pend., Econ. Dev.; Cert. Bus. Analyst; Dip.F.Art)
Camp Administrator; Nations of Jasper 2011-2015 Assembly
CEO/Head, Mountain Cree Band
Recipient: Heritage Canada Minister's Award of Excellence in Leadership
Member: Nations of Jasper Cultural Steering Committee
Member: Jasper National Park Aboriginal Advisory Forum
Lead Historian: Enoch Cree Nation Land Claims
Lead Historian: Dene Tha' First Nation Land Claims
Elder: Mountain Cree, Beaver Lake Cree Nation, Calgary Friendship Center

Mountain Cree Business Group

Asini Wachi Manpower Services * Asini Wachi Nehiyawak Consultation

Affiliates

Alberta Moundbuilder Protection Society * Classic Ford Auto Repair
Donalda Buffalo Pound Development O Kichita * Donalda Store * Fromhold Security * Heritage Consulting
Heritage Publishing * INEW Development Society * Inew Hair Salon * Inew Publishing
J. Fromhold Business Consulting * Kayashik O Kichita * Moundbuilder Holdings * Mountain Cree Museum Society
Mountain Hotshot & Delivery * Mountain Cree Ranching * Mountain Spring Water * Museum Development Consulting
Northern Janitorial * Paintball Warrior * Red Deer Antiques * Rocky Mountain Outfitters * Sheldon Mountain Trucking
Temple Mounds Development * Todd's Welding * YardWork



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Hearing Order
NOVA GAS TRANSMISSION LTD.
2017 System Expansion Project
File 0F-Fac-Gas-N081-2014-20 02

WRITTEN EVIDENCE
of
TRADITIONAL LAND USE IN THE
NOVA GAS TRANSMISSION LTD. 2017 System Expansion Project
RIGHT OF WAY
by the
MOUNTAIN CREE (Asini Wachi Nehiyawak) TRADITIONAL BAND

August 2015

**Hearing Order
NOVA GAS TRANSMISSION LTD.
2017 System Expansion Project
File 0F-Fac-Gas-N081-2014-20 02**

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by

**Heritage Consulting
Box 718
Blackfalds, Alberta**





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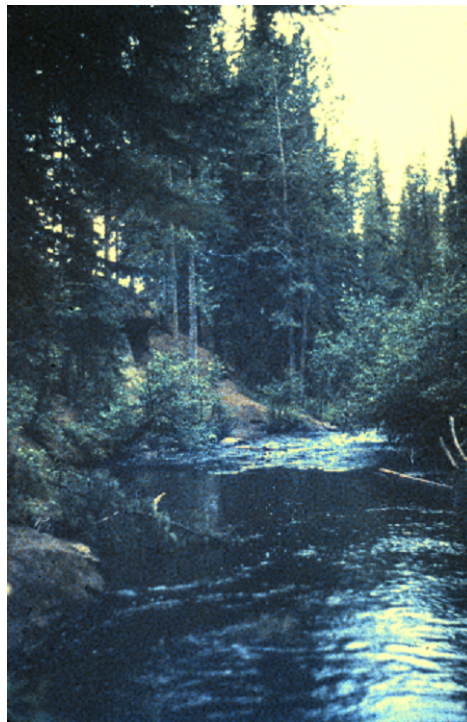
Addendum



**WRITTEN EVIDENCE
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MOUNTAIN CREE (Asini Wachi Nehiyawak) TRADITIONAL BAND**

Statement of Limitation

Information collected for this Study and this Deposition is the sole property of the Mountain Cree (Asini Wachi Nehiyawak) Traditional Band. The information contained within this project-specific Study is meant for a single application only, for consideration by the National Energy Board in the regulatory review process for the NOVA Gas Transmission Ltd. 2017 System Expansion Project and for no other purpose. Citation, use or reproduction of the information contained herein for any other purpose is permissible only with the written consent of the ASINI WACHI NEHIYAWAK (Mountain Cree) TRADITIONAL BAND.



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EXECUTIVE SUMMARY

The proposed NOVA 2017 Expansion Project is located wholly or in part within traditional ASINI WACHI NEHIYAWAK (Mountain Cree) TRADITIONAL BAND ("AWNTB") historical lands.

These lands have never been surrendered by the AWNTB in any form of Treaty. Nor has the AWNTB ever entered into a Joint-Use or Permission to Access with the Crown or Government of Canada.

By Supreme Court of Canada rulings, bands that have never surrendered any lands or rights are deemed as legally not having surrendered such property or rights, and still retain the full rights to title and Use and Enjoyment of such property and rights.

The Supreme Court has ruled that such lands, properties and and rights can only be alienated from aboriginal ownership and user rights with the negotiated consent of the affected aboriginal party.

AWNTB is recognized by the Government of Canada as a legitimate constituted "Band" which still retains it's rights, and falls under the Supreme Court rulings not only pertaining to Duty To Consult but still retains the option of entering into Treaty with the Crown and/or mounting a Land Claim for its' lands and past usurpation alienation of such lands and contents.

By Supreme Court rulings, aboriginal rights claims, such as the AWNTB claims to the aforesaid rights, lands and property can only be challenged before the Supremen Court of Canada.

Nonetheless, if approved, the Trans Mountain Pipeline Expansion Project will take up lands within the AWNTB traditional lands and assign these lands, including Unoccupied Crown Lands, into lands (e.g. Occupied Crown Lands) to be denied from traditional Use and Enjoyment by the AWNTB. This would be done without the necessary consent and approval of the AWNTB.

AWNTB has a documented land use history in the NOVA 2017 Project Right of Way (ROW). Lands in the Fort Vermilion-Wabasca area have been settled and hunted by the Gladue family since at least 1836. Mountain Cree descendants of Isadore Gladue consider this as their home territory and continue to use it to this day.

Lands in the Cadotte-Buffalo Head-Wabasca area have been settled and hunted since 1868 by Jacques Cardinal, of the Mountain Cree, and his descendants. Land Use

in this area by AWNTB members continues to this day.

Lands in the Fort McMurray-Wabasca-Lac La Biche-Christina River area have been settled and hunted by the Cardinal family since at least 1890. By 1905 the family had a settlement at Peavine Prairie. Mountain Cree descendants of Joseph and Magloire Cardinal consider this as their home territory and continue to use it to this day.

In the 1920's the four Mountain brothers, Isidore (Desjarlais), Lawrence, Leo and Michael settled in the area; their descendants consider this as their home territory and continue to use it to this day.

Lands in the High Level-Red Earth area were settled by or hunted by Mountain Cree members since the 1950's, conducting subsistence and cultural activities in the Zama-Jean D'Or-Wabasca-Lesser Slave Lake-Peace River area. They consider this as home territory and continue to use it to this day.

As a lineal descendant of the ancestral Mountain Cree, the current Mountain Cree (AWNTB) has the longest continuous historical presence in these lands of any of the other current aboriginal parties, and pre-dates most other aboriginal parties.

Nonetheless, AWNTB has not been approached or consulted regarding historical and/or current Land Use or Traditional Knowledge.

Rather, approval of the TMX project would seriously impact the rights, wellbeing and property of the AWNTB, and alienate without consent or consultation AWNTB lands and rights.

AWNTB was not informed by the Crown or NOVA on the size and scope of the potential negative impacts arising from the NOVA project on AWNTB aboriginal rights and title and on potential future Treaty rights. These loss of rights would include extra-legal loss of Use and Enjoyment of traditional lands, as has already occurred to other AWNTB lands, which would then have to be challenged in court at considerable cost to both AWNTB, NOVA and the Crown.

Furthermore, alienation of these lands would also significantly affect any future Treaty or Land Claims, as Economic Benefit analysis indicates that these very Crown Lands along the ROW would be prime lands for selection for Reservation Lands.

AWNTB commissioned this report at their own expense, having intentionally been excluded by NOVA from participation in the Traditional Land Use (TLU), Traditional Knowledge (TEK) and Heritage Resource (HRA) studies.

Specifically this report is to document AWNTB TLU, TEK and HRA knowledge of the TMX ROW.

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BACKGROUND

The NOVA project has been proposed to expand existing pipelines in northern Alberta. Some or all of these pipelines lie within traditional Mountain Cree (AWNTB) lands.

AWNTB has been identified as one of the aboriginal parties to be included in the Consultation Process.

AWNTB has one of the longest documented history of any aboriginal party in the ROW area, extending back some 200 years. This is longer than most of the other aboriginal parties in the ROW area.

However, NOVA has chosen to exclude AWNTB from consultation. Nova has historically taken a hostile stand against the AWNTB, as pertains to the Wolverine Lateral Loop Project, and has implied that AWNTB is either not a legitimate band, has no rights in the area, or does not have any information available not already known the NOVA.

That is, TMX is attempting to define who or what constitutes an aboriginal party, contrary to specific rulings of the Supreme Court of Canada. (1)

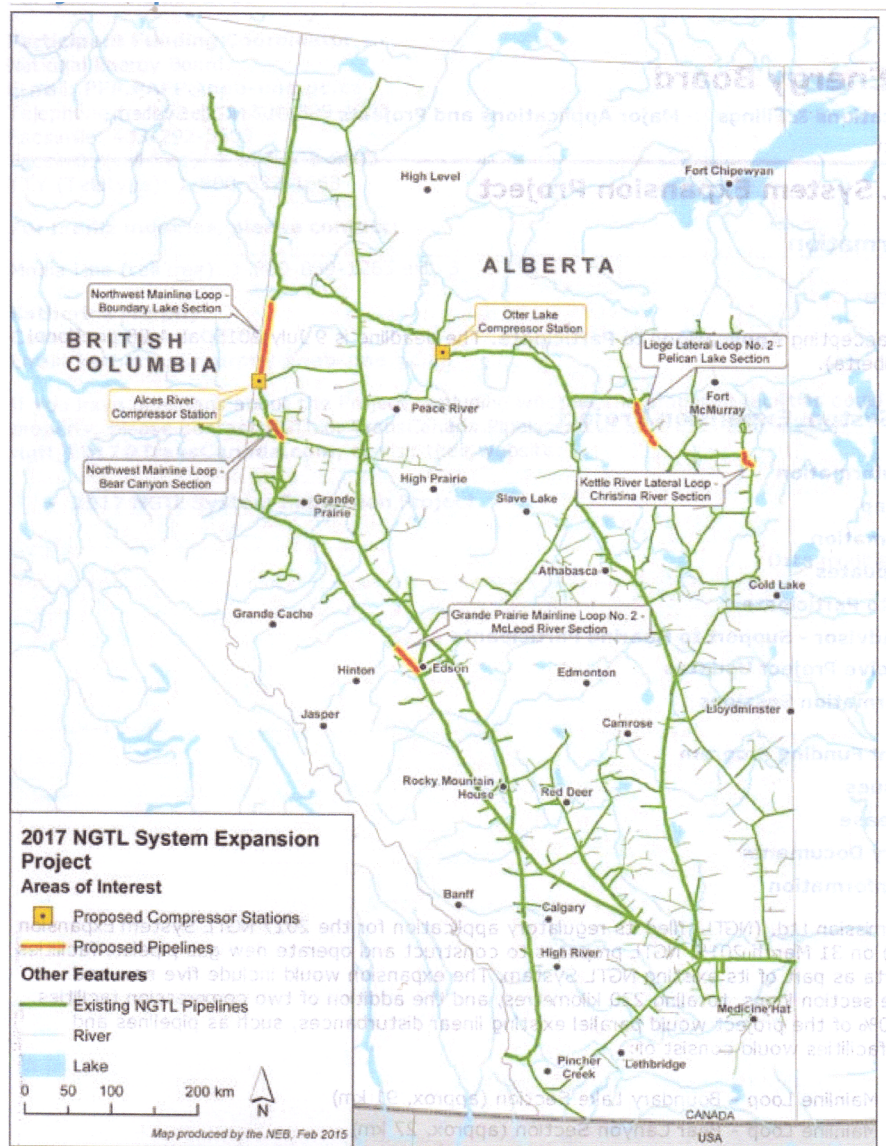
NOVA has also refused to implement NEB instructions to engage with AWNTB.

Furthermore, NOVA also implies that all aboriginal parties have a common culture and history and hence information from one source, or assumed concepts of one group are equally applicable to all others.

In point of fact, each of the aboriginal parties in the ROW in question have different histories, cultures and cultural practices. These are not interchangeable. The different bands consist of Woods Cree, Plains Cree, Ojibway, Chippewa, Iroquois, Dene Tha, and Dene backgrounds, and various mixtures of said ethnic/cultural groups.

As each and any of the aboriginal parties in the ROW will affirm, none of these parties would presume to speak for or about the internal affairs or culture of any other party. These are matters of aboriginal ethics and morality and sovereignty. To presume, make assumptions about or expect other "bands" to be alike is an alien concept to the aboriginal belief system.

In point of fact, the AWNTB history and culture is considerably different from that of any of the other aboriginal parties involved in the NOVA 2017 project.



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THE MOUNTAIN CREE TRADITIONAL BAND

Although no single definitive history of the Mountain Cree Band has yet been written, there is considerable written information currently in publication. A listing of some of these publications is given in Addendum 1. These publications are fully referenced, the listing of References constituting a separate book (2) of 350 pages.

To summarize the AWNTB history in the area, AWNTB has a documented land use history in the NOVA 2017 Project Right of Way (ROW).

In 1788 Louis Joseph Piche, progenitor of the Mountain family, came into the area with the North West Company, serving on the Athabasca, Clearwater and Christina rivers for almost a decade.

By 1836 lands in the Fort Vermilion-Lesser Slave Lake area were settled and hunted by the Gladue family. Mountain Cree descendants of Isadore Gladue consider this as their home territory and continue to use lands in the Fox Lake-High Level-Peace River-Lesser Slave Lake-Fort McMurray area to this day.

Lands in the Peace River-Cadotte-Buffalo Head-Fort Vermilion-Wabasca area have been settled and hunted since 1868 by Jacques Cardinal, of the Mountain Cree, and his descendants. Land Use in this area by AWNTB members continues to this day.

Lands in the Fort McMurray-Wabasca-Lac La Biche-Christina River area have been settled and hunted by the Cardinal family since at least 1890. By 1905 the family had a settlement at Peavine Prairie and Round Hill. Magloire Cardinal was a riverman on the Athabasca in the 1890's, and a trader at Christina Lake. Mountain Cree descendants of Joseph and Magloire Cardinal consider this as their home territory and continue to use it to this day.

In the 1920's the four Mountain brothers, Isidore (Desjarlais), Lawrence, Leo and Michael settled in the area; their descendants consider this as their home territory and continue to use it to this day.

Lands in the High Level-Red Earth area were settled by or hunted by Mountain Cree members since the 1950's, conducting subsistence and cultural activities in the Zama-Jean D'Or-Wabasca-Lesser Slave Lake-Peace River area. They consider this as home territory and continue to use it to this day.



As a lineal descendant of the ancestral Mountain Cree, the current Mountain Cree (AWNTB) has the longest continuous historical presence in these lands of any of the other current aboriginal parties, and pre-dates most other aboriginal parties.

The Mountain Cree continued to use the area and had a myriad of trails and cultural sites in the area. AWNTB has generated Land Use maps for some 200 historic Mountain Cree persons and families persons who are known to have used these lands (Addendum 2). More such maps can be generated.

In 1877 portions of the Mountain Cree took Treaty under Chief KISKIYEW (Bobtail). From 1877 to 1882 various factions of the Mountain Cree took Treaty as seperate bands. Over 1000 members of the Mountain Cree did not take Treaty.

Among those who did not adhere to Treaty was ASINI WACHI, his family and followers. The clan continued to maintain it's identity and cohesion. In the 1970's the Clan formalized it's organizational structure, and began to operate as the Mountain Peoples Cultural Society. On the death of Traditional Chief of the clan, Lawrence Mountain the Heads of Family designated the current C.E.O. to act in matters on behalf of the Mountain Cree Band as Traditional Chief. We are now known as the ASINI WACHI NEHIYAWAK (Mountain Cree) Traditional Band.

Leadership of the ASINI WACHI NEHIYAWAK can trace ancestry back to the first known Chief of the Mountain Cree in 1650.

As can be seen from this cursory summary, the ASINI WACHI NEHIYAWAK have a long documented and verifiable continuous cultural history in the area, with extensive cultural, historical, land use and traditional knowlege gained over these hundreds of years in the affected area.

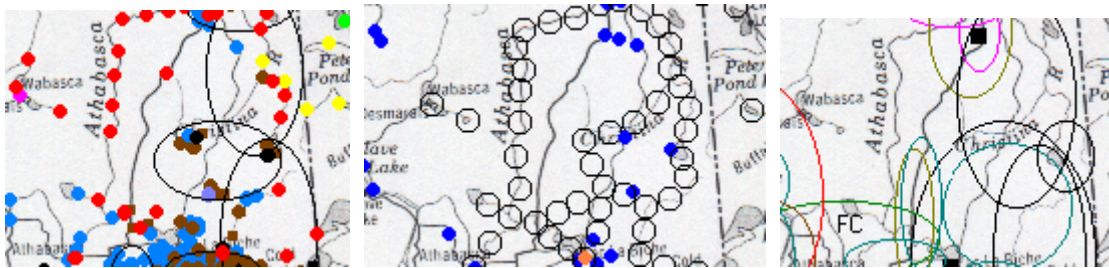
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TRADITIONAL LAND USE IN THE NOVA 2017 PROJECT AREA

As noted in the previous section, AWNTB has considerable TLU, TEK and HRA information that has been accumulated about the ROW area over the hundreds of years. AWNTB has commissioned the creation some 200 TLU maps (Addendum 2).

As noted in the previous section, documented land use in the area dates to at least pre-contact times. By 1800 we have an accumulated body of information about Mountain Cree presence in the area.

Along with this documented presence in the land, there is also a body of TLU, TEK and HRA information that has been recorded and/or is known. However, this data has not yet been compiled into a single file and remains fractionated.



As noted, AWNTB persons utilized these lands, the land use varying by season and family. Different families utilized different areas. In this area particularly these lands were seen as family properties.

There exist numerous sites of significance to the AWNTB throughout the area, including historic camps, trading posts, ceremonial sites, and sites of spiritual significance.

This information is not in the public domain and remains unknown to NOVA. Most such sites are no longer known - or have never been known - to other aboriginal bands who used the area, just as they have sites and specific knowledge that is not known to AWNTB.

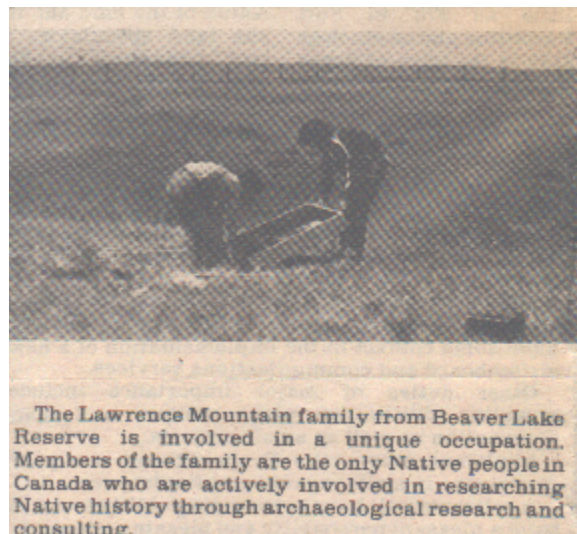
The original Lac La Biche-Fort McMurray Trail was pioneered by the Mountain Cree, as were other trails known to us in the ROW area. Details of historic use are known to the AWNTB.

AWNTB has the ability to compile a detailed history of, and of specific Land Use locations for the ROW that could be produced and published for the public domain.



We note that an AWNTB affiliate is a prominent researcher and publisher of aboriginal history (Addendum 3), and has conducted considerable archaeological research. NOVA has not consulted with or even contacted this aboriginal firm.

We note that sites known to us have not been included in the NOVA HRA studies. This is both a failure and deficiency of the NOVA HRA studies (Addendum 3).



(1) Delgamuukw vs. British Columbia

(2) Western Canadian History Bibliography; First Nations Publishing, Blackfalds





Fish Weir



Trail Cut



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ADDENUM 1

PUBLICATIONS ON THE MOUNTAIN CREE HISTORY

ALBERTA HISTORY: JASPER NATIONAL PARK pt. 1, to 1750; 350 pages; First Nations, Blackfalds

ALBERTA HISTORY: JASPER NATIONAL PARK pt. 2, to 1800; 400 pages; First Nations, Blackfalds

ALBERTA HISTORY: JASPER NATIONAL PARK pt. 2, Appendicies 200 pages; First Nations Publishing, Blackfalds

ALBERTA HISTORY: RED DEER AND AREA - 13,000 Years of History Notes; 456 pages; First Nations Publishing, Blackfalds

ALBERTA HISTORY: WEST CENTRAL ALBERTA pt. 1, to 1750; 350 pages; First Nations Publishing, Blackfalds

ALBERTA HISTORY: WEST CENTRAL ALBERTA pt. 2, to 1800; 450 pages; First Nations Publishing, Blackfalds

ALBERTA HISTORY: WEST CENTRAL ALBERTA pt. 3, to 1840; 630 pages; First Nations Publishing, Blackfalds

ALBERTA HISTORY: THE OLD NORTH TRAIL (CREE TRAIL): Prehistory to 1750; First Nations Publishing, Blackfalds

ALBERTA HISTORY: THE OLD NORTH TRAIL (CREE TRAIL); 1750-1820, 500 pages; First Nations Publishing, Blackfalds

ALBERTA HISTORY: THE OLD NORTH TRAIL (CREE TRAIL); 1820-1890, 900 pages; First Nations Publishing, Blackfalds

ALBERTA HISTORY: ALBERTA ARCHAEOLOGY: Contributions; 250 pages; First Nations Publishing, Blackfalds

INDIAN PLACE NAMES OF THE WEST, by Nation; First Nations Publishing, Blackfalds

THE WESTERN CREE: CREE TIPIS; 200 pictures; First Nations Publishing, Blackfalds

THE WESTERN CREE: PREHISTORY; 300 pages; First Nations Publishing, Blackfalds

THE WESTERN CREE: ETHNOGRAPHY; 374 pages; First Nations Publishing, Blackfalds

THE WESTERN CREE: THE CANOE CREE: 1650-1770; 300 pages; First Nations Publishing, Blackfalds

THE WESTERN CREE: ARCHANGE L'HIRONDELLE c1806-1891; 150 pages; First Nations Publishing, Blackfalds

THE WESTERN CREE: JACQUES CARDINAL, Mountainman; 280 pages; First Nations Publishing, Blackfalds

THE WESTERN CREE: MASKI PITON's BAND OF PLAINS CREE; 850 pages; First Nations Publishing, Blackfalds

2001 INDIAN PLACE NAMES OF THE WEST; 335 pages ; First Nations Publishing, Blackfalds

General History of the Mountain Cree is also posted on the Mountain Cree and Heritage Consulting websites, along with information on further materials and research materials available.

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ADDENUM 1

AWNTB LAND USE MAPS

- 1 GENERAL AREA MAPS**
- 2 BUFFALO POUNDS**
- 3 BURIALS**
- 4 CEREMONIAL SITES**
- 5 TRADING POSTS USED BY THE ASINI WACHI**
- 6 HUNTING**
- 7 LAND USE BY SELECT INDIVIDUALS**
- 8 RANGE**
- 9 ASINI WACHI SETTLEMENTS, 1870's**
- 10 SIGNAL HILLS**
- 11 SPIRITUAL SITES**
- 12 TRAILS**

7 LAND USE BY SELECT INDIVIDUALS

mLAustinC	CARL AUSTIN
mLAustinD	DAVID AUSTIN
mLAustinG	GARY AUSTIN
mLBadg	JENNIFER BADGER
mLBarnL	LEONARD BARNHADT
mLBoucher	BOUCHER
mLBruneau	BRUNEAU FAMILY
mLCard	CARDINAL CLAN
mLCard2	CARDINAL (Fort Vermilion Branch)
mLCardJ	JOSEPH CARDINAL
mLCardJaq	JACQUES CARDINAL Sr.
mLCardJq2	JACQUES CARDINAL Jr.
mLCardJB	JEAN BAPTISTE CARDINAL
mLCardK	KATHLEEN CARDINAL
mLCardMag	MAGLOIRE CARDINAL
mLCardR	RAYMOND CARDINAL
mLCree	ROBERT CREE
mLDelorme	PIERRE DELORME Sr.

mLDesjarlais	ISIDORE DESJARLAIS
mLFromI	IRENE FROMHOLD
mLFromJ	JOACHIM FROMHOLD
mLFromJL	JENNIFER FROMHOLD
mLFromJSub	JOACHIM FROMHOLD, Subsistence Activities
mLFromO	ODIN von FROMHOLD
mLGauth	GAUTHIER
mLGhostK	KYRA GHOSTKEEPER
mLGiroux	CLARENCE GIROUX
mLGirR	ROBIN GIROUX
mLGladuI	ISIDORE GLADUE
mLGladuN	NICOLE GLADUE
mLLaboucan	LABOUCAN BROTHERS
mLMntC	CRYSTAL MOUNTAIN
mLMtnDus	DUSTIN MOUNTAIN
mLMtnE	EDNA MOUNTAIN
mLMtnIrene	IRENE LOUISE MOUNTAIN
mLMtnIr2	IRENE CHICHEW MOUNTAIN
mLMtnJ	JENNIFER MOUNTAIN
mLMtnK	KATHLEEN MOUNTAIN
mLMtnL	LAWRENCE MOUNTAIN
mLMtnM	MICHAEL MOUNTAIN
mLMtnN	NORAL MOUNTAIN
mLMtnNin	NINICH MOUNTAIN
mLMtnNor	NORMAN MOUNTAIN
mLMtnP	ROBIN PIPICHEW MOUNTAIN
mLMtnR	RUBY MOUNTAIN
mLMtnT	THOMAS MOUNTAIN
mLPicheL	LOUIS JOSEPH PICHE
mLTwin	DONALD TWIN
mLTwinC	CHRISTINE TWIN
mLTwinS	STACEY TWIN



Western History Publications

ALBERTA HISTORY

ALBERTA ARCHAEOLOGY: CONTRIBUTIONS

AN ILLUSTRATED GUIDE TO THE PROJECTILE POINTS FOR THE ALBERTA REGION

A TOURIST GUIDE TO HISTORIC TRADING POSTS AND FORTS OF ALBERTA

A RESEARCHER'S GUIDE TO HISTORIC TRADING POSTS AND FORTS OF THE WEST

KINDER MORGAN TRANS MOUNTAIN PIPELINE, Archaeological Survey Assessment, Winterburn - Wabamun, Alberta

THE MOUNDBUILDER CULTURE IN ALBERTA 1100 A.D. - Alberta's First Farmers

BUFFALO POUNDS and the THE DONALDA POUND, Alberta

JASPER NATIONAL PARK - 10,000 YEARS OF INDIAN HISTORY to 1800

JASPER NATIONAL PARK - 10,000 YEARS OF INDIAN HISTORY 1750 - 1850

RED DEER AND AREA - 13,000 Years of History Notes

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2001 INDIAN PLACE NAMES OF THE WEST (Alphabetic Listing)

2001 INDIAN PLACE NAMES OF THE WEST (by Nation, revised)

THE DENE THA (Slavey) INDIANS OF ALBERTA: Historical Overview

THE MEDICINE HILLS: Sacred Ground - 13,000 Years of History Notes

THE OLD NORTH TRAIL (CREE TRAIL) v.1-4, Prehistory to 1900

WEST CENTRAL ALBERTA - 13,000 YEARS OF INDIAN HISTORY

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THE CANOE CREE 1650-1770

POPULATION RECONSTRUCTIONS 1590-1900

ETHNOGRAPHY

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CREE TIPIS

ENOCH CREE NATION - A History (V.1 & 2)

MASKI PITON'S BAND (Broken Arm/Maskepetoon) OF PLAINS CREE (V.1 & 2)

WARFARE ON THE NORTHWEST PLAINS

ARCHANGE L'HIRONDELLE

DONALD WHITFORD

JACQUES CARDINAL, Voyageur, Mountainman 1776-1839

LOUIS JOSEPH PICHE (Chief Pesew), The Founding of a Dynasty 1776-1850

WESTERN CANADIAN HISTORY

AFFILIATIONS CODES GUIDE to People In The Past

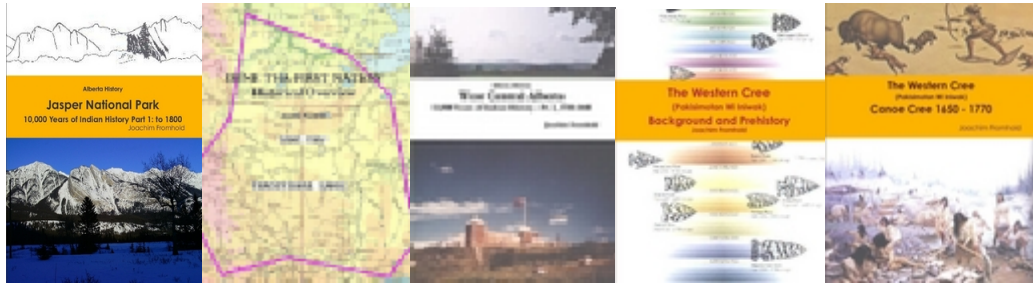
REFERENCE BIBLIOGRAPY

FUR BRIGADE SCHEDULES 1806-1874

PEOPLE IN THE PAST 1600-1900; volumes A-C; D-G; H-L; M-Q; R-Z

Births, Deaths, Residence, Affiliations

PEOPLE IN THE PAST: Master Genealogical Charts



In Process

ALBERTA HISTORY: **CANADIAN MOUNTAINMEN**

ALBERTA HISTORY: **CITY OF EDMONTON**

ALBERTA HISTORY: **20 YEARS ON PEACE RIVER 1804-1821 - The Diary of Samuel Malatere**

ALBERTA HISTORY: **THE MEETING CREEK BASIN - 12,000 Years of History Notes**

THE WESTERN CREE (Pakisimotan Wi Iniwak) - **ABORIGINAL WOMEN**

THE WESTERN CREE (Pakisimotan Wi Iniwak) - **CHIEF CHAT KA**

THE WESTERN CREE (Pakisimotan Wi Iniwak) - **CHIEF PESEW (Louis Joseph Piche)**

THE WESTERN CREE: **The ASINI WACHI WI INIWAK (Mountain People) 1650-1900**

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Asini Wachi Nehiyawak Consultation/Heritage Consulting

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STATEMENT OF CLAIM

September 2015

prepared by

Heritage Consulting



MOUNTAIN CREE

ASINI WACHI NEHIYAWAK/Bobtail Descendants
Traditional Band

Statement of Limitation

Information collected for this Study and this Deposition is the sole property of the Mountain Cree (Asini Wachi Nehiyawak) Traditional Band. The information contained within this project-specific Study is meant for a single application only, for consideration in the regulatory review process for the Tans Mountain Pipeline Expansion Project. Citation, use or reproduction of the information contained herein for any other purpose is permissible only with the written consent of the ASINI WACHI NEHIYAWAK (Mountain Cree) TRADITIONAL BAND.

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Mountain Cree/Asini Wachi Nehiyawak Traditional Band
Bobtail Descendants
Legal Rulings**



MOUNTAIN CREE

ASINI WACHI NEHIYAWAK/Bobtail Descendants
Traditional Band

STATEMENT OF CLAIM

A. MOUNTAIN CREE/ASINI WACHI NEHIYAWAK TRADITIONAL BAND

1. BACKGROUND

- 1.1.a The Mountain Cree/Asini Wachi Nehiyawak Traditional Band (MCB/AWNTB) is a Band of Cree origins and descent that has a documented history reaching back 350 years in Alberta.**
- 1.1.b Blackfoot, Cree and Kutenai legendry extends the Cree occupation of the Traditional Mountain Cree lands into legendary times, dating to the first arrival of man in Alberta.**
- 1.1.c The MCB/AWNTB is a direct lineal descent of this early Mountain Cree Band.**
- 1.1.d The MCB/AWNTB or it's predecessors have never signed a Treaty or other agreement with the Government of Canada.**
- 1.1.e The MCB/AWNTB remains a Sovereign Band with ownership to it's traditional lands, rights and resources.**

1.2. MOUNTAIN CREE CLAIM

- 1.2.a MCB/AWNTB is an Aboriginal Band with a long documented history.**
- 1.2.b MCB/AWNTB has documented Traditional Lands in Alberta and elsewhere that have been used and occupied by the Mountain Cree since time immemorial.**

- 1.2.c MCB/AWNTB is still the legal and sovereign owner of its traditional lands.
- 1.2.d MCB/AWNTB is a legal sovereign First Nations group, not subject to local, regional or National rules, regulations and laws, answerable only to the Supreme Court of Canada.
- 1.2.e The MCB/AWNTB remains a Sovereign Band with ownership to its traditional lands, rights and resources.
- 1.2.f Neither MCB/AWNTB or ancestral band have signed Treaty or are part of the Treaty system. Nor have they signed any Joint Use or Access Permission agreements. As such, use, occupation and exploitation of MCB/AWNTB are illegal in both Canadian and International Law. Entry, use of, occupation and exploitation of the MCB/AWNTB lands constitute legal Trespass or Invasion, Willful destruction and Vandalism, Destruction of Property and Theft, and are subject to compensation.
- 1.2.g Entry into, Use of, Occupation of, and Exploitation of MCB/AWNTB can only be legally done by agreement of the AWNTB.

1.3. LEGAL POSITION OF AWNTB

- 1.3.a The Supreme Court of Canada in the DELGAMUUKW Rulings recognizes the existence of bands that have never signed treaty.
- 1.3.b The Supreme Court of Canada in the DELGAMUUKW Rulings recognize that such non-treaty bands have never surrendered their rights or properties.
- 1.3.c The Supreme Court of Canada in the DELGAMUUKW Rulings have indicated that there exists an obligation ('a burden') on the Government of Canada to reach a mutually acceptable settlement of this 'burden' with these non-treaty bands.
- 1.3.d The Supreme Court of Canada in the DELGAMUUKW Rulings has ruled that Non-Treaty Bands have the same rights as Treaty Bands (aka. Indian Affairs Bands) as well as other outstanding aboriginal rights and title.
- 1.3.e The Supreme Court of Canada in the DELGAMUUKW Rulings has ruled that Non-Treaty bands have never ceded or surrendered their lands and, as such, are still the de facto owners of these lands and contents until such time as these lands are legally surrendered or ceded to the Government of Canada by Treaty.
- 1.3.f The Supreme Court of Canada in the DELGAMUUKW Rulings has ruled that Non-Treaty bands still hold Sovereignty in their lands, including Sovereign rights to the lands and properties and sovereign law and administration rights.
- 1.3.g The Supreme Court of Canada in the DELGAMUUKW Rulings has ruled that these rights are inviolate, and can not be modified, changed, ignored or done away with any laws, rules or regulations passed by a lesser authority than the Supreme Court of Canada excepting by the Government of Canada with the consent and approval of the affected aboriginal party.
- 1.3.h Non-Treaty Bands, not having signed any Treaty, are not subject to the clauses within any Treaty.

1.3.2.a The Supreme Court of Canada in the DELGAMUUKW Rulings has laid out tests that define a legitimate and legal Non-Treaty Band in law.

1.3.2.b The MCB/AWNTB has met this test. The MCB/AWNTB is accepted by the Government of Canada as a legitimate Non-Treaty Band.

1.3.3.a The Supreme Court of Canada in the DELGAMUUKW Rulings has ruled that any and all development and disturbance within Traditional Tribal and/or Band lands can only be done in consultation (known as 'Duty To Consult') with and the approval of the recognized historic and traditional aboriginal parties who have a historic claim in those lands.

1.3.3.b The Supreme Court of Canada in the DELGAMUUKW Rulings has also mandated that there are several other conditions and obligations due these aboriginal parties by developers and/or the Government of Canada.

1.3.3.c MCB/AWNTB has been accepted by the Government of Canada as falling under the Duty To Consult rulings. MCB/AWNTB is included in the Government of Canada listing of Aboriginal Bands and Entities that must be consulted in development projects.

4. LEGALITY OF CLAIMS

1.4.a The Supreme Court of Canada in the DELGAMUUKW Rulings has ruled that claims by Aboriginal Bands are to be accepted as a legal fact unless proven otherwise.

1.4.b The Supreme Court of Canada in the DELGAMUUKW Rulings state that such claims can only be challenged before the Supreme Court of Canada.

1.4.c The Supreme Court of Canada in the DELGAMUUKW Rulings has ruled that the burden of proof does not fall on the aboriginal party to prove it's claims but falls on the challenger who must prove that such claims and rights do not exist.

1.4.d The Supreme Court of Canada in the DELGAMUUKW Rulings further state that such rights as exist can not be ignored, modified, changed or done away with by any authority other than the Government of Canada through mutual negotiations with the affected party.

1.4.e The Supreme Court of Canada in the DELGAMUUKW Rulings further state that these rulings have supremacy of any other rulings by the Government of Canada and lesser jurisdictions.

1.4.f Hence MCB/AWNTB claims stand as fact, can not be ignored, and can only be challenged or changed through appeal to the Supreme Court of Canada or by mutual agreement.

1.4.g In the HAIDA GWAI rulings of the Supreme Court of Canada it was ruled that these rulings have broad application on corporates operating in First Nations Traditional lands and ruled that the First Nations were still Landowners of their Traditional Lands.

1.4.h These rights have been reinforced by the Supreme Court of Canada in the TSILQO'TN decision (2015).

- 1.4.i The Supreme Court of Canada in the TSILQO'TN rulings have further ruled that the First Nations with legal claims to their Traditional Lands have the legal right and authority to designate what use such lands can be put to, or to remove them from public use and place them under First Nations laws and regulations.**

B. BOBTAIL DESCENDANTS

1. BACKGROUND

- 1.1.a The Bobtail Band was a band recognized by the Government of Canada.**
- 1.1.b The Bobtail Band is the direct ancestral band of the MCB/AWNTB.**
- 1.1.c A portion of the Bobtail Band took Treaty Status in 1877; some 1,000 members of the band did not take Treaty Status and retained a non-treaty status.**
- 1.1.d In 1884 the Bobtail Band took a reservation at Maskwacis (Hobbema).**
- 1.1.e In 1885 the majority of the Bobtail Band withdrew from the Treaty and abandoned the reservation, reverting to a non-treaty status.**
- 1.1.f In 1887 several members of the Bobtail Band re-entered Treaty. Some 130 members of the band remained off the reservation and were dropped by Indian Affairs from the Treaty lists.**
- 1.1.g The Government of Canada now declared the Bobtail Band to be defunct as a Treaty Indian/Indian Affairs Band.**
- 1.1.h The Government of Canada subsequently gave the Bobtail Reservation to another aboriginal group unrelated to the Bobtail Band.**

2. BOBTAIL DESCENDANTS

- 2.1.a Over 1,000 members of the historic Bobtail Band never took treaty or withdrew from Treaty.**
- 2.1.b In retaining a non-treaty status they retained all their aboriginal rights and property rights, including the right of future entry into or negotiation of a Treaty.**
- 2.1.c In the MONTANA vs CANADA rulings (2007) the Supreme Court Ruled that the Bobtail Band can still exist if there is in fact an organized band of Bobtail Descendants.**
- 2.2.a The WCB/AWNTB are Bobtail descendants.**
- 2.2.b The WCB/AWNTB are recognized as a legitimate non-treaty band (see Section 1, above).**
- 2.2.c Under the MONTANA ruling, AWNTB can legitimately represent the interests of the non-treaty Bobtail descendants.**

3. AWNTB CLAIM

2.3.a Under the MONTANA ruling, MCB/AWNTB has the legitimate right to claim to represent the Bobtail Descendants.

2.3.b Under the DELGAMUUKW rulings, MCB/AWNTB can bring forward claims on behalf of the Bobtail Descendants separate to or in association with AWNTB claims.

4. LEGALITY OF CLAIMS

2.4.1.a Under the MONTANA Rulings MCB/AWNTB can claim to be the Bobtail Band, a successor Band, and/or representative of the Bobtail Descendants not otherwise represented.

2.4.2.a These claims fall under the DELGAMMUKW rulings pertaining to claims by legitimate aboriginal parties.

2.4.3.a The right of MCB/AWNTB to represent the interests of the Bobtail Descendants has been accepted by the Government of Canada.

2.4.3.b The rights of the MCB/AWNTB as representatives of the Bobtail Descendants is identical to the rights accrued to the Mountain Cree/Asini Wachi Traditional Band, which are noted in section 1, above.

C. RELEVANT LEGAL RULINGS

Supreme Court of Canada, *Dene Tha vs. Alberta*, 1994

Supreme Court of Canada, *Delgamuukw vs. British Columbia*, 1998

Supreme Court of Canada, *Haida Gwai vs. British Columbia* 2004

Supreme Court of Canada, *Montana vs. Canada*, 2006

Supreme Court of Canada, *Williamson vs. British Columbia*, 2015 (*Tsilhqot'in Ruling*)