

INDIAN CLAIMS COMMISSION

REPORT ON THE MEDIATION

OF THE

KEESECKOOWENIN FIRST NATION

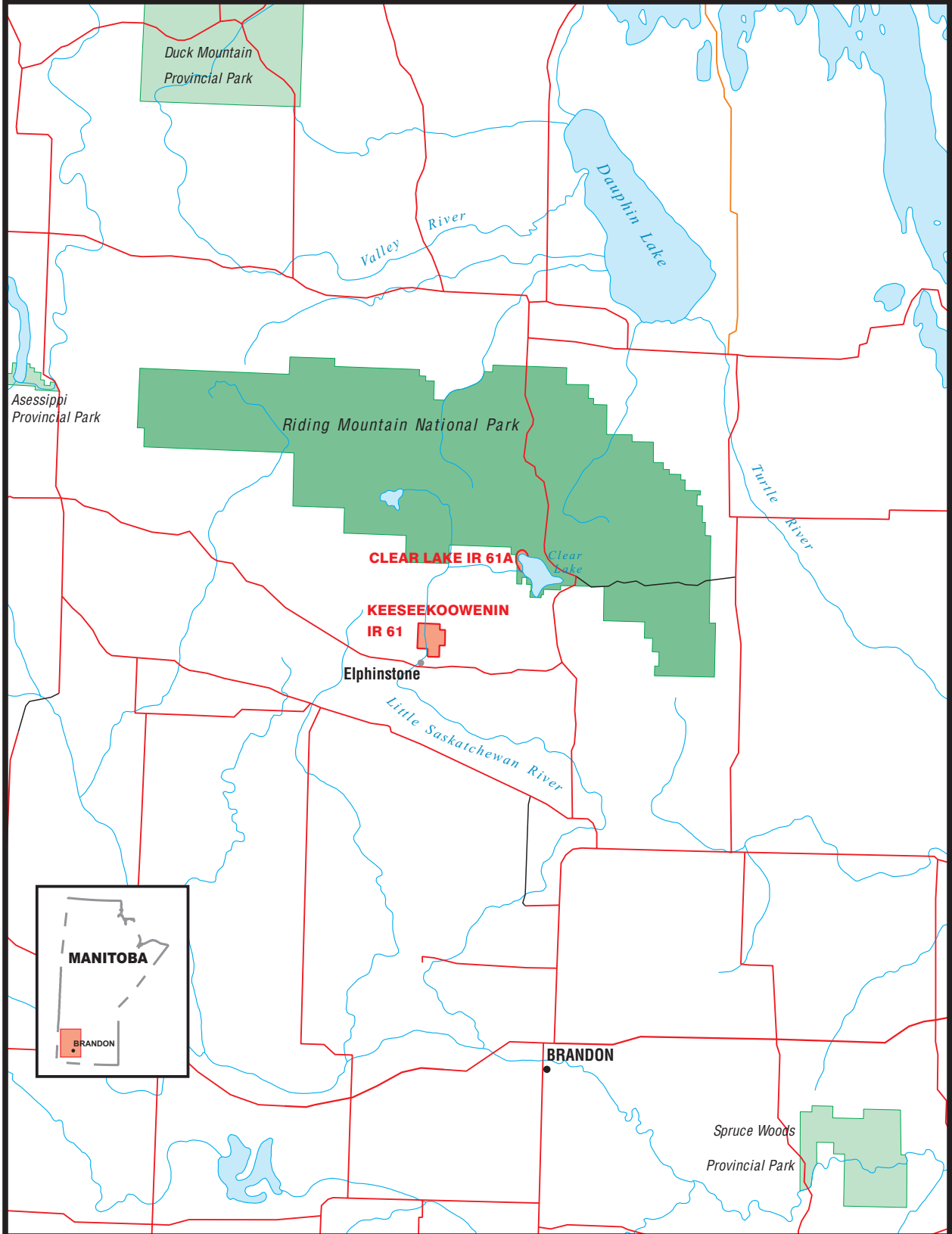
1906 LAND CLAIM NEGOTIATION

August 2005

CONTENTS

PART I	<u>INTRODUCTION</u>	1
	THE COMMISSION’S MANDATE AND MEDIATION PROCESS	1
PART II	<u>A BRIEF HISTORY OF THE CLAIM</u>	3
PART III	<u>NEGOTIATION AND MEDIATION OF THE CLAIM</u>	7
PART IV	<u>CONCLUSION</u>	9

Claim Area Map



PART I

INTRODUCTION

The Keeseekoowenin Ojibway First Nation has had a number of names in the past. When its forefathers signed Treaty 2 in 1871, it was called the Riding Mountain Band, a title based on the location where the people lived. Before Kesseekeowenin became Chief in about 1874, it was also called Okanase's Band and Mekis' Band. The Keeseekoowenin First Nation has three reserves. The largest reserve, Indian Reserve (IR) 61, is located adjacent to the village of Elphinstone, about 80 kilometres northwest of Brandon, Manitoba. The next in size, and the land that is the subject of this report, is IR 61A, on the shores of Clear Lake in Riding Mountain National Park. A third and smaller reserve, IR 61B, is located next to Bottle Lake. As of May 2005, the Band had a registered population of 973, 463 of whom live on the reserve.¹ This report outlines how a claim advanced by the Keeseekoowenin First Nation, based on events that occurred 70 years ago, was successfully resolved with the assistance of the Indian Claims Commission (ICC).

The report will not provide a full history of the Keeseekoowenin 1906 land claim but will summarize material submitted during the negotiations which provided the historical background to the claim. It will also summarize the events leading up to the settlement of the claim and illustrate the Commission's role in the resolution process. The Keeseekoowenin First Nation alleged that land purchased adjacent to its fishing station, IR 61A, was illegally expropriated in 1935. It submitted its specific claim to the Department of Indian Affairs and Northern Development in December 1994 and, after further research and legal analysis, Canada accepted the claim for negotiation in May 1997. Canada and Keeseekoowenin negotiated on their own until October 2002, when both parties asked the ICC to assist them in reaching an agreement.

THE COMMISSION'S MANDATE AND MEDIATION PROCESS

The Indian Claims Commission was created as a joint initiative after years of discussion between First Nations and the Government of Canada on how the process for dealing with Indian land claims in Canada might be improved. Following the Commission's establishment by Order in Council on

¹ Canada, Indian and Northern Affairs Canada [INAC], First Nation Profiles, Keeseekoowenin First Nation. <http://sdiprod2.inac.gc.ca/fnprofiles> (June 1, 2005).

July 15, 1991, Harry S. LaForme, a former commissioner of the Indian Commission of Ontario, was appointed as Chief Commissioner. With the appointment of six Commissioners in July 1992, the ICC became fully operative.

The Commission's mandate is twofold: it has the authority, first, to conduct inquiries under the *Inquiries Act* into specific claims that have been rejected by Canada, and, second, to provide mediation services for claims in negotiation.

Canada distinguishes most claims into one of two categories: comprehensive and specific. Comprehensive claims are generally based on unextinguished aboriginal title and normally arise in areas of the country where no treaty exists between First Nations and the Crown. Specific claims generally involve a breach of treaty obligations or instances where the Crown's lawful obligations have been otherwise unfulfilled, such as a breach of an agreement or a dispute over obligations deriving from the *Indian Act*.

These latter claims are the focus of the Commission's work. The Commission is mandated to review thoroughly a rejected claim and the reasons for its rejection with both the claimant and the government. The *Inquiries Act* gives the Commission wide powers to conduct such an inquiry, gather information, and, if necessary, subpoena evidence. If, at the end of an inquiry, the Commission concludes that the facts and the law support a finding that Canada owes an outstanding lawful obligation to the claimant, it may recommend to the Minister of Indian Affairs that a claim be accepted.

In addition to conducting inquiries, the Commission is authorized to provide mediation services at the request of the parties. From its inception, the Commission has interpreted its mandate broadly and has vigorously sought to advance mediation as an alternative to the courts. In the interests of helping First Nations and Canada negotiate agreements that reconcile their competing interests in a fair, expeditious, and efficient manner, the Commission offers the parties a broad range of mediation services tailored to meet their particular goals.

PART II
A BRIEF HISTORY OF THE CLAIM²

On August 21, 1871, Chief Mekis (the Eagle), on behalf of the Indians of Riding Mountain and Dauphin Lake, entered into Treaty 2 with representatives of the Queen. Although the treaty called for their reserve to be situated in the region of the Turtle and Valley rivers near Dauphin Lake, at the Band's request it was located instead south of Riding Mountain. Chief Mekis died in 1874 and was replaced by his younger half-brother, Keeseekoowenin. In 1875, IR 61 was surveyed for the Band along the Little Saskatchewan River. Within a few years, as settlement advanced in the area, the town of Elphinstone was established adjacent to this reserve.

Fish and game were more plentiful to the northeast of the reserve, and Keeseekoowenin and his followers continued to travel to their traditional camping site on the shores of Clear Lake, about 10 miles away. Beginning in the early 1890s, Department of Indian Affairs (DIA) officials began to take steps to protect this important source of food and fuel from the encroaching settlement. By 1896, DIA and the Department of the Interior had reached an agreement on the land to be reserved and, by Order in Council dated July 8, 1896, a tract of approximately 756 acres of land along the shore of Clear Lake was set apart as a fishing station for Keeseekoowenin's Band. This land was identified as IR 61A.³

In 1904, the Canadian National Railway located a line through Keeseekoowenin's main reserve, IR 61, in such a manner that 264 acres south of the tracks were cut off from the reserve. The First Nation asked to exchange that piece of land for another location, and, by March 1906, it had identified 320 acres in the east half of section 8 in township 20, range 19, west of the first meridian (W1M), as the land it wanted. This site, adjacent to its Clear Lake land (IR 61A), was owned by the Hudson's Bay Company (HBC). Band member James Boyer was in the process of buying the plot

² The following information is taken from Specific Claims West, "Research and Analysis Report of the Keeseekoowenin First Nation Land Claim," January 21, 1994, and from Thompson, Dorfman, Sweatman, "For Reasons of Their Own: The Removal of Keeseekoowenin Band from the Clear Lake Indian Reserve," vol. I: Factual and Legal Analysis, December 1994 (both in ICC file 2106-12-1M-17), supplemented with information from the entry for "Keeseekoowenin" in the *Dictionary of Canadian Biography*, vol. 13 (Toronto: University of Toronto Press, 1994), 537-38.

³ The 1896 lands were the subject of a separate claim, which was settled in 1994 under the Specific Claims Policy for \$4.9 million. The 305.95 hectares (756 acres) were restored to reserve status.

from the HBC because the Band had no funds with which to purchase the land. On July 13, 1906, the Band surrendered the 264 acres on IR 61 for sale, on the understanding that the proceeds from the sale would be used to purchase the specified land adjacent to IR 61A. It was not until October 1907, however, that the IR 61 surrendered land was sold, and the department paid the full amount owing to the HBC for the plot selected to replace it in township 20. No order in council was ever issued to confirm this land as an addition to IR 61A.

In July 1906, the *Dominion Forest Reserves Act* established the Riding Mountain Forest Reserve, which included within its boundaries all of township 20, range 19, W1M, where IR 61A and the added lands were located. In December 1929, an Order in Council designated land within this forest reserve as Riding Mountain National Park. From the outset, government officials wrote about the benefits of removing IR 61A from the park. At the time, about eight families were residing at the Clear Lake reserve, and many from the reserve near Elphinstone also hunted and cut timber there.

In 1935, the local Indian Agent asked the Keeseekoowenin people to surrender IR 61A, and on March 27, 1935, a majority of the Band agreed to the cession. However, the Agent had made an error in explaining to the First Nation the limits of the land to be surrendered, and, as a result, the Inspector of Indian Agencies A.G. Hamilton recommended that the transaction not be accepted. The First Nation also repudiated the surrender shortly after and refused to consider the question again.

The *Indian Act* provided that reserve lands could be alienated by way of expropriation, and on July 20, 1935, an Order in Council was passed authorizing the expropriation of the 1906 lands under the *National Parks Act*, effectively extinguishing the residual rights of the band members to occupy and use the reserve and its resources. Government officials decided that a fair compensation for the 1906 lands would include the value of the land and any improvements on it (houses, fences, gardens, etc.), as well as the cost of removing the Indians to the main reserve and building houses for them there – a total of \$4,733.45. The Keeseekoowenin First Nation was never consulted with regard to either the expropriation or the compensation.

After the expropriation, the Keeseekoowenin band members living at Clear Lake were forcibly removed from their lands and relocated to the main reserve near Elphinstone. The consultant

who provided the loss-of-use study for Keeseekoowenin in 1998 summarized the stories the elders told about this experience:

The Elders interviewed during this study felt the relocation was conducted with undue force with little, if any, thought for the well-being of the individuals living on the 1906 lands. Several Elders stated that one woman died of a heart attack during the eviction and that the people were forced to leave their homes without having time to gather their possessions. One Elder said that due to the short notice provided, some of the people were unable to get the horses or cattle that were summering in the Park. The Elders stated that their houses were burned and that the smoke could be seen while they were still leaving.⁴

Between that time and the present, an asphalt plant operated on part of the property, and large amounts of gravel were removed from another part.

⁴ Stuart Davies, North/South Consultants, Inc., "Loss of Use Study, the 1906 Lands," prepared for the Keeseekoowenin First Nation, 1998 (ICC file 2106-12-1M-17).

PART III
NEGOTIATION AND MEDIATION OF THE CLAIM

Canada and the Keeseekoowenin First Nation began negotiations in November 1997. By 1999, they had completed valuation studies and additional historical research, and they had discussed the legal principles that would determine the heads of damages to be paid in settlement of the claim. By March 1999, they had reached consensus on some of the principles to be applied, but had reached an impasse on others. They therefore sent out a Request for Proposals, seeking a

lawyer or judge who is experienced in the relevant areas of the law to give the parties an impartial view of the legal principles which apply to the facts of this claim and the manner in which a court could be expected to apply the principles to set an award of damages in this case.⁵

The parties were still in negotiations in 2002, although staff turnover in Canada's negotiating team kept the process from moving ahead. In April of that year, Canada named a new team, and negotiations began again. By October 2002, both parties agreed that an independent mediator might be able to assist them to move the matter to a conclusion, and they invited the Indian Claims Commission to join the table as facilitator and mediator.

In December 2002, Ralph Brant, the Director of Mediation for the ICC, attended his first meeting and asked each team to present its view of the current status of the negotiations, including outstanding issues and analytical options. Mr Brant next suggested that the process might be assisted by a series of "shuttle mediation" sessions, where the mediator meets separately with each party so that direct communication is only with the mediator, who then relays information, defines issues, and suggests possible solutions as the participants remain in separate rooms.

Both teams agreed to this process, and, in January 2003, the ICC met with the First Nation's representatives in Winnipeg and, later, with Canada's team in Ottawa. A third meeting was then convened in Winnipeg, with the parties in separate rooms and Mr Brant moving back and forth between them, relaying information and suggesting possible solutions to the impasse. This three-

⁵

Thompson, Dorfman, Sweatman to unidentified recipient, March 19, 1999 (ICC 2106-12-1M, vol. 1).

session shuttle mediation was successful and, by March 2003, the table had agreed on the general principles of a settlement agreement.

The ICC continued to facilitate the process as the parties spent the next 10 months discussing issues relating to the environmental clean-up of the lands, the transfer of administration of the lands from Parks Canada to the Department of Indian Affairs and Northern Development, a fair market appraisal of the land, a communication strategy, and the drafting of the settlement agreement.

On September 21, 2004, a ceremony was organized at the Keeseekoowenin reserve to initial the agreement, and, at the referendum held on November 26, 2004, a large majority of the band members voted to accept the settlement. Canada then sought Treasury Board approval for the payment of the compensation and authority from the Governor in Council for the Minister of Indian Affairs and Northern Development to sign the settlement agreement on behalf of Canada. On March 14, 2005, Minister Andy Scott signed the agreement, providing \$6,999,900 in compensation to the Band.

PART IV
CONCLUSION

The Indian Claims Commission, involved as a mediator and facilitator in this claim since 2002, had no authority to force a settlement or to impose one. However, when the ICC was asked to provide its mediation services, relationships between the parties were strained, and further movement in the process seemed impossible. The outcome of the negotiations indicates the Commission's ability to advance the settlement of claims. In this case, the parties relied on the knowledge and experience of the ICC Mediation Unit when they agreed to shuttle mediation. After being stalled for many years, they were quickly able to find a resolution to the impasse and move on to reach a settlement that was acceptable to both sides.

FOR THE INDIAN CLAIMS COMMISSION

A handwritten signature in black ink, appearing to read "Renée Dupuis". The signature is fluid and cursive, with a large initial "R" and "D".

Renée Dupuis
Chief Commissioner

Dated this 2nd day of August, 2005.