

PRESENTATION OF GRAND CHIEF JIM BADGER /

May 07, 1996 ENVIRONMENTAL APPEAL BOARD

Good morning Mr. Chairman and members of the Board. I am here today as spokesman for eight First Nations: Driftpile, Kapawe'no, Sucker Creek, Duncan's, Sawridge, Swan River, Horse Lake, and Sturgeon Lake. These 8 first Nations are members of the Lesser Slave Lake Indian Regional Council.

I am also here on behalf of the individual members of the Lesser Slave Lake Indian Regional Council who have registered traplines in the area of the Alberta Special Waste Treatment Centre. Twenty two of these trappers are named on our Notice of Appeal. With me today is Chief Bob Horseman of Horse Lake, Chief Eugene Laboucan of Driftpile, Chief Dustin Twin⁽²⁾ of Swan River, ⁽³⁾Headmnan Charlie Chalifoux of Swan River, Councillor Ronald Willier of Sucker Creek, ⁽⁴⁾Elder Harvey Giroux of Driftpile and Dion Willier who is the Environmental Liason Officer for the Lesser Slave Lake Indian Regional Council. Chief Eugene Laboucan owns trapline 0816, Councillor Ronald Willier owns trapline 0155, Headman Charlie Chalifoux owns trapline 0042, the Driftpile First Nation owns trapline 328 and the Sucker Creek First Nation owns trapline 310. Traplines 0155 and 328 are located approximately 2 miles from the Swan Hills Hazardous Waste Treatment Plant. Traplines 0816, 0042 and 310 are located approximately 3 to 4 miles from the Plant.

James Copes → *env. rep. plants losing potency*
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June 6 - Signing of Police System @ LSLRC -

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This is my second appearance before this Board. I trust you will listen to the concerns of my people with open hearts and minds. For those people present at this hearing who do not know me, I will begin by telling you something of myself and the people I represent.

I am the Grand Chief of the Lesser Slave Lake Indian Regional Council and I am also Chief of the Sucker Creek First Nation and I have been Chief for eleven years. Many people that belong to my reserve, including my brothers, hunt, fish, and trap. Many of our people who reside on the reserves along Lesser Slave Lake still rely upon hunting, fishing and trapping as a source of food. This is especially true amongst the poorer First Nations. Our elders, the trappers listed in our Notice of Appeal and other members of the Lesser Slave Lake Band also continue to hunt, fish and trap for spiritual and cultural reasons. Our medicine men continue to gather plants and herbs for the practice of traditional Indian medicine.

Among our young people there has been a renewed interest in our traditional occupations, and we have been organizing programs to encourage our young people to go and camp in the wild and learn to live in the old way, so that we can preserve our culture for future generations.

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In 1899 my great grandfather, Moostoos, signed Treaty No. 8. All of the First Nations of the Lesser Slave Lake are parties to Treaty No. 8. When Treaty No. 8 was signed, hunting and fishing was our peoples only source of livelihood. Protecting our ability to hunt and fish was the paramount concern of my great grandfather Moostoos and the other headmen who signed the Treaty. Hunting for us was different than our neighbours to the south who hunted on the plains. Our people hunted in a wooded country, and instead of moving in Bands, we hunted individually or in family groups. At the time the Treaty was signed, the woods and the lakes provided a rich source of fish and game for us, and we wanted to protect our ability to hunt and fish for future generations.

Under the terms of Treaty No. 8, we agreed to give up some of our lands for settlement in exchange for certain rights and interests in land. These rights included the right to pursue our usual vocations of hunting, trapping and fishing throughout the surrendered land as we had always done, except on lands that were taken up for settlement.

The importance of hunting and fishing is reflected in the report of the Commissioners who negotiated Treaty No. 8. I have brought with me copies of Treaty No. 8 and the Commissioners' report, which our lawyers will provide

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to you. I will read to you one section of the Commissioners' report which I think is important for you to be aware of.

The Commissioners wrote:

"Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished, went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. *But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interests of the Indians, and were found necessary in order to protect the fish and fur bearing animals would be made, and that they would be as free to hunt and fish after the Treaty as they would be if they never entered into it.*"

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You can see from this quote the promise that was made to us. We were promised that we would be as free to hunt and fish after the Treaty as we would be, if we had never entered into it.

My brother, Wayne Badger, was charged with hunting a moose without a license. His case was appealed to the Supreme Court of Canada on the constitutional question of the effect of the Natural Resources Transfer Agreement on Treaty 8. Last month, the Supreme Court released its decision in the Badger case. The Court held that the oral promise of the Treaty Commissioners that we would be free to fish and hunt as we had always done, is as important as the written terms of the Treaty. This promise, the court said, was a sacred promise and the Crown's honour requires that the crown fulfill its promises to the Aboriginal people of this country.

The Supreme Court also emphasized the following statement by Chief Justice Dickson in the Sparrow case:

The way in which a legislative objective and regulatory regime is to be attained must uphold the honour of the crown and must be in keeping with the unique contemporary relationship, grounded in history and policy, between the Crown and Canada's aboriginal people. The extent of regulatory impact on an existing aboriginal rights may be scrutinized so as to ensure recognition and affirmation.

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There are two aspects of our right to hunt and fish and pursue our traditional vocations, that I think it is important for you to know. Firstly, our right to hunt on unsettled lands has been held by the courts to be an interest in land and it is an interest that is different from that of non-Indians. Non-Indians have no general rights of hunting.

Secondly, the Supreme Court of Canada has made it very clear in the Sparrow and Badger cases that the Crown has a fiduciary obligation to First Nations to honour the treaties and to protect the rights that the First Nations understood that they were being granted when they signed the treaties.

When the court spoke of the honour of the Crown, it was in the context of the provincial and federal Crown. The provincial Crown, including Alberta Environmental Protection, has a fiduciary obligation to uphold and protect our treaty right to pursue our traditional occupations and cultural pursuits. The Court also affirmed that the provincial crown had assumed an obligation to ensure the continuance of the supply of fish and game for the benefit of First Nations. By virtue of Article 12 of the Natural Resources Transfer Agreement, this obligation is part of the constitution of Canada. The opening lines of article 12 are as follows:

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In order to secure to the Indians of the Province that continuance of the supply of game and fish for their support and sustenance, Canada agrees that the laws respecting game enforced in the Province from time to time shall apply to the Indians within the boundaries thereof, provided however, that the said Indians shall have the right, which *the Province hereby assures to them,* of hunting, trapping and fishing game and fish for food at all seasons of the years on all unoccupied Crown Land and on any other lands to which the said Indians may have a right of access.

If the land and the fish and the wildlife are damaged by pollution, then our treaty rights are also damaged. We cannot hunt and fish and trap and gather, if the subject matter of those rights is eliminated or harmed because of pollution.

That is the reason why we are concerned about the Alberta Special Waste Treatment Centre. As you know, it is situated in the Swan Hills which are largely unoccupied and unsettled lands. These are also lands which are rich in wildlife and which have been historically used by my people for hunting, trapping, fishing and gathering, and are still used by them for these purposes.

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Within a 30 mile radius of the Swan Hills, there are 26 trap lines registered to Treaty Indians. The names of those Treaty Trappers are included in our notice of appeal. We have a map showing you the location of those trap lines which our lawyers will provide to you. Our people go out on their trap lines for weeks at a time, and some of our oldtimers spend months and months on their trap line. They do not just trap, but also hunt and fish and gather berries and herbs. Our people also use the Swan Hills for gathering berries, as they are particularly plentiful here.

The elder and medicine man, Harvey Giroux, spoke at the last hearing before the NRCB and he spoke of how he used to go to places in the Swan Hills, which he considered sacred or special, to gather plants to make his medicines. For many years one of the places he went to gather plants and herbs was Windy lake, which is near the plant site.

He no longer goes there because he is afraid that the herbs will no longer help people, because of the pollution. Another elder, Bertha Chalifoux told the NRCB at the last hearing, that she no longer goes to the Swan Hills area to pick berries, because she does not know how far the pollution travels or what damage it does.

Our counsel will provide to the Board a copy of the testimony of the elders which I have just referred to.

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Even if some of our people have been scared away from using the area around the plant for their traditional vocations, their right to do pursue their traditional vocations remains a fundamental and constitutionally protected right.

We are concerned about the incremental and cumulative affects of industrial development in our traditional land that is still unsettled and available to us for hunting and fishing. Over time, developments like Chem-Securities hazardous waste treatment centre will put more and more chemicals and pollution into the environment and we are afraid that one day the fish and wildlife will die off or be too polluted or sick to eat and it will be too late fix the damage done.

We believe that we must keep careful watch and monitor the impact of the Swan Hills treatment centre and other industrial developments on our traditional lands. We must protect our treaty rights by ensuring that Alberta Environmental Protection and Chem-security protect the environment. This can only be achieved if the best and most effective precautions and safety measures are implemented by Chem-Security. We do not believe that Alberta Environment has done so in the latest Approval it has issued to Chem-Security. That is why we are bringing this appeal.

I and my lawyers would be happy to answer any questions that you may have.

Thank you for giving our submission careful consideration.