Community Knowledge and Perspectives in Support of Specific Claim Negotiations

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Overview

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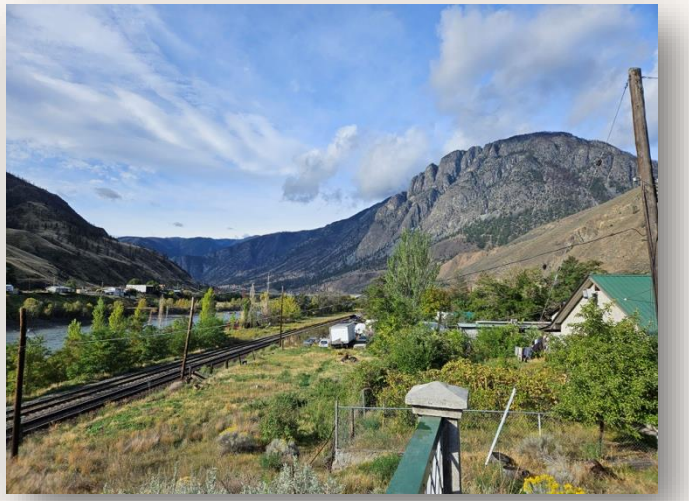

Overview of Compensation in Specific Claims Negotiations

- Canada's *Specific Claims Policy* says that "a claimant band shall be compensated for the loss it has incurred and the damages it has suffered as a consequence of the breach by the federal government of its legal obligations. This compensation will be based on legal principles."
- Common categories of compensation include:
  - Current Unimproved Market Value – *present and future losses*
  - Historic Unimproved Market Value – *no compensation paid for lawful taking*
  - Loss of Use – *past losses*
  - Injurious Affection – *damage to adjacent lands*
  - Timber losses
  - Fishing losses
  - Agricultural losses
  - Mining/Mineral losses
  - Land acquisition costs
  - Negotiation costs

Other Losses and Impacts

- Canada's *Specific Claims Policy* has limitations:
  - "Compensation shall not include any additional amount based on "special value to the owner" unless it can be established that the land in question had special economic value to the claimant band, over and above its market value." (i.e. cultural losses)
  - "Compensation shall not include any additional amount for the forcible taking of land."
- So how do specific claim settlements account for other impacts and losses identified by First Nations? Losses and impacts such as:
  - Loss and destruction of burial and cultural heritage sites
  - Loss of language, learning, and teaching opportunities on the land
  - Loss of trails and access to fishing areas, harvesting grounds, sacred areas
  - Loss of lifestyle, culture, and way of life
  - Added expenses to individuals and families to move and rebuild
  - Generational losses and trauma
  - Safety impacts, noise, pollution due to highway and railway infrastructure

Community Reports

- Community Impacts Reports
  - Supports the retelling of the claim from the community perspective
  - Recounts past, present, and future impacts that must be recognized by Canada
  - Records and memorializes impacts and stories from Knowledge Holders and Elders
  - Can support with identifying new categories of compensation to help increase overall settlement
- Community Research Reports
  - Supports the retelling of the claim from the community perspective
  - Records and memorializes impacts and stories from Knowledge Holders and Elders
  - Useful in identifying areas of use and occupation in support of confirming and/or expanding the boundaries of a claim area

Working with Community: Coordination and Interviews

Working with Community: Practices

Deliverables

Legal Principles

- Equitable compensation includes the principles of restitution, reconciliation, deterrence, fairness, and proportionality;
- The just resolution of claims arising from the Crown's failure to honour its obligations is essential to reconciliation;
- The goal of equitable compensation is to restore what the claimant has lost due to the breach and enforce the trust at the heart of the fiduciary relationship;
- The claimant's losses are assessed, and losses are compensable whether they are susceptible to precise calculation or not;
- The claimant's loss includes opportunities that were not realized because of the breach;

Legal Principles

- Equitable compensation must reflect the importance of the relationship between the claimant and the Crown;
- The claimant's loss must be assessed with the benefit of hindsight and not based on what was foreseeable or known at the date of the breach;
- The losses are to be determined on a common-sense view of causation;
- We must assume the claimant would have made the most favourable use of the trust property;
- We must assume that Canada would have carried out its duties in a lawful manner; and
- Compensation must uphold the honour of the Crown and serve the overarching goal of reconciliation.

Conclusion

- Community knowledge, in the form of Community Impact Reports and Community Research Reports, is part of a broad effort to change how Canada approaches the resolution of specific claims, and is helping First Nations reach better settlements and meaningful redress;
- We thank all of the First Nations, Elders, and community members we have worked with over the past few years on these reports.

Comments / Questions

Thank You!

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