

SIKSIKA NATION

TOPGAS AND OMAC SPECIFIC CLAIM

November 1, 2023

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BACKGROUND

BACKGROUND - HISTORICAL

- Siksika surrendered certain lands to Canada to enable the development of natural gas reserves on the Reserve.
- Contrary to the law, Canada allowed producers to deduct “take or pay” gas financing charges (“TOPGAS”) and operating, marketing and administration charges (“OMAC”) when calculating the royalties due for natural gas produced on the Reserve.
- Ultimately, Canada reduced the amount of royalties paid on natural gas produced on the Reserve and denied Siksika the use and benefit of these royalties.

BACKGROUND - HISTORICAL

- Canada failed to ensure that the producers were properly calculating their royalty payments in accordance with the law.
- Canada owed a fiduciary obligation to act in Siksika's best interest, as well as the fiduciary duties of loyalty, good faith and full disclosure.
- Canada's breaches of its fiduciary and statutory obligations form the basis of the TOPGAS and OMAC Specific Claim.

BACKGROUND – SPECIFIC CLAIM

- In April 2021, Siksika submitted the TOPGAS and OMAC Specific Claim under the Specific Claims Policy.
- The Specific Claim alleged that Canada failed to fulfill its fiduciary duties with respect to its exercise of unilateral discretionary control over Siksika's interests in the natural gas reserves it surrendered to Canada.
- In November 2021, Canada offered to negotiate the TOPGAS and OMAC Specific Claim.

BACKGROUND – SPECIFIC CLAIM

- Siksika and Canada have agreed to settle the TOPGAS and OMAC Specific Claim.
- The Siksika Nation TOPGAS & OMAC Specific Claim Settlement Agreement sets out the terms of the settlement.

SETTLEMENT AGREEMENT

COMPENSATION

- Canada will pay Siksika \$5,162,198.00 to settle the TOPGAS and OMAC Specific Claim.
- Siksika directs where the compensation is to be paid.
- The compensation will be paid directly to Siksika and will not be considered “Indian moneys”.
- This means that Siksika will be solely responsible for how the compensation is used and ISC will not have any oversight of the monies once they are paid to Siksika.
- Siksika agrees in the Settlement Agreement that the compensation will be used for Siksika’s benefit.

COMPENSATION

- Canada will not hold the compensation amount in trust for Siksika and cannot tell Siksika how the compensation should be used.
- The amounts will be paid into an account at a financial institution designated by Siksika

RELEASE

- Siksika and its members release Canada from any proceeding relating to the TOPGAS and OMAC Specific Claim, the compensation, and the negotiation and ratification of the Settlement Agreement.
- Siksika agrees to discontinue any outstanding litigation.

INDEMNITY

- Siksika will indemnify Canada for any future claims relating to the TOPGAS and OMAC Claim, the compensation, and the negotiation and ratification of the Settlement Agreement.
- Very low risk of his occurring given the very specific facts of the Claim

RATIFICATION

- Siksika will ratify the Settlement Agreement by Band Council Resolution.

MERITS OF SETTLEMENT/ OPTIONS

MERITS OF SETTLEMENT

- This is an opportunity to settle claim that has been outstanding for 45 years.
- The current federal government is favourable to First Nation claims and this may not be the case if the government changes in the immediate future.

MERITS OF SETTLEMENT

- The negotiated compensation is supported by research done independently by Siksika's oil and gas consultant and by Canada's own research.
- The negotiated amount is higher than what was initially offered by Canada in February 2022 (under \$3 million) based on the formula applied from other TOPGAS and OMAC claims with other First Nations.

OTHER OPTIONS

- Pursuing the Specific Claim before the Specific Claims Tribunal would take many years, result in high costs and may ultimately lead to a compensation award that is less than the negotiated amount.
- We recommend the settlement of the TOPGAS and OMAC Specific Claim as being in the best interests of Siksika Nation.

Q & A

THANK YOU

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