

Unwavering

Beaver Lake Cree Nation's Challenge of Alberta's Land-Use Approvals Moves Forward

A Cold Lake Air Weapons Range 'No Trespassing' sign marks one of the tens of thousands of authorizations by Alberta and Canada that Beaver Lake Cree Nation asserts have made their traditional hunting and gathering grounds all but unusable for the exercise of their Treaty rights.

Photo © Beaver Lake Cree Nation



BY CAROLYN CAMPBELL

Beaver Lake Cree Nation continues to progress in an epic struggle for its rights. In 2008, it filed a legal claim. It asserts that land-use authorizations by the Crown (Albertan and Canadian governments) have so impaired the ability of Beaver Lake Cree Nation members to carry out their way of life, that the Crown has unjustifiably breached Beaver Lake Cree Nation's rights as a signatory to Treaty 6.

Though Beaver Lake Cree Nation's traditional territory is in both current-day Alberta and Saskatchewan, their claim is about unjustified Treaty infringement in the Alberta core traditional territory. This is a roughly rectangular area of northeast Alberta, covering 39,000 square kilometres, about the size of Switzerland. It extends from the Saskatchewan border westward to the Athabasca River, and from Smoky Lake's latitude about 20 townships north to the House and Christina Rivers.

The boreal forests and wetlands of this territory

overlap large portions of what is now Alberta's south Athabasca and Cold Lake oil sands regions. That's why Beaver Lake's lawsuit was nicknamed the "Tar Sands Trial" initially — now, it's more commonly called the "Defend the Treaties" case. Beaver Lake Cree Nation estimates a staggering 88 percent of its Alberta core traditional territory lands have been taken up by oil and gas infrastructure. That includes 35,000 oil and gas sites. There are also extensive pipelines, seismic lines and road networks, plus the entire Alberta side of the Cold Lake Air Weapons Range.

The overall, transformative claim

Treaty 6 was signed in 1876 by the ancestors of today's Beaver Lake Cree Nation members. They have documented the commitments made by Canada's treaty negotiator Morris in that process, including:

"I see the Queen's counsellors taking the Indian by the hand saying we are brothers. We will lift you up, we will teach you, if you will learn, the cunning of the



Ensuring the meaningful practice of Beaver Lake Cree members' way of life, including fishing, is central to their 'Defend the Treaties' lawsuit.

Photo © Beaver Lake Cree Nation

white man. All along that road I see Indians gathering, I see gardens growing and houses building. I see them receiving money from the Queen's commissioners to purchase clothing for their children. At the same time I see them enjoying their hunting and fishing as before. I see them retaining their old mode of living with the Queen's gift in addition."

Beaver Lake Cree Nation is documenting how developments authorized by Alberta and Canada since then have transformed and destroyed the lands their members have relied upon to carry out their way of life. As a result, they can no longer meaningfully practice their way of life as promised. This infringement of Treaty rights cannot be justified. By failing to manage the cumulative effects of development on Beaver Lake Cree Nation's way of life, Alberta and Canada have breached the Treaty. The Nation seeks equitable compensation for damages. They also seek processes that include and respect them in development decisions in their territory. In this way, they will ensure they can continue to meaningfully practice their way of life.

As noted by Beaver Lake Cree Nation member Crystal Lameman — who is a proud mother as well as the Nation's government relations advisor and Treaty coordinator — this claim is about the Nation's right to share authority in land decisions, as stewards of the land. It is not about pitting economics or industry against First Nations' authority and consent. It is about "an intentional Treaty relationship, grounded in a co-existence of peace and sharing. And it's about our right to say yes or no and for that right and response to be honoured."

As Crystal has observed, in her updates on the Nation's long journey to seek justice, a victory for Beaver Lake Cree would be a win for all of us, as treaty people, and for all who breathe air and drink water. It would help us move towards "economics and industries that are grounded in environmental protection and the protection of a liveable planet — not only for us here now but most importantly for those generations that are yet to come, regardless if they're walking, crawling, swimming or flying."

Struggles to move the claim forward

When it was filed in 2008, the lawsuit was the first to base a rights infringement on the cumulative effects of Crown authorizations upon a way of life. In response, Alberta and Canada filed numerous arguments against the very legitimacy of the claim. These challenges took until 2013 to decide, when the Alberta Court of Appeal ruled that the cumulative effects claim was valid to be tried in court.

After 10 years of defending the case in pretrial challenges, and partway through its massive, expensive effort to assemble all its evidence for trial, Beaver Lake Cree Nation took another unusual step. In 2018 it asked the courts for an Advanced Cost Order. Such an order would require Alberta and Canada to pay part of the Nation's costs of bringing the case to trial. To get this order, BLCN had to prove the merit and public importance of the case; it did so in a 2019 court ruling. However, it also had to prove it could not carry the legal costs on its own. That issue, its financial capacity, was appealed first by the Crown and then by Beaver Lake Cree Nation, right up to the Supreme Court. In 2022, the Supreme Court ruled that Beaver Lake Cree Nation's financial resources were indeed too limited, given their other pressing needs, to expect them to exhaust all their funds on this trial. The Supreme Court also set out a new test for determining advanced costs, which may assist other Indigenous rights claims.

After the Supreme Court decision, the Canadian government negotiated a \$2.6 million one-time payment with Beaver Lake Cree Nation. The Alberta government chose to return to a trial court for a cost ruling. Finally, on August 30, 2024, Alberta was ordered to pay \$1.5 million per year towards the Nation's legal costs until the case is decided. Beaver Lake Cree Nation was also ordered to pay \$150,000 per year, and to bear any litigation costs above the annual payments ordered.

Meanwhile, Alberta and Canada asked for a significant limitation to the case's scope. They argued that land-use authorizations should only be considered up to 2008, the year the claim was filed. However, on August 22, 2024, the court sided with Beaver Lake Cree Nation, ruling that their claim includes past and future damages for Crown actions up to the time of the trial. Alberta and Canada could not avoid accountability for the impacts of substantial developments they've continued to authorize since 2008. This could include authorizing further extensive pipelines and facilities for carbon capture installations, proposed by oil sands

companies. Now this case is expected to come to trial in 2026.

Hopeful signs from a Treaty 8 decision

In June 2021, BC's Supreme Court ruled in favour of Blueberry River First Nations, in the *Yahey versus British Columbia* case. It was filed after Beaver Lake Cree's claim, but came to trial earlier. The Blueberry claim is on Treaty 8 lands in northeast B.C.'s Fort St. John area. Although it's about Treaty 8, B.C. government actions and B.C. land-use planning, its logic may influence a Beaver Lake Cree Nation outcome. Treaty 8 also extends across most of northern Alberta, so Blueberry could also support Alberta Treaty 8 First Nations to uphold their rights.

In her Blueberry decision, Justice Burke found "The province cannot take up so much land such that Blueberry can no longer meaningfully exercise its rights to hunt, trap and fish in a manner consistent with its way of life. The province's power to take up lands must be exercised in a way that upholds the promises and protections in the Treaty ... [B.C.] has not, to date, shown that it has an appropriate, enforceable way of taking into account Blueberry's treaty rights or assessing the cumulative impacts of development on the meaningful exercise of these rights, or that it has developed ways to ensure that Blueberry can continue to exercise these rights in a manner consistent with its way of life. The province's discretionary decision-making processes do not adequately consider cumulative effects and the impact on treaty rights..."

Because of the court's orders in Blueberry, by January 2023, B.C. had negotiated implementation agreements with Blueberry River First Nations and other nearby Treaty 8 Nations. There will be "collaborative management" of wildlife populations and habitat, working towards "co-management." Some areas immediately received permanent protection from new petroleum and natural gas activities and forestry, other areas have interim rules to reduce new disturbance. Meanwhile, multiple watershed-level land-use plans will be developed within the next three years to assess and manage cumulative effects. This relationship will unfold imperfectly, yet it helps us see how a successful Beaver Lake Cree Nation claim could affect Alberta land use and wildlife management.

After 16 years of unwavering efforts, Beaver Lake Cree Nation's rights claim is moving towards trial. A decision can't come soon enough to transform land use relationships with Indigenous rights holders here in Alberta, and beyond. 🌱