

**Deanne Ennis**

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**Subject:** FW: Links to Decisions on two Section 16 Applications**From:** Buckham, Meghan IRR:EX [<mailto:Meghan.Buckham@gov.bc.ca>]**Sent:** December-04-18 9:12 AM**Subject:** Links to Decisions on two Section 16 Applications

Good morning all,

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) has made decisions on two Section 16 Applications submitted by the Ministry of Indigenous Relations and Reconciliation earlier this year. These Section 16 applications were submitted as an interim measure to support ongoing Treaty Land Entitlement negotiations with Blueberry River First Nations (BRFN) in the Pink Mountain area and South of BRFN's existing reserve.

You can review the outcome of the decision-making process and the reasons for decision on FLNRORD's Applications and Reasons for Decision website by following the links below. The links below also provide further information and background on the applications.

Pink Mountain: <https://arfd.gov.bc.ca/ApplicationPosting/viewpost.jsp?PostID=54548>

South of IR 205: <https://arfd.gov.bc.ca/ApplicationPosting/viewpost.jsp?PostID=54549>

Regards,  
Meghan

**Meghan Buckham** | Regional Negotiator  
Ministry of Indigenous Relations and Reconciliation  
Negotiations and Regional Operations Division | Northeast

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## Treaty Land Entitlement Background

- Treaty Land Entitlement (TLE) is a specific claim for a land debt owed to Treaty 8 First Nations, from the time of signing the Treaty. Five Treaty 8 First Nations – Blueberry River, Doig River, Halfway River, Sauleau and West Moberly - did not receive all the land they were entitled to under the terms of the Treaty. This land debt is still outstanding one hundred years later. TLE settlement will right this historic wrong by providing to the Nations the land they should have received under the Treaty.
- In 1900, Blueberry River's ancestors signed Treaty No. 8 in BC. One of the solemn promises undertaken by the Crown in Treaty 8 was to set aside reserve land equivalent to 128 acres per member, after consulting Blueberry's ancestors about the location of the reserve. This promise was never completely fulfilled.
- Blueberry River has selected 5 parcels for its TLE settlement at Pink Mountain, South of IR 205, Dancing Grounds, Red Creek and Charlie Lake. The selection areas were chosen for two main reasons: 1) Blueberry members have an ancient connection to these lands and they are central to Blueberry history, culture and way of life; and 2) these lands are seen by Blueberry as fulfilling vital purposes for the community's future, including for residential and economic purposes. Blueberry's TLE selections are not intended to interfere with lands that are owned or leased to third parties. The TLE process is intended to accommodate existing interests in or near the TLE selection areas where possible.
- These land selections are subject to ongoing negotiations and review. As an interim measure to support this process, the Ministry of Indigenous Relations and Reconciliation (MIRR) is seeking the establishment of *Land Act* reserves so that no additional *Land Act* applications are approved on these parcels of land, while the negotiations are on-going.
- In order to hold the land in its current state until a final settlement is reached, MIRR has applied for a Section 16 under the *Land Act*. MIRR is not requesting any changes to the existing *Land Act* reserve for watershed protection at Charlie Lake at this time.
- Section 16 reserves may be placed on Crown land as a means of preventing or restricting the disposition of the land due to an acknowledged value or concern – in this case for the purposes of TLE. Parcels receiving *Land Act* designations are still Crown lands and access remains open for activities such as hunting and fishing. The reserves also do not restrict existing tenure holders authorized under legislation outside of the *Land Act*.
- The Province and Blueberry River are undertaking a detailed review of all the potential land parcels that have been selected. All existing interests and encumbrances on the land will be identified and addressed.
- Stakeholders will have multiple opportunities for input into the process and concerns will be taken into consideration before decisions are made on the Section 16 and potential future transfer of TLE lands.

## Treaty Land Entitlement Backgrounder

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**Reasons for Decision**  
**Establishment of a Section 17 *Land Act* Withdrawal to Support**  
**Blueberry River First Nation – Treaty Land Entitlement Negotiations**  
**Pink Mountain Selection Area – File: 8015884**

**Purpose:**

This document explains my decision, triggered by an application from the Ministry of Indigenous Relations and Reconciliation (MIRR), to establish a section 17 Withdrawal over the Pink Mountain Selection parcel of land, to support Treaty Land Entitlement (TLE) negotiations and reconciliation with the Blueberry River First Nation (BRFN).

**Authority:**

I am a Director of Authorizations with delegated authority to make decisions under the *Land Act*. Specifically I have delegated authority for decisions under sections 16 and 17 of the *Land Act*, with respect to the Withdrawal of Crown land from disposition under the *Land Act*. The decision test, specified in these sections of the *Land Act* is what “the minister (or delegate) considers advisable in the public interest”. **A *Land Act* Withdrawal does not prevent the issuance of tenures under other legislation.**

**Considerations – Application of *Land Act* Withdrawals to the BRFN TLE process:**

Treaty First Nations in Canada can file a TLE claim for land they were entitled to under a treaty, but did not receive. BRFN, a Treaty 8 signatory nation, has filed a TLE claim; that claim was accepted and negotiations with Canada and British Columbia have been ongoing for several years. While the process is far from complete, a land quantum and target land selection areas have been identified. MIRR has applied to have section 16, *Land Act* Withdrawals established over these selection areas to hold the land in its current state until a final settlement is reached. I am addressing applications for the establishment of Withdrawals over four selection areas: Pink Mountain, IR 205 (adjacent), Red Creek, and Charlie Lake. In this section I deal with my considerations of the process and issues related to the four decisions collectively. Specific considerations for the individual selection areas are addressed below.

Consultation on the four Withdrawal decisions was conducted with First Nations whose treaty rights could be impacted by these decisions. With the exception of the Pink Mountain selection area (see below) no potential impacts on treaty rights were identified by any of the First Nations who were consulted with. One nation requested to be contacted on the commencement of the project, if the scope of the project changes, or other concerns that arise – cultural or environmental issues. The ministry responded explaining that the establishment of a Withdrawal does not authorize development but is intended to hold the land in its current state until a final TLE settlement is reached. Additional consultation and consideration of potential impacts would be required as part of a process towards any decision to transfer the lands. In addition, concerns were raised about the potential of land transfer in the Pink Mountain selection area impacting access and the ability of another First Nation to practice treaty rights. This will be dealt with under the considerations specific to the Pink Mountain selection area.

In 2016 stakeholder concerns with the TLE negotiation process and with specific selection areas were raised and an MLA Stakeholder Advisory Committee was formed. A number of principles or concerns were identified by the committee.

1. Transparency and Consultation: Public, accessible process with full disclosure and genuine opportunity for input to the negotiations.
2. Protection of Civil Rights and Democratic Principles: Transparent, accountable consultations with ALL people involved are core values of democracy.
3. Protection and Stewardship of Public Lands and Watershed: Specific concerns with the Charlie Lake selection area. Specific considerations for the individual selection areas are discussed below.
4. Adherence to Land Use Law and Policy: Potential changes to long standing land use decisions and policies.
5. Historic Use of Properties: Property owners have made investment decision based on the understanding that Crown land would remain in perpetuity.
6. Crown Lands are a Public Asset and should be preserved for the use of all Canadians: Specific concerns with the Charlie Lake selection area. Specific considerations for the individual selection areas are discussed below.
7. The Minister is Accountable to the Electorate: A highly divisive issue may damage community relationships; elected representatives have obligations to the full electorate and an open and transparent process.

A robust stakeholder engagement process has been implemented with support from a consultant. Information has been provided to stakeholder representatives, meetings have been held and other opportunities for input have been provided. I have reviewed The Stakeholder Petitions, written submissions and summaries of stakeholder input prepared by government representatives. I met with stakeholder representatives on April 19, 2018 to directly receive input on these decisions. At that meeting I heard from members of the BRFN who disagreed with the current selection areas and challenge the role of Chief and Council in the TLE negotiations. The Chief and Council are the recognized representatives of the BRFN. The process to identify selection areas has been quite comprehensive and I consider the current selection areas to be a legitimate expression of the interests of the BRFN.

One stakeholder concern is that the establishment of a *Land Act* Withdrawal would essentially pre-determine the eventual transfer of these parcels to BRFN. I must stress that my decisions only deal with the application to establish Withdrawals from disposition. Additional work is required before a decision to transfer will be considered. MIRR has committed to further stakeholder engagement; selection areas could change, and any eventual decision to transfer will be made by Cabinet. Land use decisions and designations are always subject to review and change by the appropriate authority. No current condition, status or designation can be relied on to remain in perpetuity.

Finding land parcels that meet the interests of the BRFN while minimizing the overlap with existing encumbrances and stakeholder interests has been a lengthily and challenging process. Many areas of interest to the BRFN have been previously taken up and may thus be unavailable or unsuitable for TLE selection. The intent of the applications is to withdraw the selection areas from disposition, or to prevent further land within the selection areas from being taken up under

*Land Act* dispositions while negotiations toward a final settlement of the TLE claim are ongoing. The requested establishment of Withdrawals is also viewed as a demonstration of good faith to support the negotiation process and ultimate settlement of the TLE claim.

I must also consider the clearly stated public interest commitment, to true, lasting reconciliation with First Nations, implementing the United Nations Declaration on the Rights of Indigenous Peoples and the Calls to Action of the Truth and Reconciliation Commission. Settlement of the TLE claim would contribute to reconciliation with the BRFN, and the establishment of *Land Act* Withdrawals over the identified selection areas would support the TLE negotiations. Having considered the varied interests and concerns, I have decided that it is advisable in the public interest, in general, to consider establishing *Land Act* Withdrawals over selection areas in support of the BRFN, TLE negotiations. Each of the individual applications for the specific selection areas will also be considered.

**Considerations – Section 16 Withdrawal vs. Section 17 Conditional Withdrawal:**

MIRR has requested the establishment of section 16 Withdrawals over the four selection areas. I also have the option of considering a section 17 Conditional Withdrawal. A section 16 Withdrawal is often perceived as “stronger protection” than a section 17 Conditional Withdrawal. The differences between these two sections are more subtle, and I must consider the **purpose** of the requested withdrawal as well as the precise wording and application of the language in the *Land Act*. MIRR has requested that these lands be withdrawn from disposition **“to hold the land in its current state until a final settlement is reached”**.

**Withdrawal from disposition**

**16** (1) The minister may temporarily withdraw Crown land from disposition under this Act for any purpose the minister considers advisable in the public interest, including for the use of a government body.

(2) The minister may authorize a government body to place, construct, maintain or operate any works, structures or other improvements on the land withdrawn under subsection (1).

**Conditional withdrawal**

**17** (1) The minister may, if the minister considers it advisable in the public interest, designate a portion of Crown land for a particular use or for the conservation of natural or heritage resources.

(2) A portion of Crown land designated under subsection (1) is withdrawn from disposition under this Act for any purpose that is not, in the opinion of the minister, compatible with the purpose for which the land has been designated.

**Section 16** provides authority for Crown land to be withdrawn from disposition ‘for any purpose including use by a government body’. Under subsection 2, the minister may authorize a government body to develop the land.

**Section 17** provides authority to ‘designate Crown land for a particular use or for the conservation of natural or heritage resources’. There is no provision for use or development by a government body. Under subsection 2, designated land is withdrawn for any purpose that is not compatible with the purpose of the designated land.

In practice, section 16 is often used to temporarily hold land that is under consideration for differing development options or for major or strategic development. The withdrawal prevents strategic land parcels from being fragmented or obtained by speculators or potential opponents of

strategic development opportunities. A common application is to hold strategic aggregate (sand, gravel, rock) sites along highway corridors for future maintenance and improvement projects.

Section 17 provides for land to be designated for a particular use but it allows for dispositions that are compatible with that particular use. I consider supporting the TLE negotiations with BRFN to be a particular use, and it may be quite appropriate to consider compatible dispositions while those negotiations continue. For example, if BRFN wanted a tenure to conduct investigative work to assess the land for future development potential. Some of the selection areas have pre-existing tenures in place. Section 17 would allow these tenures to be considered for replacement as their terms come due; section 16 would not. Section 17 aligns better with the requested purpose “to hold the land in its current state” and further clarification that the intent is to deal with conflicting tenures during considerations for land transfer, not as part of the considerations for these withdrawal decisions.

A further consideration is that two of the selection areas are covered by pre-existing section 16 Withdrawals, for other purposes. Establishing a new section 16 Withdrawal over an existing section 16 Withdrawal does not create a conflict. The purpose and term may be different and one could remain in place even if the other expired or was cancelled or amended. Overlapping a section 17 Conditional Withdrawal with a section 16 Withdrawal would be ineffective as the ‘compatible disposition’ provision of section 17 would have no effect on land that is also withdrawn under section 16. In order to establish a section 17 Conditional Withdrawal in these circumstances I would first need to consider if it is advisable in the public interest to amend or cancel the section 16 Withdrawal to eliminate the overlap.

Generally I consider a section 17 Conditional Withdrawal to be the preferred mechanism to support reconciliation and TLE negotiations, however, in some specific circumstances a section 16 Withdrawal may be more appropriate. I will address these considerations for each of the four selection areas.

### **Considerations – Pink Mountain Selection Area:**

The Pink Mountain selection area encompasses 5750.8 ha. The BRFN have identified this as a special place to practice and teach traditional ways such as hunting, fishing, trapping and collecting medicinal flowers and plants. BRFN members have described it as a healthy place with clean air and good water and a place that is calm, peaceful and safe.

Another First Nation and stakeholders have expressed concern that access to public lands in the area is already being restricted and could be further restricted if the selection area is ultimately transferred to BRFN. A decision to establish a Withdrawal does not predetermine a transfer decision nor does it provide any authority to restrict access. It would, however, support the TLE negotiations and the potential for a settlement and thus could contribute to the eventual transfer of the Pink Mountain selection area. MIRR is the lead agency for ongoing TLE negotiations and has committed to deep consultations with First Nations and a robust stakeholder engagement process. I am satisfied that the issue of access will be given appropriate consideration in the ongoing negotiation process and any eventual decision to transfer land in the Pink Mountain selection area.

A Notation of Interest (NOI) was established over a larger area in 2016. The NOI ensured that MIRR – BRFN interest was identified, but did not withdraw the area from disposition. Negotiations have now more clearly identified a smaller selection area and the withdrawal from disposition is being requested for that area. There are three overlapping encumbrances on the land within the selection area, a wind power investigative licence, a gravel quarry and a Ministry of Transportation and Infrastructure, section 16 Withdrawal for aggregate development purposes. A section 17 Conditional Withdrawal would be more appropriate as it would allow the pre-existing tenures to be considered for replacement as ‘compatible’. The small overlap with the section 16 Withdrawal would mean that the ‘compatible disposition’ provision would have no effect on this small overlap area but it could be applied over the much larger remaining area.

**Considerations – Term:**

MIRR requested a five year term. Experience has shown that these negotiations can take longer than anticipated. If a decision to transfer land to BRFN is reached, the process to transfer is complex and can be time consuming. It would not be advisable in the public interest to have to revisit these withdrawal decisions or allow the withdrawals to expire while the negotiations and a potential transfer process are in play. I have decided that a ten year term would be more appropriate in these circumstances. If the process concludes more quickly, a future decision maker could consider cancelling or amending the withdrawal.

**Conclusion:**

Having considered the application from MIRR with specific input from BRFN, First Nations consultation, stakeholder input, referral comments and the Land Use Report prepared by ministry staff, I have decided it is advisable in the public interest to establish a *Land Act*, section 17 Conditional Withdrawal over the Pink Mountain selection area for a term of ten years. The purpose of the conditional withdrawal is: to support Treaty Land Entitlement negotiations and reconciliation with the Blueberry River First Nation.



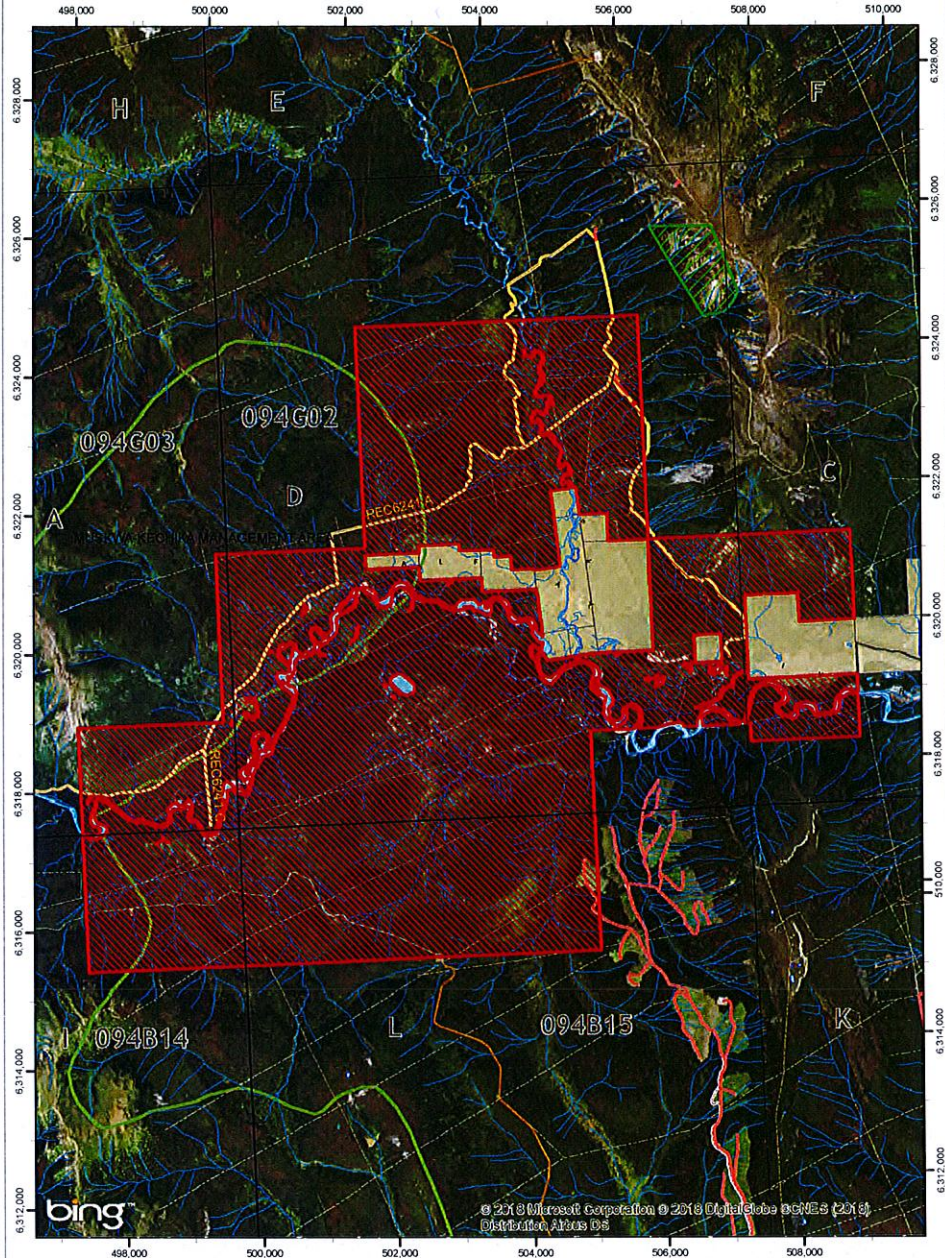
Dave Francis  
Director, Authorization

November 29, 2018




FrontCounterBC

LANDS FILE NO.: 8015884  
APPLICANT: Ministry of Indigenous Relations and Reconciliation  
PURPOSE: New - Map Reserve (S16) - First Nations - Interim Measures  
LOCATION: Pink Mountain  
AREA: 5,750.83 hectares  
BCGS (Lat/Long): 094B.095, 096, 094G.005, 006 (57° 0' 46" N 122° 56' 58" W)



-  Interest Area
-  Main Road
-  Other Road
-  Recreation Trail
-  Well Site
-  Park, Ecological Reserve or Protected Area
-  Muskwa-Kechika Management Area
-  Private Land (Surface)

N



0 0.55 1.1 1.65 2.2  
Kilometers  
1:70,000

Projection: BC ALBERS  
January 18, 2018