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Court File No. F1437-14

FEDERAL COURT

BETWEEN:

CHIEF M. TODD PEIGAN
on behalf of himself and all other members of The Pasqua First Nation
and THE PASQUA FIRST NATION

FEDERAL COURT COUR FÉDÉRALE		D É P O S É
F I L E D	JUN 17 2014	
	MJ. MONTPETIT	
	OTTAWA, ON	

Plaintiffs

— and —

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF SASKATCHEWAN
AS REPRESENTED BY THE ATTORNEY GENERAL OF SASKATCHEWAN

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules, 1998*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

DATE OF ISSUE:

Issued by:.....


M.J. MONTPETIT
REGISTRY OFFICER
AGENT DU GREFFE

Address of Court Office:

90 ~~Elgin~~ ^{Sparks} Street

Ottawa ON K1A 0H9

TO: Department of Justice
284 Wellington Street
Ottawa ON K1A 0H8

Department of Justice
1874 Scarth Street
Regina SK S4P 4B3

CLAIM

1. The Plaintiffs, Chief M. Todd Peigan (hereinafter “Chief Peigan”) and the Pasqua First Nation, seek the following relief:
 - (a) A declaration that Her Majesty the Queen in Right of Canada (hereinafter “Canada”) and Her Majesty the Queen in Right of Saskatchewan (hereinafter “Saskatchewan”) had, and have, a constitutional duty to diligently implement the Saskatchewan Treaty Land Entitlement Framework Agreement dated September 22, 1992 (hereinafter the “Framework Agreement”) dealing with fulfilment of Treaty land entitlement claims and the Pasqua First Nation Treaty Land Entitlement Settlement Agreement dated September 30, 2008 (hereinafter the “Settlement Agreement”) in accordance with the terms contained therein in a prompt and equitable manner and have failed to do so;
 - (b) A declaration that Canada and Saskatchewan had, and have, a constitutional duty to consult with and accommodate the Pasqua First Nation regarding the actual or anticipated impacts of the granting of third party interests with respect to Crown lands as set out in the Framework Agreement and Settlement Agreement and have failed to do so;
 - (c) A declaration that Canada and Saskatchewan are in breach of their fiduciary duties and obligations to the Pasqua First Nation by failing to act in the best interests of the Pasqua First Nation by failing to diligently implement the Framework Agreement and the Settlement Agreement in a prompt and equitable manner;
 - (d) A declaration that Saskatchewan’s conduct in disposing of Crown land and minerals was a breach of constitutional and fiduciary duties owed to the Pasqua First Nation and was inconsistent with the honour of the Crown;

- (e) A declaration that Canada and Saskatchewan have failed to take the necessary steps to implement the Framework Agreement and Settlement Agreement as required by the Undertakings given by each respectively therein and in a manner consistent with the honour of the Crown;
- (f) A declaration that Saskatchewan was unjustly enriched as a result of the lease and/or disposition of Crown lands, both surface and subsurface mineral rights;
- (g) A declaration that Saskatchewan has permitted activities on Crown resource land selected by the Pasqua First Nation that is causing, has caused, or is likely to cause damages to the land and the exercise of Treaty No. 4 and inherent rights;
- (h) A declaration that the Pasqua First Nation is entitled to Crown surface land or minerals, or both, and to access and/or possession thereof;
- (i) A declaration that Canada and Saskatchewan's interpretation of the Framework Agreement and Settlement Agreement requiring the Pasqua First Nation to bear the responsibility of satisfying all third party claims and/or interests on selected land is erroneous, in bad faith, and discriminatory and in breach of section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11 insofar as it creates a precondition rendering fulfilment of the compensation owed by said Agreements an impossibility and is not in keeping with the Crown's usual practice of compensating for takings land without imposing improper preconditions;
- (j) Specific and general common law and equitable damages for economic and other loss in the amount of \$200,000,000.00, or such amount as to be proven at trial, including but not limited to damages for loss of revenue

sharing opportunity pursuant to the *Municipal Tax Sharing (Potash) Act*, Ch M-34, 1978, as amended with respect to lands requested pursuant to the Framework Agreement and Settlement Agreement and denied by Saskatchewan;

- (k) Equitable compensation plus compound interest for breach of fiduciary, common law, equitable, statutory, Crown, and/or constitutional duties, dating back to the first date of the breach, such as to return the Pasqua First Nation to the financial position it would have been in had the honour of the Crown been upheld and the Framework Agreement and Settlement Agreement been properly implemented and any or all of the breaches not occurred;
- (l) An account of received and anticipated profits, revenues, royalties, and taxes and other revenues received by Saskatchewan as a result of the leasing, permitting and/or disposition of surface land or minerals and as a result of the loss of economic opportunity to develop mines or mining business on claimed Treaty land entitlement land;
- (m) An account of all taxes imposed or levied by Saskatchewan pursuant to the *Mineral Taxation Act*, 1983, SS 1983-84, c M-17.1 and *Mineral Rights Tax Regulations*, 1998, RRS, c. M-17.1, Reg 7 or any other applicable statute as a result of Saskatchewan's failure to uphold the honour of the Crown, failure to consult and accommodate, and breach of fiduciary duty to Pasqua First Nation with respect to lands requested pursuant to the Framework Agreement and Settlement Agreement and denied by Saskatchewan;
- (n) In the alternative, a declaration that the compensation aspect of the Framework Agreement and Settlement Agreement must be updated to provide additional financial compensation and access to lands for Pasqua

First Nation for the purpose of Treaty land entitlement calculations in keeping with the honour of the Crown;

- (o) In the further alternative, a declaration that the compensation aspect of the Framework Agreement and Settlement Agreement require updating to recalculate the “price per acre” of land provisions as the delay in facilitating purchases has resulted in a price per acre that is significantly depressed in comparison to the current market;
- (p) Interest as set out in the *Pre-Judgment Interest Act*, SS 1984-85-86, c P-22.2, as amended, or an equity;
- (q) Costs of this action on a solicitor-client basis pursuant to *The Crown Suits (Costs) Act*, RSS 1978, c C-51, or on such basis as this Honourable Court deems just;
- (r) Such further and other relief as this Honourable Court may deem appropriate and just in the circumstances.

THE PARTIES

2. The Pasqua First Nation is an Aboriginal people within the meaning of section 35 of the *Constitution Act, 1982* c.11 (U.K.) Schedule B (hereinafter the “*Constitution Act, 1982*”). The Pasqua First Nation members are “Indians” and the Nation’s Reserve is an “Indian Reserve” under Schedule 2 to the *Constitution Act, 1930* 20-20 George V. c. 26 (U.K.) hereinafter the “*Constitution Act, 1930*”). The Pasqua First Nation is a recognized Indian Band under the *Indian Act*, R.S.C. 1985, c.I-5 (hereinafter the “*Indian Act*”).
3. The Pasqua First Nation and Canada are parties to Treaty No. 4, entered into at Fort Qu’Appelle in 1874. .

4. The Plaintiff, Chief Peigan, is an Indian within the meaning of the *Indian Act*, a member of the Pasqua First Nation, and the elected Chief of the Pasqua First Nation.
5. Her Majesty the Queen in Right of Canada assumes jurisdiction over “Indians and lands reserved for Indians pursuant to Section 91(24) of the *Constitution Act 1867*, 30 & 31, Victoria c.3 (U.K.) hereinafter referred to as the “*Constitution Act, 1867*”) and was charged with the protection of the general welfare of Indians and the protection of Indian interests as set out over time as part of Treaty promises and various legal instruments. These legal instruments include but are not limited to the *Memorandum of Agreement between Canada and Saskatchewan*, 20 March 1930, reprinted in RSC 1985, App II, No. 26, Sched., as varied by *Memorandum of Agreement between Canada and Saskatchewan*, 8 December 1992, confirmed by SS 1993 c.S-31.1 (hereinafter the “*Natural Resources Transfer Agreement*”), and the *Indian Act*.
6. The Attorney General of Canada represents Her Majesty the Queen in Right of Canada.
7. The Attorney General of the Province of Saskatchewan represents Saskatchewan.

TREATY NO. 4 OUTSTANDING RESERVE LAND OBLIGATION

8. The Pasqua First Nation states that Treaty No. 4 provides, *inter alia*, that:

[...] her Majesty the Queen hereby agrees [...] to assign reserves for said Indians, such reserves to be selected by officers of her Majesty’s Government of the Dominion of Canada appointed for that purpose, after conference with each band of the Indians, and to be a sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families.

Reserve land, specifically Indian Reserve No. 79, was set aside for the Pasqua First Nation in or around March 1876 in partial fulfilment of Canada’s Treaty No. 4 obligation to Pasqua First Nation.

9. The Pasqua First Nation Reserve is located approximately thirty miles east of the City of Regina, in the Province of Saskatchewan, and is situated on the southerly side of Pasqua Lake, west of Fort Qu'Appelle.
10. The Pasqua First Nation Reserve initially encompassed an area of 60.2 square miles. Since creation of the the Pasqua First Nation Reserve, undue interference in forms including land surrender and expropriation by Canada have reduced the land base to an area of approximately 36 square miles.
11. The Pasqua First Nation has a registered population of approximately 1975.
12. The Pasqua First Nation states, and the government of Canada has agreed, that it has not received Reserve land sufficient in area to fulfil the requirements of Treaty No. 4 to date.
13. The Pasqua First Nation states that pursuant to the *Natural Resources Transfer Agreement*, Canada transferred to Saskatchewan the administration of all Crown lands, mines and minerals and other natural resources within Saskatchewan, subject to certain exclusions, terms and conditions including that Saskatchewan has an obligation to provide unoccupied Crown land to Canada pursuant to paragraph 10 therein which provides, *inter alia*, as follows:

[...] the Province will, from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown land hereby transferred to its administration, such further areas as the said Superintendent General may, in agreement with the appropriate Minister of the Province, select as necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province, and such areas shall thereafter be administered by Canada in the same way in all respects as if they never passed to the Province under the provisions thereof.

The Pasqua First Nation states that Saskatchewan had, and has, an ongoing obligation to provide unoccupied Crown lands to Canada pursuant to the terms of

the *Natural Resources Transfer Agreement* to allow it to fulfil its outstanding Treaty obligations.

14. Pasqua First Nation was not consulted and did not consent to the development nor the implementation of the unilateral enactment of the *Natural Resources Transfer Agreement*.
15. The Pasqua First Nation furthermore states that the *Natural Resources Transfer Agreement* provides at paragraph 1 therein, *inter alia*, as follows:

In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the *British North America Act, 1867*, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province and the interest of the Crown in the waters and water-powers within the Province under the *North-west Irrigation Act, 1898*, and the *Dominion Water Power Act*, and all sums due or payable for such lands, mines, minerals or royalties, or for interests or rights in or to the use of such waters or water-powers, shall, from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter. [Emphasis added.]

The Pasqua First Nation states that any transfer of the administration of all Crown lands, mines and minerals, and other natural resources by Canada to Saskatchewan was not payable to the province because it was subject to the

existing trust of Treaty rights and First Nations rights and title since time immemorial.

FRAMEWORK AGREEMENT AND SETTLEMENT AGREEMENT

16. On or around September 22, 1992, the Pasqua First Nation states that the Framework Agreement was executed by Canada, Saskatchewan, and 22 of the 26 Indian Bands in Saskatchewan with outstanding treaty land entitlement.
17. In or around 2001, the Pasqua First Nation states that it submitted a claim to Canada with respect to outstanding treaty land entitlement.
18. In or around 2005, the Pasqua First Nation states that Canada accepted its treaty land entitlement claim for negotiation.
19. On September 30, 2008, Canada, Saskatchewan and the Pasqua First Nation executed the Settlement Agreement.
20. The Pasqua First Nation states that in that Settlement Agreement, Canada acknowledged and accepted its failure to that date to fulfil Treaty No. 4 land allotment obligations to Pasqua First Nation, those being one square mile for each family of five or in that proportion for larger or smaller families.
21. Pursuant to the Settlement Agreement, Pasqua First Nation was provided \$8,823,272.85 in compensation. Furthermore, pursuant to the Settlement Agreement, the Pasqua First Nation would have the opportunity to purchase up to 32,504.59 acres of land and that Pasqua First Nation may apply to have it set apart as a Reserve for the use and benefit of the Pasqua First Nation. The shortfall acres, specifically those acres owing to the Pasqua First Nation pursuant to Treaty No. 4, are 6,686.55 acres.
22. The Pasqua First Nation states that the purpose of the Settlement Agreement was to compensate the Pasqua First Nation, which did not receive all the land (including minerals and other natural resources) to which they were entitled to

under Treaty No. 4. Ultimately, the goal of the provision of land pursuant to Treaty No. 4 and the Settlement Agreement is to protect the ancestral rights of the First Nation as now recognized by section 35 of the *Constitution Act, 1982*. Today, these lands serve to “promote and support economic development and self-sufficiency of the Pasqua First Nation.”

23. To that end, the Pasqua First Nation states that the Settlement Agreement operates such that once the Pasqua First Nation acquires its shortfall acres (i.e. 6,686.55 acres), it may use the remaining funds to either acquire lands that will be additional land up to its calculated equity acres (i.e. 32,504.5 acres) or to enhance Pasqua First Nation social and economic development.
24. The Pasqua First Nation states that the following definitions set out in the Settlement Agreement relevant to the Statement of Claim include but are not limited to the following:
 - (a) "Entitlement Land" means Land, Minerals or Improvements in Saskatchewan hereafter Purchased by the Band and which are intended to be set apart as Entitlement Reserve pursuant to the provisions of this Agreement and the Trust Agreement;
 - (b) "Entitlement Reserve" means Entitlement Land which is set apart by Canada as a Reserve for the use and benefit of the Band in accordance with this Agreement;
 - (c) "Fee Simple Mineral Owner" means any Person who is the legal owner of the estate in fee simple, or a share or interest of the estate in fee simple, of any Minerals, and further includes Canada or Saskatchewan, where applicable;
 - (d) "Interest of a Mineral Disposition Holder" means the legal interest of any Person in a Mineral Disposition and includes such an interest in all renewals, conversions, substitutions and replacements of the Mineral

Disposition and any new Mineral Dispositions to which the Mineral Disposition Holder is entitled either by the terms of the Mineral Disposition, provincial or federal legislation, or the policy of Saskatchewan;

- (e) "Land" or "Lands" means real property, chattels real, or any interest therein or in the nature thereof and, unless the context otherwise requires, excludes Minerals and Improvements;
- (f) "Mineral Disposition" means any rights granted by, the Fee Simple Mineral Owner under a lease or any other instrument pursuant to which any Person has obtained the right to explore for, drill for, produce or otherwise extract any Mineral, and includes any right to a share or interest in the proceeds of the production of any Minerals, whether those rights have been granted by the Fee Simple Mineral Owner or not, and any right to compensation pursuant to sections 23 and 23.1 of *The Crown Minerals Act*, S.S. 1984-85-86, c. C-50.2, provided that any of such rights were in force immediately prior to the Purchase of Land or, thereafter, at any time prior to the transfer of Entitlement Land to Canada, but shall be deemed to exclude Third Party Interests and any security interest, mortgage or similar financing arrangements and to also exclude those beneficial interests in Minerals referred to in subsection 5.04(c)(iii) of this Agreement;
- (g) "Mineral Disposition Holder" means any Person who has an interest in a Mineral Disposition and includes the heirs, executors, administrators, personal representatives, agents, successors and assigns thereof;
- (h) "Minerals" means any non-viable substance formed by the processes of nature, irrespective of chemical or physical state, and includes such substances both before and after extraction, or any interest in the same, and further includes any interest or improvement in the nature of a mine

but does not include any surface or ground water, agricultural soil, sand or gravel;

- (i) "Public Purposes" means the utilization or conservation of Minerals for the benefit of the general public of the Province of Saskatchewan, or a substantial portion thereof, as distinguished from purposes which concern particular individuals or estates in Land or Minerals but, for greater certainty, does not include the purpose of earning current, or protecting future, royalties, taxes or other revenues on behalf of Saskatchewan;
- (j) "Public Purposes Plan" means a written plan, document or any other material evidencing an intention respecting the planned utilization or conservation by Saskatchewan of Minerals for Public Purposes;
- (k) "Shortfall Acres" means that area of Land, expressed in acres (including all existing Minerals in respect thereof to be hereafter Purchased and set apart as an Entitlement Reserve or Entitlement Reserves, the exact acreage of which is referred to in section 2.06 (which Land is, for greater certainty, in addition to the Band's existing Reserve land), and which the parties agree is 6,686.55 acres;
- (l) "Third Party Interest" means the legal interest of any Person, other than a party hereto, in Land, Minerals or Improvements and, without in any way limiting the generality of the foregoing, includes the interest held by an Occupant of Crown Land, leases, mortgages, charges, encumbrances, registered builders' liens, writs of execution, easements (including Public Utility Easements), rights of way, restrictive covenants, party wall agreements, building restriction caveats and other caveats, provided the same are in force immediately prior to the Purchase of the Land, Minerals or Improvements or, thereafter, at any time prior to the transfer of the same to Canada, but shall, for greater certainty, exclude an interest in a Mineral Disposition;

- (m) "Third Party Interest Holder" means a Person holding a Third Party Interest (including an Occupant of Crown Land) but excludes Canada, Saskatchewan or any Person acting for or on behalf of the Band which has Purchased the Entitlement Land; and,
 - (n) "Undisposed Minerals" means, subject to subsections 5.04 (b) and (c), any Minerals in respect of which there are no Mineral Dispositions.
25. The Pasqua First Nation states that pursuant to the terms of the Settlement Agreement:
- (a) if Canada or Saskatchewan agrees to sell any federal or provincial Crown lands, then for a period of 18 months following notification to the Pasqua First Nation, the lands shall be available for sale to the Nation;
 - (b) during the aforesaid 18 months, neither Canada nor Saskatchewan shall permit the sale of such federal or provincial Crown lands or grant any Third Party Interest without the prior written consent of the Pasqua First Nation except any interest entitled under a contractual arrangement with the Defendants or any new Third Party Interest with a term of less than one year;
 - (c) Canada and Saskatchewan agree to give favourable consideration to offers from the Pasqua First Nation to purchase federal or provincial Crown lands subject to Mineral Disposition;
 - (d) the Pasqua First Nation agrees that prior to the Shortfall Acres Acquisition Date (which is when 6,686.55 acres have been purchased are set aside as reserve land), Entitlement Land purchased shall include all Minerals and shall be free and clear of all Mineral Dispositions and in the case of land of which all of the underlying Minerals are owned by the federal or provincial Crown, such minerals shall not be subject of any Public Purposes Plan;

- (e) surface of Entitlement Land may be purchased without acquiring all or any of the underlying Minerals provided the eligibility is subject to specified terms and conditions and aggregate service area does not exceed 4,000 acres;
 - (f) where Saskatchewan becomes a Fee Simple Mineral Owner of any Undisposed Minerals underlying Entitlement Reserves, Saskatchewan shall without compensation transfer same to Canada for the benefit of the Pasqua First Nation;
 - (g) Saskatchewan, upon request of the Pasqua First Nation, shall transfer to Canada for the benefit of the Pasqua First Nation all provincial Crown Minerals underlying Entitlement Reserve that are not subject to Mineral Disposition, not required for Public Purposes, not subject to a lease of space agreement, and for which title can be lawfully issued;
 - (h) Canada and Saskatchewan agree that they will, in good faith, employ their best efforts to fulfil the terms of the Settlement Agreement according to its true spirit and intent and that they will negotiate in good faith any further agreement or agreements that are required in order to do so.
26. The Pasqua First Nation states that the Settlement Agreement dictates that Saskatchewan must make Crown land available for sale, evaluate lands selected by the Pasqua First Nation for provincial interests and provide these lands in priority to Pasqua First Nation to fulfil its obligations in good faith and according to the honour of the Crown.
27. The Pasqua First Nation furthermore states that the Settlement Agreement dictates that when provincial Crown lands are available for sale, the lands must be held for an 18-month period to allow the Pasqua First Nation time to obtain consent from the occupants and other Third Party Interests to be cleared. The Pasqua First Nation may then purchase the land and hold it in fee simple until it obtains reserve

status. The Pasqua First Nation is required to clear registered Third Party Interests in the property before it becomes reserve land. This has been misinterpreted and misapplied by the Crown to erroneously require the First Nation to solely bear this untenable burden both at the time of selection and prior to designation as reserve land..

28. The Pasqua First Nation states that in 2005 and 2009 Reports of the Auditor General of Canada, the Auditor General recommended that Indian and Northern Affairs should work with First Nations, including but not limited to Pasqua First Nation, to assist in efforts to resolve Third Party Interests involving land requested to facilitate the implementation of Treaty Land Entitlement. The problem of third party interests and the failure of the Crown to act has been well recognized.

SASKATCHEWAN DENIAL OF ALL PASQUA FIRST NATION'S TLE REQUESTS

29. On or about February 8, 2012, the Pasqua First Nation wrote to Saskatchewan selecting for purchase certain Crown lands and minerals under section 4.05(b) and 5.03(c) of the Settlement Agreement legally described as: RM 190 Dufferin SW & NW 11-20-25 W2, SE 24-19-25 W2, NW & SW 19-19-24 W2, NW & SE & NE 11-19-24 W2, NW & SE 33-19-24 W2, NE 28-19-24 W2, NE 29-20-25 W2, SW 1-21-25 W2, NW & SW 17-16-18 W2.
30. On or about February 17, 2012, with no notice to the Pasqua First Nation, Saskatchewan sold to K+S Potash Canada General Partnership some of the Crown lands that had been requested by the Pasqua First Nation, namely RM 190 Dufferin SE 24-19-25 W2, NW 19-19-24 W2, SW 19-19-24 W2, SE 33-19-24 W2 and NE 28-19-24 W2.
31. On or about February 23, 2012, Saskatchewan wrote to the Pasqua First Nation to advise that a portion of the Crown land requested by the Pasqua First Nation for purchase had been withdrawn by Saskatchewan from the request. Saskatchewan

advised that W/2 19, NE 28& SE 33 all within 19-24-W2; and SE 24 in 19-25-W2 had recently been sold by the Ministry of Agriculture and was now privately owned land. As a request, according to Saskatchewan, it was not available for purchase pursuant to Article 4.05 of the TLE Agreement.

32. In that same correspondence, Saskatchewan advised that the provincial response for W/2 11 & NE 29 all within 20-25-W2; NW 11; E/2 11 & NW 33, all within 19-24-W2; SW 1 in 21-25-W2; and W/2 17 in 16-18-W2 would be provided within ninety (May 16, 2012) days.
33. On or about June 20, 2012, Saskatchewan informed the Pasqua First Nation that it would not make the selected land available for sale to the Pasqua First Nation, due to the following information received during the provincial review:
 - (a) The Ministry of Agriculture refused the request because the selected lands are subject to a pre-existing mineral lease held by K + S Potash Canada General Partnership effective September 7, 2010 which is the principle lease in the Legacy Solution Mine project area and subject to advance exploration and development. The Ministry of Agriculture also asserted “provincial public interests exist that require the Province to administer and control of some of the requested land.”
 - (b) Saskatchewan Ministry of the Economy refused the request because the selected lands contain freehold minerals, disposed Crown minerals, and undisposed Crown minerals. The disposed Crown minerals are subject to a pre-existing mineral lease held by K + S Potash Canada General Partnership effective September 7, 2010 which is the principle lease in the Legacy Solution Mine project area and subject to advance exploration and development;
 - (c) The Ministry of the Environment noted that of the selected lands, the NW1/4 11-19-24 W2, W1/4 11-20-25 W2, NE1/4 29-20-25 W2 and

SW1/4 1-21-25 W2 are designated under the *Wildlife Habitat Protection Act*, C W-13.2 as amended which prevents the sale of such designated land. The Ministry of the Environment observed that the Framework Agreement does enable Saskatchewan to consider making designated lands available for sale. However, such is conditional on the removal of wildlife habitat designation. Although the Ministry of the Environment had the discretion to make the designated lands available for sale, it took the position that the land in question ought to be retained by the Province and not be made available for sale; and,

- (d) The Saskatchewan Watershed Authority had no objection to the transfer of W1/2 17-16-18 W2, E1/2 11 and NW1/4 33 in 19-24 W2, W1/2 11 in NE1/4 29-25 W2 and SW1/4 1-21-25 W2 but was unable to determine at the time whether the NW1/4 11-19-24 W2 could be transferred due to water management issues.

- 34. The Pasqua First Nation states that thereafter Saskatchewan has publicly advised that the “footprint” of the contemplated Legacy Solution Mine Project area will impact on parts of the land Saskatchewan refused to provide to the Pasqua First Nation in its June 20, 2012 correspondence because it was “protected”. The Pasqua First Nation submits that Saskatchewan has exercised its discretion under *The Wildlife Habitat Protection Act* in a discriminatory fashion and to the detriment of the Pasqua First Nation.
- 35. On or about July 12, 2012, the Saskatchewan Ministry of Agriculture wrote to the Pasqua First Nation advising that certain Crown land legally known as SW 29-19-11-2 was the subject of a potential lease or sale to agriculture producers. The Saskatchewan Ministry of Agriculture inquired of the Pasqua First Nation as to whether the land in question had recently been utilized for traditional uses such as fishing, hunting or wild gather and indicated that it was unaware of any historical or traditional uses.

36. On or about July 25, 2012, the Pasqua First Nation wrote to the Saskatchewan Ministry of Agriculture selecting for purchase under sections 4.05(b) and 5.03(c) of the Settlement Agreement the land identified in the Saskatchewan Ministry of Agriculture correspondence of June 20, 2012 legally known as SW1/4 29-19-11-2.
37. On or about October 23, 2012, Saskatchewan informed the Pasqua First Nation that the Ministry of Agriculture would not make the selected lands available for sale, “due to an intervening provincial public interest,” namely under *The Wildlife Habitat Protection Act*, and its position that the designation should not be lifted (again refusing to exercise its discretion in favour of making the designated lands available for sale).
38. To date, Saskatchewan has failed to make available any Crown land for purchase by the Pasqua First Nation pursuant to the Settlement Agreement. As a result, the Pasqua First Nation has been forced to pursue land acquisition from private land owners to meet its shortfall acres. To that end, the Pasqua First Nation has purchased:
- (a) 1,630 acres for \$1,340,000 on July 30, 2010;
 - (b) 313 acres for \$232,000 on November 30, 2011;
 - (c) 4,139.88 acres for \$1,799,000 on October 31, 2012;
 - (d) 480 for acres for \$525,000 on October 31, 2012; and,
 - (e) 1,581 acres for \$2,560,000 on December 20, 2012.
39. The Pasqua First Nation states that the private land it has purchased in the face of no Crown land being made available by Saskatchewan as required by the Settlement Agreement is in piece-meal locations which do not have any significant development (such as mining) potential. There has been no assistance

and support to fund lands which may reasonably be designated reserve land in fulfilment of the Treaty obligations.

40. The Pasqua First Nation furthermore states that parts of the private land it has purchased as a result of no Crown being made available for purchase by Saskatchewan is subject to Third Party interests which the Pasqua First Nation has faced difficulties in clearing without any assistance on the part of Saskatchewan.

SASKATCHEWAN'S FAILURE TO CONSULT

41. The Pasqua First Nation states that the lease for the Legacy Solution Mine project, which was the basis of Saskatchewan's June 20, 2012 refusal to make selected land available for sale to the Pasqua First Nation, is titled Lease No. KLSA 009. The lease is a subsurface mineral lease by special agreement pursuant to Section 4(b) of *The Crown Minerals Act*, S.S. 1984-85-86, c. C-50.2. The lease was authorized by the Lieutenant Governor in Council, with a term commencing on September 7, 2010 and expiration of September 6, 2031. The lessee has the option to renew the lease for successive terms of twenty-one (21) years indefinitely.
42. The Pasqua First Nation states that the Legacy Solution Mine project lease KLSA 009 provides the lessee the right to search for, dig, work, mine, extract, recover, process and carry away subsurface minerals. The KLSA 009 does not convey any interest with respect to the surface area of the lease. Lease KLSA 009 provides exclusive rights to the minerals in the lease area of the lease.
43. The Pasqua First Nation states that the projection for the Legacy Solution Mine project is measured resources effective for 56 years of production of 2.86 million tonnes of KCI per year with a further expansion of productions capacity to 4 million tonnes of KCI per year possible in the long term. The Pasqua First Nation states that the mine is projected to produce approximately 2.86 to 4 million tonnes per year for 56 years, for a total estimated production ranging from 160 million tonnes to 224 million tonnes.

44. The Pasqua First Nation states that the province will receive significant revenues, royalties, and taxes as a result of the granting of the Legacy Mine Solution project KLSA 009 lease.
45. The Pasqua First Nation states that at no time was the Nation consulted by Canada or Saskatchewan with respect to the Legacy Mine Solution project's lease disposition or its potential impact on the Nation's rights to lands under Treaty No. 4 and the Settlement Agreement. At no point was the outstanding Treaty Land Entitlement obligation given priority.
46. The Pasqua First Nation states that as a result of the disposition of surface minerals pursuant to the Legacy Solution Mine project KLSA 009 lease, the Nation was deprived of its ability to secure the surface land and/or minerals pursuant to the Settlement Agreement and without payment of compensation to the Pasqua First Nation from either Canada or Saskatchewan.
47. The Pasqua First Nation states that the disposition of the minerals through the Legacy Mines Solution project KLSA 009 lease is detrimental to the Pasqua First Nation and represents unjust enrichment to Saskatchewan, is not in keeping with the honour of the Crown, and is a breach of Treaty, trust, fiduciary, common law, equitable, contractual, and constitutional duties.
48. The Pasqua First Nation states that Canada and Saskatchewan had and have a duty to consult with and accommodate the Nation regarding actual or anticipated impact of the granting of land, interests or mineral dispositions to third parties.
49. The Pasqua First Nation states that Canada and Saskatchewan have failed to discharge their constitutional duty to consult with and accommodate the Nation regarding the actual or anticipated impacts of the granting of third party interests in lands and/or minerals including but not limited to the grant of the KLSA 009 lease for the Legacy Solution Mine project.

50. The Pasqua First Nation states that Canada and Saskatchewan had real or constructive knowledge of the potential existence of inherent and Treaty rights or title and knew or ought to have known that the contemplated issuance of leases like the KLSA 009 lease could adversely affect the Pasqua First Nation and the fulfilment of outstanding Treaty obligations.
51. The Pasqua First Nation states that Saskatchewan did not act in accordance with the honour of the Crown when it disposed of minerals pursuant to the KLSA 009 lease and failed to engage in a process of fair dealing and reconciliation to ensure the Pasqua First Nation Treaty No. 4 and Settlement Agreement rights were given priority, protected, and given meaningful effect.
52. The Pasqua First Nation states that the honour of the Crown requires that the Crown takes into account outstanding First Nation claims before divesting itself of control over land and minerals.
53. The Pasqua First Nation states that Canada and Saskatchewan, as fiduciaries to the Nation, administer lands, subject to the First Nation trust. This trust is grounded in the prior occupation of the land, the ancestral rights and the Section 35 recognition of these rights. Treaty No. 4, the Natural Resources Transfer Agreement, and the Settlement Agreement must all be interpreted in this light.
54. The Pasqua First Nation states that through Canada's delegation of administration, ownership, and control of land, minerals, and other natural resources to Saskatchewan pursuant to *The Saskatchewan Natural Resources Transfer Agreement*, Saskatchewan is, like Canada, a fiduciary required to act in the best interests of the Nation in all matters which could impact Treaty No. 4 obligations and the ancestral rights and interests of the Nation.
55. The Pasqua First Nation states that Saskatchewan is in breach of the honour of the Crown, fiduciary, Treaty, constitutional, common law, equitable, contractual and statutory duties as a result of its failure to consult with the Pasqua First Nation prior

to the issuance of third party leases, including but not limited to the KLSA 009 lease.

56. The Pasqua First Nation states that pursuant to Treaty No. 4 and the Settlement Agreement, it had and has a priority right to surface land and minerals under Treaty No. 4 territory and as a fiduciary, Saskatchewan was obligated to deal with the Nation's interest in priority to any other third party interest with inferior rights that are not constitutionally protected.

SASKATCHEWAN'S FAILURE TO IMPLEMENT THE SETTLEMENT AGREEMENT

57. The Pasqua First Nation states that Saskatchewan has an obligation pursuant to the *Natural Resources Transfer Act* and the Settlement Agreement to provide Crown land and minerals to Canada to enable it to fulfil its outstanding Treaty No. 4 obligations to the Nation in a prompt and equitable manner.
58. The Pasqua First Nation states that in the over four years since the execution of the Settlement Agreement on September 30, 2008, Saskatchewan has failed to make any Crown lands or minerals available for purchase by the Pasqua First Nation to enable the fulfilment of its shortfall acres entitlement of 6,686.55, or equitable acres entitlement of 32,504.59. To date, the Pasqua First Nation has been forced to purchase private land to pursue these entitlements.
59. The Pasqua First Nation furthermore states that Saskatchewan's delay and failure to proactively implement the Settlement Agreement is not in keeping with the honour of the Crown, and the persistent pattern of inattention frustrates the purpose of the Settlement Agreement's intention to allow the Crown to fulfil its outstanding constitutional and Treaty No. 4 obligations to the Pasqua First Nation in a prompt and equitable manner.
60. The Pasqua First Nation furthermore states that Saskatchewan created barriers to implementation of the Settlement Agreement through the permitting of new third party interests and the taking up of land for lease and/or sale without consultation.

Moreover, Saskatchewan failed to act in accordance with the honour of the Crown through its failure to provide an opportunity to clear any third party interests related to the February 8, 2012 Treaty land entitlement request or to assist in any way with such endeavour.

61. The Pasqua First Nation states that Saskatchewan's interpretation of the Settlement Agreement requiring the Pasqua First Nation to bear sole responsibility for satisfying all third party claims and/or interest on selected lands is discriminatory and in breach of section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11. It creates a precondition rendering fulfilment of the compensation owed by said Agreement an impossibility and is not in keeping with the Crown's usual practice of compensating those parties that are owed lands in a fair and non-discriminatory manner.
62. The Pasqua First Nation states that Saskatchewan's conduct in requiring the Nation solely bear the burden to clear third party claims and/or interests on selected lands is not Saskatchewan's usual practices in dealings with other non-First Nation individuals and groups on land compensation and results in a differential impact on the Nation based on race, constituting an infringement of section 15.
63. The Pasqua First Nation states that it suffers from a very significant pre-existing disadvantage resulting from the impacts of colonization, heavy-handed legislation governing First Peoples and interference with cultural, language and livelihood. Many of the present day challenges of Canada's First Nations and for Pasqua First Nation can be traced to Canada's failure to honour its obligations pursuant to Treaty No. 4 entered into over 139 years ago.
64. The Pasqua First Nation states that the Crown's present conduct in requiring the Nation to bear the burden of satisfying all third party claims and/or interests on selected land when it lacks the capacity to do so, perpetuates this disadvantage by

rendering the Settlement Agreement entitlements, intended to facilitate long outstanding Treaty No. 4 obligations, unachievable.


65. Pasqua First Nation has suffered the indignity of being treated differently than those who might be non-Aboriginal entities who are owed lands.
66. Rather than the priority treatment properly owed, Pasqua First Nation has been made to feel less important and that their economic and social interests are lesser than non-Aboriginal business interests.
67. The Pasqua First Nation has suffered damage and adverse effects as a result of the failures to uphold the honour of the Crown, and breach of Treaty, fiduciary, common law, equitable, statutory, contractual and constitutional duties of Saskatchewan including but not limited to the following:
 - (a) Failure to respect right to choose surface land and minerals in priority to satisfy the Nation's shortfall acres as required pursuant to the Settlement Agreement;
 - (b) Loss of opportunity to dispose, sell, or produce minerals; and,
 - (c) Loss of opportunity to receive royalties, revenues, and taxes generated from the disposition of minerals.
68. The Pasqua First Nation pleads and relies upon the following:
 - (a) *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11;
 - (b) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.);
 - (c) *Constitution Act, 1930* 20-21 George V, c. 26 (U.K.);
 - (d) *Constitution Act, 1982*, c. 11 (U.K.), Schedule B;

- (e) *The Crown Minerals Act*, S.S. 1984-85-86, c. C-50.2;
- (f) *The Lease of Spaces Regulations*, R.R.S. c. C-50.2 Reg 7;
- (g) *Mineral Resources Act*, 1985, S.S. 1984-85-86, c. M-16.1;
- (h) *Memorandum of Agreement between Canada and Saskatchewan*, 20 March 1930, reprinted in RSC 1985, App II, No 26, Sched., as varied by *Memorandum of Agreement between Canada and Saskatchewan*, 8 December 1992, confirmed by SS 1993, c.S-31.1;
- (i) Pasqua Band Treaty Land Entitlement Settlement Agreement dated September 30, 2008
- (j) Report of the Auditor General of Canada to the House of Commons, Chapter 7, 2005;
- (k) *Royal Proclamation 1763 (U.K.)*, 7 October 1763, reprinted in RSC 1985, App II, No 1;
- (l) *Rupert's Land and North-Western Territory Order*, 23 June 1870, reprinted in RSC 1985, App II, No 9;
- (m) *Saskatchewan Treaty Land Entitlement Act*, S.C. 1993 c.11;
- (n) Saskatchewan Treaty Land Entitlement Framework Agreement dated September 22, 1992;
- (o) Status Report of the Auditor General of Canada to the House of Commons, Chapter 4, 2009;
- (p) *Subsurface Mineral Regulations*, 1960, Sask. Reg. 541/67;
- (q) *Surface Rights Acquisition and Compensation Act*, R.S.S. 1978, c. S-65;

- (r) *Surface Rights Acquisition and Compensation Regulations*, R.R.S. c. S-65 Reg. 1;
- (s) Treaty Land Entitlement (Saskatchewan) Remission Order, (S.I./94-47);
- (t) Order Amending the Treaty Land Entitlement (Saskatchewan) Remission Order (S.I./2010-26), (P.C. 2010-272);
- (u) *The Treaty Land Entitlement Implementation Act*, S.S. 1993, c. T-20.1;
- (v) *The Saskatchewan National Resources Transfer Agreement (Treaty Land Entitlement) Act*; S.S. 1993, c. S-31.1;
- (w) Agreement Varying Saskatchewan Natural Resources Transfer Agreement, September 22, 1992;
- (x) Treaty No. 4, 1874; and
- (y) Such further and other material as counsel may advise and this Honourable Court may permit.

69. The Plaintiffs respectfully request that this matter be tried in Ottawa, Ontario.

Dated: June 17, 2014


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Court File No.

FEDERAL COURT

BETWEEN:

CHIEF M. TODD PEIGAN
on behalf of himself and all other members of
The Pasqua First Nation and THE PASQUA
FIRST NATION

Plaintiffs

-and-

HER MAJESTY THE QUEEN IN RIGHT OF
CANADA AS REPRESENTED BY THE
ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF
SASKATCHEWAN AS REPRESENTED BY
THE ATTORNEY GENERAL OF
SASKATCHEWAN

Defendants

STATEMENT OF CLAIM

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