

PASQUA FIRST NATION #79



P. O. Box 79
Pasqua, Saskatchewan S0G 5M0
Phone: (306) 332-5697
Fax: (306) 332-5199
Toll Free: 1 (888) 820-2202

STATEMENT TO THE MEDIA BY CHIEF MATTHEW TODD PEIGAN

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Pasqua First Nation has settled its court application against the Minister of Environment and the Quill Lakes Watershed Association No. 14

I am very pleased to announce that after months of settlement discussions, we have settled the judicial review application commenced by the Pasqua First Nation against the Minister, the province, and the Quill Lakes Watershed Association No. 14 ("QLWA").

Our court application challenged the Minister's September 8, 2017 decision (the "Decision") which wrongly exempted the QLWA "Common Ground Flood Mitigation Project" from the requirements of Saskatchewan's *Environmental Assessment Act*, ruling that it was not a "development" within the meaning of the Act. That was the project that proposed to divert contaminated, saline flood waters from the Quill Lakes watershed into the pristine, clean, Last Mountain Lake watershed. In our court case, we applied to have the Minister's Decision struck down as unconstitutional, unreasonable, irrational, biased and contrary to the Act.

However, in light of QLWA's January 2018 announcement that it was withdrawing the project, and the many other assurances we have now received from QLWA and the Minister in our Minutes of Settlement, regarding the process to be followed for proposed future diversion projects, this court application is no longer needed.

The key to this settlement is that both QLWA and the Minister have promised that they will no longer rely on the September 8, 2017 Decision, moving forward. QLWA has also promised that it will not continue to pursue approvals for the Common Ground project, or any future project, in reliance upon the Decision (e.g. approvals from the Water Security Agency). So it is back to square one for this project.

Most important, for any future diversion project that is proposed by QLWA or anyone, if the project involves the diversion of waters from the Quill Lakes watershed into the Last Mountain Lake watershed (defined in the settlement as "Future Project"), then Minister has agreed to a

number of key things. (And I note that Future Project also includes, but is not restricted to, the old Common Ground project.)

First, he has agreed to an enhanced, comprehensive, First Nation Consultation process for the entire project, involving all regulatory approvers. How enhanced this consultation will prove be, in practice, remains to be seen. But we have reserved our rights in that regard. If the consultation is inadequate, and not compliant with Canada constitutional law, we will be back in court again.

Second, and even more important, the Minister has agreed to notify the public of any application, by any proponent, to have any Future Project exempted from the *Environmental Assessment Act*. He has also agreed to give us all the documents filed in support of any such exemption application. So if there is another exemption application made by any proponent, the application process and project documents won't be hidden from the public, like they were in 2017. Finally, he has agreed to give PFN and our supporting organizations – the Last Mountain Lake Stewardship Group, the Calling Lakes Ecomuseum, and the Saskatchewan Wildlife Federation – the right to a full written hearing before he makes any future exemption decision.

Although the Minutes of Settlement only confirm the hearing rights of these four parties, all affected members of the public residing within the Last Mountain Lake watershed or on the Qu'Appelle River system will be entitled to access the project documents – we will make sure they are publicly available. And all such members of the public can and should make their views known to the Minister, before he makes his exemption decision. In fact, PFN sincerely hopes that all members of the public will join us in making their environmental concerns about Future Projects known to the Minister, loudly, clearly, and in writing. We are committed to working with the broader public in that regard.

Here is why the new process will be so important. The last time around, even though QLWA and the Minister failed to make the QLWA exemption application and documents public, and worse, reached a backroom deal to avoid the *Environmental Assessment Act*, a large segment of the public spoke out against the Common Ground project. Widespread public concern was expressed to the Minister about its environmental impacts. However, the Minister ignored those concerns.

This time around, thanks to our settlement, if another exemption application is brought forward for a Future Project, it will have to be made fully public. With full public participation, we expect there should be overwhelming public opposition to the Minister exempting any Future Project from the Act. Certainly, we expect that the public concerns will be "widespread", within the meaning of section 2 of the Act, just as they were the last time. But most important, those concerns will be well-documented, in writing, focussed on the need for an environmental assessment ("EA") process under the Act, and impossible for the Minister to ignore again. In our view, the Minister will have no choice but to determine that any Future Project is a "development" under the Act - one that must undergo a full EA. If the Minister once again makes a patently unreasonable and environmentally harmful decision to exempt a Future Project from the Act, contrary to the overwhelming evidence of widespread public concern, we will be back in court, to fight the decision. This settlement fully protects our ability to continue this fight.

It is critical that we not lose sight of the reason why a full EA is needed for any Future Project. The Quill Lakes flooding problem is big enough, and any solution to it is sufficiently consequential in terms of potential environmental effects, that it should undergo a full EA. Only under the *Environmental Assessment Act* is a project proponent legally obligated to examine alternative projects (rather than coming forward with one, preconceived solution). And examine alternate means of carrying out the alternative projects. As a result, only through a full EA process under the Act, can the province examine and select the best available environmental alternative as a solution to the Quill Lakes flooding problem, and ensure that the alternative is carried out in the best available manner possible, so as to eliminate or minimize environmental impacts upon the Last Mountain Lake watershed and its residents.

For example, there could be alternative solutions available, or combinations of them, that do not involve diverting any contaminated, saline waters whatsoever into the Last Mountain Lake watershed. One such solution, which I proposed in 2017, would be to divert the waters into abandoned mine shafts. Another would be to prevent illegal drainage into the Quill Lakes watershed. The province has failed to examine these alternatives, and there could be others. The province has also failed to examine whether there are alternative means of carrying out a Future Project, such as desalinating or cleaning of contaminated waters before they are discharged into Last Mountain Lake. One has to ask why? Why is this province so intent upon ignoring the best environmental solution by implementing a quick fix that serves only half the population – the Quill Lake farmers – but tramples the environmental rights of the remaining half – the downstream residents of Saskatchewan?

Only through a proper EA process – one that examines all reasonable alternatives and selects the best ones - can the environment, and the traditional hunting, fishing, trapping and other rights of Saskatchewan's first nations, be protected.

Chief Matthew Todd Peigan
Pasqua First Nation

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