

Saskatchewan Treaty Land Entitlement Act

1993, c. 11

[Assented to March 30, 1993]

An Act respecting an agreement regarding treaty land entitlement in Saskatchewan entered into on September 22, 1992 among Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of Saskatchewan and the Keeseekoose, Muskowekwan, Ochapowace, Okanese, Piapot, Star Blanket, Yellowquill, Beards' & Okemasis, Flying Dust, Little Pine, Moosomin, Mosquito Grizzly Bear's Head, Muskeg Lake, One Arrow, Pelican Lake, Red Pheasant, Saulteaux, Sweetgrass, Thunderchild, Witchehan Lake, Canoe Lake and English River bands, and respecting an agreement regarding treaty land entitlement in Saskatchewan entered into on September 23, 1992 among Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of Saskatchewan and the Nekaneet band

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title 1. This Act may be cited as the *Saskatchewan Treaty Land Entitlement Act*.

INTERPRETATION

Definitions 2. (1) In this Act,

"band"
« *bande* » "band" means

(a) the Keeseekoose, Muskowekwan, Ochapowace, Okanese, Piapot, Star Blanket, Yellowquill, Beards' & Okemasis, Flying Dust, Little Pine, Moosomin, Mosquito Grizzly Bear's Head, Muskeg Lake, One Arrow, Pelican Lake, Red Pheasant, Saulteaux, Sweetgrass, Thunderchild, Witchehan Lake, Canoe Lake and English River bands,

(b) an Indian band that adheres to the Framework Agreement under subsection 11(1), and

(c) an Indian band that is a party to an agreement to which this Act applies by virtue of subsection 11(2);

"Framework Agreement"
« *accord-cadre* » "Framework Agreement" means the Saskatchewan Treaty Land Entitlement Framework Agreement entered into on September 22, 1992, pursuant to which Canada's outstanding treaty land entitlement obligations are to be fulfilled in respect of those bands that are parties to that Agreement, certain provisions of which are set out in Schedule II;

"Minister"
« *ministre* » "Minister" means the Minister of Indian Affairs and Northern Development;

"Nekaneet Agreement"
« *accord Nekaneet* » "Nekaneet Agreement" means the Nekaneet Treaty Land Entitlement Settlement Agreement entered into on September 23, 1992, pursuant to which Canada's outstanding treaty land entitlement obligations are fulfilled in respect of the Nekaneet band, certain provisions of which are set out in Schedule III;

"Nekaneet band"
« *bande de Nekaneet* » "Nekaneet band" means the Nekaneet band of Indians of Saskatchewan;

"NRTA Amendment Agreement"
« *accord modifiant la CTRN* » "NRTA Amendment Agreement" means the agreement to vary the Natural Resources Transfer Agreement (NRTA) entered into between the Government of Canada and the Government of Saskatchewan and set out in Schedule I.

Definitions (2) Words and expressions that are not defined in this Act have the same meaning as in the NRTA Amendment Agreement.

GENERAL

Confirmation of NRTA Amendment Agreement	<p>3. (1) The NRTA Amendment Agreement is hereby confirmed and shall take effect according to its terms.</p>
Confirmation of other agreements	<p>(2) If, either before or after the coming into force of this subsection,</p> <p>(a) an agreement is entered into with an Indian band of Saskatchewan in settlement of a treaty land entitlement claim on the same or substantially the same basis as the Framework Agreement, and</p> <p>(b) in connection with the agreement referred to in paragraph (a), the Government of Canada and the Government of Saskatchewan enter into an agreement in the same or substantially the same form as the NRTA Amendment Agreement,</p> <p>the agreement between the Government of Canada and the Government of Saskatchewan referred to in paragraph (b) is hereby confirmed and shall take effect according to its terms.</p> <p>1993, c. 11, s. 3; 2002, c. 3, s. 12.</p>
Account to be established	<p>4. (1) There is hereby established a special account in the accounts of Canada to be known as the Treaty Land Entitlement (Saskatchewan) Fund.</p>
Credits to Fund	<p>[*](2) There shall be</p> <p>(a) credited to the Treaty Land Entitlement (Saskatchewan) Fund the balance remaining of all amounts that were paid into the Consolidated Revenue Fund, prior to the coming into force of this Act, as contributions by Her Majesty in right of Saskatchewan pursuant to section 3.07 of the Framework Agreement, together with any interest credited to those amounts by Her Majesty in right of Canada pursuant to subsection 3.07(c) of that Agreement;</p> <p>(b) paid into the Consolidated Revenue Fund and credited to the Treaty Land Entitlement (Saskatchewan) Fund all amounts that are contributed, after the coming into force of this Act, by Her Majesty in right of Saskatchewan pursuant to section 3.07 of the Framework Agreement; and</p> <p>(c) credited to the Treaty Land Entitlement (Saskatchewan) Fund all amounts that are contributed by Her Majesty in right of Canada pursuant to section 3.08 of the Framework Agreement.</p> <p>[*][Note: Act in force on assent March 30, 1993.]</p>
Payments out of Consolidated Revenue Fund	<p>(3) There shall, on the recommendation of the Minister, be paid out of the Consolidated Revenue Fund and charged to the Treaty Land Entitlement (Saskatchewan) Fund any amount that is required to be paid pursuant to the Framework Agreement.</p>
Interest	<p>(4) There shall be credited to the Treaty Land Entitlement (Saskatchewan) Fund an amount that represents interest on the balance of the Fund, calculated in accordance with such terms and conditions and at such rates as the Minister of Finance, after considering any advice provided by the Minister, shall fix.</p>
Amounts not Indian moneys	<p>5. For greater certainty, the following amounts are not Indian moneys within the meaning of the <i>Indian Act</i>.</p> <p>(a) amounts that are paid into or out of the Treaty Land Entitlement (Saskatchewan) Fund pursuant to the Framework Agreement; and</p> <p>(b) subject to section 6, amounts that are paid to or for the benefit of a band under the Framework Agreement or the Nekaneet band under the Nekaneet Agreement.</p>
Amounts received before setting apart reserve	<p>6. Any amounts that are received by the Receiver General in respect of entitlement land that is held in the name of Her Majesty in right of Canada on behalf of a band or of the Nekaneet band, before the entitlement land is set apart as an entitlement reserve, are revenue moneys of the band or the Nekaneet band pursuant to the <i>Indian Act</i>.</p>
Common law riparian rights	<p>7. Sections 6.04, 6.05 and 6.11 of the Framework Agreement and sections 6.04, 6.05 and 6.11 of the Nekaneet Agreement are hereby confirmed.</p>
Authority of bands to enter into agreements	<p>8. (1) For the purposes of this Act and for greater certainty, a band and the Nekaneet band have the capacity to enter into</p> <p>(a) subject to section 6.10 of the Framework Agreement or section 6.10 of the Nekaneet Agreement, a co-management agreement in respect of the matters referred to in sections 6.07, 6.08 and 6.09 of the Framework Agreement or sections 6.07, 6.08 and 6.09 of the Nekaneet Agreement; and</p>

	(b) an agreement in respect of the matters referred to in sections 9.01 and 11.10 of the Framework Agreement or sections 9.01 and 11.10 of the Nekaneet Agreement.
Agreement binding on band	(2) For greater certainty, an agreement that is entered into under subsection (1) is binding, according to its terms, on a band or on the Nekaneet band and, where applicable, on the members of the band or of the Nekaneet band.
Surrender before entitlement reserve created	9. (1) For the purposes of this Act and in order to take into account, in accordance with the Framework Agreement or the Nekaneet Agreement, an existing interest in entitlement land of a person other than a party to the Framework Agreement or the Nekaneet Agreement, a band or the Nekaneet band may surrender, in accordance with the procedures set out in the <i>Indian Act</i> , the interest in entitlement land notwithstanding that the entitlement land has not been set apart as an entitlement reserve.
Idem	(2) A surrender of an interest in respect of entitlement land pursuant to subsection (1) takes effect on the day the entitlement land is set apart as an entitlement reserve and the surrender is deemed to confer the rights that are necessary to enable Her Majesty in right of Canada to carry out the terms of the surrender.
Non-application of this section	(3) If a band referred to in paragraph (a) or (b) of the definition "band" in subsection 2(1), or the Nekaneet band, assents or agrees, under paragraph 3(a) or (b) of the <i>Claim Settlements (Alberta and Saskatchewan) Implementation Act</i> , to the application of that Act in relation to an agreement to which this Act applies, this section thereupon ceases to apply to that agreement in so far as the agreement affects the band so assenting or agreeing.
Non-application of this section	(4) If <p>(a) an agreement is entered into with one or more Indian bands of Saskatchewan in settlement of a treaty land entitlement claim on the same or substantially the same basis as the Framework Agreement, and</p> <p>(b) an Indian band referred to in paragraph (a) assents or agrees, under paragraph 3(a) or (b) of the <i>Claim Settlements (Alberta and Saskatchewan) Implementation Act</i>, to the application of that Act in relation to the agreement referred to in paragraph (a),</p> <p>this section does not apply, or thereupon ceases to apply, as the case may be, to the agreement referred to in paragraph (a) in so far as the agreement affects the Indian band so assenting or agreeing.</p> <p>1993, c. 11, s. 9; 2002, c. 3, s. 13.</p>
Authority respecting mineral revenues	10. Where the ownership of mineral rights is transferred by Her Majesty in right of Saskatchewan in the manner set out in subsection 5.08(a) of the Framework Agreement or in subsection 5.08(a) of the Nekaneet Agreement, Her Majesty in right of Canada is authorized to receive, for the use and benefit of the band or the Nekaneet band, the mineral revenues and shall, on a direction from the council of the band or the council of the Nekaneet band, pay to Her Majesty in right of Saskatchewan the amounts that are referred to in subparagraph 5.08(a)(ii) of the Framework Agreement or subparagraph 5.08(a)(ii) of the Nekaneet Agreement.
Application of Act to Indian bands that have not signed the Framework Agreement	* 11. (1) Where the Joseph Bighead band, the Onion Lake band, the Peter Ballantyne band or the Poundmaker band adheres to the Framework Agreement, this Act applies to that Indian band on the later of <p>(a) the day on which that Indian band adheres to the Framework Agreement, in accordance with its provisions, and</p> <p>(b) the day on which this Act comes into force.</p> <p>* [Note: Act in force on assent March 30, 1993.]</p>
Application of Act to other agreements	(2) Where an agreement is entered into with an Indian band of Saskatchewan in settlement of a treaty land entitlement claim on the same or substantially the same basis as the Framework Agreement, the Minister shall, having regard to subsection 9(4), cause a notice to be published in the <i>Canada Gazette</i> confirming the extent to which this Act applies to that agreement.
	1993, c. 11, s. 11; 2002, c. 3, s. 14.

SCHEDULE I

(Subsection 2(1))

AN AGREEMENT TO VARY THE NATURAL RESOURCES TRANSFER AGREEMENT

MEMORANDUM OF AGREEMENT made the 8th day of December, 1992

BETWEEN:

THE GOVERNMENT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development, (hereinafter referred to as "Canada")

OF THE FIRST PART

AND:

THE GOVERNMENT OF THE PROVINCE OF SASKATCHEWAN, as represented by the Minister responsible for the Indian and Métis Affairs Secretariat, (hereinafter referred to as "Saskatchewan")

OF THE SECOND PART

WHEREAS a Memorandum of Agreement between Canada and Saskatchewan made the 20th day of March, 1930 (hereinafter referred to as the "*Natural Resources Transfer Agreement*") was duly approved by the Parliament of Canada and the Legislature of Saskatchewan and, upon an address to His Majesty from the Senate and House of Commons of Canada, was confirmed and declared to have the force of law by an Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland entitled the *Constitution Act, 1930*;

AND WHEREAS, pursuant to paragraph 26 of the *Natural Resources Transfer Agreement*, it was agreed that the provisions of the *Natural Resources Transfer Agreement* may be varied by an agreement confirmed by concurrent statutes of the Parliament of Canada and the Legislature of Saskatchewan;

AND WHEREAS paragraphs 10 and 11 of the *Natural Resources Transfer Agreement* provide as follows:

10. All lands included in Indian reserves within the Province, including those selected and surveyed but not yet confirmed, as well as those confirmed, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, and the Province will from time to time, upon the request of the Superintendent General of Indian Affairs, set aside, out of the unoccupied Crown lands 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 fulfill 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 had never passed to the Province under the provisions hereof.
11. The provisions of paragraphs one to six inclusive and of paragraph eight of the agreement made between the Government of the Dominion of Canada and the Government of the Province of Ontario on the 24th day of March, 1924, which said agreement was confirmed by statute of Canada, fourteen and fifteen George the Fifth chapter fortyeight shall (except so far as they relate to the Bed of Navigable Waters Act) apply to the lands included in such Indian reserves as may hereafter be set aside under the last preceding clause as if the said agreement had been made between the parties hereto, and the provisions of the said paragraphs shall likewise apply to the lands included in the reserves heretofore selected and surveyed, except that neither the said lands nor the proceeds of the disposition thereof shall in any circumstances become administrable by or be paid to the Province.

AND WHEREAS Canada, Saskatchewan and the Entitlement Bands have negotiated and concluded the Framework Agreement, pursuant to which Canada's outstanding treaty land entitlement obligations in respect of the Entitlement Bands are to be fulfilled;

AND WHEREAS Canada, Saskatchewan and the Nekaneet Band have negotiated the Nekaneet Settlement Agreement, pursuant to which Canada's outstanding treaty land entitlement obligations in respect of the Nekaneet Band are also to be fulfilled;

AND WHEREAS Canada and Saskatchewan have agreed that, in consideration of the financial and land related contributions to be made by Saskatchewan pursuant to the Framework Agreement and the Nekaneet Settlement Agreement, Saskatchewan's obligations under paragraph 10 of the *Natural Resources Transfer Agreement* in respect of the Nekaneet Band and each Entitlement Band shall, subject to ratification, execution and delivery of their respective Band Specific Agreements, be fulfilled on the earlier of the date such Indian Band reaches its respective Shortfall Acres Acquisition Date or the dates hereinafter referred to;

AND WHEREAS paragraph 6 of the agreement made between Canada and the Government of the Province of Ontario on the 24th day of March, 1924, provides as follows:

6. Except as provided in the next following paragraph, onehalf of the consideration payable, whether by way of purchase money, rent, royalty or otherwise, in respect of any sale, lease or other disposition of a mining claim staked as aforesaid, and, if in any other sale, lease or other disposition hereafter made of Indian Reserve lands in the Province of Ontario, any minerals are included, and the consideration for such sale, lease or other disposition was to the knowledge of the Department of Indian Affairs affected by the existence or supposed existence in the said lands of such minerals, onehalf of the consideration payable in respect of any such other sale, lease or other disposition, shall forthwith upon its receipt from time to time, be paid to the Province of Ontario; the other half only shall be dealt with by the Dominion of Canada as provided in the paragraph of this agreement numbered 1.

AND WHEREAS Canada and Saskatchewan have further agreed that Saskatchewan should not be entitled to any consideration in respect of any sale, lease or other disposition of any mining claim or minerals on or in any lands set apart as an Entitlement Reserve.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, including the recitals, the following capitalized terms shall have the following meanings hereafter ascribed to them:

“Band Specific Agreement” means, in respect of a particular Entitlement Band, an agreement in the form contemplated pursuant to the Framework Agreement, to be entered into between the Entitlement Band and Canada to give full effect to the provisions of the Framework Agreement among such Entitlement Band, Canada and Saskatchewan and, for the purposes of this Agreement only, shall, in respect of the Nekaneet Band, be deemed to include the Nekaneet Settlement Agreement; (accord particulier)

“Entitlement Band” means any one of those Indian Bands (excluding the Nekaneet Band) listed in Schedule 1 to this Agreement which executes the Framework Agreement on the Execution Date, or which thereafter adheres to the Framework Agreement in accordance with the provisions thereof; (bande ayant droit à des terres)

“Entitlement Land” means land in Saskatchewan which is hereafter purchased or otherwise acquired by an Entitlement Band or the Nekaneet Band pursuant to the provisions of a Band Specific Agreement to be set apart as an Entitlement Reserve; (terres dues en vertu d'un traité)

“Entitlement Reserve” means Entitlement Land which is set apart by Canada as a Reserve for the use and benefit of an Entitlement Band or the Nekaneet Band pursuant to a Band Specific Agreement; (nouvelle réserve)

“Execution Date” means the date that Canada and Saskatchewan executed the Framework Agreement; (date de référence)

“Framework Agreement” means the agreement among Canada, Saskatchewan and the Entitlement Bands executed by Canada and Saskatchewan on the Execution Date, pursuant to which Canada's outstanding treaty land entitlement obligations in respect of the Entitlement Bands, and Saskatchewan's outstanding obligations to Canada under paragraph 10 of the Natural Resources Transfer Agreement, may be fulfilled; (accordcadre)

“Nekaneet Band” means the Nekaneet Band of Indians of Saskatchewan; (bande de Nekaneet)

“Nekaneet Settlement Agreement” means the agreement negotiated and initialled for approval by each of Canada, Saskatchewan and the Nekaneet Band to be hereafter ratified, executed and formally concluded in accordance with the provisions thereof; (accord de règlement avec la bande de Nekaneet)

“Reserve” means a “reserve” within the meaning of the Indian Act, R.S.C. 1985, c. I5, as such statute may be amended or replaced from time to time; (réserve)

“Shortfall Acres” means, in respect of a particular Entitlement Band or the Nekaneet Band, that area of land (including all existing minerals and improvements in respect thereof) , the total acreage of which is set forth in respect of each such Entitlement Band and the Nekaneet Band in Schedule 1; (superficie manquante)

(superficie manquante)

"Shortfall Acres Acquisition Date" means, in respect of a particular Entitlement Band or the Nekaneet Band, the date upon which Entitlement Land (including all existing minerals and improvements in respect thereof) in an aggregate area at least equal to such Entitlement Band's Shortfall Acres (or, in the case of the Nekaneet Band, its Shortfall Acres) has hereinafter been transferred to Canada and is set apart as an Entitlement Reserve or Entitlement Reserves; (date d'acquisition d'une superficie manquante)

"Treaty Land Entitlement (Saskatchewan) Fund" means the fund established pursuant to the Framework Agreement and to be administered by Canada for the purpose of, inter alia, accepting and depositing payments by Saskatchewan in respect of the Entitlement Bands. (Fonds de règlement des droits fonciers issus des traités en Saskatchewan)

2. Canada hereby agrees that the Superintendent General of Indian Affairs shall not request Saskatchewan to set aside any land pursuant to paragraph 10 of the Natural Resources Transfer Agreement to fulfil Canada's obligations under the treaties in respect of any Entitlement Band or the Nekaneet Band, that ratifies, executes and delivers a Band Specific Agreement (or in respect of the past, present and future members of such Indian Bands) , as long as Saskatchewan is paying to Canada and the Treaty Land Entitlement (Saskatchewan) Fund the amounts required to be paid by Saskatchewan in respect of each of the said Entitlement Bands in accordance with the Framework Agreement and Saskatchewan has not failed, in any material way, to comply with its other obligations thereunder or, in the case of the Nekaneet Band, has not failed in any material way to comply with its obligations under the Nekaneet Settlement Agreement.
3. Notwithstanding section 2 hereof, Canada further agrees that it will forever release and discharge Saskatchewan from all of its obligations pursuant to paragraph 10 of the Natural Resources Transfer Agreement in respect of each Entitlement Band and the Nekaneet Band that has entered into a Band Specific Agreement;
 - (a) in the case of any Entitlement Band, from and after the earlier of:
 - (i) the date upon which such Entitlement Band reaches its Shortfall Acres Acquisition Date; or
 - (ii) the date upon which Saskatchewan has paid all amounts required to be paid by Saskatchewan to Canada and the Treaty Land Entitlement (Saskatchewan) Fund pursuant to the Framework Agreement in respect of such Entitlement Band; and
 - (b) in the case of the Nekaneet Band, from and after the earlier of:
 - (i) the date upon which the Nekaneet Band reaches its Shortfall Acres Acquisition Date; or
 - (ii) the fifth (5th) anniversary of the date that Canada, Saskatchewan and the Nekaneet Band formally execute the Nekaneet Settlement Agreement.
4. Saskatchewan agrees to relinquish any claim that it may have pursuant to paragraph 11 of the Natural Resources Transfer Agreement to any of the consideration payable in respect of any sale, lease or other disposition of any mining claim or minerals on or in any lands set apart as an Entitlement Reserve.
5. This Agreement shall take effect upon being duly approved by Acts of the Parliament of Canada and the Legislature of the Province of Saskatchewan.

IN WITNESS WHEREOF the parties hereto have set their hands on the day and year first above written.

Signed on behalf of the Government of Canada, as
represented by the Honourable Minister of Indian Affairs
and Northern Development, in the presence of:

The Honourable Tom Siddon Minister of
Indian Affairs and Northern Development

The Honourable Robert Mitchell, Q.C.

Minister responsible for the Indian and Métis
Affairs Secretariat

Peter Ballantyne	22, 465.56
Piapot	39, 073.02
Poundmaker	13, 824.00
Red Pheasant	20, 118.00
Saulteaux	16, 845.13
Star Blanket	4, 672.00
Sweetgrass	8, 192.00
Thunderchild	38, 464.00
Witchehan Lake	7, 923.00
Nekaneet	16, 160.00

SCHEDULE II

(Subsection 2(1))

PROVISIONS OF THE FRAMEWORK AGREEMENT

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.01 DEFINITIONS :

In this Agreement, the following capitalized terms shall have the meanings hereafter ascribed to them, namely:

“Act” means the *Indian Act*, R.S.C. 1985, c. I-5, and the regulations made thereunder, as amended from time to time, or any federal legislation enacted in substitution therefor or in modification thereof, that is applicable to the Entitlement Bands; (*Loi*)

“Agreement”, “this Agreement”, “hereto”, “hereof”, “herein”, “hereunder”, “hereby” and similar expressions, and any reference to “Framework Agreement” refer, unless otherwise expressly stated, to this agreement, including the recitals, the Schedules and the Appendices attached hereto, and not to any particular article, section, subsection, subparagraph or other subdivision hereof or thereof; (*accord*)

“Discernible Surface Outlet” means a defined and ascertainable channel through which water normally flows for not less than seven (7) consecutive days each year; (*débouché visible en surface*)

“Entitlement Band” means any of those twenty-six (26) Bands (which, for greater certainty, excludes the Nekaneet Band of Indians of Saskatchewan) in respect of which:

(a) Canada has, prior to the Execution Date, accepted for negotiation a claim for outstanding Treaty land entitlement under the terms of Treaty Number Four, Treaty Number Six or Treaty Number Ten; and

(b) its Chief is now a signatory hereto or, alternatively, hereafter becomes a signatory hereto in accordance with the provisions of Article 10; (*bande ayant droit à des terres*)

“Entitlement Land” means Lands, Minerals or Improvements in Saskatchewan hereafter Purchased and which are intended to be set apart as an Entitlement Reserve pursuant to the provisions of a Band Specific Agreement, the Trust Agreement and this Agreement; (*terres dues en vertu d'un traité*)

“Entitlement Reserve” means Entitlement Land which is set apart by Canada as a Reserve for the use and benefit of an Entitlement Band in accordance with its Band Specific Agreement and this Agreement; (*nouvelle réserve*)

“Improvements” means all buildings or structures erected or placed on, over or under Land and, unless otherwise expressly provided herein, includes, without limitation, anything affixed to or incorporated therein, the plant and equipment of any oil or gas well or mine, any pipeline on or under Land, fencing, and any dugouts or other alterations to Land designed to facilitate the collection and retention of water; (*améliorations*)

“Land ” or “Lands” means real property, chattels real, or any interests therein or in the nature thereof and, unless the context otherwise requires, excludes Minerals and Improvements; (*terre ou terres*)

“Member” means, in respect of a particular Entitlement Band, a member of such Entitlement Band within the meaning of the Act and shall include all registered Indians recorded on the Department’s Indian Register in respect of the Entitlement Band; (*membre*)

“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; (*minéraux*)

“Purchase” or “Purchased” means a purchase of Land, Minerals or Improvements by the Trustees or an agent of an Entitlement Band in accordance with the requirements of its Trust Agreement and Band Specific Agreement, and may include the acquisition of ownership rights by means other than a transaction of purchase and sale; (*achat ou acheté*)

“Road Allowance” means land held by Saskatchewan which was at any time intended for use by the general public for the passage of vehicles, whether actually used for that purpose or not; (*réserves de chemin*)

“Treaties” means, collectively, Treaty Number Four, Treaty Number Six, and Treaty Number Ten, and “Treaty” means any one of such Treaties; (*traités*)

“Waterbody” means any river, stream, lake, pond, swamp, marsh, or other body of water; and (*nappe d’eau*)

“Water Project” means:

- (a) any drain, dyke, dam or other work that is proposed to divert or impound water, or any alteration, addition to, or elimination of, any such drain, dyke, dam or other work;
- (b) any act which results in the emission of water or other substance into a Waterbody; or
- (c) any use of water;

that affects, or if constructed or carried out could reasonably be anticipated to affect, the existing quantity, quality or rate of flow, in a discernible way, of water in a Waterbody and which, if constructed or carried out on lands subject to the jurisdiction of Saskatchewan, would require a licence or other approval under the laws of Saskatchewan. (*projet d’aménagement hydraulique*)

ARTICLE 6

WATER

6.01 WHOLLY ENCLOSED WATERBODIES:

- (a) If a surface or subsurface Waterbody is wholly enclosed within the boundaries of any Entitlement Lands and has no Discernible Surface Outlet beyond the boundaries of the Entitlement Lands, Saskatchewan shall, without compensation, transfer to Canada all water, beds and shores of that Waterbody, effective upon creation of the Entitlement Reserve with respect to those Entitlement Lands.
- (b) For the purposes of this Article, ownership of Road Allowances intersecting a Waterbody shall not be considered in determining whether or not a Waterbody is wholly enclosed within Entitlement Land.

6.02 TRANSFER OF BEDS AND SHORES IN CERTAIN CIRCUMSTANCES:

Saskatchewan agrees to give favourable consideration to offers from an Entitlement Band to Purchase the beds and shores of any Waterbody adjacent to Entitlement Land. Nothing in this Agreement shall be interpreted as requiring Saskatchewan to sell the beds and shores of such Waterbodies.

6.03 RESERVE BOUNDARIES:

Where Entitlement Land adjacent to a Waterbody is set apart as an Entitlement Reserve, the parties agree that:

- (a) the boundary of the Entitlement Reserve shall be the ordinary high water mark for such Waterbody;
- (b) the Entitlement Reserve shall not include within its boundaries any portion of the bed or the shore of the Waterbody below the ordinary high water mark unless Saskatchewan has expressly agreed to transfer the beds and shores in accordance with section 6.02; and
- (c) subject to compliance with the Navigable Waters Protection Act, R.S.C. 1985, c. N22, the Entitlement Band shall have the right to place a dock, wharf or pier on the bed of the Waterbody along the boundary of any such Waterbody which is adjacent to an Entitlement Reserve, without needing to obtain any licence or to pay any fee or compensation whatsoever.

6.04 RIPARIAN RIGHTS:

The Entitlement Band shall, immediately upon creation of an Entitlement Reserve, have full common law riparian rights with respect to the use and occupation of that Entitlement Reserve adjacent to a Waterbody, but, for greater certainty, the principle of *ad medium filium aquae* shall be inapplicable unless the affected beds and shores have otherwise been acquired by the Entitlement Band under section 6.02.

6.05 NONENFORCEMENT OF RIPARIAN RIGHTS IN CERTAIN CASES:

- (a) Where an Entitlement Reserve is established adjacent to a Waterbody, the Entitlement Bands agree with Canada and Saskatchewan that the common law riparian rights referred to in section 6.04 shall be unenforceable by injunction, mandamus, prohibition, or similar prerogative writ for the purposes of preventing or delaying any Water Project provided that:
 - (i) Canada, and any Entitlement Band whose common law riparian rights have been affected, were notified at least six (6) months in advance of any decision in relation to the approval of any Water Project; and
 - (ii) any Entitlement Band whose common law riparian rights have been affected by any such Water Project shall have been afforded active and meaningful participation in any decision by a decision making authority concerned with the approval or operation of any such Water Project.
- (b) The parties agree that nothing in this section limits the right of an Entitlement Band to seek or obtain monetary compensation from Saskatchewan (including costs associated with obtaining such compensation) for damages suffered as the result of any interference with, loss of, or damage to, an Entitlement Band's common law riparian rights.

6.06 ENVIRONMENTAL ASSESSMENTS AND CONSIDERATION OF INDIAN USE:

- (a) Where any Water Project may, in the opinion of an Entitlement Band, reasonably be expected in a discernible way to adversely affect an Entitlement Band's common law riparian rights, the Entitlement Band and Canada and/or Saskatchewan, as the case may be, agree to jointly review or, if applicable, jointly conduct any environmental impact assessments or other studies concerning the effects, or possible effects, of any Water Project as may be statutorily required.

- (b) Canada and/or Saskatchewan, as the case may be, agree to jointly review or, if applicable, jointly conduct the same with the affected Entitlement Bands in a manner which takes due consideration of the Entitlement Bands' riparian rights and usage of any affected Waterbody by the Entitlement Bands, or the Members of such Entitlement Bands, for hunting, fishing, trapping, gathering or other traditional uses.

6.07 AGREEMENT AMONGST PARTIES:

Notwithstanding any other provision of this Article, but subject to applicable legislation, Saskatchewan and any Entitlement Band may enter into a CoManagement Agreement concerning the management and use of all or any portion of a particular Waterbody adjacent to an Entitlement Reserve (including its water, bed and shore) affecting the Entitlement Band's common law riparian rights, which meets the needs and objectives of all parties.

6.08 COMANAGEMENT AGREEMENT:

- (a) The CoManagement Agreement shall address matters affecting, in a discernible way, the quantity, quality, or rate of flow of waters in a Waterbody in respect of which an Entitlement Band has riparian rights and may provide for any matters related to the use, management or development of the Waterbody. In particular, such an agreement may provide for the following:
 - (i) the establishment of a process for the exchange of information and consultations between the affected Entitlement Band and Saskatchewan (and, where necessary, Canada) with respect to those Waterbodies and Water Projects;
 - (ii) the establishment of a process for the active and meaningful participation by the Entitlement Band in the decision making process with respect to the approval or disapproval of Water Projects; and
 - (iii) the establishment of a CoManagement Board to make binding decisions with respect to Waterbodies and Water Projects.
- (b) In no event shall the entering into of a CoManagement Agreement be a condition precedent to the sale of any Crown Land, Minerals or Improvements hereunder.

6.09 COMANAGEMENT BOARD:

In the event that the Entitlement Band and Saskatchewan agree pursuant to a CoManagement Agreement that a CoManagement Board be established, the following principles shall apply:

- (a) the Entitlement Band and Saskatchewan shall be represented on the CoManagement Board by an equal number of members except in cases where the interest of the Entitlement Band vis-à-vis the interest of other users of the water does not warrant equal representation, in which case the respective representation of the Entitlement Band and Saskatchewan on the CoManagement Board shall be agreed upon by the Entitlement Band and Saskatchewan;
- (b) in the event that there is no agreement on the representation of the Entitlement Band and Saskatchewan on the CoManagement Board, it shall be referred to the Arbitration Board; and
- (c) the CoManagement Board shall have the authority to review and either approve, wholly or on terms and conditions, or disapprove, of any Water Project within its jurisdiction.

6.10 MINISTER'S CONSENT MAY BE REQUIRED:

Subject to applicable legislation, each of the Entitlement Bands and Saskatchewan acknowledge that the Minister's consent may be required pursuant to the Act to give effect to any CoManagement Agreement. To the extent such consent is required, each of the Entitlement Bands and Saskatchewan agree that such consent shall be obtained prior to execution and delivery of any CoManagement Agreement.

6.11 NO EFFECT ON TREATY RIGHTS:

Any provision of this Article which is found by a court of competent jurisdiction to conflict with or derogate from Treaty rights of any Entitlement Band or its Members shall, to the extent of such conflict or derogation, be deemed to be null and void and of no further force or effect whatsoever.

SCHEDULE III

(Subsection 2(1))

PROVISIONS OF THE NEKANEET AGREEMENT

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.01 DEFINITIONS:

In this Agreement, the following capitalized terms shall have the meanings hereafter ascribed to them, namely:

“Act”, “Chief”, “Council of a Band”, “Indian”, “Member of a Band”, “Minister”, “Reserve” and any other words herein which are used or defined in the *Indian Act*, R.S.C. 1985, c. I-5, shall have the same meaning as they have in the *Indian Act*, R.S.C. 1985, c. I-5, and the regulations made thereunder, and a reference to the *Indian Act* means the *Indian Act*, R.S.C. 1985, c. I-5, as amended or replaced from time to time, and any reference to a section of the *Indian Act* shall include that section as amended or replaced from time to time; (*Loi*)

“Agreement”, “this Agreement”, “hereto”, “hereof”, “herein”, “hereunder”, “hereby” and similar expressions, refer, unless otherwise stated, to this agreement, including the recitals, the Schedules and the Appendix attached hereto, and not to any particular article, section, subsection, subparagraph or other subdivision hereof or thereof; (*accord*)

“Discernible Surface Outlet” means a defined and ascertainable channel through which water normally flows for not less than seven (7) consecutive days each year; (*débouché visible en surface*)

“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; (*terres dues en vertu d'un traité*)

“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; (*nouvelle réserve*)

“Improvements” means all buildings or structures erected or placed on, over or under Land and, unless otherwise expressly provided herein, includes, without limitation, anything affixed to or incorporated therein, the plant and equipment of any oil or gas well or mine, any pipeline on or under Land, fencing, and any dugouts or other alterations to Land designed to facilitate the collection and retention of water; (*améliorations*)

“Land” or “Lands” means real property, chattels real, or any interests therein or in the nature thereof and, unless the context otherwise requires, excludes Minerals and Improvements; (*terre ou terres*)

“Member” means a member of the Band within the meaning of the Act and shall include all registered Indians recorded on the Department's Indian register in respect of the Band; (*membre*)

“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; (*minéraux*)

“Purchase” or “Purchased” means a purchase of Land, Minerals or Improvements by the Trustees or an agent of the Band in accordance with the requirements of the Trust Agreement and this Agreement, and may include the acquisition of ownership rights by means other than a transaction of purchase and sale; (*achat ou acheté*)

“Road Allowance” means land held by Saskatchewan which was at any time intended for use by the general public for the passage of vehicles, whether actually used for that purpose or not; (*réserves de chemin*)

“Treaty” means Treaty Number Four made and concluded on the 15th day of September, 1874

Treaty means Treaty Number Four made and concluded on the 10th day of September, 1874, by Canada and to which the Band adhered; (*traité*)

"Waterbody" means any river, stream, lake, pond, swamp, marsh, or other body of water; (*nappe d'eau*)

"Water Project" means:

- (a) any drain, dyke, dam or other work that is proposed to divert or impound water, or any alteration, addition to, or elimination of, any such drain, dyke, dam or other work;
- (b) any act which results in the emission of water or other substance into a Waterbody; or
- (c) any use of water;

that affects, or if constructed or carried out could reasonably be anticipated to affect, the existing quantity, quality or rate of flow, in a discernible way, of water in a Waterbody and which, if constructed or carried out on lands subject to the jurisdiction of Saskatchewan, would require a licence or other approval under the laws of Saskatchewan. (*projet d'aménagement hydraulique*)

ARTICLE 6

WATER

6.01 WHOLLY ENCLOSED WATERBODIES:

- (a) If a surface or subsurface Waterbody is wholly enclosed within the boundaries of any Entitlement Lands and has no Discernible Surface Outlet beyond the boundaries of the Entitlement Lands, Saskatchewan shall, without compensation, transfer to Canada all water, beds and shores of that Waterbody, effective upon creation of the Entitlement Reserve with respect to those Entitlement Lands.
- (b) For the purposes of this Article, ownership of Road Allowances intersecting a Waterbody shall not be considered in determining whether or not a Waterbody is wholly enclosed within Entitlement Land.

6.02 TRANSFER OF BEDS AND SHORES IN CERTAIN CIRCUMSTANCES:

Saskatchewan agrees to give favourable consideration to offers from the Band to Purchase the beds and shores of any Waterbody adjacent to Entitlement Land. Nothing in this Agreement shall be interpreted as requiring Saskatchewan to sell the beds and shores of such Waterbodies.

6.03 RESERVE BOUNDARIES:

Where Entitlement Land adjacent to a Waterbody is set apart as an Entitlement Reserve, the parties agree that:

- (a) the boundary of the Entitlement Reserve shall be the ordinary high water mark for such Waterbody;
- (b) the Entitlement Reserve shall not include within its boundaries any portion of the bed or the shore of the Waterbody below the ordinary high water mark unless Saskatchewan has expressly agreed to transfer the beds and shores in accordance with section 6.02; and
- (c) subject to compliance with the Navigable Waters Protection Act, R.S.C. 1985, c. N22, the Band shall have the right to place a dock, wharf or pier on the bed of the Waterbody along the boundary of any such Waterbody which is adjacent to an Entitlement Reserve, without needing to obtain any licence or to pay any fee or compensation whatsoever.

6.04 RIPARIAN RIGHTS:

The Band shall, immediately upon creation of an Entitlement Reserve, have full common law riparian rights with respect to the use and occupation of that Entitlement Reserve adjacent to a Waterbody, but, for greater certainty, the principle of *ad medium filium aquae* shall be inapplicable unless the affected beds and shores have otherwise been acquired by the Band under section

shall be enforceable and enforceable shall have been required by the Band under section 6.02.

6.05 NONENFORCEMENT OF RIPARIAN RIGHTS IN CERTAIN CASES:

- (a) Where Entitlement Reserve is established adjacent to a Waterbody, the Band agrees with Canada and Saskatchewan that the common law riparian rights referred to in section 6.04 shall be unenforceable by injunction, mandamus, prohibition, or similar prerogative writ for the purposes of preventing or delaying any Water Project provided that:
 - (i) Canada and the Band whose common law riparian rights have been affected, were notified at least six (6) months in advance of any decision in relation to the approval of any Water Project; and
 - (ii) the Band whose common law riparian rights have been affected by any such Water Project shall have been afforded active and meaningful participation in any decision by a decision making authority concerned with the approval or operation of any such Water Project.
- (b) The parties agree that nothing in this section limits the right of the Band to seek or obtain monetary compensation from Saskatchewan (including costs associated with obtaining such compensation) for damages suffered as the result of any interference with, loss of, or damage to, the Band's common law riparian rights.

6.06 ENVIRONMENTAL ASSESSMENTS AND CONSIDERATION OF INDIAN USE:

- (a) Where any Water Project may, in the opinion of the Band, reasonably be expected in a discernible way to adversely affect the Band's common law riparian rights, the Band and Canada and/or Saskatchewan, as the case may be, agree to jointly review or, if applicable, jointly conduct any environmental impact assessments or other studies concerning the effects, or possible effects, of any Water Project as may be statutorily required;
- (b) Canada and/or Saskatchewan, as the case may be, agree to jointly review or, if applicable, jointly conduct the same with the Band in a manner which takes due consideration of the Band's riparian rights and usage of any affected Waterbody by the Band, or the Members of the Band, for hunting, fishing, trapping, gathering or other traditional uses.

6.07 AGREEMENT AMONGST PARTIES:

Notwithstanding any other provision of this Article, but subject to applicable legislation, Saskatchewan and the Band may enter into a CoManagement Agreement concerning the management and use of all or any portion of a particular Waterbody adjacent to an Entitlement Reserve (including its water, bed and shore) affecting the Band's common law riparian rights, which meets the needs and objectives of all parties.

6.08 COMANAGEMENT AGREEMENT:

- (a) The CoManagement Agreement shall address matters affecting, in a discernible way, the quantity, quality, or rate of flow of waters in a Waterbody in respect of which the Band has riparian rights and may provide for any matters related to the use, management or development of the Waterbody. In particular, such an agreement may provide for the following:
 - (i) the establishment of a process for the exchange of information and consultations between the Band and Saskatchewan (and, where necessary, Canada) with respect to those Waterbodies and Water Projects;
 - (ii) the establishment of a process for the active and meaningful participation by the Band in the decision making process with respect to the approval or disapproval of Water Projects; and
 - (iii) the establishment of a CoManagement Board to make binding decisions with respect to Waterbodies and Water Projects.

- (b) In no event shall the entering into of a CoManagement Agreement be a condition precedent to the sale of any Crown Land, Minerals or Improvements hereunder.

6.09 COMANAGEMENT BOARD:

In the event that the Band and Saskatchewan agree pursuant to a CoManagement Agreement that a CoManagement Board be established, the following principles shall apply:

- (a) the Band and Saskatchewan shall be represented on the CoManagement Board by an equal number of members except in cases where the interest of the Band visàvis the interest of other users of the water does not warrant equal representation, in which case the respective representation of the Band and Saskatchewan on the CoManagement Board shall be agreed upon by the Band and Saskatchewan;
- (b) in the event that there is no agreement on the representation of the Band and Saskatchewan on the CoManagement Board, it shall be referred to the Arbitration Board; and
- (c) the CoManagement Board shall have the authority to review and either approve, wholly or on terms and conditions, or disapprove, of any Water Project within its jurisdiction.

6.10 MINISTER'S CONSENT MAY BE REQUIRED:

Subject to applicable legislation, the Band and Saskatchewan acknowledge that the Minister's consent may be required pursuant to the Act to give effect to any CoManagement Agreement. To the extent such consent is required, the Band and Saskatchewan agree that such consent shall be obtained prior to execution and delivery of any CoManagement Agreement.

6.11 NO EFFECT ON TREATY RIGHTS:

Any provision of this Article which is found by a court of competent jurisdiction to conflict with or derogate from Treaty rights of the Band or its Members shall, to the extent of such conflict or derogation, be deemed to be null and void and of no further force or effect whatsoever.