

STONEY TRIBAL ADMINISTRATION
PO Box 120, Morley, Alberta – T0L 1N0
Phone: (403) 881-4760 Fax: (403) 881-4250



January 22, 2021

Impact Assessment Agency of Canada
Castle Project
210A - 757 West Hastings Street
Vancouver, British Columbia V6C 3M2
Email: IAAC.Castle.AEIC@canada.ca

**Teck Coal Limited – Fording River Operations expansion
Castle Project, Reference #80702**

The Stoney Nakoda Nations (the “Stoney Nakoda”) are comprised of the Bearspaw First Nation, Chiniki First Nation, and Wesley First Nation and whose reserve lands are, namely: Morley Indian Reserves 142, 143, 144, undivided; Rabbit Lake Indian Reserve 142B; Bighorn Indian Reserve 144A; and Eden Valley Indian Reserve 216. The Stoney Nakoda were signatories to Treaty 7 in 1877; and therefore, the Stoney Nakoda hold Aboriginal rights and title recognized by Treaty 7 and the *Natural Resources Transfer Act, 1930* and further affirmed under Section 35 of the *Constitution Act, 1982*.

While the Stoney Nakoda are aware that the latest public comment period for the Teck Castle Project (the “Project”) closed on November 3, 2020, we understand that at the request of the Project proponent the Impact Assessment Agency of Canada (the “Agency”) has suspended the 180-day time limit for completion of the Planning Phase. We therefore wish to take this opportunity to provide feedback on the proposed Project and comment on our preferred participation in the federal process.

The Stoney Nakoda submitted comments to British Columbia’s Environmental Assessment Office (the “EAO”) about the Project on June 8, 2020. While we understand that these comments were considered by the Agency in its preparation of the summary of issues for the Project, we wish to officially adopt for the Agency’s record our letter of June 8, 2020 (attached) originally submitted to the EAO.

The Stoney Nakoda note that the Initial Project Description Summary states that lands associated with the Stoney Nakoda “are located 90 to 130 km from the Project” (page 5). However, the Stoney Nakoda wish to emphasize that the proposed Project is located within the traditional territory and the traditional use lands of the Stoney Nakoda. This is established and reinforced by the Statement of Claim filed by the Stoney Nakoda in the Supreme Court of British Columbia in 2004, at Appendix “A” to the attached June 8, 2020 letter to the EAO, as well as the Memorandum of Agreement between the Stoney Nakoda, the Ktunaxa Nation and the Shuswap Indian Band, dated September 27, 1895 at Appendix “B” to the attached June 8, 2020 letter. We

note that the Stoney Nakoda are the only Alberta First Nations to have such a formal agreement to allow hunting in British Columbia.

The Stoney Nakoda wish to fully participate in the federal review process for the Project, including through the collection of information regarding Stoney Nakoda practice of rights and traditional uses in and around the Project area, and in the identification and development of appropriate Project conditions in order to mitigate or compensate impacts to Stoney Nakoda rights. The Stoney Nakoda also wish to participate in all technical committees and working groups that may be established for the Project.

We wish to emphasize that in order to provide for the full and meaningful participation of the Stoney Nakoda in the federal review process, adequate funding must be made available. Further, given the continuing challenges presented by the COVID-19 pandemic, we request that the Agency ensure adequate time is provided for the various process steps to account for any limitations including office closures and staff restrictions.

The Stoney Nakoda look forward to engaging with the Agency on the Castle Project and provide our contact information below:

Stoney Tribal Administration
Stoney Consultation Office
PO Box 120
Morley, AB T0L 1N0
Dean Cherkas Telephone: (403) 881-2789 Email: dcherkas@stoney-nation.com
Bill Snow Telephone (403) 881-4760 Email: bills@stoney-nation.com

With copies to the following:

L. Douglas Rae Email: lorddoug@raeandcompany.com
Sara Loudon Email: slouden@raeandcompany.com

We trust the foregoing is in order.

Sincerely,

Stoney Tribal Administration
<Original signed by>

Dean Cherkas, P.Ag.
Director, Consultation

Enc.

cc: Bill Snow, Manager, Consultation (via email)

L. Douglas Rae / Sara Loudon, Rae and Company (via email)



June 8, 2020

Government of British Columbia, Environmental Assessment Office
PO Box 9426 Stn Provincial Government
Victoria, BC V8W 9V1

Attention: Todd Goodsell, Project Assessment Director
Environmental Assessment Office
(Via Email: Todd.Goodsell@gov.bc.ca)

Stoney Consultation Office
Box 120
Morley, Alberta
T0L 1N0
Office: (403) 881 – 4276
Fax: (403) 881 – 4250

Sent Via Email

RE: Response to the proposed engagement with the Stoney Nakoda Nations by the BC Environmental Assessment Office for the Teck Castle Project

The Stoney Nakoda Nations (SNN) are writing in response to the April 09, 2020 letter from the British Columbia Environmental Assessment Office (BCEAO) which outlines an approach to engagement with the SNN during the Environmental Assessment (EA) of Teck's proposed expansion of its' Fording River operations known as the Castle Project (the Project). The SNN wish to be recognized as a participating Indigenous Nation for the Teck Castle Project. To assist in determining the scope of engagement and subsequent capacity funding needs, the BCEAO requested that the SNN provide information on three items by June 8, 2020. A response to each item is given below.

- 1) **A description of which entity or representatives have been chosen by the Stoney Nakoda collective to participate in the environmental assessment in relation to the Castle Project.**
 - The Stoney Tribal Administration (STA) represents the three distinct Stoney Nakoda Nations; Bears paw First Nation, Chiniki First Nation and Wesley First Nation whose reserve lands are, namely: Morley Indian Reserves 142, 143, 144, undivided; Rabbit Lake Indian Reserve 142B; Bighorn Indian Reserve 144A; and Eden Valley Indian Reserve 216.
 - The STA, including representation from the Stoney Consultation Department and each of the 3 SNN communities, will participate in the environmental assessment in relation to the Castle Project.
- 2) **A preliminary description of the Stoney Nakoda interests and rights that could be impacted by the Castle Project;**
 - The Chiefs and Councils of the SNN have the authority to protect the collective rights and interests of the SNN as recognized by Treaty 7 and the Natural Resources Transfer Act, 1930, and protected by Section 35 of the Constitution Act, 1982 (collectively known as "Section 35 Rights").
 - SNN use, rights and interests pertain to traditional lands described Schedule A and paragraphs 8, 9 and 10 of the 2003 SNN WRIT OF SUMMONS (Appendix A); this includes areas within the Elk Valley in the southeastern Kootenay region of British Columbia which were used continuously and occupied on a joint or shared basis with other indigenous groups.
 - Oral histories and archival material document place names throughout lands used and occupied by SNN peoples. SNN traditional lands in British Columbia are collectively known to the SNN as Îyârhe Akodâhâ. The SNN are interested in the further documentation and preservation of the SNN traditional place names and oral narrative within southeastern British Columbia.

- Available information indicates that the proposed Project is located within an area where SNN has Section 35 rights and asserted title. The Project has the potential to intersect locations used for the exercise of SNN Section 35 rights and is within an area associated with hunting, harvesting, ceremonial and sacred sites and other cultural practices. Continued access to locations where these activities, practices, traditions and customs can persist is imperative to the maintenance of SNN culture and identity.
- Members of SNN have and are participating in traditional and cultural practices in areas affected by the Project. To identify the specific knowledge, values and interests related to the Project area, and the mitigations and measures that may reduce Project impacts to SNN use, rights and interests, additional work is needed; this includes, but is not limited to, a detailed and comprehensive traditional use/traditional knowledge study for the area.
- The SNN have interests in environmental stewardship, natural resource management and monitoring of their traditional lands. As such, the SNN have expressed interest in participating on the Environmental Monitoring Committee established for the Elk Valley Water Quality Plan. Should an environmental steering or advisory committee be established for the proposed Castle project, the SNN would like to maintain an active role on the committee.
- The SNN have a spiritual and cultural connection with harvesting resources, vegetation and wildlife, water, fish and fish habitat. The SNN would like to see serious consideration of cultural perspectives, traditional knowledge and the land and resource experiences of the SNN included in the environmental assessment of the Project.

3) Description of the Stoney Nakoda governance role in the Castle Project area including any arrangements or protocols between neighbouring Nations to provide clarity around Indigenous decision making in the specific project area.

Relationships among the Stoney Nakoda and neighbouring Nations in British Columbia are historic, current and evolving. The relationships have been formalized through oral history, agreements and modern treaty:

- The 1895 Memorandum of Agreement (Appendix B) among the SNN, Ktunaxa Nation Council and the Shuswap Tribal Council affirmed SNN access to hunting lands west to the Columbia and Kootenay Rivers in exchange for granting Ktunaxa and Shuswap access to hunt on lands east to the Rocky Mountains and the eastern slopes.
- In 2015, at the Kamloops Pow-wow in Kamloops, British Columbia, a pipe ceremony was held with the SNN and the Shuswap Tribal Council member Nations, to recognize the long standing cultural, social and spiritual bonds between the groups.
- In 2019, in Morley, Alberta, the SNN and visiting Shuswap Tribal Council member Nations held a meeting, and the Shuswap Tribal Council member Nations were also recognized during the Nakoda Pow-wow gathering.

We hope that this communication provides enough information to assist the BCEAO in determining the scope of engagement and subsequent capacity funding required to ensure the SNN are provided the opportunity to participate in the environmental assessment process for the proposed Castle project.

Sincerely,

<Original signed by>

Dean Cherkas, P.Ag.
Director, Consultation
Stoney Tribal Administration

Contact Information

Should you have any questions related to this correspondence, please contact Dean Cherkas at the Stoney Consultation Office:

Stoney Tribal Administration
PO Box 120
Morley, AB T0L 1N0
T: (403) 881-2789
F: (403) 881-2677
E: dcherkas@stoney-nation.com

Cc: Ryan Robb, Stoney Tribal Administration
William Snow, Stoney Consultation Manager
Cathy Arcega, Stoney Consultation
Chris Goodstone, Wesley Consultation
Conal Labelle Chiniki Consultation
Larry Daniels Jr., Bearspaw Consultation for Eden Valley
Barry Wesley, Chiniki Consultation for Bighorn
Dale Swampy, Consultant to Stoney Tribal Administration
Erin Slater, Consultant to Stoney Tribal Administration

APPENDIX A



Action No: S036666
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHIEF DARCY DIXON, GORDON WILDMAN, KEITH LEFTHAND, DONALD THOMAS DIXON, RODRICK HUNTER, and CHIEF AARON YOUNG, FRANK CRAWLER, HOMER HOLLOWAY, HENRY HOLLOWAY, GERALD KAQUITTS, and CHIEF ERNEST WESLEY, ROBERT CRAWLER, TATER HOUSE, CLIFFORD POUCKETTE and RUFUS TWOYOUNGMEN suing on their own behalf and on behalf of all other members of the STONEY INDIAN BAND

and

CHIEF DARCY DIXON, GORDON WILDMAN, KEITH LEFTHAND, DONALD THOMAS DIXON and RODRICK HUNTER suing on their own behalf and on behalf of all other members of the BEARSPAW FIRST NATION, being part of the STONEY INDIAN BAND

and

CHIEF AARON YOUNG, FRANK CRAWLER, HOMER HOLLOWAY, HENRY HOLLOWAY and GERALD KAQUITTS suing on their own behalf and on behalf of all other members of the CHINIKI FIRST NATION, being part of the STONEY INDIAN BAND

and

CHIEF ERNEST WESLEY, ROBERT CRAWLER, TATER HOUSE, CLIFFORD POUCKETTE and RUFUS TWOYOUNGMEN suing on their own behalf and on behalf of all other members of the WESLEY FIRST NATION, being part of the STONEY INDIAN BAND

and

THE STONEY INDIAN BAND

PLAINTIFFS

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA and THE ATTORNEY GENERAL OF CANADA**

DEFENDANTS

STATEMENT OF CLAIM

1. The individual Plaintiffs, Chief Darcy Dixon, Chief Aaron Young and Chief Ernest Wesley are respectively the duly elected Chiefs of the Bearspaw First Nation, the Chiniki First Nation and the Wesley First Nation. The individual Plaintiffs Councillors Gordon Wildman, Keith Lefthand, Donald Thomas Dixon and Rodrick Hunter are the duly elected Councillors of the Bearspaw First Nation. The individual Plaintiffs Councillors Frank Crawler, Homer Holloway, Henry Holloway and Gerald Kaquitts are the duly elected Councillors of the Chiniki First Nation. The individual Plaintiffs Councillors Robert Crawler, Tater House, Clifford Poucette and Rufus Twoyoungmen are the duly elected Councillors of the Wesley First Nation. These Chiefs and Councillors are collectively the Chiefs and Councillors of the Stoney Indian Band or Tribe.
2. The Bearspaw First Nation, Chiniki First Nation and the Wesley First Nation are the components of the Stoney Indian Band or Tribe. The members of the Bearspaw First Nation, the Chiniki First Nation and the Wesley First Nation together constitute the membership of the Stoney Indian Band and collectively comprise the Îyârhe Nakoda (People of the Mountains).
3. Individual Plaintiffs act herein on their own behalf, on behalf of the Stoney Indian Band or Tribe and on behalf of the Îyârhe Nakoda. Individual Plaintiffs also act as the representatives of the Stoney Indian Band or Tribe and of all the other citizens and members of the Îyârhe Nakoda, all of which members are Plaintiffs who have the same interest in these proceedings.

4. The Chiefs and Councillors of the Stoney Indian Band or Tribe are the proper representatives of the Îyârhe Nakoda and the Stoney Indian Band or Tribe and have the authority to bring this legal action.
5. The Îyârhe Nakoda are all "Indians" within the meaning of section 91(24) of the *Constitution Act, 1867*, the *Rupert's Land and North-Western Territory Order (1870)*, the *Constitution Act, 1930*, and the *Constitution Act, 1982*, and are Treaty Indians under *Treaty No. 7* of 1877, and "Aboriginal Peoples" within the meaning of the *Constitution Act, 1982*, and notably section 35 thereof.
6. Îyârhe Nakoda is a nation or tribe within the meaning of the *Royal Proclamation of 1763*, a tribe or band within the meaning of *Treaty No. 7*, and an organized society, a collectivity, and an Aboriginal People within the meaning of the *Constitution Act, 1982*.
7. Furthermore, as a nation under international law and as an Indigenous People, Îyârhe Nakoda is legally entitled to protection from having its traditional lands, aboriginal title, aboriginal rights or any of its other rights unilaterally confiscated, extinguished, appropriated or dealt with by Canadian law without its consent.
8. Since time immemorial or at least since prior to the assertion of Crown sovereignty over or any colonization of what is now British Columbia, Îyârhe Nakoda has occupied, used and possessed the traditional lands described in paragraph 9 hereof, and functioned as a distinctive Aboriginal People and society with its own social organization, culture and particular language, institutions, laws, practices, customs, traditions and economies.
9. All individual Plaintiffs are direct descendants of the Îyârhe Nakoda who had and transmitted to Plaintiffs aboriginal title and aboriginal rights in and to their traditional lands consisting of a large part of the lands, including the inland waters and the banks and beds of inland waters within what are now the Provinces of Alberta, British Columbia and Saskatchewan.
10. The part of the traditional lands of Plaintiffs in British Columbia (herein the "Traditional Lands") comprises the areas described as follows:

- a. An area bounded on the east by the Rocky Mountain divide, on the south by the 49th Parallel, on the west as shown on the map attached as Schedule 'A' to this Statement of Claim and to the north by approximately 54° latitude and including all of the natural resources thereof;
- b. The Traditional Lands include national and provincial parks; and
- c. The Traditional Lands do not include Indian Reserves and the natural resources thereof set aside for other Indian nations and Aboriginal Peoples.

These areas are collectively known to the Îyârhe Nakoda as "Îyârhe Akodâhâ".

11. In this Statement of Claim, "Natural Resources" means all natural resources, including living and inanimate things, and for greater certainty includes the forests and timber, surface and sub-surface waters, hydroelectricity and the mines, minerals and oil and gas in and throughout the Traditional Lands.
12. Since prior to the assertion of Crown sovereignty over the Traditional Lands, Îyârhe Nakoda have continuously and exclusively used and occupied the Traditional Lands. In the alternative, the Îyârhe Nakoda have continuously and exclusively used and occupied portions of the Traditional Lands with the remaining portions of the Traditional Lands being used and occupied on a joint or shared basis with other Aboriginal Peoples including the Kootenay and Shuswap peoples.
13. Since prior to European contact and prior to the assertion of Crown sovereignty, Îyârhe Nakoda have, in the Traditional Lands, continuously had and exercised activities, practices, traditions and customs which are integral to their distinctive culture and which are a central and significant part thereof. These activities, practices, traditions and customs have significantly related to the Traditional Lands including the Natural Resources.
14. In 1877, the Îyârhe Nakoda and other nations and tribes of Indians entered into *Treaty No. 7* in its oral and written forms with Her Majesty the Queen of Great Britain and Ireland. *Treaty No. 7* was preceded by negotiations during which representations, commitments

and promises were made to the Îyârhe Nakoda by representatives of Her Majesty, and these form part of the oral terms of *Treaty No. 7*.

15. *Treaty No. 7* recognized and affirmed certain aboriginal rights of Îyârhe Nakoda and conferred particular additional rights on Îyârhe Nakoda, all of which rights are treaty rights (herein "Treaty Rights").
16. *Treaty No. 7* contemplated a sharing of that part of the lands of the Îyârhe Nakoda within what is now the Province of Alberta and did not diminish or impair Îyârhe Nakoda aboriginal title or their continuing aboriginal rights with respect to the Traditional Lands including the Natural Resources.
17. The Îyârhe Nakoda retain all of their aboriginal rights not specifically modified by *Treaty No. 7*. More specifically, they retain their aboriginal title and aboriginal rights to the Traditional Lands encompassing as well the Natural Resources, including the part of their Traditional Lands contemplated by *Treaty No. 7*. Alternatively, they retain at least their aboriginal title to the Natural Resources and aboriginal rights of various kinds in the Traditional Lands. In addition, Îyârhe Nakoda retain the right of self-government and the right to be exempt from taxation by other governments, including the government of Her Majesty the Queen in Right of Canada and of Her Majesty the Queen in Right of British Columbia.
18. The aboriginal title and aboriginal rights of Îyârhe Nakoda as described herein are recognized and affirmed in section 35 of the *Constitution Act, 1982*.
19. Without prejudice to their other aboriginal and Treaty Rights, Îyârhe Nakoda have aboriginal and Treaty Rights to the lands, including its Natural Resources in and to all Stoney Indian Reserves, particularly:

Indian Reserves No. 142, 143, 144 (Morley);

Indian Reserve 142B (Rabbit Lake);

Indian Reserve 144A (Big Horn); and

Indian Reserve 216 (Eden Valley).

20. The aboriginal rights, including aboriginal title, of Îyârhe Nakoda claimed herein include the exclusive or shared Aboriginal use, enjoyment, benefit and beneficial ownership of the Natural Resources as well as the right to the non-exclusive use and benefit of the surface of Traditional Lands.
21. The aboriginal title and aboriginal and Treaty Rights of the Îyârhe Nakoda in the Traditional Lands including the Natural Resources are an interest other than that of the Crown within the meaning of s.109 of the *Constitution Act, 1867*.
22. The Traditional Lands including the Natural Resources are lands reserved for the Indians within the meaning of the *Royal Proclamation of 1763* and section 91(24) of the *Constitution Act, 1867*.
23. At all relevant times, a trust or fiduciary relationship existed between the Îyârhe Nakoda, as beneficiaries, and Defendant the Attorney General of Canada, as trustee or fiduciary, with respect to, *inter alia*, the Traditional Lands including the Natural Resources.
24. At all relevant times, Defendant the Attorney General of Canada has been under trust, fiduciary and equitable obligations and duties to the Îyârhe Nakoda with respect to the Traditional Lands including the Natural Resources, which include but are not limited to:
 - a. the duty to preserve and protect the aboriginal title, aboriginal rights and Treaty Rights of Îyârhe Nakoda in the Traditional Lands including the Natural Resources;
 - b. the duty to secure the Traditional Lands including the Natural Resources from interference by third parties, including servants and agents of Her Majesty the Queen in Right of British Columbia;
 - c. the duty to obtain the full consent of the Îyârhe Nakoda prior to authorizing or permitting any works on or exploitation of Natural Resources in the Traditional Lands; and

- d. the duty to consult in good faith and with the intention of substantially addressing the concerns of the Îyârhe Nakoda and of involving the Îyârhe Nakoda in decisions taken with respect to the Traditional Lands and Natural Resources and the duty to accommodate Îyârhe Nakoda aboriginal and Treaty Rights in and to the Traditional Lands including the Natural Resources.
25. At all relevant times, Defendant the Attorney General of Canada has owed an equitable obligation to Îyârhe Nakoda in connection with their aboriginal title, aboriginal rights and other rights and interests and has been the guardian of these rights and interests, and charged with the preservation and protection thereof.
26. At all relevant times, Defendant the Attorney General of Canada has been obliged to adhere to the strict standard of conduct incumbent on trustees or fiduciaries when dealing in any manner or being involved with the Traditional Lands and the Natural Resources and with the title, rights and interests of the Îyârhe Nakoda therein.
27. Defendant Her Majesty the Queen in Right of British Columbia is aware of the aboriginal title and the aboriginal and Treaty Rights of the Îyârhe Nakoda in their Traditional Lands and Natural Resources.
28. At all relevant times, Defendant Her Majesty the Queen in Right of British Columbia has been aware of the trust or fiduciary relationship that exists between the Îyârhe Nakoda and Defendant the Attorney General of Canada, and of the trust, fiduciary and equitable obligations of the Attorney General of Canada respecting the Traditional Lands and the Natural Resources, as described in paragraphs 23-26.
29. Defendant the Attorney General of Canada at all relevant times has breached Her trust, fiduciary and equitable obligations to Îyârhe Nakoda respecting the aboriginal title, aboriginal rights and other rights and interests of the Îyârhe Nakoda and respecting the Traditional Lands including the Natural Resources.
30. Defendant the Attorney General of Canada has specifically breached Her trust, fiduciary and equitable obligations:

- a. by failing to protect Îyârhe Nakoda interests in the Traditional Lands including the Natural Resources pursuant to their aboriginal title and aboriginal and Treaty Rights and other rights and interests;
 - b. by purportedly granting authorizations, permits, leases and licences pursuant to which works have been carried out, and Natural Resources extracted and disposed of, including in the national parks ; and
 - c. by failing to protect Îyârhe Nakoda rights, title and interests in the face of the activities described in paragraphs 34-36 and the authorization of those activities by Her Majesty the Queen in Right of British Columbia as described herein.
31. Îyârhe Nakoda at all relevant times have been peculiarly vulnerable to or at the mercy of Defendant the Attorney General of Canada and Îyârhe Nakoda at all relevant times have been unable to exercise or enforce their aboriginal title, aboriginal rights and Treaty Rights, to a large measure because of the matters pleaded in this Statement of Claim.
32. As a consequence of the breaches by Defendant the Attorney General of Canada of Her treaty, trust, fiduciary and equitable obligations to Îyârhe Nakoda with regard to the matters pleaded herein, the exercise of Îyârhe Nakoda aboriginal and Treaty Rights was extensively compromised and Îyârhe Nakoda have been deprived of substantial revenues from the Traditional Lands including the Natural Resources and have suffered severe losses and damages. These losses and damages, respecting which particulars will be provided and proven at trial, exceed the amount of \$10 billion.
33. While the Îyârhe Nakoda were unlawfully deprived of substantial revenues from their Traditional Lands and Natural Resources, Defendant the Attorney General of Canada received a corresponding enrichment in the form of royalties, payments and fiscal revenues from the appropriation, development and exploitation of the Traditional Lands and Natural Resources.
34. Moreover, Defendant Her Majesty the Queen in Right of British Columbia has purportedly authorized and has sanctioned the activities of third parties by purportedly

granting various authorizations, permits, leases, licenses and contracts, pursuant to which works have been carried out on the Traditional Lands, and Natural Resources extracted from the Traditional Lands by third parties.

35. Pursuant to the purported authorizations, permits, leases, licenses and contracts mentioned in paragraph 34, minerals, timber, water and hydro-electricity have been extracted or taken from the Traditional Lands and such minerals, timber, water and hydro-electricity have a value of at least \$10 billion.
36. The said works in the Traditional Lands and the exploitation of Natural Resources have severely interfered with and caused extensive losses and damages to Îyârhe Nakoda and their rights and interests, have unjustifiably infringed upon the aboriginal and Treaty Rights of Îyârhe Nakoda, constitute an illegal expropriation and appropriation of the Traditional Lands and Natural Resources and breaches by Defendant Her Majesty the Queen in Right of British Columbia of the aboriginal title, aboriginal rights and Treaty Rights of Plaintiffs.
37. As a result of such purported authorizations, permits, leases and contracts of Defendant Her Majesty the Queen in Right of British Columbia and of the works carried out, and Natural Resources extracted pursuant thereto, Îyârhe Nakoda have suffered additional losses in excess of \$10 billion.
38. Îyârhe Nakoda have received no benefit, no revenues, no compensation nor monies of any kind from the development, exploitation, extraction, marketing or sale of the Natural Resources exploited in or taken from the portions of the Traditional Lands outside their Reserves and Îyârhe Nakoda have not consented to the extraction and use of any Natural Resources by Defendant Her Majesty the Queen in Right of British Columbia or those purportedly acting under Her authority in regard to the Traditional Lands and Natural Resources.
39. Defendant Her Majesty the Queen in Right of British Columbia has received a corresponding enrichment in the form of royalties, payments and fiscal revenues from the

exploitation of the Traditional Lands including the Natural Resources as a consequence of the purported authorization of resource extraction and development activities.

40. At all relevant times, Defendant Her Majesty the Queen in Right of British Columbia was a constructive trustee with respect to all activities sanctioned by Her in connection with the Traditional Lands including the Natural Resources.
41. The said purported authorizations, leases, permits, licenses and contracts and the granting and exercising of alleged rights thereunder by Defendant Her Majesty the Queen in Right of British Columbia are unconstitutional, illegal, null and of no effect or alternatively are subject to the aboriginal title, aboriginal rights and Treaty Rights of Îyârhe Nakoda.
42. These infringements, interferences, losses, damages and expropriations and appropriations of the rights and property of Îyârhe Nakoda constitute breaches by Defendant Her Majesty the Queen in Right of British Columbia of the aboriginal title, aboriginal and Treaty Rights of Îyârhe Nakoda.
43. Defendants have also illegally interfered with, unjustifiably infringed and appropriated and curtailed the aboriginal and Treaty Rights of Îyârhe Nakoda respecting:
 - a. the occupation, use and enjoyment of the Traditional Lands including the Natural Resources; and
 - b. the carrying on by Îyârhe Nakoda of activities, customs, practices and traditions, including spiritual activities and hunting, fishing, trapping, gathering, and economic activities in and respecting the Traditional Lands including the Natural Resources.
44. Moreover, Defendants have severely interfered with and seriously compromised the way of life of Plaintiffs and their ability to earn a livelihood from the Traditional Lands and Natural Resources and have caused irreparable damage to the Plaintiffs. Defendants have interfered with the Îyârhe Nakoda's customs, traditions, language, values and culture, as well as with their spiritual links to the Traditional Lands and certain of the Natural

Resources and their special relationship with the Traditional Lands and Natural Resources.

45. With respect to Defendant Her Majesty the Queen in Right of British Columbia, Îyârhe Nakoda are entitled to the most favourable remedies available to them at law and in equity, and are entitled, *inter alia*, to the following remedies, either cumulatively or in the alternative:

- a. general and special damages for losses arising as a result of the purported authorizations, permits, leases and contracts of Defendant Her Majesty the Queen in Right of British Columbia and works carried out, and Natural Resources extracted, pursuant thereto;
- b. an accounting for the administration as constructive trustee of the Traditional Lands and the Natural Resources;
- c. restitutionary or other equitable remedies for the unjust enrichment of Defendant Her Majesty the Queen in Right of British Columbia; and
- d. equitable compensation for all other losses.

46. With respect to Defendant the Attorney General of Canada, Îyârhe Nakoda are entitled to the most favourable remedies available to them at law and in equity, and are entitled, *inter alia*, to the following remedies, either cumulatively or in the alternative:

- a. equitable compensation for losses arising as a result of the breach by Defendant the Attorney General of Canada of Her trust, fiduciary and equitable duties to the Iyarhe Nakoda;
- b. an accounting for the administration as trustee or fiduciary of the Traditional Lands including the Natural Resources, and of any other Aboriginal interests of Îyârhe Nakoda; and

- c. restitutionary or other equitable remedies for the unjust enrichment of Defendant the Attorney General of Canada;
47. Plaintiffs have instituted proceedings against Defendant the Attorney General of Canada in the Federal Court of Canada, described as *Chief John Ear v. Her Majesty the Queen* (F.C.C. 2344-93). Those proceedings relate more particularly to *Treaty No. 7* and the control, management and administration of lands and the natural resources of the Stoney Reserves and of the royalties therefrom and involve as well related federal trust, fiduciary and other obligations and the deprivation of various treaty benefits. Plaintiffs have also instituted proceedings in that Court described as *Chief Harvey Baptiste et al v. Her Majesty the Queen* (F.C.C. 307-96), respecting treaty, trust, fiduciary, constitutional and other obligations of the Crown in relation to the administration, management and control of timber resources on the Stoney Reserves. Plaintiffs invoke certain aboriginal and Treaty Rights in those proceedings, notably with respect to the Stoney Reserves. Plaintiffs sue herein without prejudice to their legal position in those proceedings.
48. The Îyârhe Nakoda assertion of aboriginal rights, aboriginal title, and Treaty Rights over their Traditional Lands, including the Natural Resources, are without prejudice to, and exist in conjunction with, the aboriginal rights, aboriginal title and Treaty Rights of other Indian nations and Aboriginal Peoples respecting certain parts of the Traditional Lands.
49. More particularly, Îyârhe Nakoda assertion of aboriginal rights, aboriginal title and Treaty Rights over their Traditional Lands, including the Natural Resources, are without prejudice to, and exist in conjunction with, the aboriginal rights, aboriginal title and Treaty Rights of the Kootenay and Shuswap Peoples.
50. More particularly the Îyârhe Nakoda assertion of aboriginal rights, aboriginal title, and Treaty Rights over their Traditional Lands, including the Natural Resources, does not include Indian Reserves set aside for other Indian nations and Aboriginal Peoples.

WHEREFORE, the Plaintiffs claim the following relief against the Defendants:

- A. A Declaration that the Íyârhe Nakoda have, and at all relevant times have had, unextinguished aboriginal title and existing aboriginal rights and Treaty Rights in and to the Traditional Lands including the Natural Resources, and aboriginal title to the Traditional Lands;
- B. A Declaration that the aboriginal title and rights of the Íyârhe Nakoda are constitutionally protected, take precedence over and condition, and are a burden and encumbrance upon, any right or claim of Defendants in and to the Traditional Lands and Natural Resources;
- C. A Declaration that at all relevant times the Íyârhe Nakoda have had and still have the right to the exclusive use, enjoyment and ownership of the Natural Resources or to the shared use, enjoyment and ownership of the Natural Resources with other Aboriginal nations;
- D. In the alternative, a Declaration that at all relevant times the Íyârhe Nakoda have had and still have the right to the shared use, enjoyment and ownership of the Natural Resources in certain parts of the Traditional Lands either on an exclusive basis or together with other Aboriginal nations;
- E. In the further alternative, a Declaration that at all relevant times the Íyârhe Nakoda have had and still have the beneficial ownership of the Natural Resources in all or, alternatively, in certain parts of the Traditional Lands;
- F. A Declaration that at all relevant times Defendants have had and still have trust, fiduciary or other equitable obligations to the Íyârhe Nakoda with respect to all rights and interests of Íyârhe Nakoda in and to the Traditional Lands and Natural Resources;
- G. A declaration that Defendants have breached their trust, fiduciary and equitable obligations to Plaintiffs in respect to the rights of Plaintiffs and in respect to the Traditional Lands and Natural Resources;

- H. A Declaration that Defendants have unlawfully issued or caused to be issued various authorizations, permits, leases, licenses, and contracts respecting the Traditional Lands and Natural Resources;
- I. An Order quashing such authorizations, permits, leases, licenses, and contracts as are incompatible with the aboriginal title or inconsistent with the exercise of the aboriginal or Treaty Rights of Îyârhe Nakoda;
- J. A Declaration that the Îyârhe Nakoda have suffered losses and damages as a result of breaches of Defendant Her Majesty the Queen in Right of British Columbia;
- K. An award of damages or equitable compensation from Defendant the Attorney General of Canada in favour of the Îyârhe Nakoda;
- L. An award of damages or equitable compensation from Defendant Her Majesty the Queen in Right of the Province of British Columbia in favour of the Îyârhe Nakoda;
- M. An accounting:
- a) for the value of all Natural Resources extracted from the Traditional Lands including royalties, payments and fiscal revenues;
 - b) for all royalties, payments and fiscal revenues received by Defendants that related to the extraction of Natural Resources from the Traditional Lands; and
 - c) for the value of the unjust enrichment of Defendants.
- N. An Order that the Defendants pay the Îyârhe Nakoda any amount to which they are entitled consequent upon such an accounting;
- O. Interlocutory and permanent relief as required to prevent further or new interference with the aboriginal title and rights of Iyarhe Nakoda over the Traditional Lands and Natural Resources;

- P. All further and proper declarations, accounts, inquiries, orders and directions to carry out the remedies awarded;
- Q. Pre-judgment and post-judgment interest according to the *Court Order Interest Act* R.S.B.C. 1996, c. 79;
- R. Costs; and
- S. Such further and other relief as this Honourable Court may deem just.

PLACE OF TRIAL: Vancouver, BC

DATED at the City of North Vancouver, in the Province of British Columbia, this 22nd day of December, 2004;

<Original signed by>

~~Jim I.~~ Reynolds
Solicitor for the Plaintiffs

This STATEMENT OF CLAIM is filed and delivered by Jim I. Reynolds, Barrister and Solicitor, of Ratcliff & Company, Solicitor for the Plaintiffs, whose place of business and address for service is Ratcliff & Company, Barristers and Solicitors, Suite 500, 221 West Esplanade, North Vancouver, B.C., V7M 3J3; Phone: 604-988-5201; Fax: 604-988-1452.

James O'Reilly of O'REILLY ET ASSOCIÉS, Avocats, solicitors for the Plaintiffs, whose address for service is in care of James Reynolds of Ratcliff and Company whose address for service is #500 – 221 West Esplanade Street, North Vancouver, B.C., V7M 3J3;

Stuart C.B. Gilby of BURCHELL HAYMAN PARISH, Barristers and Solicitors, solicitor for the Plaintiffs, whose address for service is in care of JAMES REYNOLDS of Ratcliff and Company whose address for service is #500 – 221 West Esplanade Street, North Vancouver, B.C., V7M 3J3;

RAE & COMPANY, Barristers and Solicitors, solicitors for the Plaintiffs, whose address for service is in care of James Reynolds of Ratcliff and Company whose address for service is #500-221 West Esplanade Street, North Vancouver, B.C., V7M 3J3;

APPENDIX B

132982

Memorandum of Agreement made in duplicate at Windermere, District
of the Kootenay, Province of British Columbia, This
27th Day of September, 1896.

Witness:-

Abel, Chief of Columbia Lakes, Kootenay Indians,
Pielle, Headman, of the Kootenay Indians, St Mary's,
Charles Kinbasket, 2nd Chief of Shuswap Indians at
Columbia Lakes.
Pierre Kinbasket, Shuswap Chief.

Witness:- One Part,

John Cheneka, Chief of the Stonies, residing at Morley,
in the N.W. Territories, and
George Crawler, Councillor of said Stony Indians,

On the Other Part.

The said Chief and Headman, Abel, Pielle, Pierre Kinbasket,
John Cheneka, George Crawler, acting for themselves, and on
behalf of the several Bands to which they respectively belong,
because of the friendly relations hitherto existing between
their several Bands,

Do hereby agree as follows:-

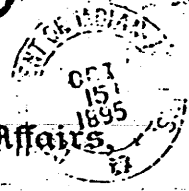
That the Stonies shall have the privilege of hunting as far
West as the Columbia and Kootenay Rivers, and that in return
the Kootenay Indians, and the Shuswap Indians shall have the
privilege of hunting as far East as the base of the Rocky
Mountains, on the Eastern Slope thereof.

And that this mutual concession is made with the distinct
understanding that the Game Laws of British Columbia
and the North West Territories, as the case may be,

your reply refer to
No. 1186

Office of the

70143
132992



also to the date of this letter.

Commissioner of Indian Affairs,

North-West Territories,

Please your reply to
"The Indian Commissioner,
Regina, N.W.T."

Regina, October 10th. 1895

*Enclose
Approval to this &
for reference to prior correspondence vide Department's file No. 82520
with file
see Stone's report
lower on file
attached to 80143
H.L.*

Sir:-

Referring to your interview with Chief
Cheneka, and other Stony Indians at Regina the latter end of
July last, and the authority given for the holding of a confer-
ence between delegates from the Stony Indians, and the Kootenay
and Shuswap Indians, regarding their respective hunting grounds,
I have the honour to report as follows:-

On the 27th August last, at a meeting held
in my presence, on the Stony Reserve, the Rev John McDougall
acting as interpreter, it was arranged that said conference
should take place at Windermere, Upper Columbia River, on the
26th September then proximo, and that I would personally be
present with Rev Mr McDougall as interpreter. With your author-
ity, communication was had with Mr R. L. T. Galbraith, Indian
Agent at Fort Steele, giving him notice of date and place of
said proposed conference, and requesting him to be present with
delegates

The Deputy of,
the Superintendent General,
of Indian Affairs,
Ottawa.

be strictly observed, and that any infraction of the said
Laws by the Stonies of British Columbia, or by the
Kootenays or Shuswaps, in the North West Territories, shall
be considered sufficient reason for withdrawing the concession
above made, from the Band or Bands to which the Party,
Parties Transgressing belong.

witness whereof the Parties to this Agreement have
set their hands hereto, this Day and Year above written:-

Witness to the presence

of the Parties,

George Golding, J.P.

John McDougall,
Missionary on Stoney Res.

his
Abel. x Chief Columbia Lake,
mark Kootenay Indians.

his
Pielle. x Headman, St Mary's Res.
mark

his
Charlie x Kinbasket. Second Chief,
mark of Shuswap Indians.

his
John x Cheneka. Chief Stoney
mark Indians.

his
George x Crawler. A Stoney Indian.
mark

his
Pierre x Kinbasket. Shuswap Chief.
mark

I hereby certify that this Agreement, previous to its being
signed, was carefully translated and explained to the
Kootenays and Shuswaps Indians, by Lewis Stowekin, Official
Interpreter at the Kootenay Agency, and by the Rev John
McDougall, to the Stoney Indians.

sgd A.E. Forget.

3

Adrian, St Mary's, Kootenay.
Old Patrick Do Do.

The Shuswap Indians by :-

Pierre Kinbasket, Chief
Charles Kinbasket Do
Alexander Kinbasket
Louis Paul.
Moise.

The Stoney delegates present were:-

John Cheneka Chief.
George Crawler Counsellor
Hector.
George Hunter.
Paul Crawler.

In addition to the above named delegates, there were present other Kootenay and Shuswap Indians, numbering in all about 25.

In opening the conference, I said it had been called at the request of the Stoney Indians, who, not having been represented by delegates chosen by themselves, at the meeting held at Golden on 9th September 1893, they did not feel bound by anything that may have been said or done at said meeting. That in any case, the Stonies present while verbally agreeing

delegates from the Kootenay, and Shuswap Indians.

On Sunday the 22nd September, I left Regina for the purpose of proceeding to the place of appointment, the Rev John McDougall joining me at Morley, the following morning arriving at Windermere by steamer on the Upper Columbia River at 2 p. m. on the day fixed for the conference.

Mr Galbraith, who had arrived the morning before with his Indian delegates, kindly met us on our arrival. The Stonies being also present, we all at once proceeded to the Public School House, where the conference was held, commencing at 3 p. m. and terminating at 7 p. m.

There were present:-

The undersigned chairman.

→ R. L. T. Galbraith, Indian Agent.

Rev John McDougall, Interpreter for the Stonies.

Lewis Stowakin, Interpreter for the Kootenays and Shuswaps.

The Kootenays were represented by the following delegates:-

Abel, Chief, Columbia Lake Kootenay.

Tatla, or Terry, Do. Do.

Aistanoma Do. Do.

Kie, Do. Do.

Pielle, Headman, St Mary's, Kootenay.

Adrian

If a boundary however was thought more advisable, I expressed the hope that they would deal generously in the matter, and suggest one that would be acceptable by the Stonies.

Chief Cheneka followed, and said that as long as he could remember, and he was now an old man, the best friendly relations had ever existed between the three tribes of Indians represented at the conference; and his only wish was that nothing would occur to prevent their continuation in the future. His hopes in this regard were great, as there now existed a bond of sympathy between them in that they were now all Christians. He had nothing further to add as to the Stonies claim, Mr Forget having fully covered the ground, Only he would say he believed from his heart that anything the representatives of the Government may advise is for the good of them all, and hoped that the other delegates will see things in the same light and that this meeting will bring forth good results.

The Stonies he added, understood that if no objection was raised to their hunting in any part of British Columbia, they will of course have to obey the game laws of that Province.

Abel, Chief of the Columbia Lake Keetenays spoke next, and said:-

" Two years ago they, the Keetenays and Shuswaps, had met the Stonies at Golden. Mr Phillips, their Agent

4

agreeing to consider the boundary between the Territories, and British Columbia as the Western limit of the Steney's hunting ground, they had nevertheless declined to sign any formal agreement to that effect, as they felt they had no authority to do so. This time, Chief Cheneka and four other properly appointed delegates from the Stenies were present, and there was no reason why some final arrangement, satisfactory to all concerned, should not be arrived at. What the Stenies claim was the privilege of extending their hunting operations irrespective of all lines. They say that in the past when game was plentiful on the Eastern slope of the Rocky Mountains, they never offered any objection to the Kootenay and Shuswap Indians coming, and hunting in what they might then have considered their own hunting grounds. On the other hand, they had never met with any opposition in their own hunt West of the Summit of the Rocky Mountains; and year after year they had established what they consider a right to hunt in the Upper Columbia, and East Kootenay districts. During recent years, game had receded West, little being now met with East of the Summit of the Rocky Mountains. It would therefore be hard for them should they be compelled to confine their hunts in the Territories. It would be for the Kootenays, and Shuswaps present to decide whether the Steney's claim was a just one.
If

seasons. We again disbelieved this, but that also has come to pass. Now the Whiteman tells us that the other fur-bearing animals will in turn soon disappear, unless well protected. Twice the Whiteman's word has proved true, although we disbelieved it at the time. We believe his word now, and in the fear that the rest of the game will soon be no more, we are devoting our attention to farming, and cattle raising. The game must be protected and for seven months, from Spring to Fall, we keep to our fields. What do the Stonies do, during that time? they come and hunt and kill everything before them. The Stonies say formerly you hunted on our side of the Mountains, why do you object now if we come on your side? Our reason is that we were told by Whitemen, to stop the Stonies coming this side, in order to preserve our game. What I say now I think in my heart, but I am like Abel, I am willing to do anything the big Chief will advise.

Adrian, Kootenay, from St Mary, agrees with what Pielle has just said, his heart is good. The advise of the Whiteman to farm is good, and we purpose following it more and more every year. The Stonies, he fears, are not doing the same but continue to hunt as of old. If they would farm more, and raise cattle, they would soon have food and not be in need of hunting for their living.

Tatia, Kootenay, Columbia Lake Reserve, said was a friend of Father Cocolat, goes to his Church every Sunday, remembers his teaching respecting the creation of the World. It took

"Agent there was with them. From him he ever since understood that the water shed of the Rocky Mountains was to be the division line. Mr Phillips said, that this was necessary, as if the Stonies were allowed to come further West, they would sweep all the game before them, and leave nothing to the Kootenays and Shu-waps ". Continuing, he said:- " We told them then, that they would always be welcome if they came on friendly visits, and that in such cases no fault would be found with them for carrying a couple of rifles. Since this is not satisfactory, we are willing to make a new arrangement, was glad to hear that two Chiefs were coming for the purpose, as they will hear what they have to say. We are willing to submit to anything the great Chief may decide, in the same manner as I want my little boy to obey me when I command him ".

Piello, Headman, Kootenay, St Mary's Reserve said:-

Long ago there were plenty of buffaloes, and the whiteman told us a time would come when they would all disappear. That seemed incredible, they were so numerous. We therefore could not believe it, nor would the Stonies. The Whiteman, however, had said the truth, the buffaloes are all gone. Then the Whiteman told us that deer which were but a few years ago, as numerous as flies in the foot hills of the Rocky Mountains, would also go, because they were being hunted at all seasons

not hunt this side of the Rockies. They have come here to make a new arrangement and when they return home, they will feel good for we will not object to their hunting in these parts, provided they do so only in the open season.

No other rising to speak, I thanked the Indians for the general tone of their speeches, and asked the Kootenays and Shuswaps if they would be willing to sign an agreement permitting the Stonies to come and hunt as far westward as the Columbia and Kootenay Rivers, in return to being allowed ~~the same~~ privilege as far eastward as the Eastern slope of the Rocky Mountains, on the special and express understanding that the Stonies would strictly observe the game laws of British Columbia when hunting within the limits of that Province, and that they would do likewise with regard to the laws of the North West Territories, should they, at any time come across to the said Territories. All having acquiesced to this proposition, and it having been in turn been submitted to the Stonies, and assented to by them, the meeting was adjourned until the next morning for the execution of the formal agreement by such of the delegates who were then and there selected for the purpose.

According to appointment, a formal agreement, embodying the above resolution, was executed in duplicate the

took seven days, after relating each days' work, now if the Stonies will imitate this example, and work in their fields the seven months during which the game is protected, everything will be well. The seven months over, let them come and hunt wherever we hunt ourselves. We will raise no objection, but the game must not be killed during the close season, by the Stonies, as they have done in the past.

Patrick, Headman, St Mary's Reserve said he was at one time nick-named the "Black-stone" Remembers the time when the international boundary was surveyed, was giving the option of going South or North of the line. Chose to come North. Look upon the Whitemen and the Stonies as friends. The Stonies may come and hunt in these parts, but do not want them to cross the Columbia River, and they must also attend to their fields and cattle during the seven months close season.

Pierre Kin-bas-keet, Chief Shuswap:-

Thought the arrangement made two years ago was good, as the game is getting scarce this side of the Rocky Mountains. However do not object to anybody, Whitemen or Stonies, hunting in these parts during the open season.

Charlie Kin-bas-keet, also Chief, brother of preceding:-

What my brother said is true. I knew that the Stonies heart must have been sore when they heard they could not

the next morning by the delegates specially designated for the purpose, and after a few short complimentary speeches, the conference was declared closed.

I have the honor to enclose herewith copy of the agreement executed as above stated.

In conclusion I think it ^{my duty} necessary to mention that the presence of the Rev John McDougall, owing to his long acquaintance with the Stonies, the interest he takes in their general welfare, and the great influence he exercises over them, proved of the greatest assistance to me; and the Kootenay and Shuswap Indians, who knew him by reputation, appeared greatly pleased to make his personal acquaintance.

Mr Galbraith deserves a similar testimony, for the valuable assistance given by him throughout the conference; and both Rev Mr McDougall, and myself had every reason to be pleased with the very cordial reception he gave us at our arrival, and other kindly attentions during our short stay at Windermere.

In his company, after the conference was over, we drove through the Shuswap Reserve, and over parts of the Columbia Kootenay Reserves. On both we were agreeable surprised at the various signs of the progress in the art of civilization.

civilization made by these Indians. All their Farms are under irrigation, and their crops, some of which were still standing, looked very fine.

Mr Galbraith made a strong effort to induce us to go and visit the Indian Industrial School on St. Mary's Reserve under the patronage of the Roman Catholic Church, and I very much regret that time did not permit of our making this visit.

We left Windermere on Saturday, the 23rd Sept, at 7 o'clock in the morning, and reached Golden the next day at Twelve.

I have the honour to be

Sir

Your obedient Servant

<Original signed by>

Asst Commissioner.