



Opaskwayak Cree Nation



Province of Manitoba

**AGREEMENT FOR
JOINT MANAGEMENT OF RESOURCES**

BETWEEN

OPASKWAYAK CREE NATION as represented by the Chief and Council of the Opaskwayak Cree Nation

("OCN")

-and -

**HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF MANITOBA as represented by the
Minister of**

("Manitoba")

WHEREAS

A. Manitoba is responsible for the management of Crown lands and resources, including water, water power, wildlife, fisheries, forests and minerals, within the Province of Manitoba pursuant to The

Crown Lands Act, The Wildlife Act, The Water Protection Act, The Water Power Act, The Water Rights Act, The Fisheries Act (Manitoba), The Mines and Minerals Act, The Forest Act, The Provincial Parks Act and other Acts of the Legislature of Manitoba made in accordance with the authority of the Manitoba Natural Resources Transfer Agreement(*Constitution Act 1930*);

B. Manitoba Conservation and Water Stewardship also has responsibilities for managing the protection of the environment under The Environment Act and other Acts.

C. The Chief and Council of OCN is responsible for the management of lands, waters, minerals, resources and the environment on Opaskwayak reserve lands under the *Indian Act* (Canada) and the *First Nations Land Management Act*(Canada), under the *Opaskwayak Cree Nation Land Use and Community Plan Including Natural Resources Land Law*;

D. OCN and other First Nations, have throughout their history, been concerned with and involved in the wise use and careful management of natural resources as part of Aboriginal practices, customs and traditions so as to maintain and protect the lands and resources which provided their livelihood;

E. The members of OCN (the "Members") have Treaty and Aboriginal Rights in respect of natural resources and waters on Crown lands and on Opaskwayak Reserve Lands, including rights under Treaty #5 and the right to hunt, trap, and fish, for food at all seasons of the year on unoccupied Crown Land and other land to which they have a right of access as set out in paragraph 13 of the Manitoba Natural Resources Transfer Agreement, and may also include other rights including the right to gather plants for food, medicine, and ceremonies on unoccupied Crown lands;

F. Crown lands and Opaskwayak Cree Nation reserve lands have traditionally, culturally and historically been used by the Members for the purpose of harvesting natural resources;

G. Manitoba and OCN agree that the sustainable management and development of lands, waters, minerals, other resources and the environment within an OCN Traditional Territory within the Province of Manitoba can be achieved through a joint management agreement;

H. OCN's traditional territory extends into the boundaries of the province of Saskatchewan. OCN has the objective, which Manitoba recognizes and supports the negotiation of appropriate and just arrangements with the province of Saskatchewan with respect to the same subject as this agreement;

I. International human rights instruments including those in the *United Nations Declaration on the Rights of Indigenous Peoples* support the principle that indigenous peoples and governments should cooperate through agreements and other constructive arrangements to protect fundamental rights of indigenous peoples.

J. The fundamental principles of Canadian constitutional law, including the recognition and affirmation of aboriginal and treaty rights under s. 35 of the Constitution Act, 1982, support the principle that aboriginal peoples and governments in Canada should cooperate through agreements and other constructive arrangements to protect fundamental rights of aboriginal peoples.

K. OCN has a long-term (twenty-year) goal of attaining a feasible and just measure of economic and political self-sufficiency in respect of management of natural resources in the Traditional Territory that may be formally recognized in agreements and other constructive arrangements within Manitoba and other relevant governmental parties and other parties ;

L. Manitoba is committed to the principle that the Crown has a duty to consult with First Nations about any decision or action that might adversely affect the exercise of Aboriginal or treaty rights in order to hear and understand any concerns of the First Nation, and that the Crown has a duty to consider seriously those concerns in making the decision including, where appropriate, taking measures to address or accommodate those concerns which may include agreements and other constructive arrangements involving Manitoba, First Nations and other parties.

M. At a meeting on June 4, 2010 at Brokenhead First Nation, the Government of Manitoba affirmed the commitment of the Provincial Government to enhance relationships with First Nations on resource and revenue sharing.

N. On 15 February 2007 OCN and Manitoba entered into a first Agreement for Joint Management of Resources which continued until 31 March 2009 and was extended by agreement of the parties until the date of this agreement.

OCN and Manitoba Agree as follows:

1. Definitions

"Board" means the Joint Resource Management Board that is continued under Section 3 of this Agreement;

"Fish" has the same meaning as in the *Fisheries Act* (Canada);

"Mineral" has the same meaning as in *The Mines and Minerals Act* (Manitoba);

"OCN Traditional Territory" means the area described as OCN Traditional Territory in Section 2 of this Agreement, and as identified in Schedule "A";

"Plan" means a Joint Management Plan proposed by the Board or approved by the Parties under this Agreement;

"Resources" includes land, minerals, fish, wildlife, forests, plants, forest products and waters within OCN Traditional Territory;

"Wildlife" has the same meaning as in *The Wildlife Act* (Manitoba).

2. OCN Traditional Territory

2.1 The Manitoba Crown Lands and OCN Reserve Lands contained within the area identified in Schedule "A" as the "OCN Traditional Territory" including the rivers and lakes within that area, is designated as the "OCN Traditional Territory" for the purposes of this Agreement.

2.2 The boundaries of the OCN Traditional Territory may be amended from time to time by Agreement in writing between the Parties.

3 Joint Resource Management Board

3.1 The Joint Resource Management Board established under the first Agreement for Joint Management of Resources is continued and shall continue to operate in accordance with this section.

3.2 The Board shall consist of four (4) members appointed by each of Manitoba and OCN.

3.3 Two co-chairs of the Board shall be selected by the members of the Board from among its members for such term as is established by the Board, provided that such term shall not exceed the remaining terms on the Board of those members.

3.4 The members of the Board shall establish rules and procedures for the conduct of the business of the Board.

3.5 A quorum of the Board shall be a majority of the members.

3.6 Meeting times and places shall be determined by the Board at least two weeks in advance, taking into account travel costs, the need for general public involvement, site investigations and like matters.

3.7 The Board shall meet at least four times annually.

3.8 The co-chairs may at their discretion determine when a meeting is open to the public and may also determine when interested parties may be permitted to make representations to the Board.

3.9 Decisions of the Board shall be made by consensus. Consensus means a process and a rule of decision that aims for unity and not unanimity in making decisions. Basic elements of a consensus model include discussions of an agenda item that share information and identify concerns, followed by formation of a proposal for decision and a call for consensus. If there is no agreement, minority objections are heard, a modified proposal is discussed and the process reverts to a new call for consensus. Procedural rules may be adopted by the Board to specify the details of the process and decision-making, which may include a time limit on agenda item discussion, a limit of times a participant may intervene, and options such as tabling a proposal to a later meeting.

3.10 Where consensus cannot be reached then a decision shall be made in accordance with the rules established by a Board bylaw.

3.11 Public and media communication on behalf of the Board shall normally be made by the Co-Chairs or other Board members who may be designated in advance by the Board. In other cases Board members speaking to the media should stipulate that they are speaking as an individual member and not on behalf of the Board.

4 ANNUAL PLAN AND BUDGET OF BOARD

4.1 The Board shall by the end of August in each year prepare an annual plan and budget for the next fiscal year.

4.2 The annual plan and budget shall:

(a) Include requirements for:

- Facilities, equipment, travel and administration;
- Public meetings, consultations and hearings;
- Research, publications and public education;
- Other program or activities deemed necessary by the Board; and

(b) Identify how the budget will be funded, recognizing that some of the costs will be the responsibility of the Parties directly; and

(c) Be submitted to the Chief and Council of OCN and to the Minister of Conservation and Water Stewardship for Manitoba for approval.

4.3 Costs incurred by the Board shall be paid in accordance with an approved plan and budget.

4.4 The budget shall be administered by OCN and as provided for in the annual plan.

4.5 Staffing, facilities and in-kind goods and services from the Parties shall be considered as bona-fide contributions to plans and budgets.

4.6 Technical support, materials and programs for the management of resources available from Manitoba within the OCN Traditional Territory shall be co-ordinated with Board activities and provided without charge. In those cases where set fees for services have been established, they shall continue to be charged unless otherwise agreed by Manitoba.

4.7 The fiscal year of the Board shall be from April 1 to March 31 of the following year.

5. BOARD FUNCTIONS

5. The Board may:

- a. consider ways to preserve and enhance the resources of the OCN Traditional Territory for the ultimate benefit of Members and others and the promotion of the goals of sustainable development and joint management;
- b. identify and evaluate the interests and needs of members of OCN and the interests and needs of third parties; identify the extent and terms of third party interests; and seek ways and means by which the interests and needs of members and third parties may be reconciled;
- c. monitor activities within OCN Traditional Territory, and particularly the actual uses of land and resources by Members, regional interest holders or stakeholders, other persons, industrial or other developments;
- d. investigate and assess resources, including the nature and extent of fish, wildlife and plant populations and their habitat, their consumptive and non-consumptive use and enjoyment and any influences on them and identify areas of ecological, cultural and historic significance;
- e. facilitate co-operation and communication between OCN and Manitoba in respect of the joint management of the OCN Traditional Territory including assisting in exchange of information;
- f. propose subjects and prepare strategies and plans, for research for the Board or for the Parties to implement with respect to the assessment and management of resources in OCN Traditional Territory;
- g. prepare information and communications strategies for Members, other stakeholders and for the general public as to the uses of the OCN Traditional Territory, Joint Management Plans, the operations of the Board, research or other such activities as the Board may deem relevant;
- h. hold meetings and workshops or otherwise consult publicly or privately with any Member, stakeholder, representative of OCN or Manitoba, or any other person in regard to matters covered under this Agreement;
- i. develop and recommend Joint Management Plans to the Parties;
- j. facilitate co-operation and communication between OCN and Manitoba in respect to the Joint Management of the OCN Traditional Territory including assisting in the accessing, disclosure or exchange of information and;
- k. make recommendations or provide advice on policy relating to any and all activities that may affect the interests or rights of OCN and its Members on matters pertaining to the subject of this Agreement including recommendations or advice respecting:
 - i. commercial uses of Resources,

- ii. the allocation or re-allocation of resources, including recommending procedures for the assignment or re-assignment of new, vacant or underutilized traplines, fishery quotas, wild rice licences or other commercial and subsistence harvesting of resources including forestry,
- iii. the protection of fish, wildlife and plant species, in particular, rare, threatened and endangered species, in connection with forest, mineral, commercial, industrial or infrastructure development,
- iv. ways and means to preserve and enhance the resources of the OCN Traditional Territory, including but not necessarily limited to, education and information, voluntary limitations, quotas and harvesting practices for Members, establishing regulatory quotas, limits or restrictions on licence-holders and non-Members; and
- iv. carry out any other duties jointly assigned by Manitoba and OCN.

6.0 JOINT MANAGEMENT PLAN

6.1 The Board may subject to the availability of funds provided by the Province and OCN, develop and recommend a Joint Management Plan for the OCN Traditional Territory or any part thereof, and which may include provision for:

- (a) harvesting levels of renewable resources by user group;
- (b) species enhancement, including habitat preservation, creation and protection;
- (c) methods of harvesting of renewable resources by user group;
- (d) health and safety considerations;
- (e) procedures for the assignment or re-assignment of permits and licences including but not necessarily limited to new, vacant or underutilized traplines, fishery quotas, wild rice licences and forestry licences;
- (f) enforcement;
- (g) protecting and enhancing the environment;
- (h) monitoring resource uses and determining appropriate levels of use;
- (i) establishing priorities and allocations for resource uses, by lease, quota, permit or otherwise;
- (j) resolving conflicts related to the use of resources;
- (k) protecting and conserving resources including the protection of endangered and at-risk species; and
- (l) sustainable development of resources.

6.2 The Board, in developing a Joint Management Plan, shall consider the following:

- (a) the Treaty and Aboriginal Rights of OCN and its members and those of other First Nations and other Aboriginal people;
- (b) the by-laws, land laws, regulations and policies governing OCN Reserve lands and Traditional Territory;
- (c) the interests of third parties respecting the extent those interests are created or defined by federal, provincial or OCN licences, policy, and custom, and ensuring opportunities for consultation with holders of those interests;
- (d) opportunities for consultation with OCN members; and
- (e) any other relevant factors.

7. CONSULTATION, ASSISTANCE AND INFORMATION-SHARING

7.1 Before recommending that a Plan be adopted, the Board shall hold one or more public meetings in such manner as it determines to be appropriate to obtain the views of, and provide information to, Members and other interested parties.

7.2 In addition to any other notice of a meeting under Section 7.1, the Board shall provide written notice to the following inviting them to participate in the public meeting:

- (a) any local association of users of resources located in the OCN Traditional Territory;
- (b) any license holders, including fishing and trapping licences that authorize fishing or trapping activities in the OCN Traditional Territory;
- (c) the municipal council of any municipality wholly or partly located in the OCN Traditional Territory; and
- (d) any outfitting, tour, lodge or guide business that conducts business in the OCN Traditional Territory.

7.3 In addition to any other notice of a meeting under Section 7.1, the Board shall publish written notice of the meeting in a newspaper or on community bulletin boards or both.

7.4 Manitoba and OCN shall, upon request and subject to the payment of any prescribed fees, unless waived, provide the Board with any information within their control which would assist the Board in properly carrying out its responsibilities, except where the information is privileged and confidential.

7.5 Manitoba shall, on request in writing from the Board

- (a) provide assistance to the Board about the application of provincial statutes, regulations and policies governing the management, use and harvesting of resources in the OCN Traditional Territory; and

(b) provide assistance as may be required by the Board on drafting of any Plan or resolutions as may be deemed appropriate by the Board, but such assistance shall not in any way imply or ensure approval by Manitoba of any Plan or resolution.

8. APPROVAL OF PLANS

8.1 Once a Plan is completed, it shall be submitted to Manitoba and OCN for approval and if approved, Manitoba and OCN shall do those things necessary, including adopting any necessary policies, to give effect to the Plan.

9. RESOURCE ALLOCATIONS

9.1 Manitoba shall refer to the Board notice of all proposed allocations of resources within the OCN Traditional Territory under consideration by Manitoba.

9.2 The Board shall, within forty-five (45) days of the receipt of a notice of a proposed allocation under Article 9.1, make a recommendation on that proposed allocation..

9.3 Where an approved Plan provides for a process for approving allocations of resources that are inconsistent with Sections 9.1, 9.2, and 14 the process provided for in the Plan shall apply.

10. ANNUAL REPORT OF THE BOARD

10.1 Within four months of the end of each fiscal year, the Board shall produce and provide to the Chief and Council for OCN and the Minister of Conservation and Water Stewardship for Manitoba an annual report that summarizes the activities of the Board in that fiscal year.

11. AMENDMENTS

11.1 This Agreement may be amended by a further agreement in writing by Manitoba and OCN.

12. TERM OF AGREEMENT

12.1 Subject to Sections 12.2 and 12.3, this Agreement shall be in effect for a period of twenty years commencing on April 1st 2015 and ending on March 31, 2035.

12.2 This Agreement may be extended by agreement in writing between Manitoba and OCN.

12.3 This Agreement may be terminated, effective March 31 of any year by either Party providing at least ninety (90) days written notice to the other Party.

12.4 Where agreed by Manitoba and OCN an independent third party may be retained to review and evaluate the effectiveness of the Agreement in achieving the objectives of the Parties.

13. TREATY AND ABORIGINAL RIGHTS

13.1 Nothing in this Agreement shall be construed so as to diminish, abrogate, infringe or derogate from the existing Treaty and Aboriginal Rights of OCN or its Members or any other Aboriginal peoples, as recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

14. GENERAL PROVISIONS

14.1 Access to Lands: Nothing in this Agreement shall restrict the right of any person to enter on Crown (Manitoba) lands for any lawful purpose.

14.2 Existing Rights: Nothing in this Agreement will affect any rights or privileges granted under any licences, permits, leases or approvals issued by or on behalf of OCN or Manitoba prior to the date of this Agreement.

14.3 Duty to Consult: This agreement is not intended to provide for consultation by the Crown with OCN about any Manitoba Crown decision or action as may be required to meet any duty of consultation arising out of s. 35 of the *Constitution Act, 1982*. Nothing in this agreement is intended to recognize or confer upon the Joint Management Board any authority to represent OCN or its members. In appropriate cases, Manitoba will initiate consultation directly with the Chief and Council of OCN.

14.4 Statutory Requirements: Nothing in this Agreement alters any statute or statutory authority or requirement or confers any statutory approval.

14.5 No Derogation: Nothing in this Agreement shall derogate from any authority of OCN or Manitoba, each within its respective jurisdiction, ownership or administration and control, over the resources in the OCN Traditional Territory.

14.6 Binding on Parties: This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement is intended to confer upon any person not a Party to this Agreement any rights or remedies under or by reason of this Agreement.

14.7 Assignment: Neither this Agreement nor any portion or provision of this Agreement may be assigned without prior written permission of both Parties.

14.8 No Admission: Nothing in this Agreement will constitute an admission of liability on the part of any Party.

14.9 Without Prejudice: This Agreement is without prejudice to the position of either Party with respect to the rights and obligations, or the intentions of, either of the Parties in relation to any matter other than the subject matter of this Agreement.

14.10 Notices: Any notice or other communication under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, postage pre-paid;

(a) **To Manitoba**

Minister
Manitoba Conservation and Water Stewardship
200 Saulteaux Crescent
Winnipeg, MB R3J 3W3

(b) **To OCN:**

Chief and Council, Band Office
Opaskwayak Cree Nation
P.O. Box 10880
Opaskwayak, MB R0B 2J0

15. APPROVAL PROCESS

15.1 This Agreement will have been approved by Manitoba by way of an Order-in-Council of the Lieutenant Governor in General.

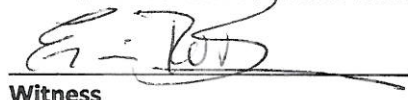
15.2 This Agreement will have been approved by OCN at a duly called and constituted meeting of Chief and Council for which notice has been given pursuant to the provisions of the *Indian Band Council Meeting Regulations*, and where the Chief and Council shall have reviewed the Agreement and made a Band Council Resolution accepting and ratifying the Agreement.

IN WITNESS WHEREOF, MANITOBA AND OCN HAVE SIGNED THIS AGREEMENT ON THE DATES INDICATED BELOW

For Manitoba



Minister of Conservation and Water Stewardship



Witness

February 18, 2015
Date

For OCN

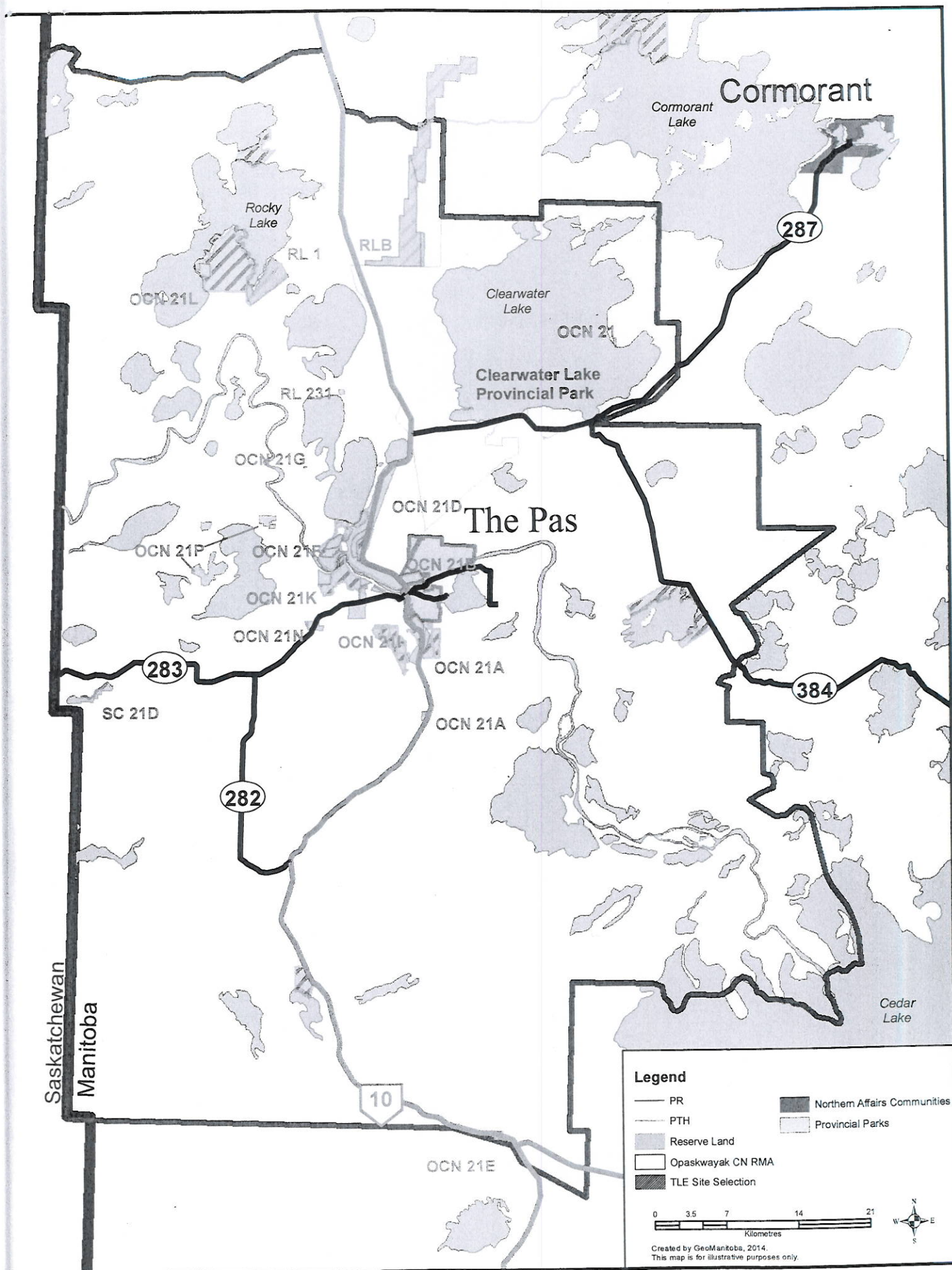


Chief



Witness

February 18, 2015
Date



Legend

- PR
- PTH
- Reserve Land
- Opaskwayak CN RMA
- TLE Site Selection
- Northern Affairs Communities
- Provincial Parks

0 3.5 7 14 21
Kilometres

Created by GeoManitoba, 2014.
This map is for illustrative purposes only.