

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**CHIEF GERALD LEWIS and ISKATEWIZAAGEGAN NO. 39 INDEPENDENT  
FIRST NATION**

**Applicants**

**AND**

**THE CITY OF WINNIPEG and HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO**

**Respondents**

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**AFFIDAVIT OF FRED GREENE**

**In support of APPLICATION UNDER Rules 14.05(3)(d) and (h), and 38 of the *Rules of  
Civil Procedure***

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I, Fred Greene, of Iskatewizaagegan No. 39 Independent First Nation in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am an Elder and Band Council member of the Iskatewizaagegan No. 39 Independent First Nation. I am also an Anishinaabe man who has lived all his life on the reserve, adjacent to Shoal Lake, and as such have knowledge of the matters hereinafter deposed to.

## **I. Personal and Family Water History**

2. My home on the reserve fronts onto Shoal Lake. Exactly three miles to the west, I can see the intake pipe where water is drawn from Shoal Lake and carried to Winnipeg. I see this every day. Attached to this my affidavit as Exhibit "A" is a true copy of a map altered by myself on January 25, 2020, marking the following locations: my home, the intake for the aqueduct ("GWWD"), the dyke, the canal, Snowshoe Bay, Falcon River.
3. I was born in September 1953 and have lived all my life in IIFN. I was raised on the reserve and apart from brief periods living elsewhere for employment purposes, I have remained living on the reserve. Also, I raised my four children on the reserve.
4. My ancestors have always lived in this area.
5. My grandfather was from Shoal Lake and part of the Midewewin society. As a part of his gifts and responsibilities, he carried with him the story of the Anishinaabe people's migration from the east to the area where we currently reside. According to the story he carried, and as passed down through the generations, the Anishinaabe people were given instructions from the spirit world to migrate to a place where food grew on the water. The manoomin (wild rice) on Shoal Lake was the reason we stopped travelling and came to live here.
6. My grandfather had three children, including my father. My parents went to Residential School, as did I. They were exceptional parents and commercial fisherman. They knew Shoal Lake intimately and taught their children everything from where to set the nets to how to traverse it safely in inclement weather.
7. I started my first job at 14, working for my father out on Shoal Lake. He had a minnow harvesting business. My job would be to load up the boat with minnows, and then take

them into Kenora. By performing these tasks, being on the lake before dawn every day, I learned a great deal about the water and the life that the water supported. Without learning Shoal Lake, I would not have been able to predict where the minnows would be.

8. I have held a number of other jobs, including that of labourer, building reserve houses, as a Children's Aid Society manager, and as a small business owner with a mining exploration company. In addition, I was hired by Goldcorp, Red Lake Gold Mines after a competitive job process and extensive evaluation as an Aboriginal Affairs Officer, Aboriginal Affairs manager, and then worked as a part of their corporate office. Finally, I have worked as a negotiator and a consultant, and a member of the Band Council. In the latter two positions, since approximately 2002, the focus of my negotiations and governance has been in relation to the water file.

9. I have been on the water most of my life.

## **II. IIFN's Relationship with Shoal Lake**

10. For Winnipeg, Shoal Lake is a water source. For community members, life in IIFN is interconnected with Shoal Lake in a myriad of ways.

11. Like me, a number of our community members have chosen homes along the shoreline. In this way, the lake is a neighbor, its sights and sounds accompanying daily life. In addition, the IIFN community center and the store are located along the lake. These are two places that every community member visits regularly.

12. Shoal Lake is also a site of fun. Shoal Lake has beaches and flat rocks, areas used for swimming and sports in good weather. Shoal Lake is also a gathering place for our community. For example, for at least the past 30 years we have held bass fishing

tournaments in the summer and ice fishing family events in the winter organized by the community for the members of Shoal Lake 39 and Shoal Lake 40.

13. In addition to recreation and community gatherings, Shoal Lake is an important travel route for the community members. In the winter, Shoal Lake 39 and Shoal Lake 40 are connected at no less than five places by winter roads. In addition, winter roads connect individuals to private cottages. In the warmer weather, as Shoal Lake is connected to a larger series of lakes and rivers, often community members will travel longer distances via the water. For instance, last summer, my wife and I travelled to Kenora a few times by boat.
14. Also, when the water is open, Shoal Lake is traversed to get to traplines, or particular hunting sites. It is also used to obtain access to particular gathering sites for medicine or other foods such as blueberries. Without this method of transportation, our ability to hunt, trap and gather would be limited.
15. Shoal Lake used to be used defensively. It was the means by which our community used to maintain gardening islands, by planting crops on islands so that our food would be protected from those outside who did not have canoes. On the Gitiigani Minis, various vegetable crops would grow in the good soil there.
16. Shoal Lake is still a source of food. It provides fish for food and commercial purposes, both in summer and, as mentioned, there is ice fishing in the winter. The community of IIFN has recently rebuilt a Fish house, in the hopes of seeing the commercial fishing rebound with strength after the walleye collapse in the 1980s.
17. Also, in the water, there is manoomin growing on the lake, which is of particular cultural and spiritual significance to the Anishinaabe people. There are a number of harvesting sites on the Shoal lake watershed including blueberries, another traditional food.

18. Shoal Lake is not only a site of recreation, sustenance, and navigation; it is a teacher.
19. When I was young, I remember my parents telling me stories of events that happened out on the lake. These stories were variously about events occurring within their lifetimes, things that happened directly to them, or about things that happened long before contact with settler society. Sitting in my office or home, I can think of these places on the lake, and the places turn into mnemonic devices, helping me to remember our history, going back as far as anyone can remember, or as people say, into time immemorial. Further, as I remember our history, I remember the lessons of history – not just the event that happened, but the wisdom that can be taken from the story.
20. Further, we actively use the lake as a tool to teach our youth. We bring our youth out on the lake to practice traditional skills, harvesting manoomin or fishing, and in so doing, instill our teachings about everything from the practical skill of catching and cleaning a fish, to the cultural knowledge, values and teachings and laws that accompany this knowledge. There is also a teaching lodge on the lake used in our school and the land-based education program operating there.
21. Finally, as outlined further in the section below, Shoal Lake is a spiritual site.

### **III. Our Interest in, or Responsibility for Shoal Lake is us Enacting our Law**

22. Often, through my work as a consultant and negotiator on the water file, I hear Anishiinaabe people speak of having a right to water. Rights, as I understand them, are a Canadian legal concept. I understand the concept of rights in relation to water as entitlement to water and certain freedoms in how we use it. While I do believe Anishinaabe people have a right to our water, the language of rights does not contain the whole of our legal relationship with Shoal Lake.

23. In addition to having rights to the water, the Anishinaabe people have a responsibility for the water. From my perspective, we were given this water to sustain us and we in turn have a responsibility for the protection this gift. Again, because we are forced to express ourselves with Canadian legal concepts, we often speak of our responsibility for the water as legal authority over the water. Again, while I do believe that the Anishinaabe people never relinquished any of our legal authority over the water when we entered into a treaty relationship with the Crown, “authority” is a limited concept which does not contain the whole of our sacred responsibility. Authority is only a power to decide. Responsibility is an obligation or duty to make those decisions that would ensure the health of the water.
24. It is my understanding that women have a particular role in enacting the responsibility for water. I have been informed by Yvonne Pinace, a member of IIFN, and do verily believe that she has done ceremonies for the water on behalf of the women.
25. The Anishinaabe people of Shoal Lake were instructed by the Elders that went before us, that we have been given the responsibility to keep the water clean. As a part of that responsibility, we were given specific instructions. For instance, we were specifically instructed to feast the gift of the water every year, to honour the spirits that are there, to renew our relationship with them, and ensure that the relationship remains alive, never dormant.
26. We have continued this practice. Every year in the fall before it gets too cold, we hold a feast in the community. The feast is led by an Elder. During the feast, a four feast plates are made up containing the same food that the community ate. These feast plates are taken by the Elder out on the water and offered to the four directions. This past year we held the feast, and we took the food and tobacco to different locations on the lake.
27. The practice of giving offerings is not isolated to our yearly feast. During other times when a number of community members will be on the lake, such as our bass fishing

tournament, tobacco is offered to the water and the spirits are asked to help to bring everyone to shore safely. I know individuals with a particularly strong spiritual practice who offer tobacco to the water on a daily basis.

28. This responsibility is at the heart of our law. Our system of law is a way of life that sees us honour all of the gifts of creation, water, fish, blueberries, by fulfilling reciprocal obligations to care for these gifts.

#### **IV. Impacts of Winnipeg's Taking Water**

29. The taking of water from Shoal Lake has injured, infringed, and otherwise interfered with our Nation's rights and interests to not only the water, but also to the enjoyment of our reserve lands, all without recognition, much less compensation, contrary to the IJC's orders, and Ontario's Order in Council.

30. Many of the impacts of Winnipeg's taking water were outlined in Chief Lewis's affidavit. I have personally borne witness to the following impacts.

- a. detrimental impacts to the ecosystem in Shoal Lake, including in particular in Indian and Snowshoe Bays with regard to valuable spawning areas for fish and other wildlife;
- b. destruction of culturally significant rice beds;
- c. changing water quality and water quantity available to our Nation; and
- d. depletion of lands and wetlands available to our Nation.

31. As one particular example of the above impacts, I was told by my parents and verily believe that the placement of the dyke had a detrimental impact on the walleye population. Previous to the placement of the dyke, walleye head to Falcon River and then to Indian Bay to spawn there. In Indian Bay, the water holds a lot of nutrients for walleye fingerlings, and the survival rate was high. Now, with the placement of the

dyke, the fingerlings have to go down Falcon river, into the canal before making it to Snowshoe Bay, where there are not a lot of nutrients. I believe this change was a contributing cause to the walleye collapse.

32. I have also witnessed personally that these impacts have been exacerbated by the deliberate flooding of Shoal Lake using waters from the Lake of the Woods by means of the Ash Rapids. As one particular example of the above, I have observed that on years when the water levels are high in Shoal Lake over June, July and August, the manoomin beds fail. They require low water levels at this time. On years where the flooding is mild or the water levels are already low accommodating the flooding without greatly raising the water level, we have a great deal of manoomin grow in the lake.

33. The City of Winnipeg states that it does not control lake levels and cannot flood the lake as there is no control structure on the outlet of Shoal Lake at Ash Rapids. However, as explained in the affidavit of Chief Lewis, the Lake of the Woods Control Board regulates lake levels of the Lake of the Woods by operating dams which have affected Ash Rapids, which in turn have an impact on Shoal Lake.

34. I have also witnessed personally Winnipeg's water taking impacting the economic opportunity available to our Nation's members. As one example, I recall when Dick Dunlop, owner of Consolidated Mines, came to make an Impact Benefit Agreement with Shoal Lake 39. The project came under environmental assessment, which was the smallest project ever to be delegated under that kind of designation. And the mine was opposed by the City of Winnipeg with concerns over their water quality. At the time, my livelihood was made by providing exploration services to mining company, and when the Consolidated Mines project ended, so did my ability to earn income and support my family. In addition, the community lost the opportunity to share in the benefits of the potential extraction including a flow of funds to the community as a royalty, a flow of



funds to individuals through promised employment opportunities, an eventual transfer of lands to the First Nation after their use as a mine had ended.

35. I make this affidavit in response to the application for judicial interpretation of Ontario's 1913 Order in Council granting Winnipeg permission to take water, subject to the condition that Winnipeg provide "full compensation be made to the Province of Ontario, and also to all private parties whose lands or properties may be taken, injuriously affected or in any way interfered with", and for no other or improper purpose.

**AFFIRMED BEFORE ME** in the Town )  
of *Kenna, Unorganized*, in the Province of )  
Ontario this 25th day of January, 2020. )

  
A COMMISSIONER, ETC. )

  
Fred Greene

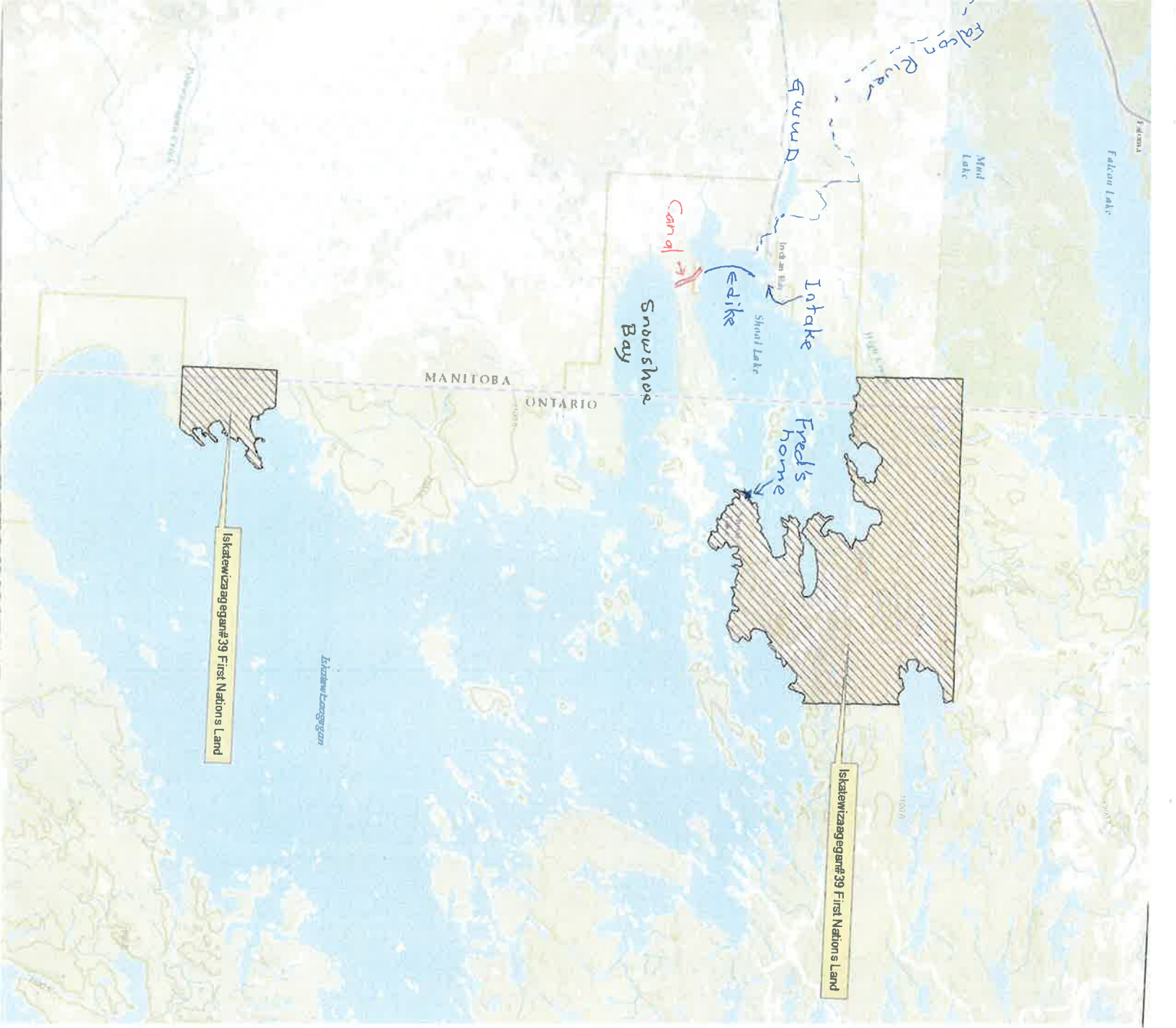
**This is Exhibit A referred to in the  
Affidavit of Fred Greene sworn  
before me on this 25<sup>th</sup> day of January, 2020**



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**Meaghan Daniel**

**A Commissioner for taking affidavits, etc.**



Iskatewizaagagan#39 First Nation's Land



Iskatewizaagagan#39 First Nation's Land