

THE JOHN SMITH BAND OF INDIANSBYLAW NO. 1

Being a bylaw governing farming practices on the Muskoday Indian Reserve No. 99

WHEREAS the Governor General in Council at the request of the John Smith Band of Indians has granted to the Band the right to exercise control and management over lands in the Muskoday Indian Reserve No. 99 occupied by the Band, all as set out in Order in Council P.C. 1978-352 dated February 9, 1978 made pursuant to section 60(1) of the Indian Act.

AND WHEREAS one of the conditions attached to the aforesaid request and grant was that the Band council develop and promulgate bylaws governing farming practices that may affect the safety, health and well-being of the Band members and that may affect the market value of the land.

AND WHEREAS paragraphs (a), (e), (f), (j) and (l) of section 81 of the Indian Act empower the Council of a Band to make bylaws to provide for the health of the residents on the reserve, for the protection against and prevention of trespass by cattle and other domestic animals, for the construction and maintenance of watercourses, roads, bridges, ditches, fences and other local works, for the destruction and control of noxious weeds and for the construction and regulation of the use of public wells, cisterns, reservoirs and other water supplies.

NOW THEREFORE the Council of the John Smith Band of Indians enacts as follows:

1. In this bylaw:

(a) "Band Administrator" means the person appointed by the Council as the band administrator for the John Smith Band of Indians;

(b) "Band Council" or "Council" means the Council of the John Smith Band of Indians and has the same meaning as "Council" in the Indian Act;

(c) "Land user" means a permittee, lessee, any person who has the right to make agricultural use of reserve lands under the authority of a resolution of the John Smith Band of Indians or any other person living on the Reserve;

(d) "Lessee" means any person who is a party to a land leasing agreement with Her Majesty the Queen as represented by the John Smith Band of Indians;

(e) "Manager" means the person appointed as Band Land Manager;

(f) "Noxious weeds" includes the following plants or seeds thereof: perennial sow thistle, annual sow thistle, Canada thistle, couch grass, poverty weed, wild oats, darnel, wild mustard, stinkweed, tumbling mustard, hare's ear mustard, ball mustard, toad flax (*linaria vulgaris*), false flax, bird rape, Russian thistle, blue burr, ragweed, purple cockle, cow cockle, night flowering catchfly, green foxtail (*setaria viridis*), bladder campion, leafy spurge, hoary cress, Russian knapweed, field bindweed (*convolvulus arvensis*) and barberry, marihuana, sometimes known as Indian hemp (*cannabis sativa*), tartary buckwheat (*Fagopyrum tataricum*), white cockle (*Lychnis alba*), yellow flowered perennial, toad flax species (*linaria spp*), dandelion (*Taraxacum species*) and wild buckwheat (*Polygonum convolvulus L*);

(g) "Permittee" means a person who is a party to a land use agreement with Her Majesty the Queen as represented by the John Smith Band of Indians;

(h) "Pest" means grasshopper, warble fly, brown or Norway rat and other rodents, insects, blight or disease;

(i) "Agricultural chemical" or "chemical" means any pesticide, herbicide, fungicide, insecticide, seed treatment or other substance or mixture of substances used in connection with agriculture for destroying, preventing or repelling any plants, animals, bacteria, weeds, fungus or any other form of plant or animal life or virus;

(j) "Reserve" means the Muskoday Indian Reserve, No. 99 set aside for the use and benefit of the John Smith Band of Indians.

#### I. NOXIOUS WEEDS

2. (a) It shall be the duty of every person to destroy noxious weeds on lands used, occupied or controlled by him and to prevent the spread of such weeds to other lands.

(b) A person shall be deemed to have complied with this section when he has performed on the land concerned in

due season and in a workmanlike manner such acts as are commonly regarded in the district (adjacent to the land) as effective in controlling the noxious weeds found thereon.

3. The person who holds the position of Band Land Manager from time to time shall also hold the office of weed inspector (hereinafter referred to as "the inspector") for the purposes of this bylaw.

4. The inspector may enter upon land and into premises, other than a dwelling house, on the reserve for the purpose of performing his duties and exercising the powers set out in this bylaw and he shall be afforded a reasonable opportunity for a thorough inspection.

5. It shall be the duty of the inspector to enforce this bylaw and to investigate and deal with complaints respecting noxious weeds.

6. (a) Subject to subsections (b) and (c) an inspector may issue orders (Form A) to land users requiring the destruction of noxious weeds on land used by them through the performance of such acts or operations as in his judgment constitute good agricultural practice for the land and district concerned, which may include the use of chemicals, and such acts or operations shall be specified in the orders.

(b) No order shall be issued that includes the destruction of a crop except in the case of perennial sow thistle, Canada thistle, leafy spurge, hoary cress, Russian knapweed, field bindweed or toad flax, and in this event the consent of the Band Council shall first be obtained where the part to be destroyed exceeds one-tenth of the total cropped area of the infested field.

(c) The inspector shall confer with the land user regarding the methods of control to be applied with a view to the most satisfactory treatment from the standpoint of the land user as well as the community and an agreement (Form B) setting forth fully the arrangements made may be signed by both parties, but where an agreement cannot be reached or where the inspector after two visits on different days cannot find the land user on the land or at his usual place of residence the inspector may issue an order (Form A) providing for the destruction of the noxious weeds and the order shall, notwithstanding section 7, be deemed to be properly served if it is left with some adult person at the residence of the land user or sent by registered mail to the last known address of the land user and the land user shall be allowed five (5) days from the date of the service or mailing to commence the destruction of noxious weeds.

7. (a) The order made under section 6(a) or section 9(a) shall be served personally on the land user by the inspector or sent to the land user by registered mail. The land user shall be allowed five (5) days from the date of service or mailing to begin the work ordered.

(b) Notwithstanding the foregoing provisions of this section, after the first day of July in any year in the case of perennial sow thistle only seventy-two (72) hours from the time the order is served shall be allowed in which to commence work. The order may be served by telegram in which event the time of dispatching the telegram shall be considered the time of service.

8. When an order has been served or mailed under section 6 or 7, the inspector may, if the work is not commenced within

the time therein mentioned and carried out as specified in the order, forthwith take the steps necessary to perform the work required by the order at the expense of the land user.

9. (a) Subject to subsection (b), an inspector may by order in writing prohibit a person from sowing a crop of any kind on land infested with noxious weeds.

(b) No order shall be issued under subsection (a) except in the case of land infested with perennial sow thistle, Canada thistle, leafy spurge, hoary cress, Russian knapweed, field bindweed or toad flax in which case if the area of the land on which the sowing of a crop is to be prohibited exceeds ten (10) acres the consent of the Council shall first be obtained.

(c) An order made under subsection (a) shall be served in accordance with the provisions under section 7(a).

10. (a) Notwithstanding anything in this bylaw, the Band Council may authorize the inspector to enter upon any unoccupied parcel of land within the reserve boundaries and to take such steps to destroy noxious weeds thereon as the inspector deems fit and proper.

(b) Any action taken under this section is at the expense of the Band Council.

11. (a) The inspector may by order in writing prohibit, except under such conditions as may be permitted and specified in writing by the inspector, the sale or other disposal or the purchase or other acquisition or the movement, except on the parcel of land on which it was produced, of hay or straw or other fodder or field crop seeds, bran, shorts, crushed

grain or cleanings of any kind if found to contain noxious weed seeds.

(b) The inspector shall have power to inspect any grain, fodder or other thing named in this section wherever it may be on the Reserve and may prohibit except under such conditions as may be permitted and specified in writing the sale, movement or other disposal of such material if found to contain noxious weeds.

(c) No grain, fodder, hay, straw, field crop seeds, bran, shorts, crushed grain or cleanings shall be transported in any manner on the reserve unless contained in bags or covered by tarpaulin.

12. (a) No person shall enter the reserve or travel upon any road in the reserve with any machine or implement containing noxious weeds or to which noxious weeds are adhering without having first removed the weeds by thoroughly cleaning the machine or implement, both inside and out.

(b) The inspector may issue an order to the person in possession or in charge of any machine or implement which is infested with noxious weeds requiring the removal or destruction of the weeds in a manner satisfactory to the inspector before the machine or implement is moved from the place where it is found.

13. No person shall, for a period of more than five (5) days, leave grain or cleanings containing the seeds of noxious weeds exposed or uncovered nor shall any person place or leave exposed or uncovered, except in a securely constructed building or other closed container, any other matter containing such seeds without having first destroyed the germinating qualities thereof.

14. No person shall take or cause to be taken across a cultivated field any machine, implement or vehicle containing noxious weeds or to which noxious weeds are adhering without having first obtained the permission of the land user.

15. (a) Where any land in the reserve is infested with leafy spurge, field bindweed, Russian knapweed, toad flax, hoary cress or any of them the Band Council may enter into an agreement with the land user for the purpose of destroying or eradicating these weeds.

(b) The agreement shall:

- (i) Specify the methods of destruction and eradication to be used whether by cultural practices, mowing down the grass, the application of chemicals or any other means;
- (ii) Specify whether such methods are to be applied by the Band Council or by any or all of the other parties to the agreement; and
- (iii) Provide for all other matters and things necessary to carry out the purposes of the agreement including the ownership or apportionment of the crops grown on the land, the payment of taxes, the compensation, if any, to be paid to the land user and the manner in which any compensation shall be paid or applied.

(c) No agreement shall cover a period longer than five (5) years but an agreement may be renewed from time to time for any period not exceeding five (5) years.

(d) Any acts or operations performed on the land to eradicate the weeds shall be done at the expense of the land user.

16. (a) Every land user shall practice a regular crop rotation program to control the spread of noxious weeds.

(b) No crops other than cereal grains or oilseeds

shall be sown in the reserve without first obtaining the written permission of the Manager.

17. No person shall burn any straw, stubble, grass, brush or any other material on the Reserve unless it is first placed in a proper fireproof container or unless the written permission of the Manager or Band Administrator has first been obtained.

## II. AGRICULTURAL CHEMICALS

18. No person shall use an agricultural chemical for a purpose other than a purpose for which the product is supplied or represented.

19. (a) Every person who keeps, stores or transports agricultural chemicals shall do so in a manner that:

- (i) Ensures that the chemical does not come into contact with or contaminate any substance intended for human consumption or for consumption by plants or other animals; and
- (ii) Prevents the chemical from coming directly or indirectly into contact with human, animal or plant life in any other manner that may be injurious to that life.

(b) Where an agricultural chemical is sold or otherwise supplied in bulk and is not contained in packages, any information or warning respecting its handling or use that would have been required to be stated on the label had the chemical been in packaged form shall be supplied in writing at the time of delivery by the vendor or other supplier to the person to whom the chemical is delivered.

20. (a) No person shall have in his possession or keep an agricultural chemical in a container other than:

- (i) A container in which the chemical was originally stored for sale or offered for sale after the manufacture thereof; or



- (ii) A container that is of a type customarily used or approved for that purpose by the manufacturer and that is properly labelled.

(b) This section does not apply to the keeping of agricultural chemicals in tanks or machines being used for the mixing or the holding of chemicals during operations by which the chemicals are being used or applied.

21. No person shall:

- (a) Dispose of any agricultural chemical or mixture containing a chemical; or
- (b) Bury, decontaminate, burn or otherwise dispose of any container that has been used to hold a chemical; except at a site or in a manner that is prescribed by the Manager or as recommended by the manufacturer of the chemical.

22. No person shall:

- (a) Cleanse or place in an open body of water any apparatus, equipment or container used in the holding or application of an agricultural chemical; or
- (b) Cause water from an open body of water to be drawn into any apparatus or equipment used for mixing or applying an agricultural chemical unless the apparatus or equipment is equipped with a device that prevents a return flow of the mixture from the apparatus or equipment.

23. No person shall spray or allow the spraying of an agricultural chemical on the reserve in areas or under conditions where the chemical may drift or flow into areas adjacent to the area which is being sprayed.

24. (a) Where the Council is of the opinion, based upon such evidence as it considers adequate, that any crop, food,

feed, animal, plant, water, produce, product or any other matter is contaminated by an agricultural chemical the Council may by a Band Council Resolution:

- (i) Prohibit or restrict the sale, handling, use or distribution of the crop, food, feed, animal, plant, water, produce, product, or any other matter permanently or for such length of time as it considers necessary; or
- (ii) Cause the crop, food, feed, animal, plant, water, produce, product or other matter to be destroyed or rendered harmless.

(b) The Band Council is not obliged to compensate any person for any loss arising out of action taken under subsection (a).

25. (a) Where the Manager is of the opinion based on such evidence as he considers adequate that the use or method of application of an agricultural chemical is or may be dangerous to the health of any person or animal or harmful to crops or other plant life he may by written order suspend or terminate the use or the method of application of the chemical.

(b) Where the Manager makes an order under subsection (a), he shall in writing notify the person to whom the order is directed of the reasons for the order.

(c) No order shall be made pursuant to subsection (a) without first having consulted the person to whom the order is to be directed.

### III. PEST CONTROL

26. Every person shall take measures to destroy, control and prevent the spread of all pests on any land or other premises on the reserve that is used, occupied or controlled by him.

27. Every person shall take measures to destroy any crop, vegetation, vegetable or other matter on any land or other premises used, occupied or controlled by him that may contribute to the spread of any pest.

28. Every person shall take measures to destroy any seeds, roots, tubers or other vegetative things that may be used for propagation and that are infested with any pest.

29. The Band Council may, where necessary, authorize entry onto any land that is infested with pests and order the destruction of such pests at the expense of the user of such land.

30. (a) The Council may issue an order to any person requiring him to:

- (i) Destroy, control and prevent the spread of pests on any land used, occupied or controlled by him;
- (ii) Destroy any infested crop, vegetation, vegetable or other matter on any land or other premises used, occupied or controlled by him;
- (iii) To destroy any seeds, roots, tubers or other vegetative things that may be used for propagation and are infested with a pest.

(b) Every order under subsection (a) shall:

- (i) Describe the land or premises with respect to which the order is issued;
- (ii) Describe the pest or the crop, vegetation, vegetable or other matter or the seeds, roots, tubers or other vegetative things with respect to which the order is issued;
- (iii) Describe the methods that may be followed and the materials if any that may be used in complying with the order; and
- (iv) Specify the time within which the order shall be complied with.

(c) The order is to be served personally by the Manager

or sent by registered mail and the work ordered shall begin within five (5) days of the service or posting of the order.

31. Every person within the reserve shall take the following measures to destroy, control and prevent the spread of rats on land controlled by him:

- (a) He shall provide bait stations where required on land used, occupied or controlled by him;
- (b) He shall keep the said stations continuously stocked with an adequate supply of bait;
- (c) He shall take all necessary precautions to protect humans, livestock and other animals from the bait;
- (d) He shall not allow the accumulation of garbage or maintain any other harbourage for rats;
- (e) He shall keep storage areas free of spilled and spoiled grain and properly maintain grain storage facilities to prevent the infestation of rats;
- (f) He shall report any infestation of rats to the Band Council.

#### IV. GENERAL

32. For the purposes of carrying out this bylaw the Manager may:

- (a) At any reasonable time enter upon and inspect any land, premises, other than a dwelling house, vehicle, equipment, record, document or other property;
- (b) Inspect and take samples of or extracts from anything mentioned in clause (a) or from any soil, water, food, feed, crop, animal, chemical or other substance;
- (c) Subject anything taken pursuant to clause (a) to laboratory analysis or to any other examination for the purposes of determining whether or not the article or substance taken is or has been contaminated by an agricultural chemical.

33. (a) The land user in charge of land, premises, articles or substances that the Manager is authorized to enter, inspect or take samples of or extracts from, as the case may be, shall give the Manager all reasonable assistance and enable the Manager to carry out his duties and functions under this bylaw and shall forthwith furnish the Manager with such information relative thereto as the Manager may reasonably require;

(b) No person shall obstruct or hinder the Manager in the carrying out of his duties or functions under this bylaw.

34. The land user shall be responsible for the upkeep of all fences which are or may hereafter be erected on the land used, occupied or controlled by him.

35. The cutting, clearing or other removal of trees on the reserve is prohibited without first obtaining the written consent of the Band Council.

36. No person shall take or divert any water from any river, stream, watercourse, lake, creek, spring, ravine, canyon, lagoon, swamp, marsh or any other body of water without having first obtained the written permission of the Band Council.

37. No person shall construct or cause to be constructed any dam or other works for the impounding of water in any river, stream, watercourse, lake, creek, spring, ravine, canyon, lagoon, swamp, marsh or any other body of water without having first obtained the written permission of the Band Council.

38. No person shall divert or impound surface water not flowing in a natural channel or contained in a natural bed or construct a dam or dike for the purpose of diverting or impounding such water without having first obtained the written permission of the Band Council.

39. Any person who violates any of the provisions of this bylaw shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred (\$100.00) dollars or imprisonment for a term not exceeding thirty (30) days, or both fine and imprisonment.

Approved and passed at a duly convened meeting of the Council this 23rd day of October , 1978.

Andrew Bear  
Chief

Walter Bear  
Manager

Charles Crain

Mervin J. Bear

William M. Bear

Eric Bear

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I, Andrew Bear , Chief of the John Smith Band of Indians, do hereby certify that a true and exact copy of the foregoing bylaw was forwarded to the Minister of Indian Affairs and Northern Development pursuant to section 82, ss(1) of the Indian Act this 23rd day of October, A.D. 1978.

FORM A

NOXIOUS WEEDS ORDER MADE PURSUANT TO  
THE FARMING PRACTICES BYLAW OF THE  
JOHN SMITH BAND (MUSKODAY INDIAN RESERVE NO. 99)

ORDER NO.  
DATE OF ISSUE

19 .

Dear Sir:

It has come to my notice that the following weeds

declared noxious under the John Smith Band Farming Practices  
Bylaw, have become established upon the land described as:

as shown on the diagram below. In accordance with section ,  
subsection , of the said Bylaw, you are hereby  
ordered (*Detail instructions indicating methods to be  
followed in destruction of weeds*).

TO

ADDRESS

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Weed Inspector

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Address

JOHN SMITH BAND OF INDIANS (MUSKODAY INDIAN RESERVE NO. 99)

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DIAGRAM SHOWING LOCATION OF WEEDS

The above land is described as:

(These locations are approximations only and do not necessarily  
indicate all noxious weeds present).

FORM B

NOXIOUS WEEDS AGREEMENT MADE PURSUANT TO THE  
FARMING PRACTICES BYLAW OF THE  
JOHN SMITH BAND OF INDIANS (MUSKODAY INDIAN RESERVE NO. 99)

AGREEMENT NO.  
DATE OF ISSUE

19 .

Agreement between \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

- and -

\_\_\_\_\_  
(Name) (Address)

As provided in the John Smith Band Farming Practices Bylaw,  
I, the above mentioned land user, having this day conferred  
with the above mentioned weed inspector, hereby acknowledge  
the presence of the following noxious weeds on the above  
mentioned land

and hereby agree to do the following work (*specify work to  
be done*).

\_\_\_\_\_  
Land User

\_\_\_\_\_  
Weed Inspector

DIAGRAM SHOWING LOCATION OF WEEDS

The above land is described as:

(These locations are approximations only and do not necessarily  
indicate all noxious weeds present).