



# The Brief

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## David vs. Goliath in a battle over water, property and quality of life

By STEPHANIE MERRILL

For almost 30 years, residents in the small and picturesque farming community of Penobsquis, just outside of Sussex, have been struggling to peacefully coexist with large industrial neighbours. Along with a population of about 1,500 people, Penobsquis is home to Potash Corporation of Saskatchewan (PotashCorp) and Corridor Resources, a junior oil and gas company. The community's struggle intensified into a battle seven years ago when some residents in the area started noticing that their private wells and springs were drying up. Shortly after water began flooding the potash mine and PotashCorp and Corridor Resources completed rounds of seismic testing, about 60 homes in the area lost their drinking water supply. For five years, from 2004 to 2009, more than 200 people were supplied with water by PotashCorp while they fought and waited for a new community water system.

Affected members of the community believe that it is ultimately the inflow of 1,300 gallons of water per minute, and its subsequent removal by pipeline and trucking, that has resulted in the loss of their well water; the subsidence (the sinking of land and buildings) that is now affecting their homes; and the stress and grief they endure everyday.

After years of failed communications with government and PotashCorp, the residents of Penobsquis are now taking on the industry in a legal battle resembling the one portrayed in the movie Erin Brockovich. In the coming weeks, 26 complainants, forming the group Concerned Citizens of Penobsquis, will appear in front of the Mining Commissioner, a quasi-judicial avenue for resolving issues arising from mining activities in New Brunswick.

The hearing will be the largest in the history of the province; the appointed Mining Commissioner, Roger Duguay, stated at the November pre-hearing that he has never before seen a case of this magnitude.

In true David versus Goliath fashion, the citizens will attempt to prove PotashCorp's responsibility and seek damages for water loss, property subsidence, suffering as a result of dust, noise and light pollution, lost property values, and stress.

The injustice of it all is that the burden of proof and the costs associated with it, rests with the people who are just trying to live their lives. While the residents feel that the provincial government and PotashCorp have all the information needed to prove their suffering, the lawyer for the PotashCorp has challenged them to "prove it". At the pre-hearing, he leaned toward the complainants' lawyer from the New Brunswick Environmental Law Society, and reminded him that PotashCorp only needs to provide evidence to refute the case. "Our response is that there is no causal evidence", he continued, and that PotashCorp "is under no legal obligation to prove anything".



**Penobsquis resident, Gordon Fraser, expresses his displeasure at the loss of his well water. Community members believe that the inflow of 1,300 gallons of water per minute into the local potash mine is responsible for the loss of their well water. The residents of Penobsquis are now taking on the potash industry in a legal battle. 26 complainants, forming the group Concerned Citizens of Penobsquis, will soon appear in front of the Mining Commissioner. The hearing will be the largest in the history of the province.** Photo by Concerned Citizens of Penobsquis.

Though the Concerned Citizens of Penobsquis are fighting for their community, there is also an altruistic motive to their legal action. As New Brunswick faces more mining, oil and gas exploration, the group doesn't want to see what happened to their homes, happen elsewhere. Beth Nixon, spokesperson for the group, and a resident of Penobsquis, feels strongly that "mining interests or big corporations should not be allowed to come to a community, create irreversible damage, and have residents bear the cost of that damage." She feels that the outcome of this hearing will set a precedent for the future standards for industrial responsibility in other rural communities.

This case is especially timely as 1.5 million hectares of land throughout the province is now allocated for shale gas exploration, an industry plagued with accusations of water, land and air contamination throughout North America. Nixon



says "it doesn't matter if it's potash or it's natural gas – it's big industry – and they can't be allowed to move in and ruin our lives. If they aren't held accountable here in Penobsquis, they won't be held accountable anywhere else, and we want other New Brunswickers to know that, and be prepared."

The hearing with the Mining Commissioner will be held in Sussex, at the Four Seasons Inn, during the weeks of March 14 and March 28th, beginning at 9am daily. The hearing is open to the public and attendance in support of the residents of Penobsquis will be needed.

A new website has been created in order to garner support for the Concerned Citizens of Penobsquis leading up to the hearing. Visit [www.penobsquis.ca](http://www.penobsquis.ca) to learn more about their struggles and how you can support their efforts.

## Chief Hugh Akagi on paying attention



Photo by Frank Jr. Molley

By FRANK JR. MOLLEY

On Monday, Feb. 14, 2011, Native Awareness Days at St. Thomas University began with a potluck social and drumming session that featured the St. Mary's First Nation Muskrat Singers. Approximately 40 participants gathered to enjoy the opener and a lecture by Chief Hugh Akagi of the Passamaquoddy Nation.

For the Passamaquoddy of St. Andrews, the issues they have been experiencing are seldom heard in the media. For Chief Akagi the issues are part of a constant and difficult struggle surrounding Passamaquoddy perspectives and their Indian Status recognition in Canada.

Chief Akagi said his experiences of government consultation with Aboriginal people has been ultimately used against Aboriginals and has destroyed their environment.

Earlier that evening, Chief Akagi set up a kiosk display made of cedar in the lobby of Holy Cross House at the university to discuss Aboriginal Oral Knowledge, or as he called it, "A-ok."

He said, "It's to make them understand that when you hear our people, when you interact with our people, you share in it and the knowledge goes back and forth. It's not something one culture can use to take advantage of another."

"How can we possibly believe that our elders could be replaced by paper, steel and glass while we store our knowledge in our elders?" he asked.

Touching on the ideals of equality, diversity and universal human rights, Chief Akagi brought to the conference a real dilemma that the Passamaquoddy people have with Canada. Passamaquoddy territory extends into what is now the United States and Canada. Separated by a border, their lands now rest in two distinct countries, and getting recognition for their Indian Status in Canada has proven difficult.

"By recognizing their borders, they don't recognize our Aboriginal and Treaty Rights, or our own [distinctiveness] in Canada. And if you're affiliated with a tribe in the United States you are not recognized in Canada," said Akagi.

Canada, specifically the Indian Act, fails to recognize the Aboriginal status of the Passamaquoddy people. Chief Akagi views this as elimination of diversity through a legislative instrument.

"How does this promote diversity? How does this promote multiculturalism? How does this support the rights of Indigenous Peoples?" he asked.

Chief Akagi offered words of caution to the crowd that paid close attention. "Beware of the language, the use of the language of industry, the language of corporations, the language of government, and the language of conquest," said Akagi.

St. Thomas University hosts the annual Native Awareness Days each year. It is a collaboration between students, the Native Studies Department, local First Nation communities and supporters to bring forth and discuss important issues related to the Indigenous Peoples of Canada and beyond.

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