

Exhibit C-9

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22 September 2016

VIA FACSIMILE, EMAIL, AND COURIER

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**Re: Notice of Dispute under the Treaty between the U.S. and Kazakhstan
Concerning the Encouragement and Reciprocal Protection of Investment dated
19 May 1992**

Dear Sirs,

We write to you as legal counsel to Big Sky Energy Corporation (“**Big Sky US**” or the “**Investor**”), an American company, to inform you of a dispute that has arisen between the Investor and the Government of the Republic of Kazakhstan (the “**Government**”). The Government’s conduct vis-à-vis the Investor and its investment in Kazakhstan has violated the investment protection guarantees of the Treaty between the United States of America and Kazakhstan concerning the Encouragement and Reciprocal Protection of Investment of 19 May 1992, which entered into force on 12 January 1994 (“**U.S.-Kazakhstan BIT**” or the “**BIT**”),¹ as well as substantive provisions of Kazakhstani law, and has led to the loss of the Investor’s investment. This letter serves as advance notice of the investment dispute, and an intention to submit the matter to international arbitration if a suitable and amiable resolution to the matter is not promptly achieved.

¹ Treaty Between the United States of America and the Republic of Kazakhstan Concerning the Encouragement and Reciprocal Protection of Investment dated 19 May 1992 (entered into force on 12 Jan. 1994) (“**BIT**”).

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A. The Investor's Investment in Kazakhstan

On 11 August 2003, Big Sky US, acting through its wholly-owned Canadian subsidiary, Big Sky Energy Kazakhstan Ltd. ("**Big Sky Canada**," and together with Big Sky US, "**Big Sky**"), purchased a 90% participatory interest in the charter capital of KoZhaN LLP ("**Kozhan**"), a Kazakhstani company. The interest was purchased via a Sale and Purchase Agreement (the "**2003 SPA**") from five Kazakhstani nationals (the "**Original Shareholders**") who each sold 18% of their interest. Later, on 22 November 2005, Big Sky Canada purchased the remaining 10% participatory interest in Kozhan's charter capital from the Original Shareholders under a subsequent Sale and Purchase Agreement (the "**2005 SPA**"). With that transaction, Big Sky Canada became the sole registered owner and shareholder of Kozhan. Kozhan holds Government-granted mineral rights to the exploration and development of three oil fields in the Atyrau region of Western Kazakhstan—the Morskoye, Dauletaly and Karatal fields.

Big Sky successfully operated in Kazakhstan for many years and invested millions of dollars in Kozhan, produced oil, and looked for other opportunities to expand its presence in the country. Big Sky's actions significantly increased the market value of the company after its initial purchase in 2003. Big Sky US, having its investment in Kazakhstan as its only asset, reached a market cap in excess of US\$190,000,000 on the NASDAQ exchange, and stock market analysts noted its potential to rise to US\$460,000,000. But Big Sky's success story came to an end due to the Government's continuous illegal treatment of Big Sky and its investment in Kazakhstan.

B. The Government's Illegal Conduct against the Investor and its Investment

Starting in mid-2006, the Investor and its investment in Kazakhstan became subject to a series of illegal actions from the Government and its courts in breach of the U.S.-Kazakhstan BIT and Kazakhstani law.

1. *The Kazakhstani Courts Illegally Took 90% of the Kozhan Shares from the Investor*

In August 2006, the spouses of the Original Shareholders started a legal action against Big Sky Canada in the Kazakhstan District Court to dispossess the company of its 90% shareholding in Kozhan. In that action, the spouses sought to invalidate the 2003 SPA. The putative basis for the suit was that the spouses of the Original Shareholders did not provide notarized consent to the 2003 SPA which, in the spouses' view, was required for disposal of the shares.

On 26 April 2007, the District Court allowed the spouses' claims and held that the 2003 SPA was void *ab initio*.² The court decided that the 2003 SPA was a transaction subject

² See Decision of the Bostandyk District Court No. 2 dated 26 Apr. 2007.

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to mandatory notarization because the actual parties had opted to notarize it by their mutual agreement. Therefore, according to the court, the lack of notarized consent from the spouses invalidated the 2003 SPA—*four years after it was signed, the company capitalized, and after profitable operations were underway*.

As will become a common thread throughout this story, the court's reasoning was flawed. Kazakhstani law is clear that a sale and purchase agreement for an interest in a limited liability partnership, such as the 2003 SPA, does not fall within the list of agreements subject to mandatory notarization and the parties' choice voluntarily to notarize the SPA does not change the requirements. Accordingly, no notarized spousal consent is required for such a transaction and, even in cases where spousal consent is required, the transaction can only be held invalid if the other party to the transaction knew or should have known that the spousal consent was missing. This has always been the position of the Supreme Court of Kazakhstan, as expressed in its decisions on individual cases before the 2003 SPA decision and in a ruling adopted just five months after the District Court's decision in the case at hand. Despite this clear legal standard, the District Court held the 2003 SPA invalid—even though there was *no evidence* that Big Sky Canada knew or should have known that the spouses had not consented to the agreement.

This picayune detail of spousal consent aside, there were even more flaws with the court's decision. The spouses' claim should have been dismissed as time-barred. Kazakhstani law provides that a spouse must claim invalidation of a transaction within one year after he or she knew or should have known of the transaction. Here, the spouses represented to the court that they only learned of the 2003 SPA in August 2006, but this statement was facially preposterous. In November 2005, each of them expressly consented to the sale of the remaining 10% interest in Kozhan, undercutting any notion that the earlier transfer was done in secret. Furthermore, the Original Shareholders specifically represented and warranted to Big Sky Canada at the time of signing the 2003 SPA that all required consents had been obtained. The truth of these representations and warranties was later confirmed by two of the spouses who told the Supreme Court that they knew about the 2003 SPA at its transaction date. The District Court, however, ignored these facts and deemed the claims timely.

Big Sky Canada appealed the District Court decision to the higher courts, but all appeals were dismissed.³ Noting this grave injustice done to Big Sky Canada, the General Prosecutor of Kazakhstan even submitted a supervisory protest on behalf of the company to the Kazakhstan Supreme Court. Two of the Original Shareholders and their spouses also submitted written statements to the Supreme Court whereby they withdrew all of their claims against Big Sky Canada. However, on 30 January 2008, the Supreme Court dismissed the General Prosecutor's protest and upheld the decisions of the lower courts.⁴ In doing so, the

³ See Ruling of the Almaty City Court (Civil Division) No. 2a-1776/07 dated 6 Jul. 2007; Ruling of the Almaty City Court (Supervisory Division) No. 22n-145/07 dated 30 Oct. 2007.

⁴ See Ruling of the Supreme Court of the Republic of Kazakhstan (Supervisory Division) No. 4gp-5-08 dated 30 Jan. 2008.

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court did not even consider the witness statements of the two spouses confirming that they had withdrawn their claims with respect to 36% of the shareholding in Kozhan. This result cannot be squared with even the basic minimum standards of justice and due process.

With this decision, Big Sky Canada lost 90% of the shares of Kozhan to the Original Shareholders at the stroke of a judge's pen. To make matters worse, the parties were never reverted back to their initial position as the court only ordered restitution of the 90% of the Kozhan shares to the Original Shareholders without ordering them to pay Big Sky Canada the fair market value of the shares taken away, essentially giving the Original Shareholders a bonanza. As discussed below, this breaches the Kazakhstani law requirement of restitution and stands in sharp contrast with the treatment Big Sky received the following year in another litigation involving the same Original Shareholders. Big Sky continued to protest this action to the Kazakhstani authorities, but its protests were all ignored. As mentioned, at first, in January 2008, the General Prosecutor's Office of Kazakhstan agreed that the actions of the Original Shareholders and their spouses constituted fraud; a criminal proceeding was started against them and the National Security Committee of Kazakhstan was instructed to conduct an investigation into the matter.⁵ Since that early glimmer of hope, however, there has been only silence.

2. *Kazakhstani Courts Fabricated an Illegal Debt against Big Sky,
Resulting in the Loss of the Remaining 10% of the Kozhan Shares*

Soon after the Original Shareholders gained control of Kozhan, Big Sky Canada lost the remaining 10% of its shares in the company through another set of unfair and inequitable court proceedings in Kazakhstan. The remaining 10% of the shares were acquired from the Original Shareholders through the 2005 SPA, which had included the notarized spousal consents. This time, in order to frustrate the 2005 SPA, the Original Shareholders fabricated an illegal debt that Big Sky US allegedly owed to Kozhan and set it off against Big Sky Canada's remaining shareholding in Kozhan.

In reality, not only did Big Sky US owe nothing to Kozhan, but Kozhan was highly indebted to both Big Sky US and Big Sky Canada. In order to convert Big Sky US into a debtor, the Original Shareholders challenged earlier transactions among Kozhan, Big Sky US and other parties. In particular, they challenged a transaction involving ABT Ltd. ("ABT"), a Kazakhstani company. On 12 October 2004, Kozhan had signed an agreement where ABT agreed to perform construction works and finance certain costs in connection with finishing Well No. 10 at the Morskoye oil field ("Morskoye"). In return for the construction and financing, Kozhan agreed to assign to ABT a 45% interest in Morskoye's subsoil use rights, with the assignment subject to approval by Kazakhstani authorities. The parties subsequently terminated this agreement and entered into new agreements that superseded all the previous agreements and provided that ABT waived all its rights to the 45% interest in Morskoye in exchange for 15 million shares of Big Sky US common stock, a certain amount of money from Kozhan, and Kozhan's promise to retain ABT as an exclusive contractor for all works at

⁵ See Letter from the General Prosecutor's Office of the Republic of Kazakhstan dated 17 Jan. 2008.

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the Morskoye contract area. This transaction was completed on 10 March 2006. Subsequently, on 12 April 2006, Big Sky US and Kozhan entered into an agreement whereby the parties agreed to treat the share transfer to ABT as financing for Kozhan's obligations to ABT. In sum, this resulted in a US\$27,150,000 loan due and payable by Kozhan to Big Sky US.

In August 2008, two years after the ABT transactions, two of the Original Shareholders commenced a court proceeding against Big Sky US, Big Sky Canada, ABT, and Kozhan, seeking to invalidate the ABT transactions. The shareholders contended that, *inter alia*, all of the agreements were invalid because the *underlying* transaction, *i.e.*, the transfer of the 45% interest in Morskoye, was made without obtaining a required Government approval.

On 15 September 2008, the District Court upheld the claim and invalidated the agreements (the "ABT Decision").⁶ The court also ordered, *inter alia*, that Big Sky US pay ABT US\$27,150,000 as the fair market value of 15 million common shares, and pay Kozhan an additional US\$2,476,053. A few weeks later, on 6 October 2008, ABT assigned its US\$27,150,000 claim to Kozhan. Accordingly, through this manipulation of the court process and corporate formalities, Big Sky US now owed a fabricated debt to Kozhan.

Like the first set of court proceedings, the ABT Decision was not an expression of due process, but an expression of the Original Shareholders' interests. This is clear on the face of the decision. The Kazakhstani court's decision to invalidate the agreements subsequent to the original agreement dated 12 October 2004 on the basis that those agreements were entered into in pursuance of the original agreement is flawed. Indeed, those subsequent agreements were new agreements and superseded all of the previous agreements that were declared terminated. Furthermore, even if those subsequent agreements were considered as entered into in pursuance of the original agreement, the Kazakhstani court could not invalidate them on the basis that no Government approval was obtained for the assignment of the 45% interest in Morskoye. This assignment never happened because it was expressly subject to the Government's approval as a condition precedent. This is standard practice in Kazakhstan: parties will enter into conditional assignment agreements and subsequently seek the necessary approval. If no approval is obtained (*viz.* if the condition precedent is not satisfied), the agreement is terminated and the parties may arrange for an alternative (new) transaction, if any. Here, the parties to the agreement knew that the approval was required; Big Sky US and Kozhan applied for the approval but could not obtain it; so as a result, the agreement never legally came into effect. The parties then expressly terminated the previous agreement and entered into a new one whereby Kozhan would pay certain amounts to ABT and retain it as an exclusive contractor. But the defunct (and expressly terminated) assignment should not (and could not) form the basis of invalidating the new agreement that the parties freely negotiated and executed between themselves. The court's arbitrary decision thus denied the parties the basic right to enter into a contract.

⁶ See Decision of the Bostandyk District Court dated 15 Sept. 2008.

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To put a finer point on the obvious injustice, after invalidating the agreements in question, the court ordered Big Sky US to pay US\$27,150,000 to ABT as a representation of the fair market value of the lost 15 million shares. However, this order to pay ABT stands in stark contrast to the earlier litigation where the court invalidated the 2003 SPA but did not order the Original Shareholders to pay to Big Sky Canada the fair market value of its lost 90% interest in Kozhan.

With a contrived debt hoisted upon Big Sky US, Kozhan (now 90% owned by the Original Shareholders) applied to state enforcement officer S.A. Steklyannikova to execute the ABT Decision in Kazakhstan. The officer petitioned the District Court for an order permitting her to execute the ABT Decision against the 10% interest that Big Sky *Canada* held in Kozhan. On 1 July 2009, the court granted this application and approved the execution (the “**10% Set-Off Decision**”).⁷ The only justification offered by the court for this decision was that Big Sky US owned 100% of the shares of Big Sky Canada. In doing so, the court ruled contrary to Kazakhstani law, which expressly recognises the separate legal personality of a subsidiary’s from its parent entity, including that the assets of the latter are legally separate from the assets of the former. Furthermore, Kazakhstani law clearly provides that a subsidiary, even if 100% owned and controlled by the parent entity, is not liable for the debts of its parent. Indeed, this is a general principle of law universal to all civilized countries.

This was not the only flaw in the enforcement proceedings. *First*, neither officer Steklyannikova nor the District Court had jurisdiction *ratione personae* over Big Sky US, which had no physical presence or assets in Kazakhstan. It was only by disregarding corporate separateness that the officer and court gained a jurisdictional hook. *Second*, neither Big Sky US nor Big Sky Canada were given any notice of the enforcement proceedings, meaning that neither of them had an opportunity to present their case, offending any elemental notion of due process. *Third*, Big Sky Canada was not permitted to exercise its right of appeal on the 10% Set-Off Decision. When Big Sky Canada finally became aware of the decision and obtained a copy in October 2012, it submitted an appeal on the decision to the Court of Appeal. The court simply failed to hear the appeal and no ruling was ever issued on it.

In sum, as of July 2009, Big Sky was dispossessed of all of its equity interest in Kozhan. Five months later, in December 2009, the Original Shareholders sold a 90% interest in Kozhan to International Mineral Resources II B.V. (“**IMR**”), with the transaction closing in February 2010. IMR completed its takeover of Kozhan in January 2010 with the purchase of the remaining 10% interest. Later, in August 2015, IMR sold 100% of Kozhan to Geo-Jade Petroleum Corporation for US\$340 million.

⁷ See Ruling of the Bostandyk District Court dated 1 Jul. 2009.

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3. *Kazakhstani Courts Released Kozhan from Paying the IUS Award, Illegally Offsetting It Against the Same Fabricated Debt*

After losing its equity position in Kozhan, Big Sky Canada filed a claim against Kozhan with the IUS International Arbitration Court in Kazakhstan to recover the loans it provided to Kozhan under certain line of credit agreements. On 7 November 2008, the Tribunal rendered an award in favour of Big Sky Canada, ordering Kozhan to pay US\$30,073,722 as the principal amount of the outstanding loan (the “IUS Award”). On 7 November 2011, Big Sky Canada applied to the Kazakhstani court for enforcement of the IUS Award against Kozhan, and on 13 March 2012, after a series of court proceedings, received an enforcement order to that effect. Big Sky Canada then retained a private enforcement officer, Mr. K.N. Mekebayev, to enforce the IUS Award against Kozhan’s assets.

Kozhan refused to comply with the IUS Award, and instead invoked the ABT Decision again to extinguish the debt represented by the Award. Kozhan petitioned state enforcement officer A. Bakbergen to execute the ABT Decision against the IUS Award. As required by law, the state enforcement officer applied to the District Court to approve such execution, and on 10 April 2012, the court granted its approval.⁸ Big Sky’s appeal on this court decision was dismissed.⁹

These proceedings, too, were clearly illegal. In fact, they bordered on the farcical. The court ordered a set off of the *entire* amount of the ABT Decision against the IUS Award without giving *any* credit to the amount which had been *earlier* set off in the 10% Set-Off Decision. Moreover, even if, *arguendo*, the ABT Decision was a valid one (which it is not), and even if it was properly executed against the 10% interest in Kozhan and the IUS Award (which it was not), Kozhan still owes a significant debt to Big Sky that is entirely unchallenged.

And again, there were grave procedural deficiencies in the proceedings. Just like the proceedings leading to the forfeiture of Big Sky Canada’s 10% interest in Kozhan, neither state enforcement officer Bakbergen, nor the District Court had jurisdiction *ratione personae* over Big Sky US. Without jurisdiction, officer Bakbergen should have returned the writ of execution to Kozhan without execution. Instead, he continued to exercise jurisdiction over the execution of the ABT Decision against Big Sky US and took a series of execution measures that interfered with enforcement of the IUS Award. Likewise, the District Court had no jurisdiction over Big Sky US. Furthermore, in a similar fashion as the 10% Set-Off Decision, neither Big Sky US nor Big Sky Canada were given any notice of the proceedings before state enforcement officer Bakbergen and, more importantly, the District Court. Once again, Big Sky had no opportunity to present its case and thus was denied due process.

⁸ See Ruling of the Bostandyk District Court dated 10 Apr. 2012.

⁹ See Ruling of the Almaty City Court (Appeal Division) No. 2a-4762/2012 dated 2 Aug. 2012.

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Similarly, corporate separateness was ignored yet again. A set off is possible when a judgment creditor and a judgment debtor have opposing claims, but in this instance, Big Sky US was the fabricated debtor, and Big Sky Canada held the IUS Award. Like the 10% Set-Off Decision, the enforcement officer and the court incorrectly equated Big Sky Canada's assets with Big Sky US's assets. In a remarkable instance of juridical bootstrapping, the court relied on the 10% Set-Off Decision as the precedent permitting such treatment.¹⁰

This decision frustrated all of Big Sky Canada's attempts to enforce the IUS Award in Kazakhstan. In May 2012, private enforcement officer Mekebayev commenced an enforcement proceeding against Kozhan and ordered a freeze of Kozhan's bank accounts. Kozhan challenged this action in court. At first, the District Court rightly dismissed this challenge on the ground that the ABT Decision could not be used to set off Big Sky US's debt to Kozhan against Kozhan's debt to Big Sky Canada.¹¹ However, this decision was reversed by the Court of Appeal, which followed the earlier court ruling permitting the set off.¹² Big Sky's appeal was dismissed by the higher court.¹³ Unable to enforce the IUS Award within the territory of Kazakhstan under these circumstances, enforcement officer Mekebayev returned the writ of execution to Big Sky Canada on 20 November 2012.

C. Applicable Provisions of International Law

The Government's conduct with respect to the Investor and its investment in Kazakhstan violated the investment protections and guarantees provided in the U.S.-Kazakhstan BIT. The BIT provides very broad protections to all companies "legally constituted under the laws and regulations of [the U.S. or its constituent States]" which "own[] or control[] directly or indirectly" assets in Kazakhstan, including but not limited to "a company or shares of stock or other interests in a company or interests in the assets thereof," "a claim to money or a claim to performance having economic value, and associated with an investment" and "any right conferred by law or contract, and any licenses and permits pursuant to law."¹⁴ Big Sky US is a Nevada State company which indirectly (through Big Sky Canada) owned 100% of the shares of Kozhan, a Kazakhstan company, and its oil properties. The Big Sky US's equity interest in Kozhan thereby amounts to an "investment" under the BIT. The dispute regarding the treatment Big Sky received in Kazakhstan's courts thus falls squarely within the terms of the BIT.

¹⁰ In addition, the District Court ignored the fact that the IUS Award was binding only between Kozhan and Big Sky Canada—the parties to the respective arbitration agreement. As Big Sky US was not a party to the agreement, the award could not in any way bind it, even if it owned 100% of the shares of Big Sky Canada. Under these circumstances, no set off was legally possible.

¹¹ See Decision of the Almalinsky District Court No. 2 of Almaty dated 8 Jun. 2012.

¹² See Ruling of the Almaty City Court (Appeal Division) No. 2a-4822/2012 dated 17 Aug. 2012.

¹³ See Ruling of the Almaty City Court (Cassation Division) No. 2k-2785/2012 dated 23 Oct. 2012.

¹⁴ BIT, arts. 1(a) and (b).

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As a US investor with a covered investment in Kazakhstan, Big Sky US and its investment are entitled to “fair and equitable treatment . . . and . . . in no case . . . treatment less than that required by international law;”¹⁵ unrestricted access to “effective means of asserting claims and enforcing rights with respect to investment . . . ;”¹⁶ most favored nation treatment;¹⁷ and to be free from “expropriat[ion] or nationaliz[ation] either directly or indirectly through measures tantamount to expropriation or nationalization” without compensation.¹⁸ Each of these provisions, *inter alia*, were violated by the Government’s conduct vis-à-vis the Investor and its investment in Kazakhstan.

The Investor now seeks recourse to the protections of the BIT to restore its rights and receive full compensation for the loss it suffered as a result of the Government’s illegal actions. This letter shall serve as a notice of “an alleged breach of any right conferred or created by this [BIT] with respect to an investment,” in accordance with Article VI(1) of the BIT. With this notice, the Investor wishes to express its willingness to attempt to settle the dispute amiably. Please be advised that failure to reach an agreement on settlement within six months from the date of this letter will prompt the Investor to commence international arbitration, in accordance with Article VI of the BIT.

We look forward to receiving your reply to this notice.

Yours sincerely,

On behalf of Big Sky Energy Corporation:



Baiju S. Vasani

¹⁵ *Id.*, art. II(2)(a).

¹⁶ *Id.*, art. II(6).

¹⁷ *Id.*, art. II(1).

¹⁸ *Id.*, art. III(1).