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Canada-British Columbia Agreement for Environmental Assessment Cooperation (2004)

Preamble

WHEREAS Canada and British Columbia respect each other's constitutional responsibilities including a shared responsibility for the environment;

WHEREAS Canada and British Columbia have each established processes for environmental assessment which operate in a framework of legislation and government policies;

WHEREAS Canada and British Columbia are both signatories to *A Canada-wide Accord on Environmental Harmonization* (the Accord) and its *Sub-agreement on Environmental Assessment* (the Sub-agreement);

WHEREAS Canada and British Columbia are committed to the principles and objectives of cooperation embodied in the Accord and the Sub-agreement; and

WHEREAS Canada and British Columbia have agreed that, when an environmental assessment of a project is required by Canada pursuant to the *Canadian Environmental Assessment Act* and an environmental assessment is required by British Columbia pursuant to the *Environmental Assessment Act*, a cooperative environmental assessment will be undertaken to generate the type and quality of information and conclusions on environmental effects required by all Parties making decisions on the basis of the cooperative environmental assessment;

THEREFORE, Canada and British Columbia agree to implement the Sub-agreement through the following provisions.

Definitions

1. In this Agreement

"Cooperative environmental assessment"

means the environmental assessment of a project where Canada and British Columbia both have an environmental assessment responsibility and they cooperate through the Lead Party's assessment process, to meet the legal environmental assessment requirements of both Parties through a single environmental assessment;

"Environmental assessment"

means the assessment of the environmental effects of a project conducted in accordance with the *Canadian Environmental Assessment Act*, or the assessment of the effects of a project conducted in accordance with the *British Columbia Environmental Assessment Act*;

"Environmental assessment responsibility"

means the legal responsibility to ensure an environmental assessment is conducted in accordance with either the *Canadian Environmental Assessment Act* or the *British Columbia Environmental Assessment Act*;

"Federal responsible authority"

means "responsible authority" as defined in section 2(1) of the *Canadian Environmental*

Assessment Act;

"Federal regulated authority"

means any person or body that is required to ensure an environmental assessment is conducted in accordance with regulations under the *Canadian Environmental Assessment Act*;

"Interest"

means the environmental management responsibilities of a Party, the exercise of which does not require an environmental assessment by that Party;

"Joint review panel"

means the public hearing body established by British Columbia pursuant to the *Environmental Assessment Act*, and by Canada pursuant to the *Canadian Environmental Assessment Act* whose members are appointed by Canada and British Columbia;

"Lead Party"

means the Party as determined under clause 5.6.0 of the Sub-agreement and clause 12 of this Agreement;

"Party"

means either the Government of Canada (Canada) or the Government of British Columbia (British Columbia);

"Project"

means a project as defined in section 2(1) of the *Canadian Environmental Assessment Act* or a reviewable project as defined in section 1 of the *British Columbia Environmental Assessment Act*.

"Proponent"

means proponent as defined in section 2(1) in the *Canadian Environmental Assessment Act* or as defined in section 1 of the *British Columbia Environmental Assessment Act*.

Interpretation

2. This Agreement:

1. creates an administrative framework within which the Parties can cooperatively exercise their respective powers and duties established by the *Canadian Environmental Assessment Act*, the *British Columbia Environmental Assessment Act* and the regulations made pursuant to those Acts;
2. is a public document that is to be read with, and interpreted in a manner consistent with the *Canadian Environmental Assessment Act*, the *British Columbia Environmental Assessment Act* and the regulations made pursuant to those Acts, and all other federal and provincial legal requirements, including but not limited to legislative requirements; and
3. does not create any new legal powers or duties nor does it alter in any way the powers and duties established by the *Canadian Environmental Assessment Act*, the *British Columbia Environmental Assessment Act* and the regulations made pursuant to those Acts, and is not legally binding on the Parties.

3. Neither Canada nor British Columbia gives up any jurisdiction, right, power, privilege, prerogative or immunity by virtue of this Agreement.

Scope of Application

4. For Canada, this Agreement applies to any person or body that is required to ensure an environmental assessment is conducted under the *Canadian Environmental Assessment Act* and its regulations, and for British Columbia, this Agreement applies to the *Environmental Assessment*

Office.

Objectives

5. The objectives of this Agreement are:

1. to foster cooperation between the Parties concerning the environmental assessment of proposed projects;
2. to set out the principles for carrying out a cooperative environmental assessment and describe the roles and responsibilities of the Parties in implementing cooperative environmental assessments, thereby achieving greater efficiency and effectiveness in the use of public and private resources; and
3. to achieve increased certainty and predictability for participants in the environmental assessment of proposed projects involving both Parties.

Designated Offices

6. (1) Each Party will designate an office to be responsible for:

1. administering this Agreement, including, developing operational procedures in accordance with Clause 38 of this Agreement;
2. facilitating consultation and cooperation between the Parties in relation to environmental assessment matters, generally;
3. providing information about its respective environmental assessment process, policies and procedures; and
4. coordinating and facilitating federal-provincial contact and communication with proponents, government departments and agencies, Aboriginal groups and the public on cooperative environmental assessment and environmental assessment matters generally.

(2) The designated office for Canada is the Canadian Environmental Assessment Agency in Vancouver (Canada Office).

(3) The designated office for British Columbia is the Environmental Assessment Office in Victoria (British Columbia Office).

Notification

7. (1) The Parties will notify each other in a timely manner about proposed projects that may be subject to a cooperative environmental assessment and provide access to relevant information about projects.

(2) For any proposed project in British Columbia that may be subject to the *Canadian Environmental Assessment Act* and the *British Columbia Environmental Assessment Act*, the person or body that may be required to ensure an environmental assessment of the project is conducted in accordance with the *Canadian Environmental Assessment Act* or its regulations, will inform the Canada Office of the project and the Canada Office will ensure that any project description or other documentation is provided to the British Columbia Office at the earliest opportunity.

(3) When the British Columbia Office makes a determination of a project's reviewability under section 10 of the *British Columbia Environmental Assessment Act*, the British Columbia Office will provide any relevant information about the project to the Canada Office at the earliest

opportunity.

(4) Once notified, a Party will identify to the other Party, in a timely manner, the information that Party believes it will require to determine if it has an environmental assessment responsibility.

(5) The Parties will advise proponents at the earliest opportunity of the potential for a cooperative environmental assessment of a proposed project.

8. (1) Canada will notify British Columbia, where there is a decision by Canada, in accordance with the *Canadian Environmental Assessment Act*, to refer a project to a mediator or review panel, including a decision to refer a project listed in the Comprehensive Study List Regulations made pursuant to the *Canadian Environmental Assessment Act* to a mediator or a review panel in accordance with section 21.1 of the *Canadian Environmental Assessment Act*.

(2) British Columbia will notify Canada if the decision under section 10 (1)(a) of the *British Columbia Environmental Assessment Act* is to refer a project to the Minister.

9. (1) Where Canada intends to declare a model or replacement class screening report pursuant to the *Canadian Environmental Assessment Act* that may have a bearing on the environmental assessment of future projects in British Columbia, Canada will notify British Columbia early in the process of developing the report, and will provide British Columbia with an opportunity to participate in the process.

(2) Where British Columbia intends to undertake and approve a partial class assessment or a full class assessment pursuant to the *British Columbia Environmental Assessment Act* that may have a bearing on future environmental assessments of projects in British Columbia in which Canada may have an environmental assessment responsibility or an interest, British Columbia will notify Canada early in the process of developing the class assessment, and will provide Canada with an opportunity to participate in the process.

Determination of Environmental Assessment Responsibilities

10. (1) If either Party believes it may have an environmental assessment responsibility, but the project description lacks sufficient information to permit either Party to make a final determination as to whether it has an environmental assessment responsibility, that Party will request the additional information needed to make a determination from the proponent and that Party will provide a copy of the information request and the proponent's response to the other Party.

(2) Where one Party has an environmental assessment responsibility and the other Party believes it may have an environmental assessment responsibility, but has not yet made a determination, the Party that has yet to make a determination will participate in the environmental assessment as if it has a responsibility until it has made a determination in the manner prescribed in paragraph (1). The Party will make its determination in as expeditious a manner as possible.

Common Information Requirements

11. (1) Where each Party has an environmental assessment responsibility for a proposed project, a cooperative environmental assessment will be administered by the Lead Party to generate the type, level and quality of information required to meet the environmental assessment requirements of each Party.

(2) The Parties will make every reasonable effort to agree, as early in the review as practicable, and, where British Columbia is the lead Party, no later than the finalization of information requirements for the application on a common set of information requirements to allow both Parties to fulfill their respective environmental assessment responsibilities and to produce a single

environmental assessment report.

(3) Where a Party determines that the information it requires to fulfil its environmental assessment responsibility will not be fully provided by the cooperative environmental assessment, that Party will identify its additional information requirements in relation to its environmental assessment responsibility, provide the documented information requirements to the other Party, and advise the other Party of its intention to work with the proponent to collect this additional information, while continuing to participate in the cooperative environmental assessment.

Lead Party

12. (1) The Lead Party for the purposes of cooperative environmental assessments will generally be determined as follows:

1. Canada will be the Lead Party for proposed projects on federal lands where Canada has an environmental assessment responsibility;
2. British Columbia will be the Lead Party for proposed projects on lands within its provincial boundary, not covered under paragraph (a), where British Columbia has an environmental assessment responsibility; and
3. If a project is located on both federal and provincial lands and both Parties have an environmental assessment responsibility, the Lead Party will be determined by mutual agreement of the Parties.

(2) If a Party believes that it would be in the best interest of a cooperative environmental assessment to vary the Lead Party from the arrangements in paragraph (1), that Party may notify the other Party and include with the notice a proposal for varying the lead with supporting rationale for suggesting a variance, including but not limited to the criteria contained in the Sub-agreement, recognizing the legal requirements of quasi-judicial tribunals.

(3) The Lead Party will be varied only as mutually agreed to by the Parties.

Contacts for a Cooperative Environmental Assessment

13. (1) A single contact for each Party will assume the following duties respecting a cooperative environmental assessment:

1. coordinate the participation of that Party in the cooperative environmental assessment;
2. contact relevant departments and agencies in their respective governments to confirm the Lead Party, as determined by clause 12(1), or give notice that the Parties have agreed to vary the Lead Party in accordance with clause 12(2) and 12(3);
3. work with the other contact to resolve process and content issues that may arise during the cooperative environmental assessment;
4. coordinate consultation, on behalf of that Party, with the other Party, the proponent, and the public on matters pertaining to the cooperative environmental assessment; and
5. make best efforts to ensure that Party meets the timelines established for the cooperative environmental assessment.

(2) The contact for Canada will be the federal environmental assessment coordinator, as provided for in section 12.1 - 12.4 of the *Canadian Environmental Assessment Act*, which, for cooperative environmental assessments, will be the Canadian Environmental Assessment Agency for Canada unless Canada notifies British Columbia that the federal environmental assessment coordinator will be other than the Canadian Environmental Assessment Agency.

(3) The contact for British Columbia will be the Environmental Assessment Office, unless British Columbia notifies Canada that its contact will be other than the Environmental Assessment Office.

Project Work Plan

14. (1) The contacts and the authority or authorities required to ensure that an assessment of the project is conducted in accordance with the Canadian Environmental Assessment Act or its regulations will develop as early as practicable in the cooperative environmental assessment process a project-specific work plan for a cooperative environmental assessment that may include the following:

1. the scope of the project to be assessed and the factors and the scope of the factors to be considered, including those relating to policy and legislative requirements;
2. identification of the federal responsible authorities and the federal regulated authorities participating in the cooperative environmental assessment;
3. opportunities for notification, public consultation and, where British Columbia is the Lead Party, reviewing the application for an environmental assessment certificate under the *British Columbia Environmental Assessment Act*, and related documentation;
4. opportunities for coordination of Aboriginal participation in the cooperative environmental assessment;
5. opportunities for determining and documenting the information requirements and analysis necessary to meet the legislated environmental assessment requirements of each Party;
6. a mutually agreeable schedule for the completion of the cooperative environmental assessment, in recognition of legislated timelines, including all required notifications and opportunities for public consultation;

(2) A work plan may be updated and amended throughout the cooperative environmental assessment with the mutual agreement of the Parties.

(3) The content of work plans may be guided by operational procedures developed in accordance with Clause 38 of this Agreement.

Joint Review Panel

15. (1) For a cooperative environmental assessment, where British Columbia determines, in accordance with the *British Columbia Environmental Assessment Act*, that the assessment should be conducted by a commission or hearing panel, or where Canada determines that the project subject to the cooperative environmental assessment should be referred to a review panel pursuant to the *Canadian Environmental Assessment Act*, the Party making such a determination will immediately notify the other Party of that determination and consult on the possible establishment of a joint review panel for the project.

(2) The Parties, where each Party so agrees, will enter into a project-specific agreement respecting the establishment of a joint review and the manner in which an assessment of the environmental effects of the project is to be conducted.

(3) An agreement referred to in paragraph (2) will set out terms of reference for the joint review panel that reflect the legislated requirements of each Party and may contain provisions respecting:

1. the operation of the joint review panel;
2. the establishment of a panel secretariat to provide administrative and procedural support to

- the joint review panel;
3. the sharing of costs associated with the joint review panel;
 4. any assistance to be provided to participants in the hearing process in accordance with the legislation and policies of each Party;
 5. the time frame for completing the work by the joint review panel; and
 6. any other matter that the Parties agree is necessary for the proper conduct of the work of the joint review panel.

16. Where a panel secretariat is established, the panel secretariat will be the single contact for Canada and British Columbia.

17. All documents produced by a joint review panel, including its final report, will take account of and reflect the views of all the members of the panel.

18. The final report of the joint review panel will be conveyed to the Parties as recommendations only.

19. Neither Party will make a decision that would allow a project to proceed before taking into account the final report and recommendations of the joint review panel and discussing the recommendations of the joint review panel with the other Party.

Coordinated Decision Making

20. Each Party will use the information generated by a cooperative environmental assessment to make its respective decisions concerning the results of the cooperative environmental assessment of a proposed project, provided that each Party is of the opinion that the information generated in the process meets the requirements of its environmental assessment legislation.

21. (1) The Parties agree to coordinate, to the extent possible, the timing of decisions.

(2) Each Party will notify the other of its respective decisions concerning the results of the cooperative environmental assessment of a proposed project and provide an opportunity to coordinate the announcement of such decisions.

22. Where a cooperative environmental assessment leads to the approval of a project subject to the conditions of both Parties, the Parties will make all reasonable efforts to coordinate their respective responsibilities for compliance monitoring and follow-up programs recognizing that for both Parties, these responsibilities reside largely with line departments and ministries and therefore the role of the designated offices for Canada and British Columbia is limited in this area.

Interests

23. Where one Party has an environmental assessment responsibility respecting a proposed project and the other Party has an identified interest related to the project, the Party with the environmental assessment responsibility:

1. will provide opportunities for the Party with an interest to review the environmental assessment information and provide comments; and
2. may request technical advice and comments from the Party with an interest, which that Party will provide consistent with its mandate in a timely manner.

24. When an amendment to a provincial environmental assessment certificate is requested and a

responsibility to conduct an environmental assessment under the *Canadian Environmental Assessment Act* and its regulations exists in relation to that project, the Parties agree to work together to fulfill any environmental assessment responsibilities.

Aboriginal Interests

25. The Parties recognize the constitutional protection given to existing Aboriginal and Treaty rights by section 35 of the Constitution Act, 1982.

26. The Parties will provide Aboriginal groups potentially affected by the proposed project the opportunity to participate in a cooperative environmental assessment and agree to coordinate and cooperate on Aboriginal participation. The Parties recognize that issues of Aboriginal rights and title continue to evolve in policy and law and the Parties will continue to discuss how these apply to cooperative environmental assessment.

27. This Agreement does not apply to environmental assessment processes pursuant to an established land claim, treaty or Aboriginal self-government agreement.

28. This Agreement may be revised to reflect comprehensive land claim agreements, treaty or Aboriginal self-government agreements that are given effect by legislation.

29. The Parties agree to share the principles of the Accord, the Sub-agreement, and the provisions of this Agreement with Aboriginal groups when negotiating environmental assessment regimes pursuant to land claim, treaty or self-government agreements.

Environmental Assessment of Transboundary Effects

30. (1) Where Canada has obligations pursuant to an international agreement with respect to the environmental assessment of a proposed project that is subject to a cooperative environmental assessment, Canada will notify and discuss its obligations with British Columbia.

(2) British Columbia will notify Canada of its obligations pursuant to any agreements concluded with neighbouring jurisdictions under section 27 of the *British Columbia Environmental Assessment Act*.

31. Where a project in British Columbia subject to a cooperative environmental assessment may cause significant adverse environmental effects on another province or territory in Canada, the Lead Party will ensure that the potentially affected province or territory is informed and consulted during the conduct of the cooperative environmental assessment.

32. Where Canada becomes aware of potential transboundary effects relating to a project within the meaning of sections 46, 47 or 48 of the *Canadian Environmental Assessment Act*, whether the project is situated in British Columbia or in another jurisdiction with potential transboundary effects in British Columbia:

1. the Canada Office will promptly notify the British Columbia Office of the potential transboundary effects;
2. upon notification, as referred to in paragraph (a), the Parties agree to exchange information relating to the project, the transboundary concerns, and any assessment of the environmental effects of the project; and
3. for projects in British Columbia, Canada will consider any assessment of the environmental effects of the project required by British Columbia before taking final action under section 46, 47 or 48 of the *Canadian Environmental Assessment Act*.

Dispute Management

33. (1) The Parties will make every reasonable effort to agree on the interpretation and application of this Agreement, including but not limited to the scope of the project, the factors and scope of factors to be assessed, the completeness and adequacy of information, the significance of environmental effects, matters relating to process, or any other matter related to a cooperative environmental assessment.

(2) Should a difference in view between the Parties arise on any of the matters referred to in paragraph (1), the Parties will, to the extent possible, seek to resolve the difference at a working level.

(3) All reasonable efforts will be made to resolve a difference at a working level. These efforts will include the use of all appropriate means as may be described in operational procedures developed by the Parties, including the advice of independent third party consultants where both Parties agree. Where these efforts are unsuccessful, the designated offices will, where both offices agree, convene a meeting of the Parties, at a senior level, within ten working days of the difference being brought to the attention of the two offices to seek a resolution of the difference or to agree on a process for resolving the difference.

(4) If after a period of time agreed to by the senior officials at the onset of the dispute resolution procedures outlined in paragraph (3), the dispute has not been resolved, the matter may be referred to the President of the Canadian Environmental Assessment Agency and the Deputy Minister for the British Columbia Environmental Assessment Office, where they both agree, to facilitate resolution of the issues by the Parties, within a specified time frame.

(5) The Parties recognize that this dispute resolution process does not fetter the authority of a federal responsible authority or a federal regulated authority under the *Canadian Environmental Assessment Act* or the authority of the British Columbia Environmental Assessment Office under the *British Columbia Environmental Assessment Act*.

Implementation, Evaluation, Revision and Duration of the Agreement

34. A working committee co-chaired by the designated offices will be established to oversee the implementation of this Agreement and the efficiency and effectiveness of the cooperative environmental assessments undertaken in accordance with the Agreement.

35. This Agreement may be revised at any time by mutual consent.

36. This Agreement will be in force for a period of five years from the date of its execution and may be renewed by mutual agreement, with or without revisions.

37. (1) Following consultations between the Parties, this Agreement may be terminated by either Party, forty-five days after written notice is provided to the other Party.

(2) In the event of termination, the Parties will provide transitional arrangements for projects already involved in a cooperative environmental assessment.

38. The designated offices, in consultation with interested federal and provincial authorities, may develop operational procedures to assist in the interpretation and implementation of this Agreement.

(Original signed on March 11, 2004)

Original signed by:

The Honourable David Anderson
Minister of the Environment
Government of Canada

The Honourable George Abbott
Minister of Sustainable Resource Management
Government of British Columbia

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