

**Canada - British Columbia - Columbia Basin Indigenous Nations
Columbia River Treaty Negotiations Framework Agreement**

(Herein to referred to as the “Negotiation Framework”)

BETWEEN:

The Ktunaxa Nation as represented by the Ktunaxa Nation Council

AND:

The Secwepemc Nation as represented by the Shuswap Nation Tribal Council

AND:

The Syilx Nation as represented by the Okanagan Nation Alliance

AND:

Canada as represented by the Department of Foreign Affairs, Trade and Development

AND:

British Columbia as represented by Ministry of Children and Family Development and
the Minister Responsible for the Columbia River Treaty

Hereinafter referred to as the Parties

WHEREAS:

- A. The Indigenous Nations hold Aboriginal rights and title within their respective traditional territories, each of which include portions of the Columbia River Basin;*
- B. The 1964 Columbia River Treaty (CRT) is an international agreement between Canada and the United States of America (the U.S.) to coordinate flood control and optimize hydroelectric energy production on both sides of the border. Canada and the U.S. have begun a process to modernize the CRT;*
- C. The Parties recognize and acknowledge that the CRT was negotiated without the participation or consent of the Indigenous Nations and without taking into account impacts to the title, rights, culture, economies and ways of life of the Indigenous Nations;*

- D. The Parties further recognize and acknowledge that the Indigenous Nations assert that they have suffered, and continue to suffer, profound and long-lasting impacts from the CRT and the construction and operation of hydroelectric facilities governed by its terms;*
- E. Existing Aboriginal and treaty rights are recognized and affirmed in Section 35(1) of the Constitution Act, 1982. Both Canada and British Columbia (B.C.) have committed to a renewed path of reconciliation with Indigenous peoples. Canada and B.C. are committed to working, on a nation-to-nation basis, through discussion and engagement with the Indigenous groups in order to advance reconciliation and renew the relationship through cooperation and recognition of Indigenous rights. Canada and B.C. have fully endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the “U.N. Declaration”) without qualification and committed to implement the U.N. Declaration in partnership with Indigenous peoples, and in accordance with Canada’s constitution;*
- F. B.C.’s Crown corporation British Columbia Hydro and Power Authority (“B.C. Hydro”) is the owner and operator of hydroelectric facilities in Canada, and charged with the implementation of the CRT under the 1963 Canada-B.C. Agreement, and both B.C. and B.C. Hydro are participants with Canada in the CRT Negotiations;*
- G. The Crown has a legal obligation to consult with and, where appropriate, accommodate Indigenous groups whenever the Crown contemplates conduct that may adversely affect section 35 Aboriginal rights and title;*
- H. The consultation process set out in this Agreement is based on the understanding that the nature, scope and geographic extent of the rights and title of the Indigenous Nations within the Columbia River basin have not been determined. The Parties acknowledge that the engagement in relation to the modernization of the CRT undertaken under the terms of this Agreement is not a rights recognition process;*
- I. The Parties agree that the meaningful participation of the Indigenous Nations in relation to CRT Negotiation processes is necessary to seek to obtain their free, prior and informed consent and to advance reconciliation, fulfill the constitutional and legal duties owed by Canada and B.C. to the Indigenous Nations, implement the U.N. Declaration and respect and uphold the laws, customs and governance authorities of the Indigenous Nations; and*
- J. Towards those ends, the Parties have entered into this Agreement to establish the principles, processes and commitments that will govern their engagement regarding the CRT negotiations.*

THE PARTIES AGREE AS FOLLOWS:**1.0 DEFINITIONS**

“Indigenous Nations” means the Ktunaxa Nation, as represented by the Ktunaxa Nation Council, the Secwepemc Nation, as represented by the Shuswap Nation Tribal Council, and the Syilx Nation, as represented by the Okanagan Nation Alliance;

“CRT Negotiations” means the negotiations between Canada, with the participation of BC, BC Hydro and the Observer Group together forming the Canadian delegation, and the U.S. concerning the modernization of the CRT;

2.0 PURPOSES

2.1. The purposes of this Negotiation Framework are to:

- a. establish the principles, processes and commitments that will govern engagement between the Parties on the CRT Negotiations;
- b. advance reconciliation and establish the means whereby Canada and B.C. will seek to obtain the free, prior and informed consent of the Indigenous Nations regarding the CRT Negotiations; and
- c. enable the Parties, whether collectively or through separate bilateral processes, to develop additional agreements related to the CRT including, but not limited to, past and ongoing impacts of the CRT to the Indigenous Nations and the domestic implementation of any outcomes of the CRT Negotiations.

3.0 PRINCIPLES

3.1 The Parties will implement this Negotiation Framework in accordance with the principles and commitments set out in this section.

3.2 The Parties commit to working together to:

- a. engage collaboratively to seek to build consensus;
- b. respect and support each other’s governance processes and structures;
- c. strive for clarity in communications and joint documents;

- d. work efficiently and with due consideration for timelines; and
 - e. share all relevant information in a timely manner in accordance with the confidentiality requirements.
- 3.3 Canada has adopted the “Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples”, which are intended to achieve reconciliation with Indigenous peoples through a renewed nation-to-nation and government-to-government relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change. Canada is committed to implementing those principles through this Negotiation Framework.
- 3.4 B.C. has developed the “Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples”, which affirm B.C.’s desire to achieve a government-to-government relationship based on respect, recognition and exercise of Aboriginal title and rights and to the reconciliation of Aboriginal and Crown titles and jurisdictions. B.C. is committed to implementing those principles through this Agreement.
- 3.5 Canada has fully endorsed the U.N. Declaration without qualification, and committed to implement the U.N. Declaration and the Truth and Reconciliation Commission’s Calls to Action in partnership with Indigenous peoples, and in accordance with Canada’s constitution. The Province of B.C. has committed to fully adopting and implementing the U.N. Declaration and the Truth and Reconciliation Commission’s Calls to Action, and is committed to bringing the principles of the U.N. Declaration into action. Through this Negotiation Framework, Canada and BC will work and cooperate with the Indigenous Nations to aim to advance those commitments and, in particular, seek to obtain the free, prior and informed consent of the Indigenous Nations in relation to the modernization of the CRT.

4.0 STRUCTURE

- 4.1 The Parties will establish a Leadership Table, Negotiation Advisory Team (the “N.A.T.”) and Observer Group as set out below.

Leadership Table

- 4.2 The Leadership Table will consist of one senior leadership representative from each Party. Each Party will also appoint an alternate who can act on its behalf in the absence of the senior leadership representative. Each Party will ensure that its representative is mandated to speak on its behalf and to make decisions on

relevant matters consistent with each Party's governance processes. The Leadership Table will:

- a. provide guidance, as required, to the N.A.T.;
- b. receive updates from the N.A.T. on and, where appropriate, provide input into the CRT Negotiations;
- c. confirm key decisions, actions and outcomes mutually developed by the Parties; and
- d. seek to resolve any outstanding issues between the Parties in accordance with sections 7.3 and 7.4.

N.A.T.

4.3 The N.A.T. will consist of no more than three representatives of each Party, with the option to include legal counsel as needed. Each Party will also appoint one or two alternates who can act on its behalf in the absence of the primary representatives. The N.A.T. will:

- a. serve as the primary forum for the Parties to share information concerning the CRT Negotiations;
- b. as a first order of business, collaboratively develop a list of issues that the Parties will seek to address through the processes established in this Agreement, including any separate agreements established through clause 4.7, and will address the need for confidentiality with respect to that list or any part of it;
- c. be the initial forum for engagement regarding any proposed changes to Canada's negotiation objectives for the CRT Negotiations;
- d. provide advice and seek to collaboratively develop consensus on the negotiation positions to guide and inform Canada's positions and negotiations with the U.S., including responses to positions and issues raised by the U.S.;
- e. collaboratively identify the key issues that the Leadership Table needs to be informed of for purposes of the dispute resolution provisions in sections 4.2(d), 7.3 and 7.4;
- f. ensure the Indigenous Nations are fully informed about the CRT Negotiations;
- g. provide updates to each Party's respective leadership on the status of the CRT Negotiations and engagement with Canada pursuant to this Agreement; and

- h. include in its meetings, as necessary and by consensus, technical experts, including from BC Hydro, to inform and support negotiations preparation sessions.
- 4.4 The N.A.T. will manage and control its own process consistent with the following:
- a. when CRT Negotiations are active, the N.A.T. will meet no less than once per month;
 - b. the N.A.T. may meet in person or by electronic means;
 - c. the N.A.T. will ensure that joint minutes are taken of each meeting and, in particular, that any issue on which consensus has been reached, or any issue of disagreement, is clearly recorded;
 - d. where required, the N.A.T. may create technical working groups to prepare more detailed studies and analysis to support its work;
 - e. the N.A.T. will collaboratively develop and, as required, update a work plan that identifies objectives, timelines, deliverables and budgets to support its work; and
 - f. the N.A.T. will provide support to the CRT Negotiations as needed.

Observer Group

- 4.5 The Parties will establish an Observer Group within the Canadian delegation to the CRT Negotiations consisting of one representative of each Indigenous Nation (the “Observer Group”). Each Indigenous Nation will also appoint an alternate who can act in the absence of the primary representative. The purpose of the Observer Group is to: attend each session of the CRT negotiations between Canada and the United States; observe the negotiations and only participate if directed to do so by Canada’s Chief Negotiator; and report back to the N.A.T. on the negotiations within the confines of the confidentiality agreement that each observer has entered into with Canada. The Parties agree to continue to discuss and seek to reach agreement on the inclusion of legal counsel for the Indigenous Nations in the Observer Group.

Meeting Record

- 4.6 The Parties share an interest in clearly identifying issues on which consensus has been achieved, and outcomes of the CRT Negotiations for which the consent of the Indigenous Nations have been obtained as well as the scope, nature and content of that consent. The Parties will ensure that a clear record of any decision

or recommendation of the N.A.T. or Leadership Table, and of any issue upon which consensus or consent cannot be achieved, are prepared.

Additional Agreements and Processes

- 4.7 The Parties recognize that separate bilateral agreements and processes between Canada, B.C. and each of the Indigenous Nations may be established to complement this Agreement, and commit to avoiding any duplication or overlap between this Agreement and any such agreements or processes.

5.0 FUNDING

- 5.1 The Parties acknowledge that, subject to the expenditures being authorized by law, Canada and B.C. commit to providing capacity funding to the Indigenous Nations to enable their meaningful participation in the processes established through this Negotiation Framework.
- 5.2 Subject to 5.1, the objectives respecting funding are set out in Schedule B to this Negotiation Framework.

6.0 INFORMATION SHARING

- 6.1 The Parties recognize and respect that the Indigenous Nations need to be able to provide input to those negotiations, update their communities and exercise their respective governance processes in a fully informed manner, while also maintaining the confidentiality of the content of the negotiations between Canada and the U.S.
- 6.2 The Leadership Table will be provided with access to the following types of information:
- a. the overarching goals and objectives of the CRT negotiations prepared by the N.A.T.;
 - b. this Agreement and any updates and amendments;
 - c. updates by the N.A.T. on the implementation of this Agreement and on the progress of the CRT Negotiations; and
 - d. any other information that the Leadership Table may request that is not confidential or, where such information is confidential, Canada or B.C. has agreed to share such information and the Parties have signed a confidentiality agreement in relation to that information.

- 6.3 Subject to section 6.5, the N.A.T. will be provided with access to the following types of information:
- a. Canada's and B.C.'s objectives and desired outcomes for a modernized CRT;
 - b. Options to be considered in advancing Canada's negotiating positions to achieve the desired outcomes;
 - c. Relevant and appropriate technical information in support of the development of negotiation options;
 - d. Information on U.S. interests and positions, including tribal interests and positions known publicly (i.e. not obtained in confidence);
 - e. Information on positions of U.S. negotiating team in order to advance Canada's response; and
 - f. Other information that the N.A.T. may request that is not confidential or, where such information is confidential, the Parties have signed a confidentiality agreement in relation to that information.
- 6.4 N.A.T. representatives may provide the following types of information to their respective Indigenous Nations so long as no information that is subject to a confidentiality agreement is included:
- a. the general goals and objectives for the CRT Negotiations as developed by the N.A.T. and the Leadership Table;
 - b. general updates on the status of the CRT Negotiations and the implementation of this Agreement;
 - c. information on U.S. interests and positions, including U.S. tribal interests and positions, so long as that information is already public and confirmed as non-confidential by Canada.
 - d. background information relating to the science and knowledge informing the negotiations in a consumable manner and as appropriate;
 - e. information with respect to any impacts to Indigenous Nations rights and title related to the CRT;
 - f. a summary of how input from leadership and communities will inform the negotiations moving forward; and
 - g. any other information that the Parties determine may be shared without breaching confidentiality.

- 6.5 If requested by Canada or British Columbia, and subject to section 6.6, the Indigenous Nation members of the N.A.T. and the Leadership Table will sign confidentiality agreements substantially in the form attached as Schedule A to this Agreement. For greater clarity, if information that is subject to a confidentiality agreement is subsequently confirmed by Canada or British Columbia, as the case may be, to be non-confidential, that information is no longer subject to the terms of the confidentiality agreement.
- 6.6 Information may only be designated as confidential and subject to a confidentiality agreement if it includes information related to one or more of the following:
- a. negotiating strategies, options and positions;
 - b. specific negotiating objectives and parameters;
 - c. any materials prepared for the purposes of the negotiation meetings;
 - d. unacceptable options;
 - e. potential trade-off areas;
 - f. potential zones of negotiated agreement;
 - g. supporting technical and financial information and data;
 - h. any other information that may affect Canada's negotiating advantage;
 - i. traditional knowledge or traditional use information provided by the Indigenous Nations; or
 - j. information that is exempt from disclosure or that may be withheld from disclosure under federal or provincial law.
- 6.7 The Indigenous Nations may designate information shared with Canada or British Columbia as confidential if it is ordinarily treated by the Indigenous Nations as confidential and, for such information:
- a. Canada and British Columbia will not disclose the information to third parties, subject to applicable access to information legislation; and
 - b. Canada and British Columbia will provide the Indigenous Nations with notice of any request for disclosure of the information under applicable access to information legislation and an opportunity to express any views regarding disclosure of the information.

- 6.8 The Parties will jointly prepare an internal information sharing plan to manage the form, content and timing of information sharing that will address, among other things:
- a. the dissemination of assigned and numbered paper copies of confidential information and ensuring security of documents;
 - b. the electronic dissemination and storage of non-confidential information;
 - c. a protocol for N.A.T. and Leadership Table meetings (chairing, minute taking, follow up action items, tracking etc.); and
 - d. a protocol for general public engagement and communication with the media.

7.0 DISPUTE RESOLUTION

- 7.1 The Parties are required to engage through this Negotiations Framework in good faith and, in the case of Canada and BC, act in accordance with the honour of the Crown. Good faith engagement requires the Parties to, among other things:
- a. collaborate with the goal of reaching mutually acceptable positions on CRT modernization;
 - b. provide timely disclosure of information to enable examinations of relevant subject matter;
 - c. respond appropriately and in a timely manner to proposed negotiating positions;
 - d. give reasonable consideration to positions of the other Party; and
 - e. act consistently with the standard of good faith as articulated in the common law.
- 7.2 The Parties will use informal, collaborative efforts consistent with the purposes and principles of this Agreement to address disputes, prior to using dispute resolution processes set out below.
- 7.3 In the event of a dispute that cannot be resolved by the N.A.T., it will refer the matter to the Leadership Table for direction or decision within 30 days of the Leadership Table receiving the referral. The N.A.T. will provide the Leadership Table with a report setting out a description of the dispute, the positions and rationale taken by the Parties, potential options for resolution identified to date, and any suggested steps to resolve the dispute.

- 7.4 If the Leadership Table receives a dispute referred from the N.A.T., it will take the following steps to meet the 30-day deadline:
- a. discuss the matter at the Leadership Table and seek to resolve the issue in a good faith and collaborative manner;
 - b. identify, if required, further steps that may be taken by the Leadership Table to resolve the dispute;
 - c. if resolution is reached, record the resolution and distribute it to the Parties; and
 - d. if resolution is not reached, ensure the respective views of the Parties are recorded in a joint document and distributed to the Parties.
- 7.5 The Parties will exhaust the process set out above prior to exercising any decision-making power, or pursuing any legal remedies, related to an issue in dispute. For greater clarity, nothing in this section prevents a Party from seeking relief in a court of competent jurisdiction to prevent irreparable harm to a right or other legal interest.
- 7.6 For greater certainty, Canada will not consider proposed substantive language on a matter in the CRT Negotiations that is subject to an active dispute resolution between the Parties.
- 7.7 Subject to 7.6, none of the above may unduly delay or interfere with the timely occurrence of Canada-U.S. negotiation sessions.

8.0 GENERAL

- 8.1 The recitals and Schedules to this Agreement form integral parts of this Agreement.
- 8.2 No amendment or waiver of this Agreement or its Schedules will take effect unless consented to in writing by all of the Parties.
- 8.3 This Agreement will be in effect for a term of two (2) years from the date of signing and will be reviewed by the Parties annually. After two years, the Parties may agree to renew or extend the Agreement for an additional period of time with the opportunity by the Parties to review and revise the Agreement.

- 8.4 A Party may withdraw from this Agreement by providing thirty (30) days written notice to the other Parties. A Party must first exhaust the dispute resolution process prior to giving notice of withdrawal.
- 8.5 The Parties agree that this Negotiation Framework:
- a. will be a vehicle through which consultations will be undertaken in relation to any legal or constitutional duty for Crown consultations in relation to the CRT negotiations and does not create any new or additional legal duties or obligations;
 - b. does not, and is not intended to, define or extinguish any Aboriginal or Treaty rights and is not evidence of the nature or extent of any Aboriginal or Treaty rights;
 - c. is made without prejudice to the positions taken by the Parties with respect to Aboriginal or Treaty rights or the duties owed by Canada and B.C. to the Indigenous Nations regarding the CRT Negotiations and to the positions any Party may take in present or future negotiations and legal proceedings;
 - d. is not a land claims agreement or Treaty within the meaning of sections 25 or 35 of the *Constitution Act, 1982*;
 - e. does not express, and will not be interpreted as expressing, the consent or agreement of the Indigenous Nations to any outcome of the CRT Negotiations;
 - f. does not affect any Aboriginal or Treaty rights of any Aboriginal group; and
 - g. does not and is not intended to contain any admission of fact or liability by any Party.
- 8.6 Any notice or communications required to be given under this Negotiation Framework will be sufficiently given or made for all purposes if by e-mail transmission, if delivered by courier, or if sent by first-class pre-paid registered mail within Canada, addressed as follows:

In the case of the Ktunaxa Nation:

Kathryn Teneese,
Chairperson,
Ktunaxa Nation Council
7825 Mission Rd.,
Cranbrook BC V1C 7E5

kteneese@ktunaxa.org, and cc'ed to
bgreen@ktunaxa.org

In the case of Secwepemc Nation:

Dale Tomma
Shuswap Nation Tribal Council
680 West Athabasca Street
Kamloops, BC, V2H 1C4
778-471-8200
crt@shuswapnation.org

In the case of Syilx Nation:

Pauline Terbasket,
Executive Director,
Okanagan Nation Alliance
101 – 3535 Old Okanagan Highway
250-707-0095
director@syilx.org

In the case of Canada:

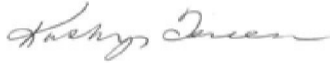
Sylvain Fabi
Executive Director
U.S. Transboundary Affairs Division
Global Affairs Canada
125 Sussex Drive
Ottawa, Ontario, K1A 0G2
343-203-3533
Sylvain.Fabi@international.gc.ca

In the case of British Columbia:

Kathy Eichenberger
Executive Director
Columbia River Treaty
Electricity and Alternative Energy Division
Ministry of Energy, Mines and Petroleum Resources
1810 Blanshard Street
Victoria, British Columbia, V8W 9N1
250-953-3368
Kathy.Eichenberger@gov.bc.ca

Signed in the presence of:

For the Ktunaxa Nation:



Kathryn Teneese,
Chairperson,
Ktunaxa Nation Council

For the Secwepemc Nation:

Kukpi7 Wayne Christian
Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:

Grand Chief Stewart Phillip
Chairman
Okanagan Nation Alliance

For Canada:

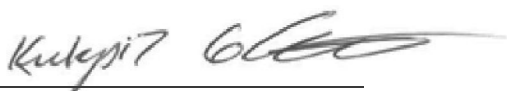
Michael Grant
Assistant Deputy Minister
Americas Branch
Global Affairs Canada

Signed in the presence of:

For the Ktunaxa Nation:

Kathryn Teneese,
Chairperson,
Ktunaxa Nation Council

For the Secwepemc Nation:



Kukpi7 Wayne Christian
Tribal Chief
Shuswap Nation Tribal Council

For the Syilx Nation:

Grand Chief Stewart Phillip
Chairman
Okanagan Nation Alliance

For Canada:

Michael Grant
Assistant Deputy Minister
Americas Branch
Global Affairs Canada

For British Columbia:

Signed in the presence of:

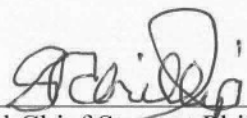
For the Ktunaxa Nation:

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Assistant Deputy Minister
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For the Syilx Nation:

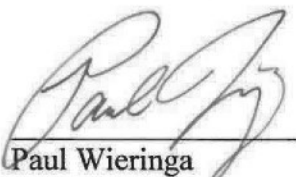
Grand Chief Stewart Phillip
Chairman
Okanagan Nation Alliance

For Canada:



Michael Grant
Assistant Deputy Minister
Americas Branch
Global Affairs Canada

For British Columbia:

A handwritten signature in black ink, appearing to read "Paul Wieringa", written over a horizontal line.

Paul Wieringa
Acting Assistant Deputy Minister
Electricity and alternative Energy Division
Ministry of Energy, Mines and Petroleum Resources