

**MINISTRY OF ENVIRONMENT
MEETING INFORMATION NOTE**

March 13, 2015
File: 280-30
CLIFF/tracking #:277348

PREPARED FOR: Honourable Mary Polak, Minister of Environment

DATE AND TIME OF MEETING: March 18 at 3:45 p.m.

ATTENDEES: Paul Kariya, Clean Energy BC (CEBC); and,
Susanna Laaksonen-Craig, Climate Action Secretariat

ISSUE:

Clean Energy BC (CEBC) is likely interested in discussing:

1. The Province's policy on independent power production (IPP), following the Site C decision.
2. Development of a new BC Climate Action Plan (CAP 2.0).
3. Negotiation of a new global climate agreement in Paris in December 2015.
4. Offsets for LNG.

BACKGROUND:

- 1) The independent power producer industry in BC was launched in 1989 when BC's Minister of Energy instructed BC Hydro to issue calls for proposals for private power. The sector is represented by CEBC, formerly known as the Independent Power Producers of British Columbia. Paul Kariya is Executive Director of CEBC.

CEBC's mandate is to develop a viable clean power industry in British Columbia that serves the public interest by providing cost-effective electricity through the efficient and environmentally responsible development of the province's energy resources. CEBC meets regularly with federal, provincial and municipal governments, First Nations, utilities, and other stakeholders to further the interests of the sector.

The member companies produce approximately 20% of BC's clean energy and as of August 2013, had 13 projects under construction throughout BC with a total capital budget of \$2.3 billion.

- 2) Building on the success of its 2008 Climate Action Plan which, over the past seven years, has positioned BC as a world leader in tackling climate change, the Province has recently signalled its intent to develop a new Climate Action Plan (CAP 2.0).
- 3) Under the auspices of the UNFCCC, a new global agreement to tackle climate change will be negotiated in Paris in December, 2015. The Minister of Environment will be attending a number of national and international climate related events in the lead up to Paris, showcasing BC's existing suite of world leading climate policies and encouraging

other jurisdictions to follow our example. BC is also working closely with other Canadian jurisdictions and with sub-national governments internationally, to build momentum towards Paris by encouraging national governments to make meaningful and ambitious emission reduction commitments.

- 4) The GGIRCA provides a GHG emissions intensity benchmark for LNG facilities that can be met, in part, through the purchase of offsets.

DISCUSSION:

- 1) Recent topics of interest for CEBC in meetings with provincial ministers have included:
 - 2013: A discussion with the Minister of Environment about how clean energy can help the province achieve the goals listed in its jobs plan, including through the provision of clean electricity for upstream activities in the liquefied natural gas sector.
 - 2014: A discussion with the Minister of Environment, and the Minister of Energy and Mines (MEM), about the status and further development of the IPP sector.
 - March 2015: A discussion with MEM Executive on current provincial policy on IPP, in light of the recent decision to proceed with Site C.
- 2) CEBC will likely be interested in the scope of any new Climate Action Plan and may have an interest in informing the content of the Plan.
- 3) CEBC is likely to be well informed about the progress towards Paris but may have specific questions about what BC is doing to inform and support Canada's negotiating position (it's intended national commitment) and the potential implications of this commitment for independent, clean energy producers in BC.
- 4) CEBC will be interested in whether clean power projects will be eligible as offsets for LNG producers.

s.13

Contact:

*Susanna Laaksonen-Craig, Head
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250-508-4132 cell*

Prepared by:

*David Coney, Manager
Climate Action Secretariat
250 387 9220*

Reviewed by	Initials	Date
DM		
DMO	VJ	Mar 16/15
ADM	SLC	13/3/15
Author	DC	13/3/15

**MINISTRY OF ENVIRONMENT
MEETING INFORMATION NOTE**

March 16, 2015

File: 280-20

CLIFF/tracking #: 276934

PREPARED FOR: Honourable Mary Polak, Minister of Environment.

DATE AND TIME OF MEETING: Wednesday March 18, 2015, 1pm.

ATTENDEES: Honourable Mary Polak, Minister of Environment
Wes Shoemaker, Deputy Minister, Ministry of Environment
Jim Standen, Assistant Deputy Minister, BC Parks
David Ranson Briefing
Yarko Petryshyn, Minister's Executive Assistant

ISSUE(S): BC Parks: Towards A Sustainable Future; a strategy for creating financial viability for BC Parks

BACKGROUND:

BC Parks is one of the largest protected area systems in North America at 1,029 Parks and Protected Areas. In 2013/14, BC Parks operated on a budget of \$47.9M, of which \$16.9M (35%) is attributed to revenue collected from recreation user fees (retained by POs). The vote allocation alone made up a BC Parks budget of \$31.0M. Expenditures against vote allocation and fee revenue are as follows:

Staffing - \$15.5M
Goods & Services - \$2.8M
Amortization - \$7.5M
Deficiency Payments - \$5.2M
Retained fee revenue (compensation to
POs) - \$16.9M

¹ The current BC Parks operating model relies on private Park Operators who are contracted to deliver park services through procured agreements. Park Operators collect and retain user fees as compensation for their services and where those fee revenues exceed their projected operating costs, the operators bid a return to General Revenue. Where the fees are not sufficient to cover the cost of providing service, BC Parks pays a deficiency payment to the Operator from the BC Parks annual operating budget. A recent procurement of 75% of the park operating agreements resulted in increases in deficiency payments of approximately \$1.8M per year bringing the total deficiency payments to an estimated \$7.1M¹ annually ².

BC Parks carries a capital inventory valued at over \$700M. Maintaining this capital stock requires an annual investment of 2% per year or approximately \$14M. Amortization of the BC

¹ The above are the expenditures made against VOTE ALLOCATION, except for retained fee revenue which comes from Rec User Fees. PEF expenditures come out of a separate account which is not part of the BC Parks operating budget. Expenditures out of PEF were \$1.8M in 2013/14. There are also capital expenditures, \$13.0M in 2013/14, but these are not paid against the BC Parks' operating budget (though amortization will be).

² Before 2015 fee increase is taken into consideration. The fee increase will reduce this by between \$860k and \$1.3M depending on negotiation success of regional teams.

Parks capital stock also requires annual amortization payments from the operating budget ,which in 2015/16, will be \$8.1M and which are estimated to increase by approximately \$300K per year.

The current gap in funding represents a structural shortfall in that it is not a one-time budget issue, but rather, an ongoing and growing gap between vote allocation and costs. In order to maintain the high level of services that is the hallmark of the BC Parks brand, the organization needs to close this gap; work that includes looking at new and innovative revenue streams. The strategies that will be employed in reaching the goal of financial viability will be the subject of a high level strategy, supported by detailed internal work plans and focused work teams.

DISCUSSION:

In late 2013, BC Parks presented to the Core Review Committee seeking direction on the transformation of BC Parks to a more viable operating model. Coming out of this presentation, BC Parks was directed to explore a viable operating model for the organisation that meets visitor needs including, where appropriate, encouraging investment by increasing tourism opportunities and commercial activities. A review done subsequent to this direction ruled out any significant downsizing or rationalization of the parks system.

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Page 06 to/à Page 08

Withheld pursuant to/removed as

s.12;s.13

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BC Parks and Conservation
Officer Service
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Alternate Contact:

*David Ranson, Executive
Director -- Business
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Prepared by:

*Angus Carnie
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DMO		
ADM	JS	March 16, 2015
Dir.	DR	Mar 16, 2015
Mgr.	AC	Mar 16, 2015
Author	JS	Mar 16, 2015

Page 10 to/à Page 20

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s.12;s.13

**MINISTRY OF ENVIRONMENT
INFORMATION NOTE**

July 11, 2014
ORCS: 56090-20 NEONIC
ARCS: 280-20/BN
CLIFF/tracking #:208302

PREPARED FOR: Honourable Mary Polak, Minister of Environment

ISSUE: Neonicotinoid Pesticides – Background Information and Current Issues

BACKGROUND:

Neonicotinoids or “neonics” are a relatively new class of insecticides, introduced in the 1990s. Neonicotinoids show reduced mammalian toxicity compared to the conventional alternatives such as organophosphate and carbamate insecticides that have been in use since the 1950s.

They can be applied as a foliar spray or as a seed coating. When used as seed treatments, the pesticide is taken up into the growing plant and is present in all the plant parts, including nectar and pollen. Some neonicotinoids are also used as a topical flea treatment for pets.

In the late 2000s some neonicotinoids were linked in a range of studies to a number of adverse ecological effects including honey bee colony collapse disorder.

Studies have revealed the following:

- Routes of exposure through dust, pollen, and nectar;
- Sublethal effects such as impacts on the bees’ ability to forage, and remember navigation routes to and from food sources;
- Presence of neonicotinoids in dead bees in and around hives near agricultural fields;
- Environmental persistence in agricultural irrigation channels and soil.

Study results have led to restrictions and bans on the use of different neonicotinoids in several countries, and re-evaluation on the use of neonicotinoids in others.

The European Food Safety Authority published a study in 2013 showing that neonicotinoids pose an unacceptably high risk to bees, via dust drift from seed treatment uses in corn, canola and cereal crops. In April of 2013, 15 of 27 European Union members voted to restrict use of three neonicotinoids for two years.

In June, 2014, President Obama issued a directive to create a Pollinator Health Task Force which will address the effect of pesticides on pollinators. The US Environmental Protection Agency (EPA) review began in 2008 and is expected to be complete by 2018.

In 2012 and 2013, Health Canada’s Pest Management Regulatory Agency (PMRA) received unusually high number of reports of honey bee mortalities from bee keepers in corn growing regions of Ontario, Quebec and Manitoba. PMRA has concluded that current agricultural practices related to the use of neonicotinoid-treated corn and soybean seed are not sustainable. In January 2014, PMRA introduced Best Management Practices for use of insecticide-treated seed. PMRA is currently re-evaluating all uses of

neonicotinoid insecticides in cooperation with US EPA. An interim report is expected by 2015.

In March 2014, the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) published an Infosheet outlining Best Management Practices for protection of pollinators. OMAFRA's intention is to have farmers and other commercial growers apply for permits to plant seeds treated with neonicotinoid insecticides. This system will be in place for 2015.

The Province of BC does not collect data from agricultural producers about specific pesticide uses. However, analysis of data from 1999, 2003 and 2010 shows an increase in the sales and use of neonicotinoids. The Province does not regulate or track the sale and use of treated seed. Ministry staff is currently working with partners in Ministry of Agriculture and PMRA to better understand how neonicotinoids are used in BC.

To address recent concerns raised in the media about bedding plants, some Canadian retailers plan to start labelling plants that contain neonicotinoid residues. The Province will continue to rely on the toxicological assessments and residue analysis performed by PMRA on consumer products with regard to safe pesticide levels.

DISCUSSION:

The evaluation and registration of pesticides is administered by Health Canada's PMRA. PMRA has a large staff trained to conduct health and environmental reviews and to establish conditions and limitations for the use of pesticides. The Province of BC relies on the expertise of PMRA scientists in these matters. The Province does not have the authority to unilaterally ban the use of registered agricultural pesticides.

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NEXT STEPS:

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Prepared by:

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Reviewed by	Initials	Date
DM	WS	July 16/14
DMO	VJ	July 16/14
ADM	JS	July 15/14
Mgr.	DD	July 11/14
Author	GL	July 11/14

**MINISTRY OF ENVIRONMENT
MEETING INFORMATION NOTE**

July 14, 2014

File:

CLIFF/tracking #: 208297

PREPARED FOR: Honourable Mary Polak, Minister of Environment

DATE AND TIME OF MEETING: July 18th, 2014; 3:45 PM; #730, 999 Canada Place, Vancouver

ATTENDEES: Rick Jeffrey (President of Coast Forest Products Association)
Jim Hackett (Interior Lumber Manufacturer's Association)
James Gorman (Council of Forest Industries)

ISSUE(S): Forest industry's concerns about the application of the federal *Species at Risk Act* (SARA), particularly with respect to identification and protection of critical habitat.

BACKGROUND:

Current interpretation of SARA (resulting from legal challenges) is that if information is available to support identification of critical habitat, it must be included in the recovery strategy, and evaluation of socioeconomic implications of identification (and subsequent protection) of critical habitat cannot be considered at this stage¹ (unless there is an abundance of habitat available for the species).

Critical habitat identified in a final version of a recovery document posted on the SARA public registry must be either "legally protected" (aquatic species, nests of migratory birds, and all critical habitat identified on federal lands) or "effectively protected" (other species and lands). Most of the critical habitat identified in BC is on provincial lands.

If critical habitat on provincial lands is not "effectively protected", the federal minister must, every six months, report on steps being taken to protect the habitat. If it remains unprotected, the federal minister must recommend to Governor in Council that an order be made applying the SARA prohibitions against destruction of critical habitat to provincial lands (a section 61 "safety net" order).

The forest industry is interested in ensuring that the Province understands their concerns with respect to identification of critical habitat under the SARA, and in aligning strategies with respect to dealing with the federal government on this issue.

DISCUSSION:

To date, critical habitat has been identified in **final** versions of recovery documents for **40** of the 210 SARA listed species in BC. Identification of critical habitat is underway for 31

¹ Action plans must include "an evaluation of the socio-economic costs of the action plan and the benefits to be derived from its implementation", and a cabinet decision to put a SARA order in place would be informed by a Regulatory Impact Analysis Statement, which includes socio-economic implications.

additional BC species. We anticipate final versions of recovery documents containing critical habitat for 10 of these 31 species (including Northern Goshawk) will be posted within the year. The total amount of critical habitat that has been, or is soon to be identified in BC is:

- Northern Goshawk = 530,000 ha (may overlap with Marbled Murrelet)
- Marbled Murrelet = 1.9 million ha (may overlap with Northern Goshawk)
- Boreal Caribou = 4 million ha
- Southern Mountain Caribou = approx. 4 to 6 million ha
- Other BC species (approx. 67) with smaller ranges -- approx. 400,000 ha

BC accepts recovery documents (including federal recovery strategies that identify critical habitat) as **science advice**. In our response to support posting of federal recovery strategies, when portions of the critical habitat remain unprotected, we indicate that “we do not support implementation of additional legal habitat protection measures on non-federal land without evaluation of socio-economic implications and full consultation with directly affected parties.”

The recently released Five-Year Plan for Species at Risk contains the following actions related to protection of habitat for species at risk in BC:

- Develop plans that reflect government decisions and commitments to implement actions for species management or recovery (ongoing).
- Conduct on-site activities designed to protect habitat and mitigate threats to species at risk (such as implementing habitat protection and restoration measures, and controlling invasive species);
- Ensure scientific information in recovery planning documents is incorporated consistently into implementation of provincial habitat protection tools and initiatives; and
- Analyze opportunities for and make recommendations regarding changes to existing or new policy and legislation to address gaps in protection for species at risk.

Government plans have been, or are being developed for several wide-ranging species at risk (e.g. Peace Northern Caribou, Mountain Caribou, Boreal Caribou, Northern Goshawk) that aim to reduce impacts of recovery implementation on industrial development while reducing the risk of federal intrusion under the SARA. The BC government plan for Boreal Caribou is currently being revised, and analysis of the implication of the federal recovery strategy for Southern Mountain Caribou with respect to the provincial plans for Peace Northern Caribou and Mountain Caribou is currently underway.

SUGGESTED RESPONSE:

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Attachments:**Contact:**

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Prepared by:

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250-387-8312

[Insert additional rows if needed]

Reviewed by	Initials	Date
DM		
DMO	VJ	July 16/14
ADM	MZ	July 15/14
Dir./Mgr.	EL	July 14/14
Author	KN	July 14/14

Bullets for MLA Throness on Salish Sucker and Oregon Spotted Frog

Salish Sucker

SARA / recovery planning context-

- On Schedule 1 of SARA as “Threatened” since 2012 (uplisted from ‘Endangered’ due to discovery of 5 new populations (an increase from 9 to 14).
- March 15, 2014 **Fisheries and Oceans Canada** posted *as proposed* the Recovery Strategy for the Salish Sucker (*Catostomus sp.*) in Canada on the Species at Risk (SAR) Public Registry for a 60 Day public consultation period.
- After the public consultation period, Fisheries and Oceans Canada will consider the comments received and work to post the recovery strategy as final within 30 days. [Note – this timing has been longer].
- Once posted on the SARA public registry as final, critical habitat for this federal aquatic species must be “legally protected” within 180 days.
- A draft action plan for Nooksack Dace and Salish Sucker (yet to be posted) indicates that legal protection will be accomplished through SARA critical habitat orders, which will prohibit the destruction of the identified critical habitat unless permitted by the Minister of Fisheries and Oceans pursuant to the conditions of SARA. Other actions indicate conservation agreements under SARA may also be used.
- Once a recovery document is posted on the SARA public registry as final, identified critical habitat must be “legally protected” on federal lands, or for federal species (e.g., aquatic species, nests of migratory birds), or “effectively protected” (other species and lands). As an aquatic species, salish sucker critical habitat must be “legally protected” within 180 days.

Strategy to manage Salish Sucker

The proposed Recovery Strategy includes nine broad strategies to achieve recovery objectives:

- 1) Reduce incidence of severe hypoxia in instream critical habitats.
- 2) Protect existing habitat, restore lost or degraded habitat and create new habitat.
- 3) Increase the integrity and function of all riparian habitats.
- 4) Encourage stewardship among private landowners, local government and agencies, and the general public.
- 5) Reduce fragmentation of instream and riparian habitats.
- 6) Reduce toxic contamination of instream habitat.
- 7) Reduce sediment entry to instream habitats.

Example Activities to manage Salish Sucker

- Using qualified professional and stewardship groups to collect field data and develop watershed-based population estimates for Salish sucker.
- Undertaking and maintaining in-stream and riparian enhancement projects in collaboration with stewardship organizations.
- Conducting a research program in collaboration with UBC to model and analyze the effects of land use on water quality and Salish sucker abundance and distribution.

Oregon Spotted Frog

SARA / recovery planning context-

- On Schedule 1 of SARA as 'Endangered'.
- January 30, 2012, the **BC document: Recovery Strategy for the Oregon Spotted Frog (*Rana pretiosa*) in British Columbia** was posted to the Recovery Planning in British Columbia website.
- On May 5, 2014, **Environment Canada** posted *as proposed* the Recovery Strategy for the Oregon Spotted Frog (*Rana pretiosa*) in Canada on the SAR Public Registry for a 60 Day public consultation period. The federal document includes the adoption of the BC recovery strategy and an addendum containing critical habitat.
- After the public consultation period, Environment Canada will consider the comments received and work to post the recovery strategy as final within 30 days.
- Once posted on the SARA public registry as final, identified critical habitat for Oregon spotted frog must be "effectively protected" (as a non-federal species on non-federal lands). If any portions are not "effectively protected", the federal minister must report on steps taken to protect it.

There are four extant Oregon Spotted Frog sites and one restored site:

- Aldergrove at the DND lands
- Mountain Slough which is primarily private land
- Maria Slough – Crown land adjacent to First Nations Land
- Morris Valley – Crown land
- Chaplin – a restored site within migration distance of Maria Slough

Example Activities to manage Oregon Spotted Frog

Activities fall into 3 broad categories: ongoing monitoring of frog populations, captive breeding of frogs to rebuild populations and habitat protection / restoration.

1. Population monitoring (egg mass counts) is conducted at all (4 plus 1 – see above) sites each spring.
2. At two sites (Maria Slough and Morris Valley) capture-mark-recapture population estimates and life-history parameter estimation has been ongoing for 4 years (goal is to have 5 years of data).
3. Threat mitigation is ongoing at two sites in particular: Mountain Slough to reduce impacts from agriculture and ditch cleaning; and Morris Valley to control expansion of bullfrog populations (first detected in 2013).
4. There are two established assurance (as insurance against catastrophic loss in the wild) captive populations, one at Vancouver Aquarium and one at Toronto Zoo.
5. Captive breeding of the animals in the assurance population has been ongoing since 2008 at Vancouver Aquarium, and Toronto Zoo was successful this year. The highlight was to get a very old female from the extirpated population at Aldergrove to successfully breed so that at least a small portion of the genetic diversity at Aldergrove remains -- a big success for Toronto Zoo.
6. Captive bred animals are have been released as hatchling tadpoles to augment the extirpated population at Aldergrove and start a population at the restored site in Chaplin.

7. At the restored site in Chaplin where captive animals have been released since 2010, natural wild egg masses were found for the first time this year indicating that the reintroduced population may be establishing itself.
8. A large habitat restoration project is underway at Aldergrove Park with the hope that Oregon Spotted Frog may be introduced to this site in the near future. Another habitat restoration project is in the planning stages at the Correctional Facilities land in Morris Valley.
9. A number of sites are being assessed as future Oregon Spotted Frog reintroduction sites including the site at Sasquatch Park, Smith Fall DND land and Cheam Lake park.
10. Research projects addressing knowledge gaps:
 - Amanda Kissel – assessing effectiveness and economic optimization of population augmentation using captive rearing and captive breeding.
 - Monica Pearson – Comparing habitat use by Oregon Spotted Frog and introduced bullfrogs to provide insight into habitat restoration activities.
 - Andrea Gielens – Optimizing husbandry protocols for Oregon Spotted Frogs.Other small projects include assessing the ability of captive bred animals to survive and successfully breed in the wild; assessing anti-predator response in captive bred tadpoles; effects of fish mortality within Oregon Spotted Frog egg masses; etc.

BULLET POINTS

CLIFF#: 207212

Client / Writer: For Deputy Minister's June 16th meeting with Tolko Industries Ltd. (Bob Fleet, Mark Tamas and Chris Armanini)

Main Issues: Wildlife strategies and initiatives with respect to the Integrated Wildlife Management Strategy (IWMS) and Species at Risk (SAR) plans

Bullets prepared by: James Quayle

Date prepared: June 11, 2014

Last revised: June 12, 2014 by Alec Dale

Tolko is a leading manufacturer and marketer of lumber, unbleached kraft papers, panel products, co-products, biomass power, and a growing number of specialty wood products in its operations across Western Canada.

Tolko's operations are located primarily in the southern interior of BC, but include facilities in Alberta, Saskatchewan and Manitoba.

Previous Meeting Info note (for Minister) included.

Identified Wildlife Management Strategy (IWMS) Update Project

Purpose: to review and update the IWMS to ensure species at risk are adequately protected from forest and range activities while providing clear direction for consideration of impacts on tenure holders.

Status: The Ministry of Forests, Lands and Natural Resource Operations is developing an IWMS Update Implementation Plan to act on these recommendations.

- The first stage of the project involved a review of the issues associated with the implementation of IWMS, based on engagement with industry and government professionals.
- The review has generated the following summary recommendations:
 - Develop guiding principles
 - Review efficiency of collocation of FRPA related designations
 - Review alternate approaches in existing research / literature
 - Ensure adequate monitoring to gauge effectiveness
 - Develop strategies for higher level plan species (these include Grizzly Bear, Caribou, Marbled Murrelet, Spotted Owl, and Northern Goshawk)
 - Link to MOE's 5 year plan for Species at Risk (see below)
- Some of this work is underway already (e.g., planning for "higher-level plan" species).

Threat-Based Management Pilot for Species at Risk

Purpose: To pilot an area-based approach to select priority actions for conserving species at risk, based on cost benefit analysis and likelihood of success. This multi-species approach was developed and successfully implemented in Australia and New Zealand, and we will be assisted by a research scientist from University of Queensland.

Status: A project plan is under development to pilot this approach in the Kootenay – Boundary area in 2014/2015. This process is expert driven and we expect there will be a role for relevant technical staff from government, academia, and industry.

- This idea has been well-received at different natural resource forums, including presentation to NCASI (the research arm of Canadian forestry) at which Tolko employees were present, including John Dunford, Manager, Forestry & Environment.

Species at Risk 5-year Plan

Purpose: To 1) bring together the numerous activities that the Province undertakes for species at risk, and present them as a coherent program, 2) provide a provincial response to the Species at Risk Task Force report, released in July 2011, 3) provide a clear path for the future, demonstrating a thoughtful, considered approach to a challenging issue.

Status: We are hoping to post a final version of the Plan this spring. It is not expected to change dramatically from the draft version.

- In March 2013, senior government approved the posting of *Protecting Vulnerable Species: A Draft Five-Year Plan for Species at Risk in British Columbia* to the internet for a 6-week public review period.
- Prior to that, the plan had been “tested” with numerous high-level stakeholders, including the Council of Forest Industries.

Federal recovery strategy for caribou in the Southern Mountains National Ecological Area

Status: The federal government posted the final version of the Southern Mountain Caribou Recovery Strategy June 3, 2014.

- Current policy is for BC to accept a federal recovery strategy as science advice to inform implementation of measures to recover the species.
- A review of this document and its possible implications is underway.
- Early indications suggest that BC is implementing, many of the measures recommended in the recovery strategy.
 - The Recovery Strategy called for Action Plans within 5 years. BC already has its Mountain Caribou Recovery Implementation Plan and Peace-Northern Caribou Implementation Plan that effectively serve this purpose and apply to 14 of 21 subpopulations in BC.
 - A captive breeding program has begun under MOU with Parks Canada and Calgary zoo.
- Several recommendations in the Strategy could require further work if the Province elects to pursue them:
 - Achieving the predator control objective in the matrix habitat;
 - Achieving thresholds for undisturbed habitat.
- As this timing on the recovery strategy was driven by a court case, Environment Canada has messaged strongly that, although the strategy will be posted as final, they will be taking the next year to adapt and amend the document based on ongoing consultations with stakeholders and the Province, to ensure they have it right.
- Also see attached meeting note developed for April 30th meeting between Minister Polak and Tolko rep Tom Hoffman for common messaging.

Quin, Melissa ENV:EX

From: Gilmour, Lori ENV:EX
Sent: Monday, October 27, 2014 8:56 AM
To: Quin, Melissa ENV:EX
Subject: RE: Question: DN 204603 - KM Transmountain Pipeline Expansion Project

Hi Melissa, I confirmed with staff that the note can be cancelled. Thanx, Lori

From: Quin, Melissa ENV:EX
Sent: Friday, October 24, 2014 3:55 PM
To: Gilmour, Lori ENV:EX
Cc: Quin, Melissa ENV:EX
Subject: Question: DN 204603 - KM Transmountain Pipeline Expansion Project

Thanks, Lori. Because this was pre-eApprovals, I will need to be re-print and send over to MO. Before I do that, and because it's been over 5 months, **can you please confirm with staff that a decision is still required?**

Thank you,
Melissa

From: Gilmour, Lori ENV:EX
Sent: Friday, October 24, 2014 10:29 AM
To: Quin, Melissa ENV:EX
Cc: Llewellyn-Thomas, Marnie ENV:EX
Subject: RE: Question: DN 204603 - KM Transmountain Pipeline Expansion Project

I don't think staff did. Also – no copy in CLIFF so I can't confirm who it would have gone back to. Thanx, Lori

From: Quin, Melissa ENV:EX
Sent: Thursday, October 23, 2014 3:15 PM
To: Gilmour, Lori ENV:EX
Cc: Quin, Melissa ENV:EX; Llewellyn-Thomas, Marnie ENV:EX
Subject: Question: DN 204603 - KM Transmountain Pipeline Expansion Project

Hi Lori,

Can you tell me if you or your staff have a signed copy of this DN? I'm trying to close the loop on some items....this was sent to MO in May.

Thanks,
Melissa

Melissa Quin
Administrative Coordinator
Deputy Minister's Office
Ministry of Environment
Ph: 250-387-9886 Fax: 250-387-6003

**MINISTRY OF ENVIRONMENT
DECISION NOTE**

Date: May 20, 2014
File: File: 280-20
CLIFF/tracking #: 204603

PREPARED FOR: Honourable Mary Polak, Minister of Environment and Honourable Rich Coleman, Minister of Natural Gas Development and Minister Responsible for Housing.

DATE AND TIME OF MEETING: TBD

ATTENDEES:

Assistant Deputy Minister Lori Halls, BC Parks and Conservation Officer Service
Division
Assistant Deputy Minister Fazil Mihlar, Oil and Strategic Initiatives Division
Associate Deputy Minister Doug Caul, Environmental Assessment Office

ISSUE: Timing of government decisions regarding proposed amendments to the boundaries of parks and protected areas for the Kinder Morgan Trans Mountain Pipeline Expansion Project in relation to the National Energy Board review process.

BACKGROUND:

Kinder Morgan is proposing to triple the capacity of the existing Trans Mountain Pipeline system from 300,000 to 890,000 barrels per day, requiring the installation of 980 kilometres of new pipeline, approximately 640 kilometres of which will be in British Columbia.

The existing pipeline right-of-way passes through a number of provincial parks and protected areas which were established after the pipeline was constructed (see Attachment 1). The existing pipeline is authorized by a number of provincial orders in council (OIC), which authorize the company to construct and operate one or more pipelines within a 60 foot right-of-way.

For the Trans Mountain project, Kinder Morgan requires additional land in three parks, one protected area under the *Environment and Land Use Act* and one recreation area for temporary work space or permanent new right-of-way beyond the 60 foot right-of-way granted by OIC. Kinder Morgan has also indicated they may need additional lands in Mount Robson Park for maintaining the Anchor Loop line but this has not yet been confirmed.

If the Trans Mountain project were to proceed on the currently proposed alignment, the lands required for the pipeline expansion must be removed from the three affected parks by an Act of the Legislature. The *Environment and Land Use Act* OIC establishing the protected area must also be amended to either enable that use, or to remove those lands from the protected area. The Minister of Environment could authorize the pipeline expansion in the recreation area, or the lands could be removed from the recreation area by the Lieutenant Governor in Council.

The Minister of Environment invited Kinder Morgan to submit a detailed Stage 2 boundary adjustment application in September, 2013. Kinder Morgan is now working to assemble their Stage 2 boundary adjustment application and expects to submit the application to government in June, 2014. Kinder Morgan held targeted stakeholder workshops regarding the proposed boundary amendments in Hope on March 26, Chilliwack on March 27, 2014, Clearwater on April 1, 2014, and Kamloops on April 2, 2014. Kinder Morgan has agreed to enable a web-based public comment site for their Stage 2 boundary adjustment application.

The Government of British Columbia has set out five conditions for heavy oil pipelines that must be met in order for B.C. to consider these kinds of projects.

DISCUSSION:

Kinder Morgan hopes to have all its major regulatory approvals in place by late 2015, in order to allow it to begin construction of the pipeline in the spring of 2016.

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The National Energy Board (NEB) is conducting a hearing on Kinder Morgan's application for a Certificate of Public Convenience and Necessity. The NEB must render a recommendation to the federal government by July 2, 2015. The federal government has 180 days from the receipt of the NEB report to make a decision on whether to approve the project.

Therefore, if the Government of B.C. introduces legislation to amend protected area boundaries in the Spring, 2015 session of the Legislature as requested by Kinder Morgan, those amendments would be considered by the Legislature before a recommendation from the NEB has been made and before a decision by the federal government. This schedule creates a number of questions regarding the timing of provincial decisions on the project that require direction on a coordinated approach by the Government of B.C.

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Attachment 1: Overview Route Map

Attachment 2: *Provincial Protected Area Boundary Adjustment Policy, Process and Guidelines*

Attachment 3: Flowchart of Options 1, 2(a) and 2(b)

Cancelled

DECISION & SIGNATURE

Mary Polak
Minister of Environment

Cancelled

DATE SIGNED

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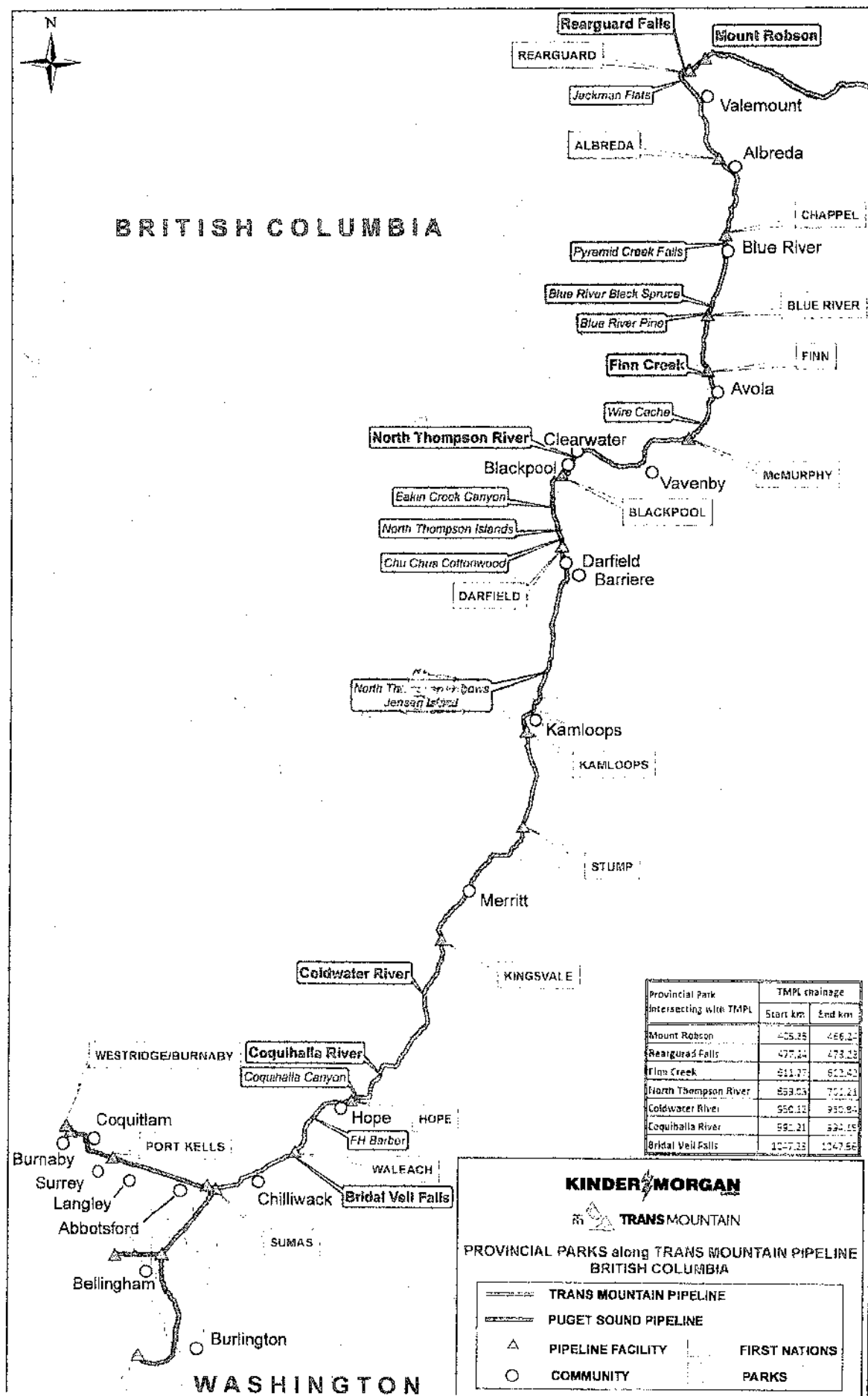
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ADM	LH	May 20, 2014
Dir. PPM	BB	May 5, 2014
Mgr. PIA	KM	May 5, 2014
Author	BH	May 1, 2014



PROVINCIAL PROTECTED AREA BOUNDARY ADJUSTMENT POLICY, PROCESS AND GUIDELINES

March 2010

1. BACKGROUND:

Provincial protected areas¹ are set aside to provide a wide range of opportunities that support tourism and recreation while maintaining the integrity of the natural environment. Most protected areas have been created through comprehensive land use planning processes that included consultation with the public, First Nations and local governments in providing recommendations to government on land use objectives, including establishing protected areas.

Periodically, there are proposed developments which involve activities which are prohibited within protected areas. The Minister² may recommend to Cabinet and the Legislature a boundary adjustment where it meets the principles associated with this Policy. This determination requires policy and guidelines for maintaining the integrity of protected area values as well as a clear process for evaluation and decision making.

Protected area boundary adjustments fall within one of three categories:

1. “Administrative housekeeping” adjustments undertaken where there have been errors in the initial legal description of the boundary or an area was captured that clearly was not intended to be captured at the designation stage.
2. Adjustments intended to alleviate a human health and safety concern.
3. Adjustments where a proponent (private or public) is interested in a boundary adjustment to allow for a development or activity not allowed by authorization under the protected area legislation.

The *Provincial Protected Area Boundary Adjustment Policy, Process and Guidelines* (the Policy) applies to private or public sector development proposals that conform to Category 3 adjustments referenced above. The Policy does not apply to Category 1 or 2 boundary adjustments³.

2. GUIDING PRINCIPLES:

In recognition of the public interest in the establishment and management of protected areas, and the integral role protected areas play in supporting local economies and community-based recreation, government has afforded protected areas a high level of legislative protection.

¹ For the purpose of this Policy, protected areas include Class A, B and C parks, recreation areas, conservancies, ecological reserves, and protected areas established under the *Environment and Land Use Act*.

² Under this Policy, “Minister” refers to the Minister responsible for the *Park Act*.

³ Category 1 and 2 boundary adjustments will be managed using internal procedures involving case-by-case analysis and decisions forwarded to the Minister.

Consideration of proposals for protected area boundary changes will be guided by the following principles:

- The BC Government is committed to the protection of provincial protected areas and the integrity of their associated ecological, recreational and cultural values.
- Proposals for protected area boundary adjustments will be considered on a case by case basis where there are compelling provincial economic, environmental and social benefits that collectively exceed maintaining the existing protected area boundary and values.
- The review and evaluation process will be timely and transparent.
- The proponent must establish the case to adjust a protected area boundary (including meeting the provisions of this Policy) and bear the associated costs.
- Where feasible, consultation will occur with participants that were involved in a public planning process where that process resulted in the establishment of the protected area.
- Consultation with First Nations and local governments will be required.
- Suitable public consultation will be required, consistent with the significance of the proposed change.

3. REQUESTS FOR BOUNDARY ADJUSTMENTS:

Proponents may be First Nations, other levels of government, private individuals, companies or agencies/ministries. A proponent considering a project within a protected area should contact BC Parks as early as possible in the proposal development stage to determine if the proposed use is compatible with legislation, regulations and protected area management objectives. If the proposal would require an adjustment to protected area boundaries in order to proceed, the proponent will be advised of the following two-stage process:

Stage 1: Initial Proposal:

The proponent submits an initial proposal to the Director responsible for protected area planning, BC Parks. The initial proposal should include:

1. Proponent information and contact details.
2. Type and purpose of project (e.g. wind power generation, mining, road, pipeline, etc.).
3. Project location.
4. Project footprint (inside and outside the protected area) including all project components such as access routes.
5. Preliminary description of economic, social and environmental impacts and benefits of the project.
6. Preliminary assessment of alternatives that would avoid the use of protected lands and the reasons those alternatives are not considered feasible.
7. First Nations and local governments potentially affected by the project, and status of any discussions with these governments.
8. Known community groups with an interest in the protected area, and the status of any discussions with these groups.
9. Any known environmental issues (e.g. species at risk impacts, fish habitat).
10. Anticipated project schedule.
11. Maps and illustrations as appropriate.

The initial proposal will be reviewed by Ministry staff and submitted to the Minister for consideration. The Minister will consider the information provided and any other information the Minister considers relevant. The proponent will then be contacted to either:

1. Be advised that the Minister declined the application, and be provided with reasons; or
2. Be advised that the Minister will consider a detailed Stage 2 proposal as outlined below.

Stage 2: Detailed Proposal:

If the initial proposal is not declined, the proponent may proceed to stage 2. At this stage a detailed proposal is required. A proponent should maintain contact with BC Parks staff during development of the detailed proposal, which must include the information required by this Policy, along with a covering letter addressed to the Director responsible for protected area planning, BC Parks, requesting a review of the proposal for a boundary adjustment.

4. GUIDELINES FOR DETAILED PROPOSALS:

Implementing a boundary adjustment requires approval of the Minister, Cabinet, and usually the Legislature⁴. Proponents should ensure that the information they submit with their detailed proposal addresses the following considerations to the satisfaction of the Minister:

1. Alternatives to avoid the protected area have been considered.

Proponents must consider and document alternatives that would avoid a protected area boundary adjustment. Clear supporting rationale for supporting or rejecting an alternative must be provided.

2. Overall economic benefits to the Province have been documented.

An overall economic analysis of the economic benefits and costs, if any, associated with the proposed boundary adjustment will inform the assessment process. The economic analysis should include a summary of the short-term and long-term employment benefits, regional infrastructure impacts, and potential revenues to Government.

3. Social and environmental impacts have been documented.

All potential impacts of the proposed development on the social and environmental values of the protected area must be identified. This should include consideration of how the proposal may impact or benefit traditional user activities, visitor enjoyment and safety, identification and impacts to natural values in the area and associated risks to natural values. Broader environmental impacts or benefits, beyond the protected area, should also be identified. The assessment of the social and environmental impacts will assist in identifying potential mitigation, restoration or compensation measures that would preserve the recreation and/or conservation values of the protected area.

4. Mitigation and restoration measures have been identified.

Proponents will identify ways to avoid, minimize or compensate for the impacts the proposed development may have on protected area values. This will inform the assessment process of opportunities to retain or add to protected area values.

⁴ The final decision on a protected area boundary adjustment rests with either the Cabinet or the Legislature depending on the level at which the protected area boundary is originally established. A protected area boundary established by Order in Council is amended at the Cabinet level and a protected area boundary established by an Act of the Legislature can only be amended by the Legislature. Most boundaries are established by an Act of the Legislature.

5. First Nations have been adequately consulted.

Proponents need to discuss the proposed development and potential impacts on protected area boundaries and values with the appropriate First Nations and include a summary of the discussions with the detailed proposal. This will provide an indication of the degree of First Nations acceptance (or lack thereof) of the proposal. Inclusion of this information in the proposal will assist Ministry staff in meeting the Crown's duties to consult with First Nations, and if necessary, accommodate any infringement on asserted rights or title.

6. Local community (including local governments) have been consulted.

Proponents must assess the level of support or opposition among the key community, local government and public groups that may have an interest in the potential impacts of the proposed development on protected area boundaries. The proponent should identify whether this indication of public response was obtained through direct consultation or through indirect means such as review of media reports, interest group newsletters, or other appropriate means. This information will assist in identifying whether adequate public and/or local government consultation has occurred.

7. Provincial and Federal Agencies have been consulted.

The proponent, with advice from BC Parks, should make contact with appropriate federal and provincial agencies that may have an interest in the proposal and seek input or comment.

If the proposed boundary adjustment is related to a reviewable project under the British Columbia *Environmental Assessment Act*, BC Parks and the Environmental Assessment Office will coordinate their respective information requirements to the greatest extent possible. While the boundary adjustment and environmental assessment processes involve independent decisions by Government, the intent is to identify means for the proponent to collect and report on information required by both processes in an effective and efficient manner.

5. PROCESS FOR REVIEWING DETAILED PROPOSALS:

The ministry will review the completed Stage 2 detailed proposal. The review process will proceed as follows (see also Appendix 1: Boundary Adjustment Process Flow Diagram):

1. BC Parks staff contact relevant or interested Ministries to inform them of the proposal and the proposal will be posted on a government web site for public information⁵.
2. The economic, social and environmental implications of the proposal, along with the extent of public, First Nations⁶, and local government consultation identified in the proposal, are assessed.
3. An assessment and recommendations regarding the proposal are submitted by BC Parks to the Minister.

⁵ The proponent may be directed to make additional efforts (e.g. newspaper advertising, web-based notification) to ensure the public is aware of the application and able to submit their views on the proposal.

⁶ First Nations consultation process will be determined between the proponent and the Ministry of Environment (or BC Parks) and outcomes will be assessed.

4. The Minister may, at any time during the review process, determine that adequate information has been provided to make a decision not to recommend the boundary adjustment to Cabinet. If the Minister decides not to recommend the proposal, then the proponent will be notified of the reasons for the decision in a timely fashion.
5. The Minister may recommend the proposal to adjust the boundaries to Cabinet. Cabinet may decide either to proceed with the boundary adjustment or to reject the proposal. If Cabinet rejects the proposal, the proponent will be notified in a timely fashion.
6. If Cabinet decides to support the proposal, a legislative amendment will be introduced and be subject to the normal process for Bills in the Legislature, if a legislative amendment is required to change the boundary. The final decision will then rest with the Legislature. In the event the existing boundary was established by Order in Council, then Cabinet may decide to amend the boundary by Order in Council.

Process Notes:

- BC Parks, the Minister or Cabinet may determine at any time during the process that additional consultation or information is required.
- Normally, a proposal that meets all information requirements will be considered within a six month time frame. However, legislative amendments may require considerable preparation and additional time.

6. PROCEDURAL NOTES:

In order to ensure clear understanding and application of these principles and guidelines, proponents should initiate early contact and maintain communications with BC Parks staff.

Decisions to consider a proposal for a protected area boundary adjustment are made by the Minister based on the economic, social and environmental considerations. There is an increased risk of a proposal being rejected at any time under one or more of the following circumstances:

- Viable alternatives exist;
- There is significant First Nations opposition;
- There is significant public or local government opposition;
- Significant adverse effects on environmental or social values cannot be avoided, mitigated or compensated for;
- There is insufficient overall benefit to the Province.

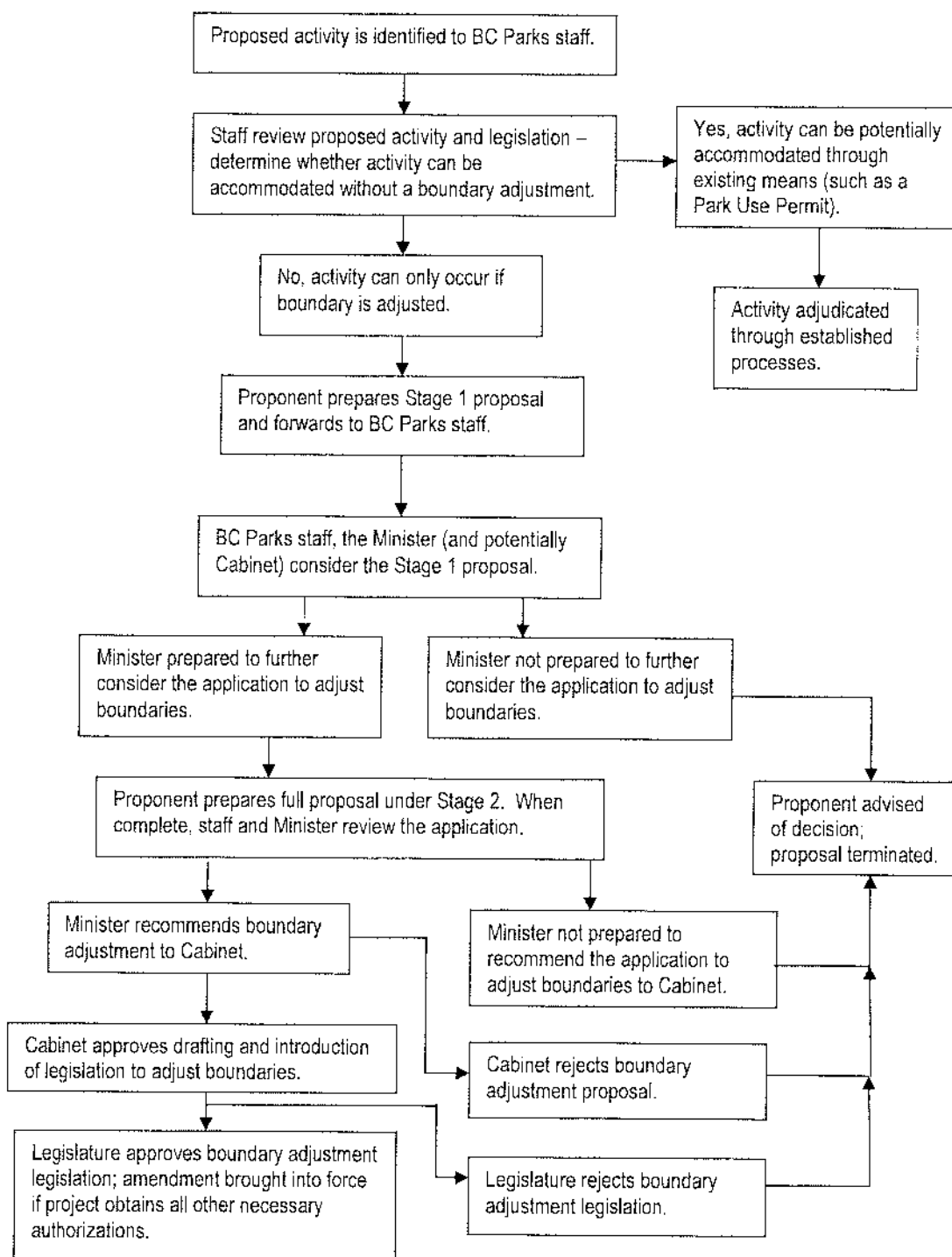
A decision to consider an application to adjust a protected area boundary to allow for a development does not constitute approval of the proposed project. The final decision to adjust a boundary rests with the Legislature (or Cabinet in the case of a protected area established by an Order in Council). As well, all proposed projects are subject to the normal provincial and federal regulatory review processes that apply to such projects. Protected area boundary adjustments, if approved by Cabinet or the Legislature, will only be brought into force if the proposed project has received all other approvals to proceed (e.g. Environmental Assessment Certificate).

7. AVAILABLE RESOURCES:

In preparing information to address these guidelines, proponents should consider the following sources of information which may be of assistance:

- The BC Parks *Impact Assessment Process* is used by staff to assess potential impacts of proposed actions in provincial protected areas – it offers processes and background information which can be used by proponents. The process is described in detail on the BC Parks website at the following address:
<http://www.env.gov.bc.ca/bcparks/conserve/impact/impact.html>
- B.C.'s environmental assessment (EA) process provides a mechanism for reviewing major projects to assess their potential impacts and to ensure environmental, economic and social considerations are taken into account. This includes assessing issues and concerns raised by the public, First Nations, interested stakeholders and government agencies. More information is available at the Environmental Assessment Office website at: <http://www.eao.gov.bc.ca/index.html>

Appendix 1: Boundary Adjustment Process Flow Diagram



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**MINISTRY OF ENVIRONMENT
INFORMATION NOTE**

May 5, 2014
File: 280-20
CLIFF/tracking #: 204518

PREPARED FOR: Honourable Mary Polak, Minister of Environment.

ISSUE: General approach on timing of park boundary decisions when proponent applications are part of Environmental Assessment Office (EAO) or National Energy Board (NEB) processes.

DATE AND TIME OF MEETING: May 7, 2014, 9:45am.

ATTENDEES:

Lori Halls, Assistant Deputy Minister, BC Parks and Conservation Officer
Service Division
Michelle Carr, A/Executive Lead, Environmental Assessments, EAO
Nathan Braun, Project Assessment Manager, EAO
Brian Bawtinheimer, Executive Director, BC Parks Parks Planning and
Management

BACKGROUND:

The Cabinet-approved *Provincial Protected Area Boundary Adjustment, Policy, Procedures and Guidelines* outlines a specific approach to how government will consider park and protected area boundary adjustment applications from proponents. The policy states that boundary adjustments are normally only approved when there are significant environmental, social and economic benefits to be realized from the project. The policy was updated in 2010, to incorporate a two staged process for proponent driven boundary adjustments.

- Stage 1 involves the submission of an initial project proposal. The Minister decides whether or not the proposal warrants further consideration.
- If the Stage 1 proposal is approved, the proponent develops a more detailed proposal in accordance with the policy.
- Upon receipt of a Stage 2 application, the Minister decides whether to reject the proposal or recommend a boundary adjustment to Cabinet.
- Implementing the boundary decision for legislated protected areas requires a subsequent decision on when to introduce legislation that amends the boundary.

The policy was developed to clearly identify the Minister, Cabinet and the Legislature as the decision makers for proponent initiated boundary adjustment requests. In some cases, boundary proposals may be part of broader projects that require additional approvals such as an Environmental Assessment Certificate or approval from the National Energy Board. Some information from the proponent may be applicable for both the boundary adjustment application and EAO or NEB so co-ordination is desirable when possible to reduce duplication.

With respect to considering boundary adjustments, the policy states:

Decisions to consider a proposal for a protected area boundary adjustment are made by the Minister based on the economic, social and environmental considerations. There is an increased risk of a proposal being rejected at any time under one or more of the following circumstances:

- *Viable alternatives exist;*
- *There is significant First Nations opposition;*
- *There is significant public or local government opposition;*
- *Significant adverse effects on environmental or social values cannot be avoided, mitigated or compensated for;*
- *There is insufficient overall benefit to the Province.*

A decision to consider an application to adjust a protected area boundary to allow for a development does not constitute approval of the proposed project. The final decision to adjust a boundary rests with the Legislature (or Cabinet in the case of a protected area established by an Order in Council).

The policy does not explicitly address timing on boundary decisions in relation to other processes or assessments such as EAO or NEB. However, it does imply that a boundary decision ahead of an EAO decision will only be implemented if the project is approved under that process:

Protected area boundary adjustments, if approved by Cabinet or the Legislature, will only be brought into force if the proposed project has received all other approvals to proceed (e.g. Environmental Assessment Certificate).

Under the current process, a proponent can apply for a stage 1 decision and if favourable, undertake and submit a stage 2 application any time. The policy states that a stage 2 application will normally be considered within a six-month period.

DISCUSSION:

The ministerial decisions whether to recommend a protected area boundary adjustment to Cabinet and to issue an EA Certificate are separate decisions. A preferred standardized approach on the timing of decisions is required to provide clarity and certainty for the processes. A standard approach does not preclude a decision to consider a different timing approach for individual projects based on specific circumstances.

In general, the Minister may choose to support or deny a boundary adjustment application before or after an EAO or NEB decision. Further, should the Minister support a boundary decision before an EAO or NEB decision, a subsequent decision by Cabinet on when and how to implement the decision through the Legislature is required. Two options outlining these approaches are shown in Appendix 1.

Attachment 1: Flow chart of Options for Boundary Adjustment Decisions linked to an EAO or NEB decision.

Attachment 2: Cabinet-approved Provincial Protected Area Boundary Adjustment Policy, Procedures and Guidelines

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ADM	LH	May 5/14
Dir./Mgr.	BB	May 5/14
Author	IDB	May 5/14

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PROVINCIAL PROTECTED AREA BOUNDARY ADJUSTMENT POLICY, PROCESS AND GUIDELINES

March 2010

1. BACKGROUND:

Provincial protected areas¹ are set aside to provide a wide range of opportunities that support tourism and recreation while maintaining the integrity of the natural environment. Most protected areas have been created through comprehensive land use planning processes that included consultation with the public, First Nations and local governments in providing recommendations to government on land use objectives, including establishing protected areas.

Periodically, there are proposed developments which involve activities which are prohibited within protected areas. The Minister² may recommend to Cabinet and the Legislature a boundary adjustment where it meets the principles associated with this Policy. This determination requires policy and guidelines for maintaining the integrity of protected area values as well as a clear process for evaluation and decision making.

Protected area boundary adjustments fall within one of three categories:

1. "Administrative housekeeping" adjustments undertaken where there have been errors in the initial legal description of the boundary or an area was captured that clearly was not intended to be captured at the designation stage.
2. Adjustments intended to alleviate a human health and safety concern.
3. Adjustments where a proponent (private or public) is interested in a boundary adjustment to allow for a development or activity not allowed by authorization under the protected area legislation.

The *Provincial Protected Area Boundary Adjustment Policy, Process and Guidelines* (the Policy) applies to private or public sector development proposals that conform to Category 3 adjustments referenced above. The Policy does not apply to Category 1 or 2 boundary adjustments³.

2. GUIDING PRINCIPLES:

In recognition of the public interest in the establishment and management of protected areas, and the integral role protected areas play in supporting local economies and community-based recreation, government has afforded protected areas a high level of legislative protection.

¹ For the purpose of this Policy, protected areas include Class A, B and C parks, recreation areas, conservancies, ecological reserves, and protected areas established under the *Environment and Land Use Act*.

² Under this Policy, "Minister" refers to the Minister responsible for the *Park Act*.

³ Category 1 and 2 boundary adjustments will be managed using internal procedures involving case-by-case analysis and decisions forwarded to the Minister.

Consideration of proposals for protected area boundary changes will be guided by the following principles:

- The BC Government is committed to the protection of provincial protected areas and the integrity of their associated ecological, recreational and cultural values.
- Proposals for protected area boundary adjustments will be considered on a case by case basis where there are compelling provincial economic, environmental and social benefits that collectively exceed maintaining the existing protected area boundary and values.
- The review and evaluation process will be timely and transparent.
- The proponent must establish the case to adjust a protected area boundary (including meeting the provisions of this Policy) and bear the associated costs.
- Where feasible, consultation will occur with participants that were involved in a public planning process where that process resulted in the establishment of the protected area.
- Consultation with First Nations and local governments will be required.
- Suitable public consultation will be required, consistent with the significance of the proposed change.

3. REQUESTS FOR BOUNDARY ADJUSTMENTS:

Proponents may be First Nations, other levels of government, private individuals, companies or agencies/ministries. A proponent considering a project within a protected area should contact BC Parks as early as possible in the proposal development stage to determine if the proposed use is compatible with legislation, regulations and protected area management objectives. If the proposal would require an adjustment to protected area boundaries in order to proceed, the proponent will be advised of the following two-stage process:

Stage 1: Initial Proposal:

The proponent submits an initial proposal to the Director responsible for protected area planning, BC Parks. The initial proposal should include:

1. Proponent information and contact details.
2. Type and purpose of project (e.g. wind power generation, mining, road, pipeline, etc.).
3. Project location.
4. Project footprint (inside and outside the protected area) including all project components such as access routes.
5. Preliminary description of economic, social and environmental impacts and benefits of the project.
6. Preliminary assessment of alternatives that would avoid the use of protected lands and the reasons those alternatives are not considered feasible.
7. First Nations and local governments potentially affected by the project, and status of any discussions with these governments.
8. Known community groups with an interest in the protected area, and the status of any discussions with these groups.
9. Any known environmental issues (e.g. species at risk impacts, fish habitat).
10. Anticipated project schedule.
11. Maps and illustrations as appropriate.

The initial proposal will be reviewed by Ministry staff and submitted to the Minister for consideration. The Minister will consider the information provided and any other information the Minister considers relevant. The proponent will then be contacted to either:

1. Be advised that the Minister declined the application, and be provided with reasons; or
2. Be advised that the Minister will consider a detailed Stage 2 proposal as outlined below.

Stage 2: Detailed Proposal:

If the initial proposal is not declined, the proponent may proceed to stage 2. At this stage a detailed proposal is required. A proponent should maintain contact with BC Parks staff during development of the detailed proposal, which must include the information required by this Policy, along with a covering letter addressed to the Director responsible for protected area planning, BC Parks, requesting a review of the proposal for a boundary adjustment.

4. GUIDELINES FOR DETAILED PROPOSALS:

Implementing a boundary adjustment requires approval of the Minister, Cabinet, and usually the Legislature⁴. Proponents should ensure that the information they submit with their detailed proposal addresses the following considerations to the satisfaction of the Minister:

1. Alternatives to avoid the protected area have been considered.

Proponents must consider and document alternatives that would avoid a protected area boundary adjustment. Clear supporting rationale for supporting or rejecting an alternative must be provided.

2. Overall economic benefits to the Province have been documented.

An overall economic analysis of the economic benefits and costs, if any, associated with the proposed boundary adjustment will inform the assessment process. The economic analysis should include a summary of the short-term and long-term employment benefits, regional infrastructure impacts, and potential revenues to Government.

3. Social and environmental impacts have been documented.

All potential impacts of the proposed development on the social and environmental values of the protected area must be identified. This should include consideration of how the proposal may impact or benefit traditional user activities, visitor enjoyment and safety, identification and impacts to natural values in the area and associated risks to natural values. Broader environmental impacts or benefits, beyond the protected area, should also be identified. The assessment of the social and environmental impacts will assist in identifying potential mitigation, restoration or compensation measures that would preserve the recreation and/or conservation values of the protected area.

4. Mitigation and restoration measures have been identified.

Proponents will identify ways to avoid, minimize or compensate for the impacts the proposed development may have on protected area values. This will inform the assessment process of opportunities to retain or add to protected area values.

⁴ The final decision on a protected area boundary adjustment rests with either the Cabinet or the Legislature depending on the level at which the protected area boundary is originally established. A protected area boundary established by Order in Council is amended at the Cabinet level and a protected area boundary established by an Act of the Legislature can only be amended by the Legislature. Most boundaries are established by an Act of the Legislature.

5. First Nations have been adequately consulted.

Proponents need to discuss the proposed development and potential impacts on protected area boundaries and values with the appropriate First Nations and include a summary of the discussions with the detailed proposal. This will provide an indication of the degree of First Nations acceptance (or lack thereof) of the proposal. Inclusion of this information in the proposal will assist Ministry staff in meeting the Crown's duties to consult with First Nations, and if necessary, accommodate any infringement on asserted rights or title.

6. Local community (including local governments) have been consulted.

Proponents must assess the level of support or opposition among the key community, local government and public groups that may have an interest in the potential impacts of the proposed development on protected area boundaries. The proponent should identify whether this indication of public response was obtained through direct consultation or through indirect means such as review of media reports, interest group newsletters, or other appropriate means. This information will assist in identifying whether adequate public and/or local government consultation has occurred.

7. Provincial and Federal Agencies have been consulted.

The proponent, with advice from BC Parks, should make contact with appropriate federal and provincial agencies that may have an interest in the proposal and seek input or comment.

If the proposed boundary adjustment is related to a reviewable project under the British Columbia *Environmental Assessment Act*, BC Parks and the Environmental Assessment Office will coordinate their respective information requirements to the greatest extent possible. While the boundary adjustment and environmental assessment processes involve independent decisions by Government, the intent is to identify means for the proponent to collect and report on information required by both processes in an effective and efficient manner.

5. PROCESS FOR REVIEWING DETAILED PROPOSALS:

The ministry will review the completed Stage 2 detailed proposal. The review process will proceed as follows (see also Appendix 1: Boundary Adjustment Process Flow Diagram):

1. BC Parks staff contact relevant or interested Ministries to inform them of the proposal and the proposal will be posted on a government web site for public information⁵.
2. The economic, social and environmental implications of the proposal, along with the extent of public, First Nations⁶, and local government consultation identified in the proposal, are assessed.
3. An assessment and recommendations regarding the proposal are submitted by BC Parks to the Minister.

⁵ The proponent may be directed to make additional efforts (e.g. newspaper advertising, web-based notification) to ensure the public is aware of the application and able to submit their views on the proposal.

⁶ First Nations consultation process will be determined between the proponent and the Ministry of Environment (or BC Parks) and outcomes will be assessed.

4. The Minister may, at any time during the review process, determine that adequate information has been provided to make a decision not to recommend the boundary adjustment to Cabinet. If the Minister decides not to recommend the proposal, then the proponent will be notified of the reasons for the decision in a timely fashion.
5. The Minister may recommend the proposal to adjust the boundaries to Cabinet. Cabinet may decide either to proceed with the boundary adjustment or to reject the proposal. If Cabinet rejects the proposal, the proponent will be notified in a timely fashion.
6. If Cabinet decides to support the proposal, a legislative amendment will be introduced and be subject to the normal process for Bills in the Legislature, if a legislative amendment is required to change the boundary. The final decision will then rest with the Legislature. In the event the existing boundary was established by Order in Council, then Cabinet may decide to amend the boundary by Order in Council.

Process Notes:

- BC Parks, the Minister or Cabinet may determine at any time during the process that additional consultation or information is required.
- Normally, a proposal that meets all information requirements will be considered within a six month time frame. However, legislative amendments may require considerable preparation and additional time.

6. PROCEDURAL NOTES:

In order to ensure clear understanding and application of these principles and guidelines, proponents should initiate early contact and maintain communications with BC Parks staff.

Decisions to consider a proposal for a protected area boundary adjustment are made by the Minister based on the economic, social and environmental considerations. There is an increased risk of a proposal being rejected at any time under one or more of the following circumstances:

- Viable alternatives exist;
- There is significant First Nations opposition;
- There is significant public or local government opposition;
- Significant adverse effects on environmental or social values cannot be avoided, mitigated or compensated for;
- There is insufficient overall benefit to the Province.

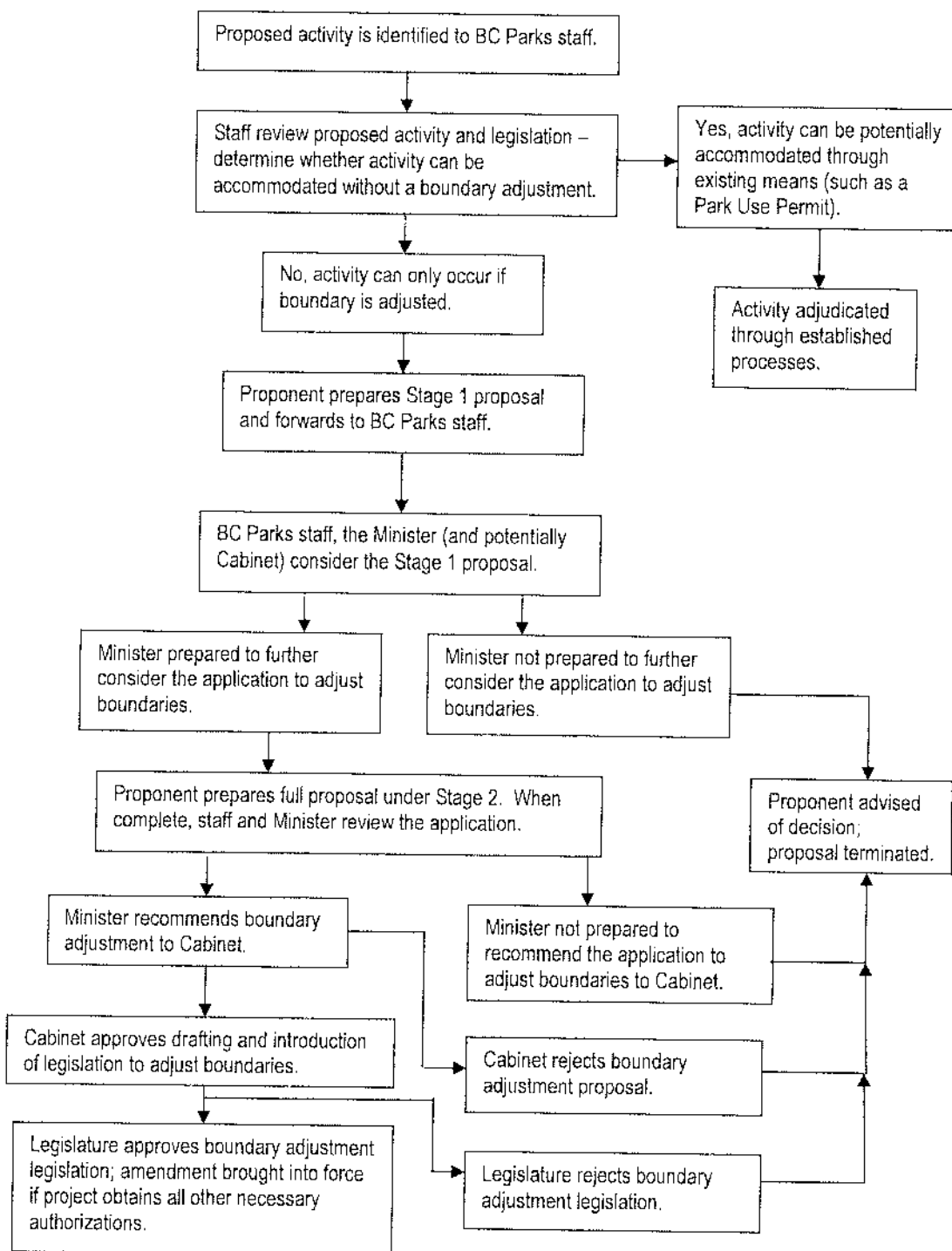
A decision to consider an application to adjust a protected area boundary to allow for a development does not constitute approval of the proposed project. The final decision to adjust a boundary rests with the Legislature (or Cabinet in the case of a protected area established by an Order in Council). As well, all proposed projects are subject to the normal provincial and federal regulatory review processes that apply to such projects. Protected area boundary adjustments, if approved by Cabinet or the Legislature, will only be brought into force if the proposed project has received all other approvals to proceed (*e.g.* Environmental Assessment Certificate).

7. AVAILABLE RESOURCES:

In preparing information to address these guidelines, proponents should consider the following sources of information which may be of assistance:

- The BC Parks *Impact Assessment Process* is used by staff to assess potential impacts of proposed actions in provincial protected areas -- it offers processes and background information which can be used by proponents. The process is described in detail on the BC Parks website at the following address:
<http://www.env.gov.bc.ca/bcparks/conserve/impact/impact.html>
- B.C.'s environmental assessment (EA) process provides a mechanism for reviewing major projects to assess their potential impacts and to ensure environmental, economic and social considerations are taken into account. This includes assessing issues and concerns raised by the public, First Nations, interested stakeholders and government agencies. More information is available at the Environmental Assessment Office website at: <http://www.eao.gov.bc.ca/index.html>

Appendix 1: Boundary Adjustment Process Flow Diagram



**MINISTRY OF ENVIRONMENT
MEETING INFORMATION NOTE**

Date: April 29, 2014
File: 280-20
CLIFF/tracking #: 203818

PREPARED FOR: Honourable Mary Polak, Minister of Environment

DATE AND TIME OF MEETING: Wednesday April 30th, 3:30 pm

ATTENDEES: Minister Polak; Wes Shoemaker, Deputy Min MOE; Tom Hoffman, Woodlands Manager (Tolko Ind.); Alec Dale (Exec Dir. Ecosystems Br. MOE)

ISSUE: Tolko is concerned about potential impacts of the Federal Recovery Strategy for the Woodland Caribou, Southern Mountain population in Canada.

BACKGROUND:

After extensive consultation with industry and other stakeholders, the Province approved the Mountain Caribou Recovery Implementation Plan (MCRIP) in October, 2007. The Ministry of Forests, Lands and Natural Resource Operations (MFLNRO) is now responsible for the MCRIP's operational delivery with support from Ministry of Environment.

The MCRIP committed Government to conducting the following recovery actions:

- protecting 2.2 million hectares of mountain caribou range from logging and road building, capturing 95 per cent of the caribou's high suitability winter habitat;
- managing human recreational activities in mountain caribou habitat in a manner that ensures caribou habitat areas are effectively protected;
- managing predator populations of wolf and cougar where they are preventing the recovery of mountain caribou populations;
- managing the primary prey of caribou predators;
- boosting caribou numbers in threatened herds with animals transplanted from elsewhere to ensure herds achieve critical mass for self-sufficiency;
- supporting adaptive management and research and implement effective monitoring plans for habitat, recreation and predator-prey management; and
- instituting a cross-sector progress board in spring 2008 to monitor the effectiveness of recovery actions

In response to a legal challenge by Ecojustice, the federal government posted for public review (January 2014) a draft recovery strategy for caribou within the federally designated 'Southern Mountains National Ecological Area', which includes all mountain caribou herds. The draft federal strategy identifies Critical Habitat under the Federal *Species at Risk Act* (SARA) which must be 'effectively protected' under SARA.

The operations of Tolko fall within the area covered by the BC MCRIP and they were an active participant in development of the MCRIP and have foregone potential harvesting activities to help ensure recovery of these caribou herds.

DISCUSSION:

Actions within the MCRIP have largely been implemented with the exception of effectively managing wolf populations. Industry has criticised government for failing to effectively implement this recovery action, and will be very reluctant to forgo additional harvesting opportunities to meet any additional habitat targets imposed by the federal recovery strategy.

The recently approved BC Wolf Management Plan should provide the Province with the ability to effectively control wolves in these areas, which in turn will increase the probability of caribou recovery.

Our (FLNRO/MOE) initial review of the draft federal recovery strategy indicates that (by design) it is fairly consistent with the habitat protection and recreation closures already in place under the MCRIP. Thus, the herds in these areas would be the least likely to require any additional habitat protection (and associated economic impacts) under SARA.

Additionally, although the draft federal recovery strategy does identify additional surrounding or 'matrix habitat' as Critical Habitat, the attributes that define that portion of the Critical Habitat are related to wolf densities on the landscape. Thus, protecting that habitat would involve reducing the wolf populations vs. putting additional habitat protection measures in place.

Finally, as this timing on the recovery strategy was driven by a court case, Environment Canada has messaged strongly that, although the strategy will be posted as final, they will be taking the next year to adapt and amend the document based on ongoing consultations to ensure they have it right.

SUGGESTED RESPONSE:

s.13

Contact:

*Mark Zacharias
Environmental
Sustainability and
Strategic Policy Division
250-356-0121*

Alternate Contact:

Prepared by:

*Alec Dale, Executive Director
Ecosystems Branch*

250-387-9731

Reviewed by	Initials	Date
DM		
DMO		
ADM	MZ	April 30/14
Dir./Mgr.	AD	Sept 24/13
Author		

**In the matter of the
ENVIRONMENTAL ASSESSMENT ACT
S.B.C. 2002, c. 43
(Act)**

and

**in the matter of a
Request for an Amendment to Application
for an
Environmental Assessment Certificate #E11-02 pursuant to the Act**

by

**Kwagis Power Limited Partnership
(Proponent)**

for the

**Kokish River Hydroelectric Project
(Project)**

September 25, 2013

Reasons and Recommendation to the Executive Director

In accordance with the provisions of section 19 of the *Environmental Assessment Act*, the Executive Project Director makes the recommendations contained in this submission, for the reasons indicated, in connection with the application by the Proponent for an amendment to Environmental Assessment Certificate #E11-02 for the Kokish River Hydroelectric Project.

SUMMARY

This document provides a recommendation to the Executive Director to approve the proposed amendment. After completing the amendment review process and the First Nations consultation process summarised in this document, the Executive Project Director is satisfied that:

- the proposed changes to the Project would not have any significant adverse environmental, economic, social, heritage or health effects; and
- the proposed changes to the Project would not impact the Aboriginal Interests of the 'Namgis First Nation or the Tlowitsis First Nation.

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A. ISSUE

A decision is required by the Executive Director of the Environmental Assessment Office (EAO) on an application by the Proponent to amend Environmental Assessment Certificate #E11-02 (Certificate) for the Project under section 19(3) of the Act.

B. BACKGROUND

1. Proponent and Project Description

- The Project is a run-of-river hydroelectric Project with a rated nameplate capacity of 45 megawatt (MW) on the Kokish River approximately 15 kilometre (km) east of Port McNeill, British Columbia.
- Certificate #E11-02 was issued to Kwagis Power Limited Partnership for the Project on November 24, 2011. The limited partnership consists of Brookfield Renewable Power Inc. and the 'Namgis First Nation.
- The scope of the Project includes of the following on-site and off-site components and activities:
 - construction and operation of a diversion weir;
 - intake and fish ladder;
 - buried penstock;
 - powerhouse;
 - switchyard;
 - tailrace; and
 - approximately 0.5 km of 138 kilovolt (kV) transmission line connecting to the existing British Columbia Hydro (BC Hydro) power grid.
- The Project has been substantially started with the construction of the intake structure, penstock, and powerhouse facility. Completion of Project construction is expected in spring 2014.
- The Project has an estimated capital cost of \$200 million and would create approximately 75 construction jobs and two part-time operational jobs.
- The Project is within the overlapping traditional territories of the 'Namgis First Nation and the Tlowitsis First Nation.
- On February 25, 2013, the Proponent submitted a Certificate amendment application to increase the maximum diversion flow rate of the Project from 23.3 cubic metres per second (m^3/s) to 25.0 m^3/s during October 16 through June 15.

2. British Columbia Environmental Assessment Process

The Proponent submitted the application for an Environmental Assessment Certificate (Certificate Application) on July 19, 2010, which was evaluated by a Working Group, led by the EAO, and comprised of representatives from Ministry of Forests, Lands and Natural Resource Operations (FLNR), Ministry of Environment (MOE), Canadian Environmental Assessment Agency (Agency), Health Canada, Transport Canada (TC), Fisheries and Oceans Canada (DFO), Environment Canada (EC), Mount Waddington

Regional District, and the 'Namgis First Nation. The Certificate Application was accepted for review on August 18, 2010.

The formal assessment of the Certificate Application commenced on September 10, 2010. A public comment period on the Certificate Application was held from October 4, 2010, to November 18, 2010. Open houses were held in Alert Bay and Port McNeill on October 5 and 7, 2010. An EAO presentation was also given to the 'Namgis First Nation in Alert Bay on October 6, 2010.

The assessment of the Certificate Application by the Working Group was completed on November 4, 2011. During the assessment of the Certificate Application there were three suspensions of the 180 day time limit mandated under section 3 of the Prescribed Time Limits Regulation. The suspensions were specifically related to the need of the Proponent to adequately address issues and information requests related to fish and fish habitat.

EAO review of the Certificate Application coordinated with the federal environmental assessment (EA) process through collaboration between EAO and the Agency, DFO, and TC. As a result, the Assessment Report prepared for ministers was also the federal screening report prepared for federal decision-maker.

The EA examined a broad range of potential effects, including effects on the following:

- Surface hydrology;
- Surface water quality;
- Hydrogeology;
- Geomorphology;
- Fisheries and aquatic habitat;
- Wildlife, wildlife habitat and vegetation;
- Air quality;
- First Nations traditional and current use;
- Archaeology and heritage resources;
- Land, resource and water use;
- Socio-economic/socio-community;
- Noise; and
- Visual quality.

All issues and concerns raised during the assessment by the public, First Nations, local governments, and provincial and federal agencies were all considered by EAO. As a result of consultation and extensive technical working group discussions, a number of potential adverse effects from the proposed Project were identified.

Based on the analysis in the Assessment Report and having regard to the mitigation measures, compensation and other commitments made by the Proponent (as listed in the Certificate the Table of Commitments) EAO concluded that there would be no

significant adverse environmental, economic, social, heritage or health effects from the Project.

On November 24, 2011, the Ministers issued EA Certificate #E11-02 to the Proponent.

3. Federal Environmental Assessment Process

The proposal to undertake the Project required an assessment under the *Canadian Environmental Assessment Act* on the basis that a federal authority was required to take action in order for the Project to be carried out. Due to potential Project effects on fish and fish habitat and navigation, DFO and TC, the federal responsible authorities (RAs) in the EA, determined in 2008 that the Project would be subject to a federal EA screening level review. Specifically,

- An authorization from DFO may be required pursuant to subsection 35(20) of the *Fisheries Act* for the alteration, disruption or destruction of fish and fish habitat; and
- An approval from TC may be required for a substantial interference to navigation pursuant to subsections 5(1) and (2) of the *Navigable Waters Protection Act* (R.S.C., 1985, c. N-22), as amended by Part 7 of the *Budget Implementation Act, 2009*, S.C. 2009, c. 2.

The federal EA screening decision, approving the Project was made on April 24, 2012.

C. DISCUSSION

1. Environmental Assessment Certificate Amendment Review Process

Under Section 19 of the *Environmental Assessment Act* (Act), a holder of a certificate may apply in writing to EAO to amend their certificate. Subject to a review of the proposed change, the Executive Director of EAO must make a decision whether to approve the proposed amendment. The decision whether to amend the Certificate is made if the Executive Director determines that the proposed amendment would not result in significant adverse environmental, economic, social, heritage or health effects, taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects. In addition, EAO considers the potential impacts to aboriginal or treaty rights and title.

On November 19, 2012, the Proponent met with EAO, FLNR, and MOE, to discuss the proposed amendment. The Proponent presented the proposed increase in the maximum diversion flow rate to occur year round. As a result of this meeting the Proponent adjusted the timing of the increase in maximum diversion flow rate to occur between October 16 and June 15 to avoid sensitive fish rearing and migration periods.

On February 25, 2013, the Proponent submitted a written request to amend Certificate #E11-02 to increase the maximum diversion flow rate of the Project from 23.3 m³/s to

25.0 m³/s during October 16 through June 15. The Certificate states in the Table of Commitments (Commitment #15) that the Proponent must not divert water at a rate greater than 23.3 m³/s during Project operations. In the Certificate Application the maximum diversion flow rate was identified as 23.3 m³/s from which in part instream flow requirements (IFR) were developed as a key mitigation measure to avoid significant adverse effects to fish and fish habitat.

On February 7, 2013, EAO received a letter of support for the proposed Certificate amendment, from the 'Namgis First Nation. On February 27, 2013, EAO received a letter of support for the proposed Certificate amendment from the Port McNeill and District Chamber of Commerce.

The nature and scale of the proposed Certificate amendment meant that there are important considerations for the region and the province in terms of potential environmental economic, social, heritage and health effects. Upon review of the Application EAO determined that the assessment process of the proposed Certificate amendment should focus on several key issues including:

- fish habitat (rearing, spawning, incubation),
- ecological function of stream flow,
- fish migration,
- aquatic invertebrate community, and
- ramping rates.

EAO referred the Application to:

- FLNR;
- MOE;
- 'Namgis First Nation; and
- Tlowitsis First Nation.

EAO sought participation in the amendment process by key federal agencies who participated in the EA including DFO and TC. However, DFO declined participating in the Certificate amendment process due to recent changes in operational mandates and organizational structure under the *Fisheries Act*. TC declined participating in the Working Group due to lack of concerns under the *Navigable Waters Protection Act*.

2. First Nations, Public and Working Group Review of Application

Issues and concerns raised during the assessment of the Application by the public, First Nations and provincial agencies were all considered by EAO. No comments were received from First Nations regarding the Application review. Public and Working Group comments and questions were responded to by the Proponent, at the direction of EAO.

Provincial Agency Comments

Both MOE and FLNR acknowledge that the timing of the proposed increase in maximum diversion flow rate (October 16 to June 15) would likely reduce negative impacts to

critical fisheries life stages (rearing and migration) when compared to the originally proposed increase occurring year round.

MOE raised concerns regarding the additional risk of potentially increasing the maximum diversion flow rate without analyzing and understanding the effects of an altered flow regime from an operational Project on fish and fish habitat. MOE expressed a preference for operational monitoring of the Project as required by the Certificate, prior to amending the maximum diversion flow rate, to reduce the uncertainty of how the altered flow regime from the Project may affect fish and aquatic ecosystem health.

FLNR commented that the proposed increase in the maximum diversion flow rate would not likely have a significant impact on wildlife or vegetation in the Project area. From a fisheries perspective FLNR provided similar comments to MOE in that they recommend operational monitoring of the Project before the proposed amendment that would affect the flow regime.

Public comments

EAO held a Public Comment Period to solicit public concerns and questions on the Application from June 20, 2013, to July 20, 2013. An EAO Open House for public review of the proposed Certificate amendment was held on July 4, 2013, in Port McNeill.

EAO received four written comments expressing concerns with the proposed amendment. Key themes included:

- In-stream flow requirements for fish, riparian vegetation, fish production and aquatic habitat; and
- No changes should be made to the Project until sufficient time and monitoring has occurred to determine if the Project is resulting in negative effects to fish and fish habitat.

Conclusion

Regarding public and Working Group comments for the Application review, EAO concludes that the Proponent has provided adequate responses to all questions provided.

3. First Nations' Asserted Rights and Title

'Namgis First Nation and Tlowitsis First Nation

On June 17, 2013, EAO sent notification letters seeking comment on the Application to the 'Namgis First Nation and Tlowitsis First Nation as the Project is located within their traditional territories. On July 8, 2013, EAO received a letter of support, from the 'Namgis First Nation, regarding the proposed Certificate amendment. EAO did not receive comments from the Tlowitsis First Nation.

Kwakiutl First Nation

Prior to receiving the Application, the Kwakiutl First Nation had notified EAO that they should have been consulted during the Project EA as the Project is located within the consultative area of the Nanwakolas Council Society. During the time that the Project was in the EA process the Nanwakolas Council Society consultative area was comprised of nine First Nation traditional territories. EAO understands that the Province of British Columbia and the Nanwakolas Council Society signed a Framework Agreement (Strategic Engagement Agreement (SEA) in December, 2009. It is understood by EAO that Engagement Levels 1 – 4 (low to high significance of bio-physical impact) under the SEA do not apply to decisions made under the *Environmental Assessment Act*. As of March 31, 2013, the Kwakiutl First Nation are no longer a signatory to the Nanwakolas SEA.

The Kwakiutl First Nation has Douglas treaty rights within their traditional territory, and when considered separate from the SEA, does not overlap the Project. The Kwakiutl First Nation BC Treaty Commission Statement of Intent (SOI) traditional territory boundary also does not overlap the Project.

On June 17, 2013, EAO sent a notification letter regarding the Application to the Kwakiutl First Nation, but did not request comment or provide an invitation to the Working Group. The notification letter to the Kwakiutl First Nation identified that the Kwakiutl First Nation SOI boundary did not overlap the Project and that it was EAO's view that the Project would not impact the Kwakiutl First Nation's exercise of Douglas Treaty rights.

On June 18, 2013, EAO was copied on a letter from the Kwakiutl First Nation to the Proponent that stated that the Kwakiutl First Nation should have been consulted during the EA process. The letter did not mention the Certificate amendment process. On July 26, 2013, EAO sent a response letter to the Kwakiutl First Nation explaining EAO's understanding that although the SEA boundary overlaps the Project the Kwakiutl First Nation SOI boundary does not and therefore EAO is of the view that the Project would not impact their Aboriginal Interests and Douglas Treaty rights.

Conclusion

Regarding First Nation consultation for the Application review, EAO concludes that:

- the process of consultation has been carried out in good faith and that it was appropriate and reasonable in the circumstances,
- the EAO, on behalf of the Crown, has made reasonable efforts to inform itself of the impacts the Project may have on the identified First Nations; and
- the potential for effects on asserted Aboriginal Interests and treaty rights has been appropriately mitigated or otherwise accommodated.

3. Assessment of the Amendment Application

In assessing the amendment application, EAO considered whether the proposed changes to the Project have the potential for significant adverse environmental, economic, social, heritage, or health effects.

In undertaking the assessment, the following were considered:

- a) Proponent's Application for a Certificate Amendment;
- b) Advice from the Project Working Group;
- c) Comments from the public received during the public comment period on the Application; and
- d) Consultations with the 'Namgis First Nation and the Tlowitsis First Nation on potential effects of the Project on Aboriginal Interests.

Summary of potential significant adverse effects

Most Project effects identified during the EA that led to the issuance of the certificate will not change, as the original and proposed revised project would occupy the same project footprint.

The Proponent identified in the Application that the increase in the maximum diversion flow rate would result in an interaction with the following valued components (VCs) and issues of concern:

- Surface hydrology (VC);
- Geomorphology (VC);
- Fisheries and Aquatic Habitat (VC);
- Navigation Issues; and
- Accidents and Malfunctions.

Upon reviewing the Application and considering comments raised by the Working Group and the public EAO determined that the key issue of the amendment process was the potential effects to fisheries and aquatic habitat. The Application identified potential changes to fisheries and aquatic habitat due to the proposed increase in the maximum diversion flow rate including:

- Fish habitat (rearing, spawning, incubation);
- Change in migration;
- Invertebrate community;
- Ramping duration; and
- Efficiency of the intake Coanda screen.

Specifically, the Proponent identified in the Application that the proposed amendment would result in a predicted 0.1% loss of summer steelhead spawning habitat and a 0.3% to 0.9% loss of Chinook salmon spawning habitat. There would also be a minor reduction

(1.41 to 1.34 days per year) in frequency of channel forming or flushing flows. The Application also states that there would be an additional loss of 197 m² (0.1%) of wetted area which supports aquatic invertebrate habitat.

The proposed change in the maximum diversion flow rate would result in an increase volume of water entering the river from the tailrace when compared to downstream flow from the diversion reach. The potential effect of this flow difference is potential fish attraction to the tailrace and stalling of upstream migration through the diversion reach.

The increase in the maximum diversion flow rate would have a minor affect on the ramping regime of the Project. Ramping rates are the flow rates of water diverted from the river and have the potential to affect fish and habitat in the diversion reach and downstream of the project primarily through dewatering habitat and stranding fish. The Proposed amendment would increase the flow ramping duration by one hour and overlap the timing of coho salmon fry emergence in April. During periods of spill, the amended diversion flow rate may also alter the stage change rate (rate of change in water depth) in the diversion reach.

Mitigation measures and Certificate Commitments

Key EAO considerations in assessing potential effects of the amendment included the proposed timing of the maximum diversion flow rate increase, the instream flow requirement (IFR) of the Project, and potential changes in the flow regime of the river.

EAO understands that the Proponent proposes the timing of the maximum diversion flow rate increase to occur between October 16 through June 15, based on discussions with fisheries staff from FLNR and MOE, because this period is outside of the key growing and migration periods for summer steelhead and early run coho salmon. The Application states that the IFR as listed in the Certificate Table of Commitments (Commitment #15) would not change under the proposed amendment. The IFR are minimum flows that must be maintained within the Kokish River during Project operations to protect fish and aquatic habitat.

The Proponent has proposed that the existing mitigation measures and commitments of the Certificate would apply to the proposed amendment and that no new mitigation would be required. A central issue that was raised during the Public Comment Period and by the Working Group is the uncertainty of how the Project may affect fish and fish habitat (including change in the invertebrate community) once it is operating and the monitoring of any potential effects. Certificate Condition #11 requires the Proponent to develop an Operational Environmental Management Plan that will be reviewed and approved by DFO and FLNR including:

- Compliance monitoring to ensure the Project complies with the conditions of the Water licence and *Fisheries Act* Authorization;
- Effectiveness monitoring to measure the success of mitigation and compensations measures implemented to minimize or offset environmental impacts; and

- Response monitoring to provide an empirical basis for understanding effects of the Project on the quality and quantity of fish habitat.

Furthermore, the Proponent must implement the Operational Environmental Management Plan, subject to any modifications required by DFO and FLNR, based on DFO's Habitat Compliance and Monitoring Framework. Whether the amendment is approved Commitment #11 will remain unchanged.

Certificate Condition # 14 requires the Proponent during the first year of Operations to:

- Conduct ramping tests to refine the preliminary ramping rates proposed in the Application;
- Conduct ramping studies to confirm flow travel times, stage change rates, and response of fish to flow ramping; and
- Develop a flow ramping protocol.

The results of the ramping tests and studies and flow ramping protocol must be shared with DFO and FLNR. The ramping protocol must be implemented and modified as required by DFO and FLNR. Whether the amendment is approved Commitments #11 and #14 will remain unchanged.

Schedule B of the Certificate lists other commitments that apply to protecting fisheries and aquatic habitat. EAO has not identified any new mitigation measures or conditions that should be attached to the Certificate in consideration of the proposed amendment.

D. CONCLUSION AND RECOMMENDATION

EAO is satisfied that the amendment review process has adequately identified and assessed the potential significant adverse environmental, economic, social, heritage and health effects of the proposed changes to the Project:

- the Proponent adequately consulted with government agencies, the public, and First Nations about the proposed changes to the Project; and
- the issues identified by government agencies, the public, and First Nations, which were within the scope of the Proposed Amendment, were adequately and reasonably addressed by the Proponent during the review of the amendment application; and,
- practical means have been identified to prevent or reduce any potential adverse environmental, social, economic, heritage or health impacts of the proposed Amendment such that no direct or indirect significant adverse effect is predicted.

EAO is also satisfied that:

- the issuance of the Certificate amendment will not impact the Aboriginal Interests of the 'Namgis First Nation or the Tlowitsis First Nation; and
- the provincial Crown has fulfilled its obligation to consult with and appropriately accommodate First Nations in relation to the potential issuance of an EA Certificate amendment for the proposed changes to the Project.

RECOMMENDATION:

In considering all relevant information contained in the Proponent's Amendment Application, this document, and the Table of Conditions, it is recommended that the proposed amendment to Environmental Assessment Certificate #E11-02 be approved/not approved.

Approve / Do Not Approve:



Doug Caul
Associate Deputy Minister and Executive Director
Environmental Assessment Office

**IN THE MATTER OF
THE ENVIRONMENTAL ASSESSMENT ACT, S.B.C. 2002, c. 43 (ACT)**

AND

**IN THE MATTER OF
ENVIRONMENTAL ASSESSMENT CERTIFICATE #E11-02
ISSUED TO KWAGIS POWER LIMITED PARTNERSHIP (PROPONENT) FOR THE
KOKISH RIVER HYDROELECTRIC PROJECT**

AMENDMENT #1 TO THE CERTIFICATE

WHEREAS:

- A. Environmental Assessment Certificate #E11-02 (Certificate) was issued to the Holder on November 24, 2011, for the Kokish River Hydroelectric (Project);
- B. The Certificate authorized the Holder to construct and operate a run-of-river hydroelectric project with a rated nameplate capacity of 45 megawatt (MW) on the Kokish River near Port McNeill, British Columbia, involving the construction and operation of a diversion weir, intake and fish ladder, buried penstock, powerhouse, switchyard, tailrace and approximately 0.5 kilometres (km) of 138 kilovolt (kV) transmission line that will tie into the existing British Columbia Hydro (BC Hydro) power grid;
- C. Condition 1 of the Certificate states that subject to subsection (b), the Proponent must cause the Project to be designed, located, constructed, operated and decommissioned in accordance with the Conditions of the Certificate, the documents listed in Schedule A, and the Commitments in Schedule B, and must comply with all of the Conditions of the Certificate;

Subsection (b) states where the Proponent intends to design, locate, construct, operate or decommission the Project in a manner different than that set out Schedules A or B (the "proposed change"), the Proponent may do so, without an amendment to the Certificate, if the Executive Director has:

- (i) considered
 - i. the nature and extent of the proposed change,
 - ii. the manner and degree that the proposed change is regulated by another agency, and
 - iii. any relevant conditions or commitments of the Certificate,

- (ii) determined that the proposed change is not likely to result in significant adverse effects, and
- (ii) provided to the Proponent a written statement that an amendment is not required with respect to the proposed change.


D. On February 25, 2013, the Proponent applied under section 19(1) of the Act for an amendment to the Certificate (Amendment application) to change the maximum diversion flow rate of the Project from 23.3 cubic metres per second (m^3/s) to 25.0 m^3/s from October 16 through June 15.

NOW THEREFORE:

1. I amend the Certificate by adding the following to Schedule A:

February 25, 2013, letter from Bill Payne, Brookfield Renewable Energy Partners LP, to Brian Murphy, BC Environmental Assessment Office, entitled "Adjustment in Maximum Diversion Flow Rate for the Kokish River Hydroelectric Project: Request for Amendment."

2. In Schedule B, commitment #15, delete "greater than 23.3 m^3/s " and substitute with "greater than 25.0 m^3/s from October 16 to June 15 and greater than 23.3 m^3/s from June 16 to October 15".



Doug Caul
Associate Deputy Minister and Executive Director
Environmental Assessment Office

Issued this 30 day of September, 2013



File: 30050-20/KRHP-04-01

Ref: 103246

July 26, 2013

Chief Rupert Sr. Wilson
and Councillors
Kwakiutl First Nation
99 Tsakis Way
PO Box 1440
Port Hardy BC V0N 2P0

Dear Chief Wilson:

Re: Kokish River Hydroelectric Project: Environmental Assessment Certificate Amendment

This letter is in response to your June 18, 2013, letter addressed to Mr. Legault (President and CEO – Brookfield Renewable Energy Partners), regarding the Kokish River Hydroelectric Project (Project). As Environmental Assessment Office (EAO) was copied on your letter to Mr. Legault, I am also writing in response to your concerns related to the environmental assessment (EA) process as outlined in your letter.

EAO understands that the Province of British Columbia and the Nanwakolas Council Society (NCS) signed a Framework Agreement (Strategic Engagement Agreement (SEA)) in December, 2009. Although the Nanwakolas SEA boundary map overlaps the Project, it is understood by EAO that this map is comprised of all the asserted traditional territories of all First Nations who were signatory to the SEA.

EAO understands that Kwakiutl First Nation was one of the original First Nation signatories to the SEA, but as of April 1, 2013, Kwakiutl First Nation is no longer a participant in the agreement.

.../2

Environmental
Assessment
Office

Mailing Address:
PO Box 9426 Stn Prov Govt
Victoria BC V8W 9V1

Location:
1st & 2nd Fl – 836 Yates Street
Victoria BC V8W 1L8

As stated in my June 17, 2013, letter regarding the recent Environmental Assessment Certificate amendment application for the Project, EAO is aware of the traditional territory identified by Kwakiutl First Nation in the Statement of Intent (SOI) submitted to the BC Treaty Commission in 1997. The Project does not overlap with that SOI area. On this basis, EAO does not believe that the Project will impact the Kwakiutl First Nation's Aboriginal Interests within the area identified as its traditional territory, including exercise of its Douglas Treaty rights.

If you have any questions, please do not hesitate to contact me by telephone at 250-387-2402 or by email at Brian.Murphy@gov.bc.ca. You may also contact John Antill, Project Assessment Officer, at John.Antill@gov.bc.ca or 250-387-8680.

Yours truly,



Brian Murphy
Executive Project Director

cc: John Antill
Environmental Assessment Office