

Cowichan Tribes – British Columbia

Government to Government Interim Letter of Agreement (“ILOA”)

Respecting the scoping of a Plan to ensure water sustainability in the Koksilah Watershed

Between:

**Cowichan Tribes
(“Cowichan Tribes”)**

And:

**Her Majesty the Queen in Right of the Province of British Columbia as Represented by the
Minister of Forests, Lands, Natural Resource Operations and Rural Development**

(the “Province”)

(Collectively referred to as the “Parties”)

Whereas:

- A. The Cowichan Tribes have their own laws (*snuw'uyulh*) which were given by their Creator and laid out in their oral histories (*syuth*) relating to *Quw'utsun* ways of life and responsibilities to below, on and above *Quw'utsun* territory including all its water, skies, earth, fires and cultural and spiritual heritage.
- B. Section 35(1) of the *Constitution Act, 1982* states, “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed”.
- C. The Province has a duty to consult in a manner that is consistent with the honour of the Crown, and, where appropriate, to accommodate Cowichan Tribes prior to approving proposed activities that could adversely impact their Aboriginal rights and title (“Aboriginal Rights”).
- D. The Province has committed to fully adopting and implementing the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) and the Truth and Reconciliation Commission’s Calls to Action (“Calls to Action”) and is committed to working with First Nations in a collaborative and respectful manner to develop a shared vision of reconciliation to guide the adoption of UNDRIP, the Calls to Action, the Supreme Court of Canada’s decision in *Tsilhqot'in* and other case law.
- E. The Province has recognized the rights of Indigenous peoples in law through Bill 41, the *Declaration on the Rights of Indigenous Peoples Act*, which was passed unanimously on November 26, 2019, and provides a framework to align British Columbia’s laws with UNDRIP.
- F. The Parties recognize that this ILOA will serve as a preliminary starting point in an evolving long-term relationship between the Parties.
- G. The Province is committed to advancing reconciliation with Cowichan Tribes through a Government-to-Government (“G2G”) relationship based on recognition of Cowichan Tribes’

Aboriginal rights, respect, co-operation and partnership as the foundation for transformative change.

- H. The Minister of Forests, Lands, Natural Resource Operations and Rural Development has the mandate and jurisdiction to implement the *Water Sustainability Act*.
- I. Without prejudice to their differing views with regard to sovereignty, jurisdiction, title, laws, and ownership, the Parties intend to work collaboratively and are committed to jointly overseeing and participating in a long-term planning process for the ongoing sustainable management of the Koksilah watershed.

The Parties acknowledge the need for timely and effective actions on the Koksilah watershed to protect fish populations, ecological communities, Cowichan Tribes' Aboriginal rights and employment and economic interests.

Now therefore the Parties agree as Follows:

1. Objectives

- 1.1. The Parties will make sustained, substantive progress towards:
 - a. Seeking consensus recommendations regarding the Koksilah watershed planning.
 - b. Seeking consensus on values and principles to guide the Koksilah watershed planning.
 - c. Scoping a long-term agreement with respect to ongoing collaborative management of the Koksilah watershed.
 - d. Overseeing and participating in the compilation of data on the Koksilah watershed.
 - e. Ensuring that the data referred to in Section 1.1(d) includes any available Indigenous Knowledge where Cowichan Tribes deems such inclusion appropriate.
 - f. Assessing and meaningfully addressing any potential impacts to Cowichan Tribes' Aboriginal Rights as a result of making or pursuing any recommendation on short-term and long-term management plans or actions for the Koksilah watershed.
 - g. Ensuring that Cowichan Tribes has sufficient opportunity to exercise, in accordance with its own internal governance system, its inherent decision-making jurisdiction with regard to any decisions made during the course of the proposed scoping exercise.

2. Actions

- 2.1. To support the commitments set out in this ILOA, the Parties agree, at a minimum, to the following actions during the course of the scoping study project:
 - a. The Parties will build a shared understanding of Cowichan Tribes' traditional governance, laws, and protocol, and identify processes to support Cowichan Tribes governance and capacity building as it relates to management of the Koksilah watershed.
 - b. The Parties will actively explore approaches for a contemporary shared decision-making model between Cowichan Tribes and the Province, reflecting principles of UNDRIP, the Calls to Action, and the *Tsilhqot'in* decision and other case law.
 - c. The Parties' technical representatives will hold at least two meetings per month during the scoping study project to discuss progress and emerging issues, with a view to reaching consensus on a course of action to address such issues.
 - d. The Parties' managerial representatives will hold at least one meeting during the course of the scoping study project to discuss progress and emerging issues, with a view to reaching consensus on a course of action to address such issues.
 - e. At the end of the scoping study project, the Parties will hold a minimum of one Chief-to-Minister meeting to discuss the study's recommendations. At this meeting the Chief will be given sufficient opportunity to communicate Cowichan Tribes' support or

disagreement of any given proposed course of action resulting from the study's recommendations.

- f. Other actions, as determined by the Parties.

3. Funding

- 3.1. The Province provide funding to Cowichan Tribes in the amount of \$75,000 to support of the actions and objectives identified in this ILOA. The Province and Cowichan Tribes will cooperatively seek future funding on this initiative.
- 3.2. Notwithstanding any other provisions of this ILOA, the payment of money by the Province to Cowichan Tribes pursuant to this Agreement is subject to:
 - a. There being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any BC Fiscal Year or part thereof when any such payment may be required, to make that payment; and
 - b. Treasury Board not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in (a).

4. Other First Nations

- 4.1. Cowichan Tribes recognizes that the Province may owe separate duties to consult with other First Nations that also assert Aboriginal rights or title within the Koksilah watershed on any actions which may potentially impact those rights.

5. Other Provincial or Federal Ministries or Agencies

- 5.1. The ILOA applies only to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.
- 5.2. In the interest of a G2G relationship, other provincial ministries and agencies may become a Party to the ILOA, where mutually agreed to, through an amendment to the ILOA made in writing and signed by all the Parties.

6. Other Interested Parties

- 6.1. The Parties may engage other interested parties where appropriate.
- 6.2. Engagement with other interested parties under Section 6.1 does not constitute an acknowledgement on the part of Cowichan Tribes of the legitimacy of any legal or equitable interest of any other interested party in the lands and waters comprising the Koksilah watershed.

7. Term and Termination

- 7.1. The term of the ILOA will be in effect for a term of two years from the date of execution, or until such time as a long-term agreement, as referenced in Section 1.1(c) is signed by the Parties, whichever occurs first.
- 7.2. Any Party may terminate this ILOA upon 60 days written notice to the others, outlining the reasons for the termination. If the ILOA is terminated by a Party, only unspent funds advanced up to the date of termination are repayable to the Province.
- 7.3. The Parties may agree to extend the term of the ILOA by way of amendment in writing.

8. Amendment

- 8.1. The Parties consider this ILOA to be a living document and may make amendments from time to time, as mutually agreed to in writing by the Parties.

9. Dispute Resolution

- 9.1. The Parties will adopt a collaborative and interest-based approach to the interpretation of the ILOA.
- 9.2. If any dispute arises out of the interpretation or implementation of this ILOA, the parties will endeavor to resolve them in a manner that fosters an improved, ongoing and respectful G2G relationship between the Province and Cowichan Tribes.
- 9.3. If the Parties are unable to resolve the dispute, a mediator will be jointly appointed by the Parties. If the Parties cannot agree on the appointment of a mediator within 30 business days, the Parties will request the appointment to be made by the BC International Commercial Arbitration Centre.
- 9.4. Each Party will bear its own costs of mediation and the Parties will share the joint costs of the mediation equally.
- 9.5. For clarity, nothing in this section prevents or limits the ability of any Party to seek relief in court and/or boards and tribunals relating to a dispute after exhausting the dispute resolution procedures under this section. This dispute resolution provision does not apply to any existing proceedings

10. Notice

- 10.1 Any notice, communication, document or amendment required or permitted under this ILOA must be in writing, and will be deemed validly given to and received by the other Party, if served personally, on the date of personal service or, if delivered by mail or e-mail, when received as follows:

if to British Columbia:

Director of Resource Management, West Coast Regional Operations
Ministry of Forests, Lands, Natural Resource Operations and Rural Development
3rd Floor 2080 Labieux Road
Nanaimo, British Columbia V9T 6J9

Email: Larry.Barr@gov.bc.ca

if to the Cowichan Tribes:

Director, Lands and Governance
Cowichan Tribes
5760 Allenby Road
Duncan, British Columbia V9L 5J1

Email: Larry.George@cowichantribes.com

11. General Provisions

- 11.1. This ILOA is not intended to be legally enforceable and does not affect the legal rights or obligations of the Parties.
- 11.2. This ILOA does not create, amend, define, affirm, recognize, abrogate, or derogate from any Aboriginal rights or title of Cowichan Tribes which are recognized and affirmed by Section 35(1) of the *Constitution Act, 1982*.


- 11.3. This ILOA is not a treaty or land claims agreement within the meaning of Sections 25 or 35 of the *Constitution Act, 1982*.
- 11.4. This ILOA does not limit the positions any Party may take in any legal or administrative proceedings or in any discussions, negotiations or other forum, or constitute any admission or fact or liability.
- 11.5. Nothing in this ILOA is intended to limit any of the rights or obligations either of the Parties may have under any other agreement.
- 11.6. This ILOA will be governed by and construed in accordance with the laws of the Province of British Columbia and Canada.
- 11.7. If any provision of this ILOA or the application of it to any person or circumstance is invalid or unenforceable, the remainder of this ILOA and the application of it to any person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.
- 11.8. Cowichan Tribes represents and warrants to the Province that it enters into this ILOA for and on behalf of itself and its members and that it has the legal power, capacity and authority to enter into and to carry out its obligations under this ILOA.
- 11.9. The Province represents and warrants to Cowichan Tribes that it has the legal power, capacity and authority to enter into and carry out its obligations under this ILOA, and that all necessary actions have been taken by the Province to authorize the execution and delivery of this ILOA.
- 11.10. This ILOA may be entered into by each Party signing a separate copy of this ILOA and delivering it to the other Parties by electronic transmission



Minister Doug Donaldson
Ministry of Forests, Lands, Natural Resource
Operations and Rural Development

Feb. 7 / 2020

Date



Chief William C. Seymour
Cowichan Tribes

Feb. 7 / 20 20

Date

