

DUPLICATE

**Memorandum of Understanding (MOU) to Establish an
Effective Government-to-Government Working
Relationship for the Management of Fish and Wildlife**

BETWEEN:

TREATY NEGOTIATIONS OFFICE

FEB 14 2005

CORPORATE SERVICES

The Ktunaxa Nation, represented by the Ktunaxa/Kinbasket Tribal Council ("K/KTC")

AND:

Her Majesty the Queen in right of the Province of British Columbia, represented by the Minister of Water, Land and Air Protection ("British Columbia")

(each a "Party" and collectively the "Parties")

Whereas section 35(1) of the *Constitution Act, 1982*, recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada.

Whereas for the purposes of treaty negotiations in British Columbia, the K/KTC has identified as the Ktunaxa Nation's traditional territory the geographic area within British Columbia identified in its Statement of Intent received by the British Columbia Treaty Commission and shown schematically in Appendix A (herein the "Traditional Territory").

Whereas almost all of the Wildlife Management Units in Region 4 - Kootenay are located within the Traditional Territory.

Whereas the Parties wish to describe how they will work together and with Canada on matters pertaining to the management of Fish and Wildlife and their habitats.

Therefore the mutual understandings of the Parties are as follows:

Definitions

1. In this MOU:

"Aboriginal Rights" means aboriginal rights, including aboriginal title, pursuant to section 35(1) of the *Constitution Act, 1982*;

“Fish and Wildlife” means any undomesticated animal and includes its parts and any of its life stages;

“Habitat Management” means activities to conserve, protect, restore, enhance or steward the habitat of Fish and Wildlife;

“Ktunaxa Nation” means the Ktunaxa people (formerly referred to as Kootenay), including any member Bands of the K/KTC;

“Minister” means the Minister of Her Majesty the Queen in Right of British Columbia having the responsibility, from time to time, for the exercise of powers in respect of the matter in question and includes a person appointed to serve, in the department over which the Minister presides, in a capacity appropriate to the exercise of those powers.

Purpose

2. This MOU describes how the Parties will:
 - 2.1. develop a shared understanding of and cooperative relationship for the management of Fish and Wildlife;
 - 2.2. exchange views and develop recommendations regarding Habitat Management issues that are within the management scope of the Parties; and
 - 2.3. develop and forward recommendations regarding Habitat Management issues that are within the management scope of other government agencies.

Scope

3. This MOU applies to the management of Fish and Wildlife and their habitats within the Traditional Territory.

Objectives

4. The objective of this MOU is to establish an effective, cooperative, government-to-government, working relationship, based on mutual respect and understanding, which will:
 - 4.1. provide the Ktunaxa Nation with a greater role in the management of Fish and Wildlife and their habitats;
 - 4.2. provide a venue for the Parties to discuss strategic issues pertaining to Habitat Management and identify any opportunities to share management responsibilities;
 - 4.3. provide a mechanism for the Parties to present recommendations to governments;

- 4.4. enable the Parties to work together on initiatives that will lead to enhanced management of Fish and Wildlife and their habitats;
- 4.5. help the Parties to coordinate their respective management activities;
- 4.6. assist the Parties to develop and implement processes for obtaining and sharing the information required to support sound decisions regarding the management of Fish and Wildlife and their habitats;
- 4.7. provide a mechanism for integrating information obtained from scientific sources and the Ktunaxa Nation respecting the management of Fish and Wildlife and their habitats;
- 4.8. provide an opportunity for the Ktunaxa Nation to implement, evaluate and enhance approaches for administering the harvest of Fish and Wildlife by Ktunaxa Nation members for food, social or ceremonial purposes;
- 4.9. provide a mechanism for the Parties to review and make recommendations on the content of plans, regulations or other documents prepared by the Parties to regulate and administer the harvest of Fish and Wildlife and recover species at risk; and
- 4.10. provide a forum for the Parties to discuss economic and capacity building opportunities for the Ktunaxa Nation.

Management Principles

5. Each Party has specific management responsibilities established outside of this MOU and will undertake its responsibilities and engage in cooperative management processes.
6. In preparing recommendations the Parties will be guided by the information available to them, by their respective conservation principles, and by federal and provincial statutes.
7. The harvesting of any Fish or Wildlife is subject to measures necessary to: (i) conserve any Fish or Wildlife species populations; (ii) protect public health; or (iii) ensure public safety.
8. Cooperative management processes adopted by the Parties will: (i) be operationally pragmatic; (ii) utilize existing management processes to the greatest extent possible; (iii) reflect an incremental, adaptive management approach, growing as relationships mature and the Parties' capacities change; and (iv) where possible, incorporate the interests of non-government stakeholders in ways that are

consistent with the government-to-government relationship established under this MOU.

9. The Parties acknowledge that management agreements with other government agencies that hold responsibilities for the management of land and natural resources may provide additional opportunities for the Ktunaxa Nation to identify issues and make recommendations respecting Habitat Management and land and resource management.

Ktunaxa Fish and Wildlife Management Committee

10. Within sixty (60) days of signing this MOU, the Parties will take steps to establish the Ktunaxa Fish and Wildlife Management Committee (the "Committee") to provide a forum for the Parties to develop the working relationship described in section 4.
11. The Parties intend to work with Canada on the Committee pursuant to the Memorandum of Understanding ("MOU") to Establish an Effective Government-to-Government Relationship for the Management of Fish and Wildlife between Canada and the Ktunaxa Nation.
12. The Committee will undertake the following activities:
 - 12.1. coordinate the exchange of information respecting Fish and Wildlife and ensure that each of the Parties has access to the best available information for developing recommendations and making management decisions;
 - 12.2. identify current or emerging threats to Fish and Wildlife populations and provide recommendations for reducing or mitigating the potential impacts of these threats;
 - 12.3. identify opportunities for the Parties to cooperate in the development and implementation of recovery plans for species at risk;
 - 12.4. identify management actions of one Party which are of concern to the other and develop recommendations to the respective Party to address the concern;
 - 12.5. make recommendations regarding the development of cooperative management mechanisms, including cooperative approaches to data collection and compliance and enforcement;
 - 12.6. review and make recommendations on the content of plans, regulations and other documents prepared by the Parties to regulate and administer the harvest of Fish and Wildlife and manage species at risk;

- 12.7. provide advice respecting the identification of species that are subject to a conservation concern;
 - 12.8. identify opportunities for the Ktunaxa Nation to obtain Fish or Wildlife species, in whole or in part, that are subject to harvesting restrictions or prohibitions, as appropriate;
 - 12.9. provide strategic advice to governments on Habitat Management issues including advice on matters pertaining to the:
 - 12.9.1. sharing of information about Habitat Management objectives, strategies, policies and regulations and land-use planning and management;
 - 12.9.2. effectiveness of Habitat Management programs at the landscape level; and
 - 12.9.3. identification of habitat requirements for species subject to a conservation concern;
- and
- 12.10. other activities to promote the management relationship.
13. The Committee will not review or make recommendations respecting operational-level decisions that may affect Fish and Wildlife habitat, however the Committee may discuss and develop recommendations regarding ways to improve the processes for reviewing proposed operational activities.
 14. The Parties will each appoint representatives to the Committee with the objective of achieving continuity and consistent representation.
 15. The Committee may establish rules and procedures for its internal operations.
 16. The Committee may:
 - 16.1. invite other governments and other government agencies to participate in the cooperative processes established under this MOU; and
 - 16.2. for the purpose of obtaining a variety of perspectives and access to diverse sources of information, invite non-governmental stakeholders to participate in the Committee in an advisory capacity.
 17. Each Party will be responsible for its own costs to participate.
 18. The Committee will be responsible for attempting to resolve issues that arise regarding the funding of the operations of the Committee.
 19. The Committee will work cooperatively to acquire funds for projects.

20. Either Party may submit to the Committee for consideration any topic that is within the Committee's general mandate. The Committee will provide a written summary of its considerations and/or recommendations to the Parties.
21. When the Committee forwards a recommendation to one of the Parties, the Party receiving the recommendation will provide in writing within thirty (30) days an explanation of any action the Party intends to take in response to the recommendation.

Regional Advisory Process

22. If either Party establishes a regional advisory process to obtain advice on matters pertaining to Fish and Wildlife, that Party may invite the other Party to also participate in the process, as a government, and will ensure that the role of the Party in the regional advisory process is reflective of the government-to-government relationship developed by the Parties through their cooperative work in the Committee.

Nature of this MOU

23. This MOU describes:

- 23.1. the framework for a cooperative working relationship between the Parties, and
- 23.2. processes which form a component of consultation and accommodation,

but the MOU itself may not wholly satisfy the Crown's legal obligation to consult regarding any potential infringements of Aboriginal Rights and to seek workable accommodations as appropriate.

24. This MOU is not intended to:

- 24.1. be a legally binding contract;
- 24.2. be a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*;
- 24.3. create, amend, define, affirm, recognize, abrogate or derogate from, any Aboriginal Rights;
- 24.4. be interpreted or implemented in a manner that fetters the discretion of statutory decision-makers;
- 24.5. limit the positions either Party may take in any legal or administrative proceedings; or
- 24.6. constitute any admission of fact or liability.

25. For additional clarity, the Ktunaxa Nation asserts that its agreement to enter into this MOU does not mean that it accepts British Columbia's or Canada's assertion of jurisdiction or authority respecting the management of Fish and Wildlife.

Dispute Resolution

26. When a dispute arises between the Parties during the term of this MOU regarding the interpretation or implementation of this MOU, the Committee may employ voluntary dispute resolution measures that may include mediation conducted in good faith and in an informal and non-adversarial manner.
27. With the written agreement of the Parties, other dispute resolution procedures may be used to assist Committee members to achieve consensus.

Amendment

28. The Parties will review this MOU and its effectiveness from time to time at the request of any Party but not more frequently than annually.
29. Any amendments to this MOU will require the written consent of the Parties and will take effect upon signing.

Notice

30. Where in this MOU any notice or other communication is required to be given by either Party, it will be made in writing and will be effectively given by any of the following methods:
 - 30.1. delivery to the address of the Party set out below, on the date of delivery;
 - 30.2. pre-paid registered mail to the address of the Party, mentioned in this MOU, on the date the registered mail is delivered;
 - 30.3. facsimile, to the facsimile number of the Party, mentioned in this MOU, on the date the facsimile is sent; or
 - 30.4. electronic methods of communication, once these are developed and implemented with the agreement of the Parties.

K/KTC 7468 Mission Road Cranbrook, BC V1C 7E5 Fax: (250) 489-2438 Attn: Manager, Lands and Resources	Water, Land and Air Protection 205 Industrial Road G Cranbrook, BC V1C 7G5 Fax: (250) 489-8506 Attn: Regional Manager, Environmental Stewardship, Kootenay Region
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Termination

31. Either Party may terminate this MOU by giving the other Party thirty (30) days advance written notice of the intent to terminate the MOU and the reasons for terminating the MOU.

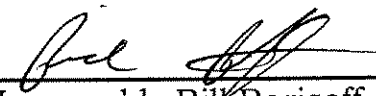
Signed on the 8th day of February, 2005.

On behalf of the Ktunaxa Nation

On behalf of Her Majesty the Queen
 in Right of the Province of British
 Columbia



 Kathryn Teneese
 Administrator
 Ktunaxa/Kinbasket Tribal Council



 Honourable Bill Barisoff
 Minister, Water, Land and Air
 Protection

APPENDIX A

Traditional Territory of the Ktunaxa Nation

