

Short Term Mountain Pine Beetle Agreement
(the "Agreement")

Between:

Upper Similkameen Indian Band

As represented by
Chief and Council

Upper Similkameen Indian Band

and

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

as represented by the Minister of Forests and Range
(the "Government of British Columbia")

(collectively the "Parties")

Whereas:

- The Upper Similkameen Indian Band signed a Forest and Range Opportunities Agreement (FRO) with the Government of British Columbia on December 14, 2006. This Agreement is a short-term additional forestry economic opportunity as referenced in 1.11 of the Upper Similkameen Indian Band FRO, and does not supersede or serve to alter the terms of the Upper Similkameen Indian Band FRO.
- The Upper Similkameen Indian Band has aboriginal rights and/or title ("Aboriginal Interests") within its traditional territory (see attached map Appendix A).
- The Upper Similkameen Indian Band asserts that it has a relationship to the land that is important to its unique culture and the maintenance of its community, governance and economy.
- This Agreement and any decisions and/or licenses issued during the term of this Agreement do not change or affect the positions either Party has, or may have, regarding jurisdiction and authorities.
- Mountain pine beetle uplifts in the Merritt Timber Supply Area will lead to increased harvesting activity and potential infringements of Upper Similkameen Indian Band Aboriginal Interests.
- The Parties wish to enter into an Interim Measures Agreement in relation to mountain pine beetle uplifts and harvesting.
- The Government of British Columbia wishes to support additional economic opportunities for the Upper Similkameen Indian Band.

Purpose

1. The purposes of this Agreement are to:
 - a. increase the participation of the Upper Similkameen Indian Band in the forest sector; and
 - b. provide an economic opportunity by inviting the Upper Similkameen Indian Band to apply for non-replaceable forest licence(s) to assist the province in the management of mountain pine beetle in the Merritt Timber Supply Area, in a manner that is linked to the Upper Similkameen Indian Band FRO and as set out in this Agreement.

Therefore the Parties agree as follows.

2. After execution of this Agreement by the Parties and the Upper Similkameen Indian Band FRO, the Minister of Forests and Range (the "Minister") will invite the Upper Similkameen Indian Band to apply for non-replaceable forest licence(s) (the "Merritt uplift licence opportunity") under section 47.3 of the *Forest Act* to harvest a total of up to 51,296 cubic meters annually over a 5 year term in the Merritt Timber Supply Area and within the traditional territory of the Upper Similkameen Indian Band. Volume comes from 1,296 m³ annual uplift volumes to meet the 54m³ goal. The 30,747m³ volume is MPB uplift volume and 19,253m³ volume is annual smallwood top up.
3. If during the term of this Agreement a further Mountain Pine Beetle temporary volume uplift, or other undercut or unallocated volume becomes available in the Merritt Timber Supply Area, the parties agree to explore further tenure opportunities in this Timber Supply Area, in accordance with Section 47.3 of the *Forest Act*.
4. Any invitation will be subject to a condition that prior to making an application for the Licence, the Upper Similkameen Indian Band will contact the Ministry of Forests and Range and the Parties will work co-operatively to identify an operating area within the traditional territory of the Upper Similkameen Indian Band.
5. Any licence(s) entered into as a result of the invitation to apply under this Agreement:
 - a. will be for a term of no longer than 5 years as determined by the Minister,
 - b. will contain other terms and conditions required by law, including the condition that the Upper Similkameen Indian Band must comply with this Agreement and with the Upper Similkameen Indian Band FRO;
 - c. will include a term that Upper Similkameen Indian Band may not dispose of the Licence except in accordance with the *Forest Act*; and
 - d. will include other terms and conditions as may be required by the Regional Manager.

6. An invitation to apply for a licence(s) and any licence(s) entered into as a result of the invitation to apply under this Agreement may be combined with a tenure opportunity included in any other Agreement in accordance with the *Forest Act*.
7. If the intended holder of the licence is a legal entity other than the Upper Similkameen Indian Band, the Upper Similkameen Indian Band must supply the Government of British Columbia with the supporting documentation stating that, the intended holder has been validly appointed by the Upper Similkameen Indian Band as its representative. Refer to Appendix B.

Consultation

8. The Government of British Columbia intends to consult with the Upper Similkameen Indian Band regarding forestry operational plans and administrative decisions pertaining to increases and/or potential increases in harvest levels to address the mountain pine beetle epidemic in the Merritt TSA, as set out in this Agreement and section 4 of the Upper Similkameen Indian Band FRO.
9. The Upper Similkameen Indian Band agrees to participate in any consultation initiated by the Government of British Columbia regarding forestry operational plans and administrative decisions pertaining to increases and/or potential increases in harvest levels to address the mountain pine beetle epidemic in the Merritt TSA, as set out in this Agreement and section 4 of the Upper Similkameen Indian Band FRO.
10. During the term of this Agreement, and subject to the terms of this Agreement being met and adhered to by British Columbia, the Upper Similkameen Indian Band agrees that British Columbia will have provided an interim accommodation, with respect to the economic component of potential infringements of the Upper Similkameen Indian Band's Aboriginal Interests resulting from operational plans and administrative decisions pertaining to increases in harvest levels to address the mountain pine beetle epidemic in the Merritt TSA, as an interim measure.
11. The Upper Similkameen Indian Band is entitled to full consultation, and accommodation where required, with respect to all potential infringements of their Aboriginal Interests arising from operational plans or decisions or administrative decisions affecting Upper Similkameen Indian Band's Aboriginal Interests, regardless of the economic opportunity afforded to the Band under this Agreement.

Dispute resolution

12. If a dispute arises between the Government of British Columbia and the Upper Similkameen Indian Band regarding the interpretation of a provision of this Agreement, the Parties or their duly appointed representatives will meet as soon as is practicable to attempt to resolve the dispute.
13. If the Parties are unable to resolve differences at the appropriate level, the interpretation issue will be raised to more senior levels of the Government of British Columbia and Upper Similkameen Indian Band.

14. If the interpretation dispute cannot be resolved by the Parties directly, they may appoint an independent and mutually agreeable mediator to assist them to resolve that dispute within 60 days, or such period as agreed upon, or the Parties may choose other appropriate approaches to assist in reaching resolution of the interpretation issue.

Subsequent Agreement

15. Any subsequent Agreement between the Government of British Columbia and the Upper Similkameen Indian Band may provide for an opportunity to acquire a Forest Tenure, and/or other economic benefits.
16. This Agreement is intended to be a short-term economic Agreement, and thus does not preclude the Upper Similkameen Indian Band from accessing other forestry economic opportunities and benefits, which may be available from time to time.

Amendments

17. Any alteration or amendment to the terms and conditions of the Agreement must be in writing and duly executed by the Parties.
18. Either Party may request the participation of the other Party to review the effectiveness of this Agreement annually or as mutually agreed upon and consider amendments to this Agreement.

Term

19. This Agreement will take effect on the date on which the last Party has executed it.
20. This Agreement will terminate on the occurrence of the earliest of any of the following events:
 - a. Five years from the date this Agreement is executed; or,
 - b. the mutual Agreement of the Parties; or
 - c. 90 days notice.
21. If the Upper Similkameen Indian Band FRO is terminated, the consultation processes that were set out in section 4 of that Agreement are incorporated by reference into this Agreement and will continue to be followed by the Parties for the term and purposes of this Agreement subject to the availability of resources.
22. The Government of British Columbia will not terminate this Agreement on the grounds that the Upper Similkameen Indian Band has challenged an Administrative or Operational Decision by way of legal proceedings.

Notice

23. Any notice or other communication that is required to be given or that a Party wishes to give to the other Party with respect to this Agreement will be in writing and will be effective if delivered, sent by registered mail, or transmitted by facsimile to the address of the other as in this section of the Agreement.
24. Any notice or other communications will be deemed to have been given on the date it is actually received, if received before 4:00 p.m. If received after 4:00 p.m., it will be deemed to have been received on the next business day.
25. The address of either Party may be changed by notice in the manner set out in this section of the Agreement.

British Columbia

Deputy Minister
Ministry of Forests and Range
P.O. Box 9525 STN PROV GOVT
Victoria, B.C. V8W 9C3
Telephone: (250) 387-3656
Facsimile: (250) 953-3687

Upper Similkameen Indian Band

Contact Chief Richard Holmes
Upper Similkameen Indian Band
Address:
P.O. Box 310
Keremeos, B.C.
VOX 1N0
Telephone: (250) 499-2221
Facsimile: (250) 292-8579

Miscellaneous

26. This Agreement shall be interpreted in a manner consistent with provincial, federal and constitutional law
27. This Agreement is not a treaty or a land claims Agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* and does not define or amend aboriginal rights, or limit any priorities afforded to aboriginal rights, including aboriginal title.
28. This Agreement is without prejudice to the positions that a Party may take in future negotiations or in current or future legal proceedings, except as provided by this Agreement.
29. The Province acknowledges and enters into this Agreement on the basis that the Upper Similkameen Indian Band has Aboriginal Interests within their Traditional

Territory and further that the specific nature, scope or geographic extent of Aboriginal Interests of the Upper Similkameen Indian Band have not yet been determined. Broader processes engaged in, to bring about reconciliation, will result in a common understanding of the nature, scope and geographic extent of Aboriginal Interests or treaty interests of the Upper Similkameen Indian Band.

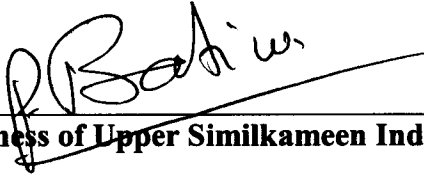
30. This Agreement shall not be interpreted as addressing any potential infringements other than potential economic infringements associated with increased harvesting activity pursuant to temporary Mountain Pine Beetle uplifts in Allowable Annual Cut in the Merritt Timber Supply Area. Nothing in this Agreement shall be interpreted to authorise any infringement that may occur following the termination of this Agreement, even if that infringement is caused by a decision that was made during the term of this Agreement.
31. This Agreement does not address or affect any claims by the Upper Similkameen Indian Band regarding infringements of Aboriginal Interests, arising from Operational or Administrative Decisions made previous to the signing of this Agreement, nor any future settlement related to an aboriginal rights or title claim.
32. Any reference to a statute in this Agreement includes all regulations made under that statute and any amendments or replacement of that statute and its regulations.
33. There will be no presumption that any ambiguity in any of the terms of this Agreement should be interpreted in favour of either Party.
34. The applicable laws of British Columbia and Canada shall govern this Agreement.
35. This Agreement may be entered into by each Party signing a separate copy of this Agreement, including a photocopy or faxed copy, and delivering it to the other Party via facsimile. Each facsimile will be deemed to be an original for all purposes and all counterparts taken together will be deemed to constitute one document.

**Signed on behalf of:
Upper Similkameen Indian Band:**



Chief Richard Holmes

Date: DEC-15-2006



Witness of Upper Similkameen Indian Band signatures

Date: Dec 15/06

**Signed on behalf of:
Government of British Columbia**



**Honourable Rich Coleman
Minister of Forests and Range**

Date: Jan. 3/07

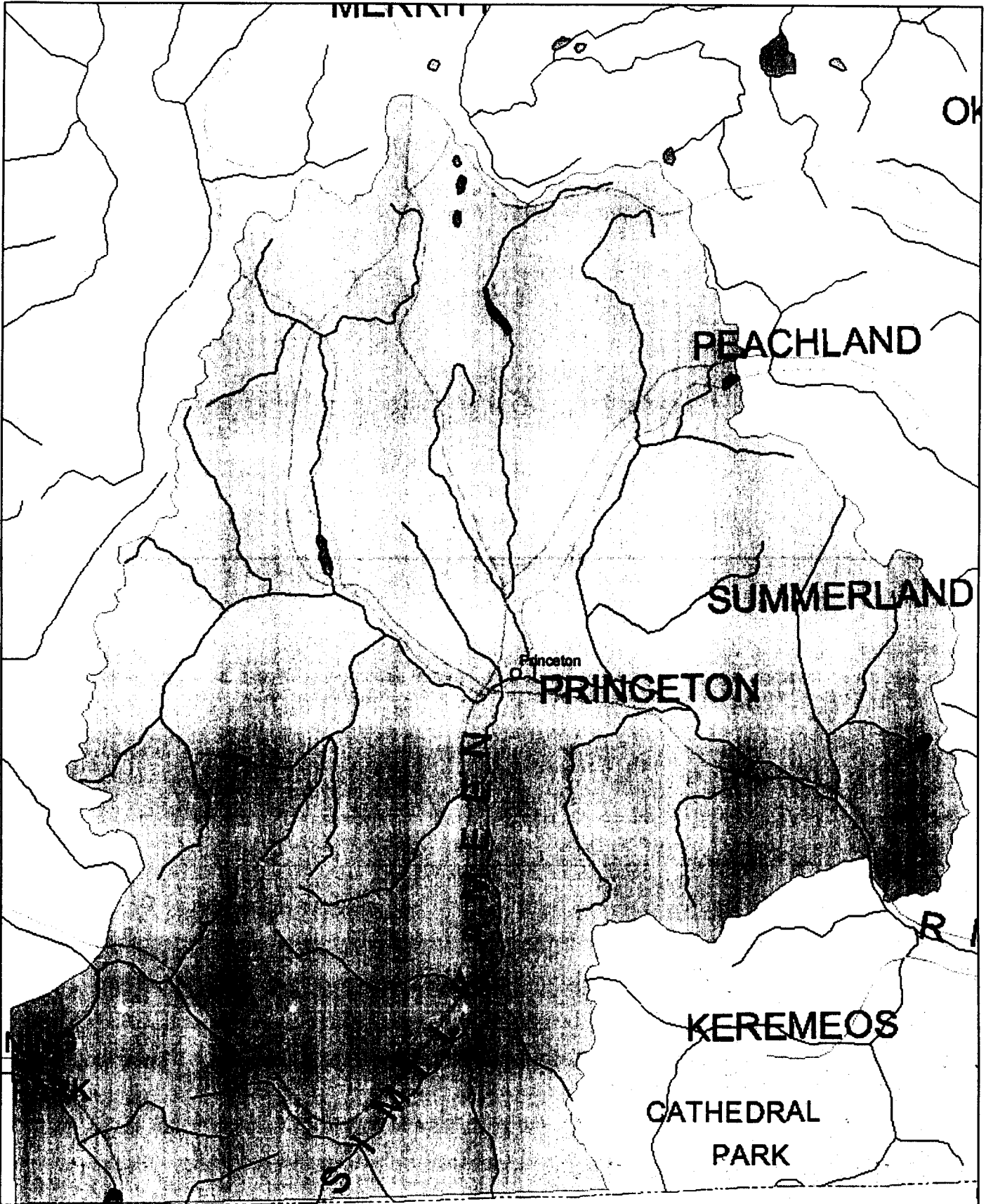


Witness of Minister Signature

Date: Jan 3/07

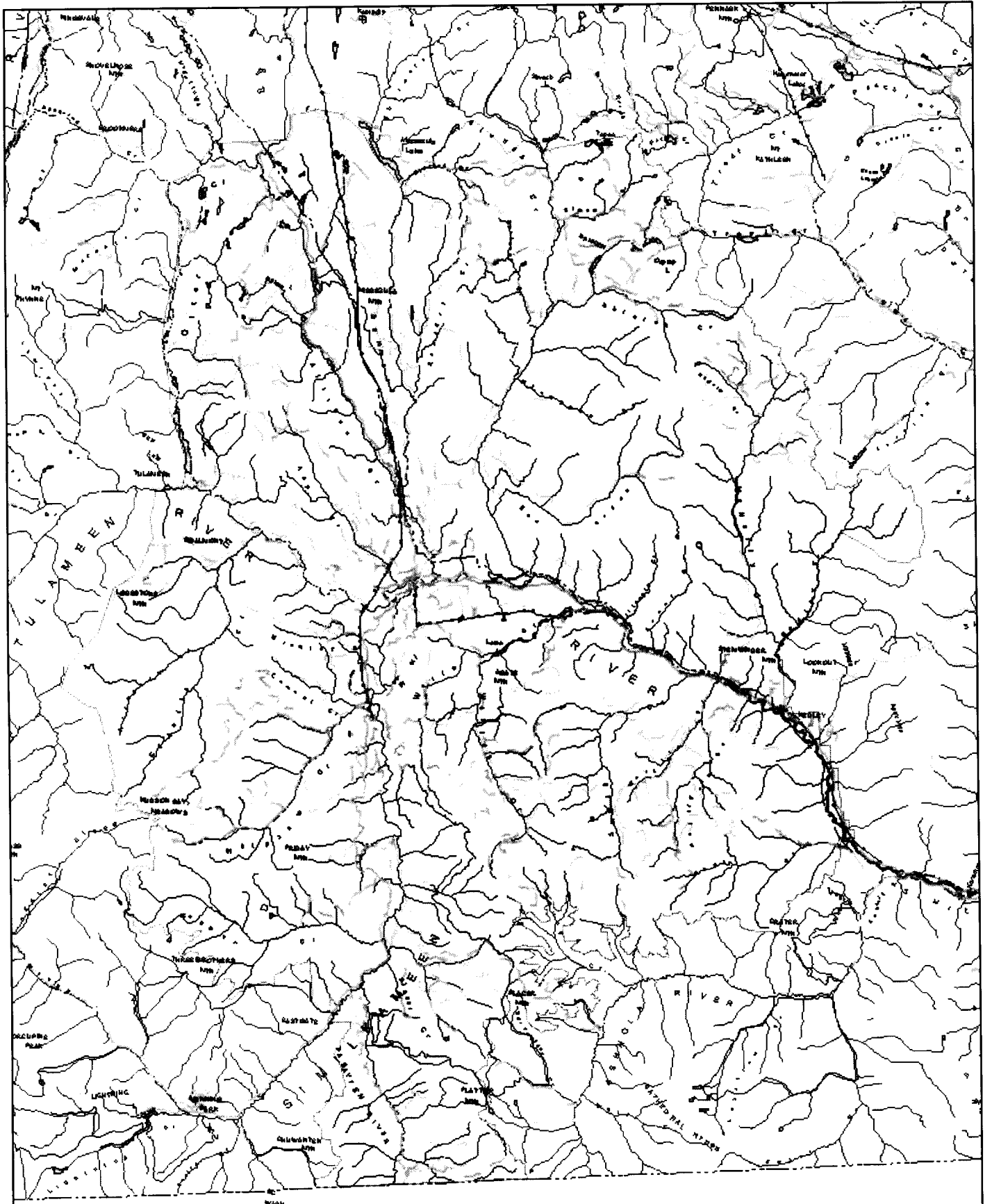
APPENDIX A

MAP OF UPPER SIMILKAMEEN INDIAN BAND TRADITIONAL AREA



Traditional Territory Map

1:500,000



NRFL Draft Operating Area

1:425,000

APPENDIX B:

***Description and Documentation pertaining to the Intended Holder
of the licence***

Please complete part A or B, whichever is appropriate, and attach appropriate documentation:

A) Applicant for the license: Upper Similkameen Indian Band

OR

B) Full legal name, or corporate description of the legal entity, authorized

To represent the applicant of the licence

- (i) Copy attached of legal instrument (letter) authorizing that legal entity to be their representative;
- (ii) Copy attached of the ownership structure of the legal entity (the intended holder of the licence); and,
- (iii) Copy of verification that the applicant has the controlling interest in that legal entity.